

**IN THE WAITANGI TRIBUNAL**

**Wai 2915**

**IN THE MATTER OF**

The Treaty of Waitangi Act 1975

**AND**

**IN THE MATTER OF**

The Urgent Oranga Tamariki  
Inquiry

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**JOINT BRIEF OF EVIDENCE OF EMILY KEDDELL AND KERRI  
CLEAVER**

**DATED 7 OCTOBER 2020**

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Waitangi Tribunal

**7 Oct 2020**

Ministry of Justice  
WELLINGTON

**MAY IT PLEASE THE TRIBUNAL**

1. Tēnā koutou, rau rangatira mā. This is a joint brief by Emily Keddell and Kerri Cleaver. Together we bring a perspective that draws on current research into disparities and a frontline perspective of forming and working within an Oranga Tamariki – iwi (Ngāi Tahu) partnership. This brief outlines our responses to the three key questions faced by the Tribunal in relation to Oranga Tamariki.
2. My name is Emily Keddell and I'm an Associate Professor in the University of Otago's Social and Community Work programme. My research covers various aspects of the child protection system. It focusses on inequalities in the child protection system, decision-making variability, perceptions of risk, knowledge and values in practice, the use of predictive decision-making tools and child welfare policy. I have practice experience in child protection and family support social work. I'm a member of the Reimagining Social Work collective and am currently undertaking a research project examining what helps to prevent the removal of babies at birth, as well as a comparative project on what affects decision variability between different types of decision-makers and countries.
3. Ko wai au?, Ko Kerri Cleaver au, Ko Waitaha, Kāti Māmoe, Ko Ngāi Tahu oku iwi. I am Kāihautu, Hāpai-ā-whānau, Director of Tiaki Taoka, the Ngāi Tahu mandated whānau care service in Dunedin. I hold additional roles, Board member for IPAN (International Parent Advocacy Network), Runaka representative for Puketeraki Runaka in the Oranga Tamariki partnership, member of the Topuni Tamariki Working Party and the Ngāi Tahu Oranga Tamariki Strategic Partnership Governance Group. I am a qualified and registered social worker and supervisor.

**Emily Keddell****Describing disparities and their complexity**

4. In order to answer the question of why, firstly the question of what do we know about disparities needs to be clearly understood. Disparities for Māori contain both high level ‘big picture’ findings, as well as more detailed findings. Large disparities in their blunt forms are well known, but understanding their nuances and intersections assists with generating a fuller picture as well as enabling better inferences about their meaning and causes.
5. Disparities for Māori in the child protection system can only be understood in a wider framework of intersecting inequalities that includes the influences of class, location, gender, disability, and the demand and supply of services. Disparities for Māori intersect with each of these other factors in specific ways.
6. Māori disparities have a significant intersection with deprivation levels, (as defined by the NZDep index) with a rate of 851 per 100,000 in the most deprived quintile, compared to just 350 in the least deprived quintile. Māori disparities overall, are high because of the high population share (43% of children) living in the most deprived quintile. Interestingly, the next highest group in the most deprived quintile is Pākehā children (at 616/100k).

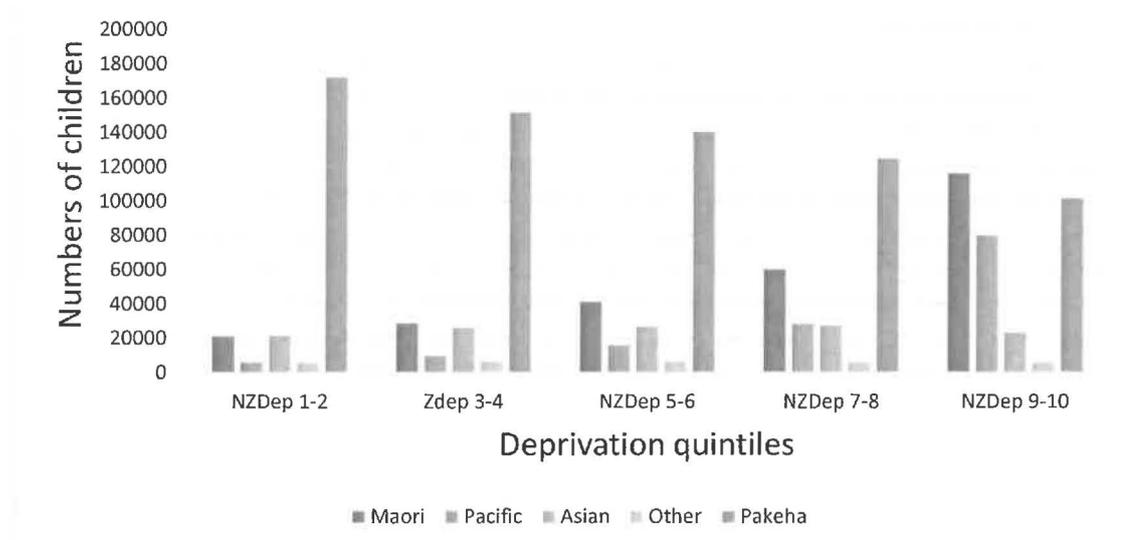


Figure 1: Population share by ethnicity and deprivation

7. While Māori rates of system contact increase as deprivation increases (as do all ethnic groups), disparities between Māori and Pākehā reduce as deprivation increases, because Pākehā rates are very low in the least deprived quintile. Differences between the two groups in the rate of placement reduces from 4.4x in the least deprived quintile to 1.4x in the most deprived quintile (using total response data), or from 5.7x to 2.2x using prioritized data (reduction in ethnic disparities as deprivation increases is also evident in other countries)<sup>1</sup>.

<sup>1</sup> Keddell, E., Davie, G., & Barson, D. (2018). Building the evidence base: Child welfare inequalities in Aotearoa new zealand. Paper presented at the Social Work and Social Policy, Dublin, Ireland.

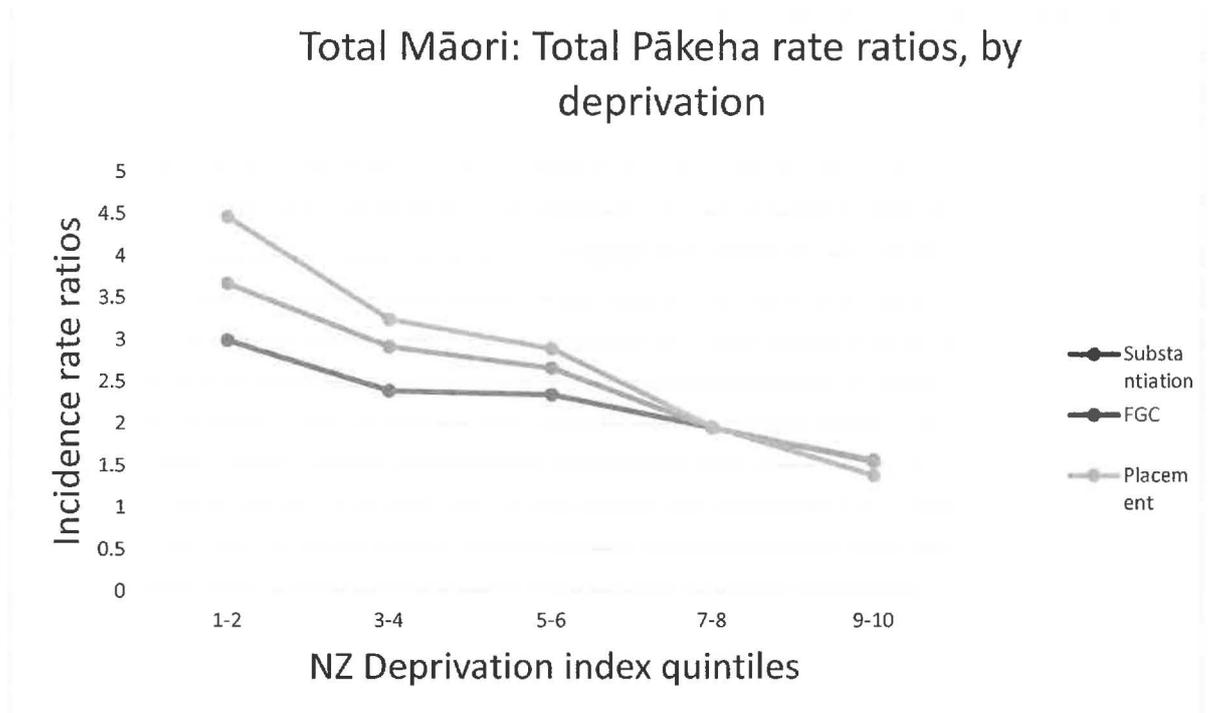


Figure 2: Māori and Pākehā outcome rate ratios over deprivation (total response)

8. Regional differences also show interesting patterns. Equally highly deprived children (who are disproportionately Māori, as above) in regions with low overall levels of deprivation, have as much as 2.6x the chances of entering care as those in regions with higher levels of overall deprivation (known as the inverse intervention law – found in other countries too).
9. There are other regional variations. For example, Northland has about the same rate of substantiations as Gisborne, but double the placement rate, despite being fairly well matched on ethnicity and deprivation levels. Canterbury has half the substantiations and FGC rates of Gisborne, but a much higher placement rate (333 v 237 per 100k) (perhaps an example of the ‘inverse intervention’ law described above). In Gisborne, placement rates are only 10% of substantiations,

but in Wellington, it's 23%, in Hawkes Bay 28%, and in Canterbury, it's 35% <sup>2</sup>.

10. Overall, disparities for Māori have been steadily increasing at least between 2010 and 2019, driven by increasing rates of Māori entering care, and remaining there, while other groups remain stagnant or reduce<sup>3</sup>. An example is the rates of newborn removals (Figure 3).

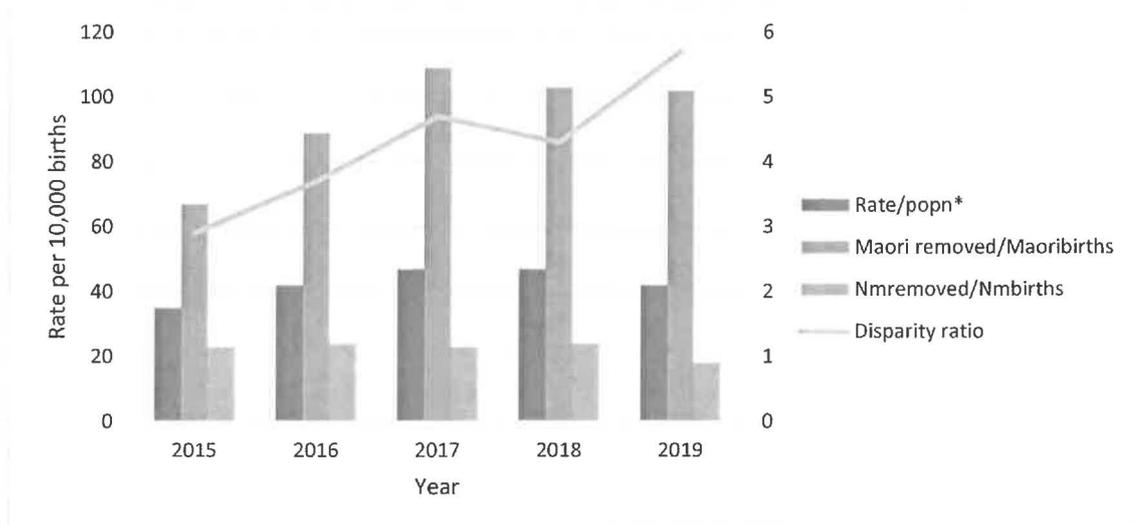


Figure 3: Rates of babies removed unborn – 3 months old, 2015 – 2019, with disparity rate

11. Disparities are not only in system contact and entry to care, but also manifest through the experiences of children once they are in care, and the outcomes of it. Currently, we know little about these latter two aspects of inequalities. There is some evidence that Māori whānau offering whānau care, for example, don't get as much support and

<sup>2</sup> 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*. doi: <https://doi.org/10.1016/j.chidyouth.2019.06.018>

<sup>3</sup> Supra at 1

resources as non-Māori caregivers<sup>4</sup>. Much more research is needed to explore these two aspects, in order to avoid a focus only on entry disparities, and not later outcomes for children and their families and whānau. Without examining them all, the focus becomes on reducing entry alone, rather than a fuller understanding of reducing disparities across the whole system.

12. It is not inevitable that Māori have higher rates of system contact, nor should we accept it as a normal state of affairs. These intersections with other factors draw attention to this fact.
13. A final important point in the discussion regarding disparities is that serious physical abuse towards children of all ethnic groups is reducing. For example, hospitalisations for child abuse and neglect have reduced by 25% between 2010 and 2017 and have steadily fallen since 1990. Reported use of ‘physical punishment’ has also fallen across all deprivation levels and ethnic groups (see child poverty monitor technical reports 2018 and 2019). There is some evidence that our rates of child deaths from maltreatment are also falling, though trends are difficult to ascertain when numbers are small and volatile.

### **Conceptual frameworks for understanding disparities**

14. Both national and international research frames disparities experienced by Indigenous, and in some countries, particular ethnic minorities, as related to the ‘risk-bias’ or ‘need-bias’ debate<sup>5</sup>. This

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<sup>4</sup> Keddell, E., & Hyslop, I. (2019c). ‘I’m in two minds about it’: decision variability in child protection (Project Report). Retrieved from <http://hdl.handle.net/10523/9647>

<sup>5</sup> Cram, F., Gulliver, P., Ota, R., & Wilson, M. (2015). Understanding overrepresentation of Indigenous children in child welfare data: An application of the drake risk and bias models. *Child Maltreat*, 20(3), 170-182. doi: 10.1177/1077559515580392; Drake, B., Jolley, J. M., Lanier, P., Fluke, J., Barth, R. P., & Johnson-Reid, M. (2011). Racial bias in child protection? A comparison of competing explanations using national data. *Pediatrics*, 127, 471 - 478. Johnson-Reid, M., Drake, B., & Kohl, P. L. (2009). Is the overrepresentation of the poor in child welfare caseloads due to bias or need? *Children and Youth Services Review*, 31(3), 422 -427.

framing asks the question: are disparities in child protection system contact caused by heightened needs amongst some populations, or biases in the systems that respond to them? This question is key to the questions before the Tribunal.

15. In most countries, including ours, the answer is essentially both, and to state is it one and not the other tends to reduce the scope of responses and leads to finger pointing and disavowals of responsibility. As Detlaff notes<sup>6</sup> 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”.
  
16. Instead, a both / and approach to disparities is needed in order to have a reasoned strategy to respond to both disproportionate need within some Māori whānau as well as address biases within the systems that respond. Both need and bias, as sources of disparities, can be related to patterns of racism, colonisation, and class inequity through history. To quote Detlaff again: “Although research clearly documents the relationship between poverty and maltreatment, poverty and “disproportionate need” are the result of centuries of racism and

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<sup>6</sup> 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*, DOI: 10.1080/15548732.2020.1814542

structural disadvantage that have created the conditions of risk that contribute to maltreatment.... These issues ... are then compounded by the over-surveillance and over-reporting of Black families to child welfare systems, which begins their involvement in a system that exacerbates these inequities through racial biases in decision making”. Such findings chime with both historical documents such as Puaoteata-tu, and more recent reports such as the Whānau Ora and Office of the Children’s Commissioner report 2020<sup>7</sup>.

17. It is clear that the effects of poverty, combined with the cultural and economic oppressions of colonisation have impacted on Māori whānau, as described by many Māori researchers in this area<sup>8</sup>.
18. However, this brief now turns to describe some of the ways that biases can be conceptualised. Biases within the child welfare system (both inside and outside Oranga Tamariki) that contribute to disparities are both instrumental and direct. Instrumental biases are third party or proxy factors that serve to increase Māori disparities. Direct biases are those that affect the decisions of individual decision-makers.

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<sup>7</sup> Whānau Ora Commissioning Agency. (2020). *Ko te wā whakawhiti: Its time for change - a Māori inquiry into Oranga Tamariki*. Office of the Children’s Commissioner. (2020). *Te Kuku O Te Manawa - Ka puta te riri, ka momori te ngākau, ka heke ngā roimata mo tōku pēpi*. Wellington: Office of the Children’s Commissioner.

<sup>8</sup> Pihama, L., Lee, J., Te Nana, R., Campbell, D., Greensill, H., & Tauroa, T. (2015). Te Pā Harakeke: Whānau as a Site of Wellbeing. In R. E. Rinehart, A. Emerald, & R. Matamua (Eds.), *Ethnographies in Pan Pacific Research: Tensions and Positionings* (pp. 251–264). New York: Routledge.

Wirihana, R., & Smith, C. (2019). Historical trauma, healing and well-being in Māori communities. In C. Smith & R. Tinirau (Eds.), *He Rau Murimuri Aroha: Wāhine Māori insights into historical trauma and healing* (pp. 3–16). Whanganui: Te Atawhai o Te Ao: Independent Māori Institute for Environment & Health.

Williams, T., Ruru, J., Irwin-Easthope, H., Quince, K., & Gifford, H. (2019). Care and protection of tamariki Māori in the family court system. *Te Arotahi Series Paper*, (1).

19. Instrumental biases include factors such as exposure bias. That is, more Māori, especially those living in highly deprived areas, are exposed to those with heightened notification responsibilities, such as Police, health and other social services. This alone can lead to increased notification simply by being ‘exposed’ to notifiers, especially when compared to non-Māori living in less deprived areas.
20. Visibility bias is where people may be targeted because they are a visible minority in their particular area. This has been proposed as a cause for the large disparities in affluent areas, where the majority population is Pākehā. This could be a reason for the inverse intervention law, though more detailed research is needed to clarify this.
21. Surveillance bias refers to both the heightened surveillance experienced by Māori in general, and for particular whānau. In our research we heard of those ‘famous families’ where simply having a particular family name would heighten the response from Oranga Tamariki: often these are Māori families. Families with multiple contacts with multiple systems also generate a heightened perception of risk, even if those services are aimed at assistance, support or health needs: “Often there’s a, like an overshadowing, I mean there’s a care experience part of things but an overshadowing of some connection with a justice system or a health system. It might not even be current ...so whether it be family violence or there’s been drug and alcohol ...The concerning thing for me is it doesn’t need to be a current thing but it’s, you know a past thing that’s been there and because that family is then under some sort of radar within the systems, they’re jumped up a level or two for people to react”<sup>9</sup>.

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<sup>9</sup> Keddell, E. (2020). Contextualising trends in baby removals in Aotearoa New Zealand: international patterns, inequalities, policy trends and practice logics. Presentation for National Institute of Demographic and Economic Analysis, Waikato University, July 29th.

22. A related instrumental bias relates to the use of recorded case history in assessments. An emphasis on ‘the history’, as contained in case records, at the expense of current, in-depth assessment based on an engaged relationship (as we saw in the Hawkes Bay case) will exacerbate bias because of the weight of history – more Māori are surveilled and have intergenerational whānau histories of system contact. Giving weight to recorded contact in decision-making without up to date assessment, compounds historic inequities (as an aside, in some US states, social workers are forbidden from accessing historic notifications when families are notified, in order to reduce the racial bias of previous notifications).
23. Further instrumental biases come through the intimate partner violence pathway, which is a good example of the interrelationship between need and bias. Māori are more likely to be victims of IPV, but may be more likely to have police callouts, which lead to automatic notification to Oranga Tamariki. A closer examination of the data (from OIA) tracking reports of concern from Police for family violence, compared to those cases then categorised as ‘further action required’ shows a higher proportion of Māori between these two decision points every year since 2010 (Figure 4). These small increases at particular decision points serve, over the entire decision-making continuum, to ratchet Māori whānau into more intervention while others take exit pathways. Interestingly, our research showed middle class clients (disproportionately Pakeha) are more likely to seek legal advice, and provoke more anxiety among Oranga Tamariki social workers, and this helps them exit the system early if notified<sup>10</sup>.

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<sup>10</sup> Supra at 4

24. Disparities amongst notification patterns are not clear. It may be that direct racism amongst notifiers to Oranga Tamariki may also contribute to biases before Oranga Tamariki even becomes involved.

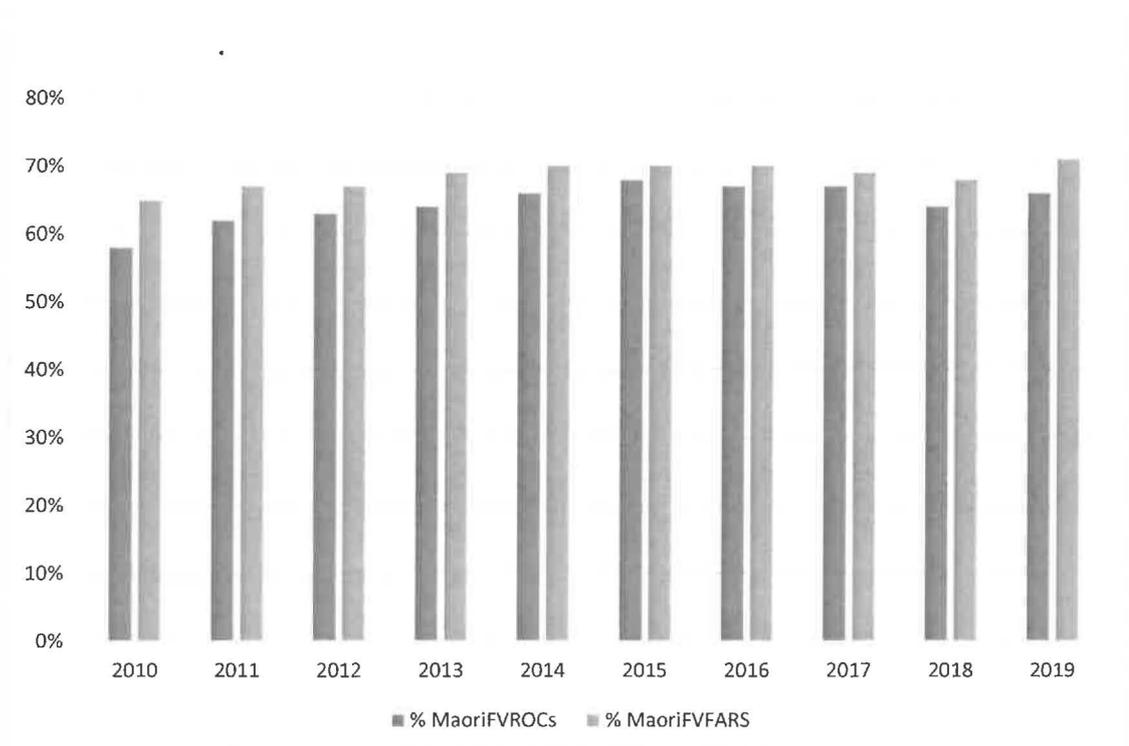


Figure 4: Proportion of Māori family violence reports of concern, and proportion of 'further action required'.

25. Direct biases also contribute to disparities. Our study of perceptions of risk compared social workers' responses to Māori and non-Māori families (via an otherwise identical vignette)<sup>11</sup>. This showed that the Māori whānau was perceived as at higher risk than the non-Māori whānau, and this biased perception was most evident when the family

<sup>11</sup> Keddell, E., & Hyslop, I. (2019a). 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

circumstances and behaviour were decision proximal, that is, nearing the required threshold for specific decisions. This was true of social workers both inside and outside Oranga Tamariki. Oranga Tamariki workers showed increased bias at the point of determining if ‘forming a belief a child was in need of care and protection’ had been reached (see Figure 5). The effect of these differences in risk perceptions translated into a greater number of interventions and decisions made for the Māori whānau, including higher chances of negotiating an agreement for care or holding an FGC. There was very little difference in the explanations as to the causes of whānau problems, showing that differences in risk perceptions can be affecting decision-making without overtly racist reasoning. It also shows limited ability to connect the issues that may be facing some Māori whānau with the historic processes of colonisation affecting Māori. These perceptions are one cause of the incremental increases between decision points reported in the recent Oranga Tamariki ‘disparities’ report.

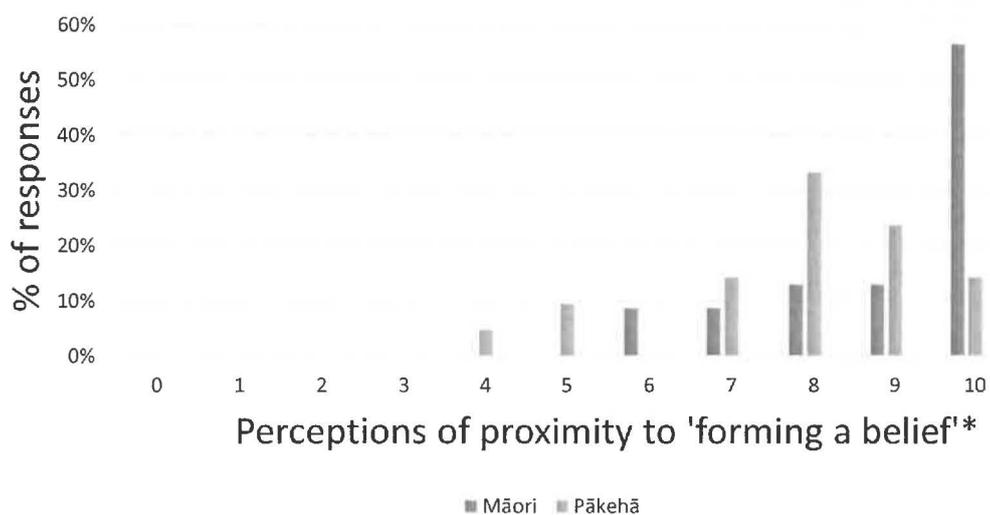


Figure 5: Perceptions of proximity to forming a belief

26. Disparities in the child protection system can therefore be understood as caused in several key ways. Firstly, by disproportionate need in the

community, secondly, by instrumental biases, and thirdly, by directly biased perceptions of risk that contribute to decision outcomes.

27. Both needs and biases are affected by services: their provision, structure, distribution, demand and supply. 'Services' refers to both the statutory services of our child welfare system (Oranga Tamariki), the services supplied to families in the NGO and Iwi/Pacific social services sector, and the range of universal services and social protections available. Demand and supply of these services, and their relationship to disparities is not well understood. Greater research in this area is needed to understand how these function. For example: how patterns of community service provision might prevent contact with the child protection system, (as may occur in regions with higher deprivation); if there is any evidence for the process of 'supply suck' – where the supply of child protection services leads to more and more people sucked into the system; or if notifications are essentially swamping the system, leading to high rates of 'screening out' because there is simply not enough 'supply' to deal with them; and if there are not culturally appropriate prevention services in a particular area, does this increase the chances for Māori entering the child protection system compared to non-Māori. At the moment, we simply don't know enough about the relationships between regional/site differences, demand and supply of services, and Māori or socioeconomic disparities.

#### **Site culture and processes**

28. Both instrumental and direct decision-maker biases are constrained or exacerbated by site specific processes and dynamics. Decision-making research tells us that where strong systems do not operate to reduce biases, they will become more and more implicated within a

risk-averse child protection system. A strong system should have fair decision-making processes that whānau, and other professionals can contribute to, principles should be balanced evenly, not some emphasised at the expense of others. For example, the Hawkes Bay review found the site office over-emphasised being child centred, creating early permanency for young children and keeping siblings together, at the expense of whānau, hapu support and inclusion in decision-making. Supervision that considers counterfactuals, and ensures all parties have contributed to decision-making helps reduce biases of all kinds, including racist bias as well as a wider forms of ‘institutionalised confirmation bias’ that can occur.

29. Site cultures also shape disparities for Māori. At one site we interviewed in our research, we found a strong commitment to family preservation which was linked to both family support values and a sense of community investment by the social workers. Many lived locally, and were Māori and Pasifika similarly to the community they worked in. More efforts were made to engage with whānau and gather information directly from them, and the rates of children in care at that site were low. At other sites, such explicit commitment to family preservation was less obvious in the site culture<sup>12</sup>.
30. Resources affect checks against biases too: where there is not enough time to make proper decisions, where workload is too high or there are too many inexperienced workers at a site, these will exacerbate any individual or group tendency for biases in decisions, as well as contributing to general variability in decision outcomes.

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<sup>12</sup> Keddell, E., & Hyslop, I. (2019b). Networked decisions: Decision-making thresholds in child protection. *The British Journal of Social Work*. doi: 10.1093/bjsw/bcz131

31. Concepts and values used in practice also contribute to decision-making disparities. How practitioners understand concepts such as trauma or interpret family relationships affect perceptions of risk. Our research found those who emphasised trauma and its future effects, over current welfare, for example, tend to be more risk averse<sup>13</sup>. Theories such as attachment, based on narrow Western ideals of the nuclear family, can be used to further erode Māori values and concepts of whānau<sup>14</sup>. Social workers themselves identified social worker culture, values and theoretical preferences as a key source of decision variability<sup>15</sup>. Values and concepts inevitably contain culturally malleable assumptions that work to advantage some ways of viewing family life over others.

### **The contributions of power and policy**

32. As is described in the Ombudsman's report<sup>16</sup> where power differences are extreme, this will disadvantage Māori more than others, because then procedural fairness strategies are ineffective at reducing both directly racist bias or those disparities created earlier in the decision-making continuum by instrumental biases. Checks on power are therefore important, both at the structural (who controls the service) and procedural (how do decisions get made) levels.

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<sup>13</sup> Keddell, E. (2017). Comparing risk-averse and risk-friendly practitioners in child welfare decision-making: A mixed methods study. *Journal of Social Work Practice*, 31(4), 411-429. doi: 10.1080/02650533.2017.1394822

<sup>14</sup> *Supra* at 8. Choate, P., & Lindstrom, G. (2017). Parenting capacity assessment as a colonial strategy. *Canadian Family Law Quarterly*, 41 - 56.

<sup>15</sup> Keddell, E., & Hyslop, I. (2016). First findings from phase one of the child welfare decision-making variability project: Research briefing paper. Dunedin: University of Otago.

<sup>16</sup> Boshier, P. (2020). *He Take Kōhukihuki | A Matter of Urgency*.

33. The Chief Ombudsman's report examined the use of 'without notice' removal orders (Boshier, 2020). His report examined 74 cases across nine of the 59 Oranga Tamariki sites, and found that the use of interim custody orders to remove babies without notice had become routine. Not a single one of the cases examined was made 'on notice', where parents had an opportunity to dispute the facts of the case before a removal order was made. The Ombudsman found that less than half of the families in the cases examined had a family meeting or family group conference before the order was made. There was no evidence of professional supervision in 46% of cases, and of the cases where supervision did occur, 90% were focused on tasks and actions rather than critical and reflective practice. In only 23% of cases the social worker sought legal advice before applying for the order, and the required 'case consults' were only undertaken in 36% of cases<sup>17</sup>. Families had little opportunity to present their views and pregnant women were often not assessed in time despite the service being aware of the pregnancy, nor offered prevention or support services. This frequently resulted to reactive practice when the baby was born, often leading to removal. In short, the findings showed that the policies and practices established in law and guidance were only minimally applied, resulting in poor practice, unfair decisions and a reliance on 'without notice' orders<sup>18</sup>. While some of these issues have clearly been improved, the lack of these procedural fairness mechanisms increases the power differential and serve to increase structural racism for Maori.
34. Finally, disproportionate need, biases, service provision, site cultures and processes, and the balance of power, are all shaped by dominant policy discourses and the legislation, guidance and practices they spawn. In recent years, these policies have swung around between the

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<sup>17</sup> Ibid

<sup>18</sup> Ibid

child protection, family welfare and child focussed policy orientations (different national ‘flavours’ of policy that direct the shape of policy and practice in particular directions<sup>19</sup>. The Vulnerable children’s reforms were hyper ‘protectionist’ in nature, implying (through the (Vulnerable) Children’s Act 2014 particularly) that if only surveillance and identification of abusers was improved, that would reduce child abuse. Following on from this, the 2015 reforms of the ‘expert panel’ implemented further policy directions that were a combination of child protection and child focussed orientations. These orientations were exemplified by the language of being ‘child focussed’, emphasising removal to ‘permanency in safe and loving homes at the earliest opportunity’.

35. The direction of these reforms was bound to disadvantage Māori. Neither reforms took seriously either the effects of social conditions or biases, or lack of prevention services as key contributors to disparities in the care system. Our child poverty rates remain high, housing is in crisis, and the NGO and Iwi social service sector, is notoriously underfunded<sup>20</sup>. Oranga Tamariki has only recently begun to be engage in provision of what are now called ‘intensive intervention’ services. Both reforms played to political concerns about high profile child deaths, despite the fact that the vast majority of families referred to Oranga Tamariki are struggling with a range of social pressures and issues, rather than the demons presented in child death cases on the front pages of the news.

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<sup>19</sup> Gilbert, N., Parton, N., & Skivenes, M. (2011). *Child protection systems: International trends and orientations*. Oxford: Oxford University Press.

<sup>20</sup> Jenkins, M. (2019). *Social service system: The funding gap and how to bridge it*: Social Service Provider Association.

36. Disparities therefore result from a complex interaction of need, biases, service provision, and site-specific processes and cultures, as well as the concepts and values used in practice. All of these exist within a policy environment that shapes the basic assumptions as to what causes child harm and what should be done about it.

### **A notify-investigate system**

37. The nature of the institutional arrangements we have in place to manage children protection are also implicated in disparities. A 'notify-investigate' system based on a 'protectionist' orientation, operationalised through a central statutory agency, reliant on surveillance of the population, and a need to both triage, then assess for risk, lends itself to the reproduction of social disparities. This was something noticed very early in the creation of similar 'protectionist' systems worldwide<sup>21</sup>. This institutional structure creates both an extreme power differential, and a reliance on assessing for risk that draws the focus and resources of the system towards this task, and away from helping, support, or power sharing. As the populations in contact are disproportionately living in poverty and racialised, this process of assessing, which relies on making subjective judgements under poor conditions (of uncertainty, vague definitions, value conflicts, time pressure, often with poor information quality) is ripe for the expression of biases as described. This is especially the case in a colonised and neoliberal context where social inequities and racism remain structuring features.
38. The recent disparities report from Oranga Tamariki provides some information that can be analysed from a need-bias perspective. The

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<sup>21</sup> Melton, G. B. (2005). Mandated reporting: A policy without reason. *Child Abuse and Neglect*, 29, 9 - 18.

report gives a solid overview of the nature of disparities as they proceed through the child protection system, as well as those presenting at the front door to that system. With this in mind, several observations can be made:

- Using only ‘first time’ events (of reports of concern, referral to assessment/investigations, FWA or FGC, first placement), reduces the inclusion of Māori event data more than non-Māori, because Māori are more likely to have had multiple contacts over childhood. Therefore using only first time events will reduce the represented disparities by reducing the Māori rates of events.
- Comparing Māori with ‘NZ European and other’ reduces the latter group rates, as Asian rates are very low and have a significant size population, increasing the representation of disparity.
- ‘Allowing for’ or controlling for a range of factors as well as presenting the uncontrolled disparities was positive – both are valuable indicators. But while it’s interesting to see the ‘controlled for’ size of disparity, it’s important to remember that this is somewhat artificial. The true disparity is the uncontrolled rate. To control for means to hold those factors as if they were constant – the reality is that they are not constant within the Māori population, and they can’t be removed from current social realities. Nor do they necessarily ‘explain’ the disparities in any meaningful way, such as suggesting that they are caused by those risk factors in the population instead of by biases. They can be accounted for by both or either. Controlling for does show the powerful intersections of ethnicity with the range of social factors identified (parental income, socioeconomic decile, recent parent corrections involvement, school disengagement, mental health

provider contact, involvement in victimisation via police, emergency department contact).

- ‘Reports of concern’ is an internal decision point, reflecting disparities within the cases accepted by Oranga Tamariki, not disparities of notifications (that could be attributed to outside referrers). Notifications would be good to report disparities in, even if they can't be reliably linked for other calculations.
- The use of the previous decision as a denominator for each of the next decision points also deserves comment. This is a perfectly acceptable way to track disparities because it shows whether the pathway through Oranga Tamariki is maintaining, reducing or increasing disparities. However, this method of reporting doesn't show the ongoing disparities compared to the overall population, only those within the population notified. Both are valuable.
- What these calculations show is that at each decision point within Oranga Tamariki there is a small increase in disparities, apart from between a first FGC and first placement, where there is no increase in disparities. This shows that processing through Oranga Tamariki begins with a large disparity at the first decision point, and this is reproduced and increased slightly at each decision point until family group conferences, at which point disparities are maintained, but not further increased between that decision and placement decisions. Reporting the overall disparities at each decision point as well as the increment since the previous decision point would make both type of disparities more transparent.

39. I now turn to address questions 2 and 3. As the previous account explains, disparities are caused by multiple interlocking factors, many of which are only tangentially related to legislation or formalised

practice frameworks. Because of this, I don't think the legislative changes and practice changes since 2017 will, alone, address these disparities. Addressing social conditions, especially the causes and consequences of poverty, providing sound prevention services, sharing power, and addressing both instrumental and direct biases are the solutions we need. Changing the structure of the system from notify-investigate to community capacity building and family support is a longer term, structural aim. Further, the legislative changes since 2017 are myriad, and even those not specifically about 'Māori' issues may have an effect on Māori disparities, because they influence the broader environment of resource distribution, policy orientation or concepts and values used in practice.

40. However, the biggest opportunity for addressing some of the factors causing disparities remains through the s7AA section. This could be expanded to ensure a greater level of power and resource sharing than it currently allows.
41. The requirement to report on disparities created by s7AA will be key to highlight disparities and drive work programmes that track their causes and address them. This can be used to engage in anti-racism education, promote poverty-aware practice, and track instrumental biases within Oranga Tamariki, examine instrumental biases outside of Oranga Tamariki, critically interrogate concepts and values used in practice, and in the greater provision of prevention services outside of Oranga Tamariki.
42. The ability to form strategic partnerships with iwi and Māori organisations also holds promise, for better power sharing and resource distribution that can also help address the causes of disparities. Devolution of power and resources to Māori is clearly a way to reduce the current power differential that provides fertile

ground for biases of many kinds to develop, create prevention services based more closely on community preferences, Maori values and needs, based on a greater consensus about the concepts used to work with whanau. It would also enable greater inclusion of whanau in decision-making processes and respect the rangatiratanga of iwi. The partnership legislation, however, could be strengthened to ensure this.

43. For example, there could be a legislated requirement for Oranga Tamariki to negotiate with iwi as to their preferred model of partnership, which could include some or all of the following (in order to cater for differing iwi preferences):

- Delegated resources for preventive service provision, defined by iwi;
- Assistance with service capacity building;
- Provision for iwi to take on decision-making powers through internally defined processes. Borrowing on the ideas of both Tania Williams and my honours student, Andrew Rudolph, enabling legal decision-making by a forum defined by iwi to make decisions about care, review plans and hold family group conferences could be created to truly enable iwi to make decisions for their own tamariki, as they see fit.
- Require iwi FGC coordinator positions to be supported
- Where iwi take on decision-making powers, all iwi children notified to the local site office would instead go to them to respond to.
- Alternatively, iwi representatives should be able to have input to any family court process regarding a tamaiti from that iwi.
- Iwi and Māori organisations should also be resourced to provide community programmes and development (as many already do) to enable more general family support and services. Much research exists about the role of community social cohesion and

intergenerational closure – both strengths of iwi Māori – in reducing child harm.

- Resources to develop parent and whānau advocacy services, so all whānau going through Oranga Tamariki have access to advocates.
- Iwi could opt into some or all of these provisions. For those they choose not to take up, the partnership could instead require input to site office processes and whānau decision-making within Oranga Tamariki.

44. Troubleshooting: the difficulties with a ‘mixed model’ such as this would be ensuring that variability in decision outcomes are not intensified around major decision points, while maintaining iwi rights to develop responses as they see fit. This is essentially an article 2 and 3 tension, but is also a classic tension within child welfare: how can we ensure specific service provision responsive to community needs, while also maintaining consistency around the thresholds for legal intervention?
45. Another issue is how to respond to children who have multiple ethnicities and or are living outside of their iwi takiwā. Who responds to these tamariki?
46. However, the potential for iwi and Māori organisations to create the kind of services and community building that can fundamentally reconstruct the child protection system away from a centralised notify-investigate system, address the effects of social conditions to some extent, reduce biases, and offer services that whānau experience as helpful, consistent, local and supportive, (rather than sporadic, distant, and risk oriented) cannot be overstated.

47. Forming alliances between iwi and non-Māori NGOs doing valuable work in the sector may also be a way to build collective capacity in the sector.
48. It is important to recognise that no one agency – whether Māori or Oranga Tamariki in its current form – can address causes relating more broadly to poverty, housing and access to health services.

### **Kerri Cleaver**

49. In the roles mentioned above, I have been dedicated to working in a Treaty partnership with the government with a shared goal of whānau wellbeing. In both the localised (Puketeraki and Ōtakou runaka) and iwi partnerships Ngāi Tahu has understood our responsibilities extend past Ngāi Tahu and to Māori and Pākeha who reside in our takiwā. I hold the belief that developing Ngāi Tahutaka services and extrapolating the applied principles will provide benefit for all whānau and mokopuna.
50. Partnership is a key word utilised in the re-visioning of Oranga Tamariki. To my understanding a Treaty partnership is about equity in design, development and delivery. We should be there at the start of the process and should hold key decision making roles with government, holding on to our rangatiratanga.
51. What I now understand is that the Oranga Tamariki systems do not allow for true partnership to occur and what we have is a mix of willingness and intent at some levels and confusion and refusal at other levels. The disconnect between national office decision making and regional relationships alongside a general lack of understanding of Te Tiriti means locally we are unable to advance our aspirations in this space as mana whenua lead services.

52. Two prioritised Quality Assurance Standards under the 7AA reporting strategy; upholding and protecting Māori interests; and valuing our Māori evidence base under a government lead organisational structure are not met from my localised perspective. While the Oranga Tamariki system remains the sole decider in who gets funded, what gets funded and who delivers services in what manner, Māori interests and evidence will never be upheld.
53. At a macro level, programmes for delivery such as *transitions* are pre-designed and put out for delivery with no room to negotiate according to our whānau needs, differences in locations or the complexities of people's lives. Research into the estimated additional cost of young people aged 18 + to their parents puts the real cost average at \$42,000 in 2008<sup>22</sup>. By comparison Oranga Tamariki under the transitions contract has allocated \$500 per year to a young person for the duration of the contract. This highlights issues around Government directed contracts that seek to meet fiscal limits rather than the needs of youth. Other examples of macro level issues in partnering include the national office pre-determining who can have a iwi Family Group Conference co-ordinator or the decision that the New Zealand Council for Christian Social Services is the appropriate body to deliver nationwide 7AA training as two examples. This is not partnership as understood at a localised mana whenua level.
54. At a meso procurement level we are asked to line up with the NGO sector and submit for contracts with no acknowledgement of the legacy of colonisation which preferences established mainstream social services, who have built assets and contract portfolios over decades of government funding. Māori providers by comparison are

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<sup>22</sup> Packard, T., Delgado, M., Fellmeth, R., & McCreedy, K. (2008). A cost-benefit analysis of transitional services for emancipating foster youth. *Children and Youth Services Review*, 30(11), 1267-1278.

new to the sector and iwi providers such as Tiaki Taoka are start-ups with a zero asset base and stretched resourcing. The procurement process conflicts with a Treaty partnership and replicates inequity at a agency/ service level.

55. At the micro level, whānau in the child protection system are feeling the system in a business as usual manner. They have not seen a shift in practice at the front line and continue to state the service they receive is biased and monocultural. Whānau are also subjected to social work practice that pushes for permanency decisions early on without consideration of whānau growth and development and home for life has become normal practice. In our now eight year runaka partnership we have asked to lead cultural assessments and cultural reports both in Oranga Tamariki and in the court system. To date we have not managed to secure agreements to be able to input in this space which both disregards the value of our cultural knowledge but also dismisses our rights and interests in whānau lives through whakapapa.
56. In my role and through our initiatives such as the Kāhui Panel (2019) the practice appears unchanged. Oranga Tamariki locally has a workforce unable to understand the Treaty partnership environment. Currently sites in the South Island have no comprehensive learning and development plans in place to grow understanding of the principles of Mana Tamaiti, whakapapa and whānaungatanga. While stark evidence of the lack of internal knowledge is produced in multiple witnessed court documents which have no reference to a mokopuna Māori's whakapapa.
57. There appears to be an inability for Oranga Tamariki to recruit Māori to senior leadership roles in the agency locally and this affects the ability to challenge and change practice. This may be because Māori

practitioners in the community witness and experience first hand, multiple racist slurs and we are therefore unwilling to enter the machine.

58. Currently Tiaki Taoka is transferring mokopuna Ngāi Tahu in foster care from Oranga Tamariki to our service. This is an example of positive relationships and partnership, primarily at a national level with the Whānau Care team lead by Frana Chase. The difference being this team demonstrates an understanding of Te Aō Māori and acknowledges our rangatiratanga.
59. Tiaki Taoka designed our service with our Ngāi Tahu community, with whānau and rangatahi involved with Oranga Tamariki. Our community placed a strong emphasis on advocacy and support with a clear directive that we needed to quickly move to the beginning end of the system in order to support whanau at the point of first contact with Oranga Tamariki. The challenge is that Oranga Tamariki systems at national and regional levels do not allow for a hapū endorsed, iwi mandated service to direct our own service development and delivery.
60. There is work that needs to be done in changing the way the Family Court functions to allow hapū and iwi a participatory role in mokopuna Māori under Oranga Tamariki Act, 1989 proceedings. Currently we are locked out of the Family Court subject to each individual Judge's prerogative.
61. A shift in power and resourcing is the main requirement in creating a fair system with reducing disparities and enabling Māori knowledge, evidence and world views to lead practice. This is about devolution into our communities and trusting that we can build capacity and capability to deliver to whānau and mokopuna needs. This is not just about funding services, this is about iwi and hapū having the time to

research and develop how we address the issues facing our communities.

62. Substance addictions, unstable housing and family harm require collective thinking and re-imagining what a responsive Māori service will look like for our whānau and mokopuna to flourish. To do this we need a new template of how the start of design occurs. My opinion based on eight years of partnership is that a re-set is required for how the government works with iwi, hapū and Māori in order to reduce disparities, build our community capacity and share power in a Treaty relationship that is centered on mana and rangatiratanga.

#### **Emily Keddell**

63. In addition to the explicit provisions of s7AA, there are other legislative changes introduced since 2017 that might affect disparities for Māori. For example, the extension of conditions allowing intervention in s14AA, s2 and s3. Here the definition of ‘suffering or likely to suffer, serious harm’, was extended (July 1 2019) to include those circumstances where “a child’s or young person’s development or physical or mental or emotional well-being is being, or is likely to be, impaired or neglected, and that impairment or neglect is, or is likely to be, avoidable; the child or young person has been exposed to family violence” (within the meaning of section 9 of the Family Violence Act 2018)), and, as per s3, this can be a single incident, or “2 or more incidents that taken on their own would not be serious enough to constitute serious harm, but the cumulative effect of which is serious enough to cause serious harm; or(c) the co-existence of different circumstances”.
64. Such a nebulous range of concepts, and the ability to gather up a list of vague future possibilities and impacts on ‘emotional wellbeing or

development' to constitute 'harm' may serve to reinforce the net-widening that always affects those most at risk of system contact more than others, that is, Māori and others living in high deprivation areas. It allows for intervention on almost anything a decision-maker decides 'impairs wellbeing', an ill-defined and culturally contested concept. This could well lower the threshold for statutory intervention, capturing ever more needy, but not risky, families in its net. Is this the role of legislation or other types of policy, services and strategies?

65. Including exposure to family violence adds another source of net-widening that will affect Māori more than others, especially without any other checks (as there is in the Family Violence Act) on holding other victims responsible. The blaming of women for 'failing to protect' their children is more likely to affect Māori women within the child protection system, so including this as a new kind of child harm could provide more justification for this blaming approach.
66. Where concepts such as wellbeing or a 'collection of circumstances' are included to define harm, the lack of clarity makes space for broad interpretations that can allow the types of subtle biases described above to creep into decision processes. Vague and contested concepts such as wellbeing, particularly future well-being, can be constructed in multiple ways and are fundamentally unknowable in all but the most serious cases. Children respond in complex ways to the circumstances facing them, and adult's lives also follow unpredictable trajectories.
67. Conceptual vagueness creates the preconditions for arbitrary and paternalistic decisions. In turn, arbitrary and paternalistic decision-making is fertile ground for racist bias in decision outcomes.

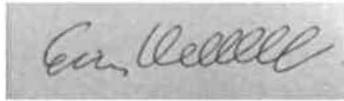
68. Other amendments that conflict may encourage disparities because the services are not in place to be able to ensure a proper balancing of competing tensions. For example, the amendments in the principles in s4 (d) “assisting families and whānau, hapū, iwi, and family groups, at the earliest opportunity, to fulfil their responsibility to meet the needs of their children and young persons” and (e) “ensuring that, where children and young persons require care under the Act, they have—(i) a safe, stable, and loving home from the earliest opportunity. The first, at (d), is only possible with the proper provision of services and social protections outside of Oranga Tamariki. Without these, the effect in practice is likely to favour the latter at the expense of the former. That is, without enough emphasis on both poverty reduction, income, housing and the provision of preventive services, it is unlikely that families will be assisted ‘at the earliest opportunity to fulfill their responsibilities’ (as we saw in the Ombudsman’s report and in our forthcoming research). Instead, what happens in reality is that families are only picked up by Oranga Tamariki once the issues they have are very serious, or in the case of pregnant women, too late in the woman’s pregnancy, when the latter provision of providing a safe home “from the earliest opportunity” can be used to justify immediate removal to permanency. This obviously goes against other provisions that require the dept to maintain and strengthen children’s relationships with their families and whānau (s4 (h), and the recognition of the whānau as the primary responsibility bearers (s5c) and the effects of any decision on the relationship between children and their whānau.
69. This is why, within the ‘partnerships’ of s7AA, as well as the existing s (396) organisations, fundamental redistribution of funds from Oranga Tamariki to the agencies working in the community is needed in order to operationalise these provisions. It is only through devolution of these resources that Māori and Iwi organisations will be

able to create the kinds of services and communities that can truly keep children safe in their own homes and whānau.

70. The new insertion of concurrent alternative care planning that should begin early (s5 (f) (i) (ii)) may also trump, in practice, all those sections before it emphasising the need to provide ‘early support and services’ to ‘strengthen and support families to enable them to care for their children’ (s2, (a) – (b)). If the balance of resources is tilted towards the organization who is in the business of removal at the high end, rather than providing the support services who truly can reach families early, then the result is that those most disadvantaged in society, who are disproportionately Māori, do not get the services required early enough. When concurrent planning is in place, removal to that permanent caregiver is much more likely.
71. Instrumental biases related to the emphasis on recorded data may also be heightened due to the new information sharing arrangements (s65 -66). The increased data held about Māori whānau by all the agencies in contact with Māori is more likely to be shared even when agencies would prefer not to. As mentioned above, the increased weighting of risk based on those recorded contacts can increase perceptions of risk which may or may not be factual.
72. It is clear that all the amendments must therefore be considered (not only those that might be considered specifically relating to Māori) as many affect the wider orientation, the balancing of competing principles, or conceptual issues that affect their application.
73. Policies and legislation can be defined as racist if the effect of them is to “produce and maintain racial inequity”, while anti-racist policies

are “those that produce and maintain racial equity”<sup>23</sup>. It is clear that inequity is the effect of our combined social policies, but we can create those that reverse the trend.

74. Attached is Schedule A which sets out a list of our references discussed in this brief.



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**EMILY KEDDELL**



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**KERRI CLEAVER**

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<sup>23</sup> Kendi, I. X. (2019). *How to be an antiracist*. New York, NY: One World.