

TE WHANAU O WAIPAREIRA REPORT

TE
WHANAU O WAIPAREIRA
REPORT

WAI 414

WAITANGI TRIBUNAL REPORT 1998



The cover design by Cliff Whiting invokes the signing
of the Treaty of Waitangi and the consequent interwoven development
of Maori and Pakeha history in New Zealand as it continuously
unfolds in a pattern not yet completely known

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LIST OF ABBREVIATIONS

app	appendix
CA	Court of Appeal
CFA	Community Funding Agency
ch	chapter
CHE	Crown health enterprise
COGS	community organisation grants scheme
CYPS	Children and Young Persons Service
doc	document
DSW	Department of Social Welfare
encl	enclosure
HC	High Court
J	justice (when used after a surname)
NDOC	non-departmental output class
NZLR	<i>New Zealand Law Reports</i>
p, pp	page, pages
P	president of the Court of Appeal (when used after a surname)
PC	Privy Council
POBOC	payment on behalf of the Crown
r	rule
RHA	regional health authority
s	section (of an Act)
sec	section (of a book, report, etc)
vol	volume
Wai	Waitangi Tribunal claim



The Waitangi Tribunal
Wellington

The Honourable Tau Henare
Minister of Maori Affairs

Parliament Buildings
Wellington

*Tuia i runga, tuia i raro,
Tuia i waho, tuia i roto,
Tuia i te here tangata
Ka rongo te po, ka rongo te ao!
Tuia i te muka tangata
I takea mai i Hawaiki nui, i Hawaiki roa,
I Hawaiki pamamao, i te Hono-i-wairua
Ki te whaiao! Ki te ao marama!*

Tena koe e te Minita

Tena koe i nga ahuatanga o te wa; i nga mate e hingahinga atu nei, e hingahinga mai na, huri noa, i nga tautohetohe, taukumekume i waenganui i te iwi, e taea ai te ki kei te oreore tonu te ao Maori!

Kei te piri atu nei a matou korero mo te whakapae a Te Whanau o Waipareira mo nga kaupapa o te Tari Toko i te Ora me ana mahi.

Ko te take, he kore no te rangatiratanga o tenei whanau e whai wahi i roto i te kawanatanga. Ko te raru, ko te tirohanga whaiti a te kawanatanga ki te Tiriti o Waitangi, he wehenga i nga kupu kia ngaro tona tikanga.

Me pehea e whakatika? Me manaaki te kawanatanga i te rangatiratanga Maori - te rangatiratanga-a-iwi, o wai atu ranei. Ma reira nga kaupapa here e wete, te Maori e whakawatea ki te whakatika i a ia, kia tu pakari ai. Ka rangona ano te rangatiratanga o te Maori, ka huri tahi ai nga iwi ki te whakatika i to raua whare i hangaia ai i raro i te Tiriti.

We present to you our report on the claim by Te Whanau o Waipareira that they were prejudiced by the policies and operations of the Community Funding Agency of the Department of Social Welfare. While it was funding decisions of the agency which brought matters to a head, Waipareira's claim raised broad and deep issues about the relationship today between Maori and the Crown, as founded by the Treaty of Waitangi nearly 160 years ago.

LETTER OF TRANSMITTAL

In this claim, each party had problems identifying how the Treaty relationship should apply to the other. In most historical land claims, the Crown knows the identity of the Maori group it has to deal with, even though it is not always clear who are its proper representatives. In this case, Waipareira's organisation was clear and strong, but the Crown believed the community itself was so different from a traditional tribe that the guarantees in the Treaty did not apply to it.

For its part, the trust tried to provide a range of integrated social services that spanned health, welfare, education, training, employment, and economic and community development to achieve social goals which were shared by the Crown. However, officials found it difficult to collaborate because of the division of the Crown's responsibilities among many different agencies, and the way their respective accountabilities were specified. The trust was unable to deal with the Crown as a coherent entity, the community suffered, and the social goals have not been achieved.

Therefore, the Tribunal had to consider who today is or are Maori, and what are their just rights; and how can the Crown be sure it governs in a way that fulfils its duty to protect Maori?

Because of these problems of mutual recognition, simply recommending that the parties try to resolve their differences through better communication and consultation would not be sufficient. So the Tribunal looked for useful principles to explain who should consult with whom, and how. We found a thorough understanding of rangatiratanga to be the key.

Rangatiratanga is more than just ownership or management rights; it is the duties of care and protection that leaders and members of a Maori community owe to each other, and to their taonga. It is the key principle of customary social and political organisation, part of the essence of Maori identity, and a taonga in its own right.

With a broader understanding of what the Crown undertook to protect, it became easier to assess the quality of kawanatanga – in this case, to decide what are the legitimate interests of Waipareira, and to what extent the Crown is governing in a way that recognises those interests.

We reminded ourselves that the intent of the Treaty was something like a marriage of two nations, two cultures, who wanted to share a house which they planned to build together, accommodating each other's needs with respect and goodwill, for their mutual benefit.

This has not come to pass in West Auckland, where large numbers of Maori people are living in dire circumstances. They and the Government want things set right. Community leaders say they have done what they can to provide suitable social and welfare services by establishing Te Whanau o Waipareira Trust to pool the community's resources and coordinate their efforts to promote their self-sufficiency. But the trust claims the Crown's funding agency, the CFA, has laid down funding policies and criteria which have undermined the trust's efforts and prejudiced the integrity of the community.

Crown witnesses said that, on the contrary, they had established a policy that was fair to everyone, but the Government was unable to meet all demands. They said Waipareira wanted more than their share, and claimed to exercise rangatiratanga in

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order to get around the funding restrictions and reporting requirements that applied to other service providers.

Crown counsel argued that rangatiratanga is guaranteed protection only in article 2 of the Treaty, and it only applied in respect of the control of properties by iwi and hapu. This led to the conclusion that, since Waipareira was not a traditional tribe or iwi with customary lands and fisheries, it could not exercise rangatiratanga, and its members had no rights other than citizenship rights.

In the context of this claim, we saw that argument as diverging from the path mapped out by the Treaty. It was supported by a narrow and restrictive interpretation of the words and articles of the Treaty, instead of a proper consideration of the principles and intent of the agreement as a whole. It fell short of the spirit of goodwill and generosity that the Treaty partnership calls for.

The fact remains, however, that the Crown and the Waipareira trust are both committed to achieving the best outcome for Te Whanau o Waipareira. What is more, we are convinced that neither of them can achieve results on their own – they need each other. Therefore, we see our task as finding a sound basis for their relationship, restoring a proper balance between them, and promoting positive attitudes, so they can resolve their differences and work together constructively. We hope our report achieves that, and that others may find useful guidance for diverse aspects of the Crown's relationship with Maori.

This leads us to a final point of procedure. At any time, there are issues arising from the Treaty relationship being debated elsewhere and, in some cases, litigated. We have released this report at the earliest opportunity. Advice from the Crown Law Office has confirmed that this is the proper course for the Tribunal to follow.

Heoi ano

SUMMARY

SUM.1 PURPOSE

The purpose of this summary is to provide an introductory overview of our report on the claim by Te Whanau o Waipareira. In this section, we provide clarification of certain matters of terminology and a summary of the main arguments presented to us in what was a complex and far-reaching claim. We also outline our interpretation of the Treaty of Waitangi as it applies to the claim and our general conclusions about how the parties might try to resolve their differences.

This was not a historical claim, tracing a chronological sequence of events, so this report is structured a little differently from many of the Tribunal's previous reports. We outline that structure at the end of this summary.

SUM.2 TERMINOLOGY

During the hearings it became clear to the Tribunal that vague or inconsistent terminology plagued the definition of the issues before us (and hence their resolution). We consider it necessary to establish at the outset the terms that we have used in this report, and our reasons.

The claimant is Haki Wihongi on behalf of himself and Te Whanau o Waipareira Trust, of which he is the chairperson. The relationship between the trust board and the community it purports to represent is at the heart of this claim, and is discussed at section 1.5.4. In this report, we use 'the claimants' or 'the trust' to mean the trust board and its employees, as the formally constituted leadership and the authorised representatives of a community called 'Te Whanau o Waipareira' or simply 'Waipareira'. The membership of Te Whanau o Waipareira, including the social service providers affiliated to the trust and the clients of those social services, we have called 'beneficiaries' of the trust, meaning the people for whose benefit the trust was legally constituted. (This term has nothing to do with getting a Government welfare benefit.) Incidentally, Waipareira is a Maori community, but not all members of the whanau are Maori.

We use the term 'community' to mean a group of people who identify themselves as part of a collective; in other words, they see themselves and are seen by others as part of a body that has its own identity beyond that of the individual members. Section 1.5.4 explains this in more detail.

A central concept to this claim is 'iwi'. The claimants' view of the term 'iwi' is summarised at section 1.2.2(2), the Crown's at section 1.3.2, and our own interpretation in the light of Treaty principles is set out at section 1.5.1.

The parties agreed that ‘traditional iwi’ or ‘traditional hapu’ in pre-contact times were descent groups or tribal groups. In this report, we have described communities such as Te Whanau o Waipareira, for whom descent from a common ancestor is not the defining principle of organisation, as ‘non-tribal’, to distinguish them from ‘kin-based iwi’ or tribes. We acknowledge that individual members of non-tribal groups may identify strongly with their own tribes.

The claimants themselves tended to use ‘pan-tribal’, which we took to mean embracing individuals from different tribes. However, we felt this term failed to distinguish Waipareira from bodies such as Te Arawa, Te Runanga o Muriwhenua, or even the Maori Congress, whose constituents or members are themselves tribes or descent groups. ‘Urban Maori’ was another term used to mean non-tribal groups, but Ngati Whatua o Orakei, Ngati Whakaue, and Ngati Toa are urban tribes; on the other hand, national non-tribal organisations like the Maori Women’s Welfare League, the Ringatu Church, and the Black Power movement are not confined to urban areas.

SUM.3 SUMMARY OF THE CLAIMANTS’ ARGUMENTS

The claim breaks new ground in contending that a non-tribal group of Maori has rights under the Treaty of Waitangi.

Members of Te Whanau o Waipareira are not all linked by kinship; most live outside the traditional territories of the tribes from which they are descended. As a regrouping of Maori people in response to changing circumstances, however, Te Whanau o Waipareira claimed to be none the less a Treaty partner of the Crown, exercising rangatiratanga rights, which the Crown is obliged, by article 2 of the Treaty, to protect.

Claimant counsel, Joseph Williams, raised the matter in his first address to the Tribunal, when he said:

It is a claim which at its heart says the rights and interests of urban Maori, separated from, distanced from and disenfranchised from their home iwi are rights which fall properly within the Treaty of Waitangi.¹

Te Whanau o Waipareira traced its origins to the first generation of Maori migrants to West Auckland during and after the Second World War, and the welfare work done ever since then by Maori community leaders for other Maori who had lost their traditional support networks as a result of urbanisation. The development of Hoani Waititi Marae during the 1970s and 1980s was seen as a major factor in drawing Te Whanau o Waipareira together as a community. It was argued that this solidarity now provided a mandate for the trust they established, which was constituted under the Charitable Trusts Act in 1984 as an umbrella organisation to promote the welfare and development of West Auckland residents, especially Maori.

1. Joseph Williams, first address, first hearing, 31 August 1994, tape 1

The claim alleged that the Crown, through the Community Funding Agency (CFA) of the Department of Social Welfare (DSW), had failed to recognise the special status of Te Whanau o Waipareira as a Maori organisation and had failed to properly consult and deal with it in accordance with the Crown's obligations under article 2 of the Treaty of Waitangi. This alleged denigration of Te Whanau o Waipareira, in breach of article 2, was said to have led to further breaches, namely that the Crown developed and implemented a piecemeal approach to welfare funding that was inappropriate for Maori clients, compromised the unity and effectiveness of Te Whanau o Waipareira, and trapped its beneficiaries in a state of dependence on the Government. In the end, it was contended, funding levels and standards of welfare services declined to the point where the trust's Maori clients did not get their article 3 entitlement to the same welfare services as other citizens.

In the words of John Tamihere, Te Whanau o Waipareira Trust's chief executive:

The claim is essentially about fairness, due process and equality of opportunity. It is about our right as a pan-tribal whanau in the urban area to be acknowledged as a Treaty partner and our right as urban Maori to organise ourselves in accordance with our own tikanga to address our own problems our way.²

SUM.4 SUMMARY OF THE CROWN'S ARGUMENTS

The Crown responded that article 2 did not apply to this claim at all. It said its guarantees to protect tino rangatiratanga extend only to traditional kin-based groups of Maori exercising customary authority over resources such as lands, forests, and fisheries, and not to non-tribal groups involved in social services. It said that the CFA had properly exercised the Crown's kawanatanga in accordance with the Treaty in its dealings with Te Whanau o Waipareira. It had consulted Te Whanau o Waipareira over funding contracts and funded the trust's social and welfare services in proportion to the needs of their Maori clients, recognising the need for affirmative action to overcome current disparities between Maori and non-Maori in social welfare.

However, the Crown said that Government funding for Maori welfare programmes is not redress for historical grievances; it is no more than all citizens, including Maori, are entitled to under article 3 of the Treaty. The trust's status as a Maori organisation was therefore relevant to the claim because the Government accepts that welfare and other social services to Maori clients are most efficient when delivered in a culturally appropriate manner. However, the Crown maintains the trust should not look to article 2 to claim dispensation from the political and economic constraints on Government funding for welfare services.

Both the claimants and the Crown acknowledged the relevance to this claim of *Puao-te-Ata-tu*, the 1986 report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare. *Puao-te-Ata-tu* noted with alarm

2. Document A19, para 1.2

the extent of Maori deprivation and underachievement, especially among alienated younger people in urban areas. It recommended that Maori tribal structures should be strengthened through greater power sharing and that, because of its size and influence in welfare matters, the DSW must take the lead in coordinating urgent action among Government departments to overcome the crisis.

Because of the references in *Puao-te-Ata-tu* to tribal structures, and in social legislation and policy to iwi, hapu, and whanau, this claim was presented to us as a test of the rights of non-tribal Maori groups in relation to, or in comparison with, the rights of iwi under the Treaty.

SUM.5 SUMMARY OF FINDINGS ON TREATY INTERPRETATION

We consider that this conception of the issues results from an undesirably narrow analysis of the separate articles of the Treaty instead of a proper consideration of the intent of the document as a whole. We have avoided an overly literal analysis of the Treaty, believing this to be the appropriate course and the course adopted by the Tribunal and the courts in the past. In any event, the Tribunal is enjoined by statute to determine matters by the Treaty's underlying principles rather than its terms; principles that flow not only from the Treaty's terms but also from the circumstances of its execution having regard to the underlying purposes and goals.

For the purposes of this claim, we consider:

- first, that the Treaty was directed to all Maori, not just to tribes;
- secondly, that, as a living document, the Treaty speaks to Maori according to their circumstances from time to time irrespective of their original tribal structures;
- thirdly, that the Treaty was directed to the protection of Maori interests generally and not merely as the Crown contended to the classes of property interests specified in article 2;
- fourthly, that application of the principle of rangatiratanga, in the sense of admitting rights of autonomous action and management, is not limited to tribes but applies in a variety of situations, and the exercise of rangatiratanga by particular Maori groups or within particular Maori communities, tribally based or not, is an indicator of whether that group deserves special recognition; and
- fifthly, that the cession of kawanatanga and the acknowledgement of rangatiratanga give rise to the concept of partnership, a concept that serves to define how Maori and the Crown should relate to each other.

We elaborate on these matters in chapter 1. At this point it is sufficient to say that the Tribunal finds that non-tribal Maori groups may be entitled to special consideration in terms of the Treaty; that is to say it should not be assumed that they should be treated simply as another interest group under the Treaty's equal citizenship provisions, although our reasons for doing so are not precisely those that the claimants gave.

SUM.6 THE PRINCIPLE OF PROTECTION

In this respect, we follow previous Tribunal opinion and consider that the Treaty was primarily a recognition of the special status of Maori as the prior inhabitants, and an undertaking that, in return for accepting European settlement, Maori interests would be respected and given an appropriate priority where their circumstances required.

The Treaty of Waitangi was signed by rangatira of hapu, on behalf of all Maori people, collectively and individually. Therefore, conversely, protective benefits and rights of autonomy in terms of the Treaty are not limited to traditional tribal communities. Here again, a broad consideration of the Treaty is required, one that keeps to the fore the Treaty's underlying purpose. An approach that limits Maori rights by reference to the tribal arrangements of 1840 is no more justifiable in our view than one that would limit the Crown's right of governance to governance according to 1840 standards. At the time of the Treaty, everything lay in the future, and if the cession of governance and the promises in the Treaty were to mean anything, they would need to be always speaking and to speak in the context of changing circumstances over time.

SUM.7 THE PRINCIPLE OF RANGATIRATANGA

Which modern Maori communities, and which organisations servicing Maori communities, should be recognised by the Crown for these purposes? This must be given consideration, especially because many communities may form today, possibly alienated from their traditional lands and fisheries, and the bona fides of some of these communities may be in question. We do not attempt to provide a prescriptive list of criteria, but we consider that the demonstration of rangatira values in action, albeit in a modern setting, is the key indicator of a community that may so qualify.

Rangatiratanga, in this context, is that which is sourced to the reciprocal duties and responsibilities between leaders and their associated Maori community. It is a relationship fundamental to Maori culture and identity and describes a leadership acting not out of self-interest but in a caring and nurturing way with the people close at heart, fully accountable to them and enjoying their support. A Maori community defines itself by a relationship of rangatiratanga between its leaders and members; rangatiratanga gives a group a distinctly Maori character; it offers members a group identity and rights. But it is attached to a Maori community and is not restricted to a tribe. The principle of rangatiratanga appears to be simply that Maori should control their own tikanga and taonga, including their social and political organisation, and, to the extent practicable and reasonable, fix their own policy and manage their own programmes.

That the Tribunal and the courts have viewed the principle of rangatiratanga as applying generally – that is, as a right of autonomy in a variety of situations neither restricted to tribes nor confined to the management of lands and fisheries – is evident

in their conception of a partnership arising partly from the fact that the Maori rangatiratanga and the Crown's kawanatanga, or right of governance, are juxtaposed.

SUM.8 THE PRINCIPLE OF PARTNERSHIP

The perception of a partnership relationship between Maori and the Crown arises from historical evidence of Maori and Pakeha expectations at the time of the Treaty; that the gift of kawanatanga was in exchange for protection and the guarantee of rangatiratanga in all its forms. Partnership thus serves to describe a relationship where one party is not subordinate to the other but where each must respect the other's status and authority in all walks of life.

In this situation neither rights of autonomy nor rights of governance are absolute but each must be conditioned by the other's needs and the duties of mutual respect. If a power imbalance lies heavily in favour of the Crown, it should be offset by the weight of the Crown's duty to protect Maori rangatiratanga. But most of all, the concept of partnership serves to answer questions about the extent to which the Crown should provide for Maori autonomy in the management of Maori affairs, and more particularly how Maori and the Crown should relate to each other that such issues might be resolved.

On the facts of this case, the relationship of rangatiratanga is especially evident in the operations and proceedings of Te Whanau o Waipareira. Accordingly, when Crown policies or actions affected their interests, Te Whanau o Waipareira was entitled to have the Crown respect the rangatiratanga that in fact existed and so to operate on a basis of partnership with them; and the question is whether the Crown sufficiently upheld that principle in this case. We later explain why these findings create no conflict between Te Whanau o Waipareira and the tangata whenua of West Auckland.

SUM.9 CONCLUSION

This claim was directed primarily against the CFA, and we found the agency had been remiss in some ways. But many problems were not of its making. To an extent, the agency and its staff were actors on a stage set by others.

For example, the agency's ability to coordinate and collaborate with other Government welfare and funding agencies in pursuit of social policy goals (as recommended in *Puao-te-Ata-tu*) has been hampered by the major restructuring of the State sector since 1986, with the abolition of the Department of Maori Affairs and the mainstreaming of Maori affairs, and by the division of the DSW into separate business units, one of which is the CFA. Furthermore, any incentive for the agency to develop a broad vision of community welfare and development, and an integrated strategy to achieve it, has been limited by the Public Finance Act and its narrowly specified accountabilities.

A most important point was made by the claimants when they said that funding issues were only indicative of their real grievance, which was the failure of the Crown, in particular the CFA, to treat Te Whanau o Waipareira as a partner, and to consult properly and work together with it to achieve social goals over which there was no disagreement. In assessing the Crown's dealings with Waipareira, we looked at many specific points of contention. We did this not to rake over old coals but to illustrate what we saw as the underlying causes of the problems between the parties.

In the Tribunal's opinion, this grievance will not be resolved and this claim will not be settled by a transaction, a payment, or reparation (although that may be part of a settlement). The problem is mainly structural and may be summarised in this way: while the agency deals one way with 'iwi' (in the sense of tribes), as having autonomous rights under the Treaty, it deals differently with Te Whanau o Waipareira, as though it has only the same rights that accrue to all citizens. We have found that this view stems from a narrow view of the Treaty's articles, a failure to have regard to the Treaty's principles as envisaged in the Treaty of Waitangi Act 1975, and a failure to understand the structure, organisation, and values of the Waipareira community, and their relevance for the delivery of social services.

It seems that the most important outcome sought by the claimants is an ongoing, constructive relationship with the CFA, one based on mutual goodwill, cooperation, and trust, in which the unity, strength, and authority of Te Whanau o Waipareira are recognised and enhanced by its dealings with the agency. This seems to us to go to the heart of the partner relationship that the Treaty intended. It has influenced the Tribunal's consideration of this claim.

Although we confine ourselves to the findings on the facts of this particular case, the Tribunal hopes that Crown agencies and Maori groups of all kinds might find some general principles in this report to guide their future relations.

SUM.10 STRUCTURE OF THE REPORT

In chapter 1, we elaborate on the arguments, our interpretation of the Treaty and application of relevant principles, and the issues we isolated for evaluation in the light of the evidence.

In chapter 2, we introduce the claimants, who they are, where they came from, and what they do. From this information, in chapter 3 we make our first finding: that Te Whanau o Waipareira Trust exercises rangatiratanga.

In chapter 4, we introduce the CFA, the main target of the trust's claim, and we look at some features of its operation that were the subject of dispute. The CFA is part of the DSW, which aims to be more responsive to Maori and bicultural in its operations by adopting the recommendations of *Puao-te-Ata-tu*. In chapter 5, we look at the implications of that report for this claim. The DSW in turn is part of the wider State sector, which has been radically restructured over the past 15 years or so. We look at that restructuring in chapter 6 as part of the background to this claim.

Then, in chapter 7, we look at the particular policies, acts, and omissions of the CFA that led the Waipareira trust to bring this claim, and in chapter 8 we record our conclusions, findings, and recommendations.

In the appendices, we reproduce the statement of claim and the record of inquiry.

Hepora

*Ē te Whaea, te kuia, te hoa tuturu,
takoto mai ra i roto i te rangimarie.
Takoto mai i te okiokinga pumau mo taua mo te tangata,
i te mana, i te reo o te Po.*

*Ka tokia to tinana e te anu matao.
Āue te mamae e!*

*Moe mai ra e te wahine rangatira,
te kaiako, te whakaruruhau mo te kaupapa
o te Ropu Whakamana i te Tiriti o Waitangi.*

*Ē tika ana te korero,
na te maramatanga, te tohungatanga,
te aroha i roto i a koe,
kua whakatakia te ritenga tino tika
mo te katoa, Maori, Pakeha atu.*

*No reira, Hepora, moe mai ra.
Moe mai e te kahurangi o to iwi.*



Hepora

*Mother, elder, and ever constant friend, rest in peace.
Be at rest in the final abode of our people,
protected by their authority and harmony of spirit.*

*Your body has been pierced by the sharpness of death.
The pain of separation is unbearable.*

*Sleep, gracious lady,
mentor and protector of the Treaty and its Tribunal.*

*It is truly said, your clarity of thought,
your depth of knowledge and your love
have set the highest standards for us all,
Maori and Pakeha.*

*So now, Hepora, sleep on.
Sleep, beloved of your people.*

CHAPTER 1

THE ARGUMENTS AND THE TREATY

1.1 INTRODUCTION

The details of the claim and the record of inquiry are set out in appendices I and II. Suffice to say at this point that the Tribunal found this claim to be well founded and within the jurisdiction conferred on us by the Treaty of Waitangi Act 1975.

Crown counsel did question our jurisdiction to make a finding on whether or not Te Whanau o Waipareira Trust represented the West Auckland Maori community. We deal with that question at section 1.4.1 of this report.

The Crown also objected to the causes of Maori urbanisation being raised in this claim, which was granted urgency on the basis that it was a contemporary claim only and historical research would not be required. We address that question at section 1.4.2; in short, we accepted the Crown's contention but found the matter was not significant.

1.2 THE CLAIM

The claimants' four main allegations are:

- (a) that the Crown has failed to recognise the fact that Te Whanau o Waipareira represents the West Auckland Maori community;
- (b) that the Crown has failed to consult with Waipareira so as to ascertain the needs of the West Auckland Maori community;
- (c) that the Crown, in discharging its obligation properly to fund welfare programmes targeted at the Maori community of West Auckland, has failed to deliver in accordance with Maori needs and cultural preferences; and
- (d) that the Crown has failed to provide an equitable share of funding to properly targeted welfare service programmes for the West Auckland Maori community, whether by way of contracts with Waipareira or otherwise.

The claimants used funding decisions as evidence that the Crown, through the policies and practices of the Community Funding Agency (CFA), had not properly served West Auckland Maori. They said that, in the absence of consultation and negotiation with the representative body of West Auckland Maori, namely Te Whanau o Waipareira Trust, the CFA had established funding policies and procedures that were inappropriate for meeting Maori needs, and ultimately the

Maori people of West Auckland had not received the services they required and were entitled to, either in terms of quality or in terms of quantity.

Thus the prejudice complained of was not only that the funding allocated by the CFA to Te Whanau o Waipareira was inequitable in comparison with the amount that other providers received; but also that the CFA ignored the trust's advice on how to get the best results from funding for services to Maori clients. As a result, the funding that was allocated for the benefit of West Auckland Maori was spent on services which, in the opinion of the trust, served Maori inadequately and failed to meet their needs.

As Dr Pita Sharples of Hoani Waititi Marae said:

... Waipareira is the appropriate organisation to administer and deliver services and create responsibility and hope and dreams amongst our people in West Auckland.

We are better suited to know our needs and to deal to them than any government organisation. That is what the claim is saying. Forget the amounts, or which department it comes from, or whose Vote, for the moment. We talk of the Treaty of Waitangi and the partnership it promised, which was never realised. It will never be realised, in my view, in the way it was worded, because we are miles away from the government partner, which is Pakeha culture, understanding truly the feelings, the aims and the aspirations of the everyday Maori. We are miles apart.¹

We turn now to outline the claimants' main arguments in more detail.

1.2.1 Waipareira 'is representative of' West Auckland Maori

(1) *The trust's mandate*

Te Whanau o Waipareira says the trust and its community as they exist today are the culmination of efforts by West Auckland Maori over the past 50 years to manage their affairs in a Maori way in an urban environment. Their earlier efforts were directed through the Maori committees set up by the Government to deal with the consequences of urbanisation, through the Maori Affairs community management programmes of Tu Tangata, the management of programmes for employment, welfare, and economic development devolved by the Government to iwi authorities in the mid-1980s, and the development of a bicultural partnership with the Department of Social Welfare (DSW), envisaged in the 1986 review of the department reported in *Puao-te-Ata-tu* (see ch 5).² The trust and the community have grown and developed together.

Arising from the 25-year history of Te Whanau o Waipareira, the trust claims to have gained a mandate from the West Auckland Maori community which is regularly tested and confirmed through the operation of Hoani Waititi and other non-tribal marae in the area, and through its annual general meetings, which make the trust fully accountable to the community.

1. Dr Sharples, oral evidence, first hearing, 1 September 1994, tape 2

2. 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, 1988

In closing submissions, counsel for the claimants said that the trust's mandate and accountability make it the *best* representative of the West Auckland non-tribal Maori community that exists – the leaders of Waipareira have been the leaders of this community (and at the inception of the trust, the Crown was also represented as a partner in dealing with the community's problems). He said the representative status of the trust is an important aspect of this claim, because if Maori in West Auckland who are not tangata whenua there are found to have rights under article 2 of the Treaty, those rights accrue to the *community*, and the trust claims to be the appropriate body to exercise them on behalf of the community.

(2) *No conflict with tangata whenua*

Waipareira saw no conflict with the traditional hapu of West Auckland arising from this claim. They pointed to the support given by the traditional hapu to the work being done by Waipareira.

Waipareira in turn acknowledged the mana whenua claims by Ngati Whatua Nui Tonu and Tainui Nui Tonu. The trust said it had no desire to usurp the status of the traditional hapu, but neither did it want to be prejudiced by an ideology that deals exclusively with or prefers kin-based bodies. It claimed that both non-tribal and kin-based Maori organisations should be recognised as having a mana of their own, and funding should be adequate for both to provide services to their communities.

While the focus of this inquiry was on Waipareira and its relationships with the Crown, the Tribunal well understood that Waipareira's operations are conducted within the mana whenua of Ngati Whatua, and that Ngati Whatua maintain their own relationships with the Crown. The Tribunal was also aware of Ngati Whatua of Tamaki's relations with Maori who have migrated into Auckland, in particular that hapu's long history of attempting to fulfil *its* obligations of providing care and hospitality to the living and the resources of its urupa to the dead for those not of Ngati Whatua.

During the hearings, a submission was made by Tom Parore, of Te Runanga o Ngati Whatua, who said:

Although other iwi group have historical links to the area served by Waipareira (West Auckland) the mana whenua is with Ngati Whatua. This mana whenua in Auckland is represented by the Ngati Whatua of Orakei Maori Trust Board and the Reweti and Haranui marae with support from Te Runanga o Ngati Whatua representing the whole tribe.

We acknowledge that Waipareira and other similar urban authorities serve useful purposes and we have no difficulty in giving support in principle to them. The Ngati Whatua charter 'welcomes these organisations and invites them to work in harmony with us'. We are in fact represented as a right on the Waipareira Trust – although this is only one member. Although we are supportive of Waipareira there are some comments that we would wish to make—

- Ngati Whatua, representing the mana whenua, wishes to provide services itself within Tamaki Makaurau and funding of urban authorities should not prejudicially affect the funding required by us for this purpose.

- We do have reservations about any other iwi claiming mana whenua status in our rohe. We wonder how their own iwi would respond if Ngati Whatua living in their rohe sought to claim such status.
- There could be an element of double counting if people from particular iwi are included in statistics for that iwi (as happens in census statistics) and also for the urban authority.
- There is a large number of people who do not know who their iwi is and this is the natural catchment for urban authorities. At the same time it should not be overlooked that some of these people are already being catered for in our rohe by Ngati Whatua as mana whenua. These numbers could increase significantly if adequate funding were available.

The Runanga believes the CFA as an agency of the Crown has a responsibility to deal with the Treaty partner and in Auckland that in our view means Ngati Whatua. A good precedent has been set with a co-purchasing contract which has just been completed between the Northern Regional Health Authority and the Runanga. Under this arrangement the Runanga will have a role to play in overall funding of health services and programmes such as those provided by Waipareira, and others, will of necessity be required to work within this framework. We believe a similar arrangement should be put in place for CFA funding.³

Thus, while Ngati Whatua were willing to recognise non-tangata whenua initiatives in caring for their own, the Tribunal was told that they, Ngati Whatua, hoped non-tangata whenua would not now come to subvert Ngati Whatua's right to an appropriate share of Crown welfare resources to care for themselves and to provide for others who turn to the tangata whenua for assistance.

(3) The Crown's role in the urbanisation of Maori

The claimants stated that the history of Te Whanau o Waipareira Trust, and its role in dealing with the social and economic problems facing Maori people in West Auckland today, were best considered against a backdrop of the Crown's role in the urbanisation of Maori. They said Maori were not free agents when they decided to leave their tribal homelands, thereby losing the support of their traditional iwi and hapu organisations. They were under pressure following the Crown's massive alienation of Maori land, and the serious consequences that followed. The claimants alleged that the Government responded with economic, housing, employment, and Maori Affairs policies which accelerated the urban migration.

Therefore, they argued, the Crown's complicity in the process of urbanisation, and its failure to take steps to ensure whanau, hapu, and iwi connections were maintained for Maori migrants, place an extra burden on it now to recognise its obligations to the Maori organisations that are coping today with the legacy. This is one of the reasons behind the claimants' request to the Tribunal to make a finding that Waipareira is the Crown's Treaty partner (see sec 8.2.6).

3. Document E4

1.2.2 The Crown has failed to consult

(1) *DSW took narrow view of Treaty partnership*

It was agreed by the parties that after the restructuring of the DSW (which the director-general acknowledged had contributed to a loss of commitment to *Puao-te-Ata-tu*), the newly created CFA came to the view that, for the purposes of the Children, Young Persons, and Their Families Act 1989 at least, only traditional kin-based groupings of Maori were in Treaty partnership with the Crown.

This view was challenged by the claimants. They said that Maori society is dynamic and has always adopted new structures and approaches to meet new situations, and thus they argued that it would be wrong – and dangerous – to set in concrete the types of bodies or organisations which may invoke the guarantees of article 2.⁴

Dr Sharples put it this way for the claimants:

It also talks to Maori people, as well as hapu, in the Treaty of Waitangi. What I have to say to you is, to achieve tino rangatiratanga, we can only achieve that by empowering Maori people katoa [ie, all Maori people or Maori people as a whole], not only those that are domiciled within their hapu area.

We have to recognise that this is a day where most Maori live outside of their tribal areas, certainly outside of their kainga [villages]; so that 80 percent of Maori are urbanised and a good percentage of that are outside, in big cities like this . . . So, unless we recognise that in order to achieve tino rangatiratanga, that we must empower Maori from wherever and in whatever group, then I feel that the cause and the case is lost.⁵

In closing, claimant counsel submitted that:

from the point of view of Article 2 of the Treaty of Waitangi and the concept of Treaty partnership . . . Waipareira represents a community of Maori. As I submitted in opening, the traditional hapu was and remains a community which is linked by kinship. That community, in Treaty terms, exercises tino rangatiratanga for such purposes as are consistent with its interests. It is difficult to see why the West Auckland Maori community cannot, for its own purposes, come together and exercise its own tino rangatiratanga for those purposes.

Waipareira, however, found its status downgraded from Treaty partner to charitable trust. This was recognised, by the CFA outreach worker most closely associated with Waipareira, as being a policy issue for CFA management, or the Crown generally, to address; but the challenge was not taken up. Waipareira claimed protocols were developed for consulting iwi, in the sense of tribes, but not Waipareira; Waipareira was disqualified from becoming an ‘iwi social service’ under the Children, Young Persons, and Their Families Act because it was not kin-based, while it could not become a ‘cultural social service’ for the purposes of the Act because it was not a Pacific Island or other immigrant ethnic group. The first round of services planning, by which the CFA assessed priorities for funding, involved no separate

4. Document B7, paras 4.2–4.9

5. Dr Sharples, oral evidence, first hearing, 1 September 1994, tape 1, side 1

meeting with Waipareira, nor a joint meeting of the Maori service providers in West Auckland.

(2) What is an ‘iwi’?

In this claim, both the claimants and the Crown used the term ‘iwi’ to refer to ‘traditional’ tribal bodies, groupings of hapu whose members are linked by descent. Waipareira did not claim to be an ‘iwi’, in the tribal sense, because membership is not on the basis of kinship, and the trust does not have a rohe, a customary territory over which it claims to exercise mana whenua. Rather, Waipareira described itself as a courageous attempt to recreate an ‘iwi’ environment for urban people who cannot trace their links to their traditional iwi, or who seek the comfort and solace of that environment in the urban context where they live.

However, Waipareira said that if ‘iwi’ is taken to mean ‘the people’, then it *is* iwi. In closing submissions, claimant counsel argued that:

until recently Crown agencies resolved the potential conflict [inherent in statutory and policy references to iwi] by taking a very liberal view of what constituted an iwi. That is by intentionally or unintentionally using that word in its literal sense meaning simply – the people – not necessarily a tribe and not necessarily kin connected. Thus an urban Maori authority could be an iwi authority simply because it was an authority representing ‘the people’. That certainly seemed to be a pragmatic and commonsense approach to dealing with the issue. Waipareira is not an iwi but is iwi. [Emphasis in original.]

The claimants alleged that, instead, the CFA retreated from the DSW’s initial view, written into its early contracts in 1991 and 1992, that the trust was its Treaty partner for the purpose of delivering social services. The trust argues that the CFA lost sight of the fact that the West Auckland Maori community was able to come together to exercise rangatiratanga for its own social welfare purposes.

(3) The relevance of ‘Puao-te-Ata-tu’

Both Waipareira and the CFA point to *Puao-te-Ata-tu* as a critical document in this claim. *Puao-te-Ata-tu* is the report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare, which in 1986 examined ways the department could improve its service to Maori clients. Under the chairmanship of the late John Rangihau, the committee made 13 recommendations in its report to the Minister of Social Welfare, outlining a comprehensive plan for integrating Maori perspectives into a bicultural department. The committee noted with alarm the statistics of Maori underachievement, especially among alienated younger people in urban areas. The solution it recommended was that Maori tribal structures be strengthened through greater power sharing, and that the Maori community play a larger role in developing policy and advice on matters which affect Maori people. It argued that the department was uniquely placed among Government agencies to facilitate this process, in part by coordinating Crown action on Maori welfare issues.

One of the issues underlying this claim, therefore, is whether the department, and thus the CFA, have interpreted the advisory committee's recommendations appropriately and are acting accordingly.

To help it analyse the evidence presented by the parties on the intent of the committee that wrote *Puao-te-Ata-tu*, and determine the proper meaning and application of the committee's findings, the Tribunal asked a member of the committee, Peter Boag, to assist it as an expert witness with this claim.⁶

(4) '*Puao-te-Ata-tu*' invites broad interpretation

The trust believes that the recommendations in *Puao-te-Ata-tu* do not bear out the DSW's (and the CFA's) contention that the report imposes on the department an interpretation that its Treaty partner can only be a kin group. It supports what it saw as the thrust of evidence given by Mr Boag, who said the committee's intention was that the report and recommendations should be interpreted permissively. The claimants argued that the advisory committee's recommended objectives for the DSW refer to 'attack[ing] all forms of cultural racism in New Zealand ... by ... harness[ing] the potential of all of its people, *and especially Maori people*, to advance' (emphasis added). Also, they said, the recommendation in *Puao-te-Ata-tu* which refers to training staff with regard to customary cultural preferences *and* current Maori circumstances and aspirations shows that the advisory committee did not have a rigid or restrictive view of Maori custom.

1.2.3 The Crown has failed to deliver in accordance with Maori cultural needs

(1) *Maori solutions to Maori problems*

The claimants challenged the CFA's funding policies and criteria, its management structure, and its administrative procedures which, they said, allowed the CFA to impose its own priorities and strategies over the trust's, rewarded activity rather than results, frustrated the trust's holistic approach to servicing its beneficiaries, and precluded funding for essential community development.

For example, in its own delivery of welfare services, the trust created employment and training opportunities for members at the same time. Such initiatives lay outside the CFA's area of responsibility. The trust's investment in business activities of its own commercially derived funds seemed to be questioned by the CFA, on the basis that the trust was in a position to subsidise its social services to an even greater extent than it had been doing.

The trust's stance was that training, employment, and business development were part of its long-term community development strategy, the aim of which was to

6. In 1986, Mr Boag was deputy chairman of the State Services Commission. Previously, he had been Assistant Director-General of Education, a position he attained after a career which included teaching, membership of the executive of the New Zealand Post Primary Teachers Association, and appointment as director of secondary education in the Department of Education. After serving on the advisory committee, Mr Boag was appointed Secretary for Internal Affairs, Local Government, the Arts, and Civil Defence. Throughout his public service career, Mr Boag led a variety of initiatives of vital concern to Maori. Since his retirement in 1990, he has been involved in negotiations between the Crown and Maori (doc E1, p 2).

reduce members' dependence on Government handouts. It argued that the trust was an efficient and effective service provider, and that it should be funded accordingly by the CFA. It said any expectation that the trust should spend a greater proportion of its own money, derived from commercial operations, on the narrow range of services funded by the CFA would stifle the uniquely Maori response the trust was making to its community's situation.

Dr Sharples said the Crown was demanding that Maori follow its own approach:

What I'm saying is, there's this government block, that they want everybody in a box that they understand or that fits in with their box, before they are prepared to fund it. And I think they should look at the Treaty and what it means and – Maori is Maori, and if there is a positive Maori initiative they should recognise it . . .
. . . There are different mindsets in terms of this thing and it's a question of those who are devolving the resources to come to terms that our way might be right. Until it happens, we're still left doing it your way, doing it the way CFA wants.⁷

(2) *Clash of views*

By the time that Waipareira was negotiating with the CFA over its funding contracts for 1993–94, the relationship between them was fraught with problems caused by, or at least exacerbated by, deep philosophical and ideological differences, communication problems, and conflicts over what was the proper way for the two parties to interact.

The trust believed it had a right to be involved in the CFA's key decision-making processes. It wanted to act as advocate for the needs of the West Auckland Maori community in relation to other communities. It wanted to set priorities as to which services to its community should get funding, to decide how welfare services should be delivered, and by whom.

It expected that when negotiations stalled, the senior management of the CFA would get involved. Instead, the CFA insisted that all decision-making over funding was delegated to local outreach workers. CFA managers rarely spoke directly to the trust. It was the breakdown of these negotiations that led to this claim being filed with the Waitangi Tribunal.

(3) *Wider State restructuring relevant*

The claimants argued that the restructuring of the public sector as a whole, under the State Sector Act 1988 and the Public Finance Act 1989, introduced a regime of accountabilities that disrupted what had previously been a more holistic approach by the Crown to welfare service delivery. They said Maori groups generally, and Waipareira in particular, had not been able to secure adequate levels of funding to enable them to offer a range of services in the integrated or holistic way that their Maori clients required. That was because Government agencies now had to purchase clearly defined outputs in narrowly defined policy areas, rather than empowering community groups who were working in their own way to achieve broader social

7. Dr Sharples, oral evidence, first hearing, 1 September 1994, tapes 2, 3

goals – goals which the Government shared. The CFA's approach to Maori welfare was said to be piecemeal and ineffective, contrary to that recommended in *Puao-te-Ata-tu*, which called for greater coordination among Government departments in order to empower Maori groups.

The trust particularly criticised the outcome of the mainstreaming of Maori Affairs from 1992 onwards, which made much less money available for Maori programmes. The trust also found that with the fragmentation and dispersal of Maori policy and programmes throughout the State sector, the provision of integrated services became much more difficult for it.

Dr Sharples suggested that the proper approach for Crown agencies is to recognise positive Maori developments and fund them in good faith, without imposing conditions that destroy the Maori character of the enterprise that is the key to its success.

1.2.4 Funding to West Auckland Maori was not equitable

As well as rights under article 2 of the Treaty, the trust claimed that, under article 3, the Maori community of West Auckland was entitled to an equitable share of funding for welfare services, whether delivered by Waipareira or some other group. Their counsel submitted that article 3 obliges the Crown not just to provide equality of treatment, but to overcome disparities and to achieve equity of outcome for all people, if necessary through affirmative action. The Crown supported this stance.

The trust said that census data and the caseloads of statutory agencies, including the police, the Youth Court, and the Children and Young Persons' Service, indicated that the proportion of West Auckland's funding targeted at Maori should have been higher than it was. They also argued that West Auckland generally should have received a larger slice of the national funding cake.

The trust also claimed that Maori service providers as a group were entitled to the benefit of affirmative action by the Crown. It argued that Maori providers suffer disadvantage compared with mainstream providers in that, because of their more recent entry to the welfare service sector, they lack a pool of suitably qualified and experienced staff to draw on, and have an organisational infrastructure and professional networks that are underdeveloped. Moreover, the trust alleged its share of funding fell more than 21 percent during the period complained of.

1.2.5 Findings and relief sought

The claimants ask the Tribunal to make findings that:

- (a) from the period 1991–92 to 1993–94, overall funding to Te Whanau o Waipareira in its service delivery contracts with the CFA fell 21.21 percent;
- (b) the Crown owes a Treaty obligation to address the social and other problems of West Auckland Maori (such as unemployment, poor health, and educational performance) through the funding of programmes targeted specifically at delivering welfare services to Maori in accordance with their needs;

- (c) the Crown has failed to provide funding for such programmes in accordance with the needs of the West Auckland Maori community;
- (d) Te Whanau o Waipareira, having been established to—
 - (i) address the results of the Crown’s own Treaty breaches; and
 - (ii) reconstruct traditional Maori structures and patterns in an urban context;
 is a Treaty partner representing the West Auckland Maori community;
- (e) the Crown has failed to recognise the representative status of Te Whanau o Waipareira and has failed to recognise that the trust is a Treaty partner;
- (f) the Crown owes Te Whanau o Waipareira a Treaty obligation to ascertain the needs of the West Auckland Maori community in terms of welfare services through consultation with the trust;
- (g) the Crown has failed to consult and has failed to ascertain the needs of the West Auckland Maori community;
- (h) the Crown owes West Auckland Maori a Treaty obligation to fund their needs in terms of delivery of welfare service programmes targeted to Maori in an equitable manner; and
- (i) the Crown has failed equitably to fund West Auckland Maori, whether by way of contracts to Te Whanau o Waipareira or otherwise.⁸

The claimants ask the Tribunal to recommend that:

- (a) the CFA formally recognise that Te Whanau o Waipareira is representative of the West Auckland Maori community and, for the purpose of the delivery of social welfare services, is its Treaty partner;
- (b) the CFA engage in a process of bona fide consultation with Te Whanau o Waipareira to ascertain the needs of the West Auckland Maori community in terms of the delivery of welfare services;
- (c) the CFA renegotiate with Te Whanau o Waipareira service delivery contracts for the year 1994 to identify contract figures which more accurately and equitably reflect the proportion of the West Auckland case load which can be attributed to the needs of West Auckland Maori;
- (d) the CFA establish systems which ensure accountability to the West Auckland Maori community in terms of funding for service provision and, in particular, systems which ensure that an appropriate and equitable proportion of CFA funds allocated to West Auckland be expended on programmes which are directly targeted at the needs of the West Auckland Maori community; and
- (e) the Crown meet Te Whanau o Waipareira’s costs in prosecuting this claim.⁹

8. Claim 1.1(e), paras 30–39

9. Claim 1.1(e); doc E6, para 1.4

1.3 THE CROWN'S RESPONSE

1.3.1 Kawanatanga has provided properly

The Crown said the issue before the Tribunal was the reasonableness of the CFA's dealings with Waipareira. It argued that the allocation of resources is a political matter, one for the Tribunal to review with caution. The question was, Has the Crown exercised its right of kawanatanga with due regard to the guarantees of the Treaty, and delivered 'quality kawanatanga'? The Crown said it had; it was entitled under article 1 of the Treaty to establish and implement social and welfare policies, and the CFA had properly fulfilled the Crown's Treaty obligations.

1.3.2 Article 2 does not apply to this claim

The Crown accepted that this case raised issues about the interface between Maori and the Crown; the position of non-tribal and pan-Maori organisations within Maori society, and the mainstreaming of services and funding previously 'ring-fenced' for Maori. However, it said article 2, which relates to the rights of collectives of Maori, had no application to this claim. It said article 2 confers rights on kin-based groups only; tribes and families in the English version, hapu in the Maori text of the Treaty. It said Waipareira did not meet the criteria of an iwi set out in the (now-repealed) Runanga Iwi Act 1990, which were agreed to by Maori prior to the Act being passed (although the Crown acknowledged that as time passes, those criteria might change).

But the Crown said even if Waipareira was recognised as an iwi, article 2 would not apply to this case, because Waipareira's activities, concerning training, employment, education and community development, were fundamentally distinct from issues of ownership of land, forests, fisheries, and other Maori taonga which are the proper focus of article 2.

1.3.3 The limits of consultation

The CFA acknowledged its duty to consult with Maori, whether they be tribal groups or pan-iwi, pan-Maori organisations. But it rejected any suggestion that the CFA should act at the behest of the community, and said consultation does not necessarily lead to agreement. So long as each party understands the other's position, then consultation has been adequate.

It noted that Maori have input to all policy developed by the DSW, through consultation carried out under a protocol described in its document *Te Wakahuia o Pua-te-Ata-tu*, published by its Social Policy Agency.

While the Crown accepted the value of Maori control over the provision of welfare and social services to Maori, it believed it was not appropriate for the department to specify in policy that only Maori or particular groups of Maori can or should provide welfare services to Maori. Nor should the department be expected to hand over public funds without any accountability back to the Crown. Articles 1 and 3 of the Treaty, and the Public Finance Act, allow the Crown to maintain control and to

account to Maori as a whole and to all New Zealanders; the Crown cannot abrogate its duties under article 1 to provide quality kawanatanga to all New Zealanders.

1.3.4 Article 1 permits State sector restructuring

The restructuring of the public sector, with the mainstreaming of Maori Affairs, and the introduction of the Public Finance Act with its accountability and reporting mechanisms, were part of the legitimate exercise of kawanatanga, according to the Crown. Teething problems were being sorted out and, in the end, the claimants had not established that they had been prejudiced by the restructuring. Waipareira did lose Mana and Maori Access funding for business development and job training, it was acknowledged, but this was mainstreamed to the Ministry of Education, the Labour Department, and elsewhere, not to the DSW.

Under the State Sector Act 1988 and the Public Finance Act 1989, the CFA's line of accountability to the people is indirect, through the Director-General of Social Welfare, the Minister, and Parliament. There was also a 'reciprocity' with the community, in that information and comment gathered from the community were fed into the political and administrative process. But the Crown said it did not have to account to any particular community for the appropriations made for Vote: Social Welfare, nor for the way that funding was allocated: those are article 1 functions of government. Still, the Crown maintained that the CFA's services planning, described in chapter 4, was fairer than the old 'community development' model, and the devolution of funding decision-making to the agency's local level was inherently more 'accountable' than the old system of 'batting to the top' (see sec 4.2).

1.3.5 *Puao-te-Ata-tu* promotes tribal rangatiratanga

The DSW said it had adopted bicultural policies expressed in *Puao-te-Ata-tu* and other documents, which required it to operate as equal partners with Maori in a culturally appropriate and responsive way, in accordance with Treaty principles. The Crown saw the whole emphasis of *Puao-te-Ata-tu* as being the reassertion of tribal links and identity wherever possible, although it recognised that the advisory committee did see some role for urban organisations in dealing with the social problems of Auckland and other urban areas.

Rangatiratanga was the 'key principle' the department was working to, to empower Maori to have control over their own destiny. The advice given by Maori to officials developing the policy reflected in the Children, Young Persons, and Their Families Act 1989 was that only iwi social service providers, meaning groups with a mandate from kin-based 'iwi' organisations, should be eligible to gain sole guardianship of Maori children. The director-general acknowledged that acting on that advice can create a dilemma for the department in cases where children do not know their tribal affiliations or have no links with their tribal organisations. The department was guided by the preponderance of Maori opinion as it picked its way through the dilemma.

1.3.6 Welfare funding not only for ‘iwi’

However, the CFA’s funding for welfare services is not intended to redress Treaty grievances under article 2. Instead, the CFA’s task is to ensure that *all* Maori (traditional kin-based groups, modern social groupings, and individuals) have an equitable share of all the social benefits of citizenship. While the Crown accepts the value of Maori delivery of welfare services to Maori clients, it said those services must be appropriate and in accordance with objectively assessed need.

1.3.7 Maori entitlement to affirmative action acknowledged

The Crown was well aware of the negative statistics of Maori social participation and achievement, and said the targeting of resources to Maori was express acknowledgement of their special needs and problems in the welfare area. In particular, the high level of funding to Waipareira showed that the Crown regarded Waipareira as an important service provider, in a relationship with the Crown which was established by its funding contracts.

Eligible individuals were entitled to welfare services, but so were groups with special needs because of their disadvantage. On that basis, Waipareira was entitled to funding under article 3, and it did not need to assert iwi status or article 2 rights. Conversely, Waipareira could not claim exemption from the political and funding constraints on the CFA.

1.3.8 Representation and urbanisation

The Crown sought palpable proof of the trust’s mandate before it would accept that Waipareira represents West Auckland Maori; and Crown counsel also argued that the Tribunal lacked the jurisdiction to make any finding on this aspect of the claim. Further, it said urban migration was not an issue for this Tribunal, because this claim was granted urgency as a contemporary claim concerning the CFA’s funding of Waipareira, and adequate evidence was not presented. We deal with these two matters now.

1.4 FINDINGS ON REPRESENTATION AND URBANISATION

1.4.1 Representation

The Crown questioned the Tribunal’s jurisdiction to make a finding on whether or not Te Whanau o Waipareira represented ‘the West Auckland Maori community’. Crown counsel asserted in closing submissions that section 30 of Te Ture Whenua Maori Act 1993 ‘gives special jurisdiction to the Maori Land Court in respect of issues of representation, as a mechanism for resolving differences between iwi or hapu’ and thus the Tribunal’s jurisdiction to consider or determine these issues was limited.¹⁰ In

10. Document E7, para 164

support of this assertion, the Crown cited the Waitangi Tribunal's *Report on South Auckland Railway Lands*.¹¹

The Tribunal does not accept the submission that section 30 is a limit on the Tribunal's jurisdiction in any way, nor that the South Auckland railway lands report supports the Crown's submission. Section 30 represents but one avenue for the determination of particular representational issues; it does not exclude others being tried. We believe that the Tribunal's report makes this clear when it states, 'We note that the Tribunal may not need to resolve this issue in future, *another* process for determining representation having now been provided' (emphasis added).¹²

In any case, the Tribunal does not consider that it is necessary to deal with this question of representation in order to answer the essential question: whether Te Whanau o Waipareira has rights under the Treaty.

The Tribunal agrees with claimant counsel that Treaty rights most regularly concern collective rights which reside in a community. We observe to begin with that to substantiate a claim to represent a community one must first define the community.

The claimants asserted that Waipareira 'exercises a mandate in respect of a community of Maori who have come together for the purpose of maintaining cultural integrity in an urban environment' (as distinct from the tangata whenua, whom Waipareira never claimed to represent), and also that it is the largest service provider in West Auckland.¹³ The Tribunal considers that both claims are significant in establishing the trust's status as a significant Maori group within West Auckland whose services are available to all Maori of that district, but neither statement proves that it represents 'the West Auckland Maori community'.

Importantly, however, it is our view that Waipareira does not have to represent every individual Maori in West Auckland in order to qualify for the recognition of its rangatiratanga by the Crown. The traditional hapu of West Auckland clearly have interests in terms of the Treaty without having to demonstrate that they represent 'the West Auckland Maori community'. Each group simply represents its own community, and there can be more than one Maori community in West Auckland. No doubt there are other Maori groups in West Auckland as well.

In the Tribunal's view it is the structure, organisation and values of Te Whanau o Waipareira that are critical, for it is these dimensions of its members' social life that allow consideration to be given to the question of the relevance of the Treaty for their claim. In other words, is the whanau itself a community with Treaty interests? Therefore, we did not find that Te Whanau o Waipareira represents 'the West Auckland Maori community'; but that the proper focus of the questions to be asked and answered about rangatiratanga in this claim is Waipareira itself.

11. Waitangi Tribunal, *Report on South Auckland Railway Lands*, Wellington, Waitangi Tribunal, 1993

12. Ibid, p 2

13. Document E6, para 10.8

1.4.2 Urbanisation

In reporting on this claim we do not consider whether the Crown played a role in the creation of Te Whanau o Waipareira by (deliberately or otherwise) promoting urban migration by Maori, with the consequent breakdown of traditional tribal support networks. The Crown objected to the Tribunal making a finding on the Crown's role in the urbanisation of Maori on procedural grounds. As we have mentioned, this hearing was granted urgency on the basis that it was a contemporary claim, which did not require historical research. The Tribunal accepts that although there was some evidence that land loss, town planning laws and housing policies exacerbated the urbanisation of the Maori people, there was insufficient evidence and argument on that matter and it could not be part of the Tribunal's inquiry at this time. In any event it makes no difference to the outcome of our consideration of this claim.

1.5 FINDINGS ON TREATY INTERPRETATION

Our findings on Treaty interpretation are outlined in the summary, and particular aspects are now elaborated on.

The Tribunal is established under the Treaty of Waitangi Act 1975 to make recommendations on claims relating to the practical application of the principles of the Treaty (see the long title and the preamble), not to adjudicate on the basis of its strict terms. In exercising its functions it is directed to consider not only the meaning of the Treaty but its effect (preamble and section 5(2)). Similarly, in considering claims, the issue, in terms of section 6(1) of the Act, is whether particular Crown enactments, policies, practices, or omissions are inconsistent not with the Treaty's terms but with its principles. This legislative direction is reinforced by judicial opinions that the 'spirit' rather than the strict text of the Treaty should be considered in its interpretation and application, and that, in giving practical effect to the Treaty's principles, a generosity of spirit is required. This is especially important in dealings between different cultures, where neither party can claim to have all the answers for the other.

The formulation of Treaty principles has been discussed by the Tribunal and the courts in reports and decisions over the years. We consider counsel's arguments in this claim followed an overly narrow interpretation of the Treaty's words. It must be asked, Having regard to the Treaty's terms and the circumstances of its execution, what are the essential principles involved?

The first important principle as we see it is the principle of rangatiratanga which requires, in the circumstances of this case, the Crown's acknowledgement of Maori control over tikanga, or Maori custom and values. Maori communities are entitled to identify themselves, and to manage their affairs, in accordance with Maori custom and values. Furthermore, if the rangatiratanga exercised by a community in respect of welfare services requires additional Crown protection, in the form of support services for significant Maori groups, it should be delivered so as to enhance the capacity of the group to determine the programmes most needed and how they should be

managed, at least to the extent practicable and reasonable having regard for the Crown's legitimate responsibilities to the nation as a whole. The Crown's response, in other words, should enhance rangatiratanga. It should not be made with undue prescription so as to maintain a regime of dependency or subservience but be given in a manner that respects Maori group or community autonomy. It should recognise that Maori have a special status in the life of the country as the first inhabitants and, as Treaty partners, the people who gave the rights of European settlement and national governance in the first instance. If need be it should accord their interests an appropriate priority.

The second principle is that the Treaty promised protection in order that Maori would fully benefit from the settlement of Europeans to which they had generously agreed. That promise, in our view, was for all Maori and according to the circumstances that might pertain from time to time. It extends today to non-kin based Maori communities that, through choice or by dint of circumstance, do not or are not able to participate in the traditional tribal way.

In elaboration of these views and for the purposes of this claim, the matters noted in the summary are of critical importance:

- (a) first, that the Treaty was directed to all Maori, not just to tribes;
- (b) secondly, that, as a living document, the Treaty speaks to Maori according to their circumstances from time to time irrespective of their original tribal structures;
- (c) thirdly, that the Treaty was directed to the protection of Maori interests generally and not merely to the classes of property interests specified in article 2;
- (d) fourthly, that the principle of rangatiratanga in the sense of admitting rights of autonomous action and management, applies in a variety of situations, including in respect of the social and political processes of Maori group formation, leadership, and representation; and that the maintenance of rangatiratanga by particular Maori groups or within particular Maori communities, tribal or non-tribal, is an indicator of whether that group deserves special recognition; and
- (e) fifthly, that the cession of kawanatanga and the acknowledgement of rangatiratanga gives rise to the concept of partnership, a concept that serves to define how Maori and the Crown should relate to each other. Although the power imbalance between the parties to the Treaty currently lies heavily in the Crown's favour, equilibrium in the partnership should be maintained by the weight of the Crown's duty to protect rangatiratanga. In this role, the Crown has a double trusteeship: a duty to protect the Maori duty to protect and an obligation to strengthen Maori to strengthen themselves.

We turn now to discuss each of these, elaborating in particular our understanding of the principles of rangatiratanga, and the partnership relationship which arises out of the Crown's protection of rangatiratanga in return for Maori's generous gift of kawanatanga.

1.5.1 The status of 'iwi' under the Treaty

The point that the Treaty was directed to all Maori needs emphasis in view of some current opinions that Treaty rights apart from those of equal citizenship accrue only to iwi, or tribes, and in view of the regular references now made to iwi, as tribes, in legislation and official policy.

The Crown for its part said that article 2 applies only to tribes and families, or hapu, as specified in the texts of the Treaty. It said that outside this social and political context, Maori as individuals or in other groupings are provided for under article 3, which offers no protection beyond that given to any citizen (including affirmative action to overcome disadvantage suffered by a class of people).

Throughout the hearings, however, debate between the claimants and Crown repeatedly returned to the meaning of the term 'iwi'. In current popular usage, 'iwi' has ideological value, to distinguish between large Maori groups whose identity is derived by reference to a more or less remote ancestor, and so-called 'pan-tribal' or non-tribal groups which have come together on some other basis such as co-residence or the shared interests of members.

Iwi, hapu and whanau are often used together (so much so in this claim that Mr Boag, the Tribunal's expert witness, described the expression as a 'mantra') in a way that suggests a hierarchy of descent groups, from a broad-based numerically strong iwi or tribe, made up of a number of hapu federated together, with the hapu, in turn, comprising a number of smaller but even closer-knit whanau or extended family groups.

The conception that all these groups function in much the same way, but are found at different levels of the organisational hierarchy (ie, that hapu are sub-divisions of iwi, and whanau are sub-divisions of hapu) may be a Eurocentric view of Maori society, one where power is seen to reside at the top with its exercise delegated to the people below.

The Maori reality prior to European contact appears to have been quite different. It was the whanau and hapu that were the effective and autonomous units of Maori social and political organisation. These provided a person's primary source of security and identity, because members lived and acted together as a community. Rangatira signed the Treaty on behalf of hapu, not 'iwi'.

Hapu who were linked by common descent from a more remote ancestor did, from time to time, pursue a greater benefit from a particular undertaking by voluntarily and temporarily submerging their separate identities and federating together as an iwi under a single paramount leader. The wider authority depended however on the support from below.

In addition, there is a view that genealogy was the critical determinant of membership of all tribal groups. While a tribal or family group may be identified in terms of ancestry, descent is not the sole criterion for membership. In traditional Maori society, prior to European contact, descent determined eligibility, but Maori custom required that inherited rights in the community be maintained by an ahi ka, a burning fire that was kept alive through residence or continued association. Status as a member of a hapu depended on commitment and contribution to community

undertakings. So a person's hapu affiliation could change during their lifetime, as a result of defeat in battle, family feud, strategic alliance or change of residence.

Whanau or 'extended families' were not and are not households. The closest of kin, members of a single whanau, could identify with different hapu (eg, where brothers and sisters were raised by different grandparents). The identity of the group could also change. Whanau and hapu were constantly coalescing, splitting up and regrouping in a dynamic state of flux.

Following European colonisation the term 'iwi' came to signify the larger aggregations of hapu that more regularly came together for political purposes. European ethnologists saw these as tribes and hapu as sub-tribes, when in reality the hapu were the tribes while various combinations of hapu, combinations that constantly changed, could constitute an iwi or a people. The incorporation of outsiders was also a feature of Maori society even prior to the signing of the Treaty.

'Iwi' also meant simply 'the people', and could refer, for example, to the people of a district, the people of a country, or the people engaged in an expedition. While usually of the one kin-group, blood ties were not in fact the test, for in some expeditions, as in the migrations under Te Rauparaha, the iwi, or the people, came from tribes far and wide. So, too, in the Treaty, the Crown in the person of Queen Victoria refers to 'nga tangata o tona iwi', the people of her nation, meaning settlers and migrants from England.

Today, 'iwi' can mean either the people of a place or a large tribe composed of several dispersed groups.¹⁴

Clearly, descent does not provide a complete explanation of Maori identity, nor of the dynamics of group formation and interaction, prior to European contact or since. Ancestry provides a grid, or a framework, but there is more to Maori identity than that. Especially since the Second World War, 'traditional' tribal communities have been disrupted and dislocated, and customary processes of group formation have been exposed to new influences. For Maori today, membership of churches, cultural groups, and sports clubs, for example, may contribute significantly to the way they identify themselves as Maori, and to the way their Maori identity is acknowledged by others.

For the purposes of Treaty interpretation, however, it is to be noted that, in terms of the Treaty's words, the guarantee of lands and fisheries in the Maori text of article 2 is 'ki nga Rangatira, ki nga hapu, ki nga tangata katoa' – to the chiefs and tribes and to all [Maori] people. It is thus apparent that the Treaty used 'hapu' for tribes, not 'iwi', lending support to the opinion in the *Taranaki Report* that at 1840 the hapu was the primary political unit of the Maori people. In the strict words of the Treaty, 'iwi' would not be a useful term to describe the Crown's Treaty partner today, for iwi are not provided for.

14. This report follows the opinion on 'iwi' in Waitangi Tribunal, *Appointments to the Treaty of Waitangi Fisheries Commission Report*, Wellington, Department of Justice: Waitangi Tribunal Division, 1992 (see sec 6.2); and the terminology in Waitangi Tribunal, *The Taranaki Report: Kaupapa Tuatahi*, Wellington, GP Publications, 1996 (see sec 1.1), and Waitangi Tribunal, *Muriwhenua Land Report*, Wellington, GP Publications, 1997 (see sec 2.2).

More importantly, however, the general promise of protection, in article 3, is extended to ‘the Natives of New Zealand’, or in the Maori text, ‘nga tangata maori katoa o Nu Tirani’ (all the Maori people). The principle of protection is referred to later. In the meantime we observe that while the claimants claimed Treaty rights as a Maori group exercising rangatiratanga, the more direct basis for their Treaty rights is simply that the Queen’s protection extended to all Maori. The question of rangatiratanga is more particularly relevant to whether a Maori group operates in such a way as to attract special consideration, and to the manner in which that protection is provided.

1.5.2 A living document

The second point, that the Treaty speaks to all Maori according to their circumstances from time to time and not simply as they were at 1840, reflects findings in previous Tribunal reports and follows opinions of the Court of Appeal. Thus, in the *Report on the Motunui–Waitara Claim* of 1983, the Tribunal said:

A Maori approach to the Treaty would imply that its wairua or spirit is something more than a literal construction of the actual words used can provide. The spirit of the Treaty transcends the sum total of its component written words and puts narrow or literal interpretations out of place.¹⁵

These words were subsequently cited by Justice Bisson in the Court of Appeal in *New Zealand Maori Council v Attorney-General* in the context of the State-Owned Enterprises Act. Adverting to the same, Cooke P said:

The differences between the texts and the shades of meaning do not matter for the purposes of this case. What matters is the spirit. This approach accords with the oral character of Maori tradition and culture. It is necessary also because the relatively sophisticated society for whose needs the State-Owned Enterprises Act has been devised could not possibly have been foreseen by those who participated in the making of the 1840 Treaty.¹⁶

There were similar comments from other judges of that court, Justice Richardson observing:

it is readily understandable that much of the contemporary focus is on the spirit rather than the letter of the Treaty, and on adherence to the principles of the Treaty rather than the terms of the Treaty. . . .

Whatever legal route is followed the Treaty must be interpreted according to principles suitable to its particular character. Its history, its form and its place in our

15. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, 2nd ed, Wellington, Government Printing Office, 1989, sec 10.1

16. *New Zealand Maori Council v Attorney-General* [1987] 1 NZLR 641, 663 (CA)

social order clearly require a broad interpretation and one which recognises that the Treaty must be capable of adaptation to new and changing circumstances as they arise.¹⁷

and:

The way ahead calls for careful research, for rational positive dialogue and, above all, for a generosity of spirit.¹⁸

He also noted:

Finally, the last paragraph of the Treaty contains in the English text the significant statement that those subscribing ‘accept and enter into the same *in the full spirit* and meaning thereof’... [Emphasis in original.]¹⁹

The Tribunal’s 1988 *Report on the Muriwhenua Fishing Claim* added a caution:

It may very well be that the colonial Government would have ignored the Treaty in any event, no matter how well it was framed, but it also appears that it was largely through the literal construction placed upon it that it was either ignored or conveniently misread.²⁰

Dealing with a contention that Maori fishing rights were fixed according to the definition of territorial seas at 1840 it was said:

We are of opinion that *New Zealand Maori Council v Attorney-General* is authority for the proposition that the Treaty is always speaking, and the duties to which the Treaty gives rise, apply to fullest extent practicable according to the circumstances from time to time prevailing.²¹

There are many more opinions, for example:

The principles of the Treaty have to be applied to give fair results in today’s world.²²

and:

As was said in the *Maori Council* case, the Treaty is a living instrument and has to be applied in the light of developing national circumstances.²³

1.5.3 Protection

The third point, the promise of protection, was undoubtedly that Maori might benefit from the settlement of Europeans and European governance, for governance and the

17. *New Zealand Maori Council v Attorney-General*, pp 672–673

18. *Ibid*, p 673

19. *Ibid*, p 681

20. Waitangi Tribunal, *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, 3rd ed, Wellington, GP Publications, 1996, sec 11.3.6(c)

21. *Ibid*, sec 11.3.5(b)

22. *Tainui Maori Trust Board v Attorney-General* [1989] 2 NZLR 513, 530 (CA), per Cooke P

23. *Tē Runanga o Muriwhenua Inc v Attorney-General* [1990] 2 NZLR 641, 655 (CA), per Cooke P

settlement of Europeans were the substantial gifts made in return. Protection was a fundamental Treaty principle in our view. In fleshing out the Treaty's bare terms by reference to the surrounding history,²⁴ which the Tribunal has recorded in previous reports, there is ample evidence of the earnest intent that Maori should benefit from the new developments that the Treaty ushered in and under the mantle of the Queen's protection.

In this respect, the Treaty itself is somewhat sparse, enumerating the main concerns of the time – lands, estates, forests, and fisheries – but the principle found expression in article 3, that 'Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection'. This passage, in our view, and having regard to the context of the Treaty's execution, is to be read separately from the words that follow – 'and imparts to them all the Rights and Privileges of British Subjects' – so that article 3 contains two important messages, not one as Crown counsel assumed: the protection of the Maori as a people and the assurance to them of equal citizenship rights.

It is thus important to seek the principle in applying the Treaty to today's world and not to rely too literally on the particular words in the articles. As the Tribunal pointed out in the 1983 *Report on the Motunui–Waitara Claim*:

It [the Treaty] was not intended to merely fossilise a status quo, but to provide a direction for future growth and development. The broad and general nature of its words indicates that it was not intended as a finite contract but as the foundation for a developing social contract.²⁵

This was echoed in the Court of Appeal: 'The Treaty has to be seen as an embryo rather than a fully developed and integrated set of ideas.'²⁶

In his text *The Treaty Now*, William Renwick puts the position this way:

The principle that shines most clearly through the text of the Treaty is the principle of protection. It was, the preamble states, because Queen Victoria regarded the 'Native Chiefs and Tribes of New Zealand' with 'Her Royal Favour' that she was 'anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order.' Article 3 'extends' to them 'Her royal protection.' This commitment on the part of the Crown is as explicit as it is solemn.

It is also linked specifically to the guarantees that are given to the chiefs in article 2 of the English text for 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 to retain the same in their possession.' This guarantee of protection is central to several claims that have already been heard by the Tribunal and it will be central to many more in future. But although the principle

24. For example, the report of the select committee on Aborigines (British settlements) to the British House of Commons in 1837, the formation of the Aborigines Protection Society by five members of the 1837 committee 'to watch over and protect the interests of the Natives', the operations of the Church Missionary Society, the instructions from Lord Normanby to Governor Hobson in 1839, and the oral statements and Maori responses accompanying the Treaty's signings.

25. *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, sec 10.3

26. *New Zealand Maori Council v Attorney-General*, p 663, per Cooke P

can be easily stated, its practical application in the vastly changed circumstances of the late twentieth century raises very difficult questions of equity and public policy.

The Tribunal has had to wrestle with these issues in its *Orakei*, *Muriwhenua* [Fishing], and *Waiheke* Reports. It is clear from the instructions that Hobson was given when he set out to negotiate a treaty that the British Government expected Maori to be left with enough lands to provide for their own future needs. Only land that Maori could alienate 'without distress or serious inconvenience to themselves' was to be purchased. Article 2 is to be interpreted in the light of those intentions. And what is the force of the guarantee of protection? Was it a passive duty of the Crown, or one that called for an active, continuing commitment on its part? The Waitangi Tribunal has concluded that the duty to protect Maori interests is an active one. The Court of Appeal has endorsed that conclusion.²⁷

Looking to the broad purpose of the Treaty, to achieve a European settlement where Maori interests would still be protected, the Tribunal considered in the *Report on the Muriwhenua Fishing Claim*:

Maori were protected in their lands and fisheries (English text) and in the retention of their tribal base (Maori text). In the context of the overall scheme for settlement, the fiduciary undertaking of the Crown is much broader and amounts to an assurance that despite settlement Maori would survive and because of it they would also progress.²⁸

And as we have mentioned, the protection formally expressed in article 3 was directed to all Maori, not specifically to tribes. It also embraces tikanga or custom, a point we will return to shortly.

1.5.4 Tino rangatiratanga

(1) *Application in modern circumstances*

The principle of tino rangatiratanga, that the Crown should acknowledge and foster aboriginal autonomy and self-management, has most recently been expounded on in the *Taranaki Report*, but its application in modern settings has been considered by the Tribunal and the courts in a variety of situations – the management of fishing, land development, resource management practice, Maori language retention, and broadcasting, to name only some.²⁹ Thus the principle of rangatiratanga may be applied to a variety of Maori activities each with the goal of promoting a Maori responsibility for Maori affairs.

27. William Renwick, *The Treaty Now*, Wellington, GP Books, 1990, p 29

28. *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, sec 10.5.4

29. See Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau Claim*, 2nd ed, Wellington, Department of Justice: Waitangi Tribunal, 1989; *Report of the Waitangi Tribunal on the Waiheke Island Claim*, 2nd ed, Wellington, Government Printing Office, 1989; *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies*, Wellington, Brooker and Friend Ltd, 1990; *The Ngai Tahu Sea Fisheries Report 1992*, Wellington, Brooker and Friend Ltd, 1992; *The Mohaka River Report 1992*, 2nd ed, Wellington, GP Publications, 1996; *Report of the Waitangi Tribunal on the Te Reo Maori Claim*, 4th ed, Wellington, GP Publications, 1996; *The Taranaki Report*; *Report of the Waitangi Tribunal on the Motunui-Waitara Claim*; *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*

But which modern Maori communities, or which Maori organisations servicing Maori communities, should be recognised by the Crown for these purposes, given that many may form today, possibly alienated from their traditional lands and fisheries, and the bona fides of some may be in question? We do not attempt to provide a prescriptive list of criteria, but consider that the exercise of rangatiratanga, albeit in a modern setting, is a critical indicator of a community that may so qualify.

What, then, is rangatiratanga, in this latter context? To answer that we have found it necessary to delve more deeply into its nature and meaning. In our view, there are at least two helpful approaches to defining a Treaty-oriented concept of rangatiratanga, short of a comparative evaluation of a substantial number of case studies. One is to have regard for a considered Maori opinion. Another is etymological.

(2) A considered Maori opinion

Taking the first approach, the most authoritative discussion so far is contained in the New Zealand Maori Council's *Kaupapa*.³⁰ It was presented to the Government after a series of hui and a two-year study by a co-opted committee of experts. Accepted by both the Government and the Opposition, it eventually became the philosophic basis of Te Ture Whenua Maori Act 1993. The opinion defines rangatiratanga as trusteeship; that is, the relationship between individuals acting as trustees and their beneficiaries in relation to an estate:

In its essence it [rangatiratanga] is the working out of a moral contract between a leader, his people, and his god. It is a dynamic not static concept, emphasising the reciprocity between human, material and non-material worlds. In pragmatic terms, it means the wise administration of all the assets possessed by the group for that group's benefit: in a word trusteeship. And it was this trusteeship that was to be given protection [by the Crown], *a trusteeship in whatever form the Maori deemed relevant*. [Emphasis added.]³¹

For Maori, rangatiratanga has both sacred and secular aspects, neither of which should be isolated from the other. So, for example, even commercial activity may be subject to ritual constraints. This is especially true where rangatiratanga applies to taonga, as is envisaged in article 2. While the term 'taonga' is not easily defined, a spiritual link with the people and an obligation on them to protect it for future benefit is commonly a critical element, as is conveyed, for example, in the following pepeha:

Kia uhia rano te mana, te ihi, te wehi, te tapu a te Atua ki runga, katahi ka waiho ai ki nga kaitiaki hei manaaki ma nga whakatupuranga e tupu ake – he taonga kei reira.

A property (material or non-material) becomes a taonga when, with divine blessing, it is entrusted for the benefit of future generations.

The 1840 context of rangatiratanga was of course the face-to-face community, the whanau or hapu, whose members had a shared heritage and territory. Suburban

30. New Zealand Maori Council, *Kaupapa: Te Wahanga Tuatahi*, 1983

31. Ibid, p 5

communities of transient and unrelated Maori did not exist nor were they contemplated. Nevertheless the Maori Council, bearing in mind the consequences of urbanisation, deliberately did not limit rangatiratanga to the hapu. Neither should it have done, because the Treaty itself refers to Crown protection being extended, not only to rangatira and hapu, but to all (Maori) people; that is, 'ki nga tangata katoa', without further qualification. As the council said:

Rangatiratanga takes many forms today, and many exercise it over their people and their heritage in more than one way. . . . Whatever their outward form, each [mode of rangatiratanga] is rooted in a pre-European tradition where those who lead have obligations as well as rights, where, irrespective of lineage, they have to prove themselves in service, and where they are at all times accountable to those for whom they are trustees. While this is well understood among Maori people in general, we take this opportunity to make such rangatiratanga explicit, to give it the priority accorded by the Treaty of Waitangi, to demonstrate where appropriate its relevance for the conservation, use and development of the resources of the Maori people, and to affirm that it is the underlying common ingredient in all legislation concerning their welfare. Rangatiratanga is, in short, the single most potent factor in Maori social organisation and the most effective catalyst for constructive change.³²

(3) *An etymological approach*

In following an etymological approach, *A Dictionary of the Maori Language* shows that rangatiratanga is based on the concept of atawhai:

Ko te rangatiratanga o te wahine nei, he atawhai ki nga tangata o tona iwi.

The rangatiratanga of this woman is in the kindness she shows the people of her tribe.³³

Atawhai in turn is about showing kindness and fostering.³⁴ 'Showing kindness' accords with Bruce Biggs's view of rangatiratanga being about 'caring'; while 'fostering' is relevant to the present claim because the latter is about caring for non-kin (though not to the exclusion of kin) and not least about 'nurturing', that is, about developing.³⁵

32. *Kaupapa*, p 6. In his foreword, Sir Graham Latimer, the president of the New Zealand Maori Council, submitted *Kaupapa* as guidelines for Maori land legislation, but he also noted:

The Council is well aware that recent decades have intensified the urbanisation of Maori people begun during World War II and increased their problems of adjustment to a new economic and cultural order. There is, nevertheless, a lack of adequate information about these complex and volatile processes and we will therefore be urging the appointment of a Royal Commission to inquire into them. Only on the basis of the facts that a comprehensive investigation can produce will we be able to make reasoned recommendations for a body of laws to protect and sustain our people forced by circumstances to live away from their land. We would expect the inquiry to include in its focus matters of health, education, employment, housing, justice, committee and tribal structures, language and culture.

33. H W Williams, *A Dictionary of the Maori Language*, Wellington, Government Printer, 1992

34. Ibid

35. B G Biggs, in I H Kawharu (ed), *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi*, Auckland, Oxford University Press, 1989, p 310

(4) Observations on the exercise of rangatiratanga

A number of observations can be made about the concept of rangatiratanga as it is described here.

In contrast to the way it is often interpreted today, to mean autonomy, sovereignty, authority, or control – that is, as the exercise of rights – these opinions emphasise that rangatiratanga also concerns responsibilities, duties, obligations, service, and accountability – the other side of the same coin. Further, both leaders and supporters are equally important in the exercise of rangatiratanga – leaders cannot act decisively, creatively, boldly – effectively – without the respect, loyalty, and trust of their community. Both leaders and supporters owe each other reciprocal rights and duties.

It is the reciprocal relationship of rangatiratanga between leadership and membership that binds people together in a Maori community. The boundaries may be permeable – members can come and go – but the community can be discerned from the exercise of rangatiratanga.

Rangatiratanga resides in a community. While legal structures may be established by Maori groups for their own purposes, they merely reflect or approximate the locus of rangatiratanga, and the legal structure should not be mistaken for the community. A group that does not act as a community (whatever its legal constitution) cannot properly be said to exercise rangatiratanga.

Rangatiratanga is not absolute. The character of rangatiratanga depends on the internal dynamics of the community, and it may well fade around the edges, and can change over time.

In making any assessment of the rangatiratanga asserted by a Maori group, the Crown must demonstrate good faith and act at all times to enhance rangatiratanga; just as it did at Waitangi in 1840 when it accepted without question the bona fides of the rangatira who signed the Treaty. The Tribunal put it this way when considering a related question in the *Maori Development Corporation Report*:

As we have attempted to explain, tribalism is the essence of Maori life. Further, it was recognised as such by the Crown in its Treaty guarantee of rangatiratanga. Therefore, the matter is properly one for conscientious exploration by both Treaty partners. We would suggest that while Maori must be ultimately responsible for determining the basis for and identity of any novel pan-Maori entity, the Crown's part in facilitating that determination is equally vital.³⁶

The rangatiratanga of the group can extend to taonga. The relationship between rangatiratanga and taonga is as subject to object. The exercise of rangatiratanga over taonga proceeds from the perception that the people and taonga are part of the same universe, regulated by the atua (gods). In exercising care and protection, nurturing, conserving and maintaining taonga for the future benefit of the group (commonly called kaitiakitanga), rangatira have always sought divine sanction for the responsible use of those taonga.

36. Waitangi Tribunal, *Maori Development Corporation Report*, Wellington, Brooker's Ltd, 1993, sec 7.4

(5) *Rangatiratanga and community*

Rangatiratanga, then, is grounded in reciprocity: a reciprocity between rangatira and their community. Rangatira are the quintessential leaders of Maori society. Their leadership focuses not on self-interest but on the survival of their community at a level of maximum advantage. The heroes of the Maori world have been those who have applied these principles with fortitude and imagination. Those who followed have echoed their spirit. A relationship of rangatiratanga between leaders and members is how a Maori community defines itself; it gives a group a distinctly Maori character; it offers members a group identity and rights. In short, rangatiratanga applies to much more than the customary ownership of lands, estates, forests, fisheries and other taonga. It describes a value that is basic to the Maori way of life, that permeates the essence of being Maori.

(6) *Crown protection of rangatiratanga*

As was noted by the Tribunal in the *Muriwhenua Land Report*, it was stated when the Treaty was signed, in response to Maori questioning, that the Maori custom would be respected and protected.³⁷ In article 3, the Crown's protection applies in respect of 'nga tikanga katoa' – all customs and values – just as it did to those of British subjects; and the term 'taonga' in article 2 encompasses all those things which Maori consider important to their way of life, which rangatiratanga so clearly is. For so long as there is adherence to such fundamental values as rangatiratanga entails, Maori custom survives, although in a number of new institutions and forms, and is guaranteed Crown protection.

(7) *Protection for Maori people generally*

It thus appears that rangatiratanga may be possessed by Maori in diverse communities or by the Maori as a people, and is not something confined to tribes. Indeed following European settlement it became customary to refer to the leaders of several types of new groups as rangatira, and thus as exercising a rangatiratanga. The principle of rangatiratanga appears to be simply that Maori are guaranteed control of their own tikanga, including their social and political institutions and processes and, to the extent practicable and reasonable, they should fix their own policy and manage their own programmes.

This is consistent with the preamble in the Maori text of the Treaty of Waitangi where the Queen expresses her desire to preserve the general Maori authority of the chiefs and tribes, their rangatiratanga or autonomy, and also their lands, as separate items, and not only their authority in respect of their lands and other properties listed there.³⁸ It is also consistent with historical opinion of Maori expectations when the Treaty was signed.

Yet the Crown contended that even if rangatiratanga was something that generally applied, it was guaranteed in the Treaty only in the terms of article 2, and there it

37. *Muriwhenua Land Report*, sec 4.2

38. The text in Maori reads 'kia tohungia ki a ratou o ratou rangatiratanga, me to ratou wenua'. 'Rangatiratanga' is in the plural form, suggesting its multiple facets, while land is singular.

applied only to traditional kin-based groups and to the management of lands, estates, forests, fisheries and other properties.

We consider the article is merely reflective of an intention that rangatiratanga would generally be maintained. The article relates to the primary incidents of rangatiratanga as seen by the Treaty drafters at 1840. In looking to the overall purposes of the Treaty, however, and the statements at the Treaty signings that the chiefs and Maori law and custom would also be acknowledged, and in reading article 2 and article 3 with the provision in the preamble above cited, we consider it was intended that Maori rangatiratanga would be generally respected, not limited to lands and fisheries in the way described, and that as a result a special relationship with the Crown would be maintained. Certainly this was the expectation of the chiefs as is borne out by the way they expected to relate to the Governor at the time and in the first post-Treaty decades, as the *Muriwhenua* and *Taranaki* reports show, and it is doubtful that Maori would have signed the Treaty were this type of relationship not generally maintained. That this guarantee applied generally and was not limited to the tribes, has already been referred to.

We would not therefore read article 2 of the Treaty as circumscribing the operation of rangatiratanga but rather as reflective of it, and of the pervasiveness of rangatiratanga as a cultural norm. The principle now falls to be determined according to the new circumstances that apply in the late twentieth century.

(8) Protection for Maori as a people

The question is whether, in this case, the Crown sufficiently upheld the principle of tino rangatiratanga. We note in this context the significant observations of Justice McGechan in the Maori option case – *Taiaroa v Minister of Justice* – that, while he would not attempt to state the full content of tino rangatiratanga preserved in article 2, he would ‘readily accept it encompassed a claim to an ongoing distinctive existence as a people, albeit adapting as time passed and the combined society developed’.³⁹

That the Tribunal and the courts have viewed the principle of rangatiratanga as generally applying, that is, as a right of autonomy in a variety of situations neither restricted to tribes nor confined to the management of lands and fisheries, is evident in their conception of a partnership arising from the circumstances of the Treaty’s execution and the fact that a Maori rangatiratanga and Crown kawanatanga, or right of governance, are juxtaposed. This is a concept to which we now refer.

1.5.5 Partnership

The perception of a partnership relationship between Maori and the Crown arises from historical evidence of Maori and Pakeha expectations at the time of the Treaty, and the fact that in the Treaty the gift of kawanatanga was in exchange for protection and the guarantee of rangatiratanga in all its forms. Partnership serves to describe a

39. *Taiaroa v Minister of Justice* unreported, 29 August 1994, McGechan J, HC Wellington CP99/94, p 69

relationship where one party is not subordinate to the other but where each must respect the other's status and authority in all walks of life.

(1) Treaty partners

The claimants specifically argued that Waipareira is a Treaty partner of the Crown and on that basis, that its rangatiratanga was properly to be acknowledged and respected. They asserted their status as a Treaty partner on the basis that:

The Treaty envisages that this collective [Waipareira] exercises a right of rangatiratanga in respect of delivery of social services. All the more so because, like traditional iwi, Waipareira has marae, kaumatua, mokopuna and most importantly, the collectivity is openly and proudly Maori.⁴⁰

For the reasons earlier given, we find that according to the circumstances of the case, groups and communities other than those represented in traditional tribes may be entitled to protection and thus support pursuant to the Treaty's principles and that, in appropriate cases, the principle of rangatiratanga should be applied to them; but we see nothing to be had in defining Waipareira as a Treaty partner and for the reason that the partnership relationship is one that exists between the Crown and Maori generally, or the Maori as a people.

The problem as we see it has been that the Crown and Maori have taken the principle, as found by the Waitangi Tribunal and more emphatically by the Court of Appeal, to mean that a partnership in a somewhat contractual sense exists between the Crown and particular Maori groups, a viewpoint that has led to the question, Which groups? It appears to be a line of thinking that arises not from Tribunal or judicial utterance but from Crown devolution policies as expressed in Te Urupare Rangapu for example, with its heavy emphasis on devolution to prescribed iwi, and the short-lived Runanga Iwi Act 1990.

The Treaty partnership, in our view, is not a term of science but art, describing the expectations of Maori and the Crown, brought out by historical evidence, that both would work together in the new society, not one above the other but each acknowledging the status of the other. The principle was first established by the Tribunal in the *Report on the Manukau Claim* where it stated that the interests recognised by the Treaty give rise to a partnership, 'the precise terms of which have yet to be worked out'.⁴¹ Definition was given by the Court of Appeal which, recognising that the status of Maori and the Crown were equally important, though not the same, developed the concept of a partnership to describe the relationship between the two. It was a relationship that required, in the opinion of the Court of Appeal, that each should act towards the other with the utmost good faith.

The Tribunal in the *Report on the Muriwhenua Fishing Claim* saw the principle of partnership like this:

40. Document E6, para 10.8

41. *Report of the Waitangi Tribunal on the Manukau Claim*, sec 8.3

It was a basic object of the Treaty that two people would live in one country. That in our view is also a principle, fundamental to our perception of the Treaty's terms. The Treaty extinguished Maori sovereignty and established that of the Crown. In so doing it substituted a charter, or a covenant in Maori eyes, for a continuing relationship between the Crown and Maori people, based upon their pledges to one another. It is this that lays the foundation for the concept of a partnership.⁴²

From its first substantive report, the 1983 *Report on the Motunui–Waitara Claim*, the Tribunal has stressed that the relationship between Maori and the Crown is one where the parties must recognise each other's customary rights and responsibilities: that Maori must recognise those things that reasonably go with good governance just as the Crown must recognise those things that reasonably go with being Maori. With regard to fishing grounds, it was noted in that report, for example, that Maori were to be protected not only in the possession of them, 'but in the mana to control them . . . in accordance with their own customs and having regard to their own cultural preferences'.⁴³

Thus, partnership describes a relationship between the Crown and Maori generally rather than a relationship between the Crown and particular classes of Maori persons, and while the partnership may have been spoken of as being between the Crown and iwi, in the sense of tribe, that is only because it was the position of the iwi that was then under consideration. The question whether any particular Maori group has Treaty rights is not to be answered by an inquiry as to whether that group is a Treaty partner, for the concept of partnership applies to all Maori and is primarily for the purpose of describing the way in which Maori and the Crown should relate to each other.

(2) Mutual obligations

A relationship of this type, as considered by the Tribunal in the *Report on the Manukau Claim*, was later confirmed by the Court of Appeal. As Cooke P put it in *New Zealand Maori Council v Attorney-General*, 'the Treaty signified a partnership between the races'.⁴⁴ In the Tribunal's *Report on the Motunui–Waitara Claim*, the position was put this way:

That then was the exchange of gifts that the Treaty represented. The gift of the right to make laws, and the promise to do so so as to accord the Maori interest an appropriate priority.⁴⁵

Thus, the concept of a partnership was founded in large part on the Maori acceptance of a Crown's right of governance, or kawanatanga, and the Crown's general recognition of a Maori rangatiratanga. The two are not in conflict but are indicative of the undertaking of mutual support, at the time and in the future. In this

42. *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim*, sec 10.5.2

43. *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, sec 10.2(b)

44. *New Zealand Maori Council v Attorney-General*, p 664

45. *Report of the Waitangi Tribunal on the Motunui–Waitara Claim*, sec 10.2(b)

situation neither rights of autonomy nor rights of governance are absolute but each must be conditioned by the other's needs and their duties of mutual respect.

(3) Maintaining a proper balance

The principle of a partnership relationship has been accepted by the Crown in the past. The Crown's *Principles for Crown Action on the Treaty of Waitangi*:

show that the Treaty has as much relevance today as it had in 1840. They also show that the Treaty is relevant today for all New Zealanders. The Treaty has its own balance: The balance of the Kawanatanga Principle, the right of the Government to make laws, and the Rangatiratanga Principle, the right of iwi to organise as iwi and control their own resources.

The Principle of Equality talks about not just legal equality but social equality for all New Zealanders. Balance is again shown in the Principle of Redress and the Principle of Reasonable Cooperation. That is, the Government is responsible for the resolution of grievances and both parties are obliged to approach these issues in a spirit of reasonable co-operation.⁴⁶

It does not appear to have been considered by the Crown at that time that the guarantee of rangatiratanga was confined to the management of specific properties. The restoration of iwi self-management and self-reliance in the diverse areas announced in the Government's policy of Te Urupare Rangapu (partnership responses), and the protection of taonga, both material and cultural, were also specifically referred to as part of the Crown's policy of recognising rangatiratanga. While it is true that the Crown referred to iwi self-management, not Maori self-management, it has to be borne in mind that the formulation of the Crown's principles was based on the then findings of the Tribunal and the courts and the position of urban groups had still to be considered. For the reasons earlier given, we consider rangatiratanga may be possessed by diverse groups and is not confined to tribes.

And so we see the concept of a partnership as serving to answer questions about the extent to which the Crown should provide for autonomy in the management of Maori affairs, and more particularly how Maori and the Crown should relate to each other that such issues might be resolved.

1.5.6 Conclusion

For the foregoing reasons we conclude that bodies other than traditional tribes may be entitled to the special protection of the Crown envisaged in the Treaty of Waitangi according to the circumstances of the case. This is particularly so if the community or group concerned is not merely a grouping of Maori for any purpose but is a group that is distinctively Maori in adhering to customary values and seeking to promote the welfare of its community. Such a group is not to be treated as simply another

46. New Zealand Government, *The Crown and the Treaty of Waitangi: A Short Statement of Principles on which the Crown Proposes to Act*, Wellington, 1989, p 3

cultural group, and indeed, it is doubtful that Maori would have signed the Treaty had it been said at the time that distinctive Maori communities would have no greater status in their country than that of any other subsequent arrivals. The promise of protection in article 3 of the Treaty is evidence of the special way in which the Maori were seen.

In considering the shape of the protection to be given, regard must be had to the principle of rangatiratanga, and not only because a Maori rangatiratanga was recognised in the completion of the Treaty, but because that is the most appropriate way in which the Maori custom might be upheld, respect for custom being also orally promised to Maori when the Treaty was signed. Rangatiratanga requires in this instance that Maori should control their tikanga, including the way their social and political organisation develops, and to the extent reasonable and practicable Crown protection, in the form of support, should be so given as to enhance the capacity of the group to determine the programmes most needed and how they should be managed.

1.6 WAIPAREIRA AND RANGATIRATANGA

Presumably not all Maori groups are necessarily entitled to special consideration but to this point the assumption has been that Te Whanau o Waipareira is a Maori body exhibiting strong cultural traits as a community of trustees and beneficiaries and deserving of support as such. This may be tested by examining the following questions:

- (a) Did the Waipareira trustees provide care and development assistance to a significant number of Maori beneficiaries (the clients whom they nurtured), were they properly accountable to them, and did the community support its leaders?
- (b) If this was the case, did the manner in which the trustees operated also reflect Maori cultural values?

The second question is concerned with an important ingredient in the provision of social services for Maori people. Such provision often requires, for example, the reconciling of conflicting bicultural values and the management of profound social and cultural changes. If this task is not approached in a Maori way, in which the marae and elders play a crucial and uniquely Maori role, then the delivery of services for the welfare of the people may undermine the very foundations of Maori culture.

It is also a Maori tendency to develop networks of friendship, as distinct from kinship, in a marae-centred environment. Such networks are ready made for an 'holistic' approach to the delivery of welfare services. When the providers and recipients are members of a culturally knit network in a socially alien urban environment the benefits of an holistic programme are very likely to be greater than those from a programme which focuses on a limited range of services to disparate individuals.

Thus if the answers to these questions are in the affirmative then, in the Tribunal's opinion, Waipareira will have established a valid position that in the provision of social services, broadly interpreted, they exercise a significant degree of rangatiratanga. They would be a Maori body following traditional Maori precepts, though in a modern setting, and so entitled to special consideration in terms of the Treaty of Waitangi.

The Tribunal began its assessment by considering Te Whanau o Waipareira's evidence about itself and its operations.

CHAPTER 2

TE WHANAU O WAIPAREIRA

2.1 INTRODUCTION

In its publicity material, Te Whanau o Waipareira Trust describes itself as:

a democratically run, charitable organisation, providing many forms of assistance to the people of West Auckland. It offers a caring service with dignity to all who request support. By doing so, the Trust aims to foster a greater understanding of matters Maori.¹

This statement complements the trust's founding kaupapa, which appears on its letterhead:

A Public Forum of the people of West Auckland, concerned with ensuring that facilities and resources are better utilised to benefit and assist the Maori community. Promoting Training and Employment, Economic, Social and Community Development.

It is followed by the whakatauki 'Kokiritia i roto i te kotahitanga' ('progressively act in unity').

It was impressed on the Tribunal, and accepted by all who took part in the inquiry, that Te Whanau o Waipareira Trust Incorporated is a major, positive force in West Auckland. It has a multi-million dollar budget and in 1993 had accumulated funds of \$3,090,590.² In 1993–94, it was involved in a large number of programmes concerning education, housing, employment, vocational training, health, and community services. It also has a corporate arm that provides professional 'innovative financial and business investment services'.³ As it was boldly put in the chairperson's 1993 annual report, 'this is a whanau on the move and it is definitely not going backward'.⁴

Reclaiming the Maori name for the region, Te Whanau o Waipareira has a self-defined catchment area in the West Auckland region from Waterview to Helensville.⁵

1. Document A21(b)

2. Document A21(g), p 26

3. Document A21(a)

4. Document A21(g), para 7.3

5. Claimant witness Naida Pou explained why Helensville is regarded as falling within Te Whanau o Waipareira's area of operation (doc A8(i), p 3):

Twenty-five years ago Henderson was the shopping centre for Helensville. The Department of Maori Affairs was mainly in Auckland but it has a sub-branch out here in Henderson. When the Helensville Court House closed down, the people would come to Henderson for any Hearings. Therefore Helensville is a natural part of Waipareira and extended part of west Auckland.

Twenty-eight thousand eight hundred Maori live in its area, including 16,800 Maori who live in Waitakere City (ie, 12 percent of Waitakere City's population), the largest concentration of whom live in Te Atatu North.⁶ The trust's chief executive, John Tamihere, provided further demographic information in his evidence:

- b. We [ie, Maori] make up approximately 35% of the social welfare caseload work in the Western region. (Department of Social Welfare reportage)
- c. We make up 22% of the unemployed people which translates into a staggering 3 out of 4 Maori families in the Western region that obtain some form of Government benefit. (Census 1991)
- d. The average income of Maori in the Western region is \$12, 400 per annum. (Census 1991)
- e. We make up approximately 40% of all Police enquiry work which translate[s] into around about a 38% charge rate on a ethnic factor. (Police statistics)
- f. We make up approximately 55% of the Youth Justice work in the Western region. (CYPS/Justice statistics)⁷

Ninety percent of Maori in Waitakere City over the age of 15 have no formal schooling qualification and only 0.399 percent have any form of university degree.⁸

Albert Williams, the director of the Department of Maori Affairs in the Auckland region from 1978 to 1985 (and, at the time of the Tribunal's inquiry, the national manager of the Operations Division of the Ministry of Pacific Island Affairs), told the Tribunal that 'West Auckland is the fastest growing area in New Zealand, it has a staggering growth rate. The families who are coming into West Auckland are primarily young, and often solo parents.'⁹

2.2 THE ORIGINS OF TE WHANAU O WAIPAREIRA TRUST

2.2.1 Urbanisation

Claimant witnesses emphasised that the trust 'did not just happen in a vacuum over night'; 'The Kaupapa for Te Whanau o Waipareira Trust goes back many years, long before . . . the Trust officially incorporated.'¹⁰

The organisation known today as Te Whanau o Waipareira came into being in 1981 and gained its present structure as an incorporated charitable trust in 1984. However, its origins date from conditions and events that occurred between 30 and 40 years ago, when Maori urbanisation was rapidly taking place and West Auckland, which until the end of the Second World War consisted of small, isolated, rural communities, was itself emerging as a new major urban settlement.¹¹

6. Document A19, app 1, p 10

7. Ibid, para 4.1

8. Ibid, app 1, p 10

9. Document A8(e), para 9

10. Document A17, para 23; doc A16, para 7

11. Document B6, app 5, paras 2.1, 3-5

2.2.2 Social disruption

Mavis Tuoro was amongst the first Maori to move into the West Auckland area, arriving with her husband in the 1950s to find work in the city. In discussing the difficulties that the new urban setting presented, Ms Tuoro said:

The root of the problem . . . arose from the breakdown of the traditional whanau links. These Whanau links were no longer a guarantee in the new urban environment. Maori were not used to meeting responsibilities like mortgage payments. These were never a concern back home. Unemployment was not a huge issue at the time, in fact there was plenty of work. Our commitments were rather with budgeting and the matter of alcohol abuse by our men in the local pubs. These were the social problems of the time.

Education was a priority for our children. Our children were very affected by the move with their parents into the city. You would have the problem of children going to school with no lunch and because their parents were struggling to adapt to the urban environment, children suffered. Often they had poor clothing and poor health. We really needed to motivate these children into being education oriented.¹²

Drawing on her 31 years of experience working at the Department of Maori Affairs, Connie Hanna said:

Groups of Maori school leavers aged between 16 and 18 would arrive from the rural areas during the period 1960 to 1962. . . .

Around [1967] we began getting many inquiries from Maori who would tell us that they [had] lost their jobs, had no money or food and no where to stay. Many of them wanted to go home. . . . These people would come to us because they had no families in the city or had fallen out with their families.¹³

She related how the social problems grew in the late 1960s and through the 1970s:

Key issues were housing. Many of [the] clients were also very lonely, and often came as individuals to the city. They were isolated from their whanau support networks. In my view if Maori had strong whanau ties in the city they would not have come to us as frequently as they did.

During this time nearly two thirds of the housing mortgages administered by Maori Affairs were in arrears. Ada Bratten was in charge of this arrears portfolio. She would get a tongue-lashing from some of the people she visited in relation to their mortgage arrears. She dealt with our Maori men who would give her a hard time. These people were having serious problems with real life skills like budgeting. They would spend all their money on alcohol. . . . We were sometimes called upon by the woman [of] the house when serious arrears were occurring. By the time we were called upon to assist with arrears or other matters, the whole family was usually falling apart.

12. Document A17, paras 4, 5

13. Document A25, paras 20, 32

Over crowding caused serious domestic problems ... Women would end up carrying a tremendous share of the burden which family had put upon her. ...

Around 1975 and 1977 what we were beginning to see was the emergence of gangs like Black Power, Mongrel Mob and Head Hunters. ...

These gang members were the children of those Maori who came from the rural areas to the cities in the early 1960s. They were the product of the breakdown of whanau links in the cities during those years.¹⁴

Maori in West Auckland responded in a number of ways to the new challenges city life presented.

2.2.3 Maori community organisations

One of the chief responses was through Maori committees established under the Maori Welfare Act 1962.¹⁵ The committees were the most 'grass-roots' level in a system of non-tribal Maori associations that included Maori executive committees, district Maori councils, and the New Zealand Maori Council. According to Ms Tuoro:

The purpose of these [committees] was to get together to see what could be done for people who had left their own homes in rural areas and moved to a new environment. The [committees] which developed as a result of this shift by Maori into these Cities covered many aspects and tackled many problems that people were having.¹⁶

A number of committees formed in West Auckland, including the Henderson Maori Committee and the Te Atatu Maori Committee. Although the committees were statutory in origin, claimant counsel concluded that 'Maori of the time obviously welcomed these developments because the committees were active and innovative from a very early stage',¹⁷ a conclusion supported by evidence from claimant witnesses. Naida Pou, for example, a Maori health manager and trustee of Te Whanau o Waipareira Trust (as well as a Treaty of Waitangi fisheries commissioner, a trustee of Te Runanga o Ngati Whatua and Te Roopu Mataihi, and, at the time of the Tribunal's inquiry, the chairperson of the Auckland District Maori Council), stated:

The Maori Committees that I was involved with handled a great deal of social disruption in the Community. Those Maori involved gave their time voluntarily, even this took [its] toll on the providers though. These same Maori voluntarily went into Courts, to support Parents and their Children.¹⁸

14. Document A25, paras 34–36, 38–39

15. The predecessor of the Maori Welfare Act 1962 was the Maori Social and Economic Advancement Act 1945, which established tribal committees and tribal executives and provided for district conferences. Significantly, the 1945 Act was based on tribal groupings, whereas the 1962 Act was not. The submissions to the Tribunal generally referred to the 1962 Act as the Maori Community Development Act.

16. Document A8(f), para 1

17. Document B7, para 2.4

18. Document A8(i), para 5

Ms Pou also observed how Maori committees initiated family group conferences in the mid-1970s, well before they became formalised in law under the Children, Young Persons, and Their Families Act 1989.¹⁹ According to Tai Nathan, a former chairperson of the trust:

there were many initiatives by Maori Committees all over West Auckland to advance and promote Tikanga Maori, Te Reo, Business, Horticulture, Health, Education, and other social needs in a holistic way.²⁰

Mr Tamihere commented on the link between the committees and the growth of pan-tribalism in West Auckland:

As a consequence of the Maori Committee structure a number of strong networks grew in the Waipareira region. Names such as Monty Wikiriwhi, Brownie Puriri, Peter Awatere, John Waititi and others helped Maori, perhaps unconsciously, organise against the integration and assimilation policies pursued in the 50's and 60's. Consequently, significant organisational Maori networks based on a pan-tribal nature were embraced fully in the Waipareira area.²¹

Like the Maori committees, Maori wardens (who also derived their authority from the Maori Welfare Act 1962) and the Maori Women's Welfare League provided West Auckland with strong leadership 'in dealing with the social problems happening at the time as a result of the move by Maori families into the city and the resulting breakdown of traditional whanau ties'.²² They, too, were pan-tribal and, together with the Maori committees, dealt with cultural, social, educational, and health issues. 'What unified us in the early days in the Maori Women's Welfare League, Maori Wardens, and the Maori Committees,' said Ms Tuoro, 'was the desire to continue our culture and tradition in the cities. We wanted to recreate whanau, hapu, iwi structures for our people in the city.'²³

Central to that objective, and to the evolution of Te Whanau o Waipareira Trust, was the development of Hoani Waititi Marae.

2.2.4 Hoani Waititi Marae

(1) Origins of Hoani Waititi Marae

Ms Tuoro was one of the witnesses who explained to the Tribunal how and why Hoani Waititi Marae developed:

The focal point for West Auckland was sown 36 years ago when Hoani Waititi emerged as an idea. At the time, the then Mayoress Mrs Wiltshire was active on the Committees around West Auckland. She suggested we needed a Marae. The kaupapa for the Marae was something we put on ourselves. We needed to educate Pakeha to

19. Ibid, para 3; see also, for example, doc A8(h), para 2

20. Document A18, para 9

21. Document A19, para 1.11

22. Document A17, para 19

23. Ibid, para 23

understand us and we wanted to educate our own Maori who did not know about Marae and their whanaungatanga links. With so many Maori coming to live in West Auckland, and many of them increasingly out of touch with their families at home and their culture and traditions we sought to establish a place where they could learn from and which they could belong to and identify with. We wanted to continue our culture and traditions in the cities as well as at home.

We recognised that the Marae had to be a place to help educate and motivate our people, a place we could bring manuhiri aboard and do things Maori, like having hui and tangihanga. Tangi are one of the most important occasions in Maoridom. We used houses to have our tangi, before the Marae was built. . . .

John Waititi was a prominent Maori Educationalist who with Peter Awatere and Barbara Devonshire of Maori Affairs made a real drive for Adult Education in West Auckland. . . . The marae was named because of the qualities that we saw in John Waititi. He exemplified everything that we wanted Maoridom to be. . . .

The enthusiasm for developing Waititi marae was great. We needed an enormous amount of money to get it off the ground. We began to look at land. We had a very supportive Mayor Jack Colvin, who really got in behind our efforts with this. . . . The place we wanted originally was on Edmonton Road, however the zoning requirements would not permit us to buy the area at the time. There was also an attitude that probably the people didn't want a whole lot of Maori running around the middle part of Henderson in the fashion that seemed to be envisaged by Pakeha.

I went with Letty Brown to have a look at the original 8 acres at the present [site] of Waititi Marae. It was nothing but a lot of muddy land with [a] lot of rubbish and trees growing all over it. These were cleared by many of the Periodic Detention workers led by Denis Hansen. I remember being extremely disappointed with the property when I first saw it. Pine Taiapa blessed the area originally and he was to work with his brother Hone on the carvings of the Marae, many years later. This gave the Marae a lot of Mana.

Many supportive business people at the time helped with the process of getting the Marae up and running. We brought Pakeha in initially for the expertise at finding money which we needed to fund the Marae. I believe that at the time we really underestimated our own abilities to do these tasks ourselves. We did heaps of fundraising like car raffles and walkathons. . . . In organising funding for the Marae we got Mr Spencer from Caxton Paper Mills to donate a car which we then proceeded to raffle. The great thing about this project is that you really got to know everyone in the community. . . .

In building Waititi Marae we got a blessing if we all succeeded, and if we all failed then we went down together. . . . Many of those who were so actively involved with the Marae at the time were to later involve themselves with Waipareira Trust.²⁴

(2) A pan-tribal initiative

Ms Tuoro also explained the pan-tribal kaupapa of Hoani Waititi Marae:

Waititi Marae was meant to be pan-tribal. [It] left no room for the tribal bit. You had to leave your tribalism at the door. Some didn't necessarily like this. What we were trying to create with this Marae was a sense of family and a sense of belonging when people were no longer able to readily access their whanau ties in the areas they were

24. Document A17, paras 8–10, 15–18

originally from. We seriously thought about these kinds of issues at the time. We wanted to recreate whanau ties in the city. This was something the League and the Maori Committees were trying to do as well.²⁵

Mr Nathan added to Ms Tuoro's account:

It did not matter that many of us were not related when it came to building this Marae. There was a family spirit driving it. The effort invested, was pure aroha. Although many of the people who were initially involved with this Marae were not originally from West Auckland, they have since been buried in Waikumete Cemetery and have kept their link with the land that way.

For those Maori who did not belong to West Auckland, Waititi became a formal focal point for belonging. . . . Waititi was about belonging and identities. It was a place we could continue our cultural ways.²⁶

Dr Pita Sharples, a driving force on Hoani Waititi Marae, described how the building of the marae reflected the growing sense of community among Maori in West Auckland:

it became apparent that various groups were trying to build a marae in West Auckland. We approached a number of our people, and half were for and half were against. The half against said, no, my marae is Ngati Porou and that's it, or my marae is Te Arawa, in Te Arawa, and that's it, you can't have a marae in town. Yet we looked at what we were doing, when we needed a marae, we just hired the hall and turned it into a marae. The street was our marae, our houses were our marae when tangi came up, our schools were our marae. So we said, well, that may be all right, that we have our own marae, but we still need a place; and so suddenly there was a group of, ah, marae planned in Auckland City, and so on, and this one came about.

And I mention this because in a way it was typical of how the trust was constituted, that this place was built by the people, for the people, and Waititi was chosen as an ideal that we might all aspire to. So with permission from Ngati Whatua elders, Tommy Downes, [inaudible], when they were alive, to have a marae here; and with permission from Te Whanau a Apanui to carry John's name, we built this marae.

And all those people on the marae committee today, and on the marae committee when we had nothing, no site, no constitution, nothing, all those people were people strong in their marae tradition back at their homes; so they knew who they were, where they hoped to be buried, and all that. So they set about building this place, which could be like a takawaenga, an intermediary marae, for the many thousands of Maori that live in the city.

And it worked. Because we noticed that Maori moving to the city were transferring their kinship relations to non-kin. No longer were they living in the hapu, so instead of borrowing a cousin's car, they borrowed mine. But because mine broke down, they borrowed Tuck Nathan's! . . . So steadily, those obligations and privileges which we enjoyed with our aunties and uncles and our cousins and our children back home, we were extending to our fellow Maori resident neighbours. So suddenly, Te Atatu became

25. Ibid, para 4

26. Document A18, paras 5, 7

a Maori community, Henderson and so on, and with the building of this marae, West Auckland; and the development of the Trust reinforcing that in West Auckland here.

So to me it is very clear that the time for recognition . . . of non-tribal residents if you like, of Maori people in urban areas, has got to be recognised.²⁷

(3) *Focus for cultural revival*

Hoani Waititi Marae was ‘the first urban marae built in Auckland on the non-tribal secular principle of an elective committee’,²⁸ and has been the impetus for the establishment of other marae such as Kotuku and Kakariki Marae based from schools.²⁹ It is considered to be the marae matua in the Waipareira region. Mr Tamihere put it this way:

It is extremely important for the Tribunal to note that Maori of my generation born in the cities find comfort, solace, support and coverage as a Maori under the umbrella of our Matua Marae Waititi and Te Whanau o Waipareira. . . . there are now third generation babies that know no other marae than this pan-tribal marae. . . . Our Matua Marae which has been acknowledged nationally . . . is a symbol to pan-tribalism and multi-culturalism. It is a symbol to the progression of our people into the urban areas and a statement that we can continue to practice tikanga Maori in a new environment.³⁰

June Mariu, a founding trustee of Waipareira and former national president of the Maori Women’s Welfare League, said, ‘Waipareira exists to accommodate the transition from the Home marae’.³¹ Dr Sharples emphasised how Hoani Waititi Marae provided a natural venue for the teaching and promotion of Maori culture in West Auckland:

This is a training ground, and I’ve watched . . . people, who are principals of schools in the country who are main speakers on their marae, and they learned Maori here, learned to whaikorero here. There are kaikaranga who are teaching us now, who learned their stuff here, went home [to] the gun people in their areas, have learned more and have come back and are teaching us now. So in that way I think that serves as an example how things that are happening in the urban area which goes back to the hapu.³²

Building Hoani Waititi Marae served to unify and provide a focus for Maori in West Auckland, but a further development was to take place before Te Whanau o Waipareira emerged as a distinct entity.

2.2.5 Tu Tangata and the Kokiri programme

That development was the introduction of the Tu Tangata programme by the Department of Maori Affairs in 1978. Literally meaning ‘the stance of the people’, Tu

27. Dr Sharples, oral evidence, first hearing, 1 September 1994, tapes 3, 4

28. Document A23, p 12

29. Document A8(n), para 5; see also doc A24(a), para 42

30. Document A19, paras 1.20, 8.11–8.13

31. Document A8(o), para 7

32. Dr Sharples, oral evidence, first hearing, 1 September 1994, tapes 3, 4

Tangata was, as Marea Brown (the trust's chief executive officer from June 1987 to 1990) put it, intended to let 'culture be the catalyst': 'it incorporated the need for both Government and non-government organisations to recognise just how the Maori Community wished to position itself in the World at large.'³³ As another witness put it, 'The Tu Tangata programme was an attempt to empower the people, and to change focus from a Government Department with all the power concentrated at one level.'³⁴

Part of this new philosophy was the Kokiri community administration programme 'designed to assist the passage of a great deal of departmental decision-making from the bureaucratic centre into the community's own hands'.³⁵ Albert Williams told the Tribunal:

The issues which the Kokiri Units dealt with were very holistic. These Kokiri Units were given money, decision making power and administrative support from Maori Affairs. The Kokiri Units operated very effectively in meeting needs at the local level and stimulating community involvement in many action programmes such as education, women's programmes and youth projects.³⁶

The Kokiri programme came to Auckland in April 1982, and the following month Connie Hanna, who was then working for the Department of Maori Affairs, notified the Maori community and the Government departments in the Waipareira area that a Kokiri unit was to be established:

As a result of this action the first meeting of the Waipareira Community was held at Hoani Waititi Marae on Wednesday, 2nd June 1982 at 6:30pm. . . . At this meeting the concept of Kokiri Community Administration and Kokiri units [was] explained and the guidelines for a Waipareira Community Management Group were set down.

The Guidelines were the following:

- (1) That the group be made up of representatives from any Maori organisation and/or any other interested parties in the Community, whether it be a group, club, family or individual.
- (2) Meetings would be held at least once a month and there would be no structured committees.
- (3) Anyone who is in attendance at the meeting immediately becomes a member of the Community Management group. This Community Management group may not necessarily consist of the same people each month, therefore whoever is in attendance at a particular monthly meeting [becomes] the Community Management Committee for that month.
- (4) That a Chairperson, or Chairpersons be elected to head [the Group].³⁷

Sixty people representing 23 different organisations attended that first meeting, and June Mariu was elected as the Waipareira Community Management Group's first chairperson, assisted by Ossie Peri and Jerry Taingahue as co-vice-chairpersons.³⁸ As

33. Document A6, p 1

34. Document A8(c), para 5

35. Document A6, p 2

36. Document A24, para 17; see also doc A8(e), p 10

37. Document A6, p 2

38. Ibid, p 3

a Kokiri unit – one of seven in Auckland (the others being based at North Shore, Auckland City, Panmure, Otara, Mangere, and Papakura) – the management group also included representatives of the Departments of Maori Affairs, Social Welfare, Labour, and Justice and of the police.³⁹ The Kokiri units seemed to enjoy a measure of success generally, resulting in ‘an upsurge of active participation by Maori people in matters that have always concerned them but were too often left to be actioned within Government Departments’.⁴⁰ However, the Tribunal was told that the Waipareira unit was ‘unique’ in that it was ‘directly community utilised, directed and in essence controlled’.⁴¹ According to Albert Williams:

The Waipareira Kokiri stood out . . . because of [its] impressive track record. It was often chosen to pilot many programmes such as Matua whangai because of [its] track record.⁴²

2.3 TE WHANAU O WAIPAREIRA AND TE WHANAU O WAIPAREIRA TRUST

The next meeting of the Waipareira Community Management Group, on 7 July 1982, decided:

That the name of the management group and Kokiri unit be ‘Te Whanau o Waipareira’ and not Waipareira only, as the ‘Family of Waipareira’ seemed a more suitable name and in keeping with the whanau concept of helping and supporting each other.⁴³

Commenting on the name, Mr Nathan said in his evidence:

We acted like a whanau. It was our actions and feelings, our wairua, which knitted us together as a whanau. We made a conscious, unified effort to protect Maori values, and nurture them in the urban environment.⁴⁴

On 10 August 1983, Te Whanau o Waipareira passed a resolution to set up a charitable trust, and on 30 May 1984, 20 trustees signed a deed to constitute Te Whanau o Waipareira Trust.⁴⁵ The trust was incorporated under the Charitable Trusts Act 1957 on 24 August 1984.⁴⁶

39. Document A6, p 1; see also doc A8(h), paras 4–5

40. Document A24, para 18

41. Document A19, para 1.14

42. Document A24, para 17; see also doc A8(c), p 5

43. Document A6, p 3

44. Document A18, para 11

45. Document A5, p 2

46. Document A6, p 3

2.3.1 An umbrella group

The Tribunal was told that a trust structure was adopted in order to further the whanau's ability to provide for West Auckland Maori. In particular, the trust provided an administrative arm by which the numerous active but fragmented groups working in West Auckland could be coordinated. As Ms Hanna put it, the groups making up Te Whanau o Waipareira 'were aware that because of the looseness of their open community forum structure, funding agencies would not look upon them favourably'.⁴⁷ In Ms Mariu's words:

When Whanau o Waipareira first incorporated as a Charitable Trust there were many fragmented groups. There was Hoani Waititi Marae spearheaded by Dr Pita Sharples as well as other voluntary groups like the Te Atatu Maori Womens Welfare League, Waipareira Maori Womens Welfare League and several Maori Committees scattered over West Auckland. The High Schools like Rutherford established Marae which promoted Maori Culture and Language. These groups basically worked in their own areas, linking into Government programmes of Training and Employment ... What the Trust ... sought to do was to collate with key players and others in West Auckland who wished to make things happen for Maori People in a more co-ordinated fashion.⁴⁸

According to Ms Brown:

The advantage of bringing groups together under one umbrella, were the economics to be gained from pooling resources, and the benefits of pooling talents. We had a stronger commercial voice on many political issues, such as legislation like the Resource Management Act. We frequently lobbied Government, especially on education issues. We sought to develop a consensual and collective approach, rather than a competitive approach, for resources among the groups which made up the Trust umbrella.⁴⁹

These fragmented groups thus became the trust's affiliates – 'those organisations which in essence make up Te Whanau o Waipareira'.⁵⁰ In his evidence, Mr Tamihere explained that:

[a] number of affiliates do not have the capacity to place funding out and run into difficulties with basic GST reportage let alone other matters of detail required to be reported on in terms of contractual outputs. In this sense Te Whanau o Waipareira [Trust] was set up as an administrative and facilitative structure to ensure that

47. Document A25, para 56

48. Document A8(o), para 3

49. Document A8(r), para 25

50. Document B5, para 7.1. In the trust's funding bid to the NZCFA for the 1993–94 year, the following affiliate groups were identified as making up the trust's social service delivery mechanism: Piringatahi o te Maungarongo Marae, West Harbour; Haere Whakamua, Massey; Henderson Maori Committee, Henderson–Swanson–Ranui; Hoani Waititi Marae, Glen Eden–Titirangi–Sunnyvale; Te Kotuku Marae, Te Atatu; Te Roopu Manaaki a Iwi, Waitakere; Te Ruruhau o Te Whau, Avondale–New Lynn; Te Maranga Trust, psychiatric care; Wahine Whare Toa, women's refuge; Tika Maranga, women's refuge; and Waipareira Community House, women's programme.

resources won on the basis of representing the Maori community were applied to their fullest capacity in the Maori Community. As a consequence affiliates arrive at our whanau meeting, present their package and a rationalisation as to why they should be affiliated and once they are approved at the whanau meeting they are noted as an affiliated member. This gives them our political coverage, administrative management and seeding finance coverage . . .⁵¹

The trust's 1993–94 bid to the CFA further explains the rationale of the trust as an 'umbrella' organisation:

Whilst from one cultural perspective it could be seen that the Whanau, [its] Trust and [its] affiliates are separate identities this is not so in reality and practice. Each is bound by common cultural, historical and philosophical links. These bonds ensure that the whole remains together whilst maintaining the dignity of each component part. These ensure that the service delivered is close to the real need of the whanau and community by people who are part of that network, community and milieu. In turn each contributes not only to meeting the needs of their own area but to the community as a whole. . . .

The organisation is collected under the legal identity of Te Whanau o Waipareira Trust to ensure that the work of each group can access support, resources and expertise to carry out the function that is [theirs] in each area that make up Waipareira.⁵²

And as Kimball Stewart, the trust's community services manager, said in his evidence:

The concept of having our affiliates involved in the delivery [of social services] is that they are representative of the localities of Waipareira and as such can contribute insight and contact with the area in which they operate. . . .

In institutional terms the place of affiliates could be expressed as a team structure not unlike that used by the Department [of Social Welfare].⁵³

2.3.2 Affiliates retain autonomy

This organisational structure was promoted as a flexible one that does not constrain the constituent bodies from becoming independent. For example, Te Roopu Mataihi o Kaipara Social Services, initially an affiliate of the trust, no longer comes under its umbrella, having 'gone out on [its] own'.⁵⁴ Indeed, the trust's chief executive, Mr Tamihere, indicated in cross-examination that this is a process that the trust encourages. He stressed, also, that the decision to become independent is made by the

51. Document B3, para 6.4

52. Document B5, app 7, p 25

53. Ibid, para 7.1. A social worker for 16 years, Mr Stewart was employed between April 1988 and April 1992 in a variety of DSW community service positions, including that of acting regional coordinator of the south-west region and senior (or acting senior) social worker in the Henderson, New Lynn, and West Auckland offices. Joining the CFA as an outreach worker in South Auckland upon the agency's formation in 1992, Mr Stewart resigned eight months later to take up his position with Te Whanau o Waipareira Trust (ibid, paras 1, 6.1).

54. Document A8(i), para 9

affiliate and not by the trust. He gave as an example the experience of a sewing cooperative that had begun as an affiliate:

For two years the women that run [the cooperative] were mentored with administrative, legal, and other support, marketing, and the like, from the Trust. As of April this year they were a stand alone company – eight women. . . . but it took two and a half years to get it there. Their first contract they worked 12 hours a day, six days a week, and they had to pay them \$2.40 for it. They over ordered and they did everything wrong. Now they are doing everything right . . . and they are very happy, and they're the ones that said when they're happy to go alone. So, that is a decision not made by Waipareira but by an affiliate group of women.⁵⁵

Claimant witnesses gave evidence that the affiliate model and philosophy succeeded. According to Robert Newson, a trustee at the time of the Tribunal's inquiry:

Every group sought their own funding in tandem with this movement. . . .

The Trust was a good initiative to source funding. The attitude was always united we stand. We never wanted to compete with each other for funds. We preferred to work together, otherwise we would all wind up with nothing.⁵⁶

Te Whanau o Waipareira Trust was therefore constituted in such a way that it reflected the diverse groups coming under its umbrella. Its 20 trustees were people of standing, community leaders who represented marae committees, Kokiri units, Tu Tangata groups, and Maori women's welfare committees and who gave the trust 'credibility'.⁵⁷ A notable feature of the trust board as it was originally constituted was the inclusion of senior Government officials, including the director of social welfare in Henderson, a trustee until 1991, and the assistant director of social work in New Lynn, a trustee until 1985.⁵⁸ The inclusion of these officials and others from the Department of Justice on Te Whanau o Waipareira's trust board indicates the closeness of the trust's working relationship with those governmental bodies and that those departments 'were keen to see the Trust succeed'.⁵⁹ Claimant counsel saw it as 'confirming the partnership between the Crown and the Maori community in dealing with the problems the [West Auckland] community faced'.⁶⁰

2.3.3 Growth of the trust

(1) *Small beginnings*

The trust had few resources when it came into life. Initially, accommodation was in the top floor of rented premises in Ratanui Street, Henderson, which the trust had

55. Document B10, p 18

56. Document A8(b), paras 5, 16

57. Document A6, pp 3–4; doc A17, para 24

58. Document B5, para 4.2; see also doc A8(h), para 5; doc A19, para 1.14; doc A25, para 56

59. Document A8, para 13

60. Document E6, para 3.5

obtained as a Kokiri unit. Operating with a skeleton staff and heavily reliant on voluntary workers, the trust had funds amounting to \$733.47 upon establishment.⁶¹ Even when Ms Brown began as the trust's chief executive officer in 1987, 'there was [only] \$800 in the kitty'.⁶² Patrick Hanley stated that, when he was appointed coordinator of the trust in September 1987, 'the Whanau had \$4,000 in the bank'.⁶³

Claimant witnesses indicated that the trust's initial year or two were slow and that it took time for the trust to become not only functional but also aware of its power and potential: 'In the early days the Trust had very few systems in place.'⁶⁴

(2) Steady growth

Three years after the formal establishment of Te Whanau o Waipareira and one year after the incorporation of Te Whanau o Waipareira Trust, Ms Brown wrote a paper that offers a valuable snapshot of the whanau and the trust at that time. She wrote:

Since that first meeting was held in June 1982, the Whanau o Waipareira has held regular monthly meetings on the last Wednesday of each month, with the average monthly attendance of 65 people representing 44 different organisations. . . .

These monthly meetings take the form of a public forum and Maori values prevail. Meetings always commence (in keeping with tradition) with a karakia and mihi, and many members when presenting their take, do so in Maori. Meetings are often lengthy and filled with debate, and a wide range of topics are discussed. . . . The minutes of each meeting are available to any person who wishes to be on the mailing list. Membership is very loose. It is multi-tribal and consists of any person who is interested in assisting and benefiting the Maori people in West Auckland.

Because of the growth and strength of the Whanau o Waipareira over the past 3 years, it has become an autonomous body in its own right. It no longer looks to the Maori Affairs Department as a means to solving its problems but rather to the people in the Community where communal decisions are made. Maori Affairs Departmental Officers generally keep a low profile and are there to offer advice if and when it is requested by the larger Communal group.

Much of the work done by the Whanau members is social work. Many of the members who are involved in this type of work are volunteers, who when they are not working in paid employment spend their leisure time trying to sort out the problems of their wider communal group. Many hours weekly are spent trying to overcome the many social problems facing the Maori people in West Auckland. These volunteers are involved with unemployment, Prisoners Aid, Maori patients in Carrington Hospital, emergency housing, budgeting, health problems, street kids, and providing Community services like discos to name a few. Other groups are involved with programmes like, 'Te Piki Ora', Rapu mahi, homework centres, Kohanga Reo, Education, Maatua Whangai, Kokiri work schemes, Labour Department Work schemes, reviewing legislation, foster homes and establishing and supporting local Marae.

61. Document A8(b), para 5; doc A8(r), para 15; doc A25, para 56

62. Document A8(r), para 15

63. Document A8(h), para 13

64. Document A8(r), para 18

During the three years that the Whanau o Waipareira has been operating many changes have taken place. . . . One of the greatest difficulties that the organisation faces is to be able to discuss any topic in depth or at length, purely because of the logistics of the numbers attending the meetings. . . . Therefore sub-committees have had to be formed to discuss the issues relevant to them, and they in turn report back their findings to the Whanau. When the Whanau was initially organised, issues tended to be more local; however nowadays, many of the issues that the Whanau is involved with are national issues which are debated in the political arena. Therefore, subcommittees have been formed to specifically look at these national issues. These committees however still report to the Whanau and look to the Whanau for endorsement and support for the work that they are doing.⁶⁵

With a thoughtful eye to the future, Ms Brown wrote:

However the Whanau o Waipareira will need to be careful in that it does not grow too quickly as it could well outstrip the resourcefulness of the people who are its members. Even though attendance over the past three years has been constant, and many of the people who were original members are still very much involved, the sorts of issues which are coming to the notice of the Whanau now, take much more time and expertise to handle. Although there will always be local concerns . . . the greater national and political issues demand professional people with specific skills of whom there are only a handful in the Whanau and who without careful handling could well suffer from burn-out due to over commitment.⁶⁶

2.3.4 Maatua Whangai

Through its success as a Kokiri unit, Te Whanau o Waipareira was chosen to pilot the Maatua Whangai programme in 1983, a joint venture between Maori communities and the Departments of Maori Affairs, Justice, and Social Welfare:

Because of the fact that we were doing so well in our area it was stated at the first National Conference of Social Workers for the Department of Social Welfare that Waipareira was to pilot the Maatua Whangai programme.⁶⁷

The programme, founded on the Tu Tangata concept of community decision making, was trialled in 1983 and implemented nationwide the following year.⁶⁸ Ada Lau'ese who, at the time of the hearing was working as a voluntary social worker for the trust, became part of the Maatua Whangai team for West Auckland. She explained to the Tribunal that the 'primary objective' of the Maatua Whangai programme was, as she saw it:

to encourage and help support Maori people to take care of, and guide those of their children who were 'at risk'. The initial step in attaining this objective, was for the team to try and link the child at risk up with their own whanau or tribal group, who would

65. Document A6, pp 3, 7, 8–9

66. Ibid, p 9

67. Document A8(c), para 5; see also doc A8(m), para 5

68. Document C1(15), para 37

assume responsibility for caring for that child, with support from the Team in terms of the child's health, education and welfare.⁶⁹

In this way, the programme aimed to deinstitutionalise Maori youth and facilitate alternative whanau care.⁷⁰ Ms Lau'ese told the Tribunal that her duties:

ranged from doing Case Histories on children referred to us, trying to improve the whanauship of the child by helping them to identify with their own whanau or tribal group, working with children and their whanau as well as liaising with other people and organisations relevant to this relationship, and helping to arrange meetings.⁷¹

Ms Hanna also discussed the Maatua Whangai programme:

We tried to get our kids back with their Whanau. Our kids didn't know who they were. That is the root of many of the problems today. These children have no Marae, Kawa or identity. . . . We wanted to tie these kids in with their tribal networks to give them a sense of belonging and identity. We wanted them to have strong positive role models who would mentor them and that they could relate to.⁷²

2.3.5 Roopu kaumatua

To achieve these ends, kaumatua in West Auckland helped to provide a link between children in need and their iwi. As a result, a roopu kaumatua was formed, as Ms Hanna explained:

[Daryl] Cross who played a major role in Maatua Whangai was instrumental with our group in helping get the Roopu Kaumatua together. We met monthly to establish the Roopu Kaumatua group. We actively and actually went out to meet them. We would go up to people in the Malls and ask them if they were Maori. Sometimes they would turn out to be Tongan or Samoan, but that wouldn't deter us, we would just say hi and move on until we found another old Maori person.⁷³

Although the 'first Kaumatua team had representatives from a number of different tribal groups, such as Sam Waiti and Jerry Taingahue from Ngati Porou, Robert Clark and [Ms Lau'ese] from Ngai Tahu, Aaporo Murphy and Jack Manuel from the North, Pat Heremia and Sonny Waru from Taranaki, but to name a few', the kaumatua did not opt for a tribal approach.⁷⁴ Ms Hanna told the Tribunal that the:

Kaumatua did not think that setting up tribal groups would be any good in Auckland. They preferred a pantribal approach. They saw the taurahere roopu approach as divisive, by this I mean that groups based on iwi links were viewed by our Kaumatua as not necessarily functioning well in the present environment.⁷⁵

69. Document A22, para 21

70. Document C1(15), para 7

71. Document A22, para 23

72. Document A25, para 49

73. Document A8(c), para 6

74. Document A22, para 22

75. Document A25, para 51

2.3.6 Maori Access and Mana schemes

A significant factor in the development and growth of the trust was its designation in 1987 by the Department of Maori Affairs as a Maori authority for West Auckland. As a result, the trust was authorised to implement the Mana Enterprises and Maori Access schemes in West Auckland. Whereas the Maori Access scheme was aimed at training and retraining Maori, the Mana Enterprises scheme was employment-oriented and had as its objective to:

provide assistance to enterprises for them to develop and become financially viable, with the aim of creating unsubsidised employment, and with the aim of increasing the earnings and employment potential of Maori workers.⁷⁶

Albert Williams informed the Tribunal that:

One of the underlying philosophies of the MANA scheme was the concept of nurturing. The approach taken to applicants and loan recipients was one of the characteristics of [the] MANA [scheme] which made the scheme different from the operations of most commercial lending institutions.⁷⁷

To be designated as a Maori authority, the trust first had to satisfy the Department of Maori Affairs that it had the capability to administer the schemes. To that end, the trust employed Mr Hanley as its first coordinator to set up the necessary management and administrative systems.

(1) *Facing the challenge*

Mr Hanley gave his view of the trust at that time:

When I became coordinator of the Trust the dynamics on the Trust Board were very exciting and at times stormy. When I began the Whanau had \$4,000 in the Bank. Their focus was essentially to help Maori families in emergencies. Within a year the Trust had a budget of approximately \$2,000,000 and that meant lots of changes in the way in which the Trust operated. The changes that had to be made were not easy and there were often strong, opposing views on how best to achieve our objectives. A lot of learning occurred and for some Trustees the changes were hard to understand and the associated responsibilities somewhat frightening.⁷⁸

Up to that point the Trust had no experience in the delivery of programmes. It therefore had to quickly develop appropriate structures and systems to enable it to undertake the responsibilities of a Maori authority.⁷⁹

We therefore set about setting up the necessary committees, appointing staff and putting the administrative systems in place to administer MANA and MACCESS.⁸⁰

76. Document A19, app 2, paper A, schedule

77. Document A24, para 26

78. Document A8(h), para 13

79. Document A8(t), p 3

80. Document A8(h), para 2

Mr Hanley outlined how the trust operated the schemes:

The model for MANA and MACCESS schemes, as developed by the Trust was for the Trust to act as an agent for other Maori organisations who wished to provide training or establish a business. The Trust would not be a provider in the first instance unless no other provider was able to meet the need. We sought to act as a resource to other Maori groups both in terms of funding and advice and support for their initiatives. We wished first of all to support groups like Hoani Waititi Marae, Kotuku, Kakariki Marae and others. We placed a lot of emphasis on staff training, forward planning and the development of practical solutions to the problems they were experiencing. The model worked because we were expanding the base of skilled and experienced Maori capable of running training and employment programmes appropriate to Maori. We attempted to constantly reinforce this basic kaupapa.

The model we established did not preclude the Trust from itself becoming a provider. But it was not intended that the Trust take over from existing providers. An example was the catering service which the Trust established. There was no other comparable scheme and there was a need for this type of training module because there was seen to be employment opportunities in this area. So the Trust decided to fill the gap. We tried to keep a firm line between training and employment. We did not wish to see unemployed people exploited as cheap labour or training schemes operating as businesses with no real training for the trainees. So we monitored both training schemes and businesses very closely to ensure they would [operate] efficiently and effectively in the interests of the trainees or employees. We had our own staff monitoring and advising providers in a way in which no outside agency could do because we had the authority and mana of the Trust and Whanau behind us. We were very successful in making providers accountable first of all to the Whanau and secondly to funding agencies.⁸¹

According to Ms Brown, the Mana and Maori Access schemes fitted in well with the trust's constitution: 'There was a very holistic approach overall which is totally consistent with the Maori way of doing things. The approach was always collective and consensual.'⁸² By participating in the schemes, the trust believed that it was moving 'in a direction consistent with prevailing government policy' by putting 'into operation a model of Maori self-determination directed towards overcoming dependency and stimulating genuine socio-economic development among Maori in West Auckland'.⁸³

(2) Some frustration

However, Mr Hanley and Ms Brown outlined a history of frustration in the trust's involvement with the Mana and Maori Access schemes. According to Mr Hanley, despite the Government's stated policy of devolution:

There was no opportunity for the whanau or the Trust to be involved in programme design or policy development. . . . The [Mana and Maori Access] contracts did not

81. Document A8(h), paras 8–9

82. Document A8(r), para 10

83. Document A8(t), p 3

reflect a partnership approach between Maori Authorities and the Crown but rather established Maori Authorities essentially as agents of the Crown administering programmes established by the Crown with no 'substantive power' being devolved to Maori.⁸⁴

Giving an example of the difficulties the trust experienced, Mr Hanley stated that:

Attempts were made by Maori Affairs to have all Trust staff employed as Maori Affairs staff thereby removing their day to day accountability to the Whanau and the Trust. This would have also removed the responsibility for the Trust to hire staff.⁸⁵

Furthermore:

frequent administrative changes and arbitrary decisions made by government in respect of MANA and MACCESS and the lack of resources provided, inhibited the development of the Trust's own internal organisation. It also [affected] the Trust's ability to broaden its local base within West Auckland.⁸⁶

Ms Brown presented similar views:

A problem with the Mana Programme was the Board of Maori Affairs made the decisions at a national level and then later [at] a regional level. This took the power away from the Trust Boards in making good decisions. The Trust Board really just processed the loan. There was little negotiation or consultation with the Trust Boards. This reeked of paternalism and really reflected a desire to hold onto power rather than to share it. The Trust became more autonomous in administering the Mana Programme in 1989, when the Trust Board was given the authority to make the final decision on any particular proposal which was presented to them.⁸⁷

A further difficulty was the negative publicity given to the programmes in spite of their successes. According to Mr Hanley:

One of the important points to realise about the success of the MANA programme in West Auckland was that these businesses were being established at a time when business failures in West Auckland and unemployment were increasing at unprecedented rates.⁸⁸

Nevertheless:

Even with 85% success in loan repayments the failures got all the publicity and were used to promote the idea that Maori could not run commercial enterprises.⁸⁹

84. Ibid, p 4

85. Ibid

86. Ibid, p 5

87. Document A8(r), para 5

88. Document A8(h), para 10

89. Ibid, para 17

(3) *Real growth*

Whatever the difficulties, however, the schemes brought profound benefits for the trust:

The strength of the MANA programme was that it had the potential to transfer real power to the Trust. Because the interest earned on the loans became the property of the Trust this had the potential to generate a self funding economic base. By lending \$450,000 annually on an average of 10% per annum the Trust could earn \$45,000 a year. This amount could grow as the loans were repaid and reinvested.⁹⁰

In fact, interest which the trust earned from the Mana and Maori Access schemes enabled it to purchase the former Henderson police station on the corner of Edmonton and Great North Roads where its current premises are located. Although no longer operating by the start of the 1990s, the schemes provided a ‘model which was easily measured and easily managed’ and ‘were the building blocks for the Trust in [its] present format’.⁹¹

At the same time as it became involved in the Mana and Maori Access schemes, the trust continued to develop other initiatives. According to Mr Hanley:

[it] also took the opportunity . . . to apply for Community Organisation Grants Scheme (COGS) funding to establish a Whanau Liaison Worker position to focus on social issues of concern to Maori in Waipareira at the time. Tuini Hakaraia was appointed to this position and did an excellent job of liaising with other Maori organisations and government departments on behalf of the Trust. Through the efforts of Tuini and the Trustees themselves we were able to open the doors with Justice Department, the courts, Social Welfare, Housing Corporation, city Council and others. The whanau had always had informal links with these agencies but we wished to [establish] linkages based on the role of Te Whanau o Waipareira as THE Maori Authority in West Auckland.⁹²

2.3.7 Trust advocates for Maori

The trust was also pursuing its role as a lobbyist, making ‘frequent submissions to Task Groups and Commissions established by Government including the Royal Commission on Social Policy’⁹³ and on legislation before Parliament such as the Runanga Iwi Bill and the Resource Management Bill.⁹⁴ In 1988, the trust proposed to the Local Government Commission the establishment of Maori Authorities under the Local Government Act:

It proposed that, as the Local Government Act made provision for two types of local authorities, territorial local authorities and special purpose local authorities, that two types of Maori Local Authorities could also be established. Iwi Authorities could be

90. Document A8(h), para 20

91. Document A8(r), paras 8, 14

92. Document A8(h), para 2; see also doc A8(d), paras 4, 5

93. Document A8(t), p 6

94. Document A8(r), para 12

established as territorial local authorities and in addition authorities such as Waipareira could be recognised as special purpose authorities with responsibility for Maori socio-economic development in areas such as West Auckland. By this means Maori Authorities could be established with ‘substantive power’ consistent with New Zealand’s existing constitutional arrangements.⁹⁵

Mr Hanley told the Tribunal that ‘These proposals were never acknowledged by the Local Government Commission’.⁹⁶ He maintained that at no stage did the trust’s proactive stance result in:

any Government Department actually setting down with the Trust Board or Whanau to negotiate and plan strategies to enhance the social and economic well being of Maori people in Waipareira. The Trust was constantly having to react to government initiatives while never having the opportunity to plan and evaluate future strategies. The outcome was growing frustration and even antagonism towards government in respect of Maori issues and concerns.⁹⁷

2.3.8 Links with local bodies

However, in 1988, through its local government linkages, Te Whanau o Waipareira and the four local bodies in West Auckland jointly commissioned a study on social services in the region:

The objective of the study was to examine social services in West Auckland and the impact of [current and impending] local government reform on these services. The responsibility of the local council in respect of the Treaty was also included within this study. The study recommended, supported by the Whanau, the establishment of a co-ordinating committee to plan and evaluate the provision of social services in West Auckland. This committee was to be a committee of the new Council and include representation from the Trust as the Maori Authority.⁹⁸

It was also intended that the committee would monitor the performance of Government departments in West Auckland:

All government departments would be required to submit their annual plans for consideration by this committee and the following year the departments would be evaluated from a community perspective on their performance. This represented a model of dual accountability and partnership between the city Council and the Trust.⁹⁹

95. Document A8(t), p 6

96. Ibid

97. Ibid, pp 5–6

98. Ibid, p 6. The local bodies were the councils of Glen Eden Borough, Henderson Borough, New Lynn Borough, and Waitemata City. They no longer exist. The study, *West Auckland Community Social Services Review Report* (doc B6, app 5), was prepared by Social Planning and Research Consultants. The principal consultant preparing the report was Mr Hanley, who, from September 1987 to June 1988, had been employed as the coordinator of Te Whanau o Waipareira Trust. (In document B6, at page 2, Mr Hanley states that he was the trust’s coordinator from September 1986 to June 1987.)

99. Document A8(t), p 6

While the recommendations of this study were not fully implemented, Te Whanau o Waipareira subsequently gained representation ‘within the City Council structure’ through formal membership of the Waitakere City Council’s Taumata Runanga, comprising ‘representatives from iwi and other organisations selected by the Maori community’. Robert Harvey, the mayor of Waitakere City, explained to the Tribunal that the runanga was set up:

to ensure Maori values are upheld in Council’s decision-making, that Council meets its statutory obligations to tangata whenua and that Council provides effective services for, and communication with, Maori people in our City.¹⁰⁰

Claimant witness Monty Rihari informed the Tribunal that, at the time of the hearing, there were 10 Maori on the Taumata Runanga. He described the runanga as ‘a doorway for procedures between Maori and the Council’:

Each member is responsible for the area they represent. We deal with a wide range of issues. An example which comes to mind would be discussing the management of the Urupa which is being proposed for Waitakere City Council. . . .

We are very in touch with the community. I am able to carry across the knowledge I have for the benefit of both Waipareira Trust and the Council. So, I have an awareness of the medical, housing, educational needs in West Auckland. We are always kept very up to date and are therefore well able to inform our community whether it is the whanau or the Council or the Roopu Kaumatua of what is happening.¹⁰¹

In further concerted action, the trust, the Waitakere City Council, and ‘other key community organisations . . . conducted a joint planning and evaluation exercise in respect of Health needs and services in West Auckland’.¹⁰² This was a further extension of the Whanau’s involvement in health initiatives:

The Whanau had early on established a health sub-committee and it was also represented on the West Auckland District Health Committee which was established to work with the Auckland Area Health Board before its demise. Te Piki Ora had been established at [Hoani] Waititi Marae to promote Maori health. But this and other health initiatives were never funded adequately and all that we could do was address the most glaring gaps. The late Don Rameka and Tuini Hakaraira were, along with many others very active in advocating for resources for Maori to address their own health needs. Their dream was to establish a Maori model of health provision which could work alongside the Area Health Board.¹⁰³

2.3.9 Links with the DSW

Throughout this period, Te Whanau o Waipareira Trust maintained a close relationship with the DSW. Departmental officials were trust board members, for

100. Document A27, para 2

101. Document A8(s), pp 5, 6–7

102. Document A8(t), p 6

103. Document A8(h), para 12

example, and the trust was represented on the department's local district executive committee, established on the recommendation of the 1986 report *Puao-te-Ata-tu*.¹⁰⁴ Some claimant witnesses spoke positively of the relationship with the department over this time, at least until the establishment of the CFA in 1992. Mr Tamihere, for instance, told the Tribunal:

It would be true to say that up until the advent of the Community Funding Agency Waipareira was tracking a very healthy and progressive relationship with officials from the Department of Social Welfare. There was an expectation ... in their policy documentation in terms of *Puao-Tē-Ata-Tu* and the principles of the Treaty of Waitangi, [that there] would grow a stronger relationship.¹⁰⁵

However, Mr Hanley, the trust's coordinator from September 1987 to June 1988, presented some criticism of the relationship:

despite these linkages, we had critical problems with DSW Henderson because of their, in my view, inability to work in partnership with a Maori Authority and the wider whanau and attempts by them to impose, counter to what we believed to be Government policy, pakeha solutions and bureaucratic dictates on Maori despite the evidence that such approaches were failing Maori. We found there was lack of support from DSW Henderson for Maori Social Work staff and Maatua Whangai staff to the detriment of maori families and good working relationships between DSW and the whanau. DSW management appeared to lack the necessary training and commitment to DSW policy in respect of Maori.¹⁰⁶

2.4 CORPORATE PLANNING AND THE TRUST'S SOCIAL SERVICES PROGRAMME

2.4.1 Prompted by Government cutbacks

In the early 1990s, the trust responded to what it regarded as a 'massive down-sizing ... in the New Zealand bureaucracy', which had resulted in a 'vacuum' of social services to the Waipareira community, with a decision to 'expand and upgrade its facilities'.¹⁰⁷ Consequently, in 1991, now under the administrative leadership of Mr Tamihere as its chief executive officer, Te Whanau o Waipareira Trust developed a corporate plan with the purpose of acknowledging the problems facing the people of

104. As already noted, the assistant director of social work in New Lynn was a trustee until 1985 and the director of social welfare in Henderson was a trustee until February 1991, although not always an active trustee. Furthermore, Mr Stewart, who, from April 1988 to April 1992, was an employee of the DSW, became a trustee in 1989 'in major part as a representative of the Department'. He remained a trustee until November 1992 and in January 1993 became the trust's community-social services manager (doc B5, para 4.2).

105. Document A19, para 6.5

106. Document A8(h), para 5

107. Document A21(h), ch 2. As an example of this reduction, Mr Tamihere cited the closure of the Kokiri unit in Henderson on 29 June 1989. According to Mr Tamihere (doc A19, para 6.2), 'The Iwi Transition Agency was supposed to install an Iwi Development Manager in [the] Waipareira region with the appropriate resources. This did not occur and Waipareira has had to fill this vacuum completely without any funding from the Iwi Transition Agency or Government.'

Waipareira and determining how to obtain the resources to implement long-term sustainable solutions to them. In his evidence to the Tribunal, Mr Tamihere emphasised how the trust now realised that:

Long term sustainable solutions were only going to be available to us in the event that we as an organisation became the provider and in effect the operational deliverer of goods and services directly to our community. . . .

Te Whanau o Waipareira concluded in 1991 that as we were a pan-tribal group operating in the urban area and had a long history as being an acknowledged provider of a range of services that we should start to target and understand and appreciate where we might be able to expand in terms of lifting our socio-economic status in a long term sustainable way.¹⁰⁸

2.4.2 Socio-economic development

Mr Tamihere also drew a link between the absence of primary resources available to Maori who had migrated to West Auckland and the importance of the Waipareira community developing social services in the attempt to establish an economic base and thus break the poverty cycle:

Obviously when we do not have primary resources such as forests, land, fisheries and the like to work up, service related industries in the city take on a significance of some degree.

As an urban based Maori people suffering the difficulties that we have expressed it was extremely important that we look around for employment opportunities. Consequently, we invested significantly in systems to run a vision where we would start to advocate and tender on merit and performance that we could actually manage better our problems. . . .

In the first instance we would win resources which would uplift our socio-economic status and obviously being the whanau moving into the ascendancy we would appoint our own to provide service in a significant service industry. We are all aware that one of the biggest industries in any nation[']s economy is the social service sector. . . . Under no circumstances were we inclined to continue to be merely clients. It was extremely important in an attempt to break out of our poverty cycle that we became providers of the service.¹⁰⁹

2.4.3 Economic and State sector reforms helpful

Mr Tamihere acknowledged that the State sector reforms of the 1980s and 1990s that introduced the so-called funder-provider split (ie, the policy by which Government agencies providing funding for services were separated from those providing the services) were important in assisting the trust to carry out these intentions:

¹⁰⁸. Document A19, paras 5.1–5.2

¹⁰⁹. Ibid, paras 5.3, 5.16–5.17

The division of the funder from the provider of services was one of the most exciting and stimulating occurrences for us as a people in the history of the development of this country. It allowed us the opportunity to put in place systems to deliver services to our own people and at the same time impact dramatically on our socio-economic status.¹¹⁰

As an example of how the trust took advantage of this development in governmental policy, Mr Tamihere explained how the trust had obtained money through the Education and Training Support Agency to train over 140 people to certification A level toward a diploma in social work.¹¹¹

Mr Hanley also spoke positively of the restructuring undertaken by the Government over the previous decade and how it could continue to provide real opportunities for Maori, if power were to be shared:

The new structure of the Public Service is not a straight jacket. There are many variations already in place which reflect the ability of the general model to be adapted to meet a range of needs. There are over 2,600 locally elected School Boards of Trustees in this country responsible for the delivery of educational programmes with accountability relationships to both government and their communities. There are COGS committees, CHE's, RHA's, Lottery Grants Board, and so on all organised in a variety of ways to meet different needs. Perhaps the best known example in respect of Maori programmes is the structure of Te Kohanga Reo. It is whanau based but includes a National Trust who is contracted by the Ministry of Education to administer and maintain standards. There is a formal tripartite monitoring agreement between the National Trust, Te Puni Kokiri and the Ministry of Education.¹¹²

Pat Hohepa, Professor of Maori Language at the University of Auckland, was another claimant witness to comment on the effect of the Government's reforms on Te Whanau o Waipareira Trust:

Waipareira has taken over many of the duties of Government Departments, particularly so since Departments have restructured so that non-government agencies are empowered to take over its various functions and duties.¹¹³

2.4.4 Trust's infrastructure developed

To further develop its role as a service provider, however, the trust had to learn how to manage systems on a larger scale. As Mr Tamihere observed, West Auckland Maori had played their part in labour projects of the past, 'but never had [they] been allowed to supervise and manage projects on any scale'. In the first six months of 1991, therefore, the trust spent \$250,000 'implementing state-of-the-art management systems and bringing in-house its own chartered accountancy operation, legal operation and quality management assurance systems'.¹¹⁴ This investment of money

110. Ibid, para 5.18

111. Ibid, para 5.20

112. Document B6, p 15

113. Document A8(j), para 7

114. Document A19, paras 5.19, 5.21

enabled the trust to replace its cash-book accounting system, under which ‘financial management . . . was limited to the reporting of bank balances’, with an in-house operation based on cost-centre accounting, including a cost centre for social services. Under the new system, and through the hard work of dedicated, high-calibre staff, the trust overcame a 2½-year backlog of accounts and, with detailed financial reportage possible, ‘was now in a position to manage its operations in an appropriate and prudent manner’.¹¹⁵

2.4.5 First contracts with Social Welfare

In 1991, Te Whanau o Waipareira Trust moved from providing services based on ‘goodwill and voluntary labour of [the] Maori community’ to funded services under the name Te Whanau o Waipareira Social Services. This development arose from a two-year contract with the DSW to provide a homebuilders service followed by a further contract in April 1992 to provide child and family support services.¹¹⁶

The homebuilders programme, later renamed home and marae-based services, provided ‘a casework service . . . aimed at the practical support of families and children’.¹¹⁷ According to Mr Stewart:

This was the first time that a service which purported to have a Maori Kaupapa had been attempted. There was an attempt to meet both cultural imperatives and departmental contracts and approval requirements.¹¹⁸

Ms Hanna told the Tribunal how the homebuilders programme was part of the trust’s holistic approach to social services:

One of the great things about the Trust is that it is such an holistic outfit. For example one worker here [at the trust] . . . deals with many of the Domestic Problems that occur, particularly in relation to Homebuilders which concentrates on families in stress. We might then link these people in with some of these Psychological experts in our Health Unit . . . In addition to this it may be that a child needs to be removed from a particular home. We are then able to place them in care if this is necessary. We attempt to look at the whole person and because of the networks that we have developed and these Services that are in place at the Trust we are able to do this.¹¹⁹

Isabella Mano, a Te Whanau o Waipareira trustee, indicated some frustration with the homebuilders programme:

Really we try to get the family back on a Marae, but it is seen as impractical by The Children [and] Young Persons Service. So why call it a Marae Service if they are not funding us to do this.¹²⁰

115. Document B4, pp 4–13

116. Document B5, app 7, p 27; doc A8(k), para 7

117. Document B5, app 8

118. Document A8(k), para 7

119. Document A8(c), para 9

120. Document A8(g), para 8

In 1991, in tandem with these developments, the trust formed the Waipareira Social Services Committee, made up of representatives of all its affiliates. The committee's role was to oversee and manage, in conjunction with the community services manager, the delivery of social services by staff, the whanau support workers. According to Ms Hanna, the committee was 'charged with the responsibility of ensuring that everyone involved was accountable, and performing their jobs properly'.¹²¹

2.4.6 Contact with the police

Te Whanau o Waipareira Trust was also establishing a working relationship with the West Auckland police. A committee, comprising trust representatives Jack Wihongi, Heta Tobin, and Ms Mariu, was formed 'to establish Iwi contacts' and to 'assist in the implementation of the District responsiveness plan for Maori as part of [the] Treaty of Waitangi obligations of West Auckland Police'. Through this relationship, the trust has had input into matters such as the recruitment of Maori police and the Auckland Institute of Technology police generalist course and the police have been provided with 'an excellent Management information resource'.¹²²

2.4.7 Maatua Whangai abolished

In 1992, the Maatua Whangai programme then operating within the Children and Young Persons Service finished and the money used in that programme was transferred to the CFA for Maori service provision. Mr Stewart said in his evidence that since the demise of Maatua Whangai and the transfer of funding he had seen 'a noticeable decline in the ability of the Department to access and deal with Maori families in an appropriate manner. The Department now relies on Waipareira to fill that vacuum'.¹²³

2.4.8 Trust's social services expanding

At the same time as the Children and Young Persons Service's Maatua Whangai programme ended, Te Whanau o Waipareira Trust was continuing to develop its range of social services. Ms Lau'ese, who began working as a voluntary social services worker for the trust in 1992, told the Tribunal that the trust established a number of new services in 1992 and early 1993 including a food cooperative, a foodbank, the provision of budgeting advice, holiday programmes for children at risk, and a health clinic. She indicated that over this time 'client demand had increased dramatically':

A lot of people were using the services set up under these programmes because they knew the Trust could offer them these services. This was especially so for Maori people,

121. Document A25, para 68

122. Document A20, paras 38, 40, 41, 46. Under the New Zealand Police 1991–92 corporate plan, each district police commander was required to develop a district 'responsiveness plan' for implementation by 30 June 1993, as part of the police's commitment to Maori (ibid, para 33).

123. Document B5, para 5.3

largely because the Trust had Maori Personnel, whom the Maori people felt comfortable with.

... The Trust was fortunate enough to have the support of the community and Affiliate Groups, to help cope with demand. Also a number of Voluntary workers, like myself, had been brought on board to help cope with the demand. The administrative support staff employed, were invaluable in co-ordinating between the various groups we were involved with.

What is also important to note is that once more and more people were coming to us, we noticed that many of them had a number of different other social problems as well. Many of these problems were of a severe nature.¹²⁴

2.4.9 Alternative school started

In August 1992, the trust significantly expanded its role in the education field by providing for the educational needs of a group of about 17 'street kids'. The trust board responded by directing 'management to [implement] some form of regime to clearly target this problem area'.¹²⁵

Information about the trust's Transition Education Unit was provided by the head of the unit and in three reports prepared by Mr Tamihere in June 1994, the principal of Rutherford High School in August 1994, and the Special Education Service in August 1994.¹²⁶

The principal of Rutherford High School provided this history of the unit:

The unit was developed on the premise that the community should acknowledge and take ownership of its problems. Community owned and driven solutions do work.

In March 1992, a Waipareira Trust Board member advised the Board that he had identified up to 17 'street kids' aged from 13 to 17 who were creating a significant degree of community difficulty through truancy, loitering, burglary and other offences.

It was evident that their particular needs precluded them from mainstream school campuses. The students were identified by the Police and Children and Young Persons Service as creating social disharmony totally out of proportion to their numbers. This small group were identified as being a major cause of youth offending in the western district.

As a consequence, the Trust Board decided to act on this problem. A pilot scheme, now known as Waipareira Alternative Unit, was now set up. It was always intended that after an initial period of funding by the Trust, there would be a need for other Government and non government agencies to share in the burden of providing resources. Two major evaluations of the Unit were carried out by the Special Education Service.

... Both reports are supportive of the Unit's work, highlighting the need for a resource such as this to remain. Other supportive reports have been provided by the Correspondence School and Rutherford High School's Computer Assisted Learning Programme.¹²⁷

124. Document A22, paras 41-49

125. Document A26, app 2, p 12

126. Ibid, apps 1, 3, 4

127. Ibid, app 3, p 2

The Special Education Service report began with this description of the unit:

The Unit was set up to meet the needs of Maori Youth in West Auckland, who are no longer in the school system and have become alienated from society. Students are aged between 13 and 16 years. They are brought to the Unit by Youth Justice Workers; Social Workers from Children & Young Persons Service; Special Education Service Visiting Teachers, Psychologists and Kai Takawaenga, Youth Aid, Boards of Trustee members and parents. The roll of the Unit is approximately 20.

The Unit is staffed by a trained teacher and a youth worker. They are supported by Correspondence School staff and an itinerant special needs teacher (1 day a week).

The programme aims to reverse alienation and anti social behaviour of the students.¹²⁸

The aims of the unit are stated in Mr Tamihere's report as being unchanged from the time it was piloted. They were:

- a. To provide a safe and supportive environment for clients for whom school years have been unproductive.
- b. To provide life skills education for the non-academic.
- c. To provide literacy and numeracy skills using the ARLA philosophy.
- d. To provide study opportunities for those who need extension in academic or technical areas.¹²⁹

The report of the principal of Rutherford High School elaborated on these by listing three further objectives of the unit:

- To deliver the National Curriculum through attachment to the Correspondence School.
- To return students to mainstream educational settings where appropriate to their needs.
- To place students in mainstream training programmes where appropriate to their needs.

The over-riding aims will be for clients to achieve positive, long-term, behavioural and attitude changes through a co-operative student-based programme.¹³⁰

The same report described the way in which the unit's programme was delivered:

The programme depends on the active co-operation of a number of agencies. The leisure/fitness activities are usually carried out in facilities supplied by Waitakere City Council. Health education is provided by the Waipareira Trust, outside agencies and the teaching staff. Computer Assisted Learning Programmes utilise Rutherford High School's facilities while academic programmes are the responsibility of the [Unit's] staff members Sue and John, the Te Waka Ora Support Staff [an itinerant unit attached to Green Bay High School] and in the main by the Correspondence School, as are Link and Transition Programmes. Meals and transport . . . as well as staff salaries, buildings,

128. Ibid, app 4, p 2

129. Ibid, app 1, p 27

130. Ibid, app 3, p 3

administrative support, heat, light, power and telephone, social services and programme assistance are provided by the Waipareira Trust. Counselling is offered by Te Waka Ora.¹³¹

The unit was housed in a leased factory, which was described as being:

a great improvement on the previous locations. There is provision for flexible teaching spaces and also for recreation facilities, toilets, small lounge and office space. There is a need for more complete kitchen facilities and on a long term basis heating needs to be greatly improved. Any new premises would need to be leased on a long term basis so that it can be developed as a teaching space.

The furniture and fittings have been provided by both the Trust and the former Owairaka Boys Home School.¹³²

The Special Education Services report discussed the prior schooling and the homelife problems of six students at the unit and then examined their attendance record, their communication and social skills, and their achievement of educational goals. Favourable comments were made about the students' progress in all areas.

2.4.10 Corporate and social service divisions of the trust

(1) Trust restructured

Early in the 1990s, the trust underwent some restructuring itself. The chairperson's 1993 annual report stated:

We have restructured significantly in the manner in which we conduct business. All programme areas are now structured as separate business units and the development of each programme area will slowly be devolved into each business unit so that each takes on a greater degree of autonomy yet continues to operate under the umbrella of the Trust Board.¹³³

Part of this restructuring involved the establishment (sometime in 1992 or 1993, it appears) of two operating arms: one a corporate arm, based in premises purchased in New Lynn, to look after the trust's commercial and investment interests; the other a social services and health arm, based at the trust's Henderson property on the corner of Great North and Edmonton Roads.

(2) Waipareira Corporate

Publicity material about the commercial and corporate arm stated:

Waipareira Corporate is about commitment to economic development, locally and nationally, and invites opportunities for potential investment. Waipareira Corporate understands the composition of business in New Zealand and that 'small' business is

131. Document A26, app 3, pp 5, 6

132. Ibid, p 2

133. Document A21(g), para 3

‘big’ business. As a result, we are dedicated to the development of all business and investment opportunities.¹³⁴

The original statement of claim dated 16 December 1993 explained the theory behind the trust’s commercial work, likening it to the business of Fletcher Challenge Limited. In short, it stated that ‘The commercial arm of the Trust goes out and endeavours to obtain large contracts and then sets out to employ.’¹³⁵

In his 1993 annual report, trust chairperson Mr Wihongi explained:

It is intended that our Training and Employment and Commercial arm will be necessary in breaking the cycle of dependency . . . The Social Services and Health arms are vital in our shorter term strategy as they provide sustenance and assistance to our known social plight.

The Trust is now fully committed to investment opportunities securing a far more solid and long term economic base for the Board so that it can invest directly in longer term sustainable projects. As a consequence the Board is no longer in to on-lending but is committed to reviewing investment opportunities to increase [its] own balance sheet and income.¹³⁶

He also explained a further rationale behind the development:

It is important that profound statements are made to our community as we develop. We desire to show that we can be competitive and that it is not beyond us to operate at any level of business or commerce. Our children have been hosted at our New Lynn venue and introduced to role models so that they may know that business technology or professionals are not mythical or unattainable.

We must concentrate on adding value to everything in West Auckland, employing from West Auckland, building in West Auckland and the like. If the West Auckland economy is moving forward this will provide greater employment opportunities and we are strongly committed to promoting this region.¹³⁷

Ms Mariu, a former chairperson of the trust, told the Tribunal that the development of the commercial and corporate arm was part of ‘a long history of being very proactive and creative. . . . The corporate phase the Trust has entered is part of the natural evolution which the Trust has undergone in the past 30 years.’¹³⁸

(3) Aim to generate income

In cross-examination, Michael Tolich, the trust’s financial manager, confirmed that, while the purpose of Waipareira Corporate was to increase the trust’s ‘own balance sheet and income’, profits gained from its business operations must be applied in

134. Document A21(a)

135. Claim 1.1, para 8(d)

136. Document A21(g), paras 2, 3.1

137. Ibid

138. Document A8(o), para 13

accordance with its constitution as a charitable trust.¹³⁹ Tested further by the Crown on the relationship between the trust's investment approach and its status as a charitable trust, Mr Tolich responded by saying:

if we had a dream . . . the dream would be simply this – that we wouldn't need any State money, that we had it all ourselves . . . The dream is that we will employ all our people, that when they want the housing we will provide the money for them, that when they want a doctor we will give them a doctor for nothing. That's our dream. That is what the trustees dream about. That's what our kaumatua dream about. And all our companies are is a vehicle to do it.¹⁴⁰

(4) To fund social services

In cross-examination, Mr Tamihere also drew the link between the trust's corporate and social service divisions, emphasising that developing employment opportunities through commercial investment and development was viewed by the trust as very much 'a social service result':

if you look at our whole development process and plan it's integrated and it is a community development plan, regardless of whether you like to confine it in terms of the way we have had to, business units, cost units, all these sorts of things, the reality is that . . . everything it does is providing a social service outcome.¹⁴¹

By 1993, the trust's corporate division was 'attracting invitations to join significant commercial opportunities'. It had established profitable trading companies 'in the Building Industry, Sewing Apparel Design, In and Out Catering, Training & Employment, Labour Hire and Business Advisory Services' and, assisted by West Auckland business people, was providing legal, accounting, and management support to assist those in the community who were commencing their own business. The division had given business plan training to over 60 people in preparation for their entry to self-employment. The division's work in this area had been acknowledged by a certificate from the Minister of Business Development.

The chairperson's 1993 annual report indicated that a significant policy decision had been made to discontinue the trust's large sports sponsorship programme and direct that money into employment creation programmes in West Auckland.¹⁴²

139. Document A21(g), para 10; doc B10, p 55, see also pp 15, 33. A member of the New Zealand Society of Accountants since 1986, Mr Tolich was employed by the trust in 1990. From 1973, he held various accountancy positions with organisations including the Alex Harvey Group of companies, New Zealand Steel, Arthur Yates and Company Ltd, and Apparel Holdings DIC Group. At the time of the hearings, Mr Tolich was the chairperson of the national advisory committee of the community organisation grants scheme (COGS) and of the COGS local distribution committee for Waitakere City (doc B4, p 1).

140. Document B10, p 56

141. Ibid, p 13

142. Document A21(g), paras 3.2, 3.5, 3.6, 7.3. A wide range of sports codes, including rugby, rugby league, netball, 10-pin bowling, rowing, athletics, and martial arts, had previously received sponsorship from the trust (ibid, para 7.3).

2.5 TE WHANAU O WAIPAREIRA TRUST AT THE TIME OF THE TRIBUNAL'S INQUIRY

2.5.1 Structure

The Tribunal received in evidence Te Whanau o Waipareira Trust Board's corporate plan for 1993–94, prepared after consultation with the whanau, and the chairperson's annual report for 1993.¹⁴³ These documents, in addition to other evidence presented by claimant witnesses, were valuable in providing the Tribunal with an up-to-date account of the trust's management structure and operations at, and leading up to, the start of the Tribunal's inquiry in August 1994.

2.5.2 Trust board and management

Following the adoption of new rules, the trust's amended constitution provides that the board of trustees comprise between seven and 15 members, who are to be 'elected from Te Whanau o Waipareira' at an annual general meeting of the trust, except for one trustee who is nominated annually by Te Runanga o Ngati Whatua as a standing representative of the tangata whenua of Auckland. At the time of the hearing, the board of trustees had a full complement of members under the leadership of Mr Wihongi. Ms Pou was the Ngati Whatua representative on the board and the board's deputy chairperson.¹⁴⁴ According to Mr Tamihere, 'Every waka is represented on [the] Trust Board.'¹⁴⁵

The corporate plan explains that:

The Trust Board now works on a tri-annual basis. That is, each year, five trustees offer themselves for re-election or retirement and stand with any new nominations that may come from the wider whanau. A poll is held at the Annual General Meeting to determine the five successful members to the Trust Board.¹⁴⁶

2.5.3 Accountability to the community

The plan stresses that not only is the individual accountability of the board members tested by way of election to the board every three years but:

More importantly a Hui-a-whanau is held on the last Wednesday of every month. Consequently, any individual in West Auckland can stand and ask for support, criticise or require information on every facet of [the trust's] existence from financial detail to policy.¹⁴⁷

Claimant witness Dr Sharples put it this way:

143. Document A21(g), (h)

144. Document A8(i), p 3. The remaining trustees are listed at page 3 of the 1993–94 corporate plan (see doc A21(h)).

145. Document A19, para 3.5

146. Document A21(f), p 7

147. Ibid

Accountability is in terms of one, the constitution, in terms of what the trustees have to do formally; and there's another kind of accountability which is your personal accountability to the people generally. And, because this area is so old in terms of people having lived here, Maori, a lot of the people living here have done their time, if you like, in West Auckland, it's got a very strong sense of censure, and of support for good initiatives. So there is, in people fronting up, an accountability to the people, as well as their requirements in terms of the legal constitution.¹⁴⁸

The trust also reports weekly to the wider West Auckland community through a 'Whanau o Waipareira page' in the West Auckland newspaper the *Western Leader*.¹⁴⁹

The trust's new rules provide that, in addition to public notice of the annual general meeting, 'Separate notification shall be forwarded to known members of the Whanau in respect to the date time and place of the proposed meeting and the proposed agenda' (r 8).¹⁵⁰

Matters arising at any annual general hui are to be decided by a majority vote with the chairperson having a second or casting vote where voting is equal (r 3(h)). However, while questions arising at any meeting of the board are decided by a majority vote, 'in the case of an equality of votes the Chairperson shall not have a second or casting vote' (r 5(b)).¹⁵¹

Rule 6 enables certain matters to be referred to a meeting of the whanau:

- a. In the event that seven (7) or more Trust Board members determine by notice in writing to the Chairman that an issue of importance to them has arisen the matter must then be referred to a Hui a Whanau called within fourteen days of the written notice to the Chairman.
- b. Whilst the matter is being referred to the Hui a Whanau all action in regard to the matter raised . . . will be caveated pending resolution by a majority vote at the Hui a Whanau.
- c. A matter addressed at a Hui a Whanau called in accordance with this clause shall be raised and dealt with once only.¹⁵²

The trust board's new rules allow it to establish executive committees to carry out delegated powers, duties, and responsibilities of the board and management committees in order to inquire into, superintend, or carry out any business of the board.

2.5.4 Kaumatua committee

The rules also stipulate that there 'be a special committee of the Board known as the Kaumatua Committee'. Rule 12 states:

148. Dr Sharples, oral evidence, first hearing, 1 September 1994, tapes 3, 4

149. Document A21(g), para 7.5

150. Document A5, app B, p 5

151. Ibid, p 4

152. Ibid

- b. The members of the Kaumatua Committee shall be Nga Kaumatua-O-Waipareira and membership shall be determined in accordance with Tikanga Maori O Waipareira.
- c. In the administration of the affairs of the Trust Board the Board Members may consult with the Kaumatua Committee and the Kaumatua Committee may advise the board Members on any matter relating to the affairs of the Trust Board PROVIDED THAT the Kaumatua Committee shall not be deemed to be trustees in respect of the objects set forth in Appendix A hereof. [Emphasis in original.]¹⁵³

In his 1993 annual report, chairperson Mr Wihongi praised the work of the kaumatua committee, describing the group as an 'inspiration'. Later in the report, he wrote:

My Trust Board and myself are extremely proud of the tremendous increase in activities and numbers that our Kaumatua Komiti has reflected this year. There are presently 90 registered kaumatua in this Komiti and they have provided absolutely invaluable assistance in the hosting of dignitaries and in the quiet methodical way they provide advice to the whole of the community and the whanau.

It is necessary to let our kaumatua know that they have a meaningful and rightful position to play in terms of all our initiatives, the Mauri, the Ihi and the Wehi in which they have continued to act as elder statesmen, advisors and the dignity and humility that they have exhibited in solving a number of problems in our community have not gone unnoticed.¹⁵⁴

2.5.5 Executive and staff

Rule 7 enables the board of trustees to 'appoint an Executive Officer to oversee the proper functioning of its affairs', together with other staff to whom it may delegate certain powers.¹⁵⁵ The trust's chief executive reports monthly to the trust board and more frequently if necessary.¹⁵⁶

The chairperson's annual report for 1993 says of its staff:

Our personnel leading our Management teams . . . bring tremendous private and public work experience to the Trust. We are pleased to advise that all of the Senior Managers are Degree qualified . . .

The Trust is building a multi-disciplinarian and multi-functional work force.¹⁵⁷

The 1993–94 corporate plan sets out the following management strategy for management and staff to work to:

¹⁵³. Ibid, pp 7–8

¹⁵⁴. Ibid, pp 4, 20

¹⁵⁵. Document A5, app B, p 5

¹⁵⁶. Document A21(h), ch 7. There is a discrepancy on reporting frequency in the evidence, however. On page 18 of the chairperson's 1993 annual report, it states that 'we' report to the trust board fortnightly, whereas elsewhere in the same document it is said to be monthly (eg, see doc A21(g), p 28).

¹⁵⁷. Document A21(g), paras 1.2, 1.3

- 1 That the whanau is our key resource.
- 2 That service to our community is an operational imperative.
- 3 That accountability and consultation with the community must be optimised.
- 4 That joint decision making between the Trust Board, staff and community will set down the action strategies to address priorities.
- 5 That accountability to our contractors and community is a priority.¹⁵⁸

2.6 THE TRUST'S PROGRAMMES PRIOR TO THE HEARING

Leading up to the Tribunal's inquiry into this claim, Te Whanau o Waipareira Trust was involved in a large number of programmes in the areas of education, training and employment, economic development, community and social services, and health. The trust's involvement in each area is summarised below.

2.6.1 Education, training, and employment

The Tribunal was told that Te Whanau o Waipareira Trust had become acknowledged as a provider of second-chance training and education; indeed, it was the largest provider of training and employment services to the West Auckland community.¹⁵⁹

In 1993–94, the trust was 'administering, initiating and supporting' a large number of educational and employment-oriented programmes including courses in agriculture, bone carving, car maintenance, carpentry, catering, computer training, Te Ataarangi Maori language course, fundamental retailing, home maintenance and building, secretarial work, sewing, shoe-making, spray painting and panel beating, and telemarketing.¹⁶⁰ The trust had been approved to deliver the Government's Training Opportunities Programme and had negotiated with polytechnics and universities to have trust courses cross-credited to qualifications gained at tertiary institutions. It had entered into a joint venture with the Auckland Institute of Studies and the trust's Maori Performing Arts Academy was based on the institute's campus. The majority, if not all, of its courses had been accredited by the New Zealand Qualifications Authority.¹⁶¹ Over 200 West Aucklanders had been placed in employment through the trust's employment arm between 30 June 1992 and 1 July 1993.¹⁶²

By the time of the hearing, the trust had become, or was about to become, part of the 'Parents as First Teachers' scheme. Kohanga reo, kura kaupapa Maori, and wharekura Maori education systems in the Waipareira area were well established and

158. Document A21(h), ch 4

159. Document A21(g), para 2.1

160. Document A21(b)

161. There is a discrepancy in the evidence on this point. The 1993–94 corporate plan states that 'all 21 [of the trust's] courses have been accredited by the New Zealand Qualifications Authority' (doc A21(h), ch 9), while other evidence labelled 'Excerpt from Te Whanau o Waipareira Corporate Plan' states that 'the majority of [its] programmes are officially recognised by the New Zealand Qualifications Authority' (doc A19, app 1, p 6).

162. Document A21(g), para 2.5

showing ‘dynamic growth’.¹⁶³ The trust supported West Auckland students with educational scholarships.¹⁶⁴ A Waipareira education agency, comprising Maori teachers in West Auckland schools, had been set up to pursue policy development and curriculum changes in institutional education. The Alternative Education Unit, established in 1992, had moved from a borrowed prefabricated classroom where it had first existed without educational books or equipment to leased factory premises, with room not only for educational activities but also for indoor recreation and social activities.¹⁶⁵ The Tribunal received in evidence evaluative reports that praised the unit and the achievements it had made. The director of the Correspondence School wrote:

The project . . . clearly offers a constructive and rehabilitative education alternative for ‘at risk’ youth in West Auckland based on sound principles and offering considerable potential for successful outcomes.¹⁶⁶

In her evaluation report on the unit by the Special Education Service, Justine Tennant, a registered psychologist, concluded:

In my opinion this unit represents not just alternative education but a real effort to achieve quality education for alienated students. That they have continued their efforts now for two years is amazing, given their limited resources and lack of financial security.¹⁶⁷

Claimant witnesses impressed upon the Tribunal the strategic importance of the trust’s education, training, and employment programmes as a way of empowering whanau members:

It is important . . . that we change attitudes and that we provide self-esteem so that as many of our trainees as possible are granted greater empowerment and the ability to be more productive for themselves, their family and our community.¹⁶⁸

The trust’s 1993–94 corporate plan set out the following priorities in this area:

Training and Employment

- a. Become a Private Training Establishment.
- b. Have 90 percent of the Training Programme validated under the NZ Qualifications Authority.
- c. Negotiate better courses for clients staircased into higher tertiary institutions
- d. Upgrade our facilities by way of a capital purchase and improvement programme which will link in with our economic development.
- e. Continue upgrading of staff.

163. Ibid, p 14. ‘Kohanga reo’ are ‘language nests’ providing pre-school education in Maori; ‘kura kaupapa Maori’ are Maori language immersion primary schools; ‘wharekura Maori’ are Maori language immersion secondary schools (doc A19, para 1.22).

164. In the 1992–93 financial year, the trust provided 20 \$1000 educational scholarships.

165. Document A21(h), ch 9; doc A26, app 1, app 3, p 4

166. Document A26, app 3, p 15

167. Ibid, app 4, p 8

168. Document A21(g), para 2.2

- f. Develop and implement more Joint Ventures with Industry, Commerce and other Tertiary Institutions offering enhanced educational opportunity.

Education

- a. Increase the retention rate of Maori children at schools.
- b. Review the performance of schools relevant to Maori beneficiaries under Trust Boards at these schools.
- c. Develop alternative curriculums.
- d. Develop homework centres.
- e. In tandem with our Community Development, develop Whanau Committee at every school.
- f. Upgrade the facilities offered to our Alternative Education Unit (13 to 17 year olds).¹⁶⁹

2.6.2 Economic development

At the time of the Tribunal's hearing, Waipareira Corporate was offering services relating to venture capital financing, investment analysis, business development, business skills seminars, business services, legal advice, business communications, desktop publishing, central and local government policy development, and work with central and local government.¹⁷⁰ According to its 1993–94 corporate plan:

The Trust is the largest contracted agent to deliver small enterprise business entrepreneurial training to the West Auckland region and was one of 6 organisations chosen nationally to pilot a capitalization scheme offering up-front cash to kick-start businesses.¹⁷¹

Mr Tolich informed the Tribunal that the trust board was operating the following seven companies providing training and employment opportunities for West Aucklanders: Wai-Tech (to run the trust's training division), Wai-Health (to run its health services), Waipareira Building Company, Man-Tech Waste Disposal, New Zealand Guard Services, Waipareira Properties, Waipareira Sewing Company, and Waipareira Developments.¹⁷²

The trust's 1993–94 corporate plan established the following priorities for the trust in the area of economic development:

Economics

- a. Sponsor and operate business management programmes.
- b. Provide small facilities of venture finance.
- c. Provide legal and accounting management assistance.
- d. Implement community co-operative company models.
- e. Develop a holistic product marketing policy.

¹⁶⁹. Document A21(h), sec 8

¹⁷⁰. Document A21(a)

¹⁷¹. Document A21(h), ch 9

¹⁷². From Crown counsel's questions of Mr Tamihere, the Tribunal learned that the sewing company was no longer an affiliate of the trust. Whether the trust still had shares in the company is not clear from the evidence.

- f. Develop Joint Ventures, Partnerships and Consortiums to strengthen the economic base of the Trust.¹⁷³

2.6.3 Health services

Endeavouring to ‘take advantage of the philosophy behind the health reforms’, the trust was providing medical, dental, and community health care to the West Auckland community and had shown ‘dynamic growth and dynamic results’. In its 1993–94 corporate plan, the trust identified its health care priorities as being:

Health

- a. Implement free medical service to tamariki.
- b. Continue to develop the Waipareira Medical Clinic.
- c. Enter into comprehensive contracts with the Northern Regional Health Authority.
- d. Play a more proactive role in the health consultation process to ensure appropriate resourcing of our client.
- e. Co-ordinate our capacity to contest better health delivery to our clients.¹⁷⁴

Its health services were designed to be high quality, accessible, and affordable, and a successful innovation had been the provision of its health services through mobile units to places such as schools and marae. Demonstrating the integrated nature of the services, the trust had developed under its employment and training arm a health resource certificate providing instruction in the operation of the health system. The course ‘had met with tremendous feedback and success’.¹⁷⁵ The trust’s health services also included the provision of education and counselling in relation to drug, alcohol, and substance abuse.¹⁷⁶

2.6.4 Community and social services

The trust’s community work priorities for 1993–94 were:

Community

- a. Increase the distribution potential of the Food Co-operative.
- b. Develop a totally integrated Social Servicing delivery system.
- c. Develop monitoring, accountability, and evaluation methods subject to client confidentiality.
- d. Develop and implement Social Work training programme in Joint Venture with other Tertiary organisations.
- e. Support use of Kaumatua Committee.¹⁷⁷

¹⁷³. Document A21(h), sec 8

¹⁷⁴. Ibid

¹⁷⁵. Document A21(g), paras 4, 6.1, 6.3

¹⁷⁶. Document A21(h), ch 9

¹⁷⁷. Ibid, sec 8

In his evidence, Mr Stewart outlined the specific CFA categories into which the trust's services fell. These were: child and family support services (including care services for children and young people), home- and marae-based services, youth activities services, family resource services (including a food bank servicing 300 families), budgeting services, and anger management programmes.¹⁷⁸

However, difficulties with the trust's community and social services were the catalyst for this claim. The details are canvassed in chapter 7. At this point, it is sufficient to say that for nine months from 1 July 1993 the trust refused to accept the CFA's offer of funding for the trust's programmes. Instead, the trust fully covered the costs of providing its social services until 10 March 1994, when it entered into a without prejudice contract with the agency pending the outcome of the trust's claim to the Waitangi Tribunal. However, despite increasing client demand, the trust was forced to decrease significantly the range of services it could offer and became, predominantly, a 'referral service'.¹⁷⁹ Mr Tamihere explained that, as a 'fiscally responsible organisation' that relied on Government funding to maintain its infrastructure, the trust 'could not continue to operate such an expensive service and survive'.¹⁸⁰ Consequently, in May 1994, Te Whanau o Waipareira Trust's social services division officially closed and the 15 whanau support workers it employed lost their jobs.¹⁸¹

(1) Drastic cutbacks

In her evidence, Ms Hanna, who was the executive officer of the trust's social services division, informed the Tribunal that, before the closure, the trust was providing the following social services:

- (a) whanau support workers for families under stress;
- (b) youth workers for young people;
- (c) outdoor activities for at-risk youth;
- (d) budgeting services;
- (e) anger management programmes;
- (f) emergency housing for families, pregnant young mothers, solo mothers, and women under stress;¹⁸²
- (g) accommodation and care for teenage boys;
- (h) accommodation and care with approved caregivers for children or young people;
- (i) court workers in the District, Youth, and Family Courts; and
- (j) supervision of men, women, and youth referred by the Children and Young Persons Service and the justice system to do community work, community care, and community service.¹⁸³

178. Document B5, p 20. More information about these services is to be found in Te Whanau o Waipareira Trust's social services business plan for 1994–95 (doc B5, app 8).

179. Document A22, para 52(c)

180. Document B3, paras 3.8–3.9

181. Document A25, paras 67–68

182. According to the 1993–94 corporate plan, the trust provides 15 such houses (doc A21(h), ch 9).

183. Document A25, para 69

Ms Hanna also explained that at the time of the hearing the trust was providing only the services referred to in (f) to (j) above and that it received funding for only (g) and (h):

Apart from a little funding from the Youth Justice Section of Children [and] Young Persons Service, all other current social services work is being done on a voluntary basis.¹⁸⁴

Mr Tolich also emphasised the contribution the trust had made in its delivery of social services in the 1992–93 and 1993–94 years and the difficulties caused by the failure to reach agreement on the amount of agency funding the trust should receive in the 1993–94 year:

In the 1992/93 year, \$87,000 of our own funds go into social services to bolster it. In the 1993/94 year something like \$90,000 of our own funds go in there to bolster it. We have a further problem in 1993/94 – we have to cash flow it for 9 months . . . and the Trustees have to back the management of the Trust to say ‘We will continue to pour money into social services in the hope that you will solve your difficulties with the CFA and get a contract.’¹⁸⁵

(2) *Trust in crisis*

The sense of urgency that the trust clearly believes surrounds the social circumstances of Maori, both in West Auckland and more generally, was captured by Mr Tamihere’s reference to the ‘race against time’ in which the Treaty partners are participating:

The goodwill this Treaty partner has exhibited has not been met with any positive response from the Crown. The employment creation, commercial side of the Trust is bleeding to death and the Trust will collapse completely if we continue to haemorrhage in servicing our deprivation. We are breaking the cycle of dependency in our commercial arm and to survive we have had to cease funding our Social Services. This step has not been taken lightly. This whanau was born out of our social plight. We will not be driven back into dependency when we know millions of dollars are expended in the Social Welfare area with no tangible result for us. It appears the actions of the Community Funding Agency are symptomatic of a policy to tie us to dependency. The unfair negotiation, consultation process has impacted dramatically on our integrated system.¹⁸⁶

184. Ibid, para 70

185. Document B10, p 47. Elsewhere, Mr Tolich said in evidence (doc B4, para 28):

In addition to the Whanau’s contribution of human resources the Trust contributed \$87,991 of its own funds to support the delivery of Social Services. This represents 59% of the contracted CFA funds for the same year. The \$87,991 represents a significant loss of opportunity to the Trust and its whanau. The money would have been much better spent in investment and employment generating ventures here in West Auckland.

186. Document A19, para 8.16

Mr Tamihere emphasised to the Tribunal that the trust's 'Social Service response had not ceased' but that people were now doing the work 'for pure aroha because they cannot bear to see the work being left undone'. In his evidence, he went on to say:

Providing social services to our people is absolutely fundamental to the operation of Waipareira as a whole. It strengthens our relationship with our own community, particularly that part of our community which is most in need. It provides the glue that holds our network together and it also ensures that Waipareira sustains a critical mass which in turn can sustain our infrastructure and systems. Without it the whole organisation comes under threat.¹⁸⁷

Nevertheless, according to Mr Stewart, the manager of those services, the trust's ability to fund social services was severely constrained. He told the Tribunal that:

our budgeting service is down to one volunteer, social work intervention has only two workers now voluntary and anger management programmes that were once running to full capacity are barely functioning.¹⁸⁸

2.7 CONCLUSION

Te Whanau o Waipareira has been actively helping the people of West Auckland, and specifically targeting Maori people there, for about 40 years. That the people have needed, and continue to need, such help was not challenged in the inquiry. Claimant witnesses stressed, however, that:

An organisation such as Waipareira does not have the historical structures or levels of resources either internal or external such as other organisations like Salvation Army or Barnados.¹⁸⁹

Despite this, Te Whanau o Waipareira has successfully provided a broad network of effective and often innovative services. Their effectiveness was not questioned in the inquiry. Mr Stewart, himself a social worker of 16 years' experience, gave the following opinion of the social services provided by the trust:

The quality and commitment of our Social Workers is admirable. The Workers that we have on board have a long and successful history of Social Work in West Auckland. These Workers have well developed networks and impressive track records. Those that come to mind include Connie Hanna, Ada Lau'ese and Bella Mano for example. The Social Services network which we have sought to develop is recognised as a model mechanism for the urban Maori Community throughout the Country.¹⁹⁰

187. Document B3, paras 2.2, 4.3

188. Document B5, para 6.2

189. Document A8(k), para 9

190. Ibid, para 10

2.7.1 Community support

Other evidence endorsed Te Whanau o Waipareira's work. Superintendent Donald McConnell of the West Auckland police said:

I am aware that the Trust has always been regarded as Whanau for urban Maori in West Auckland. Waipareira has always sought to fill the role which the traditional Marae with [its] support system provided. It does not differentiate as to which tribe you descend from.

It is important that with the Police emphasis on preventing family violence, and Police commitment to community policing, and therefore community and social service organisations, that this Act [the Children, Young Persons, and their Families Act 1989] be enforced as best as it is able to be. Clearly Waipareira Trust is the only Maori Organisation in West Auckland which Henderson Police deal with, relevant to fulfilling the emphasis in the Act, on dealing in a culturally sensitive way with Maori.¹⁹¹

Mr Harvey spoke positively of the relationship between his council and the trust:

Council recognises Te Whanau o Waipareira as a key representative of urban Maori in the district and supports the members of the Trust in their determination to address the needs of the Maori community through practical and effective delivery of programmes. Te Whanau o Waipareira is the product of the Maori community of this City. It is a truly 'grass-roots' organisation. Through years of hard work, Te Whanau o Waipareira has won the respect of Council and of the wider community of Waitakere City; Council recognises Te Whanau o Waipareira as the main representative of pan-tribal urban Maori in Waitakere City.¹⁹²

Mr Stewart told the Tribunal:

We have been visited by other Iwi and Maori social service providers from throughout the country looking to Waipareira as a model. I have personally met with the people of Whangaroa, a consultant employed by Ngati Wai, the Hatepe Incorporation of Taupo and social work students from Taranaki Iwi on placement from their social work courses. I have also been visited by the Ministers of Social and Family Services of Victoria and South Australia. These dignitaries I understand were referred to us by the most senior levels of the Department [of Social Welfare] as a role model of indigenous social services.

Further Te Whanau o Waipareira has been consulted by a vast array of iwi . . .¹⁹³

2.7.2 Relations with tangata whenua

Claimant counsel noted in his summary to the Tribunal that 'none of the iwi voices [that spoke at the hearings of this claim] questioned the good work being carried out by Waipareira'.¹⁹⁴ Although some of those voices did question the trust's relationship

191. Document A20, paras 24–25

192. Document A27, para 10

193. Document B5, para 7.3

194. Document E6, para 3.2

to the tangata whenua of Auckland, the trust's position on that point was stated unequivocally by Mr Tamihere:

We have no desire to usurp in any way the status of manawhenua iwi. Our claim is at a different level. . . .

It is important and significant for the Tribunal to note that under no circumstances does Waipareira Whanau hold itself out as advocating or having an ability to speak on behalf of Ngati Whatua or Tainui.

Having stated the above clearly and succinctly we do not at the same time see Maori relevant to the services we deliver and rate them on the basis of what tribal affiliations they have. For example, in the event that some of our people are desirous of our support we do not say to them, 'you are Ngati Whatua you must go to Ngati Whatua ki Orakei, you must go to Ngati Whatua ki Kaipara'. At the same time we do not say to any Tainui people 'you must head back to Tamaki ki Raro, Huakina or Ngaruawahia'.¹⁹⁵

Another claimant witness spoke of 'an unbroken bond' and a 'physical and spiritual relationship' between Ngati Whatua and Te Whanau o Waipareira Trust.¹⁹⁶

During the course of the inquiry, the Tribunal was reminded 'to reflect on the way in which Te Whanau o Waipareira was conceived' and in particular to recall that it was 'born out of Maori protocol'.¹⁹⁷

No single statement encapsulates all of the various attributes of Te Whanau o Waipareira, but we close this descriptive account with these words of claimant witnesses:

What the Trust . . . represents is a collective conscientiousness of people. For Maori it's more about aroha and awhi, and creating a sense of identity and belonging, where the good of the whole is paramount.¹⁹⁸

The Whanau o Waipareira is the oldest and most significant of all those organisations in West Auckland. . . . Whanau members comprise both Maori and Pakeha committed to dealing with the situation of Maori 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.¹⁹⁹

The Trust's role in countering the disempowering effects which Government policy and programmes had on Maori in West Auckland, was reflected in a concern to empower Maori in West Auckland with an ability to operate programmes that were community based, Maori owned and operated, and developed to appeal to the collective consciousness of Maori, based on awhi, manaakitanga, whanaungatanga and aroha.²⁰⁰

195. Document A19, paras 3.1, 3.6–3.7; see also doc B10, p 28

196. Document A8(i), para 8

197. Document A19, para 3.5

198. Document A8(r), para 17

199. Document A8(p), p 3

200. Document A8(r), para 24

CHAPTER 3

TE WHANAU O WAIPAREIRA AND THE TREATY

In the light of the evidence in the previous chapter, the Tribunal is able to answer the vital questions it identified at the end of chapter 1:

- (a) Did the Waipareira trustees provide care and development assistance to a significant number of Maori beneficiaries (the ‘clients’ whom they nurtured), were they properly accountable to them, and did the community support its leaders?
- (b) If this was the case, did the manner in which the trustees operated also reflect Maori cultural values?

It is the answers to these questions that allow the Tribunal to answer the further question, which is central to its examination of the claim: Is Te Whanau o Waipareira itself a community deserving special recognition in terms of the Treaty of Waitangi?

3.1 EMERGENCE OF A COMMUNITY

At Waipareira, a sense of community grew out of the circumstance of some people meeting the needs of others. The needs were those of the ‘orphaned and the lost’, who had drifted into the city, looking for work and out of touch with home. In West Auckland, they found a core of people much like themselves, who, however, had survived the rigours of relocation and had turned to membership of welfare committees to help others.

The ‘whanau’ of individuals brought together by material, physical, and emotional need were scattered over a wide area from Waterview to Helensville. It was not, therefore, a co-residential community. Most members were not tangata whenua of West Auckland; they had come from far and wide, so the whanau was not kin-based, and it had no marae. Yet the welfare work done by the few continued to engender a spirit of whanau and a will to survive the challenges of West Auckland suburbia.

It was a marae, however, that eventually consolidated and focused the Maori ethos and identity of Te Whanau o Waipareira. Over the years that the Hoani Waititi Marae took to be created – and to be defended against the sceptics – more than just the fabric of the buildings and their symbolism were put in place. It was evident to the Tribunal that the principle of reciprocity and loyalty between kin in a tribal group had been transposed into a group of non-kin at Waipareira and enhanced through their

common endeavour of building the marae. On its completion, there was thus an effective network of kaumatua and kuia, of rangatira, of rangatahi and mokopuna, all bound together by a Maori spirit unique to Te Whanau. It was not the bond found at a deeper level of spirituality that is inherent in the reverence among kin for their ancestors. But Waipareira was indeed a community, one in which there were both leaders and the led, where there were rewards of approval and promotion, protected by sanctions of rebuke and exclusion, and where voluntary service was the high ideal. While not at all limited to the marae, these values and attitudes were brought to a focus on the marae, where debate could be joined, hospitality offered, cultural exercises practised, and grief for the departed shared.

And it was on the Hoani Waititi Marae that the principles and practice of the Community Management Group were set down, to be followed later by the formation of the trust itself in 1984. Where the whanau philosophy had brought together individuals, it now brought 'together under one umbrella' fragmented groups operating in the social welfare and educational domain, the better to integrate the services they offered and to maximise economies of scale.

3.2 TIKANGA MAORI

However, the multi-affiliate group still conducted its affairs according to Maori protocol and through its regime of monthly hui gave opportunity for communal decision-making and personal accountability, as well as intersectoral exchanges. And affiliate autonomy still allowed programmes specific to locality and welfare field to continue to flourish. Whanau values were not to be stifled by 'big business' management.

Where the trust's operations had developed initially with departmental support – Kokiri units, Tu Tangata groups, and the like – it was not long before it was able to wean itself away from direct dependence on the State sector, as the status of its Mana business development programme, for example, indicates. But the whanau character of the trust's welfare work continued, as encapsulated in the following extract from claimant evidence:

We tried to get our kids back with their Whanau. Our kids didn't know who they were. That is the root of many of the problems today. These children have no Marae, kawa or identity . . . We wanted to tie these kids in with their tribal networks to give them a sense of belonging and identity. We wanted them to have strong positive role models who would mentor them and that they could relate to.¹

Perhaps an even more fundamental whanau dimension was provided by the roopu kaumatua: elders who helped to link such children in need with their wider kin through their intimate knowledge and understanding of the workings of whakapapa. What was activated in practice was the customary bond uniting alternate generations: that is to say, where patterns of authority and subordination between parent and child

1. Document A25, para 49

had given way to a relationship of affection and nurturing in the lessons of life between parents and their children's children.

3.3 MAORI SPIRIT

Notwithstanding an increasing complexity and sophistication in organisation, leading in time to its own restructuring, the trust continued to focus on fundamental human and social needs. For instance, there were the Alternative Education Unit's work in the rehabilitation of 'at risk' youth, Maori language immersion courses, and general employment and training programmes, all of which were aimed at raising self-esteem as a first priority. Help could also be highly personalised, as in budgetary advice and anger management, but again conceived and executed within the philosophical framework of the whanau. And even in the exacting, contractual world of commerce, the underlying stance of the trust was still one of nurturing; for example, in small business development.

It is noteworthy that, when funds were curtailed, the social service response was to continue voluntarily 'for pure aroha', for those concerned could not 'bear to see the work being left undone' – a reflection, therefore, of the bond of spirit between caregiver and receiver that went far beyond the legal requirements of the trust, in the way that one might expect of kinship ties.² So much, then, for the nurturing and fostering dimensions of rangatiratanga and the ethic of whanautanga. Finally, in the trust's corporate plan in existence at the time of the hearing, three of the five management strategies emphasised accountability and consultation – of the kind maintained by the monthly hui and the institutions embedded in Hoani Waititi Marae.

3.4 RANGATIRATANGA ESTABLISHED

In the light of the above, the Tribunal is of the clear view that the Waipareira trustees did indeed care for their beneficiaries, and were properly accountable to them and that the whanau was a community that not only reflected Maori cultural values but operated according to tikanga Maori. Thus, Waipareira did exercise rangatiratanga, albeit in a modern setting, and was therefore deserving of special recognition in terms of the Treaty of Waitangi. It was justified in expecting Crown protection under the Treaty; in particular, protection of the rangatiratanga that it exercised in fact.

We emphasise that we reach this conclusion from an overall assessment of the facts of this case. It is neither desirable nor, we think, possible to create a checklist of the ingredients for the recognition of a Maori group in terms of the Treaty. Such an approach would do nothing to enhance rangatiratanga, which must be the Crown's aim.

2. Document B3, para 2.2

3.5 BALANCING RANGATIRATANGA AND KAWANATANGA

We add a footnote. In the present case, the Crown saw its responsibility to Waipareira as being to ensure that the allocation of funds was made on the same basis as that which applied to non-Maori; namely, proven need for a particular service and proven capacity to deliver that service. That is, the emphasis was on equality of eligibility as perceived by the Crown, rather than on mere equality of opportunity. In the event, however, that a given need reflected a disparity in existing levels of attainment between Maori and non-Maori, the allocation of funds was expected to take this disparity into account, though still constrained by the overall budget. It is a principle widely known as affirmative action.

On the other hand, where a group deserves special recognition in terms of the Treaty, the Crown's responsibility would be to protect their interests and the exercise of their rangatiratanga. Where this protection entails an allocation of the Crown's own resources, it is never expected by Maori to be on the basis of a comparison with non-Maori. The Crown is simply bound to recognise the identity and kaupapa of such a group, its rangatiratanga, as articulated by its representatives – kaumatua, boards, councils, chief executive officer, and the like – because that is the basis on which Maori granted the Crown the right to govern. With Waipareira, it would have been the trust's representatives with whom the Crown under the Treaty should have consulted in a way commensurate with the rangatiratanga that they exercised. This kind of recognition, then, has nothing to do with comparisons (or dealing with 'disparities') between Maori and non-Maori.

The Crown resisted this approach, arguing that it represents an 'open cheque' situation, a way for Maori groups to avoid the constraints on public funding for welfare services. However, as noted in our findings on the nature of the Treaty partnership, rangatiratanga is constrained by kawanatanga, and vice versa. Although the claimants said their dream is that one day the trust would be able to provide for all the needs of all its people and would not require any State money, this level of absolute rangatiratanga is far from the current reality. In the meantime, the aim must be to strike a proper balance between the demands of rangatiratanga and kawanatanga through consultation and negotiation. Without the cooperation and support of the Crown, Maori have little chance of solving the disproportionate share of the problems that have been thrust on them.

Having found that Waipareira did indeed enjoy the protection of the Treaty, we turn at this point to consider whether the Crown exercised kawanatanga so as to protect Waipareira's interests and the rangatiratanga it in fact exercised. In the next chapter, we look at the CFA; in chapter 5, we consider the import of *Puao-te-Ata-tu* to this claim; and, in chapter 6, we assess the impact of the restructuring of the wider State sector, before considering in more detail in chapter 7 the CFA's relations with Te Whanau o Waipareira.

CHAPTER 4

THE COMMUNITY FUNDING AGENCY

4.1 ESTABLISHMENT

4.1.1 DSW reviewed

A review of the DSW in 1991 led to major changes to its structure in 1992. The decision to split the department into separate business units was modelled on similar changes previously made to ‘most State-Owned Enterprises’, which had resulted in ‘dramatic’ efficiency gains.¹

The restructured department is made up of a corporate office, which includes the Social Policy Agency; an information technology unit (Tritec); and three operating business units: the New Zealand Children and Young Persons Service, the New Zealand Income Support Service, and the New Zealand Community Funding Agency:

NZCFA has 137 staff. There is a small Head Office, responsible for the provision of support services including making payments, and a policy operations group responsible for planning, developing operational policy and communications. There are 8 Area Teams covering the whole of New Zealand, 4 in the Northern Region under the Regional Manager . . . and 4 Teams which constitute a Southern Region under [a] Regional Manager . . .²

4.1.2 Funder of community social services

The CFA is responsible for ‘allocating resources and support to community groups and organisations working in the area of social services delivery’.³ Since it began operating in May 1992, the agency has allocated over \$90 million annually to voluntary organisations providing social and welfare services. To this end, it contracts with the organisations whose services it funds, and it approves and monitors the standards of service providers:

NZCFA’s role is to administer the resources at its disposal as fairly and equitably as possible to meet identified and prioritised social and welfare need. While NZCFA is a substantial funder, it does not hold full and final responsibility for the outcome. The

1. Document C1(b)(1), para 53

2. Document C1(2), para 5

3. Document C1(1), para 3

outcome is determined by a number of factors, for example: the community itself, and the mixture of other sources of support and resource available.⁴

The corporate plan for the 1994–95 year forecast that the agency would spend \$92.815 million in the purchase of services and \$10.869 million in operating costs.⁵ The general manager at the time of the hearing, Ann Clark, reported that funding to the social and welfare service sector increased in both the 1993–94 and the 1994–95 years: in 1993–94, there was an increase of \$3 million to the family–whanau resource development programme; in 1994–95, there was a total increase of \$8.3 million spread across seven programmes.⁶

4.1.3 Not full funding

The funding allocated by the agency by no means covers the costs incurred by community groups in providing social and welfare services. On average, the agency funds services to the extent of 25 percent of their cost.⁷ It funds particular services to a level that is usually between 10 and 90 percent of their cost. Full funding is rare and is done only on the basis of a ‘one-off’, short-term, injection of funds.⁸

‘At best’, the agency provides 40 percent of the total funding base of the community organisations that provide social and welfare services.⁹ The balance comes from such sources as the Lotteries Board, philanthropic trusts, business interests, and public donations.

The Audit Office has described the agency as being a rationer of Government moneys to the community. As such, it is said to be in a difficult position because ‘Those funded will expect it as their due, and those from whom funding is withdrawn or not provided, will consider themselves aggrieved.’¹⁰

4.2 PHILOSOPHY BEHIND THE CFA

4.2.1 ‘Service development’ not ‘community development’

One of the key objectives of the CFA has been to change the philosophy behind Government funding of social and welfare services from community development to

4. Document c1(6), para 86; see doc c1(2), paras 4, 6, 13

5. Document c1(b)(7), para 35

6. Document c1(2), para 66. Before joining the department in January 1992, Ms Clark had been the general manager (branch operations and support) of the Housing Corporation of New Zealand, a position for which she was recruited from the United Kingdom in 1989. With the qualifications of a BSc (hons), a diploma in urban and regional studies, and a diploma in housing management, and as an elected fellow of the Chartered Institute of Housing, Ms Clark had ‘extensive managerial experience in a number of positions in the UK’, where she had also worked as a volunteer in a number of voluntary welfare organisations, including Housing Advice and Advocacy, Refuge, and the Child Poverty Action Group (ibid, para 1).

7. Document c1(1), para 8

8. Transcript 4.3, p 22

9. Document c1(6), para 85

10. Quoted in doc c1(5), para 5

service development, and to design and implement policies and procedures that establish a new basis for dealings between service providers and the agency.

4.2.2 Service development described

The CFA's northern regional manager at the time of the hearings, Wendy Reid, described the difference in this way:

... NZCFA looks to see a service established which will meet a need which has been prioritised by NZCFA... We are advised in that prioritising process by the community. This approach is quite different to a community development model which would see NZCFA in the role of resource provider, that is funding the aspirations presented by the community with little or no element of state control.¹¹

Ms Clark elaborated:

They're not unrelated concepts but we always look at anything with the word 'development' in it and say 'is it developing a service we need', and if the answer's 'yes' to that then we can consider funding. If it's not, then we would not fund it. So we would not fund somebody who was a community development worker whose job it was to go around everybody making sure they were happy. We would not fund that because there is no discernible output which fits with our NDOC structure.¹²

(1) *The agency decides what services required*

The work undertaken by the agency is based on 'vested interest', which means the agency develops or maintains services to meet a need that it has prioritised, acting on behalf of the Government, in the current funding year.¹³ Ms Reid summarised the advantages of this approach:

For all the complexities and difficulties resourcing agencies such as NZCFA face, I am convinced that resourcing of social and welfare service delivery on prioritised need as the sole primary focus, administered by an objective non-provider third party, is the only way forward for community based social and welfare service delivery. The relative distance this puts between funder and provider makes it more likely that fairness will be achieved; and that a balance will be found for conflicting interests which exist in all communities. It also allows government to develop a professional focus on the interface

11. Document C1(6), para 133. At the time of the hearings, Ms Reid had recently been awarded a State Services Commission senior management fellowship to attend Monash University. Since 1987, she held 'a range of management positions, initially at the Manukau branch of the Housing Corporation as Manager of Human Resources and Manager of the Client Services New Business Unit, and then later in the national position as Divisional Manager Community Housing'. In 1990, Ms Reid was seconded for three months to the Royal New Zealand Foundation for the Blind to assist in setting up its management and human resource systems. Before 1987, Ms Reid worked as a volunteer, trainer, and manager with community groups in New Zealand and obtained a certificate in community work from Manukau Polytechnic, where she was employed for a time as a tutor in the Community Studies Department. Ms Reid's other work experience includes a period of staff training and development in Papua New Guinea and an earlier career in nursing (doc C1(6), paras 2-5). Some time after the hearing of this claim, Ms Reid was appointed general manager of the agency.

12. Transcript 4.2, p 77

13. Document C1(6), para 133

between the voluntary welfare sector and Government, and gives both the opportunity to accumulate considerable expertise in this specialised field of service delivery.¹⁴

(2) The agency decides who will provide service

In its service development role, and in its contracting generally, the agency does not invite providers to tender for the provision of needed services. A tendering system, it was explained, assumes that full, not partial, funding is available and that potential providers are sufficiently sophisticated to submit a tender and develop costs of service delivery. It also assumes that the service can be specified.¹⁵ Because none of those assumptions can be made about the social welfare service sector, the agency's practice in developing new services is to determine, on the basis of the information gathered about the choice of services already available to consumers, either to develop the provision of the service from a new provider or to invite selected existing providers to submit proposals to provide the service:

Sometimes this means establishing an entirely new group. Sometimes it means encouraging an existing group to change or enhance its service, by providing information about changing service trends and the current and future funding priorities of NZCFA.¹⁶

(3) Iwi and non-iwi invited to provide services

The general manager explained that:

In this regard NZCFA has contracted with iwi where iwi have decided to become involved in social service delivery. It is recognised however that in urban areas, there are needs for service from Maori people who do not exercise mana whenua and NZCFA has consistently contracted with both iwi and pan tribal groups to ensure coverage of services, choice of service for Maori and quality services.¹⁷

While no details of the agency's service development in West Auckland were given, the Tai Tokerau area manager made it clear that iwi organisations there were being encouraged to develop services in two areas of need: residential care services for youth in need of care and protection and services targeting Maori with disabilities. To this end, the agency had convened hui at which all 15 iwi organisations in the area were present.¹⁸

(4) Procedures vary throughout country

The agency's early practice of requesting proposals from existing providers to provide a new service had varied throughout the country because it was in its developmental stages:

14. Document C1(6), para 232

15. Document C1(2), para 76

16. Document C1(6), para 132

17. Document C1(2), para 54

18. Document C1(7), paras 6, 10

As we have done in the agency a lot, what we have done is we have encouraged teams to try innovative things first and then we evaluate them, identify the best practice and then the following year put them into our procedures handbook. This is really, essentially, what is going on with this particular part of our work. Requests for proposals were issued by a number of teams last year in a number of ways so there was no one way to do it ... it was variable throughout the country because it was a developing thing.¹⁹

(5) Various kinds of help offered

Ms Reid described how the agency works with community groups as it undertakes its service development role:

The Agency works to develop services by giving establishment funding, funding for feasibility studies, and by supporting and guiding voluntary organisations with information about how to set up their service and who is available to help them. Groups are frequently referred to the Link centres of the Department of Internal Affairs for assistance with establishing legal structures, writing job descriptions, etc or they may be introduced to other providers who have experience in the particular area where support is required. In addition, many Outreach Workers carry information leaflets and examples of documentation in pro forma form collected in the course of their work, which are made available to groups.

To avoid conflict of interest, Agency staff are careful to avoid actual hands on involvement in the day to day establishment or ongoing operations of a service. Their role is to support and facilitate, it stops short of active participation.²⁰

(6) Services funded – not providers

An example was provided, involving Te Whanau o Waipareira Trust, to illustrate how the agency's service development role impacts upon its relationship with the trust:

NZCFA focusses *on services – not organisations*. On this basis, Te Whanau o Waipareira is viewed by NZCFA as providing care services; youth services; whanau development services; anger management and parenting programmes; budgeting services; and community housing services. The NZCFA does not have a responsibility to fund the organisation itself, only to contribute a portion of the costs of those services for which NZCFA has funding responsibility. [Emphasis in original.]²¹

During the hearings, the agency defended its service development role, observing that community development was the responsibility of the Department of Internal Affairs. However, little evidence was presented on how the two departments interact, except in relation to funding of community groups under the Community Organisations Grants Scheme and the Lotteries Board, both administered by the Department of Internal Affairs (see sec 6.4.4).²²

19. Transcript 4.3, p 68

20. Document C1(6), paras 134, 135

21. Ibid, para 167

22. Ibid, para 45

4.2.3 Community development described

By contrast with the service development approach of the CFA, community development was defined as:

a model of working with the substantial networks that support people in their own social structure. It is about enabling people to identify the issues and problems they experience collectively; to decide upon a programme of action that will address these; and to identify the resources and skills necessary to implement that programme. The goal of such a model is that the community will eventually assume control over all aspects of its development.²³

(1) A disorganised response to demands

Crown counsel summarised the agency's view of the community development model of social welfare, which was in place before the agency was created, by saying that:

individual communities could demand resources and services which could be inconsistent with the needs of other communities. . . . It is this disorganised reaction to individual demands which the services planning process of the NZCFA seeks to move away from.²⁴

(2) Conflicts of interest

From his own experience, Patrick Kelly, an outreach worker for the CFA,²⁵ expressed the view that a 'true' community development model is incompatible with the role of an employee of a Government department. In response to questions, he spoke in terms of dancing to two different tunes, which, if not synchronised, could leave the employee falling on his or her face. He explained that what the Government wants its social service agencies to achieve may not always correspond to what a community wants, either in the specifics or in the manner or timing of its achievement. The difficulty therefore arose because a Government employee is 'dancing to the tune of Government', but under the community development model, the community 'calls the shots'.²⁶

Referring to the 1980s, when community services staff of the department were encouraged to provide direct assistance to community organisations, including by being active members of those organisations, Mr Kelly commented that staff in the previous northern region had identified a potential conflict of interest in their role and a decision was taken that they were not to be members of executive committees of such organisations.²⁷

23. Document c1(9), para 8

24. Document E7, para 104

25. With 15 years' experience as a departmental social worker in the Takapuna office before 1992, Mr Kelly was senior social worker in that office's community services team prior to the formation of the CFA (doc c1(9), para 2).

26. Transcript 4.2, p 175

27. Document c1(9), oral comment made at para 11

4.2.4 Consistency sought in funding decisions

The agency's evidence stressed the value of consistent and transparent funding policies. The general manager of the agency stated that it became apparent from examining the funding distribution for 1992–93 that there were two anomalies in previous funding arrangements:

a strong relationship between the volume of funding on the one hand and on the other the strength of the former DSW community services team, or the advocacy skills of providers, which bore no relationship to the needs of the community, or the context of that community with another community.

The other issue identified was the ability and ease with which national groups, predominantly Pakeha groups, could make their case to Government and get special treatment.²⁸

4.2.5 Local knowledge valued

To overcome that second problem, the senior management team of the agency has tried to ensure that the agency and voluntary welfare organisations deal with each other at a local level.

A motivating factor for the agency's 'front line' and team-based operating style was referred to frequently by Crown witnesses. They emphasised that the devolution of funding authority to the area teams and sub-teams countered the possibility of service providers negotiating 'special deals'.

4.2.6 Behavioural changes required

The Director-General of Social Welfare explained that the new devolution policy:

has required some behavioural change on the part of the staff and providers, as historically there has been a practice internally of 'batting to the top' and externally of 'going over the heads of local staff'. . . . This [new] approach has been adopted to overcome historical practices which frequently saw local knowledge and experience over-ruled by bureaucrats for political and/or pragmatic reasons. This historical practice in my view inhibited the development of staff, reduced the levels of accountability of all parties, and resulted in ad hoc decisions being made by people unfamiliar with the local needs. At best this was a highly reactive process which lacked an overall context within which to make or test decisions. This is best demonstrated by the number of 'special deals' uncovered by the Agency since its establishment which bear no relation to overall need and/or equity.²⁹

28. Document C1(2), paras 50, 51

29. Document C1(1), para 9

4.3 ORGANISATION

4.3.1 Statutory and administrative framework

The general manager of the agency is appointed under the State Sector Act 1988, and is directly accountable to the Director-General of Social Welfare for expenditure of the CFA's budget and achievement of the goals set out in the agency's corporate plan.

The agency (in fact the whole department) regards its main client as being the Minister of Social Welfare, who approves the corporate plan; and through the Minister, the Cabinet, which sets the social goals for the department and decides its annual appropriation.

Those accountabilities, established by the Public Finance Act 1989 and the State Sector Act 1988, are monitored by the Government's control agencies. The State Services Commission and the Treasury ensure that the department complies with its purchase and performance agreements with the Minister, and Audit New Zealand reports on the efficient administration of the department. Te Puni Kokiri is responsible for monitoring the effectiveness of Government agencies in meeting Maori needs, but high priority has not been given to monitoring the CFA.

CFA witnesses made clear that they do not regard the agency as being directly accountable to service providers or the public, except through the Minister. The general manager described her relationship with the New Zealand public in these terms:

I am not directly accountable to the community but to the taxpayer through Government. I do accept, though, that there is a reciprocity in NZCFA's relationship with the community. Through Services Planning we undertake extensive consultation on need and priorities for social and welfare services. As part of our commitment to those we collect information from, we undertake to communicate this to Government so that they are fully informed on needs. The Government then makes choices on levels of funding for each NDOC and I am accountable for ensuring the appropriations are used consistently with the purpose they were appropriated for.³⁰

The fact that the agency's primary client is the Minister of Social Welfare was reflected in the general manager's terminology: service providers with whom the agency contracts were not referred to as agency clients and the people who use the services were described as clients of the service providers.³¹

The northern regional manager introduced the notion of the agency having 'customers' when she acknowledged there had been failings in its dealings with Te Whanau o Waipareira Trust. As well, it was said that work had been undertaken to develop 'customer feedback' mechanisms, and that a formal external 'customer service review' had been done.³² In both instances, the 'customers' referred to were service providers who contract with the agency. Consumers of social services were referred to as one of the agency's:

30. Document c1(2), paras 7, 8

31. For example, doc c1(2), paras 57, 79

32. Document c1(6), para 41

three customer bases it serves, ie the consumer of community based social and welfare services, the provider of those services and the Minister of Social Welfare representing the Government of the day.³³

However, the community does have a key role in the services planning process, which the CFA sees as the heart of its operation (see sec 4.5). Services planning underpins the agency's bid for its annual appropriation, and also determines which programmes and services get priority for funding.

4.3.2 Management and staffing

The general manager of the agency together with the two regional managers and three managers within head office (responsible for operations, support services, and audit) comprise the senior management team. At the time of the Tribunal's hearings, all were Pakeha. Originally, there was one Maori member of the team.³⁴

Each of the eight area teams is led by an area manager. Agency staff in the Auckland area, which extends from Te Hana to the Waikato River, work in one of three sub-teams known as central, north-west, and south. The north-west Auckland sub-team, with which Te Whanau o Waipareira is most closely associated, was established with a sub-team leader and six outreach workers.³⁵ At the time of the Tribunal's hearings, there were two Maori outreach workers in the sub-team. Both had been appointed upon the agency's formation in May 1992.³⁶

Of the agency's 137 staff in 1994, 93 (just under 70 percent) were outreach workers. The outreach worker positions were created with the intention that their incumbents would be the front line of the agency:

[They] would have responsibility for a specific geographic area and all the functions that NZCFA were to carry out. They were to have considerable delegated authority, work from home or small community based offices as part of a team; they were to have notebook technology to generate contracts on the spot, have a dedicated vehicle to cover their patch and have access to mobile communications.³⁷

4.3.3 Relations with community groups

The outreach workers deal with the approximately 2000 community groups throughout the country which are agency funded.³⁸ To receive funding, service providers must meet the agency's standards for delivery of services. It is the outreach workers who grant approvals to service providers and monitor their performance in accordance with those standards. Another major part of the outreach worker's job is contracting, on behalf of the agency, with individual service providers. As a

33. Ibid, para 43

34. Transcript 4.2, pp 74, 170

35. Document C1(6), paras 8, 15, 21

36. Document C1(11), para 4; doc C1(14), para 1

37. Document C1(2), para 12

38. Transcript 4.2, p 52

prerequisite to that task, each area team gathers and assesses information about the need for services in the area and decides how funding should be allocated amongst the providers for each of their services.

In line with its devolution policy, in the words of the northern regional manager:

we've devolved everything to the local level staff, and so that's where the work goes on and that's where the decision making takes place. I certainly don't have a bucket of money, the General Manager doesn't have a bucket of money. The money is out there amongst the teams and the decision making is out there amongst the teams. So by taking a case higher in actual fact what will happen, it will be delegated straight back down again because that's where the funding and the decision making rests.³⁹

However, while funding decision-making within the agency's areas is the responsibility of local staff, the amount to be allocated to each of the eight geographic areas is determined by the senior management team (see sec 4.4).⁴⁰

One feature of the north-west sub-team's operating practice is notable because it may have contributed to confusion within the trust about the extent of an outreach worker's authority in funding matters. Although individual outreach workers have authority to sign contracts on behalf of the agency up to a value of \$100,000, the north-west practice is for contracts up to that amount to be signed by the sub-team leader or, in her absence, an outreach worker not involved in negotiating the contract.⁴¹ The sub-team leader did not know if this was a general practice. It was said that it had been adopted locally to avoid the possibility of errors being made, especially in stating the dollar value of contracts.⁴²

Although outreach workers spend a substantial part of their working day in the field or working from home, members of the north-west Auckland sub-team expressed satisfaction with the team spirit that prevailed in their group, comparing it favourably with team environments in more conventional office settings in which they had worked. In particular, sub-team members could not recall a time when any initial differences within the group had not been resolved by mutual agreement.⁴³

4.4 HOW THE CFA FUNDS

4.4.1 Government budget cycle

The annual budget round begins with the Government adopting a series of social goals for the DSW to pursue. The general manager of the CFA said that she played no part in defining those goals and did not know how they were set.⁴⁴

39. Transcript 4.2, p 130

40. Document C1(2), para 63

41. Document C1(10), para 18. The area managers have authority to sign a contract up to the value of \$500,000.

42. Transcript 4.2, p 189

43. Transcript 4.3, pp 82, 85

44. Transcript 4.2, p 36

Then the department draws up a budget and prepares a bid for funding. With regard to the CFA, the bid is broken down into non-departmental output classes (NDOCs) or funding programmes.⁴⁵ Under each heading, the department specifies the services that will be provided within the proposed budget. It is implicit that provision of the specified services will achieve the social goals set by the Government, but there is no empirical evidence on which this assumption is based (see sec 6.2.1).

The bid is based on information gathered by CFA staff during the services planning process. This enables the CFA to justify its bid, and to set priorities for spending whatever allocation it might get.

The bid is analysed by the Government's control agencies, including the State Services Commission and the Treasury, who forward it to the Cabinet with their own recommendations, following discussion and negotiation with senior CFA and DSW managers.

The Government's funding decisions, announced in the budget, are specific to each of the NDOCs administered by the CFA. These appropriations become the responsibility of the general manager of the CFA.

4.4.2 Allocation by CFA management

(1) *National contracts*

The funding in each NDOC administered by the agency is allocated by its senior management team to the agency's eight areas. But first, the amount needed to fund 'national contracts' is taken 'off the top'. The contracts with 'national services', sometimes also referred to as 'special deals', are arrangements that the agency has inherited and that it has not yet renegotiated to make subject to its ordinary contracting procedures.⁴⁶ At the time of the hearing of the claim, progress had been made towards putting at least one of the national services on the same footing as all others purchased by the agency, but staff had encountered resistance, including a 'political and media blockade', to the renegotiation of national services' funding.⁴⁷

To illustrate the effect of these contracts upon the 1993–94 residential care NDOC, the funding of two national services, Glenburn and Youthlink, took \$1,323,330, or just

45. NDOCs were formerly called payments on behalf of the Crown (POBOCs) (see sec 6.2.2).

46. Transcript 4.2, pp 164, 168

47. Ibid. The total cost of the national contracts is difficult to discern from the agency's annual national services plans. In the 1992–93 plan, a separate section at the front of the plan records their total cost that year as \$77,355,234. In the 1993–94 plan, a separate section at the front records their total cost as \$28,207,931. In the 1994–95 plan, the final two pages record their total cost as \$34,207,149.

However, none of those sums represents the full cost of the national contracts, because some of the services purchased under those contracts are recorded under the provider organisations in each of the agency's areas. This is the case, for example, for the Presbyterian Support Services' facility Glenburn, which is recorded in the north-west Auckland section of the 1992–93 plan as being allocated \$521,722 from the families under stress programme (doc C1(b)(9), p 31; doc C1(b)(10), p 43). In the 1993–94 plan, Glenburn is included in the Auckland families in need of support section as being allocated \$580,500 (doc C6, p 34). So, in 1993–94, when the plan recorded the cost of national contracts as \$28,207,931, their cost was in fact \$38,926,990 (doc D3, p 4).

under 25 percent, ‘off the top’ of that NDOC’s total amount of \$5,370,000 for the purchase of residential care services throughout the country.⁴⁸

(2) Allocation of remainder

Once the cost of the national contracts is taken from the relevant NDOCs, the senior management team of the agency determines, from the information gathered in services planning and from the needs indicator (see sec 4.5.1), the amounts that each of the agency’s eight areas will receive from the balance of the NDOC funds. Finally:

Once each Area Team knows their allocation they meet as a team and collectively decide how the funding is to be utilised in line with the results of the earlier services planning exercise. The teams are required for example to ensure that funding for Youth is spent on Youth but the types and varieties of programmes and their cultural appropriateness are all factored into the choices of providers and the value of the contracts.⁴⁹

(3) Allocation criteria

Before the March 1995 hearing, agency witnesses had described the consensual nature of the outreach worker teams’ funding decision-making process but had not elaborated on the factors they took into account when deciding the amounts to be allocated to individual providers for their services. At the March 1995 hearing, the northern regional manager produced a list the agency had recently published of the criteria that outreach workers had been considering in their funding decisions. The list of criteria:

applies to the future, but it draws on the experience of the past . . . All it does is now present them in one place . . . when in actual fact it has been a process that has just not been pulled out and clearly documented previously, but it has been happening.⁵⁰

Twelve criteria are listed for ‘deciding the percentage of agency funding for a selected provider in relation to need’, including:

- cultural appropriateness demonstrated;
- whether the service is ‘owned’ by that community (ie, managed by local residents);
- the ability of the provider to contribute to the strengthening of the community is proven;
- consumer choice is maintained;
- the ability of the provider to secure other cash income;
- the ability of the community to contribute non-cash resources;
- the level of agency funding needed to ensure the provider remains viable; and
- the percentage of funding that the provider expends on overhead costs as opposed to service delivery.⁵¹

48. Document D3, p 3; doc D5(e), p 1

49. Document C1(2), para 64

50. Transcript 4.3, p 25

51. Document D5(f), pp 2–3

(4) Contracts provisional

At the time they contract with the agency, individual providers may be uncertain whether their applications for funding from other sources will be successful. One source of other funding is the Lotteries Board, administered by the Department of Internal Affairs, and the agency has been cautioned by the Auditor-General to take care to avoid situations in which service providers are ‘double dipping’ from both agency and Lotteries Board funds.⁵² This means that providers must not be funded from both sources for the same services to a level that exceeds the cost of providing the services.⁵³

In light of this, it was explained that the agency regards the contracts it enters with service providers at the start of a financial year as arrangements that reflect the knowledge of the parties at that time but that are subject to renegotiation should a service provider’s circumstances transpire to be other than those that underlay its contract or contracts.⁵⁴ Accordingly, a provider can go back to the agency and request a ‘top up’ of funding.⁵⁵ In response, the agency may help the provider, because it has ‘some options as the year goes on to recycle some of the funding that becomes free for other reasons’.⁵⁶

4.5 SERVICES PLANNING**4.5.1 Local needs compared nationally**

The information upon which the CFA makes its bids to the Government (for the amount of funding to be invested in each NDOC, or funding programme) also informs the decisions made within the agency about how the funding should be allocated. The information is gathered by means of two strategies designed to complement one another. One is the services planning process, which, generally speaking, aims to gather subjective information about each area’s needs for social and welfare services. The other is the needs indicator (or needs index), designed for the agency by Ernst and Young in 1993, which uses mainly objective (statistical) information for the purpose of assessing the relative needs of the agency’s areas.

The purpose of the process of services planning, coupled with the use of the needs indicator, was stated by the general manager of the agency to be ‘to get more equity into funding distribution and get a better feel for the needs of social and welfare services’.⁵⁷

52. Document C1(5), para 4

53. Transcript 4.2, p 208

54. Transcript 4.3, p 25

55. However, the trust believed that their contracts with the agency, like the contracts they had previously entered into with Te Puni Kokiri, fixed the terms of the parties’ agreement (doc B10, p 53): ‘it [the contract] simply says “I will provide these services, these outputs which CFA are purchasing, for this amount of expenditure, for this term of time.” That’s what it says.’

56. Transcript 4.3, p 26

57. Document C1(2), para 13

The agency's design and implementation of its services planning process were praised by the Director-General of Social Welfare as providing 'an extremely robust model' for identifying and prioritising needs for social and welfare services.⁵⁸ The Audit Office has also commended the process. In a report prepared for the agency as a result of a study forming part of the office's report to Parliament at the end of 1994, it is stated that:

The assessment of community needs at a local level by the area teams of outreach workers and the benchmarking of those assessments against the needs index prepared independently by Ernst & Young gives a comprehensive inter-locking framework for decision-making.⁵⁹

The services planning process is scheduled to be completed before the agency's annual budget is confirmed by the Government in June of each year so that contract negotiations with service providers can begin as soon as possible after that time.⁶⁰ The 'entire focus' of services planning is to identify, in consultation with the community, the needs of that community for social and welfare services. The next principle of services planning, granted that resources are limited, is to consult the community on their relative priorities for service.⁶¹

4.5.2 Development and refinement of process

Because the services planning process was in its infancy before the 1992–93 financial year, the agency's funding recommendations, or bids, for that year, as well as its own funding decisions, were based largely on prior funding levels. Since then, the services planning process has supplied the information upon which the agency forms its advice to the Government and its own funding decisions:

For 1992/93 the services planning process was extremely rushed and whilst some useful information was obtained, the resulting funding decisions were effectively a rollover of funding from 1992/93. The records NZCFA inherited of previous funding decisions were very poor in some parts of the country.

During 1992/93 the NZCFA put a lot of effort into respecifying services planning, scheduling it into the first five months of 1993 and generally ensuring that a quality job would be undertaken. We also started to develop the concept of *priority based budgeting*. This concept meant that all services were categorised into high, medium, and low priority as a result of the consultation rounds. Each Area Team compiled three scenarios for service plans with their associated budget bids:

- (i) a 10% cut scenario;
- (ii) the same funding again, and
- (iii) their ideal funding (which assumed more).

58. Document C1(1), para 7

59. Document C1(5), para 5

60. Transcript 4.3, p 84

61. Document C1(2), para 42

The ideal funding formed the basis of NZCFA's bid to Government for additional funding for the various programmes for which NZCFA had responsibility. [Emphasis in original.]⁶²

4.5.3 CFA tested by other agencies

It was stressed that the Government decides how much funding to put into each NDOC⁶³ and that the agency's recommendations are scrutinised by other officials:

CFA have to report to the controller agents, which are the State Services and Treasury etc, who are a panel who actually question and debate those bids, if you like. The decisions are then finally made by Cabinet and the funding that Cabinet decides to appropriate to us really reflects their decisions based on all the information – some of it from us, some of it from other sources. So we have a role of information and recommendation, but at that point it stops.⁶⁴

The general manager observed that the agency's credibility in persuading the Government as to what it should fund, and in what amount, depends not only upon the strength of its services planning process but also upon the strength of its financial accountability:

1993/94 and 1994/95 has seen increases in funding to the social and welfare service sector. This would not have happened if NZCFA had not acquired the respect of NZ Treasury.⁶⁵

4.5.4 Maori in services planning

(1) Importance of services planning for Maori

The agency's 1993 services planning handbook emphasises the importance of the process for Maori. After referring to *Puao-te-Ata-tu*, it states that services planning aims to ensure that:

- Maori people are able to choose Maori-based structures for the delivery of their social services.
- Maori-based services are preferably organised around Iwi-based structures. Taura Here and Pan-Tribal groups that are providing Maori-based services are also considered appropriate.
- Resource allocation to Maori-based structures takes into account the proportion of Maori in the client group in each sector and their need for social services.

Progress towards Maori management of social services will be developmental as structures become able to take on service delivery.⁶⁶

62. Ibid, paras 45–47

63. Ibid, para 63

64. Transcript 4.3, p 32

65. Document C1(2), para 66

66. Document C1(c)(33), para 1.2

(2) Consultation with Maori

The agency's general manager described the services planning process for the 1993–94 year as providing for 'extensive consultation':

through mailouts, one-to-one meetings, meetings of sector groups and liaison with other interested bodies eg local Government, Police, Schools. NZCFA made use of benefit and other statistics to ensure that not only was subjective opinion taken into account but also objective data, such as benefit dependency and shared households.

In the 1992/93 Strategic Plan for NZCFA, all Area Teams were required to develop protocols with iwi to ensure that iwi were aware of the services planning and they had opportunities to become involved in the process if they wished.⁶⁷

However, with regard to Maori involvement in services planning, the northern regional manager said that, while the process was designed to include wide consultation at community level, its 'extension' to formally involve Maori had varied throughout the agency. Acknowledging that there was room for improvement in the area of formal consultation between the agency and Maori organisations, she said this would require a more consistent effort on the part of the agency to establish working relationships at the local level with all 'mandated representatives of Maori'.⁶⁸ The agency's understanding of a 'mandated' Maori group is one that is formed and supported by the manawhenua iwi of an area.⁶⁹

(3) Limits to consultation

Agency witnesses acknowledged another deficiency in the consultation process – its focus on service providers rather than consumers of services:

In terms of the comprehensiveness of services planning as conducted by the Agency to date, it would however be true to say that this has largely focused on talking to voluntary organisations about the need for services, with less emphasis placed on talking directly to consumers. Some teams have held forums with consumers but it would be fair to say that this area of the Agency's work is largely undeveloped and the managers within NZCFA acknowledge the need to now shift the services planning aspect of its work out to the level of consumers.⁷⁰

The agency also noted constraints upon the scope of the consultation it can conduct in services planning. First, it was said that it is not practicable for the agency to consult on the division of the funds in each NDOC, because the amount is only known to staff from the night of the budget speech, by which time the imperative is to get the funding to providers as quickly as possible. Further, it would be difficult to consult when each NDOC is divided eight ways (amongst the area teams) and then by each team in up to 200 ways to provide for the various contracts.

67. Document c1(2), paras 39, 48, 49

68. Document c1(6), paras 171–173

69. Transcript 4.3, p 62

70. Document c1(6), para 178

Secondly, the agency's consultation is limited by the purposes for which it is conducted:

I think we've certainly tried to set limits on the consultation. So I don't think we've tried to present our consultation as being anything other than what it is. I mean, in terms of consulting on what the needs are of a particular community and then consulting on the relative priorities of those needs, I think we're asking a very narrow range of questions and I think consultation, having read the [Parliamentary Commissioner for the Environment's report on consultation], is actually far wider than that. We haven't taken it wider than that.⁷¹

These limitations were summarised in this way:

whilst we cannot consult on the amount, there is infinite negotiation possible on the type and range of services within the parameters set by the NDOC description published by Government.⁷²

(4) Consultation in 1992–93 and 1993–94

The conduct of the services planning consultation process in the Auckland area for the 1992–93 and 1993–94 years was explained in some depth.⁷³ In both years, the three Auckland sub-teams were divided into service sector teams so that staff from each of the three geographic areas were involved in the planning for the three service categories – families under stress (now known as families in need of support), people with disabilities, and community welfare. Each sector team was responsible for drawing up a draft issues paper identifying the need in Auckland for that particular service, how far the needs were being met, and what services needed to be further developed. The issues papers used information from agency-funded service providers as well as any other relevant information that could be obtained (eg, from departmental records, surveys, the census, and newspaper articles). In that process, some service providers were contacted for further information and perspectives on community needs.

In the 1992–93 planning round, the sector teams were responsible for attending consultation meetings or consulting with individual groups. In the next year, the geographic teams were responsible for community consultation.⁷⁴

The consultation conducted in the Auckland area for the 1993–94 year included four public meetings scheduled to last either two or three hours.⁷⁵ In advance of the meetings, each outreach worker was responsible for contacting the organisations she or he worked with, and as many relevant non-funded organisations in the area as could be identified:

71. Transcript 4.2, p 80

72. Document C1(2), para 40

73. Document C1(12), paras 4–19

74. Ibid, paras 6–12

75. Ibid, para 13, app 2. Paragraph 13 of the evidence stated that there were four meetings, but appendix 2 suggests that there were five.

They were sent notices advising meeting topics, dates, times and venues, copies of the draft issues paper and questionnaires to which organisations could respond. The Team tried to be as comprehensive as possible in making these contacts so as to have as full a picture as possible of the whole situation for service provision. Te Whanau o Waipareira Trust was included on the mailing list. . . .

Between thirty and fifty representatives from the various organisations attended most meetings.⁷⁶

The meetings were run in workshops, each group's comments being recorded on sheets of paper and shared with the whole meeting towards its conclusion, with further comments noted. The information gathered was collated into papers for use by the sector teams when preparing the final versions of the issues papers. Information from the final issues papers was published in the Community Funding Agency's *National Services Plan: Funding Decisions 1993–94*, which was circulated to all funded service providers.⁷⁷

If a service provider was unable to attend one of the meetings, an arrangement was made for a separate meeting with the outreach worker to discuss social service needs in the area. It was acknowledged by the agency that the services planning process had not included a separate meeting for Maori service providers in the Auckland area.⁷⁸ Responding to the claimants' criticism of this omission, the general manager stated, 'I think that criticism is legitimate and I accept it. . . . if we have not met Waipareira's needs then that's a customer issue and I think we should have tried a bit harder.'⁷⁹

4.5.5 Services planning for the 1994–95 year

The subsequent services planning round occurred after the claim was lodged and before the Tribunal hearings began. In light of the agency's acknowledgement of deficiencies in the earlier processes, including the need for better consultation with 'mandated' Maori representatives and with consumers of services, it is notable that no public consultation meetings at all were held in the 1994–95 planning round:

For the services planning for . . . 1994/95 . . . we did not have public consultation meetings . . . we didn't have any of those meetings that particular year for anyone, but we did make a concerted effort, I hasten to say, that we contacted all our groups individually with a visit and gave questionnaires if they wished to follow up with written responses too. They weren't neglected . . . it was a wide consultation process but individual. . . .

. . . as I understand it, it was a national way of doing it that particular year . . .⁸⁰

76. Document C1(12), paras 14, 15

77. Ibid, paras 17, 19; doc C1(b)(10), pp 33ff

78. Document C1(12), para 13

79. Transcript 4.2, p 73

80. Transcript 4.3, pp 87–88

The outreach worker who gave that evidence gave her personal view that the feedback she obtained by this new means, from the group of service providers and others she contacted, was sufficient.⁸¹

4.6 THE NEEDS INDICATOR

4.6.1 An objective basis for comparison

Because the information gathered in the services planning process is largely subjective, it does not provide a strong basis for comparative assessment of the need of different agency areas and the sub-areas within them. To generate an objective basis for those assessments, in 1993 the agency commissioned Ernst and Young to develop a 'needs indicator'. In this task, Ernst and Young received assistance from representatives of the Department of Statistics and Te Puni Kokiri and from Professor Leon Fulcher of Victoria University, Jan Dowland (strategic planner, IHC), Suzanne Snively (Coopers and Lybrand), and agency staff.⁸² The Ernst and Young consultant who helped develop the indicator gave evidence about its design and application.⁸³

It was explained that the needs indicator does not replace the collection of the services planning data from the community but complements that process, providing a tool against which funding decisions can be tested. In essence, the indicator uses information from the most recent census about the population of each of the agency's areas to produce needs-weighted population figures, which can then be used as the basis for the division of funding not only amongst the agency's eight areas but also within each area.⁸⁴

4.6.2 Seven criteria checked

The seven criteria chosen for use in the needs indicator are based on those developed in a 1985 study by the Department of Health, called *Health and Equity*. They were said to have 'generally accepted credibility and reliability in predicting social need'.⁸⁵

The seven criteria are based on the percentage of Maori and Pacific Islands people in an area, the percentage of people who are unemployed or receiving income support, the percentage of single parents with dependent children, the percentage of multi-family households, the isolation of the area in terms of access to services, and the cost of housing.⁸⁶

The general manager explained that the choice of criteria for use in the indicator was limited by available statistical information. As a result, while it would be appropriate for the indicator to include statistics on child abuse notification and on

81. Ibid, p 88

82. Document D5(b)

83. Document C1(16)

84. Document C1(2), para 52

85. Document C1(16), para 8

86. Ibid, para 11

disability, the lack of reliable information about those matters precluded it.⁸⁷ The northern regional manager added that, if factors could be identified as causing problems for Maori but not Pakeha, and if there was a national database that could be used, the agency would be happy to use that information in its needs indicator. However, the problem is ‘what are the factors on a national basis and where are the databases on a national basis? . . . to date those two things have not been identified.’⁸⁸

Information is available from public records about all but one of the criteria used in the needs indicator – the regional isolation criterion.⁸⁹ It takes account of the time taken to travel to services and was developed for use in the needs indicator because of the paucity of rural social services and the fact that the cost infrastructure for rural social services is much greater than for urban social services.⁹⁰ By the weighting applied to the criterion, high isolation areas (two hours’ travelling time to the nearest service) have their overall need increased by 20 percent, low isolation areas have their overall need decreased by 20 percent, and medium isolation areas are unaffected by the criterion.⁹¹ A table showing the results of the criteria for the 1994–95 services planning round reveals that only two of the eight agency areas – Auckland and Wellington – are ranked low isolation areas.⁹²

While the final choice and weighting of the individual criteria was determined by the agency’s project team, their weighting was not explained in any depth at the hearing.⁹³ Agency witnesses assured the Tribunal that, during the development of the needs indicator, different weightings of the various criteria had been tested to ensure that it reflected the high need of Maori for social and welfare services. For example, the northern regional manager stated:

The factors were tested and run through various models of weighting, thinking of how did they affect Maori . . . if you weighted them in various ways it didn’t actually change the result because Maori are over-represented in all those factors now, and so therefore they are actually counted in a number of cases because they are over-represented in the benefit figures, because they are over-represented in the double household. So we tested that by modelling and in actual fact came to the conclusion that that indicator worked for Maori, certainly not against Maori.⁹⁴

4.6.3 Equitable funding decisions depend on integrity of services planning

The agency agreed with the trust that the integrity of the services planning and funding allocation processes was central to any assessment of how equitable is the agency’s funding. The northern regional manager explained why this was so when she observed that, in the absence of mechanisms that measure the social welfare

87. Transcript 4.2, p 69

88. Transcript 4.3, p 12

89. Document C1(2), para 52

90. Transcript 4.2, p 69

91. Document C1(16), para 11; transcript 4.3, p 12

92. Document C1(16), app 4

93. Ibid, para 8

94. Transcript 4.3, p 12

outcomes for consumers of services, mere knowledge of the cost of services that have been purchased from different providers is of limited assistance to any assessment of how equitable is the funding received by different groups of consumers:

I am yet to be convinced that the measurement of equity, based simply on the amount of dollars invested, is a useful exercise. We as a Government Department focus in part on a measurement of output in dollar terms, and we are fortunate to be able to measure enhanced opportunity by simply using dollars. However this is not an adequate measure in terms of the much larger issue of equity of outcome. My point is that the dollar input alone will not buy equity, although it may help of course to achieve equality of opportunity, which is the fundamental objective of social engineering. In the achievement of equity of outcome, it is the economic base and education which are of greater importance.

For its part, NZCFA works to target the resources it has to the areas of greatest social and welfare service need.⁹⁵

4.6.4 Funding to providers not a reliable indicator of outcomes achieved

At the hearings of the claim, various reasons were identified as to why ‘dollar input alone will not buy equity’ of outcome. They include:

- some service providers rely wholly upon voluntary labour while others employ some paid workers and use voluntary labour to a lesser extent overall – factors that affect the quantity, and perhaps the quality, of the services able to be delivered for a set amount of money;⁹⁶
- some providers are large, well-established organisations able to achieve economies of scale in their delivery while others are new with high establishment costs;⁹⁷
- some providers offer a range of services while others focus on the delivery of particular services, some of which can be particularly costly to deliver;⁹⁸ and
- the human dynamics involved in service provision can mean that the ‘right’ provider may achieve an effective result for a consumer at little cost, when a different provider would have achieved far less at greater cost.⁹⁹

In sum then, because these variables influence the ability of providers to use agency funds to achieve ‘success’ with their clients, and there is no requirement that the agency measure success (the outcomes for clients) nor any mechanism to do so, funding figures alone provide a limited means of assessing the equitableness of the agency’s funding allocations.¹⁰⁰

95. Document C1(6), paras 130, 131

96. Transcript 4.3, p 14

97. Ibid, p 22; doc B5, para 5.2; doc B10, pp 46, 47

98. Document A8(h), para 3; doc A8(t), p 3

99. Document C1(6), para 129

100. Ibid, paras 125–130, 139, 140; transcript 4.3, p 13

4.6.5 A new factor – the community’s ability to contribute

At the hearing in March 1995, however, the agency referred for the first time to its development of a ‘second needs indicator’, quite separate from the one agency witnesses had focused on before that time. It was explained that, in about July or August 1994, the agency had started developing a measure of a community’s ability to contribute to the funding of needed services. This was done in recognition of the difficulty posed by the sole focus of the isolation criterion upon geographic isolation from services. As a result of discussions within the agency and beyond, an assumption had been identified underlying the isolation criterion, relating to a community’s ability to contribute funding for needed services.

The northern regional manager said:

because we believe that this is an issue for Maori, there is an assumption because we partially fund that a community can respond and contribute, and what we are setting out to do, and it hasn’t been done before, is to develop some way of measuring a community’s capacity to contribute.¹⁰¹

A working group had been set up to develop the second needs indicator, which was expected to be available for use in the 1996–97 year: ‘it won’t be one piece of data. It will be a combination of things which will give us a picture. I don’t think you will ever be able to do better than that.’¹⁰²

4.6.6 Measurement of the community’s contribution

The value of the contribution made by providers to their service delivery, whether in voluntary labour or otherwise, was an important issue to Waipareira. It said its community can contribute valuable voluntary labour and support in kind, but simply could not raise as much money as other communities. Before 1995, at least, this non-cash contribution could not be accounted for in the agency’s reports to the Government because it had no means of costing it. Further, the Audit Office had stated in a report to the agency prepared late in 1994 that it may be inappropriate for the agency to attempt to price or value the non-cash contributions made by service providers.¹⁰³ That view may derive from the fact that social service delivery is dependent upon the historical, and continuing, partnership between the Government and the voluntary sector and that to cost the voluntary component too precisely may erode the spirit in which it is supplied.

4.6.7 No simple task

Despite that, the agency said that a major aim of output contracting, introduced in 1994, is to enable it to report to Government in terms of ‘If you invest this, you will

101. Transcript 4.3, p 12

102. Ibid

103. Document c1(5), para 6

also be getting this', so that the voluntary or other contribution becomes valued and explicit. It was indicated that it would not be a straightforward matter to devise criteria by which to value providers' contributions for the same sorts of reasons as are listed above. Further, it had not yet been determined what effect the information about providers' contributions would have on agency funding decisions.¹⁰⁴

To further complicate any assessment of Maori service providers' contributions, it is not only Maori consumers who benefit from any increase in the amount of funding allocated to Maori service providers, as is illustrated by Te Whanau o Waipareira itself.

The trust is a pan-tribal provider and so is classified by the agency as a Maori provider. Yet in some areas of the trust's services, such as its youth day and home-marae based services, only 60 percent of its clients, at least in the latter part of 1994, were Maori.¹⁰⁵ Conversely, the agency noted that a proportion of the funding directed through national contracts (some \$38.9 million in 1994–95) would be reaching Maori clients. It identified Women's Refuge in particular, which received \$3.665 million, as having a high percentage of Maori clients.¹⁰⁶

4.7 MONITORING OF THE CFA BY THE COMMUNITY

4.7.1 Flaws in formal consultation process

The services planning process conducted by the agency provides the sole formal opportunity for providers and others in the community to have input into the agency's decision-making (apart from appeals against funding decisions).

As has been noted, some limitations in the conduct of that process for the 1992–93 and 1993–94 years were acknowledged by the agency; in particular, that consumers of services had not been targeted in the consultation and that Maori service providers, at least in the Auckland area, had not been provided with a separate opportunity to discuss service needs with the agency.

4.7.2 Regular informal consultation processes

Agency witnesses emphasised the regular informal opportunities that community groups had, individually, to talk with their outreach workers about matters relevant to the agency's operations. The northern regional manager explained that the feedback outreach workers obtained in this way would be discussed in team meetings and the issues identified there passed on by the area managers in their formal monthly reports. The regional and national management meetings provided forums for discussion of policy matters.¹⁰⁷

¹⁰⁴. Transcript 4.3, pp 70, 71

¹⁰⁵. Document C1(6)(a); doc D5(d)

¹⁰⁶. Document D5(d)

¹⁰⁷. Transcript 4.3, p 56

The agency's publication of papers setting out what it had done, including its bimonthly newsletter *Outreach*, and its annual publication of funding decisions were also identified as important means by which its performance can be monitored by the community:

What we strive to do is to have processes that have their integrity, that we are open with our information, we report back and then through that feedback loop it gives people an opportunity to contest what we are doing.¹⁰⁸

4.7.3 Internal appeal process

Further, the agency gave some emphasis to an internal appeal process it had established by which service providers can contest agency funding decisions and thereby monitor its performance. The claimants seemed unaware of the process before the hearings, but did not dispute that the agency's procedures handbook contained information about the appeal procedure and that the August 1993 issue of *Outreach* contained a very brief mention of the appeal process. The outreach worker most closely associated with the trust between May 1992 and March 1994 said that he had not informed it of the appeal process because he had never considered the possibility to be an issue.¹⁰⁹ The northern regional manager also indicated that the appeal process, at least at the time when it might have been used by the trust, could have initiated only a limited inquiry into agency staff's adherence to procedures.¹¹⁰

Nevertheless, there was some suggestion that it would have been appropriate for the trust to use the agency's funding appeal process before lodging a claim with the Tribunal. In the final submissions made on behalf of the agency, Crown counsel surmised that the appeal process could have led to further consultation between the parties had the trust availed itself of that process.¹¹¹

4.7.4 Customer satisfaction reports

The introduction in the 1994–95 year of a requirement that providers conduct customer satisfaction surveys in respect of certain services funded by the agency was also identified as a community monitoring mechanism.¹¹²

4.7.5 Monitoring by Maori

On the specific matter of Maori monitoring of the agency's performance, the northern regional manager said the agency expected:

108. Transcript 4.3, p 19

109. Document E2, para 1

110. Transcript 4.3, p 53

111. Document E7, para 46

112. Ibid, para 103. See, for example, doc C1(b)(16), pp 926–927.

to have to report back to Maori on what we are doing for Maori in our area of responsibility and how we are ensuring that the needs of Maori are being met and how we can demonstrate that that is happening.¹¹³

The means by which this is done are the same as those already mentioned. In relation to the reporting back which is done on funding decisions, it was said that the agency's ability, since the 1993–94 year, to report on funding according to the ethnicity of service providers enabled it to demonstrate to the Maori community that funding previously 'ringfenced' for Maori which had been transferred to the agency (eg, community and welfare programmes previously administered by the Department of Maori Affairs) had not been lost to Maori.¹¹⁴

(1) No formal monitoring by Waipareira

It was acknowledged that there had not been any regular face-to-face contact between the agency and Te Whanau o Waipareira Trust for the purpose of discussing the agency's administration with respect to the trust's interests:

I don't think that has occurred – it depends upon what level. I mean the outreach workers are interfacing with Te Whanau o Waipareira all the time and have that information so it's really at what level and what degree. There is a constant exchange of information between providers and the Agency, either in written form or face to face through the outreach interaction. So it's not a formalised process, if you like.¹¹⁵

(2) Komiti Whakahaere does not monitor

Because the agency, and the department as a whole, have not established monitoring mechanisms with significant community representation – comparable to the Social Welfare Commission and district executive committees established in response to *Puao-te-Ata-tu* (see ch 5) – some attention was focused at the hearings on the precise role of the Komiti Whakahaere, which was referred to by the director-general. It was explained that the komiti provides input to the Minister of Social Welfare 'on issues for Maoridom within the department'. The komiti is a ministerially appointed group of eight 'leading kaumatua', including representatives of various tribal groupings, which meets 'about every three months'. The information provided by the komiti to the Minister is conveyed to the director-general and she regularly attends komiti meetings.¹¹⁶ The komiti does not include practitioners in the field of the provision of social services.

113. Transcript 4.3, p 9

114. Document C1(2), para 71

115. Transcript 4.3, p 10

116. Document C1(1), para 24; transcript 4.2, pp 10, 11

CHAPTER 5

PUAO-TE-ATA-TU

5.1 SUMMARY

A key document guiding the Department of Social Welfare's approach to meeting the needs of Maori in policy, planning, and service delivery is *Puao-te-Ata-tu* ('daybreak'), the report of a ministerial advisory committee that reviewed the department in 1986. It highlighted the crisis proportions of the range of social problems experienced by Maori at that time and emphasised the need for concerted action to redress the situation – from central and local government, the business community, Maoridom, and the community at large.

The report's recommendations, all accepted by the then Minister, focus upon the need for the department to function in a bicultural manner and to share responsibility and authority for decisions with appropriate Maori people. The Department of Maori Affairs and representatives of Maori communities were envisaged as key participants in the planning and coordination of future social welfare activities.

An expectation of *Puao-te-Ata-tu* was that Maori would respond to its bicultural vision by strengthening traditional Maori structures. A particular concern identified in the report was that Maori networks were not strong enough to cope with the serious situation of many Maori children and especially young people living in Auckland in 1986.

Although *Puao-te-Ata-tu*'s recommendations were accepted by the Minister of the day, the department's commitment to their implementation had waned by the time of its restructuring in 1992, when the CFA was created. The restructured department has endeavoured to restore *Puao-te-Ata-tu*'s status as a key document, but it acknowledges it has a distance to travel before its operational style can be described as bicultural.

We consider that an informed commitment to *Puao-te-Ata-tu* was absent in the establishment of the CFA and in its operations leading up to the claim. Agency initiatives that are claimed to be consistent with *Puao-te-Ata-tu* lack the unity and depth needed to give life to the report's goals. In the north-west Auckland area in particular, agency staff's appreciation of the report's meaning for their work was neither required nor encouraged. Departmental initiatives taken since 1993 could not provide an instant remedy to the situation. Further, those initiatives offer little guidance on the issue at the heart of this claim: the Treaty rights of Maori who are removed from a tribal base.

5.2 BACKGROUND

In 1986, a ministerial advisory committee that reviewed the DSW produced the report *Puao-te-Ata-tu*. The report made 13 recommendations on how the department might meet the needs of Maori in policy, planning, and service delivery. All were accepted by the Minister of the day. Both the Crown and the claimants regarded the report as central to the claim.

The parties had different purposes in relying upon *Puao-te-Ata-tu*. The Crown sought to establish that, because the DSW generally, and the CFA in particular, are committed to the report, the claimants cannot invoke *Puao-te-Ata-tu* to support their criticisms of the agency's operations. The claimants sought to establish that the agency's professed commitment to *Puao-te-Ata-tu* is contradicted by its activities, which are inconsistent with *Puao-te-Ata-tu*'s true meaning.

The significance of *Puao-te-Ata-tu* to this claim, made under the terms of the Treaty of Waitangi, derives from the fact that the report is a considered, practical guide to the way in which the DSW should develop as a bicultural institution. While the Treaty's meaning cannot be supplanted by the opinions in *Puao-te-Ata-tu*, the report reflects a partnership approach, which accords with Treaty principles, but more especially for the purposes of this claim, the insights, advice, and cautions that the report gives on the department's relationships with Maori make it, as the director-general said, a 'key document' for the department.¹

5.3 THE RANGIHOU COMMITTEE'S ORIGINS, PROCESS, AND MESSAGE

5.3.1 Aimed at improving DSW's relations with Maori

The Minister decided to establish the Advisory Committee on a Maori Perspective for the Department of Social Welfare because of her concern at the number of complaints she had received about relationships between the department and its clients, particularly Maori clients.² Chaired by the late John Rangihau, the committee comprised five distinguished Maori and two Pakeha senior public servants. Its terms of reference were:

- to advise the Minister of Social Welfare on the most appropriate means to achieve the goal of an approach which would meet the needs of Maori in policy, planning and service delivery in the Department of Social Welfare.
- having regard to the needs of Maori and to the organisation, structure and functions of the Department . . . to:
 - 1 *Assess* the current capability of the Department in relation to the declared goal;
 - 2 *Identify* those aspects (including, for example, current practices in staffing, recruitment, staff training and development and public relations) which militate against attainment of the goal;

1. Document C1(1), para 13

2. Document E1, p 9

3 *Propose* a strategy for overcoming problems and deficiencies identified; and

4 *Report* with recommendations to the Minister . . . [Emphasis in original.]³

5.3.2 Authors considered Maori viewpoints

The resulting report summarises the committee's consultative process and the essence of the responses it received:

The Committee decided that to undertake our task adequately, we had first to listen to the community. We therefore chose to travel around the country to meet the department's clients in a marae setting, believing that an oral approach to our work was the traditional approach of Maori people to which they would respond. . . .

We held a total of 65 meetings on marae, in institutions and Department offices. We spoke to staff, to community workers, to young people and to judges who sit in the Childrens and Young Persons Court.

We had countless discussions and consultations. The faces and the places have been different, the statements have been made in countless different ways, but the messages have been the same.

They have been messages of frustration, anger and alienation. They have been messages, though, which have frequently been flavoured with hope, unfulfilled expectations, pride and aroha. The angry sense of powerlessness is not matched with a sense of hopelessness.⁴

5.3.3 Serious problems revealed

The Rangihau committee was convinced of the gravity of the problems identified in its inquiry and of the urgent need for change within and outside the DSW. The strength of its message is conveyed in the preface to *Puao-te-Ata-tu*:

We comment on the institutional racism reflected in this Department and indeed in society itself. We have identified a number of problem areas – policy formation, service delivery, communication, racial imbalances in the staffing, appointment, promotion and training practices. We are in no doubt that changes are essential and must be made urgently. . . .

While we are recommending significant changes to the policies and practices of Government agencies, with particular reference to giving the Maori community more responsibility for the allocation and monitoring of resources, these will be to no avail unless that community in turn picks up the challenges and significantly strengthens its tribal networks.

We have been disturbed at the extent to which Social Welfare institutions and indeed the courts, have a clientele which is predominantly Maori. We think that as a society we cannot survive much longer if we continue to ignore these facts and the situation which give rise to them.⁵

3. Document A3, p 5

4. Ibid, p 17

5. Ibid, p 7

5.3.4 Concerted action required urgently

Highlighting the ‘crisis proportions’ of the situation and the need for an urgent and coordinated response, involving key Government agencies as well as community groups, the report continues:

Although we invited the people to talk to us about the operations of the Department of Social Welfare, discussions invariably brought out equally grave concerns about the operations of the other Government departments, particularly those working in the social area. There is no doubt that the young people who come to the attention of the Police and the Department of Social Welfare invariably bring with them histories of substandard housing, health deficiencies, abysmal education records, and an inability to break out of the ranks of the unemployed. . . . To redress the imbalances will require concerted action from all agencies involved – central and local government, the business community, Maoridom and the community at large. We make recommendations for a comprehensive approach accordingly. Our problems of cultural imperialism, deprivation and alienation mean that we cannot afford to wait longer. The problem is with us here and now.⁶

5.4 EXPERT WITNESS’S SUMMARY OF *PUAO-TE-ATA-TU*

5.4.1 Overview of *Puao-te-Ata-tu*

An expert witness called by the Tribunal, Peter Boag, was a member of the committee that wrote *Puao-te-Ata-tu*. He provided an overview of the report:

The thrust of the Report was that the whole Department should become sensitive and responsive to the needs of *all* its clients, whatever their ethnic origin. The Report was not about separatism; it was about a bicultural development. The Department’s current publication *Te Punga* sums up this objective extremely well:

‘The principles of *Puao-te-Ata-tu* have to do with:—

- the redressing of historical imbalance
- a commitment to end all forms of racism
- the allocation of an equitable share of resources to Maori
- incorporating the values, cultures and beliefs of the Maori people in all policies
- attacking and eliminating deprivation and alienation
- ensuring that Departmental recruitment, staff and training policies do not disadvantage Maori
- recognising and utilising appropriately different skills of Maori staff
- ensuring that communication practices take account of the needs of Maori and other ethnic groups
- promoting/funding schemes which harness the initiative of Maori and the wider community to address problems
- ensuring effective coordination of planning, policy and practice to tackle serious economic and social problems.’⁷

6. Document A3, pp 7–8

7. Document E1, p 13

5.4.2 A vision of biculturalism

Noting that *Te Punga* endorses *Puao-te-Ata-tu*'s thrust towards biculturalism, Mr Boag quoted the paragraphs in the 1986 report, also quoted in *Te Punga*, which set out the advisory committee's view of biculturalism:

The Committee sees Biculturalism as the appropriate policy direction for race relations in New Zealand. It is considered as the essential prerequisite to the development of a multi-cultural society.

In our view policies and social objectives rooted in the concept of multiculturalism are commonly used as a means of avoiding the historical and social imperatives of the Maori situation. These should be addressed in a context of bicultural policy.

When applied to the functioning of the Department of Social Welfare we interpret biculturalism as the sharing of responsibility and authority for decisions with appropriate Maori people.

In functional terms we are concerned that decisions should be founded on the right information obtained from the right people. We perceive a social and cultural partnership here – not separatism.

Biculturalism involves understanding and sharing the values of another culture, as well as understanding and/or preserving another language and allowing people the choice of the language in which they communicate officially.

Biculturalism also means that an institution must be accountable to clients of all races for meeting their particular needs according to their cultural background, especially, in the present case, Maori.⁸

5.4.3 Recommendations promote partnership

That vision of biculturalism clearly provides the basis for the first two recommendations made in the report:

Recommendation 1 (Guiding Principles and Objectives)

We recommend that the following social policy objective be endorsed by the Government for the development of social welfare policy in New Zealand:

'Objective

To attack all forms of cultural racism in New Zealand that result in the values and lifestyle of the dominant group being regarded as superior to those of other groups, especially Maori, by:

- (a) Providing leadership and programmes which help develop a society in which the values of all groups are of central importance to its enhancement; and
- (b) Incorporating the values, cultures and beliefs of the Maori people in all policies developed for the future of New Zealand.'

Recommendation 2

We recommend that the following operational objective be endorsed:

'To attack and eliminate deprivation and alienation by:

- (a) Allocating an equitable share of resources.

8. Document A3, pp 19-20, quoted in doc E1, pp 13-14

- (b) Sharing power and authority over the use of resources.
- (c) Ensuring legislation which recognises social, cultural and economic values of all cultural groups and especially Maori people.
- (d) Developing strategies and initiatives which harness the potential of all of its people, and especially Maori people, to advance.⁹

5.5 THEMES OF *PUAO-TE-ATA-TU*

5.5.1 An integrated plan for coordinated action

Mr Boag emphasised that it was necessary to read the 13 recommendations in *Puao-te-Ata-tu* in the context of the report itself, and he highlighted three important messages that they contain:

- The report represents a closely argued plan for the bicultural development of the DSW both as a Government department and as an agency whose activities touch the vast majority of New Zealanders in one way or another.
- In the committee's view, biculturalism required that responsibility and authority for decisions be shared with appropriate Maori people, that control over resources be devolved closer to the consumer, and that the institution be accountable to clients for meeting their needs in accordance with their cultural preferences. The committee believed that Maori would respond by strengthening their tribal networks and Maori management systems and, in time, the strength of the Maori family would return.
- The report's focus upon the need for coordination amongst Government departments, in which it saw the DSW playing a leading role, arose from the committee's recognition of the need to address urgently and comprehensively the mounting feelings of anger and frustration within sections of the community, particularly in the larger metropolitan areas.¹⁰

5.5.2 Accountability to the community

(1) New structures for community representation

When commenting on the major themes of *Puao-te-Ata-tu*, Mr Boag emphasised that the Rangihau committee perceived some serious defects in the department's organisation and administration, especially with regard to its accountability to the community and, in particular, to Maori. It responded with the report's third recommendation: that the existing Social Security Commission should be replaced by a differently constituted Social Welfare Commission and that district executive committees should be established.¹¹ These bodies were to have a mixed membership of officers from the Departments of Social Welfare and Maori Affairs together with community representatives.

9. Document A3, p 26

10. Document E1, p 10

11. Ibid, p 11

The Social Welfare Commission's departmental membership was to be equalled by Maori and women members. Broadly speaking, the function of the commission was to advise the Minister on policy development within the department and on the cooperation and coordination of social welfare activities across the State sector and in the community. It was also to recommend the appointment of, and oversee the work of, the district executive committees, and to allocate budgets according to those committees' priorities. To these ends, it was to consult with representatives of tribal authorities in a national hui at least once a year.¹²

The district executive committees would have a significant majority of community members, with up to nine members nominated by Maori tribal authorities and other community interests. The other two members would be the district directors of the Departments of Social Welfare and Maori Affairs. They were to be responsible, in consultation with the various tribal authorities, for assessing and setting priorities for the funding of specific family and community welfare projects in their areas. They were to draft budgets for those projects and monitor and review their effectiveness. As well, the committees were to monitor and review the appropriateness and quality of the department's services in the districts.¹³

(2) Set up, but not for long

Although the recommendation to establish the Social Welfare Commission and district executive committees was implemented, those bodies were shortlived, being disbanded by the time the CFA was established in 1992. The reasons for their abolition appear from a memorandum written late in 1990 by the then director-general of the department, John Grant, to the new Minister of Social Welfare.¹⁴ Mr Grant's memorandum, entitled 'DSW Bicultural Approach – Towards Reducing Dependency', states that, from the beginning, the commission:

was unable to perform its functions adequately and it has simply not fulfilled expectations. It is not altogether surprising, given the complexity of the policy area surrounding social welfare that members appointed on a representative (and political) basis have difficulty in coming to grips with the high policy issues involved.¹⁵

Mr Grant's assessment of the success of the district executive committees is far more positive. Their performance:

has, in some cases been very good, [but] there is considerable unevenness throughout the country. A major benefit of the committee system has been the promotion of community consultation and local responsiveness. The committees also have a valuable role in scrutinising the effectiveness of local service delivery. The consultative climate has now become established and local operating units are considerably more aware of community resources and culturally appropriate consultation requirements. I am not

12. Document A3, pp 9–10

13. Ibid

14. Mr Grant and Mr Boag were the two Pakeha members of the advisory committee that produced *Puao-te-Ata-tu* (see doc A3, p 8).

15. Document A19, app 11, p 7 (quoted in doc E1, p 12)

saying that these committees have been a failure. However I can no longer justify the heavy cost involved in maintaining the structure.¹⁶

Mr Boag concluded from that memorandum that the district executive committees were victims of a cost-cutting regime, although the benefits arising from enhanced community and client satisfaction with the department's performance could well have outweighed the monetary costs involved.¹⁷

5.5.3 Strengthening Maori tribal structures

(1) *'Tribal' message misinterpreted by the CFA*

The third aspect of *Puao-te-Ata-tu* upon which Mr Boag focused was the meaning intended by the report's emphasis on the need to strengthen Maori tribal structures. He was plainly of the view that the passage of time showed that the DSW, including the CFA, had misconstrued the report's thrust:

CFA speakers have referred continually to their commitment to *Puao-te-Ata-tu* and hence the 'traditional Maori structures iwi/hapu/whanau'.

Although the Rangihau Committee saw the strengthening of traditional tribal structures as the ideal outcome of its Report, it nevertheless saw it as a long-term rather than an immediate objective.¹⁸

Mr Boag then quoted a passage from *Puao-te-Ata-tu*'s summary of its conclusions. It appears in the report directly after the statement that 'a main thrust' of *Puao-te-Ata-tu* concerns the coordination of resources among departments and the transference of authority over the use of those resources 'closer to the consumer':

Our recommendations are based on the expectation that Maori people will respond by participating in the strengthening of their tribal networks. We believe that our recommendations will assist and encourage the re-emergence of Maori management systems with their special blending of spiritual and pragmatic values. We also believe the co-ordination of Maori and non-Maori systems offers an opportunity for this country to develop a unique social service delivery.¹⁹

(2) *Non-traditional groups generally included*

In his evidence, and in response to close questioning from Crown counsel, Mr Boag stressed that, for the most part, the report's references to Maori groups – by the use of such terms as 'tribal authority' for example – were not intended to be exclusive of non-traditional groups. The exception was explained by Mr Boag:

The principal specific reference to traditional structures . . . comes in the Report's comments on the then Maatua Whangai programme which was concerned with the nurturing of children within the family group and on the then Children and Young

16. Document A19, app 11, p 7 (quoted in doc E1, p 12)

17. Document E1, p 12

18. Ibid, p 14

19. Document A3, p 24 (quoted in doc E1, p 14)

Persons Act. The Committee expressed its strong displeasure with the Maori communities who let their young people get into trouble, often leading to them being placed in foster care or Departmental institutions, without their families accepting any responsibility for their welfare.²⁰

(3) State agencies must support Maori community

To support his point that the report was generally concerned to promote the furtherance of *Maori* participation in welfare activities, Mr Boag quoted passages from *Puao-te-Ata-tu* which reveal the committee's deep concern at the situation in Auckland in 1986:

In the Auckland area alone recent information gives cause for serious concern. The following estimates are from Auckland Police and schools:

- 300–400 unsupervised young people on the streets (about 90% Maori);
- 200–300 chronic solvent abusers;
- 1%–5% of children, on a daily basis, who should attend school not doing so. (1% is 4250 children; 5% is 21250).

Figures like these suggest that parental influence has broken down and that Maori networks are not yet strong enough to be really effective. The Committee does not see this as a matter with which the Maori community can be expected to deal themselves. It is imperative for steps to be taken to ensure that there is adequate funding in place to allow a co-ordinated strategy by the Department of Social Welfare and Maori Affairs and the Police which will promote community efforts to strengthen Maori networks and family linkages.²¹

(4) What about urban youth?

Mr Boag elaborated upon the Rangihau committee's understanding of the sort of community efforts that would be required to respond to the plight of urban rangatahi (young people). He acknowledged that the committee had reported at a time when Maori were signalling a need to restore traditional tribal structures: the Hui Taumata in 1984 evidenced this and 'it was reflected to a large extent in *Puao-te-Ata-tu*'.²²

However, Mr Boag reiterated, the committee understood that the development of tribal structures was a long-term objective. Further:

Maori can't achieve it by themselves, it's no good just sitting back and saying right by concentrating on traditional structures we can forget everything else. One of the things that I was conscious of, or the committee was conscious of, was they desperately hoped that the recommendations which they put up would in fact fix what they called the Auckland problem and in this they were influenced by the Chairman, John Rangihau whose Tuhoe has a strong presence around Mt Wellington with Tirahou and he was supremely confident Tirahou, just to name one group, would pick up their young people in Auckland and do something with them . . .²³

20. Document E1, pp 14–15

21. Document A3, p 35 (quoted in doc E1, p 14)

22. Transcript 4.4, p 16. The Maori Economic Development Summit Conference called by the new Minister of Maori Affairs at Parliament in October 1984.

23. Transcript 4.4, pp 16–17

While he agreed with Crown counsel that the emphasis at the time was on the development of iwi and taura here organisations, although that alone was insufficient, Mr Boag strongly denied the suggestion that *Puao-te-Ata-tu* advocated a preference for funding iwi-based groups over urban Maori groups.²⁴ The committee, he emphasised, saw the Department of Maori Affairs – ‘an agency that had roots into the community’ – playing a key role in identifying the ‘right people’ in the Maori community to be consulted about the performance of the DSW.²⁵

(5) ‘Tribal’ includes non-traditional groups

Crown counsel suggested that the wording in *Puao-te-Ata-tu*’s recommendations distinguished between ‘tribal authorities’ and ‘Maori authorities’ and that the emphasis was on consulting with tribal authorities except in one specific instance where the net was cast more broadly to include both tribal and urban authorities.²⁶ Mr Boag responded:

No. Maori authorities in that context as I remember it would include groups such as the Maori Women’s Welfare League, and non-tribally based groups. It talks about investment in urban and rural districts. I don’t think it talks about urban [authorities].²⁷

Accepting that other recommendations in *Puao-te-Ata-tu* use the term ‘tribal authorities’ to describe the Maori groups to be involved by the DSW in its work, Mr Boag said that the term was a ‘fairly loose’ one. He also explained why the Rangihau committee would not necessarily have envisaged the department’s future consultation being largely with tribal authorities in the narrower, traditional sense in which Crown counsel used the term:

If I take the West Auckland district or Mangere or other places like that, if you wanted to talk to someone who could represent the views of the community or some group, they are not necessarily going to a tribal authority to get that information. You are probably going to be much more pragmatic and say what does the situation look like on the ground.²⁸

Crown counsel also suggested that *Puao-te-Ata-tu* gave the message to the Government that tribal authorities, where they can provide a service, should be enabled to. Mr Boag also rejected that interpretation: ‘I don’t think we’ve talked about tribal authorities providing a service, I think we talked about a consultation process.’²⁹

24. Taura here (‘ropes that bind’) are organisations established by members of tribal groups who reside outside their traditional territory, to serve the needs of tribal members and to help them maintain active links with their home base.

25. Transcript 4.4, pp 17, 19, 20

26. Ibid, pp 20–21. See recommendation 8(b), concerning the promotion of training and employment opportunities for young Maori in urban and rural districts (doc A3, p 37).

27. Transcript 4.4, p 21

28. Ibid

29. Ibid, p 22

(6) *Traditional tribal means hapu not iwi*

Mr Boag went on to explain that, in the one area of the report's recommendations where traditional Maori groups were intended to be the focus (concerning the Maatua Whangai programme), the committee was firmly of the view that the strength of the traditional Maori community was in fact the hapu.³⁰ This point, which questions the rationale for a focus upon iwi in the provision of social services, has been canvassed in chapter 1 of this report.

(7) *Need to be pragmatic and flexible*

Mr Boag did, however, express concern:

that the Committee deliberately didn't feel it could come to grips about what to do with urbanised Maori groups. [The committee] lived in hope that somehow tribal structures would pick them up but they weren't at all sure about that . . .³¹

Elaborating on this matter, he said:

the committee expressed some nervousness about whether what it was identifying would fix the Auckland problem. Under strong pressure from the Chairman of the Committee and the senior Maori members, the Committee gave as its solution to many things, the strengthening of tribal networks, it was still aware that this would still have to stand the test of time and that there may be other solutions that should be looked for.

I alluded to it in passing that the model that came through was very much influenced by the success of Tuhoe and although that was a successful model, I think the committee felt that developments had to be in two stages, one was to reemphasise to the extent possible the still current importance of traditional groupings and basically express the faith that the sort of Tuhoe model would be followed by other tribal groupings around the countryside, and I think that the way things have emerged, and certainly in this case . . . this approach probably has been at the expense of urban groupings and that I think that in the community we probably have to rethink how we handle today's issues.

. . . If the committee was re-formed today, they would see that great strides had been made . . . they would feel that their task had been well justified in what's been happening with the resurgence in Social Welfare, but I think they'd also say that we haven't yet really got the answer to deal with our community problems. They're still there and we haven't overcome them.³²

5.5.4 A comprehensive approach to averting civil disorder**(1) *Critical role for Maori Affairs Department***

Mr Boag emphasised that, for the reasons stated in *Puao-te-Ata-tu* at the conclusion of its 13 recommendations, it was of critical importance to the report's plan that the

30. Ibid

31. Ibid, p 24

32. Ibid, pp 55, 69-70

DSW develop and maintain a close working relationship with the Department of Maori Affairs:³³

This report contemplates that the social and cultural insights available to the Department of Maori Affairs will be central to the development of strategies that cannot afford to fail.

The Department of Maori Affairs can bring experience and skill in the social dimensions of the Maori world in a measure greater than that available from any other agency of Government. Combined with Social Welfare's depth of practical experience in dealing with the social situation of Maori people these two departments together face the greatest single social and cultural challenge of our times.³⁴

In light of the demise of the Department of Maori Affairs (see ch 6), Mr Boag expressed concern that the role *Puao-te-Ata-tu* envisaged for it had been left unfulfilled:

Whatever its defects, real or perceived, the Maori Affairs Department was seen as the voice of Maori within Government ranks as the agency able to provide informed advice on appropriate channels of communication with the Maori community. All departments, including the CFA, will have had to make alternative arrangements to fill the gap.³⁵

(2) Coordination of all State welfare agencies

Over and above the need for the DSW to work collaboratively with Maori Affairs, *Puao-te-Ata-tu* argues forcefully for broader coordination of State agencies' activities:

All the community groups and many of the staff to whom we spoke raised the problems of lack of inter-departmental co-ordination. . . .

We also were given a clear picture of problems that need addressing across the board. The point was made repeatedly, for example, that the clients of the Social Welfare Department or Justice, had records of indifferent health, poor educational achievements, unemployment, inadequate housing etc. These problems plainly require a co-ordinated approach from Government agencies. . . .

Although the picture varied from centre to centre, we were told by the staff about the lack of co-ordination among departments and their concern that no mechanism for co-ordination appeared to exist even when they were dealing with the same clients. Inter-departmental rivalries and jealousies seemed to interfere with any joint operation. We regard it as a matter of urgent priority for the State Services Commission to take steps to ensure more effective co-ordination among its State social service organisations.³⁶

The committee continued by saying that it had considered whether a transfer or a re-grouping of the welfare functions of the key welfare departments could be possible in order to make the delivery of welfare services more effective. It resisted recommending such an option, however, believing that the strength of the Maori

33. Document E1, pp 15–16

34. Document A3, p 14

35. Document E1, p 16

36. Document A3, p 42

family would return in time and that the concern of the DSW must be to take advantage of the tremendous drive amongst Maoridom to improve its family strength: 'Therefore, immediate and broader problems have to be addressed by departments and agencies working together to direct existing resources to best possible advantage.'³⁷

The committee then recommended that the terms of reference for the intended Royal Commission on Social Policy take account of the issues raised in *Puao-te-Ata-tu* and that the State Services Commission take immediate action to ensure that more effective coordination of the State social service agencies occurs.³⁸

(3) Need for urgent action

The final section of *Puao-te-Ata-tu*, preceding its thirteenth recommendation, is headed 'A Comprehensive Approach'. Referring to United Kingdom and United States reports on civil disorders, the Rangihau committee emphasises the need for the whole community to address the 'cultural, economic and social problems that are creating serious tensions in our major cities and in certain other outlying areas', with the Government providing the leadership and expertise to coordinate resources for the community. This is explained in these terms:

It is not enough for departments and agencies to meet around conference tables. We need the co-ordinated approach that has been used to deal with civil emergencies because we are under no illusions that New Zealand Society is facing a major social crisis.

The solutions to social problems lie in a co-ordinated attack on the problems, involving the resources of the private sector as well as the public sector and particularly of the people themselves.

The Committee has given much thought to how this co-ordinated action can be directed. The problem is so serious that in the Committee's view, it requires the attention of the Cabinet itself. . . .³⁹

(4) Recommendation 13

Recommendation 13, which follows, is in these terms:

We recommend that:

- (a) immediate action be taken to address in a comprehensive manner across a broad front of central Government, local Government, Maori tribal authorities and the community at large, the cultural, economic and social problems that are creating serious tensions in our major cities and in certain other outlying areas;
- (b) the aim of this approach be to create the opportunity for community effort to:
 - (i) plan, direct, control and co-ordinate the effort of central Government, local Government, tribal authorities and structures, other cultural structures, business community and Maoridom;

37. Ibid

38. Ibid, p 43

39. Ibid, p 45

- (ii) harness the initiatives of the Maori people and the community at large to help address the problems;
- (c) the Cabinet Committee on Social Equity and their Permanent Heads be responsible for planning and directing the co-ordination of resources, knowledge and experiences required to promote and sustain community responses and invite representatives of commerce, business, Maoridom, local Government and community leaders to share in this task.⁴⁰

Overall, the tenor of Mr Boag's evidence about the meaning of *Puao-te-Ata-tu* is captured in these statements:

what was driving the [Rangihau] committee was that if the Department could get it right with its Maori clients, it was going to get it right with all its clients, it is a question of sensitivity, communication and understanding.

[The] committee came down very firmly on the question of partnership, that it wasn't either/or, it wasn't one or the other. [It was] seeing that we should be working as a total community, with various strands within.⁴¹

5.6 PUAO-TE-ATA-TU AND THE RESTRUCTURED DSW

5.6.1 Background

The present Director-General of Social Welfare, Margaret Bazley, was appointed in July 1993, more than one year after the CFA became operational. Mrs Bazley was frank about the level of commitment to *Puao-te-Ata-tu* within the department upon her arrival:

the early impetus given by *Puao te Atatu* had gone and many Maori staff were very angry and bitter about the failure to follow through. It is difficult to speculate as to the reasons behind this failure to follow through. Suffice it to say I am committed to ensuring that *Puao te Atatu* is restored to its rightful place as a key document for the Department.⁴²

The process that the director-general set in place to this end began with four hui of all Maori staff in the department, which were attended by the senior managers. From those hui, a framework was developed to ensure that the department was a bicultural workplace, and the booklet *Te Punga* ('the anchor') was published in December 1994. Mrs Bazley stated that the department's general managers, through their performance agreements, would be held to account for the delivery of the objectives in *Te Punga*.⁴³

40. Document A3, p 45

41. Transcript 4.4, pp 67, 71

42. Document C1(1), para 13

43. Ibid, paras 14, 16

5.6.2 *Te Punga*

(1) *Indirectly relevant to this claim*

Published while the hearings of the claim were in progress, *Te Punga* was not available to guide CFA management and staff during the establishment of the agency and its first 18 months of operation. While it signposts the bicultural direction of the department from 1995, earlier departmental attitudes and conduct, including those within the CFA, did not have the benefit of *Te Punga*'s guidelines, and the relevance of the booklet to the claim is primarily to indicate future intent.

(2) *Five-year plan for a bicultural DSW*

Te Punga sets out the strategies the DSW will pursue over the next five years in order to 'anchor our bicultural approach' and meet the challenge of the Treaty of Waitangi and of *Puao-te-Ata-tu*. That challenge is described as being 'to ensure that our advice to Government, and our service delivery planning, addresses tangata whenua needs in tangata whenua terms'.⁴⁴

The aim of *Te Punga* is 'getting it right for Maori', and the examples given of what this means are these:

- Maori perspectives are a key part of policy development and service delivery,
- The Department [is] an organisation in which Maori are comfortable being Maori,
- Maori have equal access to employment opportunities within the Department,
- Cultural skills are utilised effectively and recognised,
- All staff are culturally aware and sensitive to Maori needs, customs and issues,
- Appropriate links are in place with local iwi, hapu and whanau,
- There is active promotion of policies and practices which will result in improved outcomes and greater well-being for Maori.⁴⁵

Te Punga's three main sections deal with the Justice Department's 1989 statement of the principles for Crown action on the Treaty of Waitangi; *Puao-te-Ata-tu*; and the way ahead for the department.

(3) *References to iwi and hapu*

It has already been noted that Mr Boag, an author of *Puao-te-Ata-tu*, praised *Te Punga*'s summary of the principles of that report.⁴⁶ *Te Punga*'s section on *Puao-te-Ata-tu* refers to iwi and hapu only in the following context:

[*Puao-te-Ata-tu*] emphasises the culturally defined place of the child in Maori society and views with confidence the roles of iwi, hapu and whanau in providing a strong system of succour and guidance for their children.⁴⁷

44. Document C1(b)(4), p 16

45. Ibid, p 4

46. Ibid, p 14

47. Ibid, p 13

In light of the Treaty issues raised by this claim, it is of interest that *Te Punga*'s Treaty section, and the section on the way ahead for the department, concentrate on the role of iwi and, to a lesser extent, hapu. For example, the discussion of the principle of rangatiratanga focuses entirely upon iwi; the role of hapu is mentioned in the discussions of Maori representation and of consultation to pre-empt the development of Treaty grievances; and the strategies for the way ahead during the next five years emphasise the need to establish and maintain links with mana whenua iwi on service issues.⁴⁸

(4) What about non-iwi groups?

Claimant counsel asked the director-general to explain *Te Punga*'s failure to mention any relationship between the Crown and Maori other than iwi. Mrs Bazley accepted that 80 percent of Maori live in cities and that Maori organisations like Te Whanau o Waipareira have been established to provide a sense of cultural cohesion and continuity in circumstances where that would not otherwise be likely to take place. She also agreed that the work of those organisations was vitally important to the well-being of urban Maori and that the department has to deal with Maori in their current 'reality', not as they were or as they could be.⁴⁹

Te Punga's focus upon iwi, the director-general said, reflects the department's legal obligation to deal with iwi as Treaty partners. The department sources that obligation to section 56 of the State Sector Act 1988 and section 396 of the Children, Young Persons, and Their Families Act 1989 (see sec 7.2). It was emphasised, however, that the department's formal relationship with iwi did not mean that urban groups were treated differently when it came to approving funding: 'we recognise the sovereignty of iwi and we deal with pan-tribal groups and a host of other groups as well'.⁵⁰

The agency's general manager also emphasised that iwi and pan-tribal groups do not get treated differently in terms of funding.⁵¹ She later acknowledged, however, that other differences between the agency's treatment of iwi and pan-tribal groups could have an indirect influence on their respective funding.⁵²

(5) The DSW's coordinating role lost

Te Punga's summary of *Puao-te-Ata-tu*'s principles includes the statement that the 1986 report was about 'ensuring effective coordination of planning, policy, and practice to tackle serious economic and social problems'. However, *Te Punga* itself does not emphasise, nor set out specific strategies to further, the role of the department in promoting or participating in coordinated responses by Government agencies to welfare needs. The clear focus of *Te Punga* is therefore on making the department a bicultural workplace and on improving its links with Maori in the

48. Document c1(b)(4), pp 6, 8, 10, 17

49. Transcript 4.2, p 6

50. Ibid, pp 4, 5

51. Document c1(2), para 74

52. Transcript 4.2, p 55

community. The strategy that holds out the greatest prospect of promoting coordination between the department and other Government social agencies is a medium-term (one- to three-year) strategy promising that managers' performance agreements will include the requirement that they gain a good working knowledge of the community that their office serves and identify key results areas against which they will be measured.⁵³

5.6.3 *Te Wakahuia o Puao-te-Ata-tu*

(1) *Protocol for bicultural policy development*

When explaining how policy-making within the DSW is informed by Maori views and experiences, the director-general referred to *Te Wakahuia o Puao-te-Ata-tu*, which was published by the Social Policy Agency of the department in September 1994. Like *Te Punga*, this document was not available to the CFA during its establishment and early operations and so is of indirect relevance to the claim. It does, however, offer insights to the level of bicultural development attained by the Social Policy Agency – a key unit of the department – by late 1994.

The Social Policy Agency has a budget of \$8 million and approximately 100 staff, 60 of whom are involved in policy work. Elaborating on its personnel, the director-general said there is:

a very active – not a formal unit but a group of Maori staff that work very closely together. As would be in all our businesses, as you've heard that CFA have their Maori staff network, the same thing is in place in most of our offices and the other businesses are looking to establishing other regional or nationwide Maori staff networks.⁵⁴

Te Wakahuia o Puao-te-Ata-tu 'represents a step down the road to biculturalism' within the Social Policy Agency, presenting a plan by which its staff will be able to 'ascertain and accurately present the special needs of Tangata Whenua and incorporate this knowledge into our work'.⁵⁵

(2) *Focus on tribal groups*

The document acknowledges that much has yet to be achieved in pursuit of that goal. For example, the Social Policy Agency's strategy for consultation with 'iwi and hapu' was in the process of being developed in September 1994.⁵⁶ Again, it is of interest in light of the Treaty issues raised by the claim that comparatively little mention is made in *Te Wakahuia o Puao-te-Ata-tu* of Maori groups other than tribal groups. There are few suggestions as to when and how non-tribal groups should be involved in the Social Policy Agency's consultative processes. For example, in regard to consultation beyond Government agencies, *Te Wakahuia o Puao-te-Ata-tu* states that a first task is

53. Document c1(b)(4), pp 20–21

54. Transcript 4.2, p 12

55. Document c3, ch 3, pp 1, 2

56. Document c3, ch 9, p 7

to determine who are the most appropriate ‘iwi and Tangata Whenua’ groups to consult with and points out that ‘An important decision here is the extent to which consultation needs to be iwi-based and the extent to which non-iwi based groups need to be involved.’⁵⁷ It then goes on to refer only to consultation with iwi and hapu – acknowledging that the strategy for achieving this has yet to be developed but referring to Te Puni Kokiri’s *Guide for Departments on Consultation with Iwi*, a document received by all Social Policy Agency staff.⁵⁸

The director-general summarised the method by which the Social Policy Agency gains input from Maori:

when we are doing policy issues we have a very separate protocol in place that the Social Policy Agency follows, to ensure that there is Maori input into all policy and on major issues they do nationwide consultation with iwi. So that there is no question of one or two or six people in Wellington deciding what is good for all iwi. On major issues of policy all iwi will have input. Now I would expect in that sort of situation that groups such as yours [Te Whanau o Waipareira] would also be consulted.⁵⁹

5.7 PUAO-TE-ATA-TU AND THE CFA

5.7.1 General manager’s understanding

The agency’s general manager at the time of the hearings, Ann Clark, stated that throughout the establishment and development of the agency, she had been very conscious of the need to ensure its service addressed the requirements of *Puao-te-Ata-tu*.⁶⁰ She had tested out her understanding of the report with ‘key players’, including Maori staff in the Social Policy Agency, the Children and Young Persons Service, and the CFA. She could not recall any discussion at that time of the needs of urban Maori who did not know their iwi affiliation, but:

There was clearly an issue about how you provided services effectively to urban Maori and in fact there are different solutions. I mean some iwi have set up taurahere, and in Wellington Ngati Kahungunu for example has a very effective social service for their members within the Wellington urban area which is one response. Another response is like Waipareira which essentially says that they’re providing services to all the Maori in the West Auckland area who mandate them to be in that position. So our response is really to be flexible, we’re not closing the door on any type of service provider. What we’re saying is these are the people with the needs, how best can those needs be met? Who are the best providers to do that? Those are the questions we ask.⁶¹

57. Document c3, ch 9, p 6

58. Document c5(b)

59. Transcript 4.2, p 11

60. Document c1(2), para 82

61. Transcript 4.2, p 65

5.7.2 References in agency documents

The agency's internal documents provide information to guide staff in their efforts to implement the principles of *Puao-te-Ata-tu*. Amongst these is the agency's *Services Planning Handbook 1993*, which states:

Puao-te-Ata-tu expresses the Department of Social Welfare's commitment to increasing Maori management over their own social service delivery, emphasising the traditional structures of whanau, hapu and iwi.⁶²

On the specific matter of contact with iwi, the agency's 1992–93 strategic plan required all area teams to develop protocols with iwi to ensure that they were aware of services planning and had opportunities to become involved in the process if they wished.⁶³

5.7.3 Application in agency's practice

(1) *No requirement for staff training*

Staff training on the obligations flowing from *Puao-te-Ata-tu* had not been organised on an agency-wide basis by March 1995. The north-west Auckland sub-team, which works with Te Whanau o Waipareira Trust, had not had any such training. Nor had there been any specific discussion of *Puao-te-Ata-tu* in any of the team's meetings. Team members envisaged that issues of bicultural training and the reaffirmation of the principles of *Puao-te-Ata-tu* would be addressed by the general managers' hui to be held in response to the publication of *Te Punga*.

At the time of the hearings in this claim, therefore, the north-west Auckland sub-team's understanding of *Puao-te-Ata-tu* derived in large part from the knowledge that individual members brought to their jobs from previous positions within or outside the department. The two Maori members of the sub-team stated that their own previous experience with Maori organisations was relevant to their work. One believed that he had been appointed because of his knowledge of and ability to work with Maori.⁶⁴

(2) *Strategic planning varied*

In sharp contrast to the north-west Auckland sub-team's approach to *Puao-te-Ata-tu* is that of the agency's central north team and its sub-teams.⁶⁵ Detailed evidence was given about how that team had asked itself where it was going and how it would know when it had got there in terms of 'the *Puao-te-Ata-tu* outcome'. The central north team considered it important to take a strategic approach to planning for iwi–Maori social service provision beyond any one year for two reasons:

62. Document c1(c)(33), para 1.2

63. Document c1(2), para 49

64. Transcript 4.3, p 90; transcript 4.5, p 31

65. The central north team covers an area from 'south of the Bombay Hills, goes down to the Mokau in the south, east towards and under Turangi and then in a straight line up to Cape Runaway, it includes the Bay of Plenty and Coromandel area' (doc c1(8), para 1).

firstly, because the agency contracts annually and secondly, as the full team makes decisions regarding any resources the Iwi/Maori staff were keen to ensure that any existing or new Iwi/Maori groups/subgroups were not being set up to fail. One result of this was that the full team decided that any additional funds we were able to secure [as a result of mainstreaming] would be targetted specifically for Iwi/Maori services. This occurred.⁶⁶

The first step the team took was to build a profile of iwi-Maori structures within the region that was used to increase awareness and to educate staff about the different role or purpose of iwi-Maori organisations. It was also used as the basis for contact with the organisations, with protocols being developed so that staff could ensure effective two-way communication. While the protocols vary according to the requirements of different organisations, protocols for Maori groups working outside iwi structures ensure they have the same opportunities as iwi groups for contact with the agency.⁶⁷

(3) Innovation preferred to uniformity

Because the very different approaches of the north-west Auckland sub-team and the central north team gave rise to different practices in consulting with Maori groups in the two areas, the agency's northern regional manager, Wendy Reid, was asked what guidelines had been given to the four northern teams about consulting with Maori service providers or potential providers. She replied:

we have encouraged innovative approaches by the team. So we've said look, this is what we want you to do, but we haven't said how to do it. We have given resources where they've been available and guidelines where they've been available but we've really wanted the teams to develop ways and then spread that knowledge and experience throughout our other teams and say look Central North's doing this, you might like to think about doing that too, and it's more that process.⁶⁸

When asked how the agency ensured that all eight of its areas gave appropriate and consistent attention to the Crown's obligations to Maori, the general manager observed that consistency of practice was not always desirable:

The thing that strikes me overwhelmingly as the General Manager is the diversity of the eight teams who service New Zealand. In terms of consistency the question I always ask is why does it need to be consistent? Now in terms of financial delegations then I have to have consistency. In terms of dealing with the needs of local iwi I would prefer not to see consistency in the sense that I would like to be assured that we have responded appropriately to the needs of that particular iwi and so there may well be a different approach, but that's a negotiated approach. So the consistency is that they sort out iwi and negotiated a protocol. The protocol may be very different . . .⁶⁹

66. Document C1(8), para 5

67. Ibid, paras 6-14

68. Transcript 4.2, p 167

69. Ibid, p 75

(4) *Other bicultural indicators*

More broadly, the general manager gave the following examples of the agency's service being consistent with *Puao-te-Ata-tu*:

the establishment of the Maori staff network, the collection of statistics on iwi affiliation and ethnicity as a non negotiable for both staff and service providers in respect of their client base, ensuring all funding was capable of equal access by Maori and other ethnic groups in New Zealand . . . ensuring the approval processes were culturally sensitive, progressing the development of iwi based child and family support services, and actively promoting with staff the need to establish protocols with iwi.⁷⁰

Very little evidence was given about the Maori staff network within the agency, although the general manager stated that the network had been consulted on the development of some of the agency's policies and that the input of Maori staff is valued.⁷¹

5.7.4 Performance can be monitored

It was explained that the agency's operational plan provided a means by which the areas' responses to Maori could be monitored:

So in terms of actually testing out and asking the question about what work had been done with iwi, looking at things like the purchase plans and the services plans to make sure that the needs of Maori were being addressed insofar as we knew what the needs were. Making sure that the services plan process actually gave opportunities for input from Maori whether that be urban Maori or rural Maori on an iwi basis.⁷²

5.8 THE TRIBUNAL'S ASSESSMENT OF PUAO-TE-ATA-TU

As we observed in chapter 1, the Crown's case was founded on the belief that it was giving full effect to its Treaty obligations through implementing a policy of biculturalism. We have already found that the Treaty interests of Te Whanau o Waipareira were not fully recognised by the Crown, and its status was seen as less than that of a traditional tribal group for the purposes of social policy delivery. To that extent, the Crown's obligations were not fulfilled, for the Treaty obligation is to all Maori. In this case, and for reasons given earlier, Te Whanau o Waipareira is a community which is entitled to recognition.

It may be asked, do the Crown's shortcomings reflect on *Puao-te-Ata-tu* itself, or on the way it was interpreted by the department? That question, whether the Crown was justified in relying upon the report, is not directly in issue before this Tribunal; our inquiry is simply whether Crown policy has failed to recognise such Treaty rights

70. Document C1(2), para 82

71. Transcript 4.2, p 82

72. Ibid, p 75

as Te Whanau o Waipareira may have, and whether Te Whanau o Waipareira is prejudiced as a result. However, we make the following observations.

Puao-te-Ata-tu itself does not answer the question as to whether biculturalism would have fulfilled the department's Treaty obligations. Because the Rangihau committee was directed to 'assess the current capability of the Department in relation to . . . an approach which would meet the needs of Maori in policy, planning and service delivery', its report did not discuss in detail the respective roles and rights of Crown and Maori in a Treaty-based relationship. While the principles of biculturalism and partnership it advocated reflect Treaty principles, the argument in the report is not addressed in Treaty terms.

None the less, it is understandable that the Crown should rely on *Puao-te-Ata-tu*, given its high calibre, the standing of its authors, and the status of the chairperson of the reporting committee in particular in both Maori and Pakeha worlds. The report is not diminished by our statements. Moreover, it is commendable, in our view, that the Crown has shown, or now expresses a commitment to its principles.

We commend the department for seeking a bicultural understanding and process, as reflected in its policy documents *Te Punga* and *Te Wakahuia o Puao-te-Ata-tu*. Their intention is clearly to promote affirmative action within the department and the agency to ensure Maori are not prejudiced through ignorance. However, it has constantly to be borne in mind that, in a Treaty-based relationship, a bicultural dimension to policy and practice is not an end in itself but the means to an end. *Puao-te-Ata-tu* went much further than encouraging a bicultural perspective within the department. The goal, in terms of the report, is a proper engagement between the Crown and Maori, a sharing of power and control over resources, a mutual accountability, where the relationship harnesses the potential of all Maori in the most effective manner. That in our view goes more to the heart of the Treaty as well.

The Minister's aim in commissioning *Puao-te-Ata-tu* was to improve the department's relationships with Maori clients, but the Rangihau committee realised that disparities between the development and welfare of Maori and non-Maori would not be overcome until Maori people's own social and political structures were developed and strengthened. Underlying the report, in our view (although the matter was not expressed in these terms), was a concern to maintain the rangatiratanga of Maori people, rangatiratanga being the way Maori have customarily organised their many and scattered communities and the way in which modern service delivery may still be most effective for them.

Looking to the longer term, therefore, the committee recommended that the department adopt a two-fold strategy. First, it should lead the efforts of the Crown to get its own house in order, to organise proper coordination and cooperation between Government agencies which, at that time, were each dealing with the same Maori clients in their own separate ways. This tended to render ineffective whatever support was provided, and to dissipate Maori efforts to control and manage their own affairs. Secondly, *Puao-te-Ata-tu* recommended that, in conducting its business, the department empower Maori and assist them to organise themselves appropriately, and that it make itself accountable to Maori and the wider community.

Following the wisdom of the day, *Puao-Tē-Ata-tu* considered that Maori communities would build themselves up by strengthening family and tribal structures, which still seems sensible. We are not convinced, however, that the committee's desire for the strengthening of tribal organisations was such a fundamental tenet of its report as to exclude other options. The focus of the report as we read it is actually upon communities and consumers and, by building up communities, developing an effective partnership between the Crown and the people. The Auckland problem was seen as being in a class of its own and the question of how Maori might deal with it was left open; so the particular position of bodies like Te Whanau o Waipareira was not directly addressed, or placed in issue in the way that it has been brought before us.

We consider that the extent to which the tribal approach has been made a fundamental tenet is due to others who have placed that complexion on it. In doing so, they have misconstrued from the outset a fundamental concept in Maori culture – rangatiratanga, a concept at the heart of the Treaty. By believing that rangatiratanga could not be exercised outside the kinship domain, the Crown denied itself the opportunity to consider whether or not there were sufficient grounds for Waipareira to have special recognition under the Treaty. For reasons given earlier in this report, we consider rangatiratanga may be exercised in new and diverse situations. The principle, or customary value, of rangatiratanga remains the same. All that changes are the circumstances in which it is applied, and as earlier opined, Te Whanau o Waipareira is now possessed of it.

'Iwi', another key element in the interpretation of the Treaty, also seems to have been misconstrued. In the sense of 'tribe', it does not appear in the Treaty. Accordingly, there is no inherent reason why the Crown should reify the concept and negotiate with iwi at the expense of hapu in Treaty grievance contexts. More to the point, 'iwi' may well have a central place in bicultural policies and programmes dealing with Government services to a cultural group, but if these are to be Treaty driven, rangatiratanga, kawanatanga and partnership apply. Even *Puao-te-Ata-tu*, which the department relied on, dwelt not upon the wider construct of iwi at a district level but on the need for performance at the more local level of the actual community, as represented in hapu.

The problem as we identify it then is not in the prescriptiveness of the report but in the prescriptiveness of some who followed after it. Indeed, the later emphasis on tribal authorities may be due to events subsequent to the report when legislation for the recognition of iwi authorities was briefly placed on the statute books.

When read as a whole, *Puao-te-Ata-tu* presents as a beginning, not an end, calling upon the Government to maintain a search for solutions in consultation with the community, and not just with tribal authorities but with 'other cultural structures' and with 'Maoridom', and seeking that the issues be further considered by the Royal Commission on Social Policy that was then in contemplation. Thus, the report may justly stand as an important milestone in the development of the country's administration, and we see it, and the report appears to have seen itself, as just that – a milestone, and not the end of the path.

Further, a proper assessment of what might be required of the Crown in fulfilment of its Treaty obligations to Maori, the finding of a proper balance between rangatiratanga and kawanatanga, called for an honest inquiry into the facts and circumstances. In view of the magnitude of the social crisis revealed by the Rangihau committee and persisting today, it is not an adequate response overly to rely on a particular view of tribal structures as thought to have been endorsed in a report of 1986. The facts clearly call for alternative initiatives. Instead, the CFA became preoccupied with the question of how Maori ought to organise themselves (an aspect of *Puao-te-Ata-tu* that the Rangihau committee assumed Maori would decide in their own way) to the point where it failed to see the wider picture. On the facts, Te Whanau o Waipareira is clearly more than just an appropriate group to consult, even though it is not a traditional iwi; given the record of its capacity and the concentration of Maori in Auckland, it is a key player. In its closing submission, the Crown said that Waipareira did not need to assert iwi status or article 2 rights.⁷³ In the claimants' view, consultation between the Crown and Maori at the appropriate juncture and level would have avoided unwarranted assumptions and expectations in this as in other matters. The Tribunal concurs.

But what of the other tasks recommended for the department in *Puao-te-Ata-tu* – getting the Crown's affairs properly coordinated and making the department itself accountable to Maori and the wider community? In carrying these out, the department was overtaken by the restructuring of the State sector, and then its own restructuring into separate business units, during a period when commitment to *Puao-te-Ata-tu* was acknowledged to have waned. We look at these matters in the next chapter.

73. Document E7(19), para 49

CHAPTER 6

CHANGES TO WIDER STATE SECTOR

6.1 SUMMARY

Part of the background to the claim is provided by the State sector reforms that have occurred since the late 1980s; in particular, the introduction of the State Sector Act 1988, which preceded the restructuring of the DSW and major changes made in the former Maori Affairs area of State, and the creation of a new regime of financial accountabilities under the Public Finance Act 1989.

The claimants did not allege that the statutes themselves were inconsistent with Treaty principles; rather, their claim was that the path the agency chose to follow to meet the requirements of statute did not lead to proper consideration being given to the needs of the Waipareira community and how they should be met. It was the agency's style of adherence to the statutes that was allegedly in breach.

There were four major themes that ran through claimant witnesses' evidence:

- (a) *Accountabilities*: The claimants said there was no formal mechanism to make the agency accountable to Waipareira. The claimants pointed to school boards of trustees, regional health authorities and Crown health enterprises, and other structures operating in the education and health sectors that provided for community input, were accountable both to the Crown and to the community, and were also consistent with the reformed State sector. They said there was no equivalent in the social and welfare sector since the DSW's district executive committees had been abolished (prior to the advent of the CFA). The claimants also argued that, because of the way that the agency reported to Parliament under the Public Finance Act, Maori were given no useful information for monitoring the performance of the CFA or the service providers it funded against the social goals set by the Government.
- (b) *Fragmentation*: The restructuring of the State sector has fragmented the Government's welfare operations and State sector managers are not making sufficient efforts to coordinate their policies and programmes to achieve broad welfare goals; in short, while the legislation did not require the CFA to cooperate better with other agencies, neither did it prohibit proper cooperation, and the claimants argued that the CFA could have and should have done more to this end.
- (c) *Disruption*: The restructuring has also disrupted the networks by which Government workers used to collaborate.

- (d) *Mainstreaming*: The reduction since the late 1980s in the value of Government's targeted programmes for Maori, coupled with the effects of mainstreaming, have reduced the amount of Government funding and services specifically available to Maori and made access to whatever is provided more complicated.

6.2 THE PHILOSOPHY OF STATE SECTOR RESTRUCTURING

A succinct overview of the governmental framework within which the Community Funding Agency operates was provided by State Services Commission and Treasury managers.¹

6.2.1 The State Sector Act 1988

(1) *Framework*

The basic effect of the State Sector Act 1988 is that the chief executive of a Government department (eg, the Director-General of Social Welfare) enters into a purchase agreement with the Minister responsible for that department. By that agreement, the Government (through the Minister) purchases or funds the activities of the department. The chief executive also enters a performance agreement with the Minister and is accountable for the department's conduct in terms of both agreements. The State Services Commission and the Treasury are involved in monitoring compliance with those agreements. Audit New Zealand is contracted to audit the department's performance and to provide information to the State Services Commission and Parliament.²

In departmental terminology, the Government purchases 'outcomes' in the purchase agreement with a department's chief executive. In each of the 1993–94 and 1994–95 fiscal years, the statement of outcomes desired by the Government from the Department of Social Welfare is prefaced by these words:

The services provided by the Department of Social Welfare will contribute to the Government's goal of a fair and just welfare system, taking into account other demands on national resources. The services are to be delivered in strict conformity with legislation and in a manner which might reasonably be expected of an efficiently run organisation.³

Then follows a list of the outcomes – general statements which, when read together, capture the direction of Government policy in the social welfare area.

The outcomes Government desires a department to achieve are associated with the 'outputs' expected of that department. Generally, the CFA's outputs are to produce a purchase plan for social and welfare services; to approve service providers who meet

1. Document c1(3),(4)

2. Document c1(3), paras 3, 4

3. Document c1(3), app 1

the agency's service delivery standards; to contract with approved service providers; and to monitor those providers' performance. Each output is subject to specified quality and quantity measures, against which the agency's performance is measured.⁴

In sum then:

The New Zealand Community Funding Agency, as a business unit of the Department of Social Welfare, is expected not only to deliver the agreed outputs to meet the desired outcomes, but also to contribute to the purchase of social and welfare services consistent with the requirements for payment on behalf of the Crown (POBOC/NDOC) under s 32A of the Public Finance Act.⁵

(2) Reporting on outputs not outcomes

Under the State Sector Act, the agency's performance is monitored against its outputs. Those outputs are associated with the broad social welfare outcomes that the Government desires the DSW to achieve. However, there is no direct monitoring of the agency's performance in terms of those outcomes.⁶ The quality and quantity measures that are set for each of the agency's outputs do not seek to assess the consequences of agency-funded services upon the lives of consumers.

The agency's northern regional manager explained this situation:

the agency has not been required to report on outcomes, it only is required to report on outputs, and our outputs at this stage are how many programmes we bought, how many counselling hours, those things, and they are measured in our contract monitoring processes. Since the move last year to output contracting we now contract for, for example, a hundred counselling hours, and we can measure whether we got that through our reporting stats. . . .

We set out to get x number of counselling hours because our needs assessment processes shows that's what we needed, this is what we contracted for, these were the quality service indicators we needed to ensure that we got a quality service return and that's what we got. It doesn't take us to the next step which says, how did that impact on the outcome for family life or in terms of the Government's outcomes which are at a higher level where there is no measurement mechanism yet in place for that and no requirement of any Department to report at that level as yet.⁷

The agency was unaware of any work being done within the Government to enable the measurement of the extent to which its desired outcomes are being achieved, although the agency said there was a growing awareness of the need for that work to be done (but see sec 6.5.1(3)).⁸

4. See doc c1(3), app 2

5. Document c1(3), para 9

6. Document c1(2), para 26

7. Transcript 4.3, p 15

8. Ibid, p 16

6.2.2 The Public Finance Act 1989

Since 1989, outputs such as those supplied by the agency (where third parties – community organisations – actually provide the services which will contribute to meeting the Government’s desired outcomes), have been appropriated to Ministers by a type of appropriation formerly known as a POBOC (payment on behalf of the Crown) but now known as an NDOC (non-departmental output class).

(1) Input contracting changed to output contracting

Before 1994, the CFA reported on the funding allocated to service providers from each POBOC it managed by specifying the inputs for which service providers had used the money. For example, the agency would report in terms of how much money had been spent on the wages, administration costs, training and travel of service providers. Accordingly, its contracts with service providers were also couched in terms of the inputs funded.⁹

As a result of an amendment to the Public Finance Act, from 1 July 1994 the agency was required to change its method of financial reporting. Instead of reporting on the allocation of funding in terms of service providers’ inputs, it is now required to report in terms of the actual services (outputs) – such as the number of counselling hours – purchased from service providers.

Consequently, the agency has had to change its method of contracting with service providers. Instead of contracting to fund service providers’ inputs, it must now contract to purchase particular outputs (of a specified quantity and quality) supplied by service providers. This change has required new data to be gathered from service providers so the agency can report on the quality and quantity of their services. The Government review panel responsible for implementing these changes accepted that the agency could not supply all the new information by 1 July 1994.¹⁰

(2) Funding programmes redefined

The agency inherited some 27 different funding programmes in 1992, a list that was reduced to 21 for the 1992–93 year. In the 1993–94 year, those POBOCs were simplified and reduced in number to 18.¹¹ The Public Finance Act required a formal review of POBOCs before the 1994–95 year to ensure that there was homogeneity of outputs and that quality and quantity measures were specified for each one. The review, conducted by a panel of representatives from the Treasury, the State Services Commission, and the Department of Prime Minister and Cabinet, took place between September 1993 and March 1994. The general manager of the CFA was called before that panel on two occasions to discuss the way in which the agency’s outputs were proposed to be grouped and specified. In addition to those formal meetings, dialogue took place between Treasury officials and agency staff.¹² The general

9. Document C1(10), paras 6, 20

10. Document C1(4), para 13

11. Ibid, paras 27–30. A list of the POBOCs and NDOCs managed by the agency in the three financial years between 1992–93 and 1994–95 was provided at document C1(2), appendix 3.

12. Document C1(4), paras 9–11, 33, 35

manager of the agency stated that throughout this review process, the agency ‘went to great lengths to ensure the definitions were such that cultural appropriateness could be retained’.¹³

The ‘enormous number of changes in the funding descriptions’ during the first three years of the agency’s operation, especially in conjunction with major changes in the agency’s contracting and reporting requirements, must have caused difficulties both for providers and for agency staff.¹⁴ A further consequence of the redefinition of the POBOCs and NDOCS is that it is now difficult to trace and compare some elements of the agency’s funding over the years.¹⁵

(3) Accountabilities more specific

The agency favoured the current system of contracting for outputs over the previous system of contracting for inputs. The general manager referred to the benefits of the funding programmes’ definitions for the agency’s accountability to the Government and so for its bids for increased funding. The ‘cultural appropriateness’ of the programme definitions was also asserted. As well, the agency’s non-prescriptive approach to proposals for the development of services, which allows for flexibility in the design and delivery of services within each programme area, was emphasised.¹⁶ The agency also highlighted the steps it has taken towards monitoring the effectiveness on consumers’ lives of services it funds, even though the Public Finance Act does not specifically require that.

The general manager gave a summary of the regime established by the Public Finance Act 1989, and her opinion of its effect, when she said:

Government puts funding into POBOCs. Through NZCFA this money is put into services by way of a contract. The contract is written to ensure the input of funding secures a specified number of outputs. In selecting those outputs to be purchased, NZCFA is mindful of the potential outcomes or impact on the community of these outputs. I believe the changes brought about by the amendments to the Public Finance Act are focussed and beneficial both to NZCFA and the provider community. A much better connection is made between funding, outputs and outcomes, and these arrangements are consistent with other Government funding arrangements.¹⁷

6.3 ACCOUNTABILITIES

6.3.1 Government monitoring of the CFA

On its establishment, the CFA consciously abandoned a community development philosophy in favour of service development in order to maintain tighter Crown control over funding for social and welfare services. Its style of service development,

13. Document C1(2), para 35

14. Ibid, para 66

15. Document C1(13), paras 19, 20; doc C1(6), para 94

16. Document C1(2), para 35

17. Ibid, para 37

which was consistent with the reporting requirements of the State Sector Act and the Public Finance Act, measured performance not against the achievement of social outcomes but against the outputs specified in the agency's bid in the previous budget round (see sec 4.4).

In the words of Patrick Hanley of Waipareira: 'The assumption is that these outputs will achieve the desired outcomes, as determined by government, both in terms of efficiency and effectiveness.'¹⁸

6.3.2 Efficiency is not effectiveness

Citing the work of 'a recognised authority in this field',¹⁹ Mr Hanley defined an organisation's efficiency as the relationship between its inputs and outputs and described this as being relatively easy to measure. By contrast, an organisation's effectiveness – the relationship between outputs and outcomes, or the value of the goods and services to the community – is far more difficult to measure, yet 'it is this measure which is critical particularly in respect of social service provision'.²⁰

Mr Hanley emphasised the absence of a requirement that the CFA report on the outcomes achieved by its purchase of outputs (services):

Government is now organised in such a way that agencies like the Community Funding Agency are concerned with the management of inputs, processes and outputs (efficiency) but they are not directly responsible for the impact or outcomes for society as a whole (effectiveness).²¹

6.3.3 Measuring effectiveness involves value judgements

Mr Hanley listed the components of the public sector management model, including the mission statement, goals, objectives, inputs, outputs, outcomes, and net social benefit. With regard to the Treaty, he observed:

Each component of the model ... involves value judgments and these value judgments, and who makes them and the manner in which they are incorporated into programmes administration and delivery are critical to the overall impact on the community and the specific groups within the community, for example Maori. Given the decisions and judgments which have to be made within the context of this management process it is difficult to imagine how any government department or agency can meet its responsibilities under the Treaty of Waitangi unless there are clear lines of accountability between the Treaty partners at each stage of the decision-making and resource allocation processes. Thus systems of accountability are critical if the needs of different client groups and different communities are to be addressed

18. Document B6, p 7

19. Professor Ian Eggleton, *Performance Measurement*, New Zealand Society of Accountants, June–July 1990 (see doc B6, p 8)

20. Document B6, p 8

21. Ibid, p 12

effectively and to prevent the values of one group, particularly the bureaucracy, overriding the needs and values of others.²²

6.3.4 Power sharing vital to community development

The trust argued that the community and the Government would benefit if funding allocation decisions were to be devolved. In its experience, service providers are rarely in direct competition with one another, and the networks that exist amongst service providers, as well as their shared motivation, make them receptive to the plight of others. It was suggested that if the best information available about the 'bigger picture' of needs in this country was shared amongst Government agencies and with communities, and if those communities were truly consulted about the matter, the atmosphere would be ripe for a broad consensus to be reached about the most appropriate allocations of Government funding. The trust's vision of equitable funding allocation within a community development context could take into account the different stages of different communities' development at any one time.²³ It was said that if a sufficient information base and consultation process underlay the funding allocation process, it could be expected that communities would agree to accept lower funding at certain stages of their own development in order that others could get higher funding when they needed it. An example of such informed decision-making was given where the residents of one area which lacked certain health services did not insist that the services be relocated to their area; they supported the development of the services in their existing location together with an enhanced transport system which would improve access to them.²⁴

In Mr Hanley's view, the restructuring of the Government over the last decade could continue to provide real opportunities for Maori, if power is shared:

The new structure of the Public Service is not a straight jacket. There are many variations already in place which reflect the ability of the general model to be adapted to meet a range of needs. There are over 2,600 locally elected School Boards of Trustees in this country responsible for the delivery of educational programmes with accountability relationships to both government and their communities. There are COGS committees, CHE's, RHA's, Lottery Grants Board, and so on all organised in a variety of ways to meet different needs. Perhaps the best known example in respect of Maori programmes is the structure of Te Kohanga Reo. It is whanau based but includes a National Trust who is contracted by the Ministry of Education to administer and maintain standards. There is a formal tripartite monitoring agreement between the National Trust, Te Puni Kokiri and the Ministry of Education.²⁵

22. Ibid, p 7

23. Document B10, p 30

24. Ibid, pp 116–117

25. Document B6, p 15

6.3.5 The agency's monitoring of social services

The agency's northern regional manager adverted to the difficulties of measuring 'success' in the social welfare arena. She said cultural diversity is a key component in producing a variety of positive outcomes. As a result, the agency would not expect service providers to work in identical ways but would want to demonstrate that there was 'a value added' to a consumer by their interaction with a service provider.²⁶ At the time of the hearings, the agency was developing two indicators of success in achieving social outcomes.²⁷

6.3.6 Expert witness's view

The Tribunal's expert witness, Peter Boag, commented upon the evidence presented to the Tribunal about the definition of, and relationship between, community development and service development. As Secretary for Internal Affairs from 1986 until 1990, Mr Boag was responsible for that department's community development role. In response to a question from Crown counsel about the differences between community development and service development, he stated:

I don't think they need to be separated, in fact they can't be separated. It seems to me that if an agency of whatever sort is approving funding for what[ever] particular social service, it must be done in the context of a community development policy. There is no way that the agency would fund the development of the service [if] that would run contrary to what it saw as a desirable community development.²⁸

Crown counsel put it to Mr Boag that the Government's present day financial management requirements assisted the process of accounting for the use of taxpayers' money by ensuring that community organisations had responsibility for good financial management, instead of relying on the sort of 'benevolent oversight' provided by a Government employee board member.²⁹ Mr Boag responded:

It depends how the outcomes and outputs, to use the current jargon, are identified. One of the nervous reactions I got was that in some ways the [Public Finance] Act had been operated to tie down far too tightly what agencies like the CFA were trying to achieve. If you tie things down into very narrow boxes and remove the ability of managers in an agency like CFA to move money from one box to another, which has happened, then you're working against, I think, good Government administration . . .³⁰

26. Document C1(6), paras 194, 196

27. These were the needs indicator, which ranked geographic areas according to social need (and was expected to be able to track changes that might result from the agency's service development), and a review of the family-whanau development NDOC, which was not completed by the time the hearings ended (doc B6, paras 199–207).

28. Transcript 4.4, p 11

29. Ibid, p 8

30. Ibid, p 9

6.3.7 Community goals provide the benchmark for assessing social services

The trust's view is that the agency needs to employ a community development model to discharge its functions, and that it must measure the cost-effectiveness of services against the social outcomes which are sought. Communities will pursue those outcomes in different ways, so the funding, monitoring, and reporting mechanisms would have to recognise the values underlying each community's chosen path. For example, Mr Hanley pointed out that the values that inspired Kohanga Reo would be ignored if it were assessed as if it were nothing more than a childcare or pre-school education service.³¹

For these reasons, the trust clearly regarded as inadequate the mechanisms by which the agency currently reports and accounts to the community (see sec 4.7).

6.4 FRAGMENTATION

Inevitably, the trust's concern for the cost-effectiveness of services, not merely their cost, caused it to be critical of the monitoring and reporting conducted by the agency in accordance with State sector imperatives. The trust claimed that its holistic style of integrated service delivery was cost-effective. However, the narrow output focus of the various NDOCs administered by Government agencies, including the CFA, disrupted the trust's broad vision of the integrated set of services required by Maori clients and frustrated its holistic plan.³²

6.4.1 The CFA acknowledges the problem

Alongside its expressions of support for the current system, the agency emphasised the 'strictures' arising from the individual financial accountability of each State agency. The 'strictures' of the POBOC-NDOC regime were said to arise because individual departments are now 'solely responsible for performance of their POBOCs'.³³

6.4.2 Holistic approach 'ideal'

The agency noted that the trust's holistic approach is replicated by a number of organisations in different areas of the country and described it as an "'ideal" but not yet a reality'.³⁴ It was said that the approach makes 'good business sense' and is one which Government departments should aspire to. However, two matters were identified as posing problems for the achievement of such an approach. The first is the extent of the coordination that is needed between Government departments to achieve holistic service delivery. The other is the 'fit' between the Government's

31. Document B10, p 128

32. Ibid, pp 108–109

33. Document E7, para 90

34. Transcript 4.2, p 135; doc C1(6), para 221

priorities and the aspirations and expectations of community groups which have an holistic vision.³⁵

At one point, the agency said it regarded the lack of coordination of funding programmes as a short-term consequence of the Public Finance Act; a consequence that is already abating as a result of the commitment of the DSW to rebuilding links between Government departments.³⁶ Elsewhere, some suggestion was made that nothing short of the creation of one State agency with responsibility for all community-based service provision could overcome the ‘strictures’ of the need to maintain control and accountability for the resources involved.³⁷ The possibility of future interdepartmental initiatives such as the Crime Prevention Strategy was alluded to and accepted as beneficial. However, the trust was unconvinced of the agency’s resolve or capacity to initiate and maintain links of the kind that it believes are necessary to enable Maori social needs to be addressed in Maori terms.³⁸

6.4.3 Alternative school suffered from fragmented funding regime

The difficulty the trust experienced in coordinating support and attracting funding for its alternative school (described in section 2.4.9) was a graphic illustration of the problem caused by a fragmented funding regime.

The school was opened to cater for a group of young people – regular truants from mainstream schools – whom the community identified as needing support and guidance to get them out of a pattern of antisocial and criminal behaviour. The Waipareira Alternative Unit offered a mix of conventional schooling, counselling, and therapy, and life and work skills to cater for the needs of individual students. The trust’s plan envisaged participation and support from several Government agencies and funding from several different sources, all contributing to a holistic service.

The restructuring of the public sector and the ‘strictures’ of the Public Finance Act made the task of coordinating this effort almost impossible. Because the school did not qualify as a ‘national service’ (see sec 4.4.2(1); note the efforts that the CFA was making to dismantle national services), the trust tried to secure funding for it from the various funding programmes administered by different Government agencies, each of which sets its own criteria for funding. This creates particular problems for providers of ‘holistic’ services like the trust’s alternative school, which crosses the boundaries between several funding programmes.

The trust was unsuccessful in its efforts to secure agency funding for the school because it did not meet the criteria for services that are purchased by the agency, yet staff from another part of the same department – the Children and Young Persons

35. Transcript 4.2, p 135

36. Document E7, para 90

37. Document C1(6), para 223

38. Document B6, pp 14–15. For example, the trust challenged the agency’s reliance upon a needs indicator which it had developed in isolation from other Government agencies with welfare responsibilities (in the broad sense of that term). One possible consequence of this, it was said, is that other Government agencies will develop their own needs indicators using different criteria, which will create different sets of rules for the various activities of service providers such as the trust.

Service – were referring children to the school. And while the trust received valuable support from education services, its approaches to the Ministry of Education for direct funding proved fruitless – partly, at least, because it had not found acceptable the conditions the Ministry imposed on education funding. Meanwhile, the alternative school was receiving referrals from the Special Education Service, from boards of trustees, and from school guidance counsellors, and its work was being praised by the Special Education Service and at least one local school.

Further, this situation was not novel in the trust's experience. Its concern at the reduction in the agency's funding of its care services (discussed at section 7.12) stemmed from its view that a similar situation prevailed there.

Granted the situation with the trust's alternative school, the Tribunal had considerable sympathy with Mr Tamihere's statement:

Given the fragmentation of the state sector under reforms it is difficult even for experienced Maori to firstly locate the appropriate area or responsible individual in government and secondly to pin down accountability.³⁹

The trust plainly felt that it had tried to promote an interdepartmental arrangement for the school by inviting the previous Minister of Social Welfare to visit it. The Minister visited in September 1993 accompanied by the northern regional manager of the agency. At the Minister's request, officials from the Ministry of Education and the Children and Young Persons Service were also present.⁴⁰ Michael Tolich, who was at the school when the Minister visited, thought Justice Department officials had also been in attendance and believed the outcome of the visit was that the Minister had said to the various officials that they should get together and sort something out.⁴¹

However, the northern regional manager, who was part of the visiting party, stated that the focus of the Minister's discussions about the alternative school had been on whether there should be a mechanism by which resources follow students who leave one school to attend another type of education or training facility. Also discussed was the Ministry of Education's policy regarding activity centres, which were being phased out because they provided schools with a means of avoiding their responsibilities to meet the needs of all students.⁴² Ms Reid summarised the outcome of the meeting in this way:

At the close of the meeting Mrs Shipley suggested that perhaps there was still a need for some Activity Centres and that the Ministry of Education could undertake further work on both this and the issue of the release of resources to follow school age students. Mrs Shipley then specifically advised me that she saw no further role for the Agency, and that I was not required to take any further action unless her office contacted me

39. Document B3, para 8.2

40. Document C1(6), para 49

41. Document B10, p 52

42. Document C1(6), paras 50–52

directly again on the matter. No-one in the NZCFA has been contacted by the Minister's office, or requested to undertake work on this matter, since the date of that visit.⁴³

Mr Tamihere acknowledged that some progress had been made in the latter part of 1994 with the Ministry of Education, which had put together a group to consider the school's future. The bureaucracy, he said, makes haste very slowly, but 'they are meeting on it right now. . . . Whether it's going to be worthy of achieving funding or not, I don't know.'⁴⁴

By the time of the hearing at the end of January 1995, Ms Reid was able to provide more information about the content of the visiting party's discussions in September 1993. She reported that the group had identified several options for obtaining Education funding or further support for the school. She also reported that the group had plans to meet further.⁴⁵

6.4.4 Coordination with the Department of Internal Affairs

Agency witnesses stated that the wider role of community development is carried out by the Department of Internal Affairs.⁴⁶ The department, through its Link offices, was said to provide information for voluntary organisations and to offer a comprehensive resource kit giving detailed information about the establishment, funding, and development of organisations.⁴⁷

The agency had established formal links with the Department of Internal Affairs to coordinate funding of community groups under the community organisations grants scheme (COGS) and the Lotteries Board.

The agency's sub-team leader in north-west Auckland stated that, in her experience, COGS funding was available locally for services funded by the agency. Claimant counsel, however, referred to conflicting advice from Mr Tolich (the financial manager of Te Whanau o Waipareira Trust and the national chairperson of COGS) to the effect that COGS national policy was not to fund such services.⁴⁸

Lotteries Board funding is available for the types of services funded by the agency, but in the context of only partial funding being available from the agency, the position of service providers that seek funding from both sources appears to be beset by complexity and uncertainty. The agency's role in Lotteries Board grants was explained as follows:

At the request of Cabinet NZCFA has for some time reviewed all funding applications in relation to social and welfare services to the Lotteries Board . . . and provided comments regarding the match of the proposed service to the Agency's funding priorities, and information about the applicants Approval status with NZCFA

43. Document C1(6), para 53

44. Document B10, p 25

45. Document C1(6), paras 54–56

46. Ibid, paras 8, 12

47. Ibid, para 80

48. Transcript 4.2, p 216

and funding levels available from NZCFA for such services. This information is collated at the national level and forwarded to the appropriate Lottery Committee. NZCFA will also support the applications of organisations to Lottery Welfare or Lottery Youth when these fall outside of the Agency's funding responsibilities, but only when value in a proposal at a more strategic level is recognised.⁴⁹

Beyond the coordination of funding decisions to prevent so-called 'double dipping' by community groups, very little evidence was presented that showed the extent of coordination between the CFA and the Department of Internal Affairs.⁵⁰

6.4.5 Summary on fragmentation

In closing submissions, Crown counsel cited the division of functions between the Departments of Social Welfare and Internal Affairs as an illustration of some of the difficulties arising from individual departments being solely responsible for performance of their POBOCs.⁵¹ On the matter of how these difficulties might be overcome, Crown counsel submitted that:

Actions are now underway to overcome these limitations with pro-active collaboration amongst departments. The Director-General gave evidence of the development of these partnerships, with their inter- or multi-departmental links, for example, the New Zealand Crime Prevention Strategy designed to enable the Government and the community to better manage the resources involved in working towards a positive solution, of this problem. It is expected there will be more such initiatives. Such developments should enable greater complementarity of funding, with more holistic service delivery as sought by the claimants. . . .⁵²

It was not clearly explained why the 'strictures' of the Public Finance Act should preclude departments from engaging in joint ventures and devising accountability mechanisms suitable for that purpose; or why other measures to 'enable greater complementarity of funding, with more holistic service delivery as sought by the claimants' were not routine, given the agency's acknowledgement that that would be 'ideal' and is 'good business sense'.⁵³ In sum, the agency's evidence of the causes and effects of the 'strictures of the POBOC/NDOC regime', and how they might be overcome, left a great deal to conjecture.⁵⁴

49. Document C1(6), para 45

50. Although it goes beyond the matter of interdepartmental links, it may be noted here that the agency, in recognition of service providers' need for information about alternative funding sources, has contributed to the development by Te Ratonga Whakamarama Putea (Funding Information Service Incorporated) of a computer database of such sources. The database is updated regularly and copies are held by each outreach worker and at each of the Department of Internal Affairs' Link Centres (doc C1(6), para 79).

51. Document E7, para 90

52. Ibid

53. Document C1(6), para 221; transcript 4.2, p 135

54. Document E7, para 90

6.5 DISRUPTION OF STATE SECTOR NETWORKS

The agency was far more forthcoming about the breakdown of links between State agencies in the aftermath of the restructuring of the State sector. It was acknowledged that the operational links between the DSW and other Government agencies that deliver funding or services to community organisations are underdeveloped. The Director-General of Social Welfare, presenting evidence at the end of 1994, identified the need for the restructured State sector to quickly re-establish viable working networks across the various departments.⁵⁵

The agency's northern regional manager gave an indication of the practical difficulties involved in re-establishing links between agencies in the wake of restructuring:

Improving collaboration between government departments at the local level essentially means re-establishing working relationships with all departments following on from the state sector reforms which have dislocated many staff and have broken down many interdepartmental networks. For example, in the Health sector this rebuilding only became possible in the later months of 1994 as final key appointments within Regional Health Authorities have been made.⁵⁶

6.5.1 Te Puni Kokiri and the DSW

(1) *Introduction*

Bearing in mind the findings of *Puao-te-Ata-tu*, the relationship between the DSW and the agency that replaced the Department of Maori Affairs is of particular importance. When the end of the Department of Maori Affairs was first discussed publicly, iwi development was the thrust of Government policy. It was said that the operations and funding of the department could be devolved to iwi groups, including, where appropriate, the transfer of experienced staff. The Government Maori Affairs agency that remained was to provide policy advice to the Crown and to monitor the implementation of Maori affairs programmes by iwi groups or mainstream Government agencies.

Te Puni Kokiri came into existence in 1992, replacing the short-lived Iwi Transition Agency and Manatu Maori, which were created in 1989 upon the disestablishment of the Department of Maori Affairs. No evidence was given about the relationship between the DSW and the predecessors of Te Puni Kokiri. However, it may be surmised that for at least five years from 1988, from the time when the demise of the Department of Maori Affairs was anticipated through to the time when Te Puni Kokiri divested itself of many of the funding programmes it inherited from the Iwi Transition Agency,⁵⁷ the dramatic changes wrought in the previous Maori Affairs portfolio must have been severely disruptive, both internally and for relationships

55. Document C1(1), para 28

56. Document C1(6), para 46

57. In the first year of its operation, Te Puni Kokiri was focused upon the tasks of divesting itself of such programmes while building its own staff (transcript 4.2, pp 106–107).

with other State agencies. Certainly, there is a dearth of official information about the programmes previously administered by the Department of Maori Affairs and then passed through two successors' hands into the NDOCs administered by the CFA, including information about the number of personnel previously employed by the Department of Maori Affairs in the Maatua Whangai programme and other community services.⁵⁸

Also during that time, a new Government suspended plans for devolution to iwi groups (see sec 6.6).

(2) Social welfare not high priority for Te Puni Kokiri

Te Puni Kokiri's monitoring and evaluation policy manager gave evidence about the role of Te Puni Kokiri and its relationship with Government departments, particularly the DSW. Of note is the fact that Te Puni Kokiri's highest priorities do not include social welfare. Instead:

the key areas that Te Puni Kokiri are focused on include education, health, manager training and economic development, particularly resource issues. The other area of course is the Crown/Maori relationship. For some reason . . . Social Welfare and perhaps Justice issues were not seen as the highest priority when Te Puni Kokiri was established. So that while Te Puni Kokiri would work with mainly social policy agencies [such] as the policy arm of DSW, the range of issues that Te Puni Kokiri could be involved in is huge. The resource that we have to put to that is not as huge and we obviously choose – select certain issues in which we will come in and be involved in. In the specific case of the iwi social services . . . as it relates to the Children, Young Persons, and Their Families Act I know we do have a policy manager attending those particular meetings. So that's seen as given some priority in view of our resources.⁵⁹

Te Puni Kokiri was also involved in the development of the CFA's needs indicator.

(3) Te Puni Kokiri to start monitoring the CFA

Reference was made at the hearings to preliminary discussions that had taken place between the chief executives of Te Puni Kokiri and the DSW about the future involvement of Te Puni Kokiri in monitoring the department's outputs against the outcomes desired of it by the Government. It was hoped that an agreement would be reached that in the 1995–96 year Te Puni Kokiri could 'look at some evaluation process'. However, some difficulties were envisaged in that future task owing to the poor quality of information about the impact of earlier Government activities upon Maori and the different focus of past monitoring efforts.⁶⁰

58. Transcript 4.2, pp 101–102

59. Ibid, p 115

60. Ibid, pp 101, 106, 108. The Crown filed evidence on this matter after the hearings were completed. Document E14 summarised a contract that had been drawn up and signed on 18 December 1996. Under that contract, the agency and Te Puni Kokiri were to develop and test a methodology for the agency to monitor and report on any improved outcomes for Maori as a result of the agency's funding of iwi- and community-based welfare services. The contract specified the scope of the report and set out a timetable leading to a final test report by the end of October 1997, which was intended to lead to annual reports from the CFA to Te Puni Kokiri.

(4) *Te Puni Kokiri and the Social Policy Agency*

Some links exist between Te Puni Kokiri and the Social Policy Agency of the department. *Te Wakahuia o Puao-te-ata-tu* states that the Social Policy Agency should invite Te Puni Kokiri and Te Ohu Whakatupu (the Maori secretariat of the Ministry of Women's Affairs) to participate in any interdepartmental project but notes that their participation will depend on the priority they place on the project. It also states that where a project involves a submission to Cabinet, Te Puni Kokiri and Te Ohu Whakatupu must be given the chance to comment and that their comments must be reflected accurately in the Social Policy Agency's paper. Early and active involvement of Te Puni Kokiri and Te Ohu Whakatupu is encouraged so that their comments can be integrated in the agency's submission. Input from the Maori units of other Government agencies is identified as a matter to be considered in individual projects.⁶¹

6.5.2 Summary of disruption**(1) *Problems acknowledged***

Overall, the tenor of the agency's evidence about the difficulties caused by the severing of links between State agencies was that they were transient and that their worst effects had now passed:

It is acknowledged that community groups have sometimes been the innocent bystanders while the major restructuring process has occurred across government departments over recent years. There has as a consequence been some loss of momentum or continuity at the interface between government and the community during this period. That is an essentially transitional impact of restructuring and one that is now behind us.⁶²

(2) *Better consultation promised*

In this same vein, the director-general outlined her expectation of departmental managers that they would proactively initiate planning and information-sharing forums at the local level. The forums would involve representatives of iwi, the voluntary sector, relevant Government agencies, and local Government councils – which could adopt a facilitative role.⁶³

(3) *The CFA to improve coordination of Government agencies*

The CFA confirmed that it accepts a responsibility to work to achieve better coordination between the various arms of the Government in order to ensure that the needs of consumers are met. It was noted that the agency had asked all staff to look at ways in which they could improve collaboration between Government departments.⁶⁴

61. Document c3, ch 9, p 5

62. Document c1(6), para 47

63. Document c1(1), para 29

64. Document c1(6), para 44

The agency's general manager also spoke positively of existing mechanisms that seek to ensure continuity between departments in the funding or provision of services for members of the community. She referred to the quarterly meetings she attends with representatives of other departments 'to make sure there aren't gaps' and to the interdepartmental initiative that led to the establishment of the family service centres, where services provided by a number of Government agencies are delivered in one place. As well, the coordinating role of the Treasury's review process was noted: 'they look at each departmental set of outputs and make sure there is no duplication or overlap, and that process extends into the appropriation process'.⁶⁵

(4) Some systems already in place

An example was given whereby the existing processes had led to Health and Social Welfare officials discussing their future responsibilities for drug and alcohol abuse services and reaching the decision that Social Welfare should not continue its limited role with regard to adolescent abusers. When asked if the consequences of such senior level collaboration had filtered down to the work being done in the community, the agency's general manager said it had filtered both ways and cited the same drug and alcohol overlap situation as an example: the overlap had been identified by the agency's Auckland team as posing a risk to ongoing service provision because of the lack of clarity about accountability and responsibility for funding and the standards set within that service delivery.⁶⁶

6.6 DEVOLUTION AND MAINSTREAMING

6.6.1 Background to mainstreaming

Te Puni Kokiri's policy and evaluation manager, Ria Earp, gave an overview of the entire history of the Department of Maori Affairs as well as presenting financial information about the immediate effects of mainstreaming.

Ms Earp described mainstreaming as reversing the earlier Government policy of devolution and introducing the concept that mainstream departments or agencies must be accountable for the delivery of services to Maori:

Through mainstreaming, the Government aimed to become more effective, reduce the replication of service provision, and ensure Maori had better access to existing State programmes.⁶⁷

6.6.2 A loss of resources

Trust witnesses claimed that with the disestablishment of the Department of Maori Affairs in 1989, and the later policy shift from devolution to mainstreaming, there was

65. Transcript 4.2, p 182

66. Ibid

67. Document C1(15), para 23

a decline in Government funding, as well as Government-provided services, for Maori. As a result, it was said that the pool of ‘Maori money’ that was mainstreamed in 1992 was much smaller than the pool that had earlier been available.⁶⁸ As well, the effect of the loss of Maori Government employees who previously worked in the community, as Maatua Whangai officers for example, was not accounted for in the transfer of funding to mainstream agencies. Instead, Maori communities had to ‘fill the gaps’ left by the disappearance of those positions. This has been a particularly difficult task in the absence of those individuals’ knowledge and networks.⁶⁹

6.6.3 Te Puni Kokiri has fewer resources

Ms Earp’s information lent weight to trust witnesses’ accounts of the impact that mainstreaming had ‘on the ground’ upon services in West Auckland. Agency witnesses seemed to be unfamiliar with much of the information presented by the Te Puni Kokiri manager.⁷⁰

Te Puni Kokiri is a policy-oriented Ministry rather than a service delivery department. It employs 240 staff and has a budget of \$34 million (including the Maori Trust Office, which employs 40 staff and has a budget of \$5 million). When compared with the previous Iwi Transition Agency’s staff of 880 and budget of \$205 million (including the Maori Trustee’s staff of 80 and budget of \$5 million), Ms Earp concluded: ‘the total budget for Maori Affairs has been reduced directly by \$181 million’.⁷¹

Financial details were presented to the Tribunal of the ‘visible consequences’⁷² of mainstreaming: the transfer or wind down of programmes and the transfer of programme funding to mainstream agencies.⁷³ To fully explain the conclusion that mainstreaming directly reduced the total budget for Maori Affairs by \$181 million, Ms Earp produced a table (‘Summary of Funding Transferred During Mainstreaming’), which lists:

- the 1992–93 budgets for the various targeted Maori programmes transferred by Te Puni Kokiri;
- the amount of funds transferred from each programme;
- the department or agency which received each programme’s funding; and
- the funds returned to the consolidated fund.

From that summary, the total budget for Maori programmes in 1992–93 is shown as being more than \$116.577 million. Of that amount, \$66.350 million was transferred to mainstream Government agencies and \$45.777 million was returned to the consolidated fund. The figure of \$181 million, the ‘loss’ to the Government’s budget for Maori Affairs, is reached by totalling the amount transferred (\$66.350 million), the amount returned to the consolidated fund (\$45.777 million) and the amount of \$68.873 million – which Ms Earp gave as the amount by which Te Puni Kokiri’s

68. Document A19, paras 6.3ff; doc A24, para 30; doc B4, para 14; doc B5, para 5.3

69. Document A19, para 6.1; doc A25, paras 67ff

70. Transcript 4.2, pp 70, 142

71. Document C1(15), para 14

72. Ibid, para 25

73. Document C1(15)(a), p 1

operating budget was reduced compared to that of the Iwi Transition Agency and Manatu Maori.⁷⁴

6.6.4 Loss in West Auckland

Many trust witnesses gave evidence of their personal experiences of the changes produced by mainstreaming upon the availability of services and funding for Maori in West Auckland.⁷⁵ Albert Williams, an employee of the Department of Maori Affairs for 20 years until 1988 and the director of Maori Affairs in the Auckland region from 1978 until 1985, gave evidence for the trust about the department during the time he was employed by it, including the changes in the philosophies upon which its activities were based, and the programmes for which it was responsible. In his estimation, as a result of the shedding of many functions from the Department of Maori Affairs, 'the Auckland Maori population has as a region lost about 17 million dollars. West Auckland as a whole would have lost about 400 thousand dollars'.⁷⁶

6.7 DEVOLUTION AND THE DSW

The devolution of Maori programmes and funding to Maori community groups was supported by the DSW. Patrick Hanley, the trust's first coordinator in 1987–88, traced the development of Government policy on devolution in the late 1980s. This devolution was evidenced by the publication in 1988 of the discussion document *He Tirohanga Rangapu* ('partnership perspectives') and the State Services Commission's Task Group Report on devolution, *Sharing Control*, which was signed by the permanent heads of eight social service departments: Social Welfare, Internal Affairs, Labour, Women's Affairs, Maori Affairs, Education, Health, and the National Library.

6.7.1 Maori promised power

The thrust of Mr Hanley's evidence was that the trust was encouraged to develop in the way it did by the Government's commitment to continue to share with Maori the power to design and deliver programmes that accorded with the community's own definition of development. The Mana Enterprises scheme and the later Maori Access scheme both gave the trust that power by devolving responsibility for the whole of the programme to Maori authorities:

The key distinction is that unlike a provider under the current contracting regime, Te Whanau o Waipareira under the MANA and MACCESS schemes had, by way of its contract with the Crown, 'Lawful power . . . in any matter or matters pertaining to the Scheme and for the Scheme purposes' (See MANA contract . . .)⁷⁷

74. Ibid, p 2

75. Document A19, para 6.2; doc A21(h), ch 2; doc A22, paras 47–49; doc B5, para 5.3

76. Document A24, para 36

77. Document B6, p 14

6.7.2 DSW started out on the right track

The community services manager of Te Whanau o Waipareira Trust, Mr Kimball Stewart, previously a DSW senior social worker in the West Auckland area and then a CFA outreach worker in South Auckland, stated that the process of development of Maori social services by the DSW began in West Auckland at the end of the 1980s. He said community development remained an important role for community services social workers there right up until the formation of the CFA. Referring to the period between April 1988 and mid-1990, when the DSW's south-west regional community services team was responsible for administering all programmes then current in the region, Mr Stewart said:

The team also had a community development role in the development of policy and operations by the Department and within the community to produce the services consistent with commitments in *Puao-te-Ata-tu* and the emerging new funding programmes. This role was carried out until the formation of the CFA.

They were also responsible for overseeing and involving themselves in the development of new programmes which were to be tailored to the up and coming introduction of the Children, Young Persons, and Their Families Act. These were specifically Homebuilders and Child and Family Support Services funding.

... It was the time also when the Department began to undertake a commitment to move funds away from traditional providers in order to support and develop Maori and Pacific Island services.⁷⁸

Elaborating on what this meant 'on the ground', Mr Stewart continued:

It was evident in this process that there were very few Maori or Pacific Island providers in existence in the terms of the service guidelines of the Department. Hence the Department had to work out ways in which to develop these sufficient to meet the emerging requirements of contract and approval and to make those organisations competitive with those agencies already existing.

It was during this period that Te Whanau o Waipareira was identified as an organisation with the infrastructure potential and the representational capacity to develop Maori social services delivery in West Auckland. This was a perception not just held by the South West Regional Community Services Team but also by the District managers of New Lynn and Henderson.

It was at this time that a process was begun to negotiate for the development of Maori social services in West Auckland. Up until this time no attempt had been made by the Department to do this and indeed prior to 1990 no money was forthcoming for this purpose other than the small discretionary funds managed by District Executive Committees.⁷⁹

78. Document B5, para 3.2

79. Ibid

6.7.3 Waipareira and the DSW collaborated well for a while

Mr Stewart described the period between November 1990 and April 1992 as the only period when a favourable relationship existed between the DSW and Te Whanau o Waipareira Trust in regard to the manner in which contracts were negotiated:

This was because there was a management structure [in the department] aware and supportive of Maori desires and processes.

It is clear to me that management viewed Waipareira as the body representative of and capable of delivering to urban Maori community needs. Further they were aware of the scale and infrastructure needed in the delivery of social services. It is my view that they were farsighted enough to see that social services of the future would not rest upon small agencies. Rather larger agencies that could achieve some economies of scale were the ones likely to be successful. Waipareira fitted the latter category.⁸⁰

6.7.4 Trust's expectations grew

Mr Tolich, the trust's financial manager, highlighted how the encouragement given to the trust by the department in the few years before 1992 and, in particular, the funding it was given to 'kick off' programmes had created an expectation in the trust about the future size of, and State funding to be provided for, its services:

I appreciate that the CFA contracts talk about contributions towards particular programmes and not total funding for certain programmes, right. But there is an expectation, I guess, if you are encouraged to set something up, and the Trust was encouraged to set up a social service arm by the old Department of Social Welfare. . . . Now, the problem arises as to how big that grows. . . . one of the issues here is who determines how big the Trust social service arm will become, because on the one hand the CFA is saying, 'We will decide how much money you get.' On the other hand the Trust, if it goes back to the 1992 year, when it signed the original contracts with the old Department of Social Welfare, . . . it was given funding of \$40,000, \$150,000 in bulk amounts to kick off this programme.

Now, when I say the Trust continues to develop the social service arm, it was working along that particular line. The problem occurred . . . in that the Trust expectation on how big that service should get and therefore how much CFA or the social service arm of Government should contract to it, and what CFA decided was a fair amount of money, in its opinion, but those two points of view are miles apart.⁸¹

6.7.5 CFA did not appreciate the background

Mr Tolich's point was that the funding the trust received from the department in the 1991–92 year 'kicked off' the provision of much-needed services by an organisation that then became eager to meet the demand for additional services. He questioned whether the department foresaw the growth in the trust's capacity to deliver social services and whether the CFA appreciated that the department's prior dealings with

80. Ibid, para 5.2

81. Document B10, p 46

the trust had created in it an expectation that its growing capacity to deliver services would be met by increased funding.⁸²

6.8 CONCLUSION

At the time the CFA came into existence, Te Whanau o Waipareira clearly saw itself as having a growing part to play in social service delivery. This claim focuses on the CFA's dealings with Te Whanau o Waipareira, to which State sector change provides the backdrop.

In the light of our earlier finding that Waipareira exercises rangatiratanga, the central question for the Tribunal to consider is whether the Crown, through the CFA, exercised its kawanatanga in such a way as to protect the trust's rangatiratanga. Clearly, the environment in which the CFA operates must affect its ability to do so. At this point, we turn to examine those dealings between Waipareira and the agency that were more directly within the agency's ability to manage.

82. Document B10, pp 46–47

CHAPTER 7

RELATIONS BETWEEN WAIPAREIRA AND THE CFA

7.1 BACKGROUND

In chapter 6, we noted that Waipareira's venture into social service delivery started well. The old DSW provided significant funding to the trust in 1991–92, on terms that allowed the trust to pursue its vision of community development and which confirmed the trust's expectation that Te Whanau o Waipareira would benefit from the devolution of Government programmes to 'iwi authorities'.

The CFA was established in mid-1992, and, because its first full year of operation was very busy, in the 1992–93 year funding contracts were essentially rolled over at previous levels.¹ The agency's first task was to get its management systems in place, recruit staff, and get its area teams up and running. As it battled to its feet, it encountered a series of changes to the Government's fiscal reporting requirements – POBOCs were redefined and regrouped as NDOCS (see sec 6.2.2) and input contracting (eg, payments for community workers or facilities to be used as the community thought best) was changed to output contracting (the purchase of a specified quantity or quality of services). During that hectic first year it was developing its needs assessment and services planning procedures, but there was not enough time for a full round of consultation with community groups.

However, right from the advent of the agency, it became clear to the trust that there were several major changes in the CFA's approach, compared with that of the old Department of Social Welfare, which, from the trust's point of view, denigrated the trust's history, its status, and its vision for the future. The trust's main problems stemmed from the CFA's lack of recognition of the trust's rangatiratanga and the resulting lack of consultations with the trust, the CFA's operational policy of devolution to outreach workers, and its style of service development; all of which crystallised as a lack of opportunity for the trust's input to the CFA's needs assessment and services planning processes. These problems were aggravated by administrative and communication failures. Their differences came to a head over the agency's assessment of:

- (a) the needs of the trust's beneficiaries, and how to weigh them up against those of other communities;
- (b) what style of service delivery best meets their needs;

1. There was some dispute between the parties over the exact amount of CFA funding to the trust in 1992–93.

- (c) what type of service provider best meets the needs of the trust's beneficiaries; and
- (d) the level of service the trust's beneficiaries were entitled to, in particular the level of CFA funding for services.

The trust saw these as questions of who knew best what its community wanted, and how their aspirations could best be achieved. These were matters of rangatiratanga. The CFA's focus was on equitable funding, and it saw the trust's challenges to its decisions as bids for an unfair share of limited funds. The CFA assumed that if equitable funding was allocated to Maori groups, then its funding policies and procedures were consistent with its Treaty obligations, which in the case of Waipareira it saw as arising from article 3, and specifically from the guarantee of equal rights of citizenship.

Once such differences between the parties became apparent, the trust said they should be resolved by negotiation as between Treaty partners who shared power. The CFA's response was to defend its consistent funding policies and decisions on the basis of the integrity of its decision-making processes and, when the trust would not agree with it, the CFA asserted the Crown's Treaty right to govern and make decisions.

The trust's challenges to the CFA's funding *policies*, and the CFA's responses (or lack of responses), therefore led to further disputes between them over how the CFA managed its relationship with the trust. The CFA was accused of being poorly structured and managed, unresponsive, and of communicating poorly, all of which denied the trust effective input to its policy-making and breached the Crown's Treaty duty to protect the trust's rangatiratanga.

Finally, there were other disputes in which the parties disagreed on the facts of the matter, or which seemed to the Tribunal to be matters of carelessness or discourtesy aggravated by the poor relationship between the parties.

Thus there were profound differences between the parties as to how social welfare programmes should be designed and implemented, and the differences could not be resolved because of their divergent views over the trust's status as a Maori group under the Treaty of Waitangi.

A great deal of detailed evidence was presented on the parties' interactions and how they were understood on each side. Clearly, both the trust and the agency learned a great deal about one another in the process, and it is to their credit that as a result of the hearings the previous stand-off seemed to give way to greater optimism and commitment to a more constructive future relationship.

Having studied all the evidence in depth, we do not consider it fruitful to embark on a full account of each transaction and event in the short history of the dealings between the CFA and Te Whanau o Waipareira Trust before this claim was lodged. Instead, in this chapter, we outline a sequence of events, highlighting some significant misunderstandings and differences between them, which support the opinion of Mr Takerei, a CFA outreach worker, that the trust and the agency 'were on two different ships' at times; and which underline that Te Whanau o Waipareira was a square peg that did not fit into the round hole envisaged for it by the CFA.

7.2 DEVELOPMENT OF IWI SOCIAL SERVICES

7.2.1 Section 396 of the Children, Young Persons, and Their Families Act 1989

Under section 396 of the Children, Young Persons, and Their Families Act 1989, the Director-General of Social Welfare has power to approve any incorporated body established by an iwi as an 'iwi social service', previously called an 'iwi authority'.² Section 396 also empowers the director-general to approve an incorporated body established by one or more cultural groups which are not iwi as a 'cultural social service'. These powers have been delegated to the general manager of the CFA.

A feature of the Act's regime is that the Family Court can award sole guardianship of a child or young person to an approved iwi social service (or a 'cultural social service') without inquiry into its fitness for that responsibility. By contrast, a child and family support service – which is what the trust is approved to be – can ordinarily be awarded only joint guardianship (with the Director-General of Social Welfare or with a parent) of a child or young person.

Before it could approve the first 'iwi social services' under section 396, the agency had to develop policy to inform the approvals process. This work highlights the agency's, and the department's, understanding of both the Treaty relationship between the Crown and Maori and the recommendations made in *Puao-te-Ata-tu* which inspired the 1989 Act.

7.2.2 Rangatiratanga over children

The Director-General of Social Welfare explained how the approval of iwi social services as bodies able to be awarded sole guardianship of children had much broader implications in terms of the principle of rangatiratanga:

I see it as empowering Maori to have control over their own destiny, and that probably what we are doing with the approval of iwi social services is moving beyond what we have ever done before. . . . we're moving into a very exciting era in this country by handing the guardianship of children back to the iwi. I think that that is quite fundamental in terms of rangatiratanga, and I see that that's the hub of it.

What we are also looking at, though, is what else we are doing that can be handed over to Maori, and we've got the social workers in the Children and Young Person's Service looking . . . to give – the first two iwi we're working with are Ngati Porou and Ngati Ruanui. So in those two areas we've got the staff looking at what else . . . those [two] iwi could do and discussing with them what they would want to do and if there are things they see that they could be doing, and we see that when we get agreement, then we wouldn't be doing those things any more, and we won't have the resource any more . . . we will have given all the resource to Ngati Porou and Ngati Porou would look after Ngati Porou people.

So that's how I see it working . . . – we're not just giving lip service to it, we're working to really give self-management, the right to organise, to control their resources

2. An amendment to the Act late in 1994 changed the terminology to iwi social service, in response to Maori concerns about the connotation of the term 'iwi authority' (see s 2(5) Children, Young Persons, and Their Families Amendment Act 1994).

as their own to the iwi; and I believe that, as our staff do, that we're working on some very exciting trendsetting developments that are right at the cutting edge of handing resource from the State to the iwi, and really giving substance to the principle of rangatiratanga.³

She also explained that the devolution of social and welfare services to iwi was negotiated on a case-by-case basis:

it's section 396 in the Children, Young Persons, and Their Families Act that is the legal framework for what we're doing, and we haven't done it yet. We are right in the middle of talking with the two iwi to work out how we're going to do it because we're – it's very much a partnership in developing what we're going to do and it will be different for every area. We don't see that we're going to get a pattern for Ngati Porou that's then going to be applied everywhere else because it will be whatever is appropriate and required in each area, and that's what – where I believe this sovereignty of iwi becomes – is fundamental to it. But it is not something that has been driven in a blanket form from Wellington . . . It's being done at the local level.⁴

7.2.3 Trust aware of potential

The powers that an iwi social service may be awarded, to exercise sole guardianship over Maori children, represent a recognition in law of an important aspect of the rangatiratanga which the trust claimed to exercise. From the correspondence it is clear that the trust, too, saw recognition as an iwi social service under the Children, Young Persons, and Their Families Act as a direct way to establish itself as a 'Treaty partner' of the Crown, and to gain acknowledgement of its status from the CFA. The trust wanted to get out of 'the queue for handouts' from the CFA, and negotiate directly with the agency appropriate levels and terms for funding (as it had done previously with the Departments of Maori Affairs and Social Welfare under the policy of devolution).

7.2.4 Problems foreseen by DSW

It is apparent that, long before this claim was brought to the Tribunal, the department had foreseen difficulties arising from the director-general's power (delegated to the general manager of the agency) to approve iwi authorities and social services, and that Te Whanau o Waipareira had been active in putting its views on the matter.

7.2.5 The trust's application to become an iwi social service

In February 1993, Te Whanau o Waipareira Trust applied under section 396 of the Children, Young Persons, and Their Families Act 1989 to become an iwi authority, as it was then called.⁵

3. Transcript 4.2, pp 19–20

4. Ibid, p 20

5. Paper 2.50, para 1

Before it applied to be an iwi authority, it is evident from correspondence between the trust and the department that the trust had given considerable thought to the matter and was perturbed by the department's view of the essential attributes of an iwi authority. On 5 June 1992, Mr Tamihere wrote to the northern regional manager of the CFA, requesting:

urgent clarification over your perceived definition of an Iwi Authority [on the grounds that] it is quite important from our perspective that a number [of] your advisors obtain some clarity in dealing with organisations of our ilk.⁶

The letter also includes the statements:

It is submitted that Te Whanau o Waipareira is an iwi authority because it services the iwi within the West Auckland region. It does not differentiate on whether the iwi are Ngati Porou, Tuhoe, Ngati Whatua, Tainui or otherwise. I respectfully suggest to you that a common sense appraisal must occur. The Runanga a Iwi Act has been repealed and Te Whanau o Waipareira is a response of the Maori to articulate, advocate and facilitate the better and more meaningful direction and targeting of limited resources to a client base that clearly demonstrates a need to be serviced. If we are not an iwi, Hoani Waititi is not a marae.⁷

7.2.6 Call for debate

The later paragraphs of the letter state that the appropriate place for the debate on whether the trust is an iwi authority in the West Auckland area is on 'our Matua marae', Hoani Waititi. An invitation to debate the issue on the marae is extended to the regional manager and those of her advisors who differ with the trust's view of its philosophy and role. The letter continues that if 'certain people' are still not happy with that, they can refer the matter to the Waitangi Tribunal which, it is said, has powers relevant to cross-claims to refer it to the Maori Land Court where it can be determined. Mr Tamihere made plain the strength of his views when he concluded the letter in this way:

In effect, what I am submitting to you is that the Maori can sort the Maori problems out, the mechanisms and systems are there, just kindly allow us to get on with the job rather than having some advisors leading some of your senior managers into acting like schizophrenics.

I look forward to your responses to this issue because unless it is resolved very quickly friction will occur. It is preferable that the matter is addressed by way of a consensual round of talks and we have a preference for this.⁸

6. Document A19, app 9.2, p 1

7. Ibid, p 2

8. Ibid

7.2.7 Criteria for recognition spelt out

Near the time when the trust applied for recognition as an iwi authority, Mr Tamihere wrote to the general manager of the department's Social Policy Agency, requesting information under the Official Information Act about the origin of the department's policy on iwi and Maori and about the application of that policy to the approval of iwi authorities. The response, dated 24 February 1993, states that the department's policies in regard to iwi and Maori are influenced by *Puao-te-Ata-tu*.⁹ After discussing key objects and principles of the Children, Young Persons, and Their Families Act 1989 as well as recommendations and comments made in *Puao-te-Ata-tu*, the letter concludes by referring to an attached memorandum written in August 1992 by the former chief executive officer of the department:

This internal memorandum, along with *Puao-Te-Ata-Tu*, Ka Awatea and the recent report of Ken Mason et al, on the Ministerial Review of the CYP&F Act are documents which serve as reference material to the policy project. The latter reports are specifically what leads Social Welfare to form its view about Iwi Social Services approval being restricted to traditional tribally based Maori peoples. . . .

It is important to note that the proposal for approving Iwi Social Services has not been developed unilaterally. I would refer you to the report itself, [the Social Policy Agency's draft report to the Minister of Social Welfare on iwi social services] where the Iwi representatives with whom Social Policy Agency officials met are listed. It is also important to note that *Puao-Te-Ata-Tu*, while being a document that guides Social Welfare in its developing relationships with Iwi and Maori, is also a document that was developed after considerable, and country-wide consultation.¹⁰

7.2.8 Doubts about approval process dismissed

The internal memorandum from the then chief executive officer of the department was written in response to a Social Policy Agency paper dated 10 August 1992 which presented options on the role of iwi authorities (as they were then called) under section 396 of the Children, Young Persons, and Their Families Act. From the memorandum, it is plain that the Social Policy Agency's paper had noted 'a lack of skilled personnel to negotiate with iwi on services to be provided'.¹¹

This was dismissed as incorrect by the chief executive, however, who wrote:

The Community Funding Agency has as complete a services planning and contracting approach as exists and is well placed to provide the necessary skills as indeed it is doing.¹²

Having earlier referred to 'past inaction' within the department in the matter of approving iwi authorities¹³, the chief executive's memorandum concludes:

9. Document B3, app 3, para 1

10. Ibid, paras 3B ff

11. Ibid, app 3 attachment, para 7

12. Ibid

13. Ibid, para 5

In summary the option for approving (and funding) an Iwi Authority under present legislation seems to me to be relatively clear cut. The requirement is to establish with iwi the nature of the conditions which iwi seek to have specified in granting an approval and to reach agreement on these. The work of the Iwi authority might then be funded by Government, by the iwi or jointly. Government funding, which would entail some form of contract, is not in itself essential to approval.

In my view the approach to establishing Iwi Authorities under the law as it stands should be explored with iwi before the need for further legislation is assumed. The inclusion of an option or options outside the Act should arise only if the role of iwi as perceived by iwi cannot be accommodated under the present legislative framework.¹⁴

The draft report prepared by the Social Policy Agency had been ‘circulated to all Iwi Runanga, Maori Trust Boards and a sample of pan-tribal organisations for consideration and comment’.¹⁵

7.2.9 Iwi restricted by law to kin groups

The director-general at the time of the hearings was clear that the department is obliged by law to deal with iwi, in the sense of Maori groups related by kin, as Treaty partners, and she stated that she had received legal advice confirming that view. That obligation was sourced firstly to the terms of section 396 of the 1989 Act concerning iwi social services, and secondly to section 56 of the State Sector Act 1988. The director-general justified her interpretation of ‘iwi’ in the phrase ‘iwi social service’ on the grounds that iwi social services may be awarded sole guardianship of children and young persons and Maori opinion is not at all clear that pan-tribal groups should have that right.¹⁶

The northern regional manager of the CFA added:

I think iwi will take the opportunity to mandate in their own way within their own decision-making okay. Now the assumption I guess that’s running behind this, that because children and young people are seen as taonga, that it would be unlikely for iwi on a kinship basis to confer a mandate for sole guardianship to somebody else – another organisation or somebody who is not kinship linked. That’s an assumption. That assumption is a Pakeha assumption I guess. It’s also an assumption that is built into the legislation which as we heard yesterday came out of the views of Maori at the time. I would not like to presume anything further.¹⁷

The provision in section 56 of the State Sector Act that the director-general referred to – subsection (2)(d)(i) – requires a departmental chief executive to be a good employer by operating a personnel policy that includes provisions requiring the ‘Recognition of . . . The aims and aspirations of the Maori people’.

The director-general and senior agency witnesses emphasised that the preponderance of Maori opinion on this matter of iwi social services favours their

14. Ibid, paras 9, 10

15. Ibid, app 3, p 1

16. Transcript 4.2, pp 3–4, 7–8

17. Ibid, p 154

restriction to kin-based iwi groups. This opinion had been gathered through Maori input to major reviews of Government policy, such as occurred with *Puao-te-Ata-tu*, and by means of the consultative processes of the Social Policy Agency and Te Puni Kokiri: the agencies which have advised the director-general and the agency in this matter. In addition, the department's Maori staff had input into the policy underlying the approval of iwi social services.

7.2.10 Kin-based iwi have special status

The department's view of its legal obligations means that it pays particular regard to the needs and views of iwi in its work. This is not only borne out by *Te Punga* but also, in the particular context of the agency, by the clear focus upon iwi as opposed to other Maori groups in such matters as the development of consultation protocols between the agency and providers, and the consultation that is conducted in services planning. The language used by agency witnesses throughout the hearings of the claim impressed upon the Tribunal their sense of the pre-eminence of iwi amongst Maori groups.

7.2.11 'Dilemma' over pan-tribal groups for Maori to resolve

The department's legal obligation, it was said, poses a 'dilemma' concerning the status of 'pan-tribal' Maori groups, such as the trust, who are virtually certain to be ineligible for approval as iwi social services under the policy developed about those services. However, the department is clear that it is for Maori, not the department, to decide what is an iwi so that, for as long as Maori opinion continues to favour the view that only kin-based groups are appropriate sole guardians of Maori children, the department must 'pick its way through that dilemma'. It was said that even if section 396 was amended so that non-iwi services could legally be approved as the sort of services which may routinely be awarded sole guardianship by the Family Court, that would not be sufficient to persuade the department that it should begin approving such services: 'we would need to . . . have a clear steer from Maoridom that they in fact wished such things as sole guardianship to be given to pan-tribal groups'.¹⁸ In practice, the department deals with the dilemma by recognising the sovereignty of iwi while also dealing with pan-tribal groups, and a host of others.¹⁹

18. Transcript 4.2, p 7

19. Ibid, p 3. It was maintained that its focus on iwi had not caused the agency to fund iwi-based providers more favourably than all other Maori providers. Consistently, it was said that the agency's funding is allocated on the basis of the need established, around New Zealand, for services prioritised by the agency, acting on the basis of the information gathered from communities and from the needs indicator. The general manager did, however, comment that the agency's more concerted focus upon iwi than upon other Maori providers, such as in developing protocols and in consulting, could unwittingly and indirectly have a flow-on effect to their funding (ibid, p 55).

7.2.12 CFA contracts mainly with hapu

The general manager also observed that while agency funding for Maori groups in rural areas goes mainly to 'iwi-based groups', meaning representative bodies established by iwi in the sense of the now repealed Runanga Iwi Act:

we actually contract predominantly at hapu level . . . interestingly.

. . . service delivery seems to occur at an organisational level which is more associated with hapu, and so in terms of the iwi social services project that actually creates quite an interesting dynamic, that we haven't worked through yet, that if you give the approval at tribal level, how do they mandate hapu who are actually probably going to be the service deliverers? But we haven't got there yet but we're very conscious of that potential issue.²⁰

When asked why, in light of the fact that services were mainly delivered by hapu, the agency negotiated for the development of iwi social services with a wider tribal group, Ms Clark replied:

I guess we take our cue from the preamble to the [Children, Young Persons, and Their Families] Act which clearly identifies the need to reassociate . . . children and young people [with] and it specifically identifies iwi, hapu and whanau. If there is a hierarchy then I suppose that will have conditioned our thinking.²¹

7.2.13 Te Puni Kokiri concurs

The Te Puni Kokiri manager who gave evidence confirmed that it is the view of that agency that iwi and hapu alone are in partnership with the Crown under the Treaty of Waitangi and that, as a result, other Maori groups, notably urban groups, do not have the collective rights of iwi and hapu under article 2 of the Treaty but have rights under article 3 of equal access to social services.²²

On the particular matter of which Maori groups may exercise sole guardianship of Maori children and young people, Te Puni Kokiri's view again supported the interpretation of the DSW and the agency. It was explained that, while the Children, Young Persons, and Their Families Act was passed at a time when the meaning of 'iwi' was understood in the light of the Runanga Iwi Act 1990, which was repealed in May 1991, that understanding had continued to inform Te Puni Kokiri's view. Some difficulties with this view were acknowledged, however: 'it does have the danger of putting in rigidity in thinking about Maori – a changing, dynamic Maori reality'.²³

20. Ibid, pp 55, 56

21. Ibid, p 56

22. Ibid, pp 91, 92

23. Ibid, p 112

7.2.14 Iwi, hapu, whanau ‘mantra’

The agency emphasised that the department’s view of iwi and, in particular, their authority over their own children and young people, was supported by all the evidence that exists about the aspirations of Maori, including *Puao-te-Ata-tu*. However, the repetition of the phrase ‘iwi, hapu, whanau’ by agency witnesses at the hearing, and in departmental documents, caused the Tribunal’s expert witness on *Puao-te-Ata-tu*, Peter Boag, to describe it as a mantra. In his view, *Puao-te-Ata-tu*’s long-term aim to strengthen traditional Maori structures by a variety of means (consulting with appropriate Maori groups, actively involving Maori in policy-making, planning and monitoring of departmental activities, and tapping the resources of all Maori as well as Government and business institutions), had become distorted by the narrower and primary focus upon the development of iwi groups as service providers.²⁴

The trust’s view, derived from its knowledge of its own history and its vision for the future, was that *Puao-te-Ata-tu* urged the Government to support whatever groups were responding effectively to the Auckland crisis, which began with the breakdown of family and tribal networks.

7.2.15 CFA recognition limited

In line with the department’s understanding about iwi, the agency’s view of the sorts of bodies which may be approved as iwi social services is made plain by its published documents which state that approval is limited to two types of body. One is an incorporated body established by the tangata whenua of a particular area (ie, the people with manawhenua in that area) and mandated to deliver social services to the children and young persons of that particular iwi. The other is a taura here body – one delivering services to tribal members who live outside the tribe’s rohe or area – which has the agreement of the manawhenua iwi in the area in which the taura here body is to operate.²⁵

7.2.16 Waipareira unlikely to qualify

Although the director-general at the time of the hearings would not pre-empt the matter by giving a definite answer to the question whether the trust would be approved as an iwi social service, she clearly indicated that as the law and Maori opinion stood at present, the trust would not succeed in its application. She said:

there’s a much wider debate which I believe has to be sorted out in Maoridom because a lot of iwi do not agree with pan-tribal organisations serving the people.

... I don’t accept that that [the status of urban Maori organisations] is for a Government Department to resolve. From my position we recognise the sovereignty of iwi and we deal with pan-tribal groups and a host of other groups as well.²⁶

24. Transcript 4.4, pp 22–26

25. Document C1(b)(15), p 5

26. Transcript 4.2, pp 3, 4

Nevertheless, the standards for approval for iwi authorities (now ‘iwi social services’), published by the general manager of the CFA four months earlier, explicitly state that ‘Pan-tribal and Pan-Maori groups are not eligible to apply for Approval as an Iwi Authority’.²⁷

7.2.17 Trust says iwi paradigm does not match reality

The trust says that a policy of approving only kin-based groups as iwi social services divides Maori in a manner which is contrary to the reality of modern Maori life and contrary to the Treaty of Waitangi. It argued that the policy defines modern Maoridom by an iwi-based paradigm which is spurious for two major reasons. First, iwi was never, and is not now, the organisational level at which kin-based Maori communities operate to deliver what Maori would define as social and welfare services. Secondly, many Maori, especially young Maori, do not identify with iwi and those young Maori are over-represented in negative welfare statistics. The right to be fully responsible for their own children and young people is critical to Maori development. The adoption of an exclusive iwi paradigm in this matter is to deny that Maori can be Maori outside that paradigm and to deny Treaty rights to Maori who do not fit within it.

7.2.18 Urbanisation requires recognition of both kin-based and urban groups

In the words of Mr Tamihere:

The Department of Social Welfare has no policy in place to acknowledge and accept the reality that urbanisation has brought to Maori and the manner in which we have had to re-rationalise our position in light of wanting to preserve our Maoritanga.

In reading *Puao-te-Ata-tu* in my respectful opinion Waipareira as a response to urbanisation can be embraced within it. We can be embraced within the wording of any legislation. What needs to be borne in mind is that there must be a will to act in an even-handed fair manner.

I do not wish my comments to be seen as a detraction from the mana of iwi in the traditional sense. They have and will always have a position of great importance to us as Maori. But a policy which practices to ignore the reality we face here in West Auckland on a daily basis for the sake of tribal fundamentalism is a policy which is doomed to fail. As the Deloitte’s report . . . [reviewing child and family support services funded by the CFA, May 1994] notes ‘*the majority of Maori clients do not know their iwi*’ (P 30). To exclude Waipareira from the Treaty paradigm is to exclude the majority of Maori from the benefits guaranteed to them in that document. If the Treaty is truly to have life in our time then it must be capable of adapting to the realities of our time. There is no point in burying our heads in the sand. The reality is that the Treaty, government policy, and the Community Funding Agency are all amply big enough to accommodate both the mana of our traditional iwi and the needs of our people living in a non-tribal situation in urban areas. Both can and must be given a place in the sun. To accept one without the other is to court certain disaster. [Emphasis in original.]²⁸

27. Document C1(b)(15), p 6

28. Document B3, paras 7.2–7.4

7.2.19 How can the ‘dilemma’ be resolved?

Claimant counsel questioned the focus of past consultation and asked how Maoridom generally might be provided with the opportunity to discuss the particular issue raised before the Tribunal: the implications of current policy for non-tribal Maori groups like the trust and for those ‘orphaned and lost’ Maori who do not know their iwi. For them, the reality of being Maori is based on urban life, family or whanau relationships and, if fortunate, the relationship with a wider face-to-face community of Maori people living and working to assist one another. Neither the director-general nor the agency seemed to accept a direct responsibility to generate future opportunities for that discussion, although the CFA’s northern regional manager said that the director-general’s direction to collect statistics on the iwi affiliation of service providers’ clients would have the effect of stimulating that debate.²⁹ While acknowledging the contentiousness of the issue for Maori, and the difficulties for the department in being placed in the position of approving iwi social services, the department’s view was that Maori would decide the matter in their own way and that the department would learn of any change in the preponderance of Maori opinion on the matter.³⁰

Claimant counsel further suggested that a wider forum should have been provided by the agency for Maori service providers in the north-west Auckland area to define the full range of issues arising from the dislocation from iwi of urban Maori youth in the area. If it had been, the understanding of Maori and the agency on the implications of delivery of services by means of iwi social services would have been properly informed. That it was the agency’s responsibility to see the need for that forum and arrange it was said to arise from its unique position of knowing all the Maori ‘players’ or potential players in the north-west Auckland area. Also, from its position, the agency should have gained an awareness that its funding policy was effectively creating competition between Maori service providers, which was destructive of the greater good it seeks to achieve by its role in the provision of social services for Maori.

7.2.20 What about ‘cultural social services’?

Another line of questions put by claimant counsel to the director-general concerned the distinction in the Children, Young Persons, and Their Families Act 1989 between an iwi social service and a *cultural* social service, both of which, under the Act’s regime, can be awarded sole guardianship of children and young persons placed in their care. The director-general was very clear that Parliament’s recognition of cultural social services was never intended to cover non-iwi Maori groups: the category was created for Pacific Islands groups. However, later in the evidence the director-general referred to a Scottish group being approved as a cultural authority.

29. Transcript 4.3, pp 5–6

30. Transcript 4.2, p 5

It was put to the director-general that it seemed inconsistent that a group deriving its cultural identity from offshore could obtain sole guardianship of a child or young person on the mere basis of its membership of the same cultural group, whereas a Maori group had to satisfy a higher threshold and be united by kin links at iwi level in order to obtain the same recognition. The director-general's response, consistent with her earlier responses, was that it was her understanding that the iwi links of Maori children and young people are critical determinants of the groups which can assume full responsibility for young Maori. She referred again to legal advice obtained by the department on the meaning to be attributed to 'cultural social services', which confirmed her understanding.³¹

7.2.21 Social Welfare's criteria narrower than Maori Affairs'

Plainly, the DSW's understanding of iwi social services differs from the old Department of Maori Affairs' understanding as it applied to the iwi authorities which administered the Mana scheme. For the purposes of the Mana scheme, an iwi authority was defined, in a direction by the Minister of Maori Affairs issued pursuant to section 4 of the Maori Affairs Act 1953, to mean:

any tribal or other corporate body approved by the Minister (corporation aggregate or corporation sole) having lawful power to act generally as an agent or to act, for the purposes of the Scheme or generally as an agent for the Crown and engaged or appointed by the Minister or by the Secretary to act as the Crown's agent in any matter or matters pertaining to the Scheme and the Scheme's purposes.³²

7.2.22 DSW says Mana scheme was for different purpose

Agency witnesses pointed to the different purposes of iwi authorities under the Mana scheme and iwi social services under section 396 of the Children, Young Persons, and Their Families Act 1989: the iwi authorities under Mana were not dealing directly in a matter as central to Maoridom as the welfare of its children and young people.

As well, it would seem that another distinction arises from the director-general's view that the Crown's Treaty partner is defined by the reference in section 396 of the 1989 Act to 'iwi social services', and by section 56 of the State Sector Act 1988. Because those statutory provisions post-date the Mana scheme, and the term 'iwi authority' did not appear in the Maori Affairs Act, the Crown earlier had lawful latitude to deal with a variety of Maori groups when delivering Mana funding to those the Minister chose to call 'iwi authorities'.

31. Ibid, p 9

32. Document A19, app 2, p 2

7.2.23 DSW says access to funding not affected

Throughout the hearings, another response was made by agency witnesses to the trust's challenge to the policy underlying the meaning of 'iwi social services'. It was argued that since the agency allocates funds on the basis of needs to both iwi and non-iwi groups which provide social services, there was no disadvantage to the trust in not being recognised, now or in the future, as an iwi social service. The general manager did, however, comment that the agency's more concerted focus upon iwi than upon other Maori providers, such as in developing protocols and in consulting, could unwittingly and indirectly have a flow-on effect to their funding.³³

The clear tenor of the agency's evidence was that funding for iwi and other Maori providers was not a matter of 'either or' but 'as well as', a matter which could be verified by the statistics it produced which show an increase in the funding the agency had allocated to Maori service providers during each year of its operation. It did acknowledge that the 1994–95 appropriation for residential care 'growth' funding 'ring-fenced' \$1 million for the development of iwi social services.³⁴ But, it explained, the \$1 million set aside for iwi social services had not all been spent on just the two services recently approved. Rather, the money had been spread amongst a number of iwi who wished to 'start down the process' of reaching the standard required to be approved as an iwi social service.³⁵ Thus, although the trust was not eligible for a share of the \$1 million set aside for iwi social services, the agency argued it could not demonstrate that it was prejudiced. That argument, however, fails to meet the trust's central objection to the policy, which relates to the exclusion of non-kin groups, contrary to the reality of modern Maori life and the Treaty of Waitangi.

In the end, the trust's application for recognition as an iwi social service was bound to fail. For interconnected reasons, the CFA had decided that the trust was not entitled to special consideration in the consultation processes it adopted about service development or other matters.

7.3 DEVOLUTION TO OUTREACH WORKERS

In chapter 4, the reasons for the agency's policy of devolution to outreach workers have been outlined (see secs 4.2.4–4.2.6). In short, it was intended to prevent larger or more powerful service providers lobbying senior bureaucrats to secure 'special deals'. It was clear that Waipareira's approaches to CFA management, to discuss funding *policy*, were interpreted as attempts to secure special consideration, and were referred back down to the outreach worker (see sec 4.3.3).

Mr Takerei, the CFA outreach worker most closely associated with the trust before the Tribunal hearing, acknowledged that a great deal was happening, and at a rapid pace, within the agency in its early period of operation. He also acknowledged the magnitude of some of the issues raised for the agency by the trust's very existence and

33. Transcript 4.2, p 55

34. Ibid, p 39

35. Ibid, p 152; doc c1(b)(15)

philosophy and that these would require long-term attention at a policy level. The fact that Te Puni Kokiri and the Social Policy Agency of the department were regarded as the appropriate policy agencies on Maori issues further made it unlikely that there could be rapid responses to the trust's larger concerns. But he was also aware of the rapid pace of change within the trust and his description of the agency and trust being, at times, 'on two different ships' suggests he was in a position to foresee their imminent collision.³⁶

7.3.1 Trust refusing to work with outreach workers?

In chapter 4, we quoted witnesses for the agency to reveal how comprehensive is its view of the responsibilities it has devolved to the local level. It was acknowledged, however, that the policy had posed particular problems for Maori, particularly iwi who 'prefer to deal chief-to-chief, largely for reasons of protocol'.³⁷

The northern regional manager then stated:

I believe Te Whanau o Waipareira Trust has not fully recognised or appreciated the devolved authority and ethos created at the inception of the Agency – that decision-making has been devolved to local Agency staff. Indeed the Agency considers Te Whanau o Waipareira has demonstrated a refusal to work with local Agency staff although they have had the decision-making responsibility delegated for all interactions at the local level since May 1992.³⁸

7.3.2 A challenge to policy or a demand for more funds?

Claimant counsel put it to Ms Reid that Te Whanau o Waipareira Trust had in fact worked very well with its former outreach worker and that what it had refused to do was to accept the answers that local staff were giving it. Ms Reid replied that she saw that as a refusal to continue to work through the issues and an inability to accept the answers given. She adverted to the trust's efforts to take issues higher hoping or endeavouring, she presumed, to get a different answer.³⁹

Claimant counsel then focused on the 1993–94 funding bid (see sec 7.9.1) and referred Ms Reid to a letter the Minister had written to the trust on 25 May 1994 about that bid. Counsel's point was that the trust had been engaged in extensive dialogue at the lower levels of the agency, which did not demonstrate a refusal on its part to work with local staff. Ms Reid replied:

The issue I think I'm referring to here is that if you take, which is totally your prerogative, a case to the Minister then obviously there is an expectation again from the Trust that the Minister has another bucket of money or is able to do something about it when in fact the Minister works to support the integrity of the processes of NZCFA.

36. Transcript 4.5, pp 15, 16

37. Document C1(6), para 36

38. Ibid, para 37

39. Transcript 4.2, p 129

... I think ... what we've been dealing with here is an expectation ... that as NZCFA at the local level was unable to meet that expectation, quite rightly, the Trust took it further. And that has raised issues in terms of the local staff being able to work and deal with the issues around Te Whanau o Waipareira because there was this feeling like well we're doing – giving information but the expectation cannot be met by us and I believe that was a fundamental facet of what I see as became the impasse of the working relationship.⁴⁰

Claimant counsel questioned further whether the situation just described demonstrated a refusal to work with the agency or merely denoted a situation in which the answers the trust was getting from junior and middle officers within the agency were not the right answers from the trust's point of view, necessitating it going higher. Ms Reid replied that the answers given by local staff were the right answers from the agency's point of view and by refusing to accept them the trust, by default, refused to work with local staff.⁴¹

When asked whether there was any point of review beyond the area team, the northern regional manager explained:

we have a funding appeal process which – and there are the other mechanisms available to individuals as Waipareira have taken. You can go to the Minister, you can go to the Ombudsman, you can go to the Auditor-General's office. You used all those processes but at the end of the day none of those people have a bucket of money to resource your expectation.⁴²

7.3.3 Trust's motives misunderstood by the CFA

The Tribunal considers that those statements reveal a fundamental misunderstanding of the trust's motive in disputing the contract sum offered to it for the 1993–94 year. The references to the trust going higher in order to access non-existent 'buckets of money' fly in the face of the trust's consistent challenges, since 1992, to the policy adopted by the agency in allocating funding to Maori service providers. We find it difficult to comprehend that the northern regional manager could sincerely believe, early in 1995 after listening to the whole of the claimants' evidence, that the trust held the simplistic view throughout its dealings with the agency that if it could only get above the level of local staff it would somehow access a pool of money in the control of higher hands. The trust wanted access to the policy makers within the agency and other parts of the department: those who set the criteria which dictate the trend of local funding decisions.

7.3.4 CFA ought to have known better what trust wanted

In assessing the agency's reaction to the 1993–94 funding bid, the Tribunal believes it is relevant that it had prior knowledge of the trust's general line of argument with

40. Transcript 4.2, pp 129–130

41. Ibid, p 130

42. Ibid, p 131

regard to agency funding of Maori service providers. That much should have been plain as a result of the trust's communications in 1992 over the meaning of iwi authorities in section 396 of the Children, Young Persons, and Their Families Act 1989 (see sec 7.2.5). As well, from August 1992 the trust had written several letters to the northern regional manager and the area manager about its funding for 1992–93.⁴³ It had requested meetings with senior management about the matter and, after a visit by the area manager, had followed up with a request for information about the funding policy and criteria being developed by the agency. It had reacted to a telephone discussion with the team leader, in which the trust was informed that the 1992–93 service plan for the area was completed and that funding decisions would be concluded within the next three weeks, by writing to the area manager reminding the agency of the Maori statutory caseloads in West Auckland. As well, in a letter written to the northern regional manager in October 1992, the trust expressed concern over further reporting requirements of the agency and indicated that it did not find it appropriate that the agency dealt with it through an outreach worker who 'does not have delegations relevant to the decisions that have been made over and above his head'.⁴⁴

In addition to correspondence from the trust and occasional meetings between it and more senior agency staff, it was of course meeting regularly with its outreach worker in the period leading up to the first funding bid, and he was reporting back to his team, which in turn was reporting to management on any important issues that had arisen. We have earlier recorded the outreach worker's view that he took the opportunities available to him to bring to the agency's attention the issues raised by the trust but felt frustrated by the agency's responses. He specifically mentioned the opportunity provided, in March 1993 and thereafter, by the report he did on the trust's ability to comply with the approval standards for a child and family support service. Prior to that time, however, his own intimate knowledge of the trust's operations, values and expectations would have provided grounds for raising at team meetings some, at least, of the issues which the trust was itself raising in its correspondence to management.

7.3.5 Poor communication within the CFA

On the matter of his ability to take the issues back for the attention of the agency and its Maori policy advisors, Mr Takerei said:

Those lines of communication in being a new and developing organisation, at times weren't clear. The need for initiative played a lot from a personal view at that particular time in terms of accessing where and how things needed to go and how they were processed.⁴⁵

It was also said that the Auckland area had suffered from a lack of continuity in its management which meant that different individuals represented it at the agency

43. Document A19, apps 9.3–9.6

44. Ibid, app 9.6

45. Transcript 4.5, p 16

meetings at which policy issues were discussed.⁴⁶ As well, in the mix of formal and informal communication from outreach workers to management, including area managers' formal monthly reports to regional and national management meetings, it was not a requirement to feed back all issues raised by outreach workers.⁴⁷

7.3.6 Outreach worker powerless to avert problems

It was very clear from Mr Takerei's evidence that he empathised with the trust's mounting frustration in its dealings with the agency. He described the difficulties he had experienced as an outreach worker, taking back to the agency for its attention some of the challenges posed to its systems by the trust but finding that the information either did not filter up through the agency or did not receive a prompt response. In the approval report he had done on the trust's services in 1993, he had identified two challenges the trust posed for the agency: its wish to deliver services holistically; and its place, as a pan-Maori organisation, in the agency's policy thinking.

Mr Takerei described his own role in the complex and fast-moving situation as that of a 'toothless tiger'. He referred to the outreach worker's formal delegated responsibility in these terms:

And the reality is although you have been given the power to do things – . . . I believe that is there within the procedures handbook to do that and within the authority given to you by your seniors or whatever – but in reality [it is] those issues that we talk about, the wider issues or the bigger issues which are the important issues. At the outreach worker level we turned up and said what are the problems? Here are the problems, oh *kia ora*, I'll take that back and see what I can do about it. But hence, I suppose, the frustration at Waipareira at times to say well we are only dealing with the outreach worker who seems to not have the total authority on the wider issues, over his head. And I felt in that situation many times . . . I had no control.⁴⁸

7.3.7 Outreach worker in untenable position

The difficulty of Mr Takerei's position was brought into sharp relief in the process by which the north-west team responded to the trust's 'bid' for greatly increased funding for the 1993–94 year (see sec 7.9.1). In evidence, Mr Takerei said he recommended an increase in funding for the trust's provision of social services, and that he was supported in that recommendation by the other Maori outreach worker in the team.⁴⁹ The sub-team leader stated that the funding decision was made upon Mr Takerei's recommendation.⁵⁰ The sub-team may have believed it was slightly increasing the trust's funding by its decision, but that belief was not shared by the trust. The task

46. Document c6, pp 13–14

47. Transcript 4.3, pp 56–57

48. Transcript 4.5, p 16

49. Ibid, p 6; transcript 4.3, pp 94–95

50. Transcript 4.3, p 83

then fell to Mr Takerei, the trust's outreach worker at the time, to explain to the trust the level of funding that had been decided upon. When the trust did not sign the contracts by which that funding would have been accepted, Mr Takerei was eventually instructed by his area manager to deliver an 'ultimatum' to the trust: that it take or leave the agency's offer of funding.⁵¹

In his own words, by that direction Mr Takerei was required to be a 'hatchet man', despite his disagreement with that treatment of the trust and his belief that he knew what its reaction would be. In fact, the claim to the Tribunal was lodged 10 days afterwards. The direction given to Mr Takerei to deliver an ultimatum to the trust was subsequently dealt with at the highest levels in the agency and the Auckland area manager then became involved for the first time in a meeting with the trust. However, Mr Takerei expressed the view that had the northern regional manager met with the trust at that point, it would have helped to settle matters down. He suggested that the agency's strict policy of devolving to outreach workers all matters to do with service providers in their area worked against the regional manager becoming involved.⁵²

7.3.8 Devolution policy questioned

The lines of communication between the trust and the agency were not of a sufficient calibre to ensure that the policy matters raised by the trust were discussed in depth between the parties. We acknowledge that there were numerous contacts between 1 June 1993, when the 'funding' bid was received, and 20 December 1993, when the trust communicated to the agency its decision to lodge a claim with the Tribunal. As well, before 1 June, there had been meetings between Mr Stewart of the trust and Mr Takerei, the outreach worker, which canvassed matters relating to the 1993–94 funding bid.⁵³

Closer examination, however, shows the extent to which the outreach worker was involved, supported at infrequent formal meetings by the leader of the north-west Auckland sub-team, in attempting to resolve the fundamental policy issues raised in the trust's funding bid. The Tribunal believes that this matter calls into question the agency's devolution of policy questions to outreach workers.

7.4 LACK OF CONSULTATION PROTOCOL

7.4.1 Iwi protocols apply only to tribes

The agency, from the outset, required all area teams to develop protocols with iwi to ensure that they were aware of the services planning process and had opportunities to become involved if they wished.⁵⁴ Part of the claimants' grievance arose from the lack

51. Transcript 4.5, p 23

52. Ibid, pp 23–25

53. Document C1(14), app 2

54. Document C1(2), para 49

of any attempt by the agency to establish a protocol for dealing with Te Whanau o Waipareira Trust.

The general manager explained that the agency had made a commitment to keeping iwi informed of the agency's work regardless of whether they were involved in social service delivery. She also noted the agency's belief that iwi have a very good understanding of the needs of people in the community so that an important contribution to services planning is the identification by iwi of those needs.⁵⁵

7.4.2 Other protocols for non-iwi

It was further explained that the agency has protocols in place for groups other than iwi, and the protocol for dealing with the National Association of Citizens Advice Bureaux was produced as evidence.⁵⁶ The general manager said the agency was seeking a sound working relationship with providers and the question of whether a protocol was needed for a particular provider was one which the outreach workers would be expected to assess and respond to, whether the organisation 'be pan-tribal, Pacific Island or Pakeha or indeed iwi'.⁵⁷

Referring to a protocol negotiated with a pan-tribal organisation in the Central North region, the northern regional manager explained that the area manager there had interpreted her responsibilities for good practice, particularly in terms of *Puaote-Ata-tu*, as requiring that protocol. The agency, it was said, is looking for innovation and best practice models which can be shared with other areas and other staff: 'it's an evolutionary process not a dictated process'.⁵⁸

When asked if the Tribunal's hearing process had caused the northern regional manager to think that she should dictate that the Auckland area team engage in the process of preparing a protocol for Te Whanau o Waipareira, she said, 'I think under the circumstances it seems to me to make good sense, and good practice'.⁵⁹

7.4.3 Trust's frustration growing

Against this background of profound differences between the parties over their status in relation to each other, and therefore what was appropriate philosophy and practice, all the other dealings between the parties became fraught with tension. The CFA, in particular, appeared to misunderstand what the trust wanted, because senior managers were not aware of the trust's history and did not recognise its rangatiratanga. The trust became increasingly frustrated and, as its correspondence shows, impatient and angry with the CFA. Delays, oversights and mistakes took on a greater significance, and became incapable of resolution by simple discussion. We look at several examples here.

55. Transcript 4.2, p 39

56. Document C1(6)(b)

57. Transcript 4.2, p 40

58. Ibid, p 120

59. Ibid

7.5 THE TRUST'S APPLICATION FOR APPROVAL AS A CHILD AND FAMILY SUPPORT SERVICE

7.5.1 Long delays annoyed trust

The protracted process, lasting from February 1993 until August 1994, by which Te Whanau o Waipareira Trust was granted unconditional approval by the agency as a child and family support service was a cause of vexation to the trust.

The precise causes were obscure. However, having gained conditional approval as a child and family support service early in 1993, it took until early 1994 for the trust to meet all the conditions which would entitle it to receive full approval.⁶⁰ Thereafter, difficulties of some sort within the agency precluded full approval being granted until August 1994.

7.5.2 No replies to correspondence

It is clear from a timeline of events supplied by Mr Takerei that, after the trust had received conditional approval early in 1993 but before it had met the necessary conditions, Mr Stewart of the trust wrote in June 1993 and again in August 1993 to the team leader of the north-west sub-team. It would appear that there was some dispute, which caused 'considerable tensions', about what was needed from the trust to meet the necessary conditions.⁶¹ It may have concerned difficulties which the trust foresaw over the agency's standards being 'culturally inappropriate'.⁶² The trust may also have been anxious to obtain full approval as quickly as possible in the belief that its funding for the 1993–94 year would be prejudiced by its continuing status as a conditionally approved service.

Neither of Mr Stewart's June and August 1993 letters seems to have been responded to but the agency's outreach worker met with Mr Stewart, some six weeks after the first letter and four days after the second letter, to discuss the matter further. It appears from Mr Takerei's timeline that, in other meetings with him later in the year, the trust was still awaiting some written response from the agency as to its approval status.⁶³

Having met the final approval conditions, at the end of February 1994, Mr Stewart wrote again to the agency, presumably to the north-west sub-team leader, requesting that full approval be granted. In mid-June, he wrote to the area manager asking for written confirmation of the trust's approval status. And in late July he wrote to the director-general asking for the same thing. It seems that none of those letters was responded to, but, early in August, a meeting was held between Mr Stewart and the new Auckland area manager and a full approval letter was sent from the area manager to the trust shortly afterwards.

60. Document C1(14), app 1

61. Transcript 4.2, p 197

62. Document B5, app 10, p 1

63. Document C1(14), app 1

7.5.3 CFA admits poor service – but funding not affected

The agency acknowledged that it had been remiss in its dealings with the trust over this matter. The northern regional manager said that the agency should match the expectations and demands of a customer by promptly responding to letters⁶⁴ and the general manager accepted the trust's criticism that the approval process was not conducted as well as it might have been.⁶⁵

The agency emphasised, however, that the trust was not prejudiced in terms of funding by the fact that it had only a conditional approval as a child and family support service from March 1993 until August 1994. That does not, as the agency acknowledged, make up for the failures in written communication and the delays on its part in its dealings with the trust, which may well have seemed to the trust to be further proof of the agency's lack of understanding and interest.

7.6 TE ROOPU MATAIHI TRUST FUNDING

In 1993–94, the trust's funding for family-whanau development (which incorporated the earlier homebuilders programme) was cut. When pressed for an explanation, the agency said that the money had been transferred to a former affiliate of the trust, Te Roopu Mataihi.

Te Roopu Mataihi is a Ngati Whatua group operating in south Kaipara. It had become affiliated to the trust, and had been supported from the trust's own funds and services, to the point where its staff were trained, it had accommodation and administrative systems in place, and it was in a position to seek its own contract with the CFA.

The trust challenged the agency's reason for cutting its own allocation in order to fund Te Roopu Mataihi. The trust said that this dispute showed that the CFA did not understand the trust's relationship with its affiliates – a matter that goes to the heart of the trust's rangatiratanga. It said service provision to south Kaipara had never been a part of the trust's contractual obligation to the CFA. It saw its support for Te Roopu Mataihi as an expression of rangatiratanga, a koha freely given to meet a recognised need and a return for Ngati Whatua's recognition and support of Waipareira. By its subsequent cut to Waipareira, the agency treated the trust's gift as if it were an allocation made by the CFA to Te Roopu Mataihi. Not only was funding lost, but the relationship between the Maori parties was disrupted by the CFA's action.

7.6.1 Funding for south Kaipara

There was a direct disagreement between agency and trust witnesses on whether the trust had been funded, prior to the formation of the agency, to offer services in the Kaipara area under the homebuilders programme. In the 1991–92 year, by contract

64. Document c1(6), para 40

65. Transcript 4.2, p 78

with the department's Henderson office community services team, the trust was allocated \$123,457 from that programme. No other Maori service provider was funded that year from the homebuilders programme in the then West Auckland area.⁶⁶ The contract between the trust and the department does not specify any particular area as being the area in which the trust is to deliver services under the homebuilders programme.⁶⁷

In the 1992–93 year, when the agency essentially 'rolled over' the contracts it had inherited, the trust received \$97,142.86 from the homebuilders programme. Services were also purchased 'for rural Maori' in the agency's north-west region. The value of that contract was \$18,000.⁶⁸

In the *National Services Plan: Funding Decisions, 1992–93*, Te Roopu Mataihi Trust of south Kaipara is listed as having contracted with the agency for \$36,000 to provide family-whanau services. the family-whanau development programme at the time encompassed the homebuilders and other programmes.⁶⁹ It would seem then that half of the \$36,000 allocated to Te Roopu Mataihi came from the homebuilders programme.

For the 1993–94 year, funding for homebuilders was again allocated from the family-whanau development programme. The trust received \$70,000 for this purpose and other Maori providers in West Auckland received a total of \$49,749.⁷⁰ In the *National Services Plan: Funding Decisions, 1993–94*, Te Roopu Mataihi Trust is again listed as having received \$36,000 from the agency for family-whanau development.

7.6.2 Trust support for Te Roopu Mataihi

The evidence of the trust, given by its financial manager Mr Tolich, was that in July 1992 there was a meeting between Mr Tolich and Connie Hanna on behalf of the trust, and the agency's Auckland area manager, its north-west sub-team leader and the outreach worker resident in the Kaipara area. The meeting discussed the trust's efforts to develop Te Roopu Mataihi as the deliverer of social services in the south Kaipara. Before that time, the trust had been helping to organise and set up Te Roopu Mataihi's structure. To that end, the trust had spent \$14,000 on outfitting two houses which Te Roopu Mataihi had secured from the Housing Corporation, had provided financial assistance in the development of Te Roopu Mataihi's systems, had trained two social workers from the south Kaipara area in the trust's first social workers course and had assisted in paying those workers.

Mr Tolich emphasised that the trust assisted Te Roopu Mataihi out of the trust's General Funds: 'At no time were Community [Funding] Agency funds used to pay them'.⁷¹

66. Document C1(13), para 16

67. Paper 2.44, attachment

68. Document C1(13), para 18, app 2

69. Document C1(b)(9), p 31; doc C1(13), app 2

70. Document C1(13), app 2

71. Document B4, p 4

7.6.3 Mataihi's services additional to trust's

Mr Tolich also said that at the July 1992 meeting, the trust outlined that it would assist Te Roopu Mataihi to obtain a separate contract with the CFA. It was made clear, however, that the current funding for the trust was seen as being for its area only and that any funding made available to Te Roopu Mataihi would be additional funding due to the people of southern Kaipara, whose lack of services was well known to all. The agency people did not indicate that if such funding was to be given to Te Roopu Mataihi a subsequent reduction in trust funding would occur.⁷²

7.6.4 Trust says its funds cut unfairly

However, in response to an official information request made by the trust about the policy relevant to the funding of the trust and others in its area in the 1993–94 year, a letter dated 23 June 1994 from the general manager of the agency was received, which states:

Family/Whanau Development: There has been an increase in funding to Maori services in West Auckland from the Family/Whanau Development programme. Whilst actual funding to Te Whanau o Waipareira Trust has decreased in this programme area, funding previously included in that contract has now been contracted separately to an affiliate of Te Whanau o Waipareira Trust.⁷³

Mr Tolich gave evidence that the separate contract referred to in the letter was the contract for \$36,000 with Te Roopu Mataihi. Agency witnesses did not dispute that. The trust's complaint is that:

none of the funding allocated to the Trust was ever tagged for service provision to the South Kaipara. Waipareira contributed to that organisation from its own funds. Having done so, CFA now insists that the existence of Te Roopu Mataihi justifies a reduction in funding to Waipareira. I have no difficulty with funding being provided to Te Roopu Mataihi over and above that being provided to Waipareira but actually reducing Waipareira's allocation using that group as a justification is particularly unfair in my view.⁷⁴

7.6.5 Original contract covered Kaipara – CFA

Ms Gillard, sub-team leader for the north-west team, stated that the area served by the Henderson departmental office that first contracted with the trust for the homebuilders programme (in 1991–92) included the Kaipara and that the original contract with the trust therefore would have included the offering of services in the Kaipara. However, she stated, since the agency came into existence, it has contracted with Te Whanau o Waipareira only for services within the urban area and has

72. Document B4, p 4

73. Document B5, app 9, p 3

74. Document B4, p 4

contracted separately for the provision of services in the rural area. Because of this, she said, the earlier and later contracts could not be compared with one another. She also referred to the fact that there was an overlap of funding between funding years such that, although the contract for the 1992–93 year may have been only for urban services, the addition of funding that moved forward complicated the issue.⁷⁵

7.6.6 Tribunal's comment

A chart provided by the Auditor-General's office of Te Whanau o Waipareira Trust's contracts with the agency between 1991–92 and 1993–94 does not clarify whether, and if so how much, funding moved forward into the 1992–93 year from the 1991–92 year.⁷⁶ However, the trust is not arguing over the level of funding received in 1992–93: it is concerned that its 1993–94 allocation was reduced from the 1992–93 level for the reason that the agency was contracting separately with an affiliate of the trust, Te Roopu Mataihi, to provide services in the Kaipara. The general manager's letter to the trust, which explains the basis of funding decisions in the 1993–94 year, says as much quite plainly.⁷⁷

The Tribunal considers it significant that the agency was contracting separately with Te Roopu Mataihi in the 1992–93 year. This bears out the sub-team leader's statement that, from its inception, the agency contracted with Waipareira for services in the urban area and contracted separately for rural services. But it appears to contradict the general manager's statement, in her letter of 23 June 1994, that, for the 1993–94 year, funding to the trust in the family-whanau development programme decreased because funding previously included in its contract had been contracted separately to Te Roopu Mataihi. Since the agency had been contracting separately for rural services since 1992–93, a reduction in the funding of the trust's urban services in 1993–94 could not be justified on the ground that its 1992–93 contract had previously included rural services.

The only other possible explanation of the general manager's letter is the convoluted one that the trust's 1993–94 funding was lowered because it had been funded, prior to the agency's formation, to provide services for urban and rural areas but had not done so, therefore its 1993–94 funding was reduced to take account of the past overfunding, with the balance being allocated separately to Te Roopu Mataihi. This seems highly improbable for the following reasons.

First, if it was the Henderson office's understanding in 1991, or the agency's upon its formation in 1992, that the trust's homebuilders funding was to be used to provide services in the urban and rural areas covered by the office, then this was not communicated to the trust. Secondly, it would not be a natural assumption on the part of either the department or the trust that the area covered by the Henderson office would determine the area in which the trust was to provide services: the fact that Te Roopu Mataihi is Ngati Whatua would have dispelled that notion. Thirdly, it

75. Transcript 4.2, pp 201–202

76. Document B4, app 3

77. Document B5, app 9, p 3

would be extremely bad business practice to make a decision of this nature more than a year after the agency was established, based on pre-agency funding decisions, not communicate the reason for it for another 12 months, and then only in response to an official information request.

The Tribunal is satisfied that a meeting was held in July 1992 between the trust and the agency and that the agency did not demur from the view expressed by the trust that the agency's funding of Te Roopu Mataihi should not prejudice the trust's funding. Indeed we believe the agency's agreement that the trust should not be financially responsible for the development of Te Roopu Mataihi's services is borne out by its separate contract with Te Roopu Mataihi in 1992.

As a result, the Tribunal finds the explanation given by the general manager to the trust in June 1994, to the effect that its funding for 1993–94 had been cut because funding previously allocated to the trust had been contracted separately to Te Roopu Mataihi, to be spurious. The trust's concern about this matter is justified.

7.7 REPORTING AND COMPLIANCE DISPUTES

The trust's financial manager, Mr Tolich, said that 35 percent of the funding the trust receives from the CFA is spent on reporting and compliance costs. He said that figure was so high because of the vagueness of the agency's reporting requirements, and because of regular changes in those requirements. On occasions, he said, the trust was notified of what reports the agency required only at the end of the contract period, when assembling the necessary data was very difficult. He said the trust had to bear the costs of compliance.⁷⁸

The agency disputed this figure, saying the compliance costs it had monitored are nothing like this. The general manager said a pilot study carried out by the agency, which she emphasised was not reliable but indicative only, showed compliance costs were considerably less than 35 percent. She added, however, that providers of level 1 residential care for children in need of care and protection, which the trust is, have to meet very high standards and are rigorously monitored because of the need to ensure that such children are placed in a safe environment.⁷⁹

On the other hand, Maryanne McGee for the CFA said that in one year the trust did not report according to the agency's requirement that reporting be broken down into the CFA's categories of funding.⁸⁰ Mr Tolich seemed to acknowledge this but observed that he had not received any complaint from the CFA about that. In response to a further allegation, that the trust had not reported on the 1993–94 contracts at the time of the September 1994 hearings, Mr Tolich observed that the contracts had not been entered into until a few months before the end of the financial year, and that 13 days before the end of the contract the CFA had changed the reporting requirements. While the trust was working on its report and did not foresee

78. Document B10, pp 58–59

79. Transcript 4.2, pp 55, 84

80. Document C1(13), para 22

any problems meeting the new requirements, Mr Tolich said the late change, coupled with the trust's pursuit of its claim to the Tribunal, accounted for the delay. He was critical of the CFA's failure to specify its new reporting requirements earlier, and referred to a Deloitte report done for the agency that had made a similar point. While he said the CFA's shortcomings had contributed to the trust's problems, he accepted that 'it's a learning exercise'.⁸¹

At the March 1995 hearing, there was a further allegation by the CFA that the trust had been late in meeting its reporting requirements in respect of the 1993–94 year. The agency's evidence on this matter was not clear but it appeared to the Tribunal that the trust's audited accounts had been submitted on time. It also appeared that its report on its contract performance had also been submitted within the time period, measured by reference to the trust's annual general meeting, and anticipated by the agency's own reporting requirements.⁸²

These disputes on financial reporting were of a technical nature, and there was no evidence given nor suggestion made to the Tribunal of any irregularity in the trust's finances.

7.8 TWO MISCONCEPTIONS ABOUT AGENCY FUNDING

Two grievances relating to the agency's funding that were raised in the claimants' evidence were not justified by all the evidence before the Tribunal but are sufficiently significant to warrant mention here.

7.8.1 'Voluntary cut' in the department's budget

The first misconception relates to what the claimants referred to as a 'voluntary cut' of \$535 million in the DSW's spending in 1993–94. The claimants asserted that this was a cut in the department's expenditure on social services.⁸³ The general manager of the agency explained that the sum of \$535 million was not a cut of any sort but the difference between forecast expenditure and actual expenditure that year. She elaborated:

That frequently happens and if you look at NZCFA's operating budget for example you will find that in the financial year 93/4, we underspent our operating budget by nearly \$1 million. So the difference between what was budgeted by Government to spend on NZCFA and what we actually spent was just under \$1 million. That happens throughout the Department both on operating budgets and happens in relation to the appropriations in respect of [POBOCs]. In terms of my colleagues in the Income Support Service, whilst we've got a fair degree of accuracy in reporting in relation to superannuation claimants for example, there can be quite marked changes during the year in relation to unemployment benefit, domestic purposes benefit, sickness benefit

81. Document B10, pp 43–45, 46

82. Transcript 4.3, pp 94–97

83. Document B6, pp 10–11

and invalids benefit. Now all of those have a compounding impact on the cumulative budget for the Department when you take both the programme expenditure and the operating expenditure together. . . . we do end up with a situation where we constantly review, in fact on each quarter, we review the forecast expenditure against the actual expenditure and if we're forecasting an end of year out-turn of significantly less than we actually budgeted for, that money is returned to the Crown early in the financial year . . . because that reduces borrowing requirements. It's fiscally prudent to do that.⁸⁴

The Tribunal accepts the agency's explanation.

7.8.2 'Underspensing in West Auckland'

Another misconception advanced by the claimants was that a substantial amount of the agency's northern regional budget was left uncontracted at the end of the 1993–94 financial year. This conclusion was based in part on a letter written by the northern regional manager to the trust on 12 August 1994 which stated:

The total Northern Regional Fiscal 94 budget for the Families in Need of Support and Community Welfare sectors covered six programmes and amounted to \$17,704,383. Of this \$325,161 or 1.83% was underspent.⁸⁵

As well, Mr Stewart for the trust stated his understanding that:

a significant proportion of that under-spending related to Central and West Auckland. It appears that the CFA was unable to deliver this money as it had taken a restrictive view of which Maori services qualify especially in West Auckland. This I understand is in regard to their philosophical position on what constitutes an Iwi. . . . This apparent refusal to make unspent money tagged to Iwi available to Waipareira demonstrated to me that CFA saw provision for the need for urban Maori in West Auckland as a low priority matter. . . .⁸⁶

Ms Reid corrected this misapprehension by explaining that of the total underspending of \$354,753 in the two sectors relevant to the trust's funding, only 16 percent (\$60,060) related to the Auckland team. Also, the variations occurred largely as a result of account coding problems experienced following the POBOC restructuring and partly because of inaccuracies in the personal computer spreadsheets used by area teams prior to the introduction of a networked computer database.⁸⁷ Further:

The underspending was largely in the POBOC for Community Welfare General, which in the 1993/94 year purchased public education & training programmes, victim support programmes, information & advice programmes and refugee services. No services able to be funded from this POBOC have been purchased by NZCFA from Te Whanau O Waipareira Trust.

84. Transcript 4.2, p 35

85. Document B5, app 6, p 1

86. Document B5, para 5.3

87. Document C1(6), para 63

There is therefore no substance to Mr Stewart's inference that the Auckland Central and North West Auckland sub-teams significantly underspent, nor any substance to the conclusions drawn later in his evidence, that this underspending occurred at the expense of Te Whanau O Waipareira Trust.⁸⁸

The Tribunal accepts the agency's explanation.

7.9 ALLEGED FLAWS IN SERVICES PLANNING

The crux of the problem which flowed from the trust's inability to raise policy issues with the agency was the lack of the trust's input to the CFA's services planning (see secs 4.5–4.7). The trust argued that, in the absence of consultation, the agency adopted needs assessment and service development procedures which prejudiced the trust, but the trust's criticisms went unheeded. In another effort to place these issues on the table for discussion with the agency in June 1993, the trust submitted to the CFA a funding bid for the 1993–94 year.

7.9.1 The trust's 'funding bid'

(1) *A basis for discussion of differences*

On 1 June 1993, the trust made a 'funding bid' to the agency which set out its view of the services needed in West Auckland and the amount of funding it required to continue providing those services and develop further services. The bid was particularly significant because while it was intended by the trust to provide the platform for its discussions with the agency about its 1993–94 contracts, it was the breakdown in those discussions that was the catalyst for the claim being made to the Tribunal.

(2) *Did not fit with procedure*

From the agency's point of view, the trust's 'bid' was not entirely in accord with its services planning process. The northern regional manager explained:

... NZCFA no longer accepts applications for funding. So the direct 'put in an application and expect a response' is not part of our process any longer. Our process is that we complete services planning and having assessed and prioritised the needs we then look to who [is] out there to meet that need and we're moving – we've moved more to a request for proposal position from those providers we identify [as] best able to meet those needs.⁸⁹

Ms Reid speculated about the reasons the trust submitted the funding bid:

... I think again it was the change in our practice that I take responsibility [for] that the agency obviously did not communicate well enough to the Trust that we are not in a

88. Ibid, paras 64, 65

89. Transcript 4.2, p 133

position to respond to a bid per se, until the budget night, until the allocations are made, and then we do the matching process.

... there's been a lot of confusion on the part of organisations who for years have been trained by the State to fill in application forms. So this change is quite major and it takes some communicating and each year as we go on and get feedback people are understanding this better.⁹⁰

However, the outreach worker working with the trust in 1993, Mr Wiremu Takerei, stated in evidence that he would have told all service providers that a proposal would be needed from them for the 1993–94 funding year. He stated:

The service proposal and funding bid received in June 1993 contained a detailed outline of the organisational structure and the many and varied services that Te Whanau O Waipareira were providing. . . .

At the time there was no standard proposal format available nationally from New Zealand Community Funding Agency. However the Te Whanau O Waipareira proposal which was submitted in their own format contained the key elements considered to be relevant by the team.

In terms of timing, the lodging of the Te Whanau O Waipareira funding bid was prior to the formal requests to all service providers for proposals. This occurred in approximately June/July 1993. The initiative shown by Te Whanau O Waipareira pre-empted a need to request a service proposal at this time.⁹¹

(3) Bid was an assertion of rangatiratanga

Contrary to Ms Reid's perception of the reason why the trust submitted its funding bid, Mr Tamihere made plain that it had been prepared by the trust in response to its perception, at that early time, that its previously healthy relationship with the DSW was deteriorating with the advent of the agency:

A new arrogance pervaded the Community Funding Agency and was evidenced by significant policy shifts, in the appointment of senior staff in the organisation and the lack of consultation in regard to our communities over the appointment process. The community's involvement was removed absolutely with the demise of the District Executive Committee wherein community elected and representative persons highly knowledgeable at the community provider base were removed without consultation.⁹² These committees were actually the conscience of the community in regard to funding decisions. The transparency and participation of the community as a consequence was denied.

This was a backward step and immediately painted a picture for a very poor relationship. . . .

Our Community Services Manager was instructed to pre-empt servicing plans from bureaucracies centred away from our community and to place before this bureaucracy,

90. Transcript 4.2, pp 133–134

91. Document E2, para 3

92. Agency witnesses emphasised that the decision to disband the district executive committees preceded the formation of the CFA.

the Community Funding Agency, a very well articulated service plan exhibiting quite clearly the type of service required to be delivered to our community.

It is accepted that there will never be enough resource to satisfy everybody's inclination to settle the difficulties that we suffer under in the Social Service interface. This claim is not about resource. It is about recognition of our status as an urban whanau and Treaty partner. There are certain consequences that follow from our relationships with Community Funding Agency being in the nature of Treaty partnerships. First, Community Funding Agency should consult with us before making any decisions which affect the interests of the people we represent. And I mean real consultation. Not token hui. I mean a proper process of open honest dialogue about the needs of our people and how they can be met. It is also about our right to an equitable share of a limited resource. We are not just another charity in the queue waiting for handouts. We are a Treaty partner with our own direct relationship with the Crown.⁹³

7.9.2 Contents of the trust's 1993–94 bid

The 1993–94 funding bid from the trust set out its view of what was required to service West Auckland Maori. The bid describes the trust's structure, the rationale for its evolution, its affiliates which deliver social services, and its management philosophy. It then criticises departmental funding of Maori social services in West Auckland since 1991 for not being based upon any credible estimation of the real cost to set up or operate an appropriately resourced service to Maori people of West Auckland.

As well, the department is said to lack, then or now:

any credible notion of how a Maori service should function. The service must retain the cultural imperatives of its people whilst being able to meet the requirements set by policy and statute.⁹⁴

(1) *Outline of community's need*

The trust quotes statements from the agency's 1992–93 *National Services Plan* which reveal the agency's commitment to increasing Maori management over their own social service delivery and of allocating resources to Maori-based structures that take into account the proportion of Maori in the client group and their need for social services. Using the figures in that 1992–93 plan, the trust concludes that only \$144,000, or 14.28 percent of the total West Auckland funding, was made available to Maori social service providers in 1992–93.

Next, the trust's bid sets out a statistical profile of Maori in West Auckland showing the high proportions who are on low incomes, have no qualifications, are unemployed, sole parents, or subject to pre-sentence reports. Justice and Social Welfare statistics are used to highlight the high Maori prison population generally and, specifically, the proportion of Maori in the Henderson Children and Young Persons Service intakes over a three-month period in 1993.

93. Document A19, paras 6.6, 6.7, 6.9

94. Document B5, app 7, p 27

(2) Budget includes voluntary contribution

The funding bid then lists the costs of the trust's services, which total \$293,000, and provides breakdowns of the costs of the new programmes for which it has identified a need.

It is noteworthy that the 1993–94 funding bid includes the sum of \$80,000 in the trust's service costs, which sum is said to be the cost of 13,500 hours work at \$10 per hour. A note to that figure reads: 'This is a realistic estimate of the costs of service fees based upon current paid and unpaid hours.'⁹⁵

Since the actual cost of supplying 13,500 hours at \$10 per hour would be \$135,000, it is plain that the trust had built into its 1993–94 funding bid a significant labour component for which agency funding was not expected to provide. It is also plain that a fee of \$10 an hour for workers delivering social services is not excessive.

(3) Demands on trust growing

Part of the conclusion to the bid states:

On the basis of any analysis Maori services in West Auckland have been grossly underfunded, resourced and supported by agencies of the state charged in statute to ensure this occurs. Resources to the Maori community in West Auckland has been drastically reduced since 1989. This is firstly with the closure of the Maori Affairs office and has culminated with the loss of one position now two positions in Maatua Whangai in West Auckland. It is into these gaps without the resourcing that Te Whanau O Waipareira Social Services has had [to] step. Notwithstanding any impressions to the contrary these were significant resources to our community.

The comparative novelty of the trust's social services is then emphasised, and the dedication that has been required to deliver them to the level attained. Referring to the 'continuing catch 22' of satisfying the demands of its people for services and the ever increasing demands of statutory agencies in relation to standards, the bid concludes:

We at all times are open to the scrutiny of anyone but ... only by continued negotiation and with credible resourcing will we be able to meet the ongoing demands of our society.⁹⁶

7.9.3 Failure of the bid

The 1993–94 bid failed as an attempt to open up negotiations between the parties. What it did do was set out the trust's main arguments against key agency policies and procedures, arguments which were elaborated during the hearings, and which we now summarise.

The trust claimed that a philosophy of service development which ignored community values could not measure the cost-effectiveness of service providers. This

95. Document B5, app 7, p 30

96. Ibid, p 35

had led the CFA to pursue the Government's social goals by funding a range of competing service providers instead of developing proven achievers like the trust; to develop measures for assessing the appropriateness of services and for screening potential providers which were not based on providers' accountability to the community; and to decline to fund the trust's alternative school because parts of its holistic service fell outside the CFA's criteria. Finally, Waipareira said the CFA had adopted flawed procedures for assessing the needs of both the Waipareira community and Maori service providers in general, with the result that inadequate funding was allocated to West Auckland Maori and to the trust. In particular the CFA's decisions on funding for the trust's care services shows poor coordination and information exchange between the business units of the DSW.

7.10 SERVICE DEVELOPMENT

The CFA is charged with purchasing social and welfare services in order to achieve social goals set for it by the Government.

In its service development role, the agency works to 'fill gaps in services needs which are a priority'. It does this by contracting with other agencies, and with providers, to bring in additional expertise so that providers' services and systems are enhanced.

The trust challenged the agency's process for deciding which agencies or providers should be invited to provide new or extended services.

7.10.1 Funding a range of services

Among the 12 outcomes that the Government desired of the department in the 1993–94 year was that:

The community has access to a range of social service providers and social services which are appropriate to individual and family circumstances and the cultural backgrounds of recipients.⁹⁷

By its express wording then, this outcome supported a CFA policy of providing a choice to consumers of appropriate services and service providers.⁹⁸

From the evidence it was clear that the CFA regarded the trust as one among many service providers in West Auckland, albeit a large and well-organised one. Claimant witnesses emphasised that the trust was more than that. They said that, while it did provide services, the trust was established by the community as an umbrella

97. Document c1(3), app 1

98. In the 1994–95 statement of outcomes desired by the Government (which was not in effect when the present claim was filed but became operational during the hearings of the claim), the comparable outcome omits the reference to consumers having access to a range of service providers and services. Instead, it only requires voluntary welfare services funded by the Government to be accessible and appropriate to the needs of their client groups and to complement services provided by the State (doc c1(b)(7), p 3).

organisation, to assist affiliates to meet the reporting requirements of the Crown, and at the same time to monitor affiliates and hold them accountable to ensure that the community got full value from the CFA funding:

It is absolutely crucial in the funding of the Maori community in urban West Auckland that the organisation being funded is accountable to and has a mandate from its community. Without that accountability and mandate the funding dollar will be wasted.⁹⁹

7.10.2 Agency view ‘unbiased’

Naturally, the agency too is concerned that its funding not be wasted. However, its role allows, or even demands, that it be more detached about the matter than the trust is able to be. The agency’s view is that in a partial funding environment, service providers have a vested interest in promoting their own services and the needs of their own community but are often unaware of the circumstances prevailing in other parts of the country. This makes it difficult to convince providers that the partial funding allocations made around the country are equitable.

7.10.3 Assessing effectiveness of services

It is self-evident that ineffective services will not achieve desired social outcomes and therefore must always be inappropriate. In chapter 6, we noted the trust’s view that any assessment of the effectiveness of social and welfare services required consideration of the community’s values and the accountability of providers to their community. The trust claimed that it was an efficient and effective provider because it was part of its community, it was accountable to its beneficiaries and attuned to their needs. The extent to which the trust and its workers identified with their own community was expressed, by Mr Tamihere, in these words:

Some people have the luxury of being able to turn the key at 9.00 am and having the same opportunity and luxury of turning the key at 5.00 pm and walking away from problems. Regretfully our Whanau, its operatives, its workers and the people we service have to wallow in our difficulties 24 hours a day and as a consequence we are motivated and passionate about the way in which we desire to deliver our services in a most efficient, effective and well measured way.¹⁰⁰

Despite the trust’s track record and status as a key Maori service provider in West Auckland, Mr Stewart, the trust’s community services manager, said the trust had never been approached by the CFA to discuss developing or extending the services offered by the trust:

99. Document B3, para 6.5

100. Document A19, para 5.22

I have heard of services planning, but service development as such in terms of how it's affected our service is developed, where it's planning to go, has not been part of the consultation process between ourselves and the CFA.¹⁰¹

The trust was concerned about the policy of funding a range of providers on two counts: first, in a climate of rationed Government funding for much-needed social services, precious funds may be wasted on ineffective services; and secondly, effective providers may not get funding to extend their service capacity and to achieve economies of scale.

The trust alleged that in West Auckland both these things had happened: the CFA had funded a number of providers, but funded each of them inadequately so they collapsed and their service stopped; moreover, allocations to other providers (including direct funding to affiliates of the trust) were used to justify a reduction in the trust's own funding, which meant the trust's capacity to support and monitor providers to its community was undermined, and consequently the ability of the community to hold service providers accountable was diminished:

the Community Funding Agency will not shrink from a policy of dividing and ruling us. As I have said the Community Funding Agency is not interested in accountability to the community or mandate from community, it is just interested in outputs. The reduction in funding to Waipareira has reduced the effectiveness of accountability processes between affiliates, Waipareira, and the community. Over the course of our difficulties two of our major affiliates, both used as excuses by the Community Funding Agency to reduce our funding, have collapsed. We lack the resources now to hold them up or to repair them.¹⁰²

7.10.4 Funding appropriate services for Maori

The agency generally aims to fund a 'culturally appropriate range of services'. When asked what that meant, the northern regional manager said:

Basically that really means that people who are Maori, people who are Pacific Island, should have the right to choose a service provision that meets their cultural norms, that . . . they should be able to access a service that responds culturally appropriately to them from whatever base they are. So if we were to contract just purely with Pakeha organisations we would not be providing that. It's about a matter of choice and about a matter of matching and it also acknowledges that while the service may be the same, ie it may be a counselling service, the way it will be delivered will be different depending on cultural norms.¹⁰³

101. Document B10, p 68

102. Document B3, para 6.4. The agency did not know of any local groups that had 'fallen over' for that reason (transcript 4.2, p 214). It is relevant to note, however, that the Deloitte report commissioned by the agency expresses similar concerns to those of the trust and also refers to two groups that had failed for want of securing a viable level of funding (doc B4, app 7, p 15).

103. Transcript 4.3, p 20

(1) Identifying the ‘culture’ of providers

The notion that the cultural appropriateness of services depends primarily upon providers and clients sharing the same ethnicity was reiterated by senior agency witnesses throughout the hearing.

The general manager described how the agency could determine a ‘match’ between client bases and providers by comparing the information collected about the ethnicity of clients with the information collected about the ethnicity base of each provider. The process by which a provider’s ethnic base is determined involves asking them:

whether they would consider themselves to be iwi-based, pan-tribal, Pakeha, 50/50 Pakeha/Maori – because there are some organisations that do work as a genuine partnership – Pacific Island and other, because we’re also dealing with refugees, so there’s Vietnamese, Cambodian and other Asian communities. . . .

. . . we ask for the ethnicity of staff. We also ask for the ethnicity of trustees, and we also ask for the ethnicity of clients. So if you collect all of that information, you are in a position to form a view. The [agency’s] staff . . . are primarily community based, and many of them have good local knowledge in terms of local iwi and so are able to confirm and consult if they are in doubt.¹⁰⁴

Services to Maori were seen to be complicated by the ‘iwi’ factor. In the case of care and protection services for Maori, iwi affiliation data is integral to service development (see sec 7.11.5(2)). However, for most services the agency has contracted with both iwi, where iwi have decided to become involved in social service, and with other Maori groups:

It is recognised . . . that in urban areas, there are needs for service from Maori people who do not exercise mana whenua and NZCFA has consistently contracted with both iwi and pan-tribal groups to ensure coverage of service, choice of service for Maori and quality services.¹⁰⁵

Because of the complexities, the agency further assesses the cultural appropriateness of a service by taking into account two things: the use which clients make of the service and the feedback which outreach workers receive about it:

One of the things that I think happens a lot is that people – the consumer votes with their feet. If the service provider is meeting their need, and they can choose a service provider, they will go to the provider who is best meeting their needs, they will judge whether that meets their needs in a culturally appropriate way. What we try to do is have a range – in terms of Maori – of iwi-based services, Maori-based services and services to meet other needs. Therefore the client chooses. At the end of the day the accountability of that provider will be ‘were they used by those people?’

. . . It’s part of our needs assessment process, it’s part of our services planning process. We are not going to fund a group who is actually not delivering a service. If clients are not using them – and that is one of the benefits of having our outreach staff in the

104. Transcript 4.2, pp 40–41

105. Document c1(2), para 54

community, they are constantly picking up that information. They are constantly saying, 'look stop' – they will get messages 'why are you funding that group? People aren't going there but you should be funding this group.' I mean it's a constant flow of information. So again it's not one thing, it's a package of information.¹⁰⁶

(2) Criteria for approval of providers

When asked how the agency would determine from the outset – before it purchased services from a particular organisation – whether that potential service provider had community support, it was said that the approval process served that end.¹⁰⁷

The process aims to establish that the potential provider can do what it is setting out to do and that it has clear accountability back to its client group, including by means of customer complaints procedures. Features of the organisation that are taken into consideration include who is on the board, who the target population is, its links with other groups, and the observance of the requirement that there be an annual general meeting.

The northern regional manager said that she did not see a great deal of difference between the features of the organisation which were assessed in the agency's approval process and the features stressed by the claimants as being important to establish what the claimants referred to as the 'mandate' of Maori groups.¹⁰⁸

However, the Tribunal detects a sizeable difference between the agency's approval assessment of providers and the type of assessment advocated by the claimants. Further, we note that Dialogue Consultants Limited, commissioned by the agency to review the family-whanau resource development funding programme, recommended a review of a pertinent aspect of the agency's approval process. The consultants' stage one report stated:

an on-going monitoring system is no replacement for appropriate screening of the approach and methods of potential providers to the NZCFA at the approvals stage. In the interests of protecting the clients, service providers (to the extent that they refer on their clients to other service providers), and the NZCFA from inappropriate providers, it would be better if the approvals process ensured that the NZCFA had a clear understanding of the philosophy and methods of potential providers at the outset so that dubious organisations could be screened out.¹⁰⁹

The footnote to that passage stated that the report was not advocating a particular set of formal skills as the basis of approval and that a blanket assertion of the appropriate skills was really not adequate. It is in this regard that the consultants concluded that a review of the agency's approval process appeared to be needed.¹¹⁰

¹⁰⁶. Transcript 4.3, p 21

¹⁰⁷. Ibid, p 63

¹⁰⁸. Ibid, p 64

¹⁰⁹. Document C1(b)(24), p 13

¹¹⁰. Ibid, fn 7

(3) *Criteria for funding services*

The impasse reached over the funding of the trust's alternative school (see secs 2.4.9, 6.4.3) highlights the problem of an effective service not meeting the CFA's criteria, which are narrowly specified to meet the reporting requirements of the Public Finance Act. The trust's frustration was expressed by Mr Tamihere in these terms:

The Crown continues to allege that the Community Funding Agency has no responsibility for the education of these children. That might well be the case, but why invest in children between the hours of 9.00am and 4.00pm with an education dollar when you know quite clearly that they are going to go into dysfunctional and difficult backgrounds after school? The education they have received during the day must be secured by providing an environment after hours that reinforces it. Our funding bid takes into account the services which needed to be provided to ensure that the education being provided to these children during day light hours is supported by whanau support workers in the early hours of the morning and late hours of the night.

The bottom line is, education dollars spent during the day are wasted if they are not backed up by social services outside school hours. This seems fairly straight forward to us and you will excuse us if we become impatient and intolerant with those who say Community Funding Agency does not provide education funding. What really makes us angry ... is that just down the road at Glenburn School, Community Funding Agency is providing exactly the sort of funding that we are looking for with our school. In that example Community Funding Agency seems to be able to make the connection, but not in ours. [Emphasis in original.]¹¹¹

As that passage reveals, the trust's frustration at being denied agency funding for the alternative school had been compounded by its knowledge that at the time of the hearing, the agency was funding Glenburn, a so-called 'national' facility (see sec 4.4.2(1)), which the trust believed provided comparable services to that of its own school. Glenburn comprised a school and three residences serving the whole region north of the Bombay Hills. Its target group was six- to 12-year-olds who were failing at home, in school, and in the community. The objective of the programme was to rehabilitate children into behaviours which allowed participation in family, school, and the community. Glenburn had been subject to various evaluations and had been shown to be extremely effective in meeting the needs of its client group.¹¹²

The general manager described Glenburn as a very good example of an 'holistic service' being offered through a tripartite partnership.¹¹³ Glenburn received substantial funding from the agency's residential care NDOC: \$521,772 in the 1992–93 year and \$580,500 in both of the 1993–94 and 1994–95 years.¹¹⁴ The Te Whanau o Waipareira Trust's budget of the costs it would incur during the 1994 year in supporting its Alternative Unit was \$229,985.¹¹⁵ The cost of national services, however, affected the funding available to all agency areas, and the agency told the hearing that

111. Document B3, paras 4.4, 4.5

112. Document D5(e), paras 1, 2

113. Document C1(2), para 84

114. Document D5(e), para 3

115. Document A26, app 1, p 28

it was trying to eliminate or renegotiate national contracts or ‘special deals’ such as Glenburn.

The trust had tried to promote an interdepartmental agreement to fund its Alternative Unit, and had organised a visit by the Minister of Social Welfare. By the end of the hearings some progress had been made but the outcome was inconclusive.

7.10.5 Needs assessment process flawed

Both parties accepted that equitable funding decisions depend on a sound decision-making process, and that a simple comparison of how much money different providers received gives no indication of whether or not decisions are fair and proper (for reasons, see sections 4.6.3 and following). At the hearings, the trust claimed that the agency’s procedures used flawed census data and unreliable iwi affiliation statistics, and failed to acknowledge the relative disadvantage faced by both Maori service providers and cash-strapped Maori communities in managing and funding their own social services. The thrust of the trust’s argument was, therefore, that the CFA cannot claim its funding decisions to be equitable unless it takes account of all those factors.

(1) Census data criticised

The trust contended that in addition to flaws in the ‘subjective’ process by which the CFA gathers information about community needs from service providers and others, its ‘objective’ measure for comparing the different needs of various communities (the needs indicator) is unreliable. The census data used (which are gathered at five-yearly intervals) were said to get out-of-date between censuses; and the needs indicator failed to incorporate localised measures of welfare need which are already available nationwide – such as caseloads of the police and the Children and Young Persons Service. The trust contended that Statistics New Zealand, in conjunction with appropriate Maori experts, should be contracted to develop local social needs indicators of the quality needed to inform the decisions of Government and communities.¹¹⁶

(2) Iwi affiliation statistics incomplete

The trust also questioned the validity of the CFA’s iwi affiliation data. The director-general has directed the agency, since 1994, to require providers to supply the ethnicity or iwi affiliation or both of their clients. The reason is connected to the

116. Document B6, pp 13–14. Claimant witnesses also suggested, however, that the agency’s funding allocations to West Auckland Maori could be assessed for their equitableness, at least generally, by equating funding levels with the level of Maori representation in the statutory caseload statistics of key social agencies. On this basis, because West Auckland Maori account for 35 percent of the caseloads of the area’s police, Children and Young Persons Service, and Community Corrections, an equitable level of agency funding for social services for West Auckland Maori would be 35 percent of the West Auckland allocation. By the trust’s calculations, only 14.28 percent of the total West Auckland allocation had been made available to Maori service providers in the 1992–93 year (doc B5, app 7, p 28).

agency's obligations under the Children, Young Persons, and Their Families Act 1989.¹¹⁷

It was emphasised that the Act itself was the product of the recommendations made in *Puao-te-Ata-tu*. Its general import was summarised as requiring the DSW to 'promote and resource services to enable children and young people to be cared for by their whanau, hapu and iwi'.¹¹⁸ By gathering statistics about the ethnicity or iwi (or both) of service providers' clients, the agency aims to track the amount of funding going to consumers on the basis of ethnicity and to monitor the 'cultural appropriateness of providers to their client base'.¹¹⁹

Difficulties in obtaining information about clients' ethnicity and iwi affiliation were noted by the general manager: some clients do not wish to provide it and some service providers have difficulty asking for it.¹²⁰ It was said there can be a raft of reasons why iwi affiliation data is difficult to collect, even in the census. The agency was primarily seeking to overcome providers' and clients' reticence to provide it. That reticence was attributed to lack of understanding of the reasons why the agency needs the information and also to a sense of shame in providing it.¹²¹

The claimants highlighted another reason. They referred to a May 1994 report prepared for the agency by Deloitte Touche Tohmatsu which states that the majority of Maori clients of agency-funded child and family support services 'do not know their Iwi'.¹²²

This suggestion was supported by the Te Puni Kokiri manager who gave evidence for the agency. She referred to the 1991 census results which reveal that 13 percent of the people who identified as Maori did not identify their iwi affiliation. That percentage does not include the group, which is almost as large again, who have both Maori and some other ancestry but who did not identify themselves as Maori. The 13 percent who identified as Maori but did not state their iwi affiliation in the census were assumed by the Te Puni Kokiri manager not to know their iwi. Many were in the younger age groups and this would support the statement, made in the Deloitte report, that most clients of child and family support services do not know their iwi.¹²³

Whatever the reason in particular cases, the inability or failure of service providers to record their clients' ethnicity poses difficulties for the agency's work under the Children, Young Persons, and Their Families Act, such as the purchase of appropriate placements for Maori children and young persons requiring care. At the hearings, however, the agency made plain that the fact that clients might not know their iwi was

117. Under the terms of a protocol recently established between the Children and Young Persons Service of the department and the agency, the service actually places children and young people in care but it is the agency's responsibility to ensure that services exist for appropriate placements to be made (transcript 4.3, p 8). The previous coordination between the service and the agency on this matter had been extremely problematic, causing the director-general to commission a review of the situation. The resulting report – the Weeks report – led to the new protocol (doc C1(1), paras 10–12).

118. Document C1(2), para 60

119. Ibid, para 57

120. Ibid, para 62

121. Transcript 4.3, p 6

122. Document B4, app 7, p 30

123. Transcript 4.2, pp 92–93

not seen as a significant reason why iwi affiliation data could not be collected from many young clients of service providers.

(3) *Affirmative action required for Maori*

The trust claims that the CFA's needs assessment and services planning processes should have to compensate for the fact that the provision of Government social and welfare services aimed at Maori has been eroded over the last decade. The trust says that, in the new mainstreamed environment of community group service provision, it is vital that Government agencies fully recognise the plight not only of Maori consumers of services but also of Maori service providers.

The plight of Maori consumers of services, it said, is reflected in the statutory case loads (eg, pre-sentence reports and referrals of children and young people in need of care and protection) in which Maori are disproportionately represented. And further, the plight of Maori service providers, it was said, is that they are starting up a considerable distance behind long-established, Pakeha-based providers whose longer experience in the social services arena has produced a pool of skilled managers, staff, facilities, and systems. These resources are beyond the reach of new Maori providers unless they are assured of significant State funding throughout a realistically determined developmental period.¹²⁴ Also, Maori service providers typically operate in a particular geographic area, which precludes their reliance upon wider fundraising appeals.

(4) *Communities' differing abilities to contribute*

Besides facing criticism of its methods for assessing the different needs of various communities, the agency was alleged to have failed to take full account of those communities' differing abilities to contribute to the cost of their social services. The trust emphasised that while Maori communities generally are typically short of cash as well as management and other formal skills, they are rich in voluntary, formally unskilled, labour – especially that of Maori women. The trust's own records show that for every paid hour that is worked in delivering its social services, between six and seven unpaid hours are worked by its volunteers.¹²⁵

The trust said the CFA promoted an assumption that the formally untrained labour component of Maori services will continue. While the trust conceded that the assumption might be correct in the sense that Maori will always volunteer their labour in order to assist their communities, it questioned the wisdom of such an assumption when Maori are under-represented in positive welfare statistics and over-represented in negative statistics.

To the trust, promoting, even if indirectly, the continued reliance of Maori service delivery upon the formally untrained labour of Maori volunteers, is counterproductive to the broad goal of reversing the cycle of Maori dependency upon welfare, which both Maori and Government share. Rather, it would be to the benefit of all Maori and

124. Document B5, p 13; doc B10, pp 77, 87

125. Document B4, app 6, p 3. Elsewhere, Mr Tolich says trust staff work five hours for each hour paid (doc B4, para 28).

so for New Zealand as a whole for an increasing number of Maori community workers to be trained and paid for their work. This is an example of the trust's holistic view of welfare goals and the need for a community development vision to achieve them.

7.11 SUFFICIENCY OF FUNDING TO TE WHANAU O WAIPAREIRA TRUST

Mr Tamihere explained the claimants' reliance upon funding statistics in support of this aspect of its claim:

This claim is not about money. Regretfully to evidence our allegations, funding will be utilised to demonstrate inequitable treatment. The claim is essentially about fairness, due process and equality of opportunity. It is about our right as a pan-tribal whanau in the urban area to be acknowledged as a Treaty partner and our right as urban Maori to organise ourselves in accordance with our own tikanga to address our own problems our way.¹²⁶

7.11.1 Parties compare figures differently

The trust and the agency disagreed on how to compare the amount of funding the trust received from the DSW and then from the agency in the three financial years from 1991–92 to 1993–94. As a result, they reached different conclusions about the trend that was revealed by the trust's funding over the three-year period. Further, they did not agree on the relevance of any trend that might be ascertained.

7.11.2 Difference of GST

One cause of their difficulty in agreeing on the amount of funds the trust received in each of the three years between 1991–92 and 1993–94 was that before July 1992 payments excluded GST whereas since that time payments included GST. From a table supplied to the trust at its request by the Audit Office, the funding the trust received for social services in 1991–92 is stated to be \$163,957.14. To make that 1991–92 GST-exclusive figure comparable with the GST-inclusive amounts received in the following two years, Mr Tolich's table of the trust's funding for social services added 12.5 percent to that amount. The total he reached by that method was \$184,451.78 for the 1991–92 year.¹²⁷

7.11.3 Establishment grants and discontinued services

Mr Tolich then compared the 1991–92 GST-inclusive total with the total amounts the trust received from the agency in the next two years and, by that means, revealed a decline of 21.21 percent in the trust's funding over the three-year period. While the

126. Document A19, para 1.2

127. Document B4, apps 3, 4

agency also relied upon the table compiled by the Audit Office, it did not accept that merely comparing the Auditor-General's figures over the three years between 1991–92 and 1993–94 revealed the true trend of its funding to Te Whanau o Waipareira Trust. In its view, one-off establishment grant funding, finite funding for information and resource services, as well as funding for community housing contracts (a service no longer provided by the trust), should be deducted from the 1991–92 total before it could be compared with the agency's funding of trust services in the next two years. By these means, the agency put the trust's funding for 1991–92 at \$138,600.¹²⁸

The Audit Office put the total amount received by the trust from the agency in 1992–93 at \$157,514.44. The trust reached a higher total: \$168,407.30.¹²⁹ The Audit Office identified the cause of this discrepancy in a letter to the trust accompanying its table of figures. Briefly, it appears that adding GST to the 1991–92 figures had a flow-on effect on the 1992–93 total Mr Tolich reached because a key services contract entered into in 1991–92 was for two years.¹³⁰

While accepting the Auditor-General's total for the funding received by the trust for social services in 1992–93, again the agency disputed the validity of using it to compare the trust's funding in 1992–93 with its funding in other years. The sum it gave as the total value of the trust's funding in 1992–93 for comparative purposes was \$135,361. Again, the difference is explained by the agency's deduction of one-off establishment grant funding, finite funding for information and resource services and community housing contracts.

The Auditor-General's total of the funding received by the trust for social services in 1993–94 is the same as the trust's total: \$145,332.78. Again, the agency put forward a lower figure to be used for the purposes of comparing the trust's funding over the three-year period. That figure is some \$8000 lower: \$137,119.¹³¹

For ease of reference, the various figures put to the Tribunal as representing the trust's funding for social services over the three-year period are as follows:

	1991–92	1992–93	1993–94
Auditor-General	\$163,957.14*	\$157,514.44	\$145,332.78
Agency	\$138,600.00*	\$135,361.00	\$137,119.00
Trust	\$184,451.78†	\$168,407.30	\$145,332.78

* Excluding GST

† Including GST

7.11.4 Trust funding has declined

From that table, it can be seen that none of the three versions of the figures reveals an increase in the trust's funding for social services over the three years. All show a

128. Document C1(6)(c)

129. Document B4, apps 3, 4

130. Ibid, app 3

131. Document C1(6)(c)

decline between 1991–92 and 1993–94 but the agency’s figures show the least decline – some \$1500 or less than one percent – while the trust’s figures show a decline of nearly \$40,000 or 21.21 percent. The Auditor-General’s figures for the 1991–92 and 1993–94 years, being different from the trust’s only because of the earlier figure being GST-exclusive, show a decline of 12.5 percent over the period.

The Tribunal has not attempted to establish the ideal way to determine, for comparative purposes, the funding received by the trust over those three years. It believes it is significant, however, that the trust was of the view that its funding had been decreased substantially over that period.

7.11.5 CFA’s position changed

As well, it is significant that the agency’s position at the hearing of the claim was very different from its position in February 1994 – just two months after the trust had lodged its claim with the Tribunal. In a letter from the then Auckland area manager to the trust’s chairperson, dated 10 February 1994, the value of the trust’s contracts with the agency in 1992–93 is given as \$97,210.95 – some \$40,000 less than the figure given by the agency at the hearings, and some \$60,000 less than the Auditor-General’s figure and \$70,000 less than the trust’s figure. The letter states that, for the 1993–94 year, the agency has offered or already contracted with the trust for contracts to the value of \$135,333.35 and that a further \$10,000 is available subject to the receipt of an overdue report from the trust. It then states that the 1993–94 funding level ‘in fact represents a 33% increase in funding to the Trust for the services purchased from our agency this financial year, compared with last year’.¹³²

It was as a result of receiving this letter that the trust requested the Audit Office to audit its own and the agency’s accounts of the trust’s funding levels since 1991–92. It also obtained an audit from a chartered accountant. The accountant’s prompt response, by letter dated 14 February 1994, identified an error in the agency’s tallying of the 1992–93 contracts: it had omitted a contract to the value of \$62,178.00. The Auditor-General confirmed, by letter dated 28 April 1994, that the agency had made that error.¹³³

7.11.6 Basis of agency’s stance mistaken

While the positions taken by the trust and the agency at the hearings of the claim differed, they did not differ to anything like the same extent that they had nearer the time when the impasse over the trust’s 1993–94 funding occurred. In the increasingly tense atmosphere of that time – during the second half of 1993 – it seems that the agency was dealing with the trust either on the basis of a significant error about the level of funding it had allocated the trust the year before or on the basis that the trust’s tally of its 1992–93 funding did not need to be checked because it was of little relevance to the funding allocation process.

132. Document B4, app 1

133. Ibid, apps 2, 3

7.11.7 Trust watching trends

By contrast, in its dealings with the agency over funding for the 1993–94 year, the trust was very much focused on comparing the amount it was offered with past funding levels: it was well aware of the contribution it had made to its own delivery of social services in the previous two years and was eager to provide more services in the future on the basis of what it regarded as an equitable (larger) share of agency funding. And both the trust and the agency were also well aware that the trust was the largest deliverer of social and welfare services to Maori in West Auckland and that it was, by the agency's own standards, effective in its service delivery.¹³⁴

7.11.8 CFA says trust expected full funding

A major point made by the agency about its role as a partial funder was that its funding is a finite resource to be allocated amongst numerous service providers, most if not all of whom will believe their services to be deserving of more funding than is allocated. However, a particular point made by the northern regional manager was that Te Whanau o Waipareira Trust had, at least in the hearing of the claim, displayed an expectation that the Government should fully fund organisations delivering social and welfare services.¹³⁵ Crown counsel reiterated this point in closing submissions.¹³⁶

7.11.9 Tribunal view of the evidence

The Tribunal was surprised at the assertion that the trust expects the Government to fully fund its services. The claimants' evidence spelt out that the trust contributes a great deal of voluntary labour, as well as funding from its corporate activities, to its social services programmes.¹³⁷ That level of contribution was plainly regarded to be inequitable by trust witnesses but they explicitly accepted that there is never enough money to go around and that it is necessary for the trust to 'chip in' to provide its services.¹³⁸ Even the trust's 1993–94 'funding bid', in which it laid claim to a larger share of agency funding than had been allocated to it in the past, made provision for the trust's supply of voluntary labour to the value of \$55,000.¹³⁹ As Ms Reid later noted, the trust also expressed its aspiration to become fully self-supporting in time so that it would not need to look to the Government for funding of the services it provides to the people of West Auckland.¹⁴⁰ The confusion over the trust's expectations of the Government and the agency might have been less had the northern regional manager read the trust's funding bids. In response to questions from claimant counsel, she acknowledged that she had not done so.¹⁴¹

134. Transcript 4.2, p 127

135. Document C1(6), para 67

136. Document E7, para 140

137. Document B3, paras 2.1, 2.2, 3.8; doc B4, para 28; doc A19, para 6.9

138. Document A19, para 6.9

139. Document B5, app 7, p 30

140. Document B10, p 56; transcript 4.3, p 70

141. Transcript 4.2, p 140

7.11.10 Poor communication evident

Such disjunction between the agency and the trust, on such basic matters as the amount, and the relevance, of the trust's previous funding for social and welfare services, persisted for at least 18 months after the agency's establishment. We consider that very fact to be further proof that the quality of interaction between them on matters of agency funding policy was poor indeed.

We cannot reach a definite conclusion about what effect the agency's error in tallying its 1992–93 funding had on its 1993–94 offer to the trust. Nevertheless we certainly appreciate that, to the trust, the discovery of the error tended to confirm its belief that its 1993–94 funding level was inequitable.

7.12 AGENCY FUNDING OF MAORI IN WEST AUCKLAND

Ms Maryanne McGee, a former outreach worker working on contract for the agency at the time of hearings, provided an analysis of the funding allocated between 1991–92 and 1993–94 to West Auckland providers of services in areas of the families in need of support sector in which the trust was involved. The providers were grouped into two categories – Maori-based organisations and non-Maori based organisations – with average funding levels given for each category of provider in each programme area.¹⁴² It was explained that Maori-based organisations, for this purpose, included organisations with a board, staff, and target client group who are largely Maori and who have Maori views, ethics, and beliefs. Non-Maori based organisations are 'everybody else'.¹⁴³

7.12.1 Maori providers funded fairly

The agency said that its figures for Maori funding:

appear to refute the allegation that because Maori organisations have to compete for funding with non-Maori organisations, and are required to comply with changed criteria and the contractual demands of NZCFA and other government agencies, Maori are being denied the opportunity of deciding what is best for their own people.¹⁴⁴

The agency also said that the figures demonstrate that urban Maori are not ignored by agency policy: funding of iwi and urban groups is a matter not of 'either or' but of 'as well as'.¹⁴⁵

However, it was accepted by the agency that its 'bottom line' figures for the years 1992–93 to 1994–95 are of little value in illustrating the effectiveness of the social and welfare services delivered to Maori. As has been noted, monitoring of the consequences (outcomes) for clients of agency-funded services is not required by the

142. Document C1(13), paras 4–22, app 1

143. Transcript 4.3, p 109

144. Document C1(6), para 116

145. Ibid, para 100

Government and, apart from the needs indicator's ability to detect long term changes in need between and within areas, the agency is still in the early stages of developing client-focused measures of the outcomes of its funding. In the absence of those measures, many factors bedevil attempts to compare the positions of different groups of providers and consumers on the basis of the funding allocated by the agency (see sec 4.6.4).

Ms McGee acknowledged that a comparison of average funding levels for Maori and non-Maori organisations in West Auckland was of limited value because providers, and their client bases, would be very different. The point in providing those comparative figures, she explained, was to highlight any 'radical difference' in the average amounts of money going to Maori and non-Maori groups.¹⁴⁶ However, no evaluation was supplied as to whether the differences so highlighted did amount to radical differences which the agency should address or had addressed.

7.12.2 Trust disagrees with CFA conclusions

The trust's response to the agency's comparative funding statistics included both general and specific arguments. At a general level, the trust asserted that the agency's figures showed that funding in West Auckland, in the service areas identified in Ms McGee's evidence, had risen by 50 percent over the three years from 1991–92 to 1993–94. By contrast, it was said, the same figures showed that funding to West Auckland Maori organisations had increased less than 5 percent over the same period. Ms McGee responded that a large proportion of the total increase in West Auckland funding was attributable to the inclusion, in the West Auckland figures, of funding already assigned to other groups. As a result, she denied the validity of the conclusion drawn by the trust.¹⁴⁷

The trust noted, however, that the increase in West Auckland's funding included money transferred from programmes previously dedicated to Maori, including the koha placement and Maatua Whangai programmes. It contended that the small increase in funding to Maori groups over the period did not reflect the transfer of funding from Maori sources.¹⁴⁸

7.12.3 CFA says trust funded fairly

The trust's claim of inequitable funding by the agency related to the amount allocated to West Auckland Maori – whether or not by way of contracts with the trust. However, some of the agency's statistics compared the level of funding received by the trust relative to other agency-funded providers throughout New Zealand. Ms Reid summarised the import of these statistics by saying they showed:

146. Transcript 4.3, p 108

147. Ibid, p 122

148. Document E6, para 9.15

that the value of the NZCFA contracts with Te Whanau o Waipareira was amongst the largest of NZCFA contracts compared with the average value of contracts with all other service providers, both Maori and non-Maori.¹⁴⁹

The statistics highlighted were as follows:

- The level of funding allocated by the agency to the trust is available to only 2 percent of service providers contracted by the agency throughout the Auckland and Central North Areas. Nationwide, less than 10 percent of providers have contracts with the agency valued at over \$100,000. The trust is in the ‘highest category’ of providers.
- The trust’s ‘bid’ for additional agency funds in 1993–94 was equal to the total funding of 8.8 other groups receiving the average contract amount of \$23,925 in West Auckland for the provision of services in the areas in which the trust is involved.
- Of the 32 West Auckland providers funded by the agency to provide services in the areas the trust is involved in, the trust received 14.3 percent of the total budget of \$765,592 in the 1993–94 year.¹⁵⁰

The overall conclusion drawn by Crown counsel from the comparative statistics presented by the agency was that there were no grounds for the trust’s claim that the agency had acted unfairly to the trust or breached an alleged Treaty duty by reducing the trust’s funding. It was submitted that:

... Maori in West Auckland have been equitably funded by the NZCFA for social and welfare services in relation to funding allocated to other groups in Auckland; and in particular Te Whanau o Waipareira Trust has had equality of access to the resources available from the NZCFA.¹⁵¹

7.12.4 Waipareira’s response

A general response was made to Crown counsel’s mention, based on the statistics provided by Ms McGee, of the trust receiving 14.3 percent of the total funding available in West Auckland in 1993–94 to the 32 groups providing services in programmes in the families in need of support sector.¹⁵² Claimant counsel provided a context for that percentage amount by noting that, for the same programmes, the trust had received 32.1 percent of the West Auckland pool in 1991–92 and 25.5 percent of that pool in 1992–93. He concluded:

Waipareira could be forgiven for believing that in light of this significant and consistent decline in its ‘share of the pie’, its position was being progressively and severely downgraded.¹⁵³

149. Document C1(6), para 209

150. Ibid, paras 213–216

151. Document E7, para 147

152. Ibid, para 145

153. Document E8, para 41

The trust's main response, however, was to analyse in detail the CFA's funding to the trust under two categories: homebuilders and family-whanau development, and care services.

7.12.5 Homebuilders and family-whanau development funding

(1) Trust originally only Maori provider

The first, and most significant in dollar terms, of the more specific challenges made by the trust to the agency's comparative statistics related to the funding of home-based services in West Auckland between 1991–92 and 1993–94. Ms McGee's evidence was that in 1991–92, before the agency was set up, the trust was the only Maori provider of Homebuilder services and:

received a very high proportion of funding from what was then the [DSW's] Community Services team as opposed to any other provider, Maori or Non-Maori. . . . the average funding for Non-Maori providers of home based services in 1991/92 (1 Pacific Island and 1 Pakeha) was \$57,482. In that same funding year Te Whanau o Waipareira Trust received \$123,457 which was 51.8% of the total funding for the Homebuilder services.¹⁵⁴

That high proportion of funding in that year has created problems for subsequent years where funding was required to be provided on the basis of caseload need.¹⁵⁵

In the 1992–93 year, the trust's funding for home based services was \$97,142.86 and another Maori provider received \$18,000 for those services.¹⁵⁶ Therefore, the total funding to Maori providers that year was \$115,142.86 or 54.9 percent of the West Auckland allocation for those services. A single non-Maori provider received the \$94,568.63 allocated to non-Maori groups for such services.¹⁵⁷

(2) Funding programmes restructured

The restructuring of funding programmes for the 1993–94 year led to the creation of the family-whanau development programme. Because it absorbed funding from areas previously classified differently, it is difficult to compare 1993–94 funding with that allocated from the earlier homebuilders programme. Ms McGee suggested that the total amount allocated to Maori providers in 1992–93 for both homebuilders and family resource services (\$120,928.86) could be compared with the total allocations made to Maori providers in 1993–94 from the new family-whanau development programme (\$119,749.00). She noted, however, that the 1993–94 figures were

154. It is notable that the trust's 1991–92 allocation for homebuilders services included the \$40,000 one-off establishment grant that was a major element in the difference between the parties' tallies of the trust's funding for that year (doc E7, para 146).

155. Document C1(13), para 17

156. The other Maori provider in 1992–93 was Te Roopu Mataihi Trust of south Kaipara, and the matter of its funding that year and subsequently was the subject of the disagreement between the agency and the trust, as discussed at section 7.6.

157. Document C1(13), para 18, app 2

distorted by the inclusion in the family–whanau development programme of national contract, community housing and other funds.¹⁵⁸

(3) Sharp decline in West Auckland share – trust

Using the basis for comparison suggested by Ms McGee, the trust totalled the funding it had received from the relevant programmes in each of the three years. In 1991–92 it received \$125,957 (42.1 percent of the total funding available for those services in West Auckland); in 1992–93 \$102,928 (34.5 percent of the West Auckland total for those services); and in 1993–94 \$70,000 (15.6 percent of the West Auckland total for those services). Claimant counsel said these figures ‘represented a massive decrease which CFA has still not explained’.¹⁵⁹

(4) Holistic service prejudiced

He also drew attention to the fact that family–whanau development services are ‘in essence ordinary Social Worker casework’ and that, in practical terms, while funding for the trust’s services comes from different funding programmes, the delivery of services is closely interlinked:

If a child comes into care with Waipareira, it will be important to maintain a case worker to assist the child in reestablishing their links with family and being ultimately de-institutionalised. Thus without the case work [family–whanau development] component to back up the care category or the youth category, the overall effectiveness of the service is significantly diminished.¹⁶⁰

Although the agency gave additional reasons for the particular level of funding allocated to the trust from other programmes in the families in need of support sector (see sec 7.12.6(2)), its explanation of what the trust referred to as ‘a massive decrease’ in its funding in this area was supplied by the general evidence it had given about the basis of agency funding. The two major components of that explanation are that the agency funds on the basis of the needs, assessed both nationally and within areas, identified in the services planning process; and that, on that basis, the trust’s 1991–92 funding level – which in effect set the 1992–93 level – was inflated.

7.12.6 Care services

(1) Trust’s share declines

The second of the more specific challenges made by the trust concerned the funding of care services in West Auckland between 1991–92 and 1993–94. The trust and one other Maori group received agency funding for care services in West Auckland in 1991–92 and 1992–93. The \$38,000 allocated by the agency to the two Maori providers in 1991–92 represented 26.4 percent of the funding allocated for care services in West Auckland. Of that \$38,000, the trust received \$30,000. In 1992–93, \$45,000 (20.4

¹⁵⁸. Document C1(13), paras 19–20

¹⁵⁹. Document E8, para 44

¹⁶⁰. Ibid, para 45

percent of care service funding in West Auckland) was allocated by the agency to the two Maori providers, with the trust receiving \$40,000. In 1993–94, the other group ceased providing care services and the trust was allocated \$30,000 (12.8 percent of West Auckland’s care service funding).¹⁶¹

(2) CYPS places children within whanau?

The reduction in the trust’s level of funding for care services between 1992–93 and 1993–94 was partly explained by the advice given to the agency by the Henderson office of the Children and Young Persons Service (CYPS) that it preferred to place Maori children within their whanau in line with the Children, Young Persons, and Their Families Act 1989 and so did not require a greater supply of Maori care services.¹⁶²

(3) CYPS advice to CFA wrong – trust

Mr Stewart of the trust, adverting to difficulties caused by the reduction in agency funding for its care services, said that, if the agency had been told there was no need for a Maori care service in West Auckland because Maori children were being placed with their whanau, then it had acted on inaccurate information. The trust, he said, had clearly demonstrated the need for such a service but that information had not ‘filtered through’.¹⁶³ The claimants questioned CYPS ability to readily place Maori children and young people within their whanau, hapu or iwi, in light of the evidence that providers were having difficulty collecting iwi affiliation statistics (see sec 7.10.5(2)).

The agency acknowledged that in the 1992–93 year, a large proportion of the trust’s care service clients had been referred from out of the West Auckland area and that this made it difficult to trace any links to their whanau, hapu, and iwi. As a result, it was difficult to know whether those referrals to the trust were appropriate in terms of the Children, Young Persons, and Their Families Act 1989 which promotes the placement of Maori children and young persons within their whanau. However, the agency’s experience was that the Henderson CYPS office made every attempt to find out the whanau, hapu, and iwi of Maori youngsters and place them appropriately.¹⁶⁴

(4) CYPS still uses trust

Although not focused on at the hearings, the trust also put in evidence its response to the questionnaire about child and family support services that had been distributed by Deloitte Touche Tohmatsu in advance of preparing its report.¹⁶⁵ Written early in 1994, after the trust lodged its claim with the Tribunal, the trust’s response notes that:

161. Document C1(13), paras 6–8, app 1

162. Ibid, para 9

163. Document B10, p 70

164. Transcript 4.3, pp 100, 123; doc C1(13), para 10

165. Document B4, app 6

There has been a marked increase in CYPS referrals both for care and for other services. Further there has been a noticeable increase in the complexity of cases both from our own referrals, from lawyers and from CYPS.

There has been a marked increase in the referral of adolescents most noticeably from outside our area.¹⁶⁶

(5) Trust under pressure

In his final submissions to the Tribunal, counsel for the claimants spelt out the basis of the trust's concern over the agency's funding of its care services. It was said that, despite the advice the CYPS had given the agency – and the reduction in trust funding which occurred as a result – the CYPS had continued to place unabated demand upon the trust's care services.¹⁶⁷

Neither the Tribunal nor the Crown had fully appreciated the trust's concern over the funding of its care services until counsel made his final submissions. The Tribunal requested that claimants' counsel clarify the matter in writing and undertook to provide the agency with an opportunity to respond.

In a letter dated 18 July 1995, claimant counsel informed the Tribunal that the trust had provided 2492 bednights in the 1993–94 year and that the number of bednights provided in 1994–95 would exceed 2500.¹⁶⁸ The letter was duly copied to Crown counsel. No response was received.

(6) Needs assessment by Runanga o Ngati Whatua

Another reason that was given for the reduction between 1992–93 and 1993–94 of the level of agency funding for the trust's care services was that, at the time funding decisions were made, the agency was awaiting the results of a needs assessment which Te Runanga o Ngati Whatua had requested be carried out and which it was conducting. The assessment was to include information about the possible need for care services among Maori in the areas covered by the Ngati Whatua rohe. The delay in the needs assessment caused the agency to delay making decisions about possible changes in resource allocation to care services.¹⁶⁹

At the time of the Tribunal's hearing in March 1995, it appeared that the agency-funded needs assessment was still not complete. Although a final draft of a first needs assessment had been completed in 1993, its results were very general and had necessitated a second assessment focusing specifically on social service needs. Some difficulties had been experienced in obtaining the services of a person to conduct that assessment. Ms McGee said that the trust had not lost any funding as a result of the delay with the needs assessment. Further, she did not believe it was meaningful to ask if the trust had lost access to extra funding as a result.¹⁷⁰

166. Document B4, app 6, p 4

167. Document E8, para 42

168. Document E11(a), p 2

169. Document C1(13), para 12

170. Transcript 4.3, pp 101–102, 112

(7) '*A tangle of disagreements*'

The parties had disagreements in all aspects of their relationship. They disagreed over the facts of the claim, beginning with the amounts of money that had passed between them, and therefore they disagreed on the trend of funding decisions and what that showed about their dealings. There were vexatious matters of communication and courtesy which appeared not to affect the funding position – for instance, delays (which the agency acknowledged were unacceptable) in processing correspondence from the trust, and some misconceptions on the trust's part about agency funding. There were more serious misunderstandings or failures of communication such as that over the requirements on the trust to report to the agency on its expenditure and results.

Under ordinary circumstances, all these problems were capable of being resolved by straightforward discussion between the parties. But the difficulty in this case was that, in the background, the parties disagreed over more important issues. The trust thought that the CFA's funding policies, which promoted service development rather than community development, infringed on its right (and its responsibility) to design and implement the programs that it felt would be most cost effective for its community. The trust also felt that the CFA's services planning was inadequate in that it relied on flawed data and focused on service outputs rather than social outcomes, to the detriment of the trust's community. The policy differences, in turn, overlaid their disagreements over the structural relationship between the parties, which crystallised in this claim as a dispute over the trust's status as a Maori group under the Treaty of Waitangi and its expectation that it should be consulted and have input into the CFA's policy.

In the next chapter, we outline our conclusions as to why an impasse between the parties resulted; we identify the relevant Treaty principles and make our findings on the extent to which they were breached; and we make recommendations which we hope will guide the parties towards a more constructive relationship.

CHAPTER 8

CONCLUSIONS, FINDINGS, AND RECOMMENDATIONS

8.1 CONCLUSIONS ON OPERATIONAL CONFLICTS

8.1.1 Differences of opinion reflect deeper problems

In this claim, the simplest disagreements between the parties took on a greater significance, indicating as they did the underlying problems between them. Differences of opinion masked communication problems, which resulted from their different perceptions of the issues, which overlaid structural problems in the relationship between them. And just as the problems were symbolic of bigger issues, so were the potential solutions. The trust sought discussion and negotiation to resolve their differences, but it must have seemed from the agency's point of view that the very act of entering into debate about its funding policies and criteria could have been seen to validate the trust's claim to be a Treaty partner of the Crown, which the CFA disputed. Also, the CFA was not prepared to make ad hoc changes to its funding policies because that would threaten the consistency of its funding decisions and undermine the integrity and credibility of the agency's own stance. This may explain what appeared to the trust to be the siege mentality that developed in the CFA.

There was certainly no agreed mechanism for talking about their policy or operational differences, let alone Treaty issues. In fact the CFA seemed unable even to recognise the basis of the trust's stance. The only challenges the CFA was prepared to entertain concerned funding decisions, for which it had devised an appeal procedure just prior to the claim. Even though the outreach worker was not responsible for the policy matters which the trust was trying to discuss with the agency's management, the trust's challenges were repeatedly referred back down to him.

The agency took an unyielding prescriptive approach with the trust, asserting that the Crown's right to govern under article 1 of the Treaty was not qualified by article 2 in this case, while at the same time it developed protocols for consultation with 'iwi' (by which it meant traditional kin-based tribal groups) in recognition of their rangatiratanga and of the fact that a partnership with them was established by article 2. The trust was not an 'iwi' as the agency understood the term, and was thus not considered to be a Treaty partner of the Crown entitled to consultation as such; it was acknowledged only as having collective rights under the equal citizenship provisions of

article 3 of the Treaty which were the same as those of other interest groups, including, as a Maori group, the right to affirmative action to overcome disadvantage relative to non-Maori.

8.1.2 The department's policy relied on *Puao-te-Ata-tu*

The agency's view and its stance towards the trust were derived originally from its interpretation of *Puao-te-Ata-tu*. It was stated that the department's focus on and commitment to *Puao-te-Ata-tu* had been lost in the past but had been restored under the director-general at the time of the hearings. We heard from Mr Boag that there were three main themes of *Puao-te-Ata-tu* – the need for the DSW to become more bicultural in order to serve Maori clients better; the need for tribal structures to be strengthened through greater Maori involvement in policy development and service delivery and greater accountability by the department to Maori; and the need for the department to coordinate urgent Government action to address the social crisis that was developing in Auckland and other major cities.

In relation to the first theme, the department argued that implementation of a policy of biculturalism, which it was in the process of doing but had not completed at the time of the hearings, would fulfil its obligations to Te Whanau o Waipareira by ensuring that Maori were given equitable consideration in the operations of the department.

The second theme referred to the goal of strengthening tribal structures. The department's policy on recognition of 'iwi authorities' (later called 'iwi social services') which was enacted in section 396 of the Children, Young Persons, and Their Families Act 1989, and the planned devolution of many of the department's functions to recognised iwi authorities, were directed to achieve this end.

At the time section 396 was enacted, the thrust of the Government's Maori Affairs policy was the development of a Treaty-based partnership between the Crown and Maori people. This was to be done by devolution of responsibility for implementing and administering Government programs to 'iwi (tribal) or other appropriate organisations', or 'traditional iwi structure[s]'.¹ The short-lived Runanga Iwi Act was passed to facilitate and regularise this process.

Section 396 of the Children, Young Persons, and Their Families Act concerned sole guardianship of children, a matter critical to the rangatiratanga of a group. In line with its bicultural approach adopted in response to *Puao-te-Ata-tu*, the department consulted Maori people in developing its policy for approving iwi social services. The director-general said the advice the department received through its consultation was consistent with its conclusion that only kin-based iwi or hapu exercised the rangatiratanga guaranteed protection in article 2, and were thereby the Crown's Treaty partners entitled to special consideration. Undoubtedly, in line with its interpretation of *Puao-te-Ata-tu*, the department attached particular importance to the views of iwi over those of other groups, such as Te Whanau o Waipareira, who

1. *He Tirohanga Rangapu: Partnership Perspectives – A Discussion Paper*, Ministry of Maori Affairs, April 1988, pp 4, 13. This is a discussion booklet outlining the Government's plan for devolution.

expressed a dissenting view. In any event, Te Puni Kokiri endorsed that conclusion; and the department's legal advice also confirmed that, under section 396, only those social services which are established by kin-based iwi can be recognised as iwi social services.

Therefore, while the director-general said that rangatiratanga was 'the key principle that we are working to . . . I see it as empowering Maori to have control of their own destiny',² section 396 was seen to give priority to empowering tribal structures compared with 'pan-tribal' typically urban groupings like the Waipareira trust (although the department dealt with and funded both types of groups). The director-general added that even if the statute were to be changed, the department would still be guided by the preponderance of Maori opinion on whether or not non-kin based groups should be granted sole guardianship of Maori children, because a matter of such importance was for Maori to decide, and not for a Government department.

The director-general openly acknowledged that the department's interpretation of *Puao-te-Ata-tu*, and its consequent focus on the rangatiratanga of kin-based 'iwi' with all its implications for Treaty partnership, presented the department with a dilemma when placing children under the provisions of the Children, Young Persons, and Their Families Act. The Act requires that, where possible, Maori children should be placed with their whanau, hapu or iwi; but in many cases the iwi of such children was either not known or had no practical significance to them. Also, as was acknowledged at the hearings, at that time there were comparatively few Maori service providers, whether kin-based or otherwise, who were sufficiently established to provide the level of care and protection required by such placements. The department's response, she said, was to resolve the dilemma as best it could by recognising the sovereignty of iwi and at the same time dealing with pan-tribal organisations, while continuing to be guided by the preponderance of Maori opinion.

8.1.3 A broader interpretation of *Puao-te-Ata-tu*

The restrictive interpretation of *Puao-te-Ata-tu* was a key plank of the department's argument before us. We have already noted our conclusion that *Puao-te-Ata-tu* did not address directly the question at the heart of this claim, namely the status under the Treaty of non-tribal communities of Maori who live away from their traditional home territories. The Treaty remained in the background of *Puao-te-Ata-tu*.

Mr Boag acknowledged that iwi development was the Government's Maori Affairs policy at the time the report was written, and he said the committee's expectation was that in the long term, Maori would respond to the initiatives recommended in *Puao-te-Ata-tu* by strengthening their kin-based communities. But clearly the committee did not adopt a prescriptive approach, and members were not certain how Maori in Auckland might respond. In the interim, Mr Boag believed, a pragmatic approach was best in deciding who to consult and deal with. He denied that the Rangihau

2. Transcript 4.2, p 19

committee advocated that only kin-based groups be recognised as service providers in order to achieve the long-term goal of strengthening Maori communities: instead, the committee was concerned that the department should talk to the ‘right’ Maori people and develop a range of responses appropriate to their various situations. As a result, he agreed with the claimants that *Puao-te-Ata-tu* was capable of a broader and more generous interpretation than it was given by the department.

Such an approach might have avoided the department’s dilemma over placing children for care and protection with a tribal community that was foreign to them or that was insufficiently equipped to meet their needs. It might also have averted the department’s disputes with the Waipareira trust.

We consider that, having reached the view that only traditional kin-based iwi were its Treaty partners, the department denied itself the fullest opportunity to consult the advocates of different viewpoints. Instead, when challenged to justify its stance in terms of the Treaty, it relied on the strict terms of the separate articles, rather than the principles and the intent of the Treaty as a whole. In effect, the Crown construed the Treaty against ‘te pani me te rawakore’, Maori who are not organised in traditional tribal groupings, while at the same time acknowledging that such people have Treaty rights.

The third theme of *Puao-te-Ata-tu*, concerning coordination of Government action to avert the social crisis in Auckland and elsewhere, was overshadowed by the restructuring of the national economy and the State sector, a matter we return to later.

8.1.4 Communication problems

What made the parties’ differences of opinion intractable was the lack of good channels of communication between them. In chapter 7, we identified three possible avenues that were blocked – recognition of the trust as an Iwi Social Service under section 396 of the Children, Young Persons, and Their Families Act; direct dialogue with agency management over policy issues that was frustrated by the agency’s policy of devolution to outreach workers; and the lack of a consultation protocol for the agency’s dealings with Waipareira.

8.1.5 Section 396 of the Children, Young Persons, and Their Families Act 1989

We consider that the policy developed for recognition of iwi social services, by which the trust was bound not to qualify, was an enormous blow to Te Whanau o Waipareira’s aspirations. At the time Waipareira applied for recognition, the term in section 396 was ‘iwi authority’, and in the context of the Government’s Maori Affairs policy of devolution to iwi, ‘iwi authority’ had all the connotations of ‘Treaty partner’. The perceived importance of ‘iwi authorities’ no doubt stems from the idea that the Crown has a list of Treaty partners. In *He Tirohanga Rangapu*, the April 1988 discussion booklet outlining the Government’s plans for devolution, the role of iwi was described in this way:

Maori signatories to the Treaty of Waitangi represented a specific iwi or hapu. The strength of the traditional iwi structure is reflected in their continuing existence today. . . .

It is suggested that iwi organisations which meet eligibility criteria jointly established by the Government and iwi should become responsible for implementing and administering government programmes. . . .

The appropriate iwi-based organisations must be identified, and this can only be done by the iwi themselves. However, there must be some limitations to prevent an undue proliferation of iwi organisations – as looks like happening at present . . .

The Government proposes to establish criteria which would qualify an iwi to participate . . . Whatever arrangements might be devised they would need to reflect the responsibilities of the Government to Parliament and the taxpayer, and also the responsibilities of iwi to their members.³

The Runanga Iwi Act gave legislative effect to this policy.

Waipareira clearly believed that recognition under section 396 as an ‘iwi authority’ was one way to get on that list of Treaty partners and join the fast track to consultation and input to Government policy, Government funding, and control over service delivery. The director-general at the time of the hearings clearly shared that view, as did many Maori. This is no doubt why Maori insisted on a change from ‘iwi authority’ to ‘iwi social service’ in the wording of the section, to avoid any possible misunderstanding that they were conceding to the DSW the right to decide which organisations represented them in their wider dealings with the Crown.

Recognising the importance of the right to take sole guardianship of Maori children, a matter which was seen by the department and the Maori whom it consulted as central to the identity and future of Maori groups, the CFA eventually adopted narrow criteria for approval which clearly denied recognition to groups like Te Whanau o Waipareira. This had the effect of placing Waipareira outside the Treaty partnership as the department perceived it.

8.1.6 Devolution to outreach workers

The policy of devolution to outreach workers led to problems apparently because of communication breakdowns within the agency. Mr Takerei, the outreach worker who liaised with Waipareira, stated that he had tried to raise Waipareira’s policy concerns with his managers, but he received no response. Waipareira’s direct communications with agency management were referred to Mr Takerei apparently without a proper analysis of the issues raised. These exchanges occurred during the time when the agency was determined to establish in the minds of all service providers the new style of interaction, which discouraged direct approaches to senior management to overrule local funding decisions.

3. *He Tirohanga Rangapu*, p 13

8.1.7 Consultation protocol

It may be that many of the problems between the trust and the agency can be solved by a protocol for consultation between the parties. Clearly, there was no principle behind the agency's failure to develop one with Waipareira. We can only conclude that it was a casualty of the destructive relationship that developed, and we note with approval the agency's statement that it makes good sense to have one.

8.1.8 Services planning the crux

As we outlined in chapter 7, the lack of consultation and communication between the agency and the trust came to a head over the trust's lack of input to the agency's services planning process, which is the basis for its funding decisions. The trust argued that the underlying philosophy, the information base, and the agency's decision-making procedures were all flawed, and as a result, the agency's funding decisions were inequitable and the trust's community was prejudiced.

(1) Service development philosophy

The trust claimed that when the agency's philosophy of service development so completely replaced one of community development, the values, aims and aspirations of its community were lost sight of in welfare services, and the Treaty partnership broke down. In carrying out its task, the agency was pursuing only the Government's agenda – a fact which the agency freely acknowledged, and which it attributed to the requirements and the 'strictures' of the Public Finance Act 1989 and the State Sector Act 1988.

(2) Monitoring of services' effectiveness

Under the State Sector Act, the Government alone sets the social goals to be achieved by the department and the agency (by a process which was not known to the general manager of the CFA). Through its services planning, which provides for limited consultation with the community, the agency proposes the services that should be purchased to best achieve the predetermined goals. Once its budget is allocated, the agency decides who should provide those services; and at the end of the financial year, it reports to Government on the services which were provided.

The trust criticised the services planning process, and the agency's reporting to Government, for not being measured against the desired outcomes, the social goals set by the Government. Therefore no assessment was possible of the effectiveness of providers or the agency, only their efficiency in securing or supplying the proposed services within the budget allocated for that purpose. The agency pointed out that the Public Finance Act does not require it to assess the effectiveness of the services it purchases, although it acknowledged that such an assessment would be valuable, and it had begun developing methods of assessing social impact.

The trust argued that social impact assessment would show that the CFA's approach to achieving the desired social outcomes for the Waipareira community was deficient. This affected the style of service delivery to its clients. For example, the trust

contended that the appropriateness of services to clients could not reliably be determined by outsiders using objective criteria, but could be assured if service providers were fully accountable to their community and operated with a proper mandate. By this argument, the trust was not asserting that such a provider would be immune from more formal monitoring measures: it praised the tripartite system of monitoring kohanga reo, for example. Importantly, however, it saw it as the role of the trust, on behalf of the community, to ensure that funding to community groups was allocated only to those whom it judged effective. Providers had to present themselves and their programme to a meeting of the whanau which then decided whether or not to endorse them and grant them status as affiliates. Also, the trust acted as an umbrella group for the benefit of its affiliates. However the CFA's policy was to fund competing providers in order to achieve the CFA's own goal of funding a range of appropriate services to clients – an approach which the trust said was wasteful and ineffective.

For another example, the trust was convinced that integrated or holistic services were most effective, such as its alternative school which combined elements of education, social work and vocational training. However, the funding and reporting mechanisms of the Public Finance Act are specific to each programme within each Government agency, so there is no incentive for them to cooperate, no 'ownership' of the bonus that could be gained by integrating programmes, and no way to measure the increased benefit anyway.

(3) Equitable funding

Finally, the trust asserted that the funding allocated to West Auckland Maori, and to the trust in particular, was inequitable because the methods used by the agency to assess community needs and weigh them up against the needs of other communities failed to take into account all the relevant factors. Among those factors were a decline in funding for Maori programmes that followed the mainstreaming of the Department of Maori Affairs, and the relative disadvantage facing Maori community groups in comparison with established service providers in the mainstreamed environment. The CFA acknowledged that its needs index was being refined and it had not 'got it all right' at the outset.

8.2 FINDINGS ON JURISDICTION AND APPLICABLE PRINCIPLES

8.2.1 Jurisdiction

We find that the claim for Te Whanau o Waipareira is well founded. We consider the claim was honestly brought, not to obtain an advantage over others in competition for limited funds, but to seek to have their relationship with the Crown established on a proper Treaty basis, and to ensure that structural arrangements and policy directions can adequately achieve appropriate outcomes for their community.

There was no dispute that the policies and practices of the DSW as applied to Te Whanau o Waipareira, are policies and practices of the Crown. The central issue in

terms of our jurisdiction, was whether those policies and practices are inconsistent with the principles of the Treaty of Waitangi and prejudicial to the Waipareira claimants.

8.2.2 Applicable principles

As we outlined in chapter 1, the key Treaty principles in this claim are the principles of rangatiratanga and protection, and the partnership which arises from the Maori gift of the right of governance in exchange for the Crown's promise to protect Maori rangatiratanga.

8.2.3 Rangatiratanga principle

Rangatiratanga, as we explained in chapter 1, is not just Maori authority or control, as the Crown suggested. In Maori culture, it is the reciprocal relationship of trust between leaders and members of a Maori community, kin-based or non-kin based. It is the role of rangatira to protect and promote the interests of the community itself and all its members. A rangatira has a duty to protect, nurture and augment the human resource by maintaining a safe spiritual, social, and economic environment, one that maximises the benefits to and the contribution from all members, with the aim of enhancing the autonomy of the community, and their ability to determine their future direction and manage their affairs according to their own priorities. A rangatira secures the support and political allegiance of the people, the community from whom he or she gains the authority to articulate their will and advocate their interests.

Rangatiratanga is a dynamic relationship; popular support, freely given, can equally freely be withheld or transferred in order to better secure the interests of individual members or the community. However, the need to maintain the unity and integrity of Maori communities was a powerful social control. 'He totara wahi rua, he kai na te toki' – 'A split totara is vulnerable to the axe.' Individuals have their personal responsibilities to the community, including its past and future generations.

The political success of a rangatira may wax and wane, ebb and flow; yet rangatiratanga itself endures as a fundamental value in Maori culture, and the key customary principle in Maori social, political, and economic organisation. Kinship and descent provide ready-made networks of relationships among Maori, but it is rangatiratanga that determines which of those relationships have current significance.

It follows, therefore, that rangatiratanga is how a Maori community identifies itself – the acknowledgement and fulfilment of the reciprocal duties and obligations between members and leaders reflects the extent to which the people perceive themselves to be in a community. Usually rangatiratanga is manifest amongst members of a hapu, sometimes amongst a wider group of kin united under a paramount leader, and, in modern times especially, sometimes amongst a community of people who are not all connected by kinship. Conversely,

rangatiratanga also allows others to identify a Maori community, and, in the context of this claim, we have found that any community in which rangatiratanga is evident deserves special recognition in terms of the Treaty of Waitangi.

In chapter 1, we reiterated earlier findings of the Tribunal and the courts that Maori autonomy and authority can apply in a range of situations in the modern world, not merely, as the Crown contended in this case, in the management of lands, forests, fisheries and other properties. In article 3, the Crown imparted to the natives of New Zealand all the rights and privileges of British subjects. The Maori text and the oral promises made at the signing of the Treaty make clear that what was guaranteed is the right to speak their own language and live according to their own custom, for example, and is not the imposition of English language and the rule of English law. The Maori text says: ‘ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani’ – ‘[The Queen of England] allows or grants to them [that is, to all Maori people] all customary values and practices, just like theirs [are allowed] to the people of England.’

This principle has some counterpart in current human rights standards that groups should be empowered, within reasonable or necessary State constraints, to be responsible for themselves, for the sake of their own dignity and to harness their capacity, so that their potential might be realised. It is a principle of common courtesy to respect others in that way, and common sense that cultural groups and communities know better than anyone else what they need or would aspire to, and how to achieve their own goals. The Treaty merely underlines the obligation to so provide for the indigenous people.

It was emphasised in this claim that Waipareira acknowledged the mana whenua claims of Ngati Whatua nui tonu and Tainui nui tonu; that Waipareira’s claim was at a different level, and that Waipareira placed particular importance on participation in social service delivery because they had no natural resources of their own to develop. The point is that the Crown’s duty is to protect rangatiratanga wherever it is manifest. In this case it does not extend to the natural resources or esoteric lore of the tangata whenua. The Crown guarantee, in the context of this claim, is to protect the Maori customary principle of social, political and economic organisation, or the right of any or all Maori to identify with the communities and support the leaders of their choice, in accordance with Maori custom; and an undertaking that its dealings with the Crown will, as far as is reasonable and practicable, enhance the autonomy of any such community and the authority of its leaders. A question the Tribunal had to consider was how the Crown might properly have given effect to its guarantee.

8.2.4 Protection principle

Another important question is whether the policies and practices at issue in this claim enhance the solidarity and integrity of Maori communities and empower the people, or whether they divide and rule them. In chapter 1, we reiterated that the Queen’s protection applies in a general way to all Maori people; in particular, we found that

article 3 assured Maori of recognition and protection as a people, in addition to rights of equal citizenship.

In this case the DSW, acting on advice from certain Maori, assumed responsibility for deciding that Maori who were organised into non-tribal communities would not be given special consideration. Furthermore, the CFA, by directly funding the trust's affiliates, hindered their banding together under the umbrella of the trust. This undermined the rangatiratanga of Maori living in West Auckland, their right to organise themselves as they preferred, and denied the Treaty's protection to some.

By contrast, the Maori expectation, based on their customs of rangatiratanga and the guarantees of the Treaty, was that the Queen would ensure that Maori as a people benefited from her kawanatanga and the European settlement and development that followed, just as the Queen had benefited from the Maori gift of the right to govern.

8.2.5 Partnership principle

This goes to the heart of the partnership implicit in the Treaty. In chapter 1, we found that the exchange of the Maori gift of kawanatanga for the Crown's guarantee of protection established the basis of an ongoing partnership between Maori and the Crown.

In the case of Waipareira, a partnership was not acknowledged by the Crown. The argument the Crown presented to us is that the principle of partnership as found by the Court of Appeal in 1987, and which was presented as underlying devolution policies, describes a partnership between the Crown and 'traditional iwi'. As a matter of law the argument is unsustainable on two grounds. As to the first we can find nothing in the decision of the Court of Appeal to determine that the partnership was with traditional iwi. On the contrary, the court speaks of a partnership between the Crown and Maori. That includes traditional iwi, of course, and in decisions of the Court of Appeal they are naturally spoken of, but we can find no judicial leaning to exclusivity.

The second ground has also been previously mentioned in chapter 1. 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 Maori 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 for example.

The restrictive argument comes not from judicial opinion but the application of a narrow interpretation to a broad legal principle that should not be so constrained.

(1) Partnership through devolution

We must look to the origins and underlying purpose of a thing to divine its true intent and this applies not only to partnership but to empowerment by devolution generally. What is the principle behind devolution to Maori but that Maori communities should be empowered to take control of their own affairs? What is the customary Maori principle but survival of the group, and therefore that community autonomy is to be

maintained, ensuring the location of power at the basic level of the functioning community?

As the evidence in this case has amply shown, Te Whanau o Waipareira became the effective force that it is today partly because the policies of devolution, and the funding Waipareira subsequently received, enhanced the rangatiratanga that, since the 1950s, had been drawing Maori people in West Auckland together into a community. It enhanced the capacity of the trustees to meet the welfare needs of their community, and it broadened and strengthened the base of their support.

The restrictive approach, limiting devolution to tribes, came later, in policy documents of the Government already referred to. This was on the basis that there was a partnership between the Crown and not Maori, but exclusively tribes, and many Maori subscribed to it.

In this case we consider, for reasons given in chapter 1 and elaborated here, that the devolution policy is consistent with the principles of the Treaty but that the restriction of devolution to tribal authorities is not. The problem is not the policy of devolution as such, but the introduction of prescriptive rules that do not take account of all sections of the Maori community. This restrictive view impacted on Te Whanau o Waipareira probably more than anything else, and created a serious dilemma for the DSW, so we examine it in more detail.

(2) Partnership with communities

What then is the basis for restricting devolution to tribes? It appears to us that one is the Treaty partnership argument but, as we have found, that is flawed. The other relies on the importance of maintaining tribes as representing the customary units of Maori society.

Apart from one argument about the maintenance of kinship links, to which we shall later refer, this claim does not touch on the customary status of tribes in our view, save to the extent that the inclusion of urban groups in the distribution of limited resources may be seen to reduce that available for tribes. Special consideration of non-tribal groups does not diminish the right of tribes to special consideration as well.

The principle behind the process of empowerment by devolution to Maori is that Maori communities should be assisted to take control of their own affairs. To do that we must look to the communities as they are and not as they were or as we would have them be. Indeed to insist that Maori communities should all be of one kind is itself disempowering of those Maori communities that are not.

This is not to denigrate the tribes, or the tribal runanga or other authorities established to represent the tribes in a district and to manage their material and cultural resources. Tribal communities clearly exercise rangatiratanga, which must be actively protected. Kinship is a key criterion by which tribal members may gain access to their own traditional natural resources, tribal history, oral literature and traditions, tribal dialect, and other taonga which are only accessible through this channel, and only by the appropriate people. These are incentives which give kin-based groups a natural advantage over other types of organisation claiming the allegiance and

support of individual Maori. But it does not follow from this that genealogy is the only principle of Maori social and political organisation.⁴ Devolution is not about empowering a particular type of structure no matter how important it may be. It is really about empowering communities to achieve their aspirations having regard to their own perceptions. Our concern is that, in the absence of effective trusteeship exercised by the hapu, tribal prescriptiveness does not reach out to all Maori, and all Maori are entitled to the Treaty's benefit and on terms that are equal for all. An inclusive, not an exclusive approach is thus required in defining Maori communities if Maori communities are to be empowered under devolution principles.

(3) Custom accommodates various communities

We observe that this approach may be seen as consistent with custom. It is clear that far from being static, Maori communities have changed over time. No doubt they will continue to do so. They have changed throughout history with hapu growing, disappearing and emerging, their political alliances reshaping continuously, and sometimes with major migrations occurring, the migrants regularly gathering adherents from communities far and wide. It is thus apparent that, in 1840, Maori were not organised into the same communities as they were only 20 years before. There were major and pan-tribal movements in the interim, as the migrations to Wellington in the 1820s and 1830s well show. And those that exist today did not all exist in 1840. The concept of iwi authorities has grown, exercising corporate functions previously unheard of, and so too national bodies, each valid if they serve the needs of Maori in a new age. In addition new urban communities have grown as well, and these for many may now represent the communities of their choice.

The Treaty no more invalidates those things that happened after it than it did those things that happened before. It did not freeze Maori in time. It accommodates change for it is the customary values and the principles that remain the same. The fundamental principle of customary organisation is the survival of the community, requiring that its autonomy is to be protected, and ensuring the location of power and decision-making at the basic level of the functioning community. Here again to do that we must look to what constitutes the functioning community and not to some broader politic.

We thus caution against reinterpreting custom to bolster what is really a current Government policy desire. We can find no fundamental tenet of custom law that says that Maori can be serviced only through tribes. On the contrary, there is evidence that Maori were creative in adopting a range of institutions to meet their needs that were not based on kinship, but were Maori none the less.⁵ This creativity was consistent with a freedom of choice, and there is historical evidence that Maori valued their

4. Maori have consistently denied that identity is based solely on degree of 'blood'. For instance, in 1974 the definition of a Maori in the Maori Affairs Act 1953 was changed in response to Maori opinion. The old requirement was at least half Maori ancestry; that was broadened to any Maori ancestry, allowing ethnic and cultural identity to become the most important consideration.

5. For instance, there were non-tribal villages established at Parihaka to protest the confiscation of land in Taranaki and elsewhere in the 1870s and 1880s; and the church-based community at Ratana Pa established in the 1920s.

freedom. We have noted that rangatiratanga arises from the reciprocal relationship between members and leaders of a Maori community. The support and loyalty of the community is a vital ingredient of rangatiratanga, and that flows from the exercise of choice by individuals. Rangatiratanga cannot be imposed on the people – the people choose their own rangatira and create their own communities. This aspect of their rangatiratanga, by which Maori control their own group formation and representation, is also guaranteed protection by the Crown in terms of the Treaty.

(4) Maintaining kinship ties and other Maori values

However, there is one customary consideration that deserves attention and that is the very proper desire of many Maori to maintain the strength of their kinship ties, and to capitalise on kin networks to improve their social performance. We would not devalue that concern but see it as a separate issue. The question here is not whether kinship links should be maintained but how best to do it. Waipareira argued that for Maori individuals who are removed from traditional kin-based support networks, it was most important to bring them into a Maori cultural environment. There the community could best meet their immediate physical, emotional, and social needs, and teach them the rudiments of Maori cultural practices; in the process, inculcating in them basic Maori values, a sense of their obligations and rights as members of a Maori community. If and when appropriate, Waipareira tried to meet the individual's need for knowledge of and contact with kin and traditional culture by re-establishing contact between the individual and his or her tribal group(s).

On the facts presented in this claim it appears to us that Te Whanau o Waipareira is well equipped to do that, and that it indeed does so. It is they who operate in the urban areas where Maori most estranged from kinship ties are found. It is they who are best located to bring in 'te pani me te rawakore' and re-establish their connections to their kin.

In this regard, we heard that Waipareira's roopu kaumatua was set up initially to help young people trace their whakapapa back to their tribes. Equally relevant was the evidence of Pita Sharples that he knew of tribal spokespeople and kaikaranga who began to learn their skills through Waipareira and practice them on Hoani Waititi marae before returning to their tribal areas.

It is unfortunate then that only one way was put up for achieving a common goal when all help is needed, and a diversity of strategies is required. It is more unfortunate still that a focus on defining communities in terms of descent tends to set Waipareira up as a competitor with the tribes when it is not and when the two types of Maori community could collaborate in achieving a common objective. The recognition of Waipareira has been seen as being incompatible with Maori values, when in fact Waipareira serves to maintain them in a modern context.

There are then other Maori values to be brought into account. Respect for other Maori communities is one, a respect still played out in marae proceedings. A sense of inclusiveness is another, not an exclusive regime that provides for some but denies opportunities for others or which is unconcerned for different sections of the Maori people. It is the sense of generosity and concern for all the people that has been the

hallmark of the modern rangatira and which characterises our current rangatiratanga. We do not believe that prescriptive practice is a genuine reflection of Maori custom.

(5) Restriction to tribes a step backwards

The current policy of devolution only to tribes is especially unfortunate in view of the history between the peoples and the recent steps to redress the consequential imbalance. Maori have long suffered from official control in the management of their affairs, even of their land and their children. It robbed them of their dignity and sapped them of their once renowned initiative and energy. The record in that respect is abundantly clear.

Change came only late, from about 1978, but not too late for a resurgence to occur. Under the Tu Tangata philosophy of community empowerment, the transfer of decision-making through Kokiri units backed with resources, and a range of community based programmes under Maatua Whangai, Mana Enterprises and Maori Access schemes, a renaissance was evidenced in the unleashing of a creative energy that Maori had not witnessed for many years.

This new and dynamic power was especially evident in the operations of Te Whanau o Waipareira. Given the tools they were more than equal to the job. Their vigour and their vision had the potential to resolve Maori social problems in the district, and it appears as though nothing could have stopped them save a reversion to prescriptive controls by the Government.

Unintentionally or not, the elements of reversion are now emerging. Much progress was made by the Government in promoting the standing of the Maori people in the life of the nation, but now urban Maori are threatened with a step backwards.

(6) The source of the dilemma

The Director-General of Social Welfare freely acknowledged that the advice the department received from Maori, to restrict recognition under section 396 to kin-based tribal groups only, created a dilemma. On the one hand, the department's interpretation of the rangatiratanga principle bound it to act on advice from Maori in such matters; on the other hand, that advice created practical difficulties placing children in appropriate care. The department felt unable to resolve the dilemma on its own initiative, so it soldiered on, alert to any change of opinion among Maori.

In fact it was receiving contrary opinions, from Waipareira for one. But its earlier advice was that Waipareira's opinion did not carry much weight, because Waipareira was not an iwi.

Once the DSW moved away from the stance that 'all Maori' were entitled to special consideration, it found itself, a Government department, in the position of defining an iwi and selecting its Treaty partners. This was contrary to the rangatiratanga principle that Maori should decide how they want to organise themselves. Its departure from the Treaty's guidance also created a circular argument that trapped the department in its dilemma over how best to place children needing care and

protection. Having sought and received Maori opinion, the DSW found itself unable to give Waipareira the recognition which common sense indicated was appropriate.

8.2.6 The trust as a Treaty partner

In order to escape the consequences of the DSW's circular argument, the claimants sought a finding that they were a Treaty partner of the Crown. In our view, this reflects a misconception of the Treaty as explained in chapter 1. The Treaty was effected for and on behalf of all Maori. It was on behalf of all Maori that the right of governance was given, and it was for the benefit of all Maori that the Crown's solemn undertakings were made. If contracts are made in partnership mode, then that would be consistent with the Treaty. However, it would not be consistent with the Treaty if the effect is to exclude significant Maori communities, like Te Whanau o Waipareira, who exercise a rangatiratanga in fact. In light of the determination above no such conclusion is required, and in view of the earlier discussion, nor is such a finding desirable when the principles of partnership apply to all Maori and are for the purpose of prescribing appropriate conduct between Maori and the Crown.

8.2.7 Treaty principles not upheld

We come now to answer the question of whether the policies and practices of the DSW and the CFA are inconsistent with the principles of the Treaty and prejudicial to the Waipareira claimants. Taking a broad view of the relevant policies and practices, it is obvious to us that important principles of the Treaty were not maintained in this instance. The essence of our finding is that the relationship between the Crown and Waipareira was not properly defined. The CFA dealt with the trust as though it were nothing more than a Maori service provider; it did not deal with Te Whanau o Waipareira as a Maori community (through the trust as its representative body). The recognition given to Maori in the Treaty was not matched in performance in this case. In chapter 3, we made a finding that Te Whanau o Waipareira is clearly a community that exercises rangatiratanga in welfare matters, and is entitled to expect recognition as such by the Crown. The CFA acknowledged that Waipareira was a Maori group, but on the other hand said its rights were no more than those of any group of citizens. The effect of this was to deny Waipareira special recognition and protection. In the result, the principles of rangatiratanga, protection, and partnership were not maintained in respect of an important group which exercised a rangatiratanga in fact, and which was entitled to have that rangatiratanga protected through an ongoing partnership with the Crown.

We find that Te Whanau o Waipareira was prejudiced as a result. In broad terms, it is neither empowering of Maori communities nor enhancing of their rangatiratanga for others to decide what is best for them, what they need, or how those needs will be met. On the contrary, it denigrates their status and robs them of their dignity, and yet that is effectively what the policy prescribes. It is conceptually wrong that a people who are parties to a Treaty with the Crown should be limited to a role only as the

Crown's service providers, as Crown contractees or agents to do the Crown's bidding. This is most especially so when they have not only an independent status as a people, but a proven capacity to achieve goals the country wants, once freed and empowered to do so. And while it is reasonable for the Government to decide the quantum and to be satisfied as to the proper and effective use of public funds in the interest of both Maori and the wider public, there is no sharing of power with the people, or recognition of their status as a people, when there is no sharing of the essential decisions on the services required to improve their social performance.

8.3 BALANCING RANGATIRATANGA AND KAWANATANGA

The task is to get matters back on track. In the case of Waipareira and the Crown, that means striking a proper balance between the Crown's guarantees to protect Maori rangatiratanga, including Waipareira's, and the CFA's needs to exercise quality kawanatanga, not just for Waipareira but for all Maori and in the public interest. As we noted in chapter 1, in the partnership envisaged by the Treaty, the rights of each party are constrained by their duties to each other.

Striking a proper balance, we would suggest, means more than simply trading off clauses in the negotiation of a business contract. The Treaty is more like a marriage contract, in which broad and general vows express the desire and the intention of the parties to live together in mutual love and respect. The success of a marriage depends not on the ability of the parties to formulate or interpret vows advantageously to themselves, nor on their ability to enforce them in the case of dispute. Rather, it depends on their commitment to work through problems in a spirit of goodwill, trust, and generosity, actively seeking creative solutions, and taking opportunities to bolster each other. We observe that the very notion of the Treaty of Waitangi arose from Queen Victoria's 'mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani', 'Her Royal Favour' with which Queen Victoria regarded the 'Native Chiefs and Tribes of New Zealand'; and that 'atawhai', the showing of kindness and fostering of people regarded as belonging to one's community, is an expression of rangatiratanga. These are the personal and corporate attitudes that need to be brought to the resolution of this grievance by each and every agent and representative of the Crown, and by their Maori partners.

Under the circumstances revealed by the evidence, the Crown's response was inadequate. In making this observation, we do not intend to denigrate the clear commitment that exists within the present DSW to rangatiratanga – the empowering of Maori to have control of their own destiny – and to the principles of its 'key document' *Puao-te-Ata-tu*. In particular, we do not wish to demean the dedication and hard work of the agency's staff and management. On the contrary, we see all of these as critical elements of the solution.

The task of the Government is to provide a policy and operational context in which both parties can live side by side. Pursuing the analogy of a domestic relationship, this could be compared to building a family home. The trust's dislike of the decor is only

indicative of the real problem, which is that their needs have not been adequately considered in the design of the whole house. Maori custom and lifestyle have produced one architectural tradition – large, flexible, living spaces, open planning, rich symbolism – which does not fit well into the ordered, specialised, functional, and private spaces of the European style. Is there one design that can, with some compromise on both sides, accommodate both partners' cultural preferences, while maintaining the structural integrity of the whole which is necessary for their security and protection?

Let us return to the recommendations of the Rangihau committee.

There are three main themes of its report, outlined at section 5.5, namely: that the department should become more bicultural in its approach; that it should strengthen Maori community networks through greater consultation and devolution of power and resources to Maori; and that it should lead the coordination of policy and programmes amongst Government departments to improve delivery of services to Maori.

Of those three themes, the first has been returned to the agenda by the current director-general after an absence of some years, during which time the department itself was restructured; the completion of this is seen by the Crown as fulfilling the department's Treaty obligations to Maori.

We have already concluded in chapter 5 that biculturalism is a means to an end and not an end in itself – the goal is a partnership with Maori, a relationship that enhances the rangatiratanga of Maori and the kawanatanga of the Crown, and that is characterised by mutual respect and trust and the utmost good faith. Biculturalism is commendable, and it may be a necessary step for Crown agencies to try to see things from their partners' perspectives, but biculturalism must lead to interaction with Maori and not simply to better-informed unilateral action by the Crown. Biculturalism is no substitute for a Treaty-based relationship.

Puao-te-Ata-tu's strategy for strengthening Maori networks has two prongs – consultation with Maori and devolution of power and resources.

8.3.1 The DSW's consultation with Maori

The department took a change of approach to consultation with Maori community groups. This was reflected in the abolition (prior to the advent of the CFA) of the district executive committees, which were established for a short time as a result of *Puao-te-Ata-tu*, and their substitution in effect by consultation procedures driven by the Social Policy Agency in Wellington; and also in the adoption by the CFA of a service development philosophy which strictly limited community input to key policy-making and decision-making.

(1) Poor communication

We have already referred to the importance of the Crown consulting organisations that articulate the views of Maori communities. The Tribunal sees consultation on welfare matters as primarily the department's responsibility because of its extensive

presence ‘on the ground’ in the welfare arena. We believe this aspect of its work has been impeded by the way the CFA has applied its policy of devolution to outreach workers. Quite apart from the Crown’s special relationship with Maori, the agency emphasised that its role as a partial funder of services which are provided by, and are therefore also subsidised by, the not-for-profit sector arose out of a historic partnership between the State and the voluntary sector. We do not consider it to be conducive to that partnership to require all communication to pass through the lowest levels of the respective organisations. However smoothly the relationship is running, there are occasions when summit meetings are called for, if only to cement close ties. Although we understood the reasons for introducing a change of policy, the Tribunal had grave doubts about the wisdom of devolution of a kind that so isolated senior management from community feedback.

Among Government agencies, the CFA is in the best position to gather information about community viewpoints and translate them into ‘quality kawanatanga’. Consultation across cultural boundaries involves each party understanding the other’s cultural imperatives and priorities – hence the importance of a bicultural approach. It is doubly important in this case, since many Maori Affairs staff who worked in the community were lost from the Government service in the restructuring of that department. Te Puni Kokiri as a policy ministry is not capable of fulfilling the community liaison role that *Puao-te-Ata-tu* envisaged for the Department of Maori Affairs.

(2) Lack of responsiveness

Consultation involves not just listening, but also responding; and in Treaty partnership mode, responding so as to accommodate the other’s cultural values. Again, this has been impeded by the introduction of a service development approach to funding social services, which provides so little scope for community input. The CFA decides what needs are required to be met, what service is required to meet those needs, and who can best provide it; it also determines which factors will be weighed in the balance to assess competing claims from communities. It defended its decisions on the basis essentially that its process was bicultural, and its policy took into account criteria which ensured Maori received equitable treatment. We consider that this policy offered insufficient scope for community input. As we said earlier, not even informed unilateral action is any substitute for proper interaction between Treaty partners. The earlier style of community development represented a better balance of kawanatanga with rangatiratanga. We consider below whether the current statutory and policy framework disqualified the agency from taking this approach, as the agency claimed.

Responding to Waipareira may be relatively simple. First and most importantly the agency can recognise the rangatiratanga of Waipareira, by entering into open-ended discussion about what can be done to improve their relationship, and perhaps developing a joint strategy. For a start, the CFA could incorporate into its services planning some of the factors pointed out by the trust. As it stated at the hearings, the

agency does not claim to have got it all right, and is prepared to amend its criteria in the light of new information – an approach we strongly endorse.

8.3.2 Recognition of Maori in West Auckland

(1) Recognition of Waipareira

It will be recalled that a finding was sought that Te Whanau o Waipareira is representative of the West Auckland Maori community. We have found that this claim casts the net too wide, for there may be other Maori groups in West Auckland that operate independently. In any event, it is our view that Maori communities are not necessarily defined by land boundaries, rohe, or concepts of mana whenua, though the current trend is to do that. We find, however, that Te Whanau o Waipareira is representative of a significant Maori community based predominantly in West Auckland and that it makes itself fully accountable to West Auckland Maori.

Can the Tribunal accept, then, Waipareira's objection to the CFA's policy (now superseded) of funding a range of services, and its claim that, at the very least, it ought to be consulted about policies underlying the funding of other service providers in West Auckland? The answer is yes we can, and we do.

It was not explained why, in 1993–94, one of the Government's objectives was that the CFA should fund a range of appropriate service providers and services. Possibly, making explicit the contestability of funding was seen as an efficient mechanism to minimise the cost of any given service by creating commercial competition.

Whether or not the intent was to divide and rule, that is how it was perceived and that also could be its effect. From Waipareira's point of view, the affiliate structure of the trust was established to enable the diverse community, under the umbrella of the trust, to get the best value from the funding dollar by integrating and coordinating the services provided in West Auckland. Direct funding of service providers other than the trust, including trust affiliates, was seen to undermine the community's ability to organise its own affairs through the operation of the trust – in other words, Waipareira's rangatiratanga was undermined by a policy of funding a range of providers.

We find that it would be inconsistent with the principles of the Treaty to so deploy funding as to threaten the rangatiratanga of Te Whanau o Waipareira by compromising its unity. This is not to say there should be no funding of other bodies on some proper ground, but that care must be taken to ensure that the funding does not create unnecessary competition, does not fragment effort, does not compromise bodies with a proven track record, and does not threaten the unity necessary for the rangatiratanga of Waipareira, as evidenced in its comprehensive arrangement for accountability to the community. Accordingly, if the standard of conduct between Maori and the Crown, as required under the principle of partnership, is to be maintained, it appears that the agency should consult with Waipareira on services planning in the district.

(2) Recognition of tangata whenua

However, because of the dynamic interplay of rangatiratanga, several Maori communities may coexist in one area, and each is entitled to similar consideration. So, for example, Ngati Whatua as tangata whenua in West Auckland should also be consulted on services planning and funding priorities.

In Maori terms, the emergence of a powerful community within the mana whenua of another can easily create tensions, and it is to the credit of both Ngati Whatua and Waipareira that a delicate relationship remains good. We consider the qualities of rangatiratanga to be amply demonstrated by both Ngati Whatua, in particular in the submission of Mr Parore which we quoted at section 1.2.1(2), and by Te Whanau o Waipareira, in particular its recognition of the tangata whenua. We are concerned that this good relationship should be protected and maintained.

It is clear to the Tribunal that neither Ngati Whatua nor Waipareira is motivated by desire to deny the other's just rights and entitlements – rather, each is concerned to maintain opportunities to fulfil obligations to the other. Thus, Waipareira was concerned that direct funding of Te Roopu Mataihi denied it the chance to demonstrate its support for Ngati Whatua in south Kaipara – and we see Mr Parore's reservations about direct funding of Waipareira in the same way. We note that Ngati Whatua is represented as of right on the Waipareira trust board. We are confident that this good relationship can continue – provided mutual recognition of, and respect for, rangatiratanga remains its basis, and not a market model driven by competitive self-interest. We are also confident that tikanga Maori provides a better basis for two such groups to debate and resolve issues of concern than litigation over a Government policy.

We consider, furthermore, that the representation finding sought by Waipareira was not the basis of a claim for an exclusive territorial domain, but arose from concerns that the claimants' efforts were being fragmented by the funding of others. Therefore, we reiterate our finding in chapter 3 that Waipareira exercises rangatiratanga in matters of welfare, and it should be consulted by the Crown when its interests are affected.

(3) Recognition of all Maori providers

We are suggesting here that each Maori group in a district should be consulted about how delivery of and funding for social services might best promote the development of Maori communities in the district. What is crying out throughout this claim is the lack of a consultative forum, equivalent to the now-abolished district executive committees of the DSW. On committees such as these, all the Maori groups of the district could come together, acknowledge the rangatiratanga of each other in accordance with Maori custom and, on this basis, seek a consensus on how best to apply whatever funding is available for welfare services, so as to maximise their rangatiratanga. Here the Treaty partnership comes into play - Maori and the Crown debate with each other how best to balance the requirements of rangatiratanga with those of kawanatanga. By providing an opportunity for Maori communities to reach

consensus, which enhances their rangatiratanga, the Crown enhances the quality of its kawanatanga, and the Treaty partnership is greatly strengthened.

Since the district executive committees were disbanded, the community workers of Maori Affairs have disappeared from Government, and the kind of liaison with Maori communities envisaged in the devolution policy has all but been lost in the current drive towards mainstreaming.

We welcome the director-general's statement that she expected managers of the department to pro-actively create forums for consultation with Maori. We consider that this complements our conclusions below on the need for better interdepartmental coordination and collaboration. Other Crown agencies could attend the consultative forums, provided they did not overwhelm the Maori voices; otherwise, input from the community would certainly put the CFA and the DSW in the best possible position to take the lead amongst Government agencies, as envisaged by *Puao-te-Ata-tu*.

8.3.3 Identifying Maori as parties to the Treaty

Puao-te-Ata-tu also recommended strengthening Maori networks through devolution of power and resources. It appears to the Tribunal that devolution has been characterised by a preoccupation on the part of the Crown with the particular type of networks which Maori might decide to strengthen, in particular, an unnecessary focus on defining and prescribing the characteristics of an 'iwi'.

The evidence is clear that Te Whanau o Waipareira results from endeavours over many years to draw together and coordinate under one umbrella a host of Maori organisations in West Auckland. We also accept that Te Whanau o Waipareira has gained wide respect and recognition, from many years of work and some outstanding initiatives and success. This was an achievement in itself, but also emphasises the wide representativity that Te Whanau o Waipareira enjoys and the close contact the trust has with the community in delivering services.

The result, however, is a coupling of ironies. At a time when the Government is beset with problems over who represents tribes, for the purpose of settling claims, Waipareira is one of the few districts where representation for a very large community has been resolved, but its status for the purposes of Treaty obligations is unrecognised. And while the Government has difficulties in determining an appropriate Maori face to deal with for negotiations, here the roles are reversed. Waipareira has settled coordination problems but is prejudiced by a lack of coordination amongst the many Crown agencies. The Crown has many faces, but Waipareira cannot find a single Crown face to deal comprehensively with its concerns.

(1) *The department's approach*

The director-general clearly expressed her vision that devolution would promote the rangatiratanga of iwi whose social services were recognised in terms of section 396 of the Children, Young Persons, and Their Families Act 1989. In the present case, the

DSW and the CFA placed a limited interpretation on the term 'iwi' in section 396 by what we believe is circular reasoning.

We are not critical of the department in coming to the view that the Government policy of devolution to Maori should be restricted, so that some Maori communities should benefit but not others, to the extent that this restrictive approach was supported by both Maori opinion and advice from Te Puni Kokiri, to both of which the department had to be sensitive. In brief it was considered that in the predominant Maori view, devolution should be to tribes but not to non-tribal communities. The department relied upon its assessment of Maori views solicited in the process of policy development, and on the opinions of certain advisory kaumatua.

(2) An alternative approach

While Maori opinion is clearly important, the most important question is 'What does the Treaty say?' What protection does it give for non-tribal Maori communities which, while possibly a majority in terms of numbers, are a minority in terms of power? The opinion that Maori prefer to operate through tribes is not sufficient grounds to deny the rangatiratanga of others. Excluding sizeable non-tribal communities is not good kawanatanga and does not seem to accord with the human rights standards of today. We think it telling in this respect that, on the record of the Treaty debate, Maori sought that the Crown would settle disputes not only between Maori and Pakeha but between Maori themselves, having regard to the justice of the case. If there is a difference of opinion, it is not enough to inquire of the predominant Maori view but to inquire of what is right, bearing in mind the Crown's guarantees to protect rangatiratanga. Much the same must apply to the exercise of kawanatanga or governance. While governance requires a sensitivity to public opinion, good governance also requires doing that which is fair and right. It may be considered for example that the Treaty claims process for the alleviation of historical wrongs might not have got off the ground if public opinion were the sole test.

The department's concern to maintain rangatiratanga bound it to accept the views of Maori whom it consulted. However, a process of consulting Maori by seeking responses to discussion documents or draft policies from separate or scattered groups is not reliable. It does not provide proper opportunities for Maori themselves to gather together and weigh up a range of opinion, and to develop a consensus which represents the views, and enhances the rangatiratanga, of all Maori present.

The department's policy on iwi social services was developed without the benefit of such a consensus. In view of the department's dilemma, and this Tribunal's opinion, the department is entitled, indeed is obliged, in the interests of protecting rangatiratanga and enhancing kawanatanga, to refer this question back to Maori for reconsideration.

It is further to be observed that there are difficulties in determining a considered Maori view. There is no Maori parliament or other elected body truly representative of all Maori to determine Maori opinion or propose Maori policy. The nearest, perhaps, was the Hui Taumata of 1984, and that provided for non-tribal communities in the devolution scheme.

(3) Inclusive approach required

As we have explained in chapter 1, a defensive, restrictive construction of the Treaty with minimal recognition of Maori rights is quite the wrong approach for the Crown to take. Neither does it provide a stable basis for this nation's social contract. All Maori are entitled to protection. In all, we could find no proper grounds for the Crown to take a restrictive approach to devolution policies or sound reasons for differentiating between non-tribal communities and tribes as a matter of welfare policy.

Whether legally sound or not, the effects of the DSW's interpretation of 'iwi' must now be overcome in the CFA's ongoing relationship with the trust. The evidence we heard made clear that *Puao-te-Ata-tu* calls for the CFA, and the broader department, to wholeheartedly support Te Whanau o Waipareira in its efforts to deal with 'the Auckland crisis'. And, as we have found, the Treaty of Waitangi demands no less. Naturally this ought not to be done at the expense of traditional tribal groups.

The CFA said the approach that guided its earlier dealings with kin-based and other Maori groups was 'not either/or but as well as'. This needs to be taken much further than simply funding both tribal and non-tribal groups in accordance with current CFA policies and criteria. The CFA always ought to consult with and support to the fullest extent practicable a Maori group that is articulating its community's desire to look after its own, and in which members are bound by common imperative to nurture and care for others and the things that are important to their wellbeing. For its part, a group exercising such rangatiratanga is bound to respect the kawanatanga of the Crown and to assist it to achieve the appropriate balance between kawanatanga and rangatiratanga in the particular circumstances.

(4) Including Waipareira

We suggest that there is broad scope for Waipareira to carry out many of the functions of an iwi social service under its current status as a child and family support service, provided that its relationship with the DSW is healthy and constructive. The main difference in law between the two types of provider is that an iwi social service can, in appropriate cases, be awarded sole guardianship of a child, while a child and family support service can only have joint custody with either a parent or the Director-General of Social Welfare. If a better relationship could be developed, that difference may relatively quickly become less significant in the day-to-day dealings between the parties.

However, it may be that, despite proper consultation and greater devolution to Waipareira as a child and family support service, the lack of recognition as an iwi social service under section 396 continues to blight that relationship. For that reason we recommend below a legislative change, which we hope will be handled expeditiously.

So that the matter may be beyond doubt, however, we consider the status of Waipareira, in relation to the CFA on the matters covered by this claim, to be no less than that of a tribe – but hasten to add, in case another literal interpretation is given to a question of principle, that it does not follow that both should have an equal supply. That is something to be determined following proper consultation.

8.3.4 The Crown as a party to the Treaty

We come now to the third theme of *Puao-te-Ata-tu*, the coordination of Government policy and programmes in order to improve delivery to Maori. Waipareira said the disruption of Crown networks and the fragmentation of the Crown's social policy and funding precluded proper support being given for holistic services which worked for Maori. The problem was evident in Waipareira's failure to secure proper funding for its alternative school, which 'fell down the cracks' between the various Crown agencies responsible for supporting social services. The implication was that *Puao-te-Ata-tu*'s recommendation had been swamped in the wake of the restructuring of the national economy and the State sector.

(1) Fragmentation of the Crown

The effect of those economic and State sector reforms on the Crown's capacity to fulfil its Treaty obligations is not entirely clear-cut. The disruption of State sector networks appears to have prejudiced the claimants; on the other hand, it is an unfortunate side-effect of what, in the Crown's view, is a necessary exercise of *kawanatanga*. The agency sees the disruption as a regrettable but unavoidable problem which is already dissipating. *Puao-te-Ata-tu* placed prime responsibility on the DSW to coordinate Crown welfare policy and action. The department acknowledged its responsibility, and said it was doing what it could to rebuild effective networks. We consider that, if prejudice results from any failure of the department to act with the utmost good faith to overcome this problem, then the Crown would be in breach of the Treaty.

Secondly, while the agency acknowledged that 'holistic' service delivery makes good business sense, it said the 'strictures' of the State Sector Act 1988 and the Public Finance Act 1989 narrowed the focus of each separate agency, and fragmented the overall efforts of the Crown. In other words, the agency argued that it was operating within a restrictive statutory and fiscal policy framework which provided insufficient scope for it to meet Maori needs which it recognised as valid.

(2) Emphasis on kawanatanga

The reforms certainly changed the management and operational culture of the Crown. This was achieved through statutory requirements to report and account to Parliament for expenditure and policy outputs (but not policy outcomes), and through more precise specification of funding programmes. These changes, among others, had the effect of tightening Crown control over expenditure at the expense of community input, resolving the dual accountabilities of public servants to Maori and the Crown in favour of the Crown through employment contracts, and transforming the public service into the State sector. It was certainly our impression that the Public Finance Act and the State Sector Act, with their detailed and specific reporting requirements linked to performance assessment of managers, concentrated the attention of the CFA on serving the Government rather than the public and, in this case, at the expense of the Crown's Treaty obligations.

To the extent that these results were among the aims of the reforms, then they were inconsistent with the partnership principle of the Treaty. Our overall impression, based on the evidence we heard in this claim, is that in welfare and social policy, the relationship had become very one-sided.

However the Tribunal was not convinced that it was the statutes or the fiscal policy that were to blame. Rather, in this case, it was their rigid application, without a balancing of the requirements of statute with other principles, that is the real source of the Waipareira grievance. We consider that, within the statutory framework, appropriate recognition for Waipareira and steps to maintain their autonomy were practicable. What was required was a broad vision of the purpose of the statutes, and a recognition of how to apply them appropriately in a Treaty context.

8.3.5 Mutual accountabilities of Treaty partners

The purpose of the State Sector Act 1988 and the Public Finance Act 1989 is to establish a framework of authorities and accountabilities, and requirements for reporting. These enable the responsible authorities to monitor and assess output performance, and exert control, in order to discharge their responsibilities.

The Acts define the accountabilities of State employees to their Ministers, and specify how Crown agencies report, through their Ministers, to Parliament. Except for the requirement of section 56 of the State Sector Act, the Acts do not spell out the accountabilities of State employees to Maori – but those accountabilities come into play nevertheless through the partnership of the Treaty.⁶

It is fundamental to a partnership that there is some level of accountability to each other, as a prerequisite for shared control. It is self-evident, too, that if no consideration is given to a Maori community's values and aspirations in assessing the performance of Crown agencies, it cannot be said that the Crown and Maori are working together, nor that the principle of rangatiratanga is in fact being maintained.

(1) Rangatiratanga and kawanatanga not mutually exclusive

The agency's approach to social service funding policy was inadequate in that, having recognised the benefits, and even the necessity, of accommodating Maori values and aspirations, it was content to satisfy the reporting requirements of the statutes, which provide only for Crown control, and not the broader standard of the Treaty. For example, it was stated by the general manager (and the Auditor-General) that the CFA's services planning provided a robust framework for accountability which was consistent with other reporting requirements under the Public Finance Act. The clear impression was given that community development did not provide such a framework because, in any requirement to respond to community priorities, there was a loss of State control.

6. Since this claim was heard, there has been included in the performance contracts of chief executive officers a 'key result area' relating to their organisations' performance with regard to Maori. This may be, or could become, one way by which the Crown's Treaty obligations are given life through the State Sector Act 1988.

In our view, it is glaringly apparent that, in a society based on a partnership of two peoples, the achievement of social goals requires the active support and participation of both. Inevitably, then, the tighter the control that one party exerts over social policy, the less the other is able to contribute, and the less likely the goals are to be reached. It appears to us that Crown agencies cannot exclude the values and aspirations of communities unless they are totally incompatible with Crown goals. Nothing was said to that effect about the trust's aspirations.

(2) *Kawanatanga exercised restrictively*

In this case, conflict arose because the agency was required by the Acts to report only on the achievement of its policy outputs, which the trust had no hand in formulating, and not on the achievement of policy outcomes which both parties appeared to be agreed on. The policy framework enabled the Crown to take full control, and disenfranchised the Waipareira community.

We find this to be a valid and serious criticism of the way the Public Finance Act and the State Sector Act were applied. In a political and economic culture founded on the values of transparency and accountability, the lack of performance assessment against social outcomes renders hollow all the mechanics of measurement and reporting associated with output contracting. If the purpose of the Acts is to provide a framework for assessing the value of public expenditure, then the standards must be meaningful and substantial.

(3) *Need to focus on outcomes*

The Tribunal believes that work 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 coordination 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 coordinating role to improve social service planning. They must ensure that Maori are not prejudiced by the lack of coordination.

Perhaps most importantly, public reporting of information from such assessments would provide a basis for monitoring of Crown actions by Maori that would better reflect the cooperative, interactive nature of Treaty partnership.

(4) *Range of strategies needed*

The Crown argued that it is accountable to Maori through parliamentary processes, and that is sufficient; that it is not accountable to individual communities for the Government's appropriation of welfare funding or its allocation between communities, because these are article 1 functions of Government. The Tribunal considers that this assumes that Maori communities have no rights other than citizenship rights – and denies that the Treaty partnership established some level of Crown accountability to Maori communities.

It was made quite clear that Te Whanau o Waipareira Trust wanted significantly more freedom to follow its own pathway towards mutually acceptable social goals, because it believed it was a far more effective route for its people than the one mapped out by the CFA. The relaxation of Government control to allow them to do that, in other words a recognition of rangatiratanga and a balancing with the demands of kawanatanga, is the key to a successful policy framework.

The claimants themselves welcomed certain promised aspects of the reforms: greater transparency and consistency in decision-making; and the funder-provider split which allowed community groups to manage delivery of publicly funded services. In the words of one claimant witness, the Public Finance Act is not a straitjacket. There are various structures operating, in the health and education sectors in particular, which provide for the dual accountabilities of public servants – accountabilities to Parliament for the proper expenditure of public funds, and also to the community for the achievement of social goals.

A less prescriptive policy framework and appropriate devolution policies would have allowed the trust to design and manage programmes suitable for its community. There was no convincing evidence that appropriate recognition of Waipareira, and the creation of structures to enable their input to welfare policy and monitoring of the Crown's performance, would place other Crown responsibilities in jeopardy. The record itself is clear, that recognition was given to Waipareira in the past, in the developmental funding that was once provided. At the very least there was no proper basis to accord them a lesser standing of consideration than that which was in fact given to the tribes. In balancing governance with rangatiratanga, it is consistent with good governance that the rangatiratanga of Te Whanau o Waipareira should have been recognised as well.

(5) Immediate action possible

There is therefore action the agency could take to overcome or ameliorate some of the 'strictures' of the Public Finance Act 1989. The Act does not require reporting on the outcomes of social policy, but neither does it preclude it; and the Tribunal notes with approval the agency's intention to develop appropriate measures. Similarly, while the narrow specification of NDOCs does not encourage coordination and collaboration between Government agencies to tackle broader social issues or to deliver integrated services or funding to Maori, neither does it prohibit it, and there appears to be no reason in principle why the inter-departmental approach taken towards a crime prevention strategy could not be applied to social policy. In view of the recommendations of *Puao-te-Ata-tu* in 1986, and the subsequent mainstreaming of Maori affairs and restructuring of the State sector, such action is more important and more urgent than ever.

8.3.6 Findings on funding

In the Tribunal's opinion, the trust's arguments against services planning, outlined in chapter 7, raised serious doubts about the likelihood of equitable funding resulting

from the CFA's processes. As both parties agreed, measuring equity of funding is much more complicated than comparing the amounts granted to different providers. But equally importantly, equitable funding must not only be done, it must be seen to be done. The CFA tacitly acknowledged this in its spirited defence of the rigour of its processes, and its reluctance to make one-off exceptions to its formula assessments.

However, in a relationship between Maori and the Crown that is governed by the Treaty, a comparison between Maori and non-Maori is irrelevant. In the Treaty, the Crown undertook that it would exercise its *kawanatanga* so as to protect the *rangatiratanga* of Maori. On the evidence, the funding for the trust's social services declined between 1991–92 and 1993–94. The important point, though, is that the trust was not given adequate opportunity to clarify or question the situation or to negotiate funding criteria or levels with the CFA.

In conclusion, we return to the central notion in this claim – the proper balancing of the principles of *rangatiratanga* and *kawanatanga* in the Treaty partnership. The Privy Council put the position this way in its opinion on the Maori language and broadcasting case:

This relationship the Treaty envisages should be founded on reasonableness, mutual cooperation and trust. It is therefore accepted by both parties that the Crown in carrying out its obligations is not required in protecting *taonga* to go beyond taking such action as is reasonable in the prevailing circumstances. While the obligation of the Crown is constant, the protective steps which it is reasonable for the Crown to take change depending on the situation which exists at any particular time. For example in times of recession the Crown may be regarded as acting reasonably in not becoming involved in heavy expenditure in order to fulfil its obligations although this would not be acceptable at a time when the economy was buoyant. Again, if as is the case with the Maori language at the present time, a *taonga* is in a vulnerable state, this has to be taken into account by the Crown in deciding the action it should take to fulfil its obligations and may well require the Crown to take especially vigorous action for its protection. This may arise, for example, if the vulnerable state can be attributed to past breaches by the Crown of its obligations, and may extend to the situation where those breaches are due to legislative action. Indeed any previous default of the Crown could, far from reducing, increase the Crown's responsibility.⁷

Thus, the balance is to be found not by an objective test but through consultation and negotiation between the parties, conducted in a spirit of partnership with the mutual goal of enhancing the status of the other party and the quality of the relationship.

8.4 RECOMMENDATIONS

This claim is unusual in the sense that it is not about a denial of kin group property rights. Rather, it is about a denial by the Crown of a reasonable opportunity for Te Whanau o Waipareira Trust to fulfil its self-imposed cultural obligations to provide

7. *New Zealand Maori Council v Attorney-General* [1994] 1 NZLR 513, 517 (PC), per Lord Woolf

welfare services for the benefit of its community. It was claimed that the inadequate fulfilment of these obligations was the outcome of a lack of recognition by the Crown, in particular the Community Funding Agency, of the rangatiratanga exercised by the trustees on behalf of their whanau of beneficiaries.

There are two fundamental requirements underlined by this case: (a) all parts of the Treaty must be seen in their functional interrelationships with each other; and (b) any doubt about the meaning of the Treaty should be construed in favour of Maori, in accordance with internationally recognised legal principles.

We have found that the non-kin-based Te Whanau o Waipareira Trust did exercise a rangatiratanga in caring for, nurturing, and fostering those who had sought help from the social services provided by the trust. It is in that context that provider and beneficiary became Te Whanau o Waipareira, a community with its cultural centre at the Hoani Waititi Marae.

Given the Crown's guarantee under the Treaty of Waitangi actively to protect the rangatiratanga of all Maori, and our finding that the trust did exercise rangatiratanga in the delivery of social services, our task has been to consider how a proper equilibrium might be reached between the exercise of rangatiratanga in the social welfare field and kawanatanga; that is, how Crown and Maori can balance the Crown's guarantee to protect rangatiratanga against its obligation to exercise quality kawanatanga for the benefit of all New Zealanders.

We consider that this equilibrium can best be found through consultation between Maori and the Crown which meets the Treaty's standards of mutual cooperation, trust, and the utmost good faith. The proper application of Treaty principles to social policy is yet to be determined. Te Whanau o Waipareira has given both Maori and the Crown this valuable opportunity to reconsider the findings of *Puao-te-Ata-tu* and social policy directions to improve their future relationship. To further advance matters, the Crown should:

- (a) develop and publish evaluations of its current social service policies and programmes, based on their outcomes for Maori;
- (b) better coordinate its many agencies, each with its own policies and practices, in their relationships with Maori groups in order to represent its views as a whole on social service issues more effectively than it does at present;
- (c) ensure that any consultation with Maori about how the allocation of resources for social services might best promote community development in any given region includes both tangata whenua and non-tangata whenua in the region, irrespective of relative need and population size.

Therefore, we make recommendations concerning Te Whanau o Waipareira in particular, and social policy for Maori more generally, as follows:

- (a) We recommend that, in developing and applying policy for the delivery or funding of social services to Maori, the Department of Social Welfare and the Community Funding Agency deal with any Maori community which has demonstrated its capacity to exercise rangatiratanga in welfare matters, so that all interaction between Crown and community should enhance the exercise of that rangatiratanga. This necessitates appropriate changes to the

policies and practices of the department and its agencies as they apply to non-kin-based communities in particular. Such consultation with Te Whanau o Waipareira would demonstrate acceptance of Waipareira's rangatiratanga and do much to ensure the effectiveness of its welfare programmes in future.

- (b) There is more than sufficient evidence from the operations of Te Whanau o Waipareira to establish the point that Maori perform best when the principles of rangatiratanga are maintained; when a community is empowered to determine its own needs and resolve its problems in its own way. The practice of the Community Funding Agency of contracting for the services that it thinks are required, and from those whom it selects, has undermined the initiative of Te Whanau o Waipareira and its affiliates. It has been wasteful of public expenditure when social service contracts have been let in West Auckland which do not accord with Te Whanau o Waipareira's values, priorities, or standards, and its capacity to meet its community's needs through its own network and dedicated workforce.

We therefore recommend that the Community Funding Agency negotiate with Te Whanau o Waipareira with a view to devolving sufficient authority and resources to enable it to undertake a coordinated and holistic approach to community development within the whanau. We so recommend on the grounds of the Treaty requirement to protect Maori in the exercise of their rangatiratanga; on the grounds that those who deliver most effectively to Maori people are Maori communities which provide integrated services and utilise Maori holistic strategies; and on the grounds that the scale of the problem of Maori underdevelopment lends urgency to the need for a distinctive strategy to deal with it. For its part, the agency is entitled to assurance that whatever resources it provides for this purpose are used responsibly to meet those goals on which Te Whanau o Waipareira and the agency are agreed.

- (c) We are especially concerned that children needing care and protection should be placed with the communities where they are most comfortable and where the best care can be provided. That may well be with kin, but not necessarily, for it is always the welfare of the child that should be paramount. Although the difference between a child and family support service and an iwi social service may not appear to be great, in practice it is, especially as it creates unnecessary and undesirable distinctions between tribal and non-tribal communities which may affect the capacity of potential service providers to meet recognised needs, and may also prejudice the proper placement of children.

Therefore we recommend that section 396 of the Children, Young Persons, and Their Families Act 1989 be amended by substituting the term 'Maori social service' for the term 'iwi social service' (with consequential amendments to other relevant provisions), and that the department alters its policy and practice accordingly.

(d) We recommend that the Government, in its policies, practices, and protocols, should aim to apply the principles of the Treaty of Waitangi to protect the rangatiratanga of all Maori in contemporary situations, kin-based or non-kin-based, where the facts of any particular case reveal the exercise of rangatiratanga. The Waipareira claim has shown that Crown policy guidelines for non-kin-based groups are yet to be formulated. For the present, therefore, only free and open consultation between Maori and the Crown will minimise the risk of misconceptions about tikanga Maori, Crown policy, and the effects of each on the other.

(e) We recommend that social and welfare services to Maori communities stand as a separate output class designed to promote community development.

(i) In this context, we further recommend that the Crown should create appropriate opportunities, at either a national or a regional level depending on the circumstances, for all Maori, tangata whenua and non-tangata whenua, whose rangatiratanga is likely to be affected by policies on funding or delivery of social services to come together in a hui with the Crown to debate such policies. This would give each Maori community an opportunity to contribute to a consensus which enhances their rangatiratanga. The goal is to enhance, but not substitute for, the exercise of kawanatanga, and any failure on the part of Maori to reach a consensus does not relieve the Crown of its duty to exercise quality kawanatanga so as to protect Maori rangatiratanga.

(ii) Just as we consider that the rangatiratanga of all Maori is not enhanced by a piecemeal approach to consulting separate communities, we also consider that the quality of kawanatanga is not enhanced by a piecemeal application of the policies and practices of various Crown agencies. The current fragmented structure of the Crown dissipates the Treaty relationship and denies Maori communities proper support for holistic or integrated services such as the Trust's alternative school.

Therefore, we further recommend that the Government establish appropriate arrangements to coordinate the policies and practices of Crown agencies involved in social services; and that Crown agents consulting Maori on social service issues be able to represent the views of the Crown as a whole.

(f) We consider that the lack of public information on the effectiveness of Government policies and programmes in achieving social goals breaches the partnership principle of the Treaty in that it denies Maori communities any real opportunity to monitor the Crown's performance, and it denies the Government valuable information that would enable it to improve the quality of its kawanatanga.

We therefore recommend that Te Puni Kokiri ensure that comparable monitoring mechanisms are developed for all Government agencies concerned with the delivery of social services, and that those agencies be required to report to Parliament on the outcomes of their policies or funding for Maori communities.

TE WHANAU O WAIPAREIRA REPORT

- (g) We recommend that the Minister of Maori Affairs initiate an independent review within three years to report on developments in the relationship between Te Whanau o Waipareira and the Crown. This review should also report on progress towards Maori community development generally, and on any areas of complaint; and make recommendations to remove any obstacles inhibiting the effective provision of funding for integrated or holistic social services.
- (h) We recommend that the Crown pay the claimants' reasonable costs of prosecuting this claim.

Dated at this day of 1998

J R Morris, presiding officer

I H Kawharu, member

P E Ringwood, member

J H Ingram, member

APPENDIX I

STATEMENTS OF CLAIM

Note: Some minor grammatical and spelling errors and stylistic inconsistencies in the following statements of claim have been amended.

STATEMENT OF CLAIM

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF The Community Funding Agency

AND

IN THE MATTER OF The Children Young Persons and their Families Act 1989

To: The Registrar
 Waitangi Tribunal
 Justice Department
 Private Bag
 Postal centre
 Wellington

1.0 I, Haki Wihongi Superannuant of Henderson, Waitakere, Auckland, Chairperson of Te Whanau O Waipareira Trust Board, for myself, Trust Board and Maori who are beneficiaries of my Trust, and the people of West Auckland (Blockhouse Bay in the South, Point Chevalier in the East, the Tasman Sea in the West and Helensville in the North) claim to be prejudicially affected by the acts, omissions and policies of the crown in the following ways:

2.0 That this claim is based predominantly on process, principle and accountability in the delivery of resources to the West Auckland Community.

2.1 That this claim concerns the manner in which the functions of the Community Funding Agency, the Department of Social Welfare and its Director General have carried out, promoted and implemented breaches contrary to the principles of the Treaty of Waitangi, the rules of Natural Justice, fundamental human rights The ‘Children Young Persons and their Families Act’, State Sector Act and Social Security Act.

- A) Community Agency Funds are not achieving any outcomes of a tangible qualitative nature in the West Auckland region relevant to expenditure within the total cost of the Community Funding Agency.
- B) Thousands of dollars of community funding is paid over to community welfare organisations annually without any control over its direct expenditure either in service delivery outcomes or capital acquisition relevant to targeting a clearly known Maori Client base.
- C) The Community Funding Agency pays the operational costs of each organisation that provides Community Funding Agency programmes. To facilitate effective and efficient administration our organisations must be served competently and professionally.

The Community Funding Agency have acted so negligently in the delivery of community funding decisions that our ability to serve the community has been subverted. There are no negotiation processes, only arbitrary decision making applied with absolute arrogance.

- D) The actions, omissions and policies of the Community Funding Agency and its General Manager, and the Director General of Social Welfare breach the basic rules of natural justice relevant to due process.
- E) The actions, omissions and policies of the Community Funding Agency and its General Manager, and the Director General of Social Welfare breach Fundamental Human Rights.
- F) The actions, omissions and policies of the Community Funding Agency and its General Manger, and Director General of Social Welfare breach the objects of the Children Young Persons and Families Act, the State Sector Act and the Social Security Act.
- G) The provision of money for social development funding to Maori is an obligation of the crown arising from the Treaty and amounts to an action consistent with the crowns obligations to protect and restore their rangatiratanga.
- H) That the Crowns failure to protect Maori interests in the delivery of Social Care breach articles I, II and III of the Treaty of Waitangi, and the fiduciary duty of the crown to the claimants is as a consequence in breach.
- I) That the Crown’s negligence, failure, actions and omissions constitutes sharp practices without good faith carried out unreasonably.

2.2 That the full and complete particulars to our claim are addressed in the affidavit of the chairman of Te Whanau O Waipareira Trust Board attached hereto marked with the letter ‘A’.

2.3 That we claim those matters addressed in the affidavit marked ‘A’ to be inconsistent with the principles of the Treaty of Waitangi.

3.0 That the Tribunal has been asked to recommend as follows.

3.1 That the functions carried out by the Community Funding Agency its General Manager and the Director General of Department of Social Welfare are in breach of the principles of the Treaty of Waitangi in that the service provided to the Maori community has been inefficient, ineffective and negligent.

3.2 That the Director General of Social Welfare is not utilising her discretion pursuant to section 6 of the 'Children Young Person Family Act' 1989 and has acted in a manner which has breached the principles of the Treaty of Waitangi.

3.3 That the Community Funding Agency and the General Manager of the Community Funding Agency, and Director General of Department of Social Welfare have a duty of care in the provision of services to the Maori community and that they have breached that duty of care.

3.4 That the Minister of Social Welfare has a duty of care relevant to his statutory discretion held pursuant to the Social Security Act, The Children Young Person and Family Act and the State Sector Act and has clearly breached that duty of care in not ensuring his portfolio is managed in an efficient and effective manner.

3.5 That organisations servicing predominantly the Maori population be acknowledged in terms of their representational capacity, performance and systems available to place Government programmes out to their communities.

3.6 That the Tribunal acknowledge Te Whanau O Waipareira as an efficient and effective delivery system of policies available to its Maori community.

4.0 Persons affected by this claim and who should have notices of it are:

- a) the Minister of Maori Affairs
- b) the Prime Minister
- c) the Attorney General
- d) the Minister of Social Welfare
- e) the Minister of Justice
- g) the Minister of Housing

[Note: There is no 4.0(f).]

4.1 The Tribunal is advised that due to the subject matter of this claim, the claimants have the ability to present the claim at extremely short notice. A range of documentation has been collated by the claimants.

4.2 The Tribunal is further advised that a venue convenient to both parties will be struck at short notice so that the matter can be proceeded with expeditiously.

4.3 Definitions attached hereto marked with the letter 'B'.

4.4 The notices to the claimants should be sent to the Chief Executive Office, Te Whanau O Waipareira Trust Board, Corner Edmonton and Great North Road, Henderson, Auckland.

Dated this 16th day of December 1993.

Signed by claimant

Haki Wihongi

‘A’

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF The Community Funding Agency

AND

IN THE MATTER OF The Children Young Persons and their Families Act 1989

I, HAKI WIHONGI, Superannuant of Henderson, Waitakere, Auckland, make oath and swear as follows:

1. I am Chairperson of Te Whanau O Waipareira Trust, a duly registered Trust under the Charitable Trust Act 1957 having its registered offices situated at No 1 Edmonton Road, Henderson, Waitakere City, Auckland.

2. I am authorised by my Trust Board to make this affidavit in support of our grievances to the Waitangi Tribunal against the Department of Social Welfare and its Minister.

3. Te Whanau O Waipareira is a charitable Trust that services predominantly but not exclusively Maori people in the west Auckland region. This region stretches from the Blockhouse Bay ridge line through to Point Chevalier and encompasses all of the territory to the east and west as far north as Helensville. The Maori population in this geopolitical area numbers 28,800 people from the 1991 Census.

4. The difficulty my Trust Board trades under and is determined to change can best be described by the following statistics. We make up approximately 11.7 percent of the population of the Waitakere City region and over the last 10 years have made give or take 2 percentage points up 22 percent of the unemployed on the registered Employment Service rolls in both Henderson and Avondale. Our situation is exacerbated in the fact that only 6 percent of our people are of working age. Eight out of ten of our people leave School with two years or less Secondary. Seventy five percent of all incomes into Maori households in the West Auckland region come from Welfare payments. The average income of a Maori in the west Auckland region is \$12,000 per annum.

We make up 40 percent of the Social Work case load in the western district, we make up 45 percent of the Corrections Services, Justice Department work and 65 percent of Police enquiry work. It has been known for quite some years now that the impact of these outrageous statistics is creating significant dysfunction in our communities.

5. My Trust Board and myself desire to stand up and do something about these statistics on the basis of a very disciplined, well managed, targeted approach to our problems. It is

about time that we were given acknowledgement and prudent resources to uplift our performance so that our people play a far more productive and meaningful role in the evolution of our whole community and nation.

6. For years a number of people and organisations have been paid significant amounts of tax payer money to target and correct some of the problems I have outlined above. It is clearly evident that for one reason or another they have failed.

7. My Trust Board has over the last three years implemented some of the most exciting programmes available and we anticipate that by the year 1997 some significant indicators will have been moved positively relevant to uplifting our performance within the community.

8. I will now outline a number of programmes that we have implemented, all are highly transparent, fully accounted for and the demarcation lines add value and attack negative expenditure as follows:

- a. We are a registered Private Training Establishment under the Education Act 1989 and all of the courses that we administer are fully acknowledged and accredited by the New Zealand Qualifications Authority. We are in fact the largest Training Provider in the West Auckland region catering to 35 percent non-Maori clients. This is a key strategic programme area for us to be contracted as our second chance training, second chance education area will be vital to uplift our performance. Even if our people cannot get jobs, turning them into far more productive parents and citizens whilst they have downtime is extremely important to us. This programme area allows us off the Ministry of Education vote to achieve this.
- b. We were the first organisation contracted by the Northern Regional Health Authority to implement a significant primary preventive health care plan and the area of services is comprehensive. Our mobile services will deliver to children in need so that the bridging of poor parenting and disadvantaged background can be clearly targeted. Equalizing our children's opportunity off educational campuses will be significant and necessary.
 Bridging disadvantaged background and poor parenting is capable and available by way of delivery of this service in all efficient and effective manner off School campuses.
- c. We have a Food Co-operative and this must be noted by way of distinction from a Food Bank. Under no circumstances should we give things away, people must be put on budget plans and taught how to extend the purchasing power of their dollar.
- d. We have a commercial division of the Trust which is presently very pro-active in the market place endeavouring to secure long term sustainable employment. In effect the commercial operation of the Trust acts much the same as the main works or a Fletcher Challenge. The commercial arm of the Trust goes out and endeavours to obtain large contracts and then sets out to employ. We presently uplift rubbish, tendering for rubbish contracts in the Waitakere City Council Area have labour only Building Company, a Sewing Apparel and Design Company, Catering Company and a number of other industry related Companies. Demographically, most of our people are in the semi-skilled, unskilled area. As a consequence we must be very pro-active

in endeavouring to obtain contracts from local authorities who have a greater need for larger numbers of people with this skills requirement.

- e. We did have one of the most pro-active, efficient and effective Social Service delivery responses until negotiations with the Community Funding Agency have now meant that my Trust Board may have to make the unfortunate decision of closing this down. In our Social Services area we have 30 cases a week and these cases come from the most dysfunctional families possible. At the same time we have taken 30 Youth Justice referrals aged between 13 to 17 and commenced an Alternative Education Unit utilizing the correspondence curriculum and mentoring these people significantly. This has had significant results in youth offending when taking into account other training programmes.

9. I am endeavouring to paint a picture for you in regard to the very positive jigsaw puzzle this Trust Board has implemented at great investment for longer term sustainable uplifting of our communities' performance with the greater community.

10. We know of another organisation which does good work yet is funded 80 percent greater than us for only 35 percent of the work. This competitive organisation does good work, however, it has all the historical baggage relevant to efficiencies and effectiveness.

11. We are acknowledged in the west Auckland region by having status on the Maori Perspectives Committee which is a full standing committee of Waitakere City Council. We have a tremendous relationship by way of network with a range of other organisations.

12. We have obtained a large contract through a normal tender process wherein we are the largest provider of Small Business Advisory Services to the west Auckland community.

13. We are pro-actively moving to set up a number of Companies so that we can contest the employment market.

14. We are mindful and aware of a number of Government reports chronicling our deprivation and difficulties in the Social Welfare area. More importantly we are aware of the Department of Social Welfare's commitment to the Rangihou Report known as *Puao Te Atatu*.

Judge Mason delivered the Mason Report in 1992 evidencing once again that Maori organisations who have met the required standards of management, quality, monitoring and evaluation be utilized as service providers to their communities.

15. We are at a loss to understand why the Department of Social Welfare, its Director General and the General Manager of the Community Funding Agency who are aware of the massive resource we have spent on ensuring that we provide quality delivery of care to our community have not recognised us by funding support.

16. With the downsizing of the Department of Maori Affairs, the move into the Iwi Transition Agency and the move back to the Ministry of Maori Development, it was clear to us as a Trust Board that we had to be affirmative and pro-active in standing up in our region to deliver services to our people. We are acknowledged as being efficient and effective in

terms of the way in which we manage ourselves. We are credible and have integrity in terms of the way in which our accounting systems and structures work. Maori in our region with the downsizing have lost \$600,000 worth of support.

17. We have no problem in dealing with mainstream organisations, it is starting to become apparent however that people that manage the Community Funding Agency definitely have a difficulty in acknowledging Maori with equity, equality, fairness and justice.

18. What more must a Maori based organisation do to prove its worth in terms of the good job it is doing for its community and nation.

19. From my Trust Board, I can signal quite clearly to you that we are becoming disillusioned and very frustrated at the manner in which we are being treated. Under no circumstances can we allow our positive and affirmative programmes which will lead us out of dependency on the State to be derailed by conscious and known decision making by bureaucrats.

It is over to Trust Boards of our like to expose these types of inequalities.

[Haki Wihongi]

Sworn at Henderson

Dated this 16th day of December 1993.

[Tania Belz]

A Solicitor of the High Court of New Zealand

‘B’**Definitions**

Principles of the Treaty of Waitangi in this statement of claim, unless the context otherwise requires, the following principles of the Treaty of Waitangi are defined.

Active protection

‘Active protection’ means the Crown’s duty, in accordance with the preambles and articles II and III of the Treaty, to recognise and actively protect the Maori interests specified in the Treaty including:

- a) The duty to ensure that Maori always retain a sufficient share of their resources for their sustenance and property and that Maori be provided with the means to exploit such resources in a manner consistent with their own cultural preferences and
- b) the duty to protect Maori physical, cultural, spiritual and economic wellbeing.

Fiduciary Duty

‘Fiduciary Duty’ means the duty of the Crown, created by its undertakings to Maori as expressed in the Treaty and founded upon the consent of Maori, to act for the benefit of Maori in all matters connected with or arising out of its undertakings and without limiting the generality of the above includes the following duties:

- a) Active protection
- b) Honour of the Crown
- c) Remedy of past breaches
- d) Sharp practices
- e) Utmost good faith
- f) Consultation
- g) Tino rangatiratanga
- h) Treaty process
- i) Non derogation

Honour of the Crown

Honour of the Crown means the principle that all Maori uphold and assert the honour of the Crown.

Non derogation

Non derogation means the principle that in accordance with the guarantees in article II of the Treaty, where grievances under the Treaty are established by Maori, the Crown is required to take positive steps to remedy those breaches.

Remedy of past breaches

Remedy of past breaches means the principle that in accordance with the guarantees in article II of the Treaty, where grievances under the Treaty are established by Maori the Crown is required to take positive steps to remedy those breaches.

Sharp practices

Sharp practices means the principle that in all its dealings with Maori, the Crown take no unfair advantage including avoiding the use, or any suggestion of the use, of unfair dealing, undue influence, improper pressure, exploitation, inequality of bargaining, inadequacy of consideration in any transaction between the Crown and Maori leading to grievous impairment of bargaining power on their part and further that the Crown ensure in all its dealings that Maori receive informed and independent advice.

Tino Rangatiratanga

Tino Rangatiratanga means the principle that in accordance with mana atua, mana tupuna and mana whenua, Maori are entitled to possess, manage and control all their own taonga in accordance with their own cultural preferences and customs including the right of Maori to have all other taonga expressly recognised and protected by the Crown.

Treaty process

Treaty process means the duty of the Crown to procure the express and informed consent of Maori in respect of any interference contemplated by or on behalf of the Crown in the rights and privileges of Maori protected by the Treaty.

Utmost good faith

Utmost good faith means the principle that the parties to the Treaty act toward each other reasonably and in utmost good faith.

Consultation

Consultation means the principle that a Treaty partner act in good faith, fairly and reasonably toward the other, an onus when acting within its sphere to make an informed decision, that is a decision where it is sufficiently informed as to the relevant facts and law to be able to say it has had proper regard to the impact of the principles of the Treaty.

Such characteristics of consultation include:

- a) The obligation to provide sufficient information so as to allow Maori to make an informed assessment on the proposal and determine their response to it.
- b) The obligation to be willing to change plans or proposals if that is the result of consultation.
- c) The obligation to ensure adequate time frames. This means allowing sufficient time frames for Maori to absorb what they are being asked to consider, and giving them sufficient time to respond.

IN THE MATTER OF The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF A claim by Haki Wihongi for himself and Te Whanau
 O Waipareira Trust a duly incorporated Charitable Trust

SECOND AMENDED STATEMENT OF CLAIM

Monday 22nd of August 1994

Background

1. In 1840 the tupuna of the claimants were members of various iwi dispersed throughout Aotearoa, which iwi had and exercised tino rangatiratanga over their various rohe.

2. In 1840 the aforementioned iwi were economically wealthy as the owners of assets which included lands, forests, fisheries, waters and other natural resources.

3. At the same time the iwi were culturally and spiritually rich in that they lived and expressed a culture of great antiquity which culture sustained the life of these iwi and insured the maintenance of a relationship of profound spirituality between the iwi and their resources.

4. The Treaty of Waitangi entered into between those tribes and the Crown included guarantees in respect (inter alia) of the following:

- (a) The right, in the exercise of tino rangatiratanga, to determine the role, direction and development of traditional social structures including whanau, hapu and iwi.
- (b) The right, along with all other New Zealanders, to equity of treatment, equality of opportunity and the recognition of the mana and dignity of the individual (both as individuals and as members of whanau, hapu and iwi).

5. From 1840 down to the present day the aforementioned iwi have been systematically deprived of their social, economic, spiritual and cultural wealth through Crown policies practices and laws which have been formulated and implemented in a manner in breach of the principles of the Treaty of Waitangi and in particular in a manner in breach of Articles 2 and 3 of that Treaty.

6. Particulars of the foregoing include (inter alia):

- (a) The creation of the Native Land Court in 1865 and the pursuance of a direct policy of acquisition of the Maori land base.

- (b) The engaging in acts of aggression against various of the iwi including Ngapuhi, Tainui, Taranaki, Tuhoe, Ngati Awa, Whakatohea, Whanau Apanui, Ngati Porou, Ngati Kahungunu, Te Arawa and Wanganui and confiscating the lands of various of the aforementioned iwi who acted in defence of their lands.
- (c) The adoption of laws and policies which lead to the destruction of culture and loss of language including the adoption of a policy which discouraged education through the Maori language and the enactment of legislation which rendered traditional forms of healing and traditional systems of knowledge illegal.
- (d) The adoption of electoral laws which ensured the marginalisation of the Maori political voice.
- (e) The adoption of laws, policies and ideologies openly designed to achieve the assimilation of Maori and the breakdown of Maori social structure and systems.
- (f) The enactment of legislation including the Maori Affairs Act 1953 and the Maori Affairs Amendment Act 1967 which (inter alia) led to the compulsory acquisition of uneconomic interests in Maori land, reduced the modern role of the Maori Land Court as a protector of Maori ownership and abolished any useful distinctions between the system of Maori land ownership and the European land ownership system.
- (g) The adoption of policies which actively discouraged the retention of rural Maori populations on traditional papakainga and actively encouraged the depopulation of those papakainga through urban migration.
- (h) The utilisation of the migrating Maori population as an unskilled labour force for the burgeoning post war NZ economy.
- (i) The active adoption of a policy of assimilation in the post war period through methods such as 'pepper potting' – designed to ensure that Maori would be physically as well as culturally and economically assimilated into the Pakeha mainstream.

Te Whanau O Waipareira Trust

7. From the 1960's through to 1984 the process of urbanisation of individual Maori whanau occurred leading to a substantial increase in the Maori population of West Auckland.

8. Throughout that period, the new Maori leaders in the West Auckland community moved to deal with the inevitable social and other problems that arose as a result of the new migration.

9. The new models of leadership which arose as a result of urbanisation included pan tribal groups such as the Maori Women's Welfare League, the Maori committees and the Maori Wardens and inevitably the Whanau O Waipareira Trust.

10. The social and other problems included:

- (a) The breakdown of traditional whanau, hapu and iwi systems of support.
- (b) Social and cultural dislocation.
- (c) Poor health and educational performance.
- (d) Large scale unemployment.

11. Notwithstanding attempts by Maori to deal with these problems, the downturn in the New Zealand economy in the 1970's and the economic restructuring of the 1980's saw these problems steadily increase among West Auckland Maori.

12. In 1985 Te Whanau O Waipareira Trust ('Waipareira') was created to confront in a co-ordinated and cohesive way the social and economic difficulties Maori in West Auckland now faced. These difficulties had reached an unprecedented level.

13. Waipareira was created as a contemporary manifestation of traditional Maori structures and patterns in an urban context in an attempt to deal with the problems faced by West Auckland Maori and referred to at paragraph 9 hereof.

14. Waipareira is an efficient, effective and innovative deliverer of a range of holistic social and other services to the Maori community of West Auckland.

15. Waipareira is widely acknowledged by the community (both Maori and non-Maori) in West Auckland as possessing considerable mana and leadership in the community and as representing that part of the West Auckland Maori community which is not Ngati Whatua or otherwise tangata whenua, in all matters relating to their interests in the West Auckland urban context.

16. As an urban Maori organisation which provides cultural continuity for Maori in an urban setting Waipareira is a Treaty partner and enjoys rights deriving from the guarantees contained in the Treaty of Waitangi including those guarantees referred to at paragraph 4 hereof.

Government Policy

17. From the period 1984 on, the Government announced and implemented its policy to devolve the functions of the former Department of Maori Affairs to iwi.

18. The process of devolution of the former Department of Maori Affairs was justified upon a foundation of delivering greater rangatiratanga to iwi organisations.

19. The devolution and ultimate mainstreaming of Department of Maori Affairs programmes led to a loss in programme funding to the West Auckland Maori community in excess of \$600,000.00 which funding was not compensated for through programmes targeted to Maori administered by mainstream departments such as the Department of Social Welfare.

20. The Department of Social Welfare was restructured along similar lines without being completely devolved. Instead it became to a much greater extent, a funder of service providers rather than a service provider in its own right.

21. The impetus for such restructuring was the introduction of a new economic environment geared towards greater community responsibility, competition and efficiency.

Accountability of public service managers was to be reflected in the enactment of the State Sector and Public Finance Act.

22. In May 1992, social welfare service delivery was restructured and the Community Funding Agency ('CFA') was established as one of three new business arms of the Department.

23. CFA funding agency had and retains the responsibility of allocating and delivering funding and support to community based social and welfare service providers throughout New Zealand where such funding is within the discretion of the Director General of Social Welfare. Funding from this source is currently administered by way of contracts negotiated between the service provider and the CFA and contracts are usually entered into for a one year period.

Contract between CFA and Waipareira

24. Maori in West Auckland represent approximately 35% of the case load in respect of community social and welfare services in West Auckland funded through CFA.

25. In each of the years 1992 and 1993 CFA allocated only 16.5% and 13.8% respectively of its overall funding for West Auckland to Maori service providers.

26. None of the Non-Maori service providers in West Auckland provide programmes specifically targeted to the needs of the West Auckland Maori community.

27. In 1991–2 prior to the creation of the CFA, funding allocated to Waipareira for the provision of services which would be taken over by CFA in the following year was \$184,451.78 inclusive of GST.

28. In 1992–3 contracts with CFA and ongoing uncompleted contracts with the departmental structures combined to create an overall funding allocation to Waipareira of \$168,407.30.

29. In 1993–4 Waipareira was awarded contracts by CFA of \$145,332.78 inclusive of GST.

30. From the period 1991–2 to 1993–4 overall funding to Waipareira in this category has fallen 21.21%.

Wherefore the Claimant Claims

Crown's obligation to fund the needs of West Auckland Maori

31. The Crown owes a Treaty obligation to address the social and other problems of West Auckland Maori referred to in paragraph 9 hereof through the funding of programmes targeted specifically at delivering welfare services to Maori in accordance with their needs.

32. The Crown has failed to provide funding for such programmes in accordance with the needs of the West Auckland Maori community.

Representivity

33. Waipareira, having been established to:

(a) Address the results of the Crown's own Treaty breaches.

(b) Reconstruct traditional Maori structures and patterns in an urban context.

is a Treaty partner representing the West Auckland Maori community described in paragraph 14 hereof.

34. The Crown has failed to recognise the representative status of Waipareira and has failed to recognise that Waipareira is a Treaty partner.

Crown Obligation to ascertain needs

35. The Crown owes Waipareira a Treaty obligation to ascertain the needs of the West Auckland Maori community in terms of welfare services through consultation with Waipareira.

36. The Crown has failed to so consult and has failed to so ascertain the needs of the West Auckland Maori community.

Crown's obligation to provide equitable levels of funding

37. The Crown owes West Auckland Maori a Treaty obligation to fund their needs in terms of delivery of welfare service programmes targeted to Maori in an equitable manner.

38. The Crown has failed to equitably fund West Auckland Maori, whether by way of contracts to Waipareira or otherwise.

Wherefore the Claimants seek the following findings:

39. Findings in terms of paragraphs 30 to 37 hereof.

Wherefore the claimant seeks the following recommendations:

40. A recommendation that CFA formally recognise that Waipareira is representative of the West Auckland Maori community and for that purpose is its Treaty partner.

41. A recommendation that the CFA engage in a process of bona fide consultation with Waipareira to ascertain the needs of the West Auckland Maori community in terms of the delivery of welfare services.

42. A recommendation that the CFA renegotiate with Waipareira, service delivery contracts for the year 1994 with a view to identifying contract figures which more accurately

and equitably reflect the proportion of the West Auckland case load which can be attributable to the needs of West Auckland Maori.

43. A recommendation that CFA establish systems which ensure accountability to the West Auckland Maori community in terms of funding for service provision, and in particular systems which ensure that an appropriate and equitable proportion of CFA funds allocated to West Auckland be expended on programmes which are directly targeted at the needs of the West Auckland Maori community.

APPENDIX II

RECORD OF INQUIRY

THE TRIBUNAL

The Tribunal membership comprised Joanne Morris (presiding), Sir John Ingram, Professor Sir Hugh Kawharu, Pamela Ringwood, and Hepora Young.*

COUNSEL

Counsel appearing were Joseph Williams and Tania Belz (for the claimants) and Helen Aikman and Dr Briar Gordon (for the Crown).

By a letter dated 10 February 1997, the claimants advised the Tribunal that they were no longer instructing Mr Williams. In a memorandum received on 8 December 1997, Frederick Thorp and Christian Whata of Russell McVeagh McKenzie Bartleet and Company advised the Tribunal that they had been appointed as solicitors to replace the solicitors and counsel who appeared on behalf of the claimants at the hearing.

THE CLAIM

The original claim (claim 1.1) was received on 11 January 1994 (see app 1). Five subsequent amendments to it were filed.

URGENCY AND PRE-HEARING CONFERENCES

Shortly after filing the claim, the claimants requested that it be heard urgently (see papers 2.1, 2.2). Amongst their reasons for seeking urgency, the claimants stated that the Crown's actions were 'significantly prejudicing [Te Whanau O Waipareira's] ability to implement the delivery of necessary Social Services Programmes to the West Auckland Community' (paper 2.1, para 6). The Tribunal's direction to register the claim issued on 26 January 1994. It was further directed that an inquiry should be conducted if the claimants were ready to proceed. In early March 1994, claimant and Crown counsel attended a pre-hearing conference in Auckland before Professor Gordon Orr and Pamela Ringwood, Tribunal members acting with the authority of the chairperson. Following this conference, the Tribunal indicated that,

* Hepora Young died on 5 December 1996, before the report was completed.

while consideration had to be given to existing Tribunal commitments, it would ‘endeavour to set a date for the hearing in or about June–July 1994’ (paper 2.8).

In July 1994, a Tribunal consisting of Joanne Morris (presiding), Sir John Ingram, Professor Sir Hugh Kawharu, Pamela Ringwood, and Hepora Young was constituted to hear and report on the claim (see paper 2.14). A further pre-hearing conference was held in Auckland on 1 August before Ms Morris, principally to seek agreement between the Tribunal and counsel on the ambit of the claim and the main issues involved. In this regard, the claimants undertook to file another amended statement of claim, which was received on 24 August (and which was amended further by another statement of claim received on 26 August). It was also decided that during the inquiry Peter Boag would fill an advisory role for the Tribunal and would be called as a Tribunal witness, with parties having the opportunity to cross-examine him on any evidence that he submitted (paper 2.16). The conference also considered the possibility of the Tribunal referring the claim to mediation under clause 9A of the second schedule to the Treaty of Waitangi Act 1975. The claimants, however, preferred to proceed to a hearing (papers 2.15, 2.16).

THE HEARINGS

The first of five hearings of the claim ran from 31 August to 2 September 1994 at Hoani Waititi Marae in Henderson, West Auckland. Following the powhiri, the Tribunal proceeded to hear evidence in support of the claim from members of Te Whanau o Waipareira Trust Board, kaumatua and supporters of the trust, and past and present members of its staff.

The second hearing, from 21 to 22 September 1994, again at Hoani Waititi Marae, heard the remainder of the claimant evidence and opening submissions from claimant counsel. The Tribunal also heard submissions from third parties to the claim, who sought to inform the Tribunal of their position as tangata whenua in the geographical area that Te Whanau o Waipareira services.

During the third hearing, from 31 January to 3 February 1995, held in part at Hoani Waititi Marae and in part at conference facilities at the Dalma Court Motor Inn, Henderson, the Tribunal heard submissions from Crown counsel and supporting evidence from Crown witnesses.

At a one-day hearing on 20 March 1995 at the Quality Hotel Airport, Mangere, Auckland, further cross-examination of the Crown’s witnesses took place. The final hearing saw the Tribunal return to Hoani Waititi Marae for the week 24 to 28 April (with 25 April, Anzac Day, a non-sitting day). At this hearing, the cross-examination of Crown witnesses was completed, Mr Boag presented his report and was questioned on it, and counsel for both parties presented their closing addresses. Tom Parore, for Te Runanga o Ngati Whatua, was also given an opportunity to speak about the runanga’s position in West Auckland, its relationship with Te Whanau o Waipareira Trust, and how it viewed the claim.

RECORD OF PROCEEDINGS**1. CLAIMS****1.1 Wai 414**

Claimant: Haki Wihongi
Date: 16 December 1993
Concerning: Te Whanau o Waipareira Trust

- (a) Amendment to claim, 4 February 1994
- (b) Amendment to claim, undated (filed 28 February 1994)
- (c) Amendment to claim, undated (filed 8 March 1994)
- (d) Amendment to claim, 22 August 1994
- (e) Amendment to claim, 22 August 1994

2. PAPERS IN PROCEEDINGS

2.1 Memorandum from claimant counsel to the registrar requesting urgent hearing, 19 January 1994

2.2 Memorandum from claimants to the registrar concerning request for urgency, 20 January 1994

2.3 Directions from the chairperson to register claim 1.1, 26 January 1994

2.4 Directions from the chairperson concerning claim 1.1(a), 14 February 1994

2.5 Directions from the chairperson concerning claim 1.1(b), 1 March 1994

2.6 Memorandum concerning the claimant's position, undated (filed 4 March 1994)

2.7 Memorandum from the claimants concerning evidence, undated (filed 10 March 1994)

2.8 Directions from the Tribunal issued following a conference in Auckland on 4 March 1994, 14 March 1994

2.9 Memorandum from Crown counsel to Tribunal concerning issues, 15 March 1994

2.10 Directions from the chairperson concerning claim 1.1(c), 11 April 1994

2.11 Letter and attachments from claimant counsel to the registrar concerning an official information request and other matters, 28 March 1994

(a) Letter from Te Whanau o Waipareira Trust to the Department of Social Welfare, 25 February 1994

- (b) Letter from Te Whanau o Waipareira Trust to the Department of Social Welfare, 8 October 1993
- (c) Letter from the Community Funding Agency to Te Whanau o Waipareira Trust, 4 November 1993
- (d) Letter from the Department of Social Welfare to Te Whanau o Waipareira Trust, 28 February 1994

- 2.12 Letter from the Department of Social Welfare to Te Whanau o Waipareira Trust, 28 March 1994 (claimants)

- 2.13 Letter from the ombudsman to Te Whanau o Waipareira Trust, 8 April 1994 (claimants)

- 2.14 Directions from the chairperson to constitute the Tribunal, 22 July 1994

- 2.15 Directions from the Tribunal to convene a judicial conference, 25 July 1994

- 2.16 Directions from the Tribunal to convene the first hearing, 18 August 1994
- (a) Notification of first hearing, 12 September 1994

- 2.17 Directions from the Tribunal concerning the second hearing, 9 September 1994

- 2.18 Notification of second hearing, 12 September 1994

- 2.19 Letter from the Community Funding Agency to Te Whanau o Waipareira Trust, 24 August 1994

- 2.20 Letter from Kawerau a Maki Trust to Te Whanau o Waipareira Trust, 19 September 1994

- 2.21 Notification of third hearing, 28 September 1994

- 2.22 Memorandum of claimant counsel concerning draft list of issues, 30 September 1994

- 2.23 Letter from Crown counsel to the registrar seeking to postpone the third hearing, 17 October 1994

- 2.24 Certificate of dispatch of notice concerning postponement of third hearing, 20 October 1994

- 2.25 Notice of postponement of the third hearing and notice of resumption of that hearing, 20 October 1994

- 2.26 Letter from Crown counsel to the registrar concerning progress on resolving points at issue, 10 November 1994

- 2.27 Letter from claimant counsel to Crown counsel concerning draft issues, 21 December 1994

- 2.28** Letter from Crown counsel to claimant counsel concerning judicial conference and issues, 22 December 1994
- 2.29** Letter from claimant counsel to Crown counsel concerning issues, 9 January 1995
- 2.30** Memorandum from Crown counsel concerning Community Funding Agency witnesses, 30 January 1995
- 2.31** Direction from Tribunal to distribute document D1, 15 February 1995
- 2.32** Notification of fourth and fifth hearings, 20 February 1995
- 2.33** Letter from Crown counsel to the registrar concerning document D1 and other matters, 1 March 1995
- 2.34** Letter from Crown counsel to the registrar concerning Community Funding Agency procedures handbook, 2 March 1995
- 2.35** Letter from claimant counsel to the registrar concerning document D1, 6 March 1995
- 2.36** Letter from Crown counsel to the registrar in response to paper 2.35, 9 March 1995
- 2.37** Letter from Crown counsel to the registrar concerning a judicial conference, 13 March 1995
- 2.38** Direction from Tribunal to release document E1, 12 April 1995
- 2.39** Letter from claimant counsel to Crown counsel concerning draft list of issues, 11 April 1995
- 2.40** Letter from Crown counsel to claimant counsel concerning draft list of issues, 19 April 1995
- 2.41** Memorandum from Crown counsel concerning scope of claim, 20 April 1995
- 2.42** Direction from the Tribunal concerning statement of issues, 21 June 1995
- 2.43** Memorandum from claimant counsel in response to paper 2.42, 6 July 1995
- 2.44** Memorandum from Crown counsel in response to paper 2.42, 9 August 1995
- 2.45** Letter from claimant counsel to the registrar concerning paper 2.44, 17 August 1995
- 2.46** Letter from claimant counsel to the registrar concerning further evidence, 22 August 1995

- 2.47 Letter from Crown counsel to the registrar concerning issues, 22 August 1995
- 2.48 Letter from Tribunal to Crown counsel in response to paper 2.47, 29 August 1995
- 2.49 Letter from claimant counsel to the registrar concerning contract negotiations, 30 August 1995
- 2.50 Memorandum from claimant counsel concerning the Tribunal's request for information, 14 December 1995
- 2.51 Memorandum from Crown counsel concerning materials filed by the Crown in relation to sections 110 and 396 of the Children, Young Persons, and Their Families Act 1989, 24 January 1996
- 2.52 Letter from claimant counsel to the Tribunal opposing any use of document E14 by the Tribunal, 4 February 1997

3. RESEARCH COMMISSIONS

- 3.1 Research commission, Edward Douglas, 20 January 1995
- 3.2 Deleted

4. TRANSCRIPTS

- 4.1 Transcript of questioning of witnesses, 21–22 September 1994 (also as doc B10)
- 4.2 Transcript of questioning of witnesses, 31 January – 3 February 1995
- 4.3 Transcript of fourth hearing completed by Crown counsel, 20 March 1995
- 4.4 Transcript of Peter Boag's oral evidence
- 4.5 Transcript of Wiremu Takerei's oral evidence, 24–28 April 1995

RECORD OF DOCUMENTS

* Document held in the Waitangi Tribunal library, Waitangi Tribunal offices, third floor, 110 Featherston Street, Wellington

The name of the person or party that produced each document or set of documents in evidence appears in parentheses after the reference, except where that source is already apparent.

A. TO END OF FIRST HEARING

A1 New Zealand Community Funding Agency, *The Mission, Aims and Value Statement of the New Zealand Community Funding Agency*, January 1994

A2 Department of Social Welfare, *New Zealand Community Funding Agency: Brief for the Minister of Social Welfare*, Wellington, 1993

A3* 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, 1988

A4* Ministerial Review Team, *Report of the Ministerial Review Team to the Minister of Social Welfare: Review of the Children, Young Persons and their Families Act, 1989, 1992*

A5 Constitution of Te Whanau o Waipareira Charitable Trust, 30 May 1984

A6 Marea Brown, 'Te Whanau o Waipareira', background paper, 1985

A7* Report of Royal Commission on Social Policy, 1988

A8 Affidavits of evidence, 7 June 1994 (claimant counsel)

(a) Affidavit of Tai Nathan, 30 May 1994

(b) Affidavit of Robert Newson, 31 April 1994

(c) Affidavit of Connie Hanna, 22 April 1994

(d) Affidavit of Mervyn Phelps, 18 April 1994

(e) Affidavit of Albert Williams, 21 April 1994

(f) Affidavit of Mavis Tuoro, 21 April 1994

(g) Affidavit of Isabella Mano, 22 April 1994

(h) Affidavit of William Hanley, 22 April 1994

(i) Affidavit of Naida Pou, 26 April 1994

(j) Affidavit of Pat Hohepa, 26 April 1994

(k) Affidavit of Kimball Stewart, 26 April 1994

(l) Evidence of Toby Curtis, undated

(m) Affidavit of Denis Hansen, 29 April 1994

(n) Second affidavit of Haki Wihongi, 2 May 1994

- (o) Affidavit of June Mariu, 3 May 1994
- (p) Affidavit of Daryl Cross, 3 May 1994
- (q) Affidavit of Barney Tupara, 5 May 1994
- (r) Affidavit of Marea Brown, undated
- (s) Affidavit of Monty Rihari, 31 May 1994
- (t) Statement of William Hanley, 22 April 1994

A9 Outreach newsletters from the Community Funding Agency (claimant counsel)

- (a) December 1992
- (b) April 1993
- (c) June 1993
- (d) July 1993
- (e) October 1993

A10* New Zealand Government, *The Government's Response to the Report of the Ministerial Review Team: The Children, Young Persons, and their Families Act 1989*, Wellington, 1992

A11 Submission from Te Warena Taua, Kawerau a Maki Trust, 22 August 1994

A12 Letter from Emily Karaka, Ngai Tai ki Tamaki Trust, to the registrar, 26 August 1994

- (a) Submission of Emily Karaka, Ngai Tai ki Tamaki Trust, 26 August 1994

A13 Letter from Whakataute Te Huia for Te Kawerau a Maki to the Tribunal concerning representation, 18 August 1994

A14 Submission of M Powell, Te Tinana o Ngati Whatua Nui Tonu Trust, undated (filed 31 August 1994)

A15 Evidence of June Mariu, undated (filed 31 August 1994)

A16 Evidence of Naida Pou, undated (filed 31 August 1994)

A17 Evidence of Mavis Tuoro, undated (filed 31 August 1994)

A18 Evidence of Tai Nathan, undated (filed 31 August 1994)

A19 Evidence of John Tamihere, undated (filed 1 September 1994)

A20 Evidence of Donald McConnell, undated (filed 1 September 1994)

A21 Background information on Te Whanau o Waipareira Trust, filed 1 September 1994 (claimant counsel)

- (a) *Waipareira Corporate*, pamphlet
- (b) *Te Whanau o Waipareira Trust*, pamphlet
- (c) Waipareira Training Academy, *Wai-Tech Course Directory 1994*, pamphlet
- (d) Waipareira Corporate, *Management*, pamphlet

- (e) Waipareira Corporate, *Te Whanau o Waipareira Trust 1994*, calendar, 1994
- (f) Untitled booklet about Te Whanau o Waipareira
- (g) Te Whanau o Waipareira Trust, *Chairman's Annual Report*, 1993
- (h) Te Whanau o Waipareira Trust, *Te Whanau o Waipareira Corporate Plan: June 1993 to June 1994*, Auckland, 1993

A22 Evidence of Ada Lau'ese QSM, undated (filed 1 September 1994)

A23 Submission of Ranginui Walker, 1 September 1994

A24 Evidence of Albert Williams, undated (filed 2 September 1994)

A25 Evidence of Connie Hanna, undated (filed 2 September 1994)

A26 Evidence of Susan Jeavons, undated (filed 2 September 1994)

A27 Evidence of Robert Harvey, August 1994

B. TO END OF SECOND HEARING

B1 Evidence of Whakataute Te Huia

B2 Community Funding Agency, 'Services Planning', *NZCFA Procedures Handbook* (claimant counsel)

B3 Evidence of John Henry Tamihere (claimant counsel)

B4 Evidence of Michael Timothy Tolich

(a) Contract, 17 March 1994 (claimant counsel)

B5 Evidence of Kimball Robert Stewart

(a) Supporting documents (claimant counsel)

B6 Evidence of William Patrick Hanley

(a) Supporting documents (claimant counsel)

B7 Synopsis of opening submission of claimant counsel

B8 Evidence of Pamera Te Ruihi Warner

B9 Evidence of Basil Sharp

B10 Transcript of questioning of witnesses (John Tamihere, Michael Tolich, Kimball Stewart, Patrick Hanley), 21–22 September 1994

C. TO END OF THIRD HEARING

c1 Evidence and other material (Crown counsel)

- (1) Evidence of Margaret Bazley
- (2) Evidence of Ann Clark
- (3) Evidence of Alfred Kirk
- (4) Evidence of Richard Morris
- (5) Evidence of Stephen Fogarty
- (6) Evidence of Wendy Reid
 - (a) Evidence of Te Whanau o Waipareira Trust contract reports
 - (b) Evidence of framework for Citizens Advice Bureau and Community Funding Agency contract
- (c) Letter from the Office of the Controller and Auditor-General
- (7) Evidence of Elizabeth Marsden
- (8) Evidence of Yvonne McLean
- (9) Evidence of Patrick Kelly
- (10) Evidence of Sarah Gillard
- (11) Evidence of Haahi Walker
- (12) Evidence of Christina Bettany
- (13) Evidence of Maryanne McGee
- (14) Evidence of Bill Takerei
- (15) Evidence of Ria Earp
 - (a) Attachments from Te Puni Kokiri
- (16) Evidence of Richard Morrison

c1

- (a) Appendices to document c1(15)
- (b) Supporting documents to document c1 (vol I)
- (c) Supporting documents to document c1 (vol II)

c2 Synopsis of opening submissions of Crown counsel, 31 January 1995

c3 Social Policy Agency, *Te Wakahuia o Puao-te-Ata-tu*, Department of Social Welfare, 1994 (Crown counsel)

c4 Chapters from Community Funding Agency, *NZCFA Procedures Handbook* (Crown counsel)

- (a) 'Operations' (vol I)
- (b) 'Administration and Finance' (vol II)
- (c) 'Human Resources' (vol III)
- (d) 'Ministerial Communication and Public Relations' (vol IV)

c5

- (a) Social Policy Agency, *Te Wakahuia o Puao-te-Ata-tu*, Department of Social Welfare, 1994 (Crown counsel)
- (b) Te Puni Kokiri, *A Guide for Departments on Consultation with Iwi*, 1993 (Crown counsel)
- (c) Department of Health, *Health and Equity: Special Report 72*, 1985 (Crown counsel)

C6 Community Funding Agency, *National Services Plan: Funding Decisions* (Crown counsel)

D. TO END OF FOURTH HEARING

D1 Edward Douglas, 'Urbanisation of the Maori Population'

D2 Memorandum from Crown counsel concerning iwi social services policy (Crown counsel)

D3 Letter from the Community Funding Agency to the Tribunal, 20 March 1995 (Crown counsel)

D4 Final page of a letter from J T Chapman, the Controller and Auditor-General, concerning POBOCS (Crown counsel)

D5 Information from the Community Funding Agency (Crown counsel)

(a) Definition of a Maori based service provider

(b) Development of the needs indicator to reflect the community's capacity to contribute

(c) Answer to question on paragraph 228 of Wendy Reid's evidence

(d) Funding to Maori and Pakeha to demonstrate how accountability under the Treaty of Waitangi is discharged

(e) Glenburn School

(f) Partial funding

(g) Tendering

(h) Roles and responsibilities of Children and Young Persons Service and the Community Funding Agency

(i) Dialogue consultants

E. TO END OF FIFTH HEARING

E1 Commentary on the Te Whanau o Waipareira claim by Peter Boag (registrar)

E2 Questions from Joanne Morris to Wiremu Takerei requesting written answers (Crown counsel)

E3 Questions from Joseph Williams to Sarah Gillard on the approval process (Crown counsel)

E4 Letter from Te Runanga o Ngati Whatua to the registrar, 21 April 1995 (Crown counsel)

E5 Article by Mason Durie

E6 Synopsis of claimant counsel's closing submissions

- E7** Synopsis of Crown counsel's closing submissions
- E8** Submissions in reply (claimant counsel)
- E9** Letter from Crown counsel to the registrar, 16 May 1995, enclosing two papers by Chief Judge Durie concerning:
- (a) The Chatham Islands claim
 - (b) Custom law
- E10** Letter from the Tribunal to Crown counsel requesting further information on evaluation and other matters, 20 June 1995
- (a) Crown counsel response to document E10, 10 July 1995
- E11** Letter from the Tribunal to claimant counsel requesting further information on contracts and other matters, 19 June 1995
- (a) Claimant counsel's response to document E11, 18 July 1995
- E12** Further data from the Community Funding Agency, 15 November 1995 (Crown counsel)
- E13** Further information from the Community Funding Agency in relation to document B3, appendix 3 (Crown counsel)
- E14** Monitoring agreement between Te Puni Kokiri and the Community Funding Agency