

Opinion Report – Changes needed to the current system of child protection and care in Aotearoa

Ian Hyslop & Emily Keddell – 07/06/2022

Interpretation of brief

This report is a response to the following brief developed in discussion with Allan Cooke and Aroha Fletcher – Counsel Assisting (Foster Care Inquiry) – Abuse in Care Royal Commission of Inquiry:

Letter of Instruction:

1. (a) A retrospective and contemporary conceptual analysis – how children came into care and their journey through the foster care system, and with this including their exit from care.

(b) What changes need to be made to the foster system so that it can better address the needs of those children who are the subjects of intervention by the State and are removed from their families or those providing care for them.

It is anticipated that in addressing this aspect of the brief, you will provide an opinion about the overall structure of any proposed care system:

- i. It has been proposed that a new structure is created to look at care and protection and youth justice matters in New Zealand. That structure may be based on a ‘for Māori-by Māori’ approach. Do you have any opinions on what social work practices could be useful or may need to be change if such and approach is taken?
- ii. How would a ‘for Māori by Māori’ approach correlate to the care and protection systems and processes applied to non-Māori / Pacific children who may be the subjects of care and / or protection and the provision of foster care?

We have been asked to write this report in plain language and to focus on research and reference material from Aotearoa. We have tried to do this where possible, and we have also set out a bullet-point plain language summary of the main points (see page 2). The authors are aware of a lot of people who could help with ideas about how to reform state care and wider social services in Aotearoa. Also, the task we have been set is very wide and it is hard to do it properly in a short time. Because of this we have decided to talk about things that we know something about from our own experience of practice, study, and research. We are also very conscious of our limitations, as Pākehā, in relation to the issue of developing a ‘for Māori by Māori’ approach to policy and practice. We have made comment and raised some questions from our perspective in this report, but we make no pretence of ‘expert’ status in this critically important area.

This report mainly looks at preventing the need for state care. The aim is to lay out some key issues and share some thoughts about how progress can be made. We need to do a range of things – at different levels and at the same time. The economic problem of poverty and the social problems that come with inequality must be a major focus for Government. We also need to develop services that better meet the needs of children (and whānau) at risk of entering care.

Child welfare is not a simple area of policy and practice. It is a sensitive topic which has led to a range of political responses over the years. When you look back, policy ideas can be seen to go around in circles in many ways. Often changes of direction which sound good on paper do not have enough money spent on them or enough planning done to make sure that new approaches will really work.

Sometimes change is made by politicians who do not really understand the needs of the children and whānau who come into the child welfare system (Hyslop, 2022). Meeting these needs is where the focus for change should be. It is also important to learn from the history so that we stop repeating mistakes of the past. Child welfare policy and practice is complex, but it is possible to build a better system. It is hoped that the following report will be of some help to the survivor-led inquiry. We begin with historical overview and description of the existing system and the problems that it faces. Then we look at some possible solutions - and the challenges of making these solutions work.

Authors

The following Report has been prepared by Dr Ian Hyslop, Senior Lecturer, University of Auckland and Associate Professor Emily Keddell, University of Otago. The text has mainly been compiled by Dr Hyslop, simply because he has had more time to devote to this project in the brief window available. However, Dr Keddell has done a lot of work in terms of the key issues identified, the research evidence that is presented, and the suggestions for reform which are made. Associate Prof Keddell is a researcher and author in the field of child protection reform, inequalities, and decision-making, and has a background in both state and community child protection practice. She was an invited witness for WAI 2915, the urgent inquiry into Oranga Tamariki, undertaken by the Waitangi Tribunal. Dr Hyslop worked in statutory social work in Auckland for twenty years from 1984. This work experience gave him an understanding of the challenging practice environment which framed social work in these times. Many of the same challenges remain today. In recent years he has produced several reports at the request of the law firm Cooper Law in relation to survivor claims against the Crown for failing to uphold the human rights of children and young people in state care. His recent book, 'A Political History of Child Protection – Lessons for Reform from Aotearoa New Zealand' (2022), looks at policy shifts and patterns in relation to the state child protection system. The book argues that policy makers need to learn from this history if lasting change is to be made. It is important to change the power relationship between the state and Māori in Aotearoa.

Main points in plain language

- The history of foster care is too often a harmful history. This report mainly looks at how to prevent the need for children to come in to state care. Foster care needs to be understood as part of the wider child welfare system and state policy more generally.
- Child welfare is a complicated area of policy and practice but it is possible to make the system work in fairer and better ways. Changes need to be made to the child welfare system in different areas, at different levels in the system, at the same time.
- Small reforms to the system are not enough – we need big changes in the way that money and decision making authority is distributed across the system. We need to move away from blaming social problems on the behaviour of people living in poverty and we need to develop support systems that work for parents, children and whānau if we are to keep children safe and out of care.
- We need a system that is more focussed on prevention as well as giving better support for children and young people in care, and leaving care. A better system will cost money but it is worth the investment. Change needs to be carefully planned.
- We had a chance for a new approach from the late 1980s but not enough has changed. We now have another chance. The Royal Commission and survivor voices are part of this process.
- There is a chance to re-think the power balance between the Crown and Māori. We should take this opportunity.
- We need to learn from the past. The child / youth / family welfare-protection system has been reviewed many times. The 2015 Expert Panel (Modernising Child, Youth and Family) review focused on child safety and rescue. This led to more Māori babies being uplifted from young mothers living in hard situations. The now infamous Hastings (Hawkes Bay) case exposed this harmful practice. These events sparked a wave of reports and reform ideas.
- In Aotearoa we have a “notify-investigate” child protection system. This system ends up with unfair (biased) outcomes for many reasons. Māori (and Pacific) people are more likely to live in poor communities and are more likely to be reported to the system. Relative poverty is a result of history – colonisation and low wage work. Racist attitudes and beliefs can also create biased outcomes inside the child welfare system.
- Practice policy has shifted since the Hawkes Bay event. Fewer babies are being uplifted now because OT have changed their procedures around this. But we do not really know if this practice change means that high needs / high risk children and carers are getting more help.
- We need to think of child welfare as a social / public health problem rather than it being all about the behaviour of individuals.
- It is very important to hear the voices of people who have been through the system if we are going to make it better. This includes not only children but also parents, grandparents, aunts and uncles – people who have experienced the system from the inside. Social workers need to show respect and work ‘with’ people, not ‘on’ them. The system needs to stop treating some people as if they have a smaller set of human rights.

- People at risk of losing their children need good skilled support. This sometimes involves challenging their behaviour and a trusting working relationship is the key to this. Some people have painful histories and some people are isolated. There are reasons for this and it takes time and effort (and money sometimes) to build support systems that can last.
- State systems tend to resist change. If we are going to develop a system that works better for whānau, we need to make sure that community organisations and iwi/hapū are major players in service planning and design.
- At present there is a big gap caused by OT withdrawing from responsibility and community organisations not having the resources or authority to pick up the slack.
- Giving Māori authority to design and deliver services to Māori is a good idea, but how this works needs to be thought out carefully and it needs to be properly funded. Community responsibility without power and resources does not work and history shows us this. This is tied to upholding te Tiriti and Māori have never stopped struggling for this to happen.
- A new independent governing body needs to be set up to plan and implement the development of a new child and family welfare and protection system, especially for Māori. We need to take this chance because it may not come again.

The need for change

The history of foster care and care in institutions is all too often a harmful history. In many ways it paints a damning picture of state social work in Aotearoa (Hyslop, 2022, p. 65). However state social work can't solve all of the problems in our society by itself. The care system needs to be reformed but the most important thing is to address the poverty and disadvantage that leads to children entering care in the first place. This has been recognised by the Waitangi Tribunal in the recent Wai 2915 report - 'He Pāharakeke, He Rito Whakakikanga Whāruarua':

These factors include poverty, alienation, transience, income and housing insecurity, health and education disparities, involvement with the criminal justice system, and drug and alcohol dependency. Addressing these issues will require a bold and comprehensive all-of-government approach. Piecemeal reform of Oranga Tamariki, no matter how well designed, will ultimately fail another generation of children (Māori and non-Māori), if the same factors placing inhumane stress on families continue (Wai 2915, 2021, p. 179)

It is clear that significant change is necessary if the needs of children likely to enter the care of the state are to be better served. In terms of future practice, out-of-family care should be a last resort and it should be brief. However there are some challenging realities in all of this. We cannot ignore the need to keep children safe. This report will look to identify possible ways forward.

We need a fairer distribution of wealth in Aotearoa. People earning low wages or on benefits need more money if they are to give their children a better life. Child welfare support services can be improved in a lot of ways, such as clearer and more effective organisational arrangements, more preventive services, better practice on the ground, support for children and young people in (and exiting from) care, and greater help for whānau when children are in need of protection. All of these things require planning and resourcing. It costs money to develop and provide better services. You can't just expect the community to do it without financial investment. Words on paper are not enough. Judge Ken Mason hit the nail on the head in the 1992 report into the reforms which followed the Children, Young Persons and their Families Act, 1989 (now Oranga Tamariki Act):

If the Act is not generously supported in terms of personnel and funding, it will fail. Resourcing the Act is an expensive business but the consequences of not doing so will be even more expensive. In human, social and economic terms our New Zealand community, long-term, will reap the rewards of a generosity of spirit and pocket. (Mason, 1992, p. 191)

For reasons to do with political ideas that were not very helpful to people in need, the whānau-centred vision of this legislation was not adequately resourced and delivered in practice. This pattern of under-resourcing was established through a twin focus on family responsibility and a business efficiency model for state services in the policy context of the 1990s (Hyslop, 2017: 2022).

The many abuses that we have seen in the care system over the last fifty years (and longer) are not simply caused by dangerous individuals. Of course, such individuals do exist and have caused serious harm to children and young people in care. However in a more general way damaging outcomes result from systemic faults. Long term solutions do not lie in the better management of the existing system. Major change is needed at structural / political and organisational levels. However, as noted in the Waitangi Tribunal report 'He Pāharakeke, He Rito Whakakikanga Whāruarua' (Waitangi Tribunal, 2021) in relation to the harm caused to Māori through the child protection system, finding faults is one thing but building solutions is a harder job:

The prejudice arising is profound. In confidential sessions we heard from those who had tamariki taken from them by Oranga Tamariki. The impacts are felt over generations. We heard from those who had been in care about the effects of disconnection and we heard from a range of remarkable individuals and organisations working to help whānau in contact with the system. The case for substantial redress is obvious, but its form is less so. (Wai 2915, 2021: 25)

We need to be careful when we plan changes because child welfare is a complex system and sometimes changing one part of it can have unexpected effects in other parts (Kemp, 2020). You can't treat the 'foster care' system as if it is separate from other parts of state child protection and youth justice system, including the way that entry and exit from care is set up. The need for a care system is also connected with the nature and quality of wider social services. We need a child and family support service system that works for people in need.

Some people argue that the foster care system is separate to wider questions about economic and social inequality, but we think that the way that the care system works is very much tied up with the way that social suffering is unevenly spread in Aotearoa. Māori and Pacific children are much more likely to live in poverty. There are other cross-overs, with gender and disability for example. The capacity to access resources and social supports impacts on children in the care system in many ways – the reasons for care entry, the experiences of children and families as they pass through the Oranga Tamariki system, the capacity of wider whānau to support children and parents, and the chances of parents to be safely reunified with children after a period in care.

As developed in the discussion that follows, state responses to child welfare policy and practice cannot change the political and economic settings that create inequality. However, big changes to the current child protection system could form an important part of a wider political solution. In this context we must also consider the obligations of the Crown to Māori in terms of te Tiriti – the distribution of both authority and resources, including possible changes to constitutional arrangements such as those envisaged by the late Moana Jackson.

We are potentially on the brink of a revolutionary turning point in the development of policy and practice. However, we have been here before. We arrived at a very similar cross-roads well over thirty years ago with the passage of the Children, Young Persons' and their Families Act, 1989 (now the Oranga Tamariki Act).

A short history

When considering the current challenges and options it is important to be aware of the circular nature of care system reform in Aotearoa. The Children and Young Persons and their Families Act, 1989 (now the Oranga Tamariki Act) was informed by concern with racism and the over-representation of tamariki Māori in state care. This was set out in the important Māori Advisory Committee Report - Puaote Ata Tu, in 1986. Making the new law work required services to support high-needs families. It also needed the transfer of authority and resources to whānau / hapū / iwi. This was not achieved.

On the contrary, the political and managerial practice and policy set up which developed through the 1990s and into the 2000s resulted in a minimalist (and often dysfunctional) state child protection system (see Brown Report, 2000):

Brown's (2000) criticisms were substantive and wide-ranging, recognising that under-resourcing had resulted in reactive and crisis-driven social work. The report located the genesis of this situation in the competitive business model approach of the previous decade and recommended a return to a participatory community framework consistent with PtAT.ⁱ (Hyslop, 2022, p. 114)

The child welfare system was subject to an extended process of review between 2011 and 2015. The Green Paper / White Paper 'vulnerable children' reform process associated with Minister Paula Bennett was extended and developed through the Expert Panel Modernising Child, Youth and Family review established by Minister Anne Tolley. This later review was tied

to the broad policy umbrella of social investment. The chairperson, Paula Rebstock, had just completed the welfare working group benefit reform process.

These reforms linked the failings of the state care system with the faults of a whānau-centred model of child protection (Hyslop & Keddell, 2019). We believe that this analysis is wrong because it overlooks the way that the vision of the 1989 law was not resourced in practice:

The ‘problem’ of child protection is associated with the shortcomings of social work and the risk posed by a dangerous group of people. The systemic problems that directly resulted from policy confusion, misguided managerial prescriptions and under-resourcing are rendered invisible in this analysis. (Hyslop, 2022, p. 120)

It is easier to blame the poor than it is to face up to issues of structural inequality. Puaotea Tu tells us that ‘... *the heart of the issue is a profound misunderstanding or ignorance of the place of the child in Māori society and its relationship with whānau, hapū, iwi structures*’ (Ministerial Advisory Committee, 1988, p. 7). The reforms that followed on from the Expert Panel review in 2015 brought back this ‘misunderstanding’. It focussed on the interests of ‘the child’ as an individual unit separate from the needs and rights of whānau. Wider issues of systemic poverty and racism were placed in the background. The finding of this inquiry led to the creation of a stand-alone Ministry for Children (Oranga Tamariki).

Although presented as forward thinking, this review process was a backward step in many ways. It led to a rise in the removal of babies. Several policy ideas came together in the amending legislation, including the subsequent child provisions which simplified the removal of children where siblings had been uplifted earlier. The focus on children as individuals was joined with the idea that earlier permanent placement was the best way to make good citizens and reduce the cost to the state. There was less emphasis on directing resources to supportive intervention aimed at building family capabilities or addressing the causes of inequality (Keddell 2017; Hyslop and Keddell 2019). This approach to child protection generated a dramatic increase in the uplifting of pēpi Māori from young mothers living in stressed environments. This outcome was coded as bringing middle-class love to all New Zealand children: securing safe and loving homes at the earliest opportunity. Simple ideas like this can be very powerful and mis-leading.

As the Royal Commission has heard, efforts by the state to remove and fix children and young people via foster or institutional care has often led to further harm - for tamariki Māori and for the wider Māori life-world. This is not new knowledge:

There were extremely high rates of Māori entering the care system in the 1980s, with 7% of Māori boys in custody at that time. This has resulted in a whole generational effect, particularly as the nature of that care was often in residential homes that subjected children to abuse of multiple kinds, with little contact with parents and whānau (Cook, 2021). (Keddell, Cleaver, Fitzmaurice, Cleaver & Exeter, 2022, p.7)

The work of Dr Oliver Sutherland and associates exposed institutional abuse in the 1970s. If this had been properly recognised a great deal of suffering could have been prevented:

In hindsight, if the clear and carefully documented message of widespread institutional abuse and dysfunctional programme design (as well as endemic racism) had been properly heeded, we might be in a very different position today. If time had been taken to digest the wider implications, the current Royal Commission (40 years later) and, more importantly, the underlying suffering of powerless children, young people and whānau that this process signifies may have been avoided.

(Hyslop, 2022, p. 65)

Child welfare inequalities and systemic biases

The issue of inequality and bias is complex (Keddell and Hyslop, 2020). Poverty creates a range of social stressors such as debt, food insecurity, lack of access to health services and decent housing which make parenting more demanding. Available time and energy is spent on getting the necessities of life. Poorer communities (and relatively deprived neighbourhoods within richer areas) also tend to be at risk of higher rates of reported child welfare concerns because of greater oversight from the services which report to the child protection system (Keddell, Davie & Barson, 2019).

However, as argued by Keddell and Cleaver (2020) in evidence presented to the Wai 2915 hearing, the fact that an unequal society produces racially unequal social outcomes for disadvantaged groups does not mean that racist attitudes, beliefs and practices do not continue to operate within state bureaucracies – in terms of monocultural organisational settings, legal frameworks and procedures:

As Detlaff notes in the US context: ‘Despite the body of evidence that exists, those who contend that “disproportionate need” is the primary contributing factor to disproportionality have largely discounted the role of racism or racial bias in child welfare systems and have emphasized the role of poverty and related risks.... These arguments that frame “disproportionate need” as the predominant contributing factor have led many in child welfare systems to believe that the causes of disproportionality occur largely outside their systems, and as a result, racial disproportionality is to be expected and no action is needed to address it’.

(Keddell and Cleaver, 2020 : para 15)

Oliver Sutherland’s (2019) witness statement to the Royal Commission provides very clear evidence of the operation of these internal racial biases (and the repeated denial of such biases despite clear evidence to the contrary) within the care system historically:

In 1974, of the 269 children remanded to a penal institution, 53% were Māori. In 1975, of the 320 children remanded in custody to a penal institution, 57% were Māori. In 1977, of the 356 children remanded in custody to a penal institution, 63% were Māori.... It is very clear that Māori children received heavier sentences than non-Māori children. Any Māori child before the court was more than twice as likely to be sent to a penal institution (detention centre, borstal or prison) as a non-Māori child, while the

latter was more likely to be fined or simply admonished and discharged. The following data is drawn principally from the annual N.Z. Justice Statistics:

Children in Court between 1967– 1976:

(a) Total: 116, 595; c.11,000/ year – 41% Māori

(b) In one particular year, 1974, there were 10,438 children of which 45% were Māori.

(Sutherland, 2019: paras 18, 22-4)

In terms of present day inequalities there continue to be cross-overs between relative poverty and ethnicity. Our colonial history and the way that wealth is distributed in our society means that whānau Māori are often concentrated in relatively deprived communities. There is recent evidence to suggest that this uneven playing field may be further tilted by internal bias within the state child welfare system:

Although the threshold and intervention decisions made by social workers are entangled with wider contributing factors, it is likely that practitioner bias is a factor in outcome differentiation for Māori: This pattern of findings suggests that despite similar ways of defining risk, safety, problems, and practice aims, practitioners can still differ in their perceptions of the level of risk, as despite these similarities in problem conceptualization, they perceived the Māori whānau as higher risk than the Pākehā family. When combined with a lessened ability to identify safety factors operating in Māori whānau, this may result in heightened intervention for some Māori whānau, especially where concerns are serious. (Keddell & Hyslop, 2019, p. 418)

Poverty and child protection

The relationship between poverty and care system contact in Aotearoa is shown very clearly in research data presented by Keddell, Davie and Barson (2019):

The main finding of this study is that there is a substantial social gradient relationship between deprivation and all three types of child protection of system contact. The spread of system contact relative to deprivation level is marked. For example, 36% of all substantiated findings, and 28% of all children placed in care, occurred in the most deprived decile [the poorest 10% of areas in Aotearoa]. The size of the differences between quintiles [all areas split into fifths] of NZDep were particularly marked for substantiations and family group conferences although a rate more than six times higher was still observed for placement of children in the most deprived quintile [poorest 20% of areas] compared to the least deprived quintile [richest 20% of areas].

(Keddell et al, 2019, p. 6)

The second report of the two part review completed by the Office of the Commissioner for Children (Te Kuku O Te Manawa) in November 2020 notes the ongoing match-up between child welfare intervention and socio-economic disadvantage. This report also suggests that the problem of economically determined inequality (and unequal life chances for children) is

beyond the control of the child protection system. However, this is a limited view in our opinion. In fact this linkage must be confronted if it is accepted that the state has a role in promoting whānau well-being. In other words the child welfare system needs to be fair, whānau need to be empowered and children nurtured, but the state also has a role in creating the economic settings that make this possible.

The notify-investigate model

In Aotearoa we have a 'notify, investigate / assess and intervene' child protection system. This system is:

... implicated in disparities ... a notify-investigate system based on a protectionist orientation, operationalised through a central statutory agency is reliant on surveillance of the population and a need to both triage, then assess for risk. This lends itself to the reproduction of social disparities. ...this structure creates both an extreme power differential, and a focus on assessing for risk that draws the aims and resources of the system towards this task, and away from helpful, meaningful support or power sharing. (Keddell & Cleaver, 2021, p.37)

Child abuse work is particularly difficult. This system has many stresses and there is a risk of biased outcomes. The assessment process operates in uncertain situations and pressured time-frames. Decisions are often subject to unclear evidence, competing interests and value conflicts. This system grew out of the work of the American children's doctor Henry Kempe and his associates in the early 1960s (Kempe et.al., 1963):

The modern child protection system emerged from a concern to stop babies dying or being "battered" by parents who were considered to be suffering from a lack of empathic mothering in their own lives. Poverty, bad housing and so on were screened out as holding helpful explanatory value (Parton, 1985). ... Despite all the changes, the story honed in the 1960s has proved remarkably resilient in its stress on the actions of individual parents/carer, and its focus on the intra-familial as the locus of cause and consequence. (Featherstone, Gupta and Morris, 2017, p.191)

The focus of such child protection systems is mainly on assessing reports about the risk posed to children by their care-givers. This model has led to unequal outcomes in terms of race and class wherever it has been applied around the world, and this is a matter of increasing concern and controversy internationally (Dettlaff et al., 2020; Webb et al., 2020).

In summary, all of this history led us to something of a perfect storm: economic inequity, racism, a notify-investigate system and child-focussed reforms, meant that by the late 2010s, we had come full circle. We had returned to the same point of crisis and concern about racially biased care practices that we had aimed to fix in 1989. The data presented by Keddell and co-authors is very clear:

' ... the rate of orders made on babies within three months of birth in Aotearoa New Zealand increased by 20% between 2015 and 2019, from 35 per 10,000 to 42 per

10,000, with a peak in 2017 of 47 per 10,000' (Keddell et al. 2020). Further, this increased rate of baby removal ' ... **between 2015 and 2019 was exclusively due to an increase in the removals of Māori babies**, It should be noted, however, that the quality of Māori data is questionable, particularly given the problems with ascertaining ethnicity both in administrative child protection data, and in estimated resident population counts, due to changing census processes (Reid et al. 2016). Regional variations also highlight significant inequities. These are somewhat related to differing deprivation levels, as babies in the most deprived region have more than double the rate of removal than those in the least deprived region ...'.

(Keddell, Fitzmaurice, Cleaver & Exeter, 2022, p.5 **bold italic emphasis added*)

The spark was lit by the 'Hawkes Bay' case, where an attempt to remove a baby at birth was filmed and made public. The policy emphasis on early removal sat behind this process but other ideas and procedures also contributed. The Oranga Tamariki internal review of this case noted a 'a litany of missteps':

These included: a reliance on outdated information; limited assessment of the parents and their available supports; lack of understanding of the relevant legislation; no family group conference held before the order was made; exclusion of the views of other professionals working with the family; and the parent's childhood backgrounds of 'trauma' used to justify viewing them as risky (Oranga Tamariki 2019). At the systemic level, the lack of resources available at the site office and a site culture focussed on 'removing children early to permanency' exacerbated these issues. This combination led to an institutionalised confirmation bias, where an early negative view of the parents and their wider whānau was upheld, despite evidence to the contrary being available.'

(Keddell, Cleaver, Fitzmaurice, Cleaver & Exeter, 2022, p. 6)

The recurrence of the messages contained in Puao te Ata Tu is obvious from the text of subsequent independent inquiries:

Views reported in Puao te Ata Tu, for example, high-lighted the common views within Māori communities that unfair treatment and cultural racism drove the actions of the department, and recent reports also show that many Māori whānau experience the interventions of the state as racist, punitive, disempowering and surveillant (Keddell 2019b; Kaiwai et al. 2020; Office of the Children's Commissioner 2020).

(Keddell, Fitzmaurice, Cleaver & Exeter, 2022, p.8)

The 'culture' and dominant rescue mentality orientation of Oranga Tamariki practice in these years clearly led to this spike in the uplift of Māori babies at, or soon after, birth. This outcome was entirely predictable (Hyslop, 2022).

An administrative remedy

Keddell, Fitzmaurice, Cleaver & Exeter (2022, p. 4) illustrate that both the number of babies removed and the disproportionality of pēpi Māori have reduced significantly in the aftermath of the Hastings uplift event:

In 2019–2020, however, there has been a significant reduction in children entering care, particularly babies, and especially babies aged under three months. The inequities for Māori in baby removals have also reduced markedly. What has caused this reduction in care entries of babies?

(Keddell, Cleaver, Fitzmaurice, Cleaver & Exeter, 2022, pp.9-10)

The authors go on to explain that this shift in practice has been achieved by imposing procedural barriers and stricter operational guidance. Other factors may be at play, including some iwi partnerships, more emphasis on the role of preventive community-based services, the kairaranga role, a greater focus on whānau care, and increases to the unsupported child allowance, which may encourage families to make their own care arrangements (Oranga Tamariki, 2021). While all of these factors could be influencing this practice shift, the outcomes of it are not clear. We do not, essentially, know if children and whānau are in a better position as a result. This changing practice context will be discussed further below.

Solutions and their challenges

Given the history that has been summarised in this report we believe that the time is right for a carefully thought-out and well-resourced programme of change. We need to re-think our understanding of the problem of child maltreatment and how we respond to it.

Addressing the drivers of care and changing the care system is a complex and layered undertaking. Firstly, to the extent that child maltreatment is largely a sub-set of wider social suffering, it will not be comprehensively addressed until the larger political and economic issues of poverty and distributional inequality are addressed. Child protection is an economic and political issue: it is not simply a behavioral problem associated with faulty individuals and families. Through the lens of te Tiriti-based rights and obligations, the Wai 2915 report acknowledges this in the following terms:

Active protection means recognising that Māori parents struggling in poverty have an equal right as citizens to meet their children’s needs as do the better-off in society. Active protection means recognising that the vast majority of whānau in contact with Oranga Tamariki are not out to harm their tamariki, but they may have ongoing needs that place stress on the whānau. These include factors such as a ‘notify and investigate’ system, poverty, poor housing, poor mental health, substance abuse, intimate partner violence, or children with high needs. Growing inequality and the disparities in child protection, education, justice, and health that result are not the inevitable outcomes of individual choice. They are substantially the outcomes of legislation, policy, and economic settings about which a society has choices. Active

protection requires substantive changes designed to address these structural conditions. (Wai 2915, 2021: 20)

Framing these issues as separate from the task of child protection reduces the ability of relevant government agencies to advocate for more effective responses to this wicked problem. For example, the creation of Oranga Tamariki to only focus on those children needing 'care and protection' effectively split off this population group from the broader welfare needs associated with the Ministry of Social Development. Policy must view these as interrelated issues.

Hearing excluded people

If the issue of child abuse is perceived to be a problem located within a class of group of 'problem' families, the behaviour of this group of people becomes the bone to be picked. In the present context a disproportionate number of young brown women who are struggling to parent in relative poverty are subject to notification and intervention (although harm to children is often generated by the male parents or partners).

The ongoing perception that child abuse is perpetuated by a particular category of families and that child welfare services are directed to a particular group of underclass children has fed a powerful form of social stigma. Over time the history of state social work can be seen as an uneasy mix of moral judgment and the popular 'science' of the day (Hyslop, 2022). This is reflected in the way that current state social work records document the lives of whānau from a clinical expert /diagnostic distance. Inappropriate behaviours are documented, and remedies are prescribed.

The associated 'professional' approach risks working 'on' rather than 'with' people – assuming that whānau understandings of their own lived experience are distorted, incomplete and of secondary value. This can be seen in the way that young people, particularly Māori, who were brought into foster and institutional care from the 1960s, were believed to be in dire need of corrective discipline. The idea of the time was that this deficient sub-group of the population needed a school of "hard knocks". This belief system masked what is now coming to be properly understood as a deep history of abuse and suffering.

The voices (and experiences) of those subject to the state care system tend to be recognised only in times of crisis and/or in retrospect. Much of the lasting power of the Puao te Ata Tu stems from the way in which the voices of the disenfranchised were heard:

Like a litany of sound – Ngeri – recited with the fury of a tempest on every marae and from marae to marae came the cries: *'Their child care processes are undermining the basis of Maori society or have already done so'. ... 'Rendered children and parents helpless at great cost to racial, tribal and personal integrity'. ... 'Maori people being allowed to look after themselves – to be given back our own welfare.'*

(Ministerial Advisory Committee, 1988: 21; italics in original)

In a similar way the post-Hastings uplift reports produced by the Whanau Ora Commissioning Agency, the Office of the Children's Commissioner, and the Waitangi Tribunal provided a rare opportunity for those on the receiving end of state care and protection services to speak into the public domain and to be afforded a degree of respect and credibility normally reserved for official (sanitised) accounts of their experiences.

On this level, a fundamental problem is that those subject to the state care system are seen as a less deserving 'other'. This is captured in the following observation made by an Australian writer, Professor Dorothy Scott, well over ten years ago:

Most child protection services in countries such as Australia and New Zealand have become demoralised, investigation-driven bureaucracies which trawl through escalating numbers of low-income families to find a small minority of cases in which statutory intervention is necessary and justifiable, leaving enormous damage in their wake. The point has been reached in many places where we are exceeding the use of the State's coercive powers to protect children without causing further harm.

(Scott, 2006, p.1)

The function of the current Royal Commission can also be seen in these terms – giving a hearing to those who have been denied the rights of citizenship taken for granted by more privileged New Zealanders. We believe that this voice should not only be reserved for enquiries into past injustice. A role for children and their parents who have been through the system needs to be directly embedded in the operation and development of services, including guidance, oversight, and advocacy.

The broader lesson from Hastings

Keddell, Fitzmaurice, Cleaver & Exeter (2022) argue that the events in Hastings had a 'democratising' effect, disrupting the capacity of the state to control the story around child safety and protective intervention. This is an important insight in relation to future reform of the care system. The reality is that the adults subject to intervention from statutory social work services are often drawn from the bottom of the socio-economic heap in unequal societies such as Aotearoa. There are resulting social inequalities in relation to power and 'voice': resources, credibility, education, and systemic knowledge. This reflects the culture of class-based inequality and professional expertise more broadly. In an over-arching sense, addressing this systemically ingrained power differential may be the biggest and most important challenge for reform of care services.

These differences are classed, raced, and gendered. Accounts of the characters, behaviours, and circumstances of those on the receiving end of state intervention are traditionally constructed in file notes, reports and referrals produced by social workers and other professionals. The power of the video coverage of the Hawkes Bay case was that it brought the normally hidden experiences of heavy-handed child protection intervention into the living rooms of middle-class New Zealand.

As suggested, much of the authority of the post-Hastings enquiries is also generated by attention to the voices of system-experienced whānau - often young Māori mothers struggling to parent effectively in the face of multiple stresses. In a wider way the Royal Commission is concerned with recognising oppression and abuse which has been ignored, minimised, or otherwise concealed in official accounts of care experience. It is very clear from witness statements that a lesser set of human rights has often been afforded to children and young people in state care.

In the same way the views of parents and caregivers subject to child protection oversight and intervention are often disregarded, reframed, or interpreted as somehow less important or legitimate:

The experiences of families on the receiving end of statutory practice, particularly high stakes interventions such as child removal, are usually confined to case-note records assembled by social workers. For all intents and purposes the official version of practice becomes 'the' authorised story. Whānau accounts of practice in these circumstances are delegitimised by the ascription of subaltern labels; as belonging to the uneducated, immoral, emotionally traumatised and any number of similar deficit categories. (Hyslop, 2022, p. 166)

When fleshing out new institutional arrangements and principles there is a vital need to include the voice of parents, other adult whānau members such as grandparents, and children and young people themselves in service design. While there is now an independent group for children who have been in care (VOYCE – Whakarongo Mai) there is no systematic inclusion of the experiences of parents and other adult whānau members. Currently this group is silent, while in other countries roles have been created for system-experienced parents in developing practice guidance, working as peer advocates for other parents going through the system, and in social worker professional development.

Systematic participation and oversight by this group is important going forward, if we are to design a system that reduces the need for alternative care while offering meaningful parent and whānau support (Keddell, Fitzmaurice & Cleaver, 2020). Overseas experience shows that mistrust and miscommunication borne of social distance and status is reduced when people are positioned as valuable knowledge holders (Tobis, 2013). What is more, care numbers fall, and services are more effective.

Preventing care entry

There is a need for planning and action at various levels if entry into care is to be prevented. New institutional arrangements and conceptual frameworks (ways of understanding and thinking about the problem of child maltreatment) are needed if we are to move away from the 'notify-investigate' model. We need to reduce the need for forced protective intervention at times of crisis and address family struggles in meaningful and effective ways. In terms of iwi and hapū empowerment we need to find (and make) ways of enacting a genuine te Tiriti-

based response. This may involve re-casting the dominant ‘commissioning’ model and entering arrangements that allow for ‘real’ authority and resourcing. This is a process that will take time and good will if we are to begin to redress the consequences of colonisation.

In bigger picture policy terms, we need to adopt a wider politics of inclusion which provides economic security for all, and which aims to respect the needs and wishes of all citizens equally. Respecting the voices of whānau and building community support systems is critical to longer term solution-building. In this sense child protection reform is a matter of individual and collective human rights. This does not mean that children are never harmed in family care, but it does mean that at the front end of immediate preventive practice, it is important to consider the needs of parents who are ‘at risk’ of having children removed.

Long-term client families were variously labelled in the state social work culture as multi-problem, severely dysfunctional, or, if applicable, as ‘white trash’ (in the covert lexicon of practice). This ‘truth’, and mistrust of ‘the welfare’ born of experience, can be woven into the historical wisdom of some client families. Ironically it is such resource-scarce, impoverished and excluded families, with an associated unwillingness or inability to accept their alleged failings or to adjust their parenting practices, who are the most likely to be confronted with the power of the State in the form of adversarial care proceedings. Hyslop (2007, p. 5-6)

Recently published work from Keddell, Cleaver & Fitzmaurice (2022) reports on a small but intensive study involving three women who avoided ‘removal’ of their babies with the support of community-based social workers. This article sheds light on the support needs of this group of women. In the words of one of the participants: “They only help the children apparently ... that doesn’t make sense because the children need to go back to their parents, you know?”. It is important not to oversimplify the needs and challenges facing women in such circumstances:

Intimate partner violence and substance use are often presenting issues leading to baby removal. An analysis of 62 cases of baby removal (a random sample from the 242 total cases 2017-18) in Aotearoa New Zealand found that the most common issues leading to care were substance abuse combined with family violence (Oranga Tamariki, 2020). Marquis (2017) found that parents who had children removed had a history of painful life events including physical and sexual abuse, domestic violence, substance abuse and few opportunities to develop parenting skills, along with limited family support. (Keddell, Cleaver & Fitzmaurice, 2022, p. 3)

It is also critical not to idealise family and culture as a cure-all in every situation. The reality is that sometimes whānau must be “re-built”. Caregivers whose children are at high risk of removal are often isolated from support networks because of violent and abusive lived histories which make whānau and community connection difficult to develop and maintain. In other words, it is necessary to begin from the reality of people’s lives and the development of trust is critical.

This small but highly focussed study indicates that effective support involves getting close to people in need as opposed to the professional distance often associated with child protection

social work. It also requires intentional community-building to provide the informal support networks needed by people in such circumstances.

This insight has important and challenging implications for family and community-centred practice. Study participants spoke of the need for intensive (several hours a day at first) 'relational' (friend-like) support where workers were seen to go 'above and beyond' to reduce social stress. Appropriate material assistance was also noted to counter the effects of poverty: the capacity to assist with furniture, bedding, heating costs, debt reduction and other forms of practical help.

Important elements of these services were a focus on stress reduction and drawing on commitment to children as motivation for change. Relationships with a 'friend-like' quality assisted to maintain accountability and work on change, and these were more likely if Māori clients had Māori workers.

(Keddell, Cleaver & Fitzmaurice, 2022, p.8)

This level of committed support work was linked with 'earning the right' to challenge the beliefs or behaviours of participants, or otherwise hold them to account. Although acceptance of support and the need for change may have initially been influenced by fear of 'losing children' it was seen as important for participants to develop their own motivation – to reclaim a sense of agency, choice, and control: "doing it for myself and my kids".

Designing and enacting (making and doing) systems and structures that avoid the top-down definition of people's problems and their solutions is a key challenge. Braithwaite (2021) points out that a public health approach to child protection, without attention to 'institutional domination' is likely to fail. Speaking in the Australian context, what she means by this is that the need for universal, targeted, and tertiary services to respond to child abuse and neglect (a public health approach) has gained little real support because of the 'path dependency' of child protection organisations - ingrained 'culture' if you like. A combination of the agency-citizen power imbalance, risk aversion and managerialist bureaucracies (focused on production measurement and "bang for the buck") are very resistant to change - even when public health type solutions are officially adopted.

We could argue that a similar sort of thing has happened here in Aotearoa. Our 1989 legislation emphasised the need to assist whānau, hapū and iwi, and create family services that allowed children to remain in the care of their families, but these aims had limited long-run influence. Ongoing institutional (organisational and political) domination of policy and practice development (and lack of resourcing) lead to oppressive processes despite good law. This comes out, for example, in an arrogance towards community agencies and a disregard for child and whānau views, with particularly damaging outcomes for Māori.

One way to counter institutional oppression is to bring together the range of affected stakeholders to actively create open and constructive dialogue about how the system should function:

... strong and interconnected networks of dialogue where information would flow openly and ideas would be contested freely, where child protection staff, community

workers, and families would meet on equal footing, and where politicians, representatives of the justice, health and welfare systems (including housing) would be active participants in conversations about system reform.

(Braithwaite, 2021, p.50)

The idea of ensuring community-led problem solving and service design is another key element. This involves an emphasis on building community cohesion and informal networks of support for whānau. This is an obvious role for iwi and Māori organisations, as well as other organisations that are rooted in civil society rather than ‘professional domains’, although many non-governmental agencies provide aspects of both. Braithwaite (2021) talks about the idea of ‘responsive regulation’:

Well-functioning systems encourage dialogue while having controls in place to prevent harm. Optimally balancing dialogue and control is the challenge that child protection authorities face. (Braithwaite, 2021, p.53)

The intent is that the formal ‘regulatory response’ should only be as heavy as needed to reach the desired aim.

In child protection, this means a hierarchy of responses that begin with informal decision-making rather than more formal intervention, with applications for Court orders at the other end of the spectrum (Harris, 2011). There is increasing consensus around this in Aotearoa, with an emphasis on families being offered community support first, then engaging in whānau hui, or being advised about how to engage in informal care arrangements, without needing Oranga Tamariki to become involved (such as extended family applying for the Unsupported Child Benefit). Then, if these options are not effective, moving to a formal family group conference and, finally, applying for Court orders if a cooperative plan fails.

Applying this kind of layered approach seems to be challenging at present because of the gap between what community agencies can provide and the threshold for OT to intervene. This is made worse by lack of trust and communication between OT and other agencies (although there are exceptions). As Oranga Tamariki makes best efforts to limit their involvement, if families do not engage with community services or have very complex needs that the community agency is not resourced to address, this can result in families falling through the cracks and all agencies avoiding responsibility. The notion of whānau responsibility needs to be considered in the context of support services and power relationships – within whānau, and between whānau and the state. In situations of stress, conflict, and risk it can be misleading and disempowering to simply leave ‘responsibility’ to whānau without providing appropriate advice, services, resolution processes and material support.

The availability and accessibility of services for high needs children and whānau is critical to preventing harm and care entry. We know that care entry is associated with multiple material and emotional stressors. In developing ‘devolved’ models as discussed below, careful thought must be given to strengthening existing services and building new models and capabilities in areas such as substance abuse, family violence, adult mental health and social / educational support for high-needs children and young people. There are insufficient resources available

currently and, specifically, a lack of services informed by cultural expertise to bridge the gap between (western) professional expertise and the lived realities (and histories) of Māori and Pacific service users.

Specifically, there is a lack of community resources to support families who do take on the care of children with no OT involvement. It is positive that many whānau make their own arrangements for care of children with limited involvement from OT, however, often the carers are grandparents of high-needs children who need additional supports from health and social agencies.

Devolution of care and protection services to community service providers could potentially ensure that authority and resourcing is held at the same place, while devolution to iwi has the potential to close these gaps by reducing the division between Oranga Tamariki on the one hand, and community or iwi organisations on the other. However, for this structure to avoid replicating or even extending a system of surveillance and control, it must be part of a process of community building and supports for families more generally at the local level, as discussed below. Design and delivery must be mindful of the risk of reproducing regional and population-based inequalities.

Devolution to community and a by Māori/for Māori approach

In commenting on the issue of Māori-centred development we wish to reiterate that we are very aware of our position as Pākehā. We want to make it very clear that we do not claim expertise in this area. It is for Māori and the Crown to define what their relationship should entail. However, we have been asked for our thoughts in relation to this aspect of future directions and challenges, and for our ideas about community devolution in its wider sense. Devolution has been called for to iwi, Māori, and non-Māori communities. In general, we support this intention, as this fits with addressing many of the problems previously discussed, as well as responding to the ongoing concern over Treaty breaches relating to over-intervention in Māori communities.

There is significant knowledge held in the Iwi /NGO / Community sector in relation to how effective support can be best provided to whānau experiencing high needs / high risk circumstances. Putting this idea into practice poses several challenges, including issues around the difference between Treaty-based and non-Treaty based relationships, and between the state, the public and other and organisations. There are also questions of service / resource duplication and service user choice (particularly in the context of multiple ethnic identities and iwi rohe/iwi member location difficulties). Many Māori have multiple ethnic identities, may be living outside the rohe of their iwi, or simply prefer not to use a Māori service. These challenges do not mean that change should not happen, but it does mean that thought and care is needed.

Some non-Māori may prefer to use a Māori service and in the context of whānau / extended families there may be multiple ethnic groups who disagree about which service to use. An additional issue is resource duplication, where multiple services end up competing for clients

in a particular area. The right to community representation could potentially be contested between iwi and pan-Māori groups, between non-Māori and Māori organisations and between different non-Māori organisations. Careful inclusive attention to local need, Treaty rights, organisational capacity and community trust are key to resolving these conflicts.

Another key issue is the level (size) of resources devolved / provided at the outset. In terms of historical patterns, the notion of empowering and resourcing 'community' to effectively address child welfare concerns is not a new direction of travel. In the contemporary setting it is necessary to critically examine what it is that we mean and expect. It is very important to be aware of the ideological positions that cut across this territory. A community development focus can allow for the effective definition and tailoring of services to meet the needs of those on the receiving end. It can also be code for minimal state resourcing and a return to nineteenth century notions of charitable (or iwi) responsibility and the naturalisation of inequality in deprived communities.

There is a need to be clear about who holds statutory power to intervene when needed. A reluctance to use the most intrusive of interventions or lack of clarity about when they should be used (and who holds this responsibility) could place children at real risk of harm. That said, there is no compelling reason why iwi, Māori and community organisations could not take on the powers of the current Act, in the form of delegation for non-Māori agencies, and in the form of separate legislation if desired by Māori (discussed further below).

When discussing devolution of power and resources, the wider question of how outcomes and service delivery models might be defined (by whom, and through what processes) has been a continuous bone of contention (O'Malley, 1998; Harris, 2007). In the 1980s calls for devolution and accountability to community significantly influenced the shape of child welfare policy and practice:

According to Garlick (2012, pp 104–107) the early 1980s witnessed a period of generalised disruption within the Social Work Division: agitation for a more community-centred approach (exemplified by the development of a Community Services Unit in 1982), and decentralised decision making, a weakening of hierarchy and a changing of the managerial guard. (Hyslop, 2022, p. 80)

The following excerpt from a DSW Māori Advisory Unit report could easily have been produced by the architects of the present-day Oranga Tamariki focus on regional development and community partnership:

The Māori Advisory Unit argued that the Department of Social Welfare's 'bureaucratic model' was 'inappropriate' and did not 'adequately cater to the needs of Māori people'. Endorsing a 'structural biculturalism', it recommended the implementation of a 'concept of whānau and community development' based on the 'decentralisation of power and resources' to whānau and community groups. This criticism from a cultural perspective was in accord with other criticisms of the Department's services, particularly that its hierarchical and centralised structure had become increasingly untenable as the Department had grown in size, and that it had become distanced from community perspectives and local needs. (Garlick, pp. 113-4)

It is beyond the brief of this opinion to recount all the detail of past community devolution initiatives. Suffice to say that the realities of transferring real power and authority over child and family programme planning, development, and resourcing to 'community', particularly to Iwi Māori, have not been adequately confronted over time. The model of direct participatory governance proposed by Puaio te Ata Tu was short-lived because it conflicted with the managerialist business production model adopted by state services in the 1990's. Similarly, the 'New Directions' policy direction associated with Minister Maharey in the early 2000s was heavy on the rhetoric of strengthening community and the production of associated policy documents, but there was little practical development of power-sharing mechanisms (Hyslop, 2022, p.106).

The current commissioning and funding/contracting process needs to reflect the change of direction to community-led services. If communities are to create their own relevant and effective services, the role of procurement should be to ensure that a community-led process has been undertaken to construct and define outcomes, rather than dictate desirable goals and measures. Broad outlines based on need could be centrally defined, however preferred outcomes need to be determined by community and iwi/Māori.

Legislative change and poverty as Treaty issues

It is important to state that it makes sense, as a general principle, for Māori to control, design and deliver services to Māori. The relational support which high-needs Māori whānau require is best delivered by Māori within Māori service frameworks and concepts. However, there is also an argument for legislative change to operationalise the Waitangi Tribunal claim findings - to enshrine te tino rangatiratanga over 'ō rātou kāinga' as was argued there – in the form of either delegating the power of the Chief Executive in the current legislation to iwi, or the creation of iwi-specific legislation.

This level of authority would require significant work to clarify the new responsibilities involved, and to ensure that the level of resourcing to enable this was released, but it would move beyond the position of iwi and Māori organisations as just another 'service' provider. Iwi could choose to opt in or out of this legislation, and it would confer greater power / autonomy than the current 'partnership' model. There are very real complexities in developing and delivering on this imperative, but this does not mean that it should not be vigorously pursued. There are tensions and contradictions which need to be confronted and worked through (as noted above).

Within this context it is important to recognise the weight of history. The need to honour the guaranteed right for Māori to live as Māori in terms of te Tiriti is complicated by the history of colonisation. The state also, in meaningful consultation with Māori, has a duty to manage economic settings so that the underlying burden of poverty is taken off the shoulders of whānau:

While mindful of our terms of reference we nevertheless believe that most of the socio-economic difficulties Māori clients have with the Department are a reflection of

the socio-economic status of Māori in the community. In proposing a Māori perspective for the Department, we cannot ignore the lack of a Māori perspective in the community at large. (Ministerial Advisory Committee, 1988, p. 17)

As experienced social workers we are aware of the pressures which impact on the capacity of caregivers and the harm that can result for children. These are the inevitable tensions in child welfare work. Generally, parents should be supported to care for children in situations where there are deficits of care and risk of harm. However, there will always be times when this is not tenable. In such situations where children are unsafe with parents, they should always be placed in the care of whānau where possible but the support needs of whānau and children must be met if placement is to be successful.

Assessment of whānau caregivers is also important and needs to be done with care and skill. Rigid assessment rules can discourage or disqualify whānau carers, but some adults are unsafe and informed judgements must be made. When children are in care it is their right to be heard and to be protected and that right includes connection to whānau. This is a balance and all practitioners, be they state, iwi, or NGO based, need to be well trained, supported and supervised. Experienced social workers are always wary of making assumptions.

In our view the development of autonomous but integrated iwi social services is a realistic goal. It is the process to this end that needs to be thought through / planned and implemented. The Waitangi Tribunal has endorsed the approach in making the recommendation for a Transition Authority with:

... a clear mandate to design and reform the care and protection system for tamariki Māori, coupled with authority to work in genuine partnership with the Crown to ensure a modified system is properly implemented. (Wai 2915, p. 2915)

How do we get there?

This Transition Authority was seen as a much more authoritative initiative than the Māori Advisory group which the current Minister appointed to guide the organisational development of Oranga Tamariki. This would also need to be carefully thought through but, in our view, it is desirable for a governing body that is separate and independent of the existing organisational structure to be charged with the future development of the child and family welfare system for Māori in Aotearoa. The size and complexity of this task should not be under-estimated. It should be Māori-led, and its terms of reference should be negotiated with Māori. Reporting timeframes should be set by agreement and processes in terms of tikanga and resourcing should be transparent.

It also seems to us that broader policy questions of iwi and hapū empowerment cannot be neatly divorced from the issue of child welfare reform. As was the case in the 1980s with the Matua Whangai programme, the development of iwi and hapū outreach and connectedness to urban whānau may be needed as part of a broader process of decolonising development. There is the question of pan-Māori urban organisations and the fact that some Māori may not

wish to be involved with iwi mandated services. None of these challenges are new and nor are they likely to disappear.

Current practice settings and challenges

Despite the history of over-intervention, particularly for Māori, current practice has reacted to recent public inquiries by swinging back towards a stated focus on prevention and a broadly 'child welfare' orientation. Oranga Tamariki responses to reports of concerns have changed markedly in the last three years, to raise the threshold at which they will intervene. This reflects efforts to reduce unwarranted intervention and a reluctance for OT to engage with child welfare concerns apart from in more serious physical and sexual abuse cases. There is also more emphasis on family group conference plans, a big reduction in children entering care (including Māori children), and an increase in whānau care.

The positive effect of this direction is a reduction in intervention for less serious family issues. When Oranga Tamariki do become involved, the primary focus is now more consistently on engaging with the family to find solutions that keep children with their parents or in the care of whānau. This reorientation has resulted in more scrutiny of court applications for care and generally a more widespread consensus between all parties that care should be a last resort option. Maintaining the care of children within their families is generally effective in terms of ensuring child safety while recognising their whānau, hapū, iwi and personal identity needs. Another positive aspect is the potential for community and iwi organisations to respond meaningfully to family needs with an intensity that can address some of those issues effectively.

There are potentially negative implications as well, however. Community and iwi services are not yet uniformly resourced to provide the more intense level of intervention expected of them by the withdrawal of Oranga Tamariki. They are also unable to require family engagement with services, leaving some families with neither the support of community services nor the oversight of Oranga Tamariki, resulting in child and family need going unaddressed. We have not yet seen the necessary shift of authority and resources into the community to support this practice change of less intervention from Oranga Tamariki, nor has this intent been communicated clearly to organisational partners.

The direction towards whānau care more generally also leads to an assumption that all families can offer safe care within the wider whānau, and a reduced role, if any, for stranger care. This framing creates some unintended consequences, such as fewer resources to recruit or support stranger care. There are times when children need stranger care, if only in a short term or emergency basis, or for respite purposes to enable either parents or other whānau members to continue to care for children. Some whānau need the creation of new supports to help them in their care of children.

In efforts to support whānau care, we shouldn't make unrealistic assumptions about whānau capacity. This has happened too often in the past. A final issue is that with the increased use of whānau care comes an increased need to support those whānau, some of whom are in vulnerable positions themselves, including attention to the strained relationships between

family members when children are changing caregivers within whānau under the mandate of Oranga Tamariki.

Another outstanding matter is the resourcing of plans for children in care and transitioning out of care. There are often time-lag and resource constraints on important services. While there are some wonderful plans created for children transitioning out of care, for example, the contents of those plans are often impossible to operationalise, because the resources of housing, income support, educational provision and health/therapeutic supports are simply unavailable. In constructing its role as case manager or service broker rather than service provider, Oranga Tamariki is often left with a good plan but no real way to make it happen. While not all services are appropriate for Oranga Tamariki to provide, the key message is that in the current fast-moving environment where the role of the state in relation to children, and the meaning and form of partnerships with Māori are both in flux, the potential for whānau to not receive the assistance they need is high.

Conclusion

This report has not addressed all the issues that impact on the care system. We have tried to express our understanding of where things stand: the current conjuncture if you like. There are challenges and risks at this important time. However, as argued here, we are on the brink of a significant opportunity:

... as there was in 1989, to develop a world leading, te Tiriti-compliant, and socially just child protection system. It won't be given to us on a plate however: there is a great deal of work to be done. (Hyslop, 2022, p.177)

The challenges not new, nor are they likely to go away. The decision to confront the challenge of a post-colonial society is a question of courage and political will.

Signed: GRO-C Date: 8/6/22

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References

- Braithwaite, V. (2021). Institutional oppression that silences child protection reform. *International Journal on Child Maltreatment: Research, Policy and Practice*, 4(1), 49-72. doi: 10.1007/s42448-021-00068-8
- Brown, M. (2000) 'Care and Protection is about adult behaviour', The Ministerial Review of the Department of Child, Youth and Family Services and Employment, Hon Steve Maharey. Retrieved from: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/2000-care-and-protection-is-about-adult-behaviour.pdf>
- Detlaff, A. J., Weber, K., Pendleton, M., Boyd, R., Bettencourt, B., & Burton, L. (2020). It is not a broken system, it is a system that needs to be broken: The upend movement to abolish the child welfare system. *Journal of Public Child Welfare*, 14(5), 500-517. doi: 10.1080/15548732.2020.1814542
- Harris, A. (2007) 'Dancing with the state: Māori creative energy and policies of integration, 1945–1967' [Doctoral Thesis: University of Auckland] Available from: <http://hdl.handle.net/2292/2605>
- Harris, N. (2011). Does responsive regulation offer an alternative? Questioning the role of formalistic assessment in child protection investigations. *British Journal of Social Work*, 41(7), 1383 - 1403.
- Hyslop, I. (2017). Child protection in new zealand: A history of the future. *The British Journal of Social Work*, 47(6), 1800-1817. doi: 10.1093/bjsw/bcx088
- Hyslop, I. (2007). Twenty years in an open-necked shirt: A retrospective personal narrative. *Aotearoa New Zealand Social Work*, 19 (1), 3 - 10.
- Hyslop, I., & Keddell, E. (2019). Child protection under national: Reorienting towards genuine social investment or continuing social neglect? [Article]. *New Zealand Sociology*, 34(2), 93-22.
- Hyslop, I. (2022). A political history of child protection. Policy Press.
- Keddell, E. (2017). The vulnerable child in neoliberal contexts: The construction of children in the aotearoa new zealand child protection reforms. *Childhood*, 0(0), 0907568217727591. doi: 10.1177/0907568217727591
- Keddell, E., & Cleaver, K. (2020). *Evidence brief: Urgent inquiry into oranga tamariki wai 2915*. Wellington: Waitangi Tribunal Retrieved from

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_165023706/Wai%202915%2C%20A090.pdf.

- Keddell, E., Cleaver, K., & Fitzmaurice, L. Experiences of baby removal prevention: A collective case study of mothers and community-based workers. *Qualitative Social Work*, 0(0), 14733250211058178. doi: 10.1177/14733250211058178
- Keddell, E., Davie, G., & Barson, D. (2019). Child protection inequalities in aotearoa new zealand: Social gradient and the 'inverse intervention law'. *Children and Youth Services Review*, 104, 104383. doi: <https://doi.org/10.1016/j.childyouth.2019.06.018>
- Keddell, E., Fitzmaurice, L., Cleaver, K., & Exeter, D. (2022). A fight for legitimacy: Reflections on child protection reform, the reduction of baby removals, and child protection decision-making in aotearoa new zealand. *Kōtuitui: New Zealand Journal of Social Sciences Online*, 1-27. doi: 10.1080/1177083X.2021.2012490
- Keddell, E., Fitzmaurice, L. & Cleaver, K. (2020). The prevention project: Supporting whānau and reducing baby removals: Research report. Dunedin: University of Otago.
- Keddell, E., & Hyslop, I. (2019). Ethnic inequalities in child welfare: The role of practitioner risk perceptions. *Child & Family Social Work*, 0(0), 1-12. doi: doi:10.1111/cfs.12620
- Kemp, A.P. (2020) 'Child protection practice: an unintended consequence of reform', PhD thesis, University of Tasmania. (Available from: <https://eprints.d.utas.edu.au/34789/>)
- Kempe, C.H., Silverman, F.N., Steele, B.F., Droegemueller, W., & Silver, H.K. (1962). The battered child syndrome. *Journal of the American Medical Association*, 181, 17-24
- Mason, K.H. (1992). *Report of the Ministerial Review Team to the Minister of Social Welfare, the Hon. Jenny Shipley*. Review of the Children, Young Persons and their Families Act, Wellington: Government Printer.
- Ministerial Advisory Committee (1988). *Puao-te-Ata-Tu (daybreak): The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare*. Wellington, New Zealand: Retrieved from <http://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/archive/1988-teatatu.pdf>.
- O'Malley, V. (1998) *Agents of Autonomy—Māori Committees in the Nineteenth Century*, Wellington, Huia Publishers.
- Oranga Tamariki Evidence Centre. (2021). *UCB as an alternative pathway: Exploration of UCB supported care which followed a report of concern to Oranga Tamariki in 2019*. Wellington, New Zealand: Oranga Tamariki - Ministry for Children.
- Scott, D. (2006) 'Sowing the seeds of innovation in child protection'. *Keynote paper presented to 10th Australasian Child Abuse and Neglect conference*, Wellington, New Zealand.

Retrieved from:
<https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.121.4966&rep=rep1&type=pdf>

Tobis, D. (2013). *From pariahs to partners: How parents and their allies changed new york city's child welfare system*. Oxford: Oxford University Press.

Wai 2915 - Waitangi Tribunal. (2021). *He pāharakeke, he rito whakakīkinga whāruarua oranga tamariki uregent inquiry wai 2915. Waitangi tribunal. Retrieved from https://forms.Justice.Govt.Nz/search/documents/wt/wt_doc_171027305/he%20paharakeke%20w.Pdf. Retrieved from https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_171027305/He%20Paharakeke%20W.pdf.*

Webb, C., Bywaters, P., Scourfield, J., McCartan, C., Bunting, L., Davidson, G., & Morris, K. (2020). Untangling child welfare inequalities and the 'inverse intervention law' in england. *Children and Youth Services Review*, 111, 104849. doi: <https://doi.org/10.1016/j.childyouth.2020.104849>

¹ Puao te Ata Tu (Daybreak) – The 1986 Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare.