The year 2019 represented a watershed moment for Aotearoa New Zealand’s child welfare system, as a public spotlight was shone on systemic ethnic inequities during ongoing legislative changes aimed at centering Te Tiriti o Waitangi and whānau, hapū, and iwi considerations in policy and practice.

In the midst of this dialogue, Victoria University of Wellington’s School of Government hosted the “Children, Families, and the State”—a seminar series focused on the historical, current, and future role of the state in the lives of families and children. The seminars, and the discussion it generated, was due to the calls to action from speakers across the system, including leadership at Oranga Tamariki, within the family court, non-profit providers, commissioners and advocates, and academics.

The following essays in this edition of Policy Quarterly capture viewpoints from several of the seminar speakers. Despite their different perspectives, common threads unite them. A greater recognition of the structural causes of the historical and current patterns of ethnic inequities in child welfare system contact, a commitment to whānau, hapū, and iwi-centred policy, practice, and partnership, the authors argue, are vital for a more just and empowering system.

### Four essays on the child welfare system

The year 2019 represented a watershed moment for Aotearoa New Zealand’s child welfare system, as a public spotlight was shone on systemic ethnic inequities during ongoing legislative changes aimed at centering Te Tiriti o Waitangi and whānau, hapū, and iwi considerations in policy and practice.

In the midst of this dialogue, Victoria University of Wellington’s School of Government hosted the “Children, Families, and the State”—a seminar series focused on the historical, current, and future role of the state in the lives of families and children. The seminars, and the discussion it generated, was due to the calls to action from speakers across the system, including leadership at Oranga Tamariki, within the family court, non-profit providers, commissioners and advocates, and academics.

The following essays in this edition of Policy Quarterly capture viewpoints from several of the seminar speakers. Despite their different perspectives, common threads unite them. A greater recognition of the structural causes of the historical and current patterns of ethnic inequities in child welfare system contact, a commitment to whānau, hapū, and iwi-centred policy, practice, and partnership, the authors argue, are vital for a more just and empowering system.

---

### Ian Hyslop

**Child protection, capitalism and the settler state: rethinking the social contract**

Child protection is an emotive and complex field which is constructed within a conflicted milieu: it does not sit outside the context of capitalist economics, the orthodox liberal political rubric, and our history of colonial oppression (Stanley and de Froideville, 2020). The following is a necessarily broad-brush analysis which aims to name some of the elephants—the uncomfortable reality of discriminatory outcomes in a society divided by inequalities structured by relations of domination—that are skirted around in policies targeted at the imaginary ‘good Kiwi’ electorate of a mythical middle New Zealand.

**History, inequality and racism**

The policy and practice of child protection social work has followed the twists and turns of the political policy roller coaster that has careened across Aotearoa New Zealand over the last 30 years. A focus on the contested nature of policy prescriptions and practice development, however, risks masking some of the underlying realities of liberal capitalist societies such as ours. Child maltreatment is a social problem which is linked with structurally reproduced inequality—class, race and relative poverty (Parton, 2019). The children who come into the care of the state are disproportionately poor and Māori. In recent history, state welfare systems have visited a painful legacy of institutional abuses upon these children, often culminating in incarceration and wider social damage, particularly for whānau Māori (Stanley, 2017).

The germinal report *Puao-te-Ata-Tu* (day-break) (Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, 1988) brought these concerns into the light, explicitly naming racism as the key obstacle to the advancement of Māori people. It was this message which fundamentally shaped

---

*Ian Hyslop is a senior lecturer with the School of Counselling, Human Services and Social Work, University of Auckland. Ian worked in child protection practice for 20 years and is passionate about the reform of state social work. He is currently engaged in writing a critical history of child welfare in Aotearoa New Zealand.*
the design of the Children, Young Persons, and Their Families Act 1989 (now the Oranga Tamariki Act). The legal framework of the act pivoted around the belief that whānau, hapū and iwi could provide adequate care for their children if furnished with respect, authority, information and support in terms of financial and social service assistance. This vision was never adequately resourced and by 2015 the Expert Advisory Panel on Modernising Child, Youth and Family had inverted this narrative, focusing on the cost visited upon the state and wider society by dangerous families rather than the damage done to Māori by state violence (Hyslop, 2017).

There is a deep whakapapa to this discursive shift. The 1990s blitzkrieg of public sector readjustment essentially moved the focus from whānau empowerment to whānau responsibility with minimal state assistance. The below-subsistence-level benefit cuts devised by Ruth Richardson echo the less-eligibility framework of the 19th-century poor laws (Hyslop, 2016). The avalanche of neo-liberal reform was stabilised by the social development agenda of the 2000s Labour-led governments, with an overriding policy emphasis on employment as the antidote to social exclusion (Lunt, 2010). This economic prescription was closely aligned with the soft neo-liberal ‘hand-up’ ideology of Tony Blair’s New Labour in the United Kingdom (justified in part by the individuated social mobility sociology of Anthony Giddens). Benefit levels were not raised in the Labour-led years, but a Working for Families tax relief package was introduced to incentivise low-wage work, consistent with the demands of globalised capitalist economics.

The social investment agenda of the recent three-term National-led governments ratcheted the policy needle a little further to the right with the adoption of an actuarial accounting focus on the future cost generated by failing citizens (Baker and Cooper, 2018). The 2015 Expert Advisory Panel report posted a target of reducing forward liability associated with poor outcomes for Māori by 25–30% within five years (Modernising Child, Youth and Family Panel, 2016, p.22). There is, frankly, more than a hint of eugenics in this prescription: the perception of the threat of a feral underclass which animated Victorian social science (Jensen and Tyler, 2015). Effectively, the National-led government proposed a watering down of the commitment to whānau decision making, a clearer focus on child-centric/trauma-informed care and early calls on out-of-home permanency to stop the intergenerational transmission of social disadvantage: safe and loving homes at the earliest opportunity. The extremely narrow view of causation evident in this analysis is consistent with the neo-liberal imagination. Responsibility is individualised and neatly divorced from the deep structural inequalities which presently characterise social life in Aotearoa New Zealand (Hyslop and Keddell, 2019).

Resistant narratives

This neo-liberal construction of child maltreatment as a product of deviant, irresponsible individuals, divorced from the wider context of austerity, poverty, inequality, racism and postcolonial history, has not gone uncontested. The final shape of the Oranga Tamariki Act reflects conflicted agendas and interests, specifically Māori voices, and includes principles related to whakapapa, whanaungatanga, mana tāmaiti and te Tiriti o Waitangi alongside the injunction to ensure that: ‘where children and young persons require care under the Act, they have – (i) a safe, stable, and loving home from the earliest opportunity; and (ii) support to address their needs’ (Oranga Tamariki Act 1989, s4(1)(e)). The writing was clearly on the wall from 2014 for more small children (disproportionately Māori) to be brought into the permanent care system. Although most informed commentators predicted this outcome, the state agency Oranga Tamariki acted surprised when it came to pass (Hyslop, 2019).

The now infamous Hawke’s Bay uplift video brought muscular child protection – state violence directed against a specific section of the population – into our living rooms. In addition to the internal Oranga Tamariki review and the promise of procedural reform, we have four inquiries in progress at the time of drafting this commentary piece. The fairground ride has, of course, come full circle. The over-representation of tamariki Māori in the state child protection system is, as it always has been, a product of how the historic legacy of colonisation, structural inequality and institutional racism plays out in the lives of children and families.

Rethinking the social contract

Much needs to be done. Real change requires a radical redistribution of power and resources. Social workers need to get closer to the lived realities of whānau living in hard times. We need to rediscover discretion and compassion, hear survivor voices and engineer local responses. We need to transfer authority, means and mana to Māori, not just responsibility. And beyond this we need to confront the deficiencies of the capitalist social form. The market functions to perpetuate and intensify uneven accumulation. Call me old-fashioned, but if we are to live in an egalitarian society where a semblance of real freedom is possible, people need decent housing, income security, education and health services as part of the universal social contract. Social protection is the pathway to child protection. The current social wellbeing agenda falls well short of this objective.
In 2014, children living in the most deprived 10% of neighbourhoods in Aotearoa New Zealand had 21 times the chance of having a substantiated finding of child abuse than children living in the least deprived 10%, were 35 times more likely to have a family group conference held about them, and over nine times more likely to enter foster care (Keddell, Davie and Barson, 2019). Each step increase in deprivation resulted in a sequentially higher chance of child protection system contact, clearly illustrating the systematic relationship between living in high deprivation areas and contact with the child protection system.

An inequalities perspective on the child protection system

This pattern can be usefully understood using an inequalities perspective (Bywaters, 2015; Bywaters, Brady et al., 2016; Bywaters et al., 2019). Where there appear historical and seemingly intractable patterns of disproportionate representation, social inequalities are considered the underlying contributor. Specifically, in child protection, ‘child welfare inequalities can be defined as unequal chances, experiences and outcomes of child welfare that are systematically associated with social advantage/disadvantage’ (Bywaters, 2015, p.9, emphasis added). An inequalities perspective on the child protection system draws attention away from individual and family-level causes of system contact to consider structural contributors and their underlying inequalities (Bywaters, 2015). This perspective highlights – similarly to a health inequalities approach – the inherently political nature of the fundamental inequalities contributing to the expression of inequalities in system contact; disparities.

Emily Keddell

The case for an inequalities perspective in child protection

In 2014, children living in the most deprived 10% of neighbourhoods in Aotearoa New Zealand had 21 times the chance of having a substantiated finding of child abuse than children living in the least deprived 10%, were 35 times more likely to have a family group conference held about them, and over nine times more likely to enter foster care (Keddell, Davie and Barson, 2019). Each step increase in deprivation resulted in a sequentially higher chance of child protection system contact, clearly illustrating the systematic relationship between living in high deprivation areas and contact with the child protection system.

An inequalities perspective on the child protection system

This pattern can be usefully understood using an inequalities perspective (Bywaters, 2015; Bywaters, Brady et al., 2016; Bywaters et al., 2019). Where there appear historical and seemingly intractable patterns of disproportionate representation, social inequalities are considered the underlying contributor. Specifically, in child protection, ‘child welfare inequalities can be defined as unequal chances, experiences and outcomes of child welfare that are systematically associated with social advantage/disadvantage’ (Bywaters, 2015, p.9, emphasis added). An inequalities perspective on the child protection system draws attention away from individual and family-level causes of system contact to consider structural contributors and their underlying inequalities (Bywaters, 2015). This perspective highlights – similarly to a health inequalities approach – the inherently political nature of the fundamental inequalities contributing to the expression of inequalities in system contact; disparities.
in people’s experiences once in the child protection system; and differences in the outcomes of it. In doing so, an inequalities perspective draws attention to the policy, community, systems, cultural, institutional and historical contexts, and service-access related elements that mediate the relationships between macro political contexts and family life.

An inequalities perspective focuses on several key concepts. First, the concept of social gradients as opposed to discrete differences or ‘gaps’ shows how differences between groups are graded, social position-sensitive changes rather than dichotomised categories (ibid.). If there is an angled line of increasing interventions in any system relating to an axis of inequity, this is suggestive of a systematic relationship with that factor. The opening example above describes a social gradient based on deprivation, with the relative differences between each end of the gradient described (Keddell and Davie, 2018).

Second, an inequalities perspective takes a strongly intersectional approach, recognising the interrelated nature of dimensions of inequality such as class, ethnicity, gender, age, location, disability and others (Bywaters, Kwhali et al., 2016). A social gradient might exist based on a single type of inequity, but add another and it becomes more complicated, suggesting interrelated structural or system factors. For example, adding the intersectional element of ethnicity to deprivation shows that increasing deprivation increases the rates for all ethnic groups, but not equally, and nor is the effect equal due to differences in population share in different deprivation quintiles. For example, the Māori rate increases to the highest rate in the most deprived quintile. Population share for Māori also increases as deprivation increases, while the Pākehā population declines. Together, high deprivation and high population share together lead to high Māori rates overall. However, beneath this broad-level finding, the gradient for non-Māori groups – especially Pākehā – is steeper across deprivation levels than for Māori, meaning that disparities between Māori and other groups reduce as deprivation increases, nearly equalising between Māori and Pākehā in the most deprived quintile (Keddell, Davie and Barson, 2018). This resonates with findings in other countries that show a reduction in ethnic disparities as deprivation increases. In some studies, ethnic group rates equalise or even reverse in high deprivation areas – that is, the majority (white) ethnic group has higher rates than minority groups (Wulczyn et al., 2013; Putnam-Horstein et al., 2013; Bywaters, Kwhali et al., 2016).

Third, the concept of demand and supply of services helps understand the system-related factors that can operate in tandem with demographic inequities to shape contact in nuanced ways (Bywaters et al., 2018). For example, does greater supply of child protection services result in more further understand disproportionality related to class and ethnicity (Cram et al., 2015; Drake et al., 2011). Increases in true risk may be due to over-exposure to family stressors, especially poverty, the detrimental effects of colonisation, and lack of access to culturally responsive and well-matched services (Love, 2017). Interacting with this risk is the effect of multiple types of bias, including exposure bias (poorer neighbourhoods with higher Māori populations are more exposed to notifiers to the child protection system), surveillance bias (heavier surveillance and reporting of families), instrumental bias (differential institutional responses that ratchet Māori

Lack of adoption of an inequalities perspective, and action on structural factors, is in part due to the policy framing of the last four years.

New ‘child-focused’ legislation obscures structural determinants
Lack of adoption of an inequalities perspective, and action on structural factors, is in part due to the policy framing of the last four years. This framing drew on highly individualised ‘child-focused’ discourses, and, while well-intentioned, it made structural determinants invisible. For example, the policy direction emanating from the ‘modernising child protection reforms’ were laden with the language of child trauma, being child focused, ensuring children have ‘safe and loving homes at the earliest opportunity’, and increasing resources for children in the permanent care system. These features are not bad per se, but as a package of policy
The case for an inequalities perspective in child protection

Hyslop, I. and E. Keddell (2018) ‘Outing the elephants: exploring a new discourse makes invisible the causes of poor outcomes as significantly related to social inequities affecting families and whānau, as much as individual trauma inflicted on a child.

Integrating an inequalities perspective amplifies the importance of social policies that prevent child protection contact upstream

The politics of those reforms clearly promoted a view that the child protection system should be residual in nature, acting to assess risk and intervene once a certain threshold has been reached, but not address the known causes of contact: poverty, institutional racism, and lack of access to support services that promote community, social cohesion and humane, relationship-based responses. They disconnected the child protection project from the policy drivers of inequities. An inequalities approach shows their deep interconnections. Overall, an acceptance of the social conditions and structures shaping family life requires a government to enact policy that addresses those factors.

This kind of political reorientation involves a commitment to a meaningful politics of redistribution and the re-building of family-centred social services … Struggling families have an equal social right to meet their children’s needs. Policies that provide for adequate basic income, housing and affordable quality child-care facilities are required.

A lack of integrated social policy and accessible community support services means that poorer families are funnelled into the child protection system; effectively as a social service of last resort. (Hyslop and Keddell, 2018, p.10)

References

Bywaters, P. (2015) ‘Inequalities in child welfare: towards a new policy, research and action agenda’, British Journal of Social Work, 45 (1), pp.6–23, doi: 10.1093/bjsw/bct079

Bywaters, P., G. Brady, L. Bunting, B. Daniel, B. Featherstone, C. Jones, K. Morris, J. Scourfield, T. Sparks and C. Webb (2018) ‘Inequalities in English child protection practice under austerity: a universal challenge?’, Child and Family Social Work, 23 (1), pp.1365–2206, doi: 10.1111/cfs.12383

Bywaters, P., G. Brady, T. Sparks and E. Bos (2016) ‘Child welfare inequalities: new evidence, further questions’, Child and Family Social Work, 21 (3), pp.369–80, doi: 10.1111/cfs.12154

Bywaters, P., J. Kwhali, G. Brady, T. Sparks and E. Bos (2016) ‘Out of sight, out of mind: ethnic inequalities in child protection and out-of-home care intervention rates’, British Journal of Social Work, doi: 10.1093/bjsw/bcw165

Bywaters, P., J. Scourfield, C. Webb, K. Morris, B. Featherstone, G. Brady, C. Jones and T. Sparks (2019) ‘Paradoxical evidence on ethnic inequities in child welfare: towards a research agenda’, Children and Youth Services Review, 96, pp.145–54, doi: https://doi.org/10.1016/j.childyouth.2018.11.042

Cram, F., P. Gulliver, R. Ota and M. Wilson (2015) ‘Understanding overrepresentation of indigenous children in child welfare data: an application of the Drake risk and bias models’, Child Maltreatment, 20 (3), pp.170–82, doi: 10.1177/1077559515580392

Drake, B., J.M. Jolley, P. Lanier, J. Fluke, R.P. Barth and M. Johnson-Reid (2011) ‘Racial bias in child protection? A comparison of competing explanations using national data’, Pediatrics, 127, pp.471–8

Harris, R., D. Cormack, J. Stanley, E. Curtis, R. Jones and C. Lacey (2018) ‘Ethnic bias and clinical decision-making among New Zealand medical students: an observational study’, BMC Medical Education, 18 (1), doi: 10.1186/s12909-018-1120-7

Hyslop, I. and E. Keddell (2018) ‘Outing the elephants: exploring a new paradigm for child protection social work’, Social Sciences, 7 (7)
Child welfare system: a perfect storm?

The child welfare system: a canary in society’s coal mine?
A ‘child welfare’ system is the canary in the mine of society. All the failings and stresses of our nation end up being concentrated and reflected in this system. The compound effects of punitive policies, colonising practice, underinvestment, poor housing, poverty, hyper-consumerism and relational deserts have all fuelled trauma in stress-saturated households. This trauma and abuse is passed down through generations and the family pecking order, with the child becoming the final ‘dumping ground’. A child welfare system has to respond to the accumulated systemic failure. To say that the work is tough is an understatement of epic proportions.

I have worked for over 15 years as part of the Wesley Community Action team to support and sustain a stable and vibrant service that works with the ‘hard’ end of tamariki and their whānau in this system (the top 3% in relation to complexity and need). Wesley also works, outside of government contracts, alongside marginalised communities, many of whom are ‘products’ of the state welfare and justice systems and who understandably fear it.

Restructuring: the answer to complex issues?
This experience shapes my view of the current state of our child welfare system. Like the families and whānau we work with, we see the Wellington-centric linear policy solutions as another Groundhog Day. Restructuring is almost always the preferred change lever for ministers wanting to leave a legacy. Consultants are engaged, experts are gathered and people are processed through ‘co-design’ Post-it forums. This results in a ‘new’ agency, new logo, new leadership, new approach, all with a stated desire to be very different from the old. But are they?

This very expensive process could unintentionally be fuelling a perfect storm for an already stressed system. In addition to the issues mentioned above around poverty, colonisation and the resulting toxic stress, a major restructuring can amplify this storm, as we have seen with:
- an exodus of dedicated and skilled staff who had hung on in very challenging situations (this knowledge is not quickly or easily replaced);
- lack of historical understanding of the factors that led to the situation;
- lack of learning from past initiatives: for example, a royal commission set up after a new system;
- over-reliance on external consultants who lacked understanding of the issues and a long-term commitment to change;
- an expert panel which lacked in-depth understanding of sound social work practice and which adopted dangerous assumptions (e.g., in removing babies and children as a long-term solution);
- the disestablishment of the NGO (non-governmental organisation) and iwi advisory forum;
- imposition of a managerial regime that lacked knowledge of New Zealand cultural context and social work practice; and
- an under-resourced NGO sector through years of chronic underfunding.

Enter the new Labour-led government, which inherited a key department midway through a major change process. They wanted to ‘do better’ for children. This worthy aim led to more changes to the system: in particular, a revision of the child wellbeing and welfare legislation and creation of a child and youth wellbeing entity. While these initiatives do have the potential to lift the game, they also risk bringing more confusion into an already overcomplicated and struggling system. As a simple example, removing the word ‘vulnerable’ from the Ministry of Children’s name raises confusion about which children Oranga Tamariki serves.

It is a common view of people experienced in working in child welfare that much of this new system is not new at all. We are witnessing the same old mistakes being made by a central state agency that is largely flying blind in many areas. This is happening at a time when the compounding effect of negative social statistics is moving whole communities dangerously close to tipping points. Given how we have endured years of underfunding, seeing much of the precious new investment being wasted by a Wellington-centric system is highly frustrating. To handle this pressured situation, the highly managed corporate culture expands. This happens despite the rhetoric of partnership and at the expense of growing trusting and robust collective relationships across the sector. These relationships are the foundation of effective practice.

Solutions: is it all about relationships?
Ironically, the key to improving our system – from an NGO perspective – isn’t new either. We are all actors in the one system and, as such, interdependent. The NGO sector has valuable insights and wants to contribute to improvements, challenging the assumption that we are mere ‘providers of services’ to the government agency.

David Hanna (fourth-generation tangata tiriti) has worked as a national youth director, a policy manager in central government and a consultant for the World Bank, and is now director of Wesley Community Action. He led the development of the New Zealand Youth Suicide Prevention Strategy and Youth Development Strategy Aotearoa, championing community-led development in communities across New Zealand.
A key starting point is understanding how we adjust to working with complexity. To quote from a recent report on working with complexity:

We are not lone rangers, and we shouldn’t seek to be. Our strength lies in positive collaboration, in honesty, openness and generosity in sharing what does and doesn’t work – and in hearing, acknowledging and responding to others’ views on this, too. (Davidson Knight et al., 2017)

In short, this means relationships are the lifeblood of the system. There are four principal domains where healthy relationships are essential to sustain a vibrant system. Valuing the intervention logic between these domains in critical. Primary are the relationships within the whānau (encompassing connections between tamariki, whānau, hapū/extended family), and next is the relationship with the key ‘professional’ worker (state or NGO/iwi), then the network of relationships at a community/regional level. Encompassing these is the national framework of legislation, policies and resources. The intervention logic of each dimension is to enhance wellbeing within the prior domain.

First and foremost, I have learnt over the years that whānau-led is more effective than and very different from whānau-centred. Any change, to be sustainable, has to be owned by the person/group seeking change. Given the power imbalance in the relationship between a paid social worker and whānau, unless the relationship is whānau-led, then the power remains with the professional. Successful solutions are seldom imposed.

The next dimension of relationships is a community and local one. This involves mana whenua, neighbourhood actors, businesses, sports clubs, community organisations – the range of agencies that have something to offer whānau under stress. The Child Rich Communities initiative supported by Barnardos, Plunket,¹ UNICEF and Inspiring Communities is highlighting the value of recognising and mobilising these community assets to support positive outcomes for children under stress.

Holding all these relationships is the national domain. This entails monitoring, researching, resourcing and generally supporting a healthy flow of relevant information across the whole system and helping maintain healthy relationships between all key players. Equally important is linking with other national policy fields such as housing, income support and the like that have an impact on family stress.

Weaving through all these levels, we need to give life to te Tiriti o Waitangi. The whole system needs to appreciate that the indigenous culture of Aotearoa holds profound insight and strengths for how we sustain positive relationships between peoples and our natural world. Instead of being viewed simply as something to be adhered to, te Tiriti is a potent, unique strength of our communities and child welfare system in Aotearoa. A Tiriti o Waitangi informed-approach would cease mining and remove the need for canaries to acts as beacons of risk.

Reference
Davidson Knight, A., T. Lowe, M. Brossard and J. Wilson (2017) A Whole New World: funding and commissioning in complexity, Newcastle: Centre for Knowledge, Innovation, Technology and Enterprise, Newcastle University Business School and Digital Civics

Claire Achmad

Realising treaty-based protection in Aotearoa’s child welfare system

In 2020 in Aotearoa New Zealand it is clear that a significant opportunity exists to strengthen our child welfare system. Embracing this opportunity is imperative. Not only are the numbers of children in state care at an all-time high, but official statistics show that Māori tamariki are disproportionately more likely to enter state care, and to experience abuse in state care. We must strengthen the system in ways that prioritise the needs and rights of children and tamariki. Moreover, this must be done in ways that strengthen the system to be holistic in its engagement with families and whānau. After all, it is children and their families and whānau who are the people that the system exists to serve.

The child welfare system is there to protect the welfare of children and tamariki and to prevent harm in the short term. We must never lose sight of the fact, however, that the system can and should enable
positive long-term outcomes in children’s lives, and the lives of their families and whānau. For example, the child welfare system can help families and whānau to effectively process and manage the impacts of intergenerational trauma, supporting family and whānau hauora. This is especially powerful if coupled together with preventative approaches. A rich evidence base illustrates that when families and whānau are thriving, it is more than likely that their children and tamariki are thriving too.

Our efforts to strengthen Aotearoa’s child welfare system so it effectively serves children, tamariki and their families and whānau need to pay attention to the structural forces that shape our system. These structural forces also have a shaping impact on the lives of children, tamariki, families and whānau at the day-to-day level. These forces can be cultural, economic, environmental, legal, political, social and technological. They can, of course, be shaping forces with positive and/or negative effects. In today’s context, the negative effects of some of these structural forces are significant: inequality and poverty, abuse, neglect and family violence, mental distress among families and whānau, and restrictions on availability of resources are among those with a day-to-day impact. The layering of such structural stressors on children, families and whānau flows on to impact the child welfare system, triggering broader system-level repercussions too. Without intentional and comprehensive counter-actions, this can end up creating a looping effect of structural stressors. This leads to negative shaping impacts coming from multiple directions, leading to outcomes inconsistent with children’s rights and positive family and whānau outcomes.

Te Tiriti and the UN Convention … make … clear that all children and tamariki have inherent dignity and mana, are taonga who must receive appropriate protection, and that family and whānau are the bedrock of children’s and tamariki hauora and holistic wellbeing.

Te Tiriti and the United Nations Convention on the Rights of the Child: complementary protective frameworks that can provide solutions

An opportunity exists, however, to make real the promise of the existing underpinning protective frameworks in the lives of children and tamariki and their families and whānau in Aotearoa New Zealand. Te Tiriti o Waitangi and the United Nations Convention on the Rights of the Child are two integral protective frameworks in the context of Aotearoa New Zealand’s child welfare system. They are complementary instruments: both have at their heart the notion of collective wellbeing. The texts of both te Tiriti and the convention are protective of the concept of children thriving best as part of a collective – namely, a family or whānau. The convention takes a holistic view of the child and their connections to family, and
te Tiriti makes clear the essential nature of connections among tangata whenua to the wider collective – including hapū, iwi and innate whakapapa connections – and the central importance of self-determination.

The potential of both te Tiriti and the UN Convention to have a greater protective effect in the lives of children and tamariki in the functioning of our child welfare system is huge. The strengthening effect of these frameworks within the child welfare system remains untapped. To date, we cannot say that either of these treaties has been implemented in a manner that fulfils their true potential in the lives of Aotearoa’s children and tamariki, including in the context of the child welfare system. There are, however, some notable recent signals that we are finally on the precipice of an age of implementation. This is observed in developments such as new sections 5(1)(b)(i) and 7AA of the Oranga Tamariki Act 1989; the Child and Youth Wellbeing Strategy with its principles reflecting the Convention and te Tiriti; and the government’s pledge of recommitment to the Convention in November 2019.

To work, solutions need to be mana-enhancing
Taken together, te Tiriti and the UN Convention on the Rights of the Child make clear that all children and tamariki have inherent dignity and mana, that they are taonga who must receive appropriate protection, and that family and whānau are the bedrock of children’s and tamariki hauora and holistic wellbeing. This is a strong foundation for Aotearoa New Zealand’s child protection system to centre upon and build from. If implemented, these protective frameworks can help to address the structural forces influencing the lives of children, families and whānau and shaping the child welfare system. Such implementation can also help to ensure that the child welfare system itself takes consideration of the holistic rights and needs of children and their families and whānau, to better prevent harm and to be more responsive in protecting and promoting their rights and needs in enduring ways (see Figure 1).

At its heart, taking an approach to Aotearoa New Zealand’s child welfare system that seeks to uphold and give life to te Tiriti and the Convention on the Rights of the Child should lead to a system that holds the inherent dignity of each child, family and whānau central. This should create an approach that is mana-enhancing for all who engage with it. The experience can be one that enables children, families and whānau to experience a child welfare system where children’s rights are protected and respected, families’ and whānau’s specific needs and experiences are central in decision making, and all involved can participate in ways in which their views are meaningfully heard. A system where help is provided early to prevent child harm, and where this is done in collaboration across the system, working proactively with families and whānau. To fulfil the promise of te Tiriti and the Convention in the child welfare system would be to make real the rights and obligations of these fundamental underpinning frameworks, for the benefit of Aotearoa’s children, tamariki, families and whānau.