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ARE WE THERE YET?

**THE JOURNEY TO ORANGA TAMARIKI THE
MINISTRY FOR VULNERABLE CHILDREN: AN
ANALYSIS OF THE LAW REFORM PROCESS**

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Abstract: The establishment of Oranga Tamariki, The Ministry for Vulnerable Children was supposed to end the perception that the law protecting vulnerable children and young people was crisis driven. The establishment of a stand-alone Ministry was to stabilise the law and improve outcomes for the most vulnerable. However, the law reform process to implement this change undermined rather than supported this effort. The method of reform, its intrinsic link with government ideology, close connection to previous reforms and the opposition to legislative amendments undermined the foundations the reform sought to lay. This paper suggests that the law reform process could have been better utilised as a vehicle with which to emphasise and accentuate the ultimate aims of the reform and assist in their successful implementation. The paper tracks various tensions in the reform process and suggests that these deficiencies permeate the law that has resulted. As such, the paper suggests the ultimate goal of the reform remains unrealised, not for lack of intention, but due to fundamental flaws in gaining support from key stakeholders. Because of this, the likelihood of future reform is high. The law reform process could have placated rather than enhanced this risk.

Key Words: Oranga Tamariki; Children; Vulnerable Children; Ministry for Vulnerable Children; Child Welfare

Table of Contents

<u>I</u>	<u>INTRODUCTION</u>	4
<u>II</u>	<u>BACKGROUND</u>	5
A	KEY FIGURES AND INSTITUTIONS	5
B	RELATIONSHIP WITH PREVIOUS REFORM	6
C	THE STATE OF AFFAIRS	7
D	POLITICAL LANDSCAPE	9
1	IDEOLOGY	9
2	METHOD OF REFORM	11
E	ITERATIONS OF REFORM	13
F	THE ESTABLISHMENT OF ORANGA TAMARIKI	15
<u>III</u>	<u>THE ESTABLISHMENT OF A PANEL</u>	17
A	THE USE OF A PANEL	17
B	THE PANEL MEMBERS	20
C	THE REPORT	23
1	CRITIQUE OF THE REPORT	24
2	CRITIQUE OF THE IDEOLOGY	26
D	THE NEXT STEPS	27
E	THE ALTERNATIVE	28
<u>IV</u>	<u>THE RELATIONSHIP WITH THE VULNERABLE CHILD REFORM</u>	29
A	THE GREEN PAPER	30
B	THE WHITE PAPER	31
C	THE CHILDREN’S ACTION PLAN AND VULNERABLE CHILDREN ACT	33
D	IMPLICATIONS FOR ORANGA TAMARIKI	33
<u>V</u>	<u>WHEN POLICY MEETS LAW</u>	34
A	INFORMATION SHARING	35
B	THE PRINCIPLES OF THE ACT	41
C	PURPOSE AMENDMENTS	43
<u>VI</u>	<u>FURTHER LAW REFORM LESSONS</u>	44
<u>VII</u>	<u>CONCLUSION</u>	46
<u>VIII</u>	<u>BIBLIOGRAPHY</u>	48

I Introduction

Ko te wā o te tamarikitanga he wā mō te hari mō te koa. Kia kua kē e pokea e te mataku e te tūkinō me te taratahi; Childhood should be a time of joy and light. It should be free from fear and neglect and isolation.¹

Ending the cycle of serious abuse to our vulnerable children and young people is not an honourable but essential undertaking for the government of New Zealand. Around 60,000 children are reported to Child, Youth and Family (“CYF”) every year² and in 2016 a record number of children (just under 6000) were taken into state care³ with an estimated one out of three New Zealand children living in poverty.⁴ The law that seeks to protect our most vulnerable has been in a consistent state of flux, largely responsive to tragic events that provide evidence of failures within the system. The establishment of a stand-alone Ministry, the Ministry for Vulnerable Children, Oranga Tamariki (“Oranga Tamariki”, “MVC”, “the new Ministry”) in 2017 can be viewed as an attempt to steady the crisis driven reform approach New Zealand has arguably been following thus far.

The process of law reform can be a source of legitimacy and a means with which to build a stable foundation for the law that results. This paper will argue that the law reform process that led to the establishment of Oranga Tamariki was utilised in such a way that the stability of the resulting reforms is undercut, and the aim of ending a crisis driven reform model undermined. To do so, this paper will highlight aspects of the process that indicate a lack of stability. It will suggest amendments to these could have altered the perception of the process and the stability of the result. The paper will begin by providing the context within which Oranga Tamariki was established, as well as providing a framework of previous iterations of reform in this area. The paper will critique the establishment of the panel that undertook the reform of CYF, and will suggest that the influence of political ideology left little room for alternate options to be considered. Further, the paper will highlight the confused relationship between the reform in question and reform undertaken directly prior to this, and propose this perpetuates instability. Finally, the paper will focus on the interface between the intentions of a policy and the subsequent transformation of

¹ Iwi Chairs Forum “A Covenant for our Nations Children” (Henwood Trust, August 2016).

² Katie Kenny “Faces of Innocents CYF to be shut down and replaced by a new ministry” (28 July 2016) Stuff www.stuff.co.nz.

³ Stacey Kirk “Record number of children in the care of CYF as Govt prepares for new era in state care” (30 March 2017) Stuff www.stuff.co.nz.

⁴ Simon Collins “Nearly one in three New Zealand children ‘living in poverty’” *The New Zealand Herald* (online ed, Auckland, 15 December 2015).

such intent into law. This will be done through the lens of the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016. The tensions during the progression of this Bill undermine the longevity of the reform.

The paper aims to suggest that Oranga Tamariki, while well intentioned, sits on unsteady footing and an emphasis on a stable law reform process could have eased this. It will argue that the law reform process can be utilised as a means by which to propagate a sense of stability for the law. The transformation of CYF into Oranga Tamariki was intended to steady the law but the law reform process undermined, rather than emphasised, this quest for stability.

II Background

This paper tracks a reform process that, as with any reform of the law, is somewhat convoluted. This part seeks to outline some of the key background material and context for navigating the following law reform landscape.

A Key Figures and Institutions

In the case of child welfare, the relevant Minister is the Minister for Social Development. In the context of this paper, there are two key figures in the role:⁵

- Paula Bennett MP (Minister for Social Development 2008 – 2014).
- Anne Tolley MP (Minister for Social Development 2014 – 2017).

Key parties in opposition at the time of this reform were, the Labour Party, the Green Party of Aotearoa New Zealand (“the Green Party”) and the Māori Party. At the time of reform the Māori Party had a Relationship Accord with the National Party following the 2014 General Election. The Accord provided the National Party with Confidence and Supply, in return for support of policy priorities for the Māori Party. This did not preclude vocal opposition by Marama Fox MP, co leader of the Māori Party. Other key figures who were vocal in their opposition to the reform were:

- Jacinda Ardern MP (Labour Spokesperson for Children, appointed Leader of the Labour Party in 2017);

⁵ “Hon Paula Bennett” beehive.govt.nz www.beehive.govt.nz; and “Hon Anne Tolley” beehive.govt.nz www.beehive.govt.nz.

- Carmel Sepuloni MP (Labour Spokesperson for Social Development, Children and Pacific Affairs);
- Jan Logie MP (Green Spokesperson for Social Development); and
- Marama Davidson MP (Green Spokesperson for Māori Development, Human Rights, and Pacific Peoples).

Other key figures and institutions mentioned throughout this paper include, the Privacy Commissioner (John Edwards (2014 - present)) and the Children’s Commissioner (from 2016 Russell Wills, from 2011 – 2016 Andrew Becroft). Prior to 2017 the relevant Ministry, for the care of vulnerable children, was the Ministry of Social Development (“MSD”) in which CYF operated. Post 2017, the relevant Ministry is Oranga Tamaraki, the Ministry for Vulnerable Children.

B Relationship with Previous Reform

Ms Bennett led the “Vulnerable Child Reforms” of 2011 to 2014. This reform process informs the discussion of, but is distinct from, the process that led to the establishment of Oranga Tamariki. It is vital for the reader to distinguish the two. The process of the Vulnerable Child Reforms began with the release of a public consultation document “The Green Paper for Vulnerable Children” (“the Green Paper”). Submissions were invited and informed the publication of “The White Paper for Vulnerable Children” (“the White Paper”), and the Children’s Action Plan. These publications set out a series of reforms to be implemented. This led to the introduction of the Vulnerable Children Bill 2013 and subsequent Vulnerable Children Act 2014.⁶ Notable reforms as a result of this process included the introduction of Children Teams, increased vetting for those working with children, and reforms to the KiwiSaver Act 2006, so that children in care were automatically enrolled in the scheme.⁷ These are just some of the 30 proposals recommended in The White Paper and implemented in the Vulnerable Children Act.⁸ The fact that these reform processes are distinct, albeit close in subject matter and time, will be a discussion point of the paper as it illuminates instability.

Mrs Tolley was instrumental in the Modernising Child Youth and Family reform, of 2015 onwards, that led to the establishment of Oranga Tamariki. The independent expert

⁶ Vulnerable Children Act 2014.

⁷ Paula Bennett “White Paper for Vulnerable Children” (11 October 2012) [beehive.govt.nz](http://www.beehive.govt.nz)

⁸ Ministry of Social Development *White Paper for Vulnerable Children Volume I* (Ministry of Social Development, October 2012).

advisory panel (“Modernising Child, Youth and Family Expert Panel”, “the Panel”) was established in 2015.⁹ The Panel was formed as a part of the Modernising Child, Youth and Family Programme.¹⁰ At the time of the Panels’ establishment this programme had been responsible for a number of reviews of CYF such as the “Broad Report”¹¹ and the Strategic Business Case for CYF.¹² The Panel was convened as Mrs Tolley was not satisfied with the recommendations that had been presented thus far.¹³ The final report of the Panel recommended a child centred approach to achieve the best outcomes for child welfare in New Zealand.¹⁴ In order to realise this the Panel endorsed the establishment of a standalone Ministry. Such a Ministry (Oranga Tamariki) was launched in March of 2017.¹⁵ In addition, the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill was introduced in August 2016 and gained Royal Assent in July 2017. This implemented many of the supplementary reforms recommended by the Panel. From the establishment of the Panel in April 2015 wide ranging reform was implemented in just over two years’ time. It is this reform process that the paper argues could have been completed with greater certainty and stability.

C The State of Affairs

When Mrs Tolley was appointed Minister for Social Development in 2014 with the role she inherited a Ministry that had undertaken significant reform in recent months. The Vulnerable Child Reforms were in their early stages of implementation. The briefing prepared in 2014 by both MSD and the Social Sector Forum for the incoming Minister reflects this.¹⁶

While the Social Sector Forum (“the Forum”) recognised that the services for vulnerable children in New Zealand had been “fragmented and siloed”, there was confidence that the

⁹ Anne Tolley “Independent expert panel to lead major CYF overhaul” (press release, 1 April 2015).

¹⁰ “Modernising Child, Youth and Family” Ministry of Social Development www.msd.govt.nz.

¹¹ Howard Broad *Review of Child, Youth and Family Complaints System: A Report to the Minister of Social Development* (Ministry of Social Development, June 2013).

¹² Ministry of Social Development *Modernising Child, Youth and Family Programme Business Case: Strategic Case Draft for Discussion* (Ministry of Social Development, 15 December 2014).

¹³ Anne Tolley *Modernising Child, Youth and Family Expert Panel Cabinet Social Policy Committee Paper* (Ministry of Social Development, November 2015) at 2.

¹⁴ Anne Tolley “Radical changes to child protection and care” (press release, 7 April 2016).

¹⁵ Anne Tolley “New Ministry for Vulnerable Children, Oranga Tamariki launched” (press release, 31 March 2017).

¹⁶ Social Sector Forum *Briefing to the incoming Government* (Social Sector Forum, 2014); and Ministry of Social Development *Briefing to the incoming Ministers* (Ministry of Social Development, October 2014).

Children's Action Plan was addressing this issue.¹⁷ The Forum was complementary of the reforms that had been initiated by Ms Bennett in the previous term¹⁸. The Vulnerable Children Act and Children's Action Plan were driving fundamental changes in how government agencies, and the Non-Government Organisations ("NGO") sector, worked together to protect and improve the well-being of children and young people.¹⁹ The briefing for the incoming Minister from the Ministry of Social Development mirrored this approach.²⁰ Regardless of this optimism within a year Mrs Tolley had established the Panel which would implement the most drastic reforms of CYF since its inception in 1989.²¹ Where the pressure for such reform came from, when recent reforms had not had sufficient opportunity to be implemented, is unclear.

The Forum also advised the incoming government more generally as to how to best implement change in the social sector area. The Forum warned that it was essential that any process to set new targets or results should engage front line services, and the community, to achieve "buy-in" and commitment.²² Further, on the subject of integrating services the Forum felt that when:²³

...done well they can improve the focus on clients and results, improve engagement with and access to services and reduce unnecessary visiting and assessment. There is, however, more limited evidence of the impact of those approaches on longer-term outcomes and the transaction costs of co-ordination and integration can be high. Care is therefore needed when deciding which problems and populations or needs require an integrated approach and how best to achieve integration. In addition, integration needs to be designed and delivered sustainably. Change needs to be led and success sometimes depends on particular agencies or workers.

The Forum was positive about the potential of data and analytics to improve services for people.²⁴ Such integrated data sets give a better understanding of individuals and families as they move across services over time and support better service targeting, funding decisions and informed frontline services.²⁵ However, the Forum warned of "significant

¹⁷Social Sector Forum, above n 16, at 4.

¹⁸At 5.

¹⁹ Social Sector Forum, above n 16, at 4.

²⁰ Ministry of Social Development, above n 16.

²¹ Tolley, above n 14.

²²Social Sector Forum, above n 16, at 2.

²³At 3.

²⁴At 5.

²⁵At 5.

challenges” that needed to be worked through, and that “...people’s lives do not match our data structures...we need to build stakeholder and community understanding of the potential uses of data and analytics”.²⁶ Making better use of data and analytics across the social sector was said to require sustained effort to:²⁷

Understand and address the current privacy and permissions environment (including learning about how we best use Approved Information Sharing Agreements – AISAs); ensure we have the necessary infrastructure; meet challenges of data quality and records linking; build the necessary capability and expertise across the social sector...

The briefing from the MSD recommended that investment in technology and robust information governance was necessary for better use of data and analytics.²⁸ There were doubts about the use of predictive modelling based on administrative data held by the Government to identify and assess at risk children. This was based on the fact that the use of such data in the context of identifying at risk children was untried, carried ethical risks, and warranted careful and staged development and training.²⁹ The establishment of Oranga Tamariki was, in part, driven by a desire to better utilise the datasets available to the Government and to target interventions according to such information. The implementation of this faced fierce opposition. The advice on the use of data and analytics, if followed, could arguably have eased the opposition which the legislative reform to implement and establish Oranga Tamariki faced in the House and in wider discourse. This paper will propose that simple measures such as these, streamline the law reform process and stabilise the resulting law.

D Political Landscape

1 Ideology

Since 2008 the National Government has implemented a social investment model across many areas of the welfare sector in New Zealand. Social investment means:³⁰

Using information and technology to better understand the people who need public services and what works, and then adjusting services accordingly...Much of the focus is on early investment to achieve better long-term results for people and helping them

²⁶Social Sector Forum, above n 16, at 6.

²⁷At 6.

²⁸Ministry of Social Development, above n 16, at 12.

²⁹Social Sector Forum, above n 16, at 6.

³⁰“Social Investment” (12 July 2017) The Treasury www.treasury.govt.nz.

to become more independent. This reduces the number of New Zealanders relying on social services and the overall costs for taxpayers.

Emily Keddel describes the social investment approach as follows:³¹

The Social Investment approach to social policy aims to reduce the forward liability, that is, the future financial costs of the state by reducing future contact with the benefit system, criminal justice system and notifications to the state child protection service.

As it applies to the subject of this paper, the basis of the investment approach is an actuarial valuation of the long term costs to Government that are associated with poor outcomes of vulnerable New Zealand children.³² Liability is assessed based on risk factors that indicate the likelihood of future poor outcomes which would in turn result in a cost to the government and wider social sector.³³ Children are therefore grouped based on risk profiles and characteristics, and services are targeted accordingly.³⁴ Beyond the reform that is the focus of this paper, the approach has influenced many other reforms in the welfare sector. The establishment of Oranga Tamariki lies within this context.

A key element of the social investment ideology is “targeted intervention”.³⁵ Part of utilising the social investment approach requires ‘identifying’ and ‘categorising’ individuals at risk of cost to the state in the future, and intervening and providing costs in the present to reduce this. This identification model is apparent in the focus on “vulnerable children” in the reform led by both Ms Bennett and Mrs Tolley. The focus on identifying ‘vulnerable children’ based on their potential cost to the state was apparent from the outset of The Green Paper:³⁶

Children in contact with Child, Youth and Family are five times more likely to have a Corrections’ sentence by age 19 or 20 than a young person with no contact with Child, Youth and Family. Links between childhood experiences and adult mental health, substance abuse, poor education and employment outcomes have been well

³¹ Emily Keddel *The Child Youth and Family Review: A Commentary on Prevention* (The Policy Observatory, June 2017) at 5.

³² Modernising Child, Youth and Family Expert Panel *Modernising Child, Youth and Family Expert Panel: Interim Report* (Ministry of Social Development, July 2015) at 106.

³³ At 106.

³⁴ At 106.

³⁵ Above n 30.

³⁶ Ministry of Social Development *Every child thrives, belongs, achieves: The Green Paper for Vulnerable Children* (Ministry of Social Development, July 2011) at 3.

documented. The costs to the individual and society as a whole of not giving children the best start in life are high. Because we know that a good childhood is important we need to focus on those children who are vulnerable.

The prevalence of the social investment approach throughout the National Party's 2017 Election Campaign suggests it has become an intrinsic aspect of the Party's political ideology. Nationals "plan" for serious young offenders is an example of this. The policy was prefaced on the use of data to identify the 150 young people committing a large number of crimes of a serious nature, those that were at risk of future cost to the state.³⁷ Such individuals would be classified as "Young Serious Offenders" who would be sent to a defence-led Junior Training academy to decrease their risk of future offending and in turn, cost to the state.

Implementing targeted intervention, in accordance with the social investment approach, involves navigating privacy and human rights. There appears to be a level of flexibility by the Government in this area so that targeted intervention can be realised. Another election policy was the "Methamphetamine Action Plan". This involved increasing measures available to Police in order to "clamp down hard" on organised crime and drug dealers. It was this group that was "identified" to be perpetuating the high levels of methamphetamine dealing in New Zealand.³⁸ "Firearm Prohibition Orders" if implemented would allow Police to search the property of 'the most serious gang members' at any time to ensure there were no firearms.³⁹ Further, there would be obligations for gang members on a benefit to justify expensive assets and if not justified benefits could be cancelled or declined. The perceived benefits of the implementation of this ideology seem to inform the extent to which the Government will go, to turn the policy into law, regardless of legal implications. Such an insight informs the reform process of this paper. The interface between utilising data to allow intervention and rights to privacy was a contentious issue in the establishment of a legal framework to allow the collection of this data.

2 Method of reform

The use of a panel as an instrument for implementing sweeping reform, as occurred with the Panel which is the focus of this paper, has been a common strategy of the National Government since 2008. In 2010 a Welfare Working Group was established which

³⁷ Amy Adams "National's plan for serious young offenders" (press release, 13 August 2017).

³⁸ Paula Bennett "New crack down on gangs and drugs" (press release, 3 September 2017).

³⁹ Bennett, above n 38.

investigated long term welfare dependence.⁴⁰ In keeping with the social investment ideology an actuarial valuation estimated the lifelong cost of beneficiaries for the state to be \$78 million and identified those at risk of welfare dependency and in turn a risk of increased cost to the Government.⁴¹ According to the insights of the panel, "... long term benefit dependency can be avoided if investments are well targeted and timely."⁴² The reforms were seen as an expense in the short term to reduce dependency and cost to the government and tax payer in the long term.⁴³ They were, however, controversial.⁴⁴ As a result of the report of the group more than three quarters of all beneficiaries were forced to seek work or face cuts to their benefit payments. This was enabled under the Social Security (Benefit Categories and Work Focus) Amendment Bill 2013.⁴⁵ The panel was criticised for its narrow terms of reference, punitive approach to welfare, exclusion of significant matters and for being:⁴⁶

One of the most unenlightened pieces of work to emerge from a government funded task force. Most submissions were ignored, revealing that much of the consultation process was simply a public relations exercise.

Similar examples of the use of a panel to implement reform include:

- The Expert Parole Panel (2009) which recommended a focus on managing offenders based on their risk to the community not the category of sentence or offence⁴⁷; and
- The Work and Income Board (2012) which was established to oversee the investment approach to welfare, and was responsible for overseeing the delivery of reforms that would embed this approach across the welfare system.⁴⁸

⁴⁰ Paula Bennett "Paula Rebstock to chair Welfare Working Group" (press release, 13 April 2010); and Paula Bennett "New Board to oversee Work and Income performance" (press release 15 May 2012).

⁴¹ Paula Bennett "Welfare reforms pass into law" (press release, 9 April 2013).

⁴² Kay, above n 45.

⁴³ Paula Bennett "Welfare Reform" (29 February 2012) beehive.govt.nz www.beehive.govt.nz.

⁴⁴ "Bennett rejects 'hypocrite' claims" *The New Zealand Herald* (online ed, Auckland, 28 February 2012); and Kate Chapman "Bennett unapologetic about welfare reforms" (20 March 2013) Stuff www.stuff.co.nz.

⁴⁵ Martin Kay "Extensive Welfare Shake Up Needed: report" (22 February 2011) Stuff www.stuff.co.nz.

⁴⁶ "The Alternative Welfare Working Group" Child Poverty Action Group www.cpag.org.nz; and "Bennett rejects 'hypocrite' claims" above n 44.

⁴⁷ Judith Collins "Minister welcomes Expert Panel probation plan" (press release, 14 October 2009).

⁴⁸ Bennett "New Board to oversee Work and Income performance", above n 40.

The use of a panel to prompt law reform is therefore a common strategy for the Government of the time, and the establishment of Oranga Tamariki as a result of the report of a panel cannot be understood in isolation from this context.

E Iterations of Reform

Any reform to child welfare law in New Zealand cannot be truly understood in isolation from the history of law reform in the area. Child welfare law in New Zealand has a history of crisis driven reform; reform that responds to failures in the system identified as a result of tragic events that result in pressure on the government and CYF to ‘do better’. This model of reform is inherently destabilising and incoherent. This part of the paper provides a background to the ‘crisis driven’ reform model Oranga Tamariki seeks to resolve, as well as context to the devastating harm to children that necessitates government intervention.

The inception of CYF in 1989 and the passing of the Child, Young Persons and Their Families Act 1989 was a world leading legislative step.⁴⁹

It was ground-breaking, it was world leading, and it placed children and family at the centre of that legislation...In particular, the principles of that Act, under s 13(2), included sentiments like, for instance, "(f) where a child or young person is removed from his or her family, whānau, hapu, iwi, and family group, ... that,—(i) wherever practicable, the child or young person should be returned to, and protected from harm within, that family, whānau, hapu, iwi".

Despite its “world leading” potential, CYF was restructured 14 times since that inception.⁵⁰ Much of this reform was in response to harrowing statistics, stories, and events that would reach media headlines and place pressure on the government for action. In 1993, then Children’s Commissioner Dr Ian Hassal reviewed the death of 11 year old Craig Manukau as a result of actions of the child’s father. The death was deemed “...foreseeable and preventable.”⁵¹ That same year, 11 year old Wayne Kairau – Sandhu was beaten to death by his stepfather but was not reported missing to Police until the following year. A review in 1994 criticised CYF for not acting sooner and “...more authoritatively.”⁵² A coroner’s report into the death of James Whakaruru in 1999, found there were numerous instances of

⁴⁹ (13 December 2016) 719 NZPD 4711.

⁵⁰ “New children’s ministry to be under ‘constant restructure’” (1 April 2017) RNZ www.radio.nz.

⁵¹ Warren Barton “Faces of Innocents: Craig Manukai, ‘the grease-weasel’” (25 July 2016) Stuff www.stuff.co.nz.

⁵² Stacey Kirk and Katie Kenny “A Trail of Broken Promises”: 1992 – 2015” (24 November 2015) Stuff www.stuff.co.nz.

abuse leading up to the death of James. The death was as a result of the actions, like Craig Manakau, of the young boy's stepfather. Despite the warning signs there had been no intervention and a report into the case by Children's Commissioner Roger McClay was published in 2000.⁵³ It pointed to lack of communication between health and welfare agencies as contributing factors and called for more information sharing.

Again, in 2000 Rt Hon Helen Clark called for a review of community health services and condemned New Zealand's level of child abuse. This was after the death of Lillybing (full name Hinewaioriki Karaitiana-Matiaha) who was severely abused while in the care of aunts (the child was beaten, shaken and scalded in hot water).⁵⁴ In the same year ACC launched an initiative that would mean CYF would be notified if a child was reported as having more than 10 "accidents" before their fifth birthday. The Children's Commission Roger McClay demanded a free 24-hour emergency phone line to combat child abuse. The result was the 0508 FAMILY direct line.⁵⁵ Principal Youth Court judge Mick Brown reported that CYF was under "extreme pressure" and called for urgent change. The death of two Masterton sisters, following years of violence, in 2001 prompted a new strategy for dealing with abused Māori children.⁵⁶ In September 2013, Cora Burrows was murdered by her step father at age 6. This was despite her father contacting CYF with concerns for her safety. Investigations found the call was not recorded nor followed up and as a result Children's Commissioner Cindy Kiro recommended all CYF phone calls be recorded.⁵⁷

In 2003 there was review of CYF by the Treasury, MSD and CYF. The Principles Baseline Review of CYF found "deep and systemic problems" which were "...about much more than just levels of resourcing...".⁵⁸ Chief Executive Jackie Pivac resigned as a result. That same year the tragic and shocking story of Nia Glassie made headlines. Coroner Wallace

⁵³ Kirk and Kenny, above n 52.

⁵⁴ Kirk and Kenny, above n 52.

⁵⁵ Kirk and Kenny, above n 52.

⁵⁶ "Report into Girls deaths find fault with CYF" *The New Zealand Herald* (online ed, Auckland, 12 November 2003).

⁵⁷ "CYF admits getting call from Coral's father" *The New Zealand Herald* (online ed, Auckland, 17 October 2003); and "Report on Burrow's call to CYF released tomorrow" *The New Zealand Herald* (online ed, Auckland, 17 December 2003); and Ruth Dyson "Minister welcomes CYF reports" (press release, 18 December 2003); and "Cora-Ellen's inquest reveals CYF loophole" (17 February 2009) www.stuff.co.nz.

⁵⁸ Ruth Dyson "CYF baseline review findings released" (press release, 23 October 2003).

Bain described the abuse the 3 year old suffered as “chilling”. Then, in 2009 22-month old Hail-Sage McClutchie suffered fatal brain injuries as a result of child abuse.⁵⁹

Media attention surrounding fatalities perceived to be the fault of failings within CYF continue to be prevalent even in the context of this most recent reform. In 2015 the case of Moko Rangitoheriri, like Nia a three year old victim, who fell through the gaps of CYF prompted calls for action. The death of a 17 month old child in 2015 also made headlines. The child was returned to the care of a methamphetamine using household, and CYF admitted the information provided to the judge, who determined the child would return home, by CYF was “poor”.⁶⁰ The dysfunctional family of eight month old Isaiah Neil, who died in a hot car while his carers smoked synthetic cannabis, had been frequently alerted to social workers before the death in 2015.⁶¹ In August 2017 allegations of sexual assault were made by two young girls while in state care.⁶² This is the context within which the establishment of Oranga Tamariki operates.

The welfare of children is an inherently emotionally driven law reform issue and as such has been perceived to be crisis driven. The establishment of Oranga Tamariki was intended to change the model and stabilise the law that defends the most vulnerable children and young people. This paper will argue that while honourable in intent, the law will be inherently unsound if the law reform process does not perpetuate a sense of stability and as such the inherent instability of this law may be something New Zealand must continue to contend with.

F The Establishment of Oranga Tamariki

To combat the perceived failings of CYF Oranga Tamariki was launched in March 2017.⁶³ This standalone model signalled a conceptual shift; where CYF worked on a “crisis management” model, the new Ministry would identify “at risk” families and young people early on and work intensively to prevent harm.⁶⁴ Early indicators of “at risk” children or

⁵⁹ Kirk and Kenny, above n 52.

⁶⁰ “Secret recording on CYF case released to Media” *The New Zealand Herald* (online ed, Auckland, 27 February 2017).

⁶¹ Jared Savage “CYFS warned of ‘next Nia Glassie’ before baby Isaiah Neil dies in car while family smoke drugs” *The New Zealand Herald* (online ed, Auckland, 1 July 2017).

⁶² Phil Pennington “Girls report sexual assault while in state care” (3 August 2017) RNZ www.radionz.co.nz.

⁶³ Tolley, above n 15.

⁶⁴ Laura McQuillan “Q&A: Whats different about Oranga Tamariki, the Ministry for Vulnerable Children?” (3 April 2017) Stuff www.stuff.co.nz.

families would be evidence of family violence, children displaying signs of offending behaviour or with parents who experienced care during their own childhood.⁶⁵ Parents who have experienced state care are a key part of this group as evidence shows that young people who have experienced state care have high rates of early parenthood and imprisonment.⁶⁶ Parents at risk of having vulnerable children would be identified 'pre-birth'. With knowledge of the influence of the social investment model, this reform aligns closely with Government priorities to identify those that most necessitated the use of funds.

Following significant debate the new Ministry was launched by Mrs Tolley with lofty goals:⁶⁷

The Ministry puts children and young people's safety and wellbeing first. It will work with families and whānau to ensure children and young people get access to the care and support they need... This is the start of a four to five year major transformative programme to build a more child-centred care and protection system, focusing on harm and trauma prevention and early intervention

When asked how the new Ministry would be different to CYF, Mrs Tolley said the ministry will be child centred, and will not operate by responding to crisis but by stepping in to prevent unnecessary tragedy.⁶⁸ This need for stability was emphasised in the first reading of the Oranga Tamariki Legislation Bill.⁶⁹

Achieving real and enduring change that improves the long-term life outcomes for our most vulnerable children and young people requires bold legislative reform, and that is what this bill is about.

How best to protect the vulnerable children in society is by no means a new issue for government, and society, to contend with. However, reform that is consistently crisis and emotively driven culminates in law that lacks certainty, clarity and stability. The reform of CYF into Oranga Tamariki was an attempt to stabilise the law relating to vulnerable

⁶⁵ Modernising Child, Youth and Family Expert Panel *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015) at 75.

⁶⁶ S Crichton and others *New findings on outcomes for children and young people who have contact with Child, Youth and Family*, (Ministry of Social Development, 2015); and Modernising Child, Youth and Family Expert Panel, above n 65, at 76.

⁶⁷ Tolley, above n 15.

⁶⁸ Rosanna Price "New 'Ministry for Vulnerable Children' boss to lead culture change, Tolley says" (18 August 2016) Stuff www.stuff.co.nz.

⁶⁹ (13 December 2016) 719 NZPD 4711.

children. This paper will argue that the law reform process could have been utilised as a tool to perpetuate this stability, but fundamental flaws mean that the stability and intent of the law is undermined and misunderstood.

III The Establishment of a Panel

In 2015 Mrs Tolley announced the establishment of an independent expert advisory panel that would be tasked with overhauling CYF:⁷⁰

For the sake of vulnerable children we must do better, and we need a very clear strategy that focuses on the needs of children, rather than the needs of the system... New Zealand used to be a world leader in the field of child protection, but I believe we are now eight to ten years behind in our thinking in some important areas, such as how we support children in state care...

The recommendations of the Panel would be the driving force behind the establishment of a standalone Ministry dedicated to Vulnerable Children, in the largest reforms to child welfare since 1989. In establishing the panel Mrs Tolley aimed to provide independent advice and assurance on the Modernising CYF programme.⁷¹ This part of the paper will propose that the use of a panel, if not sufficiently representative, can alienate influential stakeholders and disseminate a perception of preconceived decision making. Ultimately the instability of the panel, that was responsible for this reform, exaggerated subsequent opposition to the legislative reforms and undermined the overall stability of the law.

A The Use of a Panel

The expert panel was convened because Mrs Tolley believed that, despite improvements, significant issues remained with CYF.⁷² In justifying this Mrs Tolley made reference to a number of recent reports including the Mel Smith Report, the Broad Report, a Deloitte Report and the Workload Review that all found issues with CYF.⁷³

Mel Smith (Chief Ombudsmen) reported to Ms Bennett in 2011, as a result of a Ministerial inquiry into the serious abuse of a nine year old girl who died in 2011.⁷⁴ The Mel Smith Report was released in 2011 and advocated for a child centred approach with all of

⁷⁰ Tolley, above n 9.

⁷¹ Above n 10.

⁷² Tolley, above n 13, at 2.

⁷³ At 2.

⁷⁴ Paula Bennett "Independent Inquiry into serious abuse" (press release, 20 January 2011).

government taking responsibility for child safety and welfare.⁷⁵ Howard Broad was responsible for the Review of Child, Youth and Family Complaints System (“Broad Report”) which was completed in 2013. The review and recommended ways in which CYF could be held more accountable. Broad identified areas of improvement for the organisational, professional and regulatory structures in order to better support CYF.⁷⁶ The emphasis of the report was on the establishment of an independent complaints mechanism for Child, Youth and Family separate to MSD.⁷⁷ The Qualitative Review of Social Worker Caseloads, Casework and Workload Management (“the Workload Review”) was completed in 2014 and found a lack of clarity existed around the core business of CYF.⁷⁸ In mentioning these reports and proceeding with the establishment of the Panel, Mrs Tolley failed to mention that in 2011 a Better Public Services Review had found MSD was “well placed” when it came to Care and Protection.⁷⁹ Mrs Tolley placed little emphasis on the Children’s Action Plan that had set up measurable targets for CYF to improve their services.⁸⁰ These were the targets that the briefing for the incoming Minister emphasised were driving fundamental changes.⁸¹

Mrs Tolley was dissatisfied with the Child, Youth and Family Strategic Business Case (“the Business Case”) that was presented in late 2014.⁸² The Business Case was presented to Mrs Tolley as a part of the Modernising CYF programme which is mentioned above.⁸³ The Business Case was influenced by the social investment model in its recommendations:⁸⁴

Because the vulnerable children and young people that, Child, Youth and Family serve are at a significantly higher risk of poor outcomes than the general population, they make up a large proportion of the New Zealanders known to need more costly intervention and services:

⁷⁵Tolley, above n 13, at 7.

⁷⁶ At 7.

⁷⁷Broad, above n 11.

⁷⁸ Tolley, above n 13, at 7.

⁷⁹RSW Collective “Part Two of the Modernising Child Youth and Family Expert Panel’s Interim Report: The Good, The Bad and the Potentially Ugly” (22 October 2015) RSW www.reimaginingocialwork.nz.

⁸⁰ Ministry of Social Development *Children’s Action Plan Identifying, Supporting and Protecting Vulnerable Children* (Ministry of Social Development, October 2012).

⁸¹Social Sector Forum, above n 16, at 4.

⁸² Tolley, above n 13, at 3; and above n 10.

⁸³ Ministry of Social Development, above n 12.

⁸⁴ At 12.

- (a) Former Child, Youth and Family clients represent 87 per cent of all high cost New Zealanders (defined as costing over \$350k each to date across Child, Youth and Family, Work and Income, and Corrections);
- (b) \$5.6 billion is the collective costs of these individuals to date (up to age 40) and 710 individuals have cost over \$1 million each.

While the Business Case recognised that a more significant, child centred, operating model was required, it recommended that substantial change would require a considered and controlled programme of work.⁸⁵ The case also highlighted the changes that had been made by CYF in the last 12 months to improve results for children and young people.⁸⁶ Mrs Tolley stated: “while it [the Business Case] represented a good starting point, it did not fully encapsulate my vision for CYF’s future operation.”⁸⁷ In April of 2015 Mrs Tolley announced the establishment of the Panel to oversee the development and implementation of a new operating model for CYF and to inject “fresh, child centric thinking”.⁸⁸

It was clear by Mrs Tolley’s statement that, “...the independent expert panel will not be tinkering around the edges and small-scale changes are unlikely to produce the results we all want to see”⁸⁹ that the recommendations of the Panel were intended to be of the kind that would prompt large scale reform. In establishing the Panel Mrs Tolley made explicit reference to the Welfare Working Group as well as other advisory mechanisms such as the Expert Panel on Parole, and the Work and Income Board.⁹⁰ The examples referred to, as canvassed above, are panels that lead to wide spread and major reform in the area for which they were tasked to review. Arguably by making reference to these examples Mrs Tolley seems to indicate that the role of the Panel would be beyond mere assurance or advice. Further, the panels that she refers to, had all implemented a social investment model in their reform, in line with the Governments ideology. Not only does this undermine the perception of independence of the Panel by its seemingly inevitable alignment with the Government ideology but, by following a preconceived model of reform utilised by the Government, there seemed to be a lack of prospect for the Panel to make more nuanced or original change. By not being seen to have had the opportunity to canvass a full range of

⁸⁵ Ministry of Social Development, above n 12, at 16.

⁸⁶ At 27.

⁸⁷ Tolley, above n 13, at 3.

⁸⁸ Above n 10.

⁸⁹ Tolley, above n 9.

⁹⁰ Tolley, above n 13, at 5.

options the final decision is inherently unstable. This instability and the sense of inevitability of the result is further emphasised by the makeup of the Panel.

B The Panel Members

The Panel was made up of five members and would produce an interim report by mid-2015 and a final report by the end of the year. It was advertised that the Panel as a whole would have the following skills or attributes:⁹¹

Extensive, large scale change management experience, preferably in an operational environment. Experience in developing and / or providing assurance on an investment approach. A strong understanding of CYF's operating environment, or of a comparable operating environment in another jurisdiction. Senior and recent Public Service experience. Strong understanding of tikanga māori and strong governance capability.

The appointments were as follows:⁹²

- Paula Rebstock (Chair) (with extensive governance experience from ACC to Auckland Transport);
- Commissioner Mike Bush (experience at senior level with New Zealand Police);
- Duncan Dunlop (Chief Executive of a Scottish independent advocacy charity for young people);
- Helen Leahy (a former high school teacher with experience in Parliament); and
- Professor Richie Poulton (with extensive psychological experience).

The makeup of the Panel contradicted the proposal as there was an absence of any member with a strong understanding of CYF's operating environment and tikanga Māori. This was concerning as the overrepresentation of Māori was a key issue that the Business Case (which Mrs Tolley was presented with) canvassed and therefore should permeate any future reform decisions. The Business Case found that while Māori make up only 23 per cent of the population of children up to the age of 14, they are around half of the children receiving CYF services. Further Māori comprise 55 per cent of the children in the care of the Chief Executive, 59 per cent of young people referred to a Family Group Conference and 65 per cent of children and young people in a CYF residential care placement.⁹³

⁹¹ Tolley, above n 13, at 23.

⁹² Tolley, above n 9.

⁹³ Ministry of Social Development, above n 12, at 5.

Concerns about the quality of reform for Māori that would come from a panel that did not have sufficient experience or knowledge came in particular from the Te Ropu Wahine Māori Toko I te Ora (“Māori Women’s Welfare League”).⁹⁴ National president Prue Kapua stated that “without Māori expertise and knowledge we have no confidence that any of the panel’s findings or recommendations will properly address the needs of our children.”⁹⁵ Further, the New Zealand Association of Social Workers felt the decision to not include social workers on the panel was “gobsmacking”:⁹⁶

It’s almost as if social work is still being regarded as a bunch of do-good church women, rather than professionals that are doing four-year degrees and coming out as competent practitioners

As a response to public and stakeholder outcry Peter Douglas was appointed to the Panel in July 2015.⁹⁷ With extensive experience as a social worker and then Principal Māori Advisor in the Ministry of Social Development, Douglas then went on to be chief executive of Te Ohu Kaimoana Māori Fisheries Trust.⁹⁸ The appointment of Douglas gives a sense of diversity of opinion but as the interim report of the Panel was released at the end of July 2015, shortly after Douglas was appointed, it is conceivable that Douglas would have been limited in the level of influence he could have over the plans of the Panel. A lack of membership for a representative of those most affected from the initial stage of reform means the reform process lack stability and “buy in” from the relevant stake holders. An issue that would be exemplified as the reforms progressed.

The failure to recruit key stakeholders without public pressure raises the question of who the reform was for, or perceived to be for. It fuels the rhetoric that the Government was aiming for a social investment reform, and as such the Panel process was, in a sense, a formality. Such a perception is emphasised by the effort made to engage with other stakeholders; namely young people. A Youth Advisory Panel made up of eight young people with experience of state care was appointed to provide advice.⁹⁹ To make an effort to engage some, but not all, of the relevant public suggests the deliberative nature of omission or at the very least a lack of effort on the part of government. This undermines the integrity of the reform. Further, it contradicts the advice given to Mrs Tolley by the

⁹⁴ “Douglas to put Maori view on CYF review” (9 July 2015) Waatea News www.waateanews.com.

⁹⁵ Stacey Kirk “Social workers fuming over CYF overhaul snub” (18 May 2015) Stuff www.stuff.co.nz.

⁹⁶ Kirk, above n 95.

⁹⁷ Stacey Kirk “Former state care kids included in CYF review” (7 July 2015) Stuff www.stuff.co.nz.

⁹⁸ Anne Tolley “Youth Advisory Panel to aid CYF design” (press release, 7 July 2015).

⁹⁹ Tolley, above n 98.

Social Sector Forum, which emphasised the importance of engaging front line services and the community to achieve their “buy-in” and commitment for the reform.¹⁰⁰ It seems as if, regardless of the subsequent level of consultation the Panel undertook¹⁰¹, that the failure to include a key figure for stakeholders such as Māori or Social Workers was a fundamental flaw. This would have further ramifications for the stability of this process as when the enabling legislation was in the house, the Māori Women’s Welfare League and Social Workers were vocal opponents and drove changes to the law. This fundamental opposition from such key stakeholders perpetuates the sense of instability.

It is not only deficiencies in the membership of the Panel that impacted the stability of the reform but, equally as importantly, it was those who were present. In particular, it is significant that Paula Rebstock was the chair of the Panel. This is because Rebstock was also the chair of the Welfare Working Group, Expert Panel on Parole and the Work and Income Board. Mrs Tolley’s explicit reference to these advisory groups when establishing the Panel and subsequent appointment of Rebstock suggests this Panel is a carbon copy of those prior. This is problematic for the outcome of the reform. Not because of a lack of competence on Rebstock’s part (in 2015 she was made a Dame Companion of the New Zealand Order of Merit)¹⁰² but because in all the panels Rebstock had lead for the Government she had implemented a social investment approach. As established, the social investment approach is so intrinsically linked with the ideology of the current government that it casts doubt on the independence of the panel and whether an alternate model was, or could have been considered under the circumstances. Particularly where insufficient effort was placed on gaining diversity of inputs into the reform, this increases the perception of a lack of authenticity of reform. It makes the process appear to be a streamlining of ideology across all sectors.

Not only does the appointment of Rebstock point to a specific outcome, so too does the appointment of Duncan Dunlop. Dunlop had extensive experience developing an advocacy group for Scottish Children with experience of the state care system. Therefore it is unsurprising that the final recommendations of the Panel included the establishment of a new child centred complaints system, VOYCE – Whakaronga Mai (“VOYCE”). VOYCE stands for Voice Of the Young Care Experienced.¹⁰³ While, such a service is arguably vital

¹⁰⁰ Social Sector Forum, above n 16, at 2.

¹⁰¹ Anne Tolley “Minister welcomes State of Care report” (press release, 27 August 2015).

¹⁰² Jo Moir “Dame Paula Rebstock has learnt to ignore the criticism that comes with the job” (31 December 2015) Stuff www.stuff.co.nz.

¹⁰³ “Who Are We” Voyce Whakarongo Mai www.voyce.org.nz.

and will be of great benefit, the panel seems to have been ‘loaded’ with panellists who would achieve pre conceived outcomes.

This does not seem to be meaningful reform or change, but such that aligned with the Ministers aims and the Government’s ideology. While it is the case that law reform is often constrained by the ambitions of the relevant Minister, in an area such as child welfare, reforming the law based on Ministerial preferences and government ideology arguably may not lead to the ‘best’ nor the most stable outcome. It gives a narrow focus to the reform and means that alternate more effective options may not be explored. Inherently this means further reform will be needed and so continues the cycle of amendments.

C The Report

Critiques of the Panel’s report further emphasise a sense of instability. The panel consulted across New Zealand and abroad. This involved meeting with staff, young people, practitioners and researchers from across the health, education, justice, social services, and care and protection fields. The panel also visited youth justice and care and protection residences, and family homes.¹⁰⁴ Following this, an Interim Report was produced in July 2015 for the Minister, before being released to the public in September that same year. The final report (“the Report”) was announced by the Government in April 2016 but was completed in December 2015. In total the report contained 81 recommendations. The Panel found that CYF was failing vulnerable children and young people¹⁰⁵, that the system was fragmented and lacked accountability as well as a common purpose.¹⁰⁶ The Panel concluded that CYF was not effective at intervening early enough so that children and young people were provided with the support they deserved.

There is an emphasis in the report of the Panel on the consequences of early experiences for the later life, and cost to the state, of a child. A study the Panel referred to found that by the age of 21, for children with a care placement who were born in the 12 months up to June 1991:¹⁰⁷

- Almost 90 per cent are on a benefit;
- Around 25 per cent are on a benefit with a child;

¹⁰⁴ Tolley, above n 101.

¹⁰⁵ Anne Tolley *Modernising Child, Youth and Family Expert Panel: Interim Report Cabinet Social Policy Committee Paper* (Ministry of Social Development) at 5.

¹⁰⁶ *Modernising Child, Youth and Family Expert Panel*, above n 65, at 7.

¹⁰⁷ Anne Tolley “The future of child protection and care” (7 April 2016).

- Almost 80 per cent do not have NCEA Level 2;
- More than 30 per cent have a Youth Justice referral by age 18;
- Almost 20 per cent have had a custodial sentence; and
- Almost 40 per cent have had a community sentence.

Further, demand for CYF services had increased as a result of children re-entering the system on multiple occasions (64 per cent of the 61,000 children notified to CYF in 2014 had a previous notification, the average age of children placed with family was seven to eight years old and most already had an average of eight care placements by this age).¹⁰⁸ The workload of staff was mentioned as around 50 per cent of staff time is spent on administration.¹⁰⁹

...less than 25 per cent of CYF staff work directly with children in need of care and protection, and less than one per cent of staff have a dedicated professional support role, such as psychologists and therapists.

To rectify this, the Panel recommended a new department and operating model with a single point of accountability.¹¹⁰ The new model would be child centred with a focus on five core services: prevention, intensive intervention, care support services, transition support and a youth justice service aimed at preventing reoffending. These would be rolled out over four years.¹¹¹ The new operating model, as a single point of accountability, would be responsible for the long term well-being of vulnerable children.¹¹² The social investment approach would achieve this. Children with the highest needs and risks will be targeted using actuarial valuations and early interventions will ensure that these children receive the care and support they need, when they need it.¹¹³ The report was released to the public in April 2016, and within a year Oranga Tamariki was launched.

1 Critique of the report

The report of the Panel was the driving force behind the establishment of Oranga Tamariki but is not without its flaws. David Kenkel, lecturer in Social Work and Community

¹⁰⁸ Tolley, above n 107.

¹⁰⁹ Tolley, above n 107.

¹¹⁰ Modernising Child, Youth and Family Expert Panel, above n 65, at 14; and “Government announces reforms to Child, Youth and Family” (8 April 2016) New Zealand Family Violence Clearinghouse www.nzfvc.org.nz.

¹¹¹ Tolley, above n 107.

¹¹² Tolley, above n 107.

¹¹³ Tolley, above n 107.

Development at Unitec Auckland when reviewing the Report said “...some of the most interesting things about a new policy or document is not what is present in the report but what is absent”.¹¹⁴ In the case of the Panel’s report what Kenkel found lacking was any mention of “poverty”. The word itself is mentioned once in the 300 page report.¹¹⁵ This was surprising to Kenkel due to the well documented link between poverty and increased levels of neglect and abuse of children.¹¹⁶ Similar criticisms were made about the Welfare Working Group’s reform in 2010:¹¹⁷

The report uses the term “paid work” 242 times but “unpaid work” does not appear once. Thus caregiving of young children by their parents is invisible and unvalued. Parents are either paid workers or “job seekers” but not nurturers caring for the next generation of New Zealanders.

This similarity in criticism feeds the perception of a carbon copy reform process being used by the Government and of a predetermined vision being set, without lessons being learnt from previous reforms. Ian Matheson, who has extensive experience working with CYF, thought the terms of reference and the timeframe dealt to the Panel were ambitious and that the report reflects a failure to fulfil these:¹¹⁸

Given the magnitude of change that the interim report and Ministerial statements have signalled, the absence of any assessment of high level options, and thus the opportunity for the sector to respond/contribute ahead of the final December report, is concerning.

Matheson comments, “...our reviews are always undertaken within a political context, and take a particular position on what is important, and to whom.”¹¹⁹ The tight timeframe furthers the sense that this Panel was fulfilling a predetermined outcome, and as such required less time to produce this. This means that the approach as reformed is not stable as there is a sense that it was not the “best” choice but the only option. As it was, the social

¹¹⁴RSW Collective “The Absent Elephant in the 2016 ‘Modernising Child, Youth and Family Expert Panel Report’ (23 April 2016) RSW www.reimaginingocialwork.nz.

¹¹⁵ Modernising Child, Youth and Family Expert Panel, above n 65, at 78.

¹¹⁶RSW Collective, above n 114.

¹¹⁷ Donna Wynd and Susan St John “Enlightening the welfare working group” *The Dominion Post* (online ed, Wellington, 29 March 2011).

¹¹⁸ RSW Collective, above n 79.

¹¹⁹ RSW Collective, above n 79.

investment model as implemented for vulnerable children faced significant backlash and there was much concern as to whether it was best suited for this area of law.

2 *Critique of the ideology*

By purely focusing on the data and statistics, as the social investment model is perceived to do, many fear the reality of a situation and the individual people who the statistics represent is lost. Dr Carol Harrington a senior lecturer in sociology and social policy at Victoria University of Wellington believes the risk assessment approach may result in social workers investigating, not supporting, families as they seek to gather “evidence” in order to evaluate “risk factors”.¹²⁰ Harrington suggests this could lead to a more adversarial relationship between whānau and social worker. Social policy expert and child advocate Anton Blank also disagreed with the targeted model and advocated for a universal model which has been found to be more “effective”. Blank also mentioned the damaging effect on Māori the new model would have.¹²¹

It's definitely bottom of the cliff, and I think particularly with this strategy, which acknowledges that 60 per cent of these most vulnerable children are Māori children, this targeted approach has the danger of stigmatising these particular populations, especially Māori.

Dr Carol Harrington emphasised Blank’s concerns:¹²²

...according to a risk-assessment framework, “vulnerabilities” such as a caregiver being young, single, impoverished, Māori or an ethnic minority, predict violence and criminality. Such people show up in research on child abuse more often in part because they attract more state surveillance. Consequently more young, single, poor, Māori and minority parents lose their kids to state care and the new Ministry seems set to continue that pattern.

This was reinforced by Emily Keddell of the Social Policy Observatory:¹²³

Social investment that was genuinely ‘social’ would involve more diverse criteria for judging the system’s success by including measures of people’s experiences of

¹²⁰ Carol Harrington “New Ministry set to make same mistakes as CYF” (12 April 2017) Newsroom www.newsroom.co.nz.

¹²¹Newshub “Child advocate Anton Blank slams new ‘hugely flawed’ Ministry for Vulnerable Children” (31 March 2017) Newshub www.newshub.co.nz.

¹²² Harrington, above n 120.

¹²³ Keddell, above n 31, at 28.

services, measures of change in family relationships, and measures of child wellbeing. It would also accept that the prevention of child abuse should be aimed at a much larger proportion of the population than those captured by child protection system statistics.

These critiques do not serve to argue that the social investment model is inherently ill suited for this area of law, but that there is a strong opposing view to the reforms as made. A view that, due to the timeframe granted to the panel, its makeup, and links to the social investment ideology which gave a sense that the result was inevitable, is not placated or addressed. This means that the fundamental basis of this reform is not stable and is without consensus. While disagreement is inherent, steps throughout the process could have been taken to stabilise the implementation, reception, and ultimately the longevity of this reform.

D The Next Steps

The Panel's report was tabled to Cabinet and advice was sought from the State Services Commission, Treasury and MSD as to how best to implement the reforms recommended by the Panel. This cross agency working group looked at potential options for a new children's entity.¹²⁴ Various options were considered from simply enhancing the status quo, to a separate department or a department hosting a departmental agency (a new organisational form enabled by the Better Public Services Reforms).¹²⁵ Cabinet agreed with the Panel's recommendations and decided that, due to the significance and scale of reform the new operating model would entail, a stand-alone department was the best suited option.¹²⁶ This conclusion by Cabinet to implement a significant reform seems inevitable. The Panel was explicitly established to recommend substantial change and the chair of the Panel was a key player historically in implementing such fundamentally transformative reform.

On 1 April 2017 the Government launched Oranga Tamariki. This new Ministry incorporates many existing services including: CYF, some of MSD, Community Investment Functions as well as the Children's Action Plan Directorate, including Children's Teams, Vulnerable Kids Information System (ViKi) and the Vulnerable Children's Hub.¹²⁷ The new child centred complaints system VOYCE was also launched. This independent advocacy service for children or young people in the system includes a

¹²⁴ Anne Tolley and Paula Bennett *Organisational Form to Support the new Ministry for Vulnerable Children* (Ministry of Social Development and Ministry of State Services) at 3.

¹²⁵ At 3.

¹²⁶ Anne Tolley "New ministry dedicated to care and protection" (press release, 18 August 2016).

¹²⁷ Brendan Boyle "Investing in New Zealand's Children and their Families" (press release, 7 April 2016).

new interactive website that gives care-experienced children and young people an online community.¹²⁸ VOYCE is committed to being a ‘megaphone’ to the government and care system.¹²⁹ By the end of the year a youth council will be established and connection events will occur with the goal of building a care-experienced community of support.¹³⁰ The five core services of Oranga Tamariki will be introduced incrementally over the next four years.¹³¹ Oranga Tamariki will be reviewed after two years in operation and “the creation of the new Ministry signals a ‘whole of sector’, child centred approach to working with vulnerable children and young people”.¹³²

E The Alternative

Mrs Tolley sought an ‘independent’ view on CYF by establishing the Panel, despite such a view being provided yearly to the Minister in the State of Care Report produced by the Children’s Commissioner. This is an annual summary based on independent monitoring of CYF policies, practices and services and includes feedback from children and young people about their experiences in the system.¹³³ Further, the Children’s Commissioner had also established the “Expert Advisory Group on Child Poverty” which resulted in the Solution to Child Poverty in New Zealand report, following public consultation on the Issues and Options Paper: Solutions to Child Poverty in New Zealand.¹³⁴

The Expert Advisory Group on Child Poverty was made up of 13 members from a wide variety of roles and experience.¹³⁵ In the report the panel acknowledged the assistance of many community leaders and researchers. Of note, many were stakeholders in key demographics, such as those working in the industry (Plunket, Barnardos) and those working with Māori (notably Prue Kapua, National President of the Māori Women’s Welfare League, as well as representation from Solutions for Tamariki, Te Kahui Mana Ririki, and Every Child Counts).¹³⁶ Acknowledgement was also made of international

¹²⁸“Ministry for Vulnerable Children, Oranga Tamariki” Ministry of Social Development www.msd.govt.nz.

¹²⁹ Above n 103.

¹³⁰ Above n 103.

¹³¹ Above n 128.

¹³²Boyle, above n 127.

¹³³ Children’s Commissioner *State of Care 2015: What we learnt from monitoring Child, Youth and Family* (Office of the Children’s Commissioner, August 2015).

¹³⁴ Expert Advisory Group on Solutions to Child Poverty *Solutions to Child Poverty in New Zealand evidence for action* (Office of the Childrens Commissioner, December 2012).

¹³⁵ Expert Advisory Group on Solutions to Child Poverty, above n 134.

¹³⁶ At iv.

experts who had assisted.¹³⁷ Such a report engages with the relevant public, is produced wholly independently from government, and arguably may have been a better mechanism to produce reform that had stable foundations. The establishment of the Panel instead, regardless of the independent advice available to Mrs Tolley, suggests a specific outcome was envisaged. One that had not been provided by the Strategic Business Case, nor the Children’s Commissioner. While the reform by a government appointed panel may be effective, to do so it must include the relevant viewpoints so that its independence and reliability is maintained and its recommendations, and the implementation of them are stable.

IV The Relationship with the Vulnerable Child Reform

The process of the Vulnerable Child Reforms involved the release of the Green Paper for public consultation, before the White Paper and Children’s Action Plan. This was followed by the Vulnerable Children Bill 2014, which was introduced to the House in September of 2013 and received Royal Assent in June 2014.¹³⁸ This process is wholly distinct from that which lead to the establishment of Oranga Tamariki.

The implementation of the reforms from the Children’s Action Plan was one of the key focuses of the briefing to the incoming Minister in 2014. As mentioned, the briefing was optimistic about the effect these legislative reforms could have. While supporting vulnerable children was listed as one of the key demands and challenges facing the social development portfolio, the briefing stated that the Vulnerable Children Act and the Children’s Action Plan were driving fundamental changes in the way the government prospect’s and improves the wellbeing of children and young people.¹³⁹ While positive, the briefing recognised that the implementation of these legislative reforms would have resourcing implications for the ministry and that, “the successful implementation of these changes is likely to be a significant focus of the social development portfolio over the next few years.”¹⁴⁰

This part of the paper will canvas briefly the process undertaken for the Vulnerable Children Reforms. A full analysis of this reform process is beyond the scope of this paper, but its inclusion serves to indicate the extensive nature of reform and consultation that had been so recently undertaken when Mrs Tolley established the Panel. Having reform

¹³⁷ Expert Advisory Group on Solutions to Child Poverty, above n 134, at iv.

¹³⁸ “Vulnerable Children Bill 2014” New Zealand Parliament www.parliament.nz.

¹³⁹ Ministry of Social Development, above n 16, at 19.

¹⁴⁰ At 20.

processes that deal with the same subject matter come in quick succession of one another suggests an internal instability. The lack of a clear link between these two processes meant there was a lack of consistency. Further, it implies a lack of legitimacy and commitment to each individual process. The Vulnerable Child Reforms underwent a far more extensive consultation process. An understanding of the extensiveness of this reform process informs the issues that may arise by a secondary reform process following too closely.

A The Green Paper

The Green Paper for Vulnerable Children was launched in July 2011 by Ms Bennett.¹⁴¹ Ms Bennett framed the launch of the Green Paper as an opportunity for New Zealanders to be part of the solution as to how children of New Zealand should be valued, nurtured and protected.¹⁴² The paper was framed as a “discussion document” that aimed to “test” ideas with the public before forming a Children’s Action Plan.¹⁴³ An emphasis on data and analytics was prevalent in the Green Paper with the focus of the paper on the 15 per cent of children at risk of not ‘doing well’¹⁴⁴; that is children who are unlikely to thrive, belong and achieve.¹⁴⁵ The reason that the focus was on these children was that the long-term outcomes and costs to these children and to everyone is high.¹⁴⁶ In other words, the social investment approach targets these children as being of at risk of incurring a large cost to the state.

For the most part the Green Paper seemed to achieve its target to engage with New Zealanders nationwide. When submissions closed in February 2012, almost 10,000 submissions had been received (2000 of which were from children) and there had been 68 public meetings held from Kaitaia to Invercargill. People could make submissions by mail, email, online surveys or through Facebook. This seems to be an effective mechanism with which to engage members of the relevant public. These submissions informed the authors of the White Paper (released in October that same year).¹⁴⁷

¹⁴¹ Paula Bennett “Green Paper for Vulnerable Children” (press release, 27 July 2011).

¹⁴² Bennett, above n 141.

¹⁴³ Bennett, above n 141.

¹⁴⁴ Ministry of Social Development, above n 36, at 1.

¹⁴⁵ At 1.

¹⁴⁶ At 1.

¹⁴⁷ Paula Bennett “Green Paper submissions released” (press release, 14 August 2012).

Early on in the submissions there was a concern with the definition of ‘vulnerable children’:¹⁴⁸

Submissions said a necessary first step in developing a plan was to define what a “vulnerable child” is. Some submissions said all children are vulnerable and any definition should respect this. Others recognised the needs of particular groups of children, such as children with disabilities, children living in hardship, children who had been maltreated or who were in danger of being maltreated, very young children or Māori children.

Following the submissions of the Green Paper, Cabinet directed Social Sector Forum Chief Executives to form a cross agency working team to develop The White Paper.¹⁴⁹

B The White Paper

Three documents made up the White Paper, with more than 30 total proposals. The reform was extensive and culminated in the Children’s Action Plan and later the Vulnerable Children Act.¹⁵⁰ The focus in the White Paper was explicitly on “vulnerable children” estimated as being between 20,000 and 30,000 in number:¹⁵¹

The White Paper for Vulnerable Children is bigger than politics...It is not only for this generation of children, but also for their children and their grandchildren. We are all responsible for the welfare and wellbeing of our children. Too many children are seriously abused and neglected...It is time for fundamental change.

The paper recommended the use of recent advances in research and technology to identify these vulnerable children and intervene before harm occurs.¹⁵² Ms Bennett acknowledged that a key issue would be identifying these vulnerable children or “knowing who they are”¹⁵³ but was unclear on how such identification would occur. A definition was provided in the Paper as:¹⁵⁴

¹⁴⁸ Ministry of Social Development *The Green paper for Vulnerable Children Complete Summary of Submissions* (Ministry of Social Development, October 2012) at 12.

¹⁴⁹ Ministry of Social Development *The White Paper for Vulnerable Children Volume II* (Ministry of Social Development, October 2012) at 6.

¹⁵⁰ Paula Bennett “White Paper for Vulnerable Children, Launch” (11 October 2012).

¹⁵¹ Bennett, above n 7.

¹⁵² Ministry of Social Development, above n 8, at 5.

¹⁵³ Bennett, above n 150.

¹⁵⁴ Ministry of Social Development, above n 8, at 6.

...children who are at significant risk of harm to their wellbeing now and into the future as a consequence of the environment in which they are being raised and, in some cases, due to their own complex needs. Environmental factors that influence child vulnerability include not having their basic emotional, physical, social, developmental and/or cultural needs met at home or in their wider community.

Ms Bennett emphasised that a “risk predictor tool” was being developed in association with Auckland University.¹⁵⁵ This “tool” would use statistical criteria to identify at risk children or young people based on information about themselves or their families.¹⁵⁶ The system would use information from large government databases and would be made accessible to professionals working with children.¹⁵⁷ Ms Bennett attempted to reassure the public that such a “tool” would inform rather than replace professional judgment.¹⁵⁸ The response to the information sharing framework established by reforms to the Children, Young Persons and Their Families Act 1989, in the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill¹⁵⁹ suggested that public and key stakeholder opinion was not persuaded by either Ms Bennett during the Vulnerable Child Reforms or subsequently by Mrs Tolley.

The emphasis on identifying risks of future harm is consistent with the social investment approach and the Panel also recognised that any investment approach to vulnerable children involves identifying what is meant by vulnerability.¹⁶⁰ The White Paper highlighted key factors that are frequently considered by researchers to impact on children’s development.

¹⁶¹

- Poor maternal health behaviours in pregnancy;
- poor maternal mental health;
- parental substance abuse;
- parental antisocial behaviour and criminality;
- material hardship and financial stress;
- poor quality and unstable housing;

¹⁵⁵ Bennett, above n 150; and “Vulnerable Children Predictive Modelling” Ministry of Social Development www.msd.govt.nz.

¹⁵⁶ Bennett, above n 150.

¹⁵⁷ Ministry of Social Development, above n 8, at 10.

¹⁵⁸ At 10.

¹⁵⁹ Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (224-2), cl 38.

¹⁶⁰ Modernising Child, Youth and Family Expert Panel, above n 32, at 12.

¹⁶¹ Ministry of Social Development, above n 149 at 30.

- malnutrition;
- exposure to violence in the family; and
- recurrent child maltreatment.

The criteria that will be used in the “tool” are yet to be revealed to the public and at the time of writing it is equally unclear how “vulnerability” will be assessed for the purposes of Oranga Tamariki services.

C The Children’s Action Plan and Vulnerable Children Act

The Children’s Action Plan “...sits behind the White Paper for Vulnerable Children and provides the framework outlining the solutions and actions to be taken to resolve the issues with vulnerable children.”¹⁶² Within the first year of reform, by the end of 2013, there was a target in the Plan to introduce a Vulnerable Children’s Bill to ensure services for children and families are child centred and to implement the legal changes proposed in The White Paper.¹⁶³ The Vulnerable Children Act received Royal Assent in June of 2014. The Act confers responsibility on the heads of five government departments, for improving the lives of vulnerable children. Some of the other initiatives in this reform include:¹⁶⁴

- The establishment of Children’s Teams; a group of professionals who will plan and wrap around services for at risk children.
- Increased vetting and screening checks for government and community agency staff working with children.
- Banning people with serious convictions from working in core children workforce roles.
- Children in care will be enrolled in Kiwisaver.

There were 30 proposals in total contained the White Paper, and therefore in 2014 Mrs Tolley inherited a Ministry in a state of transition but looking towards better outcomes. This, like all good things, required time.

D Implications for Oranga Tamariki

As with any change, time is needed for the effects of it to be felt and assessed. The Vulnerable Child Reforms were arguably not given such time. The Panel followed closely

¹⁶² Ministry of Health “Childrens Action Plan Programme” Ministry of Health www.health.govt.nz.

¹⁶³ Ministry of Social Development, above n 80, at 2.

¹⁶⁴ Paula Bennett “Vulnerable Children Bill Passes into Law” (press release, 19 June 2014).

behind this wide ranging law reform process and as such undermined a sense of consistency of approach by MSD toward vulnerable children. Change in short spaces of time has been the historic model of CYF and Oranga Tamariki sought to reform this crisis management model. But the basis on which it was built was not a solid foundation. Arguably if a desire for a new ministry was not elicited during the extensive public consultation undertaken by the Green Paper process, it is possible such a reform was unnecessary. Regardless such reform was implemented. It can be hypothesised that Mrs Tolley saw the creation of Oranga Tamariki as a means by which to “make her mark” on the portfolio regardless of its necessity. Even if it was necessary the process by which it was implemented undermined the stability that was being sought for the law. Extensive reform on the same policy area in quick succession means the process is confused, the links between the two unclear and the integrity and ultimately success, of both undermined and destabilised.

V When Policy Meets Law

The legislation introduced to Parliament was variously described as “a dogs breakfast”, “more confusing”, “taking us back to the 1950s”, “a tractor rolling over Māori”, and “poorly drafted, poorly thought through and consulted.” We acknowledge that there has been significant improvement in the legislation from the bill as first introduced. However, as a result of remaining unresolved issues, the poor process, and concern that the significant drafting changes may still increase legal uncertainty, we cannot support this bill.¹⁶⁵

The above quotation from Ms Logie illustrates the convoluted and controversial progression of the Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (“the Bill”) through the House. There is an inherent tension within the law reform process when policy is transformed into law. The two areas are distinct in their framing of issues and their means of implementation, but legal backing is often seen in New Zealand as crucial to the success and legitimacy of reform. The Bill implemented much of the surrounding amendments recommended by the Panel alongside the establishment of Oranga Tamariki. It was introduced in December 2016 and received Royal Assent in July 2017 with 60 ayes to 59 noes.¹⁶⁶ This is in comparison to the passing of the Vulnerable Children Bill 2013 which passed with 105 ayes to 10 noes. Similar

¹⁶⁵ Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (242-2) (select committee report) at 24.

¹⁶⁶ “Oranga Tamariki Bill Passes into Law” (14 July 2017) Oranga Tamariki Ministry for Vulnerable Children www.mvcot.govt.nz.

complainants at the panel stage were vocal yet again through Select Committee Submissions. The Māori Womens Welfare League went so far as to take an action to the Waitangi Tribunal against the proposed reforms.¹⁶⁷ Such backlash from key stake holders in the reform does little to inspire faith in the longevity of the amendments especially if passed by only a slim majority.

The tension between policy targets and legal limits was most prevalent in the opposition to amendments relating to increased information sharing across agencies, and those to the purposes and principles of the Child, Young Persons and Their Families Act 1989 (“CYPF Act”). Cross party support is challenging to garner due to the nature of ‘opposition for oppositions sake’, but on a universal issue such as child welfare it can be more ‘easily’ achieved, if the process encourages this. Further, cross party support and the stability of law which flows from this is essential if the continued iterations of crisis driven reform are to end, as the establishment of Oranga Tamariki was supposed to signal.

A Information Sharing

...a major barrier to keeping them [children] safe is the lack of a consistent approach to information sharing across agencies and professionals...Within strong safeguards, this framework will allow information to flow as required to those who need it, when they need it¹⁶⁸

A key amendment in the Bill was the implementation of a new framework for a “bespoke information sharing service”. The aim of this was to “...facilitate the timely and consistent exchange of personal information about individual vulnerable children and young persons to promote their safety and well-being.”¹⁶⁹ The basis of Oranga Tamariki was the focus on identifying “at risk children” using large quantities of government held data so as to best target the relevant group.¹⁷⁰ To do this, the legal framework had to be altered to allow the sharing of information across services.

¹⁶⁷ Mānia Clarke “New child and youth protection bill challenged” (8 December 2016) Māori Television www.maoritelevision.com.

¹⁶⁸ (13 December 2016) 719 NZPD 4711.

¹⁶⁹ Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (224 – 1) (explanatory note) at 8.

¹⁷⁰ Ministry of Social Development, above n 8, at 10.

Clause 38 of the Bill proposed to replace s 66 of the CYPF Act with ss 65A to 66O. The Bill was explicit that the welfare and best interests of the child take precedent over any pre-existing professional duty of confidentiality (aside from legal privilege) and provides protection from civil, criminal or disciplinary proceedings as a result of providing such information.¹⁷¹ Information for investigations and statutory responses must be provided by a wider range of individuals and authorities and there are wider powers for requiring a person to provide information for an investigation or statutory response.¹⁷² There is a presumptive provision that child welfare and protection agencies must share personal information about a child or young person when requested to do so by another authorised agency or independent person unless there are good grounds for not doing so. This is so as to encourage the active exchange of information and better provide for the safety and wellbeing of the child or young person. In turn improving their life outcomes and reducing the future cost to the state.¹⁷³ There are some protections in place that recognise such a bespoke information sharing regime is not without its privacy implications. Agencies that make use of the collected data sets must publicly notify about the use of the data, and a child welfare or protection agency must engage with a child or young person should they intend to disclose personal information. Further, the responsible Minister must issue codes to provide guidance about the application of these information sharing provisions.¹⁷⁴

In the Select Committee the emphasis was on ensuring there was no perceived limitation to the collection of information. New s 66(4) initially contained examples of information that sufficed as “information relating to a child or young person”; these extended beyond information relating to the child or young person and were broad in nature.¹⁷⁵ They were removed at Select Committee as they were seen to limit the information that could be required to be disclosed. The Committee was focused on ensuring that it was clear that the power to require information for care and protection matters would apply to any and all information that might relate to, or affect the safety and wellbeing of, the child or young person.¹⁷⁶ Even the change of name to s 66 indicates an emphasis on empowering the collection of information; from “agencies may be required to supply information” to “agencies to supply information”.¹⁷⁷

¹⁷¹ Above n 169, at 8.

¹⁷² At 9.

¹⁷³ At 9.

¹⁷⁴ At 9.

¹⁷⁵ Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (224 – 1), cl 38.

¹⁷⁶ Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (242-2) (explanatory note) at 15.

¹⁷⁷ Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (242-2), cl 38.

The definitions of “child welfare and protection agency” and “independent person” are central to the operation of the new information sharing network.¹⁷⁸ This is because it is these persons or organisations who will be collecting the information. Each definition of these allows other organisations or persons to be include by regulation made under cl 119(4), s 447(ga).¹⁷⁹ The Regulations Review committee advised that the power should not be included if it was not necessary and if necessary it should set out clear criteria for including organisations or persons into the definitions.¹⁸⁰ The Select Committee decided that broad definitions and the ability to allow other persons or organisations to be added by regulation would keep the definitions “up to date”¹⁸¹.

Further, s 66D sets out requirements for organisations that use and combine information in data sets. It aims to introduce public transparency so that people could find out what might happen to their data when agencies share the data so as to produce combined data sets for analysis.¹⁸² The purposes for which information could be used or disclosed was broadened so that it would apply not just to information about individuals but also to information and datasets about classes of children or young people.¹⁸³ Under s 66A, information could be disclosed in certain circumstances. The Select Committee recommended that the effect of this section be made clearer so that it was not seen as prohibiting the sharing of information.¹⁸⁴ Amendments were made so that it was clear that the exceptions in s 6, Principle 11 of the Privacy Act that permit certain disclosures applied in addition to the situations envisaged under s 66A.

The proposed policy of a ‘bespoke information-sharing framework’ was met with much criticism; namely from opposition parties, key stake holders in the industry and notably the Privacy Commissioner. The Commissioner declared the information sharing provisions as “...neither clear nor workable...”.¹⁸⁵ Despite supporting the overall intent of the Bill to

¹⁷⁸ Above n 176, at 15.

¹⁷⁹ At 15.

¹⁸⁰ At 16.

¹⁸¹ At 16.

¹⁸² At 16.

¹⁸³ At 16.

¹⁸⁴ At 17.

¹⁸⁵ Privacy Commissioner “Privacy Commissioners submission to the Social Services Committee on the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill” at [3].

improve the care and protection of vulnerable children and to clarify agencies ability to share information where necessary, the Commissioner believed the provisions:¹⁸⁶

...have been developed without adequate consultation, are complex and fragmented, and will be harder to understand than the current legislative regime...as currently drafted the information sharing provisions in the Bill will not deliver the intent of improving information sharing, and may make things worse for some of the most vulnerable.

There were no substantive changes as a result of the Commissioners concerns. Both the Labour and Green Party expressed minority views in the Select Committee Report and did not support the Bill further. The view of the Labour Party was that "...we should reinstate Children, Young Persons and their Families Act 1989 with amendments".¹⁸⁷ The Party contended that while in principle it was important to increase collaboration between agencies, the provisions as drafted were too great a risk to the privacy of young people and families. Ms Sepuloni reiterated much of the Privacy Commissioners concerns. That is, that the Government was currently unable to deal with the data, and that there might be reluctance on the part of those seeking help if personal information will be collected and held by the Government.¹⁸⁸ The Labour Party agreed with the Privacy Commissioner that the provisions were "disproportionate and unnecessary".¹⁸⁹ Ms Sepuloni also referred to the Children's Commissioner who had expressed concern as to the provisions:¹⁹⁰

...the Children's Commissioner said that "there is a significant risk that families could withdraw from government services as a result of fears about their information being shared." That is the last thing we want to happen.

Like the Labour Party, the Green Party shared concerns about the information sharing provisions:¹⁹¹

We acknowledge the desire to protect children and heard the concern that maybe children's lives could have been saved if information had been shared. However we are very mindful of the need to protect the confidentiality that enables people to seek help before things go awfully wrong. This concern was raised by Hestia Rodney

¹⁸⁶ Privacy Commissioner, above n 185, at [3].

¹⁸⁷ Above n 165, at 22.

¹⁸⁸ (13 December 2016) 719 NZPD 4711.

¹⁸⁹ Privacy Commissioner, above n 185, at [26].

¹⁹⁰ (5 July 2017) 723 NZPD;

¹⁹¹ Above n 165, at 26.

Womens Refuge Māori Caucus who noted...women are given an 0800 number to call if they are concerned for their safety but won't call it if CYF are going to be called.

The Green Party also referred to the concerns expressed by the Royal Australian and New Zealand College of Psychiatrists (“RANZCP”). The RANZCP raised concerns about the accuracy of information, the inability to verify such accuracy and the potential for professionals to code information in an attempt to protect the privacy of clients and maintain a therapeutic relationship with them.¹⁹²

The incoming Ministerial briefing, forewarned the importance of engaging with the relevant stakeholders in reforming this sector. Had the Panel placed more emphasis on this there would have been more ‘buy in’ from the relevant stakeholders and opposing parties who would understand why the usage of the data was going to be useful. In turn this would provide a cohesive approach to the reform which in turn stabilises the child welfare approach in New Zealand that has been consistently in flux. The approach of the National Government in this reform was so intrinsically linked to its ideology that it is hard to garner cross party support. This in turn leads to doubt as to whether the reform can sustain a change of government and, with that, ideology. With more due process and consideration to achieving stable reform across government such a risk could have been decreased.

Events surrounding the Bill fed a rhetoric of the perceived incompetence and lack of ability on the part of MSD to manage an information framework such as the one proposed by the legislative reform. The Government’s perceived ability to collect data and store it safely was under threat due to a number of privacy breaches in April of 2017. A system designed to hold highly sensitive, personal information, allowed organisations to access the client data of other organisations.¹⁹³ The fall out saw a prominent MSD official step down and an independent review of MSD practice.¹⁹⁴ The review found there was no privacy breach, but that the approach to the IT system that collected this data, on the part of MSD, was not rigorous enough.¹⁹⁵ This review coincided with the rejection of another National Policy by the Privacy Commissioner.

¹⁹² Above n 165, at 24.

¹⁹³ Stacey Kirk “Privacy Commissioner has slammed Social Development data collection plans as too intrusive” (6 April 2017) Stuff www.stuff.co.nz.

¹⁹⁴ Stacey Kirk “No privacy breach of vulnerable client data, but review cites poor MSD approach to privacy” (16 May 2017) Stuff www.stuff.co.nz and “MSD official steps down over privacy breach” (19 May 2017) RNZ www.radionz.co.nz.

¹⁹⁵ Kirk, above n 194.

The reasons for which the Commissioner hesitated to support this Bill mirrored concerns expressed when the Commissioner rejected a proposed policy by Mrs Tolley in 2014. The policy would require NGO's to provide personal details of their clients in return for government funding.¹⁹⁶ One of the reasons for which the Privacy Commissioner rejected the policy was that it might lead to worse outcomes as individuals would be reluctant to seek help from these services.¹⁹⁷ This was a concern that was emphasised by the opposition parties during this Bill's progression through the House. There is clearly a consistent concern in the community that the government should seek to ease to ensure its law reform can be stable in practice and has "buy in" from the relevant sectors.

There was forewarning from the Social Sector Forum that any further progression into the use of data and analytics would require "significant challenges" and that the necessary infrastructure, capability and expertise needed to be fostered across the social sector.¹⁹⁸ A closer alignment with such advice may have meant that key stakeholders had more faith in the safety of security of the data and analytics being collected, and would have therefore been more readily accepting of the implementation of an information sharing network. As it stands, the ability of the Government to cope with the collection and protection of these large amounts of data they are actively seeking, is in doubt. The integrity of the policy and the social benefits using such data can have is undermined. Because of this the conversation is no longer focused on how best to utilise the collected data, to make further reforms for the welfare of children but remains a discussion as to the integrity of the reform itself. Taking time in the law reform process can prevent this and provide stability and certainty to the law itself.

The proposed provisions were broad in application initially but the amendments at Select Committee are evidence that the Government intended them to be as broad as was possible. However, the implications of such a policy through a legal lens was problematic and the provisions faced oppositions from opposition parties, the Privacy Commissioner and relevant stakeholders. The Social Sector Forum forewarned such a response and an understanding between opposing sides could have been better engaged. As such, the introduction of the information sharing provisions was polarising and the law reform sits on unsteady ground.

¹⁹⁶ Kirk, above n 193; and Ministry of Social Development *Investing in Services for Outcomes Community Investment Strategy Update 2016* (Ministry of Social Development, 2016).

¹⁹⁷ "Privacy commissioners report criticises MSD collection of individual client data" (6 April 2017) NZFVC www.nzfvc.org.nz.

¹⁹⁸ Social Sector Forum, above n 16, at 6.

B The Principles of the Act

Under the CYPF Act, in the event a child or young person could no longer remain in the care of their family, there was a priority that the child or young person would be placed with a member of their wider family, whānau, hapu or iwi.¹⁹⁹ This was commonly referred to as the “whānau first policy”.²⁰⁰ The Bill as originally amended removed this policy and this was a contentious issue throughout the initial progression of the Bill. The original provision in s 13(2)(g) of the CYPF Act stated:

(g) where a child or young person cannot remain with, or be returned to, his or her family, whānau, hapu, iwi, and family group, the principle that, in determining the person in whose care the child or young person should be placed, priority should, where practicable, be given to a person—

- (i) who is a member of the child’s or young person’s hapu or iwi (with preference being given to hapu members), or, if that is not possible, who has the same tribal, racial, ethnic, or cultural background as the child or young person; and
- (ii) who lives in the same locality as the child or young person:

This priority was considered ground breaking and world leading.²⁰¹ But was proposed to be ‘watered down’ to:²⁰²

(g) if a child or young person is removed from the care of their usual caregivers and cannot be returned to those caregivers,—

- (i) decisions about placement should be guided by the child’s or young person’s best interests, and the court or person making the decision should seek the views and understand the needs of the child or young person:
- (ii) children or young persons should be in a placement in which they will be safe and protected from harm:
- (iii) stability and continuity of placement are important considerations when making placement decisions:
- (iv) if practicable, a child or young person should be placed with their siblings: (v) children or young persons should be placed where they can develop a sense of belonging and attachment, and where their personal identity and cultural identity are maintained

¹⁹⁹ Children, Young Persons and Their Families Act 1989, s 13(2)(g).

²⁰⁰ Jane Patterson “PM questions wisdom of whanau first” (25 September 2015) RNZ www.radionz.co.nz.

²⁰¹ (13 December 2016) 719 NZPD 4711.

²⁰² Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (224-1), cl 13(2)(g).

Placement with family, whānau, hapu, iwi or family group was presented as one of many options but was afforded no priority. This aligns with the ‘child centred’ approach as it focuses on the best outcome for the child and is not limited by a competing priority. The change was said to be in response to the levels of reabuse of Māori children or young people who return to their homes after being placed in the care of the state (29 per cent of Māori compared to just 17 per cent of non-Māori, a further 11 per cent were re-abused when permanently homed with wider whānau, compared with two per cent who were permanently homed outside of family and kin-care).²⁰³ The amendment was to protect children and young people by allowing flexibility to place a child or young person where they would be most safe. However, the practical reality of such an amendment was that it undermined the importance of kin-care and ignored that the real issue is that hapu and iwi needed to be properly resourced so as to provide these kin care placements.²⁰⁴ According to Children’s Commissioner Andrew Becroft such a reform was a “retrograde step” when taking into account the Crown’s obligations under the Treaty of Waitangi.²⁰⁵ Mrs Fox was vocal in the sentiment that child safety and a whānau first priority were not mutually exclusive ambitions.²⁰⁶

Mrs Tolley responded to the criticism by emphasising that the amendments were so that social workers using the law would know that the emphasis should be on finding a safe home for the child or young person.²⁰⁷ Mrs Tolley accepted that the reform tried to “nuance that” and that “we’ve nuanced it too much”.²⁰⁸ The amendment was met with much backlash and had to be re-instated. At Select Committee Mrs Tolley acknowledged this:²⁰⁹

The select committee agreed with the recommendation to clarify the wording around this to align with the original intent. These changes now better set up the bill’s original intention—that where it is safe and in their best interests, children who are removed from their usual caregiver are returned home whenever possible, and, that where they cannot be returned home, and it is consistent with their best interests, there is a preference for a placement within their wider family, whānau, hapū, or iwi.

²⁰³ Stacey Kirk “Back to the table over controversial “whanau first” clause, Government to soften stance” (15 March 2017) Stuff www.stuff.co.nz.

²⁰⁴ Kirk, above n 203.

²⁰⁵ Above n 165, at 22.

²⁰⁶ Kirk, above n 203.

²⁰⁷ Kirk, above n 203.

²⁰⁸ Kirk, above n 203.

²⁰⁹ (13 December 2016) 719 NZPD 4711.

The whānau first policy was reinserted but re worded so that ‘preference’ not ‘priority’ should be given to family, whānau, hapu, iwi and family group as caregivers.²¹⁰ The level of opposition and the subsequent redrafting suggests a lack of sufficient consultation during the reform process and can be linked to the delayed Māori representation on the Panel. The Maori Party threatened abandoning their support relationship with the Government over the change²¹¹ and the Maori Women’s Welfare League (who had expressed strong concerns at the Panel stage) laid a Treaty of Waitangi Claim.²¹² The vocal opposition by the Māori Women’s Welfare League, along a similar vein to that expressed over issues with the panel, arguably stems from failures early on in the process.

Such changing of provisions, while common in drafting, has more of an impact on the stability of this legislation because it was seen to be ‘caving’ to pressure.²¹³ This perpetuates an ‘us versus them’ cross party mentality and does not provide for consistency of approach or a sense of cohesion. It can only lead to a lack of faith in the reform that follows. This is evidence that the means with which a policy intent is given effect in legislation can lead to different legal results than may have been anticipated.

C Purpose Amendments

Of less controversy throughout the progression of the bill was the amendments to the purpose provisions of the Act. One such purpose was that children who come to the attention of the ministry should have a “safe, loving home”.²¹⁴ This was said by submitters as at risk of being interpreted as encouraging early removal of children from their families. To prevent this the Select Committee recommended changing the order of the provisions so that the importance of family support was reinforced.²¹⁵

²¹⁰ Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (242-2), cl 13(i)(iii)(A).

²¹¹ Jane Patterson “New CYF bill ‘bone of contention’ for Māori Party” (17 February 2017) RNZ www.radionz.co.nz.

²¹² Above n 167.

²¹³ Jan Logie “Backdown on whānau-first placements a victory for Māori” 15 March 2017 www.greens.org.nz; and Isaac Davidson “Govt signals change of heart on child placements, but will not go back to whanau first” *The New Zealand Herald* (online ed, Auckland, 16 March 2017); and Mei Heron and Demelza Leslie “Govt backs down over whānau-first care” (16 March 2017) RNZ www.radionz.co.nz.

²¹⁴ Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill (242-1), cl 6.

²¹⁵ Above n 165, at 3.

However aside from the order of the purpose provisions there remains a definition issue as there is no indication of what qualifies as a “safe, stable, loving home”. Further, the reordering suggests this principle applies only to children who require care under the Act, rather than to anyone who comes “to the attention of the ministry”.²¹⁶ Such a distinction is problematic. Arguably such a right is applicable and should be owed to all children in New Zealand, or at the very least to any child the Ministry has contact with. The Law Society raised concerns with the ambiguous purpose provisions. The Law Society felt the provisions added complexity to a piece of legislation that needs surety due to the high volume of court cases in practice:²¹⁷

That certainty plays a really important role in decision making, and this risks undermining the surety of practice...How will the courts define "loving" in a legal sense?...We all want our kids to be loved, but is it appropriate for us to ensure, through legislation, that they are loved? I am not convinced. It just does not seem appropriate, and other submitters agreed on that point.

A safe and loving home is conceivably intended as means to ensure the best life outcomes for New Zealand’s most vulnerable children, but is another example of the tricky interface between policy aims and legal drafting, which lead to unclear legislation and unsteady reform.

VI Further Law Reform Lessons

There are many other issues with the law reform process that lead to the establishment of Oranga Tamariki and that perpetuate instability. Some of the opposition to the reform was based on the narrow nature of the framing of the “problem”. Public Policy scholar Carol Bacchi said that every policy proposal contains within it an implicit or explicit diagnosis of the problem.²¹⁸ The diagnosis of the problem in this instance was conceived to be too narrow. By focusing the efforts on ‘vulnerable’ children, this edited wider societal issues such as alcohol or drug dependency, poverty and housing deficiencies, which affect child welfare, out of the equation. Ms Ardern stated that “nothing I've seen suggests to me that they'll be looking at issues beyond child protection”.²¹⁹

²¹⁶ Above n 165, at 4.

²¹⁷ (5 July 2017) 723 NZPD.

²¹⁸ Keddel, above n 31, at 9.

²¹⁹ Price, above n 68.

A similar oppositional point and one that gathered much momentum was the issue of the name of the Ministry. Children's Commissioner Andrew Becroft said the emphasis on 'vulnerable children' was stigmatising and labelling.²²⁰ While a name may seem somewhat insignificant in the scheme of large reform, in this instance it proved polarising.²²¹ When combined with the other perceived deficiencies in this process, cumulatively this leads to a lack of faith in the reform.

Further issues with the reform involved the sense of history being repeated and lessons not being learnt. The first of these is the similarity between the model implemented and that which is credited as being responsible, in part, for high levels of abuse of children in state care. Ms Ardern made explicit reference to this during the first reading of the Bill:²²²

...this bill takes us backwards. At one point, in fact: "During the 1980s"—and I am taking this from the Ministry of Social Development (MSD) website—"there was increasing dissatisfaction with the negative effects statutory care practices were having on a growing number of children."—that is according to Dr Marie Connolly in 2004—"Children were frequently placed outside their kinship network, and the overrepresentation of Maori children in care meant that Maori families felt the effects of this cultural loss.

This combined with the removal of provisions integral to Māori, emphasises the importance of learning from the history of law reform. To not do so, raises concerns about the mistakes of governments past being repeated. Further, the lack of response to the practical realities that CYF struggled with suggest the same issues are doomed to resurface. There have been consistent concerns around staffing, resourcing and funding for the new Ministry and many have expressed the opinion that had CYF been properly funded from the beginning it may have been able to fulfil the goals it was set.²²³ Dr Carol Harrington of Victoria University of Wellington believed that CYF could not live up to the whanau centred approach it was built on due to under resourcing.²²⁴ Even with the Vulnerable Child Reform of 2011 – 2014 which saw the implementation of Childrens Teams there have been continued concerns around the practical effectiveness of the reform. This is because there

²²⁰ Price, above n 68.

²²¹ Katie Kenny "What's in a name: MP's weigh in on 'Ministry for Vulnerable Children'" (2 August 2016) Stuff www.stuff.co.nz; and "Ministry for Vulnerable Children name criticised as replacement for Child, Youth and Family" NZFVC www.nzfvc.org.nz.

²²² (13 December 2016) 719 NZPD 4711.

²²³ (5 July 2017) 723 NZPD.

²²⁴ Carol Harrington "New Ministry set to make same mistakes as CYF" (12 April 2017) Newsroom www.newsroom.co.nz.

has been no increase in hours to allow members of the teams to spend more time with families.²²⁵ Such concerns will permeate Oranga Tamariki if the reality of resourcing is not taken into account. Even recently the issue of resourcing of Oranga Tamariki and the staffing needs made headlines, further undermining the stability of this well intention reform.²²⁶ This concern had been brought to Mrs Tolley's attention in a 2015 internal review. Mrs Tolley mentioned this review when establishing the Panel and said that the Qualitative Review of Social Worker Caseloads, Casework and Workload Management ('the Workload Review') was completed in 2014 and found a lack of clarity existed around the core business of CYF. The Workload Review also found that social workers caseloads required review and that social workers need more capability to build relationships.²²⁷ This was not the focus with which the Panel took and suggests the timeframe, make up and task of the Panel may have meant such crucial issues were overlooked.

This is an area of law reform that is inherently emotionally charged and as such, the "buy in" of stakeholders and those in opposition is crucial to stabilise the approach of the law, and to be able to focus on the true issues at hand. These smaller issues such as framing and naming, cumulatively feed into a rhetoric of government ideology being prioritised which undermines the stability of the law.

VII Conclusion

The establishment of Oranga Tamariki, the Ministry for Vulnerable Children was supposed to end the perception that the law protecting vulnerable children and young people was crisis driven. The establishment of a stand-alone Ministry was to stabilise the law and improve outcomes for the most vulnerable. However, the law reform process to implement this change undermined rather than supported this effort. The method of reform, its intrinsic link with government ideology, close connection to previous reforms and the opposition to legislative amendments undermined the foundations the reform sought to lay. This paper suggests that the law reform process could have been better utilised as a vehicle with which to emphasise and accentuate the ultimate aims of the reform and assist in their successful implementation. The paper tracks various tensions in the reform process and suggests that these deficiencies permeate the law that has resulted. As such, the paper suggests the

²²⁵ Emily Keddel *The child Youth and Family Review: A Commentary on Prevention* (The Policy Observatory, June 2017) at 17.

²²⁶ Catherine Hutton "Social worker shortage leaving children at risk, says lawyers" (20 February 2017) RNZ www.radionz.co.nz.

²²⁷ "Review finds social workers do not have enough time with children and families" NZFVC www.nzfvc.org.nz.

ultimate goal of the reform remains unrealised, not for lack of intention, but due to fundamental flaws in gaining support from key stakeholders. As such, the likelihood of future reform is high. The law reform process could have placated rather than enhanced this risk.

It is arguable that such an emotionally charged area of law, as is child welfare, must always be in a state of transition. This is because it often must respond urgently to protect vulnerable children and young people. While it is true that an element of flexibility and change should always remain, much of the discourse in this area recognises that the foundations should be steady. This paper suggests that simple considerations in the law reform process can assist in implementing such long lasting and effective reform and that a rushed reform process permeates the law that results. A considered process could have, at the very least, appeased some of the issues that impacted the perception of stability of this law reform process. For the sake of those who cannot defend themselves, we must do better. While we are closer than we were, we are not there yet.

VIII Bibliography

A Legislation

1 Acts

KiwiSaver Act 2006.

Oranga Tamariki Act 1989.

Vulnerable Children Act 2014.

2 Bills

Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (224-1).

Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (242-2).

Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (242-3).

Vulnerable Children Bill 2013 (150-1).

Vulnerable Children Bill 2013 (150-2).

Vulnerable Children Bill 2013 (150-3).

B Journal Articles

Jane Blaikie “Kids experiences leave long term scars” (2013) 4 Education Aotearoa 28.

Kristie Carter, Fiona Imlach Gunasekara and Tony Blakely “The relationship between trends in income inequalities and poverty in New Zealand” (2003) 9 Policy Quarterly 24.

Mark Henaghan “Why we need legislation to address child poverty” (2013) 9 Policy Quarterly 30.

Karen J. Hoare “Children’s participation in society is likely to lead to their improved health and wellbeing” (2014) 127 New Zealand Medical Journal 12.

Emily Keddell “Substantiation Decision Making and Risk Prediction in Child Protection Systems” (2016) 12 Policy Quarterly 46.

Michael A. Peters and Tina Besley “Children in crisis: child poverty and abuse in New Zealand” (2014) 46 Educational Philosophy and Theory 945.

Susan St John “Putting children at the centre: making policy as if children mattered” (2014) 46 Educational Philosophy and Theory 1004.

Joy Swanson Ernst “Culture and Child Welfare Insights from New Zealand” (2001) 44 International Social Work 163.

C Parliamentary and Government Materials

1 Hansard

(17 September 2013) 693 NZPD 13382.

(15 April 2014) 698 NZPD 17278.

(15 April 2014) 698 NZPD 17262.

(13 May 2014) 698 NZPD 17806.

(13 May 2014) 698 NZPD 17801.

(14 May 2014) 698 NZPD 17878.

(17 June 2014) 699 NZPD 18595.

(19 June 2014) 699 NZPD 18739.

(13 December 2016) 719 NZPD 4711.

(29 June 2017) 723 NZPD 19148.

(5 July 2017) 723 NZPD 19287.

(6 July 2017) 723 NZPD

2 Submissions to Select Committees

New Zealand Law Commission “Children, Young Persons and Their Families (Oranga Tamariki) Legislation”.

Privacy Commissioner “Privacy Commissioners submission to the Social Services Committee on the Children, Young Persons, and Their Families (Oranga Tamariki) Legislation Bill”.

3 Select Committee Reports

Children, Young Persons and Their Families (Oranga Tamariki) Legislation Bill 2016 (242-2) (select committee report).

Vulnerable Children Bill 2013 (150-2) (select committee report).

D Reports

Howard Broad *Review of Child, Youth and Family Complaints System: A Report to the Minister of Social Development* (Ministry of Social Development, June 2013).

Children’s Commissioner *State of Care 2015: What we learnt from monitoring Child, Youth and Family* (Office of the Children’s Commissioner, August 2015).

S Crichton and others *New findings on outcomes for children and young people who have contact with Child, Youth and Family* (Ministry of Social Development, 2015).

Expert Advisory Group on Solutions to Child Poverty *Solutions to Child Poverty in New Zealand evidence for action* (Office of the Children's Commissioner, December 2012).

Ernest Young *Investment Approach for Vulnerable Children Feasibility Assessment* (Ernest Young, December 2015).

Iwi Chairs Forum "A Covenant for our Nations Children" (Henwood Trust, August 2016).

Emily Keddel *The Child Youth and Family Review: A Commentary on Prevention* (The Policy Observatory, June 2017).

Maori Affairs Committee *Inquiry into the determinants of wellbeing for tamariki Maori* (Maori Affairs Committee, December 2013).

Ministry of Social Development *Briefing to the incoming Ministers* (Ministry of Social Development, October 2014).

Ministry of Social Development *Children's Action Plan Identifying, Supporting and Protecting Vulnerable Children* (Ministry of Social Development, October 2012).

Ministry of Social Development *Every child thrives, belongs, achieves: The Green Paper for Vulnerable Children* (Ministry of Social Development, July 2011).

Ministry of Social Development *Investing in Services for Outcomes Community Investment Strategy Update 2016* (Ministry of Social Development, 2016).

Ministry of Social Development *Modernising Child, Youth and Family Programme Business Case: Strategic Case Draft for Discussion* (Ministry of Social Development, 15 December 2014).

Ministry of Social Development *The Green paper for Vulnerable Children Complete Summary of Submissions* (Ministry of Social Development, October 2012).

Ministry of Social Development *The White Paper for Vulnerable Children Volume I* (Ministry of Social Development, October 2012).

Ministry of Social Development *The White Paper for Vulnerable Children Volume II* (Ministry of Social Development, October 2012).

Modernising Child, Youth and Family Expert Panel *Expert Panel Final Report: Investing in New Zealand's Children and their Families* (Ministry of Social Development, December 2015).

Modernising Child, Youth and Family Expert Panel *Modernising Child, Youth and Family Expert Panel: Interim Report* (Ministry of Social Development, July 2015).

Public Services Association *CYF Review let's get real key discussion points from the symposium on the CYF Review* (PSA, 2015).

Statistics New Zealand *Vulnerable children and families: Some findings from the New Zealand General Social Survey* (Statistics New Zealand, October 2012).

Social Sector Forum *Briefing to the incoming Government* (Social Sector Forum, 2014).

Anne Tolley *Investing in Children Legislative Reform: Paper Eight – Accountabilities Cabinet Social Policy Committee Paper* (Ministry of Social Development).

Anne Tolley *Investing in Children Legislative Reform: Underpinning the new operating model Cabinet Social Policy Committee Paper* (Ministry of Social Development)

Anne Tolley *Investing in New Zealand's Children and Their Families Overview – Final Report of the Modernising CYF Expert Panel: Proposed Blueprint for Reform and Implementation Cabinet Social Policy Committee Paper* (Ministry of Social Development).

Anne Tolley *Investing in New Zealand's Children and their Families Paper Two – Final Report of the Modernising CYF Expert Panel Policy and Legislation Cabinet Social Policy Committee Paper* (Ministry of Social Development).

Anne Tolley *Modernising Child, Youth and Family Expert Panel Cabinet Social Policy Committee Paper* (Ministry of Social Development, November 2015).

Anne Tolley *Modernising Child, Youth and Family Expert Panel: Interim Report Cabinet Social Policy Committee Paper* (Ministry of Social Development)

Anne Tolley *Progress in Implementing the New Vulnerable Children Operating Model Cabinet Social Committee Paper* (Ministry of Social Development).

Anne Tolley and Paula Bennett *Organisational Form to Support the new Ministry for Vulnerable Children* (Ministry of Social Development and Ministry of State Services).

The Treasury *Research Using Administrative Data to Support the Work of the Expert Panel on Modernising Child, Youth and Family* (The Treasury, May 2016).

E Internet Resources

“ACC Board” ACC www.acc.co.nz.

“Childrens Action Plan Programme” Ministry of Health www.health.govt.nz.

“Child advocate Anton Blank slams new ‘hugely flawed’ Ministry for Vulnerable Children” (31 March 2017) Newshub www.newshub.co.nz.

“Cora-Ellen’s inquest reveals CYF loophole” (17 February 2009) Stuff www.stuff.co.nz.

“Core Services” Ministry of Social Development www.msd.govt.nz.

“Douglas to put Maori view on CYF review” (9 July 2015) Waatea News www.waateanews.com.

“Govt confirms new Ministry for Vulnerable Children” (18 August 2016) RNZ www.radionz.co.nz.

“Government announces reforms to Child, Youth and Family” (8 April 2016) New Zealand Family Violence Clearinghouse www.nzfvc.org.nz.

“Hon Anne Tolley” beehive.govt.nz www.beehive.govt.nz.

“Hon Paula Bennett” beehive.govt.nz www.beehive.govt.nz.

“Ministry for Vulnerable Children name criticised as replacement for Child, Youth and Family” NZFVC www.nzfvc.org.nz.

“Ministry for Vulnerable Children, Oranga Tamariki” Ministry of Social Development www.msdc.govt.nz.

“Modernising Child, Youth and Family” Ministry of Social Development www.msdc.govt.nz.

“MSD official steps down over privacy breach” (19 May 2017) RNZ www.radionz.co.nz.

“New children’s ministry to be under ‘constant restructure’” (1 April 2017) RNZ www.radio.nz.

“Oranga Tamariki Bill Passes into Law” (14 July 2017) Oranga Tamariki Ministry for Vulnerable Children www.mvcot.govt.nz.

“Part Two of the Modernising Child Youth and Family Expert Panel’s Interim Report: The Good, The Bad and the Potentially Ugly” (22 October 2015) RSW www.reimagining-social-work.nz.

“Privacy commissioners report criticises MSD collection of individual client data” (6 April 2017) NZFVC www.nzfvc.org.nz.

“Review finds social workers do not have enough time with children and families” NZFVC www.nzfvc.org.nz.

“Social Investment” (12 July 2017) The Treasury www.treasury.govt.nz.

“The Alternative Welfare Working Group” Child Poverty Action Group www.cpag.org.nz.

“Vulnerable Children Bill 2014” New Zealand Parliament www.parliament.nz.

“Vulnerable Children Predictive Modelling” Ministry of Social Development www.msdc.govt.nz.

“Who Are We” Voyce Whakarongo Mai www.voyce.org.nz.

Warren Barton “Faces of Innocents: Craig Manukai, ‘the grease-weasel’” (25 July 2016) Stuff www.stuff.co.nz.

Paula Bennett “Welfare Reform” (29 February 2012) beehive.govt.nz www.beehive.govt.nz.

Paula Bennett “White Paper for Vulnerable Children” (11 October 2012) beehive.govt.nz www.beehive.govt.nz.

Kate Chapman “Bennett unapologetic about welfare reforms” (20 March 2013) Stuff www.stuff.co.nz.

Mānia Clarke “New child and youth protection bill challenged” (8 December 2016) Māori Television www.maoritelevision.com.

Emma Espiner “Closing an ugly chapter in our history” newsroom www.newsroom.co.nz.

Carol Harrington “New Ministry set to make same mistakes as CYF” (12 April 2017) Newsroom www.newsroom.co.nz.

Mei Heron and Demelza Leslie “Govt backs down over whānau-first care” (16 March 2017) RNZ www.radionz.co.nz.

Catherine Hutton “New Ministry needed extra \$22m to set up” (13 September 2017) RNZ www.radionz.co.nz.

Catherine Hutton “Social worker shortage leaving children at risk, says lawyers” (20 February 2017) RNZ www.radionz.co.nz.

Emma Jolliff “Resources, money isn’t the issue for CYF cases – Tolley” (27 August 2015) Newshub www.newshub.co.nz.

Martin Kay “Extensive Welfare Shake Up Needed: report” (22 February 2011) Stuff www.stuff.co.nz.

Katie Kenny “Faces of Innocents CYF to be shut down and replaced by a new ministry” (28 July 2016) Stuff www.stuff.co.nz.

Katie Kenny “What’s in a name: MP’s weigh in on ‘Ministry for Vulnerable Children’” (2 August 2016) Stuff www.stuff.co.nz.

Katie Kenny and Laura Walters “Who named the Ministry for Vulnerable Children, Oranga Tamariki” (22 October 2016) Stuff www.stuff.co.nz.

RSW Collective “The Absent Elephant in the 2016 ‘Modernising Child, Youth and Family Expert Panel Report’ (23 April 2016) RSW www.reimaginingsocialwork.nz.

Stacey Kirk “Back to the table over controversial “whanau first” clause, Government to soften stance” (15 March 2017) Stuff www.stuff.co.nz.

Stacey Kirk “CYF in line for major overhaul” (1 April 2015) Stuff www.stuff.co.nz.

Stacey Kirk “Former state care kids included in CYF review” (7 July 2015) Stuff www.stuff.co.nz.

Stacey Kirk “No privacy breach of vulnerable client data, but review cites poor MSD approach to privacy” (16 May 2017) Stuff www.stuff.co.nz

Stacey Kirk “Privacy Commissioner has slammed Social Development data collection plans as too intrusive” (6 April 2017) Stuff www.stuff.co.nz.

Stacey Kirk “Record number of children in the care of CYF as Govt prepares for new era in state care” (30 March 2017) Stuff www.stuff.co.nz.

Stacey Kirk “Social workers fuming over CYF overhaul snub” (18 May 2015) Stuff www.stuff.co.nz.

Stacey Kirk and Katie Kenny “A Trail of Broken Promises”: 1992 – 2015” (24 November 2015) Stuff www.stuff.co.nz.

Jan Logie “Backdown on whānau-first placements a victory for Māori” 15 March 2017
www.greens.org.nz;

Jan Logie and Metiria Turei “Vulnerable Children’s Bill” Green Party of Aotearoa New Zealand
www.home.greens.org.nz.

Laura McQuillan “Q&A: Whats different about Oranga Tamariki, the Ministry for Vulnerable Children?” (3 April 2017) Stuff www.stuff.co.nz.

Jo Moir “Children in state care are being abuse and CYF is failing them – report” (27 August 2015) Stuff www.stuff.co.nz.

Jo Moir “Dame Paula Rebstock has learnt to ignore the criticism that comes with the job” (31 December 2015) Stuff www.stuff.co.nz.

Jane Patterson “New CYF bill ‘bone of contention’ for Māori Party” (17 February 2017) RNZ www.radionz.co.nz.

Jane Patterson “New plan for children in care unveiled” (7 April 2016) RNZ www.radionz.co.nz

Jane Patterson “PM questions wisdom of whanau first” (25 September 2015) RNZ www.radionz.co.nz.

Phil Pennington “Girls report sexual assault while in state care” (3 August 2017) RNZ www.radionz.co.nz.

Rosanna Price “New ‘Ministry for Vulnerable Children’ boss to lead culture change, Tolley says” (18 August 2016) Stuff www.stuff.co.nz.

Rob Stock “Debunking the hild poverty myths” (24 May 2015) Stuff www.stuff.co.nz.

Adriana Weber “Girl relentlessly bullied before death” (3 October 2017) RNZ www.radionz.co.nz.

F Other Resources

1 Newspapers

“Bennett rejects ‘hypocrite’ claims” *The New Zealand Herald* (online ed, New Zealand, 28 February 2012).

“CYF admits getting call from Coral’s father” *The New Zealand Herald* (online ed, Auckland, 17 October 2003).

“‘No jab no pay’: thousands immunise children to avoid family payment cuts” *The Guardian* (online ed, 31 July 2016).

“Report into Girls deaths find fault with CYF” *The New Zealand Herald* (online ed, Auckland, 12 November 2003).

“Report on Burrow’s call to CYF released tomorrow” *The New Zealand Herald* (online ed, Auckland, 17 December 2003).

“Secret recording on CYF case released to Media” *The New Zealand Herald* (online ed, Auckland, 27 February 2017).

Simon Collins “Nearly one in three New Zealand children ‘living in poverty’” *The New Zealand Herald* (online ed, Auckland, 15 December 2015).

Simon Collins “Panel issue scathing report of Child, Youth and Family’s Performance” *The New Zealand Herald* (online ed, Auckland, 24 September 2015).

Isaac Davidson “Govt signals change of heart on child placements, but will not go back to whanau first” *The New Zealand Herald* (online ed, Auckland, 16 March 2017).

Nicholas Jones “Ministry for Vulnerable Children to be established” *The New Zealand Herald* (online ed, Auckland, 18 August 2016).

Jared Savage “CYFS warned of ‘next Nia Glassie’ before baby Isaiah Neil dies in car while family smoke drugs” *The New Zealand Herald* (online ed, Auckland, 1 July 2017).

Donna Wynd and Susan St John “Enlightening the welfare working group” *The Dominion Post* (online ed, Wellington, 29 March 2011).

2 *Press Releases*

Amy Adams “National’s plan for serious young offenders” (press release, 13 August 2017).

Brendan Boyle “Investing in New Zealand’s Children and their Families” (press release, 7 April 2016).

Judith Collins “Minister welcomes Expert Panel probation plan” (press release, 14 October 2009).

Paula Bennett “Green Paper for Vulnerable Children” (press release, 27 July 2011).

Paula Bennett “Green Paper submissions released” (press release, 14 August 2012).

Paula Bennett “Independent Inquiry into serious abuse” (press release, 20 January 2011).

Paula Bennett “New Board to oversee Work and Income performance” (press release 15 May 2012).

Paula Bennett “New crack down on gangs and drugs” (press release, 3 September 2017).

Paula Bennett “Paula Rebstock to chair Welfare Working Group” (press release, 13 April 2010).

Paula Bennett “Vulnerable Children Bill Passes into Law” (press release, 19 June 2014).

Paula Bennett “Welfare reforms pass into law” (press release, 9 April 2013).

Ruth Dyson “CYF baseline review findings released” (press release, 23 October 2003).

Ruth Dyson “Minister welcomes CYF reports” (press release, 18 December 2003).

Anne Tolley “Independent expert panel to lead major CYF overhaul” (press release, 1 April 2015).

Anne Tolley “Minister welcomes State of Care report” (press release, 27 August 2015).

Anne Tolley “New ministry dedicated to care and protection” (press release, 18 August 2016).

Anne Tolley “New Ministry for Vulnerable Children, Oranga Tamariki launched” (press release, 31 March 2017).

Anne Tolley “Next steps for CYF overhaul” (press release, 24 September 2015).

Anne Tolley “Radical changes to child protection and care” (press release, 7 April 2016).

Anne Tolley “Second major care reform Bill introduced” (press release, 8 December 2016).

Anne Tolley “Youth Advisory Panel to aid CYF design” (press release, 7 July 2015).

3 Speeches

Paula Bennett “White Paper for Vulnerable Children, Launch” (11 October 2012).

Bill English “Speech to the Treasury Guest Lecture Series on Social Investment” (17 September 2015).

Anne Tolley “The future of child protection and care” (7 April 2016).

Anne Tolley “New Ministry to focus solely on vulnerable children” (18 August 2016).

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