

Evidence for the times: a statistical perspective on the justice sector

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Preface

The optimism of *Puao-te-Ata-tu The Report of the Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare* (Department of Social Welfare 1988) and its heightened expectations and means of assessing accountability through a trustworthy evidence base remains a challenge to child welfare and the justice system. We still lack the means to understand when success or failure is a consequence of deliberate action rather than chance. Youth and young adult incarceration rates have fallen to levels not seen for some 75 years, yet the high imprisonment rates of Māori males over 30 have been unyielding for some 15 years and are now the main determinant of the level of Māori male imprisonment. Further complicating predictions for the future, the rates at which Māori children are the subject of care and protection by child welfare have risen steadily over the past two decades.

This paper seeks to sharpen the range of questions that an evidence strategy across the justice sector might address, and why. Statistics provide just one vital window on the relationship between Māori and the State. How these statistics are responded to will be another test of that relationship.

This study of the evidence base that underpins trust in the justice sector has two parts:

1. An assessment of the current evidence base that enables oversight of the trustworthiness of the laws, policy, institutions, and processes and practices of justice and child welfare
2. Suggestions for the forms of evidence needed to examine the trustworthiness in justice and statutory social services in the future

The sections which contain comments on public sector management structures draw on my career in top level management roles and public accountability that spanned critical periods of public sector transformation in both New Zealand and the United Kingdom. This paper builds on the analysis in the working paper published in January 2021 by Victoria University of Wellington Institute for Governance and Policy Studies: *A Statistical Window for the Justice System: Putting a Spotlight on the Scale of State Custody across Generations of Māori*.

Evidence in the justice sector – why it matters

What is “evidence of justice”?

Although governments have long been expected to attempt to remedy matters of concern in society, there are many signs of indifference, and attitudes to the condition or number of prisoners are no exception. For public awareness to grow, a strong evidence foundation is needed, based on a comprehensive rethink of the requirements of the evidence base that informs institutional practices, public perceptions, policy analysis, and political and parliamentary consideration. Public legitimacy requires a community-inspired spotlight on the need for evidence of justice to not only inform policy and agency accountability but also to offer assurance of trustworthiness and meeting constitutional obligations. The past has a long reach when it comes to public legitimacy and trust, which has been made apparent in the Waitangi Tribunal Oranga Tamariki inquiry (Wai 2915 2021).

After a strong commitment to social science research and population studies by government departments in the 1960s to the 1980s, there are now fewer published reports of evaluation studies, and most agencies had downsized their research capacity by the mid-1990s. Web-based access to any regularly released information is frustrated by poor information management. There has been an associated narrowing of the range of evidence and analysis that supports external evaluation of what and how actions take place. The availability of the Stats NZ Integrated Data Infrastructure (IDI) has added a new capability, but it cannot substitute for all of this narrowing of analysis. The observations of people and processes that form evidence in social services are rarely precise, or complete in who they represent, even when they contain all who are part of some service or condition.

Policy is of course always immensely political. Operational decisions and their evidence need to be protected from political influence by the structures and impartiality of the public service and have independent oversight. Past independent reviews provide a guide to rethinking the central needs of the evidence base. The recent mix of inquiries into Oranga Tamariki (Whānau Ora Commissioning Agency 2020, Children’s Commissioner 2020,1 & 2, Office of the Ombudsman 2020) has provided the strongest foundation for understanding the statistical and other evidence forms that are important for addressing the importance of independent review and protecting the long-term evidence base.

The complexity of the justice sector

Strategic-level change in the justice sector can be fraught. Within the justice system, the Judiciary, police, Corrections Department, Crown prosecutors and the Parole Board have independence in their operation and practices. This results in less capability for directing integrated responses than in other sectors of the State. Although a focus on youth at risk of imprisonment started to see results by 2007/8, it was a good decade earlier that well-articulated goals appear to have become a common cause across the sector. It is not possible to differentiate the parts played by the many contributors to this most significant fall in imprisonment rates of youths and young adults. To be sustained over decades this common focus is likely to have been a powerful catalyst and strengthened the resolve at local, regional and national levels.

Prison is one of the many end points of a pathway starting from illegal acts, notification to authorities, detection, apprehension of offenders, court hearings and sentencing. The pathway has many variations depending on the offender's age and history, the nature of the illegal act, and rehabilitation prospects and options. Consequently, monitoring the justice system through analysing prison counts is somewhat like driving a car using only the rear vision mirror. Across the justice sector, practices respond in different ways to policy and law changes. As noted by Young (2021), there are many examples of when public and political sentiment may have had a larger overall influence on practice than that of legislation or policy. The connection between the public policy settings which shape both legislation and the evidence base, and operational practice and outcomes, can be obscure, and more so when public and political sentiment have been stirred up.

Some outcomes, such as managing the societal impact of placing people on remand for prolonged periods, do not appear to be the responsibility of any specific place in the justice sector, yet police, judges and the prison service all exercise discretions here. Consequently, the prison system cannot escape the pressures passed on by stresses elsewhere across the justice sector. These may result from slower court processes that have contributed to the doubling since 1999 of the average duration on remand, or legislative changes which necessitate imprisonment when it was not previously necessary. The reintegration of offenders who are remand or sentenced prisoners has become less effective, as seen in increased rates of recidivism. This also places pressure on the prison muster. Possible responses are dependent on the capacity of either probation services or community organisations to meet reintegration needs for which the justice sector does not take responsibility.

It is generally well-known that institutional practices based on continuous improvement and the enabling of informed curiosity will function best when operational groups are empowered to test and challenge how they carry out their responsibilities. The quest for better outcomes by improving practice requires the ability to continually challenge the evidence base. Despite carrying out the most difficult tasks, child welfare agencies have seldom had the support and nurturing they should have had from the wider public service. The range of findings from the five reviews of Oranga Tamariki in 2020 suggest the scope of planning required for a future justice and social services sector-wide evidence base. These reviews have also signalled the diverse ways in which the institutions in the wider justice sector must expect to be challenged. A common purpose and trustworthy, up-to-date knowledge of the impact of past practices can provide strong guidance for those who make decisions daily about individuals. Consequently, continuous improvement approaches led from within an individual organisation may have a broad and persistent impact if there is an institution-wide or sector-wide intent to make change. The Youth Crime Action Plan (Ministry of Justice 2013) is a comparatively rare, tightly focused statement of intent able to influence a broad-based mix of organisations, government institutions and the judiciary. It was intended to set common goals for those who influence youth imprisonment, and the preface to the plan notes that it "deliberately turns away from the idea of a youth justice 'pipeline'".

Anecdote and political and public sentiment – the power of one

Periodic arousals of political and public appetite for harsher responses to offending have led to legislation, policies and practices that have placed at risk or reduced the gains that result from the continued reductions in reported crime and greater challenging of indifference to discrimination in practices. The former Chief Justice Elias (2009) noted, “We live in a climate in which every mistake becomes a scandal.” In both child welfare and the justice system there have been periods of quite extreme consequences from the laws and practices that result in State custody. The policy changes triggered by moral panic (Dalley 1998) in the 1960s were the most extreme, and the laws, policies and practices that enabled them remained in place until just over 30 years ago. The impact of those extreme periods on the connection of later birth cohorts of Māori to the justice system can still be seen in the trends in imprisonment rates for males over 25.

For Māori males under 25 there has been a major break with the past. In particular, the average imprisonment rates for Māori males under 25 in 2020 have fallen sharply to levels last observed in the 1930s. This massive drop is even more remarkable given that on matters of justice, Parliament has regularly legislated to appease public sentiment and anecdote, rather than based on evidence or sound practice. When evidence is underused through choice, limited capability or competence, or underinvestment, then anecdote, belief, unvalidated theory or prejudice are more likely to drive decisions. There is, at best, only a weak link between scientifically credible evidence and public trust in how justice institutions meet their statutory obligations. While it continues to be inevitable that policy and practice will be influenced by occasional sentinel events, the rashes of public sentiment may have a different effect on outcomes than intended by political and Parliamentary reactions. Policies founded on sentiment and reaction to extreme events are usually difficult to implement well. The absence of analysis at the evaluation stage means there will be no clear framework for monitoring the effectiveness of implementation or determining whether to continue to gather evidence or invest in new forms. The intended benefits and costs of policies which are usually judged as extreme are rarely scientifically validated at the time of selection.

To understand how swings in sentiment lead to rapid escalation in notifications and statutory obligations to respond (such as formal statutory investigation, child removal), Mansell (2006) examined the effects on discretionary processes around child welfare. His focus was on examining why child welfare did not have the flexibility in either fiscal management or operational capability to rapidly scale up and maintain service quality when rapid changes in notifications arose. Most critically, he noted that, “the evidence presented here demonstrates that the main factors driving the demand surge are endogenous – factors relating to changes in the behaviour of the child protection system itself”. As the perception of risk around particular options rises and falls at screening points in the process, the possibility of escalation of investigation and examination in the same situation will vary. Mansell also noted that, “the effect of increased attention on screening draws resources away from intervention and increases the probability that concerns will linger and resurface ... uncertainty in decision making implies flexibility; social workers can adjust their intervention threshold to deal with surges in demand”.

Increased risk aversion at a practitioner level that results in more surveillance will then result in fewer resources for oversight of individuals already in the care and protection of child welfare. At each stage of the justice pathway where risk aversion around making the wrong choice increases in line with public and political sentiment, there is an escalation to a higher level of statutory challenge. For some the end point will be a prison sentence. At the point of imprisonment, there is no further path for escalation compared to the range of discretions about escalation that are applied further back in the chain of decision making.

Imperatives for improving evidence

The limited range of information about the components of the justice system and how they connect makes it hard to readily determine which part of the chain of decisions is the ultimate cause of excessive demands on prison capacity. The Department of Corrections has little capacity for reducing inmate numbers when adjusting to demand pressures, compared to the discretionary flexibility of police, judges and Crown prosecutors. This may be a contributing factor in the huge difference between the low rates of imprisonment of males under 25, and the sustained higher imprisonment rates of Māori males 25 and over. It may be that reducing youth imprisonment had become such a well-embedded cause that practitioners across the justice chain could operate with a less risk aversion. The response to growth and volatility in pressures of this kind significantly shapes the wider justice system responses because the institutional focus is on security and risk pervades all roles (Elias 2009).

Increasing numbers of offenders are remanded to prison for longer than the length of the prison sentence that they eventually receive. Pressure on legal aid resources or workload pressure in the courts could be two of many contributors to this. Without legal representation, those granted bail may not be fully aware of the significance of bail conditions and how they are monitored. Ethnicity data on those using legal aid is too poor to be of use, although the over-representation of Māori in breaching bail is very high. Oranga Tamariki (2018) noted, "In the total 12,604 bail episodes between 2011/12 and 2015/16, 69% of youth either breached their bail conditions or reoffended, including 34% who did both." A comparable study by Corrections might highlight the extent to which breaches of bail influence prisoner numbers.

Monitoring offender rehabilitation processes is complex because of the many critical decision points which determine outcomes. The integration of information across the justice sector has to track a wide range of alternatives for offender rehabilitation, and alternatives to prison for sentenced offenders. These range from community sentences to home detention, most of which are managed by the Corrections Department. Families, whānau and communities play a critical part in providing safe places for the guardianship of children in the care and custody of the State, in the rehabilitation of offenders not imprisoned or those on release from prisons, and in supporting the families of those in State custody. They also provide a vital alternative to State custody. This is all done in the face of long-standing beliefs that public institutions are the central remedy.

The long-term decline in levels of offending and reported crime has been one of the influences on a strong system-wide commitment to offender rehabilitation, but with the results indicating a very

strong preference for offenders who are under 25 and without previous prison experience. Such operational choices ultimately affect the lives and outcomes of those who enter the system, and their families. Possible explanations include weaker reintegration rates of older prisoners, and longer sentences given to these offenders. There is an increased likelihood of offenders at any age to be imprisoned on remand before being sentenced. Many key questions are unanswerable because there is no part of the justice sector responsible for determining the nature of evidence that would enable individual public institutions to be held accountable for sector-wide intentions and obligations.

If the government's intention to significantly reduce offender numbers includes the prison population, its goals need to be explicit and enable initiatives well-fitted for each of the agencies directly involved, as well as the wider social services sector. Such plans need to recognise that the prison system cannot avoid the consequences of stresses elsewhere across the justice sector, whether associated with pressures on the courts through increasing the average duration on remand, or legislative changes which explicitly or implicitly create a need for imprisonment when it was not previously necessary. Changes driven by public and political sentiment rather than laws or policy will influence change most, albeit unpredictably. This makes modelling a somewhat imprecise art.

The importance of the judiciary, police, Corrections Department, Crown prosecutors and the Parole Board being able to independently exercise their constitutional or statutory discretion in their operation and practices is one of the critical checks and balances on the authority of the State. What may also be significant are the differences across the agencies of the justice sector in how risk is perceived, especially when openly subject to pressure after sentinel events. The New Zealand public sector has long faced difficulties in coordination and collaboration, with the result that in 2020 the public sector legislation was rewritten to explicitly emphasise the importance of coordination to Ministers and to enable effective policy delivery across sectors. Cross-agency collaboration on difficult issues has been infrequent and generally required coordination at Ministerial level, as demonstrated by early initiatives in family violence, closing the gaps, youth justice and child poverty. In many areas coordination at an operational level is not measured and does not gain the attention of policy analysts.

The considerable differences in rehabilitation between offenders who are younger or older than 25 may reflect variation in the way that community organisations, family and whānau can connect with the child welfare and youth justice institutions compared to the rest of the justice sector. The differences among agencies in rehabilitation intentions and expectations are particularly important when it is necessary to engage with several agencies in order to reach resolution. There are few means of testing whether there is consistency in practices.

Challenging indifference

The analysis behind the reporting by the State on the Māori connection with courts and custodial institutions compares poorly with health and education. In these fields a rich research and official statistical culture, including from universities, can combat public indifference. Understanding the

diversity and variability of the human condition, and how to take account of it varies over time and among cultures. There are large generational differences in how justice institutions have influenced, and been influenced by, the wellbeing and outlook within NZ society and its communities over the past century. While changes to policy and legislation have played a huge part in determining the connection of Māori to child welfare and justice agencies, it is institutional cultures and practices that have been recognised as the source of some of the most significant trend shifts. Changes in practice are mainly visible through anecdote because of the paucity of published case studies.

Entrenched institutional cultures and practices can also prevent or delay desired change. Narrowed accountability can obscure the actual nature of operational practices and rules, such as those specific to child protection. The impact on any community of the selection criteria for surveillance, and the discretionary element in determining target populations will also be influenced by different population structures. Those who lead strategic change programmes need to be aware that changed processes will be similarly moulded, as practitioners fit them to their experience. Whether or not such change is made with reference to available evidence, the operational practices need to be directed by the social and management sciences that inform their effectiveness and efficiency. Management by mantra cannot substitute for this.

Examining the forms of evidence

The legacy

The politicians' mantra of "evidence-based policy" implies a richer foundation of evidence in policy change than usually exists when child welfare and justice legislation is changed. Some fundamental concerns about the quality of evidence include:

1. The focus of the administrative reporting on institutions rather than population groups leads to a lack of knowledge about societal context and population dynamics, which is needed to assess generational change in wellbeing and the impact of laws and institutional practices.
2. The public sector focus on the evidence base needed for assessing operations and delivery is weak. Political sensitivity may be more influential than the needs of operational improvement in determining the scope and frequency of evaluation of operations.
3. When operational evaluations are carried out, there is a reluctance to make them accessible through the Official Information Act. This may be because studies of processes are regarded as internal and may be expected to become a source of criticism. The Evidence Centre of Oranga Tamariki and the Corrections web journal are exceptions.
4. A general paring back of evidence available in the public domain means it is less able to mitigate the influence of anecdotes and rare cases on policy change and practice. This has led to unexpected and unintended outcomes with high, unmeasured cost to the public.
5. Government-wide protocols that provide assurance on the integrity of research selection, methodology, quality assurance and release practices are minimal. Generally recognised principles for social research, official statistics and evaluative studies are not complied with. The Government Statistician's Protocols for Official Statistics is one area where a set of principles is well-established, but compliance is poor and not monitored.

One of the earliest initiatives focused on Māori was the Waitangi Tribunal, which was established by the Treaty of Waitangi Act 1975. This now provides a judicial window on the present, past and prospective situation of Māori in Aotearoa. The Waitangi Tribunal has been just one of the judicial and other institutional developments that can now challenge and oversee institutional cultures and practices. The work of the Tribunal is an exception to the general low level of challenge to the evidence base of the justice sector. The Oranga Tamariki inquiry (Wai 2915 2021) provided an example of where the State was not able to provide the evidence that could confirm the integrity and accountability of the decisions made by those who apply some of its strongest powers. Justice is a complex sector, with an unenviable history of extreme policies and disproportionality that have occurred in the lifetime of many still alive. The residual effects on confidence in the trustworthiness of its institutions remain.

Understanding and managing the breaking with the past

The scale and significance of the continuing reduction in imprisonment rates of young people should raise expectations among Māori, Pasifika communities, politicians and the public generally about the scale of future change that is possible through the collective goals of the courts, police, Oranga Tamariki and Corrections working alongside communities. It is vital that the evolving context for this

is understood more than ever before if change is to continue. Māori are seeing the most significant break with the past since the 1960s. There has been a greater understanding of forms of social exclusion that have had disproportionate educational, social, economic or health outcomes. The capacity of each generation to participate fully in society reflects the context of the time. For the young of Māori and other ethnic communities, their experiences of racism and indifference to it are being shaped in a world that is very different from the 1980s and before – much more so than for Europeans.

Many recent influences escape easy measurement, such as the generational differences in attitudes to drugs, alcohol and sex reported in surveys of the young. For all young people, and particularly Māori, the courts, as well as the police, child welfare and Corrections have been less driven by punitive models of thinking than they were in the 1960s to 1980s, while the role of supportive community organisations has strengthened since the late 1980s (Durie 2005). Most notable are kohanga reo, kaupapa Māori schools, wananga, Whānau Ora and health organisations, all of which have deep cultural and community roots in the centres where Māori live. The rapid growth in the total Māori population since the 1970s has been matched by a parallel expansion of political, governmental, economic, social and cultural influence, unlike any earlier period of population growth since the 1890s. These economic, social and cultural changes have been immense and continue. They have occurred in the face of the dominance of an indifferent monocultural Westminster system of government that until recently had little regard for existing Māori institutions, tikanga, demographics and potential.

After two generations, the successive effects on later birth cohorts of the series of extreme policies and practices that dominated youth justice and child welfare during the 1960s to the 1980s are no longer visible in the youngest generations. Yet, in the very same justice system, the impact on imprisonment rates for Māori males 25 and over has so far been remorseless for birth cohorts from 1945 to 1990. For Māori males 25 and over, a large share of their or their parents' generation was placed in State custody when very young. The impact of this remains with a share of those generations still inside our prisons now.

More data but less analysis

There has been a major expansion in accessible data about people and their connection to justice agencies through the integration of records from various administrative processes, but the analytical capability for improving social services by this data has not kept pace. There is a growth in modelling in the sector, among NGOs as well as government. The power of the Stats NZ IDI in connecting up the information known by agencies in the sector has the potential to lift the analytical capability in order to address questions that have been beyond the existing capability. The legacy of information management at a sector-wide level is weak across the public sector, and more so across the justice agencies. There are many opportunities for improvement by sector-wide application of information management standards.

Much of the context within which communities live and relate is not known or knowable by State agencies, so unless obtained specifically such causative factors will not be represented in data

modelling. Drawing on the common threads in people's individual experiences, such as done by the Royal Commission on Abuse in Care, offers a valuable window into some of the opportunity costs of past policy decisions.

Managing the vulnerability around critical transitions

Entering and exiting State custody can be a time of considerable vulnerability. The absence of preparation can result in long-term consequences that may worsen the impact of the custody. Recidivism rates among those imprisoned are influenced by rehabilitation practices, and departing prisoners require community support. Former Chief Justice Elias (2009) argued that the probation service may have been more influential in offender rehabilitation before its role changed in 2009. The economic and social deprivation and the experience of violence that are strongly associated with imprisonment have the potential to increase the risk of family breakdown and likelihood of a released prisoner reoffending. Variation in the adequacy of support at the time of release compounds these risks.

One of the few independent research studies (Roguski and Chauvel 2009) about the lives of prisoners identified that securing basic needs before release from prison was a primary protective factor. The authors identified the following basic needs:

1. *prerequisites for the individual's release – securing appropriate identification and a bank account*
2. *basic living needs – financial support (Work and Income application filed) and accommodation*
3. *supportive travel arrangements from the prison to new accommodation*
4. *continuity of care – the prison's provision of the inmate's medical record, prescriptions, referral and an appointment with an affordable medical provider in close proximity to their new accommodation.*

They noted deep concern about the mixed access to health and education services by those in custody. When they analysed the health, social and economic conditions of those both continuing in and leaving prison, they found that the first three to four weeks following release were critical adjustment periods that risked ill-health, compromised wellbeing and reoffending. Although it is believed to be significant, we have no information on how often this involves the absence of identity documents, bank accounts and transitional housing, in a society where little is possible without them. Regular case studies could monitor how release transitions are changing.

Stress points in child welfare

Since the initial Child Welfare Act 1925, child welfare has faced many demand swings that have been driven by perceptions of risk fuelled by public and political responses to high-profile events that were often unsupported by the evidence of risk in the community. These large swings have not been accompanied by the same immediacy in adjustments to capacity, resulting in reduced quality of support for children already in State custody (Mansell 2006). The legislative requirement for agencies to focus on family violence since 2004 resulted in a rapid growth in notifications to child welfare (Mansell 2006) and the same accompanying stress on resources. Around this time, the

number of children in State care and custody began to increase from the range maintained between 1988 and 2004. By inference, children are now in the custody and care of the State for longer. An unknown number of children are supported outside the statutory system.

A statistical perspective on evidence needs in the justice sector

Determining fitness for purpose

The justice sector takes a large amount of government investment in prisons, court and police buildings, along with the annual expenditure in trained staff. The scientific and practical basis of responses to offending will only be as rational as the evidence base available to all, with a well-recognised propensity to continue on a long-established pathway of increasingly punitive measures. The single use of prisons and their cost make it critical to have sound evidence on which to base projections, as overinvestment simply crowds out other options.

In other countries, the range of analyses and studies by public agencies often dwarfs what is generally available in New Zealand. The available mix of information sources may shape the policy framework but can also constrain it. The nature of past and present policy frameworks is reflected in institutional practices and processes.

Weakness in analysing information narrows the knowledge of what is changing about the populations affected by the justice system. This can limit perceptions of the investment needed for the future evidence base. New Zealand's existing political and institutional structures have only a partial window on the justice sector, which is neither consistent nor readily available to the public. More generally, political and managerial systems may be indifferent or even obstructive when new evidence might challenge the policy framework. Weakness in evidence has had a huge impact on understanding the disproportionality in outcomes for Māori, and not only past change but prospective shifts in population structures.

When there is little knowledge of the quality of the evidence used to justify a policy, the consequent uncertainty in managing the delivery of the service is likely to affect the resulting quality, predictability and variability of outcomes. Unexpected results will periodically arise from the undoubted lack of precision in screening criteria and the natural variation in decision making. For many social services there is no means of knowing what happens to all the people who have a need and entitlement for them, and why only some people connect effectively with a service that they are eligible for. Legal aid is a typical example. The State's current evidence base does not provide a systematic basis for examining the changing relationship between Māori and the justice sector that might explain its complexities. For sector outcomes, policy and institutional practices to be judged as well-founded when they regularly face challenges to their accountability, they need a structured evidence system based on a mix of official statistics, scientific research studies and operational analyses.

Acknowledging whānau and whanaungatanga

Whānau are a rich and enduring source of wellbeing, and understanding of this is often missing from policy and practice across the justice sector. The depth of whanaungatanga is poorly recognised in policy and practice. The characteristics of whānau are generally not reflected in long-standing data sources, including the census. Whānau are anchored in the enduring element of whakapapa, which

maintains cross-generational connections to others, and the land and the natural environment. Whānau and whakapapa are about people and place, and embrace matters relating to, for example, urban planning, housing and the location of public facilities of importance to Māori.

Not accounting for whakapapa is also a matter of concern for other ethnicities, particularly those who do not see the nuclear family as a fundamental unit. In the justice and child welfare sectors, there is poor transparency in how obligations under the Treaty of Waitangi are monitored, how international obligations are recognised, and how the public is enabled to test trustworthiness. We do see an increased expectation of judicial or quasi-judicial vindication of the extent that practices are consistent with human rights. This is reflected in recent Waitangi Tribunal cases (Oranga Tamariki, Corrections), Ombudsman reviews and District Court judgements.

The demographic, societal and economic characteristics of Māori are rarely included in public forms of information, even when there is a need to justify legislation change, gain public commitment or inform both operational and policy decisions. This is the same for Pasifika communities. While systematic processes for gathering evidence are an integral part of operational practice, commitment in these areas rarely goes beyond expressing a wish for “evidence-based policy”.

The breadth of evidence that is freely available has been severely challenged, not only by the Waitangi Tribunal hearings on Oranga Tamariki but also the five independent inquiries that preceded them. These may have provided a turning point for the justice sector through the spotlight they provided. The reviews highlighted that ministerially determined performance measures fail to enable public or professional challenge to the otherwise undiscoverable practices and outcomes across the social services sector, and particularly child welfare and justice.

Priorities for a comprehensive evidence base for the justice sector

The recent independent reviews of Oranga Tamariki have brought to light evidence that could not have become available in any other circumstance about the operation of the child welfare system in New Zealand. My analysis of these reviews identified seven priorities for establishing a trustworthy evidence base that would ensure public legitimacy, ensure oversight of operational performance, test policy relevance and check legislative integrity. For each priority I have identified a range of ways that provide oversight.

1. Monitoring the effectiveness, proportionality of outcomes and relevance across New Zealand communities, of the evidence system, especially for Māori:
 - a. System-wide statistical reporting
 - b. Statistical measures of outcomes for distinct populations across time
 - c. Statistical trends across people’s life course
 - d. Contextual monitoring
 - e. Population/ target classification and analysis
 - f. Statistical measures of outcomes, such as cohort analyses
2. Assurance of compliance with New Zealand laws:
 - a. Compliance with laws validated by independent qualified third parties.
 - b. Adherence to statistical and research codes of practice

3. Confirmation of system capability for integrated outcomes across multi-agency sectors:
 - a. Credible tests of effectiveness and efficacy
 - b. Established independent third-party review of system connectedness across sectors and communities
 - c. Consumer-centric monitoring, including case studies
 - d. Academic and community research
 - e. Case studies of critical processes and individual experiences
4. Capacity to manage process variability:
 - a. Evidence of quality assurance processes
 - b. Independent third-party review
 - c. Application of operations research
5. Assurance of proportionality of surveillance, screening and selection practices:
 - a. Compliance with standards of evidence and protocols
 - b. Monitoring over-representation by measures of disproportionality, disparity and “excess
 - c. Case studies
6. Validation of science and evidence behind practice:
 - a. Independent peer review of sciences on which the administration of the service (benefit) is based, and how coherence is assured
 - b. Independent assurance of research methodology
 - c. Compliance with standards of evidence and protocols
7. Monitoring proportionality and other Treaty and international obligations (Treaty of Waitangi, UN Conventions)
 - a. Judicial vindication of proportionate application of laws and human rights
 - b. Independent third-party review of practices and compliance with treaties (including international)
 - c. Access to cultural support and supervision, and understanding of the historical legacy

Putting in place an evidence base of this scope and scale would require government agencies, academic and other research centres, and community organisations to contribute significantly, and a clear role for well-resourced independent third parties and international collaboration.

The Social Policy Evaluation and Research Unit (an independent Crown entity which operated initially as the Families Commission from 2003 and closed in 2018) developed evidence frameworks for the social services sector. They have relevance to other statutory social services and service providers in health, justice, education and care. The ongoing hearings of State care experiences are a reminder of the long reach of the past. While there are sufficient concerns to challenge indifference, it is still quite rare to have a well-resourced independent review of the processes and practices of any other parts of the justice sector and related organisations that matches the scope and intensity of those done for child welfare.

Advances in the quality of evidence for validation of delivery and practice across justice, health and social services are impeded when there is little transparency of the political mindset and institutional cultures in decision making that set the context for operational and external processes. This needs to

be challenged by the consistent use of acknowledged scientific methods and practices such as peer review and publication in professional environments for validating the design and oversight of operational practice. It also requires a strong analytical capability within the justice sector, with the capacity and authority to enable analysis of the connection of Māori to the justice system to be anchored in the population structures, social institutions and cultural dynamics of Māori.

Independent, well-resourced third parties

Evidence of justice escapes direct calculation, so trustworthiness is founded on the public's level of confidence that they will be able to know when and where justice has been found wanting. For any system to be fully trustworthy, there must be well-resourced independent third parties who have the authority and capacity to bring to notice any type of evidence that they consider necessary. When such independent third-party reviews have existed in New Zealand, they inevitably deliver rich case studies, insights and references. Usually these are initiated after random episodes of concern rather than a planned accumulation of knowledge. The authority that they give to the identification of enduring themes should be more valued at a system level.

It is often bodies outside government which first challenge the public legitimacy of situations. Courageous individuals, Māori kaumatua, Children's Commissioners, academic and community leaders, and the media have all successfully drawn attention to indifference about weakness in the legitimacy and accountability of agencies within the justice sector and child welfare. Civil protest has played a part, such as by Ngā Tamatoa, the Polynesian Panthers and ACCORD during the late 1970s regarding child custody and dawn raids. Community challenge is most effective when concerns are later vindicated through independent inquiry.

The current Royal Commission into Abuse in Care was initiated after some four decades of community challenge to the legitimacy of practices overseen or managed by the State. It is expected that such well-resourced independent reviews will bring a trustworthy scientific edge to how they highlight issues with institutional processes, practices and cultures that those who design statutes and policies have failed to recognise as important. Independent third-party review bodies can acknowledge how Treaty obligations should shape the scope of evidence. Without this there is a risk of perpetuating the lack of understanding across the justice sector of the distinct demographic and social characteristics of each generation of Māori. Challenges can be faced by those who undertake independent reviews. It is rare for them to be repeated. Established regular independent reporting of outcomes, as is now in place for environmental matters and child poverty, is an exception in New Zealand.

The essential requirements of independent inquiry include deep knowledge by the practitioners and observers of the justice sector, rich knowledge of society, and appreciation of statistical and demographic methods and conceptual frameworks, alongside expertise in management sciences including quality assurance.

Roles which have a measure of independence on reporting do exist, such as the Chief Inspector of Prisons. A role of this type cannot be an independent third party as it is part of the institution under investigation and has limited autonomy. Investigations by a role like this are not fully independent of

line managers, and reports are usually significantly redacted, if available at all. It is left to the Ombudsman, as one of many roles, to provide fully independent oversight of the prison service, some of which is authorised under the United Nations Convention Against Torture. The Chief Social Worker and Director of Public Health have some independence, but this is also constrained in scope and through being part of the department they oversee.

Puao-te-Ata-tu retains a prominent place as an accountability document within the Māori community, more so than for the justice sector or child welfare. Although a variety of groups and roles can raise concerns by providing critical evidence, change is more likely to occur when a well-resourced fully independent third party adds its authority to that evidence.

The third parties who can currently test the validity of information and make visible authoritative evidence of relevance in New Zealand are the Ombudsman, the Controller and Auditor-General, Government Statistician, the Waitangi Tribunal, Coroners and other courts, and a Commission of Inquiry. International organisations report independently on New Zealand with reference to adoption and compliance with international treaties and conventions.

At the last major independent review of social policy in New Zealand in 1988, the Royal Commission on Social Policy (RCSP 1988 vol II:77) proposed a Treaty of Waitangi Commission, “to give consistent attention to the implications of the Treaty for the full range of social and economic policies”. The need for such a body remains relevant today. It would enhance the coherence of information sources and be able to enrich analyses which are fundamental to understanding the scale and likely endurance of Māori connection to the justice system. If such a body existed it could build on the foundations of a sound evidence system, advanced by mātauranga Māori.

A connected approach to evidence in the justice sector

Because what is needed is the ability to assess the cumulative impact of the entire justice sector (including care and protection) on past, current and future cohorts of Māori, a sector-wide approach is required for any future investment in the evidence base. Sound qualitative and quantitative research and analysis are part of a broad-based evidence system. This approach would also build an oversight capability that has so far been silent on accountability to past, current and future generations of Māori. It would require an authoritative independent oversight role. Māori need to have a genuine place in setting the agenda and practices for the research and official statistics that hold the sector as a whole to account, and which enable informed challenge. This will require serious commitment to a long-term research agenda, institutional reform and demanding accountability measures.

While police, prisons, child welfare, the Parole Board and Crown prosecution services all have a distinct statutory authority to act and provide evidence of their activity, this independence need not be a barrier to common standards of information collection, management and reporting – if there was an intention or obligation to achieve this at a system level. Some agencies within the justice sector have yet to comply with standards for government statistics. Independent external review and reporting is quite ad hoc. There is some independent evidence of disproportionate processes or

outcomes in various reports, but it is child welfare that has been the major focus of reviews since the 1980s. The result is that the justice sector is characterised by:

- constrained capacity for affirming a common focus on sector-wide change
- limited Parliamentary obligation for system-wide practices and policies
- mixed capacity to adapt to changing capability and investment in agencies or the community
- insufficient recognition of what is achievable at a sector level.

Even given the autonomy of key parts of the justice system, it should be possible to achieve:

- clear commonality of purpose and partnership
- regular sector-wide reporting of outcomes
- sustained professional capability
- continuous improvement commitment that spans all bodies in the justice sector
- coherence in thresholds of response
- sector-wide information standards.

The two key areas where only Parliament can act to reinforce leadership across the public service are:

- clarity and consistency in political goals
- established capability for independent third-party review.

The complex nature of the justice sector, and the difficult political context within which it operates, place huge reliance on the coherence and consistency of those at an operational level working in different organisations and places. Enhancing the effectiveness and accountability of the justice system depends on strengthening the common knowledge base through a broad-based evidence system that is independently challenged.

Tāna wā, me titiro hoki ki ngā raranga i makere, nā te mea, he korero anō ki reira

In time, take a look at those dropped stitches, for there is a message there also

Kūkupa Tirikatene

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