ROYAL COMMISSION OF INQUIRY INTO HISTORICAL ABUSE IN STATE CARE AND IN THE CARE OF FAITH BASED INSTITUTIONS

WITNESS STATEMENT OF SIR KIM WORKMAN, KNZM, QSO

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Introduction

[1] Thank you for inviting me to contribute to this public hearing, which will examine the overarching contextual circumstances of abuse in care in Aotearoa New Zealand. It provides an opportunity to talk about my own observations of this issue over the last sixty years.

Relevant Personal History

[2] I have had the good fortune to wander about the public sector over those years, in a range of occupations, each providing a different perspective. I joined the Police in 1958 as a police cadet, and apart from a three-year period of absence between 1962 and 1965, remained in the police until 1976. For eight of those years I was a Youth Aid Officer, and in 1972, I was appointed as the Deputy National Director of Youth Aid, responsible for training and development. Between 1976 and 1983 I was a senior investigator in the Ombudsman's Office, with a primary responsibility for dealing with complaints from prisoners, psychiatric patients, and complaints against the police. In 1983, as Manager of the Social Services Branch in the State Services Commission, I worked with the late John Rangihau on a review of Mātua Whāngai, and later as an advisor to the Puao-te-Ata-Tu Committee. Subsequent positions in the Department of Māori Affairs between 1986 and 1989, and as Assistant Secretary, Penal Institutions from 1989 to 1993, provided further insight into the treatment of child and young people, their removal into, and abuse while in, institutional care.

Some Historical Context

[3] One of my earliest memories which has some relevance to this inquiry is that of my father taking me to the Workingmen's Club at the age of five, to a party held for returning servicemen, one of whom was my Uncle. It was early evening, but it was clear that the celebrations had been going on for some time – everyone seemed very drunk, the singing was out of this world, but there was one major difference, - the Club was full of local Māori servicemen. It was then that I witnessed for the first time, a haka of such power and energy, that the memory has remained. Shortly after, I was returned home to a place of safety.

[4] Some ten years later, I related that memory to one of the Māori servicemen who had been there. He said, "You know, Kimi, we were told by Sir Apirana Ngata that if we fought overseas we would be treated differently when we returned - that fighting in the 2nd World War was 'the price of citizenship'. Two days after that welcome, I returned to the Club to have a few beers, to be told that the Club didn't serve Māori."

[5] The impact of that kind of treatment took its toll on the emotional and mental health of whānau – while historians have been quick to talk about the impact of Māori urban migration, the increase in whānau based violence and abuse following the 2nd World War remained until recently, one of our 'best kept secrets.'

[6] My own experience of that abuse was limited to whānau within my own community. In our community, there were kaumātua who would intervene when children were ill-treated, taking them from their parents and placing them with other whānau, until such time that they were satisfied the parents were fit to care for their children.

[7] When Māori children were ill-treated or neglected, there was a distinct reluctance to report such abuse to Child Welfare Officers or the police, given that their response was to remove children from their homes, and place them under state supervision or care.

[8] Pākehā Child Welfare Officers did not usually have adequate networks within the Māori community, and were often not trusted. Because pākehā were often reluctant to foster

Māori children, it seemed to lead to more Māori children ending up in state institutions. Often, they were never seen again by their whānau.

[9] In the Wairarapa, older children were often fostered to local farmers, and were expected to help with milking cows and other essential farming chores. They stood out in the classroom, poorly attired, and prone to fall asleep during the day. It was tempting to conclude that the children were fostered primarily because they provided an economic benefit to the farming community.

[10] I do recall the infamous Mazengarb report, issued in 1954 which blamed parents for giving children excessive freedom, limited discipline, too much pocket money, and insufficient religious instruction.

[11] Prior to joining the Police as a trainee Police cadet in 1958, I have to confess that I happily immersed myself in that period of moral decline, embracing radical changes in clothes, hairstyles, tastes in music, (14 inch trouser cuffs, a bomber jacket and a ducktail come to mind). Coupled with a tendency to congregate on the streets in celebration of our transformed identity, we were increasingly regarded as delinquents. Social commentators described us as precocious, threatening and potentially dangerous, criminal, dangerous and noxious, even though the numbers actually appearing before the Children's Court were in decline.[1]

Lived Experience – Kohitere in the early 1970s

[12] I started visiting Kohitere in 1971, when I was a Youth Aid Officer. I would spend three days a month there, doing group work with the boys who were due for release. Nothing I had encountered up until that time prepared me for it. It had been established in 1950 to rehabilitate male offenders aged between 14 and 17, and its programme had a strong work focus, mostly centred on farming and forestry. Some secondary schooling was available for selected participants. The number of resident beds had increased from a maximum of 55 in the 1950s to 110 in the early 1970s, with about the same number of staff.

[1] Jarrod Gilbert *Patched: The History of Gangs in New Zealand* Auckland, Auckland University Press, 2013.

[13] On my first visit, I spent time talking with staff and noticed immediately a distinct split in philosophy and approach between the residential social workers and caregivers, and the farming and forestry instructors. While it was clear that only a few of the residential staff were adequately trained for the task of rehabilitating young men, they talked about their efforts to do so. There were no such pretensions from the farming and forestry staff. They were there to instil good work habits into the offenders, and if that meant 'kicking arse', so be it. I wondered why they were so open about their approach: was it because they thought I would approve of it? (I'd gone there in uniform.)

[14] While officially only the principal could administer punishment, I learned that farming and forestry instructors would punish regularly – from bum booting and ear cuffing to punching and sometimes a thorough beating. Forestry staff were particularly prone to deal with residents in that way – the forestry camp was some distance from the centre, and had developed a very macho culture.

[15] The secure unit operated as a remand prison for those awaiting trial; for those who needed protection, either from self-harm or other residents; or as a punishment facility for extreme bad conduct. But no distinction was made when it came to their treatment, and some staff regarded the unit primarily as a punishment facility. Its design made that obvious. Purpose-built in 1967, it accommodated up to 12 boys in individual locked cells, each of which had their own toilet, with a separate staff room, showers and dining-room. Made of concrete blocks, it was extremely cold and bare, and compared unfavourably with similar facilities in adult prisons.

[16] Boys were regularly left locked in their cells without staff in attendance, and while staff were evasive about the length of time spent in these cells, I was reliably informed that it could be long as three months. Under current criteria, the time spent in locked in a secure unit cell would count as solitary confinement, and the psychological impact would be extremely damaging.

[17] The policy regarding criteria for admission to the centre was equally indiscriminate. The boys were there for a variety of reasons, and no attempt was made to distinguish them,

or address their individual needs. Some had graduated from boys' homes and were already institutionalised – they knew not to inform on staff or other residents. There were considerable differences in size, making some boys vulnerable to violence. While some were sent there for serious crimes, others were minor offenders, with convictions for car burglary and theft. Some had been sleeping rough for years and were sent there for survival-related crime, e.g., stealing food or being unlawfully on enclosed premises. Others had diagnosable mental illness. While some were locked in the secure unit because they were dangerous, others misbehaved so they could be sent there, to protect themselves from other residents.

[18] During the day, the residents were mostly kept busy with work and school – it was at that time that the staff were mostly in control. But the situation reversed in the evenings, when relatively untrained night staff took over. At that point the phrase 'the inmates are running the asylum' came to mind. In the break between their evening meal and lights out, the boys would gather for recreation. The pecking order manifested itself; I realised that the staff were genuinely fearful of their safety, and not without cause.

[19] My first response was one of anger. Anger and disbelief. Anger that the state could allow such conditions. Conditions so inhumane they were almost guaranteed to turn vulnerable children and youth into scarred, distrusting and sometimes dangerous adults. Anger that senior public servants and policy advisers could have allowed these conditions to continue for so long, knowing that they were parties and accomplices to the creation of criminals. Anger that no one was concerned that the offenders of today were almost always the victims of yesterday – but that the moment they were old enough to be held accountable for a criminal act, their history of victimisation and neglect became of no account. It is almost as though the state, having neglected the welfare and needs of children in the first twelve years of their life, was able – once the child inevitably progressed to committing a criminal act – to breathe a collective sigh of relief, reclassify the child as a young offender, and quickly transfer any corporate accountability away from themselves by re-designating it as personal responsibility and laying it on an 'accountable' individual.

[20] Disbelief that the judiciary could send increasing numbers of Māori youth to facilities of this kind, on the grounds that it would 'make a difference'. Disbelief that successive

governments had failed to monitor and correct conditions in these same institutions, which were eventually to become a matter of national disgrace and shame.

[21] Was there anything I could do that would make any difference? Two things struck me. First, there were very few Māori staff at Kohitere (only 5 per cent of the total, whereas 80 to 90 per cent of the boys sent there were Maori), and a total absence of any cultural input into the lives of young Māori people. Second, as is very much the situation today in prisons, once the 'programme' was delivered, that was it. Residents were discharged without any ongoing support, and often returned home to the same conditions that had contributed to their entry. Most reoffended within months of release.

[22] I visited Kohitere for three days each month, and worked only with those residents who were due for release, facilitating discussion about the challenges they would face and what resources were available to support them in their efforts to stay out of trouble. I had sufficient details about each of them to be able to refer them to key resources in the communities to which they returned. If they were agreeable, I hooked them up with a Youth Aid officer in the area, but only where the match was likely to be compatible.

[23] Part of the pre-release programme involved helping Māori boys to cope with what would happen if they became the targets of ethnic profiling and harassment by the police – of which there was anecdotal evidence at the time. Those known to have an offending history were especially vulnerable to this, and their encounters with the police often triggered more serious offending. So we role-played situations and discussed how they could respond to police questioning in a civil and respectful manner, how to deal with taunts and badgering, and how to exercise their civil rights in relation to unreasonable questioning, stop-and-search procedures and, in extreme cases, unlawful behaviour by officers. I wore my uniform at all times, and they enjoyed the experience.

[24] Gary Hermansson, Kohitere's counsellor, kept a close eye on what was happening, and we would debrief after each session. I became adept at identifying which boys were wanting to change, those who had mental health issues, and others who were high-risk.

[25] Introducing tikanga Māori and te reo into the institution was more difficult. I did not have the necessary skills, and Kohitere was strapped for cash. However, I had contacts with Nga Tamatoa[2], the then-fledgling Māori activist group that throughout the 1970s promoted Māori rights and fought racial discrimination and injustices perpetrated by the government, especially violations of the Treaty of Waitangi. Rangitihi (John) Tahuparae, who was later to become a revered parliamentary kaumatua[3], agreed to come to Kohitere with a friend, Eruera (Ted) Nia, and take the boys for sessions in te reo and tikanga Māori. They were an instant hit. John would ask a boy his name, and with unerring accuracy trace his whakapapa and tribe, wherever he came from. Ted was an accomplished blues guitarist, and something of an orator.

[26] John was hugely influential and was received with great excitement by the young men. Kohitere staff were less receptive. They were convinced that when the boys practised te reo, they were taking the opportunity to make disparaging remarks about the institution and staff. There were mutterings about evil Māori influences and the presence of radical Māori activists (who were unpaid volunteers). The teaching continued until the end of 1974, and while it might not have helped reduce reoffending, it brought some affirmation and encouragement into an otherwise drab and grey existence.

[27] As one of the few qualified staff at the centre, Gary counselled those residents with complex behavioural problems. He evolved a strategy of working alongside the young men and counselling them as part of their everyday conversation. He was an inspiration to us all, and someone who made a significant difference in the lives of those with whom he worked.

[28] Youth institutions were singularly unsuccessful in reducing youth crime. In fact, they were primarily an intermediary step between the boys' homes and borstal, and the great majority of those who passed through them ended up in an adult prison.

[29] In later years, I thought about why I didn't do more to address the situation; to 'blow the whistle'; report on what I knew and call for an investigation. If it did occur to me, I would

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[2] http://en.wikipedia.org/wiki/Ng%C4%81_Tamatoa

3 Rawinia Higgins and Paul Meredith. 'Kaumātua – Māori elders - Kaumātua in modern times', Te Ara - the Encyclopedia of New Zealand, updated 16-Apr-13
URL: http://www.TeAra.govt.nz/en/photograph/28373/government-kaumatua-john-tahuparae

have put the idea quickly out of contention. The culture was such that I would not have been supported. Moreover, I would have been branded as a 'stirrer' and secured my place as an 'outlier' within the police organisation. I was 32 years old, ambitious, and not prepared to jeopardise my future. In this regard, I was probably no different from most other police officers and public servants at that time. In later years, I summoned the courage to speak out on issues of injustice – and came to know what a self-fulfilling prophecy looks like.

The Approach of the State to Child Abuse

[30] Child welfare officers often had insufficient training to provide an adequate response to the problems of child abuse and neglect, nor did they have sufficient departmental resources to provide support. The common response was to deal with the issue through a criminal justice paradigm, rather than take a welfare oriented approach.[4] In doing so, they often attempted to involve Police Youth Aid Officers and uniformed police in the operational process, which created considerable tension between the two agencies. Child Welfare Officers had a tendency to portray Youth Aid and the Police as the 'enforcers' when it came to removing a child from the family, even though they had initiated the process.

Lived Experience – Being a Youth Aid Officer in the 1970s

[31] By 1971, the section's reputation grew, primarily to the single-minded and visionary leadership of Brian Mooney. The number of its officers had grown from 15 to 46.

[32] In 1971 I was promoted to sergeant in charge of the Youth Aid Section, Wellington City. I had by then, though, qualified by examination for promotion to senior sergeant, and it would only be a matter of two or three years before I would have to go back to general duties. So this was not so much a reprieve as an opportunity to contribute further to the section and, at the same time, expand my understanding of youth offending.

[4] B Dalley, Deep and Dark Secrets: Government's Response to Child Abuse' in B. Dalley and M. Tennant (eds) Past Judgement: Social Policy in New Zealand History University of Otago Press, Dunedin (2004)

[33] I could see that too many young people were being brought before the courts charged with comparatively minor offences. There was too much reliance on an institutionalised, residential approach (often criminalising behaviour that was really the result of too little care and protection) and the system did not allow enough family and cultural input.

[34] The system at that time was essentially a hybrid model, because younger children (the statutory term for those aged 10–14) were dealt with under the provisions of the Child Welfare Act 1925 on a 'best interest of the child' basis (apart from homicide cases). Such a child's offending was seen as symptomatic of problems in its family and home environment, and not a matter of individual responsibility and accountability.[5] For offenders aged between 14 and 17, the prevailing view was that rehabilitation did not work: the police had little faith in the virtues of diversion, even though research at the time showed that the stigma of a court appearance made further offending more likely. Frontline and CIB staff were able to bypass the diversionary system by arresting the offender; consequently, a disproportionate number of Māori were prosecuted.

[35] Some things were particularly worrying. First, while the intent of the legislation was to reduce the number of referrals to the Children's Court, there was a tendency to label first offenders on the basis of previous dealings with older siblings of the same whānau, or the reputation of the whānau itself. Because Māori youth tended to commit minor crime with greater frequency, they were far more likely to be prosecuted at a young age, even though their offending had not become more serious.

[36] Second, the primary focus was on the individual behaviour of the young offender, rather than on the whānau. The idea of holding hui with whānau to discuss what had happened and work out how to prevent future offending was anathema to most Pākehā police officers. They feared losing total control of the process, failing to realise that the locus for behavioural change did not necessarily reside within the individual but with the ongoing commitment of whānau members.

[5] Social Services Select Committee. (2012). Inquiry into the identification, rehabilitation, and care and protection of child offenders: Report of the social services committee. Wellington, New Zealand.

[37] Third, no consideration at all was given to involving the victim in this discussion. In those days, victims' rights were almost totally ignored; only occasionally did the police arrange for the offender to compensate the victim, either by way of monetary reparation or through remedial work.

[38] The greatest challenge, however, was to persuade police personnel about the benefits of diversion away from the court system. Youth Aid officers were recruited from the rank and file and brought with them the attitudes that prevail within the police culture – mainly, a strong sense of mission, and both the internal compulsion and external pressure to 'get results'.[6] The prize is not to restore peace; it is to 'maintain order', 'fight crime' and see an offender successfully prosecuted – a much more tangible outcome than exercising discretion in a way likely to reduce future offending.

A Blaming Culture

[39] The blaming culture that dominated during this period, intersected with ingrained racism, and intolerance toward rapidly urbanising Māori. Māori and Pasifika families found that in a Pākehā –dominated society, economic prosperity was harder to achieve than at first thought. Throughout the 1970's Māori increasingly featured negatively in the statistics on a range of measures; unemployment, income levels, substandard housing, homelessness, health, and education. Often, these deficits were attributed not to the shortcomings of the state to provide adequate support, but to the personal shortcomings of Maori; drunkenness, laziness, and cultural instability.[7]

[40] The vigilant public often perceived Māori to be a problem, on the basis of their ethnicity alone. Labrum comments that Māori children often came to notice, for their 'potential' delinquency.[8]

[6] Reiner, Robert, The Politics of the Police, (Fourth Edition), Oxford University Press,: Oxford, 2010: pp.118-119
[7] B. Dalley, Family Matters.
[8] Labrum, Families and the Welfare State, p.163, 170

[41] As the supervisory activity of welfare officers grew, more children and families were placed under preventive supervision. By 1971, more than 10,000 families were subject to official oversight of some kind.[9] The rapid expansion of the Police Youth Aid Section, despite their well-intentioned efforts at preventive work, and the diversion of young offenders, led to a net-widening effect, with more children being processed into the system. Māori and Pasifika children were more likely to be caught up in the process, resulting in increased monitoring by child welfare officers, and increased monitoring of other family members.[10]

[42] The numbers appearing before the Children's Court grew exponentially from the 1960's, from 5000 annually in the 1960's to 12,000 to 14,000 each year from the 1970's through to the mid-1980's. The range of offending and misconduct was impressive; traffic offences, truancy, running away, sexual misconduct, associating with known criminals, being in a morally detrimental environment, or being indigent, ill-treated or neglected.[11] Often with the best intentions, social workers and police through these referral processes, promoted a penal welfarist position, and invited criminal justice responses to welfare issues.

[43] If the processes disadvantaged children and young offenders, they disproportionately disadvantaged Māori children, especially those living in urban settings. By the late 1960''s they appeared at a rate three to four times that of Pākehā children; by the 1990's half of all children within the justice system were Maori.[12]

The Institutionalisation of Māori Children

[44] The Department of Social Welfare developed a comprehensive network of foster parents, family homes, and social welfare institutions, to accommodate children who were removed from their homes, forming a range of optional settings in which children could be located. However, it failed to identify sufficient foster parents within the Māori community, instead sending Māori children to live with Pākehā parents, who did not know how to connect culturally with them. As a result, Māori children were often dealt with swiftly, by way of

[9] B. Dalley, Family Matters, p.188
[10] Ibid
[11] A. Morris and W. Young, *Juvenile Justice in New Zealand: Policy and Practice: Institute of Criminology, Wellington, 1987.*
[12] B. Dalley, Family Matters,1191-192, 277

supervision, or removal to an institution, rather than through constructive engagement with their whanau.

[45] One of the continuing problems was that the future of Māori and Pasifika children was left largely in the hands of Pākehā officials. In 1982, only 15% of all field social workers were Maori, at a time when 60% of all Court reports related to Māori and Pasifika children. Pākehā magistrates dominated the Courts, and cultural ignorance and racism was allowed to flourish. By 1985, the Department recorded a 78% Māori population across six Auckland institutions.

[46] Māori police officers were still very much in the minority.[13] In 1965 there were 69 of them, or 2.5 percent, in a service of 2,698. Other ethnicities were totally absent. In the same year, Commissioner C G Urquhart declared that Chinese, 'Hindus' (Indians) and Pacific Islanders were unsuited to policing and would not be recruited He stated that apart from Māori, policing should only be done by the 'white races'.[14]

New Legislation; Same Problems

[47] A standard political response to growing dissatisfaction with a system or process, is to introduce legislation in the mistaken belief that it on its own, has the capacity to bring about organisation change. In the absence of an in-depth organisational review, including an examination of prevailing values and attitudes, the outcomes are inevitably disappointing.

[48] When the Children and Young Person's Act was enacted in 1974, it was intended to distinguish and define different courses of action for children, defined as under the age of 14, and young persons (over 14 and under 17). Young offenders were to be diverted from court proceedings wherever possible, and instead referred to the Children's Board, which consisted of a member of Police, an officer from the Department of Social Welfare, an officer of the State Services appointed by the Secretary for Māori and Island Affairs, and a local resident.

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[13] http://www3.stats.govt.nz/New_Zealand_Official_Yearbooks/1966/NZOYB_1966.html#idchapter_1_70692
[14] Butterworth, Graham and Susan, *'Policing and the Tangata Whenua, 1935 – 85'*, Number 16, Treaty of Waitangi Research Unit, Rangatiratanga Series.p.24 p.20

[49] The 1974 Act also replaced the Children's Court with the Children's and Young Persons Court, which dealt both with youth offending, and care and protection complaints, an approach which was soon regarded as nothing much more than a name change.[15]

[50] The legislative changes did not have a significant impact on how police dealt with children and young people who were in need of care and protection. The prevailing police culture from 1920 to the 1970s was very much modelled on Sir Robert Peel's vision of the "New Police," and the need for the police to stand above community and factional influence and act out their part as impartial servants of an impartial law. From the late 1960s, and in the face of growing political, economic, social and ethnic conflict, the police redefined its role, seeking refuge in a call for "law and order."

[51] By the early 1970s, the police pinned its relationship with the public and their law enforcement strategy on rapid and efficient response to public calls for help; i.e. more efficient "reactive" policing. While the development of services such as Youth Aid and Crime Prevention were intended to offset the hardening police image, they were more about increasing police/community contact than involving the community in the business of crime prevention. The police generally had little confidence in the diversionary processes provided for in the Children and Young Persons Act 1974.

[52] The police were bypassing diversion and overusing arrest to ensure prosecutions, thus denying the Youth Aid Section and the social workers the opportunity to attempt to work constructively with the offender and their whānau. The new Act did not make any difference to that practice, and there were too many young people being arrested for minor offences, resulting in the unnecessary stigmatisation of young people, many of whom would likely not otherwise come to notice again.

[53] By the late 1970's, the new legislation was subject to wide criticism from both the public and justice professionals. The late 70's and 1980's were characterised by increases in youth offending, and a growing public perception that the number of 'street kids' was

[15] Seymour, (1976) p.52.

growing.[54] The new 'welfare model' seemed to have had little impact on reducing youth offending.

Mātua Whāngai – An Indigenous Response

[54] Growing Māori concerns with the state's treatment of children and young people came at a time when the government's new devolutionary policies were being debated and worked through; tribally based initiatives escalated. New Māori community-based initiatives also flourished, and at the 1981 Hui Whakatauira, the idea of a community-based Māori 'foster parenting' scheme was proposed, Mātua Whāngai, and piloted from late 1983.[16] It was continued by the new government in 1984, and established under the auspices of the Department of Māori Affairs, and other government agencies from 1985.

[55] Mātua Whāngai met two primary needs. First, it was a response to the increasing demand from tribal authorities and Māori communities to control both resources and delivery of services, and to promote Māori empowerment. Second, it was a Māori reaction to the state's racist treatment of young Māori offenders.

[56] Mātua Whāngai was presented by the heads of the Department of Māori Affairs, Justice and Social Welfare, as a programme to de-institutionalise Māori people, to prevent their entry into carceral institutions, and instead, to place them in the care of their whānau. With $1 million to spend, Social Welfare would find alternative care for Māori children, and Justice would fund work done by people in the community who cared for those children appearing before the Courts, to arrange alternatives to incarceration or institutionalisation.

[57] But the initial intent was more ambitious than that.[17] Tribal networks and work patterns would support whānau, hapu and iwi development, and departmental; officials from all three departments would facilitate that process. Involvement in Mātua Whāngai would be on the basis of a mandate from tribal representatives. Whānau, hapu and iwi, would evaluate how well the networking occurred, and how the rōpu could meet the needs of Maori.

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[16] Hill (2009) p 205.

[17] Department of Maori Affairs (1986) *Matua Whangai Policy Statement, Foreword by Secretary of Maori Affairs, Director General of Social Welfare and Secretary of Justice*, Wellington: Department of Maori Affairs.

[58] In the next five years, it enjoyed a high profile, with the Roper Report on Violence,[18] Puao-te-Ata-Tu,[19] and the Mason Review,[20] calling for more resources to be invested in it. Māori at hui enquired as to its progress, and it rated a special mention in both the Criminal Justice Act 1985, and the Children, Young Persons and their Families Act 1989. It was seen as a model of devolution in practice; an initiative of Maori, delivered via the bureaucracy, and unusually for the time, directed at criminal justice issues.

[59] The difficulty was to persuade department officials that the primary purpose was to develop whānau networks. They tended to see whānau and other sub-tribal networks as vehicles for government policy implementation, rather than opportunities to provide Māori with a measure of self-empowerment.

[60] In 1984, John Rangihau, Doug Hauraki and I were asked to undertake a review of Mātua Whāngai, with the intention of re-orienting the programme and shifting ultimately responsibility from local offices to iwi authorities.[21] It was fairly limited in scope, but as we travelled throughout the motu, talking with whānau, with departmental staff and service providers, the stories and concerns mirrored those that emerged, during Puao-te-Ata-Tu, the Ministerial Review into the Department of Social Welfare.

[61] Unfortunately, Mātua Whāngai failed to live up to its initial expectations. This was largely because while the programme was first set up within the Department of Māori Affairs, it was subsequently and administered and implemented by majority Pākehā staff who did not understand the purpose and potential of the programme.

[62] By 1991, the initial purpose of Mātua Whāngai was lost in the mists of bureaucratic understanding, and described as a programme "to assist district offices in their work with iwi, in connection with the CYPF Act".

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[18] Ministerial Committee of Inquiry into Violence (March 1987) *The Roper Report* Wellington.
[19] Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare. `1988 *Puao-te-Ata-Tu- The Report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare*. Department of Social Welfare.
[20] Mason, K. (1992). *Report of the Ministerial Review Team to the Minister of Social Welfare* Hon. Jenny Shipley. Auckland.
[21] Williams (2001) p.54

[63] Mātua Whāngai became little more than a mechanism for contracting out the delivery of state services, and added to prevailing Māori suspicions about the Crown's motivations.[22] The underlying concept never gained acceptance and was derailed by government departments, who turned the programme and the funding that accompanied it, to their own purposes. Māori paradigms were beyond the comprehension of mainstream government agencies, leading to their own interpretation of responsiveness to Māori.

[64] The other probable reason that Mātua Whāngai was never able to realise its full potential as an alternative fostering scheme is that government departments were simply unwilling to yield territory. It would be dangerous to assume that government agencies do not have a rangatiratanga of their own: an underlying view about their own special place in the universe, their own a set of underlying values and beliefs, accompanied by the underlying determination to preserve their autonomy. Ultimately, government departments did not want to truly devolve power to Māori in this way.

Reform of the Youth Justice System 1984 – 1989

[65] When the Labour government came to power in the 1984 election, the incoming Minister of Social Welfare, Anne Hercus, recommended to Cabinet that rather than take a piecemeal approach to child welfare legislation, it establish a full review of the legislation.

[66] As a first step, a departmental working party was established in 1984, to review the existing legislation.[23] Despite growing dissension by Māori to the 1974 legislation, there was no Māori representation on the working party – an act seen by Maori, given their increased concerns, as a deliberate snub.

Puao-te-Ata-Tu

[67] Despite the exclusion of Māori from the 1984 Working Party, it was clear that Māori concerns were starting to impact on government thinking. In the same year, a series of hui

[22] Hill (2009) Ibid p.205
[23] Department of Social Welfare *Review of Children and Young Persons Legislation: Public Discussion Paper* (Department of Social Welfare, Wellington, 1984) p.1

were convened by the Department of Social Welfare to discuss the concerns felt by many Māori that the department was a racist and hierarchical institution which reflected the dominant Pākehā values of the day and failed to provide fair access for Māori to its services and to income support. A group of Auckland staff known as the Women's Anti-Racist Action Group, joined in the fray.

[68] The following year, in response to the growing criticism from Māori, the Minister of Social Welfare, Anne Hercus established a ministerial advisory committee, to advise on "the most appropriate means to achieve an approach which would meet the needs of Māori in policy, planning and service delivery in the Department of Social Welfare'.[24] I was then working for the State Services Commission, and was appointed as an advisor to the Committee.

[69] The Puao-te-Ata-Tu Committee engaged in direct and extended consultation with Māori communities, social work staff, government agencies, the wider public, and other stakeholders. It was strongly supported by the Director General of Social Welfare, John Grant.

[70] Under the leadership of Tūhoe elder John Rangihau, it engaged in direct and extended consultation with Māori communities and other stakeholders. The members of the Ministerial Committee were Lena Manuel, Hori Brennan, Donna Hall, Peter Boag, Tamati Reedy (represented by Neville Baker) and John Grant. The committee attended 60 hui, over a nine month period.

[71] It was an extraordinary experience. I can't recall a more comprehensive consultative process since then. The public hui were well publicised and well-attended – they were a draw card for iwi and Māori. Te Rangihau's mana ensured that Māori felt safe speaking about the Department of Social Welfare, and treatment of children and young people, and that the hui would be held in accordance with tikanga Māori. People were free to express their frustration and anger, to shed tears and share their stories. The casual observer might have concluded that it was not much more than a cathartic opportunity for participants. But there were also

[24] *Puao-te-Ata-Tu (day break) – The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare* (Department of Social Welfare, Wellington, December 1987). p.5

moments of insight, and the articulation of ideas and thoughts, which Te Rangihau and the Committee were able to ultimately transform into workable policy.

[72] The hui were not confined to iwi and Māori. Meetings were held with departmental staff, some of whom were openly hostile and defensive. I recall one such morning meeting in Whanganui, where at the outset, a senior staff member expressed his opposition to the Committee. Te Rangihau then talked about the history of race relations in New Zealand, which reduced the staff member to tears. He apologised for his behaviour, following which Te Rangihau invited him to accompany the Committee to New Plymouth, where the committee was to meet with a similar group in the afternoon. He did so as a converted acolyte, who opened the meeting by speaking in favour of change, to the utter astonishment of his regional colleagues.

[73] The 1987 report to the minster, Puao-te-Ata-Tu, (or 'Daybreak'),[25] sought a commitment from Social Welfare to a programme of reform founded on partnership principles as validated by the Treaty of Waitangi. It exposed many deficiencies in the Children and Young Persons Act 1974 in relation to its treatment and dealings with Māori, and found evidence of institutional racism within the Department of Social Welfare:[26] It argued for significant procedural and legislative change, and greater recognition of Māori customary support networks as a conduit for state assistance to Māori communities.

[74] An appendix to the report presented a compelling representation of Māori as a colonised people operating within a Pākehā ethos of conquest and subjugation. It argued persuasively that there would be a major crisis if Māori socioeconomic deprivation was not addressed and recommended that Māori communities be integrally involved in addressing Māori issues and problems. One of the recommendations in the main report urged the government to incorporate the 'values, culture and beliefs of the Māori people in all policies developed for the future of New Zealand'.

[25] The Maori Perspective Advisory Committee, Puao-te-Ata-Tu: The report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare (Wellington; Department of Social Welfare, 1986).
[26] Ibid.

[75] The case for structural reform and the shifting of resources to Māori communities was well argued. The Children, Young Persons and Their Families Act 1989 was borne out of the report, with greater recognition of customary Māori support structures, and a closer commitment to customary iwi forms of conflict resolution. It resulted in a youth justice system that was, and still is, internationally recognised as both radical and effective. The writers of Puao-te-Ata-Tū were able to tap into Treaty polemics as the basis for its construction of both the past and the present. The report discussed the Treaty of Waitangi at length in an appendix and urged the Crown to negotiate partnerships with traditional Māori structures, and to share power and authority over the use of resources. When the Minister of Social Welfare accepted the recommendations for her own department, a precedent was set for other departments and heightened Māori expectations of fundamental change.

[76] The Puao-te-Ata-Tu Report released in 1987,[27] exposed many deficiencies in the Children and Young Persons Act 1974 in relation to its treatment and dealings with Māori, and found evidence of institutional racism within the Department of Social Welfare.[28] In the view of Becroft,[29] it exposed many deficiencies in the Children and Young Persons Act 1974 in relation to its treatment of, and dealings with Māori.

[77] Emerging from this report, and subsequent consultation with Māori groups, was the strong message that whānau must be at the centre of decision-making processes for children. Puao-te-Ata-Tu recommended that any review of the 1974 Act should have regard to the principles that:[30]

(a) For the welfare of a Māori child, regard must be had to the desirability of maintaining the child in his or her hapū (kinship group);

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[27] *Puao-te-Ata-Tu (day break) – The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare* (Department of Social Welfare, Wellington, December 1987).
[28] Ibid
[29] Becroft, Andrew *Signed, Sealed – (but not yet fully) Delivered* A Paper delivered at the Healing Courts, Healing Plans, Healing People: International Indigenous Therapeutic Jurisprudence Conference, University of British Colombia, Canada, 9 October 2014,
[30] Alison Cleland and Khylee Quince *Youth Justice in Aotearoa New Zealand: Law, Policy and Critique* (LexisNexis, Wellington 2014) p.63.

(b) Whānau, hapū and iwi must be consulted and heard on placements of Māori children; and

(c) When a child or young person is to be sentenced, the court must consult members of the child's hapū or with persons active in tribal affairs who have a sound knowledge of the child's hapū.

[78] When the draft 1986 Children, Young Persons and their Families Bill (the Bill), presented to Parliament in 1986, it was subject to extensive criticism. In the view of Maxwell, the Bill was seen as even more likely to continue to remove Māori children from their families, whānau, hapū, iwi and communities. In these years, Māori whānau and hapū meetings were advocated for by commentators, as the only appropriate model for Māori when decisions were taken about children'.[31]

[79] The Bill was in direct conflict with the findings of the Puao-te-Ata-Tu Report, whose recommendations for a bicultural approach had been accepted by the Department of Social Welfare, but had not transitioned into the content of the Bill. When Minister of Social Welfare, Ann Hercus, left Parliament upon Labour's re-election in 1987, the 1986 Bill lost its key proponent. The incoming Minister, Michael Cullen, inherited a Bill burdened by opposition.

[80] At the Select Committee stage in 1987, the decision was made to leave the original Bill with the Select Committee and a team of officials, rather than to withdraw it from the House and start again. The Select Committee, with the benefit of a Māori Advisory Group comprising of high profile Māori leaders, travelled throughout the country, visiting local marae to hear directly from the people most affected by this legislation.

[81] The Bill was radically overhauled. Guidelines were introduced to safeguard children being questioned by Police. Informal police diversion was mandated, including diversion for more serious offences when Police considered that prosecution was the next best alternative.

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[31] Gabrielle Maxwell 'The Youth Justice System in New Zealand: Restorative Justice delivered through the Family Group Conference' in Gabrielle Maxwell, James H Liu (eds) *Restorative Justice and Practices in New Zealand: Towards a Restorative Society* (Institute of Policy Studies, Victoria University of Wellington, 2007) p.48.

Most importantly for Maori, the Youth Justice provisions were exempted from the paramountcy principle and it was established that young people should be treated in the same way as adults in relation to establishing culpability (due process), but that their age would be a mitigating factor in determining penalty.[32]

[82] As the final stages of drafting were reached, it was clear that the Bill represented something internationally unique and created for New Zealand's own particular national purpose.

Children, Young Persons and their Families Act 1989

[83] It is a wonder that the Bill survived such political and bureaucratic tumult over a three year period, to emerge from the Select Committee process, in such good shape. It had achieved a balance between the competing goals of welfare and justice, achieved a manageable diversionary process which could not be easily sidestepped by the police, and provided the space for a process of community peace-making and mediation, between victims, offenders and their families. The new paradigm had the potential to empower Māori, and increase the level of cultural responsivity.

[84] Under the new Act, the Police could only arrest young offenders to ensure their appearance before Court, to prevent further offending or loss of evidence, interference with witnesses and where a summons could not achieve the same purpose. These limitations did not apply however, where the offence was liable to imprisonment for life, or imprisonment for at least 14 years.

Family Group Conferences – the 'Jewel in the Crown'

[85] At the centre of the youth justice process lies the Family Group Conference (FGC); often referred to in glowing terms such as 'New Zealand's Gift to Youth Justice' or the lynch-pin of the New Zealand system.[33] While there have been difficulties with the system over the last twenty five years, the system continues to be well regarded by other jurisdictions.

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[32] Becroft (2014) 'Signed Sealed' p.8

[33] *Police v V* (2006) 25 FRNZ 852 (HC) at [1].

[86] The knowledge and experience built up in this division is a credit to the police and a large factor in the success of the youth justice system under the 1989 Children, Young Persons and Their Families legislation.

[87] The current youth justice system is frequently lauded internationally as one of the most progressive and visionary in the world. These plaudits mask an ugly history, and an attitude to the care and control of children and young people, especially Maori, who resulted in their horrendous treatment by the state, and which in turn contributed to significant increases in the adult offending population.

Conclusion

[88] The establishment of a radical and innovative youth justice system was indeed a considerable achievement. But it also revealed patterns of personal and institutional behaviour, which did not entirely disappear.

[89] Over that period and since, I have either witnessed or become aware of unacceptable treatment of children and young persons in state institutional care, and in police custody or care. The usual response is to regard such actions as individual failures rather than existing within an unsafe institutional culture.

[90] New Zealand's experience of common patterns of colonialism and racism has created social disintegration and structural cycles of intergenerational trauma which requires significant redress. In the context of abuse of children and young people in state care, it is a particularly appalling history in terms of failing some of our most vulnerable members of society.

Signed:

Date: