CHAPTER 9

Tikanga Māori

IN THIS CHAPTER, WE CONSIDER:

- whether there is a need for a separate regime in accordance with tikanga Māori;
- the treatment of family homes on Māori land;
- the definition and classification of taonga; and
- resolution of PRA matters that involve questions of tikanga Māori.

INTRODUCTION

9.1 In the Issues Paper we identified the importance of recognising te ao Māori and of addressing how tikanga Māori might operate within or alongside New Zealand law (Issues Paper at [2.53]–[2.64]). We stated that there is an implicit principle underpinning the PRA that a just division of property should recognise tikanga Māori and in particular whanaungatanga (Issues Paper at [3.11(g)]).[525] It is important that the substantive provisions of the PRA should reflect this principle.

Response to consultation

9.2 The response to consultation on matters where tikanga Māori is especially relevant has been limited. We received 20 submissions from members of the public, three submissions from individual practitioner and academic experts, and nine submissions from organisations. Tikanga Māori was discussed at one public meeting, nine meetings with practitioners and academics, one meeting with members of the judiciary from the Māori Land Court and one meeting with members of the judiciary from the Family Court.

9.3 This does not mean that Māori do not have anything to say about the PRA, nor does it indicate that the current rules work satisfactorily for Māori. But limited feedback does mean it is difficult to assess the extent of PRA issues that affect Māori and the support for, and nature of, any desirable reform. We have focused therefore on identifying areas

525 Tikanga Māori may be understood as Māori law, custom, traditional behaviour, philosophy. It has also been described as "doing things right, doing things the right way, and doing things for the right reasons" in Māori culture: Richard Benton, Alex Frame and Paul Meredith *Te Mātāpunenga: a compendium of references to the concepts and institutions of Māori customary law* (Victoria University Press, Wellington, 2013) at 431. Whanaungatanga may be described as kinship, a web of relationships of descent and marriage, a sense of connection or belonging through shared experience.

where we consider incremental change to the PRA may give better effect to tikanga Māori, without pre-empting the possibility of further change in the future.

9.4 In developing our preferred approach to these incremental changes we have taken into account the submissions we received from both Māori and non-Māori. If legislative changes are to proceed, further consultation with Māori should occur.

NO SEPARATE REGIME ACCORDING TO TIKANGA MĀORI

9.5 In the Issues Paper we asked whether there should be a separate regime for property division according to tikanga Māori (Issues Paper at [4.17]).[526] Our preliminary view was that the PRA framework can respond to matters of tikanga Māori and so a separate regime is unnecessary.

Preferred approach

P45 The PRA framework should continue to accommodate and respond to matters of tikanga Māori.

9.6 Academics, the judiciary, practitioners and members of the public with whom we met, together with submissions received, did not call for fundamental reform at this time. We consider that a change of such significance would need to be part of a much broader conversation about the relationship between Māori and the Crown. Our preferred approach is therefore to provide for tikanga Māori through the PRA framework, its principles and those operative provisions where tikanga Māori is especially relevant.

9.7 The Human Rights Commission (HRC) recommended in its submission that consideration be given to dealing with tikanga Māori issues in a separate part of the PRA. The Human Rights Commission considered this approach would enable the PRA regime to achieve greater consistency with the self-determination principles set out under the International Covenant on Economic, Social and Cultural Rights and the United Nations Declaration on the Rights of Indigenous People. The purpose of the new Part would be to provide a framework under which relationship property disputes concerning Māori land (and related entities), taonga and tikanga Māori can be specifically addressed. HRC recommended that relevant Māori cultural concepts such as manaakitanga and whanaungatanga should be incorporated into the framework to guide decision-making.[527] HRC also suggested that provision should be made in the Part for resolution of these disputes, with a Māori Land Court judge presiding over the hearing (see paragraph 9.43).

9.8 We have considered but do not prefer this approach because we did not receive submissions expressing support for fundamental change. In our view, keeping the PRA's principles and those operative provisions where tikanga Māori is especially relevant

526 In Canada, for example, federal legislation provides for First Nations to adopt their own rules relating to interests or rights in the family home on reserves where a relationship breaks down or on the death of a partner: Family Homes on Reserves and Matrimonial Interests or Rights Act SC 2013 c 20, ss 7 and 12. The Act's provisional rules apply until First Nations rules are adopted and these rules include an entitlement on relationship breakdown to an equal division of the value of the family home and other matrimonial interests and rights (s 28) and provision for exclusive occupation orders (s 20).

527 Manaakitanga may be understood as to look after, to care for another, to protect.

where they occur in the PRA framework is likely to make the law more accessible to Māori.

FAMILY HOMES ON MĀORI LAND

Current law

9.9 Māori land is excluded from the PRA under section 6.[528] Consequently, family homes and other improvements fixed to Māori land cannot be classified as relationship property and subject to division under the PRA. This remains the case regardless of the contributions the non-owning partner made to the relationship or to the land in question (see Issues Paper at [8.30]).

9.10 Buildings and other improvements that are not fixed to the land are chattels and so are not excluded under section 6.[529] The main indicators of whether a building is a fixture or a chattel are the degree and purpose of annexation.[530]

9.11 There is limited provision for a non-owning partner under Te Ture Whenua Māori Act 1993 (TTWMA). The rights, if any, of a non-owning partner in respect of Māori land on separation are not covered, although a life interest and/or right of occupation may exist when an owning partner dies.[531] However, the Māori Land Court has recognised that someone, including a non-owner, may separately own, by way of beneficial interest under a constructive trust, an improvement in the land.[532]

Issues

9.12 We are not aware of any issues with the exclusion of Māori land itself from the PRA and are not proposing any change to section 6.

9.13 However, reliance on the law of constructive trusts in the absence of legislative provisions addressing interests in family homes on Māori land may not facilitate the inexpensive, simple and speedy resolution of PRA matters (section 1N(d)). The case law demonstrates that it can be difficult to determine without a court decision whether a building is a chattel or a fixture and therefore the basis of any claim and any rights and entitlements that will follow. There has also been judicial criticism that the distinction between a building being a fixture or a chattel is artificial and inconsistent with the purpose and kaupapa of TTWMA.[533] Further, the rights of a non-owner under a constructive trust are themselves unclear and rely on the Māori Land Court exercising its discretion (see Issues Paper at [8.35]–[8.41]).

9.14 The extent to which this is a problem is unclear. Only five per cent of New Zealand's land is Māori freehold land. We are not aware of information recorded about the number of family homes being built on Māori land and the extent to which this might be increasing.

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528 Māori land means Māori customary land and Māori freehold land: Te Ture Whenua Māori Act 1993, s 4.

529 *Rawhiti v Marama* (1983) 2 NZFLR 127 (FC).

530 *Elitestone Ltd v Morris* [1997] 1 WLR 687 (HL).

531 Te Ture Whenua Māori Act 1993, ss 108, 109, 116 and 328. Note that under s 109 where an owner of a beneficial interest in Māori land dies intestate a de facto partner is not entitled to a life interest in the land.

532 See *Nga Uri a Maata Ngapo Charitable Trust v McLeod – Harataunga West 2B2A1* (2012) 49 Waikato Maniapoto MB 223 (49 WMN 223) at [35]; and *Stock v Morris – Wainui 2D2B* (2012) 41 Taitokerau MB 121 (41 TTK 121) at [26].

533 *Tainui – Arahura No 2A* (2015) 30 Te Waipounamu MB 168 (30 TWP 168) at [53]. Kaupapa denotes purpose, policy, scheme, framework.

The Māori Land Court is dealing with some claims relating to family homes on Māori land but it is also difficult to assess whether such claims are increasing. If there are disputes, some claimants may be resolving them outside of the courts.

Options for reform

9.15 In the Issues Paper we identified three options for reform (Issues Paper [8.42]–[8.55]):

(a) Option A: Treat the family home on Māori land as a family home under the PRA. The home, or in practice its value, could be relationship property under the PRA's ordinary rules of division but a non-owning partner would not be able to claim an interest in the land on which the home sits.

(b) Option B: Provide a compensation mechanism under the PRA.

(c) Option C: Provide remedies under TTWMA.

Results of consultation

9.16 Most submitters favoured Option C (providing remedies for non-owning partners through TTWMA). They supported a non-owning partner sharing in the value of a family home on Māori land or being compensated by the other partner for a share of the value of the family home. Submitters recognised the practical and legal difficulties associated with providing remedies through the PRA due to Māori land being owned by multiple parties and/or by trusts. Submitters also recognised the knowledge and expertise of the Māori Land Court in dealing with such land and ownership structures.

Preferred approach

P46 Consideration should be given to providing remedies in relation to family homes built on Māori land through Te Ture Whenua Māori Act 1993.

9.17 We consider there is insufficient evidence of the extent of a problem and limited mandate from the consultation responses to recommend reform to address family homes on Māori land. However, we do acknowledge the increasing desire of government to better meet Māori aspirations to utilise their land, and the development of papakāinga housing and financial arrangements such as Kāinga Whenua loans.[534] There is likely to be a greater need for clarity in the law in the future.

9.18 While amendments to TTWMA are outside our terms of reference, we consider that specific legislative provision for non-owning partners, particularly on separation, should more appropriately be considered as part of any further review of that Act.[535] Further consideration could be given at that time to excluding from the PRA all structures situated on Māori land (fixtures and chattels) and including them within the jurisdiction of the Māori Land Court.

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534 Papakāinga housing is a form of housing development on ancestral land: see Te Puni Kōkiri *A Guide to Papakāinga Housing* (December 2017). Kāinga Whenua loans can be used to finance the buying, building or relocation of houses on multiple-owned Māori land: see Housing New Zealand "Kāinga Whenua" (15 May 2016) <www.hnzc.co.nz>. The Ministry of Social Development's 2018 *Families and Whānau Status Report* details the importance of kāinga and papakāinga living to Māori wellbeing: Ministry of Social Development *Families and Whānau Status Report 2018*.

535 Note that Te Ture Whenua Māori Bill 2016 (126-2) was withdrawn on 20 December 2017.

TAONGA

Current law

9.19 Taonga are specifically excluded from the definition of family chattels in section 2 but are not excluded from the PRA. This means that:

(a) taonga that would otherwise meet the definition of family chattels (such as household effects or ornaments) are separate property; and

(b) taonga that do not meet the definition of family chattels (such as other chattels and ancestral land) are classified as relationship property or separate property in the ordinary way.

9.20 Taonga is not defined in the PRA and the case law does not provide a conclusive definition. The courts initially took a broad approach to interpretation and this interpretation was not Māori-specific.[536] After reviewing the case law and Ruru's writing on taonga,[537] the Family Court in *S v S* concluded that taonga should be defined within a tikanga Māori construct; the concept could be applied pan-culturally provided the central elements of tikanga were shown to exist.[538]

Issues

9.21 In the Issues Paper we identified two potential issues with the PRA's approach to taonga.

9.22 First, whether the lack of statutory definition of taonga was a problem. In the Issues Paper we noted Ruru's suggestion that attempts to categorise non-Māori items of property as taonga may be a result of the limited interpretation of "heirloom" to items that have been passed down (Issues Paper at [11.65]). In the Issues Paper we also highlighted Ruru's recommendation, echoed by the Family Court in *S v S,* that it would be prudent for Parliament to engage with Māori about a possible definition of taonga for the PRA (Issues Paper at [11.57]).

9.23 Second, whether the classification of taonga provides sufficient protections against taonga being drawn into the relationship property pool. Taonga are recognised as a special item of property that should remain separate. But the protection only extends so far. Under the current rules taonga, or a portion of their value, can become relationship property through intermingling with other relationship property or where the value of the taonga has increased, or income or gains have been made, as a result of the application of relationship property or the actions of the other partner.[539] A court has power in certain circumstances to order that a partner pay the other partner from their separate property, which could include taonga, such as where the owner of the taonga has dissipated relationship property or used relationship property to satisfy personal debts.[540] We discussed in the Issues Paper the concepts of whanaungatanga and

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536 See *Page v Page* (2001) 21 FRNZ 275 (HC); *Perry v West* DC Waitakere FP 239/01, 25 March 2003; and *Perry v West* [2004] NZFLR 515 (HC).

537 Jacinta Ruru "Taonga and Family Chattels" [2004] NZLJ 297.

538 *S v S* [2012] NZFC 2685 at [54(b)] and [58].

539 Property (Relationships) Act 1976, ss 10(2) and 9A,

540 Sections 15A, 18C and 20E.

kaitiakitanga and that the division of taonga under the PRA may be inconsistent with these concepts (Issues Paper at [11.42]–[11.46]).[541]

9.24 In addition, the exclusion of only those taonga that are family chattels does not reflect the Māori worldview that taonga can be any item, including both the tangible and non-tangible.[542] It also prevents assertions that property that is not a family chattel, such as ancestral land, is taonga.

9.25 On the other hand, ancestral land is not within the TTWMA's definition of Māori land. Consequently the TTWMA's protections against alienation of Māori land do not apply, and ancestral land is not excluded from the PRA under section 6. If the PRA is amended to exclude from division ancestral land that is considered taonga, the PRA may provide protections to ancestral land that exceed the protections given under to it the TTWMA. The policy of the PRA towards ancestral land could therefore be inconsistent with the policy under the TTWMA.[543]

9.26 The amount of ancestral land that Māori consider to be taonga may be considerable. We were told that the 1967 amendments to the Māori Affairs Act 1953 resulted in the status of Māori freehold land being changed without owners' knowledge or consent and owners are now seeking to change the status of the land back.[544] Removing ancestral land considered to be taonga from the relationship property pool could therefore have a significant impact if the land has been used for the family home.

Results of consultation

9.27 There was a mixed response to including a definition of taonga in the PRA. There was a general caution about defining tikanga Māori concepts or relationships in legislation. The Judges of the Māori Land Court, HRC, Perpetual Guardian and a practitioner submitted that what constitutes taonga should be decided on a case-by-case basis. The Ministry for Culture and Heritage (MCH), Professor Jacinta Ruru, Ngā Rangahautira and some practitioners we met with supported the inclusion of a definition in the PRA.

9.28 We asked on the consultation website if an item should only become taonga if it is taonga under tikanga Māori. This option was marginally favoured by submitters who responded to this question. Other comments from submitters suggested acceptance that what constitutes taonga and how it is treated should be governed by tikanga Māori. One practitioner commented that taonga was a Māori term not for wider application.

9.29 All submitters responding to the issue of how taonga should be classified supported treating taonga as separate property that cannot become relationship property in any circumstances. There was some recognition that property collectively owned and subject to kaitiakitanga should be excluded and this could include items other than family chattels. MCH and Perpetual Guardian specifically supported excluding from the PRA land that is taonga. Others noted the difficulties identified in paragraphs 9.25 and 9.26 above

541 Kaitiakitanga may be understood as guardianship, stewardship, trusteeship.

542 See for example the evidence of Professor Tapsell in *S v S* [2012] NZFC 2685 at [56].

543 There is, however, provision under Te Ture Whenua Māori Act 1993 for owners of general land and general land owned by Māori to apply to change the land status to Māori freehold land and so bring that land within the protections of Te Ture Whenua Māori Act 1993: Te Ture Whenua Māori Act 1993, s 133. The provisions of s 133 require the court to be satisfied there is sufficient consent between the owners for the change of status.

544 The Māori Affairs Amendment Act 1967 allowed the Registrar to change the status of Māori Freehold Land with fewer than five owners to General Land, enabling it to be sold or mortgaged.

and considered TTWMA mechanisms were a more appropriate way of protecting ancestral land.

Preferred approach

P47 Taonga should be defined in the PRA within a tikanga Māori construct.

P48 Taonga should be classified as a special item of separate property that cannot become relationship property in any circumstances, and a court should not be able to make orders requiring a partner to relinquish taonga as compensation to the other partner.

A definition of taonga

9.30 Although there was a limited response to consultation, we consider there is support to narrow the concept of taonga in the PRA and define it by reference to tikanga Māori. Such a definition would provide clarity and certainty, and direction to the court. At the same time, it would avoid a prescriptive description that did not appropriately capture what is, and is not, taonga, in the Māori worldview. Expert evidence would still need to be brought on the particular tikanga that governs the taonga in question.[545] An example of such a definition was first suggested by Ruru in 2004:[546]

> A valued possession held in accordance with tikanga Māori and highly prized by the whanāu, hapū or iwi.

9.31 The Judges of the Māori Land Court submitted that if taonga was to be defined in the PRA, the Waitangi Tribunal's definition of "taonga work" in its *Ko Aotearoa Tēnei (Wai 262) Report* may be useful to consider in this context:[547]

> A taonga work is a work, whether or not it has been fixed, that is in its entirety an expression of mātauranga Māori; it will relate to or invoke ancestral connections, and contain or reflect traditional narratives or stories. A taonga work will possess mauri and have living kaitiaki in accordance with tikanga Māori.

9.32 We recommend that land should not be included as taonga for the purposes of the PRA for the reasons identified. Any definition of taonga in the PRA should therefore expressly exclude land.

9.33 Consultation should be carried out with Māori to inform the drafting of any definition, including whether taonga should apply pan-culturally or be limited to items of Māori significance and/or items possessed by Māori.

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545 We discuss ways that could better enable the court to resolve matters of tikanga later in this chapter.

546 Jacinta Ruru "Taonga and family chattels" [2004] NZLJ 297 at 299.

547 Waitangi Tribunal *Ko Aotearoa Tēnei: Te Taumata Tuatahi* (Wai 262, 2011) at 54. Mātauranga Māori may be understood as Māori knowledge. The authors of *Te Mātāpunenga* note that the term mātauranga most often carries with it notions of depth, cultivation and understanding: Richard Benton, Alex Frame and Paul Meredith *Te Mātāpunenga: a compendium of references to the concepts and institutions of Māori customary law* (Victoria University Press, Wellington, 2013) at 221. Mauri can be described as life essence. The meaning encapsulates two related but distinct ideas: the life principle or essential quality of a being or entity, and a physical object in which this essence has been located: *Te Mātāpunenga* at 239.

9.34 We have also considered MCH's question as to whether the term "taonga tuku iho" should be used instead of "taonga". We understand that the term refers broadly to "cultural property or objects"[548] but translates specifically to taonga "handed down". This is an appropriate term in the context of taonga already in existence; for example, the term is used in the Preamble to TTWMA to describe the relationship between land and Māori people. However, the term is likely to be too limiting in the PRA context as, like the current interpretation of heirlooms, it may prevent newly created taonga from being considered taonga under the PRA.[549]

Classification of taonga

9.35 Our preferred approach is to treat taonga as separate property that cannot become relationship property in any circumstances. However, while we acknowledge that taonga is an expansive concept in the Māori worldview, we do not recommend including land within the definition or classification of taonga in the PRA for the reasons outlined in paragraphs 9.25 and 9.26 above.

9.36 Although the number of submissions was limited, the level of support for prioritising kaitiakitanga over division for taonga favours reform. We consider this reform simply reflects the Māori worldview and how Māori treat taonga outside of the rules of the PRA when partners separate or when one partner dies.

9.37 We have also considered whether the court could be given discretion to compensate for contributions the other partner may have made to taonga. For example, relationship property or the partner's actions could be applied to maintain or restore taonga. It could be unfair that these contributions are not recognised. However, there has been very limited discussion about this potential reform and we are not aware that it is an issue for Māori. We therefore do not make any proposals for reform at this time.

RESOLUTION OF PRA MATTERS THAT INVOLVE QUESTIONS OF TIKANGA MĀORI

Current law

9.38 Māori customary law is part of the common law in New Zealand. What constitutes Māori custom or tikanga in any particular case is a question of fact for expert evidence, unless the particular tikanga has become notorious by frequent proof and so judicial notice can be taken of it. In past cases, customary rules in issue have been proved in evidence by kaumātua or by academics, by reliance on earlier published decisions of the Māori Appellate Court and in an affidavit filed "by a distinguished New Zealand chief" (see discussion in the Issues Paper at [26.116]).

Issues

9.39 Māori should have meaningful input into the workings of the justice system. We noted in the Issues Paper that the current court system may not be responsive to Māori values, beliefs and cultural practices (Issues Paper at [23.18]–[23.21]). Because of this Māori may rarely use the court to enforce their rights under the PRA.

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548 The Legal Māori Resource Hub "A Dictionary of Māori Legal Terms" <www.legalmaori.net>.

549 See further Professor Tapsell's evidence to the Family Court in *S v S* [2012] NZFC 2685 at [56]–[57] on what constitutes taonga.

9.40 Providing measures that would enhance the court's ability to resolve questions of tikanga Māori would give better effect to the implicit principle that a just division of property should recognise tikanga Māori and in particular whanaungatanga. Māori may then have greater confidence that the Family Court is sensitive and responsive tikanga Māori. While understanding tikanga and te reo are important elements in the ongoing education of the judiciary, in the Issues Paper we identified the following potential measures that could better enable a court to resolve questions of tikanga Māori (Issues Paper at [26.118]–[26.135]):

(a) enable the court to obtain a cultural report;

(b) enable the court to appoint cultural advisers as full members of the court;

(c) enable a Māori Land Court judge to sit in the Family Court;

(d) empower the Family Court to refer questions of tikanga to the Māori Land Court or Māori Appellate Court for consideration;

(e) empower the Māori Land Court and/or the Māori Appellate Court to hear PRA cases; and

(f) provide for appeals on matters of tikanga to be heard in the Māori Appellate Court rather than the High Court.

Results of consultation

9.41 There was a mixed response to the measures identified in the Issues Paper, with an equal number of submitters favouring measures that retained the jurisdiction of the Family Court to hear PRA questions on tikanga and supporting measures that give the Māori Land Court judges a role. Key submissions are discussed below.

9.42 The Judges of the Māori Land Court considered that while judicial education and the ability to appoint a person to make an inquiry and provide a cultural report would provide some understanding of tikanga Māori amongst the bench of the Family Court, they did not think such measures would be sufficient to ensure that questions of tikanga are properly understood and taken into account. Their Honours considered that at a minimum the court *must* appoint an expert to provide a report and that it would be preferable that an expert sit alongside the Family Court judge to hear and determine any question of tikanga. This would align with the practice in the Environment Court. Their Honours supported the other measures in paragraph 9.40 above and considered that those in paragraph 9.40(c)–(e) should be available both on direction of the Family Court and by consent of the parties. Their Honours acknowledged that it may be difficult in many circumstances to separate out an issue of tikanga Māori for referral to the Māori Land Court and it may be more efficient for a Māori Land Court judge to sit alongside the Family Court judge. The cross-warranting of Māori Land Court judges to sit in the Environment Court was considered a good model. Their Honours acknowledged that resourcing of the Māori Land Court could be a practical issue.

9.43 HRC submitted that there is merit in either of the measures identified in paragraph 9.40(c)–(d) above. HRC considered that "in many respects keeping the proceedings in the Family Court's jurisdiction may be preferable. This keeps the … jurisdictions largely intact". Referring matters of tikanga to the Māori Land Court was also seen as potentially workable, although HRC considered it would have the effect of significantly augmenting

that Court's jurisdiction. HRC also considered that parties should be able to "elect, by consent, a parallel process presided over by a Māori Land Court judge".

9.44 Of the measures identified, the Judges of the Family Court preferred to seek assistance from experts via cultural reports. Their Honours submitted that the measures identified in paragraph 9.40(d)–(f) above could increase costs and/or delays in proceedings. The specialist nature of the Family Court and the difficulty in severing matters of tikanga from PRA matters. Their Honours did not favour Māori Land Court judges sitting in the Family Court as the judges would need to have the same specialised knowledge, education and training as Family Court judges which would be burdensome for the judges and may also cause delay. The Judges of the Family Court considered it vital for all judges to receive specialised education on tikanga Māori.

9.45 The New Zealand Law Society submitted that "it may be appropriate to enable the Family Court to seek assistance from experts in tikanga Māori where required, although it would be preferable for each party to bring relevant expert evidence about this". They considered that the Family Court should have sole jurisdiction in respect of PRA cases.

9.46 Ngā Rangahautira supported the use of cultural reports and advisors, noting the use of cultural advisory panels in other judicial fora. They considered that a combination of those measures together with training Family Court judges in tikanga Māori to be more efficient than the use of Māori Land Court judges in the Family Court.

Preferred approach

P49 The Family Court should be enabled to appoint a person to make an inquiry into matters of tikanga Māori and report to the Court.

P50 Family Court judges should receive education on tikanga Māori.

P51 Further consideration should be given to warranting Māori Land Court judges to sit alongside judges in the Family Court where there is a difficult matter of tikanga Māori at issue.

9.47 We propose that the Family Court should be enabled to appoint a person to make an inquiry into and report on matters of tikanga Māori relevant to an application under the legislation. This would provide independent assistance to the Court where the parties' expert evidence is insufficient or irreconcilable. We do not consider that it should be mandatory for the Court to make such inquiries as the parties should be incentivised to bring their own expert evidence in the usual way. Section 38 currently empowers the Court to appoint a person to make an inquiry and report on matters of fact in issue. We propose in Chapter 10: Resolution to broaden the Court's power to enable it to inquire into such matters it considers may assist it to deal effectively with the matters before it. This power could specifically include matters of tikanga Māori or, alternatively, a new provision could be drafted.

9.48 We also agree with submitters that judicial education on tikanga Māori is vital. We note that general judicial education on tikanga Māori is currently available[550] and recommend that judges of the Family Court receive both this general education and education on tikanga Māori specific to whānau. This will better equip judges with the skills and knowledge to determine circumstances where an inquiry into matters of tikanga Māori is warranted and to recognise and apply the principles of tikanga Māori more generally through the adjudication process.

9.49 We acknowledge the concerns by some submitters about measures that involve experts other than Family Court judges in decision-making or a greater role for the Māori Land Court judges. We do not therefore recommend reform along the lines of the measures in paragraph 9.40(b)–(f) above.

9.50 We do, however, see merit in further considering the warranting of Māori Land Court judges to sit alongside a Family Court judge in cases where there are difficult matters of tikanga at issue. This would utilise the skill, expertise and mana of both courts whilst retaining the procedural jurisdiction of the Family Court. It would also avoid submitters' concerns about the practicalities of severing matters of tikanga from the rest of the proceedings. The process could be available both on the direction of the Family Court and on application by one of the parties. The implicit principle that a just division of property under the PRA should recognise tikanga Māori would guide the judge's exercise of discretion as to whether a Māori Land Court judge should also sit on the proceeding. We do not have evidence of the likely impact on the length of time for proceedings with both judges sitting but any potential delay would need to be balanced against the benefits of the measure. As it would be necessary to amend the Family Court Act 1980 and TTWMA to enable Māori Land Court judges to sit in the Family Court, further consideration of this measure could be given as part of a review of TTWMA or the Family Court.

Resolving matters out of court

9.51 During consultation both HRC and the Judges of the Māori Land Court identified the Rangatahi Courts as a good marae-based judicial model. The Rangatahi Courts operate in the same way as the Youth Court but are held on marae and follow Māori cultural processes.[551] The Rangatahi Courts are not aimed at resolving disputes but are aimed at addressing the causes and consequences of wrongdoing in terms of harm caused to others. Although part of the criminal justice process, the Courts do require willing participants as there must be an acknowledgement of responsibility on the part of the offender and the support of the offender's family and community.

9.52 For the purposes of resolving relationship property claims, in our view the principles of the Rangatahi Court are best reflected through voluntary tikanga-focused dispute resolution processes rather than a judicial model. We noted in the Issues Paper that dispute resolution services are more flexible than court processes and can therefore focus on resolving matters in accordance with tikanga (Issues Paper at [24.35]). Some mediators currently offer services that are based on traditional Māori values and respect te reo, tikanga and kawa, and the role of whānau.[552] A number of submitters supported

550 See the Institute of Judicial Studies *Prospectus 2017* available at <www.ijs.govt.nz>.

551 See Youth Court of New Zealand "Rangatahi Courts and Pasifika Courts" <www.youthcourt.govt.nz>.

552 Kawa refers to protocols.

improved information, mediation and other out of court services that can help Māori resolve disputes according to tikanga Māori. See Chapter 10: Resolution for further discussion on these measures.