

STRICTLY EMBARGOED UNTIL 7.30AM
THURSDAY 12 DECEMBER 2019

TUPUKI!

Transforming our
criminal justice system

The second report of Te Uepū Hāpai i te Ora
Safe and Effective Justice Advisory Group

TUPUKI!


MOVE TOGETHER!

First principles,
first steps.

PANAKEI.

PANAKEI.

Te Uepū Hāpai i te Ora is grateful to Justice Joe Williams and Dr Kārena Kelly for the naming of this report. We are also grateful for Dr Kelly's advice on the use of te reo Māori in fully expressing our vision and values.



It is more than 30 years since two landmark reports – Moana Jackson’s *He Whaipaanga Hou* and Sir Clinton Roper’s *Te Ara Hou: The New Way* – proposed fundamental transformative approaches to justice in Aotearoa New Zealand. In the decades since, there have been numerous reports and reviews, none of which have led decision-makers to undertake fundamental change.

New Zealanders have delivered us a clear message: we cannot wait another 30 years. We cannot continue with the same approaches and expect different outcomes. We cannot afford another generation of hurt. To create the conditions for sustainable change, everyone has a part to play.

YEARS

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COMMIT EMPOWER TRANSFORM

RECOMMENDATION 1:
Political accord

RECOMMENDATION 2:
By Māori for Māori

RECOMMENDATION 3:
Invest in transformation

RECOMMENDATION 4:
Whole of government

RECOMMENDATION 5:
People who are harmed

RECOMMENDATION 6:
Communities

RECOMMENDATION 7:
Children, families and whānau

RECOMMENDATION 8:
Racism

RECOMMENDATION 9:
Mental health and trauma

RECOMMENDATION 10:
Alcohol and other drugs

RECOMMENDATION 11:
Rehabilitation

RECOMMENDATION 12:
Justice processes

New Zealanders want transformative change to our criminal justice system. The need for change is urgent and it must be bold.

Turuki! Turuki! calls for a fundamental reshaping of Aotearoa New Zealand's justice system to one which prevents harm, addresses its causes, and promotes healing and restoration among individuals and communities. This requires a new vision, stronger values, and a long-term commitment to transformation throughout the justice system and wider social systems that determine justice outcomes.

As Te Uepū Hāpai i te Ora – Safe and Effective Justice Advisory Group, we have heard many reflections on what 'safe and effective' might mean. Our approach focuses on ensuring our collective security through an enduring system which uplifts people, strengthens our communities and relationships, ensures we are all responsible for justice and accountable for our actions, and models more care and compassion for all. This report sets a direction for such change. We are not advocating for minor measures but rather we are laying out a pathway to transformation. Our recommendations will make all New Zealanders safer, and the justice system more effective.

We are not the first to call for fundamental change. In recent decades many other reports have called for transformation and have been largely ignored or dismissed. Reforms to criminal justice have been ad hoc, with minor improvements made to a system that is inherently broken. More often, the direction of reform has been towards longer sentences and punitive approaches that satisfy retributive instincts but fail to adequately deal with victims' needs, the drivers of crime or real rehabilitation.

The time for transformative justice is now. We present this challenge to those in government, to others in Parliament, to the media, to everyone involved with the criminal justice system, and to all New Zealanders. Achieving real, sustainable change will require all of us. It will require courage, clarity of purpose, investment in people and communities, and a willingness to share power. It will also require a change in culture and mindset, from one that prioritises punishment to one that prioritises solutions; from a system which meets the needs of those working within it to one which meets the needs of all people they work with.

The responsibility for change rests with us all. Many of us put this kind of change in the 'too hard' basket or complacently consume media in which rhetoric and emotive language oversimplifies the problems and solutions, supporting punitive responses which have often failed us. If we do nothing or settle for minor reforms that do not address the real issues, we will continue to be complicit in allowing some of the most vulnerable people in our society to bear sustained harm.

Turuki! Turuki! is a traditional call to the crew of a waka or canoe being portaged or anyone trying to 'MOVE!' a large inert object or create a forward motion with urgency.[^] It is a call for collective action.

Tēnei te mihi nui ki a koutou.

Hon Chester Borrows QSO
CHAIR, TE UEPŪ HĀPAI I TE ORA

[^] We are grateful to Justice Joe Williams for providing the context for the naming of our report.

FAILING

to help those who are harmed

FAILING

to stop harm and reoffending

FAILING

iori

FAILING

to meet diverse needs

Executive Summary

Te Uepū Hāpai i te Ora was tasked with leading public discussion to develop proposals that address the failures of our criminal justice system.

Over the past year we have listened to many voices, canvassed a broad range of ideas, spoken to experts and reviewed other reports in justice and related sectors. Our June 2019 report *He Waka Roimata*¹ reflected what we heard during the many hui we held around New Zealand. People told us they have no confidence in the current criminal justice system. They want urgent transformative change.

They described a system which is:

- failing to help those who are harmed
- failing to stop harm and reoffending
- failing Māori
- racist, culturally blind and culturally biased
- failing to meet diverse needs
- confusing and alienating
- costly, especially in terms of the loss of human potential.

We have heard the call from New Zealanders for a new vision: A justice system that treats all people with humanity, dignity, respect and compassion; recognises the mana inherent in all people and communities; and enables the restoration of that mana whenever it has been diminished.

In this report we set out values and principles which can provide that direction. They are values that emphasise the inherent worth of all people and communities, the connections between us, the importance of maintaining and restoring balance in all relationships, and of caring for and supporting one another.

Turuki! Turuki! outlines our recommendations for transformation of Aotearoa New Zealand's justice system, underpinned by these strong values, and new structures and processes. Under this transformative justice approach individuals, families, communities, government and wider society share responsibility for preventing, responding to, and healing the harms that occur. The justice system must support fairness and equity, accountability, and restoration. It must also address the socio-economic conditions that contribute to offending and reoffending. To that end, changes are also needed in New Zealand's health, education, housing and social services.

Our recommendations fall under three headings: Commit; Empower; Transform.

Commit

Recommendation 1: Political accord

The establishment of a cross-party parliamentary accord for transformative justice.

Recommendation 2: By Māori for Māori

That the Government:

- establish a Mana Ōrite (equal power) governance model under which Māori and Crown agencies share in justice sector decision-making, as recommended by *Ināia Tonu Nei*;²
- transfer power and resources to Māori communities so they can design and develop Māori-led responses to offending, and to tamariki and whānau wellbeing;
- make tikanga Māori and te ao Māori values central to the operation of the justice system.

Recommendation 3: Invest in transformation

That the Government prioritise investment in community-led transformative justice.

Recommendation 4: Whole of government

That the Government:

- adopt a common vision and common values, statutory purposes and governance for the whole justice sector and align justice statutes accordingly;
- improve coordination and information sharing among government agencies; and
- implement whole-of-government responsibility for justice sector outcomes.

Empower

Recommendation 5: People who are harmed

- everyone who is harmed by criminal offending has access to an independent person who can guide and advocate for them during their contact with the justice system and other services for as long as needed
- support for people who are harmed should be strengthened with better access to a wider range of therapeutic services, and more financial support for victims, families and whānau
- victims' rights be strengthened, including rights to have input into criminal justice decisions and rights to privacy
- streamlining protection order and name suppression processes, changes to courtroom layout, and review of reparations.

Recommendation 6: Communities

That the Government transfer resources and decision-making powers to communities so they can develop and deliver services that meet justice and social wellbeing needs for everyone who comes into contact with the justice system.

Recommendation 7: Children, families and whānau

That together we address poverty and social deprivation, increase support for parents and families, and challenge attitudes and behaviour that support family violence.

Transform

Recommendation 8: Racism

That racism be challenged within the justice system and throughout Aotearoa New Zealand society, with more diverse recruitment and more effective training in the justice system, as well as school programmes, media campaigns and law changes.

Recommendation 9: Mental health and trauma

That the Government address access to culturally informed trauma recovery and mental health services and adopt trauma-informed approaches throughout the justice system, including in all training, policies and practices.

Recommendation 10: Alcohol and other drugs

That the Government strengthen regulation of alcohol, legalise and regulate personal use of cannabis, and consider that for all drugs; treating personal drug use as a health issue with more funding towards prevention, education and treatment.

Recommendation 11: Rehabilitation

- significantly increased investment in rehabilitation programmes;
- greatly expanded access to rehabilitation opportunities for all prisoners including those on remand and serving short sentences;
- gradual replacement of most prisons with community-based habilitation centres;
- strengthening 'wrap-around' reintegration services that meet basic needs and provide ongoing rehabilitation support for prisoners returning to the community.

Recommendation 12: Justice processes

That criminal investigation and court procedures be redesigned to make them consistent with transformative justice values and principles. This means ensuring everyone is treated fairly and equitably, with humanity, dignity, respect and compassion; those who cause harm are accountable; and restoration of mana to all is supported.

We recommend the following interim reforms:

- reviewing youth, specialist and therapeutic courts and applying learnings across the court system;
- reviewing laws and guidelines for sentencing, the pre-trial period (whether in custody or on bail) and post-release reintegration (parole), to ensure consistency with our values and principles;
- strengthening and increasing access to alternative justice processes. These changes will lead to a positive and fair justice system which prevents further harm wherever possible, restores mana where harm occurs, and ensures that all New Zealanders who come into contact with the system are affected positively.

HEAL

“VICTIMS” AND “OFFENDERS”

During our public conversations, there were many discussions about language and how the language we use frames our thinking about these issues. We recognise the need for a new lexicon to talk about a new kind of system that seeks to heal rather than harm. For example, some terms commonly used in prisons such as “muster” are dehumanising. The labels “victims” and “offenders” are internalising and disempowering. They suggest that these are always discrete categories and over-simplify the complex social and structural dynamics that can produce harm in society. In their place, this report tends to use the descriptions “people who have been harmed” and “people who harm”. This is not about trying to minimise people’s experiences or to “wash” our language or be “soft” on crime. A new language is not to render invisible the substantial harm that violence and other forms of crime does to individuals and communities, rather it is an attempt to ensure better personal, social and policy responses to it. This is not a new initiative – internationally there is work being done in this area which is still being debated. For example, some working definitions for preferred terminology can be seen in the UN Multi-country Study on Men and Violence³ and subsequent replications. They recognize that experiences of violence do not define the individual, but rather are part of a larger self-identity, and individuals are capable of change, healing and development. Language change is part of a wider, fundamental culture change that needs to occur and for which we are all responsible, including media.

NO-ONE IS BORN TO OFFEND

Most people in New Zealand prisons experienced violence when they were children. For some, it was while they were in state care. Many experienced physical violence, and a significant proportion – 53% of females and 15% of males – experienced sexual violence.⁴ Given what we know about the under-reporting of sexual violence, these statistics can be seen as conservative. People who experience childhood trauma often go on to experience mental health challenges, and – in the absence of more productive ways to deal with their hurt – turn to alcohol or other drugs. Behavioural and learning difficulties are also common, with poverty and educational exclusion common factors.⁵ Most people who have had these experiences do not go on to offend. The responses to trauma are diverse and environmental conditions and intergenerational features can play a significant role in determining the outcome of childhood trauma. Some, whose lives have been characterised by violence, drugs and alcohol, poverty, and myriad other risk factors, go on to commit serious violent crimes; others respond to their very limited life opportunities by turning to drug and property offending.⁶ A solely punitive approach to justice treats offending as if it is a rational choice that has been made in isolation. A transformative justice approach considers and addresses all of the experiences that have shaped the person and created circumstances in which offending was likely. It requires people who offend to be accountable and take responsibility for their actions, but it also recognises and resolves the hurt behind those actions.⁷

NOT

HARM

Over the past year Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group has met, heard from and engaged with many New Zealanders who have had lived experience of the justice system, work in the system or are actively involved. We have spoken with people who have been harmed by violence; people who have committed crimes; people who work in courts, prisons, policing and social services; people who are experts in criminal justice policy; and representatives of Māori, Pacific, refugee and migrant, Rainbow, disability, youth, and many other communities.⁸

We have found that the public has little confidence in the current justice system. It is clearly failing to provide effective help for those who need it, including both those who harm and who are harmed, particularly those affected by family and sexual violence, and those who need support to address issues with mental health, trauma and addiction. It dehumanises and re-victimises people who are harmed; it fails to prevent offending or address its causes; and it marginalises and discriminates against the people and communities who are most hurt by crime and violence.

THE SYSTEM IS FAILING TO HELP THOSE WHO ARE HARMED. People who have been harmed say that the system is not providing what they need, is impersonal, lacks empathy and often adds to their trauma. Many people harmed by crime feel unheard, misunderstood and revictimised. 83% of Victims Survey respondents say the criminal justice system is not safe. They lack support from the system towards recovery from trauma or meeting financial costs arising from criminal acts. The system does not restore the mana of those seeking justice. The needs of tamariki and mokopuna are neglected and they have no voice. We must not address harm by compounding it, as in many cases of children being taken into care where they are further harmed.

THE SYSTEM IS FAILING TO STOP HARM AND REOFFENDING. Aotearoa New Zealand's high rates of violence – particularly family and sexual violence – are unacceptable and the harm caused is immeasurable. We need a system that effectively addresses this by demanding accountability and transformative justice. While New Zealanders are imprisoned in increasing numbers and for longer periods, those who harm are not sufficiently supported to address issues with unresolved trauma, mental health, drug and alcohol abuse, anti-social attitudes, or issues such as poverty and educational underachievement. More than 61% of those imprisoned are reconvicted within two years following their release.⁹

THE SYSTEM IS FAILING MĀORI. The number of Māori in the system is a crisis, with disproportionate representation – including as victims. 37% of Māori were victims of crime in 2018. This compares with a NZ average of 29%. We heard how the enduring effects of colonisation disenfranchise and impoverish Māori communities, and how Māori experience worse outcomes than other New Zealanders at every stage of the justice process. The intergenerational effects on whānau, families and communities is severe. The Waitangi Tribunal has highlighted the Crown's failure to live up to its Tiriti o Waitangi obligations in criminal justice.¹⁰ Even when gains are made through changes in policy or legislation, Māori do not benefit proportionately from those gains.

THE SYSTEM IS RACIST. Racism is common in New Zealand society. Many people hold negative stereotypes of Māori, Pacific and other ethnic and cultural groups, and this is reflected in individual actions that discriminate on the basis of race. We heard numerous examples of institutional racial discrimination in the justice system, particularly towards Māori and Pacific communities. High rates of arrest and imprisonment of Māori reflect systematic discrimination both within justice and the wider community. We also heard from other ethnic groups of a system that harboured deep bias.

THE SYSTEM FAILS TO MEET DIVERSE NEEDS. Many people from Māori, Pacific, refugee and migrant, disabled and LGBTQI+ communities told us that the justice system did not meet their needs. Migrant and refugee communities of colour have expressed their experience of cultural blindness and lack of cultural competency within the system. For many, proceedings are conducted in languages they did not understand and according to rules that are alien to them. What's more, there is little or no attempt to explain this system or provide any navigation through it. Some said that police and others do not understand the cultural basis in which offending occurred, or the nature of the relationships. Many emphasised the need for more accessibility and greater language and cultural competence throughout the system. The expertise of those with lived experiences should be drawn on – for example, the system should consult and listen to the disabled community to ensure their needs are met proactively. More knowledge of the needs of the Rainbow community also should be built into the system processes, facilities and culture.

THE SYSTEM IS CONFUSING AND ALIENATING. We were told that the formal justice processes are often bewildering and isolating. People who are harmed by criminal offending cannot understand why the system left them powerless and voiceless. People involved in the system experience constant delays, hard-to-navigate processes, difficulty accessing information, frustration and re-traumatisation. Many feel the system favours those with more resources or knowledge of how the system works.

THE SYSTEM IS COSTLY. There is a huge financial cost with incarceration – this year the Department of Corrections' budget is more than \$1.4 billion.¹¹ Spending on law and order has increased more quickly in the last decade than health, education or most other government services.¹² Funding should be spent more effectively within communities to prevent and address harm including recidivism. Yet the financial costs of the current criminal justice system are tiny in comparison with the social costs and the huge loss of human potential.

THE SYSTEM IS FAILING TO HELP
THOSE WHO ARE HARME

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TOWARDS

TRANSFORMATIVE

JUSTICE

TRANSFORMATIVE CHANGE IS URGENTLY NEEDED

As New Zealanders, we seek a fundamental transformation of our justice system, alongside transformation of our health and social services, to address the underlying causes of criminal offending. The system which people are demanding is one of transformative justice—an approach in which individuals, families, community and wider society share responsibility for preventing and responding to the harms that occur. Where the current justice system is essentially designed to identify and punish offenders, a transformative justice system is designed to support healing, accountability and fairness, and to transform the social conditions that allow offending to occur.¹³

Consistently, the evidence supports this approach. Transformative justice more effectively addresses the real and root causes of offending, breaks intergenerational cycles of violence, and creates higher levels of individual and community accountability.¹⁴ Our recommendations aim to deliver that system. This will involve profound change to not only the system and processes, but a shift in the culture of the justice system and our wider society. To make that shift, we will need to be very clear about our new vision and underlying values.

VISION AND VALUES

Transformation will require strong shared values to bring much needed clarity and direction. Here we set out values which, in our view, can provide that direction. The concepts we use originate in te ao Māori and have resonance for all New Zealanders.

They are values that emphasise the inherent worth of all people and communities, the connections between us, the importance of maintaining and restoring balance in all relationships, and the importance of caring for and supporting one another.

A justice system designed according to these values will be one that is genuinely transformative, fair and equitable, and will support a New Zealand with much stronger individuals, families and communities; less violence and other harm; and effective restoration when harm occurs.

A transformative justice system will fundamentally alter New Zealand's current justice system. It will effectively prevent and respond to harm; it will empower communities and individuals; and it will be characterised by accountability and compassion.

VISION, VALUES AND PRINCIPLES

TE AWHERO NUI – VISION

A justice system that treats all people with humanity, dignity, respect and compassion; recognises the mana inherent in all people and communities; and enables the restoration of that mana whenever it has been diminished.

NGĀ UARATANGA – VALUES

Mana

Hāpaitia te mana tangata
Uphold people's dignity

Mana tangata is the basic humanity, inherent dignity and autonomy of every person. It encompasses concepts of status and authority, particularly the authority to fulfil our responsibilities to others and live our purpose. This value speaks to the need to elevate and support basic humanity in all aspects of the justice system. Recognising mana is consistent with international human rights principles. The criminal justice system should be designed to recognise and enhance mana for individuals and communities. It should ensure that all individuals and communities are treated with respect and should empower people to have control over their own lives. Violence and other forms of harm diminish the mana of those who are harmed and those who cause harm. The justice system must support restoration of mana for all concerned.

Whanaungatanga

Tuia te here tangata
Foster meaningful relationships

Whanaungatanga refers to the central importance of relationships. It recognises that those relationships bind us together, and that our actions influence and are influenced by others and by the broader social context. This value speaks to the need to strengthen relationships and communities. In the criminal justice context, whanaungatanga requires that the justice needs of individuals and communities are met in a holistic way. Those who cause harm and those who are harmed must be understood in the context of a network of relationships if the criminal justice system is to deliver appropriate, safe and effective responses to harm.

Haepapa

Me noho haepapa tēnā me tēnā
Be responsible and accountable

Haepapa reflects the importance of accountability and responsibility. This is closely connected to the ideas of reciprocity and striving for balance that are encompassed within the concept of utu. Haepapa emphasises the need for accountability and restoration, reflecting the need for fairness and equity. Where harm has occurred, this value draws our attention to the need to restore people and relationships and to develop effective mechanisms for accountability. It requires those who have caused harm to recognise the impact of their actions and to take responsibility. It also demands responses that heal those who have been hurt and rectify damage within our communities.

Aroha

Arohaina te tangata
Exercise care, compassion and empathy

Aroha incorporates powerful ideas of compassion, love and empathy. This value reflects the need for the justice system to be kind and compassionate in how it deals with all who come into contact with it. This value also reminds us that we all benefit from treating people with compassion when harm has occurred. This approach can greatly contribute to enhancing our collective security through an emphasis on preventive justice, establishing and maintaining the conditions for strong relationships and communities now and into the future.

OUR PRINCIPLES FOR A TRANSFORMATIONAL
SYSTEM FOR AOTEAROA NEW ZEALAND ARE:

**People who are harmed are empowered
and supported**

People who are harmed will be heard, understood and supported to recover. They will have control over their own journeys, including a range of options such as restorative justice, and choice over whether and how to engage with the justice system. They will have adequate support to meet their needs, including therapeutic and financial support, and a support person to help them navigate the system.

**Justice services for Māori are designed
and delivered in partnership with Māori**

Māori and the Crown will share leadership of the justice system under a Mana Ōrite (equal power) model. Tikanga Māori (Māori law and values) will take its rightful place in the justice system. The Tiriti guarantee of tino rangatiratanga will be honoured so Māori communities can design and deliver their own justice services.

**The wellbeing of children, whānau
and families is prioritised**

Children and parents will be supported to live full, flourishing lives in which their economic, social and cultural needs are met. Any harm will be addressed early and in a manner that involves wider family and whānau and takes account of all relevant circumstances. Harm will not be perpetuated by unwarranted removal of children from their families.

**People are supported to resolve trauma
and mental health challenges**

Anyone who experiences violence or other trauma will be supported to recover and address issues that arise, including associated mental health challenges, so they may go on to live safe and healthy lives. Early and appropriate intervention will be prioritised to break intergenerational cycles.

Violence and other harm is prevented

Priority will be given to addressing risk factors associated with violent offending including unresolved trauma, mental health conditions, family and/or sexual violence, poverty, alcohol and drug abuse (which will be treated as a health issue), and social and cultural norms that support violence.

People who cause harm are held accountable

People who cause harm will be supported to take responsibility, acknowledge the harm arising from their actions, address the underlying causes, and work with others to ensure offending is not repeated.

**Criminal justice processes are fair,
equitable and transparent**

Investigation, trial, reintegration and other processes will be transparent, and applied fairly and equally to all; will recognise the needs of diverse communities and will preserve human rights. Innovation and continual improvement will be encouraged.

**Communities are resourced to look
after their own**

Communities will be resourced to meet their economic and social needs, and to respond effectively to criminal offending by addressing underlying causes and social conditions.

People are habilitated in their communities

Most people being detained within the justice system will be located within their community close to family and whānau support. The focus will be on enhancing mana for all involved and on habilitation for those who harm. As such, communities should determine where and how these centres are established, as part of the broader community-led response to criminal offending and social wellbeing.

**Justice responses consider the whole person
and all needs**

Anyone who comes into contact with the justice system will have all relevant issues assessed and addressed, such as health, mental health, addiction, housing, education, income, employment, disability, gender, cultural and other needs. For those who offend, support will not wait for sentencing. Agencies responding will consider the needs of everyone involved, especially children and other family members.

Services are coordinated and accessible

Government sectors and non-government organisations will partner and develop a coordinated wrap-around approach to services to ensure that all needs are met, including those of Māori, Pacific, migrant and refugee, Rainbow communities, and people with disabilities. Language support will be available when needed, along with cultural understanding and competency.

WHAT IS ACCOUNTABILITY?

One of the fundamental principles of transformative justice is that people who cause harm must be accountable. Accountability means 'being responsible to yourself and those around you for your choices and for the consequences of your choices'.¹⁵ This includes stopping harmful behaviour, acknowledging the harmful impacts, agreeing not to repeat it, apologising and committing to restoration where possible, and committing to do work to understand the root causes of harmful behaviour and engage in healing and transformation.¹⁶

Delivering transformative justice

New Zealand's justice system has operated in much the same way – with the same basic structures and legal principles – for almost 180 years. The main departments – police, courts and corrections – have many thousands of employees, and together account for about \$5 billion of annual government spending.¹⁷

Transformative change will not be simple. It will require:

INVESTMENT. Significant upfront investment will be required to address risk factors associated with violence and other offending, build up workforce and community capacity and capability to effectively prevent and respond to harm, and build community habilitation centres. In the long term, the social and financial costs will fall as harm reduces. A mindset shift is needed: current approaches to justice feed human instincts for retribution and control, without effectively addressing the causes of offending or the needs of the person who is harmed. A transformative approach will require us to understand and effectively respond to the needs of those who are harmed and those who harm. This will require a shift in culture and mindset among people who work in the sector, among political decision-makers who determine policy, in media who shape public opinion, and in the public itself.

SHARED RESPONSIBILITY. A transformative justice approach recognises the broader economic, cultural and social context in which harm occurs, including social norms, economic and social disparities, unmet mental health needs, and attitudes to alcohol and other drugs. Addressing these issues is a shared responsibility for individuals, families, iwi and hapū, communities, and all government agencies that influence justice outcomes.

TRANSFER OF POWER. Traditional New Zealand approaches to criminal justice have reserved power for, and built capacity within, the government sector. While central government has an important role to play, others must also be empowered. The transformative justice system we propose empowers communities and Māori to address justice and social issues and re-empowers people who are harmed.

NEW ZEALANDERS HAVE DELIVERED US A CLEAR MESSAGE we cannot continue with the same approaches and expect different outcomes. We cannot afford to create yet another generation of harm.

To create the conditions for sustainable change, everyone has a part to play. Government agencies – justice, health, education, housing and others – must set aside current siloed approaches and share responsibility and accountability for better justice outcomes. Media and social commentators need to find new, more effective ways of talking about crime that do not perpetuate easy stereotypes of powerless victims and sub-human offenders. Families and communities need to step up, with support, to call out harm from family and sexual violence. Aotearoa New Zealand's political leaders need to take up the challenge to work together in the best interests of the broader community and develop cross-party parliamentary accords for genuine, transformative change.

These 12 recommendations set
a direction for transformational change
in Aotearoa New Zealand's justice system.

RECOMMENDATIONS

COM

Political accord

22

By Māori for Māori

25

Invest in transformation

26

Whole of government

30

NMT

WE RECOMMEND

The establishment of a
cross-party parliamentary accord
for transformative justice.

Transforming New Zealand's justice system is a major undertaking. It requires reshaping Aotearoa New Zealand's court and prison systems, sharing responsibility with communities, realigning and reprioritising delivery of social services, and significant culture change throughout the justice sector.

“Successive governments of different political orientations have supported a progressively retributive rather than a restorative approach...”

Professor Sir Peter Gluckman,
INAUGURAL CHIEF SCIENCE ADVISOR

This is a highly ambitious programme which will vastly improve justice outcomes for all New Zealanders. Delivering such a programme will require long-term commitment by successive governments. It will demand a nationwide commitment by all political parties in Parliament to a world-leading justice system that addresses causes of criminal offending, delivers accountability, and restores mana for those affected. It will require parties to stop exploiting the real harm that criminal offending does for short-term political gain.

We would expect such an accord to incorporate a shared commitment to:

- adopt the vision, values and principles of transformative justice in a New Zealand context (see pages 14 to 17);
- implement this report's recommendations, which set a broad direction for transformative change;
- adopt targets for reduction in crime and victimisation (including specific targets for Māori); and
- provide for ongoing monitoring and review to ensure that recommendations are implemented and objectives are met.

A cross-party accord would provide clarity of direction for the justice sector and related social services; it would support long-term planning and evidence-based policy-making; it would provide sufficient flexibility for governments to respond to new circumstances while maintaining a clear course; and it would support the transition to a transformed justice system that prioritises restoration and addressing causes of harm. We call on all political parties in Parliament to join this accord.

MEDIA INFLUENCE ON POLITICAL DEBATE

Media coverage can have significant impacts on public attitudes to crime, and in turn on political responses. Sensationalised coverage of murders and other high-profile crimes, often with little regard to victims and survivors, can perpetuate stereotypes and increase fear of crime, as well as re-traumatise victims, their families and whānau. Politicians and public servants sometimes respond with legislative or policy changes that may address immediate risks but also create further harm.¹⁸ One example is the Department of Corrections' ban on temporary release and release to work applications for prisoners following the high-profile escape of murderer Philip John Smith in 2014 – a ban which the High Court subsequently declared unlawful.¹⁹ The Media Working Group Project was established in conjunction with Te Uepū in 2018 in an attempt to address issues arising from media coverage of high profile crimes. This independent group is establishing best practice guidelines for crime reporting and a database for journalists and we look forward to seeing the impact.

SHARED

“Mokopunatanga.
Leave no-one behind. Work together so
all children in New Zealand will flourish,
now and for the generations to come.”

KAITIAIA

COMMITMENT

TIKANGA

“Dig deep into our
tikanga to serve all.
Be brave.”

PORIRUA

VALUES

WE RECOMMEND

That the Government:

- establish a Mana Ōrite (equal power) governance model under which Māori and Crown agencies share in justice sector decision-making, as recommended by *Ināia Tonu Nei*;²⁰
- transfer power and resources to Māori communities so they can design and develop Māori-led responses to offending, and to tamariki and whānau wellbeing;
- make tikanga Māori and te ao Māori values central to the operation of the justice system.

If our justice system is to be transformative, it must be transformative for Māori. Transformative change will require significant transfer of power and decision-making from the Crown to Māori at national, regional and community levels. It will also require recognition of tikanga Māori values in the operation of the justice and wider social systems.

In our hui throughout the country, we constantly heard of the harm done to Māori children, families and whānau by the criminal justice system. Māori told us that the system was ‘a blunt tool of colonisation’ which suppressed and marginalised Māori laws and values while imposing those of Pākehā; that institutional, structural and personal racism contributed to Māori over-representation in the system, tearing apart Māori families and whānau, and creating damaging stereotypes of Māori as offenders; and that justice and child welfare agencies excluded families and whānau from decision-making, denying them opportunities to address harm and ensure accountability within their communities. People said they wanted the justice system held to account for the harm it did.

“Māori have the solutions but
we need the space to self-determine.”
NORTHLAND

IF THESE WOUNDS ARE TO HEAL, WE WERE TOLD:

- Māori must share in justice sector decision-making as an equal partner alongside the Crown;
- Māori communities must be able to determine their own responses to hara (transgressions) among their people; and
- Māori values and tikanga must become central elements of the way justice operates in Aotearoa New Zealand.

We endorse these calls. They reflect the fundamental rights of Māori communities to tino rangatiratanga as guaranteed under Te Tiriti o Waitangi. They are also necessary if Māori over-representation in the justice system is to be addressed. Current approaches clearly have not worked. Even as offending rates decline,²¹ Māori remain disproportionately harmed by criminal offending²² and by the justice system.

The Tiriti guarantee of tino rangatiratanga includes a right of Māori communities to authority over their own affairs and in accordance with tikanga. This is the default position. Where Māori rights and interests overlap with others, as they inevitably do in respect of justice, Māori and the Crown must negotiate mutually acceptable solutions.²³

The July 2019 report *Ināia Tonu Nei*²⁴ provides more detailed guidance and recommendations on the design of a Crown-Māori partnership for transformative justice. That report calls for decolonisation of the justice system through power-sharing, Māori-led responses to offending, prioritisation of tamariki wellbeing and development, and replacement of current prison structures with community-based responses to, and accountability for, offending.

Our recommendations support the Mana Ōrite partnership, service delivery, and workforce capability recommendations in *Ināia Tonu Nei*. We also support that report’s calls for more history and treaty-based education; constitutional, legislative and policy reform to entrench Te Tiriti o Waitangi; and review and redesign of justice institutions to incorporate kaupapa Māori values.

For nearly 180 years the Crown has asserted power over Māori communities, imposing laws and legal institutions while sweeping aside Māori systems of law and social control. The legacy of colonisation is one of enormous harm. If the countries leaders are sincere about better justice outcomes for Māori, the work of decolonisation must begin.



35%

35% growth in government spending on law and order between 2010 and 2018.

WE RECOMMEND

That the Government prioritise investment in community-led transformative justice.

The move from a punishment-centred justice system to a victim centered rehabilitative and restorative system will require a significant shift in funding priorities. The Government is spending more than \$4 billion annually on law and order,²⁵ much of it on identifying, prosecuting and punishing offenders. Since 2010 law and order spending has grown by more than 30% – faster than health, education and most other areas of government spending.²⁶ Department of Corrections operational spending grew by 40%;²⁷ largely due to policies that have increased imprisonment.²⁸

UPFRONT INVESTMENT WILL BE NEEDED TO:

- address unmet social wellbeing needs for everyone in contact with the justice system;
- build new community infrastructure including habilitation centres (see Recommendation 11); and
- build community capacity and capability to deliver justice and other social services.

“Resources for prevention will save or prevent incarceration.”

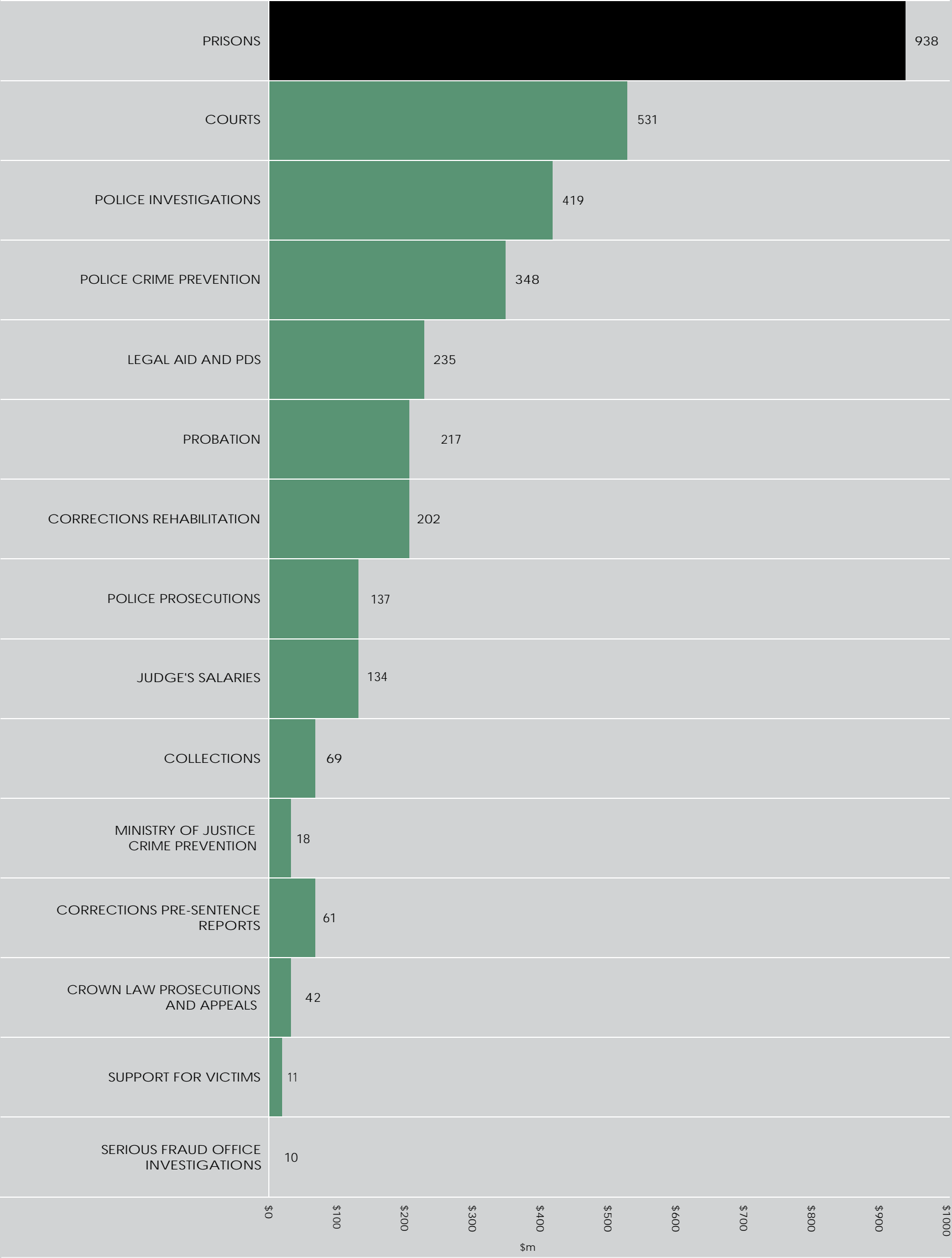
WELLINGTON

A transformative justice system will prioritise spending that supports restoration and rehabilitation, and addresses risk factors associated with criminal offending such as poverty and social deprivation, inadequate housing and homelessness, attitudes towards abuse and violence, educational underperformance and exclusion, substance abuse, and unmet mental health needs.²⁹ It will also involve a transition towards community-based, holistic responses to crime, and more comprehensive support for people who come into contact with the justice system.

According to a report from the Office of the Prime Minister’s Chief Science Advisor there is ‘strong scientific evidence’ that ‘crime prevention, early intervention... and a smarter approach to rehabilitation’ are more cost-effective than imprisonment.³⁰ Other national research has found benefits from increased spending on drug education and health interventions would significantly outweigh costs.³¹

In the near term, significant investment will be needed to build up a transformative justice system while also sustaining the existing system.

FIG. 01 — NEW ZEALAND SPENDS FAR MORE ON IMPRISONMENT THAN ON ANY OTHER PART OF THE JUSTICE SYSTEM



Source: Vote Justice appropriations, Budget 2019. Graph updated from Ministry of Justice 2019, *Towards a humane and effective criminal justice system, Evidence and Issues paper*. Figure 10. Internal report.

WE RECOMMEND

That the Government:

- adopt a common vision and common values, statutory purposes and governance for the whole justice sector and align justice statutes accordingly;
- improve coordination and information sharing among government agencies; and
- implement whole of government responsibility for justice sector outcomes.

Transformative justice requires a whole-of-government response, in which agencies collaborate effectively to address causes of offending, and to support accountability and restoration.

People told us that government services are fragmented and siloed. Some said they had to tell their story to many different agencies and people. Important services are not coordinated, leading to duplication, conflicts and gaps in provision. Different parts of the justice system have different information, leading to decisions that are confusing and inconsistent. The impacts are particularly traumatic for people who have already been harmed by other offending.

Asilo mentality also means that government agencies are not held responsible for criminal justice outcomes arising from their areas of responsibility. For example, unmet needs in mental health, education, housing and income support are associated with greater risk of criminal offending,³² yet the relevant agencies do not see justice as part of their core business.

Implementing the approaches discussed in Recommendation 6 will significantly improve coordination of services at a community level, but other changes are also needed at central government level.

In our view, all justice sector agencies should be required to commit to a shared vision and common governance structure. The Mana Ōrite model discussed in Recommendation 2 can provide a foundation for such an approach. All justice sector statutes should be reviewed to ensure alignment with our vision, values and principles. There should be a focus on statutory purposes, ensuring that decision-makers at all levels prioritise restorative approaches. Required service outcomes should also be aligned. These changes should be supported by a culture and behaviour change programme, clear strategic direction, and clear accountability and monitoring processes including general and Māori-specific targets for restoration and habilitation.

A total overhaul should be made in information sharing across police, courts, justice and social services to improve communication, manage risk, and ensure all relevant child and family needs are met. We have not dealt with the very real privacy issues that information sharing can raise. Consideration must be given to the quality and integrity of information shared, as well as ensuring that the notion of Indigenous Data Sovereignty is upheld so the benefits of information sharing are reflected in positive Māori outcomes. The focus should be on technology, data collection and use, as well as research techniques designed to drive continual improvement in the system as a whole. All agencies that contribute to justice outcomes, including health, education, housing, social security and child welfare, must be responsible for criminal justice outcomes arising from their work.

COMMON

“People first.
Collaboration – Real Power Sharing.”

ARANUI

VISION

EMPO



WER

People who are harmed

34

Communities

39

Children, families and whānau

40

Protect survivors and others
from further harm

PROTECT

SUPPORT

Support survivors to meet their
physical, emotional, psychological,
economic and cultural needs

Offer survivors choices about
how to pursue justice

CHOICE

WOMAN
AUTONOMY

Allow survivors to
exercise autonomy

WE RECOMMEND

- everyone who is harmed by criminal offending has access to an independent person who can guide and advocate for them during their contact with the justice system and other services for as long as needed
- support for people who are harmed should be strengthened with better access to a wider range of therapeutic services, and more financial support for victims, families and whānau
- victims’ rights be strengthened, including rights to have input into criminal justice decisions and rights to privacy. We also recommend streamlining protection order and name suppression processes, changes to courtroom layout, and review of reparations.

Violence and other offending cause immense harm, including physical injury, emotional and psychological trauma, and financial harm. Many people – especially women and children – endure repeated or ongoing violation, abuse or other harm, and live with the effects for the rest of their lives. Such events rob them of mana and can set some children on a trajectory towards offending. Some who are harmed do not survive, and their families and loved ones are left with an enduring legacy of grief.

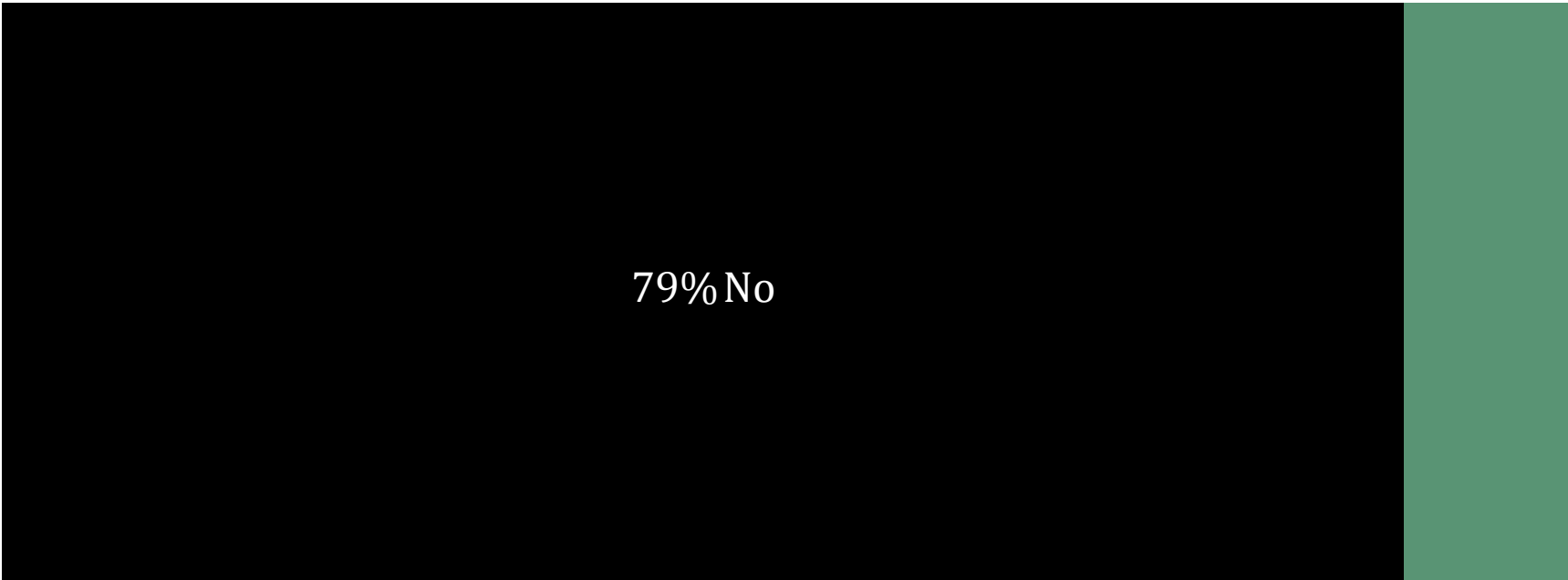
A HUMANE SYSTEM WOULD RESTORE THE MANA OF THOSE WHO SURVIVE. IT WOULD:

- protect them and others from further harm;
- support them to meet their physical, emotional, psychological, economic and cultural needs; and
- offer them choices about how to pursue justice and exercise autonomy.

People told us that current justice procedures alienate and re-traumatise them (see Recommendation 12). People told us that support services are inadequate. Current support systems include victim support services; treatment (through health and ACC) for physical injury, sexual abuse and emotional and psychological trauma; limited financial compensation (if any); and a limited victim advisory service at courts.

People who had been harmed raised significant concerns regarding all these services. We heard that victim support services rely heavily on volunteers and are limited in what they can offer. They may offer emotional support and advice but are not regarded as effective advocates when dealing with police, courts, health, ACC and other services. Court-based victim advisors are seen as part of the court system, and therefore unable to offer independent advice, support and advocacy. The range of choice is limited and does not meet the specific needs of Māori, Pacific, migrant and refugee, Rainbow and disabled communities. Many services are available only during criminal investigations and trials, while the restoration journey needs to begin earlier and may take much longer.

FIG. 02 — DO VICTIMS HAVE ENOUGH INFORMATION OR SUPPORT THROUGHOUT THE CRIMINAL JUSTICE PROCESS?



A SINGLE POINT OF CONTACT. People who are harmed by violent or other serious crime are entitled to effective support and advocacy throughout their entire restoration journey. They should have a single point of contact who is:

- responsible only to them and independent of any government agency;
- available for as long as needed, irrespective of when criminal proceedings end;
- able to coordinate all services required to meet their needs, including security, health and therapeutic services, housing and income support, and justice services;
- able to support their decision-making with respect to justice options, including safe disclosure of offending;
- able to act as an independent advocate on their behalf;
- competent to meet the specific cultural or other needs of the person they are supporting, including the needs of Māori, Pacific and other ethnicities and cultures, migrant and refugee communities, LGBTQI+ communities and disabled communities;
- sufficiently experienced and trained to fulfil these functions – this includes trauma-informed and paralegal training.

Support of this nature should be available to all people affected by violence or serious crime, including those who are harmed, those who have harmed, and also their children and families. In many communities, non-government organisations will be best placed to offer this type of support. Independent victim advocates, iwi or hapū organisations, or Whānau Ora navigators may also be able to fulfil this role. In particular, there needs to be more competent support for immigrant women who may not speak English and are vulnerable to coercion from within their community.

ADEQUACY AND RANGE OF SUPPORT SERVICES. Anyone who comes into contact with the criminal justice system should have their needs assessed at the earliest opportunity. Those who are harmed by offending may have a range of needs, including immediate need for somewhere to live where they will be cared for and kept safe. For children who are harmed, early and intensive support is essential,³³ as is support from family, whānau and the wider community. Restoration may involve physical recovery from injuries; therapeutic, cultural or spiritual support to heal emotional and psychological harm; and economic support to meet immediate needs and compensate for harm caused.

We were told that that a wider range of therapeutic services was needed, and that access must be increased. For people harmed by sexual violence, the number of ACC-funded counselling and psychological sessions is insufficient and eligibility criteria denies services to people in significant need, including those with post-traumatic stress disorder. Services must meet the needs of Māori, Pacific, refugee and migrant, LGBTQI+ communities and people with disabilities. A recent report highlighted the limited therapeutic options available for children and others who had experienced violence and noted that barriers particularly affected people on low incomes who could not afford private treatment.³⁴

CHANGES TO JUSTICE PROCESSES. Many people harmed by criminal offending said they felt disempowered and re-traumatised by investigation and trial processes. They raised concerns about the adversarial system and about aggressive or inappropriate questioning during cross-examination. They told us that their voices are not heard – police, lawyers and judges make decisions without their input and treat them as witnesses to crimes against them. In Recommendation 12 we advocate for a fundamental review and redesign of criminal justice processes to ensure fairer, more compassionate and more equitable treatment for people who have been harmed by criminal offending.

In addition, we recommend the following:

- **STRENGTHEN RIGHTS TO BE INFORMED.** Rights to be informed and have input into criminal justice processes should be strengthened and consistent across the justice and health systems. Those who have been harmed should have input into key decisions including whether to prosecute, accept plea arrangements, grant bail and parole, and pursue restorative and alternative justice processes, which should be available at any time. Victim Impact Statements should not be edited unless there is a compelling reason. Those harmed should have the same rights to be kept informed and have input into key decisions, regardless of whether the person who harmed them is treated in the mental health system or the criminal justice system.
- **REDESIGN COURTROOMS.** Courtrooms should be redesigned to create ‘safe’ spaces for those harmed which protect them from contact with defendants. Courtroom support should be strengthened for children, people who do not speak English and people with disabilities.
- **REDUCE COSTS FOR VICTIMS.** Justice processes affecting those harmed should be streamlined and costs reduced. Protection order applications should be free, as should applications to lift automatic name suppression. A single victim notification register should replace separate Police, Corrections and Health registers. Rights should be consistent for all victims of crime.
- **REVIEW REPARATION SYSTEM.** The reparation system for serious crimes should be reviewed to consider early payment to victims.
- **PROTECT VICTIM PRIVACY.** Victims of crime (and families) should have their privacy protected. Currently, media can publish names, photographs, information from social media accounts and other personal details without consent, except where subject to suppression orders. This can be disempowering and traumatic.
- **MONITOR COURT PROCEDURE CHANGES.** Changes to court procedures announced in July 2019 should be monitored and reviewed after implementation to determine whether they are ensuring fairness and safety for those harmed by sexual violence.³⁵

77%

of victims in a 2018 survey disagreed or strongly disagreed that victims’ views, concerns and needs are listened to throughout the justice process.[^]

As well as emotional and psychological harm, criminal offending imposes economic costs on the people who are harmed. They include direct economic costs from burglary and property offending, hardship, lost opportunities from time off work due to injury and court processes, health and treatment costs, and legal costs. It is not uncommon for people who experience serious violence, and for families of people who are murdered, to lose their homes due to these costs. Current levels of financial support and compensation are grossly inadequate and must be reviewed, including ACC and legal aid. These include support for people attending trials and for the costs of funerals, childcare, treatment, counselling and protection orders. Eligibility should be extended to include children, families, and whānau of the victim.

[^]Source: Strengthening the Criminal Justice System for Victims Survey 2018.

RESTORE

“Through accountability,
through understanding,
through action. Restore people
to their valued space.”

JUSTICE SUMMIT

MANA

WE RECOMMEND

That the Government transfer resources and decision-making powers to communities so they can develop and deliver services that meet justice and social wellbeing needs for everyone who comes into contact with the justice system.

Implementing a new justice system will require change in design and delivery of justice and social services. The current criminal justice system is designed to identify, prosecute and punish offenders. Most people who come into contact with the system have unmet needs,³⁶ which are addressed in a fragmented and inconsistent manner, if at all.

A transformative system must address causes of offending, ensure accountability and restore mana for all affected by offending. This will require a holistic approach, in which anyone who comes into contact with the system has their needs assessed and addressed at the earliest opportunity, as do any affected children, family and whānau. Health, housing, income support, mental health and trauma recovery, and justice needs must all be considered where relevant.

Communities told us they want to develop their own solutions, both for criminal offending and for broader social wellbeing. People want communities to be alongside police and other agencies in initial responses to offending so they can ensure that individual, child, family and whānau needs are addressed. Some want expansion of community-based alternative justice processes such as Te Pae Oranga iwi community panels.³⁷ Many said that communities should be empowered to design social services that support families and individuals to be safe and to flourish, and thereby reduce risks of criminal offending.

These sentiments were amplified among Māori and Pacific peoples, and organisations working with people who are harmed by offending. The disabled community also spoke strongly of the need to be adequately resourced and recognised as experts of their own condition in the response to their specific needs in all sectors of the justice system. Refugee and migrant communities called for recognition of the complexity of the issues they face, including cultural and social dimensions. Their expertise in developing solutions that are culturally adaptive to living in Aotearoa New Zealand must be acknowledged.

Consistently we were told that communities better understand the contexts in which offending occurs, and that people from within communities are better placed than government agencies to develop and lead effective responses. We repeatedly heard that responses must address all impacts of offending on children, families, whānau and the wider community, and that services must be available and accessible, especially in communities that are disadvantaged or isolated.

In our view, community-led, holistic, family and child-centred approaches should become the norm for justice and social services. Whānau Ora provides an effective model for transfer of power to communities, which – as recommended in the 2019 Whānau Ora Review – could be expanded to a wider range of communities, enabling them to address justice and other needs.³⁸ We have also been impressed by the Ruapehu Whānau Transformation Plan as a community-led initiative that addresses offending and wellbeing,³⁹ and the collaborative Integrated Safety Response pilots have been associated with significant reductions in family violence.⁴⁰ People from Ngāti Whātua told us that iwi-led informal responses had significantly reduced criminal offending – ranging from noise complaints to domestic violence – in recent years.

The Productivity Commission,⁴¹ the Government Inquiry into Mental Health and Addiction He Ara Oranga (2018),⁴² and Te Puni Kōkiri's review of *Whānau Ora Tipu Mātoro ke te Ao*⁴³ all supported transition away from Government 'deciding for' and 'doing for'⁴⁴ communities, towards community-led, holistic services, as did the recent Hui Māori report *Ināia Tonu Nei*.⁴⁵ Some people we spoke with – particularly from rural areas – wanted a 'one stop shop' approach in which services were located together for ease of access. The Mental Health Inquiry suggested a similar approach based on community wellbeing 'hubs'.⁴⁶

“Please fund us to deliver community solutions”

A PROVINCIAL WOMEN'S REFUGE

For community-led approaches to reach their potential, the Government will have to fundamentally reshape its approach to community service contracting, resourcing and accountability. Resources and decision-making authority must be handed to communities and community organisations, who will then be trusted and supported to design and deliver responses relevant to their needs. Groups and organisations that receive funding should be accountable to the communities they serve. We note that current funding models are not conducive to collaboration, innovation and long-term solutions. Investment will be required to build community capacity and capability.

WE RECOMMEND

That together we address poverty and social deprivation, increase support for parents and families, and challenge attitudes and behaviour that support family violence.

Much harm occurs within families or between intimate partners, and most of that offending never comes to the attention of the formal justice system.⁴⁷ While there is no single cause of family and intimate partner violence, there are known risk factors. Children who grow up with violence, abuse or neglect are considerably more likely to go on to harm others or be harmed, especially if that treatment is persistent enough for the child to see it as normal. Other related risk factors include poverty and social deprivation, poor family and parental attachment, violent or anti-social attitudes and beliefs, culturally endorsed forms of abuse, educational exclusion or underperformance, mental health challenges, and misuse of alcohol and drugs.⁴⁸

By addressing these issues, harm can be reduced, intergenerational cycles of violence and abuse can be broken, and children, parents and families can be supported to flourish and live to their full potential. If we are serious about addressing offending, we must start with children and families. Early intervention is key. We regard these as priorities for all of government, and indeed for all of Aotearoa New Zealand.

83 % of people starting a prison sentence before the age of 20 had prior CYF involvement.[^]

ADDRESS POVERTY AND SOCIAL DEPRIVATION
Children who grow up experiencing poverty, violence and social deprivation are more likely to: be mistreated and experience behavioural problems; experience mental health challenges; be excluded from school; turn to alcohol and drugs; and, as they get older, to offend and be offended against.⁴⁹ For people who experience violence or other offending, poverty and accessibility issues limit opportunities to find places of safety or get help when it is needed. Those who commit crimes are frequently unable to find work after completing sentences and become trapped in cycles of welfare dependency and imprisonment.

Government policy settings have significant potential to lift families out of poverty. The Welfare Expert Advisory Group (2018) report *Whakamana Tāngata*⁵⁰ recommended increases in benefit levels and social housing investment, noting that such increases could be expected to reduce criminal offending. The Tax Working Group (2018)⁵¹ recommended tax threshold and benefit adjustments aimed at alleviating poverty.

The Government's inaugural Chief Science Advisor has noted evidence that family violence declines after increases in minimum wage rates.⁵² Housing, health care, education and training and other government services all have vital roles to play in lifting families out of poverty, as does the business sector by providing employment at a living wage and innovative pathways to employment programmes.

60 % of prisoners have literacy or numeracy below NCEA level one.[†]

INCREASE SUPPORT FOR PARENTS AND FAMILIES
Parenting is challenging, and those challenges are magnified for parents who have grown up with trauma or are stressed by poverty, mental health or addiction challenges, lack of family support, and other risk factors. Increasing support for parents – especially those who are struggling – can reduce family and relationship stress and help to prevent or break cycles of harm.

There is significant evidence that home-based services can reduce the incidence of child abuse and neglect, as well as strengthen parent-child bonding and wellbeing.⁵³ The most effective interventions last for at least two years and take a holistic approach aimed at addressing health and social wellbeing for the whole family. Evidence-based programmes to support parenting skills are important, especially for parents who experienced violence or other offending as children. High-quality, accessible and affordable early childhood care and education also improve wellbeing for children from homes where offending risk factors are present.

A national hui held in Rotorua in April 2019 acknowledged the importance of understanding that the justice pipeline starts at birth. Participantssaid that any approach to reforming the justice system must ensure the impact of Oranga Tamariki and the Family Court is understood, as most of those who enter the courts or prisons have had previous interactions with these agencies. According to the report from that hui, taking tamariki and mokopuna away from families and whānau often compounds harm.⁵⁴

“If we are to create change in the justice system as a whole, we must create change for ... children and young people.”

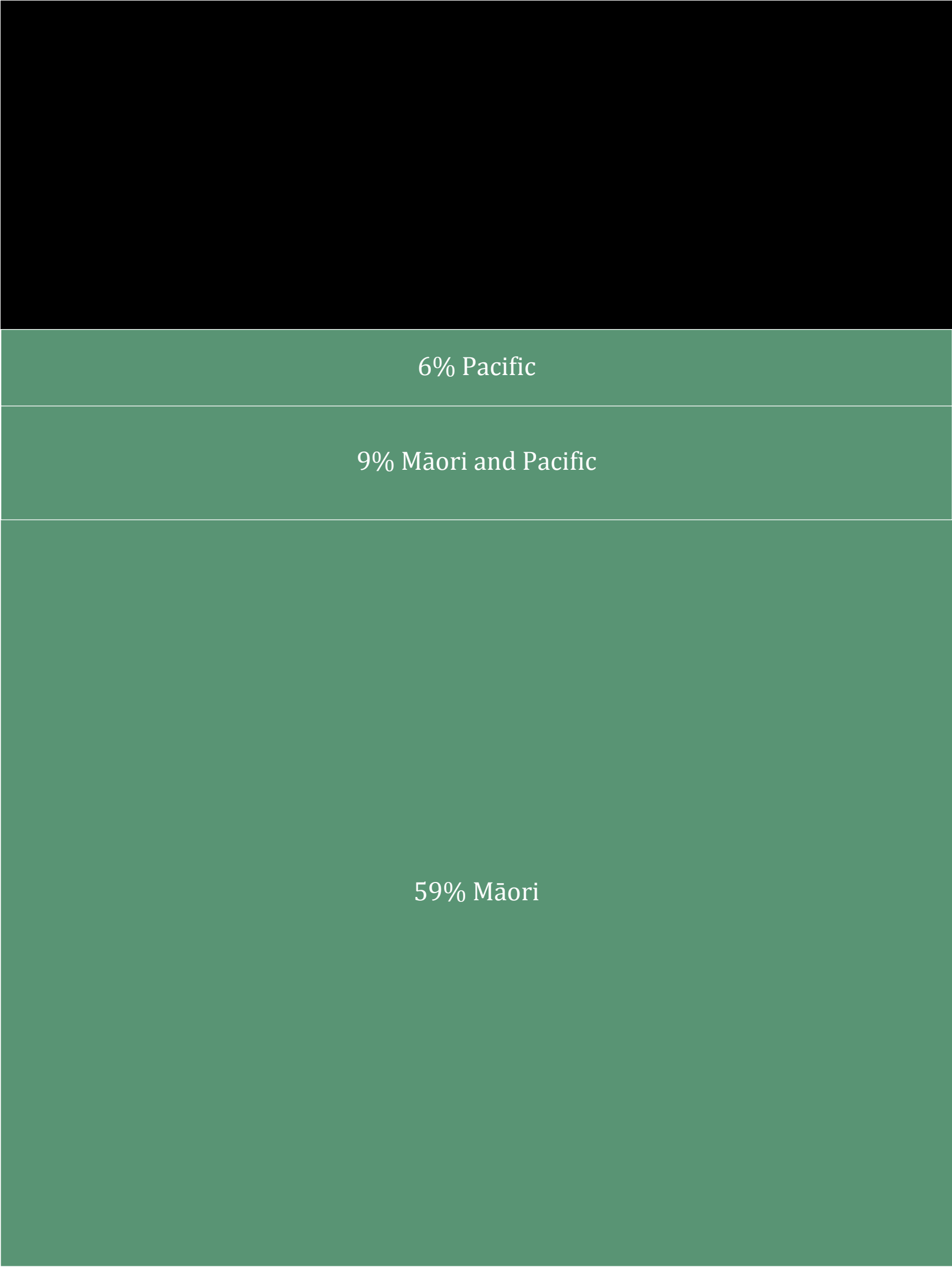
YOUTH LAW AOTEAROA SUBMISSION

CHALLENGE ATTITUDES THAT SUPPORT FAMILY VIOLENCE. Social attitudes influence individual behaviour, and violent social attitudes support violent actions. Male violence against women and children reflects underlying social and cultural attitudes about gender, sexuality, privilege and power. For example, the term ‘rape culture’ refers to social attitudes that minimise or justify rape and other sexual violence. Attitudes that reinforce gender inequality and disempowerment of women also contribute to violence, according to the World Health Organisation.⁵⁵ We heard from some migrant communities about forced marriage, dowry abuse and honour-based violence against women, and we also heard of religious institutions endorsing patriarchal attitudes that manifest in oppression towards women. Such attitudes are not confined to migrant or minority groups. We must all work towards changing our culture and attitudes which enable family violence.

[^] Source: Ministry of Social Development Centre for Social Research and Evaluation, Crossover between child protection and youth justice, and transition to the adult system, 2010.

[†] Source: Department of Corrections, Investing in prison education, 2017.

FIG. 03 — CHILDREN AND YOUNG PEOPLE IN ORANGA TAMARIKI CARE AND PROTECTION



TRANS

P. 42

Racism

45

Mental health and trauma

46

Alcohol and other drugs

48

Rehabilitation

53

Justice processes

54

FORM



FIG. 04 — MĀORI ARE OVER-REPRESENTED IN PRISON

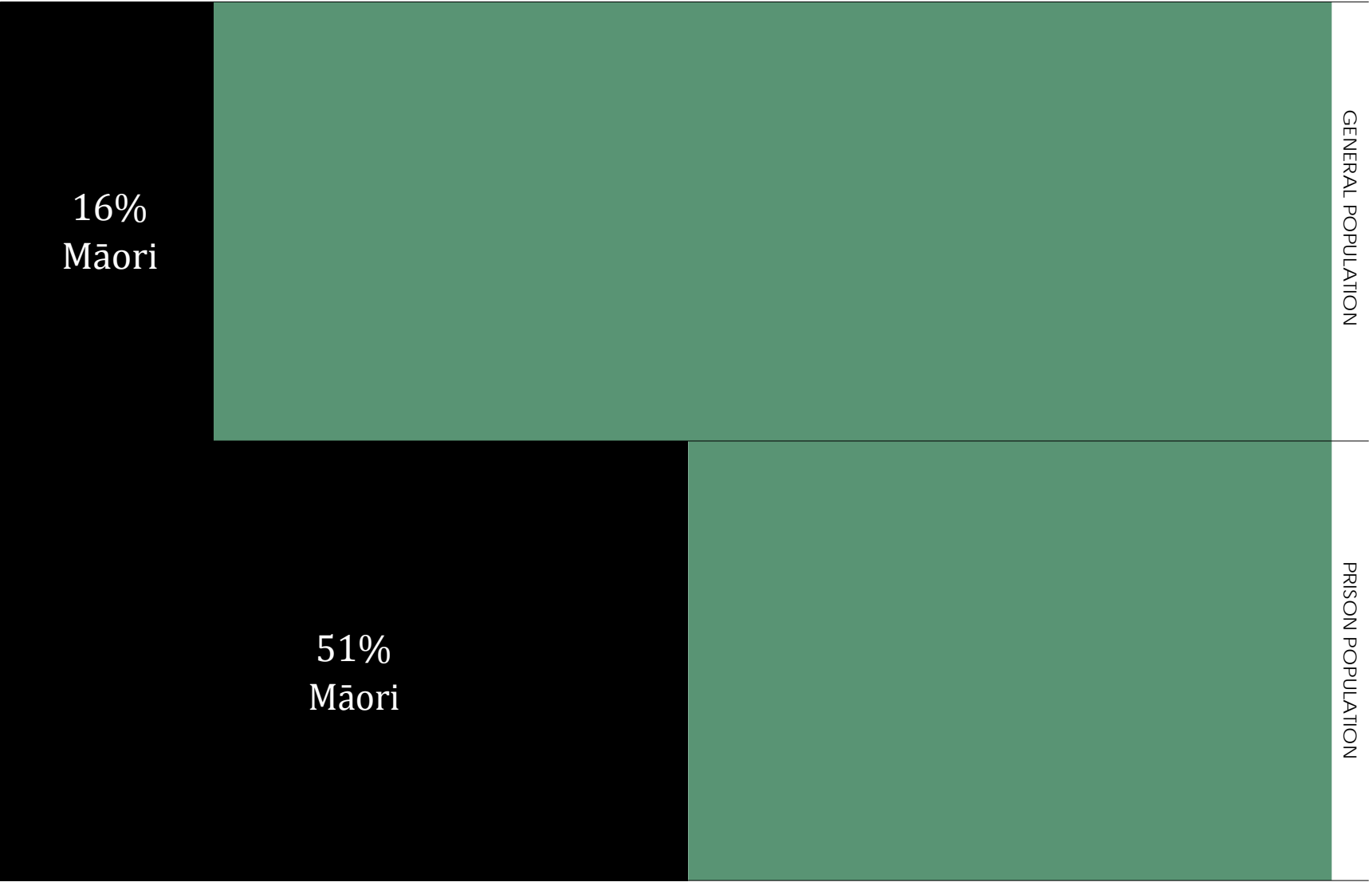


FIG. 05 — PEOPLE LIKELY TO HAVE CONTACT WITH POLICE

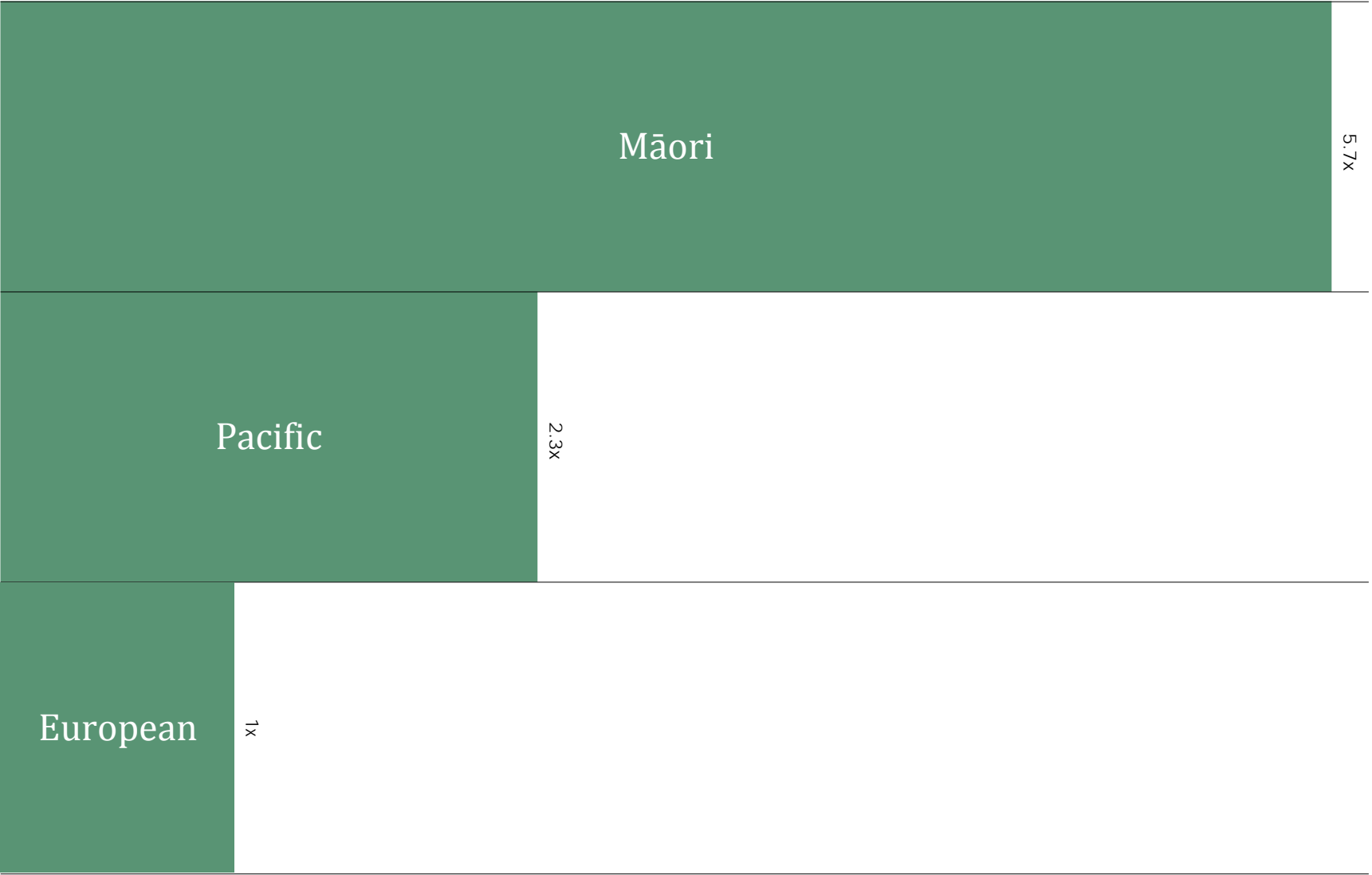


Fig. 04 Source: NZ Police, Department of Corrections and Statistics NZ.
Fig. 05 Source: NZ Police Recorded Crime Offender Statistics policedata.nz; Stats NZ National ethnic population projections 30 June 2018.

WE RECOMMEND

That racism be challenged within the justice system and throughout our society, with more diverse recruitment and more effective training in the justice system, as well as school programmes, media campaigns and law changes.

Racism is endemic throughout our society. Racism can manifest in overt acts of racial violence and abuse; in racist attitudes such as prejudice, stereotyping and profiling in beliefs that western ways of doing things are ‘normal’ or ‘superior’ to those of other cultures, and that others should assimilate or adapt; and in institutional and systemic racism, in which organisations and social systems systematically discriminate against some ethnicities or cultures.

In our engagements we heard much about racism in all these forms. Māori told us of the ongoing impacts of colonisation, in which Māori systems of law and government were supplanted, and the Māori land base was systematically transferred into Pākehā hands, leaving Māori communities with a legacy of disillusionment and impoverishment. Many saw the justice system as a tool of colonisation, which operated according to Anglocentric cultural ideas while systematically discriminating against and subjugating Māori.

“...we are automatically presumed guilty by association or we are questioned without cause. This sort of policing and racial profiling needs to stop.”

WELLINGTON

Many people – Māori, Pacific, members of ethnic communities, new migrants and refugees – described personal experiences of racial discrimination and profiling (whether conscious or unconscious) within the justice system. We heard from leaders of Pacific communities who said that racism was common in justice, including stereotyping such as when juries ‘see a brown face and make their own conclusions’.⁵⁶ While Pākehā New Zealanders are largely shielded from such experiences, they are commonplace for people of colour, for whom they fundamentally undermine trust in the justice system.

The effects of negative racial stereotyping and profiling are felt in justice outcomes, such as the disproportionate representation of Māori in prison. Māori are 5.7 times more likely than other New Zealanders to have contact with Police.⁵⁷ From that initial contact, the problem compounds. Māori are more likely to have been handcuffed or peppersprayed, more likely to be arrested, convicted, sentenced, and imprisoned.⁵⁸ The cumulative effect is the oft-quoted figure that Māori make up 16% of the national population and 51% of the prison population.⁵⁹ Māori also experience high rates of compulsory treatment and seclusion within the mental health system.⁶⁰

People also spoke of the justice system’s cultural blindness and bias. The system is constructed according to Anglocentric ideas of law and justice and many people within it, we were told, are blind to non-western cultures. For example, those delivering justice in New Zealand are often not aware that within Asian, African and Middle Eastern communities the practices of underage marriage, forced marriage, dowry abuse, and so-called ‘honour-based’ violence are common and culturally endorsed. All those engaged in delivering justice must have cultural competency through better education and awareness.

Racism not only causes unfair justice and social outcomes but is a direct cause of violence. The massacre in the Christchurch mosques are an extreme and tragic example. Here, members of a religious community were directly targeted as a collective group by lethal racist violence. Much more common are everyday acts of abuse and aggression towards members of migrant and refugee communities, which leave them feeling unsafe.

Other groups also suffer from cultural bias and discrimination. Disabled persons experience many forms of discrimination in their everyday lives in housing, employment and other social areas and have poorer social and health outcomes than any other group in New Zealand. Significant numbers of imprisoned people live with disability. Negative social attitudes also enable violence and discrimination against members of the Rainbow community (LGBTQI+) and against cultural, ethnic, religious and other minorities. Promotion of all kinds of equality is an essential part of stopping violence in our society.

Racism and discrimination must be challenged, both within the justice system and throughout society. Within the justice system, responses must include more diverse recruitment and more effective training which challenges deeply held unconscious racism and bias. School programmes, media campaigns and law changes can all help address violent social norms in wider society.

MĀORI ARE OVER-REPRESENTED AT EVERY STAGE IN THE CRIMINAL JUSTICE SYSTEM
In 2018 Māori were 38% of people proceeded against by police, 42% of adults convicted and 57% of adults sentenced to prison. One in five Māori men born in 1981 has spent time in prison, compared with one in 12 of all men born in 1981. Of people in youth justice custody 67% are Māori. Another 13% identify as Māori and Pacific, and 7% as Pacific.

WE RECOMMEND

That the Government address access to culturally informed trauma recovery and mental health services, and adopt trauma-informed approaches throughout the justice system, including in all training, policies and practices.

He Ara Oranga, the 2018 report of the Government Inquiry into Mental Health and Addiction Services,⁶¹ has comprehensively described the myriad gaps in New Zealand’s mental health services. According to that report, many common mental health and addiction challenges have their origins in experiences of trauma, including experiences of family violence, sexual abuse, neglect, and impacts of poverty.

Available mental health and wellbeing services do not effectively meet the long-term needs of our children or adults who experience trauma. Resources are focused at the acute end of the mental health spectrum but must be available for everyone. For people in the community, available services are fragmented and typically focus on a biomedical approach that uses medication to ‘dull the pain’ without addressing underlying causes or related social and cultural wellbeing issues.

“We know that the mental health system is broken, as is the justice system. If the health issues, and then mental health issues, had been dealt with, they might not have ended up where they are.”

WEST COAST

He Ara Oranga called for a fundamental transformation of mental health and wellbeing services. It recommended greatly improved access to community-based mental health and wellbeing services, and far greater choice. In particular, it recommended increased access to counselling and talk therapies, culturally aligned therapies (such as rongoā Māori and Pacific healing), and alcohol and drug treatment. It also recommended a greater focus on promotion of mental wellbeing, a ‘whole person’ approach to mental health support, and establishment of ‘hubs’ where people could access all services related to their wellbeing.

Gaps in mental health care are starkly reflected in the justice system. We heard from people who had been harmed by violence and said they lacked adequate support to address the resulting trauma. ACC-funded treatment for people harmed by sexual violence was seen as manifestly inadequate, both in the range of services available and in the number of sessions funded.

The Government’s science advisors told us of the close links between childhood trauma, mental health conditions, poverty, substance abuse, educational failure and exclusion, and criminal offending. They emphasised the critical importance of early interventions to address childhood trauma and described evidence of the effectiveness of therapeutic techniques including home and school-based programmes. In the absence of such interventions, unresolved trauma and associated challenges frequently led to ‘nuisance’ behaviour or minor offending, and in turn to more serious criminal offending. Of children and young people who commit criminal offences, about 80% have experienced family violence, and offending is closely associated with heavy drinking and drug use.⁶² Among people in prison, rates of exposure are similarly high and differ only slightly between Māori and Europeans.⁶³ To a very considerable degree, demand on New Zealand’s justice system is a product of unmet mental health needs.

For these reasons we support the recommendations of *He Ara Oranga* aimed at addressing access to trauma recovery and mental health services. We acknowledge the Budget 2019 commitment to mental health services and to services for prisoners and for people harmed by criminal offending. It is clear that more can be done, especially to support children and others affected by violence, and we look forward to further transformation in both mental health and ACC support.

We echo the view of *He Ara Oranga* that mental health services must adopt a holistic approach which considers the broader wellbeing of the people affected. This includes family, whānau and community relationships; cultural and spiritual world view; needs and values; and economic and social wellbeing factors such as adequacy of housing and income.

77% of prisoners have previously experienced violence.[^]

We also echo its emphasis on the importance of trauma-informed care that is culturally informed. It is critical that care be informed by cultural and collective understandings that go beyond solely western clinical forms of care. Māori experience trauma in distinct ways that are linked to colonisation, racism, harmful stereotyping and subsequent unequal rates of violence, poverty and poor health outcomes.⁶⁴ Similarly, there is a need for trauma-informed approaches to be responsive to the needs of Pacific peoples, migrant and refugee groups, LGBTQI+ and disabled persons.

He Ara Oranga advocated trauma-informed care as standard for the mental health system. In our view trauma-informed approaches should also be standard throughout the justice system (and, indeed, throughout social services). Police, court and corrections policies and practices should be redesigned according to the principles of trauma-informed care, and staff should receive training to apply those principles in their daily work.

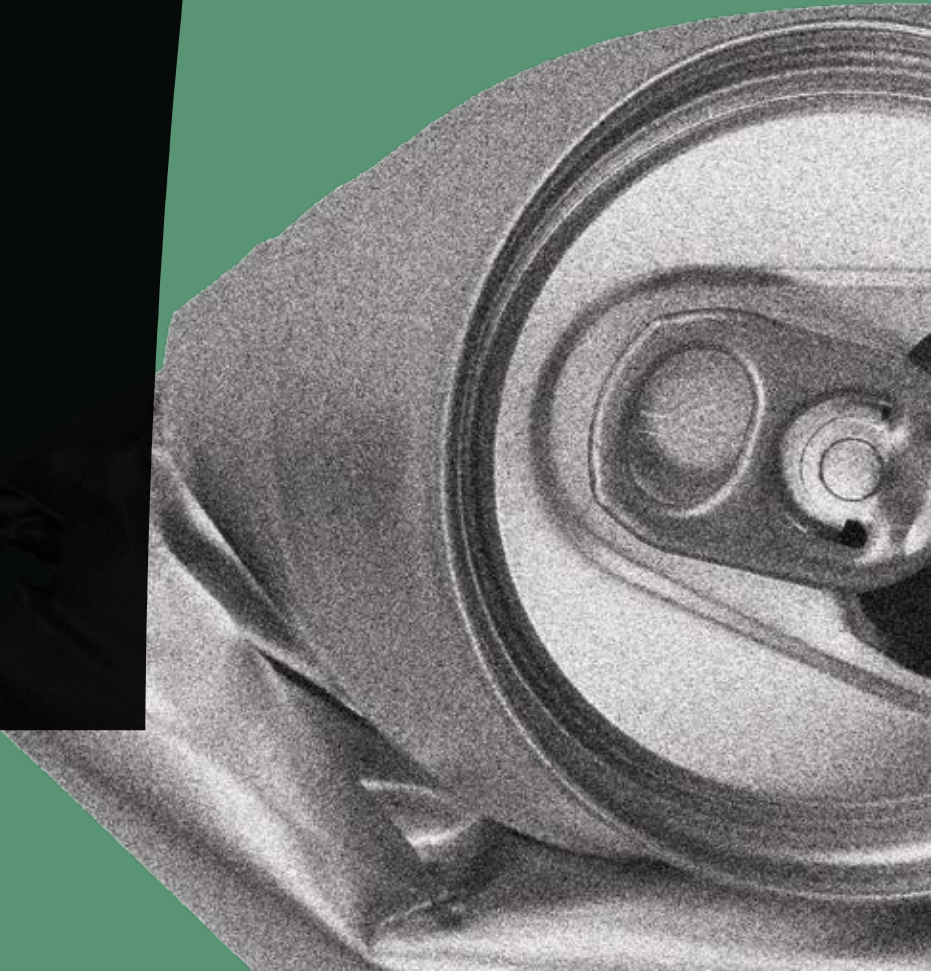
[^] Source: Department of Corrections, NZ Prisoners’ Prior Exposure to Trauma, 2017.

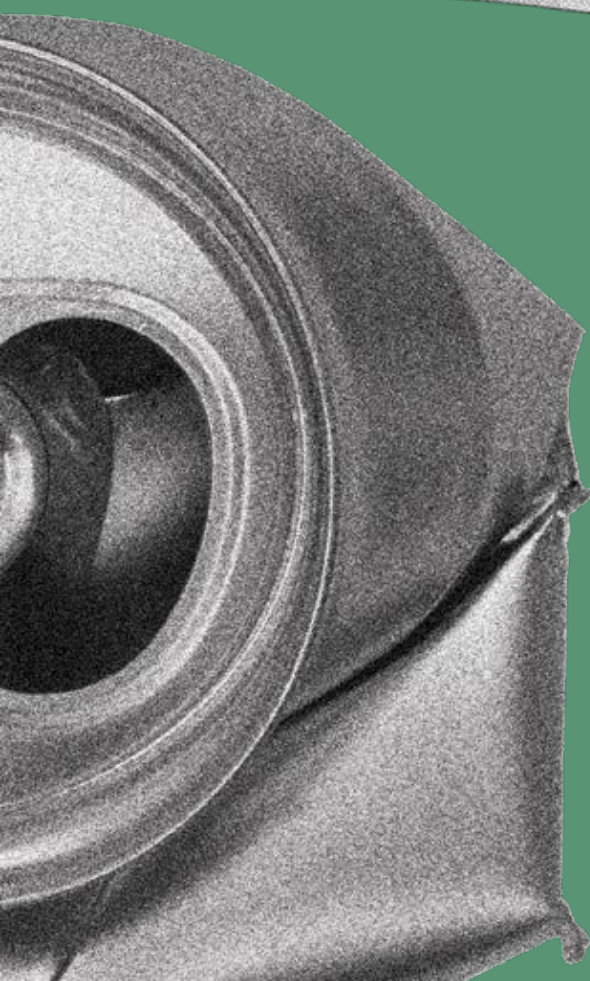
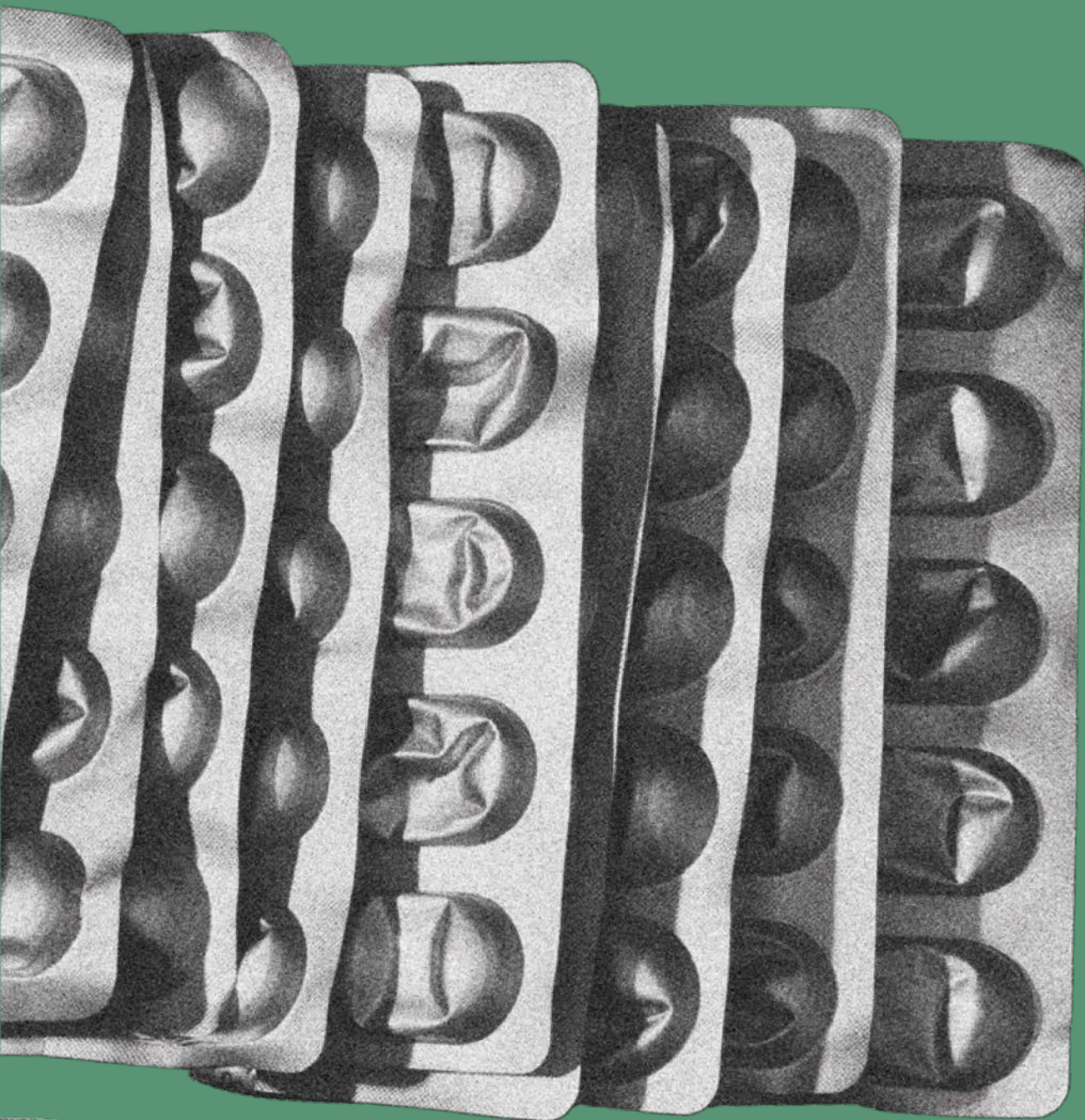
0%

91%

91% of people in prison have been diagnosed with a mental health or substance use disorder at some stage in their lifetime. Of those diagnosed within the previous 12 months, only 46% had received treatment.

8700





87% of people in prison have been diagnosed with a substance use disorder during their lifetime.

WE RECOMMEND

That the Government strengthen regulation of alcohol, legalise and regulate personal use of cannabis, and consider that for all drugs, treating personal drug use as a health issue, with more funding towards prevention, education and treatment.

Misuse of alcohol and other drugs is prevalent in our society and communities and causes immense harm – to individuals, children and young people, whānau and families. It is also a major driver of crime in both urban and rural areas.

The Government Inquiry into Mental Health and Addiction, in its report *He Ara Oranga*, noted that harmful alcohol and other drug use was significantly implicated in crime and public nuisances; negatively affected health, wellbeing, education, work productivity, personal relationships; and played a role in at least half of youth suicides.⁶⁵

Prisons are filled with people who have dependencies – 60% of community-based offenders have an identified alcohol or other drug problem and 87% of prisoners have experienced an alcohol or other drug problem in their lifetime.⁶⁶ Alcohol alone is associated with 103 offences every day.⁶⁷

Alcohol is regulated but is widely available and used in our society. It isn't seen as a drug and our regulation approaches to it are inconsistent and fail to deal with the harm it produces. Conversely, other drugs – some of which cause less harm according to international research⁶⁸ – are criminalised, which makes it difficult to deal with those health impacts. Meanwhile, convictions for personal drug use can have severe consequences, inflicting more harm on those who are addicted and on their families. A new approach is needed – one that combines better education and treatment with consistent, effective regulation.

103 offences committed every day by people who have consumed alcohol.[^]

We recommend stronger regulation of alcohol. Over recent decades governments have ignored many recommendations aimed at reducing the harm and impact of alcohol misuse. *He Ara Oranga*, the 2010 Law Commission review *Alcohol in our Lives*,⁶⁹ the 2014 Ministerial Forum on Alcohol Advertising and Sponsorship,⁷⁰ and the 2014 Ministry of Justice report *The Effectiveness of Alcohol Pricing Policies* all recommended or provided evidence for a stricter regulatory approach to the sale and supply of alcohol. Much bolder political leadership is required here to take action now.

We recommend that personal use of cannabis should be legalised and regulated. Research and experience around the world shows that criminal penalties have little impact on whether people take drugs.⁷¹ The net social benefit of decriminalising cannabis has been estimated at anywhere from \$86 million to \$963 million a year, if accompanied by increased investment in health promotion.⁷² Around the world, according to the New Zealand Drug Foundation, 44 countries now have some type of decriminalisation or legalisation of cannabis.⁷³ (See next page for definitions.) There will be a referendum in 2020 on this question in Aotearoa New Zealand. The Government has already amended the law so those using medicinal marijuana are not penalised.⁷⁴

There is a strong case for regulation for the possession, use and social supply of all drugs as well as alcohol. The New Zealand Drug Foundation in *Whakawātea te Huarahi*, A model drug law to 2020 and beyond, notes that the vast majority of people who use drugs do so without causing harm to themselves or others. Prosecuting them can have a far-reaching negative impact on their lives with limited or no effect on their drug use. Offering treatment and support instead is both more effective and more compassionate.

“Our [drug] laws prevent people accessing help when they need it...”
NZ DRUG FOUNDATION

We agree that drug misuse should be treated as a health issue rather than a criminal issue, to minimise harm. This approach is now widely agreed across many countries, with community-based treatment, education, aftercare, rehabilitation and social integration considered more effective alternatives to conviction and punishment for possession of drugs for personal use. Any changes to drug laws must be supported by a full range of effective and accessible community-based treatment and detox services, with much more funding provided towards prevention, education and treatment.

International experience shows that countries taking health-based approaches to drug use, such as Portugal, are having some success. Portugal linked decriminalisation to a public health reorientation that directed more resources towards treatment and harm reduction. Those caught in possession are referred to a board that decides whether to take any further action, such as directing the individual to treatment services or imposing an administrative fine.⁷⁵ Their experience suggests that alternative therapeutic responses to dependent drug users, combined with removal of criminal penalties, reduces problematic drug use, as well as reducing the burden on the criminal justice system.⁷⁶ Between 1987 and 2004 four Australian states decriminalised possession and use of cannabis. An inquiry has been set up there to consider decriminalisation of possession of all drugs.⁷⁷

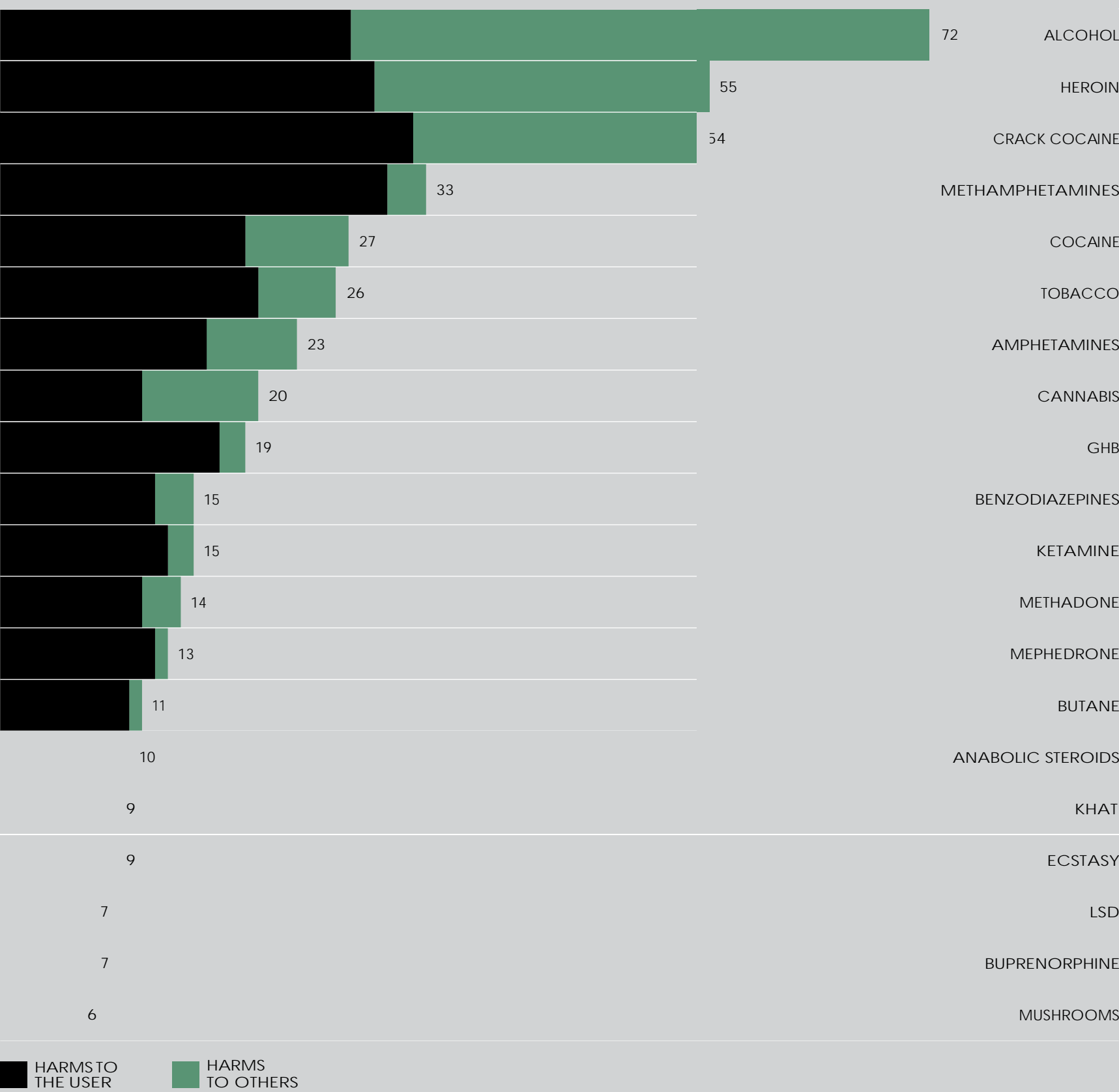
The 2018 Global Commission on Drug Policy report recommended responsible regulation of drugs as the best way for governments to take control of illegal drug markets and weaken the hold of organised crime.⁷⁸ Removing profit from crime is key, according to government reports such as *Strengthening New Zealand's Resistance to Organised Crime* (2011).⁷⁹

[^] Source: NZ Police Alcohol Action Plan, 2018.

DECriminalISATION, LEGALISATION OR REGULATION

‘Decriminalisation’ refers to the removal of criminal status from a certain behaviour or action. This does not mean the behaviour is legal, as drugs can be confiscated and non-criminal penalties may still be applied. ‘Legalisation’ makes an act lawful when it was previously prohibited. When drugs are legal they are typically subject to regulations governing sale, supply, consumption, promotion, tax and other matters – as is the case currently for alcohol and tobacco. Any action that does not conform to the regulations remains illegal. We recommend stronger regulation of alcohol, regulation of cannabis for personal use, and consideration of regulation of personal use of other drugs.

FIG. 06 WEIGHTED SCORES FOR THE HARMS OF DRUGS



■ HARM TO THE USER ■ HARMS TO OTHERS

FIG. 07 — NEW ZEALAND'S IMPRISONMENT RATE IS HIGH

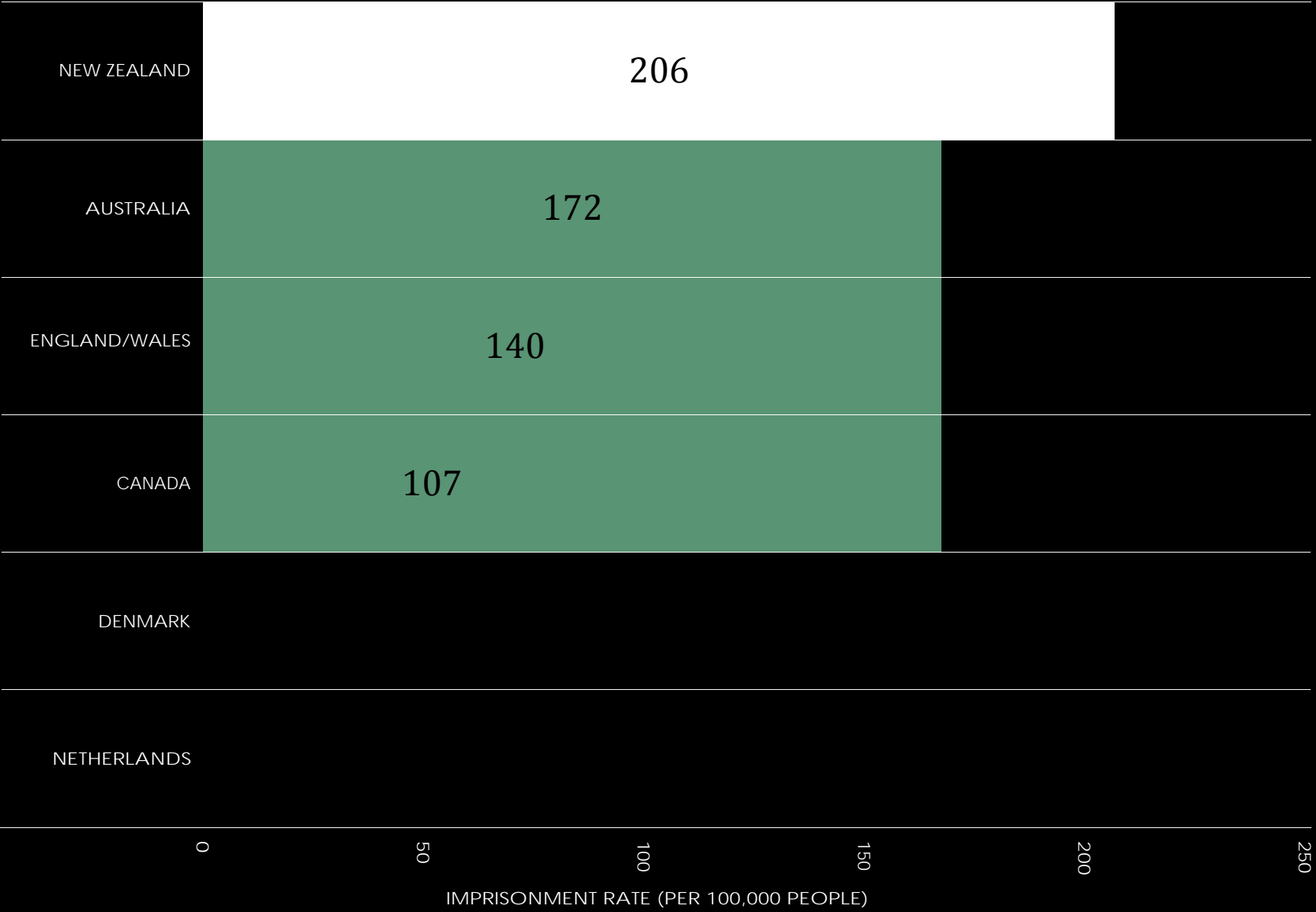
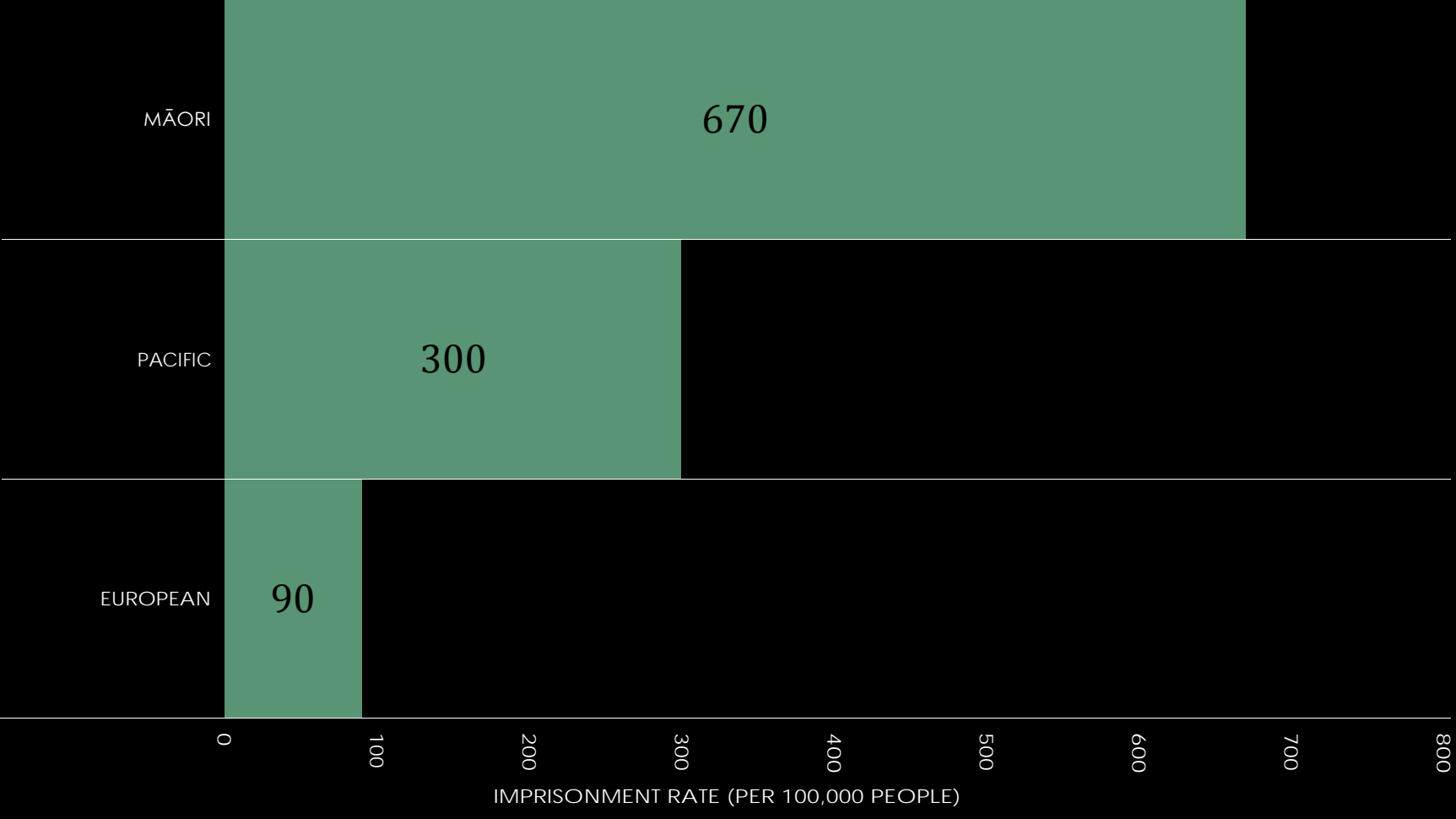


FIG. 08 — TOO MANY MĀORI ARE IMPRISONED



Sources: Ministry of Justice, 2019 (NZ); World Prison Brief, 2019 (England/Wales), 2018 (Canada, Denmark, Australia), and 2017 (Netherlands).

WE RECOMMEND:

- significantly increased investment in rehabilitation programmes;
- greatly expanded access to rehabilitation opportunities for all prisoners including those on remand and serving short sentences,
- gradual replacement of most prisons with community-based habilitation centres; and,
- strengthening wrap-around reintegration services that meet basic needs and provide ongoing rehabilitation support for people released from prison returning to the community.

Aotearoa New Zealand has a high imprisonment rate by western standards.⁸⁰ The number of people in prison has grown steadily in the last decade and is now above 10,000,⁸¹ despite a decline in serious crime.⁸² The significant increase in the incarceration of wāhine Māori and the devastating impact that this has on whānau and communities over the last decade must also be recognised. Rehabilitative responses must be sensitive to these increases.

Opportunities for rehabilitation are limited. More than one-third of prisoners are on remand.⁸³ They are not eligible for most rehabilitation programmes and have limited access to constructive activity of any kind.⁸⁴ Prisoners on short sentences of six months or less also have very few rehabilitation opportunities. For others, access to rehabilitation opportunities can be limited by factors such as programme timing and eligibility restrictions.⁸⁵

Prisons are primarily designed to meet custodial needs, and prison conditions – including removing people from their support networks, long daily lock-down periods and limited options to exercise personal responsibility – all work against effective rehabilitation.

It has been noted that ‘prisons are extremely expensive training grounds for further offending, building offenders’ criminal careers by teaching them criminal skills, damaging their employment, accommodation and family prospects, and compounding mental health and substance use issues.’ Prisons also serve as gang recruitment centres ‘and underpin the illegal drug trade’.⁸⁶

People who leave prison typically reintegrate poorly and go on to reoffend. About 61% of people who are released from prison reoffend within two years of release and 43% are re-imprisoned.⁸⁷ Academic research suggests that imprisonment does not reduce crime and may in fact lead to higher crime rates.⁸⁸

A new approach is needed to prioritise addressing underlying causes of offending and enabling people who are imprisoned to develop the skills they need for a healthy and productive life. People who have caused harm need significantly more support to address mental health and substance use disorders; gain insight into causes of crime; and develop education, work, parenting, relationship and conflict management skills. This must be done in a way that ensures accountability in a broader sense than a purely punitive approach.

Support must begin as early as possible. International research suggests that the pre-trial (remand or bail) period is critical in determining later offending patterns. Other countries invest more than we do in rehabilitation services, and invest more in early and effective wrap-around support during the pre-trial period.⁸⁹ We recommend a significant increase in the investment in rehabilitation ensuring that services are available as soon as a person comes into contact with the justice system and continue after release.

Increased access to rehabilitation opportunities is one part of the picture. Thirty years ago – when New Zealand’s prison population was at 30% of today’s levels – Sir Clinton Roper wrote that prisons ‘have failed both as a deterrent and as a rehabilitative measure, [and] it follows that their central role in the criminal justice system must be displaced’.⁹⁰ Roper recommended the establishment of community-based therapeutic centres where people who had harmed could be held to account and supported to address their offending.

Three decades on, we also recommend the establishment of community-based habilitation⁹¹ centres to deliver therapeutic and other wrap-around services to assist prisoners’ habilitation and eventual integration back into the community. Communities should determine where and how these centres are established, as part of the broader community-led response to criminal offending and social wellbeing outlined in Recommendation 6.

“Prevention first, but once you’re in, the focus should be on rehabilitation. We’re so focused on punishment.”

WHANGANUI

HABILITATION CENTRES WILL:

- support people to maintain community ties – including with whānau/family and friends and, where possible, in paid work or community-based education or training
- address mental health and dependency treatment needs
- address education and literacy, health, employment, life skills and related needs
- restore mana and more positive self-image for people
- share services with the community where possible – for example, alcohol and other drug services, mental health, health and education services
- be secure but provide a physical environment that encourages positive change and personal responsibility, with greater opportunities for contact with the wider community when appropriate.

Support for rehabilitation and positive change should continue after release as well. A case-managed wrap-around approach to service delivery would ensure reintegration where basic ongoing needs (such as income, housing, health, employment, education and training) are met and progress continues towards rehabilitation goals. A lack of support on release, along with the social stigma around incarceration, only serves to increase the chances of reoffending.

International examples help provide us with lessons about what works. There is strong evidence for putting resources into crime prevention, early intervention (identifying and mitigating risk), and a smarter approach to rehabilitation and subsequent social inclusion for those already in the criminal justice system.⁹²

WE RECOMMEND

That criminal investigation and court procedures be redesigned to make them consistent with transformative justice values and principles. This means ensuring everyone is treated fairly and equitably, with humanity, dignity, respect and compassion; those who cause harm are accountable; and restoration of mana to all is supported. We recommend the following interim reforms:

- reviewing youth, specialist and therapeutic courts and ensuring that their learnings are applied across the court system;
- reviewing laws and guidelines for sentencing, the pre-trial period (whether in custody or on bail) and post-release reintegration (parole), to ensure consistency with our values and principles;
- strengthening and increasing access to alternative justice processes.

Criminal investigation and court procedures are major areas of concern for many people. Those harmed by offending and others say they have been disempowered and re-traumatised by investigation and trial processes. Māori and Pacific peoples see police and courts as parts of a systemically racist justice system. Refugees and migrants, members of Rainbow (LGBTQI+) and disabled communities, told us their needs are frequently misunderstood and poorly served. More generally, many people said they find court processes confusing and alienating, with a culture and language that is intimidating and does not reflect a modern Aotearoa New Zealand. Some complained of bias by those in the system (including but not limited to judges, juries, lawyers, police and others), as well as inconsistent sentencing, persistent delays and variable legal representation.

For the victims of the Christchurch terror attacks, for example, there will need to be a focus on cultural competency throughout the court process, including translation services, interpreters and an explanation of the court processes.

A VALUES-BASED SYSTEM. While some of these difficulties can be addressed with administrative or procedural reform, others are woven into the fabric of the system. By their nature, criminal investigation and court processes marginalise those who have been harmed and reflect the monocultural values on which the policing and court systems were founded.

In our view a transformational approach is required. However, we are mindful that criminal investigation and court procedures are founded on long-established legal principles, such as the presumption of innocence, which must receive careful consideration as part of any change. It is also recognised that any change must be consistent with protecting the rights of those who are innocent but falsely accused. It would be inappropriate for us to make detailed recommendations about structural changes to the justice system. Instead we recommend that a detailed review of criminal investigation and court processes be undertaken, with a view to designing a system that:

- supports and prioritises restoration of mana for those who are harmed and for those who offend
- is timely in its delivery of justice
- empowers victims and meets their needs, including their need to be heard and believed
- adopts tikanga and values-based approaches currently used in the youth, specialist and therapeutic courts across the whole court system
- holds those who cause harm to account, including supporting them to take responsibility for their actions, acknowledge the harm that has resulted and seek help to address the underlying causes
- ensures fairness and equitable treatment by appropriately balancing the rights of all involved.

As part of this review and redesign process, consideration should be given to:

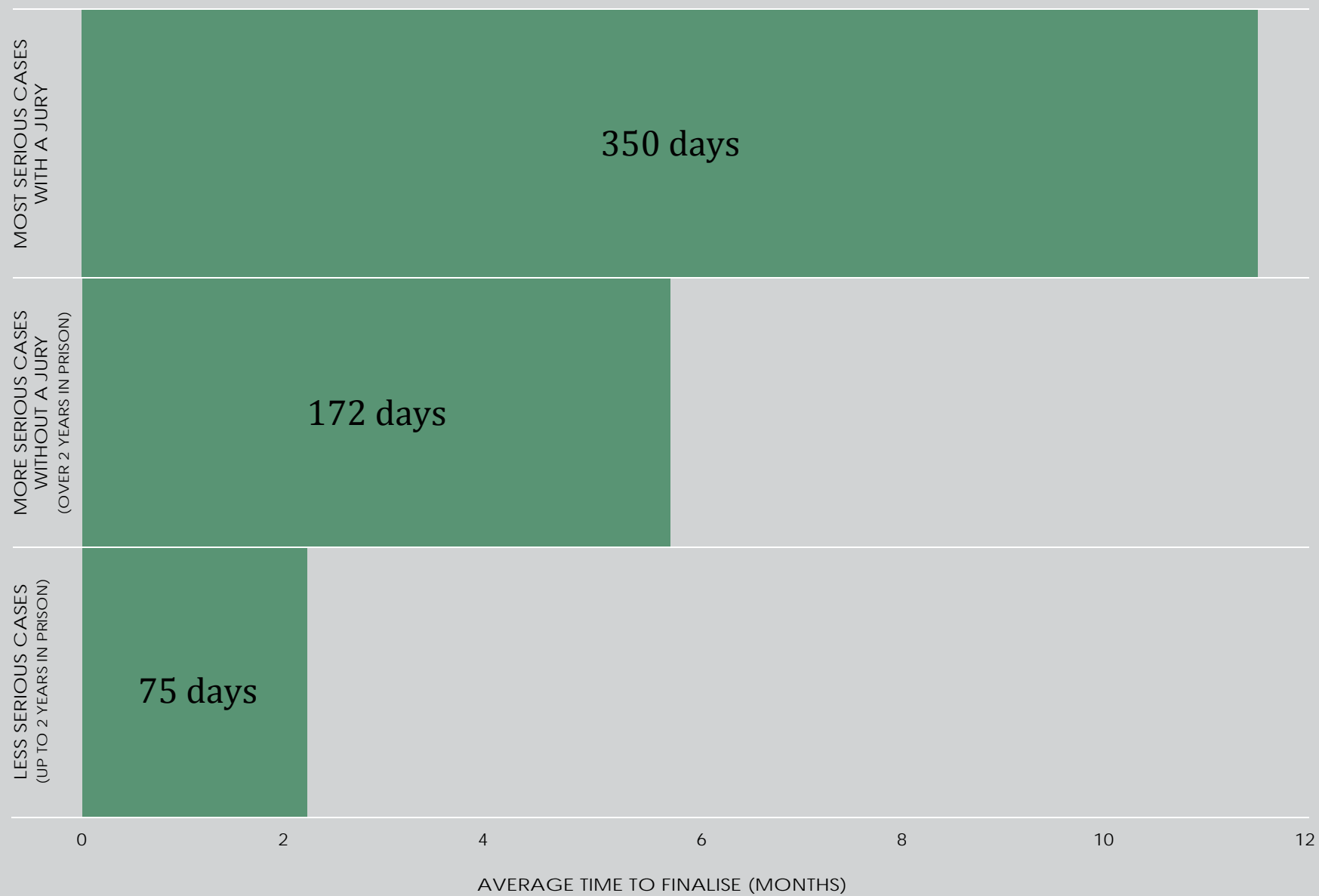
- enhancing victims' roles in legal proceedings to ensure their voices are heard and they have input into key decisions affecting their recovery and restoration
- transitioning from an adversarial to inquisitorial system in which judges take a fact-finding role aimed at uncovering truth, as distinct from determining the winner between two competing sides
- replacing separate criminal, family and civil hearings that cover similar sets of facts with a single fact-finding hearing that can provide a basis for further decisions in all of these jurisdictions⁹³
- replacing juries with a panel of judges and experts or judges only
- admitting a broad range of evidence, consistent with a move to a more inquisitorial approach
- the range of resolution mechanisms available in the civil/family jurisdiction that deal with behaviour also subject to criminal liability
- introducing new verdicts such as 'not contested' or 'not denied'; 'not proven'; and 'proven but insane' in place of 'not guilty by reason of insanity'
- addressing delays by revamping processes to encourage timely resolutions.

“Change the layout of the courtroom so the victims don’t have to keep coming into contact with offenders.”

OTAGO/SOUTHLAND

Some of these subjects have been considered in previous Law Commission reports,⁹⁴ and the Commission's work can provide an important starting point for further review. However, it is critical that the redesign process has broad community input and reflects the perspectives of victims and Māori.

FIG. 09 — THE COURT PROCESS TAKES TIME



Over 4,000 serious harm cases took more than one year.

OTHER REFORMS. Transformative change is a long-term project. While review and redesign processes are occurring, reforms can also be made to existing processes. We support the recent recommendations of the independent panel examining the 2014 family court reforms, so far as they relate to criminal justice.⁹⁵

We recommend that communities be supported to further develop alternative justice processes which can deliver restoration and transformation in ways that may not be possible in the formal system. Māori favour alternative approaches that reflect te ao Māori values and tikanga. Criteria for access to alternative justice should be widened. Meanwhile, safeguards should be put in place to ensure that victims are not pressured to participate in alternative or restorative processes.

63% of respondents in a 2018 victim survey say their experience of the criminal justice system is poor or very poor.[^]

MANY PEOPLE EXPRESSED CONCERN ABOUT DELAYS IN THE COURT SYSTEM. These are unfair to all involved and must be addressed. People suggested a range of options including increasing resourcing; removing minor offending (such as liquor ban offences or disorderly behaviour) from courts; reviewing criminal procedure legislation; and setting maximum timeframes from charges until verdict and sentencing. We also heard that rules governing criminal procedure are inflexible and conducive to delays. Procedure rules need to be holistic in approach and more flexible in nature.

We recommend that lessons from youth, therapeutic and specialist courts be applied throughout the court system, including the use of tikanga and tereao Māori, and the principle that anyone who comes into contact with the court immediately has their health and wellbeing needs assessed and addressed. Sentencing legislation and guidelines should be reviewed to ensure they are consistent with our values and principles, which include addressing causes of offending, ensuring accountability, supporting restoration, and ensuring fairness and equity. We heard from many people that sentencing approaches were inconsistent and that Māori and Pacific people were treated more harshly than others. We note academic research evidence that penalties for welfare fraud are far greater than penalties for comparable levels of tax fraud.⁹⁶ Concerns were also expressed about inconsistency and unfairness in bail and parole decisions. We recommend that laws and guidelines concerning the pre-trial period (including bail) and reintegration after sentencing (parole) be reviewed.

Fig. 09 Source: Ministry of Justice, 2019.
[^] Source: Strengthening the Criminal Justice System for Victims Survey, 2018.

A PATHWAY

TO

This report sets a broad direction for transformation of Aotearoa New Zealand's justice system – from a system that is essentially punitive to one that addresses causes of offending, ensures accountability in a broader sense, and restores mana. The system we envisage has the potential to transform the lives of the many thousands of New Zealanders who come into contact with it.

TRANSFORMATION

But transformation is a major undertaking. It will require, among other things, reshaping of our court and prison systems, transferring power and responsibility to communities, realigning and reprioritising delivery of social services, and significant culture change throughout the justice sector. Achieving this will require shared long-term commitment involving all sectors of the community. Government, Māori and communities will all have critical leadership roles. Genuine transformation could take a generation or more to achieve, but it is important to start now.

FIVE KEY STEPS ARE NECESSARY
TO START THE JOURNEY:

1. Commit

The Government must make a clear commitment to transformation, and this commitment must be shared by political parties in Parliament. Establishment of a cross-party accord will signal that this commitment can endure beyond the life of any single government.

2. Lead

Our 12 recommendations will require multiple workstreams across government and in the wider community. For some recommendations, progress towards implementation can begin soon. Others will require further review, policy development and public consultation. This work must begin urgently.

3. Plan and implement

The Government must make a clear commitment to transformation, and this commitment must be shared by political parties in Parliament. Establishment of a cross-party accord will signal that this commitment can endure beyond the life of any single government.

4. Measure to hold key people accountable

The Government should define and publish measures, actions and time-framed transformation targets for justice and social sector chief executives.

5. Monitor

An independent body including broad Māori leadership should be established to monitor implementation. That body should report publicly on progress one thousand days after public release of this report. Further monitoring at three-year intervals should include public reporting on implementation and progress towards general and Māori-specific targets for harm reduction.

It is now more than 30 years since Moana Jackson and Sir Clinton Roper first recommended transformative change to the justice system. We cannot wait another generation. Any complacency will allow harm to continue unchecked, and for the burden of that harm to fall on some of the most vulnerable sections of our society. *Turuki! Turuki!* is a call to collective action.

We must begin now and we must be willing to do whatever it takes to complete this transformation.

Turuki! Turuki!
Paneke! Paneke!

¹ www.safeandeffectivejustice.govt.nz/about-this-work/te-uepu-report

² Hui Māori (2019), *Ināia Tonu Nei – The Time is Now: We Lead, You Follow* (English), p 25.

³ Partners for Prevention (2017), *Replicating the UN Multi-Country Study on Violence – Preferred Terminology*, p 3.

⁴ Marianne Bevan (2017), "New Zealand Prisoners' Prior Exposure to Trauma (Wellington: Department of Corrections)," *in Practice: The New Zealand Corrections Journal*, volume 5, issue 1, July 2017.

⁵ Lambie, (2018c), "Every 4 minutes: A discussion paper on preventing family violence in New Zealand," *Auckland: Office of the Prime Minister's Chief Science Advisor*, available from www.pmcса.ac.nz, pp 17-20; Lambie, (2018b), "It's never too early, never too late: A discussion paper on preventing youth offending in New Zealand," *Auckland: Office of the Prime Minister's Chief Science Advisor*, available from www.pmcса.ac.nz, pp 17-18.

⁶ Bevan (2017); Lambie (2018b), pp 6-7, 9, 14, 17; Lambie (2018), pp 19-20.

⁷ Generation Five (2017), pp 37-38, 40-42.

⁸ For details see our first report *He Waka Roimata*, which is available at www.safeandeffectivejustice.govt.nz/about-this-work/te-uepu-report

⁹ Department of Corrections (2018), *Annual Report 2017/18*, p 166.

¹⁰ Waitangi Tribunal (2018), *Tū Mai te Rangū Report on the Crown and Disproportionate Reoffending Rates*, pp 86-87.

¹¹ Budget 2019, Vote: Corrections.

¹² The Treasury Fiscal Time Series Historical Indicators 1972-2018.

¹³ Generation Five (2017), *Ending Child Sexual Abuse: A Transformative Justice Handbook*, pp 37-45.

¹⁴ Lambie, (2018a), "Using evidence to build a better justice system: The challenge of rising prison costs," *Auckland: Office of the Prime Minister's Chief Science Advisor*, available from www.pmcса.ac.nz, p 4; Lambie (2018c), pp 4-7; Lambie (2018b), pp 6-7.

¹⁵ Generation Five (2017), p 40.

¹⁶ Generation Five (2017), pp 40-41.

¹⁷ Budget 2019, Vote: Police, Vote: Corrections, Vote: Courts.

¹⁸ Lambie (2018a), pp 4, 8, 10; Jackson (1988), pp 18-19, 71, 95.

¹⁹ Smith V. Attorney General, (2019) NZHC 835

²⁰ Hui Māori (2019), *Ināia Tonu Nei*, p 25.

²¹ Reported Crime Offenders Statistics (post-count data), analysis by Ministry of Justice 2019.

²² Ministry of Justice (2018), *New Zealand Crime and Victims Survey: Core Report*, pp 34-35.

²³ Waitangi Tribunal (2018), *Te Mana Whatu Ahuru*, pp 187-188, 189.

²⁴ www.safeandeffectivejustice.govt.nz/about-this-work/hui-Māori

²⁵ The Treasury Fiscal Time Series Historical Indicators 1972-2018.

²⁶ The Treasury Fiscal Time Series Historical Indicators 1972-2018.

²⁷ Department of Corrections annual reports 2010/11 – 2017/18 Statements of Comprehensive Revenue and Expenses.

²⁸ Lambie (2018a), pp 5, 8-9.

²⁹ Lambie (2018a), pp 15-17; Government Inquiry into Mental Health and Addiction, *He Ara Oranga* (2018), p 144.

³⁰ Lambie (2018a), p 4.

³¹ Sense Partners (2018), *Estimating the Impact of Drug Policy Options*, pp 3-6, 22.

³² Bevan (2017); Indig, Gear and Wilhelm (2016), pp v-vii; Lambie (2018a), pp 15-19.

³³ Lambie (2018b), pp 7, 19; Lambie (2018), pp 5, 40, 44.

³⁴ Lambie (2018b), p 29.

³⁵ Jan Logie, 2 July 2019, 'Ensuring fairness and safety for victims of sexual violence in the justice system', www.beehive.govt.nz

³⁶ Bevan (2017); Indig, Gear and Wilhelm (2016), *Comorbid Substance Use Disorders and Mental Health Disorders Among New Zealand Prisoners*, Wellington: Department of Corrections, pp v-vii; Lambie (2018a), pp 15-19.

³⁷ Hui Māori (2019), *Ināia Tonu Nei*, p 22.

³⁸ Te Puni Kōkiri (2019), *Whānau Ora Review: Tipu Matoro ki te Ao*, pp 10-11.

³⁹ www.ruapehuwhanautransformation.com

⁴⁰ Ministry of Justice (2018), *Integrated Safety Response evaluation: emerging findings*, p 2.

⁴¹ Productivity Commission (2015), *More Effective Social Services*, p 20.

⁴² Government Inquiry into Mental Health and Addiction (2018), pp 12-13, 156-157.

⁴³ Te Puni Kōkiri (2019), pp 10-11.

⁴⁴ Productivity Commission (2015), p 20.

⁴⁵ Hui Māori (2019), *Ināia Tonu Nei*, pp 27-28.

⁴⁶ Government Inquiry into Mental Health and Addiction (2018), pp 104, 115, 156.

⁴⁷ Ministry of Justice (2018), *New Zealand Crime and Victims Survey: Core Report*, pp 61-62, 114-115.

⁴⁸ Lambie (2018), pp 17-23.

⁴⁹ Lambie (2018), pp 15-17; Ministry of Justice (2018), *Justice Sector Population Report*, pp 2-3.

⁵⁰ Welfare Expert Advisory Group (2019), pp 8-9.

⁵¹ Tax Working Group (2019), *Future of Tax: Final Report*, pp 10-11, 84-89.

⁵² Lambie (2018), p 23.

⁵³ Lambie (2018), pp 34-39; World Health Organisation (2010), *Violence Prevention: The Evidence*, Geneva: WHO Press, pp 5, 10.

⁵⁴ Hui Māori (2019), *Ināia Tonu Nei*, pp 18-19.

⁵⁵ World Health Organisation (2010), *Violence Prevention: The Evidence*, pp 96-99.

⁵⁶ Pasifika Fono, 29 March 2019.

⁵⁷ New Zealand Police Recorded Crime Offender Statistics Policedata.nz; Statistics NZ National ethnic population projections 30 June 2018.

⁵⁸ New Zealand Police (2017), Tactical Options Report.

⁵⁹ Department of Corrections, Prison Facts and Statistics: December 2018.

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⁶¹ *Government Inquiry into Mental Health and Addiction (2018)*, pp 8, 44-45.

⁶² Lambie (2018), pp 17-20; Lambie (2018b), pp 17-18.

⁶³ Bevan (2017).

⁶⁴ Pihama, Tuhiwai Smith, Evans-Campbell, Kohu-Morgan, Cameron, Matakī, Te Nana, Skipper, and Southey (2017), "Investigating Māori approaches to trauma informed care", *Journal of Indigenous Wellbeing*, volume 3, issue 2, December 2017, p 18.

⁶⁵ Government Inquiry into Mental Health and Addiction (2018), pp 172-173.

⁶⁶ Department of Corrections (2016), *Comorbid substance use disorders and mental health disorders among New Zealand prisoners*.

⁶⁷ New Zealand Police (2018), Alcohol Action Plan 2018, p 7

⁶⁸ Global Commission on Drug Policy (2019), *Classification of Psychoactive Substances: When Science was Left Behind*, pp 4-7.

⁶⁹ NZ Law Commission (2010), *Alcohol in Our Lives: Curbing the Harm*, p 6.

⁷⁰ Ministerial Forum on Alcohol Advertising and Sponsorship (2014), *Recommendations on Alcohol Advertising and Sponsorship*, p 7.

⁷¹ Hughes and others (2016), *Decriminalisation of drug use and possession: a briefing note*, Sydney: National Drug and Alcohol Research Centre, pp 1, 3-4.

⁷² Sense Partners (2018), pp 3-6, 22.

⁷³ New Zealand Drug Foundation (2017), *Whakawātea te Huarahi: A model drug law to 2020 and beyond*, p 6.

⁷⁴ Misuse of Drugs (Medicinal Cannabis) Amendment Act 2018.

⁷⁵ Rolles and Eastwood (2012), Drug Decriminalisation Policies in Practice: A Global Summary, in Harm Reduction International (2012), *The Global State of Harm Reduction: Towards an Integrated Response*, p 161.

⁷⁶ Rolles and Eastwood (2012), p 161.

⁷⁷ Rolles and Eastwood (2012), pp 162-163.

⁷⁸ Global Commission on Drugs (2018), *Regulation: The Responsible Control of Drugs*, pp 7-9.

⁷⁹ Ministry of Justice (2011), *Strengthening New Zealand's Resistance to Organised Crime*, pp 14, 17, 37.

⁸⁰ World Prison Brief (2018).

⁸¹ Department of Corrections, Prison Facts and Statistics: 2010-2019 (March years).

⁸² Reported Crime Offenders Statistics (post-count data), analysis by Ministry of Justice 2019.

⁸³ Department of Corrections prison facts and statistics, 31 March 2019; Statistics NZ national ethnic population projections 30 June 2018. No data was available for other ethnicities.

⁸⁴ Ian Lambie and Olivia Hyland (2019), "The Opportunity of a Lifetime", *New Zealand Law Journal* 220, p 222.

⁸⁵ Department of Corrections (2019).

⁸⁶ Lambie (2018a), p 4.

⁸⁷ Department of Corrections (2018), *Annual Report 2017/2018*, p166.

⁸⁸ Lambie (2018a), p 4.

⁸⁹ Lambie and Hyland (2019), pp 220-221; Lambie (2018a), p 9.

⁹⁰ Roper (1989), p 4.

⁹¹ The idea of habilitation, as discussed in the Roper Report *Te Ara Hou* (1989), implies a therapeutic rather than a punitive setting, enabling offenders to examine their lives and with support find the motivation to cease offending. The term habilitation, in this context, differs from rehabilitation in that the focus is on supporting a person learn, retain and enhance skills and ways of living in the world that they had never had the opportunity to learn in their previous lives.

⁹² Lambie (2018a), p 4.

⁹³ The recent Family Court Reform Review recommended that a single judge hear all family matters and, where relevant, all criminal matters relating to that family: *Te Korowai Ture-ā-whānau: The final report of the independent panel examining the 2014 family justice reforms*, Recommendation 60.

⁹⁴ For example: New Zealand Law Commission (2015), The Justice Response to Victims of Sexual Violence; New Zealand Law Commission (2012), Alternative Pre-Trial and Trial Processes: Possible Reforms; NZ Law Commission (2019), The Second Review of the Evidence Act 2006.

⁹⁵ Independent panel examining the 2014 family court reforms (2019), *Te Korowai Ture-ā-whānau: The final report of the independent panel examining the 2014 family justice reforms*, Recommendations 20 and 60.

⁹⁶ Lisa Marriott (2014), *Justice and the Justice System: A Comparison of Tax Evasion and Welfare Fraud in Australia and New Zealand*, Sydney: University of New South Wales Taxation and Business Law School.

⁹⁷ www.safeandeffectivejustice.govt.nz/advisory-group/

ABOUT TE UEPŪ
TeUepūHāpaiiteOra – Safe and Effective Justice Advisory Group was established in July 2018. It's purposes are:
– to engage in a public conversation about what people in Aotearoa New Zealand want from their criminal justice system
– to canvas a range of ideas about how the criminal justice system can be improved.⁹⁷

The group's members are:
Hon Chester Borrows QSO (Chair)
Professor Tracey McIntosh MNZM
Quentin Hix
Shila Nair MNZM
Dr Carwyn Jones
Ruth Money
Julia Amua Whaipooti.

During 2018/19 the group attended several hundred engagement events throughout the country, including the Criminal Justice Summit in Porirua in August 2018; major hui for Māori, Pacific peoples, and victims of offending; and numerous regional hui and public engagements. For more detail about the working group and its terms of reference, see www.safeandeffectivejustice.govt.nz

COMMIT

LEAD

IMPLEMENT

MEASURE

MONITOR

WE HAVE HEARD THE CALL
FROM NEW ZEALANDERS FOR
A NEW VISION

A justice system that treats all people
with humanity, dignity, respect and
compassion; that recognises the mana
inherent in all people and communities
and enables the restoration of that mana
whenever it has been diminished.



We will commit

We will lead

We will plan and implement

We will measure to hold key people accountable

We will monitor and report back

RECOMMENDATION		RESPONSIBILITY	TIMEFRAME
01	Political accord	Political parties	Now to 2020
02A	Establish Mana Ōrite	Justice sector / Māori	Now to 2022
02B	By Māori for Māori	Justice sector / Māori	Now to 2025
02C	Tikanga and Māori values	Justice sector / Māori	Now to 2022
03	Commit to long-term investment	Government	Now to 2021
04	Whole of Government adoption of common vision and responsibility	Government	Now to 2022
05A	Single point of contact for victims	Justice sector	Now to 2022
05B	Increase breath and depth of support services for victims	Justice / health sectors	Now to 2022
05C	Changes to justice processes for victims	Justice sector	Now to 2022
06	Empower communities	Justice /social sectors	Now to 2025
07	Children, families and whānau support	Health / welfare / education	Now to 2025
08	Address racism	Government / community	Now to 2025
09	Trauma recovery and mental health	Health / justice sectors	Now to 2025
10	Regulate alcohol and cannabis	Health / justice sectors	Now to 2022
11	Community rehabilitation and habilitation centres	Justice sector	Now to 2030
12A	Redesign criminal procedures	Justice sector	Now to 2030
12B	Sentencing and other transitional reforms	Justice sector	Now to 2025

