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A Statistical Window for the Justice System: Putting a Spotlight on the Scale of State Custody of Generations of Māori

When you have mastered numbers, you will in fact no longer be reading numbers, any more than you read words when reading books. You will be reading meanings.

W E B DuBois

Len Cook

Contributors: Anne Waapu, Tahu Kukutai and Robert Didham

Preface

This is an analysis of the statistical record of the experiences of Māori with the justice system, based on the official statistics of the time since 1860. The study is based on what official statistics since 1858 reveal about Māori connection with the Justice and Child Welfare system. This study draws on an understanding of populations developed through extensive experience in official statistics, along with the discipline, science and curiosity such work requires to ensure its relevance to social and economic policy.

In common with our most important official statistics, the analyses draw on relevant intellectual frameworks, but from demography rather than criminology. A key challenge has been making the best of the limited coherence among disparate sources. Contextual information has been of vital importance in understanding outliers and trend shifts.

The statistical picture highlights that lawmakers and institutions inadequately account for the distinct characteristics of Māori, despite the extraordinary demographic dynamism of Māori and their contribution to the vitality of the New Zealand population. Māori have been particularly affected whenever politics and attitudes have selectively used anecdotal evidence and untested theory to introduce laws and institutional practices involving State custody. Without robust analysis the costs to society remain unknown. **It is the politics and attitudes of the time that create laws and shape institutional practices, but their impact during the 20th century has ultimately been determined by the inevitability and nature of the demographic dynamism of Māori.**

It is hoped that this study will inform current thinking on the justice system and its consequences for different generations of Māori. We must know how to take advantage of emerging trends among younger adults. We also need redress for policy-induced distress among those whose reason for spending their childhood in custody had more to do with their birth year than their delinquency.

Anne Waapu, Tahu Kukutai and Robert Didham contributed to the thinking behind the formative stages of this study, mainly through our joint paper. I am responsible for the final form and accuracy of any statistical analyses.

Len Cook

Wellington

July 2020

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1. Introduction

For all age groups of Māori, a disproportionate connection with the justice system has become embedded through the continuing impact of much earlier policies, laws, institutions and their cultures. The demographic dynamism of Māori has always distinguished them from other groups in the New Zealand population, particularly those of European ancestry. Māori age structures, growth rates, comparative number and population share, location, or place in the economy have been continually changing. Many of these changes have challenged European society and the State, which have jointly dominated the evidence base, policy setting and institutional cultures since 1840. Māori whānau, hapu and iwi are often outliers when public policy and institutional practices are based on non-Māori norms. While the politics and attitudes of the time create laws and shape institutional practices, their impact on Māori during the 20th century has ultimately been determined by the inevitability and nature of the demographic dynamism of Māori. These impacts have rarely been a consideration of policy change, despite the foreseeability of negative or disproportionate effects.

1.1. The Uniqueness of the Demographic History of Māori

Even incremental change in laws and practice can disproportionately affect Māori. In justice and child protection, New Zealand has experienced several periods involving the State's harsh treatment of citizens, particularly children. The two most significant practices lasted for well over a decade, and their impact has been long lasting, continuing to the present day. The life chances of those immediately involved have been damaged, and the shadow of trauma has been passed on to later generations. The expansion of State custody has affected particular birth cohorts of Māori, and the impact has usually been amplified by the demographic forces particular to each generation. Policy development appears to lack understanding of how these demographic forces could exacerbate the existing inequities in imprisonment and child protection.

Demographic analyses enable us to identify the connections between different age cohorts and understand how the experiences of a cohort persist through their life course and can influence later cohorts. Despite this, there are few areas of government where there is such a gulf between the understanding we have of population dynamics and the information on which policy is based. This study seeks to address this lack by examining how both prison and child welfare policies have affected the Māori population over the last 100 years and presenting insights into changes that are now occurring.

1.2. Overview of the Sections in this Study

Section 2 describes the demographic dynamism of Māori from 1840 through published population statistics. It explains how changes in fertility, migration and mortality have resulted in the continuing dynamism in the structure of the Māori population. It contains a technical explanation of statistical terms used in the paper. This section and parts of others draw on an earlier paper which focuses on the experiences of cohorts of Māori males through the justice system. The paper by this writer and Anne Waapu, Tahu Kukutai and Robert Didham has not yet been published. The development of this second paper evolved from the range of interest generated after presentations based on this initial paper.

Section 3 discusses situations where the combination of two or more factors which differentiated the Māori population from those with European ancestry had great significance for Māori and for disparity between the two groups. Section 4 analyses statistics from the increased institutionalisation of children from 1972 to 1987. Using official statistics and statistical studies, the paper describes the impact of Māori demographic structures, birth levels and urban migration at the time of this damaging period of State institutionalisation, and the hugely disproportionate impact on Māori children.

Section 5 covers long-term trends that have resulted in Māori becoming one of the world's most incarcerated populations. When sentenced prisoners and those on remand for more than three months¹ are analysed together, I estimate that there have been 1690 per 100,000 Māori males imprisoned on average over the last five years, compared to 230 non-Māori males per 100,000². Quite different outcomes for Māori have resulted from the purportedly universal application of laws and institutional practices. In relating the number of Māori males in prison as seen through prisoner counts to demographic trends, I discuss whether there are any signs of change.

Section 6 offers some personal views on the institutional context and the weak connection between accountability and reporting among public institutions of the justice sector. This has implications for the future research base in the wider justice sector.

1.3. Source Material

This study has drawn on official reports and research studies to summarise the historical context for the more comprehensive analysis of the later periods. Less information is available before the 1960s on child protection or adult offending on which to base long-term trends. To connect the periods before 1940 and during the 1960s with later decades, this study examines two separate series of age cohorts born since 1920 to the present, and the extent to which they have come to the attention of the State. It is only since the late 1990s that departments responsible for child protection and prison statistics have adopted data management practices that allow deeper analysis in relation to age and ethnicity. There is a need to measure the incidence of people's connection with the law and public institutions at different stages of their lives, and the lifetime prevalence of such connection and its implications for others. Comparisons between Māori and Pākehā are not the basis of this study, although disparity measures are presented. I have personally prepared most of the calculations.

Over the period from 1860 to 2020 the departmental arrangements, titles and roles have changed, the most recent being the formation of Oranga Tamariki (Ministry for Children) out of the Child, Youth and Family Agency in 2017. The original agency set up in 1925 was the Child Welfare Division of the Department of Education, which in 1971 merged with the Social Security Department to form the Department of Social Welfare. Between 1971 and 2017 there were a mix of titles and agency structures. When comparing counts of children in custody over long periods, different forms of custody appear to be involved, although this is not obvious from the definitions presented by the child welfare agency of the time. In 1995 the Prison Service which was then part of the Department of Justice became a stand-alone Department of Corrections. When the reference period of the subject matter spans several different agencies with the same general purpose, I use the terms "prison service" and "child welfare agency". When identifying the source of information, the usual reference is to the name of the organisation or legislation during the relevant period. Reference to State custody of children mean taken into the care and protection of the child welfare agency. Children in the custody of the State were formerly referred to as wards of the State.

¹ I have subjectively selected three months as a threshold for long term remand. If one month in remand had been taken the threshold the number would have been greater.

² There were 1,501 black prisoners for every 100,000 black adults at the end of 2018, according to a new report from the Bureau of Justice Statistics (BJS), the statistical agency of the U.S. Justice Department. Pew Research Centre 2020

2. The Demographic Vitality of Māori

While the politics and attitudes of the time create laws and shape institutional practices, their impact on Māori during the 20th century has ultimately been determined by the inevitability and nature of the demographic dynamism of Māori. Despite the value of long-term demographic analyses, the predominant reporting to the public of the justice system has generally focused only on the composition and management of the prison inmate population. These are measures of the workload placed on public institutions and cannot tell about the impact of these institutions on populations.

Māori, Pākehā, Pasifika and Asian peoples in New Zealand have long had quite different age structures and population drivers from fertility, mortality and migration. With their younger, changing age structures, high mobility and high intermarriage, Māori have long been among the more dynamic populations in the world. The differences between the Māori and Pākehā populations have been stark, and while those differences may not have directly influenced policy, in practice they have magnified the impact on Māori of disparities in practice and institutional cultures. The justice system, in reflecting the norms and behaviours of any period, places its stamp on each cohort and ethnic group of New Zealanders from an early age, starting with the State's role in child protection.

It is not possible to disentangle the causes of persistent ethnic disparities without identifying differences in demographic structure and population dynamics, and accounting for differences in economic position. Across gender, age and ethnic differentials in the incidence of offending and its consequences in any period will also be influenced by earlier experiences through a variety of structural connections between cohorts. The narrow focus and inadequate evidence base that supports policy change does not usually recognise the significance of such shifting demographic structures. As noted in section 1.1, this section and parts of others draw on an earlier paper of Cook, Waapu, Kukutai and Didham (2020) which focuses on the experiences of cohorts of Māori males through the justice system.

2.1. The Drivers of a Century of Māori Demographic Dynamism

A very brief summary of 19th century population trends

While there remains uncertainty about the size of the Māori population before 1840, records suggest that some time before 1850 the numbers began to fall significantly. By 1858 (Pool et al, 2007) the Māori population had more than halved and was somewhat fewer than 60,000. This kept falling until a low point was reached of close to 40,000 in 1896. Māori were then barely 5 percent of the total population, having been some 50 percent of the population in 1860. Pool (1977) estimated that life expectancy of Māori was 22.5 to 25 years during the 1890s. Other estimates of Māori life expectancy then are 24 years for women and 28 years for men. Ironically, at that time Pākehā male life expectancy at age 60 was the highest in the world

The resurgence of Māori in the 20th century

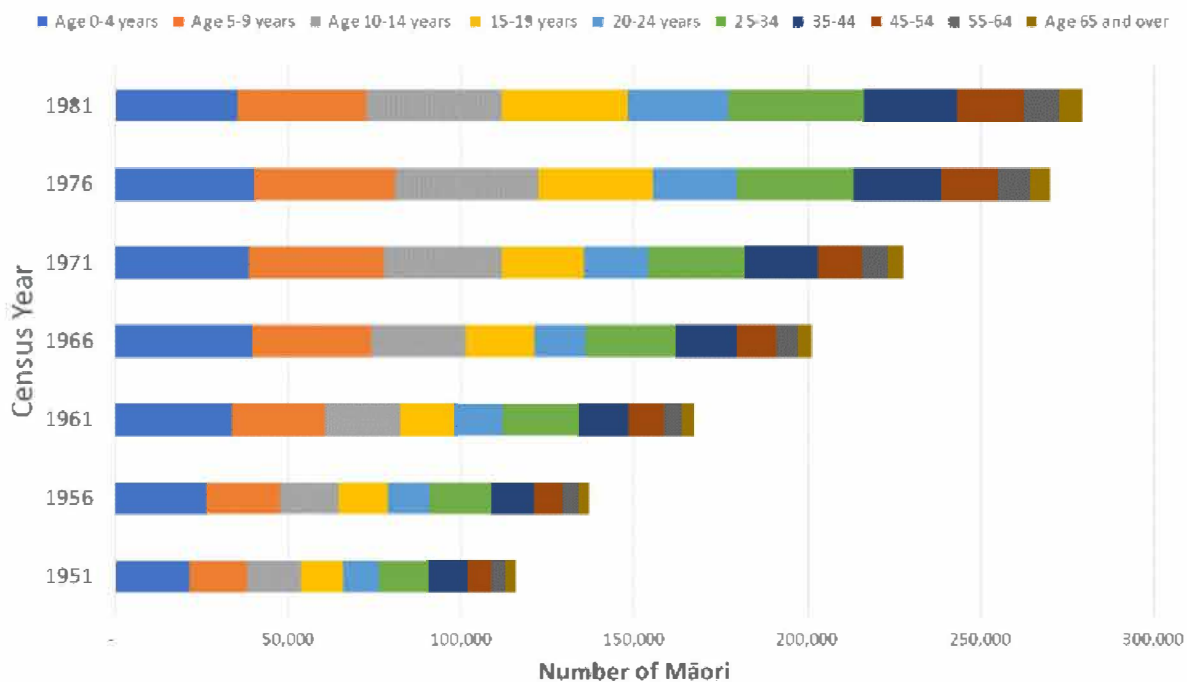
The age mix of Māori has differed greatly from that of non-Māori since records began. The 1921 Census showed the Māori population had rebounded to 50,000, and from then until 1971 birth numbers grew every year, as did the share of the population that was Māori. The fastest growth in the number of Māori children aged under 15 occurred when their number doubled between 1951 and 1966. This cohort also benefited from a large fall in infant mortality, as survival rates from birth to age 15 increased from 81–83 percent in 1945 to 95–96 percent in 1966 (Pool et al, 2007, p192).

Over the period from 1941 to 1971, the population increase was accompanied by rapid urbanisation of Māori, described by Pool et al (2007) as perhaps the most accelerated anywhere for a national

population prior to the 1970s. This amplified the visibility of young Māori in urban Pākehā New Zealand (Pool et al, 2007). As the cohort born between 1951 and 1966 has aged, it has progressively generated a need for a rapid increase in resources for care, education, training, employment, housing and health. Figure 1 highlights the growth from 1951 to 1981 in the number of Māori males under 15 and slowing of the growth rate from 1971 so that the number of children in 1981 was close to that in 1971. The number in 1966 was twice that of 1951.

At its peak in 1966, the share of the Māori population aged 14 and under exceeded 50 percent. At that time, for every Māori person aged 65 and over, there were 25 children aged under 15 years. The dynamism from high Māori fertility over this period through to the mid-1970s was tempered by high but declining mortality rates at all ages. The number of children born to Māori women fell after the mid-1970s. While overall numbers continued to grow, there has been a decline in the proportion of Māori who were aged under 15, from 49 percent in 1971 to 39 percent in 1986 and 34 percent in 2013.

Figure 1: Number of Māori in each age group 1951–1981



Source: Census of Population and Dwellings

Mortality, fertility and migration

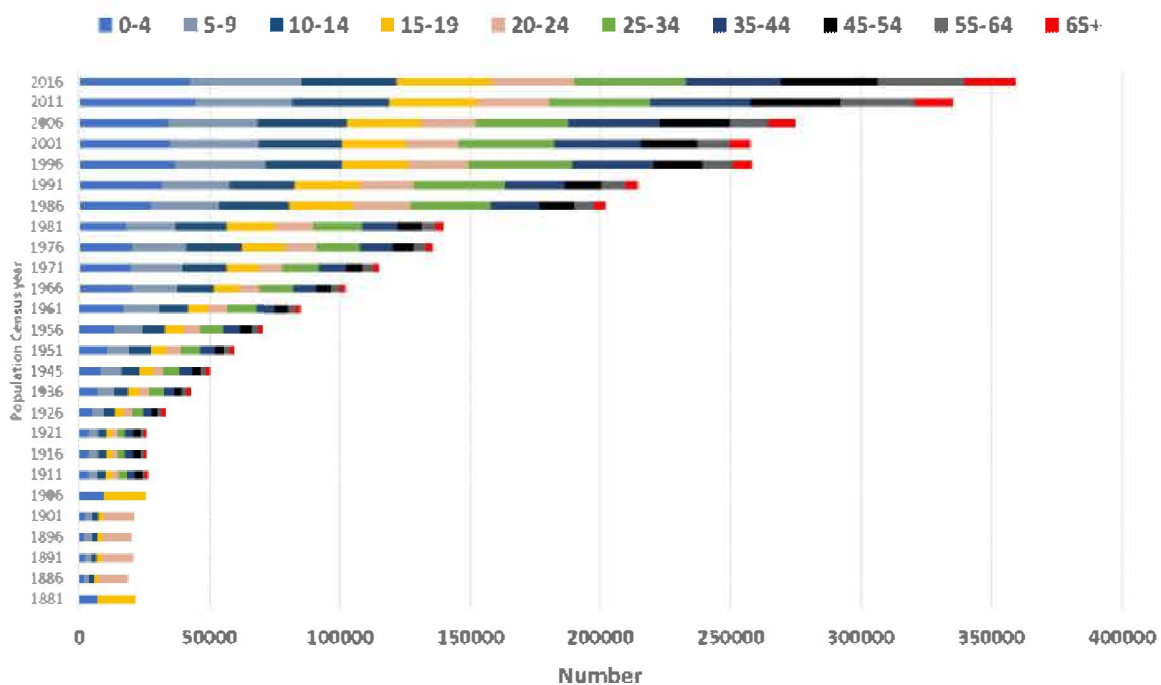
The divergent demographic experiences of Māori and Pākehā have been particularly visible in fertility rates – during the 1960s, the average number of children born to Māori women was 5.6 compared to 3.5 for Pākehā women. From 1936 to 1961 the Māori population had grown from 82,300 to 166,100 (Department of Statistics Census reports).

The intensity of Māori migration to cities remains one of the most significant experiences of rapid urbanisation seen by a people anywhere in the world. Individuals, whānau, hapu and iwi were affected by the speed at which whānau structures, cultural ties, economic underpinnings and community were eroded. This urbanisation saw Māori men and women moving to be able to provide for their whānau by becoming the workforce for the expanding industrialisation of New Zealand, and for booming

agriculture and forestry sectors. Associated with the availability of the contraceptive pill, Māori total fertility rates declined rapidly during the 1970s, falling to 2.2 children per woman in 1985, near to the then Pākehā level of 1.9 children per woman. Administrative selection criteria that include the age of mother impact differently on Māori women who on average start to have children about 10 years earlier than Pākehā women.

Several of the key elements of demographic dynamism – the size of cohorts as a share of the population, the change in the total size of the Māori population, and the size of the Māori population compared to Pākehā – have always been present. Māori have been and remain a population for whom population change has been a dominant force. Figure 2 charts the age mix of the Māori population at each Census. It shows the long period until 1901 when the population stayed around 40,000 in total, and the rise generated by continued high fertility and decreasing mortality until 1976. Māori growth stalled with the rapid fall in fertility in the early 1970s. There were step changes in 1986 then 2011 that resulted from change in statistical definitions, while the population continued to grow as Māori fertility exceeded that of Pākehā and Asian New Zealanders.

Figure 2: Number of Māori males in each age group 1881–2016



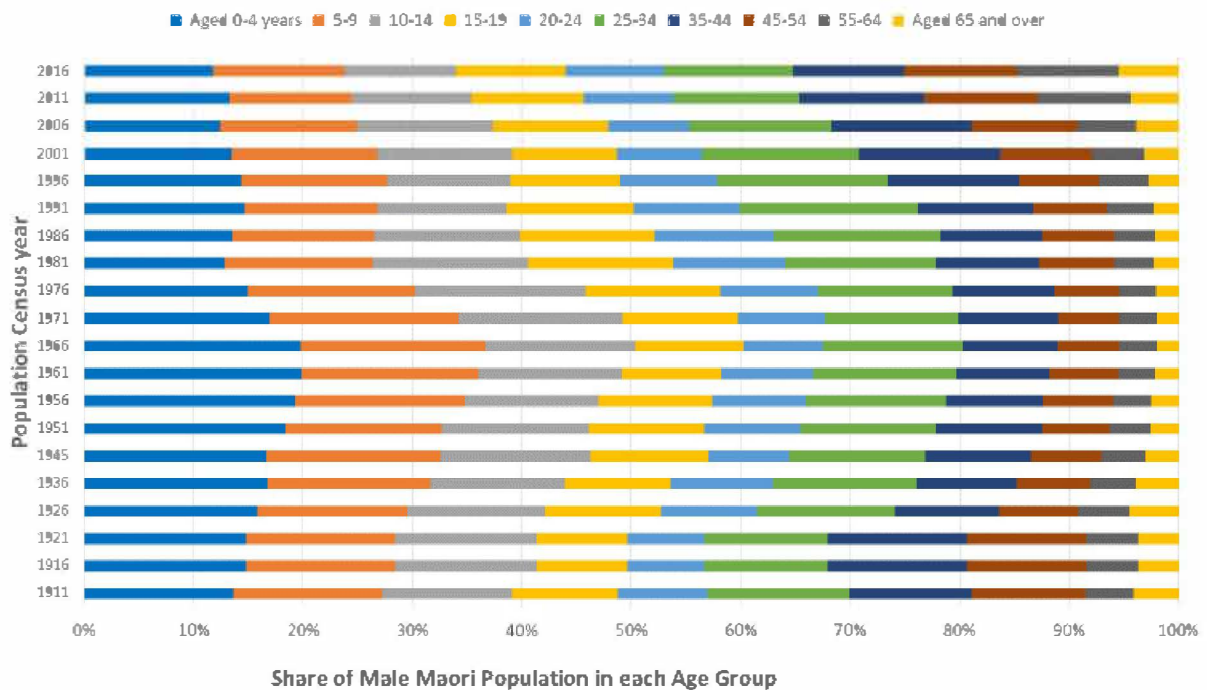
Source: Census of Population and Dwellings

2.2. Diversity of Birth Rates, Age Distributions and Migration Patterns

Figure 3 presents the same statistics that are in Figure 2, but as proportions of the total Māori male population at each Census year. This shows the changing age mix of the Māori population over the last 115 years. The age segments show the initial impact of the reduced mortality of infants from 1900 on the sustained high birth rate of Māori women for the period from 1911 to 1966, and the combined effect of reduced mortality at older ages and a lower birth rate after 1970.

The impact of colonisation on the Māori population saw its share rapidly decline after 1800 from somewhat over 150,000 to just under 60,000 in 1860 and being just half of the population then. By 1890 the population had been under 40,000 for several decades before the resurgence in the 20th century. This resurgence was driven by declining mortality rates of both children and adults. Figure 4 indicates the dramatic decline and later re-emergence after the 1920s of Māori as a key element of population growth in New Zealand.

Figure 3: The Māori male age distribution 1911–2016



Source: Census of Population and Dwellings

2.3. The Cohort as an Essential Tool in Justice Analysis

Through the quite distinct dynamism of the demography of Māori, the past has a long foreseeable reach into the future. This highlights the necessity for cohort analysis that can examine the dynamics of the Māori population and lift understanding of diverse trends in Māori imprisonment, as well as the potential to influence those trends. A **cohort** is a group of people who have something important in common. In this study, a birth cohort is formed either by people of the same age, or alternately people who were born during the same five-year period.

Cohort analyses are especially important in New Zealand, where there are vast differences in the population structures between different ethnic communities and in their experiences of the justice system. Those ethnic differences also vary over time. The earliest longitudinal study of the child welfare agency was a statistical survey of a one-year cohort initiated by the former Child Welfare Division of the Department of Education. The study surveyed all boys born in 1957 and followed their experiences through the justice system until they were 24. This study (Fifield and Donnell, 1980) is an extraordinarily comprehensive information source about the highest periods of State custody of Māori children during the past century.

Administrative records from the prison service provide the source information for two cohort studies over different periods. The first is one-off official published study (Department of Statistics, 1990). This study aggregates administrative records of the experiences of Māori males with the justice system at later stages of their life, starting with those born in the 1920s, up to those born in 1971. The individuals have been grouped into five-yearly birth cohorts to present the shifts in experiences with the prison system over time of Māori males. The later study covers the period since 1981, also using prison records. The Ministry of Justice has been able to carry out innovative analyses involving the Integrated Data Infrastructure (IDI) managed by Statistics New Zealand to provide comparative measures for the most recent past for men and women, of Māori, European, Pasifika or other ethnicity. The recent work by the Ministry of Justice will enable future comparisons with Māori women, as well as Pākehā and Pasifika men and women, none of whom were included in the original Department of Statistics research. Māori, Pasifika and Pākehā communities continue to have different population structures, with different influences on their future form, and in their interaction with the justice system at different times. For those born between 1966 and 1981, age-cohort estimates of imprisonment rates do not yet exist. The missing periods in the cohort comparisons were times of significant change, as seen in the age-specific rates of incarceration.

When there is information relating to each birth cohort, and the time period and age when influential events took place is known, then the association of these events with the life course of particular cohorts can be assessed qualitatively. The influence of events may differ with the size of the cohort and that of other cohorts that influence or are influenced by its form. Bringing together quantitative and qualitative information in a structured way can enable trend shifts to be both recognised and explained. Most especially, systemic influences are usually embedded in each cohort, which will affect the likelihood of being incarcerated or placed in the custody and care of the State later in life, compared to other cohorts. Through the quite distinct dynamism of the demography of Māori, the past has a long, foreseeable reach into the future. This highlights the importance of cohorts for examining the dynamics of the Māori population, for understanding trends in Māori imprisonment, and the potential to influence those trends.

2.4. The Limitations of Simple Counts and Rates per Population Group

Age-specific rates cannot provide information about the cumulative experiences as first-time offenders are not identifiable. Because different age groupings have been used at different times, and published Justice and Corrections statistics do not always use the same groupings, following the same age group over time can only be done using crude approximations. Simple counts have value for short-term comparisons, but they do need to be adjusted for population change. Simple Māori/non-Māori ratios do not provide a consistent measure of disparities as both the age profile and age-specific rates may be significantly different in the populations being contrasted.

Administrative counts of those in custody do not measure the impact of the justice system on the populations from which they come. The number, growth and age mix of inmates have been in a constant state of change over many decades. Flows in and out operate independently, and huge volatility is just part of the picture that they present. The counts do not take account of the way that Māori and non-Māori population groups differ from each other not only by size but also in the age distribution of their members. Simple ratios of administrative counts relating Māori with non-Māori present an institutional view of the mix of groups in custody at any time, but because these figures do not connect their experience in custody to the total reference population that they belong to. They cannot measure changes in incidence in a consistent and reliable manner.

Counts of entry and exit from custody or counts of those in custody provide measures of the workload of institutions and tell us about who is in those institutions. The different counts are neither proxies nor substitutes for each other. They provide different insights into the demands on the child welfare agency or the prison system by different groups in the population. Ideally, trends of entry to care need to be seen in the context of both exits from care and the numbers of those in the care of the State. These concerns are somewhat academic, as because of different classifications and institutional practices, the choice of measure for analysis is determined by availability rather than conceptual relevance. For monitoring the custody of children, institutional practice until 2017 focused on the number of children in custody at the end of particular months, whereas since 2017 Oranga Tamariki has preferred to focus on the number who enter the care and protection of the child welfare agency during a month.

For adult offenders, we have a comparatively rich age analysis from sentencing data. However, the age groups now used to publish prisoner numbers by Corrections obscure significant age group differences that are obvious from the sentencing statistics. Those of the past are not on a consistent basis. Those who receive a short-term prison sentence will be counted in the statistics of the sentences imposed by the Courts. Official statistics of those in prison are calculated at the end of each month and published at the end of December and June of each year, so that a significant share of those given short term prison sentences may not be present in a prison on the dates of published counts of those in prison.

2.5. Measures of Disproportionality and Disparity

For most of this study the focus is on the experiences of the Māori population with the child welfare agency and prison service, and not comparisons with Pākehā. Comparisons of disproportionality and disparity measures alone do not enable the significant influence of population structure and other demographic characteristics to be recognised. They point to the differences at any particular time in the outcomes for Māori from what is purported to be the same system, but not the impact of history on the current outcomes. Disproportionality and disparity measures cannot capture the scale of either lost or potential opportunity for the Māori population, as it is now. Morrison (2009) provides a summary of other uses and the limits of these measures.

Being able to calculate and compare age-specific rates highlights differences in the rate of imprisonment, both over time and with non-Māori and other ethnicities. Changes in the incidence of State custody for Māori compared to non-Māori can be measured in several ways, most usually by taking ratios.

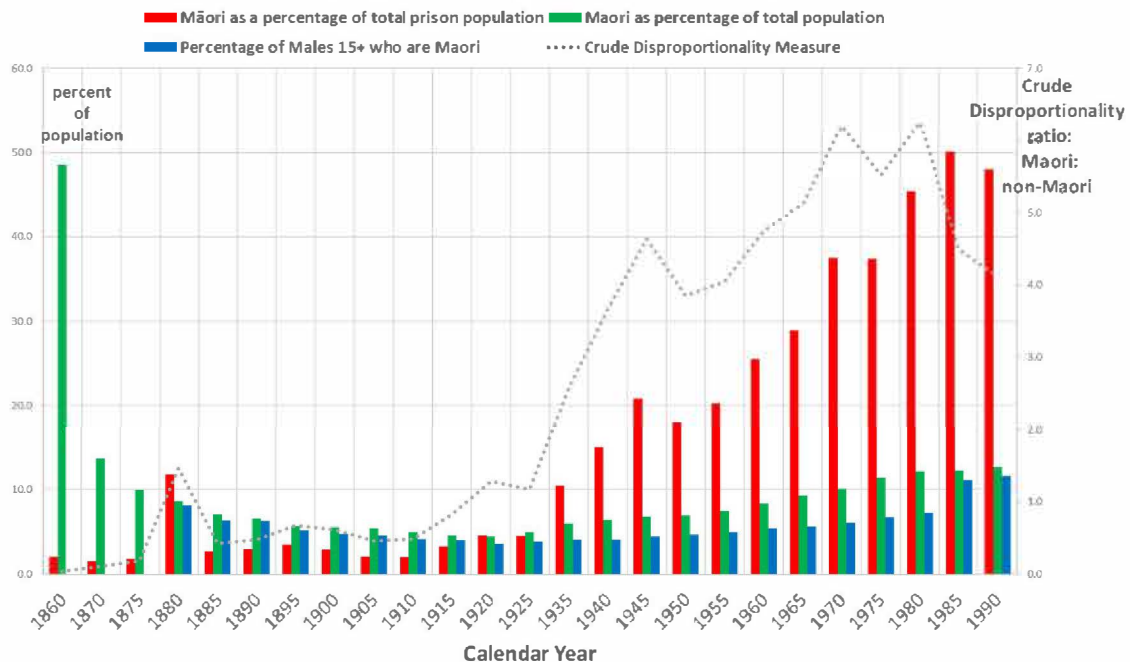
Disproportionality is calculated by the ratio of the percentage of those in custody from one particular ethnic group compared to the percentage of the same ethnic group in the overall population.

Disparity compares one ethnic group with another, rather than with the total population. For example, measuring disparity in imprisonment between Māori and non-Māori is calculated by taking ratios of the Māori and non-Māori rates, also referred to as the “rate ratio”. The differences seen in disproportionality or disparity measures will not necessarily be apparent in calculations based only on the administrative counts, which do not take account of differences in population structure or size.

Adjusting administrative counts of Māori by the total Māori population enables crude incidence rates to be compared over time, providing a measure for estimating disproportionality for the years before 1950. Figure 4 shows the disproportionality of Māori imprisonment from 1860 to 1990. Disproportionality shifted around 1925, then rose significantly between 1935 and 1945. It has remained at around four times between 1940 and 1990, except for a lengthy period between 1970 and 1985 when

it reached a level of six times, primarily influenced by the increase in imprisonment of Māori aged under 25. Because the crude measure does not vary with the changing age structures of the Māori and non-Māori populations, I have not calculated this crude measure past 1990. There are significant differences in both the age distribution of Māori and non-Māori and their rate of change. Disproportionality based on age-specific rate ratios is presented in Figure 27.

Figure 4: Crude measure of disproportionality in MALE Māori imprisonment 1860–1990



Source: Te ARA, calculations by writer

2.6. Measure of Excess Imprisonment

An alternative measure of “excess” could be calculated by comparing the incidence of State custody of non-Māori at each age group to the Māori age distribution, as explained further below. Once decided on, the measures need to be applied consistently over time. I define the **sentenced Māori male prison excess** as the difference between the number of sentenced Māori males in prison in any year, and the number of Māori males that would have been sentenced if the non-Māori sentencing rate for each age group also applied to the Māori male age distribution. By applying this method to the most recent statistics of those imprisoned by sentence or on remand during 2018/19, there were some 5,300 Māori males who would not have been imprisoned either as a sentenced prisoner or on remand for three or more months if the rates of imprisonment for each age group of non-Māori applied to Māori. My estimate of the extent of this “excess” is 1.4 percent of the Māori male population. Such an excess did not exist until 1925.

Another way of indicating the impact of the justice system and Māori is to measure the cumulative lifetime experience within the prison system of different generations. The latest measure of this shows that one in five Māori males who were born between 1981 and 1985 have been imprisoned at some time before the age of 35 years.

3. The Persistent Insensitivity of Justice Policy to Māori Population Dynamics

The justice system, in reflecting the norms and behaviours of any period, places its stamp on each cohort and ethnic group of New Zealanders from an early age, starting with the State's role in child protection.

For this section, I have analysed situations since 1930 where the combination of two or more of the factors which differentiated the Māori population from the European at the time had great significance for Māori and disproportionality. There are of course other situations that also affected disproportionality at various times, such as the way that closure of psychiatric institutions during the 1990s affected later imprisonment rates.

3.1. The 19th Century Legacy: Demographic Dynamism in the Face of Dispossession and Decimation

Apart from the years around 1880, the share of the Māori population which was imprisoned from 1860 to 1920 was lower than that of Pākehā. This is a crude estimate and may be distorted by the different age and sex distributions of Māori and Pākehā, for which there is insufficient information to make a more precise estimate. Te Ara notes:

From the time of British colonisation Māori were officially subject to British law. In practice this generally only applied when Māori were in areas of major Pākehā settlement. Elsewhere, Māori traditional systems of control continued to predominate. Throughout the 19th century the percentage of prisoners who were Māori was very low, usually less than 3 percent of the total prison population until the first world war. Fewer than one percent of adult Māori were imprisoned. There were short periods in which large numbers of Māori were imprisoned, such as prisoners of war in the 1860s and the protesters arrested at Parihaka in the 1880s.

In the early 20th century the number of Māori imprisoned began to rise. The Māori prison population reached 11 percent of the total prison population by 1936.

Iwi Māori were dispossessed of much of their land, often by armed force with significant loss of life. Parliaments of the day passed laws and condoned institutional practices that led to more loss of land. Figure 5 uses the best available long-term statistics to relate the share of Māori adults in the total male adult population to the share of Māori in the total prison population. The proportion of Māori who were prisoners was below that of the share of the population who were Māori up till 1925. There were exceptions from key incidents, including Parihaka.

The historical embedding of ethnic, economic, religious and gender bias in the relationship of Māori with the State remains visible today and an acceptance of the consequences has been institutionalised within public institutions in a variety of ways. Generally, it has been either civil disobedience, political or judicial action that has forced adjustment to the bias that remains embedded in institutions. Māori are concentrated in the lowest decile schools, live in often poorly managed low-quality housing, have significantly less access to public health services, and are most likely to be under surveillance by the justice sector. Dispossession has evolved over many decades into a persistent structural bias in outcomes for Māori that is now unchallenged by a narrowed focus of institutional accountability on procedural and fiscal obligations. The analysis in this paper provides another window on how the justice sector typifies this situation by fragmented and ineffective responses to rates of Māori incarceration which would be regarded as intolerable if they applied to a national population anywhere in the world.

As noted in section 1.3, the rate with which African Americans are incarcerated is marginally lower than that for Māori in New Zealand.

3.2. The Legacy of International Social Experimentation

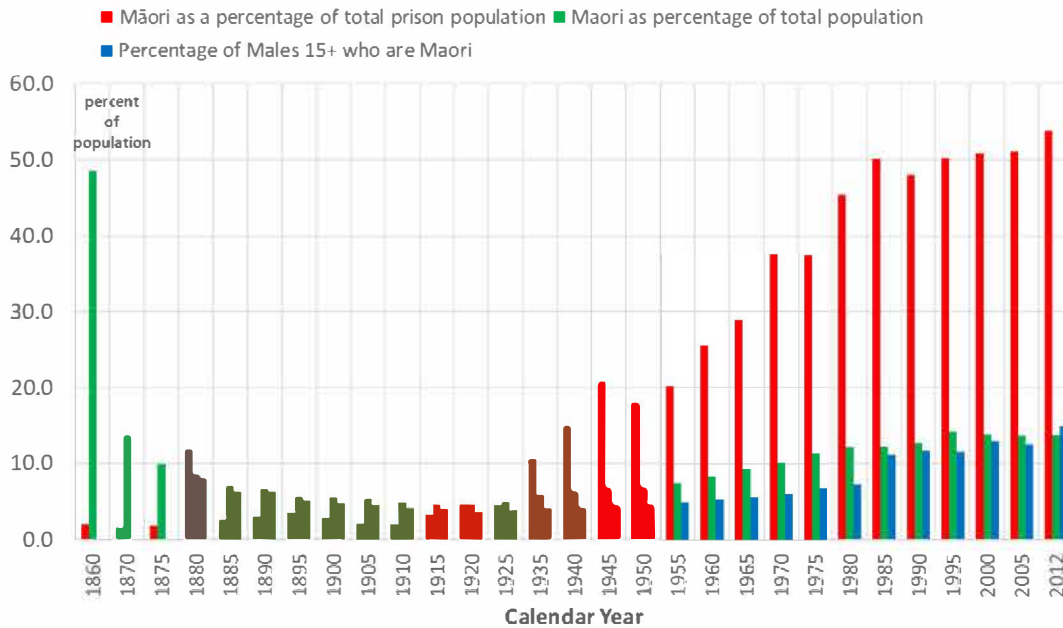
International studies of indigenous populations, particularly those in New Zealand, Australia, Canada and the USA, have brought to light commonalities in experiences and history, offering insights into past system changes that have had a lasting influence. Two past periods of intensive State custody of children have had continuing consequences up to today. There is a growing body of knowledge of the extent to which these occasions involved similar outcomes for indigenous communities in Canada, Australia, and the United States, as well as the ethnic communities in the United Kingdom.

1. Pool et al (2007) noted that *“Belich reports that over the short span of the 36 years from 1944 to 1980 87,000 adoptions occurred, on average 2,416 per year”*. Pool et al note that this annual rate that was some 10 times that of the previous 60 years (254). Over a similar period, such high levels of forced adoptions from young mothers occurred in Canada and Australia. In arguing that Māori women were less affected than non-Māori, Pool (2007) cites Belich, that *“most Māori adoptions were within families, often of births conceived by single women who were living away from home in larger urban areas”*. This does not take account of adoptions where the father was Māori and mother non-Māori.
2. During the 1960s right up to the early 1980s, there was a rapid rise in the institutionalisation of Māori children and adolescents. At its peak, the Department of Statistics (1979) reported that there were 7 percent of Māori boys and 2 percent of Māori girls being in State care. This was reducing at the time of the 1986 Puao-te-Ata-tu report (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare (DSW) chaired by John Rangihau) which was followed by the passing of the Children, Young Persons, and their Families Act 1989, since amended and renamed as the Oranga Tamariki Act 1989. This is discussed extensively in Section 3.5.

Māori girls and women who became pregnant would have been included in the group affected by the high rate of adoptions that occurred after 1944. Given what we now know about abuse while in State care, it is likely that Māori girls who had been in State care would have experienced these closed ex-nuptial adoptions. The share of Māori births taken into adoption during the 30-odd years after 1944 would most probably have been significantly larger than the 1 percent of babies that were taken from mothers through removals by the state in 2017/18. The significance of paternal contribution to ethnicity of Māori children with Pākehā mothers was explored by Kukutai (2007). There was less likelihood of the name or ethnicity of the father being identified if he were Māori.

These policies and practices were essentially social experiments without any robust scientific basis. The period of mass adoption ceased following the decline in fertility resulting from the widespread use of the contraceptive pill, but also a growing concern about the loss of connection with birth parents that came about from the closed adoptions. The institutionalisation of children by the State has not ceased, but, as seen in Figure 6 the placing of children in the custody of the State started falling after 1981/82 and fell significantly in 1987/88. Even in 1987, when the DSW advised the Royal Commission on Social Policy that the rate with which children in the custody of the State was comparable to Australia, Canada, the United Kingdom and the United States, the agency did not discuss the ethnic disproportionality in all these countries.

Figure 5: Comparison of the proportion of adult Māori in the prison population with their proportion in the total adult population



Sources: Te ARA; Census of Population; Prison Statistics (StatsNZ website)

3.3. The Wartime Urban Transition: 1935–1945

Between 1935 and 1945 there was a significant increase in the proportion of Māori males who were imprisoned. This resulted in an increase in disproportionality: Māori males who had been twice as likely to be imprisoned as non-Māori in 1935 became four times as likely just 10 years later. This coincided with peaks in both the Māori demographic revival and Māori urbanisation, with all these effects leading to an increasing number of Māori imprisoned after 1935. In 1945 Māori made up 21 percent of prison admissions, double that of 1935, at a time when they were 6 percent of the total population. This was a significant shift during just one decade. Over that period the share of males aged 15 and over who were Māori rose only slightly, from 4.1 percent to 4.5 percent. The rise between 1935 and 1945 occurred alongside an increase in the share of Māori living in urban areas from 9 percent in 1936 to 15 percent in 1945.

Hunn highlighted the discrepancies in the way that the justice system worked in 1930, quantifying the compounding of disproportionality at key stages of the justice system. By 1958 the disparities had grown in comparison with 1930. Table 1 is an exact copy of that in the Hunn Report.

Table 1: Stages in the justice system for Māori males

Stage of system	1930	1958
Percentage of all arrests	3.9	15.9
Percentage of all convictions	5.6	17.8
Percentage of all imprisonments	10.9	23.3

Source: J K Hunn, 1961, Report on the Department of Māori Affairs

In 1961, Māori made up 39 percent of male and 56 percent of female borstal inmates. The share of males in prison who were Māori went from 20 percent in 1945 to 50 percent by 1985, and by the end of 1985 the share of the male adult population in New Zealand which was Māori increased to the same

degree. However, in reaching this situation, the number of Māori males in prison escalated more quickly than did the Māori adult population between 1945 and 1980. Over the period between 1960 and 1985, disproportionality remained at the highest ever level, when compared to that before 1960, and after 1985, on this comparatively crude measure. While demographic change in its various forms is able to account for some of the change in the number of adult Māori males imprisoned over this period, there is a need to disentangle how far changes in the law and institutional practice which influenced this, and how it was reversed.

3.4. The Children’s Court in the 1940s

As crudely measured, the disparity between Māori and European rates of court appearances as boys is close to that of Māori adults during that period. The rate at which Māori boys aged 15 and 16 were appearing before the Children’s Court was near to 7 percent, four times that of European boys at those ages.

Reports on the early role of the State in child custody are rare. The Child Welfare Act 1925 established the Child Welfare Division within the Department of Education. This was the original child welfare agency which evolved to become Oranga Tamariki. The Parliamentary reports [E–4] of the Child Welfare Division were generally much more comprehensive and effective as accountability documents than we have seen from its more recent equivalents. However, information identifying Māori in official reports remained sparse even at the end of its first 20 years. The New Zealand Council of Educational Research (NZCER, 1940) reviewed the first 20 years of the Child Welfare Act 1925. They observed that there were no Māori among the approximately 2,500 children in care institutions run by churches in 1940. Younger Māori were generally in the care of whānau rather than any State or religious residence.

The Philipp 1946 NZCER survey of Children’s Court appearances

Statistical information was gathered from earlier years and made available in 1946 from a second report by the NZCER of trends and causes of child delinquency in New Zealand. The study identified the scale of Māori delinquency and the consequential court appearances. That research summarised offender numbers and incidence for Children’s Court appearances for theft, and wilful damage and mischief by the age and ethnicity of boys in 1943 and 1944. Comparisons with non-Māori are presented in Table 2.

Table 2: Incidence of theft, and wilful damage and mischief in yearly age groups for 1943 and 1944, Māori and European boys

Age	Māori boys			European boys		
	Number appearing	Population	Percentage of population	Number appearing	Population	Percentage of population
8	2	1170	0.17	9	11598	0.03
9	11	1236	0.88	43	11799	0.34
10	10	1424	0.7	77	11758	0.66
11	24	1398	1.73	107	12140	0.88
12	33	1404	2.35	156	12794	1.22
13	57	1323	4.31	168	12990	1.29
14	71	1273	5.58	241	12886	1.87
15	85	1208	7.04	246	13071	1.88
16	77	1158	6.65	221	13442	1.64
8–16	370	11594	3.19	1268	112478	1.13

Source: Juvenile Delinquency in New Zealand. NZCER 1946, page 39

Philipp (NZCER 1946, page 40) noted:

It must be pointed out that at the present stage of development of public opinion towards the Māori people there is likely to be immediate readiness to bring a Māori child before the court on an occasion when a European boy might well get by with a reprimand.... There is no doubt that Māori delinquency rates are quite considerably influenced by this possibly unintentional discrimination.

Hunn Report notes on 1950s Children's Courts

The Child Welfare Amendment Act 1948 separated the Children's Courts more clearly from the Magistrate's Courts and they were to be "courts of adjustment" not "courts of judgement" for all but the most serious offences by young people under 17. The wider context of this period and the evolving nature of the youth justice system at that time and later is surveyed in a research paper by Emily Watt (2003).

The Hunn report noted that in 1958 the main offence leading to appearances by Māori in the Children's Court was theft (24.7 percent of all cases) while for non-Māori it was drunkenness (25.6 percent of all cases). Hunn reported that over the short period between 1954 and 1958, the Māori rate of appearance before the Magistrate's and Children's Courts increased dramatically, not only heralding a consequent leap in the state custody of Māori, but also a growth in disparities. The key differences between the rates in 1954 compared to 1958 are presented in Table 3.

Table 3: Māori and Non-Māori differences in court appearance by age group, 1954–1958

Age group of offenders	Ethnicity	Percent of age group appearing in Court	
		1954	1958
10–14 years	Māori	2.06	4.11
	non-Māori	1.20	1.31
15–19 years	Māori	4.56	7.79
	non-Māori	2.19	4.03
20–24 years	Māori	6.90	9.17
	non-Māori	2.18	2.28

Source: Hunn Report

3.5. The 1970s to Puao-te-Ata-tu

The escalation of child custody in 1971

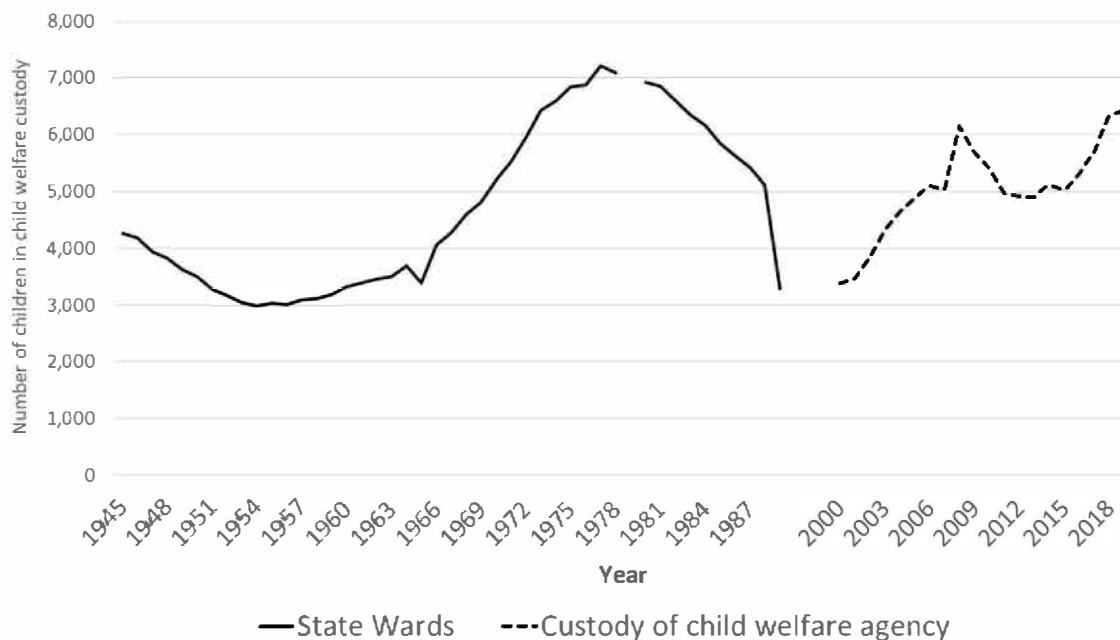
The highest rate of State custody experienced in the last 70 years by any age group of Māori occurred during the 1970s. In that period, some 7 percent of Māori boys had been placed in the custody of the child welfare agency care and protection. For a short period around the same time a similar share of young Māori male adults who were aged under 25 were in prison. Donnell and Lovell (1982) noted that the peak age at which Māori boys came to official notice for juvenile offending was at age 13 and 14, involving 8.9 percent of Māori boys at each of these ages. The Department of Statistics (1971) reported that of those convicted in the Children and Young Persons Courts between 1961 and 1976, the conviction rate for all Māori boys was 6383 per 100000 in 1975 (1958 in 1961), while for Māori girls the highest conviction rate was 2108 per 100000 in 1971 (558 in 1961). The highest conviction rate over that period for non-Māori boys was 1194 per 100000 in 1973 (811 in 1961). Māori made up 20.1

percent of the number of boys convicted in 1961 but were 54.1 percent of the growth in number between 1961 and 1976.

The rapidity with which Children's Court appearances increased in the 1970s compared to the previous 25 years can be seen in Figures 6 and 7. Youth offending overall rose at this time, which would suggest that the child welfare agency and the youth justice system were paying attention to young Māori. Lovell and Norris (1990) reported that for Māori boys born in 1957, at each age between 11 to 14 they were between 4.6 and 6.5 times more likely to appear for the first time before the Children's Court. Public sentiment and official behaviour would have been cognisant of the public inquiry (Mazengarb, 1956) which underlined expectations of delinquency in every child, perhaps most especially those who were new urban arrivals from large whānau.

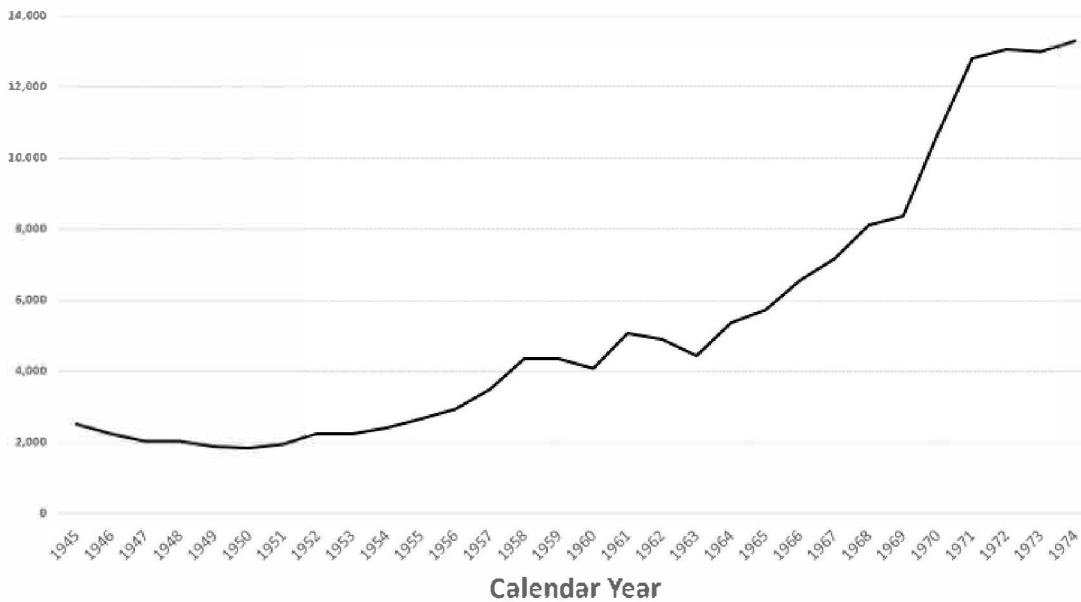
Figure 6 shows the rapid escalation from 1971/72 in the number of children taken as State wards, and the even more rapid de-escalation during 1987/88. Both major changes preceded legislative change, the first being the Child Welfare Act 1974, and the second the Children, Young Persons and their Families Act 1989. Figure 7 shows the stages of the rapid escalation of Children's Court appearances from 1958 to 1972.

Figure 6: Total State wards: children under control and supervision of the Child Welfare Division 1945–1987, and child welfare agencies 2000–2019



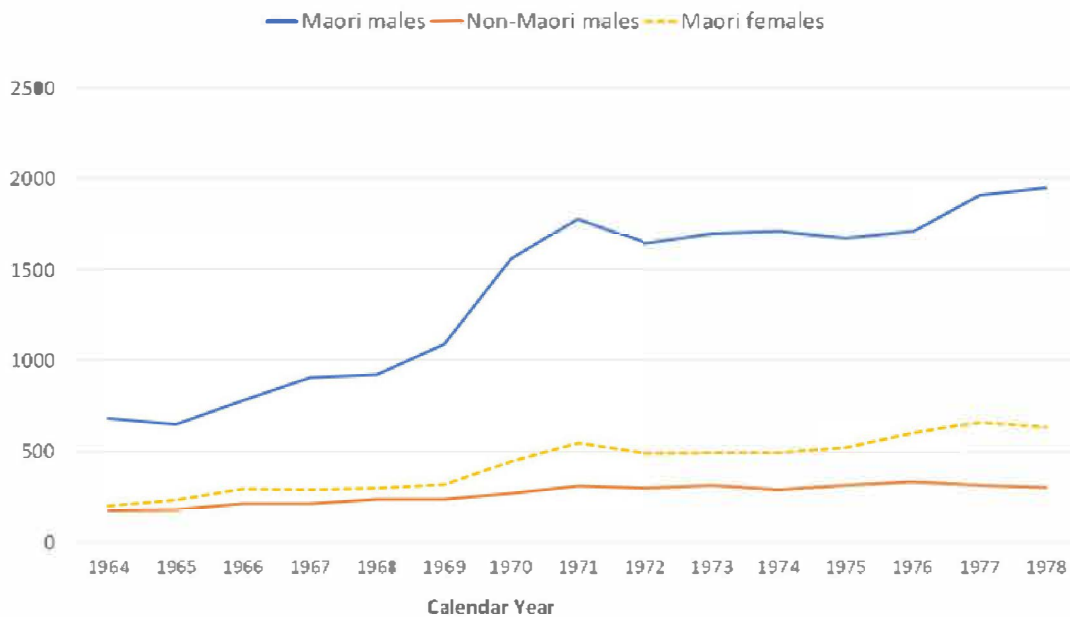
Source: Garlick (2012), page 65, Oranga Tamariki

Figure 7: Children's Court appearances 1945–1974



Source: Garlick (2012), page 65

Figure 8: Rates of appearance before official bodies for juvenile offending boys Aged 10–16 (per 10,000 in age group)



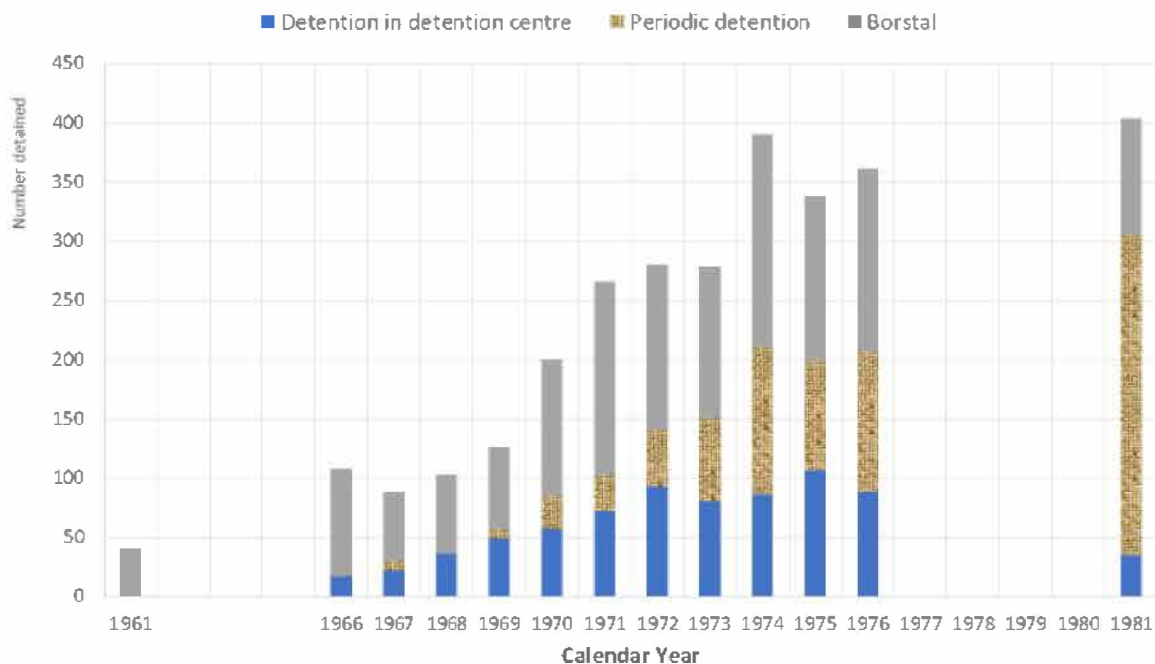
Source: Fifield & Donnell (1980)

Figure 8 shows the differences in the rates for Māori and non-Māori appearances before the Children’s Court between 1964 and 1976 and captures the dramatic shift around 1971 in the disproportionate appearance of Māori. At that time, the DSW longitudinal study found that while 10 percent of non-

Māori appearing before the Court received a custodial sentence³, this was the outcome for 20 percent of Māori boys.

Figure 9 shows where the Māori males aged up to 16 who were detained in custody were placed. These statistics again show the rapid escalation around 1970 and its continuation to 1981. I have not yet found the statistics for the missing periods.

Figure 9: Place of detention of Māori males sentenced by the Children's Court, 1961–1981



Source: Dept of Statistics (1979); Annual Justice Statistics Reports of Department of Statistics

The disconnect between child delinquency and adult offending in the 1960s and 1970s

Although the period between 1960 and 1980 was one of continued urbanisation of Māori, this time also saw a huge difference between the number of Māori children who were taken into the care and protection of the child welfare agency and the number of Māori adults in prison. Figure 6 showed that the number of children who became State wards increased dramatically in 1971, with a marked disproportionate effect on the number and incidence of Māori children and their comparative share of those in custody.

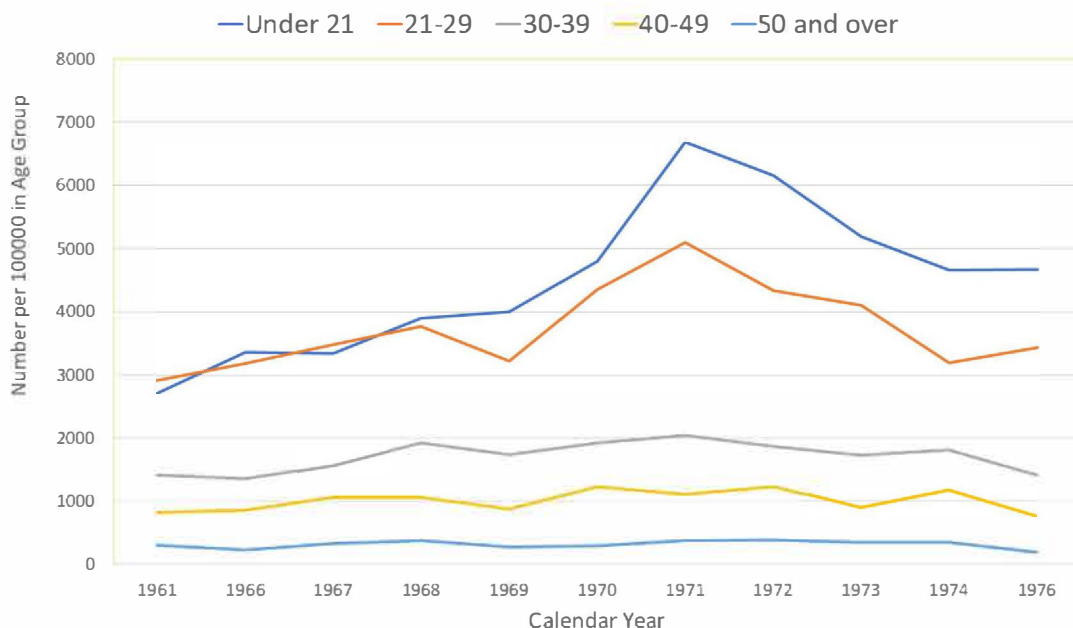
Over the period from 1960 to 1980, the experiences of Māori adults with the justice system were quite different from those of Māori boys. Figure 10 shows the incidence of imprisonment of Māori males across all age groups between 1961 and 1976. The incidence of imprisonment of Māori males aged 30 and over in 1976 was lower than the rate in 1961, while the incidence of imprisonment of Māori males aged between 21 and 29 increased during the 1960s and then fell, so that by 1976 it was only marginally

³ Donnell and Lovell (1982) note that “a custodial outcome has been defined as a sentence of borstal training, detention centre, imprisonment, committal to a mental hospital or committal to the guardianship of the Director-general of Social Welfare. This last option involves the offender being removed from home and placed in an institution, family home, foster home, residential employment or in board and separate employment”. “A supervisory outcome has been defined as a sentence of probation, periodic detention, or being placed under the supervision of a social worker”.

higher than in 1961. For Māori males aged 21–29, there was a significant rise in incarceration rates from 1970 to 1974 before a return to the earlier level of the 1960s. As a consequence, the statistics on the adult imprisonment rates do not justify concluding that the rapid urbanisation of Māori brought about an increase in imprisonment of Māori generally, as has occasionally been quite wrongly asserted.

It is not possible to exactly reproduce the published calculations of imprisonment rates used in historical sources, when identifying the highest ever imprisonment rates for Māori males. The Department of Statistics (1990) reported that in 1970-72, 6390 per 100000 Māori males aged 20-24 were in prison. During the same period, the rate for Māori males aged 15-19 was 5460 per 100000. When analysed annually, with different age groups, Figure 10 shows that 6680 Māori males out of every 100000 aged under 21 were in prison in 1971. It is highly likely that the 1971 rate for Māori males aged 21–29 resulted from the experiences of Māori males aged 21–25.

Figure 10: Incidence of imprisonment and State custody for Māori males by age group, 1961–1981



Source: Department of Statistics Bulletin New Zealand Māori and Non-Māori Population Time Series 1978

3.6. The Reduction in Institutionalisation and Disparities Following Puao-te-Ata-tu

While information on adult prisoners is strong for the period after 1989, data on the state custody of children is surprisingly weak. Given the significance of the shift in approach that led to the Children, Young Persons, and Their Families Act 1989, the monitoring of the changes that resulted from the legislation has been weak. The little information that exists suggests that between 1988 and 2008 there was a smaller disparity between Māori and non-Māori children entering State custody than in the years before 1988 and after 2008.

In 1978 just over 7,000 children were State wards, declining to 5,115 in 1988, then further tumbling to around 3,000 by 1989 when the Act came into force. This much lower count of children in care continued into the 1990s, so that for the years ending June 1993 and 1994, as reported in the 1995 *Yearbook*, State wards numbered 2,654 and 2,862 respectively. It is difficult to find ethnicity data for

children in care during the 1990s. It is possible that the information management capability of the DSW was developed later in that decade, so that for most of the 1990s record keeping was somewhat haphazard. There is some information in a 1999 Social Environment Scan by DSW which noted:

Māori children and youth are highly over-represented among the clients of the Children, Young Persons and Their Families Service. While Māori made up 24 percent of children at the 1996 Census, they made up 42 percent of care and protection cases and 53 percent of youth justice cases that came to the attention of the Children, Young Persons and Their Families Service in the year to June 1998.

Table 4: Ethnic distribution of Children, Young Persons and Their Families clients – year to June 1998

Ethnicity (DSW usage)	Care and Protection Clients	Youth Justice Clients	Total CYPFS Clients
	<i>Percentage of cases in form of care</i>		
Māori	42	53	44
Pacific Islands	9	10	9
Non- Māori and non-Pacific Islands	49	36	47
Total	100	100	100

Source: Department of Social Welfare (1999), Table 7

What happened after the mid-1990s is not clear, although the DSW statistics for 1998 show a significantly lower level of disproportionate removal of tamariki Māori than has been experienced since 2000, and a significantly lower level than that reported up to the early 1980s. The period after 1988 is a rare time when disproportionality reduced markedly. Since 2001 the number of children in State care has risen again.

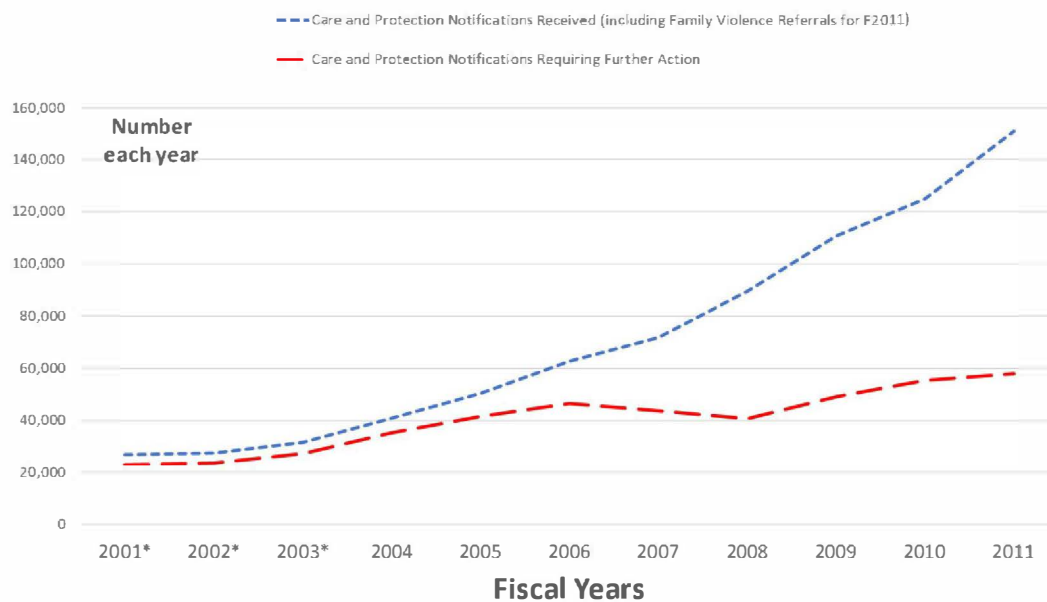
My own estimates indicate that in 2000 the ratio of Māori in the care and protection of the child welfare agency was some 2.2 times that of non-Māori, close to the level implicit in the table above for 1998. Just as the high rates of child custody from 1972 to 1987 have been mirrored in the later rates of imprisonment for that cohort, so the much lower rate experienced through the 1990s may well have influenced the declines seen since 2000 in the imprisonment rates at age 17–19, and at age 20–24.

3.7. The Growth of Parental Assessment in Child Reporting since 2002

The dramatic shift in notifications of potential harm

The child welfare agency continues to remove Māori children from their mothers and families at a rate that is higher than for non-Māori, even though the share of Māori children who are placed in State care is much smaller than that seen during the peak period from 1971 to the mid-1980s. During the 1970s, it appears that children were generally taken into care because of their perceived delinquency.

Since 2002, there has been continued growth in the rate with which children have been taken into care because the State is concerned about the negligence or offending of mothers, compared to the delinquency of children. By 2018 that rate had grown to be more than double the rate in 2000. Figure 11 shows the stages of the rapid escalation from 2002 in counts of notifications of concern to the Ministry of Social Development and Child, Youth and Family (now Oranga Tamariki).

Figure 11: Care and protection notifications received by Child, Youth and Family. 2001–2011

Source: Garlick (2012)

The share of Māori children aged 16 and under who have been taken into the care and protection of the child welfare agency has risen since 2001 from one in every 125 Māori children to one in every 64. Over this time there has been a progressive increase in the share of younger children in care, including babies. That one in 100 of all Māori babies born in 2018 were placed in the care and protection of the child welfare agency soon after birth put a spotlight in 2019 on tensions between policy, institutional culture and practice in administering statutes relating to child welfare. The removal at birth of Māori babies born in 2018 has become the subject of five reviews. It is important to recognise the demographic differences when risk criteria include the age of mothers. Māori women on average start to have children about 10 years earlier than Pākehā women.

The first review of its own operations by Oranga Tamariki acknowledged serious weaknesses in the oversight of decisions to remove babies at birth, and the absence of practices that are respectful of mothers and their family or whānau. Keddel and Hyslop (2019) argue that institutional cultures can play a disproportionate role in how discretions are applied by individuals when meeting statutory obligations.

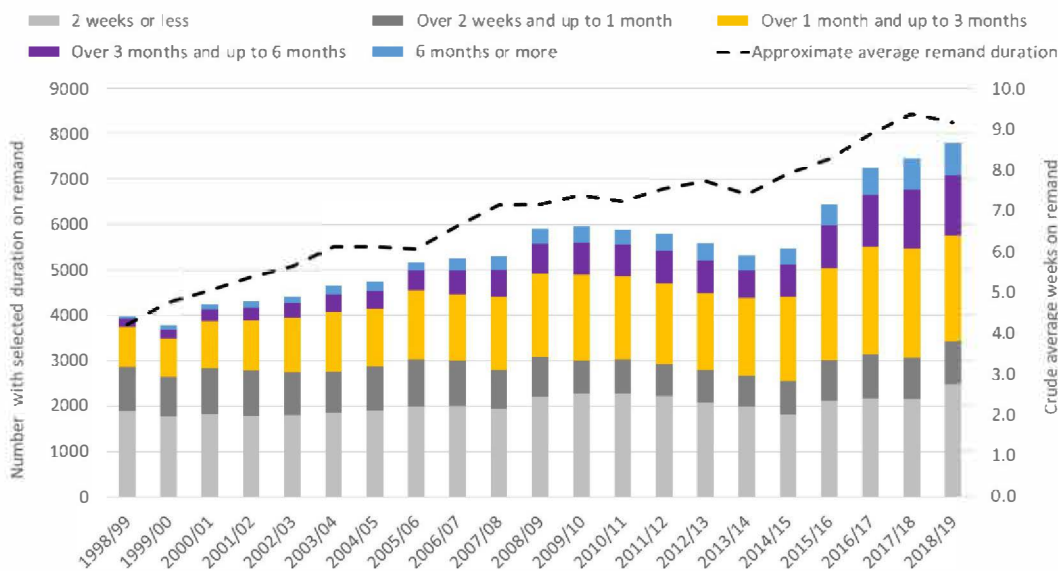
After several years of relative stability near to the 2000 level, from 2005 there has been a continuing rise in the disproportionate rate at which tamariki Māori compared to non-Māori are placed in the care and protection of the child welfare agency. Between 2001 and 2011, tamariki Māori were 3.4 times more likely than non-Māori to enter the care of the State, and since 2012 this has increased to 4.6 times. The trend has occurred despite the fall in incidence of removals for both tamariki Māori and non-Māori children over the period from 2000 to 2018, because the incidence of State care for non-Māori has declined faster than that for Māori.

3.8. The Remand Population

The increased size of the remand prison population

The Māori male remand population has doubled over the last 20 years, partly in response to changes in the law regarding bail eligibility and availability. The number on remand for less than one month has increased slightly over this period, while those on remand for more than a month have increased by four times and risen from being around 25 percent of those on remand to 60 percent. Whether it is used as a measure of system risk, equity, or efficiency of the Justice system overall, this must result in a significant increase in fiscal and welfare costs.

Figure 12: Trends in the duration of remand for the Māori male remand population, 1998–2019



Source: StatsNZ website – Department of Corrections

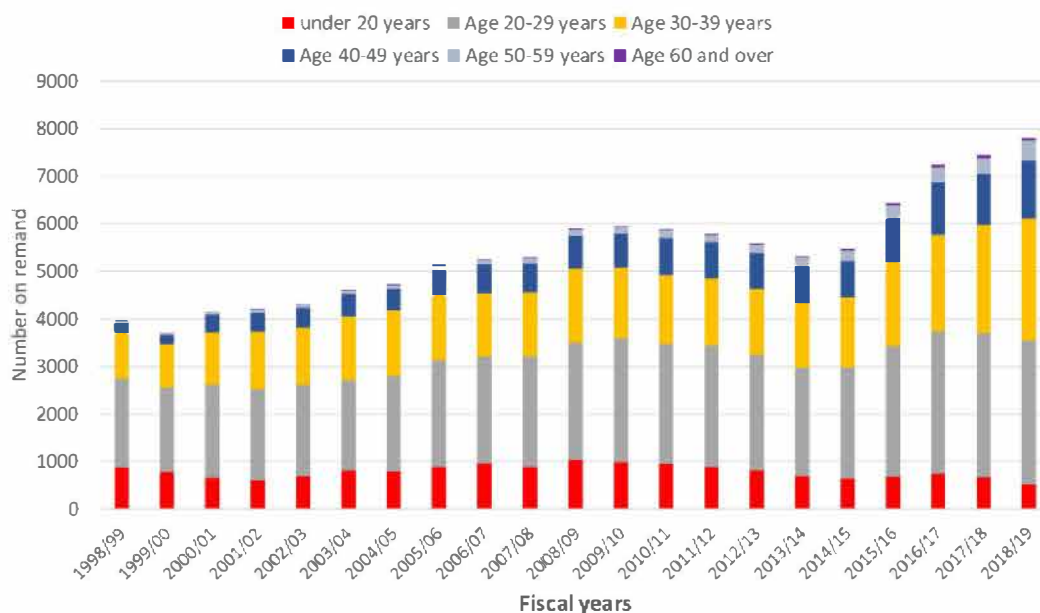
Figure 12 shows the increase in the length of remand sentences since 1998. The number of Māori males in prison on remand has doubled over the past 20 years. The average number of weeks on remand has lengthened significantly. I have calculated this approximately from published statistics, which show that the average time of remand has doubled between 1998/99 and 2018/19 from 4.5 weeks to just over 9 weeks. For the last 15 years or more the total number of Māori males serving a prison sentence has stabilised compared to the 20 years before that. When those imprisoned on remand are included, the last four years have seen a significant rise alongside the increase in Māori males entering prison on remand. We do not know the extent, but it is most likely that an increased share of remand prisoners will spend more time in prison than they were required to when eventually sentenced by the Courts. The impact on children and partners remains invisible. The present situation increases the likelihood of offenders pleading guilty in order to have some certainty about the length of their prison term. This situation ought to be taken into consideration when framing statutes or administering them. There is no redress for the personal cost of this for family and whānau of both the enforced absence from home and the loss of income. Some of this cost is borne at the time an offender is transferred to prison, whether

on remand or to start a sentence, and becomes unable to arrange for financial and other commitments to be met. The cost of a short period on remand will be disproportionately higher than for a longer period. This will include the loss of housing for families and repossession of goods as well as job loss.

The implications for the Māori population of expanded use of remand rather than bail

Given that some 70 percent of male prisoners are fathers, the implications for Māori families of this growth in the use and length of remand will be severe, while the continued growth in the number on remand for more than one month suggests that much of the social cost of what might be judged as inefficiency in the justice system is being borne by Māori families. The fiscal costs grow at the expense of other services for the New Zealand public. Figure 13 shows an increase in the number on remand for all age groups of Māori males aged 20 and over during the past 20 years. The increase in the use of remand has been as severe for Māori females as for Māori males, with the number of Māori women aged 21–39 who have been placed on remand for more than three months nearly tripling that of just four years ago.

Figure 13: Age distribution of Māori males on remand, 1998–2019



Source: StatsNZ website – Department of Corrections

We have some evidence about the connection between imprisonment and suicide. Jones (2017) looked at suicides between 2010 and 2016 in New Zealand. Cox and Skegg (1993) analysed suicide in New Zealand prisons (1973–88) and police cells (1980–91) to compare the risks for Māori and non-Māori men. They found:

Among prisoners, the risk of suicide for Māori men was very similar to that for non-Māori (38.7 Māori and 40.4 non-Māori suicides per 100,000 male distinct prisoners received per year). Māori men were, however, six times more likely than non-Māori to be in prison, with half of all sentenced prisoners being Māori. This explains why the proportion of the entire Māori population who died as a result of prison suicide was eight times higher than that for the non-Māori population. For police cells it was not possible to calculate suicide rates except as proportions of the entire Māori and non-Māori populations. The proportion of Māori men who died in police custody was nine times higher. Suicide in custody accounted for about a quarter of all suicides in Māori men aged 15–49 years, but only 1.7 percent of suicides in non-Māori men.

An IPCA⁴ report in 2012 noted *“The disproportionate number of Maori deaths in police custody reflects the overrepresentation of Maori in the criminal justice system generally.”*

3.9. The Influence of Sentinel Events

There is a pattern in which a series of one-off events leads to a political reaction focused on penalising new offenders by increasing imprisonment terms. In the rush by Parliament to appease what is judged to be public sentiment, operational decisions by the Courts, Police and other agencies, and boards of the justice system can respond in harmony, magnifying the impact on those before the Courts or Parole Board at a particular time, as well as those making discretionary judgements within institutions that make up the justice sector. The existing scale of State custody of Māori males and its effect on individual outcomes will always bring consequences for later cohorts and across cultures. These have generally been ignored.

The significant impact of sentinel events (e.g. killing of the Kahui twins, Burton parole murder) means that there is a need to greatly increase the analytical capacity across the justice sector so that it is fit to react to the rapidity of politicised events and properly place them in context. It is not possible to advise properly on the potential for unintended consequences when policy models are overly simple, the context (including demographic) is poorly predicted, and a culture of continuous improvement and evaluation is weak. When sentinel events influence speedy changes to the law or result in institutional responses, there is not necessarily a structured evidence base relevant to that event. The impact of political and institutional cultures on processes is seen in the way parole, bail, notification rates, and care and protection orders can change without amendment to statutes. Regular analysis of the wider context of crime through surveys of victimisation need to be included in a more widely based compendium of the key influences on justice policy, such drug prevalence, intentional injury and child welfare. For example, the average Māori number per decade of intentional deaths of young children has not changed in the last two decades, and intentional injury has reduced, yet media coverage of specific cases can result in changes in practice or even laws.

3.10. Summary of Distinct Periods of Māori Imprisonment and Child Custody: 1860–2020

After analysing population statistics, counts of children in State care and the counts of the number of Māori males imprisoned, along with the corresponding statistics for non-Māori, I have separated the time from 1860 to 2020 into eight distinct periods, as shown in Table 5.

Table 5: Distinct periods of Māori imprisonment and child custody and care, 1860–2020

Period	Māori share of those in State custody/care	Disproportionality/ Disparity
1860 to 1910 <i>Section 3.2</i>	Māori share of prison population ranged around 2 percent except for particular events (such as Parihaka)	Non-Māori adult males more than twice as likely to be imprisoned than Māori

⁴ <https://www.ipca.govt.nz/includes/download.aspx?ID=122553>

<p>1910 to 1935 <i>Section 3.2</i></p>	<p>Māori demographic revival driven by reduction in mortality rates. Māori share of the prison population increased from 2 to 10 percent, while the share of adult males who were Māori fell marginally. Most of this change occurred between 1925 and 1935.</p>	<p>Between 1920 and 1935 the trend reversed, so Māori adults moved from being less likely to be imprisoned to being twice as likely by 1935.</p>
<p>1935 to 1945 <i>Section 3.3</i> <i>Section 3.4</i></p>	<p>Māori share of prison population doubled while the share of adult males who were Māori rose marginally. First major migration to urban areas by Māori (Pool, 1977).</p>	<p>Disparity between Māori and non-Māori nearly doubled. Detailed analysis of annual prison receptions points to most of this change occurring between 1940 and 1945. The growing adult disparity was mirrored in those charged with delinquency in the Children's Court.</p>
<p>1945 to 1970 <i>Section 3.1</i> <i>Section 3.4</i></p>	<p>Māori share of prison population increased by 50 percent, while the share of adult males who were Māori increased by one-third. Major period of Māori migration to urban areas. Some 87,000 babies taken for closed adoption from mainly unmarried teenage mothers.</p>	<p>Disparity between Māori and non-Māori rose during the period: the level in 1970 was 50 percent above that of 1945. The total number of State wards dipped during the period but returned to the 1945 level by the end of the period.</p>
<p>1950 to 1980 <i>Section 3.6</i></p>	<p>The rapid increase in the population of Māori children increased the number of adults in the last decade of the period. Urbanisation was associated with high employment of adult Māori.</p>	<p>Adult Māori male imprisonment rates stayed unchanged over the period. Number of Māori State wards increased dramatically over the period.</p>
<p>1970 to 1990 <i>Section 3.1</i> <i>Section 3.5</i></p>	<p>The Māori share of the prison population increased by nearly one-third, while the share of the adult male population that was Māori doubled. Urbanisation was followed by high unemployment following economic restructuring in the mid-1980s.</p>	<p>Disparity between Māori and non-Māori peaked between 1970 and early 1980s then reduced again to near the level experienced in 1945. Until 1988, Māori children were experiencing New Zealand's worst period of child custody. Disparity fell after CYPF Act 1989 (now Oranga Tamariki Act 1989).</p>
<p>1990 to 2000 <i>Section 3.6</i></p>	<p>Major reduction in the institutionalisation of children by the State. Rise in rates of Māori adult imprisonment strongly associated with ageing of 1970s State care generation.</p>	<p>Incidence of State care remained at level reached by 1988. Disproportionality in child custody fell to lowest levels during the decade. Adult male imprisonment rates rose sharply.</p>

<p>2000 to 2020 <i>Section 3.7</i> <i>Section 3.8</i> <i>Section 3.9</i></p>	<p>Focus of child protection shifted to parents of children, and consequently babies and infants increased as share of State wards. Women in prison increased in number and rate. Significant increase in number of Māori on remand.</p>	<p>Ongoing decline in rates of imprisonment of males aged 17–19 and 20–24. Continuation of high rates of imprisonment of males aged 25 and over. Rise in disparity for Māori males in prison in latter half of period Rise in share of Māori children in state care. Rise in disproportionality of Māori children in state care Average time on remand rose from 4.5 weeks to 9.5 weeks.</p>
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4. A Statistical Spotlight on State Care and Custody of Māori children: 1960s to 1988

Through the long-term comparisons in this paper, we now know that the taking into State custody of tamariki Māori aged 16 and under for over a decade from the early 1970s resulted in those boys experiencing close to the highest recorded incidence of State custody in New Zealand for any age or ethnic group throughout the last 100 years, before their 17th birthday.

The shifting patterns of child custody among cohorts is shown to have been an important determinant of adult imprisonment rates in later life. This is difficult to detect because the statistical record has been poorly managed, with only weak coherence in the information published over time by the child welfare agency, the prison service, Justice, Police and Statistics. The public can see no sign of integrated statistics in the published records of these agencies. Official publication of long-term trends is sparse, given the extent to which public policy has significant life-course implications. This is particularly so with respect to links between child protection and institutionalisation, youth justice and adult offending. Vital trends and connections will often be obscured by the frequent use of simplistic measures of those who are in the custody of the State. The changing impacts on individuals and their whānau are poorly explored, while cohort effects have been largely ignored.

4.1. The Interaction of Demographic Dynamism and Disproportionality

In the late 1960s, Māori children were experiencing an extraordinary demographic transition. In 1966, Māori children aged under 15 had become half of the Māori population. Their number almost doubled from 1951 to 1966. This time also saw further urbanisation. The mortality rate of children had fallen to around 3 percent. Within five years there was a rapid rise in the rate of detention of Māori boys and girls by the State through the Children's Court. By then, some 7 percent of Māori boys and 1 percent of Pākehā boys (Fifield and Donnell, 1980) born between 1955 and 1974 had been placed in a youth custodial institution. Figure 9 presents how some of the options available to a judge were used. There was little change in the imprisonment of adult Māori males until 1980. As noted with the earlier forced removal of babies from unmarried teenage mothers, both Canada and Australia had parallel experiences, in their case with an intense focus on placing indigenous children with European parents. In Canada this is referred to as the "Sixties Scoop", and in Australia "the Stolen Generation". New Zealand's high level of State detention of children did not fall back to the earlier level until 1987/88.

Because this experience of early State custody was so heavily concentrated in some birth cohorts, the impacts on the individual boys would have influenced cohort norms and behaviours. The beginning of gangs has often been associated with the child custodial institutions from this period. There is anecdotal evidence that one consequence of the lower threshold for being institutionalised for Māori compared to non-Māori was that the non-Māori who were institutionalised were comparatively more troublesome than the generally younger Māori children. An analysis of offence history might shed light on this disproportionately negative impact on so many Māori youth.

The number and rate at which Māori boys were placed in the hands of the justice sector after 1971/72 would seem unbelievable now, were it not for the Royal Commission on Abuse in Care presenting daily personal stories that reflect a deepening concern about that period. An inquiry into the experiences of children in state care by Ngā Tamatoa in 1978 resulted in a report in 1982 by the Human Rights Commission.

4.2. Joint Committee on Young Offenders Longitudinal Survey

In 1967, the Child Welfare Division initiated a study of all boys born in New Zealand in 1957 and followed up a sample until they reached the age of 24. The Joint Committee on Young Offenders (Fifield, and Donnell, 1980) found that for Māori the chance of being taken into custody was at its highest when the Māori boys were aged 13 and 14. The study highlighted the disproportionate impact of official agencies on young Māori males and the short period during which the rate of appearance before official bodies shifted upwards permanently. Because the share of Māori boys who were institutionalised was up to seven times that of non-Māori, a far larger share of Māori boys would have been placed with comparatively less-desirable company. As noted in Section 3.5, the 1970s saw the irony of child custody rates peaking while age-specific rates of adult incarceration were little changed.

In the context of this long-term study about the youth justice system and Māori, what was done to Māori boys and girls between 1971 and the mid-1980s stands out as having the greatest continuing impact over this last 100 years. Excesses in the State's responses to child and youth offending in the past, particularly institutionalisation and its consequences, have influenced the likelihood of later imprisonment as adults. We do not know to what degree cohort imprisonment rates are independent of those of earlier cohorts, all other things being equal. The economic position of Māori is an important influence which needs further study, especially given the nature of the economic policies introduced during the 1980s. The impact of economic restructuring was severe for Māori generally while for this pivotal birth cohort there was also the impact of their move into parenthood. Disentangling the contribution of age cohort and the incidence of child custody from economic policy and public policy in influencing the incarceration rates of each generation is beyond the scope of this study.

Practices resulting in high levels of institutionalisation of children remained until the mid-1980s. Formal system change had to await the Puao-te-Ata-tu report (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare 1988) chaired by John Rangihau. Set up in July 1986, the Rangihau review highlighted the long-delayed actions the State needed to take, and the key response to this report was the Children, Young Persons, and their Families Act 1989.

When Māori boys first became a significant focus of the child welfare agency is not clear, but it was certainly before 1940, according to the NZCER study of 1946. We do not have the same rich information for Māori girls that the Joint Committee on Young Offenders study provides for boys about their later pathway through the justice system. By 1978 nearly 7 percent of Māori girls came before official bodies for juvenile offending when aged between 10 and 16. Between 1964 and 1978, Māori girls were in State custody at about one-third the rate of Māori boys.

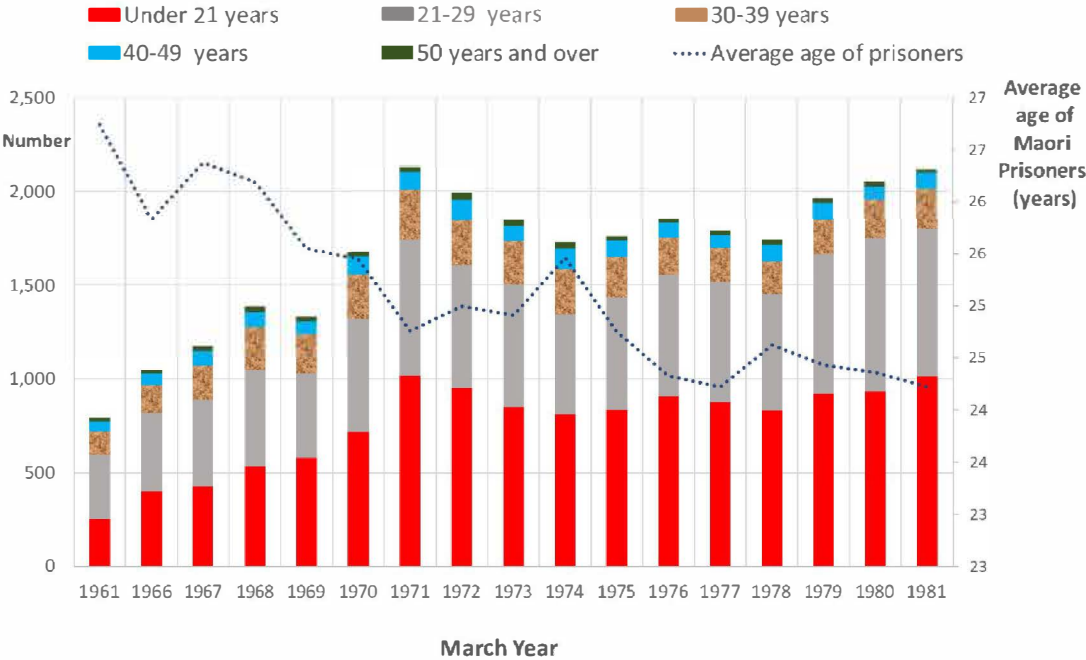
4.3. Adult Māori and prison: 1960–1980

For Māori males over 21, and most especially aged 30 or over, their experiences with the justice system were significantly different from the experiences of Māori boys. At all ages 30 and over, the rate of imprisonment of Māori males remained unchanged during the 1960s and most of the 1970s. Lovell & Norris (1990) noted that until 1981, the rise in the total number of Māori males in prison was almost entirely driven by growth in the number and rate of imprisonment of Māori males aged under 21. The exception came about from some volatility in the rate of imprisonment of those aged 21–29 for a short time, which had reversed by 1981. The rate of imprisonment of Māori males aged 30 and over in 1976 was lower than the rate in 1961, while the rate of imprisonment of Māori males aged between 21 and 29 increased during the 1960s and then fell, so that by 1976 it was only marginally higher than in 1961.

Between 1971 and 1976, the number of Māori aged over 21 in prison was little more than 10 percent higher than the number of Māori aged 21 and under.

Figure 14 shows the cumulative number of Māori males across all ages in prison between 1961 and 1981. The rapid escalation from 1961 of males aged under 21 dominates the change in number imprisoned over the whole 20-year period, with those imprisoned under 21 being similar in number of those aged 21 and over. Between 1961 and 1981 the average age of Māori males in prison fell from 27 to 24, reflecting how much growth in the Māori male prison population had been dominated by young men aged up to 25. By the mid-1980s the incidence of adult imprisonment had begun to rise, dominated by the coming of age of those cohorts which had been placed in the custody of the State as children.

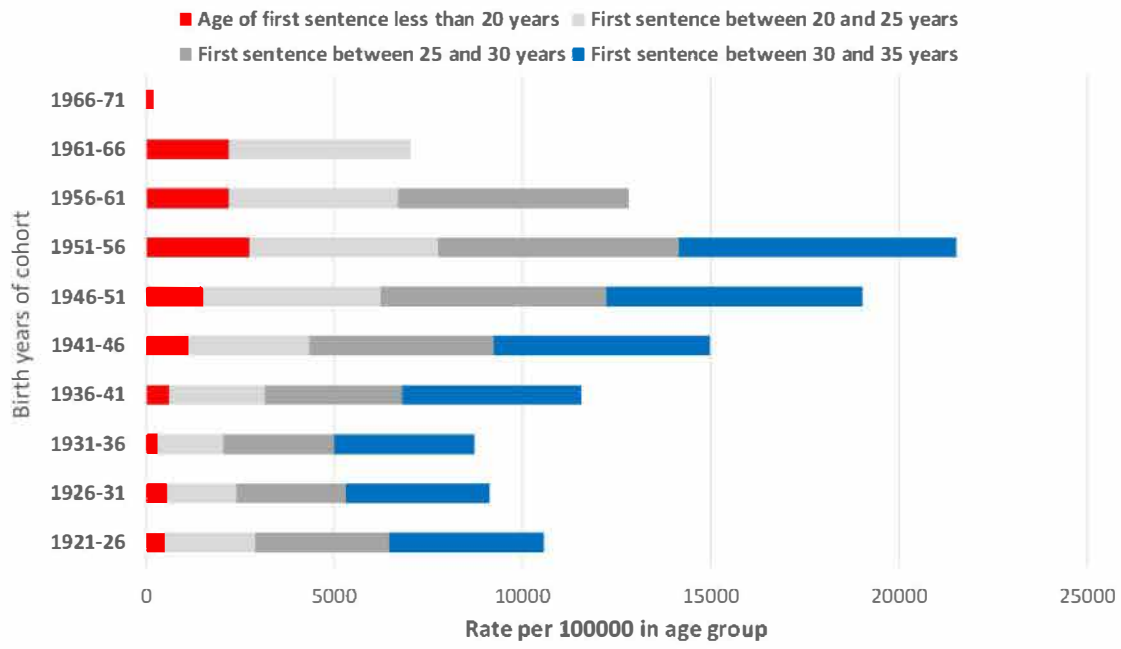
Figure 14: Change in age mix of Māori males in prison 1961–1981



Source: Department of Statistics Annual Reports on the Justice System

We can measure differences in the rate with which each of the birth cohorts of Māori males in the early 20th century have been imprisoned during their life course by the justice system. Figure 15 shows the share of the Māori males born in each five-year period who were placed in prison for the first time at the stated age. The cumulative experience of being imprisoned can be seen from the chart. For example, for those born between 1921 and 1926, just over 4 percent of Māori males had been sentenced to prison by the age of 35. That had risen to about 7.5 percent for those born in 1951 to 1956.

Figure 15: The changing ages at which successive cohorts of Māori males born between 1921 and 1971 received a first prison sentence: For the stated age group rate per 100000 in birth cohort



Source: Department of Statistics (1990)

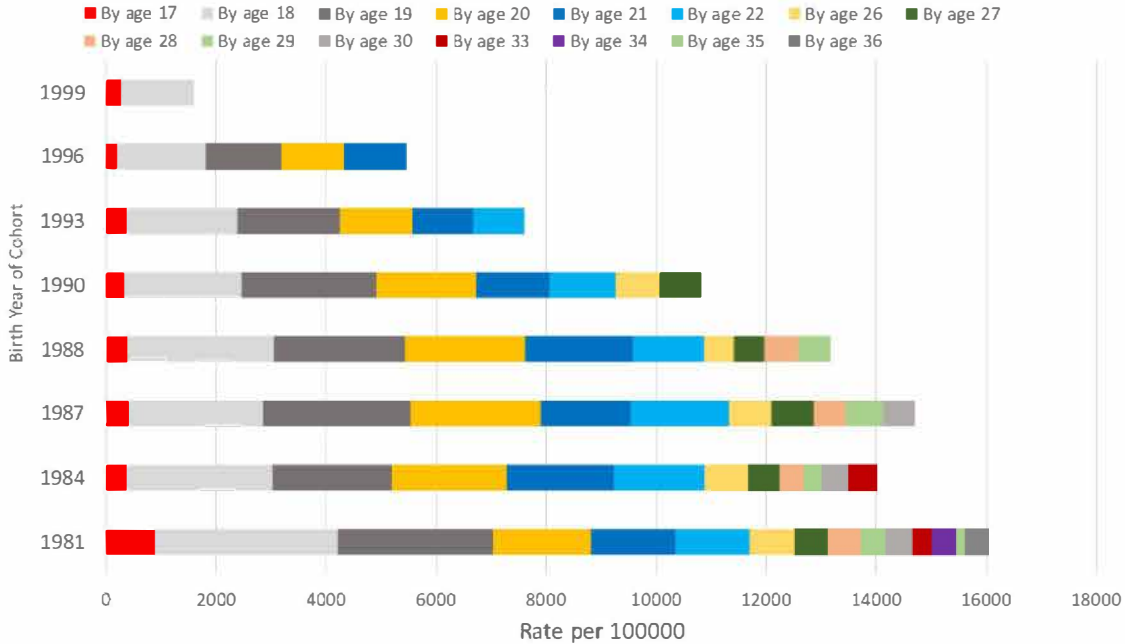
5. Current Trends in the Incidence of the Custody of Māori by the State

The diversity in experiences of each Māori birth cohort in custody of either the child welfare agency or the prison service has resulted in considerable variation in the current trends of incidence of State custody for men and women of all ages, whether in prison or on remand. History is no guide as to future direction.

5.1. Imprisonment and the First Two Generations of the Māori Demographic Revival

Figure 16 shows that the age of first entry to prison for Māori males was lower in 1981 than later years, was relatively stable for those born between 1984 and 1990 and has been steadily rising since 1990. Of Māori males born in 1981 nearly 18 percent were imprisoned by the age of 30, and 20 percent had been imprisoned by the age of 36. The most comprehensive analytical information available indicates that 20 percent of the Māori males born during 1981–86 had been sentenced to an adult prison by the age of 35, and some 18 percent had been imprisoned by the age of 30 years, the same rate as those born during 1986–1991. By the age of 25 years, 14 percent of Māori males born during 1981–88 had been in prison, whereas the corresponding imprisonment rate for those born after 1992 was 11 percent. At ages up to 22, those born after 1992-93 were sentenced to prison for the first time at half the rate of those born a decade before. For Māori males born during 1991–96, the share who had been imprisoned by the time they reached 20 years was 4 percent.

Figure 16: The changing ages at which successive cohorts of Māori males born between 1981 and 1999 received a first prison sentence: For the stated age group rate per 100000 in birth cohort



Source: StatsNZ Integrated Data Infrastructure., Ministry of Justice analysis

In a 2007 report, the Department of Corrections described an inverse correlation between age and re-imprisonment. In an early study of reconviction patterns published in 2007 they reported that “77 percent of offenders aged 17 at time of release were returned to prison, while the rate for those aged 19 was almost a quarter less”. The writer then observed that “offenders who receive sentences of

imprisonment by age 17 are likely to have a significant history of juvenile offending, which is itself predictive of future, persistent criminality". In this 2007 study, the range of alternatives to prison was not tested, which creates doubt about the validity of making use of such generalisations in individual assessments.

We know that a significant share of New Zealanders who have been imprisoned as adults were involved as children with the processes of the Children's Court and consequent institutionalisation. The most significant sign of this from comparing statistical trends comes from following the later life course of the group who experienced the extreme rates of State custody of children during the 1970s and up to 1984.

Summary of findings from the cohort studies presented in Figures 15 and 16

For Māori males aged under 20

- a) For the generations who were youths before the post-War urbanisation of Māori, 0.5 percent (one in 200) were imprisoned when younger than 20.
- b) For those born during 1991–96, 5.5 percent (one in eighteen) had been imprisoned by the time they reached 20.

Those aged under 25

- a) By the age of 25, 14.3 percent (one in seven) Māori males born during 1981–86 had been in prison. This is higher than the incidence for the next two (five-year) birth cohorts, whose incidence of imprisonment by age 25 had fallen respectively to 13.4 percent and 12.0 percent.

By the age of 35

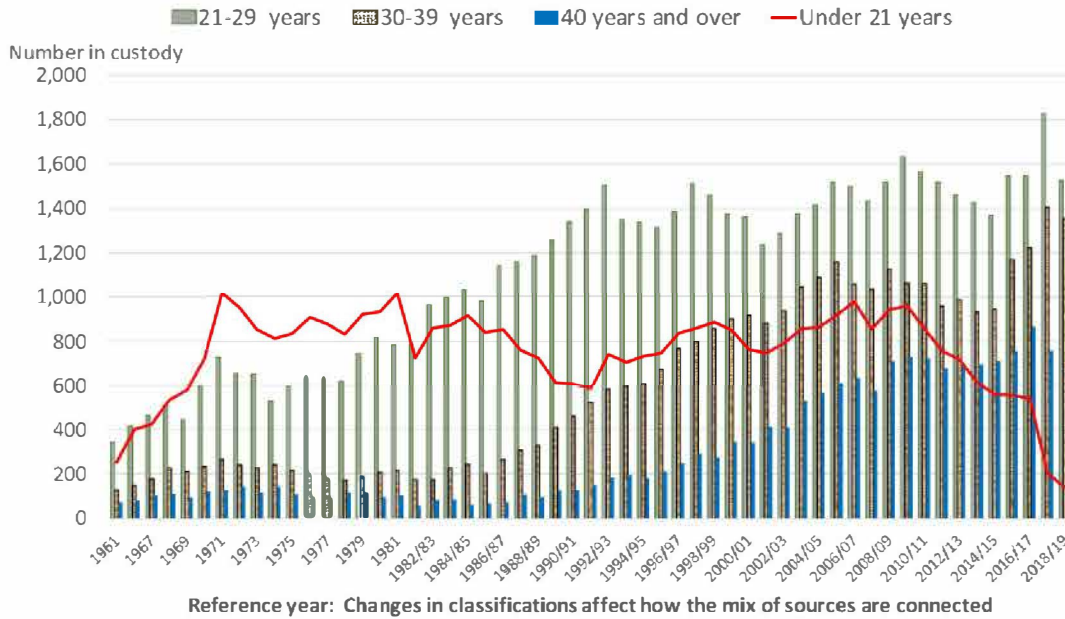
- a) Of Māori males born from 1921–1926, 5.5 percent had been imprisoned by age 35.
- b) Of those born during 1951–56, 7.4 percent had been imprisoned by age 35. This was just one-third of the incidence of 20 percent for Māori males born 30 years later, during 1981–86. This is the most recent period for which this can be measured.
- c) While 20 percent of Māori males born from 1981–86 had been sentenced to an adult prison by the age of 35, 18 percent had been imprisoned by the age of 30 years.

5.2. Trends in the Age Structure of the Māori Male Prison Population

After experiencing the extreme rates of State custody of children during the 1970s and up to 1984, in general, this particular cohort of children grew into the 20–29 year olds of the 1980s and then the 30–39 year olds of the 1990s. The ageing of this birth cohort has been the most significant trigger for rises in the age-specific incidence of imprisonment of Māori men and women, for three decades now. The experiences of Māori males and females aged 40–49 have now displayed these patterns. Up until around 1996, the incidence of imprisonment of Māori males aged over 40 had stayed the same since 1956, but progressively since 1996 the incidence of imprisonment for this age group has quadrupled.

Figure 17 presents the number of the Māori males in each age group who were imprisoned in any given year. It shows the rapid rise during the 1960s in the number of Māori males aged under 21 who were imprisoned, and the decline since 2008/09. The increase in males aged 40 and older rises rapidly after 1996, while for males aged 30–39 a similar rise occurs around 1986. For those aged 20–29, between 1981 and 1993 a significant trend shift occurred in the number imprisoned. The number of Māori males aged 20–29 years in prison has varied around the same level for near to three decades.

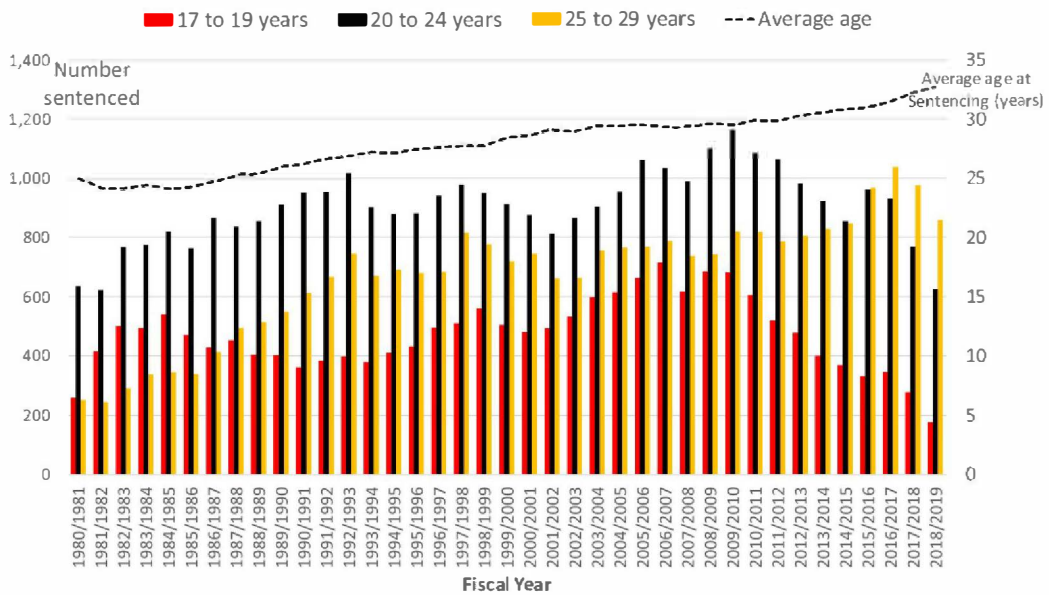
Figure 17: Trends in the number of Māori males in prison by age group, 1961–2019



**Source: Statistics New Zealand website Department of Corrections prison statistics
 Statistics New Zealand website Justice Ministry sentences by the Children’s Court.
 Department of Statistics Annual Justice Reports
 I have imputed some 1980 values.**

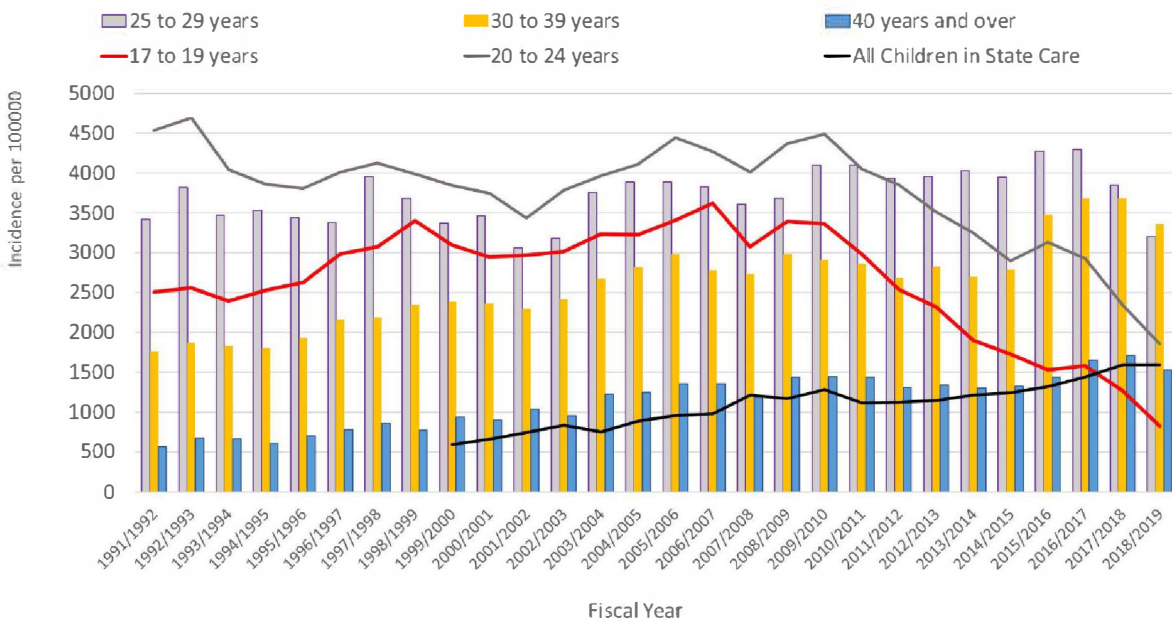
The analysis of prison inmates is currently published by the Department of Corrections for 10-year age groups, which obscures the very different trends that have been occurring over some 15 years in those aged 20–24, and those aged 25–29. The statistics of sentencing by the Courts that are published by the Ministry of Justice show separately those aged 20–24 and 25–29. The pattern since 2008/09 for those aged 20–24 compared to those aged 25–29 is significantly different. There seems to be a strong relationship between the reduction in offending reported for those aged between 17 and 24 years and the fall off a decade earlier in the number of children taken into the custody of the State after 1988. As well as highlighting the difference between those aged 20–24 and those aged 25–29, Figure 18 also shows that the average age of those sentenced has been rising since 1986/87 from about 24.5 to nearly 34 (my calculation).

Figure 18: Number of Māori males sentenced to prison each year by age group, 1980–2019



Source: Statistics New Zealand website (a) Annual Sentenced Prisoner Population (b) Sentences of the Children’s Court for the latest Calendar Years.
 Department of Statistics Annual Justice Reports
 I have imputed some 1980 values

Figure 19: Incidence of sentencing to prison for Māori males by age group, 1980–2019 and incidence of Māori Children in the care and protection of Oranga Tamariki



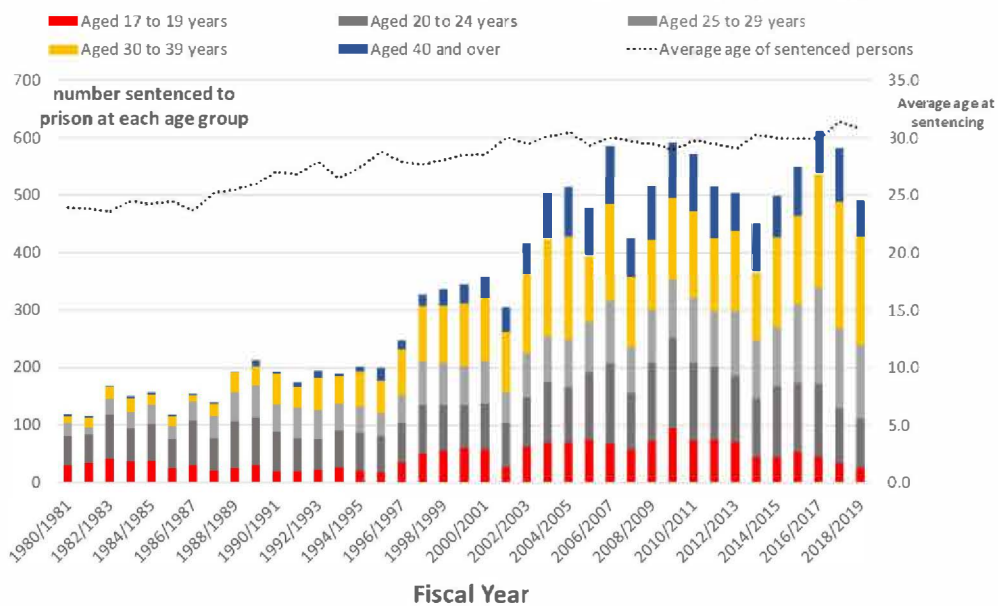
Source: Statistics New Zealand website Department of Corrections prison statistics, Oranga Tamariki website, my calculation of incidence per 100000

Figure 19 shows that the incidence of Māori children aged 17 and under in the care and protection of the child welfare agency has been rising since 2000. The incidence increased from 590 per 100000 to 1600 per 100000 Māori children. The same figure shows that over the last half of that same period the incidence of receiving a sentence of imprisonment by Māori males aged 17–19 has fallen from 3394 to 826 per 100000. Given that we can now recognise a strong connection between the earlier periods of significant change in the level of children in State care and protection and the later incidence of imprisonment of young adults, the relationship between these two trends should merit further study and explanation. Gordon and MacGibbon (2012) present the results of a small sample of prisoners and their families that outlines the breadth of issues faced by the families of prisoners, and the depth of the connections of those in prison to children, whanau and partners.

5.3. Māori Women and Prison

The rate with which Māori women are imprisoned at each age group has a different pattern from that experienced for Māori males. The rate of imprisonment has risen quickly as the cohort born between 1955 and 1970 reached the threshold ages of 30 and then 40 years. As discussed in section 3.9, after several high-profile tragedies involving children in the late 1990s, care and protection notifications to the Ministry of Social Development (MSD) escalated. After remaining steady at between 20,000 and 25,000 a year through the decade to 2004, they then rose to over 120,000 in 2010. Figure 20 shows the age distribution of Māori women sentenced to prison between 1980 and 2019. There is a rapid rise around 1997, with women aged 17–19 and 30–39 increasing the most. After 2002/03 women aged 20–25 increased in number, as did women aged 40 and over. Offences against justice procedures, government security and government operations have contributed to a significant shift since 2002 in the number and age mix of Māori women in prison. This is seen in Figure 21.

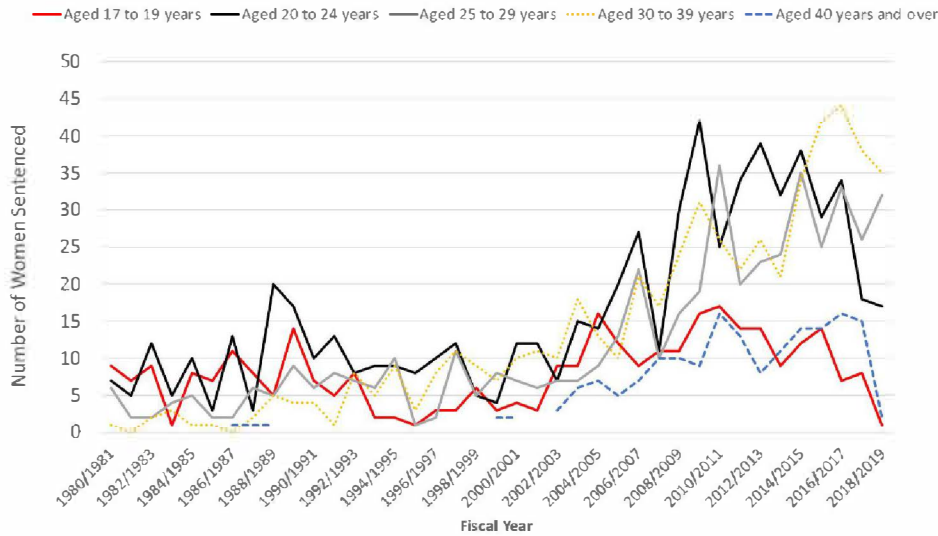
Figure 20: Number of Māori women sentenced to prison by age group, 1980–2019



Source: Statistics New Zealand website Annual Sentenced Prisoner Population

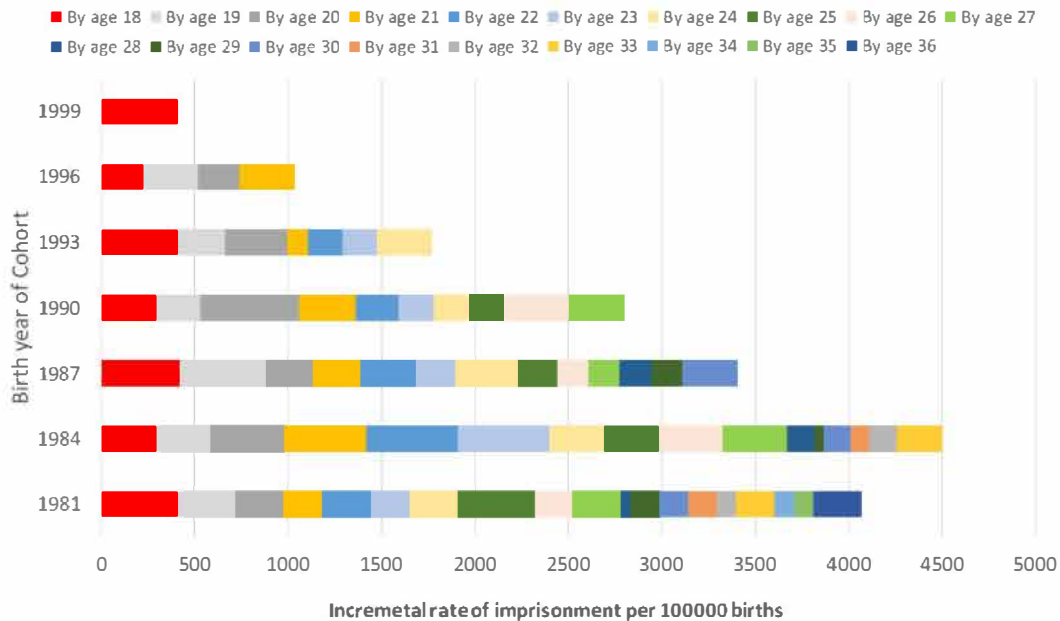
The increase in women aged 20–29 years sentenced to prison has been quite marked. This is the age range when most Māori women would be rearing children, so the implications for the number of children with parents in prison would be significant.

Figure 21: Number of Māori women sentenced to prison for offences against justice by age group, 1980–2019



Source: Statistics New Zealand website Annual Sentenced Prisoner Population

Figure 22: The changing ages at which successive cohorts of Māori females born between 1921 and 1971 received a first prison sentence: For the stated age group rate per 100000 in birth cohort



Source: StatsNZ Integrated Data Infrastructure, Ministry of Justice analysis

The age of first entry to prison for Māori women has been fairly stable for those born between 1981 and 1993, then has declined somewhat since 1993. Figure 22 shows that 1984 appears to be a somewhat aberrant result. Some 4.5 percent of Māori women born between 1981 and 1987 have been sentenced to prison by their mid-30s.

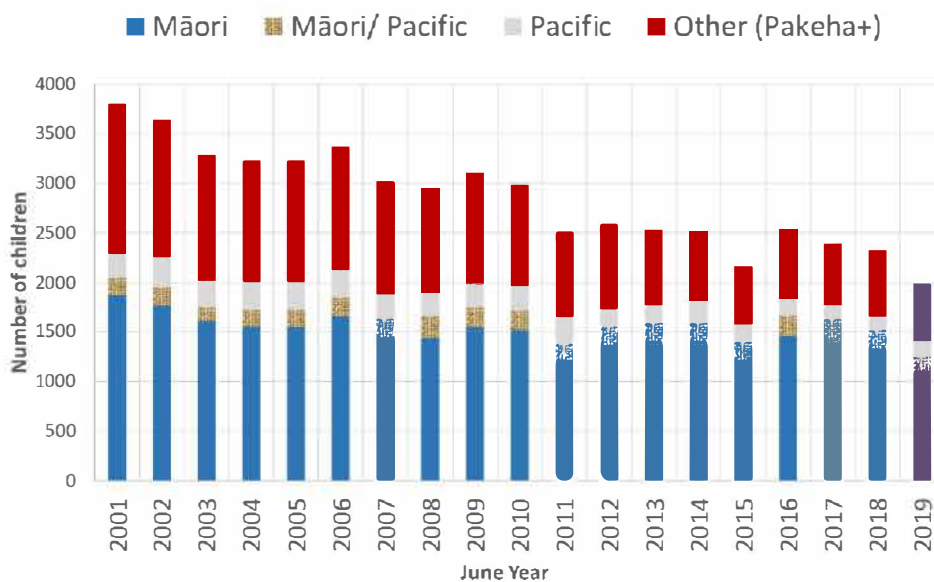
Māori women encounter the justice system as children, and as mothers, as well as through being recipients of benefit processes, and disproportionately as victims of family violence. For the reasons noted in section 2.1, just being Māori can lead to greater surveillance and selection bias when the child welfare agency makes use of algorithms.

5.4. Looking Beyond the Administrative Counts of Children in State Custody

By 2019, the annual rate of tamariki Māori entering the care and protection of the child welfare agency had halved compared to 2001. However, the rate with which tamariki Māori were held in the care and protection of the child welfare agency was 2.5 times greater than that of 2001. These two diverse trends occurred because the rate of leaving State care did not fall in the way the rate of entry did. Non-Māori trends saw a larger fall between 2001 and 2019, so that the chance of non-Māori children entering care by 2019 was just one-third of that in 2001. For non-Māori children the chances of being in care in 2018 were similar in 2001, although for a period between 2001 and 2019 there was a significant increase that had reversed by 2018.

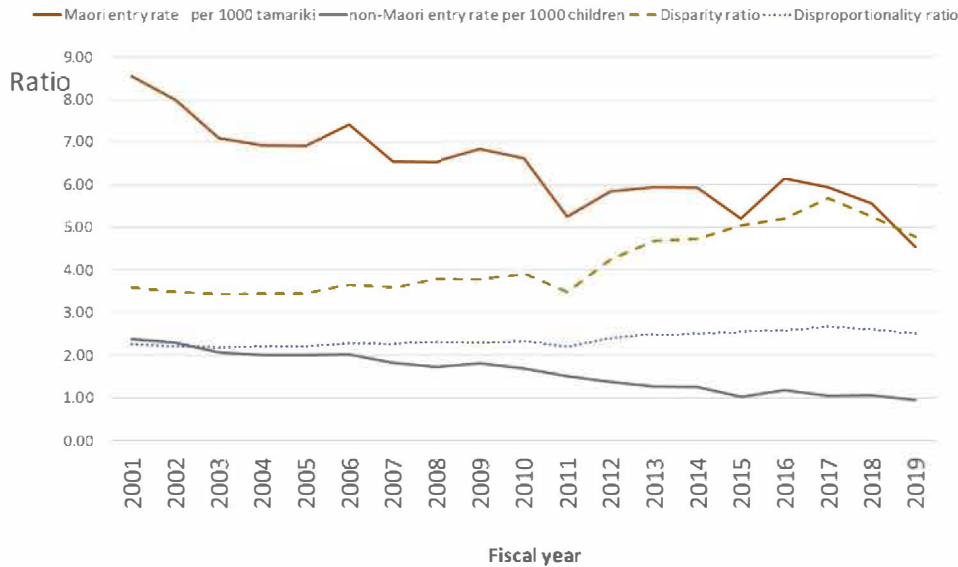
Figure 23 shows the ethnic mix of children who entered into the care and protection of the child welfare agency each fiscal year (ending 30 June). There is a decline in Māori children entering care, and a greater decline in the number of Pākehā children. This has led to the situation where although the incidence of Māori children in care is declining, Māori disproportionality is increasing, as is disparity between Māori and Pākehā.

Figure 23: Number of children who entered care of the Child Welfare Agency by ethnicity, 2001–2019



Source: Oranga Tamariki

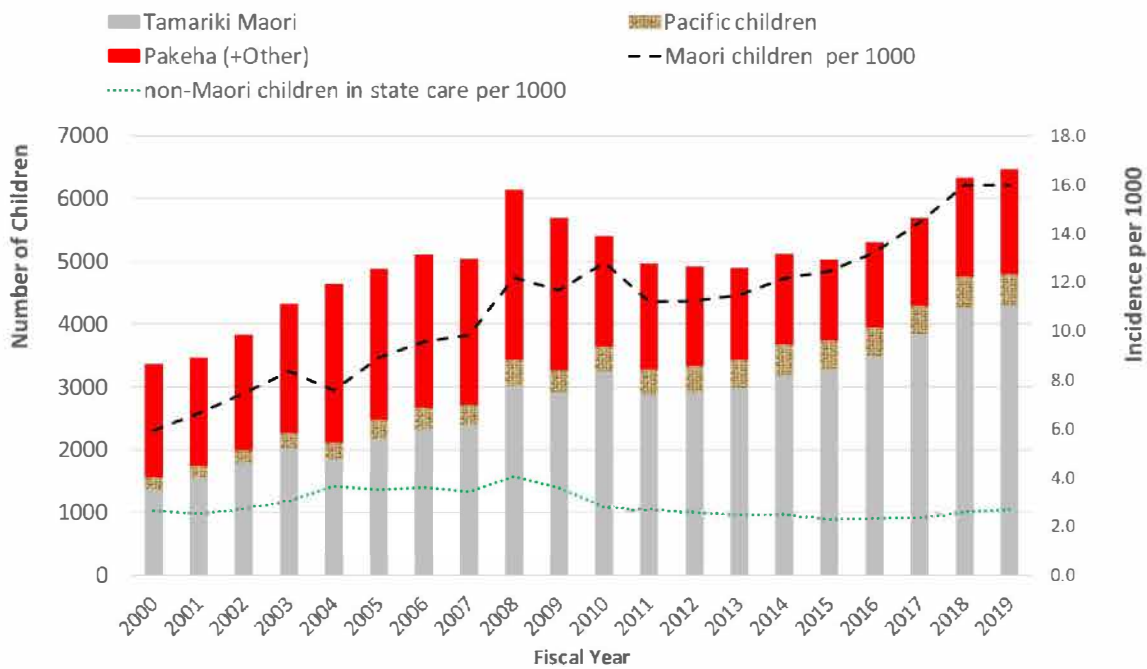
Figure 24: Comparison of disproportionality and disparity measures for children who entered care of the Child Welfare Agency, 2001–2019



Source: My calculations

Figure 24 presents calculations by the writer of measures of disparity and disproportionality for Māori children derived from the information in Figure 23. While disproportionality and disparity with European children are moving in the same direction, the trend change is rather muted for the disproportionality measure. This results from the majority of the children being Māori, so that the denominator and numerator are of a similar magnitude.

Figure 25: Ethnicity of children in the care of the child welfare agency, 2001–2019



Source: Oranga Tamariki, my calculations

Figure 25 presents trends in the number and incidence of children in State care. When examined alongside Figure 22 of children entering State care, it points to the need to also examine trends in exits from State care. The age distribution of children in State care is changing partly as a result of these diverse trends. The number of children in the care and protection of the child welfare agency shows a rising trend between 2000 and 2006, and from 2016 up to now. The increase in 2008 is aberrant, reflecting a probable response to incidents at the time such as the death of the Kahui twins. Underlying these shifts is a continued increase in disparity so that the level that prevailed from late 1988 until 2000 has now risen significantly. In a recent report *Youth Justice Insights*, analysis of the Oranga Tamariki statistics identified little difference in the likelihood between Māori children with care and protection statutory involvement and those in a care and protection placement having a youth justice statutory placement. For non-Māori children however, those in a care and protection placement were more than twice as likely to have a youth justice statutory placement compared to those with care and protection statutory involvement.

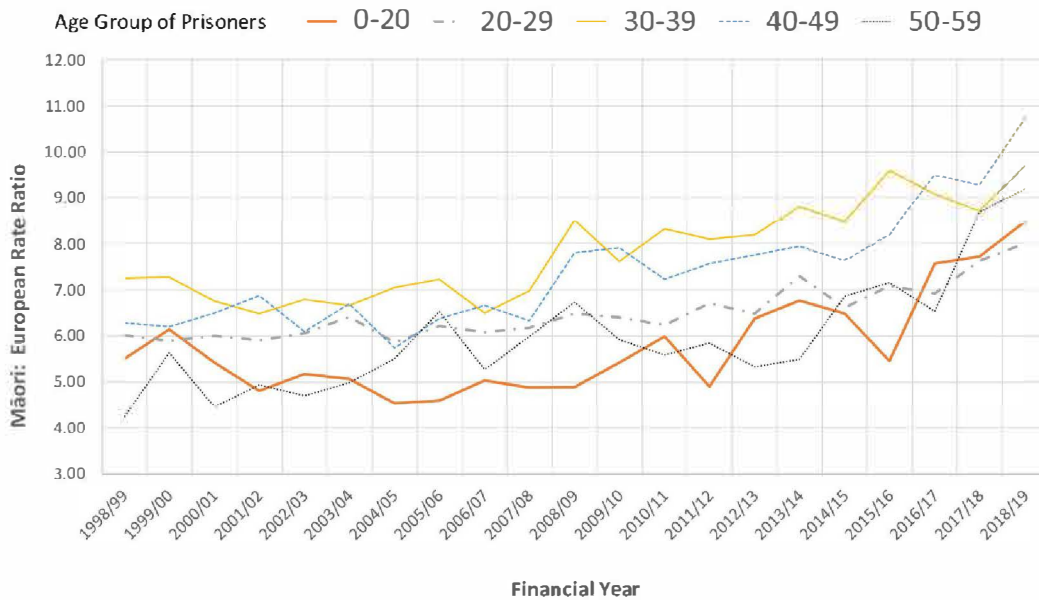
5.5. Divergent Trends among Institutional Systems

By 2018 the share of children in care and protection of the child welfare agency had grown to be more than double the rate in 2000. The share of Māori children aged 16 and under who have been taken into care has risen from one in every 125 Māori children, to one in every 64. Over this time there has been a progressive increase in the share of younger children in care, including babies. The rate of taking Māori children into care has climbed during the 18 years to 2018, while that for Māori youths aged 17–19 receiving a prison sentence has fallen during the same period. The convergence of these rates suggests that child care and protection and youth justice policies and practice have become somewhat at variance with each other. Expert study is essential now to assess how far the upward lift in Māori children placed in care by the Family Court might in the future counter the downward trends in the share of young Māori sentenced for offending by the Youth Court. Tension between the statutory authority behind the practices of State agencies and their local political legitimacy among affected communities has become the subject of inquiry.

Between 2000 and 2019, divergent trends in the incidence of sentences of imprisonment emerged. Despite a continued decline in sentences of imprisonment for Māori males under 25, as well as declining rates of appearance before the Children’s Court, the incidence of prison sentences for Māori males who are older than 25 continues to grow. The long-term trends in Māori/non-Māori disparities in child custody are indicative of the way discrimination in its various forms has become embedded in the wider child welfare system. There is a complex interconnection between custody as a child by the State, and later imprisonment as an adult. There is also the higher likelihood that the children of those who have been imprisoned will end up in the custody of the State in some way.

Being able to compare trends in child protection with trends of Children’s Court appearances and of imprisonment rates particularly at younger adult ages can provide indicators of potential effects of current policies and practices in both the care and protection of children and adult imprisonment. Figure 26 uses the disparity ratio to compare the incidence of imprisonment of Māori males to the incidence of imprisonment of European males each age group. When the incidence of European males is quite low, the disparity is amplified. The graph shows that in each age group disparity has been moving upward since around 2008/09, particularly the youngest and oldest age bands.

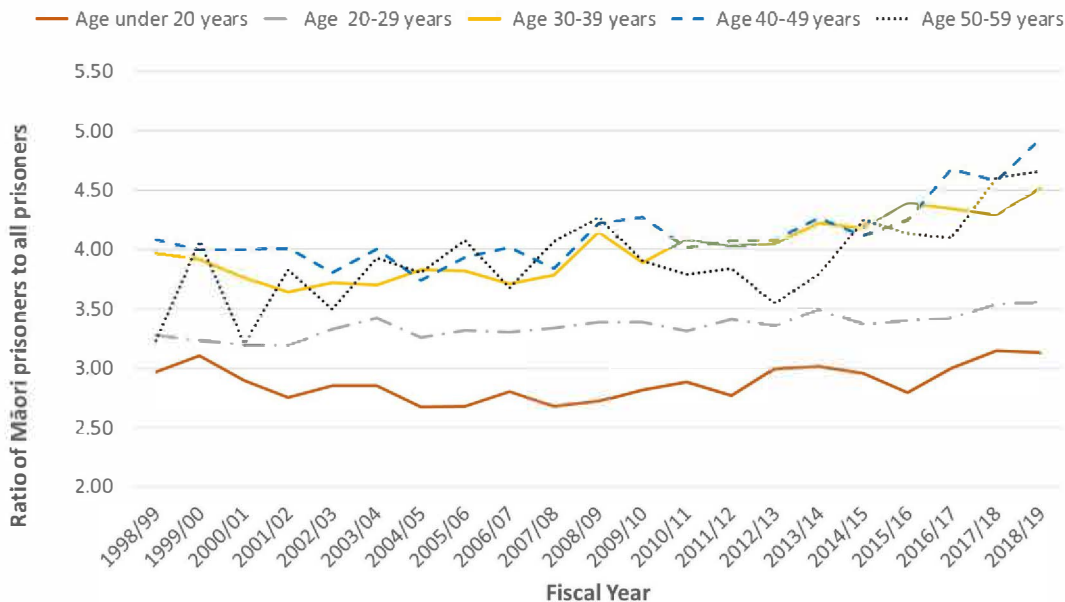
Figure 26: Disparity in imprisonment (sentenced and remand) between Māori and European males across age groups, 1998–2019



Source: Department of Corrections

Measuring disproportionality with population averages is a blunt way of distilling bias in the justice system. Disproportionality rates have value in comparisons over time, or between groups, but in aggregate they act more as an index which is itself devoid of value. The earlier rate ratios up to 1990 presented in Figure 4 were crude approximations as they could not account for changing population structures.

Figure 27: Age group differences in the disproportionality in imprisonment (sentenced and remand) of Māori males, 1998–2019



Source: Corrections

Figure 27 shows the ratio for each age group of the incidence of imprisonment of Māori males to the incidence of imprisonment of European males. The figure provides age-specific series, with the age group ranges being those available from published statistics. The figure shows that the disproportionality that was steady at around four times from 1945, except for 1970–85, has risen since 2015.

5.6. Links between Child Custody and Later Imprisonment

In making long term comparisons, it can be difficult to assess the extent to which the nature of State custody of children is itself different over time. A larger share of children in the care and protection of the State are now placed with related *whānau* compared to the predominance of custodial and supervisory outcomes described in Section 3.5. The age of the children that are taken into State care is becoming younger. This has followed continual increases over the past two decades in the share of children that come to the notice of the child welfare agency as babies, and hence require an assessment of their wellbeing.

Notifications to the child welfare agency may have grown as a consequence of other programmes, such as family violence prevention. By the nature of their demographic characteristics, Māori will be disproportionately represented in selection criteria for predictive models that include age of mother and family history with the justice system. For Māori, the younger ages of Māori mothers and the higher likelihood of some prior offending by someone included in the family histories of larger *whānau* can result in greater oversight by the State than a non-Māori woman in the same situation might receive.

6. Accountability, Legitimacy, and Institutions, Laws and Community

In recent years, quantitative information has been presented in Parliament to support law changes affecting the prison system that has been very wrong⁵. This limits the effectiveness of policy analysis and justice system design in properly framing legislation and gaining public legitimacy.

This study points to arrival in the care and protection of the child welfare agency being a critical entry point to ongoing interaction with the wider justice system. The connections are most marked for specific cohorts and reflect not only their demographic characteristics but also the perversity of public policy at critical times. The gains from managing to reduce recidivism will differ across cohorts, as will the points in the life cycle where the investments would be best made.

6.1. The Need for a Coherent Policy Toolkit and Analytical Models

The importance of achieving fairness at a case level in the face of known historical systemic bias has not been reflected in the depth of research on the wider justice system and its oversight. The accountability of public sector agencies and contracted organisations across the wider justice sector is assessed by fiscal compliance alongside selective reporting of performance. This has been insufficient to ensure public legitimacy of the system. Any commonality of commitment among components of the system is not associated with commonality of effect. One reason is the low likelihood of cross-agency cooperation (among Judiciary, Police, Prison Service, Parole Board, Crown Prosecutions Service, for example) in meeting common goals for reducing the incarceration of Māori. We still lack the oversight of systemic elements that the Roper report argued for nearly 35 years ago, even though they underpin the current disparities and could further increase disparity.

Institutional world views on child welfare practice have often lacked scientific justification. Assertions of “best practice” need to be independently justified by more than self-assessment and praise. Taylor (2019) documents how since the Child Welfare Act of 1925, the State has provided the young in its care with various waves of psychological treatments and mistreatments, and those that prevailed between 1950 and 1999 are now the focus of a Royal Commission. Although the effect of systemic influences is strong, public policy and institutional practice are dominated by a focus on estimating the propensity of individuals to become offenders. As an example, Department of Corrections (2007) analysed potential bias in access to home detention. Absent from the study was consideration of the communications networks around New Zealand, such as in Northland and other places with a higher share of the population that is Māori. In the last decade, changes in criminal law increased the likelihood of incarceration as either a remand or a sentenced prisoner. Understanding the impact of incarceration on the life course of individuals, particularly the young or those who are parents themselves, has yet to be a significant focus of research and official or political interest.

6.2. Risks from Individually Based Analytical Models

In the absence of cohort analyses, the measures that usually have prominence are those which seek to explain the characteristics of people through their place in the institutions of the justice system at any one time. Such comparisons ignore the interactions of the population, and Māori in particular, with the whole justice system. The predominant focus of solutions to New Zealand’s high incidence of incarceration, and the disproportionate rate of incarceration of Māori, has consequently been on the personal risk factors of current offenders, with little attention to the system. This system is shaped by both institutional roles and cultures and the political judgements of the past and present. While the

⁵ <http://www.legislation.govt.nz/bill/government/2012/0017/latest/whole.html>

political judgements generally determine policy, it is the various institutional cultures of government that shape operational practice, such as the effectiveness of prisoners' reintegration with their whānau and wider society.

The more recent forms of predictive modelling used across the wider justice sector examine patterns and connections across groups using the information gathered by the State to forecast the consequences of offending by men and women. These models have not been designed to take account of differences in cohort connections with the justice system, and they risk reinforcing the momentum behind the still-increasing adverse engagement of Māori with the justice system, rather than enriching our capacity to rethink and challenge the influence of our past on the present. Because of their reliance on the information gathered by the State for the administration of statutes, the information used has not been shaped by social and economic knowledge built up over a century or more. Such models do not challenge or test received wisdoms in any comprehensive manner. A report (Department of Internal Affairs and Statistics New Zealand, 2018) outlines the range of uses of predictive modelling but does not provide a statistical critique of their scientific validity. Brooks (2020) in a recent comparison of the New Zealand and Texas criminal justice systems argues that violent crime is more broadly defined than in Texas, and that sentences for the same offences are harsher in New Zealand. His work provides yet another missing dimension of a comprehensive analysis of the criminal justice system in New Zealand and challenges the form and application of the classification of offences.

In recent years, the quantitative information that has been associated with changes to laws affecting the prison system has been simplistic at best. Some have described the situation as chaotic (JustSpeak, 2017). This negates the value of policy analysis, justice system design and properly framing legislation, as well as public accountability. Forecasting long-term prisoner numbers has often proved inaccurate, with one reason being unanticipated changes and insufficient understanding of the factors that drive those numbers.

6.3. Iwi, Whānau – Influence on Policy and Practice Relevant to Māori

We have no comprehensive measures of the changed strength of Māori whānau, hapu and iwi in providing a more favourable context for raising and supporting tamariki Māori. A strengthened recognition of the Treaty of Waitangi triggered by the Treaty of Waitangi Act 1975 was followed by the introduction of human rights protections, innovative youth justice institutions after 1989, independent institutional oversight and an emergent community of Māori jurists, legal authorities and practitioners.

Outside the public sector, at a community level there have been additional Māori focused initiatives. We have seen Maatua Whāngai, Tu Tangata, Kohanga Reo, Kura Kaupapa Māori, Whānau Ora. A range of Māori community health organisations started during the 1990s by the Health Funding Agency. A significant change in having whānau care for children that are in State custody has occurred. Initiatives in environment, Treaty settlements, Māori language and family violence have invested in strengthening the institutions that can disconnect Māori from the justice system. These Māori institutions and community initiatives have boosted community connection with the young. More stringent policies regarding housing access and income support policies have conflicted with greater community connection. Workman (2019) argues the importance of Whānau Ora to "*legitimate the place of whānau in the criminal justice system*". He explains the context and the extent to which past events continue to shape Māori experiences in the justice system.

For older men and women who have already been imprisoned, the main solution of the State continues to involve providing more prison cells. The doubling of the average time spent in prison on remand between 1999 and 2019 along with the rise in recidivism rates and mixed views on the viability and

commitment to rehabilitation are performance measures that reflect significant system failure. We have yet no means for redress or rehabilitation of those born before the early 1990s. The prison system has been overwhelmed by the increased placing of offenders on remand rather than bail. Consequently, the impact of the justice system on Māori has diverged in the last 15 years. Significant falls in imprisonment of those aged 17–19 and 20–24 have not offset the increases at older ages, although the imprisonment of those aged 25–29 has stabilised.

The propensity for Māori to be disproportionately in the custody of the State compared to non-Māori remains from conception and birth. The pathway that connects individuals to the various arms of the wider justice sector in New Zealand has been analysed, from complaint of alleged offence through to sentencing, in a thesis (Jones 2016). Lambie (2018) has explored how some of these influences disproportionately affect Māori. Similar patterns for 1930 and 1958 are cited in section 3.4 from the Hunn report. There is insufficient study of the nature of practitioner bias in New Zealand and how to counter it. Oranga Tamariki’s support of the work of Keddell and Hyslop (2019, 1) shows a willingness within agencies to develop strategies for this purpose.

6.4. Managing the Accountability and Legitimacy of Institutional Practices across the Justice System

For constitutional reasons, the justice sector consists of organisations that have distinct places in our system of government, and this results in fewer levers for integrated responses than other parts of the State. We expect the Judiciary, Police, Corrections Department, Crown Prosecutors and Parole Boards to have a high degree of independence in their operation and practices. Each of these component bodies tends to focus on solutions that they can manage. Corrections, for example, appears to focus on the prison stock and prison operations. Yet any government-wide strategy to significantly reduce offender numbers and prisoners needs to be explicitly comprehensive and include initiatives particularly fitted for each of the Judiciary, Police, Corrections, Crown Prosecutors and Parole Boards, as well as the wider social services sector. These actions need to have an overall coherence and would not have the same capacity to be mutually reinforcing if implemented in a piecemeal way. Assessing the societal impact of placing people on remand for prolonged periods does not appear to be the responsibility of any agency. In this regard, the Ministry of Justice has acted as though its role is comparatively limited compared to that taken with respect to health systems and outcomes by the Ministry of Health.

Legislative change has usually played a part in strengthening the connection of Māori with State custody. In this, the Adoption Act 1955, the Child Welfare Acts of 1925, 1948 and 1974, and the Bail Amendment Act 2015 have been pivotal, while the Children, Young Persons, and Their Families Act 1989 has been vital in reducing the number of children in the custody of the child welfare agency and looks certain to have influenced the decline in youth imprisonment. The report of the Chief Science Advisor (Lambie, 2018) surveys the legislative changes that influenced imprisonment rates. Lambie noted that:

Despite policy changes in response to high-profile events (e.g., the Burton incident in 2007), imprisonment rates do not correspondingly decline — that is, there is no evidence of the supposed ‘deterrent’ effect of harsher sentences. On the contrary, these political decisions appear to drive up the prison population and put further costs on the taxpayer.

The wider justice system and social welfare changes of the last decade have led to a more mean-spirited administration of welfare services. This may have disproportionately affected older ex-prisoners, threatening the likelihood of successful reintegration to society. Employment options, housing and connections with services generally have become less supportive of the older prisoner group. We also know that the rapidity with which incarceration takes place after sentencing means that many have

asset losses from the consequent inability to manage financial commitments including rental obligations.

Most importantly, changes in all areas of the justice sector as well as health and social services need to be accompanied by a comprehensive analysis of the short- and long-term impacts on the prison population. A common element of changes in the law over the past two decades has been a serious understatement of the impact on the prison population, contributing to overcrowding, serious concerns about mental health of prisoners⁶, and high recidivism. All this is in the face of a falling crime rate and falling rates of imprisonment for young men aged under 25. Yet Ministers have been overseeing since 2000 the most extensive prison building period in New Zealand history.

6.5. Rehabilitation and Recidivism

A broader-based study than this would include recidivism, and therefore the impact of rehabilitation, but this is beyond the scope of the official statistics analysed here. Lovell and Norris (1990) analyse the experiences until age 24 of all boys born in 1957. For that cohort they show that despite the chance of appearing before a court as a first offender being much higher for Māori males than non- Māori when young, the likelihood of reoffending was much the same for Māori and non- Māori at all ages. The study by Nadesu (2009) provides a rich analysis of a cohort of prisoners released in 2002/3 and their connection with the justice system over the following 5 years. Some external assessments of rehabilitation by Newbold (2007) and Brooking (2011) within the prison system are withering and sanguine. They observe that rehabilitation philosophies are developed and changed with little scientific backing or evaluation, and programmes are designed and delivered haphazardly. System belief in the effectiveness of rehabilitation sometimes may seem weak, and the above assessments observe that innovation seems to require strong political direction for actions in the face of this well-entrenched world view. There has not been significant success in remedying low levels of literacy and alcoholism in a prison environment despite their obvious influence on the likelihood of repeated imprisonment.

Recidivism rates are currently rising, and the average time on remand has doubled in the face of declining offending, perhaps pointing to the justice system needing a richer evidence base that reflects the costs to society as well as the opportunity cost of imprisoned members of communities. Agency performance measures have little relevance and are a weak substitute. The current review of the criminal justice system (Te Uepū Hāpai i te Ora – Safe and Effective Justice Advisory Group) creates an opportunity to be an exception to this, and its preparedness to challenge the inertia in penal outcomes for Māori should not be a missed opportunity for reform. The Waitangi Tribunal ruled in 2016 that the accountability of the Corrections Department for reducing recidivism did not generate policies and programmes that would shift the huge imbalance between Māori and Pākehā in the incidence of imprisonment.

⁶ *“The vast majority of prisoners experience significant challenges related to mental health and addiction, often in combination, and at rates much higher than in the general population. A study published in 2016 found that 91% of prisoners had a lifetime diagnosis of a mental health or substance use disorder and 62% had this diagnosis in the past 12 months. As the Office of the Ombudsman has noted, prisoners (and people detained in other settings) often lack appropriate mental health support.”*
Government Inquiry into Mental Health and Addiction (2019)

6.6. Information Needs for Analysing Disparities and Diverse Trends

Ethnicity classification

Ethnicity is not measured consistently in New Zealand official statistics over the period spanned by this paper. Long-term comparisons such as these draw on statistics that were compiled according to two different statistical definitions, resulting from the major change in ethnic classification that occurred during the 1980s. They are not exactly comparable. A biological definition of race predominated until the mid-1980s, when a measure based on cultural affiliation was introduced into the 1986 Census. Administrative records changed gradually after that time. Justice sector statistics are probably more beset by problems of measuring ethnicity than other official statistics. Although the ethnic classifications are different, in each of the two time periods the definitions used to count prisoner numbers and the total Māori male population are much the same. Oranga Tamariki has introduced a different measure of ethnicity from other agencies. Although rates per each population group can be corrected for this, the counts published will overstate Māori and understate non-Māori numbers in any category. The impact of any difference is not measurable, but it will be much smaller for age-specific rates of imprisonment, than for comparisons of the number imprisoned, and for measures of the total Māori male population.

Evaluation studies after each census tell us that as in other countries there is an undercount in the base population counts from the Census of Population of young males, and this appears to be greater for Māori. This will probably overstate the prevalence of offenders in that population. These issues are comprehensively outlined in a methodological discussion paper (Statistics New Zealand, 2005).

Fragmentation of data sources

Building a coherent picture of the interaction of Māori with the justice system over the last 100 years necessitates the piecemeal gathering of disparately organised and ordered information. Elements of which have approximate definitions in common and cover a sufficient length of time need to be retrospectively connected. Population statistics involve changing definitions of Māori, and administrative statistics often respond to changed definitions with some delay. Criminal court statistics provide information for the longest time periods, as do prison statistics, but in periods before the 1940s, Court reporting only occasionally provides age analyses and then not with any consistency. The Hunn report contains a valuable mix of statistics from 1935 to 1958. Child welfare agency (DSW and MSD) records of children in custody are weak before the 1970s. Finding official statistics about the justice sector before 1980 is patchy, and even more recent series on official websites are subject to arbitrary changes in categories and curtailing of series length. Before the late 1990s some of the statistics available for those imprisoned and for State wards are limited to simple counts.

7. Conclusion

Ma Te huruhuru, Ka rere Te manu

Adorn each bird with the right feathers it needs to fly

The institutionalisation of the Māori population that has continued unabated over the last 100 years would not have strengthened in momentum and scale were all population groups in New Zealand to have had the same experience. Fiscal pressures alone would have necessitated reforms even if any social and moral concerns of legislators and the public had been assuaged. Predictive models that are focused on the predisposition for criminality might have been instead directed at rehabilitation and redress. They limit the extent to which the structure of the justice system and institutional practices and cultures play a part in imprisonment rates. The population effects of incarceration need to be made visible, while the negative impacts of imprisonment and institutionalisation would be the subject of research. This study hopefully will stimulate consideration of where to focus the attention of those leading the reform of the justice system. Prison counts, measures of disparity, recidivism rates all help us understand just a piece of the puzzle that we must solve. This study adds a few more pieces to the mix.

7.1. The uniqueness of each Māori birth cohort

Birth cohorts are likely to differ from each other not only in their size compared to earlier cohorts and share of the total Māori population, but also in their share of the population overall at that age. How these characteristics of the Māori population differ from those of non-Māori from the same birth period influences measures of disproportionality. Given the dynamic nature of Māori population structure there is a need for key agencies to extend cohort as well as age-specific analysis and comparison. This should result in a deeper understanding of what is driving cohort changes, whether it comes from elements of the justice system itself, characteristics which differentiate one cohort from another, or more subtle connections between cohorts or other influences. What happened to cohorts in the past contributes to that understanding.

7.2. Improved incidence and increased disproportionality

There has been no sustained success in countering embedded disparities across the care and custody of children, or adult imprisonment since they began to rise in the period around 1930. There have been long periods during the 1990s when disparities may have stayed at a lower level for a decade, after peaking during the 1970s and 1980s. There has been a shift upwards since 2006. When the incidence of State custody has declined, the long-term growth in the disparity in outcomes between Māori and non-Māori has not abated.

The crude measure of disproportionality that we have signals that the rate with which Māori were placed in State custody first began 100 years ago, and the effects were amplified by continued strong population growth. Disproportionality has worsened through law changes that increased sentence length and reduced remand options. This is also a situation in which there have been improvements in the incidence of conditions, but disproportionality has increased. This is an issue that needs consideration in an integrated way as the solutions may not lie in just one sector, and there may be limits to what universal programmes can achieve in reversing disparities. Institutional practices may have inflexibilities that inhibit the recognition of strengths and other characteristics particular to Māori. There are also many barriers to access for supposedly universal programmes, such as the ability to have access to legal representation in a Court hearing.

7.3. The need for continuing special attention for those born between 1955 and 1974

The reach of past events continues into the present and this will have implications for older cohorts for some time ahead. The treatment of those who were born in the 15 years to 1966 and taken into State care as children between 1971 and 1987 has been instrumental in shaping the future connections of Māori with the justice system, as well as disproportionately affecting many of that pivotal cohort for the rest of their lives.

7.4. The connection between the child welfare agency and adult imprisonment

The interaction between care and protection services and later incarceration is critical. Understanding of this mainly comes from following the later experiences in the prison system of the cohort born in the 15 years to 1966. The share of Māori children in care is now rising and overlapping with the share of Māori aged 17–19 who were sentenced to prison in 2018. However, fewer children are being taken into care, and this may be the more significant indicator of the current momentum in the child welfare system for the extent to which the current institutionalisation of children will influence the future imprisonment rates.

While many of the patterns seen for Māori males over the past 60 years are also seen in trends for Māori women, there are some differences. One of the most significant is the rise in incarceration of Māori women since 2002. As most women affected are of the age when they would usually have children, the impact on care and protection services needs to be transparent. We need to know more about the children of prisoners, and the impact of incarceration of parents on the engagement with child protection and later incarceration of their children.

7.5. Cause for cautious optimism

Although this study spans more than a hundred years, there is only one period when the momentum driving high rates of incarceration appears to have abated. This is in the late 1980s, when the number of children who were State wards halved and stayed this way for some two decades. The rate of imprisonment of adult Māori males also abated. We now see that the level of imprisonment of young male Māori aged 17–19 and 20–24 has been declining for nearly 15 years, as has the rate at which young offenders have appeared before the Children’s Court. There is a need to explore and revisit the evidence available for a deeper understanding of whether this is a transformational change for later cohorts, or merely a delay in interaction with the justice system. These signs give cause for optimism that the share of Māori who experience prison may fall. It is also a significant indicator of the extent to which for many individuals it is the structure of the justice system, as reflected not only in the law but also institutional practices and cultures, that will determine their likelihood of being incarcerated rather than any of their inherent qualities. Meanwhile, for those aged over 25, particularly those aged 30 and over, the trends present a more dismal picture.

The Department of Corrections (2007) concluded that *“In general, offenders who commence their offending careers during their teenage years are considerably more likely to become persistent offenders, particularly if their initial crimes are ones that result in a prison sentence. At any given point in time only a modest proportion of the prison population in New Zealand is aged under 20 years. Many prisoners generally however were first convicted and imprisoned when they were young”*. This conclusion may reflect the experiences of the cohorts at that time, rather than be a generalisation applicable to all later cohorts who have had quite different experiences with both child welfare, youth justice and adult imprisonment. Brooks (2020) study on the more recent experiences of Texas in

reducing the number in prison indicates key elements underpinning such policies that would most likely have resonance to New Zealanders.

7.6. The limited learning from administrative counts

Administrative counts ignore the unique demographic characteristics of each cohort of Māori. They focus on public institutions. By themselves, administrative counts have no regard for the dynamics of the Māori population, while measures of disproportionality need to have regard for the different dynamics of both Māori and non-Māori populations. Administrative counts tell us about the workload at the time on courts, prisons, and child welfare agency resources. Population-focused statistics measure the impact on the population of the justice system, over time, between ethnic groups and across generations. They highlight the coincidence of the urban migration of Māori with the more than doubling of the number of Māori children aged under 15 between 1951 and 1966. Between 1945 and 1976 Māori under 15 years were over 45 percent of the Māori population, reaching a peak in 1966 when more than half of the Māori population was under 15.

7.7. Weak information leadership across the wider justice system

The individual cost of sporadic policy explosion in the justice sector is unlikely to be effectively explored without a rich culture and strong leadership commitment to evaluation and continuous improvement. This has been a weakness in official studies of the justice system. Given that growth in the number and changes in the distribution of those on remand provide a spotlight on the efficiency of the justice system, the continuing increases over the last 15 years in the average amount of time in remand have surprisingly little importance in political discourse. Measures of recidivism provide a measure of the efficacy of rehabilitation, welfare and employment services. They contribute insufficiently to our understanding of the damaging effects of incarceration at formative stages during the lives of people and their children.

7.8. Persistent weaknesses in reporting and analysis

Significant step change as a result of either operational or policy shifts can go unnoticed without regular reporting. One example is the rapid increase in Children's Court appearances in 1971 and the wind down of the same after the mid-1980s, both changes in practice preceding the legislation that empowered the changes that had already occurred. The later changes to the Sentencing Acts impacted on women in 2002, and on remand numbers since 2003/4. The continuing escalation since 2002 of notifications of harm to MSD/Oranga Tamariki has brought massive pressures on a service that remains bedevilled by conflicting roles and relationships with the public. Oranga Tamariki needs to restore the level of reporting previously achieved by the MSD.

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Evidence, accountability and legitimacy: The oversight of child welfare services

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Abstract. New Zealand typifies countries that were colonized in that its indigenous population has long remained disproportionately affected by child protection services and their periods of doctrinaire practices, despite decades of reviews, reforms and promises to change. The very broad scope of child welfare services and their complexity require strong means of holding them to account. Diverse operational practices, as well as differing views of the science and received wisdoms are just some of the elements which create a system which is disconnected for those who engage with it. Public agency performance measures and transparency are not sufficient to bring about the degree of accountability that will meet the needs of public legitimacy when there are diverse communities with different histories with child welfare services to take account of. Strong independent oversight is needed to determine what might make it possible for trust to be properly placed, and legitimacy to be sufficiently established at a system level in order to support social workers in their difficult work amongst all communities. The problems for child welfare services in establishing political legitimacy have significant parallels in how agency and system accountability needs to be established across many unrelated forms of public administration.

Keywords: Child welfare, indigenous, legitimacy, accountability, sentinel events, trust, risk

1. Introduction

In many countries with indigenous populations, child protection and justice systems have a long history of disproportionate treatment involving both child removal and incarceration rates much higher than experienced by other groups. In New Zealand this difference has led to rates for Māori that are often around seven times that of the European population, particularly since the 1960s. A recent increase in the already disproportionate share of Māori children in State care has again put a spotlight on the legitimacy for Māori of how the State is involved in the care and protection of children, including the number and form of the removals of babies at birth. For these services whose fundamental elements have come into question, belatedly strengthening of the forms of accountability and transparency is insufficient. Change includes resolving the difficulty of the State in understanding and engaging with Māori family structures, called whānau, be-

cause of their nature. The system, policy or institutional change that Māori judge would bring legitimacy to ways of ensuring the care and protection of children would not obviate the future need to strengthen how those involved are held to account.

Child welfare services are extensive in their reach, diverse in organizational forms and beliefs, with the most fundamental part being the family, whānau or relevant kin group. The characteristics that make such a complex system work are a common focus; mutual trust and respect; strong collaboration; shared knowledge and continuous improvement. A good number of case studies [4] report that too few of these characteristics are seen across child welfare services at present, and the paucity of regular formal reporting reinforces this conclusion.

It is not unusual for the accountabilities placed on public service agencies to become focused on the efficiency of the agency rather than their impact on the wider communities that they were set up to serve,

or the means by which they are or have been performed. The formalized processes by which families and whānau can hold to account the statutory childcare and protection services have been shown to be weak. Weakness in accountability is a consequence of and contributes to a cultural bias against Māori. The agencies of the State which deal with children have long had a disproportionate effect on Māori, and current practices cannot ignore the way that past racism will determine the nature and operation of the selection criteria now and into the future.

In practice, in whatever way the tensions between responsiveness and the sufficiency of evidence are balanced when forming judgments, there are personal costs. On one hand, death can result from failure to respond when circumstances justify extreme actions; on the other hand, the process of removal itself has harmful consequences for mothers and the family and whānau that are left behind. In a fully functioning system, how the system as a whole can balance risk is critical if its legitimacy is to be properly accepted in difficult situations. Having trust in the judgements of those empowered to decide when to place children in the care of the State requires demonstrable confidence in the system as a whole – not simply the individuals on the front line.

2. The scope of child welfare services

The wider family or whānau is the dominant means by which children are usually cared for when their own mothers are in adverse circumstances, by supporting them or substituting for the care and protection they give their children. The grandparents of whānau and families care in this way for about twice as many children as do statutory services. These carers often give up jobs to do this through personal choice and obligation. In such situations there can be support from the child welfare system including families and whānau. Iwi and Māori health and social service providers also work alongside whānau to support the directions they set.

Where it has reason, the State can choose to enforce its legal authority, systems and resources on any individual family or whānau, subject to the oversight of the Family Court. The nature of this authority, the power of its reach and potential disempowerment of families is not balanced by the forms of accountability established by Parliament for the oversight of the Executive. Independent means are needed to provide reason for the

community collectively to accept the legitimacy of this State authority, while still challenging individual decisions. This independent demonstration of political legitimacy needs to occur alongside comprehensive regular reporting and research of the context within which the child welfare system as a whole operates to care for children. When this does not occur, then the State by default demands its frontline staff to function in accord with the authority acknowledged in statute of their role, but without proper resolution of the political legitimacy of their actions by those that should do so.

The power of the State to break up families and to remove children in order to protect a child from continuing harm is a dimension of family policy that is embedded in statute, as is choosing where a child that is removed is to be placed, and for how long. When the immediate safety of children determines outcomes, it is still important that their future life course and the resources of whānau and families have a place in influencing decisions by all players, especially the Family Court. How this works needs to be properly systematized so that its effectiveness is not dependent on any party with a focus on particular outcomes.

3. Child Welfare services of the State have not had the same effect on different cultural groups

Seeking a whānau voice in the child welfare services of the State has been obligatory in law since the Children, Young Persons, and Their Families Act 1989. Up to now this voice has been weakly heard or avoided, so that whānau have had few means or resources to hold the child care and protection system of the State to account for how whānau members enter this statutory system or are treated in it. Child welfare services have operated in the past in a wider environment where whānau are not recognized in regular statistics nor has much of the history of research and scholarship played a part in policy or practice. When whānau are recognized they are most often seen through an extended nuclear family lens, if that. The Puao-te-Ata-tu report (Department of Social Welfare 1986) remains a major point of reference for assessing how significant challenges by Māori to the legitimacy of State action need to be addressed. An expert review in 2015 (Ministry of Social Development. 2016) was the most recent to report on progress.

The State's child protection agency, Oranga Tamariki, reported that it had taken into its care 6,365 children at 31 December 2018, being made up of one

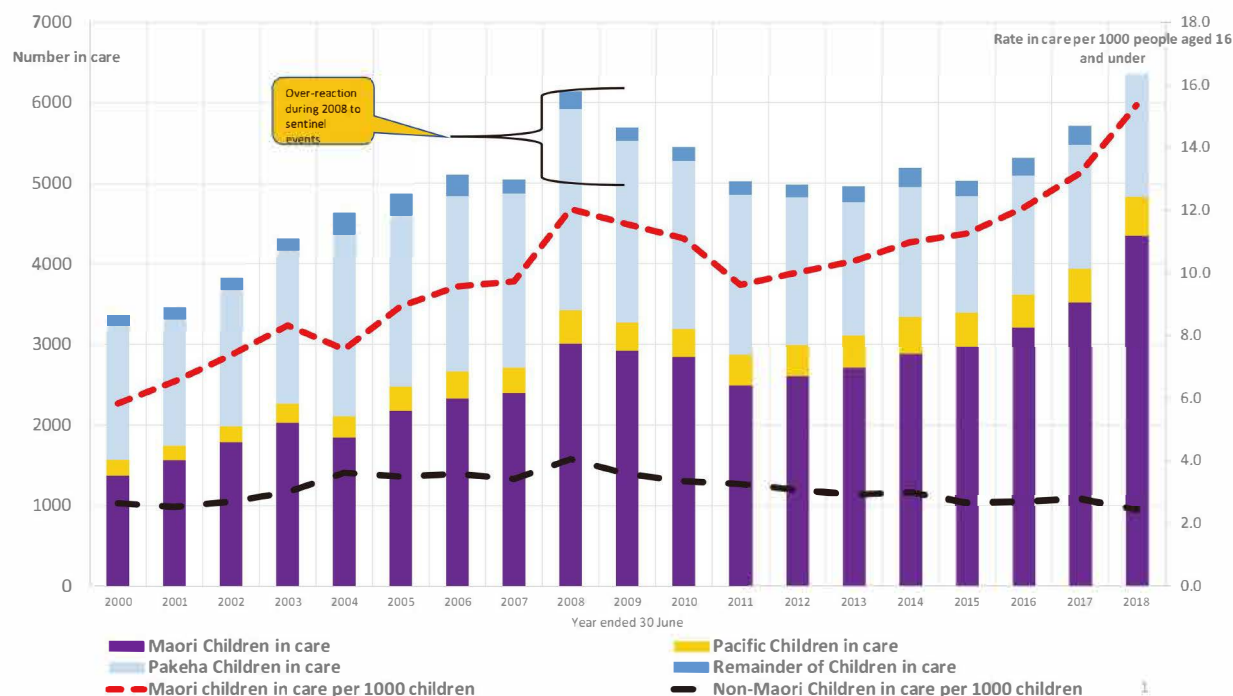


Fig. 1. Maori number and population rate in care of Oranga Tamariki compared to Non-Māori. Sources: CYPS statistics, MSD Website. Official Information Act requests of Oranga Tamariki. Author calculation of age specific rates. "Pacific" includes children of a Pacific Island ethnicity born either in New Zealand or in their country of origin.

in 65 of all Māori children and one in 400 of all other children aged 17 and under. Placing of children into the custody of the State has disproportionately affected Māori for some seventy years, most particularly in the decade after 1972/73. Those Māori boys who entered the care and protection system in that decade continued in later life to be institutionalized at a far greater rate than any group that went before, as was the cohort of their children. More recent trends are presented in Fig. 1.

While 1.5 percent of Māori children aged 17 and under are currently in the care of Oranga Tamariki, it has been estimated by an expert review [6] that during their childhood, one in five children overall would have had some experience of the care and protection system by the time they reached 17 years. Since 2015, the number of babies removed from mothers by the State has increased by one third, with all except one of the increased 70 babies being Māori.

In the context of weak mechanisms that demonstrate accountability, the recent increase in the share of care and protection actions involving Māori bring uncertainty to how further changes in law that came about from July 2019 could affect later generations. Strong and trustworthy vindication of the State's child care

and protection system is needed because of the damaging and perverse effects on the welfare of mothers and their children (including the unborn) when they withdraw their trust in institutions that exist primarily for their care, by avoiding the help they exist to give. The mix of bodies that have an increased statutory responsibility for the welfare of children is now quite pervasive. The State's child care and protection system has yet to assure those who operate alongside it or who are the subject of its use of its statutory powers about the full integrity and coherence of the system as it now stands. The State has not tried hard enough to do that with Māori, yet they make up the majority of the children in its custody.

4. Come-at-ability and legitimacy

The proper use of any State sanctioned powers to remove people from where they are, whether it be to incarcerate them or place them in some other form of custody or guardianship, must always involve proportionate oversight so that all know that their the lawful rights are able to be enforced. Even when the legitimacy of State action is generally accepted, retaining

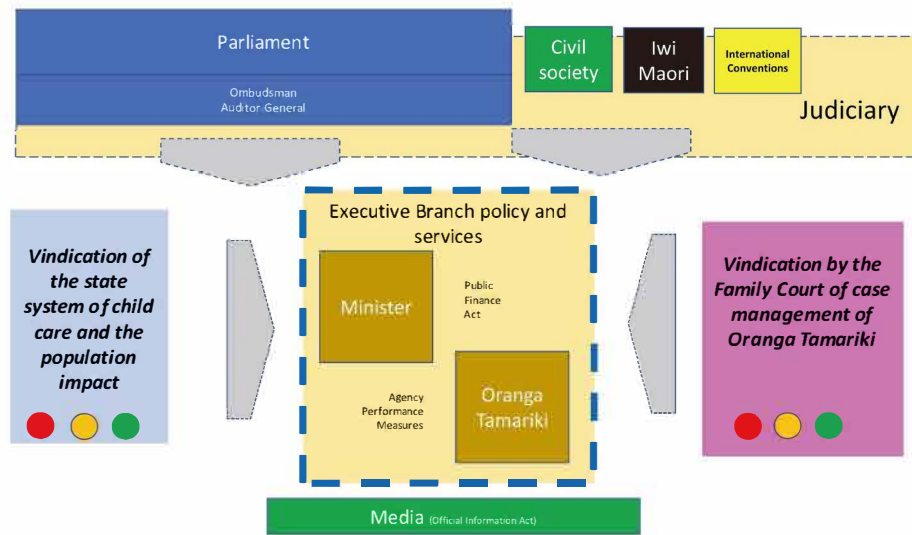


Fig. 2. Oversight of the trustworthiness of state child care and protection.

trust may necessitate that compliance with the rule of law be transparent, and that actions be properly overseen or reviewable by a judicial body independent of executive government. Because the State has long used its authority to take custody of Māori children at a disproportionate rate this has periodically led to several generations of Māori seeking to challenge to the legitimacy of this State action.

When they have reason to challenge the legitimacy of State actions, individuals, civil society and the media will find ways to withdraw trust in any action by the State. Institutions and roles outside executive government including Parliamentary Officers, Appeal Courts and Parliamentary petitions might be vehicles for this, but individuals need to have common access to them. The breadth and extent of accountability should depend on the impact when citizens withdraw trust. The diverse accountability mechanisms and multiple roles of different parts of the system that we have now do not provide citizens with an informed basis for granting or withdrawing trust. How the various parts connect is shown in Fig. 2.

We know very little about how the decisions of the Family Court influence the practices of Oranga Tamariki. This means that critical components of the statutory childcare and protection system can escape effective scrutiny because of the weak accountability of some other part. Similarly, we know little about the how and when the other parts of the State's child care and protection system interact where it includes social workers, police, midwives, hospitals, obstetricians, lawyers and non-government organisations.

Because the oversight of the State's child care and protection system does not extend beyond agency performance measures and strategic plans, these do not bring a genuine understanding of the workings of the whole child welfare system. There is weak recognition in policy of the importance of family and whānau in their independent and practical resolution of short term or longer breakdown in the care of children, or the costs they bear. Because of the different institutional cultures and incentives of those who may play a part in determining the outcomes for any individual child, proper oversight needs to be able to provide a relevant window on bodies that have varying degrees of independence in how they meet their statutory obligations including those to families and whānau. A high degree of operational independence exists alongside varied oversight and weak connections. The disproportionate intensity of State action on Māori needs vindication, which in itself would be expected to challenge the fundamentals of the system. Transparency is not enough when the focus is selectively narrowed to weak self-reporting of the practices of operational activity. This obscures scrutiny of decision-making processes and long-term impacts, as well as of how underlying models of care and protection are applied in practice. O'Neill 2009 argues that a proliferation of accountability mechanisms by governments did not necessarily increase trust. She asks whether systems of accountability are meant to replace trust or to improve the basis for placing and refusing trust. In arguing that trustworthy oversight that can hold the State to account must have an authority that is beyond that applied by institutions engaged in the activity, O'Neill noted that:

“To be accountable is not merely to carry a range of tasks or obligations, for example to provide medical treatment to those in need, to make benefit payments to those entitled to them, or to keep proper accounts.

It is also to carry a further range of second-order tasks and obligations to provide an account of or evidence of the standard to which those primary tasks and obligations are discharged, typically to third parties, and often to prescribed third parties.”

Holding the child care and protection system to account needs independent oversight comparable to that of the Ombudsman. It has to be able to make transparent the actions of the courts and know how the institutions and courts challenge their own practices through the impact on children, family and whānau. The focus on the child cannot escape consideration of its family and whānau, mothers and the science of child development. Because the impact on Māori of State care and protection has had such a long reach and high impact, this must shape the way the State recognizes that it has a special need to be able to be held to account at any time by iwi Māori, for its outcomes, practices, evidence base and underlying philosophy. What makes indigenous communities unique is that it is only through child-birth and the survival of children that they will continue to exist. Immigration can play no part in their demographic dynamism.

5. The consequences for attaining trust of the different histories of Māori and Pākehā

The long reach of past experiences and practices continues to affect the trust and attitudes to State custody today by older generations of Māori men and women. Jackson (1987) and Williams (2019) provide a comprehensive distillation of the place of the justice and child welfare systems in the colonisation of New Zealand and the continuing impact on Māori. In New Zealand, as in Canada and Australia, two particular doctrinaire policies dominated child welfare practice for long periods up to the mid-1980s, leaving residual effects on the cohorts that they were applied to.

During the 1970s, a longitudinal study by the Department of Social Welfare of all boys born in 1957 [2] found that two out every five Māori boys had come into contact with the care and protection system by age 16 years, with one in fourteen being placed in a custodial institution. This shameful taking of Māori boys into State custody took place for over a decade until it

abated in the mid-1980s. These children are now disproportionately represented in prisons.

The parents, grandparents or even great grandparents of some of the Māori children of today will have been subject to the 1955 Adoption Act, as teenage mothers, fathers or babies. During the peak period between 1944 and 1980 it is estimated that some 87,000 Māori and non-Māori babies of mainly teenage unmarried mothers and fathers were placed in adoption, with many of these mothers under duress to do so. The father was often not recorded on the birth certificate.

A much larger share of adult Māori have been through State custody in New Zealand compared to any other ethnic group. Because Māori whānau involve a much larger “family circle”, then where historical contact by whānau members with the State’s child care and justice systems increase the possibility of being selected as at risk, young Māori who wish to be mothers will be more likely to be required to be assessment. This contributes to system bias, even if the tests themselves that focus on previous contact with the Justice or child protection services have been designed to be administered without bias. The cumulation of historical factors, demographic and social structures and selective monitoring strengthen the shadow cast by past bias and predetermine the outcome of selection criteria. Each additional selection criterion by the statutory child protection and care system widens the gap between the opportunities of motherhood faced by Māori and those of non-Māori women even when they have the same likelihood of being a good mother.

The economic gains in the post war period came at the cost of the rapid urbanisation of Māori which took place at a time when strong whānau structures would have been especially important for the major demographic transition and population growth that high fertility and falling mortality underpinned. The impact of the 1984 Lange government’s policies on employment opportunities fell hard on the cohorts who were born in the latter part of this demographic transition but before the decline in fertility rates. These were the cohorts affected most by the very high levels of State custody of Māori children over the decade from 1973/74.

Where Māori are able to contend that colonial patterns of the past are still in operation when social attitudes and values are built into legislation and social services, these policies in turn serve, at best, to undermine or undervalue differing patterns of social behavior in raising children and, at worst, to deliberately fragment social and psychological supports.

6. Influences on the shape and operation of child welfare services

6.1. Risk

The child care and protection system of the State will make a difference between life and death for a small number of children, while for many others it may bring the only means of redress and response to situations of abuse. In the face of complexity in the system in its rules, practices and powers, for most people knowledge of what the State does comes from rare highly visible cases. These cases typically involve the death of a baby by the intentional violence of a carer, or the contested removal of a baby at birth from its mother. By how they respond to such sentinel events when they become of public interest, those who manage the operations of the State, in public administration as well as politicians, can determine their effect on future policy and practice. There are a multiplicity of participants who could seek to minimize the potential for their association with a sentinel event. It is the children and their whānau who bear the consequences when State responses have shown a predisposition towards lowering the threshold for child removal, hence removing more children from their family into State custody. The future life of the child, its mother, family or whānau must be a demonstrable part of consideration for removal and consequent placement.

When individuals withdraw trust because they judge that removal processes do not have legitimacy for their community, we cannot predict the range of unintended consequences. The welfare of mothers and children is affected if they think that they need to avoid any of the institutions of the State, for example where mothers and others avoid contact those who provide health care, security and safety from harm. Because processes for the vindication of the practices and outcomes of child care and protection are weak, the State is poorly prepared when challenged in cases where problems have arisen. By not being able to identify whether sentinel cases typify their practice or are outliers, community doubts about the legitimacy of State actions can grow.

The evidence informing judgements in complex cases will not always be strong or able to be independently substantiated. Statutory obligations to know what makes up the family, whānau or other most relevant relationship group requires cultural understanding and sensitivity that is likely to challenge the norms that were embedded in public policy in the past. This will be more so at a time of change when the threshold for

harm has become more loosely defined and case law around applying new law is limited or absent. Getting it right or wrong, other harms are likely to be a consequence when power is variably applied in situations of uncertainty. A recent study suggest that there is a greater likelihood of ethnic bias when social workers are at the point of making substantive decisions than at other times when balancing safety and possibility of harm [4].

The State childcare and protection system comprises different professional and institutional structures and cultures. Each of these have embedded in them attitudes to risk and these differ across medical, legal and welfare cultures, police, different civil service groups, community sector organisations and iwi Māori, as well as judges and politicians. Thresholds of risk can become volatile after sentinel events, resource shifts, frequent institutional restructuring or policy redirection. Conflicting views on practice or philosophical matters that are not properly confronted can affect trust within the wider family and whānau welfare system. One outstanding example arises because of the very different views held by midwives and social workers on the way a mother should connect with her baby immediately after birth in the event that a forcible removal of a baby has been planned.

6.2. Reactions to sentinel events

In a small country such as New Zealand, it is not unusual in the justice sector or in child protection for rare events to influence law changes. This also occurs in health but with lower frequency. The greater the chance that rare or sentinel events can determine policy, the more vital it is that responses to any rare event are seen in the context of a strong well-established evidence base as well as practices that are demonstrably up to the task. The power of a single event to influence public policy and practice can be stronger the more horrific the case and the attention associated with it. This may be contrary to evidence. In New Zealand, for the last 25 years, there has been little evidence of change in children being at risk of harm. No noticeable trends exist in recorded incidents of infant death by intentional injury. As often occurs with rare events, a low average number can be associated with a high degree of year to year variability. In New Zealand the annual average of each of fatal and non-fatal intentional injury to children aged four years and under for both Maori and non-Maori was unchanged or lower in the nine years to 2018 compared to the nine years to 2008 to.

There have been attempts to prevent some of the nearly 300 forced baby removals in 2018, and a small share of these attempts have been become highly visible to the public.

Neither of these extreme forms of rare event is a substitute for an effective, accurate and comprehensive window on the State's child care and protection system, and on the context within which it has to operate. In the absence of an informed window, a rapid escalation in the removal of children by the State can more easily triggered by the publicity of a particular case, than a change in the number of such deaths. The Table 1 shows the most recent glaring example of such escalation following three highly publicized deaths very young children in 2007. During 2008, the number of children aged under 17 years taken into the care and protection of the State increased by 1,092 or 21.6%. In the following three years, the number in care fell back to below its previous level and did not exceed the 2007 level again until 2014.

6.3. Validation of the science behind child welfare practice and policy

The science that influences thinking about child protection has seen major changes and significant reversals over the past seventy years since the professionalization of social work began to evolve. The transparency and validation of the application of any science should be a matter of periodic scrutiny. In particular, this concerns theories of child removal and adoption, trauma, social work training and methods of quality assurance. Early research by the Department of Social Welfare into the experiences of birth mothers following adoption pointed to a high need for understanding and ensuring ways of managing the impact on the mother's physical and mental health of any such loss of a child.

The common rules, obligations and tests of eligibility that are being applied to Māori have been based on analysis and knowledge dominated by the characteristics generally measured and modelled for Pākehā because of the limited scale of Māori-specific statistical sources. In the application of policies developed in this way, such ethnic bias inevitably leads to that part of the population which is Māori often being systematically identified and treated as outliers, rather than as a community whose distinct characteristics need to be measured and reliably accounted for. This failure to account for, measure and treat as distinct, the differences from culture, social and demographic struc-

tures remains, as does weak understanding of the effect of the pathways experienced by earlier generations of Māori. The rules that bring mothers to the attention of the State's childcare and protection system need to be regularly audited by relevant professionals including those with deep knowledge of whānau to identify whether they are potential sources of systemic bias against Māori. For each case, how whānau were involved in the process should be reported on by each of the key agencies and the whānau, and these reports should be summarised in an annual report that is independently audited by a body that is culturally and professionally appropriate. Apart from a minimal piecemeal start in publishing of statistics, the most visible sign that change is occurring is the recently established Oranga Tamariki Evidence Centre. This is the first move by the government's child protection service in nearly two decades to embed in the organization a research system about child welfare and build on the rich legacy of research and evidence that occurred in New Zealand between the 1960s to 1980s. While it is far from enough, it has become a well valued move and its visibility and range of work has become well connected to those who play a part in either challenging or validating the important work that child protection has to do.

Because of the complexity of child welfare services, a sample of cases should be regularly followed through the system in order to evaluate and improve processes and connections between the parts of the system. There needs to be a comprehensive mapping of the interactions with children, families and whānau of any agency whose actions involve obligations and responsibilities to the child care and protection system of the State. For example, understanding and ensuring ways of managing the impact on the mother's physical and mental health of removal of any children from a mother should be required whatever the justification for such removal. Because the connections between organisations are vital, such as the proper and comprehensive informing of the Family Court, then a review and feedback process between these institutions needs to be established. Keddell and Hyslop 2019b surveyed three regional operations of Oranga Tamariki and identified a number of practical reasons that limit a commonality of practice and continuous improvement approaches.

Child care and protection concerns highlight limitations in the evidence available for regular scrutiny and oversight by Parliament, courts, civil society and iwi Māori. The publication of statistics about the operation and impact of care and protection services has re-

Table 1
State removal of Babies from mothers, Non-Māori and Māori

Year ended June	Total number of removals of babies ¹	Total removals per 1000 births	Māori removals ²	Māori removals per 1000 Māori births	Non-Māori removals per 1000 births	Total births ³	Māori births ³
2012	225	3.7				61,032	17,385
2013	216	3.6				59,862	16,905
2014	227	3.9				58,608	16,518
2015	211	3.5	110	6.7	2.3	59,616	16,470
2016	247	4.2	147	8.9	2.4	58,995	16,545
2017	275	4.7	178	10.9	2.3	58,344	16,323
2018	281	4.7	179	10.3	2.4	60,321	17,394

¹Official Information Act answers have been the only source of information on baby removals by the State. These counts will be updated and possibly revised, but are not yet regularly published. ²Statistics on the removal of babies do not count Māori separately before 2016. ³Statistics New Zealand Birth Statistics.

duced over the past two years and minimal information is available regularly. Statistical reporting of the entry and exit of stay in the State care and protection system needs to be timely, regular and comprehensive. It should provide information on the age, ethnicity of individuals along with the statutory basis for the State's involvement and the circumstances that triggered that involvement. Such information should be available in a readily useable form such as spreadsheets. Where children are placed in care, and when they leave is important, as is knowledge of how the wider institutions of the State for education and health are contributing to the wellbeing of children in the care of the State.

7. Conclusion

Child welfare services are wide-ranging, and they do not readily form into a coherent system. Yet without understanding their many parts and complexity we can undermine the protection of the rights of any child to the care and support of kin. Strengthening accountability is just one step in this. The State can be blind to the predominance of care that is that provided by families and whānau, particularly grandparents for children who are in situations of concern. This form of care needs to be reflected in policy and practice, and the application of the powers of the State must support rather than endanger this.

The legitimacy for mothers, family and whānau of the actions by the State when acting to protect the welfare of children will not be established by the performance measures and fiscal oversight that make agencies accountable to the Ministers of the day. Where huge differences have existed and continue to do so in the processes and outcomes experienced among communities, then the much more complex requirements of

legitimacy need to be understood at a community level. Whereas in the past children have been taken into State care on a scale we would never countenance now, then among communities that were affected, strong memories will remain among the grand-parents and great grand-parents of the children of today, or their friends and relations. Doubts of legitimacy will be magnified by experience of processes which do not recognize, respect and take account of the distinct history, demography and cultural institutions and mores of communities which remain disproportionately targets of State agencies. Because the earlier disproportionate impact on Māori children of State custody remains at the historically high rates, it requires much more transparency than exists at present, to facilitate ongoing scrutiny and inform the development and support of alternative approaches. The experiences of Pacific children justify similar scrutiny.

Accountability needs to be comprehensive, have independent elements and be focused on the outcome for the child and their kin, as well as the quality of the processes with which they engage. Having wide ranging accountability will not prevent harms but lacking adequate means to hold the State to account enables further harms. The intensity and nature of accountability should depend on the impact when citizens withdraw trust. What happens to children once in the care of the State brings different risks of neglect and harm to their continuing welfare and life chances that need overseeing.

Māori who are great grand-parents and grand-parents today were part of cohorts that experienced severe forms of discrimination and disproportionate involvement in earlier versions of the current State institutions. This harmed the later lives of many. The legitimacy of State action needs to be earned, rather than just asserted. Māori and Pākehā their different histo-

ries and pathways require not only different processes but also they should shape the nature of accountability. Statistical practices that should play a part in building legitimacy must involve forms of continuous improvement, evaluation studies and operational research of processes. Cohort studies are essential for understanding the impact on diverse communities, which will necessitate a continuing vigilance in the measurement of ethnicity. As child protection services focus increasingly on the apparent delinquency of mothers compared to that of children, the characteristics of mothers and the basis for their selection needs to be able to be monitored. Mothers in indigenous communities generally have their first child much younger, and may have themselves been in care, yet both of these are characteristics often found in risk models which lead to screening. In such a complex area, case studies become critical tools, as is independent oversight and reporting. A key New Zealand initiative will be an independent oversight function established in the Office of Children's Commissioner. Given that the regulation and monitoring of child protection has been in place since the Child Welfare Act of 1925, putting in place this new oversight function ought to be accelerated, now that Oranga Tamariki has begun its third year. All statistical reporting of the State care and protection system needs to be timely, regular and comprehensive. It needs to distinguish between the entry and exit of stay in State care and protection system and the analysis of those in State care at regular intervals.

Child welfare services exemplify many of other activities that public services carry out that depend on the goodwill of the public for their effectiveness. As agency accountability measures have increasingly focused on fiscal measures and outcomes information, the legitimacy of the practices that are employed by agencies has become less demonstrable. Few aspects of public administration, from running population censuses to collecting tax, can escape such obligations although they may be evaded all too frequently.

Acknowledgments

The range of government reports that have examined child welfare in New Zealand is extensive. The author has had the privilege of participating in many situations where researchers, practitioners and ordinary citizens shared experiences of child welfare services. The paper was motivated by the need for a greater understanding of why a system that involved as many highly committed dedicated people could have its legitimacy so justifiably challenged over a long period, particularly by Māori.

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