Māori Youth Offending

Paper Addressing Some Introductory Issues By
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Introduction

Māori youth offenders make up around 50% of all youth offenders but in some Youth Courts the figure is as high as 80% or 90% - despite Māori encompassing only about a quarter of the New Zealand population under 17 years of age. This situation is deeply concerning to everyone involved in youth justice.

Of further concern is problematic research into the experiences of young Māori within the criminal justice system. This research published by the Ministry of Social Development reveals that young Māori are more likely than other racial groups to receive severe outcomes such as orders for supervision either in the community or a youth justice residence. Researchers concluded these more severe outcomes were due to “increased vigilance” by the public and the police with regard to Māori youth. Further, Māori youth are more likely to be dealt with in the Youth Court, where more severe sentences are meted out, than by Family Group Conference. These more severe outcomes may result from Māori being brought to the attention of the youth justice system more frequently.

This raises the question of whether our legal system demonstrates a “systemic bias” against Māori young people. Weatherburn, Fitzgerald and Hua (2003) argue, in relation to Australia, that although systemic bias has existed historically in the Australian criminal justice system, the fact that a high percentage of Aboriginal people are in custody is simply due to the fact that relatively more Aboriginal people commit crime, especially more serious crime. Weatherburn et al argue that responses to the 1991 Royal Commission into Aboriginal Deaths in Custody have tended to focus on changing Police and Court processes rather than attacking underlying societal and economic causes of crime. Weatherburn is particularly critical of the rise in the use of diversionary sentencing schemes which “just insert another step in the ladder of non-custodial sanctions a person ascends before eventually landing in prison.” The authors consider this “extra step” of non-custodial sentences is particularly dangerous in domestic violence cases. Weatherburn considers that the focus should be on reducing Aboriginal crime – not on changing Police and criminal justice processes to respond to that crime. The authors suggest that programs to reduce substance abuse, family violence and unemployment are the key to reducing Aboriginal crime.

However, Cunneen has mounted a withering attack on Weatherburn’s thesis in his paper Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues. He criticises

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1 Paper compiled and written by His Honour Judge A J Becroft, Principal Youth Court Judge of New Zealand and Rhonda Thompson (BBS, LLB(Hons)), Research Counsel to the Principal Youth Court Judge.
5 Weatherburn, Fitzgerald & Hua, Reducing Aboriginal Over-representation in Prison, 70.
6 C Cunneen, Racism, Discrimination and the Over-Representation of Indigenous People in the Criminal Justice System: Some Conceptual and Explanatory Issues, Institute of Criminology,
Weatherburn’s proposition that the primary cause of the over-representation of Aboriginal peoples in the criminal justice system is due to their widespread criminality, rather than a “systemic bias” in the criminal justice system. He stresses the need for a multifaceted conceptualisation of Aboriginal over-representation that looks beyond simple causal explanations such as poverty and racism and instead analyses interconnecting issues including historical and structural conditions of colonisation, social and economic marginalisation, and institutional racism, while at the same time considering the impact of specific practices of criminal justice and related agencies.7

Cunneen argues in support of diversion pointing out that some practices described as “diversionary” by non-Indigenous orthodox criminologists such as night patrols, circle sentencing or community justice groups, may actually be viewed as community control and an opportunity for actualising self-determination by members of an Indigenous group.8 Such measures that promote self-determination may be welcomed by Māori, given the calls for a separate Māori justice system.

In his presentation on Māori, Crime and Criminal Justice: Over-representation or Under-representation?9, Philip Stenning notes that few explanations for high levels of Māori offending have been the object of rigorous research in New Zealand – although many have been the subject of “rigorous assertion”.10 Stenning argues that the majority of programmes designed to reduce offending have been based on a questionable assumption that it is primarily cultural factors that cause the problem of over-representation.11 Further, many of these programmes have been inadequately evaluated – or if evaluated at all results show precious little effect in actually reducing, or significantly altering patterns of Māori offending or recidivism. Stenning puts this situation in context by noting that the current criminal justice system does not work particularly well for anyone, Pakeha or Māori. Clearly there is a need to explore the causes of Māori over-representation in the New Zealand criminal justice system.

II What do we know about Youth Offenders?

Researchers argue there is evidence of an ethnic bias in the New Zealand arrest-conviction process whereby Māori with a given history of offending are more likely to be convicted than non-Māori with the same offending history and social background.12 Research by Te Puni Kokiri posits that this is not limited to adult offenders. Their report, Whanake Rangatahi, revealed that Māori youth are three

times more likely to be apprehended, prosecuted and convicted than non-Māori youth. These findings are controversial but certainly support Stenning’s call for more research and responsiveness to rehabilitative programming in ascertaining the true causes of Māori over-representation and achieving effective responses. The Whanake Rangatahi report also found that:

- Property-related offences are the most common offence for both Māori and non-Māori youth.
- Violent offending has steadily increased since 1990 among both Māori and non-Māori youth.
- Patterns of offending for young Māori females are similar to those for young Māori males, although female rates are much lower.
- There has been a noticeable increase in the imprisonment of Māori females aged 17 to 19 since 1996.

The state of youth justice in New Zealand is further illuminated by recent Ministry of Justice statistics that show the apprehension rate for Māori youth aged 14 to 16 is more than twice as high as the rate for all young people and more than three times the rate for young people of other ethnicities. Figures also reveal that the Māori youth apprehension rate varies around New Zealand but that the highest rates are found in centres with relatively small Māori populations such as Tasman and Canterbury. In these centres, the rates were 52.7% higher than the national rate. Other regions with high Māori youth apprehension rates are Bay of Plenty, Wellington and Waikato.

III How does the New Zealand youth justice system accommodate the needs of Māori youth?

The New Zealand youth justice system attempts to accommodate the needs of Māori young people in two ways. Firstly, the system has a heavy emphasis on diverting young people away from the formal criminal justice system and on dealing with offending through community-based solutions. Around 76% of youth offending is dealt with by Police-supervised community diversionary programmes; a further 8% of cases are resolved by pre-charge Family Group Conference and most of these cases result in no charges being laid in the Youth Court. This means that less than 20% of youth offending is dealt with in Youth Court and the vast majority of young people are kept away from the formal criminal justice system wherever possible.

Community involvement and support is vital to this diversionary system. Police set the diversionary process in operation but community groups are needed to provide venues for community service, mentors and supervision. This is particularly important because more than three quarters of young offenders are dealt with in this way and consequently considerable resources are required to provide meaningful responses to youth offending.

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Secondly, the groundbreaking Family Group Conference system is employed to allow whanau, hapu and iwi to take part in addressing crimes committed by their young people. While this is certainly not a wholesale adoption of indigenous methods of dispute resolution, it does build upon the Māori practice of consensual decision-making to resolve disputes. The legislation allowing this response, the Children Young Persons and Their Families Act 1989, came partly in response to recommendations in Puao-te-ata-tu (Daybreak), the Ministerial Advisory Committee report into Social Welfare in 1988. However, the FGC process certainly does not adopt all the recommendations of Puao-te-ata-tu and contains elements that are foreign to the traditional Māori system of whanau decision-making, such as the presence of representatives of the State. It also modifies elements of the traditional system, such as the roles played by the family and victims. The FGC system has not been entirely successful in linking Māori communities to the youth justice process. More time and resources should be invested to allow greater involvement by Māori whanau, iwi and hapu in decision-making about young Māori offenders.

The FGC process is flexible enough to allow the incorporation of cultural or religious practices within the conferencing process. Researchers who have studied the CYPF Act and FGCs acknowledge that there is considerable potential for cultural and ethnic accommodation in the system.16 Yet some research suggests the New Zealand youth justice system, in some respects, remains “largely unresponsive to cultural differences”.17 However, the cultural and ethnic responsiveness of FGCs is a subtle process to manage – research showed that while some Māori were comfortable with the inclusion of tikanga (protocol), mihi and karakia in the FGC process, others were uncomfortable that these aspects had been included and they had not been consulted.18

IV Is this system sufficient to address the needs of Māori youth offenders?

This raises the question of whether this partly restorative system is effective for Māori youth offenders or whether changes are required.

Research shows that programmes that are effective for Māori youth generally:19

- take a holistic approach, involve whanau, and incorporate tikanga and whanaungatanga (relationships within the extended family, or family type relationships).
- are tailored to the needs of individuals and their whanau.

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19 Te Puni Kokiri, Ministry of Māori Development, Whanake Rangatahi: Programmes and Services to Address Māori Youth Offending, 52.
➢ enhance cultural pride and knowledge of ancestry.\textsuperscript{20}

It may be that, although diversion and FGC procedures are an important step in the right direction, this system could be improved to enhance the inclusion of these factors in the youth justice system. Research suggests that improvements could be made to the system in that:

➢ It seems that in some circumstances insufficient efforts are made to include members of the wider hapu and iwi groups.

➢ Māori offenders have criticised FGCs saying they feel the process is focussed on blaming them rather than on addressing the offending.\textsuperscript{21}

➢ Research shows that Māori offenders often find interactions with police, at FGC, in courts and prisons alienating and intimidating, or at least ineffective in addressing their problems.\textsuperscript{22}

➢ There are criticisms that there is insufficient follow-up after FGC.\textsuperscript{23}

➢ Prisons and youth justice residences are sometimes failing to address the causes of offending.\textsuperscript{24}

➢ There are few youth offending programmes and services designed specifically by Māori for Māori. Effective programmes should be staffed by Māori people with similar life experiences to their young charges.\textsuperscript{25}

How tikanga, whanaungatanga and whanau could be more appropriately incorporated into the process, and whether they should be, is a question for Māori to answer. Given the deeply concerning Māori youth offending statistics, it is vital that improvements are made to deal more effectively with this group.

\textbf{V Conclusion}

This background paper can do no more than raise some key issues regarding our youth justice system and Māori youth offending. These issues are of fundamental importance to the operation of our youth justice system. They cannot be avoided. As we have indicated, some issues, such as the causes of young Māori over-representation in the youth justice system, will require much more detailed and


\textsuperscript{21} Te Puni Kokiri, Ministry of Māori Development, \textit{Whanake Rangatahi: Programmes and Services to Address Māori Youth Offending.} 37.

\textsuperscript{22} Te Puni Kokiri, Ministry of Māori Development, \textit{Whanake Rangatahi: Programmes and Services to Address Māori Youth Offending.} 36.

\textsuperscript{23} Te Puni Kokiri, Ministry of Māori Development, \textit{Whanake Rangatahi: Programmes and Services to Address Māori Youth Offending.} 37.

\textsuperscript{24} Te Puni Kokiri, Ministry of Māori Development, \textit{Whanake Rangatahi: Programmes and Services to Address Māori Youth Offending.} 38.

\textsuperscript{25} Te Puni Kokiri, Ministry of Māori Development, \textit{Whanake Rangatahi: Programmes and Services to Address Māori Youth Offending.} 57.
rigorous research. The inquiry will not be assisted by simplistic assertions and in some areas better practice will be required. However, one thing is clear. The over-representation of Māori in the youth justice system is probably the most pressing issue confronting all of those who are involved daily in our youth justice system in Aotearoa.