



---

LAW·COMMISSION  
TE·AKA·MATUA·O·TE·TURE

---

*Report 53*

## Justice

The Experiences of Māori Women

## Te Tikanga o te Ture

Te Mātauranga o ngā Wāhine Māori  
e pa ana ki tēnei

*Me aro ki te ha o Hineahuone  
"Pay heed to the dignity and essence of women"*

*April 1999*  
Wellington, New Zealand

The Law Commission is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its purpose is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand.

The Commissioners are:

The Honourable Justice Baragwanath – President

Joanne Morris obe

Judge Margaret Lee

DF Dugdale

Denese Henare onzm

Timothy Brewer ed

The office of the Law Commission is at 89 The Terrace, Wellington

Postal address: PO Box 2590, Wellington 6001, New Zealand

Document Exchange Number: sp 23534

Telephone: (04) 473-3453, Facsimile: (04) 471-0959

Email: [com@lawcom.govt.nz](mailto:com@lawcom.govt.nz)

Internet: [www.lawcom.govt.nz](http://www.lawcom.govt.nz)

Report/Law Commission, Wellington, 1999

issn 0113-2334 isbn 1-877187-30-5

This report may be cited as: nzlc r53

Also published as Parliamentary Paper E 31AN

# Summary of contents

	<i>Page</i>
Letter of transmittal	ix
Preface	xi
Acknowledgements	xiii
Glossary	xv
Executive summary	xix
1 The Treaty of Waitangi	1
2 Value and recognition of Māori women	11
3 Māori women's experiences in the justice system	27
4 Identifying needs to develop solutions for Māori women	44
5 The justice sector	65
6 Towards community participation	104
Appendices	
A Consultation hui	125
B Te Tiriti o Waitangi	126
C Treaty principles	129
D List of contributors and agencies consulted	133
E A selection of Māori women's comments	134
Select bibliography	153

---

# Contents

	<i>Para</i>	<i>Page</i>
Letter of transmittal		ix
Preface		xi
Acknowledgements		xiii
Glossary		xv
Executive summary	<i>E1</i>	xix
1 THE TREATY OF WAITANGI	1	1
Applying the principles of the Treaty of Waitangi	8	3
Policy objectives	12	4
<i>Identifying Māori needs and aspirations</i>	14	4
<i>The value of culture and distinctiveness</i>	17	5
<i>Creating effective systems</i>	18	5
Treaty principles	20	6
(i) <i>Principle of partnership</i>	21	6
(ii) <i>Principle of participation</i>	22	6
(iii) <i>Principle of options</i>	23	7
<i>The Treaty's importance</i>	24	7
Barriers to justice	26	7
<i>Cultural disregard</i>	26	7
<i>Socio-economic disadvantage</i>	28	8
<i>Access to a secure cultural identity</i>	30	8
<i>Access to society and to the economy</i>	33	9
<i>Access to responsive mainstream services</i>	34	9
<i>Access to services by Māori for Māori</i>	35	9
2 VALUE AND RECOGNITION OF MÄORI WOMEN	38	11
The beginnings	39	11
Pre-European society and Māori women	41	12
<i>Women as nurturers</i>	41	12
<i>Women as organisers</i>	44	13
<i>Women of rank</i>	46	13
<i>Women as owners of "land-use rights"</i>	51	15
<i>Te reo</i>	52	15
Erosion of the roles and value of Māori women	53	15
The introduction of English laws and culture	61	17
<i>The English family</i>	62	18
<i>Marriage at common law</i>	65	18
<i>Māori customary marriage</i>	67	19
<i>Divorce</i>	69	20

	<i>Para</i>	<i>Page</i>
Internalising colonial values	71	20
The impact of law after the Treaty	73	21
<i>Land alienation</i>	74	21
<i>Māori women, marriage and their families</i>	77	22
<i>Adoption and guardianship</i>	81	23
<i>Changes in the law</i>	86	24
Conclusion	93	26
3 MĀORI WOMEN'S EXPERIENCES IN THE JUSTICE SYSTEM	95	27
Systemic failure	98	28
Failure to acknowledge Māori cultural values	98	28
<i>Whakamā</i>	100	28
<i>Whakamā and re-integration</i>	102	29
<i>Whānau</i>	104	29
<i>Whānau is not just a nuclear family</i>	105	29
<i>Te reo Māori</i>	111	31
<i>Whenua</i>	113	32
Socio-economic disadvantage affects access to justice	115	32
<i>Access to information</i>	116	33
<i>Access to legal services</i>	118	33
Attitudes within the justice sector	124	34
Erosion of the value of Māori women	133	36
Suggestions for change	137	37
Acknowledgement of Māori values	138	37
Developing effective and responsive services in the justice sector	140	38
<i>Recruitment of Māori in the justice sector</i>	140	38
<i>Training in the justice sector</i>	144	39
Access to information	146	39
<i>A possibility for the future</i>	147	40
Access to legal services	152	41
<i>The option of services by Māori for Māori</i>	152	41
<i>Community-based services</i>	154	41
<i>Community service providers</i>	156	42
Conclusion	160	43

	<i>Para</i>	<i>Page</i>
4	IDENTIFYING NEEDS TO DEVELOP SOLUTIONS FOR MÄORI WOMEN	162 44
	Cultural and socio-economic disparity	166 45
	Users of the criminal justice system	168 45
	The demographic context	176 48
	<i>Size and age structure of the Mäori population</i>	177 48
	<i>Geographic distribution</i>	180 49
	The socio-economic context	184 50
	<i>Income</i>	185 50
	<i>Educational qualifications</i>	191 52
	<i>Unemployment</i>	192 53
	<i>One-parent families</i>	195 53
	Outcomes	200 55
	<i>Suspensions and expulsions from school</i>	203 57
	<i>The socio-cultural context</i>	204 57
	<i>Whānau</i>	207 58
	<i>Iwi</i>	210 59
	<i>Te reo Mäori</i>	213 60
	Mäori in the Legal Profession	217 62
	Conclusion	221 63
	Epilogue	225 64
5	THE JUSTICE SECTOR	230 65
	State sector reform	235 66
	Mäori Affairs and Te Puni Kōkiri	239 67
	Strategic and key result areas	247 69
	Central agencies	254 72
	<i>State Services Commission</i>	255 72
	<i>The Treasury</i>	268 77
	<i>Department of the Prime Minister and Cabinet</i>	273 78
	Policy Ministries	277 79
	<i>Te Puni Kōkiri (Ministry of Mäori Development)</i>	277 79
	<i>Ministry of Women's Affairs</i>	281 81
	<i>Ministry of Justice</i>	289 82
	Departments with policy and operational roles	297 84
	<i>Department of Social Welfare</i>	297 84
	<i>From Puaa-Te-Ata-Tu to Te Punga</i>	299 85
	<i>Income Support</i>	307 88
	<i>Community Funding Agency</i>	310 89

	<i>Para</i>	<i>Page</i>
<i>Children and Young Persons Service</i>	317	91
<i>Social Policy Agency</i>	322	92
<i>Equal Employment Opportunities</i>	323	93
<i>New Zealand Police</i>	324	93
<i>Department for Courts</i>	332	95
<i>Department of Corrections</i>	339	97
<i>Cultural responsiveness policy and implementation plan</i>	343	98
Legal Services Board	349	99
Conclusion	356	101
<i>Departmental Policies</i>	356	101
6 TOWARDS COMMUNITY PARTICIPATION	362	104
Treaty Principles to Guide Strategies for Change	366	104
<i>"Partnership" as a guide for change</i>	369	105
<i>"Options" as a guide for change</i>	379	108
<i>"Participation" as a guide to strategies for change</i>	385	110
Ensuring effective justice services	397	113
Co-ordination of existing services	398	113
<i>Family Violence Focus Group</i>	398	113
<i>Strengthening Families Strategy</i>	404	115
Programme development	407	115
Interagency and community co-operation	414	117
Assessing and monitoring performance	418	118
Treaty principles and measuring outcomes	422	119
<i>Participation</i>	423	120
<i>Increased autonomy</i>	424	120
<i>Cultural endorsement</i>	426	121
Conclusion	427	121
APPENDICES		
A Consultation hui	A1	125
B Te Tiriti o Waitangi		126
C Treaty principles	C1	129
D List of contributors and agencies consulted		133
E A selection of Māori women's comments		134
Select bibliography		153





1 April 1999

Dear Minister

In September 1995 your predecessor the Rt Hon Sir Douglas Graham referred terms for consideration on Māori Women's Access to Justice : He Putanga mö ngā Wāhine ki te Tika.

I am pleased to submit to you Report 53 of the Law Commission, *Justice: The Experiences of Māori Women : Te Tikanga o te Ture: Te Mātauranga o ngā Wāhine Māori e pa ana ki tēnei.*

Yours sincerely

*The Hon Justice Baragwanath*  
President

*The Hon Tony Ryall*  
Minister of Justice  
Parliament Buildings  
Wellington



# Preface

The primary purpose of this report is to assist those involved in New Zealand's justice institutions, particularly those who are employed by the state and on whom the Crown depends in the performance of its Treaty obligations, to understand and respond better to the needs and values of Māori women.

We are not aware of any other research that has specifically focused on Māori women as clients or users of justice sector services. We accept that many of the problems identified in this report could apply equally to Māori men. This report does not preclude future work on their specific needs.

The terms of reference, approved by the Minister of Justice in September 1995, are as follows:

## WOMEN'S ACCESS TO JUSTICE : HE PUTANGA MO NGĀ WAHINE KI TE TIKA

The Law Commission: Te Aka Matua o te Ture will examine the response of the legal system to the experiences of women in New Zealand, recognising the importance of the Treaty of Waitangi in the examination of Māori women's experiences.

The Law Commission: Te Aka Matua o te Ture will take account of the multi-cultural character of New Zealand society and New Zealand's obligations under international law.

Priority will be placed on examining the impact of laws, legal procedures and the delivery of legal services upon:

- family and domestic relationships,
- violence against women, and
- the economic position of women

At all stages of the project, there will be widespread consultation with women throughout New Zealand. The project will also draw upon, and complement, the work of other government agencies, the Judicial Working Group on Gender Equity and other Law Commission projects.

The Law Commission: Te Aka Matua o te Ture will report to the Minister of Justice concerning:

- principles and processes to be followed by policy makers and lawmakers,
- specific law reforms, and
- educational and other strategies

which will promote the just treatment of women by the legal system.

The Commission has already published a number of discussion papers which take into account the concerns of Māori women:

- *Information about Lawyer's Fees* (nzlc mp3)
- *Women's Access to Legal Information* (nzlc mp4)
- *Women's Access to Civil Legal Aid* (nzlc mp8)
- *Women's Access to Legal Advice and Representation* (nzlc mp9)
- *Lawyers' Costs in Family Law Disputes* (nzlc mp10)
- *The Education and Training of Law Students and Lawyers* (nzlc mp11)

### *Consultation with Māori women*

There was an extensive programme of consultation with Māori women through hui arranged with the assistance of Te Puni Kōkiri (Ministry of Māori Development), the Women's Refuge Collective and the Māori Women's Welfare League. The views of the women were audiotaped and transcribed. The transcript was compiled by the Māori women who had planned and helped facilitate the hui, and then considered by a wider group of Māori women brought together to advise the Law Commission. It was then presented to the Law Commission's Māori Committee.

These groups were satisfied that the undertaking made in the terms of reference – to recognise the importance of the Treaty of Waitangi in an examination of Māori women's experiences – required the exploration of two matters which were unique to Māori women:

- the fact that Māori women sourced their understandings of justice from the Treaty of Waitangi and Māori cultural values, and
- the fact that a large measure of Māori women's concerns about their access to justice was directed at the policies and practices of Crown justice sector agencies.

Accordingly, the decision was taken to produce a draft report for comment by, and discussion amongst, Crown justice sector agencies (see the list of agencies consulted in appendix D). The responses from these agencies and other contributors have been incorporated into this report.

# Acknowledgements

## *Hepora Raharuhi Young 1925–1996*

We pay tribute to the late Hepora Young of Te Arawa, who was a member of the Māori Committee to the Law Commission and who played a major role in planning the project's course, including the nationwide programme of consultation with Māori women. She had intended to travel the country to lead the meetings with Māori women but, to her bitter disappointment, her failing health prevented that. During 1996, Hepora maintained a vital interest in all the work being conducted in the project and continued to provide invaluable advice and support, increasingly by phone, fax and mail from her home in Horohoro, where she passed away on 5 December 1996.

### *He Poroporoaki*

Takoto mai rā e Kui Hepora, te rangatira, te wahine toa, te puāwaitanga o nga moemoeā o rātou mā kua mene atu ki te pō.

Moe mai rā e te Whaea, te Tipuna, te Kai-whakaako, te Whakaruruhau mo Te Aka Matua o te Ture.

Kei te heke tonu nga roimata mōu.

Kua ngaro koe, te Tohunga-tā kupu e kaha nei ki te kawē ngā rau mo Te Reo Māori.

Haere ki a Hine-nui-te-Pō, haere ki Te huinga-o-te-kahurangi.

Aue te mamae, te pouri nui.

### *A farewell*

Rest in peace Hepora, chief, warrior woman, the fruition of the dreams of those long since gone to the night.

Sleep on Mother, Grandparent, Teacher and Protector of the Law Commission's Kaupapa Māori

The tears continue to fall

Farewell to a noted writer who worked hard to carry the fronds of Māori language.

Go to the Great lady of the night, go to the gathering place in the heavens.

What pain, what sorrow.

We are indebted to all the women who attended and spoke at the consultation hui, and to those who helped us organise the hui and arrange for women to attend.

We are grateful to all the contributors to the report, and in particular, former Commissioner Joanne Morris, who until May 1997 led this project as part of the Women's Access to Justice reference; Whetumarama Wereta, and Caren Wickcliffe. We also acknowledge the support and guidance of the members of the Māori Committee to the Law Commission.

Rt Rev Bishop Manuhia Bennett onz cmg

His Honour Justice ETJ Durie

Professor Mason Durie

Judge Michael J A Brown cnzm

Whetumarama Wereta

Te Atawhai Tairaoa

And finally we acknowledge the contribution of all those at the Law Commission, both past and present, who have worked on this report.

*Tēnei te mihi kia koutou katoa mō a  
koutou āwhina, tautoko, kaha  
Ki te hiki tēnei kaupapa  
Tēnā koutou katoa*

---

# Glossary

a tātou tamariki	the children of us all
hapū	extended kin group, consisting of many whānau
hui	meeting, gathering
iwi	tribe, descent group consisting of many hapū
kaitiaki	guardian
kaitiakitanga	guardianship
karakia	prayer
kaumātua	elder
kaupapa	strategy, theme, central idea, topic
kōhanga reo	language nest
komiti whakahaere	organising or management committee
kura kaupapa Māori	total immersion school
mana	personal and political authority
marae	<ul style="list-style-type: none"><li>• the open space in front of the meeting house</li><li>• the modern marae complex, including open marae, meeting house, dining hall, kitchen facilities and toilet facilities functions as a meeting ground and symbol of identity for whānau and hapū, and sometimes also for communities formed on other bases, such as residence in the same town or suburb, or affiliation to a religious denomination</li></ul>
paepae	threshold (in Tai Tokerau “taumata” was and often still is the preferred term)
Pākehā	New Zealander of European descent

pātere	one type of traditional poem typically chanted rather than sung
rohe	boundary, region, area
rūnanga	council, usually representative of a hapū or iwi
tangata whenua	literally “people of the land” (Māori)
taonga	treasure
tapu	sacred; under ritual restriction
te reo Māori	the language
teina	younger brother of male, younger sister of female; cousin of same sex, same generation but junior rank
tikanga	law, custom, traditional behaviour, philosophy
tuakana	older brother of male, older sister of female; cousin of same sex, same generation but senior rank
tupuna	ancestor, grandparent
tūrangawaewae	standing place, home, home turf
wāhi tapu	sacred place
wahine	woman, female
waiata aroha	song or poem of love and/or sorrow or loss
waiata oriori	song or poem informing a child of its origins, often incorporating whakapapa
waiata	song
wānanga	programme or school of learning; series of discussions; sometimes used today to mean “seminar”
whakamā	an adjective used to describe a range of feelings from shyness through embarrassment to shame and consciousness of fault, and behaviour involving varying degrees of withdrawal and unresponsiveness



whakapapa	genealogy, sometimes limited to descendants of a common ancestor, sometimes including spouses; recitation of genealogies in proper order
whānau	nuclear family, or extended family, or a community with a common purpose or identity; in the definition of whānau, circumstances and context are important variables
whanaungatanga	kinship, connectedness, a web of relationships of descent and marriage
wharehenui	meeting house
whenua	land; placenta (traditionally the placenta and umbilical cord were buried on ancestral land)

---



# Executive summary

- E1 **T**he purpose of this report is to assist justice sector institutions to better understand and respond to the needs and values of Māori women.
- E2 Many of the women whom we consulted were concerned that they did not have access to the legal system; too often they said it was something of which they did not feel part. They expressed their feelings in terms of inadequate performance of the Treaty of Waitangi. We have attempted to grasp what they sought to convey and then to work out how to deal with the result.
- E3 Chapter 1 begins with what the women saw as the relevant principles of the Treaty of Waitangi. The Treaty promised that:
- the values of Māori must be respected and protected (the Article II promise); and
  - Māori should form part of the new society and feel as much at home in New Zealand and its institutions as other New Zealanders (the Article III promise, reinforced by the Preamble to the Treaty of Waitangi).
- E4 Both promises suggest that, as far as practicable, our institutions and their practices should take account of Māori values. Some women indeed went further and asserted that a single justice system for all New Zealanders infringed the promise of the Māori language version of the Treaty of Waitangi that te tino rangatiratanga should be preserved. Most, however, accepted that a single system of justice is necessary, but must acknowledge Māori values and offer diverse solutions where practicable.
- E5 The challenge is to develop systems that will honour both elements of the commitment contained in the Treaty by which non-Māori New Zealanders secured their guarantee of places in New Zealand society.
- E6 We identify at least three principles of particular importance to guide justice sector agencies' policy and operational efforts to ensure that Māori women are treated justly. We state that Māori values have a part to play in the laws, legal institutions and legal system. Although, some changes can be discerned in the changing attitudes and development of laws, significant barriers to justice have been identified by Māori women: they are cultural disregard

of Māori values and socio-economic disadvantage. We have identified two major goals to improve Māori women's access to justice:

- access to a secure cultural identity, and
- full participation in society and the economy.

E7 Chapter 2 sketches a brief picture of the role of Māori women prior to and at the time of the signing of the Treaty of Waitangi. It is intended to provide some background information about the complementary roles of men and women in Māori society and to highlight the impact on Māori social organisation of land alienation and laws affecting Māori women and their families. The disintegration of the basic social unit had profound effects on Māori women. The value of their roles in the organisation of the whānau was lost, especially as traditional sources of support (including from Māori men) weakened. Marriage according to custom was invalidated and legal marriage resulted in a relationship that had consequences for property and children. Customary succession practices were affected with serious consequences for Māori women. Meaningful participation in their own society was undermined. The rules and values of colonial society effectively marginalised them from participating in the new regime.

E8 Chapter 3 is based on the comments of Māori women, a selection of which we have set out in appendix E. These views were recorded at the consultation hui held by the Law Commission. Māori women spoke of the Treaty and the failure of the justice sector to recognise Māori cultural values and to provide the option of services based on those values. They spoke of the cost of accessing justice services, for instance, the affordability of legal services, inadequate access to legal information and limited or no access to legal services. Their views also expressed anger, frustration and disillusionment as a result of their negative experiences within the justice system. While the views expressed are not representative of those held by all Māori women, or indeed all those at the hui, the general dissatisfaction with justice services is too recurrent to be disregarded. Overall, they perceive the justice sector treats them as having little or no value. The systemic failure identified by the experiences of Māori women requires urgent attention and change.

E9 Chapter 4 identifies the needs of Māori women having regard to their socio-economic position. The access of Māori women to justice cannot be considered only in the narrow context of services, but requires some additional understanding of the extent of their marginalisation in society generally. The marginalisation of Māori women is apparent not only through the views of the women consulted, but also through the statistical evidence which demon-

strates the disparities between Māori and non-Māori women and between Māori women and Māori men. Māori women did not speak specifically of low income, lack of education and the over-representation of Māori in criminal law statistics, but the statistics highlight these disadvantages. Māori women's access to justice cannot be separated from the level and quality of their participation, both in Māori society and in society generally.

E10 Chapter 5 provides an overview of the role of justice sector agencies and of their polices and activities which bear most directly upon Māori women's access to justice. While there is a clear willingness by Crown agencies to acknowledge the Treaty of Waitangi, there is less clarity as to how it may be implemented into specific strategies and achieve outcomes in accordance with the Treaty. Moreover, there is little evidence of policy initiatives which specifically focus on the value of Māori women in New Zealand society.

E11 Chapter 6 develops the three principles of the Treaty of Waitangi (identified in chapter 1) to guide justice sector agencies' policy and operational efforts. They are the principles of partnership, options, and participation. In light of these principles, the chapter describes the policy-making processes of, and the services provided by, the state's justice sector agencies and suggests strategies by which state agencies may best promote justice for Māori women. The aim of the strategies is to ensure that justice sector services are effective for Māori women. The chapter also identifies three broad means of measuring effectiveness distilled from Treaty principles:

- participation by Māori women at all levels of the justice sector workforce and as voluntary users of justice services;
- increased autonomy of Māori women assessed, for example, through levels of dependence on state benefits, knowledge of the law and the justice system and the establishment of specific Māori services to provide access to justice; and
- cultural endorsement, or the consistency of services with Māori cultural integrity.

E12 By these strategies, it is intended that Māori women will be able to participate in the justice system not only as users, but as providers, professionals and stakeholders. Our concern is that the justice system has failed to meet the needs of Māori women. This failure is manifest in the negative experiences they have described to us and in the perceptions that they have; primarily that the justice system accords to them little or no value. The consequence is that Māori women have little or no confidence in the justice

system. That system is intended to bring all of us under the rule of law – the principle that peace and good order result from common acceptance of Parliament’s laws.

E13 The consequences for the rule of law within our community, when those at the heart of Māori families are disillusioned, angry and frustrated with the system, are deeply troubling. With this in mind we have sought in this report to explore some of the background of how this situation has arisen, and to suggest strategies based on the Treaty of Waitangi by which state agencies may best promote justice for Māori women.

---

---

# 1

## The Treaty of Waitangi

---

---

The Treaty guarantees three things: protection, partnership and participation. But we are never allowed the participation or the partnership for Māori. You haven't got protection if you haven't got participation or partnership. – Rohe 9

---

---

1 **A** principal function of the Law Commission is to make recommendations for the reform and development of the law of New Zealand. In doing so the Commission shall, under the Law Commission Act 1985 s 5(2)(a),

take into account te ao Māori (the Māori dimension) and shall also give consideration to the multicultural character of New Zealand society . . .

2 The primary purpose of this report is to assist those involved in New Zealand's justice sector institutions, particularly those who are employed by the state and on whom the Crown depends in the performance of its Treaty obligations, to better understand and respond to the needs and values of Māori women.

3 Many of the women whom we consulted were concerned that they did not have ready access to the legal system, and too often said it was something of which they did not feel part. They usually expressed their feelings in terms of inadequate performance of the Treaty of Waitangi. We have attempted first to grasp what they sought to convey and then to work out how to deal with the result.

4 In recent times, there has been much profound discussion about the Treaty and its principles. Many agencies with whom we spoke saw Treaty principles as lawyerly notions, to be found in decisions of the Waitangi Tribunal and the Court of Appeal. For present purposes what the women saw as the relevant principles were simpler, namely that the Treaty promised that:

- the values of Māori must be respected and protected (the Article II promise); and
- Māori should form part of the new society and feel as much at home in New Zealand and its institutions as other New

Zealanders (the Article III promise, reinforced by the preamble to the Treaty of Waitangi).

- 5 From both promises, it was suggested, as far as practicable, our institutions and their practices should take account of Māori values. Some indeed went further and asserted that a single justice system for all New Zealanders infringed the promise of the Māori language version of the Treaty of Waitangi: that te tino rangatiratanga should be preserved. Many, however, accepted that a single system of justice is necessary but that it must acknowledge Māori values and, where practicable, offer diverse solutions. One such solution is Māori autonomy of the kind discussed in paras 424–425 within a single legal system.
- 6 Justice Durie highlighted the need to look to the values of a society in a paper entitled “Ethics and Values”, delivered to Te Oru Rangahau Māori Research and Development Conference at Massey University in July 1998:

#### **The need to look to the value system**

Māori society, probably like most others, is conservative with regard to its fundamental values. The point is that it has been receptive to change while maintaining conformity with its basic beliefs. Archival records evidence how Māori searched for ancestral opinions to establish what was right, often challenging officials to heed Māori precedent to maintain that which the translators called a proper line of action.

Lawyers should understand this. The common law of England began from recording local customs and practices seen as common to all England. It was in effect, a compilation of the values of that society as shown in practice. It has developed to a situation today where cases are won or lost according to whether one can establish a precedent for a particular course of conduct. Accordingly for Māori or Pākehā, antiquity may give a measure of validity. For both societies recourse to precedents provides evidence of stability.

However in following precedent, ancestral or legal, custom may not just be maintained but changed. In selecting what to recall and applying the principles to new situations we may discard that which has become unpalatable, outmoded or inconvenient. Judges, applying precedent to different situations, may establish a new principle and yet will say that the opinion has always been in the law but has been discovered only now. Similarly, Māori will refer to what the old people said to consider what to do on matters beyond the old peoples' experience. The important thing about this process is that it makes neither the law nor custom moribund, but dynamic.

The point is that in resorting to the past to determine a future course of action in new situations one must look for the principle involved.



More particularly one must seek the underlying value for it is the values that establish the enduring cultural norms of a society. (3–4)

- 7 The challenge for the justice system considered in this report is to ensure that the values of both Māori and non-Māori are respected within its institutions and processes. We discuss “the principles of the Treaty” in the following paragraphs. It may be said at once that we agree with the formulation in para 4 and the notions of limited autonomy in paras 424–425. We have applied them in considering how the values of both Māori and non-Māori can be respected within our justice system.

## APPLYING THE PRINCIPLES OF THE TREATY OF WAITANGI

- 8 The concept of the principles of the Treaty of Waitangi has entered the New Zealand vocabulary. The establishment under the Treaty of Waitangi Act 1975 of the Waitangi Tribunal to make recommendations on claims relating to the practical application of the principles of the Treaty has, as part of that purpose, had to determine the meanings and effects of those principles and whether certain matters are inconsistent with them. But there is considerable doubt and uncertainty as to the Treaty's meaning beyond the specific elements identified in judgments of the Court of Appeal and of the Waitangi Tribunal.
- 9 As a result some commentators have seen an antithesis between the improvement of delivery of justice sector services to Māori women, which it is suggested can be progressed outside of a Treaty framework, and the Treaty principles as identified to date. Such an antithesis is evident in the Court's strategic result areas (see reproduction of SRA 8 at para 252). Some clarification is desirable.
- 10 The Treaty of Waitangi was executed on behalf of the British Crown and the Chiefs who met at Waitangi and elsewhere, representing their tribes. As New Zealand approaches the 21st century the Treaty relationship is in essence between Māori New Zealanders – some more or less closely identified with tribes and others not – and the entire New Zealand populace including Māori, represented in accordance with our constitution by Parliament and government.
- 11 Some describe New Zealand as a bicultural society, of Māori and non-Māori. That description is a partial one; in fact New Zealand contains many cultures, the members of each being proud of their own history and distinctiveness. So others employ the term multi-cultural; which may nevertheless be seen as understating the position of tangata whenua. There is no simple or single solution to resolving these differences of perception.

## POLICY OBJECTIVES

- 12 Within this society, Māori women are experiencing problems which are directly attributable to:
- the effects of breakdown of Māori society and institutions; and
  - the lack of adequate systems and resources to respond to those effects.
- 13 In drawing on the experiences of Māori women, it is clear that a framework of policy objectives which build on Treaty principles is required to guide state agencies to ensure that Māori women are treated justly. Such a framework may also attempt to state parameters within which change should be considered. We suggest the policy objectives should:
- identify Māori needs and aspirations;
  - recognise Māori cultural values and distinctiveness and secure public support for responding to those values and their consequences; and
  - create effective systems and make such response as is fair and practicable.

### *Identifying Māori needs and aspirations*

- 14 The issues considered in this report transcend legal and constitutional matters and have economic, social and political dimensions. However, the legal and constitutional aspects are pivotal as they form the structure on which society is established. To get these aspects right requires a preliminary examination to identify both the needs and aspirations of Māori, and the principles that should apply to the legal and constitutional structure.
- 15 It is clear that many Māori are educationally and economically disadvantaged. What is also clear is that Māori are involved in an increasing volume of violent crime and require significant social welfare assistance. The relationship between educational and economic disadvantage on the one hand, and violent crime and dependence on welfare and health services on the other, must be clearly understood in order to secure public support for change. The July 1998 United Kingdom Home Office report by Goldblatt and Lewis, *Reducing offending: an assessment of research evidence on ways of dealing with offending behaviour*, spells out the connection, emphasising the nexus between educational disadvantage, social and economic consequences and crime.
- 16 It is necessary to recognise that there are historical and continuing claims in respect of grievances of a variety of kinds and classes. It is also necessary, however, to bring New Zealand's institutions and

society into a state where all New Zealanders feel a sense of ownership and comfort. The present institutional barriers that tend to treat health, social welfare, and justice/corrections as discrete categories, need to be dissolved. Public sympathy for more effective Māori education will be more readily secured if its effect in tending to reduce other social and fiscal costs is recognised.

### *The value of culture and distinctiveness*

- 17 The work of the Waitangi Tribunal and the courts in general has been pivotal in bringing New Zealanders to an increased understanding of the issues and some of the answers relating to the Treaty. Continuing recourse to these forums as well as direct negotiation to work through the existing and inevitable future differences is, however, still necessary. (See Durie E 1998, "Ethics and Values", and Frame 1998). A significant effort has been made by the Crown and by New Zealanders generally who, informed for the first time of something of the history of Treaty matters, have recognised the need to respond to the claims.

### *Creating effective systems*

- 18 Further specific steps are required to achieve consistent application of Treaty principles. These include:
- The need to identify what can and cannot be done. This is ultimately a task for all New Zealanders, because it relates to every aspect of national life. But a start must be made by those in the public sector, who are funded by society to promote its interests. The Law Commission has, and accepts, a significant responsibility in this respect (hence, our work in alternatives to prosecution, juries, coroners, adoption and custom law and aspects of other work) and acknowledges that further review of our laws and institutions is imperative.
  - Establishing principles for advancing the process. The principles suggested in para 4 are a beginning.
  - Establishing systems and mechanisms to give effect to the principles. Since the issues are of greatest importance for the future of New Zealand they require to be dealt with by appropriate machinery. We refer to the suggestions for change in chapter 3 and the key principles and strategies for change in chapter 6.
- 19 For Māori, the Treaty promise was therefore two fold: to play a full part in the future of New Zealand society along with other New Zealanders; and to have Māori culture and values protected. The

challenge for all New Zealanders is to develop systems that will honour both elements of the commitment contained in the Treaty by which non-Māori New Zealanders secured their guarantee of places in New Zealand society.

## TREATY PRINCIPLES

20 At least three principles of the Treaty of Waitangi are important for the purposes of this report:<sup>1</sup>

### (i) *Principle of partnership*

21 The principle of partnership was affirmed by the Waitangi Tribunal which discussed the principle as early as 1983 in the Motunui report; the principle was further affirmed by the Court of Appeal in *New Zealand Māori Council v Attorney General* [1987] 1 NZLR 641. The principle is not to be viewed narrowly as a commercial relationship: it is akin to the value of *fraternité* (fraternity) recognised in the motto of France. It suggests a relationship from which the Crown and Māori derived certain benefits while also accepting concomitant responsibilities. This mutuality provides the basis for “the reciprocal obligations of the parties to act towards each other with reasonableness and the utmost good faith”: [1987] NZLR 641, 644 (Cooke P), 673, and 681 (Richardson J). Partnership anticipates a nation where Māori are participants at all levels of society, including policy making, management and the delivery of services.

### (ii) *Principle of participation*

22 This report is concerned to promote the ability of Māori women to participate in the justice sector. The principle of participation is concerned to strengthen Māori communities in accordance with the needs and aspirations that each community determines is appropriate for it, thereby promoting empowerment, material and social advancement and self-determination (see the Waitangi Tribunal’s report, *Te Whānau o Waipareira*). In short, the principle of participation is about empowering Māori communities to achieve their aspirations.

---

<sup>1</sup> Durie M, *Te Mana, Te Kawanatanga: The Politics of Māori Self-Determination* (1998); McHugh, *The Māori Magna Carta: New Zealand Law and the Treaty of Waitangi* (1991), and the Royal Commission on Social Policy, *The April Report* (1988).

### *(iii) Principle of options*

- 23 In acknowledging the nature of modern New Zealand, the Waitangi Tribunal concluded in the Muriwhenua Report that the Treaty gave Māori individuals a choice to join the culture and lifestyles of the mainstream or continue to live according to tikanga Māori, or within limits to “walk in two worlds”. In the context of this report, the principle of options also suggests a choice of services – a choice of mainstream services or services developed for and by Māori.

### *The Treaty’s importance*

- 24 Māori women’s experiences, which we document in this report, demonstrate that justice sector policy and processes have failed to meet the needs of Māori women and failed to address Treaty principles. The centrality of the Treaty to Māori women’s perceptions of justice has led us to develop strategies for change founded on the principles of *partnership, participation and options*. These principles do not recommend specific action points but present a guide for development of policies by agencies which we discuss in chapter 6.
- 25 Māori and non-Māori share a small portion of the earth’s surface as their homeland and in order to live together in harmony must respect each other’s values and respond to each other’s needs. In this report, we suggest that such harmony can be advanced by focusing on the Treaty of Waitangi. We are aware that there are those who do not ascribe the same importance to the Treaty but who recognise, nonetheless, the importance of ensuring harmonious relations between Māori and non-Māori by whatever means. There may indeed be other roads to the same destination. The Treaty is the road we have taken.

## BARRIERS TO JUSTICE

### *Cultural disregard*

- 26 Māori women identified the dominance of colonial values and lack of Māori personnel in the legal system as the major barriers to justice. Looked at from another angle, the lack of knowledge of Māori values and culture and the lack of Māori personnel heightened their perception of injustice.
- 27 Māori women attending the consultation hui were critical of the attitudes of some in positions of authority in the justice sector. Māori women referred to examples of unsatisfactory interactions with justice system personnel which suggest that successful interpersonal communications was precluded by a lack of acknowledgement of Māori values and culture.

## *Socio-economic disadvantage*

- 28 Underlying this, however, is the effect of low socio-economic status which is a barrier in its own right. While the consultation hui were focused on access to justice, the point was often made by many Māori women that access to justice cannot be separated from the level and quality of economic and social participation in society.
- 29 With this in mind, we have identified two major goals to improve Māori women's access to justice, and which underpin our recommendations for change. They are:
- access to a secure cultural identity, including
    - services by Māori for Māori, and
    - laws which take into account Māori values;
  - full participation in society, and the economy, including
    - responsive mainstream (including community-based) services.

## *Access to a secure cultural identity*

- 30 For Māori, a secure cultural identity depends on access to the cultural, social and economic resources of te ao Māori (the Māori world), especially te reo Māori, whānau, and land. In other words, security for Māori means not only a sense of *being* Māori but also access to the institutions of culture and to resources. Further, even in the presence of adverse socio-economic conditions, a secure Māori identity is likely to be positively correlated with good health, better educational outcomes, and a greater likelihood of employment (*Te Hoe Nuku Roa: Māori Profiles* cited in Durie M 1998, 58).
- 31 In a current longitudinal study, *Te Hoe Nuku Roa*, 700 representative Māori households are being tracked over a 10-year period to measure their levels of participation in Māori society and in wider New Zealand society. Preliminary analysis of data suggests that only a minority of Māori have a secure identity. Fewer than half of those surveyed have meaningful access to land; fewer again actually receive a dividend from land; and about one-third have little or no contact with a marae. Nor do more than a quarter possess conversational Māori language skills or even minimal knowledge about whakapapa or whānau history: *Te Hoe Nuku Roa: Interconnectedness: a paper prepared for the Ministry of Māori Development* (Department of Māori Studies, Massey University, Palmerston North, 1995).
- 32 Because the level of cultural alienation of Māori from their own resources is high, few can be said to have a secure identity despite having high aspirations for greater participation in te ao Māori.

The corollary is that the level of cultural knowledge and understanding of, among other things, tikanga Māori and te reo Māori, is by no means consistent across Māori society. This may also affect the effectiveness of services which are provided by Māori in accordance with tikanga.

### *Access to society and to the economy*

- 33 Māori women are over-represented in the very lowest income bracket; they are more likely to be unemployed than Māori and non-Māori men and non-Māori women; and are over-represented as victims of violence (see para 173). For all that, they are neither helpless nor hopeless. Indeed, they are motivated and work to improve their own and their families' ability to participate more effectively in society. Many Māori women are seeking second chance opportunities for educational qualifications and training. Many of them have children and desire a better life for their families (see para 381). We discuss in this report how that can be achieved.

### *Access to responsive mainstream services*

- 34 Chapter 5 of this report describes how a number of government departments have attempted to become more responsive to Māori. However, there does not appear to be a consistent approach to orientating services towards Māori clients (Māori women in particular) or to the use of accountability measures which endorse cultural attitudes and beliefs.

Usually the emphasis is on developing sectoral policies (health policies, education policies, welfare policies, employment policies, etc) and then adding a Māori view – the so-called mainstreaming approach.

Māori, however, are seeking a mechanism for an integrated approach to policy development which has Māori development as the central focus, sectoral perspectives being added as necessary. (Durie M 1998, 236).

Effective outcomes for Māori will require policy development which takes into account Māori values and processes by which those policies can be implemented.

### *Access to services by Māori for Māori*

- 35 Services provided by Māori and in accordance with Māori values and practices are increasingly available in the health and education sectors. For example, Whaiora is a mental health service operating within a Māori cultural context though continuing to employ standard western treatments (Durie M, *Whaiora: Māori Health*

*Development*, 1994, 111–113). Several other health authorities now also offer services which are geared to Māori clientele and utilise Māori cultural expertise alongside conventional approaches. In the education sector, *kōhanga reo* and *kura kaupapa Māori* teach children within a Māori cultural context using *te reo Māori* (Māori language) as the main language of instruction.

- 36 There are few services by Māori for Māori in the justice sector. Those few which do exist are in the criminal justice sector. They are used in conjunction with formal sentencing options, are located within a Māori community and are supervised by Māori. The *Matua Whangai Programme* in Hamilton is one example of the community taking responsibility for the well-being of Māori offenders through processes and practices consistent with *tikanga Māori*. Another example, *Te Whānau Āwhina* in West Auckland, is an adult pre-trial diversion programme using community panels in a *marae*-based environment. It emphasises employment or education programmes as options for offenders and comprises Māori panel members of different age groups from diverse backgrounds. Its programme offers a cultural and educational intervention for urban Māori youth and their *whānau* who are without strong connections to their own *whānau* or *iwi* (see Smith and Cram 1998).
- 37 The Law Commission is examining the possibility of wider use of such options in a number of projects. For example, its project on alternatives to prosecution will examine the breakdown in relationships between victim and offender, the offender and *whānau*, and the offender and community. The project will consider the extent to which restorative justice principles and initiatives are better able to strengthen relationships and meet some of the objectives of the criminal justice system. In this report initiatives of a general nature are considered, with the aim of enabling justice sector services to respond to the needs of Māori women.
-



---

## 2

# Value and recognition of Māori women

---

---

Māori women are the pivotal point – the soul of Māori and the whānau. – *Rohe 10*

---

---

- 38 **B**efore the signing of the Treaty of Waitangi, Māori women had access to and exercised influential roles (Binney 1996, 26). Under Article III of the Treaty, Māori were granted “all the rights and privileges of British subjects” and with that commenced the assimilation of Māori into the British way of life (Pratt 1992, 39). The influential role of Māori women was inconsistent with British attitudes to women at the time and that role was challenged. In particular,
- the role of women as nurturers and organisers valued within their whānau, hapū and iwi was challenged by the colonial view of men as heads of the family;
  - the role of women of rank as leaders was challenged by the colonial view of the subordinate role of women to men;
  - the relationship of women with the land was challenged by the colonial concept of individual land ownership and the role of men as property owners.

### THE BEGINNINGS

- 39 The Māori female presence is a constant in Māori traditional beliefs about the origins of humankind, the transfer of knowledge and wisdom, and the restoration of balance. Māori origins are traced back through human generations and gods and goddesses to Ranginui, the Sky Father, and Papatūānuku, the Earth Mother. Papatūānuku is the ancestress of all things and her children are the guardians or the progenitors of everything on or under the earth, sea and skies. They express the role and significance of women in traditional society.

- 40 According to traditional Māori beliefs, the two grandchildren of Papatūānuku, Hineahuone (who later changed her name to Hine-nui-te-po), and her sister Hinerāwharangi, were the first to receive human form. They were empowered by the guardians and gods to be the receptacles of all knowledge which they then transferred genealogically and genetically through demigods and demigoddesses to Māori. This world view was expressed in and through whakapapa, the connection between human beings and all things in the universe being described in terms of marriage, procreation and descent. Through Papatūānuku and Hine-nui-te-po, Māori women were seen as the beginning and the end of life in this world.

## PRE-EUROPEAN SOCIETY AND MĀORI WOMEN

---

---

Māori women are the heart and soul of their whānau. – *Rohe 1*

---

---

### *Women as nurturers*

- 41 Women as bearers of children were the nurturers of whānau and hapū. The term whānau signifies
- a group of relatives defined by reference to a recent ancestor (tupuna), comprising several generations, several nuclear families and several households, and having a degree of on-going corporate life focused in group symbols such as a name, a land base (tūrangawaewae) and taonga. (Durie-Hall and Metge 1992, 61)
- 42 There are two different ways of defining whānau membership. First, whānau members can be defined as the direct descendants of the whānau ancestor. However, this definition excludes the husband or wife of a descendant. Secondly, whānau can be defined as an extended family including spouses and adopted children who are not direct descendants but who participate in the activities of the whānau group. Each of these two definitions may assume primacy for different reasons. The first comes to the fore in relation to issues of management of group property, selection of group spokespersons, and the group's relationship with the hapū and iwi. The second comes to the fore in relation to mutual support, child raising and the organisation of hui.
- 43 As an illustration of the value of the nurturing role of women in te ao Māori, Te Arawa tradition regards women as the more vital component to the guarantee of the survival of future generations. Tapu is attached to women because of the obligation and ability

to ensure the future of iwi. This obligation is described by the ritual reference to women as *te whare tangata* (the housing of the human species).

### *Women as organisers*

- 44 Dame Joan Metge, in *New Growth from Old: The Whānau in the Modern World*, discusses the complementarity of roles between male and female in marriage, family and whānau as *te tikanga tuku iho no ngā tupuna*: the customs of the ancestors (Metge 1995, 9). Furthermore, mana was attached to the role – commonly exercised by Māori women – of keeping the affairs of the communal group “buoyant and operational” (Mikaere 1994, 2).
- 45 It is sometimes assumed by non-Māori that, because the role of formal speech-making on the marae was and is the role of men in most iwi, a superior status is accorded to men. However, only those unschooled in marae protocol would make such an assumption. Many male speechmakers rely on the women of their whānau for advice before and during the speeches and in choosing appropriate waiata. At most hui women work to ensure the smooth running of the hui, which complements what their men are doing in a “different and equally valued way” (Metge 1995, 97). Also, on many marae, the exclusion of women from formal speech-making applies only during the pōwhiri which usually takes place outside on the open marae. The kaupapa of the day is discussed inside the wharenuī and women participate in the discussions and the decision making. Exclusion of women from formal speech-making is also associated with their importance as life-givers: according to Te Arawa kawa, there was often violence on the “marae ātea” and if a male died then only one life was lost, but if a woman was killed then a whole generation of her line was lost with her.

### *Women of rank*

- 46 The society which evolved accorded roles which, in many areas, enabled certain women and men to play a leading part in the community. Lines of descent and birthrights acquired within the hapū may be traced through men or women and if the mother was of higher rank than the father, then their children could trace their descent through the mother, with whom their increased rank and prestige originated (Binney 1996, 25). While there was a preference for the senior male line in tracing seniority in many tribes, rank appears to have been the main determinant of roles in pre-European Māori society. Even slaves, who were sometimes traded as property or killed for sacrifice or food, could, by ability

and will, become group leaders. If they married a free person their children inherited that person's descent group membership (Salmond 1991, 353).

- 47 There were Māori women of rank who possessed both mana and tapu. Women's mana (personal and political authority within a community) could be inherited from male and female tupuna, as well as conferred on female and male descendants. An example is Waimirangi, whose mana ranged across almost all the major iwi of Northland. Unpublished Māori manuscript sources are full of examples of Māori women of property and mana. In terms of tapu, women's tapu is said to exist because they were the channel between the realm of divine forces and the human realm (Binney 1996, 26).<sup>2</sup>
- 48 In matters of diplomacy and negotiation, women played a major role. Waitohi, sister of Te Rauparaha of Ngāti Toa, was a frequent negotiator on his behalf. Te Pikenga, wife of Te Rangihaeata (Te Rauparaha's nephew) was often involved in negotiations between Ngāti Toa and her own Ngāti Apa people. Marriages could, of course, found important strategic alliances between hapū or iwi and at leadership level were events of major political importance.
- 49 The transmission of specialised knowledge was often vested in women and covered a diverse area from childbirth to weaponry. Women also took a dominant role in the composition of songs such as waiata aroha, waiata oriori and pātere which recorded tribal knowledge for future generations.

The women who were guardians of such knowledge were therefore relied upon, not just to transmit their wisdom to following generations,

---

<sup>2</sup> The daughter of high-born parents would have both her personal mana and the mana stemming from her parents and her whakapapa. This would bring her respect for these elements alone. If, in addition, she showed leadership ability, determination, and a desire to help her people, this could enable her to take a prominent or leading role in her community. Waimirangi, for example, was a great female leader of the far north, as was her descendant Herepaenga. Herepaenga inherited the mana of her ancestors (including Te Reinga, leader of Te Rarawa in the Hokianga), and, with it, the mana whenua of the land at Waihou. There she had authority to establish land boundaries, to share in the proceeds of the produce from the land, and to spare or give refuge to persons facing danger or banishment. In the political, economic and social affairs of her community, she was the leading figure in the early nineteenth century. Other female leaders included Rangi Topeora of Ngāti Raukawa and Ngāti Toa who signed the Treaty of Waitangi, Wairaka and Muriwai, whose names are synonymous with the Mataatua canoe, and Mihi-Kotukutuku of the nineteenth century whose leadership of Whānau-A-Apanui was legendary (see Hohepa and Williams 1996, para 104).

but to carefully select the appropriate recipients and to teach them well. In fulfilling this role, they were much more than caretakers of knowledge: they were guardians of the spiritual welfare of their iwi. (Mikaere 1995, 62)

- 50 In many hapū and iwi, the strength and influence of the female ancestor was, and is, commemorated in its name, for instance Te Whānau a Hinerupe, Te Whānau a Ruataupare, Rongomaiwahine, Ngāti Hine. Tribal leader Apirana Mahuika has written of his own iwi, Ngāti Porou, that women there were leaders in the fullest sense (Metge 1995, 97).

### *Women as owners of “land-use rights”*

- 51 Māori women as individuals owned “use-rights” over land and resources. Those rights could be passed to a woman by either parent and would remain that woman’s property and not become that of her husband if she married. The woman could then hand these use-rights on to any or all of her children (Hohepa and Williams 1996, para 94).

### *Te reo*

- 52 A significant indicator that there was no hierarchy of sexes in traditional Māori society is the language. Nouns and pronouns are gender neutral: for example, *ia* applies to both he and she.

## EROSION OF THE ROLES AND VALUE OF MĀORI WOMEN

---

---

Pre-war men used to support Māori women and now machoism and chauvinism have fragmented many whānau. – *Rohe 1*

---

---

- 53 Power and authority over the family was the expectation of the British Victorian male (Graveson and Crane 1957, xi). As described by Dame Anne Salmond:

At the time of European settlement (from 1814 onwards) European gender relations were controlled by an ideology of male dominance far more severe than the agnatic biases that existed in Māori reckoning of descent group status. European women were legal minors who came under the guardianship of men and they had no independent rights to control property or to formal participation in political decision-making. Moreover the Protestant religious sects which missionised New Zealand practised male ritual dominance, and under such influences Māori women had much to lose. (Salmond 1991, 353–354)

- 54 The imposition on Māori of colonial standards subordinated Māori women and contributed directly to the diminution of their value in Māori society and consequently, in the new regime. Māori women are now highly vulnerable and have few avenues of support – either material, spiritual, or even from their menfolk – available to them.
- 55 When the Treaty of Waitangi was signed, Māori women of rank maintained powerful positions within the social and political organisations of their tribal nations. This is reflected in the fact that some women signed the Treaty of Waitangi on behalf of their hapū: to date 13 Māori women have been identified as signatories to the Treaty and more may be identified (Ballara 1993, 133–134).
- 56 At that time, Māori women were acknowledged as owners of Māori land under Māori law and custom (Rei 1993, 8–9). Riria Ponau, a chiefly ranking woman of Whangapoua, Coromandel Peninsula, owned a forest and in 1830 signed the kauri cutting contracts in that area.<sup>3</sup> Another example is Hineipaketia whose approval had to be obtained by Te Hapuku of Kahungunu, in 1850, before he could sell the Waipukurau block. She was the person of “highest rank” in the Heretaunga District at the time (Māori Land Court Minute Books, Coromandel Bk I, 217ff).
- 57 During the latter part of the nineteenth century, Māori women continued to play important and active roles, particularly those women involved with the Māori land movements and the land wars (Ballara 1993, 133–134).<sup>4</sup> In leadership matters, Māori women maintained prominent positions in Māori communities. An example is Te Paea, sister of King Tawhiao, who was famous for her skills as a peace maker and mediator, and persuaded Ngāti Kahungunu to cease their pursuit of Te Kooti into the Urewera district in the period 1868–1870 (Binney 1995, 240). Later in the century Ani Kaaro, grand-daughter of Patuone, was consulted by Waikato chiefs before the signing of the Treaty of Union between Waikato and Ngapuhi in 1885 (Orange 1987, 217). Other women assumed major roles in the Māori spiritual and religious movements such as Ringatu (see generally Binney 1989).

---

<sup>3</sup> See Turton, *Māori Deeds of Land Purchase in the North Island of New Zealand*, discussing the Ahuriri Deed 1851 (A2) signed by men and women; see also Ballara 1993 where she discusses the number of women who signed the Waipukurau and Ahuriri deeds.

<sup>4</sup> See also Coney, “War and Peace” in Coney (ed) *Standing in the Sunshine*, 302–303, where it is noted that Māori women fought either for or against the Crown depending on tribal loyalties.

- 58 However, with the exposure to a new economy, introduced disease, land alienation and Christianity, Māori women's control, authority and direct participation in Māori self-government began to change.<sup>5</sup> In addition, the status of Māori women as organisers was undermined as British values and norms started to influence traditional practices and beliefs. Judith Binney, in *Ngā Morehu: The Survivors*, suggests that European attitudes towards women's roles may have been gradually internalised by nineteenth-century Māori males resulting in women's roles being re-defined by men (26).
- 59 It is noticeable that early European writers marginalised the importance of the female essence in early Māori cosmogony, customs, values and norms (Mikaere 1988, 74–102). Marginalisation continued with the insistence of officials on “patronymic surnames and with the emphasis placed on male dominance by the Pākehā population” (Metge 1995, 132). An early example of this lack of understanding is highlighted by Dr Claudia Orange who notes Major Bunbury's refusal to allow a woman of rank to sign the Treaty of Waitangi (Orange 1987, 90). It is also reflected in the fact that negotiations regarding the sale and purchase of Māori land in the main involved only men (see, for example, the Waitangi Tribunal's *Ngai Tahu* report on purchases in the South Island and the 1995 report on *Te Whanganui-a-Orotu*, chapters 3–4, on the Ahuriri purchase).
- 60 The influence of introduced laws and culture eventually affected the core of Māori society. When the English common law was applied to Māori women, their status was reduced to that of their English counterparts.

## THE INTRODUCTION OF ENGLISH LAWS AND CULTURE

- 61 Perhaps the words Shakespeare put into the mouth of Petruchio are a fitting start for a brief but necessary examination of the common law which arrived to civilise Māori women:

She is my goods, my chattels; she is my house  
My household stuff, my field, my barn  
My horse, my ox, my ass, my anything.  
(*The Taming of the Shrew* 3.3)

---

<sup>5</sup> See Mikaere, *Te Maiharoa and the Promised Land*, in particular on the introduction of Christianity and the subsequent missionary, ethnological and anthropological distortions of Māori belief systems (74–93); see also Ballara's article, “The Pursuit of Mana? A Re-evaluation of the Process of Land Alienation by Māori 1840–1890”, 519; and Rigby and Koning's unpublished report for the Waitangi Tribunal, “Toitu te Whenua: Only the Land Remains Constant and Enduring: Crown Purchases in Muriwhenua 1850–1865”.

This view of women as property persisted in English law for two-and-a-half centuries from Shakespeare's day (see Graveson and Crane 1957, xi).

### *The English family*

- 62 In nineteenth-century England, the husband was the authoritarian head of the family, with powers over both person and property of his wife and children. On marriage, husband and wife for many purposes became one person in law and all the wife's personal chattels became the absolute property of the husband. He could dispose of her leasehold property during his life and enjoy the benefit of her freehold estate during her life. In criminal law a presumption existed that a wife who committed a felony (other than the most serious ones) had been coerced by her husband. Civilly the husband was liable for torts, such as slander, committed by his wife (Graveson and Crane 1957, 2–3).
- 63 These aspects of the nineteenth-century relationship of husband and wife reflect the relations of society which “were largely relations of status, that is, a legal position imposed by rules of general law by virtue of persons being in a certain relationship with one another, such as husband and wife, parent and child, master and servant” (Graveson and Crane, 3). Thus no doubt, for English women, marriage meant status.
- 64 In mid-Victorian England, the father had the sole and exclusive control and guardianship of the children. Even on the father's death, legal custody of the children could be appointed under the father's will, but not often under the will of the widow (Graveson and Crane, 17). Illegitimate children were generally removed at birth to a baby farm. They came from both rich or poor families: “According to the evidence of the Superintendent of Metropolitan Police, about two thirds of the children farmed were illegitimate” (Graveson and Crane, 40). Illegitimacy remained an incurable stigma.

### *Marriage at common law*

- 65 In England, the ecclesiastical courts administered matrimonial causes until the Matrimonial Causes Act 1857 came into force. Until that time, the courts recognised both common law marriage and also marriage contracted *per verba de praesenti*: “by words of the present [tense]”, a phrase applied to a valid contract of marriage. The Marriage Act 1753 (Lord Hardwicke's), regulated the formalities required for a valid marriage. Marriage at common law was



valid where the parties took one another as *man and wife* in the presence, before the Reformation, of an episcopally ordained clergyman and, after the Reformation, in the presence of a Deacon: *R v Mills* (1843 – 1844) 10 CI & F532.

- 66 Marriage per verba de praesenti existed when the parties, in words in the present tense, entered into a contract of marriage and were declared husband or man and wife in the presence of witnesses. A finding could be sought from the ecclesiastical courts in favour of a marriage contracted per verba de praesenti. Where such finding was made, the parties would be admonished by the court to marry formally in church. A valid marriage in English law was necessary to establish spouses' and children's rights to property. Children of a valid marriage were legitimate and only legitimate children had inheritance rights. (Graveson and Crane, 20 and 27)

### *Māori customary marriage*

- 67 According to Māori custom, the public expression of approval established a couple as "married". Once approval was given, the couple was considered married even if co-habitation was delayed (Durie-Hall and Metge 1992, 62). In *Rira Peti v Ngaraihi te Paku* (1889) 7 NZLR 235, Reed J described the legal status of Māori customary marriage:

[I]n what is termed a "Māori customary marriage" no formality whatsoever is required, the parties simply living together, and if they tire of each other they separate without formality and enter into fresh relations with others, and that which, if the marriage were a legal one, would be termed polygamy is recognised. These unions are recognised by the Native Land Courts and are sufficient for the purposes of succession to the estates of Māoris and half-castes, whether the estate consists of land or personal property, and whether the land is customary or freehold. No such union or customary marriage, however, is valid for any other purpose: (*In re Wi Tamahau Mahupuku* (Deceased), *Thompson v Mahupuku* [1932] NZLR 1397, 1399).

- 68 According to Heuer in *Māori Women*, customary recognition of marriage took many different forms depending on iwi or hapū, or on the social status of the couple. Generally, where one or other of the partners was from an ariki line, and especially where the marriage would effectively strengthen links between different iwi or hapū, there was formal ceremony, and consummation of the marriage occurred when the couple slept together. For others, recognition of the marriage occurred upon public discovery and acceptance of a couple's sleeping together.

## *Divorce*

- 69 Divorce according to Māori custom was neither complex nor carried any stigma (Mikaere 1994; Binney 1996, 180–181). In English law, however, until the Matrimonial Causes Act 1857 only Parliament or death could put an end to marriage (Graveson and Crane, 5). To obtain a divorce required long, complicated, undignified and expensive proceedings, curtly described by the Lord Chancellor in moving the second reading of the Divorce and Matrimonial Causes Bill on May 20 1856 as “a clumsy expedient – to give it no worse name” (Graveson and Crane, 6).
- 70 In English law (to use the words of Lord Lyndhurst, speaking on the second reading of the Matrimonial Causes Bill on May 20 1856) a divorced woman who managed to obtain a decree of divorce on the ground of her husband’s cruelty or adultery found herself . . . almost in a state of outlawry. She may not enter into a contract or, if she do, she has no means of enforcing it. The law, so far from protecting, oppresses her. She is homeless, helpless, hopeless and almost destitute of civil rights. She is liable to all manner of injustice, whether by plot or by violence. She may be wronged in all possible ways, and her character may be mercilessly defamed; yet she has no redress. . . . (Hansard, 3rd Series, vol 142, col 410)

## INTERNALISING COLONIAL VALUES

- 71 Māori began to internalise colonial values.<sup>6</sup> Binney in “Some Observations on the Status of Māori Women” has reproduced oral evidence from Heni Sunderland (born in 1916 a prominent woman of the Rongowhakaata tribe), who recalls her resistance to the introduction of chairs on the paepae of marae and their allocation to men only (Binney 1989, 28–29).
- 72 On national political matters, consistent with the position taken by Pākehā men, Māori men resisted the franchise for Māori women in the Māori Parliament (Te Kotahitanga). However, in response, women such as Meri Mangakahia of Te Rarawa and Akenehi Tomoana petitioned for the right of Māori women to vote in Te Kotahitanga – a right finally granted in 1897 (Rei 1993, 17–18; see also Ballara 1993, 127). There were many powerful women associated with Te Kotahitanga and they began the movement to

---

<sup>6</sup> See Hohepa and Williams, *The Taking into Account of Te Ao Māori in Relation to Reform of the Law of Succession* (NZLC MP6, 1996), where Hohepa illustrates the extent to which these views have been internalised (para 96). He quotes an example from 1981 of men challenging, on the basis of gender, the right of women to be trustees on a Māori land block (para 98).

organise collectively as women: Meri Mangakahia's work would act as the "catalyst for the formation of Ngā Komiti Wahine – tribally based Māori women's committees . . ."; the committees held meetings to discuss "issues such as land, the general state of Māori people and the political issues of the day" (Rei and Rangiheuea, *Nga Ropu Wahine Maori: Maori Womens' Organisations* 1993, 4). The committees, known as village women's committees, continued to operate on most marae until World War II, and eventually formed the nucleus of the Māori Women's Welfare League when it was established in 1951 to promote Māori women's and children's health and welfare issues (Rei and Rangiheuea, *Nga Ropu Wahine Maori: Maori Womens' Organisations* 1993, 9-10; see also Rogers and Simpson 1993, xii-xviii). Committees known as "komiti wahine" operated on marae in Northland in the 1950s and 1960s, though, no longer limited to women (Metge 1976, 137-138). Even today, in practice, the terms "komiti wahine" and "ladies' committee" are heard, especially but not exclusively on the lips of the elderly.

## THE IMPACT OF LAW AFTER THE TREATY

- 73 The combined effect of land alienation and patriarchal law has been to place Māori family forms and values under great stress (Durie-Hall and Metge 1992, 79).

### *Land alienation*

- 74 The Native Land Court was established in 1862 by the Native Lands Act 1862, a little used Act which was superseded by the Native Lands Act 1865. From this time on, according to Ballara, customary "Māori land tenure with regard to women was progressively undermined" (quoted in Hohepa and Williams 1996, para 98). Pākehā husbands challenged, unsuccessfully, s 22 of the Native Lands Act 1869 which provided:

It shall not be necessary for any married woman of the Native Race on executing any deed required by law to be acknowledged before Commissioners to make such acknowledgment and such deed shall be as valid as if signed by a *feme sole*.

- 75 There were Māori women who resisted and protested against the Native land legislation (Rei 1993, 9; Coney 1993, 284-285). However, by 1873, s 86 had been amended to require that husbands be a party to any deed executed by married Māori women. Husbands on the other hand were free to dispose of the interests in land of their Māori wives without the requirement that the wife be a party to the deed. Furthermore, Native Land legislation moved land

ownership into individual (and usually male) *ownership* rather than *guardianship*, again eroding Māori women's control. Māori men also challenged women's rights to make decisions over the land, for example, Waitokitoki 3 and 4 Blocks Waiariki Appeal, MB 310 (1981), the (unsuccessful) challenge to the court's appointment of five women trustees.

- 76 Land alienation had profound effects on Māori society, and in particular Māori women, as it destroyed the collective whānau/hapū unit. That the whānau/hapū unit was given less importance undermined the values that maintained its well-being. The erosion of those values – family and tribal history, language skills, mutual caring and support – eroded the importance of the roles and of the women who traditionally performed them.

### *Māori women, marriage and their families*

- 77 Legislation in New Zealand has undermined the value accorded to Māori women as nurturers and organisers of whānau and in so doing has undermined the importance of the relationships which have traditionally been extremely significant. For example, marriage according to custom did not mean for a Māori woman that she was transferred like a piece of property from her father to her spouse; nor did marriage affect her status. A woman remained a part of her own whānau even if she chose to live with her spouse's whānau and allow her in-laws to take responsibility for her well-being and support (Mikaere 1994, 125-149).

- 78 The English Laws Act of 1858 provided and declared:

That the laws of England as existing on the 14th day of January, 1840, shall so far as applicable to the circumstances of the colony, be deemed and taken to have been in force therein as, and after that day, and shall continue to be therein applied in the administration of justice accordingly.

Thus, Māori, to marry validly for any purpose other than succession to property, had to marry either in accordance with the full requirements of the Marriage Act 1908 or in the presence of a clergyman of the Church of England or the Roman Catholic Church: see *Rira Peti v Ngarahi te Paku* (1888) 7 NZLR 235; *Rex v Wairemu Kingi* (1909) 12 GLR 175; *In re Wi Tamahau Mahupuku (Deceased)*, *Thompson v Mahupuku* [1932] NZLR 1397.

- 79 Successive marriage laws required Māori to conform more and more closely to the legal requirements for establishing marriage until customary marriages were eliminated. Section 8(1) of the Māori

Purposes Act 1951 and s 78 of the Māori Affairs Act 1953 both provided:

Every marriage to which a Māori is a party shall be celebrated in the same manner, and its validity shall be determined by the same law, as if each of the parties was a European; and all provisions of the Marriage Act 1908 shall apply accordingly.

Section 79 of the Māori Affairs Act 1953 further stated:

- (1) No marriage in accordance with Māori custom that has been entered into on or after the 1st day of April 1952 shall be regarded as being a valid marriage for any purpose;
- (2) Except as is expressly provided by this Act, no marriage in accordance with Māori custom that has been entered into before the 1st day of April 1952 shall be regarded as being a valid marriage for any purpose.

80 The combined effect of these Acts and the Marriage Act 1955 was that no Māori customary marriage could be considered valid for any purpose. Legal marriage imposed a legal relationship upon couples which took priority over all other relationships, including those with parents and siblings (Durie-Hall and Metge 1992, 60).

### *Adoption and guardianship*

81 Adoption is a legal process which transfers the legal status of parent to a particular child from one set of parents to another. Māori, however, place a positive value on the process of “atawhai” (show kindness to, be liberal, foster) adoption and the status of all parties involved. As one Māori woman put it “an atawhai, though not born of my womb is born of my heart” (Metge 1995, 213).

82 Referring to the Adoption of Children Act 1895, Lord Phillimore in *Hineiti Rirerire Arani v Public Trustee*, recognising the Māori customary law of adoption, stated:

The right of the Māori to adopt according to his own custom is not interfered with by giving him a further right to adopt in the form and under the conditions provided by the Act. ((1919) NZPCC 1)

83 However, the Adoption Act 1955 deems that, since the commencement of the Native Land Act 1909, no person shall have been capable of adopting a child in accordance with Māori custom and with certain exceptions, no adoption is of any force or effect, whether in respect of intestate succession to Māori land or otherwise: s 19(1); (see also *Whittaker v Māori Land Court* [1996] NZFLR 163). The fundamental difference in the way which the law, on

the one hand, and Māori, on the other, regarded adoption was that the law's adoption policy focused on the relationships which were created and the perceived advantages for members of the new family. No attention was given to the relationship between child and birth parent which was destroyed and the impact upon the child (Griffith 1996, para 9).

- 84 The Guardianship Act 1968 s 2 defines *guardianship* as “the custody of the child . . . and the right of control over the upbringing of the child”, and *custody* as “the right to possession and care of a child”. Under the Act, the only guardians as of right are the birth mother and the birth father if living with the mother at the time of the birth. It is inconsistent with Māori ideology, however, that a child be seen as the possession of parents. Children are seen rather as “a tātou tamariki” and are taonga of the whānau, hapū and iwi (Durie-Hall and Metge 1992, 54–82).
- 85 The family law statutes enacted since 1950 reflect the assimilationist policies of the period “largely by ignoring Māori social policies and objectives, as if they did not exist”. Legislation such as the Marriage Act 1955, the Adoption Act 1955 and the Guardianship Act 1968 have all directly or indirectly ignored Māori values relating to the structure and constitution of the family. (Durie-Hall and Metge 1992, 54 and 59)

### *Changes in the law*

- 86 Notwithstanding the fact that statutes such as the Guardianship Act 1968, the Matrimonial Property Act 1976, and the Adoption Act 1955 do not expressly recognise Māori values, judicial cognisance and application of those values has continued to grow, with some judges exercising powers in a way that tries to meet Māori concerns.
- 87 A recent example where a combination of Treaty principles and the principles espoused by the Draft Declaration on the Rights of Indigenous Peoples can be seen to have been influential is *B v Director-General of Social Welfare* (HC, Wellington, 27 May 1997, AP 71/96). In hearing an appeal by a grandmother against a decision of the Family Court refusing her custody of her granddaughter the court held that:

The welfare of the child can never be considered in isolation. The cultural background of a child is significant and the special position of a child within a Māori whānau, importing as it does not only cultural concepts but also concepts which are spiritual and which relate to the ancestral relationships and position of the child, must be kept in the

forefront of the mind of those persons charged with the obligation of making decisions as to the future of the child. (13)

- 88 What the case shows is that, sometimes even in the absence of express statutory directions to do so, Māori values are being taken into consideration by the courts. The Law Commission's forthcoming paper on Māori customary law will address some underlying values and significant concepts of tikanga Māori which affect major areas of law and policy.<sup>7</sup> It will be addressed to judges, decision makers and policy makers who are responsible for shaping the future of New Zealand law.
- 89 Te Ture Whenua Māori Act 1993 is based on customary Māori attitudes to land and its importance for future generations. That Act affords hapū affiliation a relevance not contained in earlier statutes and makes no distinction as to gender in relation to succession or ownership of Māori land. This customary approach is reinforced by the exemption of "Māori land" from the provisions of the Matrimonial Property Act 1976 under s 6 of that Act, in that "Māori land" can not be viewed as only the property of the parties.
- 90 A number of other statutes contain provisions which specifically address Māori interests or require the recognition of cultural institutions and processes. The Māori Community Development Act 1962 provides for Māori wardens to exercise control over other Māori and to perform minor policing roles, while the Criminal Justice Act 1985 recognises cultural values, for instance in sentencing: s 16. The Children, Young Persons, and Their Families Act 1989 requires social workers to recognise tribal arrangements and Māori family relationships, especially those of whānau. That Act's philosophy rests on the assumption that children are best raised within their own cultural context and with their own people. It allows tribal elders to take active leadership roles in family group discussions and requires professional workers to observe – or at least not to ignore – cultural preferences and custom.
- 91 The Resource Management Act 1991 obliges those exercising functions and powers under the Act to have particular regard to Māori cultural and environmental values through the concept of kaitiakitanga: s 7. The Act specifies the "relationship of Māori

---

<sup>7</sup> For example, the administration of Māori land under Te Ture Whenua Māori Act 1993, allocation of settlement resources under the Māori Fisheries Act 1989, environmental law under the Resource Management Act 1991 and child, youth and family issues under the Children and Young Persons and Their Families Act 1989.

and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga” as one of five matters of national importance: s 6.

- 92 In the health sector, the Mental Health (Compulsory Assessment and Treatment) Act 1992 recognises the significance of a Māori cultural identity. Section 5, reinforced by s 65, requires that any court or tribunal which exercises power under the Act must have respect for a patient’s cultural and ethnic identity, language, and religious or ethical beliefs. They must also show proper recognition of the importance to the patient’s well-being of family ties, as well as whānau, hapū, and iwi. The Mental Health (Compulsory Assessment and Treatment) Amendment Bill currently before Parliament proposes to substitute a new s 5. Under the proposed new section, any court, tribunal or person exercising power under the Act must:
- consult with the person’s whānau;
  - give proper recognition of the importance and significance of the person’s ties with his or her whānau, hapū or iwi;
  - give proper recognition to the contribution those ties make to the person’s well-being; and
  - give proper respect to the person’s cultural and ethnic identity, language, and religious or ethical beliefs.

## CONCLUSION

- 93 The examples of statutes and judicial decisions which make reference to Māori cultural values do not indicate that Māori cultural identity is now secure, or that there is consensus about the place of a Māori dimension in the New Zealand legal system. Still less should these examples be seen as indicating that there is a widespread understanding amongst lawyers, judges and the public of the specific provisions, or that their application has been fully explored. But they do perhaps contain the seeds of an evolving jurisprudence which draws on both British law and Māori custom law and has the potential to incorporate solutions based on Māori world views.
- 94 In the next chapter we show why the disregard of Māori values and ineffective services in the justice sector leads Māori women to perceive the justice sector accords them little or no value.



---

### 3

## Māori women's experiences in the justice system

- 95 In this chapter we outline the barriers to accessing justice experienced by many Māori women. These experiences have led Māori women to perceive that the justice sector accords them little or no value. Disregard for Māori cultural values by the justice sector and socio-economic disadvantage are viewed by Māori women as significant barriers to accessing justice. We also outline their suggestions for change.<sup>8</sup>
- 96 Failure on the part of the justice sector to recognise
- the extent to which differences of culture affect Māori women
  - the extent to which socio-economic disadvantage affects Māori women including
    - access to information and
    - access to legal services; and
  - the extent to which attitudes within the justice sector affect Māori women
- is manifest in the negative experiences described by Māori women. The consequence of such failure is that some Māori women have little or no confidence in the justice system.
- 97 Why some Māori women perceive they are accorded little or no value in the justice system and what the justice system should do to correct that perception are matters of fundamental importance. In chapter 1 we suggested that these matters result from:
- the effects of breakdown of Māori society and institutions; and
  - the lack of adequate systems and resources to respond to those effects.

---

<sup>8</sup> A selection of some of the comments made by Māori women during the consultation hui appears in appendix E.

## SYSTEMIC FAILURE

### Failure to acknowledge Māori cultural values

- 98 The failure to acknowledge Māori cultural values in justice sector processes is a systemic failure. There was an overwhelming sense of irritation and, indeed, anger expressed, at what the women perceived to be a widespread tendency by some non-Māori to ignore the cultural values which differentiate Māori from non-Māori. Many of the agencies were perceived as unresponsive toward and dismissive of Māori desire to participate in society as Māori. It is those cultural values and practices, such as te reo Māori, whakapapa, whānau and whenua which affirm Māori cultural identity. For Māori women, it is all these values and particularly the value of whānau from which their position in Māori society is derived. Clearly, when all or any of those values are ignored, the effect is to reinforce Māori women's perceptions that they are not respected and are therefore of little value in the justice system.
- 99 We outline briefly some of the values which are important to Māori women and to which they referred during the consultation hui.

### *Whakamā*

- 100 Whakamā covers a wide range of feelings and causes. Whakamā describes feelings from shyness through embarrassment to shame and behaviour involving degrees of withdrawal and unresponsiveness. Māori can become whakamā when they find themselves in a situation of uncertainty and confusion, when the right course is not clear, or when they feel they ought to know what is right but do not.<sup>9</sup> They are unlikely to ask for help because that would be an admission that they do not know what to do. Māori can also become whakamā if they perceive themselves as individuals to have lower status (Metge 1986, 120).
- 101 Whakamā is an affliction, a sickness which "strikes" people. It is a response to consciousness of fault; a prerequisite to the confession of wrongdoing and accompanies repentance. The whakamā felt by the guilty (and non-guilty) was recognised as part of their punishment, since it involved lowered self-esteem, depression and withdrawal from social interaction. In very mild cases the person afflicted with whakamā may come out of it on their own, but in most cases they need the help of others (Metge 1986, 94–98).

---

<sup>9</sup> Individuals become whakamā for a variety of reasons, of which these are examples (see Metge 1986, 39–58).

## *Whakamā and re-integration*

- 102 The importance of whakamā is that it is not just about shame but includes a sharing of guilt with other members of the whānau as well as re-integration into the community. As Māori youth justice co-ordinators have identified, the importance of recognising and acknowledging the whole whānau's whakamā cannot be underestimated. Co-ordinators have found that when a family group conference is held on the marae, in the presence of kuia, koroua and tupuna, the recognition by the young person of bringing whakamā on all of their ancestors and of sharing the shame is very potent. It is also important that the young person be aware of still remaining part of the whānau in spite of wrongdoing.
- 103 An example of a programme which positively deals with addressing whakamā is Te Whānau Āwhina, a programme in West Auckland for offenders which aims at addressing issues of unemployment, lack of self-worth and hopelessness to reintegrate offenders back into the community. The programme addresses issues such as raising self-esteem by offering a range of positive role models and support systems to enable Māori to interact within their community. In the words of the local District Court judge, "young Māori on the brink of a career in crime are brought back into the fold". She also commented on the change in appearance and attitude of offenders when they returned to court. In her view, "they show pride and confidence, and are supported by a support system" (Smith and Cram 1998, 77).

## *Whānau*

- 104 The concept of whānaungatanga is derived from the verb *whānau* which means to "incline towards". Whānaungatanga covers all relationships formed on the basis of descent (from a common ancestor) and marriage (with spouses and affines or in-laws). Whānaungatanga includes relationships within whānau and between whānau: it means holding and preserving the practices which knit and strengthen the bonds of the family in the hapū but also includes establishing and reinforcing bonds between individuals, whānau, hapū and iwi (Binney 1996, 27).<sup>10</sup>

## *Whānau is not just a nuclear family*

- 105 The importance of whānau is that it is not just about western notions of the nuclear family but takes a wider view to include the

---

<sup>10</sup> Anthropologists often speak of "the web of kinship"; in Māori the nearest metaphor is te kupenga (see Metge 1995 81–82.)

wider community. Māori women are far more likely than non-Māori women to be living in households shared with relatives other than their immediate family. A study being conducted by Te Puni Kōkiri has identified a high degree of co-operation among the different households that make up the whānau in terms of, for instance, financial support, food and childminding. The functions of whānau are usually described in broad terms as the management of group property, mutual support and the raising of children, and organising occasional gatherings or hui. However, these functions are informed by values of love, loyalty and mutual responsibility (Taiapa 1994, 7).

- 106 The importance of recognising that whānau is about community is demonstrated in West Auckland where Māori of Te Whānau o Waipareira are not all linked by kinship and where most live outside the traditional territories of the tribes from which they are descended. The problems of this whānau could not be said to be common to all Māori. Nor could the processes by which that whānau seeks to deal with its problems be processes which are common to all Māori.
- 107 Court facilities, for example, are not designed to accommodate whānau, nor those who come to give support to whānau. A survey conducted by AC Nielsen McNair in 1997, across the criminal, family, civil and youth courts and the Disputes Tribunal, found that 25 percent of people attending the criminal court and 12 percent attending the youth court attended as whānau support.<sup>11</sup>
- 108 Attributing a narrow meaning to whānau as inclusive only of mother, father and children excludes broader family groupings and support relationships in the community. In New Zealand society today whānau is capable of incorporating groups wider than descent. In urban areas such groups typically comprise non-kin from a variety of backgrounds, both Māori and Pākehā (Taiapa 1994, 6). For instance, Te Whānau o Waipareira is an organisation which provides not only support to families in need but a sense of whānau to urban Māori of West Auckland.
- 109 A witness in the claim by Te Whānau o Waipareira told the Waitangi Tribunal:

Te Whānau o Waipareira is the oldest and most significant of all those organisations in West Auckland. . . . Whānau members comprise both

---

<sup>11</sup> With the exception of those appearing as defendants in the criminal court (11 percent), there was no other type of attendance which was reported by more than 10 percent of the respondents.

Māori and Pākehā committed to dealing with the situations of Māori in West Auckland's urban environment. This is what sets Waipareira apart from many other organisations in that it is very much family oriented in its approach to community matters and what concerns [its] members. The attitude was and still is a sense of responsibility for [its] members from birth to death. (*Te Whānau o Waipareira Report*, 33)

- 110 Māori women acknowledged that some whānau are quite incapable of offering positive support to their members; some whānau do not function well. Those whānau in particular may require the support of the wider community, for instance, in the manner that Te Whānau o Waipareira offers support.

### *Te reo Māori*

- 111 There is a great body of Māori history, poetry and song that depends upon te reo Māori (the Māori language). A 1985 finding of the Waitangi Tribunal relating to te reo Māori and the Wai 11 claim commented that if the language dies all of that will die and the culture of hundreds and hundreds of years will ultimately fade into oblivion (Waitangi Tribunal 1986, 12). It is in the area of Māori language that the effects of assimilative policies are most obvious. Only 25 percent of Māori women and 24 percent of Māori men are able to converse in Māori about everyday things (see figure 11 at para 213 for breakdown by age groups). As was observed by the Waitangi Tribunal:

The history of New Zealand is testimony to the fact that language is both divisive and unifying. English has always been seen by the British colonists as the language for unifying Māori and Pākehā and Māori the language that kept the two people apart. The unifying force of Māori language among the Māori – or for the nation – was seen as neither desirable nor necessary and consequently all past policies have forcibly or tacitly been directed at its demise. The devastating effects of language loss are reflected throughout Māoridom today – grasping for an identity through language. Compounded by the effects of low socio-economic status, continuing under-achievement, unemployment, high criminal youth offending, the sense of “being Māori” for most New Zealanders is completely negative. (Waitangi Tribunal 1986, 60)

- 112 But that is not to say that te reo Māori is no longer of any value to Māori. Rather, the contrary applies because, as the Tribunal went on to say, “te reo Māori serves to restore an identity for people who see themselves as Māori and want to be recognised as such” (Waitangi Tribunal 1986, 60). The limited or poor use of te reo Māori was taken by many Māori women to be an indication of the level of cultural awareness of those providing legal services. Poor

pronunciation of Māori names provided Māori women with further evidence that system personnel did not respect them (Courts Consultative Committee 1991, 20–21).

## *Whenua*

- 113 At many of the hui held by the Law Commission the importance of land to Māori was discussed. Traditionally, land incorporated cultural and spiritual identity, livelihood, social structure and values. As the Waitangi Tribunal noted in the *Taranaki Report* on the dispossession of Taranaki Māori of their land, “people were relocated, land tenure was changed, and a whole new social order was imposed. The losses were physical, cultural, and spiritual” (Waitangi Tribunal 1996, 13). The Tribunal noted further:

Every nook and cranny of those lands was redolent with ancient history and meaning, and the silent land spoke loudly to them of their ancestors and their own dispossession. They were confronted by a new landscape, peopled by military settlers and grid-ironed with forts and redoubts. They had to contend with new layers of authority, exercised by local, provincial, and central government officials. All came to supplant the rangatiratanga of their chiefs, who were submerged by colonisation. (105)

- 114 Other writers have described the importance of whenua:

The land “te whenua” and women are the source of life and “te whenua” is the word used for the lining of the womb and the placenta which nourishes the foetus. The living community then, is born of women and nourished on the land. (Binney 1996, 26)

Land is the key to formulating a substantive and procedural Māori succession policy because of its centrality in Māori cultural practices and law. (Hohepa and Williams 1996, para 78)

## **Socio-economic disadvantage affects access to justice**

- 115 The socio-economic position of Māori women affects the circumstances in which they can access the justice system. The experiences of some Māori women were that access was denied, for instance, when they needed its protection. The concerns raised by Māori women relate to their needs for information about their legal rights, their inability to access information and legal services which may be due to legal language, the geographical distribution of services, and the costs involved in accessing those services. We show in chapter 4 that socio-economic disadvantage affects the quality of the interaction by Māori women with the justice system.

## *Access to information*

- 116 A central need identified by Māori women was for the provision of information and advice at an early stage to be able to make choices about their circumstances. They need to know what their rights and obligations are and need reliable information either to avoid or resolve their legal problems. The experiences of many Māori women were that their needs were not met.
- 117 Research has found a strong correlation between socio-economic disadvantage and doing nothing about legal problems (National Council of Welfare 1995, 30). The Northern Law News reported last year that for Māori living in small Northland communities, legal problems can fester for weeks and months. A trip to Whangarei to seek the help of a lawyer can involve more travel and legal expenses than many can afford, and, in any event, a legal office is a strange and daunting environment (Northern Law News 25, 10 July 1998, 1). To address the problem Te Tai Tokerau Community Legal Services Trust – funded by the Legal Services Board and with the assistance of practitioners throughout the district – is paying local residents to act as “outreach workers”, and provide a link between people with problems and the lawyers who can deal with them.<sup>12</sup>

## *Access to legal services*

- 118 Māori women with legal problems identified the need for a range of different services from advice at community law centres, through mediation to help resolve issues, to representation by lawyers.
- 119 As identified in the Law Commission’s miscellaneous paper, *Women’s Access to Legal Advice and Representation* (NZLC MP9), the initial steps in the justice process of locating suitable legal service providers are problematic for some Māori women. In their view, the information about where legal services are available is deficient. Moreover, there is little or no information about who is providing legal services. When cultural differences, financial constraints and a stressful problem are combined with lack of knowledge about who might be an appropriate legal service provider and where to find that service, if it exists at all, the ability of Māori women to

---

<sup>12</sup> If the scheme is successful it may be replicated in other parts of New Zealand where there are remote, under-resourced communities. At a meeting to review the progress of the scheme, large numbers of people with legal problems concerning family law, criminal law, Māori land issues and school expulsion were identified.

participate in the justice system is reduced. Conversely, their perception that the justice sector accords them little value is enhanced. And all this before any discussion over their problem occurs.

- 120 The affordability of legal advice and representation was a major concern of the women who attended the consultations. While women are aware that lawyers provide legal advice, many dismissed the idea of going to a lawyer in private practice because of the cost. Māori households do not just have lower incomes, they also tend to have more members than non-Māori households. Under these circumstances, Māori are less likely than non-Māori to be able to find the money to access the services offered by lawyers and other professionals. For Māori women it is vitally important to know of the availability of other legal service providers.
- 121 Services were difficult to access where, for instance, the women did not have a telephone. The 1996 Census reveals that 16 percent of Māori women reported not having a phone. Another 4 percent of households did not specify whether or not they had one. What this means, however, is that contacting the police, for example, could be problematic for a number of women.
- 122 Physical distance from justice sector services is a major problem, especially for women who live in rural areas. The 1996 Census reveals that 19 percent of Māori women reported not having a car. Travel into centres to attend appointments to enforce or protect rights becomes more difficult. Transport costs were often more than some women could afford and so they would be unlikely to seek assistance from existing justice sector services.
- 123 Court facilities are not designed to accommodate mothers with young children who have no other adult support. The lack of child-care facilities at the courts for Māori mothers who may be appearing in court, who have no child-care support nor any means to pay for child-care support, is yet another factor that heightens their perception that they are accorded little value in the justice system (see paras 195–196 for figures on Māori women and dependents).

### **Attitudes within the justice sector**

- 124 We discuss some attitudes within the justice sector which, by minimising the concerns of Māori women, contribute to their perceptions that the justice sector accords them little value.
- 125 Justice sector institutions such as the Police, Department for Courts, Income Support Service and the Children and Young Persons Service exercise specific powers. The Police, for instance,



are given powers to enforce the law. Officials within these institutions are perceived to be powerful because of the positions they occupy, the responsibilities they are called upon to discharge and the resources they have at their disposal (Thynne and Golding 1987, 10). It is essential that officials treat people in a dignified manner.

- 126 The attitude of courts administrators, in failing to have regard to the safety of Māori women as victims of violence, has resulted in some women having to wait for a hearing in the same room as the offender or the offender's family. The Law Commission's telephone survey of court facilities indicated that 20 out of 59 courts had no separate waiting facilities for victims of violence. Thirty-nine courts had such facilities but they varied from use as a "police" room to use as the office of the victim support advisor. Some courts said that a room would be available but only if requested.
- 127 The New Zealand National Survey of Crime Victims showed most victims are satisfied with Police responses to their complaints but one in five is dissatisfied. Of these, Māori are most dissatisfied. Victims' satisfaction is mostly determined by the way Police present and communicate information by keeping victims informed, treating them with respect, showing interest and effort. Some Māori women, victims of domestic violence, commented that they felt their concerns had been minimised by police officers with whom they dealt. Police have incorporated better service to victims as a fundamental component of police quality customer service training. Police will introduce new performance measures aimed at meeting these needs in the departmental forecast reports and in purchase agreements for 1998–1999 (Office of the Minister of Justice 1998, 3).
- 128 An example that attitudes in the justice sector needed changing was shown by the Police 2000 Strategy Group which, in *Urupare Whitiki: Building Responsiveness to Māori Strategy*, recognised the necessity of improving their relationship with Māori.
- The future relationship of Māori in New Zealand society and with the Police is fundamental to the Police strategy of reducing crime and the fear of crime, reducing injuries and deaths on the roads, and increasing satisfaction by the community with policing services. Police and Māori need to form a much closer partnership to assist in achieving these goals. (Police 2000 Strategy Group 1997, 2)
- 129 According to the 1998 report to the Minister of Justice, *Review of support services for victims of crime: Report of the Working Group*, Māori are less likely to report crime and as a consequence be less likely to be referred to services by Police. Improving perceptions

of Police by building relationships with Māori women may assist in increasing the rate of reporting and as a result access to support services (Office of the Minister of Justice 1998, 4).

- 130 A good deal of Police Youth Aid work is positive work in the community. Some Youth Justice co-ordinators are joining with police in community projects. For example, some Youth Justice co-ordinators developed a programme in conjunction with the Police, working in the schools, which takes young people through the whole process of the youth justice system: from arrest to court, family group conference, then outcomes, possibly back to court (Levine et al 1998, 14).
- 131 Another example of changing attitudes within the justice sector is where the judiciary in Hamilton instigated a positive initiative to ensure Māori community service providers are comfortable about making representations to the court on behalf of offenders. The Community Programme Sentence was seen as being sufficiently flexible to creatively respond to an offender's needs and draw on Māori community strength (Te Puni Kōkiri, "The Community Programme Sentence", 1997, 17).
- 132 Where mutual respect between Māori women and justice sector personnel was evident, many women felt able to participate positively in the justice system. The way in which people are treated by law enforcement personnel may be of particular importance in enhancing or diminishing a sense of legitimacy. Legitimacy is closely linked to the concept of justice. (Burnside and Maher 1994, 61). It is about those in authority acting in accordance with the shared values of the society in question.

## **Erosion of the value of Māori women**

- 133 The theme of system failure recurs too frequently in the experiences of Māori women to be lightly dismissed. It is because the justice system fails to be responsive to their needs that they perceive they are of little value. Moreover, it is that failure which effectively reduces the ability of Māori women to participate in the justice system.
- 134 Domestic violence, which affects many Māori women and their children, provides a chilling example of the importance of meeting their needs. One of the potential consequences of the justice sector failing to address their specific needs is that many women spoke of preferring to live with violence rather than deal with a system that they perceived exacerbated their own feelings of little value. It is altogether unacceptable that some Māori women feel that living with domestic violence is their only option. Another ele-

ment is that the children of these relationships are being exposed to such violence. Both elements must be addressed. The consequence of the women and therefore the children being imprisoned in violent relationships is that the children are at risk of joining those who are the current and potential future adverse social statistics (Denny 1993).

- 135 To equate material poverty with poverty of spirit is to mistake the strength of Māori women. Many Māori women attending the consultation hui do not accept as inevitable their inability to participate in the justice system. Quite the contrary: they were motivated to improve their access to justice. While over-represented in low income brackets, over-represented as victims of domestic violence, and over-represented among the ranks of the unemployed (see para 192), it is clear from the consultation process that they had considered the kinds of changes needed in the justice sector to enable them to participate more positively. They are dynamic women; they wish to be more than passive objects of the process.
- 136 They therefore recommended changes which they believe will assist the justice sector to be more effective and responsive. Some of their suggestions have already been discussed in earlier Law Commission miscellaneous papers on women's access to justice.

## SUGGESTIONS FOR CHANGE

- 137 In this section we discuss some specific suggestions made by Māori women aimed at improving justice sector delivery of services (see also chapter 6 where we discuss Treaty principles as a guide to policy development). They include:
- acknowledgement of Māori values;
  - developing effective and responsive services in the justice sector including
    - recruitment of Māori in the justice sector; and
    - training in the justice sector;
  - access to information; and
  - access to legal services, including
    - the option of services by Māori for Māori, and
    - community-based services.

### Acknowledgement of Māori values

- 138 Recognition of Māori values and their implementation is an indicator that the law and its processes acknowledge and respect Māori. Changes are required, for example, to the way in which hearings are conducted to take account of Māori values in court protocols.

The Institute of Judicial Studies is developing strategies to deal with these issues in consultation with judges. We have discussed earlier in this chapter some of the values that are important to Māori women because they enable Māori to participate as Māori.

- 139 The Law Commission's forthcoming paper on Māori custom law will address some underlying values and significant concepts of tikanga Māori which affect major areas of law and policy. It will be addressed to judges, decision makers and policy makers who are responsible for shaping the future of New Zealand law.

## **Developing effective and responsive services in the justice sector**

### *Recruitment of Māori in the justice sector*

- 140 Māori women recommended that more Māori personnel be appointed at all levels of the justice system. They were acutely aware that Māori are under-represented in the police force, judiciary and legal profession. Māori have traditionally been under-represented in the institutions which have made and applied law in New Zealand and of course this is even more so in the case of Māori women.<sup>13</sup> The first Māori woman member of Parliament, Iriaki Ratana, was not elected until 1949 and the first Māori woman Cabinet Minister, Whetu Tirikatene-Sullivan, was not appointed until 1972. The first Māori woman lawyer, Georgina Te Heuheu (now the Minister of Courts and Women's Affairs), was admitted to the Bar in 1971. Currently, according to figures provided by the New Zealand Law Society, approximately 3 percent of lawyers are Māori.
- 141 The value in employing quality Māori personnel is recognised by institutions in the justice sector. A recent report to the Crime Prevention Unit on counselling for families of murder victims although, not focused specifically on Māori women, noted the importance of ensuring Māori workers were available to assist Māori people through the process because of the different ways in which Māori viewed death and the different practices in dealing with death (Maxwell and Shepherd 1998, 84–85).
- 142 Although most Māori court users were satisfied with the service provided by court staff and few felt that court services were not

---

<sup>13</sup> See generally, Sorrenson, "A History of Māori Representation in Parliament" in the *Report of the Royal Commission on the Electoral System – Towards a better democracy* (December 1986). The first Māori member of Cabinet, John Carroll, was appointed Minister of Native Affairs in 1899. The first Māori lawyer, Apirana Ngata was admitted to the bar in 1897.

responsive to Māori, those interviewed identified an increased Māori presence in the courts (in particular, Māori staff and judges) as the primary way in which courts could be made more Māori friendly. They also saw scope for more Māori protocol, more understandable language in the courts and for staff to show a better understanding of Māori language and culture. (Department for Courts 1998, 22)

- 143 For many Māori women, while a first step to improve the justice sector's services is the recruitment of more Māori, being Māori does not by itself guarantee an understanding of Māori values (tikanga). What is sought is a quality Māori service capable of providing a responsive and effective service.

### *Training in the justice sector*

- 144 Māori women suggested that the development of training programmes for justice sector personnel at all levels was essential. Dealing with the public and with cultural issues were identified as fundamental skills for justice sector personnel.
- 145 Development of communication skills across the justice sector was seen as a key element of training. Lawyers for instance, currently receive very little training in communication skills and are not adequately prepared for client interaction. The New Zealand university law degree courses generally have little focus on skills-based training. The Institute of Professional Legal Studies Course, a 13-week course which lawyers must complete before they can be admitted to practice, has recently submitted a proposal to the Law Foundation for funding to review the Institute's course materials. This review would aim to develop and implement materials promoting:
- awareness and skills in relation to the Treaty of Waitangi and Māori cultural issues; and
  - wider cross-cultural communication skills and awareness.

Similar initiatives are being developed by the Institute of Judicial Studies.

### **Access to information**

- 146 Legal information may be defined as general information about the law, legal services and legal processes (see also paras 116 and 117). It is clear that *where* legal information is obtained is just as important for Māori women as *how* it is conveyed. Māori women prefer to seek advice through informal contacts (including Māori service providers, community law centres, and agencies crossing a variety of portfolios such as social welfare and health) than through

lawyers. The environment in which lawyers practice and the language they use, only serves to heighten Māori women's experience of being of little value within the justice sector.

### *A possibility for the future*

- 147 Although at the time of our consultation, information technology had not assumed its current prominence, Māori women expressed concern at inadequate access to information and advice. It is useful to consider the possibilities of information technology in considering how access to justice can be better secured. A strategic approach to the provision of electronic legal information and services within the justice system must be considered.

Legal guidance, legal knowledge, legal expertise and legal experience may gradually be available on the internet, offering non-lawyers (individuals and organisations, for social and business purposes) access to structured, practical guidance on legal affairs. (Susskind 1998)

- 148 Marae, community law centres and service providers may be used as potential centres for distance learning, advice, guidance and communication. A recent White Paper by the Lord Chancellor in the United Kingdom called "Modernising Justice", proposed, for example, the establishment of a community legal service website offering legal advice.
- 149 The prospect is evolving of installing computer terminals, with one or two qualified persons to operate them, at remote marae or court houses to enable someone with a difficult and immediate legal problem to seek advice from a community law centre at a distance. It will not be too long before cameras are regularly linked to computers so that video conferencing is readily available, either within the court system or for advisers. Those who are currently disadvantaged within the system because they live at a distance should be able to make use of the computer technology to obtain good legal advice and to initiate, where necessary, proceedings to enforce rights. The concept will doubtless involve an immediate capital expenditure which, if the resource is used properly, may result in long term savings through the ability of people to gain access to the justice system more quickly and efficiently. It presents a challenge to Māori, the New Zealand Law Society, community law centres, Citizen's Advice Bureaux, and commercial and other potential suppliers of legal information, including the Crown.
- 150 Another aspect of information technology is the capacity to file documents electronically as now occurs in the US Federal Bankruptcy Court in South Manhattan. If that were done, it would be

possible to have only a small number of centres where court documents are actually filed. The judge in each centre could deal with the applications that are made through computerised means; including the use of video conferencing. Where it became necessary for a face-to-face hearing to take place a judge could be rostered to hear the case at a courthouse which, otherwise, may need little in the way of permanent staff.

- 151 These techniques can also be used both to obtain better access to information and also to educate. Indeed, the National Trust of Kōhanga Reo has set up a network of electronic communication by installing 600 terminals in kōhanga throughout the country. The trust has a programme of training two persons to use the system at every kōhanga. The kōhanga have access to unlimited internet connections. When these facilities are already used for educational functions it is appropriate to consider the scope of the use of such technology, as often the benefits will cross a variety of portfolios (for example, education, health, justice, courts).

## **Access to legal services**

### *The option of services by Māori for Māori*

- 152 The recommendations of Māori women went beyond simply involving more Māori in the provision of services. Because Māori women have found services to be unresponsive and ineffectual they recommended the option of services provided by Māori for Māori. Such services could advise Māori women and their whānau about issues such as drug and alcohol addiction, anger management, domestic violence and sexual abuse.
- 153 The women also referred to the need for paid Māori advocates to assist Māori through court and rehabilitation processes. The women envisaged that such advocates would have some knowledge of the law, legal processes and an understanding of cultural values.

### *Community-based services*

- 154 Community-based services include community law centres and community service providers. Māori women recommended establishing more community-based services, particularly community law centres where local networks were valued. There are now 19 community law centres in New Zealand. However the following areas are not catered for: all of Northland, Gisborne and East Cape, Bay of Plenty, Taranaki, Manawatu, Nelson and Golden Bay, Timaru and Oamaru, West Coast and Buller. Moreover, where there are community law centres, the centre is often responsible for a

very large geographical area. For example, the Hamilton Community Law Centre is responsible for the area from the Bombay Hills to National Park, Te Aroha, Morrinsville to Raglan and Kawhia and also takes in Putaruru, Tirau and Tokoroa (Law Commission NZLC MP9, 35).

- 155 Community law centres already make extensive use of community workers with legal experience and knowledge to provide legal information and advice as well as other information related to clients' situations. A number of community law centres – resources permitting – are already providing or are planning training for community workers so that the demand for law-related information and advice in the community can be better met.

### *Community service providers*

- 156 Māori women, although acknowledging that Māori processes in accordance with tikanga were desirable, queried how such processes might be developed and monitored. The Community Probation Service, for instance, in seeking to be responsive to the needs of Māori has attempted to integrate responsiveness to Māori into its internal systems, processes and structures. The Hamilton Community Programme pilot with Maatua Whangai “has empowered the local Māori community and acknowledged the general preference of Māori consumers for services delivered by Māori for Māori” (Te Puni Kōkiri, “The Community Programme Sentence”, 1997, 5). This has been done by a combination of factors including involving whānau, hapū and the wider Māori community in the implementation and delivery of programmes and by integrating strong Māori values and concepts into the programmes.
- 157 The aim of having a workforce in the justice system within which Māori, including Māori women, are participating at all levels and in all areas was suggested by the women during the consultation hui. Workforce development should allow for new categories of workers who may have particular attributes, not found among conventional professions, but closely linked to networking within Māori communities, cultural skills, and acceptance by a community group as a go-between.
- 158 Better resourcing for Māori service providers was a frequent recommendation. In the recent inter-departmental “Responses to Offending by Māori” officials noted that
- the success of programmes has been contingent on reliable funding, and development according to the needs and resources of the local community . . . the Responses to Offending by Māori [ROBM] work



programme has highlighted the scarcity of these types of programmes and the lack of a planned approach in the criminal justice sector to developing existing and potential providers to develop and deliver these types of programmes. This, together with the financial vulnerability of Māori providers suggests that Māori provider development may assist with the continued and increased provision of services that are responsive to the needs of Māori offenders and victims. (Memorandum to Cabinet Health and Social Policy Committee, 5).

- 159 The Whānau o Waipareira Trust has found that while Māori communities generally are short of cash as well as management and other formal skills, they are rich in voluntary, unskilled labour – especially that of Māori women. But promoting the continued reliance of Māori service delivery upon the untrained labour of volunteers is seen as counterproductive. Rather, it would be to the benefit of all Māori and for New Zealand as a whole for an increasing number of Māori community workers to be trained and paid for their work (Waitangi Tribunal, *Te Whānau o Waipareira*, 1998, 193–194).

## CONCLUSION

- 160 What Māori women have told us reflects their views that as a consequence of their cultural values being disregarded, in combination with socio-economic disadvantage, they experience significant barriers to accessing the justice system. Some no longer have confidence in the justice sector at all. Many recommended change.
- 161 Some of the women's suggestions to develop effective and responsive services have been or are being implemented by some agencies, particularly as regards Māori staff and even as regards the provision of services by Māori for Māori. We have also discussed further suggestions for change with government agencies. The responses by agencies, which were positive, are discussed in chapters 5 and 6.
-

---

## 4

# Identifying needs to develop solutions for Māori women

- 162 In this chapter we suggest that Māori women are involved in the justice system as victims, offenders and as whānau support more often than the available data records. The absence of data is itself symptomatic of a failure to understand the manner in which the justice system affects Māori women.
- 163 Many of the statistics used in this analysis relate to Māori generally. Only when it is clear that Māori women's experience is significantly different from that of men are women separated out. The analysis is a cross-sectional one, focusing on disparities between Māori and non-Māori at a particular point in time. It does not look into past trends. Within the confines of this report it is not possible to go into the issues in detail. The statistics used have been selected to represent the main factors involved in determining the relative position of Māori. These statistics are in the nature of broad indicators rather than exact measures of that position.
- 164 The analysis has been constrained by the fragmentary nature of the available data. Information specifically about Māori women as users of the justice system and related services is incomplete. Moreover, data that could help to show the influence of cultural differences on the relative socio-economic position of Māori and non-Māori is extremely limited.
- 165 We provide some background data on the women's concerns about the geographic distribution of services and then go on to affordability issues. These are examined in the context of the relative socio-economic position of Māori and non-Māori. We regard socio-economic issues as having a cultural dimension, and it is in a socio-cultural context that the issue of agency responsiveness to Māori is considered. Our analysis suggests that demographic, cultural and socio-economic factors intertwine in a way that entrenches and perpetuates disadvantage. Disadvantage and poverty tend to take the form of a vicious circle, such that low income can be seen as

both a cause and an effect of such things as low educational achievement and poor employment outcomes.

## CULTURAL AND SOCIO-ECONOMIC DISPARITY

- 166 There were two recurring relevant themes arising out of the consultations with Māori women about barriers to justice. These were:
- first, the barrier of cultural insensitivity on the part of agencies responsible for delivering services; and
  - secondly, the geographic distribution of services, and the costs involved in accessing those services.

These matters can be more readily understood if they are seen in the context of the relative position of Māori, and Māori women in particular, in New Zealand society.

- 167 Māori women and their families are over-represented on the lowest rung of the socio-economic ladder. To a large extent their position has been shaped by historical factors and in particular, by the assimilative policies and practices of past administrations (see discussion in chapter 2). These are reflected in the undermining of traditional Māori institutions, the Māori language and other manifestations of Māori identity. In spite of erosion, however, Māori institutions such as the whānau, the hapū and the iwi have adapted to meet new challenges and new conditions; many of the values, beliefs, expectations and practices that underpin them continue to influence Māori behaviour. The failure of successive governments to remove the disparities between Māori and non-Māori has been attributed to an unwillingness on the part of policy-makers to consider Māori cultural factors alongside social and economic ones.

## USERS OF THE CRIMINAL JUSTICE SYSTEM

- 168 From the available statistics about the criminal justice system it is evident that Māori constitute a very high proportion of its users. However, for the purpose of determining exactly what the proportion is, the statistics are inadequate. The information is restricted to offenders yet many of the women who use the services could not be classified as offenders. Some will be the partners of men who offend. Others will be the mothers of young offenders. As a result, there is no information from which a complete count of service users can be obtained. It can be inferred from the following tables that the proportion of Māori women among the criminal justice system's users may be higher than that suggested by the number of female offenders.

Table 1: Offender apprehensions: Total and Māori 1997

Gender and age	Offender Apprehensions		
	Māori	Total	% Māori
Women aged 17+	12,173	27,436	44.4
Men aged 17+	45,473	122,996	37.0
Children and young persons	21,124	44,654	47.3

Source: Ministry of Justice 1998

Note: Data relates to recorded offences

- 169 Apprehension statistics relate to the activities of the police. An impression of the proportion of Māori women who might use the courts' services can be obtained from the next table.

Table 2: Prosecution cases involving Māori: Percent all cases in each age group 1997

Age group	Males		Females	
	Number	% all cases	Number	% all cases
14–19 years	6,913	40.6	1,589	47.7
20–24 years	6,524	39.1	1,517	52.5
25–29 years	4,637	41.2	1,228	51.7
30–39 years	5,468	40.0	1,414	48.4
40+ years	1,978	27.7	506	33.8
<b>Total</b>	<b>25,520</b>	<b>38.8</b>	<b>6,254</b>	<b>48.1</b>

Source: Ministry of Justice 1998

- 170 Depending on the sentence imposed, some offenders may go on to become the responsibility of the Corrections Department. Others may become users of community-based programmes. The next table is used as an indicator of the proportion of Māori women who might be involved at this stage, not just as offenders, but also in the ways already described.

Table 3: Convicted non-traffic cases involving Māori by sentence type 1997

Sentence type	Māori	Total	% Māori
Imprisonment	3,550	6,777	52.4
Periodic detention	6,389	12,991	49.2
Community programme	231	347	66.6
Community service	1,807	3,851	46.9
Supervision	1,742	4,122	42.3
Monetary	6,207	17,901	34.7
Deferment	1,308	3,247	40.3
Other	5	17	29.4
Cost/no sentence	1,393	3,275	42.5

Source: Ministry of Justice 1998

- 171 Even with the information set out, it is still not possible to get anything other than a general feel for what the relative size of the Māori female statistics may be. As well as being limited to offenders, there are problems with the data. First, the recording of ethnicity across the justice sector is known to be unreliable. Second, the statistics refer to cases and in any given year it is possible for the same person to be counted more than once. Third, some Māori men do not have Māori partners and some Māori children do not have Māori mothers. Fourth, the information is restricted to offending: it does not extend to victims.
- 172 Successive surveys have found that Māori women carry a higher risk of becoming victims than do non-Māori women. In particular, Māori women are at higher risk of partner abuse. Support for these findings comes from the New Zealand National Survey of Crime Victims 1996 and statistics collected by the National Collective of Independent Women's Refuges. In the 10 months between 1 July 1996 and 30 April 1997, Women's Refuges assisted a total of 5,783 new clients, 2,600 (45.2 percent) of whom were Māori. Among them, these women had an average of 1.6 children. Māori men made up 40.5 per cent of the abusers.<sup>14</sup>
- 173 The representation of Māori women among victims of domestic violence and of Māori men among the abusers of women dealt with by the Collective of Independent Women's Refuges is many times greater than the representation of Māori women and men in the New Zealand population as a whole. At the 1996 Census Māori men and women made up 11.7 and 11.8 per cent (respectively) of the total New Zealand population aged 15 years and over.
- 174 Given the statistics on offending and the survey findings on victimisation, Māori women can be expected to make up a high proportion of the clients of related social services such as the Children and Young Persons Service and the health services. They can also be expected to be major users of Māori and other voluntary community-based services such as the Women's Refuges, marae

---

<sup>14</sup> The figures quoted here are the latest published figures from the Annual Report of the National Collective of Independent Women's Refuges for the year ended 30 June 1997. In other statistics, the Women's Safety Survey 1996 conducted as part of the National Survey of Crime Victims found, for example, that 5 percent of Māori women with current partners and 44 percent of Māori women with recent partners reported that they had been afraid their partner might kill them. Comparable figures for women generally were 3 percent and 24 percent.

and church organisations. Enquiries were made with the Children and Young Persons Service about the availability of statistics on their Māori clientele but this information was not publicly available at the time of writing.

175 The above information suggests a high involvement of Māori women in justice sector services, yet many of the women who participated in the consultation felt cut off and alienated even from the most heavily utilised services. In the following sections, we will explore the possible reasons why the services might be failing to respond appropriately to Māori concerns. We do this by examining the different contexts in which Māori women's concerns need to be understood.

## THE DEMOGRAPHIC CONTEXT

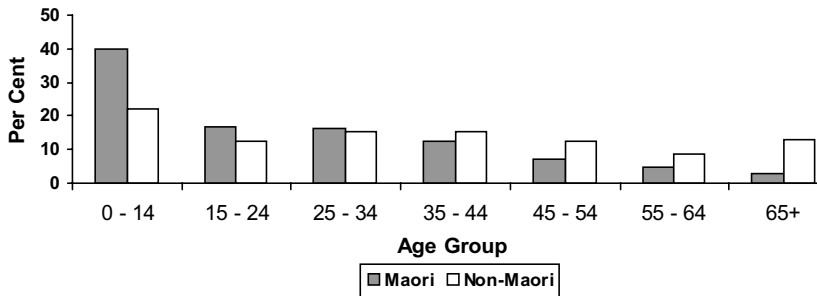
176 Some of the concerns raised during the consultations, particularly those relating to physical distance from government services, need to be seen in the context of the size, demographic structure and geographic distribution of the Māori population.

### *Size and age structure of the Māori population*

177 Māori people, who were thought by nineteenth century commentators to be dying out, now number well over half a million (523,000). Females outnumber males by a very narrow margin and, compared to the non-Māori population, the proportion of children and young adults is very high.

178 Figure 1 compares the age distribution of the Māori and non-Māori populations. It shows that over half the Māori people (56.5 percent) are under 25 years of age. The comparable figure for non-Māori is

Figure 1: Age distribution of Māori and non-Māori population



Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

just over one third (34.6 percent). Conversely, people aged 65 years and over comprise just 3 percent of the Māori population while non-Māori in the same age group make up 13.1 percent of the non-Māori population.

- 179 Between now and 2051, the Māori population is expected to rise to close to 1 million (993,000). Over this same period, the proportion of Māori in the total population is projected to increase from 15 percent to 21 percent. Massive changes are expected to occur in the age structure with the proportion of elderly Māori rising from 4 percent to 13 percent of the Māori population. Even in the year 2051, however, the Māori population will still have a younger profile than the non-Māori.

### *Geographic distribution*

- 180 Physical distance from justice sector services is a major problem, especially for women who live in rural areas. As the following discussion shows, proportionately more Māori women are likely to face this problem than non-Māori women.
- 181 More than half of all Māori (58 percent) live in the northern half of the North Island with the greatest concentration occurring in the Auckland region. However, while 24 percent of all Māori live in the greater Auckland area, Māori make up a less significant component of the population there than they do in other regions. Fifteen percent (15 percent) of the total population of New Zealand is Māori. Within some regions, the proportion greatly exceeds this figure:
- Gisborne, 45 percent
  - Northland, 32 percent
  - Bay of Plenty, 29 percent
  - Waikato, 21 percent
- 182 Although the Māori population is heavily urbanised, Māori are still more likely than non-Māori to be living in provincial cities, small towns and rural areas. This difference in the urban-rural pattern of Māori and non-Māori is illustrated in table 4.<sup>15</sup>

---

<sup>15</sup> The Department of Statistics used classifications of “main urban areas”, “secondary urban areas” and “minor urban areas” to describe urban centres consisting of cities and/or districts with populations of at least 30,000 or as specified in the brackets in table 4. The category “metropolitan urban area” has been added to distinguish large urban areas with a population of at least 100,000.

Table 4: Urban-rural distribution of Māori and non-Māori by gender 1996

Urban area	Māori		Non-Māori	
	Males	Females	Males	Females
Metropolitan (100,000+)	34.5	35.1	49.0	50.0
Main (30,000+)	27.3	27.8	22.5	23.1
Secondary (10,000-29,999)	7.1	7.0	5.5	5.7
Minor (1,000-9,999)	13.6	13.8	7.7	7.8
Rural	17.5	16.3	15.2	13.4
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

183 Problems of distance are accentuated by lack of access to a telephone or a motor vehicle. According to the 1996 Census, Māori are less likely than non-Māori to have access to either of these amenities. Eighty-four percent of Māori women had access to a telephone and 81 percent to a vehicle. The comparable figures for non-Māori women were 97 percent and 91 percent.

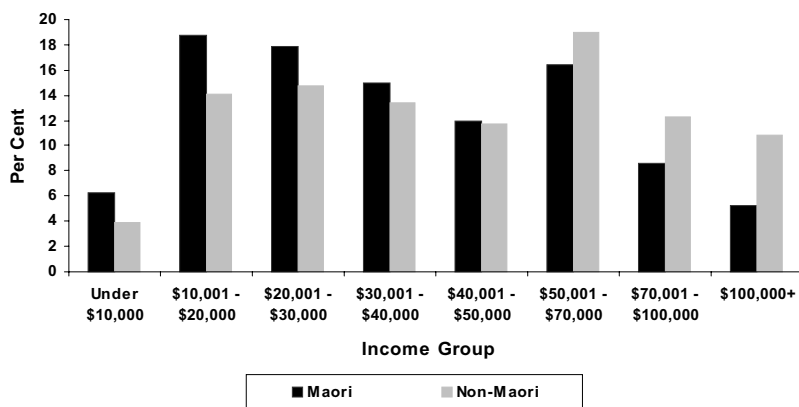
## THE SOCIO-ECONOMIC CONTEXT

184 The affordability of legal advice and representation was another major concern of the women who attended the consultations. In this section, we investigate the background to this concern.

### *Income*

185 Income is the principal determinant of socio-economic position in New Zealand society. People who have a reasonable income

Figure 2: Distribution of Māori and non-Māori by household income



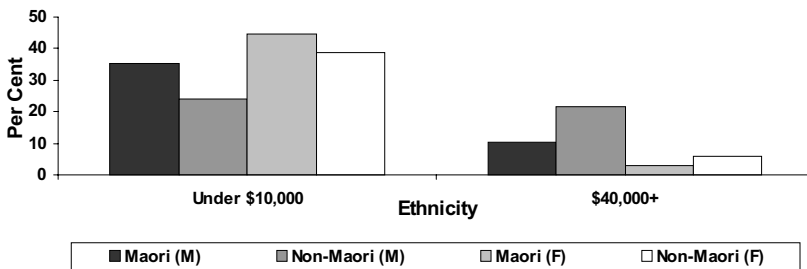
Source: Statistics New Zealand, *Census of Population and Dwellings 1996*



have greater freedom, more choices, better access to services, and better life chances than those who do not. Compared to non-Māori, Māori household incomes are low. As a result, it is not as easy for them to access services which have to be paid for.

- 186 Household income represents the combined incomes of all household members. As shown in figure 2, while a few Māori live in households with an annual income of \$100,000 or more, most (58 percent) live in households with an annual income of less than \$40,000.
- 187 Moreover, Māori households do not just have lower incomes, they also tend to have more members than non-Māori households. Under these circumstances, Māori are less likely than non-Māori to be able to find the money to access the services offered by lawyers and other professionals. Indeed, information about expenditure patterns drawn from the Household Economic Survey shows quite clearly that Māori households spend considerably less than non-Māori households on insurance and financial and legal services. As at October 1997, the average weekly expenditure on these services was \$14.00 for Māori households and \$20.10 for non-Māori households.
- 188 The relatively low household income of Māori reflects low personal incomes. It is in this respect that the extent of Māori women's socio-economic disadvantage becomes apparent.

Figure 3: Proportions of Māori and non-Māori with high and low personal income by gender 1996

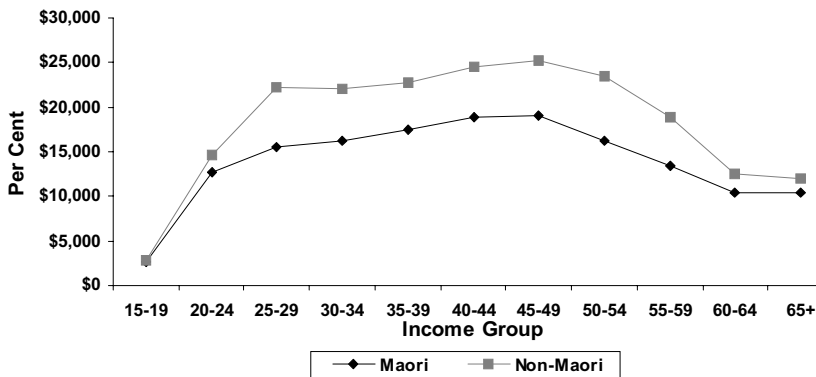


Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

- 189 As figure 3 demonstrates, when compared to the other three groups, Māori women are over-represented in the very lowest income bracket and under-represented at the higher levels of the income scale.
- 190 A number of different factors have a bearing on the relative income levels of Māori and non-Māori. First, income is age-related. Since

the proportion of Māori at the younger ages of the labour force is greater than that of non-Māori, Māori cannot be expected to have the same earning capacity as non-Māori. However, as figure 4 shows, even when age is controlled for, Māori age-for-age receive less than non-Māori.

Figure 4: Median income of Māori and total population by age 1996



Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

### Educational qualifications

191 Second, income is employment-related and, in the labour market, Māori are disadvantaged by age, by geographic distribution and by comparatively low qualifications and skills. In respect of their qualifications, Māori women are more disadvantaged than Māori men. This is demonstrated in table 5.

Table 5: Māori and non-Māori post-school qualifications by gender 1996

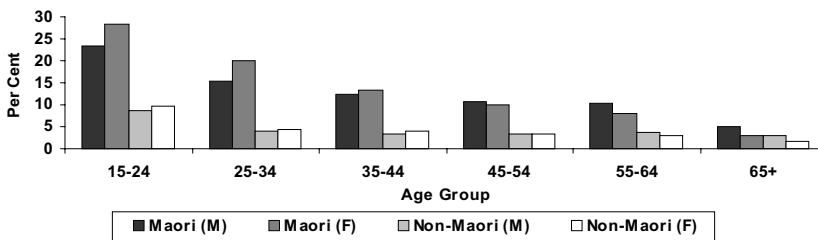
Post school qualification	Māori		Non-Māori	
	Males	Females	Males	Females
No qualification	82.6	84.2	65.5	72.7
Basic or skilled vocational	9.9	7.3	14.1	7.5
Intermediate or advanced vocational	4.3	5.8	8.9	11.4
Bachelor degree	2.3	2.1	7.5	5.7
Higher degree	0.9	0.7	4.0	2.6
<b>Total</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>	<b>100.0</b>

Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

## Unemployment

- 192 As a consequence of, among other things, their lack of qualifications, Māori are disadvantaged in the competition for jobs. The result is over-representation among the ranks of low-skilled and low-paid workers, a high concentration in industries that are sensitive to economic peaks and troughs (eg, manufacturing) and, since the economic reforms of the late 1980s, widespread unemployment.

Figure 5: Proportions of the labour force unemployed in each age group 1996



Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

- 193 Figure 5 compares the unemployment patterns of the four groups – Māori and non-Māori males and Māori and non-Māori women. Māori women at all ages are much more likely to be unemployed than Māori and non-Māori men and non-Māori women. It also shows the inter-relationship between age and unemployment. In effect, the older one gets, the less the likelihood of unemployment.
- 194 What figure 5 does not depict is the effect of the geographic spread of Māori unemployment. One of the factors influencing the level of unemployment among Māori is the geographic distribution of the population. As explained earlier, a greater proportion of Māori than non-Māori are living outside the five largest urban areas. A high proportion of these Māori live in regions in which there has been extensive economic restructuring. Jobs are scarce in these areas and given their lack of educational qualifications and skills, few Māori would be able to compete successfully against their non-Māori peers in the local job-market.

## One-parent families

- 195 Further, income is related to family composition. Māori are much more likely than non-Māori to be living in one-parent families thus reducing the opportunity for those parents to participate in employment. The differences between Māori and non-Māori women in respect of family type are illustrated in table 6.

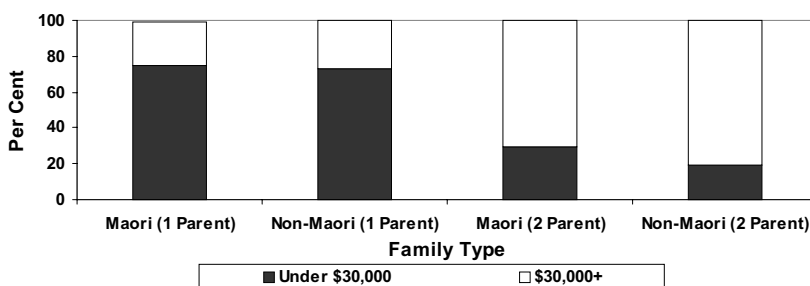
Table 6: Māori and non-Māori women with dependent children by family type 1996

Family Type	Māori	Non-Māori
Two-parents with dependent children	58.9	80.9
One-parent family with dependent children	41.1	19.1
<b>Total</b>	<b>100.0</b>	<b>100.0</b>

Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

196 As table 6 shows, Māori women are more than twice as likely as non-Māori women to be living in one-parent families. Moreover, as figure 6 shows, mothers in one-parent families have lower incomes than those living with a partner.

Figure 6: Income of Māori and non-Māori women with dependent children by family type 1996

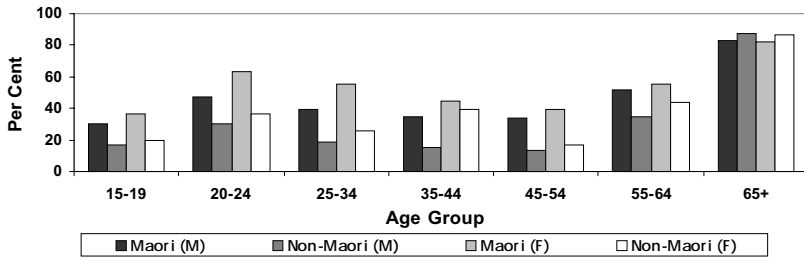


Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

197 Single women with dependent children, whether Māori or non-Māori, have similar incomes and by far the greater proportion receive \$30,000 or less. Among partnered women, Māori incomes are lower than for non-Māori.

198 Household size, age, geographic distribution, educational attainment, child-care responsibilities and labour market variables are just some of the factors that affect the position of Māori, and Māori women in particular. Each reacts on the other in a way that tends to entrench and perpetuate disadvantage. For instance, while a good education is often necessary for securing a well-paid job, whether or not Māori can achieve the same educational standards as non-Māori in the absence of a good income is open to debate. However, it is not the inter-relationships themselves that should be of concern since it is the outcome that is important. For Māori, that outcome is a very high level of dependency. As figure 7 demonstrates, at all ages Māori women are more likely than non-Māori women and Māori and non-Māori men to be on a benefit of some kind.

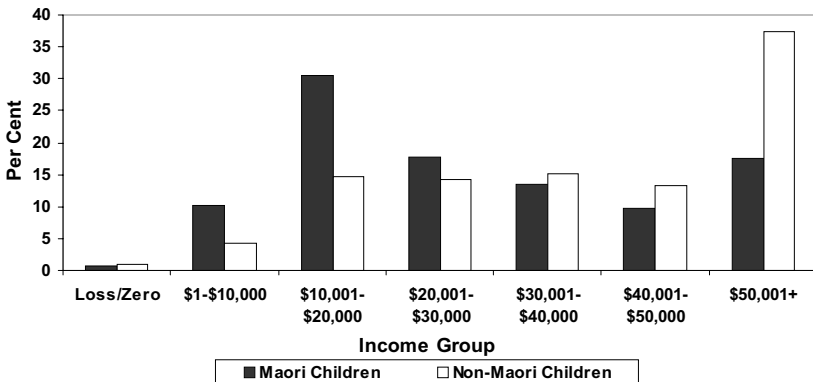
Figure 7: Proportion of Māori and non-Māori males and females who received at least one benefit during the past year by 1996



Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

199 If disadvantage persists for long enough, it soon perpetuates itself since children brought up in low income families are not likely to have the same opportunities as children in higher income homes. Figure 8 suggests that about 2 in every 5 Māori children (41.4 percent) are being brought up in families with an annual income of less than \$20,000. The comparable figure for non-Māori children is 1 in 5 (19.9 percent). Thus Māori children are more than twice as likely as non-Māori children to be living in families with an income of less than \$20,000.

Figure 8: Percentage distribution of Māori and non-Māori children by family income 1996



Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

## OUTCOMES

200 Negative disparities in such areas as criminal offending, violence and health are a manifestation of the disadvantages that Māori women face. Over-use of some parts of the justice system and of

other social services is another outcome. As we noted earlier, Māori women do not act solely on their own behalf in relation to these services. Rather as the centre of their whānau, they advocate for, advise and support their partners, their children and their wider kin group. Against this background, meeting the costs of getting to agencies to make a case, let alone meeting the cost of legal representation and advice, presents a major barrier to Māori women.

201 In addition to the statistics on victimisation set out in paragraphs 133 and 134, further evidence of the comparatively high incidence of Māori female victimisation is provided by statistics on hospitalisations. As table 7 shows, in 1995/1996, 42.7 percent of all the female cases treated in public hospitals for injuries inflicted by others were Māori. Over-representation was highest in the 25–34 and 35–44 years age groups. As these are the ages at which Māori women are likely to be mothers of pre-school, primary and secondary school children, a significant number of Māori children are affected. It should be noted that in general, Māori tend to be higher users of hospitals and accident and emergency facilities, rather than doctors. This could be a significant factor in the higher rates being reported in hospital admissions as non-Māori may be seeking treatment from their general practitioner rather than the hospital. Again, however, use of public hospitals rather than private general practitioners may well be income related but at this point we have no figures. That Māori children are themselves very often the victims of violence is also evident from Table 8.

Table 7: Māori hospitalisations for injuries inflicted by others: Percent of all hospitalisations in age group 1995/1996

Age group	Māori % all hospitalisations		Māori % total NZ population	
	Males	Females	Males	Females
0–14	27.5	32.1	23.5	23.7
15–24	24.3	40.9	18.1	18.9
25–34	26.5	52.1	14.6	15.4
35–44	21.0	46.5	11.7	12.2
45–54	12.6	40.7	8.8	9.1
55–64	18.9	7.7	8.1	8.3
65+	34.3	9.1	3.9	3.6
<b>Total</b>	<b>24.1</b>	<b>42.7</b>	<b>14.5</b>	<b>14.4</b>

Source: New Zealand Health Information Service, 1995/1996

202 Māori males and females, especially those in the younger age groups, are also over-represented among those discharged from or dying in hospital as a result of self-inflicted injuries. As table 8

shows, more than a quarter (26.4%) of the female cases aged 0-14 years were Māori and 16.6% of the male cases in the same age group. Māori women are at greater risk than Māori men of being hospitalised for self-inflicted injuries.

Table 8: Māori hospitalisations as a percentage of all hospitalisations for self-inflicted injuries by age and gender 1995

Age group	Males	Females
0-14 years	16.6	26.4
15-19 years	14.8	18.3
20-24 years	15.6	18.1
25-34 years	14.0	18.1
35-44 years	9.7	10.3
45-54 years	7.3	12.4
55-64 years	9.1	4.3
65 years & over	2.0	6.0
<b>Total</b>	<b>12.7</b>	<b>16.2</b>

Source: New Zealand Health Information Service, 1995 (Provisional)

### *Suspensions and expulsions from school*

- 203 In 1992, Māori made up a third of all school suspensions and expulsions. By 1997, the proportion had risen to nearly 42 percent. Table 9 shows that compared to their proportion in the total school population, Māori are significantly over-represented among pupils who are expelled or suspended from school.

Table 9: Māori students suspended and expelled from school: Numbers and percent of all students 1992 and 1997

Suspensions and Expulsions	1992	1997
Māori	1,694	4,772
Non-Māori	3,388	6,682
Māori percent all suspensions and expulsions	33.3	41.7
Māori percent total school population	19.6	19.8

Source: Te Puni Kokiri, *Progress Towards Closing Social and Economic Gaps Between Māori and Non-Māori*, 1998

### *The socio-cultural context*

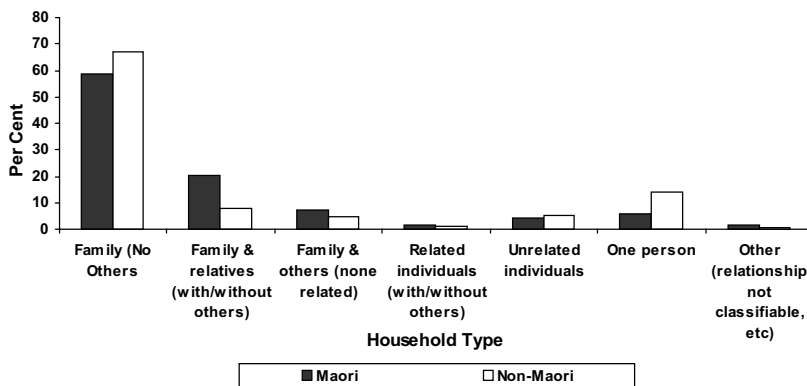
- 204 The persistence of negative socio-economic disparities has been a major concern of successive governments and of Māori commentators for many years now. For the latter, the inadequacy of response to address the issues is a symptom of a more fundamental failure to recognise and acknowledge that cultural dislocation is an

underlying factor in Māori socio-economic disadvantage. The argument is that the starting point for the development of effective policies and programmes is the identification and clarification of the underlying cultural issues.

205 Perhaps the most important resource for agencies that are seeking to respond to Māori issues is an official information-base that is relevant to Māori. Until very recently what information was collected about Māori was shaped largely by Government priorities. Since 1991, when a question on iwi was included in the census for the first time since 1901, Statistics New Zealand has been working on the extension and development of a series of statistics that meets the needs of Māori users. These statistics take into account cultural factors and their inclusion in the official statistical system can be expected, from a Māori point of view, to result in better informed, and hence more effective, policies.

206 As yet, the information is limited. In this section, we use the available data to provide the necessary context for weighing the views expressed by the women during the consultations. Data presented in this section is intended to show the extent to which Māori culture has been eroded and the efforts that Māori themselves are making to retrieve the situation. The underlying argument is that Māori need the help and the support of agencies in this endeavour.

Figure 9: Distribution of Māori and non-Māori women by household type 1996



Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

### Whānau

207 Nearly two-thirds of all Māori women aged 15 years and over live in a household made up of a single person or in a one or two-



parent family with no others present. On the other hand, more than one in five lives in a household that they share not just with members of their immediate nuclear family but with other kin as well. Some of the households in this category comprise two related nuclear families, some are made up of siblings, and others are nuclear families which have relatives living with them.

- 208 As can be seen from figure 9, Māori women are far more likely than non-Māori women to be living in households shared with relatives other than their immediate family.
- 209 Moreover, other studies have shown that the whānau is a reality for Māori families, whether or not they have relatives living with them. A separate study being conducted for Te Puni Kōkiri has found that nearly all of those families that do not have relatives living with them in the same household have one or more close and not so close family members living in the same district. It also found that there is a high degree of co-operation among the different households that make up the whānau. Among other things, the whānau provides financial support, food, child-minding services, advocacy and moral support for its members.

### *Iwi*

- 210 Until very recently it was generally supposed that iwi identification was no longer important to the majority of Māori. The 1996 Census found, however, that most Māori were able to provide the name of their iwi in response to the question on iwi affiliation. The proportion that either did not know or that failed to state an iwi was relatively small (27.6 percent of men and 25.4 percent of women).

Table 10: Knowledge of iwi 1996

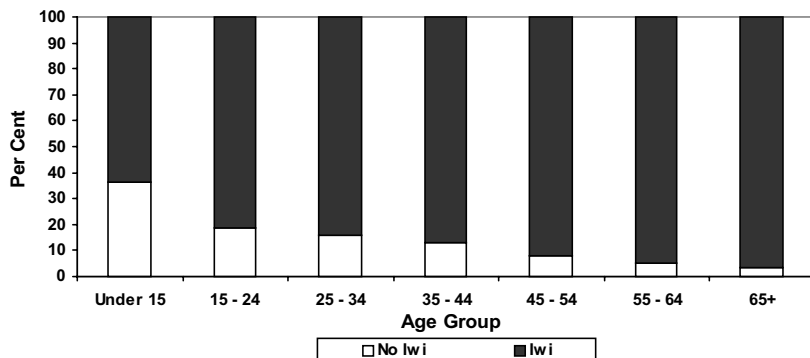
Response to iwi question	Males	Females
Iwi specified	72.4	74.6
Not known or not specified	27.6	25.4
<b>Total</b>	<b>100.0</b>	<b>100.0</b>

Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

- 211 The question on iwi affiliation is asked of all persons of Māori descent. A detailed analysis of those who did not state an iwi shows that two factors affect the size of this group. The first is whether or not those people identified as Māori and the second is age. Over a third (35 percent) of this group said they were of Māori descent but did not identify themselves as Māori. They are, in other words, people who are descended from a Māori but who identify culturally with other ethnic groups.

212 The effect of age is demonstrated in the next table. In effect, more than half of those who failed to give an iwi (54.2 percent) were under the age of 25 years. While it is correct that over half of those who did not give an iwi were aged under 25, over half the Māori descent population were aged under 25. This is really a reflection of the age distribution of the Māori descent population. What the graph shows is that in the younger age groups, there is a higher proportion of people who did not give an iwi.<sup>16</sup>

Figure 10: Response to iwi question by age 1996

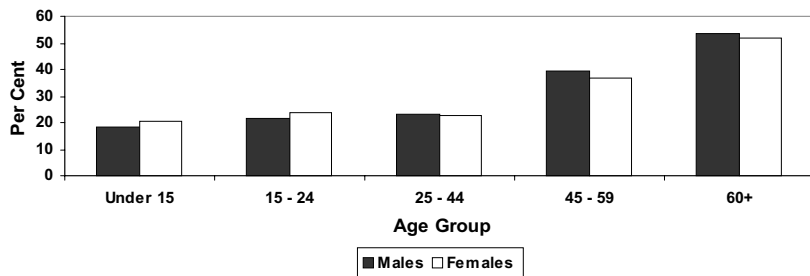


Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

### *Te reo Māori*

213 It is in the area of the Māori language that the effects of the assimilative policies of the past are most obvious. According to

Figure 11: Percentage of Māori in age group who speak Māori by gender 1996



Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

<sup>16</sup> The responses for a lot of children aged under 15 would have been provided by their parent(s) and not by the child themselves. In some of these families, the parent would be non-Māori.

the 1996 Census, which was the first census to include a question on languages, only 25 percent of Māori women and 24 percent of Māori men are able to have a conversation in Māori about a number of everyday things. Figure 11 shows that ability to speak Māori is age-related. The proportions that are able to speak the language rise with age.

- 214 Mounting concern over the survival of the Māori language led, in the 1980s, to a number of initiatives in the area of education. April 1982 marked the opening of the first Kōhanga Reo. Three years later, the first Kura Kaupapa Māori was opened. Demand for instruction by way of Māori language has resulted in a rapid growth in the numbers enrolled in Māori medium programmes or the study of Māori as a subject.

Table 11: Māori enrolments in Māori language initiatives 1992 and 1997

Sector	Initiative	Total enrolments	
		1992	1997
Early childhood	Kōhanga reo	11,041	13,353
Schools	Kura Kaupapa Māori	507	3,919
	Māori-medium	15,544	23,262
	Māori as a subject	30,940	25,528
	<b>(Total schools)</b>	<b>46,991</b>	<b>52,709</b>
Tertiary	Wananga	261*	962
<b>Total</b>		<b>58,392</b>	<b>67,024</b>

Source: Te Puni Kōkiri, *Nga Ira Tangata: Māori Towards 2000*, 1998; Te Puni Kōkiri, *The National Māori Language Survey*, 1998

\* The first Wananga was opened in 1994 and the figure of 261 refers to 1994

- 215 The 67,000 or so Māori children enrolled in Māori language initiatives within schools made up 47 per cent of the total number of Māori school enrolments in 1997. In spite of the numbers involved in these initiatives, the second Māori Language Survey conducted in 1995 suggests that the survival of the Māori language is still in doubt (*The National Māori Language Survey*, Te Puni Kōkiri, 1998).
- 216 This broad analysis of enrolments in Māori language initiatives highlights the effort that is being put in to the preservation of the language. This effort, moreover, is a joint one which serves to demonstrate what can be achieved when a state agency lends support to a Māori initiative. Enrolment in these schools and classes is a matter of choice. By taking up the opportunity, parents are demonstrating their own commitment to the language as well as to the retention of a separate cultural identity. Although they might not speak the language themselves, they are ensuring through their

children, the survival of Māori language and culture. This dispels any notion that Māori cultural values might be dying.

## MĀORI IN THE LEGAL PROFESSION

217 Māori women consulted at the Law Commission hui suggested that a greater number of Māori in the legal profession and among the staff of the service delivery agencies would go a long way toward reducing the socio-cultural distance they felt existed between themselves and the institutions. There are, however, too few Māori lawyers to meet the demand.

218 At the 1996 Census there were about 366 Māori lawyers. They represented 5.2 percent of all lawyers. Most of them were in private practice but a substantial proportion (27.8 percent) were employed in the government sector and so were not providing legal advice and advocacy services directly to clients.

Table 12: Māori and non-Māori in the legal profession by sector of employment 1996

Sector	Māori		Non-Māori	
	Males	Females	Males	Females
Government	54	48	669	447
Private non-profit services	6	3	24	45
Other private	162	78	4,119	1,602
Not specified	9	6	105	27
<b>Total</b>	<b>231</b>	<b>135</b>	<b>4,917</b>	<b>2,121</b>

Source: Statistics New Zealand, *Census of Population and Dwellings 1996*

219 As far as the government social service agencies are concerned, Māori are reasonably well-represented in relation to their proportion in the labour force as a whole. For example, whereas, Māori made up 11 percent of the total number of persons employed, within the Children and Young Persons Service, the Department of Courts and the Department of Corrections, Māori represented, respectively, 20 percent, 15 percent and 20 percent of the total staff. Unfortunately, the State Services Commission review does not include the Police (State Services Commission 1997).

220 As the true proportion of Māori women among the clients of these agencies is not known, it is not possible to judge what the representation of Māori among the staff would be appropriate. However, there does seem, on the face of it, to be an inconsistency between the Māori women participants' perceptions and the factual evidence. How is this to be accounted for? First, the statistics presented in the State Services Commission review are not broken down by region and the numbers of Māori staff could vary considerably from region to region. Second, Māori staff might not

be readily visible to clients. They may be working in areas away from the front-line. There may be other reasons as well.

## CONCLUSION

- 221 It is suggested on the basis of the evidence presented in this paper, that Māori women are more frequent users of Police, Courts and Correction services than non-Māori women. It is further suggested that they are more frequent users of related services such as those provided by the Children and Young Persons Service. Māori women's use of lawyers' services, however, is impossible to determine, as there is no data available on this part of the justice system.
- 222 The analysis has found that the women's concerns about physical distance from the justice sector services and the costs involved in accessing them can be related, at the national level, to the regional and urban-rural distribution of the Māori population and to the relatively greater inaccessibility of telephones and cars. By virtue of their location and lack of access to a telephone or car, accessing the services is likely to involve higher costs for a substantial proportion of Māori women. In view of the relatively low level of Māori household income and the larger number of household members, the costs are likely to be prohibitive for many. The budget may simply not stretch enough to accommodate them. Under these circumstances, Māori are less likely to find the money to meet the cost of legal services.
- 223 The evidence suggests that in some of the relevant agencies, the proportion of Māori on the staff exceeds the proportion of Māori in the total New Zealand population. However, this might not be the best way of assessing what the appropriate Māori staffing level should be. The proportion of Māori among the users of the agency might be a better basis. While getting the staffing ratios right is obviously important in improving the image the agency presents to Māori users, this is unlikely to be sufficient on its own to dispel their negative perceptions. Promoting an organisational culture which permits Māori staff to interact with Māori users of services and supports them in this approach is likely to be just as important. So too is appointing Māori to positions from which they can influence the way in which services are delivered to Māori.
- 224 As far as the legal profession is concerned, a substantial proportion of Māori trained in law are working outside of legal practice. However, even if they were practising, they are still too few in number to bring about any real change in the image that Māori have of the profession.

## EPILOGUE

- 225 In this chapter, we suggest that demographic, cultural and socio-economic factors intertwine in a way that entrenches and perpetuates disadvantage. Disadvantage and poverty tend to take the form of a vicious circle, such that low income can be seen as both a cause and an effect of such things as low educational achievement and poor employment outcomes.
- 226 The current tertiary policy settings drive towards:
- higher fees for tertiary study;
  - in particular, higher fees for higher cost courses;
  - a differentiation of tertiary institutions, involving variable entry standards by different institutions; and
  - lower cost provision of tertiary education.
- 227 While such a combination of policy settings for tertiary education occurs in other countries for example, (Australia, the UK and Canada), equity funding and equity access scholarships are provided to help cope with access issues. A balanced delivery of equal educational opportunities is in the country's long-term interests. Without such mechanisms the task of providing equal educational opportunities for low-income, educational-disadvantaged students is almost impossible.
- 228 Auckland has the highest concentration of Māori (46% of the total Māori population); Pacific Island (55% Pacific Island of the total population) and low income households in the country. The educational profile of these populations is on average, one of educational disadvantage. If students belong to populations with high rates of unemployment, and low levels of life time earnings, the ability to finance studies, even by way of a loan, is non-existent.
- 229 Low educational achievement and poor employment outcomes are not going to change if Māori have difficulty accessing and participating in tertiary studies. Māori women have suggested that more Māori lawyers and judges will enable them to participate better in the justice system. However, if the falling Māori roll at Auckland university is any indicator of the trend of Māori participation at tertiary level, then the prospect of more Māori lawyers and the prospects for participation by Māori women in the justice system are gloomy indeed.
-

---

## 5

# The justice sector

- 230 In this chapter we look at how state agencies working in the justice sector are developing their policies for the provision of services to Māori women. We have limited our examination to:
- Three central agencies: State Services Commission, Treasury, and the Department of the Prime Minister and Cabinet all have significant influence on the content of government justice policy and programmes.
  - Three policy agencies: Te Puni Kōkiri (Ministry of Māori Development), the Ministry of Women's Affairs, both of whom are responsible for formation of policy directly relevant to Māori women, and the Ministry of Justice.
  - Four departments with a mixture of policy and operational responsibilities in the justice sector: Courts, Corrections, Police, and Social Welfare.
  - The Legal Services Board which is responsible under the Legal Services Act 1991 section 95(1)(a) for administering the criminal legal aid scheme, the civil legal aid scheme, the duty solicitor scheme and the Police detention legal assistance scheme.
- 231 We have not examined other ministries such as Health, Education and Youth Affairs, notwithstanding our contention in this report that the access of Māori women to justice cannot be separated from the level and quality of their participation in Māori society or in society generally. While ministries have less impact on the central theme of access to justice than the departments we have considered, we do recognise that there is a close nexus between educational, social and economic disadvantage and crime. We have, however, also found it necessary to confine the scope of this paper and acknowledge that Te Puni Kōkiri has conducted evaluations of the responsiveness to Māori of mainstream social policy agencies such as the Ministry of Education.
- 232 This chapter starts with a brief introduction to the state sector reforms since 1987 and in particular their impact on state agencies responsible for Māori policy and service delivery. It then examines

the programmes, policies and processes that the justice sector departments and the Legal Services Board report they have in place, insofar as they address the needs of Māori women.

- 233 We asked these ministries and the Legal Services Board to identify the initiatives which addressed the needs of Māori women. We were looking, for example, for policies which addressed
- the Treaty of Waitangi,
  - enhancing the value of Māori women by acknowledging Māori cultural values,
  - the provision of information and quality services, and
  - socio-economic disadvantage.

The replies emphasised policies not specifically directed at Māori women and their families, but which the agencies considered would be of benefit to Māori women.

- 234 This chapter does not consider the process of hearing and settling claims made to the Waitangi Tribunal under the Treaty of Waitangi Act 1975. Implementation of Treaty settlements is obviously one way in which Māori economic, social and cultural well-being may be advanced. The present government has included negotiation and implementation of Treaty claims as one of two parts of its policy towards Māori as expressed in Strategic Result Area 8 (see para 252). However, because of the small number of concluded settlements, and because our concern in this paper is with the position of Māori women, we do not discuss Treaty settlements here.

## STATE SECTOR REFORM

- 235 State agencies are responsible for developing policy concerning the state's provision of services to the public. Government departments and ministries have a core function of giving advice to their responsible ministers and to the government as a whole. Some also deliver services directly to the public. Three "central agencies" – the Treasury, State Services Commission and Department of Prime Minister and Cabinet – maintain a general oversight of state sector activity.
- 236 Before 1987, the state comprised some 37 agencies. The large public service was criticised by many as being ill-adapted to the changing world:

It might have been stable and politically neutral; it was also swollen, stultifying, timid, bureaucratic, unadaptable, and self-perpetuating; its members lacked the necessary skills of financial management; and the system was notably inefficient when undertaking such commercial enterprises as forestry and railways. (Ringer 1991, 17)



- 237 Motivation for reform of the state sector came from:
- a perceived need to reduce state expenditure;
  - the popularisation of neo-liberal economic theory, both in New Zealand and overseas; and
  - a broad reaction against state interventionism, which by the late 1980s was seen as delivering neither economic growth nor social stability.
- 238 Since 1987, the state sector has undergone major rationalisation and restructuring, resulting in significant staff reductions. Commercial functions performed by the state in the mid-1980s have since been corporatised or privatised. Many departments have been split, with separate organisations now responsible for the delivery of policy advice and the implementation of policy or delivery of services to the public.

## MÄORI AFFAIRS AND TE PUNI KÖKIRI

- 239 The way in which the state developed policy and delivered services to Māori underwent huge change in the late 1980s and early 1990s. Māori leaders who attended Hui Taumata, the Māori Economic Summit, in late 1984 expressed disenchantment with the effectiveness of the Department of Māori Affairs. The call for services provided by the Department of Māori Affairs to be *devolved* to iwi organisations eventually found expression in *Te Urupare Rangapu (Partnership Response)* released by the Minister of Māori Affairs in 1988.
- 240 *Te Urupare Rangapu* had two broad components: to make “mainstream” agencies more responsive to Māori needs, and devolution. Consistent with changes in several other portfolios, Māori policy advice and service delivery were split. As noted in *Public Management: The New Zealand Model*, a small policy ministry, Manatu Māori, was established in 1989 and charged with
- advising government on how to effectively deliver services to Māori; and
  - incorporating Māori values into the policy development process.
- Meanwhile, many “mainstream” departments established Māori units to advise on issues relating to Māori and sought to increase the number of Māori staff (Boston et al 1996, 147 and 150). The State Sector Act 1988 s 56 also imposed on departments and chief executives the requirement to be a good employer, which means operating a personnel policy that, amongst other things, recognises:
- the aims and aspirations of Māori people;
  - the employment requirements of Māori people; and
  - the need for greater involvement of Māori people in the public service.

- 241 The Māori Affairs Restructuring Act 1989 restructured the Department of Māori Affairs into ITA – the Iwi Transition Authority (Te Tira Ahu Iwi) and abolished the Board of Māori Affairs.<sup>17</sup> The principal functions of the ITA under s 7 of the Act were to:
- administer the former Department's programmes until they were devolved to iwi authorities;
  - promote the development of iwi authorities and transfer programmes to their control; and
  - ensure that iwi authorities were fully operational and capable of carrying out the programmes in their people's best interests.
- 242 Services which ITA inherited from the Department of Māori Affairs included housing, land development, job training and *kōhanga reo*. The Authority also assumed the functions of the Māori Trust Office, while responsibility for the Māori Land Court was transferred to the Department for Justice.
- 243 The Rūnanga Iwi Act 1990 was the last major Māori policy initiative of the Labour Government. Designed to give legal recognition to *rūnanga* (councils) to represent iwi and thereby establish vehicles through which funding for devolved services could be provided, the Act was repealed by the National Government the following year.
- 244 The new Minister of Māori Affairs commissioned a report to review policy to improve the social and economic position of Māori. *Ka Awatea*, published in 1991, analysed the poor showing of Māori in health, education and employment. It recommended that four separate bodies – a Māori Education Commission, Health Promotion Unit, Training Unit, and Economic Resource Development Unit – be established within a new specialist Māori agency which would replace Manatu Māori and the ITA. A new ministry replacing these two bodies, Te Puni Kōkiri, was set up in January 1992, although its role was confined to providing policy advice, rather than also delivering education, health and other services as envisaged by *Ka Awatea*.
- 245 The two broad directions of *Te Urupare Rangapu* (devolution, and mainstreaming delivery of services to Māori while increasing the

---

<sup>17</sup> Section 5 of the Māori Affairs Act 1953 made the Board responsible for administering that Act, which was concerned mainly with Māori land and property. The Board, which comprised the Minister of Māori Affairs, any member of the "Executive Council appointed to represent the Māori race", five departmental heads and three other appointed members, had powers to acquire, purchase, lease or sell land under the Act.

responsiveness of all agencies to Māori needs) have not been endorsed wholly by the government since 1990. Devolution, which itself is a highly subjective term, has been largely rejected in principle by the government, but is perhaps discernible in some areas; for example the contracts the Community Funding Agency and Regional Health Authorities have entered into with Māori service providers (see paras 310–316).

- 246 Greater continuity in policy has been shown in the continuing preference for services to be delivered to Māori by “mainstream” agencies (or contracted out by such agencies) rather than a single agency dedicated to Māori service delivery (such as ITA). Government departments have also continued their efforts to be more responsive to Māori needs through consultation processes and Māori policy units, and EEO programmes aimed at increasing the number of Māori staff. Whether mainstream agencies are now perceived by Māori as more responsive to Māori needs is, as chapter 3 illustrates, still debatable.

## STRATEGIC AND KEY RESULT AREAS

- 247 One way of gauging government policy and departmental priorities in relation to Māori is to consider the recognition given to Māori issues in strategic and key result areas. Strategic result areas (SRAs) encapsulate the medium-term priorities of government. They focus on what government as a whole, rather than individual departments or agencies, aims to achieve. There have been two versions of the SRAs to date; the first was devised for 1994–1997, while the second, covering the 1997–2000 period, was created for the National–New Zealand First Coalition Government. The current SRAs are designed to provide a link between:
- the broad policy goals of government, as outlined in the Coalition Agreement;
  - the resource allocation priorities of the budget; and
  - the activities of government departments and agencies.
- 248 The SRAs do not reflect everything the government wishes to achieve, but rather those goals which have been selected by government as being the “critical few”, as opposed to the “important many”. Importantly, SRAs are designed to move government agencies beyond outputs, and enhance their focus on outcomes. “Outputs” are defined in s 2 of the Public Finance Act 1989 as “the goods or services that are produced by a department, Crown entity, Office of Parliament, or other person or body”. “Outcomes” are defined in s 2 as the “impacts on, or the consequences for, the community of the outputs or activities of the Government”.

- 249 Outcomes, being less tangible and more subjective than outputs, have proven to be more difficult to measure. The Public Finance Act 1989 inevitably focused a good deal of attention onto outputs due to the emphasis on outputs in forecasting the financial statements required under s 34. Section 35, for example, requires all departments, Offices of Parliament and Crown entities to include, in their annual financial statements, a statement of service performance specifying the outputs which have been produced. Now that initial difficulties in specifying outputs have been largely overcome, and that Ministers, Parliament and the public have much improved financial information by which to assess the performance of government agencies, more recently the emphasis has moved towards outcomes, and monitoring their achievement (East 1997).
- 250 Key result areas (KRAs) are essentially the contribution which each department or agency makes towards the government's SRAs. They are incorporated into each chief executive's performance agreement with their responsible Minister, and are expected to be expressed in a measurable way. Performance agreements are also, according to the State Services Commission, required to contain milestones by which progress towards KRAs may be measured (Boston et al 1996, 283). In this way, chief executives are given strong incentives to achieve KRAs, and thereby advance the government's SRAs.
- 251 In the 1994–1997 SRAs, SRA 8 referred only to negotiating claims under the Treaty and made no reference to the economic and social disparity between Māori and non-Māori, or to the Treaty as a source of ongoing rights and responsibilities between the Crown and Māori.<sup>18</sup> It may be noted that Te Puni Kōkiri's "Post-Election Brief" of October 1996 commented on "a lack of clearly expressed political will . . . as shown in the absence of a Strategic Result Area covering the disparities" between Māori and non-Māori as underlying a "lack of commitment in departments" to Māori development (13). The

---

<sup>18</sup> The 1993–1996 SRA 8 reads as follows:

**Treaty Claims Settlement**

Significant progress towards the negotiation of fair and affordable settlements to well founded grievances arising under the Treaty of Waitangi.

Particular emphasis will be placed on:

- (i) Advice and support for the negotiation process.
- (ii) Development of processes that aim to ensure that claimants entering the negotiation process are appropriately represented and mandated.

1997–2000 SRA 8 refers not only to negotiation and implementation of Treaty settlements, but also contains a clause referring specifically to Crown policies and their responsiveness to the needs of Māori.

252 The current SRA 8 states:

**Treaty of Waitangi**

Significant progress towards negotiating and implementing fair and affordable settlements to well founded grievances arising under the principles of the Treaty of Waitangi; and, consistent with the Crown as a Treaty partner, *development of policies and processes that lead towards closing the economic and social gaps between Māori and non-Māori.*

Particular emphasis will be placed on:

- (i) Providing advice and support for the negotiation process, including developing processes that aim to ensure that claimants entering the negotiation process are appropriately represented and mandated.
- (ii) Enhancing and improving the design, access to, delivery and monitoring of policies and programmes which impact on Māori economic opportunity and social outcomes. [emphasis added]

253 The use of SRAs and the KRAs affords several benefits, but for present purposes two in particular can be highlighted. First, through KRAs, government policy expectations are built into the personal assessments of chief executives, thereby creating incentives to meet those expectations. With SRA 8 having been broadened, many departments are now required (through KRAs) to take concrete measures which will lead to a closing of the parity gap between Māori and non-Māori. Secondly, SRAs and KRAs make it possible to monitor progress towards policy goals. As part of its monitoring role, Te Puni Kōkiri has reviewed the service delivery to Māori of some departments. In 1996–1997 the Audit Office developed what it described in its 1997 Annual Report as a “framework by which an organisation’s capability to deliver effective outcomes for Māori can be assessed” (*Annual Report 1997*, 37). In 1997–1998 it carried out audits in two public sector organisations to assess their respective capability to deliver effective outcomes for Māori (*Annual Report 1998*, 37). In November 1998 the Auditor-General reported on the processes that government departments and Crown entities should include in order to be effective for Māori (*Report of the Controller and Auditor-General: Third Report for 1998*). In short, as a result of the new SRAs and KRAs, departments’ paying lip-service to Māori development should be simultaneously less likely to occur, and more likely to be exposed.

## CENTRAL AGENCIES

254 We now look more closely at state agencies concerned with the delivery of justice services and with Māori policy. Before discussing the ministries most directly responsible for formulating policy affecting Māori women, we briefly consider the role of three central agencies: the State Services Commission, Treasury, and the Department of the Prime Minister and Cabinet. These agencies no longer control the expenditure of departments or the staff they may employ, but rather monitor departmental performance and attempt to co-ordinate policy. They therefore have significant influence in a contestable policy-forming environment.

### *State Services Commission*

255 The State Services Commission (SSC) is headed by a Commissioner who has the following roles, functions and authority under the State Sector Act 1988:

- To appoint chief executives and negotiate their conditions of employment (s 6 and s 38).
- To review the performance of each department, including the discharge by the chief executive of his or her functions (s 6) and to review, either generally or in respect of any particular matter, the performance of each chief executive (s 43).
- To remove a chief executive from office, with the agreement of the Governor-General in Council, for just cause or excuse (s 39).

256 The SSC's main contribution to government SRAs is to develop the state sector's capability to support government policy development and delivery. It also supervised the process by which SRAs and the Coalition Agreement was used to determine KRAs in performance agreements between chief executives and their responsible Ministers. Alongside its membership and evaluation roles, the SSC "promulgates and maintains appropriate values and standards of behaviour" for the public service (*Strategic Business Plan 1997–2000*, 3).

257 The SSC *Strategic Business Plan 1997–2000* established a Māori responsiveness strategy in 1994 with the following goals:

- that the SSC be recognised by government as a consistent and effective contributor to its recognition of Māori aims and aspirations; and
- that the SSC model best practice in achieving the bicultural goals it sets itself (22).

258 The second of these goals clearly places an onus on the SSC to develop its own capability and responsiveness to Māori. However, a review of the SSC's 1994/1995–1996/1997 Māori responsiveness strategy found that

while training in Tikanga Māori and Māori policy issues had increased staff awareness, there was a need for more effective recruitment strategies for Māori staff, and greater emphasis on the consistent incorporation of Māori perspectives in the Commission's output work. (*Strategic Business Plan 1997–2000*, 63)

259 The *Strategic Business Plan* stated that during the 1997/1998 year it would therefore give priority to:

- implementing an initiative to increase the number of Māori policy analysts in the Commission;
- giving explicit reference to Māori responsiveness in strategic and branch business planning;
- regularly reporting on Māori responsiveness development and business practices at management team meetings, in reports to the Minister and in the annual report;
- promoting seminars and other events to encourage staff debate of the issues; and
- developing more robust evaluation procedures for reviewing the success of the Māori Responsiveness Strategy (23).

260 The SSC now requires that all its analysts and advisors have, amongst their core competencies, an understanding of Treaty of Waitangi issues, and knowledge of Māori perspectives with the ability to translate these into the SSC's work. The SSC's 1997/1998 annual report does not, however, contain figures showing the percentage of Māori (or female) staff within the Commission.

261 The goals articulated in the Māori Responsiveness Plan are also meant to feed through into the policy advice the SSC provides government in relation to its strategy for Māori, and the SSC's work in a number of other areas:

- chief executive appointment (including standards for assessing effectiveness of departments' Māori participation strategies);
- advice on the machinery of government issues (for example, establishment of Māori Commissions, social policy and service delivery agencies);
- departmental performance assessment, targeting efforts to increase Māori participation in the public service;
- advice and assessment of human resource capability; and
- comment on Cabinet papers.

- 262 The SSC indicated a number of limitations of state agencies in the performance of state sector agencies vis-a-vis Māori:
- State agencies in general wished to provide a direct, coherent service to all their clients. The policies and service delivery of many agencies including those in the justice sector were focused on reducing the economic and social disparities between Māori and non-Māori, an objective which formed part of SRA 8. This objective was often pursued at a more general level rather than being targeted at Māori women in particular. Some agencies, however, were developing strategies to engage key stakeholders in their business planning and service delivery and as these moves contributed to the organisations' knowledge of their client base and understanding of Māori perspectives, it could be expected that more targeted approaches would emerge. A number of departments had also acknowledged a need to enhance their capability to deliver to Māori clients and were planning to do this through such measures as recruitment of appropriate personnel, training and development activities to boost the knowledge and skill levels of current staff, consultation with stakeholders, and ensuring that Māori and Treaty dimensions were addressed in policy development.
  - Departments were also acknowledging a need to work cooperatively with each other in the delivery of services to Māori and this was reflected in increasing efforts to plan and deliver services jointly. With encouragement from the central agencies, several of the justice sector departments had, for example, developed a joint key result area in relation to the Responses to Offending by Māori Strategy, itself a multi-agency strategy involving extensive co-operation between a range of departments and other organisations. Such co-operative efforts recognised the complexity of many social policy objectives, the benefits which could flow from linking agencies and programmes, and the need to ensure that scarce resources and expertise were deployed to greatest effect.
  - The SSC felt that departments had been understandably cautious about making specific and explicit statements about the Treaty because such statements would affect the Crown as a whole rather than just the individual department. Departments had instead focused strongly on responsiveness to Māori clients externally and Māori participation in the organisation internally as "good practice" approaches to giving effect to the Treaty within their sphere of operations. More recently, through forums such as the Treaty Chief Executives' Forum and the Officials' Treaty Strategy Committee, departments had been



seeking to address policy development more explicitly within a Treaty framework.

- Policy statements in annual reports and strategic plans relating to responsiveness to Māori are generally broadly framed. Departments are, however, beginning to translate these into concrete practices so that the philosophies can actually be carried through into the delivery of services to meet the needs of Māori, including Māori women.

263 There is also, in the SSC's view, a desire among state agencies to identify the plans, processes, programmes and policies which are working for Māori, and to build on these in a more co-ordinated manner across agencies, rather than each agency producing individual, ad hoc policies and programmes. It provided examples of programmes which offer assistance and support to Māori staff across all state sector agencies:

- Te Aratau management programme, previously run by the SSC, is now run by Massey University which has in turn contracted it out to Te Wānanga o Raukawa. The programme, which has been operating for 3 years, seeks to identify second-tier Māori management trainees to be taught "in the Māori way". The programme is reported to have been very successful, although the obstacles it faces include the limited number of Māori eligible for the training and the fact that some government departments are now running their own programmes.
- Te Hao Roa is a group of senior Māori public servants who meet to discuss issues of relevance and concern. This is not so much a training programme as one which facilitates information-sharing and opportunities to discuss policy developments.
- The Public Service Training Organisation, which is developing unit standards which can be taught by existing programmes and courses, is currently looking at Māori-specific units, as well as other units relating to Pacific Island peoples and the disabled. The development of these units receives input from each target group.

264 The SSC said that public service departments were required by s 56 of the State Sector Act 1988 to act as a "good employer" which means, among other things, that their personnel policies must recognise the aims and aspirations of Māori people, their employment requirements, and the need for greater involvement of Māori in the public service. This section also requires departments to prepare an equal employment opportunities (EEO) plan. Such plans usually included specific initiatives relating to improving the

representation of Māori within the organisation. The plans were expected to link the statutory requirements of the department with its business needs.

- 265 Increasing staff awareness and understanding of Māori perspectives and of the Treaty of Waitangi were often a critical feature of such departmental plans. While the design of such training programmes was the responsibility of individual departments, some smaller agencies had indicated that they experienced logistical difficulties in providing such training independently and were beginning to develop collaborative approaches with other agencies.
- 266 We were told by the SSC that it would be extremely useful for the Law Commission to identify the systemic problems affecting policy formation and the delivery of services to Māori, and give examples of “good practice” for state agencies. We have attempted to do this in chapter 6. As the central agency devoted to ensuring best practice and generally improving public sector performance the SSC clearly has an ongoing responsibility to consider these issues. It must also work with other agencies such as the Department of the Prime Minister and Cabinet and the Ministry of Justice to increase departmental understanding of the implications of the Treaty for their business.
- 267 The SSC is involved in a number of projects or ongoing activities designed to foster departmental understanding of Treaty of Waitangi issues and to encourage co-ordination of departmental activity in this area, including:
- The Treaty Chief Executives’ Forum (TCEF), a group of departmental chief executives chaired by the Ministry of Justice. It originally focused on settlement activity but has expanded to include social policy departments and provides a forum for discussion of Treaty-related matters spanning multiple agencies;
  - A working group established by the TCEF to examine issues in respect of SRA 8 which has produced and presented to a number of departments a conceptual map designed to prompt self-review by departments of their involvement with Treaty and Māori issues.
  - The Officials Treaty Strategy Committee (OTSC), group of senior officials which co-ordinates departmental activity in the Treaty settlements area.
  - The Officials Committee to the Cabinet Committee on the Treaty of Waitangi, which quality assures Cabinet papers with Treaty implications.

- Consideration of the government's response to the Waitangi Tribunal report on the Waipareira claim, which deals with matters of government service delivery, contracting and co-ordination.

### *The Treasury*

- 268 The Treasury “manages the Crown's finances and is the government's principal economic and financial advisor” (*Annual Report 1998*, 10). It is divided into five branches, the most relevant for present purposes being the Social Policy Branch which prepares analysis and advice on “the Government's ownership of entities and its purchase or regulation of social services and public goods”, including health, education, welfare, housing, justice, Māori affairs and the labour market (12). The Treasury's *Annual Report 1998* notes the role of Treasury officials in inter-departmental working parties and in providing advice to Treasury Ministers on social policy proposals, despite major responsibility for social policy formulation resting with other government agencies (13).
- 269 The Social Policy Branch reports to Treasury ministers on the expenditure proposals of the government's social policy agencies, and reports on their budgets and financial performance. In this regard it may be noted that “the programme of mainstreaming coincided with a period of severe fiscal constraint” (Boston et al 1996, 157).
- 270 Treasury's “Briefing to the Incoming Government 1996”, after referring to the parity gap between Māori and non-Māori, notes that “[a]lternative forms of service delivery for Māori could also assist in improving outcomes”, and cites the examples of kōhanga reo and kura kaupapa Māori. It concludes:
- Further analysis is required to understand better the cultural factors which may impede the effectiveness of current service delivery, and the ways in which such problems can best be overcome. (96)
- 271 Apart from contributing to the government's SRAs in all areas, Treasury also provides policy analysis and advice in relation to Treaty claims settlements which, as noted above, are one of the two prongs of SRA 8. Treasury also participates in Treaty claims negotiations. Treasury's *Annual Report 1998* does not refer to any initiatives, outside the context of EEO, to ensure the responsiveness or sensitivity to Māori needs or values of the department's policy advice. Nor is there specific reference in its *Departmental Forecast Report for the year ending 30 June 1999* to consideration of Māori or the Treaty of Waitangi in the “quality parameters to be met by

policy advice outputs". These outputs fall under the headings of completeness, relevance, communicability, timeliness, cost-effectiveness and reliable quality assessment (77–80).

- 272 Key goals for the second year of Treasury's EEO Management Plan 1996/1998 were recruitment and retention of women in the economic and financial analysis (EFA) class and in more senior positions, and recruitment of Māori and Pacific Island staff, especially in the EFA class (*Annual Report 1998*, 112). As at 30 June 1998, women comprised 43.5 percent of all staff, and Māori 3.8 percent, with a further 2.2 percent of staff identifying themselves as Māori/European (114).

### *Department of the Prime Minister and Cabinet*

- 273 The Department of the Prime Minister and Cabinet (DPMC) advises the Prime Minister on policy and constitutional issues. Its *Corporate Plan 1996/1997* states that it

contributes to the effective co-ordination of the work of the government across departmental lines, tests the quality of advice coming from departments and acts as an "honest broker" where there are conflicts over policy advice being offered by different parts of the public sector. (3)

- 274 As part of that co-ordinating role, DPMC advised the Prime Minister and Cabinet on the formation of SRAs for the 1997–2000 period. DPMC also provides policy advice and co-ordination in particular areas, including crime prevention. The *Departmental Forecast Report for the year ending June 1999* states that DPMC is responsible for SRA 6 relating to safer communities. The report notes at page 4 that through DPMC's Crime Prevention Unit (CPU), particular emphasis will be placed on:

- decreasing the incidence of youth offending;
- fostering positive participation by Māori and Pacific Island peoples in the criminal justice system, and reducing the impact of crime on Māori and Pacific Island peoples in terms of offending and victimisation; and
- support for, and partnership with, community organisations that provide effective crime prevention services and social support to individuals, groups and communities at risk of criminal offending or victimisation.

- 275 The CPU participated in the Responses to Offending by Māori project led by the Ministry of Justice and TPK (see paras 293 and 294). In addition, the CPU funds established a pilot community-based diversion scheme, Te Whānau Āwhina (see para 330).

276 The Department's *Annual Report 1998* does not contain a breakdown of staff by gender or ethnicity. It notes that the main focus of EEO policy for the 1997/1998 year was maintaining family-friendly policies and programmes, especially relating to child care (57). The report does not specifically refer to EEO initiatives directed at Māori although it does mention that an EEO database was maintained and human resource policies were reviewed to ensure consistency with DPMC's EEO goals (57). A formalised training policy is currently being developed which will help determine the training and development priorities for the department and will take into account factors such as EEO and the department's commitment to training in Māori culture and language (58).

## POLICY MINISTRIES

### *Te Puni Kōkiri (Ministry of Māori Development)*

277 Te Puni Kōkiri (TPK) is the government's principal advisor on the Crown's relationship with iwi, hapū and Māori, and key government policies as they affect Māori. Te Puni Kōkiri provides advice in four main areas (*User's Guide to Te Puni Kōkiri*, 5):

- Compliance: providing advice relating to the effective management of the Crown's Treaty partnership with iwi and hapū, and the Crown's relationship with individual and collective groups of Māori people. Specific areas of work include Treaty analysis, settlement policy, the performance of mainstream agencies, and economic and social disparity between Māori and non-Māori.
- Treaty relations: supporting the Crown partnership with iwi and hapū and the general Crown relationship with Māori and managing the collective interests of the Crown with its Treaty partners at the local level. A key function of this branch is to provide early warning of local issues which are likely to impact on the relationship between the Crown and Māori. This branch also provides expert advice on issues of tikanga Māori.
- Asset management: creating options to maximise the benefit for iwi and hapū from assets and resources resulting from their Treaty settlements, focusing on enterprise and industry development and entity and asset selection for investment.
- Social policy: developing policy based on the quality of citizenship, including both equality of opportunity and equality of outcome.

278 Te Puni Kōkiri has a statutory responsibility to promote increases in levels of achievement by Māori in the areas of education,

training and employment, health, and economic resource development, and to liaise with and monitor the performance of government agencies providing services to Māori (Ministry of Māori Development Act 1991 s 5(1)). Te Puni Kōkiri recognises that individual Ministers of the mainstream state sector agencies have the prime responsibility for ensuring that Māori enjoy outcomes similar to non-Māori. Te Puni Kōkiri's "Post-Election Brief" of October 1996 states its role in the environment of mainstream service provision to Māori as follows:

In its *policy* role the Ministry [TPK] will assist the state sector to develop and implement policies to which Māori people will respond positively, and which will reinforce each other across policy sectors. In its *monitoring* role the Ministry will:

- work with central Government to agree on appropriate measures of Māori outcomes and to monitor progress in achieving improvements;
- ensure that effective monitoring arrangements are in place within departments, adapted to the needs of accountability mechanisms through the Audit Office, the Treasury and the State Services Commission;
- report to the Government and to iwi, hapū and Māori on departmental performance, and the policy implications of deficiencies and successes;
- advise Government agencies on implementing best practice in the collection, analysis and evaluation of information on their Māori clients.

279 Te Puni Kōkiri identifies nine "output classes" for the 1997/1998 year in its current *Departmental Forecast Report*. Each class represents a different area of policy (for example, Māori education) in respect of which TPK will provide advice, and monitor and liaise with the providers of services. The forecast report also specifies the following KRAs for the 1997/1998 year:

- an enhanced and durable relationship between the Treaty partners at a regional and national level;
- increased successful iwi, hapū and Māori enterprises and economic participation at a regional and national level;
- progress towards parity in social and economic outcomes between Māori and non-Māori at a regional and national level;
- Māori whānau well-being; and
- ownership issues (acting in a responsible and proactive manner regarding its obligations in managing Crown ownership interests in other organisations).

280 Te Puni Kōkiri's 1997 and 1998 annual reports do not contain a breakdown of staff by gender and ethnicity: the 1996 report, how-

ever, indicated that 72 percent of the Ministry's staff were of Māori descent, and 54.2 percent of staff were female (*Annual Report 1996*, 18). Their *Annual Report 1997*, however, notes the "general view that suggests that EEO has an intrusive effect on tikanga Māori", and states that if this is so,

the Ministry will need to define tikanga as a first step towards developing and implementing some of the practices which would support EEO in this organisation which has a different set of cultural values than any other Government agency. (*Annual Report 1997*, 12)

### *Ministry of Women's Affairs*

281 The Ministry of Women's Affairs (MWA) is the government's primary provider of gender-specific advice. MWA's *Departmental Forecast Report* for 1998/1999 states that the Ministry's role is to achieve the government's goals for women and nga wahine Māori of:

- equity
- opportunity and choice
- full and active participation
- adequate resources
- no discrimination and
- a society that values the contribution of women. (10)

282 The MWA's advice to the government aims to significantly improve women's lives and addresses areas where women are disadvantaged in relation to men, and where Māori women are disadvantaged in relation to non-Māori women. The MWA uses gender analysis to examine the differences in women's and men's lives and to identify the underlying causes of these differences.

283 The MWA provides advice across a range of government activity including education, the labour market and justice. Notably, the 1998/1999 forecast report refers to "contributing to human resources development across government, including assisting the public service to enhance its Māori policy skill base at all levels" (*Departmental Forecast Report*, 12).<sup>19</sup>

284 The 1998/1999 forecast report refers to MWA's concern that the quality of policy advice across all government agencies be improved "through increased use and understanding of both gender analysis and Treaty analysis" (*Departmental Forecast Report*, 12). However,

---

<sup>19</sup> The Ministry is to provide gender specific policy advice which addresses Māori women's development, and to enhance "Māori capacity across the state services" (*Departmental Forecast Report*, 11–12).

we were advised in an email from the Ministry dated 21 December 1998 that:

The Ministry is currently developing a Treaty Analysis Framework, which will assist in understanding and addressing policy issues in relation to the Treaty of Waitangi and wahine Māori.

285 The MWA's focus on Māori women is reflected in its KRA's 1998/1999:

- women's economic independence and economic contribution,
- women and their families,
- women's participation, and
- quality policy advice.

286 The Policy Advice Output 3 (Safety Justice and Well-being) contained in the forecast report relates to advice on public policy issues which assist women and nga wahine Māori to achieve improved access to justice, protection from violence and well-being through life. This leads to one of the key priorities for the MWA which is to provide government with advice on justice sector issues impacting on women and nga wahine Māori, including Māori women's access to justice.

287 In its Responsiveness to Māori Plan, the MWA identifies the need for kaupapa Māori to be reflected in its policy advice and for ministerial services to reflect the views, opinions and priorities of Māori women. The Ministry's information services should also have appropriate input from Māori women, and reflect Māori women's priorities, aims and aspirations.

288 The Ministry of Women's Affairs aims to assist with:

- the identification and removal of barriers to continued improvements in women's social, political and economic status; and
- the realisation of the aims and aspirations of Māori women as tangata whenua.

The MWA recognises the importance of making positive achievements for Māori women in the context that to do so will contribute to the advancement of the wider Māori community.

### *Ministry of Justice*

289 The Ministry of Justice came into existence on 1 October 1995 as part of the restructuring of the Department of Justice. The Ministry's *Corporate Plan: 1997/1998* notes its five strategic priorities, which are to:

- develop a strategy for responses to crime;
- provide strategic purchase advice to government on the allocation of resources in the justice sector;



- provide advice on constitutional and other public law issues;
  - develop and implement the information strategy for the justice sector; and
  - manage electoral operations (8).
- 290 These priorities are reflected in the Ministry's internal organisation into three policy and support groups (public law, criminal justice and corporate services), the Chief Electoral Office, and the Office of Treaty Settlements. A separate purchase advice team provides advice directly to the Secretary for Justice on purchase priorities across the justice sector, while the Office of the Legal Counsel provides internal legal leadership and legal advice.
- 291 In its 1996 "Briefing Paper for the Minister of Justice" the Ministry of Justice lists the challenges it sees facing the justice sector in New Zealand over the next 3 to 5 years. These challenges include:
- maintaining an appropriate balance between the rights of people and the powers of the state;
  - resolving disputes efficiently to sustain relationships between people, and enhance New Zealand's economic development;
  - addressing effectively the complex issues involved in controlling crime and minimising its impact on society; and
  - identifying and gaining acceptance for the role of the Treaty of Waitangi (13).
- 292 The Ministry has two roles in respect of Treaty of Waitangi policy:
- (i) Through its role as Chair of the recently-established officials Treaty Strategy Committee and the Officials Committee to the Cabinet Committee on Treaty of Waitangi issues, the Ministry aims to ensure that Cabinet Ministers receive advice on Treaty matters that is coherent, consistent, and timely.
  - (ii) In terms of its substantive role, the Ministry provides advice on constitutional implications of a variety of Treaty issues. (*Corporate Plan 1997/1998*, 14)
- 293 The 1996 briefing paper refers to the need to ensure that the criminal justice system "takes appropriate account of different cultural perspectives, especially Māori and Pacific perspectives, on how offences should be dealt with within a legal framework which is fair to all members of society" (17). The Ministry is leading the development of a Responses to Crime Strategy (RCS), a significant aspect of which is the development of responses to offending by Māori. Under the Responses to Offending by Māori project, the Ministry and TPK head an inter-agency team developing strategies to reduce Māori involvement in the criminal justice system. These strategies include those for preventing entry to the criminal justice system, promoting rehabilitation of offenders, and strengthening the capacity of communities to deal with and prevent offending.

294 The briefing paper discusses two alternative approaches to developing Māori criminal justice policy: examining the scope for incorporating “cultural factors” into (mainstream) treatment of Māori offenders; and secondly, considering the extent to which criminal justice processes and programmes may be delivered by Māori themselves. In respect of the first of these approaches, the paper acknowledges that

[t]here is little doubt that some Māori do not regard the present system as reflecting their values and concepts of justice. There appears to be considerable and unused potential to include Māori and Māori tikanga within the criminal justice system. Part of the difficulty is that existing provisions in legislation allowing for the treatment of offenders in a more culturally sensitive manner and in a more culturally appropriate environment are either little used or have not been evaluated in any systematic way. (111)

295 In respect of the second approach, the briefing paper identifies models of service delivery, especially in the health sector, which have allowed for greater Māori autonomy and more genuinely bicultural service provision. The paper concludes that

[t]he development of any strategy for responding to offending by Māori needs to examine whether these sorts of models or components of these models are appropriate and/or applicable within the criminal justice sector or whether other models are needed. (112)

296 The last major aspect of the Ministry’s function vis-a-vis Māori is the provision of advice concerning, and the negotiation and settlement of, Treaty claims. These tasks are carried out by the Office of Treaty Settlements as a separate office within the Ministry. We do not discuss its role in any detail (see para 232).

## DEPARTMENTS WITH POLICY AND OPERATIONAL ROLES

### *Department of Social Welfare*

297 Before the merger of the New Zealand Income Support Service with the New Zealand Employment Service, the Department of Social Welfare (DSW) was divided into four business units (*Directory 1996*, 3):

- New Zealand Income Support Service (“Income Support”), which deals with benefits, New Zealand superannuation, pensions, and supplementary financial assistance.
- New Zealand Children and Young Persons and Their Families Service (CYPS), which contracts with the Minister of Social Welfare to provide services for child care and protection,

adoption and youth justice services. It did so through public awareness services, risk identification and management, family resolution services, residential and caregiver services, and adoption and information services (22).

- New Zealand Community Funding Agency (CFA), which coordinates and funds the purchase of community and iwi-based social and welfare services on behalf of the government. The services fall into the three main categories: families in need of support, community welfare, and disabilities (40).
- Social Policy Agency (SPA), which provides the Ministers of Social Welfare, Senior Citizens and War Pensions with policy advice across a wide range of social policy and social equity issues.

298 On 1 October 1998, Income Support was merged with the Employment Services of the Department of Labour to become Work and Income New Zealand (WINZ). The Employment Services and Income Support (Integrated Administration) Act 1998, which merged the Employment and Income Support Services, was passed on 31 August 1998. However, the merger was too recent to have produced information for analysis and so our discussion of Income Support is based on information compiled while it was still a part of the Department of Social Welfare.

### *From Puaoteata-tu to Te Punga*

299 In 1986, DSW published a major report, *Puaoteata-tu: Report on a Māori Perspective within the Department of Social Welfare* compiled by its social policy agency. This report was the result of wide consultation with Māori by a Ministerial Advisory Committee chaired by the late John Rangihau. The report concluded that DSW needed to make major changes in its policy, planning and service delivery. The Committee according to the 1994 report, *Te Wakahuia o Puaoteata-tu* "had identified a number of problem areas – policy formation, service delivery, communication, racial imbalances in staffing, appointment, promotion and training practices" (para 5.1).

300 The Committee was required to investigate and report to the Minister on an approach which would meet the needs of Māori in policy, planning and service delivery in the Department of Social Welfare. The resulting report contained 13 recommendations impacting upon "income support policies and practices, staff training and the overall departmental culture". All recommendations were accepted by the Minister of Social Welfare of the time.

301 The essential spirit of *Puao-Te-Ata-Tu* lies in its commitment to partnership, and the needs, interests and aspirations of Māori within the wider New Zealand society in which all peoples have a share. The Department's 1994 report, *Te Punga: Our Bicultural Strategy for the Nineties*, notes that *Puao-Te-Ata-Tu* aims to give effect to that spirit through:

- redressing historical imbalances;
- a commitment to end all forms of racism;
- allocating an equitable share of resources to Māori;
- incorporating the values, cultures and beliefs of the Māori people in all policies;
- attacking and eliminating deprivation and alienation;
- ensuring that recruitment, staffing and training policies do not disadvantage Māori;
- recognising and utilising appropriately different skills of Māori staff;
- ensuring that communication practices take account of the needs of Māori and other ethnic groups;
- promoting and funding schemes which harness the initiative of Māori and the wider community to address problems; and
- ensuring effective co-ordination of planning, policy, and practice to tackle serious economic and social problems (*Te Punga*, 14).

302 A major outcome of the report was the introduction of a range of measures designed to maintain children and young persons in the care of their own communities, leading to a large reduction in the numbers being taken into institutional care. One of the ways this was achieved was through the commencement, soon after the report, of devolution of care and protection services to Māori.<sup>20</sup> A Komiti Whakahaere was established to advise the Director-General of Social Welfare on Māori issues, and bicultural training was introduced throughout the Department (*Te Wakahuia o Puao-Te-Ata-Tu*, para 5.2).

303 The spirit of *Puao-Te-Ata-Tu* was also reflected in the Children, Young Persons and Their Families Act 1989 (CYPF Act), most notably in the use of family group conferences (FGCs) both in care and protection and in youth justice matters. Family group conferences involve the child or young person who is central to the concerns at hand, and also the child's family group which is

---

<sup>20</sup> For example, in the mid-1980s Māori children and young persons, who were descendants of Tainui and state wards, came under the supervision and direction of a Tainui social service organisation. This was a pilot scheme whereby resources were handed over to Māori to use as they saw fit.

defined in s 2 as including “the child’s or young person’s whānau or other culturally recognised family group”. Ideally, the FGC will be run by the family group, or at least according to its wishes. The decisions which come out of the conference should be those of the family group, not those of officials, although under s 34 the Director-General of Social Welfare may refuse to give effect to a decision of a FGC which is impracticable or inconsistent with the principles in ss 5, 6 and 13 of the CYPF Act.

- 304 The Department of Social Welfare underwent a major restructuring in 1992. It was at this time that the existing operational divisions were either reaffirmed or established. The Community Funding Agency was established, and the emphasis in Income Support and CYPS was changed. According to the Department’s “Post-Election Briefing Paper 1996”, Income Support was to seek to “maximise the opportunities for beneficiaries to move towards self reliance” (17); CYPS now concentrates more on crisis intervention and less on ongoing care which it tended to contract out to private agencies (with CFA partially funding the service provider).
- 305 Partially as a result of restructuring, which saw the appointment of new staff unfamiliar with *Puao-Te-Ata-Tu*, and as noted in DSW’s “Post Election Briefing Paper” the “Department’s commitment to bi-culturalism and the Treaty of Waitangi . . . weakened” in the early 1990s (16). The Department has sought to keep alive and working the kaupapa of *Puao-Te-Ata-Tu* in two documents published in 1994: *Te Wakahuia o Puao-Te-Ata-Tu*, and *Te Punga*. Both are intended to be working documents outlining the expectations of the Department of staff at all levels.
- 306 *Te Punga* specified a number of short term (1 year) and medium term (1–3 year) strategies in the priority areas of policy and service delivery, management, staff matters and sensitivity to customer needs which would give substance to the Department’s bicultural approach. It also identified where responsibility for the actions required under each strategy lay.<sup>21</sup> In the area of policy and service delivery, *Te Punga* states:

Accepting our obligations to the Treaty involves a shift in attitudes and a revision of the cultural assumptions which underpin social policy

---

<sup>21</sup> For example, it is the responsibility of the Director-General to include in all general managers’ performance agreements a requirement to ensure that programmes and services of each business unit are culturally appropriate and likely to improve the well-being of Māori; and the responsibility of each general manager to ensure that each district or area manager’s performance agreement includes a requirement to establish and maintain regular contact with mana whenua iwi to discuss service and how it may be improved.

and planning of service delivery. It is not simply a matter of adding a tangata whenua flavour to existing assumptions. The challenge of the Treaty and of *Puao-te-Ata-tu* is to ensure that our advice to Government, and our service delivery planning, addresses tangata whenua needs in tangata whenua terms. (16)

### *Income Support*

- 307 Income Support told us that one of the biggest advances it had made in recent years was the implementation of “customised service” whereby each customised service operator has a caseload of about 250 clients. This means that a client sees the same staff member each time he or she contacts Income Support and that both the client and the staff member become more familiar with the client’s needs. This service is now fully operational and is being applied throughout New Zealand as part of WINZ procedures.
- 308 Income Support also highlighted in their discussions with us the introduction of a call centre operating on an 0800 number. This enables clients to phone in for basic enquiries and for “technical and procedural” changes to be made on their file or in relation to their benefit. This system is also fully operational throughout the country and the 0800 number is listed in the most recent telephone books.
- 309 Te Puni Kōkiri’s 1996 report, *NZISS: Review of Service Delivery to Māori*, commented on Income Support’s service delivery to Māori and contained recommendations aimed at improving Income Support’s performance in the areas of planning and reporting, service delivery, information collection and use, evaluation, and human resources.<sup>22</sup> Income Support has a duty to report back to TPK on its progress towards implementing these recommendations, and the first such report is currently being prepared. The reports will cover monitoring comparative Māori and non-Māori data, the

---

<sup>22</sup> These include integrating performance requirements in relation to Māori customers into purchase agreements between the Minister and Income Support; ensuring that Income Support strategic plans include objectives for Māori service delivery which integrate output and reporting requirements; active recognition of circumstances in which Māori customer frustration can arise such as long waits or repeat visits, particularly when customers are required to travel long distances or have limited access to transport, and where customers are dealing with other stressful events such as disentangling themselves from abusive relationships; better matching of Māori to customer service officers; promoting the 0800 number to Māori; improved liaison with iwi and Māori organisations; integrating Māori data into operational activities and developing a clear strategy regarding the use of ethnic data; and developing formal processes for assessing and promoting innovations in service delivery to Māori.

impact of programmes and services on Māori, and use survey results to improve service delivery to Māori and target Māori in communication strategies (DSW *Annual Report 1997, 9*).

### *Community Funding Agency*

310 The Community Funding Agency (CFA) funds selected organisations which are providing services to the community. The organisations apply for funding and are assessed on:

- the type of service they provide;
- the group to whom they intend to supply the service; and
- their ability to provide an appropriate quality of service.

311 The funding budget was \$102 million dollars for the 1997/1998 financial year. Māori providers received in the region of \$15.9 million (as compared with \$5.3 million dollars in 1992). During the 1997/1998 financial year the CFA funded 464 Māori groups who defined themselves as Māori providers, 153 being "iwi-based", 182 "pan-tribal", and 129 describing themselves as being both. They provide a range of services including social support (family and youth), counselling, budget advice, relationship counselling, violence work, refuge work, emergency housing, and support for the disabled. The agency anticipates that both iwi and non-iwi based Māori providers will be more successful in reaching the target groups than some of the traditional service providers. However, it is considered necessary and important to have both Māori providers and non-Māori providers so that Māori (and other clients) can choose which to go to.

312 The CFA is required to collect information about the ethnicity and iwi affiliation of the service provider's clients. In relation to clients referred by CYPS, about 40 percent of the children are Māori. The agency finds that where it assists different service providers working in different areas of need, many of them tend to work with the same families. In the past, many eligible families have not accessed services, but this is now changing. It is clear, however, that there is still a "hidden need" and CFA is working on ways of identifying and providing appropriate resources to cater for new areas. An annual service planning process helps identify local needs and priorities. The CFA's "Post-Election Briefing Paper 1996" notes that this process has been supplemented by a new "national needs indicator index" which aims to provide objective criteria upon which to allocate funding to particular regions, including:

- level of unemployment;
- number of multi-family households;

- reliance on income support;
- ethnicity;
- level of sole parenthood;
- level of infant mortality;
- level of teenage pregnancy;
- housing cost;
- level of educational qualification; and
- degree of isolation (4).

313 One difficulty which the CFA has identified which makes service provision difficult in some areas is the lack of resources within that area. If a particular region or town is under extreme stress, for example, high unemployment or low income, it may also lack individuals or organisations able to provide services eligible for CFA funding. In this regard it may be noted that CFA only partially funds bodies with which it contracts.<sup>23</sup>

314 Since 1995, the CFA has worked with CYPS and SPA on the development of Iwi Social Services. Through Iwi Social Services, CFA aims to give iwi responsibility for providing appropriate care and protection to Māori children within their rohe. This strategy involves a major transfer of resources from CYPS to Iwi Social Services, with the eventual aim of providing all Māori children and young people referred to CYPS with the option of being cared for by Iwi Social Services by the year 2000 (*Annual Report 1997*, 15). It is felt that the appropriate way to achieve workable results is for CYPS to hand over responsibility for services gradually, so that resources and expertise can be built up over a period of time.

315 During the 1998/1999 financial year, the CFA expects to approve between 15 and 17 Iwi Social Services and to contract with a further 17 to 20 for services devolved from CYPS. Thus, by June 1999, it is expected to have approved up to 30 Iwi Social Services and to have formed contracts with up to 27 (*Business Plan 1999*, 29). Standards for approval of Iwi Social Services were developed in consultation with iwi in 1995. In order for an Iwi Social Service to gain approval it must show that:

- it is an appropriate agency for that iwi;
- it is a provider with sufficient skill;
- it has an appropriate service to deliver;
- it has appropriate personnel to deliver that service; and
- its operation has been mandated by local Māori.

---

<sup>23</sup> The CFAs "Post Election Briefing Paper 1996" states that CFA "makes a substantial (about 40-55%) contribution to the not-for-profit sector, for the provision of community based social and welfare services" (12).



316 The CFA highlighted crime prevention programmes as a priority for the 1997/1998 year (DSW *Business Plan 1998*, 30). It implemented the “Wraparound” programme in South Auckland, a prevention programme aimed at young Māori at risk, and using multi-disciplinary strategy for reducing youth offending (see North Health, *Wraparound Model of Care: Individualised Care*, 1996).<sup>24</sup> The programme aims to provide comprehensive, individualised care for young people (and their family or whānau) who are experiencing severe emotional, mental or behavioural disturbances. It involves co-ordinating justice, education, welfare, health, courts and community corrections services to provide “individual care through therapeutic case management”. The programme has been granted \$1 million per year for 3 years.

### *Children and Young Persons Service*

317 The Children, Young Persons and Their Families Act 1989 (CYPF Act) involved a fundamental rethinking of the basis on which decisions are taken about children and young persons who come to notice on the grounds of care and protection or youth justice. Before this Act, decisions about care and protection of children and offending behaviour of young people were the exclusive province of social work professionals with little participation of families in the decision-making process. This had dire consequences for many Māori families as disproportionate numbers of children and young people were removed from the care of their whānau and placed in the care of other (often non- Māori) families.

318 The Children, Young Persons and Their Families 1989 Act was founded on a recognition that a fundamental change in outcomes could only be achieved by increasing the participation of families in the decision-making process. The family group conference process is a reflection of these goals and seeks to place the family at the centre of the decision-making process. Under this process; it is the family group which is charged with developing appropriate responses to the issues which led to the conference and taking decisions about what actions are required. While the Children, Young Persons and Their Families Service (CYPS) has the power to challenge the decision of a family group conference, this option

---

<sup>24</sup> The programme operates under the “key worker” concept. Māori professionals are being “untrained” and “retrained” to work with Māori clients. Guiding principles of the programme include that young people involved should receive services that are “young person centred and family/whānau focused”, that services be culturally competent and “responsive to the cultural, racial and ethnic differences of the populations they serve”, and that “effective advocacy efforts for young people and their family/whānau” be promoted.

is rarely used and then only if the social worker has serious doubt that the decision is in the best interest of the child.

- 319 Under the Act, Iwi Social Services operate in the “care and guardianship” areas (that is, in the provision of care-giving services), not in the areas of care and protection or youth justice.<sup>25</sup> The contracting of Māori provider organisations to deliver social services to Māori families and children, in particular through the negotiation of iwi social services contracts, is another development which is expected to result in significant improvement in Māori involvement and participation in justice processes, including that by women. The process recognises that the best outcomes are likely to be achieved for Māori children, families and communities when Māori are fully involved in the delivery of services to Māori people.
- 320 A factor which may limit the growth of Iwi Social Services is the difficulty involved in contracting with providers in regions with small Māori populations. The level of resources handed over to Iwi Social Services in a region could raise issues for providers working with Pākehā families, or with Māori families who want a choice of non- Māori or Māori service delivery.
- 321 The Children and Young Persons Service is seeking to improve its performance in the area of child protection. A resource book containing Māori input, “Recognition of Abuse and Neglect”, was provided to all staff working in this area during the 1996–1997 financial year (*Annual Report 1997*, 14). However, the annual report is limited with regard to initiatives targeting Māori. These include a review of the Children’s Young Persons and Their Families Act 1989, undertaken in 1997–1998. The review identified the issues for Māori, including the huge potential of the Act for Māori, as it recognised Māori cultural values. The review also noted that approximately 50 percent of young people who re-offend are estimated to be Māori.

### *Social Policy Agency*

- 322 The Social Policy Agency (SPA) drafted *Te Wakahuia o Puaa-Te-Ata-Tu* in 1994 “as part of a series of initiatives intended to move the Social Policy Agency towards bi-culturalism and our commitment to the Treaty of Waitangi” (para 3.1). It has provided the policy advice to help the expansion of the Iwi Social Services programme (*Annual Report 1998*, 23). The SPA also states in DSW’s *Business Plan 1998* that “a heightened focus on Māori contributes

---

<sup>25</sup> That is, where “official” action may be needed to remove a child or young person from their home for their own safety, or where a child or young person offends and is required to go through the legal process.

to meeting their needs and aspirations" (32). The Strengthening Families initiative involving the Department of Social Welfare, the Ministries of Health and Education and the Treasury, in consultation with a number of other agencies (including Te Puni Kōkiri and the Ministry of Justice) is focused on developing a range of proposals to strengthen and support family cohesion.

### *Equal Employment Opportunities*

- 323 The Department of Social Welfare's annual reports do not contain a breakdown of staff by gender or ethnicity, so as to allow an assessment of progress on one of the human resource implications of *Te Punga*. However, there are a number of qualitative EEO reports (which include ethnicity and gender) that are reported on annually to the State Services Commission. In addition, the *Annual Report 1998* notes that a major review was begun during the 1997–1998 financial year to evaluate how effectively strategies in *Te Punga* were being implemented. Responses from management and staff will be collated and reported on during 1998–1999 financial year (*Annual Report 1998*, 31). The Department is committed to developing policies which ensure that Māori staff have the resourcing and recognition necessary to participate fully and progress within the Department. Training in bicultural awareness for all staff is also a priority (*DSW EEO Programme 1996–1999*, 6).

### *New Zealand Police*

- 324 In 1994, TPK made the following statement in correspondence to the Minister of Police about police responsiveness to Māori:

While Te Puni Kōkiri is supportive of the development of Responsiveness Plans by Districts, we are concerned at the lack of direction and support given by National Headquarters. There is also an absence of effectiveness measures such as measures to determine the reduction of Māori offending or the improvement of the profile of Police among Māori. . . . Te Puni Kōkiri is also concerned at the focus on Districts to the exclusion of other levels and functions of the NZ Police. In particular national policy can be developed without regard to Māori issues or concerns since there are no measures of accountability to that level . . . (cited in *Whakakaupapatanga Tiriti 1998*, 15)

- 325 Three years later, the Policing 2000 Strategy Group launched the Police's *Urupare Whitiki: Build Responsiveness to Māori strategy*. The "project initiation package" outlining the contents of the strategy acknowledges at the outset that

[t]he response of the New Zealand Police to date has fallen short of a full commitment to the Treaty of Waitangi and therefore to Māori as a Treaty partner and stakeholder of the Police. (3)

- 326 The strategy articulates the practical need to address the over-representation of Māori at all stages of the criminal justice system, based on the serious economic and social cost to the government, Māori communities and individuals, and society in general. The strategy recognises, however, that previous police policy was based on disproportionately high rates of Māori offending and victimisation (a “reactive” approach), whereas a proactive policy, using the principles of the Treaty of Waitangi as its formal base, is now required. A Treaty-based approach is also seen to establish the context in which other initiatives (such as recruiting, training, iwi liaison) can be placed. It also hopes to reduce the sense of isolation felt by Māori staff by integrating Māori values and initiatives into their work environment.
- 327 The strategy lists three key elements to establishing a partnership between the Police and Māori:
- greater understanding and acceptance of the significance and role of the Treaty of Waitangi to Māori and to New Zealand;
  - developing a greater capability of bringing the voice of Māori into policing decisions and operational procedures; and
  - implementing strategies designed to reduce the incidence and effects of offending by Māori.
- 328 The New Zealand Police *Annual Report 1998* notes that *Te Urupare Whitiki* continues as an integrated development across all service delivery areas of the Police. All districts have “responsiveness” plans and a national strategy was due by December 1998. This work is supported by Iwi Liaison Officers, appointed in consultation with Māori. A Cultural Affairs Adviser has also been appointed. This is a senior management position with responsibility for the development of *Te Urupare Whitiki* (*Annual Report 1998*, 18).
- 329 The New Zealand Police *Corporate Profile 1996* lists a number of ongoing strategies in support of commitment to the Treaty:
- “responsiveness plans” at regional and district levels;
  - having one or more iwi liaison officers for each district and region, appointed on appropriate advice;
  - ensuring all human resource policies incorporate Treaty principles and partnerships with Māori;
  - providing specialist cultural advice and consultancy to projects and staff; and
  - ensuring all regions and districts consult with local iwi (18).
- 330 Through Safer Cities Councils (which are not specifically a police initiative but receive major input from police) efforts have been made to reduce Māori youth offending. Increased use has also been made of Māori wardens to deal with youths at risk on the streets,

particularly at night. In West Auckland, Police have participated in the Te Whānau Āwhina diversion scheme set up by the Crime Prevention Unit, under which selected Māori youth are considered by a Māori committee which aims to find ways of helping the offender out of the justice system. Part of the focus of *Urupare Whitiki*, however, is to address and improve on the ad hoc and regional nature of police responsiveness to Māori needs.

- 331 There have been some initial studies into the place of women, and in particular Māori and Pacific Islands women, as staff members of the New Zealand Police. Since 1991, the percentage of women police officers has risen from 7 to 14 percent. However, police personnel staff are starting to question why no women police officer has, to date, been promoted beyond the rank of chief inspector. A letter dated 23 January 1997 from the Commissioner of Police, Peter Doone, to the Law Commission states that they have begun to examine recruitment strategies to target women, internal support groups for female staff, the roles that women are taking within the police force, and methods of enhancing career paths.

### *Department for Courts*

- 332 The Department for Courts *Annual Report 1998* lists the department's purpose as being to contribute to justice in the community through:
- supporting the judiciary in assuring access to justice for the people of New Zealand;
  - ensuring high compliance with court orders to pay fines and debts;
  - providing accurate and accessible Māori land information;
  - facilitating achievement of the principles of the Treaty of Waitangi; and
  - providing policy advice (6).
- 333 The Department came into existence on 1 July 1995, taking over the responsibilities of the Courts and Tribunals Division of the former Department of Justice. Within the Department there are four operational units:
- Case Processing Unit, responsible for the administration of courts and tribunals and the provision of support to the judiciary.
  - Collections Unit, responsible for the enforcement of financial court orders.
  - Māori Land Court Unit, responsible for the administration of the Māori Land Court and the Māori Appellate Court, and Māori land records.
  - Waitangi Tribunal Unit, responsible for providing administrative support and services to the Waitangi Tribunal.

- 334 In its *Strategic Plan 1996–2000*, the Department acknowledges the need to
- consider how the courts and tribunals could better reflect the Treaty partnership between Māori and the Crown, particularly given the significance of the justice system in this partnership. (11)
- It states that this can be achieved through:
- greater recognition of Māori culture in court buildings;
  - recognition of Māori culture and custom (tikanga Māori) in the way business is conducted; and
  - by working with local iwi and hapū to develop ways of delivering services more effectively.
- 335 The *Strategic Plan* notes the establishment of the Tu Tangata Council, which
- brings together on a regular basis prominent Māori to guide the Department in its development of policies and services and the integration of tikanga Māori into its operations. The Department sees the status and independence of this Council as a more appropriate expression of “partnership” than an in-house group whose members are essentially employees. (11)
- 336 The Department’s *Forecast Report for 1998–1999* lists as one of five key result areas for the current year reviewing Māori court and tribunal user’s needs and developing strategies to enhance the Department’s responsiveness to Māori court users. Such strategies include fostering the positive participation of Māori in the criminal justice system, and contributing to reducing the impact of crime on Māori in terms of offending and victimisation (8). An important improvement will be putting in place a national index system for Māori land ownership (9).
- 337 In the early 1990s the Department established a database to monitor and report on core equal employment opportunity (EEO) statistics. The Department’s *Annual Report 1998* shows that Māori staff increased from 13.1 percent to 18.3 percent of the total staff over the course of the preceding financial year. The Department has also set up an external EEO scholarship programme for designated groups, including Māori, with the aim of recruiting students under the programme to the Department upon graduation. It is thought that this will meet “the Department’s needs for increased capability generally and increased representation from particular cultural groups”. Three students were sponsored under the programme during the 1996/1997 year (*Annual Report 1997*, 63; the programme was not referred to in the annual report for the following year).

338 The Department has mentioned to us a number of organisations which assist the Department in its service delivery at the court, including Friends of the Court, Court Aid, Māori wardens, Matua Whangai, and Prisoners Aid Rehabilitation Service (PARS). The Department considers these groups provide a valuable service to Māori: they help defendants fill out the forms correctly, ensure they know which courtroom they are appearing in, and that they understand the sentence or order imposed. These groups are voluntary, but in some instances limited funding is provided by the Department (for example, travel expenses). The Department also endeavours to provide office space. In a letter dated 4 July 1997, the Department's Communication Adviser stated that "[t]he informal feedback we receive via the Court Managers would suggest that the relationship is very effective for Māori".

### *Department of Corrections*

339 The Department of Corrections was established on 1 October 1995. The Department manages all custodial and non-custodial sentences imposed by the courts, except fines. These include prison sentences, periodic detention, and community service and supervision. The Department states in its *Departmental Forecast Report* for 1998–1999 that its purpose is to contribute to safer communities through reducing re-offending by the effective management of:

- provision of information,
- community-based sentences and orders,
- custodial sentences,
- rehabilitative programmes,
- custodial remand services,
- escort and custodial supervision services,
- policy advice, and
- service purchase and assurance (16).

340 The Department is divided into eight services and groups: the Public Prisons Service, Community Probation Service, Psychological Service, Contract's Group, Policy and Service Development Group, Strategic Development Group, Finance Group, and Internal Audit. It employs over 4,000 full-time and part-time staff nationwide.

341 The Department's *Annual Report 1998* states that Māori are over-represented in terms of both custodial and community-based sentences with Māori inmates accounting for over 50 percent of the prison population (22). One of the Department's key result areas for the 1998/1999 year is "recognition of the particular needs of Māori in terms of reducing re-offending" (*Departmental Forecast*

*Report 1998/1999*, 24). This KRA seeks to redress disproportionately high Māori offending and develop targeted interventions whose success can be measured (*Department Forecast Report*, 24).

- 342 In the 1997/1998 financial year, a pilot Māori Focus Unit was successfully established at the Hawkes Bay Regional Prison, and guidelines were developed to evaluate the effectiveness of programmes specifically designed for Māori. The evaluation of such programmes was substantially completed during the year (*Annual Report 1998*, 17). In the 1996–1997 financial year, an inventory of Māori programmes and policies was compiled and analysed. These included participation in the inter-departmental Responses to Offending by Māori project (*Departmental Forecast Report 1997–1998*, 41), and the Psychological Service's development of a bi-cultural therapy programme (*Annual Report 1997*, 10). This programme was developed due to concerns about the responsiveness of the Service to Māori, despite initiatives and policies to address cultural perspectives which were already in place (Department of Corrections "Post Election Briefing", 54).

### *Cultural responsiveness policy and implementation plan*

- 343 The Department for Corrections' Cultural Responsiveness Policy (CRP) and the 1998/1999 Cultural Responsiveness Framework is aimed at developing a culturally responsive staff that can contribute to the Department's goal of reducing re-offending by Māori. The policy recognises that the Department, as a Crown agency, is required to demonstrate a commitment to the Treaty of Waitangi. This commitment to the Treaty of Waitangi is stated as a commitment to

responsiveness to the needs of those to whom we provide services and those subject to our custody, as well as the need to recognise and respond appropriately to the needs, aims, and aspirations of the diverse cultural and other ethnic groups that constitute our society.

- 344 The Department's Policy and Service Development Group is also currently drafting a policy on the Department's obligations under the Treaty (*Corrections News*, September 1997, 7).
- 345 The CRP would appear to be largely aimed at educating non-Māori managers who are in decision-making roles within the Department, and enhancing their cultural responsiveness, although the primary focus is to enhance the skills of employees who work with offenders. During 1998 and 1999 general managers of services will be exploring the issue of more closely aligning the ethnicity of employees with that of the offenders with a view to developing specific



strategies and a time frame to achieve those strategies by June 1999. As at June 1998 there were 49 Māori managers employed by the Department of Corrections (approximately 15% of managers in the Department). It does not appear to be aimed at increasing the proportion of Māori managers, although cultural competency requirements within job descriptions may have this effect. The Department's annual reports do not contain a breakdown of staff by gender or ethnicity although figures are available on request; at 30 June 1998 there were 766 permanent Māori employees. The Department has a priority to increase the proportion of Māori at all levels and its 1997/1998 EEO Framework includes a number of strategies to increase the particular proportion of Māori in management.

346 Three scholarship schemes are presently operating to encourage Māori to complete qualifications relevant to the Department's work and take up positions in the Department:

- Psychological Service Māori bursary;
- Community Probation Service bursary for Social Work students; and
- Head Office Scholarship.

347 The Community Corrections Service of the Department has released a document entitled *Our Strategic Plan to Address Māori Issues 1997–2000*. The plan sets out short and long-term strategic result areas. Initiatives to be undertaken to address offending by Māori include

increasing training and strengthening support for Māori staff; developing and implementing local programmes to address offending by Māori; convening working parties to collate and report on programmes and initiatives being undertaken currently with Māori offenders; promoting research proposals on community-based programmes for Māori offenders; initiating and facilitating positive communication with iwi and Māori programme providers. (Department of Corrections "Post Election Briefing", 52)

348 Support for Māori and Pacific Island staff includes strengthening of Māori and Pacific Island staff networks, open and increased consultation and communication, and providing appropriate training of Māori staff, especially management training ("Post Election Briefing", 52).

## LEGAL SERVICES BOARD

349 The Legal Services Board (LSB) came into being as a Crown entity on 1 February 1992. According to its 1997 publication, *Legal Services: a Community Resource*, it is charged with the responsibility of "making access to the law and the legal system more available

through the provision of legal services to people who, for one reason or another, might not otherwise have had access" (5). The Board is constituted under s 94 of the Legal Services Act 1991 and its principal functions are set out in s 95. They include:

- administering the civil and criminal legal aid, duty solicitor and Police detention legal assistance schemes;
- supervising and co-ordinating the work of District Legal Services Committees;
- advising on, assisting with the establishment of, and allocating funding to, community law centres which provide advice, information and education to the public at little or no cost;
- sponsoring and initiating pilot schemes for providing legal services to the public; and
- advising on the provision of legal information and law-related education.

350 The LSB has overall responsibility for the provision of publicly funded legal services through its funding, management and monitoring roles. The day-to-day administration of legal services, however, is largely devolved to District Legal Services Committees, who use the funds allocated to them by the LSB to fund, within their district:

- the criminal legal aid and civil legal aid schemes, the duty solicitor scheme, the Police detention legal assistance scheme and community law centres; and
- the provision of legal information and law-related education to the public.

351 The Committees oversee the processing of applications for criminal legal aid and civil legal aid within their districts. They are also responsible for identifying legal services needs. Under the Legal Services Act 1991 s 154 the establishment of community law centres is the responsibility of District Legal Services Committees. If there is no community law centre in a district, each committee must consider, every 2 years, whether one should be established.

352 Under ss 98 and 117 of the Legal Services Act 1991, one member of the LSB and one member of each District Legal Services Committee is to be appointed by the Minister of Justice on the nomination of the Minister of Māori Affairs. Two members of each District Legal Services Committee are to be appointed by the Minister of Justice on the joint nomination of the Minister of Consumer Affairs and the Minister of Women's Affairs: those members are also reserved places on the LSB.

353 For the year ended 30 June 1998, \$68.430m (81.6 percent) of the LSB's total expenditure was devoted to legal aid, \$4.376m

(5.2 percent) to the Duty Solicitor and Detention Legal Assistance Schemes, \$3.875m (4.6 percent) to administration, \$3.895m (4.6 percent) to community law centres and \$3.254m (4 percent) to legal research and education (*Annual Report 1998*, 49). The level of funding for community law centres is determined by the LSB but the money comes not from the government but from interest on solicitors' trust accounts which is held in the New Zealand Law Society Special Fund. There are currently 19 community law centres funded by the LSB throughout New Zealand. All community law centres have a strong Māori focus and four, one each in Auckland, Wellington, Christchurch and Dunedin, are specifically dedicated to Māori.

- 354 The LSB's *Statement of Intent 1 July 1997–30 June 2000* lists, among the values of the Board, consumer focus, customer sensitivity, and commitment to Treaty principles. The Board's public documents provide few obvious examples of legal services targeted at Māori, although the *Annual Report 1997* notes legal aid funding for claims to the Waitangi Tribunal (62), funding of Māori Law Centres (44), and the use of Māori and Pacific Island advisors in producing pamphlets concerning legal aid in a number of languages (20). The *Annual Report 1998* notes an upsurge in demand for Waitangi Tribunal claims due to the retirement of the Crown Forestry Rental Trust as a major funder (30). Objectives for the 1998/1999 year include devising new instructions dealing with civil aid for cases coming before the Waitangi Tribunal and making a series of four videos aimed at improving public understanding of the legal, social and political effects of the Treaty of Waitangi and the workings of the Waitangi Tribunal (*Annual Report 1998*, 35).
- 355 In 1997 the LSB set up a Māori advisory committee. Its role is to supplement the Māori perspective on the Board's operations and decision-making provided by the mandatory Māori appointees. It aims to provide feedback on district legal services committees' performance, suggestions for the improvement of legal services, and the means by which the existence of those services can be effectively communicated to their respective communities. As the Board employs only seven staff, an advisory committee was preferred to appointing staff within the Board itself.

## CONCLUSION

### *Departmental Policies*

- 356 Four features emerge from this review of the policies of departments and the Legal Services Board with respect to Māori women in this chapter. First, there is evidence of a desire to be responsive to Māori

and to encourage Māori participation in most organisations. There is little evidence, however, of policy initiatives which specifically focus on the value of Māori women in New Zealand society.

- 357 Second, although there is a general recognition of the importance of the Treaty of Waitangi, there is less clarity about how it may be translated into specific, measurable outputs and outcomes.<sup>26</sup> This may be partly attributable to the fact that until the second set of strategic result areas was formulated for the 1997–2000 period, the government's strategic priorities did not include the reduction of social and economic disparities between Māori and non-Māori. The Treaty was seen solely as the source of claims to be negotiated and settled. Thus it is only recently that many departments have had to include in their key result areas any references to the Treaty or improvements in the socio-economic position of Māori.
- 358 Monitoring of the state's performance in tailoring services and policy to Māori has been institutionalised through Te Puni Kōkiri. Its reports on individual departments contain suggestions on how they might improve their delivery of services to Māori, or incorporate Māori views into their policies and practices. The recent expansion of the role and resources allocated to the Ministry's monitoring and evaluation group reflects the greater emphasis now placed on this aspect of its work. The importance of monitoring is reinforced by the comments made by women whose views have helped shape this paper, which were often disparaging of government services.
- 359 Third, there is little evidence of a common understanding of the Treaty and its implications across the state sector, from which the particular needs of individual agencies may then be developed. General comments about partnership, responsiveness and representation were common to most departmental documents we examined, however, these comments reveal little about how a department incorporates the Treaty into its work, or what it understands the Treaty to mean. There is a need for Treaty analysis to become part of policy advice. The Ministry of Women's Affairs is currently developing a Treaty Analysis Framework (see para 284) and we suggest that Treaty analysis can be structured to encompass principles, outcomes and their measurement in the ways described in chapter 6.

---

<sup>26</sup> The years immediately following the enactment of the Public Finance Act 1989 saw similar uncertainty within departments over how to define the categories of outputs they produced.

- 360 Our fourth point is a caveat: any assessment of departmental performance should not overlook the contestability of policy proposals and the climate of fiscal restraint in which most government services have been delivered since the late 1980s. Policy is first contested within departments, so that a particular programme tailored to Māori must be considered alongside other programmes and their relative priorities established. But even accepting resource constraints, it must be questioned whether some improvements (for example, the incorporation of Treaty analysis into policy making) could in any event be made at little or no additional cost. An important consideration, however, is that cost must be balanced against benefit, and improved outcomes for Māori must outweigh the cost.
- 361 Māori women are, and will remain, vulnerable so long as there is a failure in justice sector policies to acknowledge Māori cultural values and in particular the value of Māori women within their whānau. The risk in failing to recognise Māori cultural values is that the needs of Māori women may be seen as being no different from those of non-Māori women or Māori men.
-

---

## 6 Towards community participation

- 362 **W**e stated at the outset of this report that two fundamental changes are required for positive outcomes in the social, economic and justice environment for Māori women.
- 363 First, the causes and consequences of disregarding the cultural values and socio-economic disadvantage of Māori women must be understood by agencies and the wider community. Such understanding is imperative for the needs and values of Māori women to be met by relevant policy makers and responsive services delivered. For example, the high representation of Māori women among victims of domestic violence means that Māori women can be expected to be high users of services such as the Children and Young Persons Service and the health services. Many of these women are mothers of children. The effects of abuse in the family – whether physical, sexual or emotional – are likely to lead to children not coping at school, dropping out and a predisposition to teenage parenthood and crime (Denny 1993).
- 364 Secondly, there must be support for strategies which foster participation by Māori and particularly Māori women. Strategies must provide for processes of joint policy formulation and assist Māori women to develop structural and organisational capability so that they themselves can participate in service delivery. Māori women wish to participate in the justice system, not only as users, but as providers and professionals.
- 365 In this chapter we propose principles for change based on the Treaty of Waitangi. The principles we suggest should be viewed as a guide to justice sector agencies, to assist them to be effective in meeting Māori women's needs and values.

### TREATY PRINCIPLES TO GUIDE STRATEGIES FOR CHANGE

- 366 In chapter 1 we identified three principles of the Treaty which we see as particularly relevant to this report. The principles are those

of *partnership, options, and participation*. In summary, these principles delineate a position where the Crown as Treaty partner respects the rangatiratanga of its Treaty partner, and enables Māori to choose whether to use services based on tikanga, or within the mainstream, or a combination of both. The principles provide where practicable for co-operative policy development and decision-making by both Treaty partners and for Māori participation in processes of policy design and service delivery.

367 In light of those principles, the aim of this report is to suggest strategies by which state agencies may best promote justice for Māori women. The key components are:

- the co-ordination of existing services for Māori women;
- the development of programmes for Māori women with new and existing providers;
- interagency co-operation within communities developing and providing services; and
- the assessment and monitoring of performance.

368 To assist state agencies in the vital task of assessing present and future efforts for their effectiveness for Māori women, the report identifies three broad means of measuring effectiveness. Distilled from the Treaty principles, the measures are:

- participation by Māori women at all levels of the justice sector workforce and as voluntary users of justice services;
- increased autonomy of Māori women assessed, for example, through levels of dependence on state benefits, knowledge of the law and the justice system and the establishment of specific Māori services to provide access to justice; and
- cultural endorsement, or the consistency of services with Māori cultural integrity.

### *“Partnership” as a guide for change*

369 A co-operative approach reflects the Treaty principle of partnership. Essentially it underlines the importance of Māori, including Māori women, and agencies working together to achieve the best outcomes for Māori women. We are aware of only one example in the justice sector where an agency is working in partnership with Māori to provide services to Māori.

370 An example of partnership in the justice sector is between Māori women’s refuges and their local police and family violence networks. Workers from these refuges are called out by the police to support women following the arrest of their assailant and provide support to the victim unless the victim indicates that support is not required. Generally, police experience suggests that where no

support is not apparent a victim – often due to the trauma of the incident – will not request it. Without proper support, the effects and trauma of a violent incident will not properly be dealt with. It is therefore important that Māori women's refuges and the police work closely together to ensure that timely and appropriate support is provided to Māori women where there is domestic violence.

371 We are aware of funding to Māori providers who enter into contracts with agencies for the delivery of services. The prescription for the services, however, and their priority, are generally determined by the agency.<sup>27</sup> In the *Te Whānau O Waipareira Report*, the Waitangi Tribunal stated that the principle of partnership

is not for the purpose of requiring particular contracts, though it is relevant to contract formation, but it defines the relationship between Māori and the Crown in all areas of endeavour. This relationship recognises their separate status but with enduring obligations to each other, and it defines appropriate conduct in their dealings, to act towards each other with the utmost good faith . . . (216)

372 The Tribunal went on to find that partnerships should be developed between the Crown and Māori communities and should not be limited to traditional iwi authorities. The co-operative approach to developing partnerships underpins the key strategies of consultation and shared decision making about the services which will improve the lives of the people. It also emphasises the mutual recognition of cultural differences and the importance of involving the Māori community in the planning, design, implementation and delivery of programmes and strategies.<sup>28</sup>

373 An example of a partnership model in education between the Māori community and schools is the Tu Tangata programme, a programme focused mainly on primary schools and colleges in the Central North Island, Wellington and East Coast. This programme was started at Parkway College, Wainuiomata in 1996 by the local community, including many Māori women who had previously been involved in setting up the local kōhanga reo. The programme is aimed at supporting children to learn and parents to teach by using a paid community workforce to attend at the schools every day. The Tu Tangata teams support teaching personnel and focus on

---

<sup>27</sup> The work undertaken by the CFA, for example, was characterised in *Te Whānau O Waipareira Report* as being based on vested interests, where the agency develops services to meet a need it has prioritised (83).

<sup>28</sup> Te Puni Kōkiri, "The Community Programme Sentence", 11, citing Mason Durie's 1994 paper to Hui Te Ara Ahu Whakamua, Rotorua, "Kaupapa Hauora Māori – Policies for Māori Health".



the needs of young students to encourage learning. They monitor student behaviour and progress, and identify where difficulties lie. They support family group conferences (when required), school trips, sports activities and home liaison. According to the programme's 1998 Handbook, *Bringing Lifeskills into the Classroom*, schools with Tu Tangata teams are reporting:

- being able to address concerns about social problems (such as drugs, suspensions and students falling behind) immediately and to involve parents, Tu Tangata staff, and other support people as appropriate;
- using concepts of "time-outs" rather than suspensions with a faster recovery being achieved;
- less drug use at school;
- homework and catch-up sessions being organised for lunchtime and after school;
- Tu Tangata personnel organising and becoming involved in after-school activities for students; and
- parents and community workers taking up education courses themselves (13).

374 There is no government policy for this initiative. All communities where the programme operates have had to contribute their own time and seek out resources themselves (*Bringing Lifeskills into the Classroom*, 22). The programme exists for all students, not just Māori.

375 An example of partnership in health was the Māori Co-Purchasing Units (MAPO) established by the Northern Regional Health Authority in 1992 (the Northern Regional Health Authority has since been replaced by the Health Funding Agency 1998). There are three MAPOs which were responsible for prioritising Māori health within the core business activity of North Health. The MAPOs shared responsibility with North Health for the selection, funding, and development of services and providers in the North Health region from Waiuku in the south to Cape Reinga.

376 Each MAPO was established using grants from the Transitional Assistance Grants Scheme (TAGS) operated by the Ministry of Health. Each MAPO owned its own premises within its own locality. The co-purchasing strategy took place at two levels to ensure that the MAPOs not only had the right to provide strategic advice, but also that they participated fully in its implementation. The two levels were governance and operational management. In respect of governance, the MAPO Board developed and approved policies and guidelines to govern the operational practice of North Health and individual MAPOs for the benefit of the regional Māori population.

- 377 The MAPO team shared joint responsibility for co-purchasing and co-monitoring service contracts with North Health purchasing teams. Full and comprehensive integration by MAPO into North Health core business activity meant regular attendance at North Health team meetings and participation in decision-making in relation to Māori health. The fundamental effect of the co-purchasing strategy was to let Māori make decisions concerning Māori health care and how best to improve its status. Thus MAPO are able to advise the Health Funding Agency on both Māori health priorities for the local Māori population, and on the Māori service providers who are able to provide safe and effective health services which meet the needs of Māori. MAPOs can give further advice to other mainstream providers in the delivery of their services to Māori.
- 378 The relationship of MAPO with the Health Funding Agency is an example of partnership and active participation. MAPO are able to work with Māori communities to develop services in primary health care and advise mainstream health services on how to respond to the needs of Māori.

*“Options” as a guide for change*

- 379 The Treaty principle of options suggests that Māori women should be able to access mainstream services if they wish, or opt for accessing services provided by Māori institutions, or some combination of both. Provision of choice requires a range of service options both the provision of mainstream services which are responsive to Māori and services for Māori by Māori. There should be no presumption that all Māori women will wish to access a particular type of service.
- 380 In respect of educational qualifications, Māori women are more disadvantaged than Māori men (see para 191), therefore there is a need for more specific options which respond to the educational needs of Māori women. In *Progress Towards Closing Social and Economic Gaps Between Māori and non-Māori*, Te Puni Kōkiri notes that despite the decline in Māori fertility since 1960, pregnancy among Māori teenagers remains high relative to non-Māori (Te Puni Kōkiri 1998, 23). There is a need for options which address both the educational needs of Māori women and their children. Twenty percent of young New Zealanders are at risk of falling out of the education system (Denny 1993). That, in our view attests to the aptness of empowering communities to achieve their aspirations having regard to their own perceptions of what is relevant to their needs (*Te Whānau o Waipareira Report*, 218).

- 381 An example of a community-based strategy providing an option for Māori women is He Huarahi Tamariki (A Chance for Children), a comprehensive education facility operating in Porirua for students who are teenage parents. It is the only school in the country for teenage parents, all of whom had been lost to the education system. The school is multi-cultural and provides breakfast, lunch and transport to its students and their children. The school has recognised the importance of providing comprehensive services which support the students and enable them to focus on their studies. Just over half of the roll is Māori but all of New Zealand's major ethnic groups are represented including Chinese and Indian. The current roll is 49 students who have responsibility for 115 children. There is a waiting list for 1999 of young parents and the school has had to turn away young people who are not parents but who have been seeking an education system to which they can relate.
- 382 The school is staffed by a full-time teacher-in-charge, a part-time teacher from Porirua College, two part-time assistants funded by the Crime Prevention Unit and six part-time volunteers. The school has close links with (and liaison among) the government welfare agencies, health services and early childhood services. It operates a medical and dental fund and has links to legal services and to private social services. It is a full service school which is giving a chance to its teenage students and their children to achieve and realise their potential in life. All funding for equipment, food and transport has to be raised from Trusts, service clubs and through speaking engagements because there is currently no government policy for such an initiative ("He Huarahi Tamariki (A Chance for Children) Information Sheet", 15 October 1998). It is treated by the Ministry of Education as just another class at Porirua College. There is no recognition that the students have responsibilities as parents nor is there any special funding.
- 383 Examples which exist in the criminal justice sector are Project Turnaround and Te Whānau Āwhina.<sup>29</sup> Te Whānau Āwhina, in the use it makes of diversion options<sup>30</sup> and in balancing the needs of the individual offender with the nature of the offence, referred

---

<sup>29</sup> Crime Prevention Unit, *An Evaluation of the Community Panel Diversion Pilot Programme*, 1998 16. These were two pilot projects offering different diversion models and operating in different community contexts. The ethnicity of offenders dealt with by Project Turnaround was described as 'European' in 86 (88.7 percent) cases and Māori in nine (9.3 percent) cases.

<sup>30</sup> Crime Prevention Unit 1998, 10: the term "options" came to be the preferred term by the projects, although it in no way signalled that the options plans were optional.

offenders, 93 percent of whom were Māori, to either marae-based programmes or programmes that catered for Māori clients.

384 The Matua Whangai programme in Hamilton evolved into the community taking responsibility for the well-being of Māori offenders through processes and practices consistent with kaupapa Māori. The programme recognised the importance of dealing with an offender in a holistic way which met their needs. Māori service providers stressed that it is preferable to provide a range of support services through one central provider, and in that way adopt an integrated approach to the offender's needs ("The Community Programme Sentence" 1997, 15 and 18).

### *"Participation" as a guide to strategies for change*

385 Participation is a means by which Māori women can achieve positive development. Positive development means strategies through which Māori women themselves can improve their access to legal and associated social services. They include:

- community-based services;
- liaison and better information between Māori women and services; and
- greater participation of Māori women in services provided to Māori and involvement in management decisions.

386 Strategic result area 6(iii) requires agencies in the justice sector to foster positive participation by Māori in the criminal justice system with the objective of reducing the impact of crime by Māori in terms of offending and victimisation. We are aware of several strategies which are actively supporting this principle in the criminal justice area: Project Turnaround, Te Whānau Āwhina, The Community Programme in Hamilton, Bicultural Therapy Model, Mahi Tahī (New Life Akoranga programme in prisons), and Māori Focus Unit at Hawkes Bay Regional Prison.

387 The community programme sentence (known as the community care sentence before it was renamed by the Criminal Justice Amendment Act 1993), provides an alternative to imprisonment and is a working example of Māori participation in the justice service sector. The Criminal Justice Act 1985 provides for the sentencing of offenders convicted of an offence punishable by imprisonment, to a programme for a period not exceeding 12 months. A "programme" is defined by s 2 of the Act as one or more of the following:

- (a) Attendance on some form of continuing basis at one or more medical, social, therapeutic, educational, or rehabilitative amenities:

- (b) Placement within programmes such as Matua Whangai:
- (c) Placement in the care of members of an appropriate ethnic group, such as a tribe (iwi), a subtribe (hapū), an extended family (whānau), or marae, or in the care of any particular member or members of any such group, such as an elder (kaumātua):
- (d) Placement in the care of members of an appropriate religious group, such as a church or religious order, or in the care of any particular member or members of any such group:
- (e) Placement in the care of any other person or persons or of any agency:

388 The Community Corrections Manual contains policies and procedures for the management of the centres of community programmes. The purpose of those programmes as contained in the Manual

is to provide the Court with an integrative and/or rehabilitative sentence, predominantly for medium-risk clients. It places the client in a positive, beneficial and supportive environment which will contribute to reduction in re-offending.

389 The Hamilton Community Probation Service has had to grapple with the most effective way of facilitating and empowering Māori community involvement and participation ("The Community Programme Sentence" 1997, 6). A review was conducted by Te Puni Kōkiri in 1997 of the practices of the Hamilton office. The Community Programme process enabled Matua Whangai workers in Hamilton to work with the wider Māori community to integrate the Māori offender's needs with the collective responsibilities of the Māori community. The judiciary have direct contact and communication with Matua Whangai, Māori offenders, the community and the Department of Corrections. When Judge Rota in the Hamilton District Court considered the option of a community based sentence, he advised the review group that he assessed:

- (a) the capacity of the community group to meet the offender's needs;
- (b) whether the community group was adequately resourced to meet the offender's needs;
- (c) the likelihood of getting a positive result from the community based programme;
- (d) whether the proposal met the ends of justice in relation to deterrence, reparation and education. ("The Community Programme Sentence", 1997, 6)

390 The report of the TPK review group advised that Māori community service providers were comfortable about making representations to the court on behalf of offenders and that the judges in the Hamilton District Court often ask Matua Whangai workers to speak on relevant issues, either in the court or in judges' chambers. The judges support appropriate cultural practices in the court, for

example, the use of karakia and waiata. The report refers to the judges' trust and confidence in community correction:

One of the positive aspects of the current arrangements was the ease with which whānau and community representatives could participate in the judicial decision-making processes, and were encouraged to participate. This is not a consistent approach across justice sector agencies. ("The Community Programme Sentence", 1997, 6)

391 The report referred to a survey of police responsiveness to Māori in the case resolution process. The survey showed that some police had difficulty accepting the view that Māori offenders had whānau members who were interested in their well-being. That whānau should be advised and consulted about the circumstances of their arrest or detention of a member went similarly unrecognised.

392 In summary, the community programme sentence provides plans which:

- develop a work programme;
- provide counselling to the offender based on cultural values;
- help offenders to understand cultural issues; and
- provide counselling, work programmes, training and support by Māori service providers.

393 The community programme sentence has sought to involve whānau, hapū and the wider Māori community in the design and delivery of programmes and strategies to reduce offending by Māori ("The Community Programme Sentence" 1997, 5). A positive aspect of its approach which has gained the support of the local judiciary is to have

effectively moved from a position of "controlling" Māori offenders, to facilitating and empowering the Māori community to take increased responsibility for members of their own community in a way which is consistent with their own norms and values. (33)

394 Research in the 1988 report to the Minister of Justice, *Review of support services for victims of crime: Report of the Working Group*, shows that Māori are more often repeat victims of violence, are less aware of services, and rely more on whānau for support (Office of the Minister of Justice 1988, 4). While there may be a number of reasons for that reliance on whānau,<sup>31</sup> research also suggests that Māori are less likely to report crime and as a consequence are less likely to be referred to services by police. Improving perceptions

---

<sup>31</sup> Reliance on whānau may reflect a number of concerns: a preference for whānau support, a lack of appropriate service for Māori victims, a lack of appropriate targeting by support services, or Māori victims' lack of confidence in the criminal justice system.

of police by improving community liaison may assist in increasing the rate of reporting and as a result access to support services.

395 The aim of having a representative workforce within which Māori, including Māori women, are participating at all levels and in all areas was suggested by the women during the consultation hui (see paras 140 and 152). Such workforce development should allow for new categories of workers who may have particular attributes (not found among conventional professions but closely linked to networking within Māori communities), cultural skills, and acceptance by a community group as a go-between.

396 The role of probation officers liaising with Matua Whangai is described:

They facilitate community involvement and provide information and support. Probation officers are available to offer training to new Māori providers and to engage the community in working with offenders. (Crime Prevention Unit 1998, 19)

## ENSURING EFFECTIVE JUSTICE SERVICES

397 As observed by the Waitangi Tribunal in the *Te Whānau O Waipareira Report*:

[W]ork is urgently required to develop methodologies for social impact assessment of welfare policies ... and that these must be applied to assess the performance of welfare funders and providers in the achievement of social goals. Such an assessment should also identify any problems caused by a lack of co-ordination between Government departments, especially in the aftermath of the Public Finance Act and the restructuring of the State sector. The department and the agency acknowledged at the hearings that they have an important co-ordinating role to improve social service planning. They must ensure that Māori are not prejudiced by the lack of co-ordination. Perhaps most importantly, public reporting of information from such assessments would provide a basis for monitoring of Crown actions by Māori that would better reflect the co-operative, interactive nature of Treaty partnership. (232)

The following are proposals which in our view are the minimum requirements to encourage participation and ensure the effectiveness of services.

### Co-ordination of existing services

#### *Family Violence Focus Group*

398 In respect of family violence, justice sector services are co-ordinated among the Police, Department for Courts, Department of

Corrections and the Ministry of Justice. These agencies are part of the Family Violence Focus Group, which has produced such documents as the *Government Statement of Policy on Family Violence* and the *Good Practice Guidelines for the Co-ordination of Family Violence Services*. In the past year, the group has also met several times with representatives from all the community groups who are involved in family violence in one way or another.

- 399 At the local level there are a total of 35 family violence networks around New Zealand. Like their national counterpart, these meet on a regular basis to deal with issues arising from their work. For instance, in the South Auckland area, the local network meets monthly. The membership consists of many organisations such as the Police, Courts, Community Corrections, CYPS, Women's Refuge, Victim Support, Stopping Violence Services, Baptist Family Services, Elder Abuse (Māori Services), Health, Safer City, Te Whare Āwhina, Barnados and the Community Law Centre.
- 400 Research shows that many factors are characteristic of an intention to commit violent behaviour in the future (Busch 1992, 176). Such factors include recent violence, actual or threatened loss of a central love relationship, recent substance abuse, as well as evidence of an intention to harm a partner or ex-partner. The police have introduced a family violence database which records the details of offences and incidents that they attend. Over 30,000 entries are made to this database each year. It is available to members of the police throughout New Zealand and provides them with information, in the event they are called to attend to the same victim, offender, or address again.
- 401 It is now the practice for police at every call out to tell the victim that a women's support group will be contacted on her behalf immediately. The police may even transport the victim to that group. While the police acknowledge that they may apply for a protection order, for instance on behalf of a reluctant victim, they have in the past experienced public criticism for having taken such action. They favour instead ensuring that the victim receives early and then continuing support from an organisation such as Women's Refuge.
- 402 The police currently record a variety of information about each family violence offence or incident attended on to a family violence report. Much of the information from this report is entered in the family violence database. The information is shared with the agency providing the support to the victim and is usually received within 24 hours of the offence or incident occurring. Information is also provided to the court staff who work as victim advisors.



- 403 An inter-departmental working party is looking at the commonality of information and the sharing of information across government agencies in the justice sector, particularly in ensuring that the departments all have the same definitions. There is another working party currently looking at sharing information within the justice and health sectors.

### *Strengthening Families Strategy*

- 404 The cross-agency Strengthening Families Strategy is aimed at improving the life outcomes of children in families at risk. Local co-ordination of services to these families to provide a more effective seamless service, is central to the Strategy. This initiative started with government health, education and welfare services but now includes housing, police and justice sectors. A total of 11 departments are now involved in the initiative. The aim is to promote inter-agency co-operation within communities by providing a collaborative seamless service to families at risk using a lead agency model.
- 405 The fundamental premise of the Strategy is, once again, that families are the best institutions for caring for children and making decisions about their well-being. The overall aim of the strategy is to ensure that government interventions enhance the capacity of families to carry out their responsibilities and have a significant impact on outcomes for children and young people.
- 406 Youth Aid Officers from the police and Youth Justice Co-ordinators from CYPS agree that interagency co-operation is fundamental to the success of the youth justice system. Time spent together helped to develop a shared philosophy of youth justice, good interpersonal relationships and, most importantly, trust. These elements made possible a respect for each others' work, opinions and overall input to the youth justice system (Levine et al 1998, 12).

### **Programme development**

- 407 It is clear that the justice sector must build structured relationships with Māori women's groups and Māori communities. The Police 2000 Strategy Group, for instance, recognise in *Urupare Whitiki: Build Responsiveness to Māori Strategy* that:

the future relationship of Māori in New Zealand society and with the Police is fundamental to the Police strategy of reducing crime and the fear of crime, reducing injuries and deaths on the roads, and increasing satisfaction by the community with policing services. Police and Māori need to form a much closer partnership to assist in achieving these goals. (2)

As noted earlier (see paras 129 and 394) Māori are less likely to report crime and, as a consequence, are less likely to be referred to services by police. Improving perceptions of police is critical.

408 While we have not categorised the perceptions of Māori women by age, the Department for Youth Affairs highlighted the importance of identifying specific needs for young people, including young Māori women, to ensure effective programme development. Those needs have been recognised in the Commonwealth Youth Programme because young people:

- form a significant proportion of most national populations (in some Commonwealth countries this exceeds 50 percent);
- need a supportive, participatory and informative environment to move successfully from the dependence of childhood to the autonomy and responsibility of adulthood;
- have a unique contribution to make to national development due to their energy, enthusiasm, resilience and an ability to inject a fresh focus;
- have had less life experience and often significantly less access to information, resources and power over their lives than other people, making them more vulnerable to neglect, abuse and exploitation; and
- often represent the most “at risk” group in terms of the major socio-economic challenges such as unemployment, low income, physical and sexual abuse, poor housing, substance abuse and a wide range of health issues including HIV/AIDS; it is fair to say that young women are most disadvantaged in these areas.

For all young people it is necessary to have an enhancement component where experiences in the four social environments – family (whānau), peer group (tuakana/teina), school (wānanga), and the neighbourhood or community (iwi/hapū) – combine to facilitate young people reaching their full potential .

409 Young people who are “at risk” can be described as those that have experienced a level of failure or breakdown in any of their social environments. According to “Getting Heard: a case study of community involvement with ‘at risk’ secondary school students”, the degree to which young people are at risk can be measured by the number of social environments they are disconnected from (Martin, unpublished, 1998).

410 Three of the four social environments in a young person’s life are directly linked to and controlled by adults. When these break down young people are not just alienated from the adult sphere but they also potentially lose access into the adult world. The extent of

this break down will determine the level of reliance on their peer group for support and approval. Youth development programmes can be designed for young people as individuals but they would probably be better if they involved the individuals and their peer group. Building on the concepts of tuakana/teina may be very fruitful for young women because they recognise the influence of peer group, leadership, role models and mentoring.

- 411 The loss of value afforded to many Māori women has occurred through a loss of access to their own community compounded by an inability to participate in the wider society. We believe that, Māori women as a community must be given the opportunity to redress those impacts in their own way:

Our struggle as Māori women is our own struggle. To lose control of that struggle is to lose control of our lives. We are not in a position therefore to simply endorse or graft on to the projects of white women. We have to develop according to the reality and logic of our lives. (Whiu, unpublished 1994, 7)

- 412 Some programmes for Māori (as distinct from programmes specifically for Māori women) already exist and achieve positive results. We have referred to some of them in this chapter. There must, however, be ongoing development of Māori women's programmes as well as provider development.

- 413 The long-term success of programmes, however, depends on reliable funding for infrastructure support and workforce development. The September 1997 "Memorandum to Cabinet Health and Social Policy Committee: Responses to Offending by Māori – Sector Wide Objectives" suggested that to build on and assist the development and effectiveness of Māori women's providers there needs to be:

- compilation of information about the services being offered by Māori women providers;
- identification of priority areas where services by Māori women are required;
- establishment of effective communication between Māori women providers and government agencies;
- development of a "comprehensive service" approach by Māori women providers; and
- identification of the skill needs of Māori women's providers (5).

## **Interagency and community co-operation**

- 414 The 1997 memorandum, "Responses to Offending by Māori – Sector Wide Objectives", suggested that to ensure the development of effective services and accountability mechanisms for both

government and service providers, agreements between all agencies responsible for funding/purchasing services in the justice sector should include “critical dates in funding and reporting cycles; the development of complementary objectives;” and “agreed guidelines for negotiating contracts with Māori/Iwi providers”. The memorandum further noted that agreements needed to include

a recognition that many Māori providers address broader issues than those for which they are directly funded and that the inclusion of whānau approaches to service delivery may be more resource intensive. (6)

- 415 Co-operation is required to determine priorities and plan outcomes as well as to develop:
- a sound infrastructure of qualified people for quality services;
  - long-term sustained approaches to funding;
  - long-term sustained provider development; and
  - agreed reporting and monitoring mechanisms.
- 416 Within the broader Strengthening Families initiative, a project has recently been established to identify ways in which government initiatives to improve outcomes for Māori in the health, education and welfare areas can be better co-ordinated across the three sectors. It is anticipated that this project will provide an additional impetus to the broader project to improve the performance of the three agencies in reducing disparities in outcomes between Māori and non-Māori and improving outcomes for Māori families and children.
- 417 A good deal of police youth aid work is proactive work in the community. Some youth justice co-ordinators are joining youth aid workers in community projects. For example, some youth justice co-ordinators developed a programme in conjunction with the police, working in the schools, which takes young people through the whole process of the youth justice system: from arrest to court, family group conference, then outcomes, possibly back to court (Levine et al 1998, 14).

## **Assessing and monitoring performance**

- 418 In the 1997 memorandum, “Responses to Offending by Māori – Sector Wide Objectives”, the Ministry of Justice proposed that:
- . . . the Department of Corrections, Department for Courts, the Crime Prevention Unit, the Department of Social Welfare and the New Zealand Police develop their own self-review methodology with the assistance of Te Puni Kōkiri as required and report progress on the development of these methodologies through the Responses to Crime Sector Annual review in 1998. (8)

- 419 The Ministry recommended that criminal justice sector agencies become more accountable for their policy development and service delivery through the annual performance and purchase agreement processes. We agree that monitoring of service and service providers is a means to ensure that Māori women are at the very least being given access to services. However, whether those services are effective to meet the needs of Māori women requires a set of performance measures aligned to outcomes agreed both by agencies and the communities. The Waitangi Tribunal recognised in the *Te Whānau O Waipareira Report* the urgency of developing methodologies to assess the performance of service funders and service providers (Waitangi Tribunal 1998, 232). Such an assessment should identify problems caused by a lack of co-ordination between agencies so as to improve service planning. Most importantly, public reporting of information from such assessments would provide a basis for monitoring agencies to promote a co-operative and interactive relationship with communities.
- 420 In the broad social policy arena, input and output measures have been the most common measures used. An input focus highlights the financial and human resources which are applied to particular areas of Māori service provision, while output focus itemises the activities undertaken by a particular agency. However, more recent interest has come to focus on outcomes, the impact of government activity and outputs on the community.
- 421 We noted in chapter 5 that outputs do not indicate whether the service has been to the benefit of the client or target group, but have the advantage of being relatively easy to define. Outcome measures, however, are more difficult to define and there are relatively few reliable outcome measures that can be easily adopted by justice sector services. Client satisfaction goes some way towards meeting the goal, but is not synonymous with an outcome. Nor are the conclusions of the department providing the service necessarily an accurate measure of a good or bad outcome. Despite the difficulty in constructing the appropriate tools, however, outcome measurements provide the most meaningful assessment of the impact of a strategy for change, and should be further developed as an indicator of progress.

## TREATY PRINCIPLES AND MEASURING OUTCOMES

- 422 The Treaty of Waitangi is not specific enough to be used as a checklist to rate government performance or to systematically monitor service delivery by the state to Māori. However, as ob-

served earlier (see para 21), it is possible to distil from Treaty principles three broad outcomes which are relevant to the access of Māori women to justice: participation, increased autonomy and cultural endorsement.

### *Participation*

- 423 Participation is an outcome which can be gauged by measuring Māori workforce participation rates in the justice sector and also by measuring the numbers of Māori using services. Māori workforce participation rates, for example, provide some indication of the level of active participation. In addition to being a part of the service workforce, Māori involvement in management decisions and whether they have a stake in owning the service should also be gauged. The numbers of Māori using services are useful measures of service accessibility, though the mode of access (voluntary as against compulsory entry) is also important.<sup>32</sup> The activities which services undertake to be more responsive to Māori are important, but need to be further tested against measures which will reflect the quality of Māori participation and the type of outcome. Unless activities enhance outcomes relevant to Māori, they will be of limited value.

### *Increased autonomy*

- 424 The Treaty did not intend that Māori should abandon their own institutions or become dependent on the state. Māori autonomy is not an outcome which requires Māori and non-Māori to live in separate worlds, or which permits the existence of separate legal systems or encourages defiance of the law. The future of New Zealand must lie in a single legal system which nevertheless recognises and respects Māori values, tikanga and aspirations. Indeed the common law principle of aboriginal rights already requires enforcement by the courts of such rights in the mainstream of that single legal system.
- 425 However, Māori should retain the right to organise as Māori, and to administer and manage their own affairs, while at the level of whānau and individuals autonomy and self respect are preserved. Measurements of this outcome category are not well developed, but could include measures of state dependency (for example,

---

<sup>32</sup> Moreover, increased Māori uptake may reflect factors other than service accessibility; for example, increased use of community law centres may result from greater need for legal services, increasing lawyers' fees, or more specific factors such as law firms leaving an area.

numbers of beneficiaries) as well as such measurements of personal empowerment as knowledge of the law and rights relating to the law and a knowledge of the justice system. The establishment of specific Māori services to provide access to justice would be a further indicator of progress in this outcome category.

### *Cultural endorsement*

- 426 The Treaty guaranteed to Māori the right to remain Māori and thus service outcomes which threaten the retention of cultural integrity are not consistent with the principles of the Treaty. Stated more positively, services offered by the state should, as a minimum requirement, aim to have personnel and processes which do not impede access to justice and the law. This is to ensure that there can be a fair assessment of any Māori woman's claim, defence or dealing with the system so that she is not disadvantaged by virtue of her cultural identity or gender. A cultural audit to measure justice sector processes and policies so that they do result in outcomes relevant to Māori, would provide some way of dispensing with services which do not meet the needs of Māori women and their families. Levels of cultural responsiveness, the introduction of Māori perspectives and the use of kaumātua and kuia cultural advisors would give some measure of this outcome. In addition, the provision of services to Māori by Māori is likely to enforce cultural identity. Levels of Māori employment in justice sector agencies are therefore a relevant measure. Services provided within tikanga Māori are probably the most culturally secure option, though it is important to recall that not all Māori women (or men) have secure cultural identities. McFarlane-Nathan has proposed a therapy model which acknowledges the stressors that cause alienation (McClaren 1992). He suggests that there is a significant group of Māori caught between two cultures, too alienated to maintain traditional ways and not sufficiently comfortable in the dominant culture. This group experiences the most conflict within society and features most considerably in the negative statistics. In the health sector the cultural philosophy underlying Māori health service provision appears to be more developed than that which exists in the justice sector (Māori Health Commission, *Tihei Mauri Ora!* 1998, 14–16).

## CONCLUSION

- 427 Our recommendations for change to ensure greater access to justice for Māori women are made up of principles, change strategies, and measures of progress. What is noticeable from *Puao-Te-Ata-Tu, Te Whaingā i te Tika: In Search of Justice* and *He Whaipanga Hou* is

that, even though they were written between 10 and 12 years ago, many of the same issues are still being brought forward today (*Tihei Mauri Ora!* 14–16). There has been institutional failure to give them the attention and priority they require.

- 428 The barriers that we have focused on in this report – of disregarding cultural values, socio-economic disadvantage and ineffective services – are fundamental in the consequences they have of deterring women from using the justice system to protect their interests and, when they do use it, participating in it in an active way.
- 429 Māori women regard it as necessary that they participate in the justice system not only as users, but as providers, professionals and stakeholders. The evolution of the Matua Whangai programme in Hamilton into a community-based Māori initiative, for example, is about the community taking responsibility for the well-being of its people through processes and practices consistent with Māori values. Educational initiatives such as He Huarahi Tamariki and Tu Tangata, on the other hand, are examples of a comprehensive or full service approach which have regard to the needs of the person to foster their well-being.
- 430 The examples we have referred to are initiatives which are fully supported by Māori women. There is evidence to show that Māori women are a huge resource in the community and are willing to shoulder responsibility for themselves and their families. They are valuable and deserve to be treated with respect and dignity by agencies and to be afforded opportunities as a group to meet their own needs and aspirations.
- 431 Our concern is that the justice system has failed to meet the needs of Māori women. This failure is manifest in the negative experiences they have described to us and in the perceptions that they have that the justice system accords them little or no value. The consequence is that Māori women have little or no confidence in that system. That system is intended to bring all of us under the rule of law – the principle that peace and good order result from common acceptance of Parliament's laws. The consequences for the rule of law within our community, when those at the heart of Māori families are disillusioned, angry and frustrated with the system are deeply troubling.
- 432 With this in mind we have sought in this report to explore some of the background of how this situation has arisen, and to suggest strategies based on the Treaty of Waitangi by which state agencies may best promote justice for Māori women.



---

*Te Mana Wahine hei ara whakatupu*

*“The power, prestige and authority of women  
shall be the pathway to equality and growth”*

---



---

## appendix a

### Consultation hui

A1 **F**orty-eight hui were held with Māori women throughout New Zealand over the period February to August 1996 as part of the project Justice : The Experiences of Māori women – Te Tikanga o te Ture : Te Mātauranga o ngā Wāhine Māori e pa ana ki tēnei. At these hui Māori women were able to express views on access to justice to the Law Commission.

A2 In most areas the hui were arranged with the assistance of the regional offices of Te Puni Kōkiri (the Ministry of Māori Development). The Women's Refuge Collective and the Māori Women's Welfare League also assisted and the Commission is very grateful to these organisations for their help and support. Nearly a thousand women attended the 48 hui. Attendance at each ranged from 3 to 45 women. The hui were held in a variety of venues including Te Puni Kōkiri regional offices, marae, community halls, urban Māori authorities' rooms, church halls, and Māori trust board premises.

A3 In the order in which they were held, the hui took place in:

Gisborne	2	Hawera	1	Blenheim	2
Ruatoria	1	Whanganui	1	Nelson	1
Paeroa	1	Taumarunui	1	Hastings	2
Hamilton	1	Whakatane	1	Mt Maunganui	1
Te Kuiti	2	Waihou Bay	1	Tauranga	2
Whangarei	2	Opotiki	1	Te Puke	1
Moerewa	2	Rotorua	1	Turangi	1
Kaitaia	2	Hokitika	1	Auckland	4
New Plymouth	2	Christchurch	2	Porirua	1
Waitara	1	Temuka	1	Wellington	1
Opunake	1	Dunedin	1	Otaki	1
Patea	1	Timaru	1		

A4 Due to the large number of hui, and because the amount of information gathered was considerable, the material was transcribed from tapes, and summarised. The hui were then classified into thirteen different rohe (regions). Reference to the different rohe by number allows the Commission to retain the confidentiality promised to the women.

---

---

## appendix b

# Te Tiriti o Waitangi

### (THE TEXT IN MAORI)

KO WIKITORIA, te Kuini o Ingarani, i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira hei kai wakarite ki nga Tangata Maori o Nu Tirani-kia wakaaetia e nga Rangatira Maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua nei me nga Motu-na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kua ainga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aiane, amua atu ki e Kuini me era Rangatira atu enei ture ka korerotia nei.

### KO TE TUATAHI

Ko nga Rangatira o te Wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu-te Kawanatanga katoa o o ratou wenua.

### KO TE TUARUA

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangitira ki nga hapu-ki nga tangata katoa o Nu Tirani te tino rangatiratanga o ratou wenua o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te Wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua-ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

### KO TE TUATORU

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini-Ka tiakina e te Kuini o Ingarani nga

tangata Maori katoa a Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

W. HOBSON, Consul and Lieutenant-Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei i te ritenga o enei kupu, ka tangohia ka wakaetia katoatia e matou, koia ka tohungia ai o matou ingoa o matou tohu.

Ka meatia tenei ki Waiangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

[Ko nga Rangatira o te wakaminenga.]

### (THE TEXT IN ENGLISH)

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands – Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

### ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

## ARTICLE THE SECOND

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

## ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[Here follow signatures, dates, etc.]

---

---

## appendix c

### Treaty principles

- C1 **D**uring the last two decades, Treaty jurisprudence has increased due to the establishment of the Waitangi Tribunal in 1975, followed by the enactment of the State-Owned Enterprises Act in 1986, and the first of the landmark Court of Appeal decisions in *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641.
- C2 The history of the Treaty in the courts prior to these developments can be found in a number of sources, notably the appendix to volume 2 of Alan Ward's *National Overview*, and in Spiller, Finn and Boast's, *A New Zealand History*. Briefly, after some initial support for issues of native title (for example, *R v Symonds* (1847) NZPCC 388), the courts under Prendergast J, who was appointed Chief Justice in 1875, took the view that the Treaty did not create rights which might be confirmed in the courts, and that it was, in a famous description, a "simple nullity": *Wi Parata v The Bishop of Wellington* (1877) 3 NZ Jur (NS) SC 72. Over half a century later, in *Te Heuheu Tukino's* case ([1941] NZLR 590; [1941] AC 308 (PC)), the Privy Council summed up the conventional legal position in holding that the Treaty could not be relied upon directly as a source of rights enforceable at law because it had not been incorporated by the legislature into domestic law.
- C3 In 1986 the State-Owned Enterprises Act was enacted. Section 9 of that Act states that "[n]othing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi". The importance of this reference is that it has allowed Māori to challenge with varying success, transfers of Crown assets such as land, forests, coal, broadcasting rights and fisheries on the basis that those transfers were inconsistent with the principles of the Treaty.
- C5 The Conservation Act 1987 (s 4) and the Resource Management Act 1991 (s 8) are other statutes which refer to the "principles of the Treaty". These Acts and the State-Owned Enterprises Act have required the courts to state what those principles are, starting with the 1987 *New Zealand Māori Council* case and including further

cases brought by the New Zealand Māori Council in 1989, 1995 and 1996, by Māori organisations including Māori trust boards, and rünanga and by individuals.<sup>33</sup> The principles identified include “utmost good faith”, “a duty to consult”, and “partnership”. From these flow further principles such as those of the “freedom of the Crown to govern”, the “Crown’s duty to remedy past breaches of the Treaty”, the “Crown’s duty of active protection of Māori interests” and Māori rights to rangatiratanga and taonga.<sup>34</sup>

- C6 The Waitangi Tribunal has identified a number of principles relevant to justice and to the distribution of social, cultural and economic resources. It has made it clear that the Treaty of Waitangi is not only for Māori, but for all New Zealanders. A mutual exchange to benefit the nation as a whole and at times requiring compromise to cope with the changing times. The principle “of paramount importance” was identified as *reciprocity* in the 1993 *Māori Development Corporation* report (113). It was taken to mean

the exchange of the right to govern for the right of Māori to retain their full tribal authority and control their lands, forests, fisheries and other valuable possessions for so long as they wished to retain them. It is clear that cession of sovereignty to the Crown by Māori was conditional. It was qualified by the retention of tino rangatiranga. (*Ngai Tahu Sea Fisheries Report*, 269)

At least six other principles derived from Tribunal reports have proved important: partnership, recognition, active protection, options, autonomy, and development.

- C8 The principle of *partnership* is probably the best known Treaty principle having been outlined by the Tribunal, the Court of Appeal in *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 (CA), and the Royal Commission on Social Policy

---

<sup>33</sup> *New Zealand Māori Council v Attorney-General* [1989] 2 NZLR 142; [1994] 1 NZLR 513 (PC); [1994] AC 466 (PC); *New Zealand Māori Council v Attorney-General* [1996] 3 NZLR 140; *Tainui Māori Trust Board v Attorney General* [1989] 2 NZLR 513; *Ngai tahu Māori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553; *Te Runanga o Muriwhenua Inc v Attorney General* [1990] 2 NZLR 641; *Te Runanganui o te Ika Whenua Inc Society v Attorney General* [1994] 2 NZLR 20; *Taiaroa v Minister of Justice* [1995] 1 NZLR 411 (CA).

<sup>34</sup> Lord Cooke, former President of the Court of Appeal, has noted in “The Harkness Henry Lecture: The Challenge of Treaty of Waitangi Jurisprudence” (1 Waik Law Rev 1,6) that

[w]ith naturally varying emphases and language, the judgements unite in defining principles in phrases such as partnership, fiduciary duty, active protection, full spirit, the honour of the Crown, fair and reasonable recompense for wrong, fundamental concepts, and satisfactory recompense.



in the *April Report*.<sup>35</sup> As a minimum, the partnership principle anticipates a nation where Māori and non-Māori are participants at all levels of society, including decision-making, the delivery of services, and in employment and education. In 1988, and again in 1995, the Tribunal stated that:

The Treaty extinguished Māori sovereignty and established that of the Crown. In so doing it substituted a charter, or a covenant in Māori eyes, for a continuing relationship between the Crown and Māori people, based upon their pledges to one another. It is this that lays the foundation for the concept of a partnership.<sup>36</sup>

- C9 The principle of *recognition* was discussed by the Tribunal in the *Muriwhenua Land* report. Māori recognise and respect the Crown's right to national governance, while the Crown "recognises and respects Māori and their rangatiratanga by which is meant their laws, institutions and traditional authority". This is an acknowledgement of New Zealand's bicultural heritage and the maintenance of different traditions, processes and customs.
- C10 *Active protection*, described by the Tribunal in a number of reports, is a principle which obliges the Crown to actively protect the interests of Māori. The obligation arises not only in relation to the protection of physical assets but also in the reduction of disparities between Māori and non-Māori.
- C11 The *Muriwhenua Fishing* report raised the principle of *options*. Acknowledging the nature of modern New Zealand, the Tribunal concluded that the Treaty gave Māori individuals a choice whether to join the culture and lifestyle of non-Māori, or to continue to live according to tikanga Māori, or to *walk in two worlds*. In the access to justice context, the principle of options suggests choice of means of service delivery – whether a *mainstream* approach which includes services responsive to Māori, for instance community-based services, or one premised specifically on tikanga Māori, the kaupapa Māori option.
- C12 The principle of *autonomy* is discussed at length by the Tribunal in the *Taranaki* report. Broadly, equivalent Māori words are tino rangatiratanga and mana motuhake and, in the international context,

---

<sup>35</sup> Partnership was first discussed by the Tribunal in the *Motunui* report (Waitangi Tribunal (1983), *Report Findings and Recommendations of the Waitangi Tribunal on an Application by Aila Taylor for and on behalf of Te Atiawa Tribe in Relation to Fishing Grounds in the Waitara District (Wai 6)*, Department of Justice, Wellington, 61).

<sup>36</sup> *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim (Wai 22)* 1988,194; *Turangi Township Report* 1995, 137.

aboriginal autonomy. The Tribunal defined autonomy for Māori as “the right to manage their own policies, resources and affairs (within rules necessary for the operation of the State)” (*Taranaki* report 20) The implications for justice and social services are that there is a place for Māori control and management of certain resources and services.

- C13 The principle of *development* is touched on in early reports, and is clearly outlined in the *Ngai Tahu Fisheries* report where the Tribunal said that it was “common ground between the claimants, the Crown and the fishing industry that inherent in the Treaty of Waitangi is a right to development” (253–254). In the *Māori Development Corporation* report the Tribunal noted that it had “no doubt that the Crown’s purpose in establishing and investing in the MDC was to promote the economic development of Māori – all Māori – in accordance with the Treaty of Waitangi” (36). The result for the justice sector is that there is room for the provision of assistance to support Māori initiatives to reduce reliance on justice sector services (for instance in the sentencing area) and to encourage the provision of services for Māori and developed by Māori.
-

---

## appendix d

### List of contributors and agencies consulted

#### *Agencies*

Office of the Controller and Auditor-General  
Department for Corrections  
Department for Courts  
Ministry of Justice  
New Zealand Police  
Department of the Prime Minister and Cabinet  
Department of Social Welfare  
State Services Commission  
Statistics New Zealand  
Te Puni Kōkiri (Ministry of Māori Development)  
Treasury  
Ministry of Women's Affairs  
Ministry of Youth Affairs

#### *Individuals*

Annette Sykes, Rangitauira and Co  
Carolynn Bull, Kinsman Barker  
Dame Joan Metge  
Caren Wickliffe  
Keri Kaa  
Ripeka Evans  
Makere Papuni  
Tania Rei  
Gina Rudland  
Kathy Ertel  
Charmaine Ross  
Gay Puketapu-Andrews

---

## appendix e

### A selection of Māori women's comments

#### ROHE 1

##### Access to legal information

"There is no-one to tell you of your rights. There is a lack of advisers. In [one small town] no-one comes except the police. There is no other help available."

"Māori women are wanting to stay in their communities. They do not want to move to [the main centre] to access services."

"Isolation and the access to services is a big problem out there. The distance between the communities where the women live and the police is too long for help. By the time the police get to them, they have been beaten to a pulp. So isolation plays a big part of the law being ineffective."

"Lawyers cost too much so we don't go and get help."

"No thought is given to the support systems of people appearing before the court."

"The court processes are insensitive to the needs of Māori."

"There needs to be a centralisation of information – a one stop help shop."

"The culture of court and the culture of us Māori. The separation of our women from our whānau again is a breach of our culture. Pākehā women encourage us to separate ourselves from whānau. The legal system is a breach of our Treaty rights. The cost is not only a cost of money, it's a cost of self-esteem, a cost of an ethnic group and it's a cost of status of tangata whenua."

"There is no protection and no real understanding of the lack of protection for women."

##### Domestic Violence

"Māori women are lacking confidence in the legal system which is not effectively doing what it promises to do."

“We need a network of Māori women to offer a safe place, that women know of.”

### **Family Court Co-Ordinators**

“You know for the amount of Māori people in this area, the services or lack of is shocking. The fact is that they know that the problems are here but they’re not putting the effort in to work with Māori people. There is no effective partnership here between any government agency and Māori.”

“Community corrections and the New Zealand Children and Young Persons Service referrals to Māori support services are non-existent.”

### **Lawyers**

“Women are not given enough information from the lawyers. Not enough energy is put into women by the lawyers, especially when the lawyers are appointed for the legal aid system.”

“Where do I go to? The yellow pages tell you nothing except that they are lawyers. The information in the telephone book does not tell us whether the lawyer is Māori or a woman.”

“Women are trivialised not only by the legal system but by the lawyers too.”

“We need more Māori women lawyers [here]. Someone who can understand where we come from as Māori. Someone who we do not have to explain ourselves to.”

### **Legal Aid**

“The money available for legal aid is used only to pay the lawyer’s fees. There is nothing in legal aid which allows for transport costs and childcare.”

“Quality representation for women and children is lacking.”

“Legal aid comes with strings attached. Legal aid seems to be just from one pocket of the legal system to another.”

### **Māori women**

“Māori women are the pivotal point – the soul of Māoridom and the whānau.”

“Too few men’s groups hook the men back into the traditional values and practices, for example, learning about the concept of whare tangata – the specialness of women; that women are sacred and her body is tapu.”

## **Police**

“Women are often left feeling like they are the aggressors when they report their men for acts of violence.”

“New police officers who come to the community are pretty heavy. The ones who have been here for a while are the ones we look for.”

## **Sentencing**

“Historical evidence of abuse is not taken into account when sentencing. The significance of a woman’s abuse in the past is trivialised.”

## **The Legal System**

“Whānau concepts need to be acknowledged by the legal system.”

“Women need to be acknowledged as part of a whole whānau unit.”

“Don’t talk women, talk whānau. There are things specific to women but we must always bring it back to the whānau.”

## **ROHE 2**

### **Access to Legal Information**

“We just korero to people, or ask Citizens Advice Bureau and government departments for help with information.”

“We need to know our [legal] rights because we don’t know.”

“I would like the Law Commission to make the law accessible, friendly, so that everybody knows something about it before we walk through the doors.”

“Information is powerful and we need to get information out to our people so they actually know before they go to court. To use the radio station or media is necessary.”

“A couple of them are very young. One young worker was telling these women what to do. She has no children and she would have been only about 22 years of age at the most.”

### **Courts**

“Court procedure has to be part of their legal advice to make them more aware of what is happening, otherwise you are creating barriers in communication between the woman and the system.”

“There are no waiting facilities available at the court-house. We have heaps of people waiting outside in the rain.”

“I keep worrying about our people pleading guilty. They don’t know any better and they’re too whakamā to ask. It pleases their lawyers. Sometimes our people take the easy way out.”

### **Family Group Conference**

“The problem of where a family group conference is not working is because there is no support for the offenders. Often this happens. I believe that they have been systematically abused by many institutions. What are we to do about it?”

“I really believe they [FGC] are working quite well. They give the whānau a chance to talk. But we always have problems trying to get the whānau to come to the conference.”

“One conference I was involved in had Māori protocol which was really important to me as Māori. Everyone had a say and it all went to the best interest of the child. Even the child had a say. It was really a neat experience.”

“Some parents don’t care about their children, so some of them don’t even turn up.”

“There’s a lot of children out there who don’t have fathers, mother, aunties or grandparents who care.”

“Why send them back to the whānau which is dysfunctional? So usually our Māori community services will pick them up.”

“I wanted to take the FGC back onto our marae. Because they are from our marae and our people know what is best for them.”

“Support services need to be culturally appropriate services. You can go into any Income Support Service and they will not know what tikanga is.”

### **Lawyers**

“Only a Māori can understand what Māori go through. We need to connect with another Māori woman. This is really important for us.”

“How do we choose a lawyer who will represent us well? We just don’t know who is the right lawyer for us. I rang a lawyer for help and the secretary said she would get him to ring me. He didn’t even bother to contact me.”

### **Māori Community Services**

“We work in well with Income Support Services and Children Young Persons Service, it’s a good relationship really”.

## **Māori Family Counsellors**

"I think it should be legislated that any Māori woman or person who is being dealt with by the law should have access to Māori counsellors immediately. It should be automatic. It should be national. There should be a leaflet and it must be accessible in every court in our land."

## **Police**

"We rang the police and they didn't even come. Nobody helped us at that time. The police waited for everyone to leave before they came to help us."

"They did not believe me. They were going to believe him. The police said it was an ordinary domestic violence incident. It wasn't an ordinary domestic violence incident for me."

"Now, I don't trust anyone. I feel safe here with my children where we get our support from my whānau."

"Consult with Māori first. Respect Māori people too. Respect our tikanga."

## **Restorative Justice**

"The only way to stop the cycle of abuse or offending is by dealing with the behaviour problem and the individual. Not by ostracising them into jail."

## **Rohe 2**

Abuse Intervention Pilot Programme (AIPP) – Every system has its own language and it keeps you away from accessing it. So we focus a lot on education, how the system works, institutional violence or control in our programmes. It's to open up and teach people about how those systems operate. So that these people can have some power to assist them through the system.

## **The Legal System**

"The justice system means to me the end of the line because everything else has failed."

"Accountability back to women and back to Māori is what makes [a local community group] a success. It's the system we need to work with."

## **ROHE 3**

### **Access to Legal Information**

"For the rural women access is a problem. Not everyone has a phone and to get help they have to travel away from home."



“Many women in this area don’t have a telephone and don’t even have any transport.”

“My priorities are on my whānau and their needs. This may mean that I don’t get to go to these organisations and as far as I can tell they certainly don’t come to me.”

“The system is not fair, it’s an injustice. The Māori is usually too shy to speak up. The judge is sitting up there in his high chair looking down on us Māori like we are little people.”

### **Children and Young Persons Service**

“It was a good experience. We got to say what we wanted and I thought we were listened to by those who were there.”

### **Courts**

“The court system is a real barrier. It is like you-do-as-I tell-you.”

“It’s a very small court-room. It’s totally intimidating.”

“There are no adequate facilities for women and children in the foyer.”

“There is too much court jargon for us to understand.”

“There needs to be de-mystifying of the language of law that is being used.”

“Courts are alien places.”

“Assistance for travelling to court is the responsibility of Income Support. Why can’t we have a court room set up in [this area] instead of us having to travel so far?”

“It was wonderful and we [Māori] felt more comfortable with that process.”

### **Domestic Violence**

“Why should us women have to be removed from the homes? The victim shouldn’t have to move out.

“We need more Māori people and we need more Māori counselling services.”

### **Judges**

“He was choice, had a nice way of speaking and clearly understood the whānau present. He looked on the whānau support group and gave us some support. It made my son think because of how [the judge] talked to him. It was really neat.”

### **Lawyers**

“Someone needs to check on the quality and representation of these legal aid lawyers because they have none.”

“We need a community law office to help us here.”

“It’s up to us as Māori and the community to get this up and running.”

### **Māori Advocates**

“The person needs to be someone who can understand our needs and is sensitive to us Māori.”

### **Māori Community Services**

“Government departments are more and more depending on Māori community services. Enough is enough.”

### **Marae Based Justice System**

“I just think it’s got to involve all the whānau. It has to involve the immediate whānau around the victim and the offender.

### **Police**

“I wonder how much it costs to be nice to people.”

“We are constantly being put down and intimidated by the Pākehā police. They look at you and they don’t believe you.”

“So the victim is not the person inside, but the victim is the whānau on the outside.”

### **The Legal System**

“Their needs to be checks and monitoring mechanisms in the system. There is a lack of consistent contact between the victim and the prosecution team.”

“Good education programmes which can be carried out in school too.”

### **Treaty of Waitangi**

“We need more Māori social workers and more Māori judges.”

“Our Māori wardens do everything. They are even part-time police workers, but they don’t even get the financial help or recognition. Māori are expected to provide their services free.”

“To be able to speak simple language and someone who can challenge the lawyers too.”

### **Te Reo Māori**

“The justice system, health care system, education system and socio-economic system are all inter-related to the well being of Māori whānau.”

## ROHE 4

### Access to Legal Information

“A lot of us Māori women do not know anything about the law.”

“Most women would either keep their problems to themselves, but if they are lucky they will by chance speak to other women for guidance”.

“Women ring whānau or other women they know.”

### Courts

“The whole court system is alienating to our people. It just treats us like a herd of cattle. There is no dignity or respect given to us at all.”

“What we really need is to have people there full-time and on a regular basis to help our Māori people. Even more faces in the court system will be of help.”

“The court waiting rooms and lack of facilities is disgusting. The lack of safety for our women who have to face their abusers in the waiting room is terrible.”

“No priority is given for women with children or for those of us who have to travel the same day. Having to sit there all day, not knowing what is happening or when you are to be called in is a real hassle. Especially if my tamariki are with me because there are no playroom or toys to keep them occupied.”

### Domestic Violence

“We don’t have a Women’s Refuge here [rural town] or a safe home.”

“As victims we often give up because it takes too long to get help. Our children are being affected in the long run and often the abuser is given plenty of time to get the victim again. It is not safe for us.”

“Here the police are really good at responding to call-outs. They always call Victim Support if victims require it.”

### Family Group Conference

“One family group conference I was involved in the people were afraid to speak out about what had happened. It turned out to be a nasty experience for the whānau who didn’t feel as though they had been listened to.”

“It was a marvellous experience for us all to have this hui on the marae. Three young children had got into trouble, but that forum allowed everyone to have their say and feel comfortable in that environment.”

## **Juries**

“The whole system, even jury service, needs to be user-friendly.”

“If the whānau can be included in part of that process it would be good.”

## **Justices of the Peace**

“There is no choice of lawyers here for us.”

“Generally women in our community and other people have a good relationship with him.”

## **Legal Aid**

“No we don’t understand what it is or how to get it.”

“Through those who have been through the system. Word of mouth or depending upon what the crime is the judge may help you out.”

## **Māori Advocates**

“We need to have Māori women to be advocates. A person who can awahi our women and people through the system.”

“They should have the knowledge of the law and they should also be a person acceptable to the people.”

“I would strongly recommend that we set up an advocacy group with the concept of a one stop shop in mind.”

## **Māori Community Services**

“The key to providing a community service for Māori is good communication and making sure you do your homework first.”

“We have to help ourselves too. We need to push ourselves forward into positions which make a difference.”

## **Police**

“We are fairly lucky with the police we have. The police work in well with the community groups and women have great respect for the police.”

“The police are getting better with their service.”

“In the past the police was like a father to us back in the old days. But now this does not happen because we no longer have our own police officer in our community. Our police officer has to travel from [a local town] which is one hour travelling to get to us.”

“I don’t think I would contact the police if anything went wrong. I would probably contact whānau first. I don’t have much confidence in the system anymore.”

“Because of those two police, we have grown in the last four years. They [police and Victim Support] work together now. They never used to.”

### **The Legal System**

“The legal system has to acknowledge Māori tikanga. If this means a total overhaul of the system then so be it. In the long run the benefits for all concerned would be worth it. As Māori too we need time and the support to build it in a way that would be culturally appropriate for us.”

## **ROHE 5**

### **Consultation Process**

“Why hold the hui in Te Puni Kōkiri (TPK) and why not hold a hui with iwi. I have a problem when TPK is being put up as a front with dealing with iwi issues. It doesn’t work for us.”

### **Judges**

“I don’t see why we can’t recommend who we want for our judge.”

### **Lawyers**

“They are not even trained to look after Māori clients.”

### **Māori Community Law Centre**

“I wonder if they [Māori Community Law Centres] are the obvious choice for our rural Māori communities’ access to justice?”

## **ROHE 6**

### **Community Law Centre**

“We have no community law centre here at all. It would be helpful to have our own.”

“We want a good lawyer, one that is going to help us, not one that just looks at us. We do not want a lawyer who speaks big words, that we cannot really understand.”

### **Cost**

“We can’t afford anything, let alone travelling for help.”

### **Courts**

“Women have to sit in the same area as the perpetrators and there is no separate entrance or safe area for them. Families have to wait in a small area and there is not enough room for them. The waiting room is too small. Lawyers come out and will talk to clients in the waiting room and everyone can hear what’s going on.”

## **Domestic Violence**

“Women have to handle domestic violence here because we don’t receive any help from anyone. We don’t have any safe houses or any social worker available for us.”

“Women are not applying for the court orders unless they really have to. More and more Māori women are using distance as their protection rather than the law. Most of our women are moving for protection. They are leaving their rohe and their whānau.”

“Women from an outlying area come here and then women from another centre collect them. This town is too small to have a safe house really because people will know where the women and their children are.”

## **Income Support**

“A lot of my clients won’t even think of going to ISS. It’s their staff’s attitude that is the problem. They talk down at you and there is no privacy to talk to them.”

“When women go to [one ISS office] the cases are exactly the same in terms of content. In another centre the women get the full amount of the benefits however the local office here are turning the women down. The practice of applying and receiving financial assistance is not consistent right throughout the country.”

## **Legal Aid**

“Women don’t understand what legal aid is about. Women don’t even know that they can ask for it.”

“There is no real information in the court or anyway where they can apply for legal aid. At the court it’s just an empty counter and you have to tell the people you could be eligible for legal aid.”

“Even filling out the legal aid papers, people don’t know how to do it properly. There is no-one there to help them do this task.”

## **Police**

“Some police are really interested in why we do things and these officers listen. Some are racist, ignorant and basically don’t give a damn about people in general. They are more interested in their power and control buzz.”

“The police attitude is ‘you just wait there and you will stay there until I am interested in dealing with you’. These police officers who need to change their attitudes come from out of the area.”

## **Women as Victims**

“Sexual abuse is carrying on yet we will not seek help because it was too embarrassing.”

## ROHE 7

### Access to Legal Information

“Mostly our women don’t seek help unless they are desperate with their situations. Usually they will turn to other Māori women or whānau members who have had similar experiences for help. We have a good CAB who can help with general information, but this is not enough usually for our Māori women. Not many Māori women use the CAB.”

“We need more information, education and awareness about the law.”

“We should be educating and promoting our people to have the confidence to be able to cut costs in legal services by doing as much as possible ourselves.”

“The type of information can include legal rights, suitable lawyers, income support, employment opportunities and support programmes for Māori. We definitely need more choice of accessing information because we are just not getting what our wāhine need.”

“We need a one stop shop with all the services people need under the one roof. Making services more available for all people has to be one way of helping us.”

### Children and Young Persons Service

“If the present service cannot help Māori, which it clearly cannot by the statistics given, then Māori need to be given the chance to do it their way. Don’t expect us Māori to do it for a koha, because we won’t. We need to be adequately funded and human resourced to make effective changes. But at the end of the day, I can guarantee you it will work. Māori need to be educated further about their legal rights. To start with, a decolonisation education should be set up. Then we can think about the best for our Māori women and tamariki.”

## ROHE 8

### Access to Legal Information

“To someone who can give it to us for free. Information Services, which is a private enterprise. Citizens Advice Bureau provide a free service to us too. Sometimes local lawyers will advertise free work too.”

“The first step is the yellow pages in the telephone book and that information is very limited. Or women can go to the CAB but that only runs at certain times. What about women who need help

after hours? Basically we don't have enough information for our women out there and that's a real concern for their safety and welfare."

"An 0800 telephone number would really be helpful to our women. We should be able to ring up someone and find out about our legal rights. If women do not have a phone, if there can be some way of having a public telephone 0800 number this would be great."

## **Courts**

"We had to sit outside with the deceased's family. The court has only one waiting room and both sides had to sit together. After the trial the court clerk suggested that we wait for a police escort to take us out the back way for our protection."

"The victim is forgotten about in the court process. The system is set up for the perpetrator of domestic violence."

"Women who have been raped have been through a horrific situation. But when they come up against the legal system and its processes they are unjustly exposed again. Their safety is not taken into account. Women through the court system are constantly put into situations which do not protect the women at all. One woman was involved in a gang rape situation. Her three abusers had to wait in the same corridor as her. When she was in court she had to walk past them to get to the dock. All the time she was being abused yet again, but our so called fair legal system does nothing to protect her."

## **Domestic Violence**

"Be careful, really sound out the lawyers you are going to. Especially if we are Māori, it's the first thing they find out. What background have we got and what money have we got to pay them."

## **Family Court**

"One client I had went through a very violent breakup. She had to go into the court to discuss the custody of the children. She went by herself and was denied any support person to go with her. She was really scared for her safety in the court. Women need to be allowed to have whānau support in the Family Court. If her ex-partner doesn't agree to that support person being there then that is it for the woman. It's a very intimidating process for her."

## **Judges**

"This judge is wonderful. He made an effort to talk to our women's group so that we can speak frankly about our concerns. We have also learnt a lot about the judiciary too. When we have to go into



court this particular judge allowed us to have all our support from the community in the court-room. It was really neat.”

### **Legal Aid**

“So many times women end up on the benefit and they are not informed of what they are entitled to. It should be part of the Income Support System policy to inform our women. Because nine times out of ten if the woman ends up on the DPB there will be some time that she will need a lawyer and to be informed of legal aid. That should be part of their policy or work for women.”

“Some lawyers are pretty good, especially those the Refuge work with, informing our women about legal aid. But we usually inform them first. This type of information sharing is alright for our women, but what about those women who stay away from Refuge but have other legal problems? They just don’t know.”

## **ROHE 9**

### **Access to Legal Information**

“They go to their friends, to their whānau or someone who has been through the same situation as them. A lot of our women don’t even know about the community law centre. It’s frightening for them because they are scared their partners are going to find out.”

### **Children and Young Persons Service**

“When co-ordinators were appointed here CYPS did look for local Māori to fill those positions. The Act has a Māori kaupapa and therefore you need Māori implementing it. And if you haven’t got Māori working the Act or people who are not of Māori cognition then the Act will not work.”

“A competency course is given to all their workers. They assess all the workers to see if they are able to work satisfactorily with Māori people. For example te reo pronunciation courses, are given and CYPS checks whether their workers are doing things culturally appropriate for Māori families. CYPS have a whānau support team and they have so many cases that are tested every three months for their competency in dealing with Māori issues.”

### **Māori Advocates**

“Women need to have women advocates who can empathise with the situation their clients are going through.”

“In the health system now we have patient advocates who look after the rights of people. Why can’t we have something very similar to Māori legal advocates in the justice system? Where an advocate

can look after our rights and make sure that the system is treating us all equal. There is a real urgent need for this with our Māori people.”

### **Police**

“Recruitment needs to be looked at because they seem to be recruiting the wrong types of people. They are getting people who do not have good human and public relation skills. They are too young, given too much responsibility and a lot of them are not sensitive to any culture. Police officers are let out of training school too early and they are not given enough support. They do not receive proper training about other cultures. Crime prevention really doesn't pay for the police. If there was no crime then we wouldn't need the police.”

### **Prison**

“Seven inmates plus those on periodic detention went back to the marae. It worked really well for those people involved. But the plug was pulled on this programme because of the cost to the prison sending one officer away for three days. One course we do is for Pākehā and Māori inmates. It involves knowing about your whakapapa – where you are from. It is just to make everyone fit somewhere with their family. Using Pākehā facilitators to do programmes for Māori does not work.”

## **ROHE 10**

### **Access to Legal Information**

“Often our women have no cars and no-one to look after their children and that is a real barrier to women's access to justice.”

### **Community Services**

“For Māori women who are not from here, Māori providers have set themselves up with a hapu and iwi focus. On the other side of the coin, a large percentage of Māori in Tauranga come from other areas and don't often get the use of these services.”

### **Courts**

“The waiting facilities are so small that a woman with a pram cannot fit in, there are no facilities for her children. Many times the mother and her children have to wait outside. There is not even a changing room for her children. It's dreadful. Court-rooms are not a place for kids.”

“It needs to become more personalised and there needs to be values put into place.”

## **Education**

“What I would like to see is proper training done and Wānanga for our Māori. These education sessions should cover not only the justice system but health, education, employment etc. We need positive parenting skills, budgeting, life skills to prevent Māori from being dependent on the state system which is not working even now.”

## **Family Group Conferences**

“Families now understanding the conferences. Especially if they have been through them a couple of times. Now some of them are turning up with their own ideas and resolutions and have been quite happy with the results.”

## **Lawyers**

“My lawyer is very good at explaining things in my everyday language instead of using those jargon legal terms.”

“We need to have more Māori lawyers in our area.”

## **Marae Based Justice System**

“Family group conferences could be held on marae for Māori families. That would work beautifully.”

“Some incest cases could be heard, but again we would have to be very sure of who the offender was and what connection they would have to the decision makers.”

“If we are talking about serious crimes like murder etc, then it must be dealt with by the legal system.”

## **Police**

“The attitude they have towards young Māori single mothers is another problem here. They look down at us as if we are nothing in their eyes. They fail to give us the support and protection we need.”

## **ROHE 11**

### **Access to Legal Information**

“This is a legal education package for our community which is hopefully a pilot for other education programmes throughout New Zealand. Our people really need to know what to do in situations which require legal information.”

### **Domestic Violence**

“It’s like the old saying, you make your bed and you lie in it.”

“We have an emergency house available but usually it is for just overnight stays or until the women and children have a place to go. Our women are removed from the area and get the help from outlying Refuges yet the man remains in the home.”

### **Interim Parenting Homes**

“Instead of sending the children away to other towns and cities like CYPs does, our homes will be established to keep Māori children together.”

### **Māori Advocates**

“A Māori advocate from the community, not from the established institutions. Where the women are comfortable to go, where there is no cost to get the information they need and to understand what that system is.”

“This advocate could be located on a marae, or placed within a Māori or iwi agency, within rünanga in a lot of avenues that would get the information back out to the Māori women.”

### **Māori Community Services**

“Many of our Māori community groups have assisted Māori women, and their whānau with a lot of their problems. Our services are taken for granted by the government. Our trust boards get funding but when it comes to our women’s groups – no-one wants to know.”

### **Police**

“This person should be available for Māori people who are brought into the station and also for the police to ask advice about dealing with the Māori community.”

“We need a community person to be the liaison person. The position needs to be paid and not voluntary. The liaison person will be worth their weight in gold to the police and the community.”

## **ROHE 12**

### **Access to Legal Information**

“I refer people back here [the Iwi Trust] or I connect them to people I know here. I usually find out where they are from and their names and I will contact them to some back home here. For me it’s whanaungatanga talking to them about where they are from and feeling the support we give, before referring them on to someone else for help.”

### **Courts**

“We had asked for the same room to be available in Otāhuhu and Papakura Courts. The whānau room has only been provided in the Youth Court. It’s a start which is good.”

“When a person needs to go and see a duty solicitor these rooms are very useful because the whole whānau can go in too.”

### **Domestic Violence**

“The area of contention for me is, we get a referral in the weekend or on a Friday night and all the law centres or law help is closed. So the woman’s emotions, hurts, stress and trauma are expected to be hung on a hanger until Monday morning. No way can you tell the woman ‘wait till Monday’.

### **Māori Women**

“Our women are so oppressed that they grew up, even today, with the nonsense of their partners giving them a hiding. Our women then think they deserve it.”

“The majority of our Māori women are dependent. Many have had this concept beaten into them or been brought up this way.”

“A lot of our women are not yet ready to make decisions. To get to that point may take a lot of time.”

### **Marae Based Justice System**

“Māori here are from different areas. I have some concerns about this system. Firstly, who is going to control someone from Nga Puhi and someone from Tainui? Secondly, do we have different marae being set up everywhere or is it going to be one main centre? Thirdly, what are we Māori going to use as the law? In traditional times we used tapu and noa. So we have to go back to the structure of Pākehā, but in reality we have to go back to implement those laws.”

“We can say yes we go for marae based justice, but for a lot of us the issue is whether women can talk on the marae.”

### **Socio-economic Influences**

“We have to educate the parents with the children. How do we bring up our children in this social life? So many of our children have so much stress because they do not know their Māori identity. They have no sense of belonging. Therefore a lot of them will slip through the system.”

### **The Legal System**

“The victims, the parents, the wives and the children suffer equally as much as those that commit the crime.”

## **ROHE 13**

### **Access to Legal Information**

“How do we go about getting information about our rights in the community in particular when we deal with the police?”

“Information about the law is not really known by our women until we actually need it. Usually it’s too late by then because you are being dealt with by the law.”

“There is nothing here like a community law service, not that we know of.”

## **Courts**

“We need more Māori lawyers, judges and court personnel to help our people.”

## **Domestic Violence**

“Women here don’t normally press charges, they just put up with the violence. They just live with it.”

“The cost is a big problem. The women don’t have the money to get help so there is no choice for them.”

## **Education**

“Lay advocates and court workers who are familiar with the system will nurture them through the process that way.”

“Education of our people about the roles and responsibilities of court advocates and lay advocates is important too.”

## **Legal Aid**

“Two trained court advocates could be used by people on legal aid, instead of having to put up with expensive lawyers.”

## **Māori Community Services**

“CYPS think they know how we operate as a whānau but they don’t know. When it comes to the crunch, it is women like me who have to go and support to make sure those Māori whānau needs are being met. I’m doing their work for them and I can’t say no because I want those whānau to be empowered.”

## **Police**

“Police are unhelpful at our local station. They have an attitude like they have got better things to do. What do we have to do to get them to take us seriously?”

“What do they learn at training school which teaches them how to deal with people like us?”

“Maybe it’s the training police receive which has got something to do with the way they behave towards us Māori.”

---

# Select bibliography

## REPORTS

AC Nielsen McNair Ltd, "Māori Perceptions and Experiences of the Court System" (Department for Courts and Ministry of Māori Development, Wellington, 1997)

Advisory Committee on Legal Services for the Minister of Justice, *Te Whaingā i Te Tika: In Search of Justice* (Wellington, 1986)

Audit Office, *Annual report for the year ended 30 June 1997* (Wellington, 1997)

Audit Office, *Delivering Effective Outputs for Māori* (Wellington 1998)

Department of Corrections, *Annual report for the year ended 30 June 1997* (Wellington, 1997)

Department of Corrections, *Departmental Forecast Report of the Department of Corrections for the year ended 30 June 1998* (Wellington, 1997)

Department for Courts, *Annual report for the year ended 30 June 1996* (Wellington, 1996)

Department for Courts, *Annual report for the year ended 30 June 1997* (Wellington, 1997)

Department for Courts, *Forecast Report for 1997–1998* (Wellington, 1997)

Department for Courts, *Strategic Plan 1996–2000* (Wellington, 1996)

Courts Consultative Committee, *Report of the Courts Consultative Committee on He Whaipāanga Hou* (Department of Justice, Wellington, 1991)

Crime Prevention Unit, *An Evaluation of the Community Panel Diversion Pilot Programme* (Department of the Prime Minister and Cabinet, Wellington, 1998)

Hohepa and Williams, "The Taking into Account of Te Ao Māori in Relation to Reform of the Law of Succession" (nzlc mp6, 1996)

Jackson, *The Māori and the Criminal Justice System – A New Perspective: He Whaipāanga Hou: Part 2* (Department of Justice, Wellington, 1988)

Ministry of Justice, *Conviction and Sentencing of Offenders in New Zealand: 1988 to 1997* (Wellington, 1998)

Ministry of Justice, *Corporate Plan: 1997–1998* (Wellington, 1997)

Office of the Minister of Justice, *Review of support services for victims of crime: Report of the Working Group* (Wellington, 1998)

Law Commission, *Criminal Prosecutions* (nzlc pp28, Wellington, 1997)

Law Commission, *What should happen to your property when you die?* (nzlc mp1, Wellington, 1996)

Law Commission, *Succession Law: Wills Reform* (nzlc mp2, Wellington, 1996)

Law Commission, *Information about Lawyers' Fees* (nzlc mp3, Wellington 1996)

Law Commission, *Women's Access to Legal Information* (nzlc mp4, Wellington, 1996)

Law Commission, *Women's Access to Civil Legal Aid* (nzlc mp8 1997)

Law Commission, *Women's Access to Legal Advice and Representation* (nzlc mp9, Wellington, 1997)

Law Commission, *Lawyers' Costs in Family Law Disputes* (nzlc mp10, Wellington, 1997)

Law Commission, *The Education and Training of Law Students and Lawyers* (nzlc mp11, Wellington, 1997)

- Legal Services Board, *Legal Services – a Community Resource* (Wellington, 1997)
- Legal Services Board, *Report for the year ended 30 June 1997* (Wellington, 1997)
- Legal Services Board, *Statement of Intent 1 July 1997 – 30 June 2000* (Wellington, 1997)
- Māori Health Commission, *Tihei Mauri Ora* (Wellington, 1998)
- Maxwell and Shepherd, *The Counselling for Families of Murder Victims Scheme* (Department of the Prime Minister and Cabinet Crime Prevention Unit, Wellington, 1998)
- McLaren, *Reducing Re-Offending: What Works Now* (Penal Division, Department of Justice, Wellington, 1992)
- Morris, *Women's Safety Survey 1996* (Victimisation Survey Committee, Wellington, 1997)
- National Council of Independent Women's Refuges, *Annual report for the year ended 30 June 1997* (Wellington, 1997)
- National Council of Welfare, *Legal Aid and the Poor: A Report by the National Council of Welfare* (Wellington, 1995)
- New Zealand Police, *Corporate Profile 1996* (Wellington, 1996)
- New Zealand Police, *Urupare Whitiki: Build Responsiveness to Māori strategy: project initiation package* (Policing 2000 Strategy Group, Wellington, 1997)
- New Zealand Police, *Whakakaupapatanga Tiriti* (Wellington, 1998)
- North Health, *Wraparound Model of Care: Individualised Care* (Auckland, 1996)
- Department of the Prime Minister and Cabinet, *Corporate Plan 1996/97* (Wellington, 1996)
- Department of the Prime Minister and Cabinet, *Departmental Forecast Report of the Department of the Prime Minister and Cabinet for the year ended 30 June 1998* (Wellington, 1996)
- Office of the Prime Minister, *Strategic Result Areas for the Public Sector 1997–2000* (Office of the Prime Minister, Wellington, 1997)
- Royal Commission on the Electoral System, *Towards a better democracy: Report of the Royal Commission on the Electoral System* (Wellington, 1986)
- Royal Commission on Social Policy, *The April Report: Report of the Royal Commission on Social Policy* (vol 2, AJHR H2, Wellington, 1988)
- Smith and Cram, *An Evaluation of the Community Panel Diversion Pilot Programme* (commissioned by the Crime Prevention Unit, Auckland Uniservices Ltd, 1998)
- Social Policy Agency, *Te Wakahuia o Pua-o-Te-Ata-Tu*, (Social Policy Agency, Wellington, 1994)
- Speir, *Conviction and Sentencing of Offenders in New Zealand: 1988 to 1997*, (Ministry of Justice, Wellington 1998)
- Department of Social Welfare, *Annual report for the year ended 30 June 1997* (Wellington, 1997)
- Department of Social Welfare, *Business Plan 1998* (Wellington, 1997)
- Department of Social Welfare, *Directory* (Wellington, 1996)
- Department of Social Welfare, *Pua-o-Te-Ata-Tu: Report on a Māori Perspective within the Department of Social Welfare* (Wellington, 1986)
- Department of Social Welfare, *Te Punga: Our Bicultural Strategy for the Nineties* (Wellington, 1994)
- State Services Commission, *Annual report for the year ended 30 June 1997* (Wellington, 1997)
- State Services Commission, *Māori in the Public Service: A Statistical Profile from 1993 to 1996* (Wellington, 1997)
- State Services Commission, *Strategic Business Plan 1997–2000* (Wellington, 1997)
- Statistics New Zealand, *1996 Census of Population and Dwellings: Iwi* (vols 1 and 2, Wellington, 1998)



- Statistics New Zealand, *1996 Census of Population and Dwellings: Māori* (Wellington, 1997)
- Task Force on Gender Equality in the Legal Profession, *Touchstones for Change: Equality, Diversity and Accountability* (Canadian Bar Association, Ottawa, 1993)
- Te Hoe Nuku Roa: Interconnectedness: a paper prepared for the Ministry of Māori Development* (Department of Māori Studies, Massey University, Palmerston North, 1995)
- Te Hoe Nuku Roa: Māori Profiles: An Integrated Approach to Policy and Planning: A Report Prepared for the Ministry of Māori Development* (Department of Māori Studies, Massey University, Palmerston North, 1996)
- Te Puni Kokiri, *Annual report for the year ended 30 June 1996* (Wellington, 1996)
- Te Puni Kokiri, *Annual report for the year ended 30 June 1997* (Wellington, 1997)
- Te Puni Kokiri, *Departmental Forecast Report 1 July 1997–30 June 1998* (Wellington, 1997)
- Te Puni Kokiri, *Māori Language Survey: Preliminary Results 1994* (Wellington, 1998)
- Te Puni Kokiri, *NZISS: Review of Service Delivery to Māori* (Wellington, 1996)
- Te Puni Kokiri, *Progress Towards Closing Social and Economic Gaps Between Māori and non-Māori: A Report to the Minister of Māori Affairs* (Wellington, 1998)
- Te Puni Kokiri, *Nga Ira Tangata: Maori Towards 2000* (Wellington, 1998)
- Te Puni Kokiri, "The Community Programme Sentence: The Use of Sentencing Alternatives for Māori Offenders by the Hamilton Community Probation Service" (Wellington, 1997)
- Te Puni Kokiri, *User's Guide to Te Puni Kokiri* (Wellington, 1996)
- Treasury, *Annual report for the year ended 30 June 1997* (Wellington, 1997)
- Treasury, *Departmental Forecast Report for the year ending 30 June 1998* (Wellington, 1997)
- Waitangi Tribunal, *Te Whanganui-a-Orotu Report 1995* (Wai 55, WTR 9, Brooker's, Wellington, 1995)
- Waitangi Tribunal, *Māori Development Corporation Report* (Wai 350 WTR 7, Brooker's, Wellington, 1993)
- Waitangi Tribunal, *Muriwhenua Land Report* (Wai 45, GP Publications, Wellington, 1997)
- Waitangi Tribunal, *Ngai Tahu Report* (Wai 27, WTR 3, Brooker and Friend Ltd, Wellington, 1991)
- Waitangi Tribunal, *Ngai Tahu Sea Fisheries Report 1992* (Wai 27 WTR 8, Wellington, Brooker and Friend Ltd, 1992)
- Waitangi Tribunal, *Report Findings and Recommendations of the Waitangi Tribunal on an Application by Aila Taylor for and on behalf of Te Atiawa Tribe in Relation to Fishing Grounds in the Waitara District* (Wai 6, Department of Justice, Wellington, 1983)
- Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim* (Wai 22, Wellington, 1988)
- Waitangi Tribunal, *Report of the Waitangi Tribunal on the Ngai Tahu Sea Fisheries Claim* (Wai 27, Brooker and Friend, Wellington, 1992)
- Waitangi Tribunal, *Te Whānau O Waipareira Report* (Wai 414, GP Publications, Wellington, 1998)
- Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi* (Wai 143, GP Publications, Wellington, 1996)
- Waitangi Tribunal, *Turangi Township Report 1995* (Wai 84, WTR 10, Brooker's, Wellington, 1995)
- Ward, *National Overview* (vol II, Rangahaua Whanui Series, Waitangi Tribunal, GP Publications, Wellington, 1997)
- Ministry of Women's Affairs, *Departmental forecast report of the Ministry of Women's Affairs for the year ending 30 June 1988* (Wellington, 1997)

Young, Morris, Cameron, and Haslett, *New Zealand National Survey of Crime Victims 1996* (Victimisation Survey Committee, Wellington, 1997)

## TEXTS

Binney, *Nga Morehu: The Survivors* (AUP, Auckland, 1996)

Binney, *Redemption Songs, A Life of Te Kooti Arikirangi Te Turuki* (AUP, Auckland, 1995)

Boston, *Public Management: The New Zealand Model* (OUP, Auckland, 1996)

Burnside and Baker, *Relational Justice: Repairing the breach* (Waterside Press, Winchester, 1994)

Busch, *Protection from family violence: A Study of Protection Orders Under the Domestic Protection Act 1982 (Abridged)* (Victims' Task Force, Wellington, 1992)

Busch and Robertson, "Ain't no mountain high enough (to keep me from getting to you): An analysis of the Hamilton Abuse Intervention Pilot Project", in Stubbs (ed), *Women, Male violence and the Law* (Institute of Criminology, Sydney, 1994)

Coney (ed), *Standing in the Sunshine* (Penguin Books, Auckland, 1993)

Coney "Te Hui Wahine", in Coney (ed), *Standing in the Sunshine* (Penguin Books, Auckland, 1993)

Coney, "War and Peace" in Coney (ed), *Standing in the Sunshine* (Penguin Books, Auckland, 1993)

Durie M, *Te Mana Te Kawanatanga: The Politics of Māori Self-Determination* (OUP, Auckland, 1998)

Durie M, *Whaiora: Māori Health Development* (OUP, Auckland, 1994)

Durie-Hall and Metge, "Kua Tutu Te Puehu, Kia Mau, Māori Aspirations and Family Law" in Henaghan and Atkin (eds), *Family Law Policy in New Zealand* (OUP, Auckland, 1992)

Else (ed), *Women Together: Me Aro Koe ki te Haa o Hinehauone* (Daphne Brasell Associates, Wellington, 1993)

Graveson and Crane (eds), *A Century of Family Law 1957* (Sweet and Maxwell Ltd, London, 1957)

Goldblatt and Lewis (eds), *Reducing offending: an assessment of research evidence on ways of dealing with offending behaviour* (directed by Christopher Nuttall, Home Office, London, 1998)

Griffith, *New Zealand Adoption History and Practice, Social and Legal 1840–1996* (KC Griffith, Wellington, 1996)

Henaghan and Atkin (eds), *Family Law Policy in New Zealand* (OUP, Auckland, 1992)

Heuer, *Māori Women* (Reed, Wellington, 1974)

Metge, *In and Out of Touch: Whakamaa in cross cultural contact* (VUP, Wellington, 1986)

Metge, *New Growth from Old: The Whānau in the Modern World* (VUP, Wellington, 1995)

Mikaere, *Te Maiharoa and the Promised Land* (Heinemann Press, Auckland, 1988)

Orange, *The Treaty of Waitangi* (Allen & Unwin Press, Wellington, 1987)

Pence and Paymer, *Education Groups for Men Who Batter: The Duluth Model* (Springer, New York, 1993)

Pratt, *Punishment in a Perfect Society* (VUP, Wellington, 1992)

Rei, *Māori Women and the Vote* (Huia Publishers, Wellington, 1993)

Ringer, *An Introduction to New Zealand Government* (Hazard Press, Christchurch, 1991)

Rei, "Nga Roopu Wahine Māori, Māori Women's Organisations", in Else (ed), *Women Together: Me Aro Koe ki te Haa o Hinehauone* (Daphne Brasell Associates, Wellington, 1993)

Rei, "Women in Kotahitanga", in Coney (ed), *Standing in the Sunshine* (Penguin Books, Auckland, 1993)

Rogers and Simpson (eds), *Te Timatanga Taatau Taatau: Early Stories from Founding Members of the Māori Women's Welfare League* (MWWL/BWB, Wellington, 1993)

Salmond, "Tipuna – Ancestors: Aspects of Māori Cognatic Descent" in Pawley (ed) *A Man and a Half: essays in anthropology and ethnobiology in honour of Ralph Bulmer* (Polynesian Society, Auckland, 1991)

Sorrenson, "A History of Māori Representation in Parliament", in the *Report of the Royal Commission on the Electoral System – Towards a better democracy* (December 1986)

Spiller, Finn, Boast, *A New Zealand Legal History* (Brooker's, Wellington, 1995)

Stubbs (ed), *Women, Male violence and the Law* (Institute of Criminology, Sydney, 1994)

Thynne and Golding, *Accountability and Control: government officials and the exercise of power* (Law Book Company, Sydney, 1987)

Tu Tangata, *Bringing Community Lifeskills into the Classroom* (1st ed, Tu Tangata, Wellington, 1998)

## ARTICLES

Ballara, "The Pursuit of Mana: A Re-evaluation of the Process of Land Alienation by Māori 1840–1890" (1982) 91 JPS, 519

Ballara, "Wahine Rangatira Māori: Women of Rank and their Role in the Women's Kotahitanga Movement of the 1890s" (1993) 27:2 NZJH 127

Binney, "Some Observations on the Status of Māori Women" (1989) 23:1 NZJH 22

Mikaere, "Māori Women: Caught in the contradictions of a Colonised Reality" (1994) 1 Waikato LRev (cited at <http://www.liinz.org.nz>, 2 May 1998)

## PAPERS AND UNPUBLISHED MATERIAL

Bingham, Rt Hon Lord, "The Judge as Lawmaker: An English Perspective" (Legal Research Foundation, Auckland, 1997)

Communications Adviser (Department for Courts) to Law Commission, 4 July 1997

Community Funding Agency, "Post-election Briefing Paper 1996" (Wellington, 1996)

Denny, "Indicative Survey of Students At-Risk in New Zealand Secondary Schools 1993" (Porirua College, Porirua, 1996)

Department of Social Welfare, "Post-election Briefing Paper 1996" (Wellington, 1996)

Doone (Commissioner of Police), letter to Baragwanath (President, Law Commission), 23 January 1997

Durie E, "Ethics and Values" (Te Oru Rangahau Māori Research and Development Conferences, Massey University, Palmerston North, 1998)

Durie M, "Kaupapa Hauora Māori – Policies for Māori Health" (paper presented to Hui Te Ara Ahu Whakamua, Te Papa iouru marae, Rotorua, 1994)

East, "From Outputs to Outcomes" (address to the Public Service Senior Management Conference, Wellington, 1997)

Ministry of Justice, "Briefing Paper for the Minister of Justice" (Wellington, 1996)

Māori Land Court Minute Books, Coromandel Bk I

Martin, "Māori Women in Mainstream Decision-Making: A Discussion Document" (June 1997)

Martin, "Getting heard : a case study of community involvement with "at risk" secondary school students" (unpublished, Victoria University of Wellington, 1998)

Memorandum to Cabinet Health and Social Policy Committee: Responses to Offending by Māori – Sector Wide Objectives (September 1997)

Mikaere, "The Balance Destroyed: The Consequences for Māori Women of the Colonisation of Tikanga Māori" (MJur thesis, Waikato University, 1995)

Parata, "Māori Policy, Māori and Government Objectives" (Hui Whakapumau, Māori Development Conference, Department of Māori Studies, Massey University, Palmerston North, August 1994)

Rigby and Koning, "Toitu te Whenua: Only the Land Remains Constant and Enduring: Crown Purchases in Muriwhenua 1850–1865" (Waitangi Tribunal, Wai 45, 1989)

State Services Commission, "Briefing Paper for the Minister of State Services" (Wellington, 1996)

Te Puni Kokiri, "Post-Election Brief" (Wellington, 1996)

Treasury, "Briefing to the Incoming Government 1996" (Wellington, 1996)

Waitangi Tribunal, *Finding of the Waitangi Tribunal relating to Te Reo Māori and a claim lodged by Huirangi Waikerepuru and Nga Kaiwhakapumau i te Reo Incorporated Society (Wellington Board of Māori Language)* (unpublished, Wai 11, 1986)

Whiu, "Women, Law and Policy: Essay 2" (1994)