

Research Dissertation

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Topic

COVID-19's impact on South Auckland tamariki and the Government's responsibilities. Does Aotearoa's child poverty reduction and child wellbeing legislation compel or impede government accountability?

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Abstract

This essay examines to what extent the Government protects and maintains all children's right to thrive in Aotearoa, which is a responsibility it has committed to as a signatory to the United Nations Convention on the Rights of the Child (UNCROC), under the Child Poverty Reduction Act 2018 (CPRA), the Children's Act 2014 (previously called the Vulnerable Children's Act 2014) (CA) and mindful of our obligations under Te Tiriti o Waitangi.

I take as a case study the children of Papakura Kelvin, South Auckland, a high deprivation community.¹ Technically Papakura Kelvin is a Statistical Area 2 (SA2). SA2s are built from mesh blocks and generally contain 1,000-4000 residents, capturing a 'community of interest'.² I look at the inadequacies of the child wellbeing and child poverty reduction legislation in relation to these children. I argue that the impact of COVID-19 has further exacerbated and brought into sharper relief these inadequacies. I explore whether there is discrimination against these children, causing material difference, and whether this is unjustified. I argue for structural change in data collection and increased accountability at the SA2 level. National measures and indicators alone do not provide adequate political accountability and transparency for children living in these communities. Just as UNCROC, our treaty obligations, our child poverty legislation, policies, and child wellbeing strategy say, it is only right and just that these children, like all children, have the opportunity to thrive.

¹ The New Zealand Index of Deprivation (NZDep) from the 2018 census for Papakura Kelvin is 10. The higher the decile, the higher the deprivation score.

² SA2 is an output geography that provides higher aggregations of population data than can be provided at the statistical area 1 (SA1) level. The SA2 geography aims to reflect communities that interact together socially and economically. In populated areas, SA2s generally contain similar sized populations. SA2s were the 'suburb' comparison denominator in the publicly available COVID-19 vaccine rollout charts.

Subjects and Topics

Aotearoa; children; child rights; child wellbeing; COVID-19; data inequities; deprivation; discrimination; equality; equity; human rights; Māori; Pasifika; poverty; spatial inequities; social equity; social justice; South Auckland; Tāmaki Makaurau; Te Tiriti-o Waitangi.

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1 The problem: the unavailability of child wellbeing and poverty reduction data for high deprivation communities

Under the CPRA and the CA it is a requirement that child poverty reduction and improving child wellbeing remain an ongoing priority of successive governments. The CPRA and the Children's Amendment Act 2018 (CAA), which amended the CA, had their genesis in the Child Poverty Reduction Bill, which was divided into two bills in its final reading. These significant pieces of legislation were passed into law on 20 December 2018, with almost unanimous support.

The purpose of the CPRA is to help achieve a significant and sustained reduction in child poverty in Aotearoa by provisions that:

- (a) Encourage a focus by government and society on child poverty reduction:
- (b) Facilitate political accountability against published targets:
- (c) Require transparent reporting on levels of child poverty.

One aspect of the CAA was to introduce a new Part 1 to the CA setting out a strategy for improving children's wellbeing. The purpose of Part I is to:

- (a) require the Government to adopt, publish and review a strategy for improving the wellbeing of children; and
- (b) ensure that children's agencies work together to improve the wellbeing of particular groups of children.

4A Treaty of Waitangi (Tiriti o Waitangi)

The duties of the responsible minister [...] are imposed in order to recognise and provide a practical commitment to the Treaty of Waitangi (Te Tiriti o Waitangi).

I argue that while the Government is complying with its obligations under the child wellbeing and child poverty reduction legislation, s 3 of the CPRA and s 4, Part 1 of the CA are not in themselves sufficient to achieve their purpose. A national framework of child poverty reduction measures is a welcome step forward, as is a national strategy for improving child and youth wellbeing. However, national measures and targets do not by themselves create the necessary accountability, transparency, public trust, and impetus to drive meaningful change in child wellbeing indicators for children living in marginalised, hard-to-reach communities.

The COVID-19 pandemic and vaccination rollout has made this abundantly clear in multiple ways.

A parallel case in point is the vaccine rollout which was necessarily focussed on the progress of each District Health Board (**DHB**) across the country towards the 90 per cent vaccination threshold. This facilitated an unprecedented degree of transparency in the performance of each DHB in meeting this target. It has enabled an unusual degree of public scrutiny of each DHB's performance across age cohorts, ethnicity, and 'at risk' groups. Transparency at both the DHB and SA2 level, has revealed the key differences across ethnic groups, ages, socio-economic status, and different parts of the country, in uptake of the vaccine. Most importantly, it has helped Māori and Pasifika health authorities and activists do several things: challenge the age cohort rollout given that their communities are demographically younger; argue for more resources to underserved communities; direct their interventions to at-risk communities; and mount a number of legal challenges in order to increase Māori vaccination rates.

Highly infectious diseases thrive in substandard living conditions. The community transmission of the virus has exposed pre-existing fault lines of inequality. It is clear from the Ministry of Health's (**MOH**) publicly available information that vaccination rates for Māori have lagged behind other eligible populations. The underlying reasons for this inequitable situation are many. There is a lack of trust by Māori in government institutions. Access to services, cost, poor service delivery, cultural barriers, the underperformance of specific DHBs, poor communication by health providers, and different approaches to wellbeing, are all cited as barriers. We have seen Māori and Pasifika community leaders and health providers forced to initiate, and in some instances, fund their own outreach initiatives. The Whānau Ora Commissioning Agency has had to seek judicial review of the MOH decision not to provide individual data of unvaccinated Māori, and win, in order to increase Māori vaccination opportunities. The case *Te Pou Matakana Limited v Attorney-General*, and subsequent judicial review, hinged around application of r 11(2)(d) of the Health Information Privacy Code 2020 and the Government's commitment to upholding Te Tiriti in the COVID-19 vaccination programme.³

³ *Te Pou Matakana Limited v Attorney-General (No 1)* [2021] NZHC2942 (WOCA 1); *Te Pou Matakana Limited v Attorney General (No.2)* [2021] NZHC3319 (WOCA 2).

The introduction of the Pae Ora (Healthy Futures) Bill (**Pae Ora Bill**) into Parliament and the setting up of the Māori Health Authority (**MHA**) underscore long standing health inequities.⁴ Section 3(b) of the Pae Ora Bill explicitly states that a key objective is to achieve equity in health outcomes among New Zealand’s population groups, including by striving to eliminate health disparities, in particular for Māori.

All of the above issues are instructive, in that they make visible the same impediments that stand in the way of enabling children in marginalised communities to have better lives. The 2022 Budget’s Child Poverty Report presents concerningly high rates of child poverty, across all three primary indicators. One in ten children live in material hardship. One in seven children are in income poverty. The rates of child poverty for Māori, Pacific, and disabled children are much higher than other groups.

The Government, through the relevant child-facing ministries, must be held accountable for child wellbeing outcomes in marginalised communities. There is an urgent need for structural change in data collection and increased accountability at the SA2 level. Child wellbeing and poverty reduction targets, measures and indicators must be set for high deprivation communities, in ways attentive to the greatest opportunities for impact.

2 The case study: the tamariki of Papakura Kelvin SA2

i. Child poverty progress from 2018 to 2022 at the national level

The legislation under the CPRA establishes a balanced suite of measures to track and report on child poverty. The Department of the Prime Minister and Cabinet (**DPMC**) states that:⁵

The measures will track progress towards the targets, allow some international comparison, and provide a good picture of the impact of policy decisions on the lives of children.

The CPRA identifies the primary measures the targets will be set against, including low income, material hardship and entrenched poverty.

The CPRA requires the Government to report annually on one or more ‘Child poverty related indicators’ (**CPRI**). The Government has identified its CPRIs which are: housing affordability; housing quality; food insecurity; regular school attendance; and avoidable

⁴ Pae Ora (Healthy Futures) Bill 2021 (85-2).

⁵ DPMC Child Wellbeing and Poverty Reduction Group “Child Poverty measures, targets and indicators” <www.childyouthwellbeing.govt.nz>

hospitalisations.⁶ These CPRIs are also used as indicators for three of the six outcome areas in the Child and Youth Wellbeing Strategy (CYWS):⁷ ‘Children and young people have what they need’, ‘Children and young people are happy and healthy’, and ‘Children and young people are learning and developing’.

In February 2020, when Statistics New Zealand (Stats. NZ) released its first set of annual measures of child poverty, there was cautious optimism. The third CPRIs Report was published in April 2022.⁸ It includes data for the year ending June 2021, capturing the start of the COVID-19 pandemic, but prior to the Delta and Omicron outbreaks. It notes that there has been real progress on the official measures. The data indicate a longer-term improving trend on three of the five CPRIs, including housing affordability, housing quality and food insecurity. However, the report confirms that across almost all the indicators, Māori, Pasifika, and disabled children face barriers to achieving equitable outcomes relative to all children overall. Furthermore, COVID-19 has impacted adversely on school attendance for Māori and Pasifika children.

ii. The significance of the children of Papakura Kelvin

In South Auckland around 35 per cent or 160,000 people live in the areas of highest deprivation (deciles 9-10). Within the South Auckland community, the local board areas of Māngere-Ōtāhuhu, Ōtara-Papatoetoe, Manurewa and Papakura show the largest disparities with the rest of the region, and Aotearoa, and are identifiable as priority areas due to the presence of poor outcomes in multiple indicators.⁹ This essay looks at children aged five to thirteen years old, who are predominantly Māori and Pasifika, living in concentrated pockets of high deprivation in Papakura Kelvin.¹⁰ They attend low decile primary and intermediate

⁶ The indicator data sources are the HES; the NZ Health Survey 2019/2020; the Attendance Survey 2020 (Ministry of Education) and Ministry of Health data 2019/2020.

⁷ New Zealand Government “Child Poverty Related Indicators Report” (May 2021) www.dpmc.govt.nz/sites/default/files/2021-05/cpri-report-20210512.pdf At 2.

⁸ New Zealand Government *Child Poverty Related Indicators Report (2021/2022)* (New Zealand Government, Wellington, 12 April 2022). <[www.ChildPovertyRelatedIndicatorsReportfortheyearending30June2021\(childyouthwellbeing.govt.nz\)](http://www.ChildPovertyRelatedIndicatorsReportfortheyearending30June2021(childyouthwellbeing.govt.nz))>

⁹ The Māngere-Ōtāhuhu community is largely Pacific and has significant issues with low income and unemployment; Papakura has a large Māori community and a significant number of children and youth at risk. While highly diverse, these communities share in common low levels of trust in external organisations.

¹⁰ The New Zealand Index of Deprivation from the 2018 census for Papakura Kelvin is 10. The higher the decile, the higher the deprivation score. Aotearoa schools are transitioning from decile-based equity funding to the new Equity Index. There will be an additional \$75 million per annum equity funding over four years for schools with the highest concentrations of students living in income poverty and material hardship households. This is an improvement, but still lower than other comparable countries.

schools in Papakura.¹¹ Based on the school role counts this represents some 1,000 of the 125,000 children described as living in ‘grinding poverty’. These children are a small sample, their lives and cultural context will be different from those children growing up in small towns and rural settings. However, in terms of the child and youth wellbeing indicators, these children all face shared challenges. I argue that the COVID-19 pandemic has made these children’s lives immeasurably harder *and* simultaneously exposed the inadequacies of our child poverty reduction, child wellbeing legislation and policies.

This is a high deprivation area with one of the largest concentrations of young Māori and Pasifika children in urban Aotearoa. Papakura Kelvin is one of 166 areas in Aotearoa that has high rates of household crowding. 18.6 per cent of households in this area live in crowded accommodation. A sizable proportion of the housing stock is owned by Kāinga Ora and is not fit for purpose.¹² Many whānau are in emergency and transitional housing or have family members living in garages. Inadequate housing imposes social, educational, physical, and mental burdens for children and their whānau. This had profound consequences when these schools operated at alert level four.

Food security is a significant issue for these households. Many of these children come to school hungry. School is the only place where they can get breakfast and lunch. They are some of the 20 per cent of children and young people in Aotearoa who live in households with moderate to severe food insecurity.

These children and their whānau have an acute sense of not belonging to the world beyond Papakura Kelvin. Many of the children have never been as far as Ardmore, a five-minute drive away. They grow up with a strong sense they do not belong in other places. Many do not know their whakapapa. The families can feel shame in asking for help from the Papakura Marae.

¹¹ Red Hill Primary School, Kelvin Road School, Papakura Intermediate and Edmund Hillary School are all decile one schools, the lowest rating.

¹² There are 1,593 managed Kāinga Ora rental properties in Papakura as of 31 March 2022.
<<https://kaingaora.govt.nz/assets/Publications/Managed-stock/Managed-Stock-ALB-March-2022.pdf>>

It is a longstanding children's rights issue in Aotearoa that there is insufficient high quality disaggregated data on different cohorts of children and young people.¹³ These children are often described in aggregate statistics, while remaining invisible. This is especially the case for Māori, Pasifika, and children facing persistent disadvantage.¹⁴ These children have important things to say about their welfare. A Papakura Kelvin primary school teacher asked students to describe what their ideal school would look like. The teacher quickly discovered that the children were describing what they wanted in their homes. Their needs to us sound simple: carpets, strong walls, windows so they could see out to the street. These children were actually identifying what for them were the fundamentals to their sense of wellbeing and understanding of security, warmth, protection, and safety. In trying to answer the question, they also revealed what makes them feel vulnerable. It was not always like this.

The Red Hill community is built on an ancient pā site known in Māori as Pukekiwiriki. Its panoramic views over Tāmaki Makaurau made it a strategic lookout point during the Māori wars to see waka on Manukau Harbour and movements through the surrounding native forest.¹⁵ The hill's rich, fertile soil was ideal for growing and storing the kai of the local Māori. Once the site of a pā with abundant resources, now there are pockets of gang homes, houses with boarded over windows, and special initiatives to keep children safe in public spaces walking to school. The complexities of ethnicity, place, and value – the realities of systemic racism – are the constants of their daily lives. Some children in this community must grapple with intergenerational disparities that many would argue are part of a systemic structural and racist society.

Just as the children's own words reveal and conceal something about their lives, the absence of good data reveals and conceals something about these same children. The invisibility of Papakura Kelvin, alongside similar SA2 'communities of interest' in the national CPRA data

¹³ Children's Convention Monitoring Group *Getting It Right: Children's Rights in the COVID-19 Response* (Office of the Children's Commissioner, Wellington, March 2021) at 17.

¹⁴ Persistent disadvantage is linked to the concept of inequality. Māori, Pasifika, and disabled children in particular, are affected by persistent disadvantage. Early influences (both during pregnancy and children's first 1,000 days) have a significant impact on their ability to thrive throughout their life. It is hard to make up for early disadvantage. For an excellent discussion on what it means, what we know, what we don't know, and the data gaps in Aotearoa see: New Zealand Productivity Commission "*A fair chance for all: Breaking the disadvantage cycle. Scoping the Terms of Reference for an inquiry*" (Productivity Commission, Wellington, July 2021).

¹⁵ Red Hill, New Zealand <www.en.wikipedia.org/wiki/Red_Hill,_New_Zealand> Pukekiwiriki Pā is co-governed with six mana whenua groups and the Papakura Local Board, as the Pukekiwiriki Pā Joint Committee.

has real consequences. It reduces government responsibility and ministry accountability. It limits optimal policy interventions. It impacts on funding levels. It lessens the ability of communities to advocate for better child wellbeing outcomes. It makes it harder for Māori and Pasifika health providers to initiate targeted interventions. It reduces public trust. It reinforces the poverty deficit model, an approach that Papakura Kelvin community advocates see as reductive, reinforcing and constricting the range of possibilities for these children. It moves the focus from improving child wellbeing outcomes. Data inequities have a discriminatory effect. Granular information builds public trust and paints a much clearer picture of what is going on within communities. The burden of invisibility falls disproportionately on these children.

iii. COVID-19's spread and vaccination rates in Papakura Kelvin

In October 2021, Papakura was identified as a suburb of interest in the transmission of COVID-19 with one active Delta sub-cluster of 21 cases with the median age of 15 to 19.¹⁶ In November 2021, less than 80 per cent of the eligible population was fully vaccinated (77 per cent).¹⁷ By 10 December 2021, 89.3 per cent of the eligible population of Papakura Kelvin had had their first dose and 79.7 per cent had had their second dose, some 3454 of the 4515 eligible population. This result is thanks to the unrelenting targeted efforts of Māori and Pasifika health providers working closely within the community. Granular data at the community level charting the progress of the vaccination roll out for children aged five to 11 provides a proxy measure for the wellbeing of Papakura Kelvin tamariki. On 23 March 2022, only 42 per cent of five- to 11-year-olds in the Papakura Kelvin community had had their first vaccine. Regardless of vaccine status, Omicron is prevalent across all age cohorts in this community.

iv. The CPRA data gaps, time lags and omissions

The short, medium, and long-term consequences for the wellbeing, health and resilience of these children are unclear. The CPRA data is not sufficiently timely to provide insight on the impact of the pandemic on these children. There is a sixteen-month time lag. Nor does it provide high quality disaggregated data at the SA2 level. The voices of the children of

¹⁶ As of 14 October 2021.

¹⁷ Keith Lynch and Kate Newton, 'COVID-19 NZ: Why these 166 places may be most at risk of virus spread', *Stuff* (online ed, Wellington, 3 December November 2021). As of 24 November 2021. Map Kate Newton. Source MOH. Stats.NZ, Stuff analysis. <www.stuff.co.nz/national/explained/127139335/covid19-nz-why-these-166-places-may-be-most-at-risk-of-virus-spread>

Papakura Kelvin are absent from government reports and those of the Office for the Commissioner of Children (OCC).

What is clear to those in the community who have these children's welfare in their hearts is that COVID-19 has exacerbated and increased the existing disparities that these children already contend with. When the schools these children attend went into lockdown at midnight on Tuesday 11 August 2021 the consequences were immediate and serious.

v. COVID-19's impact on Papakura Kelvin tamariki

(a) School is a grounding place for these children. COVID-19 disrupted this.

Many of these children come from home environments that have high degrees of dysfunction. Schools, extracurricular sports and activities, and public swimming pools in the community function as safe havens, providing a degree of normality and a focus on wellbeing. The Social Workers in Schools (SWIS) team members who work across these schools, note increases in family violence, drug and alcohol abuse, and mental illness, alongside the removal of all the existing safe havens for these children.¹⁸

(b) The digital divide has severe consequences for educational outcomes

In the first lockdown of 2020 teachers at a decile one Papakura Kelvin intermediate school discovered that laptops were not the answer for remote learning. In homes with large families there is not necessarily internet access, quiet learning spaces, or sufficient knowledge around technology issues. The school, instead, moved to providing students with paper-based workbooks. At the start of 2021, anticipating further lockdowns, each teacher was made to confirm the addresses of the students they look after. This required visiting the students' homes to confirm a contact list delivery. In September 2021, during the alert level four lockdown, as a volunteer in the Painga Project, an NGO which works in tandem with low decile schools for better child wellbeing outcomes, I delivered learning packs to children across twenty households. It was humbling to see how these students lived. Some of the neediest families were not at the house on the form – the house had been demolished for a rebuild, or they had moved. Moving frequently disconnects children from schools, networks and communities and impacts negatively on school attendance. The inability to access boarded over front doors, the necessity to go to back doors through high gates, fierce, large guard dogs, all unnerving aspects of the drop off, are the evidence of how vulnerable people

¹⁸ Conversation with the two SWIS workers in Papakura Kelvin Friday 8 April 2022.

feel.¹⁹ This is a community that does not trust institutions. Yet all the caregivers and mothers and fathers were pleased to see me. What they share in common with all parents is they want the best for their children. Their children, however, are excluded from the online learning world.

(c) The Ka Ora, Ka Ako healthy school lunch programme was suspended for fifteen weeks under Delta restrictions.

Some 1,000 Papakura Kelvin primary and intermediate school children missed out on 58 days of the school lunch programme. With schools closed and the free lunch programme suspended across the 15-week Delta lockdown these children and their whānau had to rely on food parcels and social service providers to put food on the table.²⁰

Deputy secretary, sector enablement and support, Helen Hurst, Ministry of Education (MOE) said that discussions had taken place with the Ministry of Social Development (MSD) and across agencies about where additional support was needed. The Government approved a transfer of \$3.2 million from Ka Ora, Ka Ako to MSD to support the work they are doing with vulnerable families through the NZ Food Network/ or food support work.²¹ There is no food hub partner located in Papakura Kelvin. The nearest food hub partner is the Supreme Sikh Society of New Zealand in Takanini. This is prohibitively far for poor families.

(d) School attendance plummeted

Attending school is grounding for many of these children. After three months of the 15-week lockdown Year One to Ten students across Tāmaki Makaurau returned to classrooms mid November 2021. In this community school attendance rates plummeted. Papakura Intermediate School with a role of 280 saw returning numbers fluctuate from a high of 65 to a low of 20. These attendance numbers continue to remain low in the first term of the 2022 school year.

¹⁹ There is a strong gang presence including the Hells Angels, Black Power, the Mongrel Mob and the Cripps.

²⁰ The lunch programme, run by the Ministry of Education, was set up with a vision to feed 215,000 children across 963 schools by the end of 2021.

²¹ Brittney Deguara, “COVID-19: Absence of free school lunches in lockdown a gap that needs filling, NGO says”, *Stuff* (online ed, 2 September 2021) <www.stuff.co.nz/national/health/coronavirus/126260222/covid19-absence-of-free-school-lunches-in-lockdown-a-gap-that-needs-filling-ngo-says>

Pre-COVID-19 in 2018, the Tomorrow's Schools Independent Taskforce Initial Report had drawn attention to the educational inequities that Māori and Pasifika children experience, which impacts negatively for society and the economy.²²

Māori and Pasifika students make up 38 per cent of students; by the 2030's they will comprise 42 percent... If we do achieve that equity, there will be gains in the region of a \$2.6 billion boost to the economy each year.

Earlier in 2021 the Productivity Commission Te Kōmihana Whai Hua o Aotearoa announced that the Government had asked it to prepare the Terms of Reference for a new inquiry, aimed at finding ways to break the cycle of long-term disadvantage.²³ It was noted that:

Persistent, inter-generational disadvantage represents lost opportunities (through economic and social exclusion) and significant loss of wellbeing for those involved and their communities. This lost potential flows through into substantial fiscal costs (such as welfare payments and health costs) and has implications for New Zealand's productivity and economic potential.

Other major inquiries such as the Welfare Expert Advisory Group and the Tax Working Group have already looked at the structure of taxes and benefit payments. The Commission will not duplicate their efforts, but rather focus on additional and complementary ways to break the cycle of long-term and intergenerational disadvantage and exclusion.

The inquiry will look at the capabilities and resources of families and communities to support child wellbeing, such as health, education, and housing, as well as structural features of the economy that particularly impact those capabilities and resources.

In December 2020, the World Bank stated that the pandemic threatens to push an additional 72 million more children into learning poverty. The long-term effects on this generation of children are that it puts them at risk of losing about \$10 trillion [US] in future life-time earnings, an amount equivalent to almost 10 percent of global GDP.²⁴ Professor Mark Hanson addressing the Productivity Commission's '*A Fair Start for All*' webinar noted that in the UK COVID-19 has further depressed every measure of health, wellbeing and resilience for

²² *Our Schooling Futures: Stronger Together. Whiria Ngā Kura Tūātitini*. Initial Report by the Tomorrow's Schools Independent Taskforce. (Ministry of Education. Wellington. December 2018) at 13.

²³ 'New Inquiry: A Fair Start for All', New Zealand Productivity Commission 15 June 2021. www.productivity.govt.nz/news/new-inquiry-a-fair-start-for-all/

²⁴ World Bank "Pandemic Threatens to Push 72 million More Children into Learning Poverty – World Bank outlines a New Vision to ensure that every child learns, everywhere" (press release, 2 December 2020).

children. In quantifying the UK experience he said two and a half million life years had been lost, an unsustainable figure for a high-income country.²⁵ Aotearoa does not have the equivalent data. However, we do know in two recently released welfare stocktake reports that the Government chose debt reduction over reducing child poverty; and is continuing to ignore its own advisory groups' plea for reforms and more cash.²⁶

This point was reinforced by the Child Poverty Action Group (CPAG). Noting yet again the lag in the data impeding the ability to understand what is happening to these children, Professor Emeritus Innes Asher said with the Omicron surge now hitting communities and children in poverty, along with the increases in rents and household costs in the last year and the surging demands for food parcels, the Government is failing in its duty to children:²⁷ “Clearly the discriminatory policies which trap these children in the worst poverty need to be changed”.

The children of Papakura Kelvin are the children that both the Productivity Commission and the CPAG are rightfully concerned about. The impact of COVID-19 has only compounded the issues they face. Children in monetary poor households are COVID-19's invisible victims.

Social scientists describe the COVID-19 pandemic as a “threat multiplier”. It makes its way into the most vulnerable, least vaccinated, highest health needs communities and has a massive impact on them. Professor Michael Baker describes this as a perfect storm. “These are sometimes multiplicative effects – they're not additive”.²⁸ It shows why inequality matters. The Government has the most power it could have in those settings with children who have the least number of rights.

²⁵ Professor Mark Hanson “Breaking the Disadvantage Cycle: Why the First 1,000 Days Matter”(New Zealand Productivity Commission webinar, Wellington, November 2021).

²⁶ Caitlin Neuwelt-Kearns, Emeritus Professor Innes Asher, Alan Johnson Child Poverty Action Group ‘Children Can't Live on Promises: A 2021 stocktake of implementation of the Welfare Expert Advisory Group's 2019 Recommendations, December 2021. <www.cpag.org.nz/assets/Children-can't-live-on-promises-CPAG-report-Dec21.pdf> ; Duncanson M, van Asten H, Adams J, McAnally H, Zhang X, Wicken A, and Oben G. Child Poverty Monitor 2021. New Zealand Child and Youth Epidemiology Service, University of Otago, Dunedin.

²⁷ Child Poverty Action Group “Child Poverty statistics release: Bold Policy changes needed to urgently shift stagnant child poverty rates” (CPAG press release, 24 February 2022). Commentary in response to the Child Poverty statistics for the year ending June 2021.

²⁸ Tess McClure “‘Perfect Storm’: how Covid is compounding New Zealand's existing social crises”, *The Guardian* (online ed, 5 October 2021). <www.theguardian.com/world/2021/oct/06/perfect-storm-how-covid-is-compounding-new-zealands-existing-social-crises>

The Government is committed to protecting and maintaining all children's right to thrive in Aotearoa, which is a responsibility it has committed to as a signatory to UNCROC, under the CPRA, the CA, and mindful of our obligations under Te Tiriti o Waitangi. The Government has a responsibility to ensure that Papakura Kelvin SA2 tamariki have the right to thrive, like all children. This is not what is happening. The inadequacies of the CPRA legislation with its primary focus on national targets, renders invisible Papakura Kelvin SA2 along with other specific 'communities of poverty'. The considerable time lags in collecting this data make it too blunt an instrument for guiding policy decisions, and targeted interventions. Data gaps, time lags and omissions create inequities that have a discriminatory effect. An emphasis on national metrics without the ability to track these same metrics at the SA2 community level further impedes the accountabilities of government and child-facing ministries to the communities they serve. The burden falls disproportionately on vulnerable children.

3 The child wellbeing and child poverty legislative framework

I. Child wellbeing as a human right and international child rights instruments

The United Nations (UN) has special rights specifically for children, women, people with disabilities, indigenous people and minority groups. Children have the same basic human rights as adults, but they also have some additional rights in recognition of their special need for protection. UNCROC is a comprehensive human rights treaty that enshrines specific children's rights in international law. It was adopted by the UN in 1989 and defines universal principles and standards for the treatment of children worldwide.²⁹ Article 2 states that:

The Convention applies to every child without discrimination, whatever their ethnicity, gender, religion, language, abilities or any other status, whatever they think or say, whatever their family background.

Articles 4 and 6 set out the Government's responsibilities in ensuring the wellbeing of every child. The Government must do everything it can to make these rights a reality for every child. And it must make sure that children and young people survive and develop in a healthy way.

4. States parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognised in the present Convention. With regard to

²⁹ Article 1 defines a child as everyone under the age of 18.

economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

6. (1). States Parties recognise that every child has the inherent right to life. (2). States parties shall ensure to the maximum extent possible the survival and development of the child.

Article 24 states that children have a right to “the enjoyment of the highest attainable health”. Children born into poor households experience levels of material hardship that make it hard for them to thrive. Deprived of the basics, these children are less likely to develop their full educational, societal, and economic potential, imposing a heavy cost to them as individual children, to their families and society as a whole. For children and young people to be able to live in ways that allow them to reach their full potential they should have access to adequate food and housing. Article 27 imposes an international obligation on signatories to assist children and their families who are suffering from the effects of poverty.

1. States Parties recognize the right of every child to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

Under UNCROC all children have a universal right to education.³⁰ Further, art 29 declares that education should be geared towards the “development of the child’s personality, talents and mental and physical abilities to their fullest potential”.

II. Child wellbeing and poverty reduction and Aotearoa’s legal framework

Aotearoa ratified UNCROC in 1993. Aotearoa’s international child rights obligations are addressed in our CPRA legislation. In Aotearoa, UNCROC needs to be understood and applied in the context of Te Tiriti o Waitangi.

In 2019 the Government pledged its recommitment to the signing of UNCROC. This was to mark the celebration of the 30th anniversary since UNCROC was adopted by the UN. The preceding year, 2018, marked 25 years since Aotearoa ratified the UNCROC covenant. These are significant milestone dates.

³⁰ UNCROC, art 28.

The OCC is responsible for raising awareness and understanding of UNCROC and advancing and monitoring how the Government applies the convention to improve outcomes. The Children's Commissioner role and the OCC were established in 1989 under the Children, Young Persons and Their Families Act 1989 (CYPF). The OCC is a separate body from the executive and administrative branches of government. The independence of the OCC was reinforced when it was given its own statute, the Children's Commissioner Act 2003, and the status of an independent Crown entity. This is currently under challenge. As part of a comprehensive overhaul of the independent monitoring and complaints oversight of Oranga Tamariki (OT), the Oversight of Oranga Tamariki System and Children and Young People's Commission Bill (**Oversight of Oranga Tamariki Bill**) seeks to replace the OCC with the Children and Young People's Commission.³¹

The Bill proposes placing the independent Children's Monitor alongside the Education Review Office (ERO) within a Government Department; shifting the responsibility for complaints and investigations regarding OT from the OCC to the Ombudsman and converting the OCC into a board-led Commission with less powers to make changes. There has been significant opposition to this aspect of the bill. The OCC in its submission argued that: (1) the named role of Children's Commissioner is critically important and should be retained; (2) the Commission needs a te Tiriti o Waitangi governance model; (3) the ability of the Commissioner to report directly to the Prime Minister must be retained and (4) the investigation and complaints function of the OCC should be retained. The Social Services and Community Committee, reported back on 13 June 2022, recommending the retention of a named Children's Commissioner with the power to report directly to the Prime Minister. Child advocates argue that this is not sufficient to ensure a strong and independent role of Children's Commissioner, and that the proposed governance model is complicated, and not necessarily better.

The OCC represents the 1.2 million children and young people in Aotearoa under the age of 18, who comprise 23 per cent of the population. The OCC notes that children and young people often have little say in the policies and services that affect them. Being child-centred is central to its mandate. It is about recognising the needs, rights, and views of children; and

³¹ Oversight of Oranga Tamariki System and Children and Young People's Commission Bill 2021 (94-1).

seeing children in the context of their families, whānau, hapū, iwi and communities, while working to enhance their mana.

In 2010, Aotearoa endorsed the United Nations Declaration on the Rights of Indigenous People (**UNDRIP**). It sets out the minimum standards for the survival, dignity, wellbeing, and rights of the world's Indigenous People. The Declaration reflects existing international human rights principles and explains how they apply in the specific circumstances of Indigenous People. Its 46 articles address all areas of human rights as they apply to Indigenous People. Key themes include self-determination, equality, and non-discrimination. The Treaty and the Declaration are strongly aligned.

It is a requirement that every five years Aotearoa must report to the UN on its performance in embedding children's rights into the fabric of our laws, policies, and practices. The Committee on the Rights of the Child (**CRC**) examines the evidence submitted and reports back on areas of improvement needed to ensure all children have their rights met. The CRC Sixth Periodic Review is currently underway.

The first review was in 1997, the last review was in 2016. All four reviews, over this nineteen-year period, have noted the economic, health and educational disparities that Māori children face. An unaddressed, and related issue is the lack of high-quality disaggregated data on different cohorts of children and young people, especially for Māori and Pasifika and disabled children. Significant information gaps make it difficult both to effectively formulate, monitor, and evaluate the state's individual policies, programmes and projects. Likewise, the accountability of successive governments is reduced. It is sobering to be reminded that successive generations of children have suffered as a result. The Children's Rights Alliance Aotearoa New Zealand (the **Alliance**) states in their CRC 2021 submission that:³²

... despite the passage of quarter of a century, many of the issues in this report have been raised in the previous five reporting cycles and the subject of previous recommendations from the United Nations Committee on the Rights of the Child (the Committee). The parents of children affected by the issues highlighted in this report will, in many cases, have experienced those issues themselves, as children. This reflects not only the intergenerational impact of

³² Children's Rights Alliance Aotearoa New Zealand Written input into the List of Issues Prior to Reporting Submitted to the United Nations Committee on the Rights of the Child 6th reporting cycle of Aotearoa New Zealand, 1 March 2020.

<[www.5f475317fcd59aa3a1a14d8_Childrens_Rights_Alliance_Aotearoa_New_Zealand_Written_Input_into_LOIPR_2020-2.pdf\(webflow.com\)](http://www.5f475317fcd59aa3a1a14d8_Childrens_Rights_Alliance_Aotearoa_New_Zealand_Written_Input_into_LOIPR_2020-2.pdf(webflow.com))>

many of the children's rights challenges in Aotearoa today, but also their persistent and sustained nature and the slow progress in making the CRC real, in practice, for all children in Aotearoa.

In February 2011, the Children's Convention Monitoring Group (**CMG**) was formed to monitor the Government's response to the 2011 Concluding Observations of UNCROC.³³ The 2011 CRC report had noted that some 20 per cent of children were still living below the poverty line, and that Māori children continued to face discrimination with unequal access to services. Attention was drawn to the need to observe the principles enshrined in Te Tiriti o Waitangi.

In March 2012, the Children's Commissioner established an Expert Advisory Group (**EAG**) to report on solutions to child poverty in Aotearoa. A total of 24 working papers were published addressing various aspects to the solution. The EAG working paper no.18 confirmed that housing is an important determinant of children's well-being.³⁴ A disproportionate number of children live in substandard conditions with significant implications for their health, education, and broader wellbeing. Māori and Pasifika children face significant housing challenges. A preventative approach is required that sees housing as a critical priority. Attention was drawn to critical gaps in data collection. Because there is no one point of assessment, the true state of housing needs is difficult to determine. No data on households requiring housing are collected by a single state agency because assessment is not tied to housing need but to the delivery of a housing product.³⁵ Tighter targeting of housing support for low-income families in greatest need was recommended for large families, families living in areas of high rents, and families with multiple needs.³⁶ Given the critical importance of housing on children's health and wellbeing a key recommendation was the need to implement a national housing strategy.³⁷ This did not happen. Instead, from 2012 to 2022 the financialisation of the housing market has continued unabated.³⁸

³³ The CMG is convened by the OCC and includes members from the Human Rights Commission, UNICEF New Zealand, Children's Rights Alliance Aotearoa, and Save the Children New Zealand.

³⁴ EAG working paper no.18: Housing Policy Recommendations to Address Child Poverty 1 August 2012. occ.org.nz

³⁵ At 29.

³⁶ Recommendation Seven, at.3.

³⁷ Recommendation One, at 2.

³⁸ Rebecca Macfie "The Great Divide" *North and South* (online ed. Auckland, September 2021) <www.northandsouth.co.nz/2021/08/16/nz-housing-crisis-the-great-divide/>. Bernard Hickey "How hope was lost for a generation" *The Spinoff* (online ed., Auckland, 25 June, 2021) <www.thespinoff.co.nz/business/25-06-2021/bernard-hickey-how-hope-for-a-generation-was-lost/>

The EAG recommended that the Government adopt a strategic framework for addressing child poverty with accountability for outcomes. This was taken up by Jacinda Ardern MP in the Private Members Bill 2012 and in a 2014 Supplementary Order paper on the Vulnerable Children's Bill.

The right of every child to have his or her views heard and respected is protected under UNCROC. The Care of Children's Act 2014 embeds this obligation in our legislation.³⁹ The legislation identifies four priority groups:⁴⁰

1. children and young people living in poverty;
2. children and young people in the care of, or at risk of entering the care of, Oranga Tamariki;
3. children and young people with greater need; and
4. all children and young people.

In 2011, and again in 2016, the CRC observed that the views of children were absent in the formulation of our laws and policies. The CRC's 2016 periodic review report argued the need to address the ongoing disparities facing Māori and Pasifika children and their families in access to education, health services, including age-appropriate mental health services, as well as a minimum standard of living. In relation to the non-discrimination clause (art 2) the state needed to take "urgent measures" and "if necessary, [...] affirmative action for the benefit of children in vulnerable situations".⁴¹ An increased focus on child poverty at the state level and the appointment of the EAG were welcomed. However, national definitions of child poverty were a prerequisite for a systematic approach to addressing poverty, especially amongst Māori and Pasifika children. The need for improved and adequate housing conditions and an adequate standard of living were noted.

In 2018, the DPMC requested that the OCC and Oranga Tamariki collaborate on a report on what wellbeing meant to children and young persons.⁴² Their voices were sought to help develop the CYWS, which is designed to drive government action on child wellbeing.

³⁹ Section 6C(a)(b)(c)

⁴⁰ Section 5(b)

⁴¹ V CRC/C/NZL/CO/5 21 October 2016, para. 15.(a).

⁴² Office of the Children's Commissioner and Oranga Tamariki-Ministry for Children *What Makes a Good Life: children and young people's views on wellbeing* (Wellington, February 2019).

As a signatory to UNCROC Aotearoa needed to implement child poverty legislation to ensure *all* children’s rights are upheld.⁴³ The CPRA was passed into law in December 2018 by a new Labour Government with a mission and commitment to make this a priority. The CPRA is the first of its kind in Aotearoa. It establishes a framework which requires the Government to set both income and non-income related child poverty reduction targets over both short-term (three year) and long-term (ten year) periods. The long-term target set under the legislation seeks to reduce income poverty rates by over 50 per cent by 2028, in line with the 2030 United Nations Sustainable Development Goals (**SDG**) target requirement.⁴⁴

The CPRA also implements a Parliamentary reporting budgetary mechanism which enables prospective and retrospective evaluations of the impact of appropriations targeted at child poverty reduction. Stats. NZ produces independent reports on these measures and the key child poverty reduction indicators.

The CPRA requires the Government to develop a comprehensive strategy that will set actions across the government that enhance and promote the wellbeing of children in Aotearoa and deliver the outcomes required to meet the child poverty targets. The CYWS, launched on 29 August 2019, sets out a shared understanding of what is important for child and youth wellbeing, what the Government is doing, and how others can help.⁴⁵

This strategy, underpinned by Te Tiriti o Waitangi and UNCROC, is also the means by which the Government meets its international obligations and implements children’s rights. The CYWS sets six high-level and interconnected wellbeing outcomes for children that outline what children and young people want and need for a good life. Children are:

1. loved, safe and nurtured;
2. have what they need;
3. happy and healthy;
4. are learning and developing;
5. accepted, respected and connected;
6. involved and empowered.

⁴³ Mark Henaghan *Why We Need Legislation to Address Child Poverty* (School of Government at Victoria University, Policy Quarterly 9(2) May 2013) at 31.

⁴⁴ In 2015 the UN launched the Sustainable Development Goals. Goal Number 1.2 requires Aotearoa to reduce the proportion of children in poverty in all its dimensions by at least half by 2030.

⁴⁵ Department of Prime Minister and Cabinet “Child and Youth Wellbeing Strategy – Guiding Principles” (29 August 2019) Child and Youth Wellbeing <www.chilyouthwellbeing.govt.nz/resources/child-and-youth-wellbeing-strategy>

In 2020, the Public Finance Act 1989 (**PFA**) was amended to require the Treasury to report periodically on the state of wellbeing in Aotearoa, and the Government to report annually on its wellbeing objectives alongside economic and fiscal objectives via the Budget. Sections 48-49 state:

The supporting information for the main **Appropriation Bill must** include a report on child poverty.

(2) The Report must –

(a) discuss any **progress made**, in the most recent completed financial year, in reducing child poverty consistent with the targets under the Child Poverty Reduction Act 2018; and

(b) indicate whether and, if so, to what extent, measures in or related to that Bill will **affect child poverty.**”

The wellbeing objectives must relate to “social, economic, environmental, and cultural wellbeing” and explain “how they are intended to support long-term wellbeing in New Zealand.” The amendments to government budgetary processes under the CPRA and the PFA are important structural developments.

The Government wants Aotearoa to be the best place in the world to be a child.⁴⁶ The Rt. Hon. Jacinda Ardern, in her role as the Minister for Child Poverty Reduction, is the lead minister of this work. The work is led by the Child Wellbeing and Poverty Reduction Group, which is driven out of the DPMC. The group was established in February 2018 and consisted of two units: the Child Poverty Unit and the Child Wellbeing Unit. The two units were brought together in 2022.

The 2019 Budget Policy Statement contained, for the first time, wellbeing objectives. Among these objectives was the reduction of child poverty. The 2020 Budget Policy Statement continued this focus on reducing child poverty and improving child wellbeing. In April 2022, the Government released its third Child Poverty Related Indicators Report (2020/2021).⁴⁷ The 2022 Budget was not, however, sufficiently ambitious. Pressures on the poorest families have increased. The CPAG notes that of the child poverty reduction initiatives announced by the Government, two were announced in the 2021 budget. Many high deprivation families will not be eligible to receive the new Cost of Living Payment at a time when the cost of

⁴⁶ DPMC Child Wellbeing and Poverty Reduction Group (7 March 2019) <www.dPMC.govt.nz/our-business-units/child-wellbeing-and-poverty-reduction-group>

⁴⁷ *Child Poverty Related Indicators Report (2021/2022)*, above n 8.

groceries and other essentials is escalating.⁴⁸ The impact of COVID-19 on Papakura Kelvin tamariki highlights this disconnect between child poverty national initiatives and indicators and the lived experience within communities.

III. The Government's responsibilities to Papakura Kelvin tamariki

In its third *Getting It Right* thematic report the CMG looked at children's rights in the COVID-19 pandemic.⁴⁹ It confirms that disadvantaged children and young people were most impacted as wellbeing disparities for these children are systemic and deeply entrenched. The exact impact of COVID-19 on child poverty measures is still to be determined, but the Government recognises that it will disproportionately impact on Māori and Pasifika children.⁵⁰ It notes that most government agencies who responded to its questions were unable to provide clear examples of how they considered the rights of children or the rights of tamariki and rangatahi Māori under Te Tiriti o Waitangi and UNDRIP.⁵¹ The CMG acknowledges that the report does not include the different ways that tamariki and rangatahi Māori experienced the pandemic. This continues to be an information gap. Te Pūnui Kōkiri (TPK) collected data on the experiences of Māori during the pandemic through their 17 regional offices.⁵²

Examples of the insights gathered related to children and young people include: the lack of food when schools were closed as they provided breakfast and lunch; stressed caregivers due to a lack of respite; the stress of the shift to online learning; high stress and anxiety due to virtual learning with an increased workload; and kaumātua hiding their mokopuna behind closed council unit doors knowing that they should not have them there.

Aotearoa's child poverty reduction and wellbeing legislation affords no political accountability or transparency for the children of Papakura Kelvin, a high deprivation community, hit especially hard by the COVID-19 pandemic. The existing legislation is not sufficiently granular to identify these children and communities of high deprivation. The sixteen-month time lag on the data collection and reporting affords no accountability in a pandemic. National target setting does not in itself compel or facilitate government and/or

⁴⁸ CPAG "Children in poverty still lack a secure future. Budget Analysis" (CPAG, Auckland, 19 May 2022). <www.cpag.org.nz/assets/Budget/CPAG-Budget-Analysis-2022.pdf>

⁴⁹ Children's Convention Monitoring Group *Getting It Right: Children's Rights in the COVID-19 Response*, n 13.

⁵⁰ Cabinet Social Wellbeing Committee "Mitigating the social impacts of COVID-19" at [3].

⁵¹ Children's Convention Monitoring Group *Getting It Right*, n 13, at 13.

⁵² The ministry shared this information with government networks and has stored content for future analysis. Children's Convention Monitoring Group *Getting It Right*, n 13, at 18.

ministry interventions and accountability. Instead, the COVID-19 pandemic and new data tracking capabilities have both revealed and magnified the devastating inequality that these children live with. Our most vulnerable children are invisible. Our child poverty and wellbeing legislation needs to be amended to afford them visibility. The vision of the OCC that all mokopuna live their best lives, must be extended to these children.

4 Children and young people’s views on child wellbeing

The OCC’s 2019 report *What Makes a Good Life?* is a foundational document. It was undertaken to inform the CYWS, designed and implemented to drive government action on child wellbeing. The CA, which underpinned the development of the wellbeing strategy, included an obligation to consult with children and young people. Children and young people were asked what child wellbeing means for them.⁵³ Not unsurprisingly, the term itself does not resonate with them, and instead, the phrase ‘having a good life’ was used. The report noted that, “... some children are living at the intersection of multiple challenges. An example of this is the challenges faced by tamariki and rangatahi Māori.”⁵⁴

These children had five key messages.⁵⁵

1. Accept us for who we are and who we want to be.
2. Life is really hard for some of us.
3. To help us, help our whānau and our support crew.
4. We all deserve more than just the basics.
5. How you support us matters just as much as what you do.

In 2021, the OCC issued a summary specifically highlighting the responses of the 175 tamariki and rangatahi interviewed in the 2019 report.⁵⁶ The summary gives voice to their desire to have the opportunity “to be our true and best selves as Māori”⁵⁷ They wanted safe places – safe, stable homes and safe communities. Schools needed to feel and act like

⁵³ More than 6000 children and young people were surveyed, representative of a mix of urban/rural, socio-economic status, ethnicity, and age characteristics.

⁵⁴ Office of the Children’s Commissioner and Oranga Tamariki-Ministry for Children *What Makes a Good Life, children and young people’s views on wellbeing*, n 42, at 57.

⁵⁵ At 6-7.

⁵⁶ Office of The Children’s Commissioner and Oranga Tamariki-Ministry for Children. *What Makes a Good Life for Tamariki and Rangatahi Māori?* (Wellington, 2021).

⁵⁷ At 2.

communities. They talked about their whānau having the immediate and basic needs to ensure a good life, something these families struggled with daily.

For these children, child wellbeing is inextricably linked to whānau and community wellbeing. If children are to be well, their families must be well and involved in making them better. We need to listen to their housing needs. We need to hear their recommendations for change and build from there. And as a priority, these children and communities must be afforded visibility.

5 The argument for structural change in data collection at the SA2 level

a. COVID-19 and the need to access Māori health data: treaty obligations and privacy issues

*Te Pou Matakana Limited v Attorney General (No 2)*⁵⁸ is an important and instructive case when considering the lived experience of Papakura Kelvin tamariki. It brings to light key issues around: the significance of personal health data in addressing health inequities; privacy laws and the constraints around its use; the complexity of relationships between government ministries and contracted Māori health providers; Māori data sovereignty; and the government's specific commitments to uphold Te Tiriti.

Whānau Ora is a government-funded, Māori-commissioned and delivered, whānau-centred approach to supporting whānau wellbeing and development. Te Pou Matakana is a commissioning agency of Whānau Ora and trades under the name Whānau Ora Commissioning (**WOCA**). Te Puni Kōkiri contracted WOCA to assist and support whānau with the negative impacts of COVID-19 restrictions and help with the vaccination rollout for Māori. WOCA has designed its service delivery model to address the barriers Māori often face in accessing healthcare and has a network of 96 Whānau Ora partner providers across Te Ika-a-Māui/North Island. As of 18 October 2021, WOCA's Whānau Ora partners had delivered some 496,000 COVID-19 vaccinations across their network. WOCA wanted to identify unvaccinated Māori in order to improve lagging vaccination rates for Māori, compared to Aotearoa's population as a whole.

WOCA initially brought a case against the MOH seeking to be provided with the personal details, contact details, vaccination status and vaccination booking status of those Māori in Te Ika-a-Māui/North Island who had not received any doses of the COVID-19 vaccine or had received only one dose of the vaccine.⁵⁹ This initial case hinged around application of rule

⁵⁸ [2021] NZHC 3319.

⁵⁹ *Te Pou Matakana Limited v Attorney-General (No 1)* [2021] NZHC 2942.

11(2)(d) of the Health Information Privacy Code 2020 and the Government's commitment to upholding Te Tiriti in the COVID-19 vaccination programme.

The Privacy Act 2020 (PA) governs the disclosure and use of personal information. If this information relates to an individual's health or any health services that are being used, or have been provided to that person, the Health Privacy Code 2020 applies to the disclosure and use of that information. Rule 11 sets out the limits on disclosing information.⁶⁰

A party can generally disclose health information only for the same purpose for which the party collected the information, or where the individual concerned has authorised the disclosure (rules 11(1)(b) and (c) respectively).

However, rule 11(2) recognises that there are circumstances that enable disclosure where the agency believes, on reasonable grounds, that:

1. it is not desirable or practicable for that party to obtain authorisation for the disclosure from the individual concerned;
2. the existence of a serious threat to public health or safety, or the life or health of the individual concerned or another individual; and
3. the disclosure of the information is **necessary** to prevent or lessen that serious threat.

[emphasis my own]

Where these circumstances apply, rule 11(2)(d) confers a *discretion* on an agency to disclose specific health information rather than creating a *right* to access the information, or an explicit *obligation* to disclose it. The WOCA proceedings focussed on exercise of the MOH's discretion in circumstances where there is an evident threat to public health.

The MOH had refused to provide granular individual data on unvaccinated Māori. Instead, it would only provide 'anonymised' to street level mapping representations that identified unvaccinated communities. This would oblige WOCA to door-knock at random to seek out the anonymised unvaccinated in each of the statistical areas, slowing down the roll out, especially in rural areas, where Māori populations have high concentrations. MOH was of the view that it could not disclose this more granular data, on the basis that it was prevented from doing so by rule 11(2)(d) of the Health Information Privacy Code.

⁶⁰ Case note: High Court decisions – Te Pou Matakana Limited versus Attorney General (No.1) [2021] NZHC 2942 and (No.2) [2021] NZHC 3319.< www.privacy.org.nz/publications/case-notes-and-court-decisions/case-note-high-court-decisions-te-pou-matakana-limited-v-attorney-general-no-1-2021-nzhc-2942-and-no-2-2021-nzhc-3319/>

The Court set aside the MOH's refusal to share the data on unvaccinated Māori (the first decision), and directed the MOH to urgently retake the decision, within three working days, with leave to reply if more time was required (the first judgment). That time was extended by a day with the applicants' consent. On 5 November 2021, the MOH made a new decision on individual level Māori health information sought by the applicants' (the second decision) request. The Director-General of Health, Ashley Bloomfield, accepted recommendations from MOH officials, including to decline the request for access to all Te Ika-a-Māui/North Island.

The applicants sought a judicial review challenging the second decision as being wrong in fact and law. This time the applicants asked, that in the circumstances, when time was critical, rather than remitting back to the Director General to make a fresh decision, the Court should direct the MOH to urgently share the data with the applicants. Both the MOH and WOCA agreed that the pandemic presented a serious threat to public health and/or that of the identified individuals. Both parties accepted that it was neither desirable nor practical to obtain individual consent to the disclosure of the requested information to WOCA. The issue in dispute was therefore whether disclosure of the information was 'necessary' to prevent or lessen the threat. The Court held that MOH's exercise of its discretion was not consistent with the object and policy of r 11(2)(d). The MOH released the requested information to WOCA shortly after the second judgment. It was released under certain conditions, including the requirement that WOCA securely delete the information by the end of June 2022.

Two key outtakes of this case are:

- (a) It provides guidance on the interpretation of the use of r 11(2)(d). A more considered assessment is required of the circumstances in which personal information is requested, in order to determine whether it should be released or not. Privacy law establishes a framework which can and does facilitate the sharing of personal information – provided it is for a proper purpose and preserves the status of information as taonga.
- (b) The decisions highlight the increasing focus of the Courts on the practical application of Te Tiriti principles in Crown decision-making generally, and in this instance, more particularly in the privacy sphere. The Court concluded that the Ministry did not have adequate regard to Te Tiriti and its principles as informed by tikanga. The MOH failed to determine the request for the data consistently with this commitment.

Evidence filed from experts in tikanga confirmed that the highly prized taonga of health has primacy of importance in the context of a pandemic. If there is a taonga in data, then that taonga must give primacy to life and health.

The case also highlights broader contextual issues around the actions and decisions of public agencies with regards to vulnerable populations. First, principles matter. During the pandemic, the Government has primarily focussed on protecting public health. There has been a focus on equity and partnership with Māori. The need to address low vaccination rates for Māori required aggressive, urgent, and targeted interventions, giving rise to this case. Māori health inequities necessitate ongoing targeted interventions. In Papakura Kelvin there is a need for ongoing, targeted interventions to address the current low child immunisation rates, and hearing, eyesight, and ‘other’ disabilities, which go undetected in those critical early years.⁶¹

Targeted interventions require good granular data to identify individuals. This requirement with regard to unvaccinated Māori gave rise to the legal challenge. A pandemic context makes critical time-bound interventions. Not so, normal circumstances. The first preferred response of the MOH to share anonymised (to street level) mapping representations would work, integrated with GIS data, outside a pandemic context. The spatial association of rheumatic fever with household crowding at a neighbourhood level has already pinpointed at risk communities in South Auckland, Porirua City, Northland, and parts of Hastings.

Being a good treaty partner creates a responsibility to treat data as a taonga. Government agencies are the guardians of personal information. They have a responsibility to ensure that the information is used appropriately, for the greater good.

b. The Pae Ora Bill: a new legal framework to address Māori health disparities

The Pae Ora Bill seeks to implement transformational reform of Aotearoa’s public health sector. Structural reform, the creation of new health entities, new accountability requirements, and the stated intention to place Tiriti/treaty-informed decision-making at the heart of the new health system, are together, intended to address the current inequitable health outcomes for some population groups. This is particularly the case for Māori, Pasifika

⁶¹ An unintended consequences of re-deploying health personnel to assist in the vaccine rollout has resulted in Papakura Kelvin child immunisation rates falling further behind.

peoples and peoples with disabilities. Potentially, this legislation, with its focus on population health and equity, commitment to te Tiriti, and the establishment of the MHA, should have positive results for the health and wellbeing of Papakura Kelvin tamariki.

The Pae Ora Bill was introduced into the House on 20 October 2022. The first reading was on 27 October 2021. The Pae Ora Committee released its final report to the House on 14 April 2022. The Committee recommends all amendments by majority. The Pae Ora Bill had its second reading on 5 May 2022, its third reading on 7 June 2022, and is expected to come into force on 1 July 2022.

Section 3 of the Pae Ora Bill states that its purpose is to provide for the public funding and provision of services in order to:

- (a) protect, promote, and improve the health of all New Zealanders; and
- (b) achieve equity in health outcomes among New Zealand's population groups, including by striving to eliminate health disparities, in particular for Māori; and
- (c) build towards pae ora (healthy futures) for all New Zealanders.

To achieve this purpose, the Pae Ora Bill provides a new legal framework for the health system. The MOH will focus on strategy, policy regulation and monitoring. A new entity, Health New Zealand (**HNZ**), replaces DHBs and will lead the health system operationally. HNZ would plan commission and deliver health services.

To address Māori health outcomes and participation at every level of decision-making, the Pae Ora Bill establishes the MHA. It will be an independent statutory entity and have clear accountabilities to both Māori and ministers, according to the health system principles and the best possible outcomes for whānau, hāpu, and Māori in general. It will work with HNZ to jointly commission and plan services, design and commission and deliver Kaupapa Māori services, undertake and support research, and monitor and report on the performance of the health system for Māori. The MHA would work with the MOH to prepare national strategies and provide advice to the Minister of Health.

The Pae Ora Bill additionally formalises the existing iwi-Māori partnership boards (**IMPBs**) work with DHBs. Their purpose would be to represent local Māori perspectives on what they need and want from the health system, how it is performing against these needs and wants, and on the design and delivery of health services and public health interventions within a locality.

A Public Health Agency will be established within the MOH to provide system leadership in public health and to advise the Director-General about public health matters.

The Pae Ora Committee received 4,665 submissions and heard oral evidence from 178 submitters. Key submissions from Māori medical bodies, health providers, iwi, public health organisations, the Human Rights Commission, and the OCC, culminated in a strengthening of the co-governance aspects of the Pae Ora Bill in the revised second bill. The strengths and weaknesses of the proposed legislation – including what it means to give effect to te Tiriti partnerships, governance, power sharing, accountability mechanisms, a proposed focus on primary and community care at the local level, taken together, expose the shortcomings of the existing CPRA legislative framework.

The Pae Ora Bill is explicit about striving to achieve equity in health outcomes, and the consequent need to eliminate health disparities for all population groups, and in particular for Māori. In contrast the CPRA is not explicit about achieving equity in child wellbeing outcomes. Its focus is instead on measures, targets and indicators and monitoring disparities, a more reductive framing of the issues. Nor does it explicitly identify population groups, and in particular, Māori children.

Clause 6 of the Pae Ora Bill gives effect to the principles of te Tiriti and is now further strengthened to better reflect all the provisions that reflect this intention. In contrast, the CPRA nominally references the treaty partner.

Clause 7(1)(e) of the Pae Ora Bill states that the health system should protect and promote people's health and wellbeing and be required to collaborate with other agencies for this outcome. The Pae Ora Committee notes that:⁶²

The wider determinants of health cover a range of areas including housing, transport, and climate change. To improve health and health equity by addressing wider determinants of health, we believe the health system should be required to collaborate with other agencies and organisations. We recommend inserting clause 7(e)(v) to this effect.

Under clause 19(1)(d) the MHA will correspondingly have a mandate to address the wider determinants of health

⁶² Pae Ora (Healthy Futures) Bill. Commentary, at 4.

Clause 13(c) specifies that an objective of HNZ would be to promote health and prevent, reduce, and delay ill-health including by collaborating with other social sector agencies to address the determinants of health. The Pae Ora Committee considered this too narrowly restrictive and recommended amending clause 13(c) by replacing the reference to ‘social sector agencies’ with ‘agencies, individuals, and organisations.’

According to the DPMC fact sheet there will be a focus on primary and community care at the local level:⁶³

Localities help underscore the nationally coordinated, locally driven aspect of the future health system. A locality is a geographic concept that focuses on tailoring services to meet the needs of people in a particular place.

Clause 48 has been amended so that HNZ and the MHA determine localities in consultation with local authorities, Māori organisations and IMPBs. Clause 49 requires HNZ to develop a locality plan for each locality.

It is understood that localities will be based on a combination of local, national and system considerations. The number, the size, whether a given locality approximates existing DHB footprints, are not specified. The nature of the consultation process, by whom, and with whom, its frequency, and to what extent the new accountabilities flow downwards to the community, as well as upwards to the Minister, the Government, and the public, is not specified. The intent is positive, the details are not clear.

Comprehensive locality plans would, hopefully, identify high deprivation communities within a locality, and actively seek out input from these specific communities. The CPRA legislation, with its focus on monitoring national targets, is not anchored in the lived experience of these communities, nor is it answerable to them. It references no partnership relationships with iwis and Māori organisations to improve child wellbeing.

c. Barriers impeding government accountabilities at the SA2 level

The Government has tasked the New Zealand Productivity Commission with the job of generating new insights into ways of breaking the cycle of long-term and intergenerational disadvantage and exclusion.⁶⁴ Potentially, this inquiry will address the intergenerational issues common to Papakura Kelvin. In a first for the commission, the Inquiry’s Terms of

⁶³ Department of the Prime Minister and Cabinet, Future of Health. Te Anamata O Te Oranga, Factsheet - Pae Ora (Healthy Futures) Bill, 20 October 2021.

⁶⁴ Inquiry into Economic Inclusion and Social Mobility - A Fair Chance for All. 2021-2023.

Reference were shaped by public input. More than 1000 people, and 60 organisations, shared their views, the largest response the Commission has ever had. A consensus emerged on what disadvantage looks like, what are the key drivers of poverty, and the communities and sub populations most impacted. A large body of research already exists, identifying various aspects of the problem.⁶⁵ The Commission was encouraged to take a strength-based approach, one that centred on empowered communities supporting themselves, which would help individuals, whānau and communities realise their potential, and enhance their mana and wellbeing. These Terms of Reference were signed off by the Minister of Finance on behalf of the Ministers for Child Poverty Reduction, Māori Development, Pacific Peoples, Revenue, and Social Development and Employment in December 2021. The final report is due March 2023.

A key message from the early consultative process was that the Commission could add most value if it had a strong focus on systemic change inside government. Consulting economist Julie Fry was asked to review the recent progress of joined-up social services initiatives.⁶⁶ The report, *Together Alone: A Review of Joined-Up Services*, released in February 2022, is based on a review of 18 such initiatives seeking to reduce persistent disadvantage across Aotearoa.⁶⁷

The report states that collaborative, joined-up initiatives are part of the solution to persistent disadvantage and have important advantages over standard single agency approaches, especially when the clients have multiple and complex needs. The clients of collaborative services like them. They appreciate being able to access services that are whānau-centred, strengths based, culturally anchored, and meet them where they are.

Three of the eighteen collaborative initiatives surveyed work in south Auckland – the South Auckland Social Wellbeing Board, The Southern Initiative and Whānau Ora initiatives. Papakura Kelvin falls outside the geographic scope of the first two place-based initiatives. There are no such ongoing collaborative initiatives underway in this community, barring the

⁶⁵ These include the findings of the Welfare Expert Advisory Group, the Tax Working Group, the Expert Advisory Group on Solutions to Child Poverty and the Commission's 2015 inquiry into More Effective Social Services.

⁶⁶ Internationally, these initiatives operate on a spectrum from a focus on improving coordination across agencies to identifying gaps and reducing duplication; to working together to provide integrated solutions for specific population groups; to collective impact initiatives with devolved funding and shared impact measurements. Aotearoa's examples are hybrids defying easy categorisation.

⁶⁷ Julie Fry *Together Alone: A Review of Joined-Up Services* ((New Zealand Productivity Commission, Wellington, February 2022).

Whānau Ora Commissioning Agency’s vaccination rollout administered through the Papakura Marae. This community’s lived experience of intergenerational disadvantage, alongside a high distrust of government agencies, are the exact prerequisites that would suit this new way of working.

It is possible to identify high risk segments of the population through the Stats. NZ Integrated Data Infrastructure (**IDI**).⁶⁸ Papakura Kelvin fits this descriptor. It is noted in the Terms of Reference signed off by the Minister of Finance, that the evidence of significant and growing disadvantage in the bottom income deciles is mounting, particularly in the context of rising housing costs, and with inflationary pressure on food prices. We know this to be true for Papakura Kelvin tamariki and their whānau. Following the release of the joined-up social services report Julie Fry presented a summary of the findings and invited leaders from on-the-ground organisations to join in a broader discussion.⁶⁹ The question was raised as to what extent these ministries are truly cognisant of where ‘persistent disadvantage’ is physically located across the motu. It was not clear to these participants.

What is evident, both from the Papakura Kelvin case study, and confirmed in this report, is that the existing service providers are not accountable to the communities they serve. Funding and accountability models are designed to support the existing social sector’s standard operating model. This is at odds with collaborative, joined-up service models that pay critical attention to centring people, whanau/communities and building trust. Child-facing government ministries operate as silos, vertically, with the accountabilities flowing upwards, not downwards. Fry notes that:⁷⁰

The social sector’s standard operation model seeks to reduce costs and waste and improve production efficiency through central planning, having highly specified processes, and micro-managing inputs. The system is designed to ensure that value primarily comes through providing specialist services within individual agencies.

Service providers (whether departmental chief executives and their staff or non-Government providers), are accountable to ministers, ministers are accountable to Cabinet, Cabinet is

⁶⁸ A large research database that holds microdata about people and households.

⁶⁹ Julie Fry “*Together alone: joined-up social services*” (New Zealand Productivity Commission webinar, Wellington, March 2022).

⁷⁰ *Together Alone*, above n 67, at 24.

accountable to Parliament for the use of public money and parliament is accountable to voters (who are also taxpayers) via elections.

Fry observes that collaborative initiatives are not well understood by government agencies, nor do they have the capability and appetite to address these operationally. This is in spite of the Public Service Act 2020 (PSA) putting into legislation a commitment for public services to work better collaboratively – joint work across agency and sector boundaries. Instead, collaborative initiatives are subjected to intense scrutiny, while conversely, there is less scrutiny of the existing standard agency services.

Outside the remit of this report, looms a bigger question. What does it mean for the Government to be a good and effective treaty partner? How might this shape government ministries and decision-making? What strategic assets, skill sets, resources and capabilities need to sit at the centre, and what can be devolved downwards to the community level? This question sits at the heart of the concurrent debate around addressing Māori health inequities in the Pae Ora Bill.

d. Child wellbeing and the criticality of early interventions: the evidence

Good child wellbeing outcomes need to be based on evidence-informed policy development and evaluation. In November 2020, the Productivity Commission and Koi Tū: The Centre for Informed Futures ran a webinar with four global experts to understand the importance of focusing on the early years in breaking the cycle of intergenerational disadvantage.⁷¹ The pioneering University of Otago longitudinal study, together with the work championed by Sir Peter Gluckman through the University of Auckland, have established clear cut evidence that intergenerational disadvantage, maternal mental health, childhood executive function and lifelong wellbeing are all interlinked. Moreover, the first 1000 days of a child's life, beginning with conception, are a critical time, with implications for lifelong wellbeing and intergenerational disadvantage. High investment in early life increases health wellbeing and resilience across a lifetime. We have this evidence.

We have the evidence that tells us that we need to build high trust interventions at the community level. The pandemic vaccine rollout has shown us this. In communities like Papakura Kelvin where adult and child vaccination rates have lagged behind national targets,

⁷¹ New Zealand Productivity Commission and Koi Tū: The Centre for Informed Futures “Breaking the disadvantage cycle: Why the first 1,000 days matter” (New Zealand Productivity Commission webinar, Wellington, November 2020).

high trust interventions are critical. Professor Richie Poulton, a co-author of the research and director of the Dunedin Study, noted many people brought up in such circumstances feel they are on their own. By the time they are young adults they have a personality in which they're highly stress reactive. This mistrust of authority and institutions can become "ingrained" and comes to the surface in the face of a high-stress situation like a pandemic.

Recent findings drawing on data from participants in the five-decade research project, which follows a cohort of more than 1000 people, suggest COVID-19 vaccine resistance is linked to deep-seated childhood experiences.⁷² The findings – adjusted for socioeconomic factors – suggested that among the 13 per cent who were resistant to vaccination there was a markedly higher experience of:⁷³

...adverse childhood experiences that foster mistrust, longstanding mental-health problems that foster misinterpretation of messaging, and early emerging personality traits including tendencies toward extreme negative emotions, shutting down mentally under stress, nonconformism, and fatalism about health.

A critical lesson of all that, said Poulton, was that people were much likelier to listen to people in their own communities than messages from on high. Māori and Pasifika health providers and community leaders understood this. The lesson applies equally to addressing child wellbeing in these communities. Poulton emphasised that "It's about the power of devolution and trusting the wisdom and effectiveness of community delivery".⁷⁴

e. The Treasury's greater focus on policy to improve intergenerational wellbeing outcomes

In 2020, the PFA was amended to require the Treasury to produce a Wellbeing Report, at least once every four years. The first report will be published later in 2022. Using indicators, the report will chart the state of wellbeing in Aotearoa, changes over time, and the sustainability, and or any risk, to wellbeing in Aotearoa. It is part of the Treasury's broader endeavour to lift living standards. This means a greater focus on long-term intergenerational wellbeing outcomes.

The Living Standards Framework (LSF), the updated dashboard and He Ara Waiora (the Māori wellbeing framework) together underpin the Wellbeing Report, Te Tai Waiora. The

⁷² Toby Manhire "Vaccine resistance linked to 'deep-seated' childhood experiences, Dunedin Study finds" *The Spinoff* (online ed, Auckland, 8 April 2022) <www.thespinnoff.co.nz/science/08-04-2022/vaccine-resistance-linked-to-deep-seated-childhood-experiences-dunedin-study-finds>

⁷³ Manhire, above n 72.

⁷⁴ Manhire, above n 72.

report is a step towards orienting policy and investment more towards long term, intergenerational wellbeing outcomes. It aims to inform elected politicians in setting policy and investment priorities, including through the budget.

This revised version of the LSF now describes our wellbeing as both individual and collective. This in part reflects a Māori understanding and further reinforced by the COVID-19 learning that individual wellbeing is dependent on collective action for the benefit of all. Another important change is the recognition of whānau, hapu and iwi as part of the broader institutional and governance framework. The updated dashboard includes new measures that reflect child wellbeing – such as child poverty in the income domain, childhood injuries in the safety domain, and love and support for young people in the redefined family and friends domain.

In April 2022, the Chief Executive and Secretary to the Treasury, Caralee McLiesh, gave some early insights in the first of a series of webinars on recent developments to the LSF dashboard.⁷⁵ One of the most striking trends is a large and growing gap in wellbeing between young and old. Housing matters for wellbeing as a stock of wealth – and is a strategic priority for the Treasury. Health is another strategic priority. COVID-19 has disproportionately affected Pasifika and Māori people. The MOE is reporting reductions in school attendance and early childhood education participation. These disruptions have been disproportionately experienced by students in Auckland, Tai Tokerau, and Waikato; in low decile schools; and for Māori and Pasifika students. Immunisation for all children has fallen, and especially for Māori and Pasifika children. These initial insights suggest long-term impacts on wellbeing for some specific groups.

Reforming the public finance system to better support wellbeing requires a shift towards: managing for wellbeing outcomes as well as dollars, multi-year funding arrangements in place of annual budgets, cross agency collaboration beyond narrow agency appropriations, improving the value for money of the base, not just incremental activity; systems to use wellbeing information – from planning, to proposals, decisions, and evaluation.

This shift is laudatory, but the challenges are immense. It is not clear whether there is the capability and workforce with the appetite and skill set to deliver this wellbeing mandate

⁷⁵ Caralee McLiesh “Wellbeing Report seminar” (The Treasury webinar, Wellington, April 2022).

across the government agencies. It is not clear what new accountabilities and mechanisms are required to encourage cross-agency collaboration, for long-term wellbeing outcomes. It is not clear whether these national frameworks will be sufficiently granular to draw attention to specific communities like Papakura Kelvin. Nor is it a given that elected officials will prioritise direct policy and investment towards addressing long-term intergenerational inequalities.

f. Structural disadvantage of priority populations and data collection

The Government's March 2021 vaccination rollout plan prioritised border and MIQ workers, frontline healthcare workers, older people, and those with 'relevant' health conditions. There are other ways of conceptualising 'fairness' and who gets priority in vaccine rollouts. There is an argument that alongside individual risk, people with social vulnerabilities – such as socio-economic status, occupation, housing, and living conditions, ethnicity, and other factors that limit access to healthcare, should be prioritised.

Spatial equity usually refers to a fair distribution of resources relative to need. It follows that in order to achieve equitable health outcomes, some populations should be prioritised and have better access to services. Priority populations would include Māori, Pasifika, and those living in areas of high socio-economic deprivation.

A recently released study examined spatial accessibility and spatial equity, and associated health equity, in Aotearoa.⁷⁶ Its conclusion was that COVID-19 vaccination services in Aotearoa are not equitably distributed. It said, "Priority populations, with the most pressing need to receive COVID-19 vaccinations have the worst access to vaccination services."⁷⁷

The study used population data based on 2018 census data at the Statistical Area 1 (SA1) level, which includes information on the usual resident population age, and ethnicity of residents in each SA1.⁷⁸

The population aged 15 and over was used to represent the 'vaccine eligible' population at the time of analysis. Socio-economic constraint was estimated with the 2018 New Zealand Index of Socioeconomic Deprivation (NZDep18). The Geographic Classification for Health (GCH) was used to define rural and urban areas of Aotearoa. Travel times were estimated using

⁷⁶ Jesse Whitehead, Polly Atatoa Carr, Nina Scott, Ross Lawrenson *Structural Disadvantage for Priority Populations: the spatial inequity of COVID-19 vaccination services in Aotearoa*. (New Zealand Medical Journal, Wellington, March 2022).

⁷⁷ At 54.

⁷⁸ At 56.

Beere's road network layer. COVID-19 vaccination services were linked to the Ministry of Health Facilities dataset, which includes XY coordinates for all health facilities in Aotearoa.

Geographic Information Systems (**GIS**) were subsequently used to quantify the spatial equity of COVID-19 vaccination services. Floating Catchment Area (**FCA**) techniques helped establish accessibility to service availability. Not surprisingly, parts of rural Aotearoa have poor access, but there are also differences in access and spatial inequity between DHBs, with Māori populations adversely affected.

This work has some limitations. It assumes that all residents of a SAI have access to a private vehicle, which is not true in Papakura Kelvin. The quality of the ethnicity variable in the 2018 Census is 'moderate'. Even so, it highlights the criticality of strong public health intelligence. It confirms that the health services need to 'go' to priority populations. It provides additional context for variations in child immunisation rates. The authors argue that it will be increasingly important that the MHA and HNZ monitor, and improve, the spatial equity of all health services in Aotearoa. National strategies that utilise both geospatial and public health intelligence will be needed to guide, monitor, and improve the equitable delivery of health services.

According to Whitehead, while the response from those he has shared it with at MOH and the DHBs has been positive, he is not aware of any government agencies that are actively monitoring spatial inequities. It is a relatively new area in Aotearoa, one that would require dedicated resources.⁷⁹

6. The importance of structural change in data collection to improve child wellbeing outcomes at the SA2 level

This essay took as its starting point children living in the SA2 Papakura Kelvin, South Auckland. This is a high deprivation area with one of the largest concentrations of young Māori and Pasifika children in urban Aotearoa. The COVID-19 pandemic has made these children's lives immeasurably harder *and* simultaneously exposed the inadequacies of our child poverty reduction, child wellbeing legislation and policies.

While the Government is complying with its obligations under the child wellbeing and child poverty reduction legislation, s 3 of the CPRA and s 4, Part 1 of the CA are not in

⁷⁹ Email from Dr Jesse Whitehead to Dr Sandy Callister regarding spatial modelling uptake in Aotearoa (29 March 2022).

themselves, sufficient to achieve their purpose. The COVID-19 pandemic and vaccination rollout has made this abundantly clear in multiple ways. The CPRA and CYWS are too narrow in intent, and insufficiently ambitious, coming into force in 2018, pre the pandemic years, and prior to the more activist intent of the Pae Ora Bill.

The CPRA and CAA legislation do not have a focus on equity in outcomes for all children. Unlike the Pae Ora Bill the CPRA is not explicit about either addressing inequities or striving to achieve equity in child wellbeing outcomes. Its focus is instead on measures, targets and indicators and monitoring disparities, a more reductive framing of the issues. Nor does it explicitly identify population groups, and in particular, Māori children.

The CPRA nominally notes the Crown's intention to give effect to te Tiriti. Subsequent to the introduction of the Pae Ora Bill an additional clause should be inserted to include the Government's priorities in relation to Māori health and wellbeing.

The MHA may well wish to work with Stats. NZ to support research and monitor and report on child poverty reduction and child wellbeing progress for Māori children. The MHA working with IMPBs is well placed to focus on health services and public health interventions within localities.

An important learning from the vaccine rollout is that national measures, targets, and indicators mask the critical variables of ethnicity, location, age differences and socio-economic status. Without data specificity it is hard to drive transformational change at a local level, a key argument underpinning WOCA in their legal challenge against the MOH.

Visibility of the Papakura Kelvin children and their whānau matters immensely. The invisibility of Papakura Kelvin, alongside similar SA2 'communities of interest' in the national data has real consequences. It reduces government responsibility and ministry accountability. It limits optimal policy interventions. It impacts on funding levels. It lessens the ability of communities to advocate for better child wellbeing outcomes. It makes it harder for Māori and Pasifika health providers to initiate targeted interventions. It reduces public trust. It reinforces the poverty deficit model, an approach that Papakura Kelvin community advocates see as reductive, reinforcing and constricting the range of possibilities for these children. It moves the focus from improving child wellbeing outcomes. Data inequities have a discriminatory effect. Granular information builds public trust and paints a much clearer picture of what is going on within communities. The burden of invisibility falls disproportionately on these children. This is a problem to remedy.

The CPRA data's 16-month time lags make it too blunt a tool to provide insight into the impact of the pandemic on these children. Nor does it provide high quality disaggregated data at the SA2 level. Stats. NZ is currently leading the development of a Data Investment Plan for the government data system.⁸⁰ It has identified critical shortcomings in data content, infrastructure, and capability. There is an acknowledgement that there needs to be a greater visibility of populations of policy interest in the data. It will include more in-depth coverage of Māori data needs. High priority opportunities identified include improved insights on child poverty and improved data on the wellbeing of children. This has culminated into the Data and Statistics Bill which explicitly recognises the Crown's responsibility to consider and provide for Māori interest in data and statistics.⁸¹ It was introduced into the House in October 2021 and is currently before the Committee of the Whole House.

The evidence presented in *Te Pou Matakana Limited* is instructive on the issues of Māori data treaty obligations and privacy. Being a good treaty partner creates a responsibility to treat data as a taonga. If there is a taonga in data, then that taonga must give primacy to life and health. Ideas of healthy futures, every child having the right to thrive, child wellbeing – informed by ideas of tika (just, fair, appropriate, proper) and data as a taonga, underpinned by evidence-based science, might deliver quite different outcomes to children and whānau.

The number of Māori living in high deprivation neighbourhoods has increased since 2013. A major step would be to identify, monitor and communities of high deprivation across Aotearoa at the SA2 level.

The way that the NZDep 2018 is created means that there is always 10 per cent of the SAI's in the country within each deprivation category.⁸² So when the NZDEP2018 deciles are used, there will always be 10 per cent of all SA2's in the most deprived decile (10) and 10 per cent in the least deprived (or wealthiest) decile (1).

There are 29,889 SAI's in Aotearoa, so about 2,900-3,000 will be in NZDep decile 10 (highly socioeconomically deprived.)⁸³ Likewise, there are 2,253 SA2s in Aotearoa, so

⁸⁰ Stats. NZ 'Cabinet Papers – Data Investment Plan' Wellington December 2021
<www.stats.govt.nz/corporate/cabinet-papers-data-investment-plan>

⁸¹ Data and Statistics Bill 2021 (81-2).

⁸² June Atkinson, Peter Crampton, and Clare Salmond *NZDep2018 analysis of census 2018 variables* Department of Public Health (University of Otago, Wellington, 31 March 2021)
<www.otago.ac.nz/wellington/departments/publichealth/research/hirp/otago020194.html>

⁸³ Stats. NZ 'Statistical area 1 dataset for 2018 Census – updated March 2020' (Wellington, 12 March 2020).
<[www.Statistical area 1 dataset for 2018 Census – updated March 2020 | Stats NZ](http://www.Statistical%20area%201%20dataset%20for%202018%20Census%20-%20updated%20March%2020%20|%20Stats%20NZ)>

approximately 230 will be in the most deprived area.⁸⁴ The real issue is where these neighbourhoods are (there tend to be clusters of high deprivation in certain areas of the country) and *who* is living in them.

Child wellbeing is inseparable from the wellbeing of their whānau. The impacts of the housing crisis are huge for these families. In 2020 the United Nations' special rapporteur on the right to adequate housing, Leilani Farha, visited Aotearoa, and called its housing situation “a human rights crisis” and “a dark shadow that hangs over the country”⁸⁵ In 2021 The New Zealand Human Rights Commission announced an inquiry into this issue. Concurring with the special rapporteur, its chief commissioner Paul Hunt said:⁸⁶

New Zealand governments have signed up to a critically important human right: the right to a decent home. For generations, they have promised to create the conditions to enable everyone to live in a decent home, but this has not happened. Successive governments have failed new Zealanders.

The right to decent housing will remain aspirational and inconsequential for these children if we are unable to give them, their whānau and their communities agency at the local level. To ask what power structures, what forms of racism, what social, physical, and economic barriers need to be removed, focuses the debate on people, not houses. Listening to what Papakura Kelvin children say what is important, what the people who work with them and care about them say, what Māori and Pasifika housing activists say, provides a pragmatic ground up look at what machinery, resources, and advocacy is required to make real differences.

Taking up the challenge of the UN Human Rights Special Rapporteur, Leilani Farha, to shift the paradigm and put the vulnerable at the centre of an inquiry into housing rights, these children are at the centre of my analysis into the Government's responsibilities. I ask the question what might good housing look like for them?

⁸⁴ Stats. NZ, above n 83.

⁸⁵ Eleanor Ainge Roy “ ‘They allowed the perfect storm’: UN expert damns New Zealand’s housing crisis” *The Guardian* (online ed, London, 18 February 2020). <[www.‘They allowed the perfect storm’: UN expert damns New Zealand's housing crisis | New Zealand | The Guardian](https://www.theguardian.com/new-zealand/2020/feb/18/they-allowed-the-perfect-storm-un-expert-damns-new-zealand-housing-crisis)>

⁸⁶ Paul Hunt, Chief Human Rights Commissioner “Framework Guidelines on the Right to a Decent Home in Aotearoa” (press release, 1 August 2021).

The children of Papakura Kelvin deserve to be heard. To be heard they must be seen. Just as UNCROC, our treaty obligations, our childhood poverty legislation, policies, and child wellbeing strategy say, it is only right and just that these children, like all children, have the opportunity to thrive. The absence from the data of their voices and their communities conceals the lived reality of their lives and considerably weakens government accountabilities. Data inequities have a discriminatory effect. Being a good treaty partner creates a responsibility to treat data as a taonga. Precision, accuracy, and clarity matter, as gestures of respect toward those to whom you wish to speak.

7. Recommendations

Recommendation One: Section 3 stating the purpose of the CPRA should be amended to:

The purpose of the CPRA is to strive to achieve equity in wellbeing outcomes for all children, by working to achieve a significant and sustained reduction in child poverty in New Zealand by provisions that:

~~The purpose of the CPRA is to help achieve a significant and sustained reduction in child poverty in New Zealand by provisions that:~~

Recommendation Two: Section 3(a) of the CPRA should be amended to explicitly specify addressing disparities for Māori children.

Encourage a focus by government and society on working towards achieving equity in child wellbeing outcomes among New Zealand's population groups, in particular for Māori;

~~Encourage a focus by government and society on child poverty reduction:~~

Recommendation Three: Section 3(b) of the CPRA should be amended to ensure both national and local transparency and accountability. National child wellbeing and poverty reduction targets, measures and indicators must be set for high deprivation communities, in ways attentive to the greatest opportunities for impact. This gives more focus and transparency to the level of government investment in making sure all children thrive.

Facilitate political accountability against published targets at the national and SA2 levels.

~~Facilitate political accountability against published targets:~~

Recommendation Four: Section 3(c) of the CPRA should be amended to read:

Require transparent reporting on levels of child poverty and child wellbeing, both at the national and SA2 levels.

~~Require transparent reporting on levels of child poverty.~~

Recommendation Five: Part 1(b) of the CA should be changed to a more directive intent removing the ‘ensure’ and replacing it with ‘require’.

1(b) require that children’s agencies work together to improve the wellbeing of particular groups of children.

(b) ~~ensure~~ that children’s agencies work together to improve the wellbeing of particular groups of children.

Recommendation Six: Good social housing must be attentive to the needs of good child wellbeing outcomes. Kainga Ora should be additionally required to report the number of managed Kāinga Ora rental properties at the SA2 level. Currently the reporting is at the Local Board boundary levels. This would bring a strategic focus, alongside increased transparency, and accountability to the use of resources and enable a more effective auditing of how these resources can be used for the most impact in high deprivation communities.

8. *Acronyms*

M	Meaning
The Alliance	Children’s Rights Alliance Aotearoa New Zealand
CA	Children’s Act 2014
CAA	Children’s Amendment Act 2018
CCA	Children’s Commissioner Act 2003
CMG	Children’s Convention Monitoring Group
COCA	Care of Children Act 2004
CPAG	Child Poverty Action Group
CPRA	Child Poverty Reduction Act 2018
CPRI’s	Child Poverty Reduction Indicators

CRC	Committee on the Rights of the Child
CYPF	Children, Young Persons and their Families Act 1989
CYWS	Child and Youth Wellbeing Strategy
DHB	District Health Board
DPMC	Department of the Prime Minister and Cabinet
EAG	Expert Advisory Group
ERO	Education Review Office
HNZ	Health New Zealand
HRA	Human Rights Act 1993
IDI	Integrated Data Infrastructure NZ
IMPBs	Iwi-Māori partnership boards
LSF	Living Standards Framework
MHA	Māori Health Authority
MOE	Ministry of Education
MOH	Ministry of Health
MSD	Ministry of Social Development
NZBORA	New Zealand Bill of Rights Act 1990
NZDep	New Zealand Index of Deprivation
OCC	Office for the Commissioner for Children
OT	Oranga Tamariki-Ministry for Children
NZPC	New Zealand Productivity Commission
PA	Privacy Act 2020
PFA	Public Finance Act 1989
PSA	Public Service Act 2020
SA2	Statistical Area 2
Stats. NZ	Statistics New Zealand
SWIS	Social Workers in Schools
SDGs	UN Sustainable Development Goals
TPK	Te Puni Kōkiri—the Ministry of Māori Development
UN	United Nations
UNCROC	United Nations Convention on the Rights of the Child
UNDRIP	United Nations Declaration on the Rights of Indigenous People
WEAG	Welfare Expert Advisory Group
WOCA	Whānau Ora Commissioning Agency

9 Bibliography

A Cases

Child Poverty Action Group Inc v Attorney-General [2013] NZCA 402.

Te Pou Matakana Limited v Attorney-General (No 1) [2021] NZHC2942 (WOCA 1); *Te Pou Matakana Limited v Attorney General (No.2)* [2021] NZHC3319 (WOCA 2).

B Legislation

1 New Zealand

Care of Children Act 2014.

Child Poverty Reduction Act 2018.

Children's Act 2014.

Children's Amendment Act 2018.

Children's Commissioner Act 2003.

Children, Young Persons and Their Families Act 1989.

Families Package (Income Tax and Benefits) Act 2017 (2017/51).

Human Rights Act 1993.

New Zealand Bill of Rights Act 1990.

Privacy Act 2020.

Public Finance Act 1989.

Public Service Act 2020.

United Nations Convention on the Rights of the Child GA Res 44/25 (1989), art 2, 3, 6, 12, 24, 27, 28 and 29.

United Nations Declaration on the Rights of Indigenous People.

2 Bills

Data and Statistics Bill 2021 (81-2).

Oversight of Oranga Tamariki System and Children and Young People's Commission Bill 2021 (94-1).

Pae Ora (Healthy Futures) Bill 2021 (85-2).

D Treaties

Te Tiriti o Waitangi 1840.

E Books

Sonia Mazey and Jeremy Richardson *Policy-making Under Pressure: Rethinking the policy process in Aotearoa New Zealand* (Canterbury University Press, Christchurch, 2021).

F Journal Articles

Mark Henaghan *Why We Need Legislation to Address Child Poverty* (School of Government at Victoria University, Policy Quarterly 9(2) May 2013).

Jesse Whitehead, Polly Atatoa Carr, Nina Scott, Ross Lawrenson *Structural Disadvantage for Priority Populations: the spatial inequity of COVID-19 vaccination services in Aotearoa* (New Zealand Medical Journal, 135(1551) Wellington, 11 March 2022).

G Parliamentary and Government Materials

Department of Prime Minister and Cabinet “Child and Youth Wellbeing Strategy – Guiding Principles” (29 August 2019) Child and Youth Wellbeing. www.childyouthwellbeing.govt.nz/resources/child-and-youth-wellbeing-strategy.

Department of Prime Minister and Cabinet “Child Wellbeing and Poverty Reduction Group” DPMC (7 March 2019). <www.dPMC.govt.nz/our-business-units/child-wellbeing-and-poverty-reduction-group>.

Department of the Prime Minister and Cabinet, Future of Health. Te Anamata O Te Oranga, Factsheet - Pae Ora (Healthy Futures) Bill, 20 October 2021.

Department of the Prime Minister and Cabinet Child Wellbeing and Poverty Reduction Group “Child Poverty measures, targets and indicators.” <www.childyouthwellbeing.govt.nz>

New Zealand Government *Child and Youth Wellbeing Strategy Annual Report for the year ending 30 June 2020* (New Zealand Government, Wellington, May 2021).

New Zealand Government *Child Poverty Related Indicators Report (2019/2020)* (New Zealand Government, Wellington, May 2021).

New Zealand Government *Child Poverty Related Indicators Report (2021/2022)* (New Zealand Government, Wellington, 12 April 2022).

H Reports

June Atkinson, Peter Crampton, and Clare Salmond *NZDep2018 analysis of census 2018 variables* Department of Public Health (University of Otago, Wellington, 31 March 2021) <www.otago.ac.nz/wellington/departments/publichealth/research/hirp/otago020194.html>

Children’s Convention Monitoring Group *Getting It Right: Children’s Rights in the COVID-19 Response* (Office of the Children’s Commissioner, Wellington, March 2021).

CRC Reports on NZ’s performance. V1 CRC/C/15/Add.71 24 January 1997; V11 CRC/C/15/Add.216 27 October 2003; V111-1V CRC/C/NZL/CO/3-4 11 April 2011; V CRC/C/NZL/CO/5 21 October 2016; VI CRC/C/NZL/QPR/6 6 July 2020.

Mavis Duncanson, Georgia Richardson, Glenda.Oben, Andrew Wicken, Hedwig van Asten and Judith Adams *Child Poverty Monitor 2021* (NZ Child and Youth Epidemiology Service, University of Otago, Dunedin, 2021).

Foundation North *Investing for Impact in South Auckland* (Centre for Social Impact, Auckland, July 2018).

Human Rights Commission *Guidelines on the Right to a Decent Home in Aotearoa* (Human Rights Commission, Wellington, August 2021).

Kainga Ora *Housing Statistics Managed Stock* (Auckland Local Board, March 2022).

New Zealand Productivity Commission *Inquiry into Economic Inclusion and Social Mobility - A Fair Start for All Inquiry* (Productivity Commission, Wellington, 2021 through to 2023).

New Zealand Productivity Commission “*A fair chance for all: Breaking the disadvantage cycle. Scoping the Terms of Reference for an inquiry* (Productivity Commission, Wellington, July 2021).

New Zealand Productivity Commission *Together Alone: A Review of Joined-Up Services* ((Productivity Commission, Wellington, February 2022).

Office of the Children’s Commissioner EAG working paper no.18: Housing Poverty Recommendations to Address Child Poverty (OCC, Wellington, 1 August 2012). <www.thehub.swa.govt.nz/resources/eag-working-papers/>

Office of the Children’s Commissioner and Oranga Tamariki-Ministry for Children *What Makes a Good Life: children and young people’s views on wellbeing* (Wellington, February 2019).

Tomorrow’s Schools Independent Taskforce Initial Report *Our Schooling Futures: Stronger Together Whiria Ngā Kura Tūātititini* (Ministry of Education, Wellington, December 2018).

Tomorrow’s Schools Independent Taskforce Final Report *Our Schooling Futures: Stronger Together Whiria Ngā Kura Tūātititini* (Ministry of Education, Wellington, July 2019).

I Internet Resources

Andrew Becroft “Centring Children in the COVID-19 response” (OCC press release, 7 March 2021).

Brittney Deguara “COVID-19: Absence of free school lunches in lockdown a gap that needs filling, NGO says” *Stuff* (online ed, Wellington, 2 September 2021). <www.stuff.co.nz/national/health/coronavirus/126260222/covid19-absence-of-free-school-lunches-in-lockdown-a-gap-that-needs-filling-ngo-says>

Bernard Hickey “How hope was lost for a generation” *The Spinoff* (online ed., Auckland, 25 June 2021) <www.thespinoff.co.nz/business/25-06-2021/bernard-hickey-how-hope-for-a-generation-was-lost/>

CPAG “Children in poverty still lack a secure future. Budget Analysis” (CPAG, Auckland, 19 May 2022). <www.cpag.org.nz/assets/Budget/CPAG-Budget-Analysis-2022.pdf>

Toby Manhire “Vaccine resistance linked to ‘deep-seated’ childhood experiences, Dunedin Study finds” *The Spinoff* (online ed, Auckland, 8 April 2022). <www.thespinoff.co.nz/science/08-04-2022/vaccine-resistance-linked-to-deep-seated-childhood-experiences-dunedin-study-finds>

Caitlin Neuwelt-Kearns, Emeritus Professor Innes Asher, Alan Johnson Child Poverty Action Group ‘Children Can’t Live on Promises: A 2021 stocktake of implementation of the Welfare Expert Advisory Group’s 2019 Recommendations, December 2021. <www.cpag.org.nz/assets/Children-cant-live-on-promises-CPAG-report-Dec21.pdf>

Children’s Commissioner “More required post-Budget if NZ wants ‘welfare state that really works’” *1 News* (online ed, 21 May 2021). <www.tvnz.co.nz/one-news/new-zealand/more-required-post-budget-if-nz-wants-welfare-state-really-works-childrens-commissioner>

Child Poverty Action Group “Bold Policy changes needed to urgently shift stagnant child poverty rates” (CPAG press release, 24 February 2022).

Children’s Rights Alliance Aotearoa New Zealand Written input into the List of Issues Prior to Reporting Submitted to the United Nations Committee on the Rights of the Child 6th reporting cycle of Aotearoa New Zealand, 1 March 2020. <[www.5f475317fdb59aa3a1a14d8_Childrens_Rights_Alliance_Aotearoa_New_Zealand_Written_Input_into_LOIPR_2020-2.pdf\(webflow.com\)](http://www.5f475317fdb59aa3a1a14d8_Childrens_Rights_Alliance_Aotearoa_New_Zealand_Written_Input_into_LOIPR_2020-2.pdf(webflow.com))>

Department of Public Health University of Otago Wellington “Socioeconomic Deprivation Indexes” (2018) <www.otago.ac.nz/wellington/departments/publichealth/research/hirp/otago020194.html#nzdep-comparison-imd>.

Keith Lynch and Kate Newton “COVID-19 NZ: Why these 166 places may be most at risk of virus spread?” *Stuff* (online ed, Wellington, 3 December 2021). <www.stuff.co.nz/national/explained/127139335/covid19-nz-why-these-166-places-may-be-most-at-risk-of-virus-spread>

Rebecca Macfie “The Great Divide” *North and South* (online ed. Auckland, September 2021) <www.northandsouth.co.nz/2021/08/16/nz-housing-crisis-the-great-divide/> Bernard Hickey “How hope was lost for a generation” *The Spinoff* (online ed., Auckland, 25 June 2021) <www.thespinoff.co.nz/business/25-06-2021/bernard-hickey-how-hope-for-a-generation-was-lost/>

Tess McClure “‘Perfect Storm’: how Covid is compounding New Zealand’s existing social crises”, *The Guardian* (online ed, 5 October 2021). <www.theguardian.com/world/2021/oct/06/perfect-storm-how-covid-is-compounding-new-zealands-existing-social-crisis>

Stats NZ ‘Statistical area 1 dataset for 2018 Census – updated March 2020’ (Wellington, 12 March 2020). <[www.Statistical area 1 dataset for 2018 Census – updated March 2020 | Stats NZ](http://www.Statistical%20area%201%20dataset%20for%202018%20Census%20-%20updated%20March%2020%20|%20Stats%20NZ)>

Stats NZ ‘Cabinet Papers – Data Investment Plan’ Wellington December 2021. <www.stats.govt.nz/corporate/cabinet-papers-data-investment-plan>

United Nations General Assembly. 1989. Convention on the Rights of the Child. <www.ohchr.org/en/professionalinterest/pages/crc.aspx>

World Bank “Pandemic Threatens to Push 72 Million More Children into Learning Poverty – World Bank outlines a New Vision to ensure that every child learns, everywhere” (press release, 2 December 2020).

J Seminars

Julie Fry “Together alone: joined-up social services” (New Zealand Productivity Commission webinar, Wellington, March 2022).

Caralee McLiesh “Wellbeing Report seminar” (The Treasury webinar, Wellington, April 2022).

New Zealand Productivity Commission and Kōi Tū: The Centre for Informed Futures “Breaking the disadvantage cycle: Why the first 1,000 days matter” (New Zealand Productivity Commission webinar, Wellington, November 2020).

K Other Resources

Email from Professor Michael Baker to Dr Sandy Callister regarding GIS data capture in Aotearoa (9 May 2021).

Email from Dr Jesse Whitehead to Dr Sandy Callister regarding spatial modelling uptake in Aotearoa (29 March 2022).