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**MĀORI SOLUTIONS TO MĀORI  
OVERREPRESENTATION IN THE CRIMINAL  
JUSTICE SYSTEM: IS TE PAE ORANGA AN  
EFFECTIVE SOLUTION FOR MĀORI?**

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**Abstract**

*The criminal justice system is at crisis point. At every stage of the criminal justice process in Aotearoa, Māori show disproportionately higher engagement than non-Māori. The default option for dealing with offenders is to prosecute and punish. Punishment through imprisonment does little to reduce reoffending and it creates further harm. Alternative justice solutions that are based on accountability, prevention, restoration and rehabilitation are required. Valmaine Toki identified that applying therapeutic jurisprudence principles in the criminal justice system may pave a way forward for Māori to heal from the harms of the criminal justice process and incorporate tikanga Māori in dealing with Māori criminal offending. Te Pae Oranga is an intervention that seeks to address the disproportionate overrepresentation of Māori caught in the justice pipeline. It focuses on accountability, rehabilitation and dismantling the cycle of offending. A participant is given the tools to be accountable for the harm they caused, steer their lives back on track and create long-term behavioural change. Te Pae Oranga has the potential to act as a therapeutic force in the criminal justice system and heal Māori. Te Pae Oranga is underpinned by tikanga Māori, promotes many therapeutic consequences, gives weight to the Māori experience of colonisation and does not cause further harm. However, Te Pae Oranga is limited in scope, does not reduce reoffending and is limited as a creature of police discretion. Te Pae Oranga is not an intervention that is sufficiently effective for Māori yet. More work must be done to ensure that these limitations are overcome.*

**Keywords:** 'Te Pae Oranga', 'iwi justice panels', 'Māori overrepresentation', 'criminal justice system', 'therapeutic jurisprudence'.

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### ***Glossary of Māori terms***

Aotearoa – New Zealand

Ea – state of balance

Hapū – Māori kin community

Hui – meeting

Hui mātua – Te Pae Oranga panel meeting

Iwi – Māori nation/grouping

Kai – food

Kaikawe kōrero – Te Pae Oranga panel facilitator

Karakia – prayer

Kāwanatanga – government

Koha – gift/donation

Kotahitanga – unity

Mana – authority/ prestige/ spiritual power

Marae – central community space

Mate – ailing/ill

Mihimihi – greeting

Ora – wellbeing

Rangatiratanga – chiefly authority

Take – cause of action

Te ao Māori – the Māori world

Te Pae Oranga – to talk, to listen and to become well

Te reo Māori – Māori language

Tikanga – a system that encompasses Māori law

Tino rangatiratanga – self-determination

Utu – reciprocity

Whakapapa – genealogy

Whakawhanaungatanga – a process of establishing relationships

Whānau – family

Whanaungatanga – relationships

## ***I Introduction***

In 1987 Moana Jackson recognised the urgent need for transformational change in the criminal justice system.<sup>1</sup> Over thirty years later little progress has ensued.<sup>2</sup> The criminal justice system is at crisis point.<sup>3</sup> At every stage of the criminal justice process in Aotearoa, Māori show disproportionately higher engagement than non-Māori.<sup>4</sup> Māori are overrepresented in the criminal justice process because of the bias and racism that is perpetuated by the system.<sup>5</sup> Whether someone is subject to the criminal sanctions of the state should not be influenced by ethnicity. The relationship between Māori and the criminal justice system must be understood in light of the Māori experience of colonisation and the injustices suffered at the hands of the colonial government.<sup>6</sup> According to Jackson, “no analysis of any problem can be undertaken without an understanding of its past”.<sup>7</sup> This consideration of context is largely lacking in the current criminal justice process.<sup>8</sup>

The default option for dealing with offenders is to prosecute and punish. Māori offenders are more likely to be sent to prison.<sup>9</sup> Māori make up 16.5 per cent<sup>10</sup> of the general population, yet constitute 52.8 per cent of the prison population.<sup>11</sup> Sending low-level

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<sup>1</sup> Moana Jackson *The Māori and the Criminal Justice System: A New Perspective: He Whaipanga Hou* (Policy and Research Division, Department of Justice, February 1987).

<sup>2</sup> Waitangi Tribunal *Tū Mai te Rangī! Report on the Crown and Disproportionate Reoffending Rates* (Wai 2540, 2017, pre-publication version) at 79.

<sup>3</sup> *Inaia Tonu Nei: Hui Māori Report* (July 2019) at 2.

<sup>4</sup> Waitangi Tribunal “Tū Mai te Rangī! Report on the Crown and Disproportionate Reoffending Rates” above n 2, at 10.

<sup>5</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group *Turuki! Turuki!* (December 2019) at 45 and 54.

<sup>6</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group *He Waka Roimata* (9 June 2019) at 24.

<sup>7</sup> Jackson, above n 1, at 19.

<sup>8</sup> The Hon Justice Joe Williams “Build a Bridge and Get Over It: The Role of Colonial Dispossession in Contemporary Indigenous Offending and What We Should Do About It” (Robin Cooke Lecture, Victoria University of Wellington Faculty of Law, Wellington, 4 December 2019).

<sup>9</sup> Policy, Strategy and Research Group *Over-representation of Māori in the criminal justice system: An exploratory report* (Department of Corrections, September 2007) at 27.

<sup>10</sup> Statistics New Zealand “2018 Census totals by topic – national highlights (updated)” (30 April 2020) <<https://www.stats.govt.nz/information-releases/2018-census-totals-by-topic-national-highlights-updated>>.

<sup>11</sup> Department of Corrections “Prison facts and statistics – March 2020: Prison population by ethnicity” (March 2020)

Māori offenders to prison isolates Māori individuals from their whānau and community and, in the absence of effective rehabilitation, they become further embedded into the system. The criminal justice process is failing Māori.<sup>12</sup> Punishment through imprisonment does little to reduce reoffending<sup>13</sup> and it creates further harm.<sup>14</sup> The goal of restoration must be the central pillar of the criminal justice system.<sup>15</sup> The criminal justice system must:<sup>16</sup>

... [treat] all people with humanity, dignity, respect and compassion; recognise the mana inherent in all people and communities; and enable the restoration of that mana whenever it has been diminished.

Alternative justice processes could steer Māori away from the criminal justice pipeline, address the overrepresentation and enable Māori to heal from the harm caused by the criminal justice system. Several criminal justice reports drafted following consultation with Māori, call for greater emphasis on Māori design and facilitation of criminal justice solutions.<sup>17</sup> Tino rangatiratanga as guaranteed by the Treaty of Waitangi<sup>18</sup> requires the decolonisation and reinvention of the justice system.<sup>19</sup> What that reinvention could look like has been the subject of much debate.

Building on her earlier work, Valmaine Toki in 2018 identified that applying therapeutic jurisprudence principles in the criminal justice system may pave a way forward for Māori to heal from the harms of the criminal justice process and incorporate tikanga Māori in

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<[https://www.corrections.govt.nz/resources/research\\_and\\_statistics/quarterly\\_prison\\_statistics/prison\\_statistics\\_march\\_2020](https://www.corrections.govt.nz/resources/research_and_statistics/quarterly_prison_statistics/prison_statistics_march_2020)>.

<sup>12</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 12.

<sup>13</sup> Department of Corrections *Annual report 2018/19* at 155.

<sup>14</sup> JustSpeak *The Case Against Prisons* (17 March 2018) at 8-11.

<sup>15</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 9.

<sup>16</sup> At 16.

<sup>17</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5; “Inaia Tonu Nei: Hui Māori Report” above n 3; Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “He Waka Roimata” above n 6.

<sup>18</sup> By referring to the Treaty of Waitangi, I am referring to both the English and te reo Māori texts.

<sup>19</sup> Tino rangatiratanga as guaranteed in the Treaty of Waitangi 1840, art 2.

dealing with Māori criminal offending.<sup>20</sup> Therapeutic jurisprudence suggests that the law can operate as a ‘therapeutic agent’<sup>21</sup> where the application of law can generate therapeutic or anti-therapeutic consequences.<sup>22</sup> These consequences can result in either positive or negative impacts on a Māori individual’s psychological wellbeing. A mechanism in the criminal justice system that is consistent with the principles of therapeutic jurisprudence, tikanga Māori and upholds the principles of the Treaty of Waitangi could be one that promotes a positive psychological impact on its users. Such a mechanism could also accommodate collective responsibility and be focused on healing.

Te Pae Oranga is an intervention that seeks to address the disproportionate overrepresentation of Māori caught in the criminal justice pipeline.<sup>23</sup> Te Pae Oranga evolved from the Christchurch Community Justice Panel and is an alternative to prosecution available to Māori and non-Māori.<sup>24</sup> The panel focuses on accountability, rehabilitation and dismantling the cycle of offending. A participant is given the tools to be accountable for the harm they caused, steer their lives back on track and create meaningful and long-term behavioural change. In response to the overrepresentation of Māori at every stage of the criminal justice system and the lack of engagement with Māori, *Inaia Tonu Nei - Hui Māori* was convened to place Māori aspirations and opinions at the centre of the conversation surrounding justice reform. A core recommendation that emerged from *Inaia Tonu Nei* was that Te Pae Oranga must be expanded across Aotearoa to deal with low-level offending and divert low-level offenders away from the courts.<sup>25</sup> This is a call to action that illustrates the confidence in Te Pae Oranga as an alternative justice process. Te Pae Oranga can potentially generate therapeutic consequences as it seeks to prevent harm, address the underlying causes of offending and promote

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<sup>20</sup> See generally Valmaine Toki “Tikanga Māori and therapeutic jurisprudence” in *Indigenous courts, self-determination and criminal justice* (Routledge, Abingdon, United Kingdom, 2018).

<sup>21</sup> Bruce J Winick “The jurisprudence of therapeutic jurisprudence” in David B Wexler and Bruce J Winick (eds) *Law in a Therapeutic Key* (Carolina Academic Press, Durham, North Carolina, 1996) 645 at 646.

<sup>22</sup> At 648.

<sup>23</sup> Sophie Dawson “Te Pae Oranga: a restorative justice approach to reducing reoffending in New Zealand” (podcast, 10 March 2020) Initiative: Indigenous Justice Clearinghouse <<https://player.whooshkaa.com/shows/initiative>>.

<sup>24</sup> Alternative Resolutions Workstream, New Zealand Police *Community Justice Panel in Christchurch: an Evaluation* (New Zealand Police, November 2012) at i.

<sup>25</sup> “Inaia Tonu Nei: Hui Māori Report” above n 3, at 27.

restoration and rehabilitation amongst participants, victims and the wider community.<sup>26</sup> However, some aspects of Te Pae Oranga generate anti-therapeutic consequences that must be overcome. Further, Te Pae Oranga is limited as a creature of police discretion, limited in scope and does not reduce reoffending.

In considering the effectiveness of Te Pae Oranga as a solution for Māori, this paper will assess whether Te Pae Oranga acts as a therapeutic force in the criminal justice system with the potential to heal Māori. To uphold the principles of therapeutic jurisprudence and be effective for Māori, a solution must align with tikanga Māori<sup>27</sup> and the principles of the Treaty of Waitangi. An effective solution for Māori must give weight to the Māori experience of colonisation, must not cause harm, must not be limited by the exercise of discretion and must reduce reoffending. An effective solution for Māori must also be accessible to Māori, target Māori, promote rehabilitation and achieve the overall objective of dismantling the cycle and supporting participants.

## ***II Therapeutic Jurisprudence***

Therapeutic jurisprudence emerged from the mental health system.<sup>28</sup> It is based on the premise that “the operation of law and its accompanying legal processes can have a direct psychological impact on all the players, including lawyers, judges and the offender”.<sup>29</sup> The operation of law leads to either therapeutic consequences, where communities are restored and rehabilitated or anti-therapeutic consequences, where communities are propelled into worsened states of wellbeing.<sup>30</sup>

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<sup>26</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 5.

<sup>27</sup> “Tikanga Māori refers to the system of rules, principles, practices, laws and customs that guide behaviour in te ao Māori – the Māori world. It embodies ideas of justice and correctness and the right way of doing things according to a Māori world view” as described in Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “He Waka Roimata” above n 6, at 24.

<sup>28</sup> David B Wexler and Bruce J Winick (eds) *Law in a Therapeutic Key* (Carolina Academic Press, Durham, North Carolina, 1996) at xviii-xix; see also Toki above n 20, at 212.

<sup>29</sup> Toki, above n 20, at 212.

<sup>30</sup> At 212.



Toki notes that:<sup>31</sup>

Therapeutic jurisprudence can be thought of as a lens through which to view regulations and laws, as well as the roles and behaviour of legal actors: the legislators, lawyers, judges and administrators.

Section 7(1) of the Sentencing Act 2002 establishes the aims of sentencing.<sup>32</sup> Some of these aims have the potential to be used therapeutically, while others are imposed anti-therapeutically. Section 7(1)(h)<sup>33</sup> is express statutory recognition that one of those aims is to “assist in the offender’s rehabilitation and reintegration”.<sup>34</sup> Pursuant to this particular purpose, the law ought to be administered therapeutically. There is a potential for a therapeutic impact where the aims of therapeutic jurisprudence and the aims of the Act are aligned.

Therapeutic jurisprudence suggests that where restoration is not central to the operation of the law, it results in anti-therapeutic consequences and little transformative change for the offender and the wider community. Bruce Winick notes:<sup>35</sup>

Therapeutic jurisprudence calls for the study of these consequences with the tools of the social sciences in order to identify them and to ascertain whether the law’s anti-therapeutic effects can be reduced, and its therapeutic effects enhanced, without subordinating due process and other justice values.

In New Zealand, elements of therapeutic jurisprudence are commonly employed through problem-solving courts such as the Rangatahi Court and the Alcohol and Drug Court.<sup>36</sup> Toki suggests that for Māori, therapeutic jurisprudence relies on the law to be administered in a way that promotes a state of ora (wellbeing), rather than a state of mate

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<sup>31</sup> Toki, above n 20, at 213.

<sup>32</sup> Sentencing Act 2002, s 7(1).

<sup>33</sup> Sentencing Act 2002, s 7(1)(h).

<sup>34</sup> Hannah Goodyer “Rethinking Justice in New Zealand - A Critical Assessment of Restorative Justice” (2003) 9 Canterbury L Rev 179 at 179; see also James Bruce Lutui “Apology: A Moral, Cultural and Restorative Perspective” in Warren Brookbanks (ed) *Therapeutic Jurisprudence: New Zealand Perspectives* (Thomas Reuters, Wellington, 2015) 71 at 91-95.

<sup>35</sup> Winick “The Jurisprudence of Therapeutic Jurisprudence”, above n 21, at 646.

<sup>36</sup> Warren Brookbanks “The law as a healing agent” (2019) NZLJ 83 at 84-85.

(ailing, ill).<sup>37</sup> Māori in jail are likely to experience anti-therapeutic consequences because they are isolated from their whānau and become deeply embedded in the justice system. Te Pae Oranga is an intervention that has the potential to produce therapeutic consequences for Māori individuals and the wider community by addressing the underlying causes of offending and supporting the participant to change their behaviour. Te Pae Oranga can prevent somebody from being imprisoned.

Therapeutic jurisprudence shows promise for Māori, as a mechanism that has the potential to embed tikanga Māori into the state criminal justice system.<sup>38</sup> It is underpinned by the principles of “compassion, restoration and human empowerment, viewing law as a means of bringing about healing of relationships, as much as it is a coercive force of regulation and control”.<sup>39</sup> Therapeutic jurisprudence and tikanga Māori are complementary.<sup>40</sup> Like tikanga Māori, therapeutic jurisprudence cares less for a rules-based approach and is more consistent with a principles-based approach.<sup>41</sup> Both are focused on establishing and maintaining relationships and are collective in nature, reliant on community responsibility.<sup>42</sup>

Therapeutic jurisprudence and tikanga Māori are ‘forward-looking processes’ that seek to heal the user and prevent harm occurring in future.<sup>43</sup> Tikanga Māori is underpinned by the principle of utu.<sup>44</sup> Through this principle, tikanga Māori can be upheld in a way that is compatible with therapeutic jurisprudence. This can be illustrated through the process of take-utu-ea. Where there is an action (take<sup>45</sup>), there must be an appropriate response

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<sup>37</sup> Toki, above n 20, at 213.

<sup>38</sup> At 223.

<sup>39</sup> Brookbanks “The law as a healing agent”, above n 36, at 83.

<sup>40</sup> Khylee Quince “Therapeutic Jurisprudence for Māori” in Warren Brookbanks (ed) *Therapeutic Jurisprudence: New Zealand Perspectives* (Thomas Reuters, Wellington, 2015) 347 at 350-351.

<sup>41</sup> Toki, above n 20, at 217; see also Warren Brookbanks “Therapeutic Jurisprudence: Conceiving an Ethical Framework” (2001) 8(3) JLM 328 at 328.

<sup>42</sup> Toki, above n 20, at 217; see also Quince “Therapeutic Jurisprudence and Māori” above n 40, at 350.

<sup>43</sup> Toki, above n 20, at 218.

<sup>44</sup> ‘Reciprocity; return for anything; response; retribution; compensation’ as defined in Richard Benton, Alex Frame and Paul Meredith *Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law* (Victoria University Press, Wellington, 2013) at 467-475.

<sup>45</sup> ‘Course of action’ as defined in Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 370.

(utu) to restore the balance to a state of ea<sup>46</sup> (desired outcome).<sup>47</sup> Like tikanga Māori, therapeutic jurisprudence seeks to promote therapeutic consequences and heal individuals and communities from the harms of the criminal justice process. This is a stark contrast to the state criminal justice system that purports to punish an offender retrospectively for the harm that occurred.<sup>48</sup> Therapeutic jurisprudence seeks to ensure that an offender is supported so they are held accountable for their actions and are restored to a positive state of wellbeing. This reflects the framework of take-utu-ea. When assessing whether a solution is effective for Māori, an analysis can be conducted through the lens of therapeutic jurisprudence. If the goal is to heal Māori from intergenerational trauma, address the overrepresentation of Maori in the justice system and reduce reoffending, then an intervention must seek to foster positive, transformative change in the offender.

Therapeutic jurisprudence is no stranger to academic criticism. Scholars have asserted that therapeutic jurisprudence is paternalistic<sup>49</sup>, undermines the separation of powers<sup>50</sup>, “compromises the objectivity and impartiality of judges”<sup>51</sup>, is a “soft approach to crime”<sup>52</sup> and fails to administer equal justice under the law.<sup>53</sup> Toki notes that some of these criticisms may be alleviated when therapeutic jurisprudence is applied in a tikanga Māori context.<sup>54</sup> A proper application of tikanga Māori principles such as mana<sup>55</sup>, whanaungatanga<sup>56</sup> and utu can mitigate these concerns. Further, any mechanism that has

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<sup>46</sup> ‘Having brought the cycle of utu to completion where a resolution is reached; restoration of the status quo by acknowledging and making compensation for a misdemeanour’ as defined in Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 58.

<sup>47</sup> Hirini Moko Mead “Ngā Pūtake o te Tikanga: Underlying Principles and Values” in *Tikanga Māori: Living by Māori Values* (revised edition, Huia Publishers, Wellington, 2016), chapter 3.

<sup>48</sup> Toki, above n 20, at 218.

<sup>49</sup> At 213.

<sup>50</sup> At 214.

<sup>51</sup> At 215.

<sup>52</sup> At 217.

<sup>53</sup> At 216.

<sup>54</sup> At 219.

<sup>55</sup> ‘The state or circumstances of being a relative; that is kinship and the rights, responsibilities, and expected modes of behaviour that accompany the relationship’ as defined in Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 524.

<sup>56</sup> ‘Recognised authority; influence; prestige; as defined in Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 154-160.

the potential to realise a reduction in offending, particularly Māori offending ought to be considered despite these criticisms. Te Pae Oranga in its capacity for focusing on healing and building relationships<sup>57</sup> and enabling community responsibility is consonant with the principles of therapeutic jurisprudence. Te Pae Oranga has potential to implement principles of therapeutic jurisprudence and tikanga Māori for the benefit of Māori individuals caught in the criminal justice system and the wider collective that the participant belongs to.

### ***III Te Pae Oranga, Therapeutic Jurisprudence and Tikanga Māori***

Te Pae Oranga is an initiative led by Māori that seeks to steer the criminal justice trajectory for minor offending away from court proceedings and imprisonment.<sup>58</sup> The cycle of offending suggests that assessing minor crimes through the courts is an entry point into the justice system that is a catalyst for more serious crime. Te Pae Oranga is a solution that emphasizes restoration and rehabilitation and shifts the focus from enforcement and punishment to accountability and prevention.<sup>59</sup>

#### *A Therapeutic Characteristics of Te Pae Oranga*

Te Pae Oranga is available as an alternative to prosecution for low-level offending. Te Pae Oranga is an inquisitory hui that seeks to address the underlying causes of offending and hold the participant to account. Te Pae Oranga promotes many aspects of therapeutic jurisprudence.

##### *1 ‘Participant’*

Throughout the Te Pae Oranga process, the offender is referred to as the ‘participant’.<sup>60</sup> The participant’s dignity is not eroded through terms that carry a negative stigma.<sup>61</sup> Labelling someone as an ‘offender’ “may cause the individual to view himself or herself as a criminal, and subsequently act in a manner consistent with that label”.<sup>62</sup> The label of

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<sup>57</sup> Toki above n 20, at 217.

<sup>58</sup> New Zealand Police “Police instructions: Te Pae Oranga” (10 June 2020) at 4 (obtained under Official Information Act 1982 request to the New Zealand Police).

<sup>59</sup> At 4.

<sup>60</sup> At 4.

<sup>61</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 10.

<sup>62</sup> JustSpeak *Unlocking Prisons* (3 October 2012) at 80.

‘participant’ reframes the experience, displaces the connotation with one of equal partnership and “decreases at least some of the negative self-attributional effects that such labelling can produce”.<sup>63</sup>

## 2 *Pre-hui support*

Before the hui mātua<sup>64</sup> the kaikawe kōrero<sup>65</sup> will meet with the participant and discuss the impact of the offence. They will also identify the needs of the participant and complete a risk assessment to decide whether it is appropriate to proceed to the hui mātua. The kaikawe kōrero is available to explain Te Pae Oranga and the expectations of the hui mātua. Many Māori express frustration at the processes of the criminal justice system as the experience through the courts is perceived as alienating and isolating.<sup>66</sup> The support available in the very initial stages of Te Pae Oranga promotes therapeutic consequences as it allows participants to address any concerns they may have and get a sense of what the process will involve.

## 3 *Held on marae*

Te Pae Oranga hearings are typically held on the marae and follow marae protocol.<sup>67</sup> The hui mātua begins with a karakia and all parties are introduced to each other. The prominence of tikanga Māori may have an anti-therapeutic effect on Māori who have become so disconnected to their whakapapa that they “perceive the marae as strange as a courtroom”.<sup>68</sup> However, this anti-therapeutic effect is overcome by seeking to connect the participant to their culture, so they can situate themselves within the wider collective

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<sup>63</sup> Bruce J Winick “The jurisprudence of therapeutic jurisprudence”, above n 21, at 663; see generally Bruce J Winick “The Side Effects of Incompetency Labelling and the Implications for Mental Health Law” in David B Wexler and Bruce J Winick (eds) *Law in a Therapeutic Key* (Carolina Academic Press, Durham, North Carolina, 1996) 17 at 57-58.

<sup>64</sup> Te Pae Oranga panel meeting.

<sup>65</sup> Te Pae Oranga panel facilitator.

<sup>66</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 7; Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “He Waka Roimata” above n 6, at 37.

<sup>67</sup> Akroyd Research & Evaluation *Iwi panels: an evaluation of their implementation and operation at Hutt Valley, Gisborne and Manukau from 2014 to 2015* (Ministry of Justice, New Zealand Police, Department of Corrections, 17 June 2016) at 15.

<sup>68</sup> Toki, above n 20, at 220.

and reclaim their sense of identity.<sup>69</sup> This reconnection generates a therapeutic impact for most Māori.

#### 4 *No power imbalance*

Te Pae Oranga hearings are attended by panel facilitators, panel members, a police representative, the participant and occasionally the victim and support people.<sup>70</sup> At the hui mātua, the panel members sit together in a circle around a table and work together with the participant to address the harm.<sup>71</sup> This alleviates the immediate power imbalance that is prominent between an offender and a judge in the courtroom and fosters a sense of unity amongst the group. This promotes therapeutic consequences as the participant's mana is upheld.

#### 5 *Sharing of stories*

Te Pae Oranga provides a forum where the adversarial process is relaxed and problem-solving processes are emphasized.<sup>72</sup> Te Pae Oranga promotes healing as it is a discussion-based process that allows the participant to explain their reasons for offending. The participant can share their story and their life circumstances surrounding the offence.<sup>73</sup> This empowers the participant to take ownership of their actions and have a voice in the process. This promotes positive therapeutic consequences as when there is an opportunity for a participant to share their story and be listened to, they are more likely to feel respected and comply with the requirements of their agreed actions.<sup>74</sup>

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<sup>69</sup> Katey Thom “New Zealand’s Solution-Focused Movement: Development, Current Practices and Future Possibilities” in Warren Brookbanks (ed) *Therapeutic Jurisprudence: New Zealand Perspectives* (Thomas Reuters, Wellington, 2015) 325 at 366; see also James Greenland “Justice panels: an innovative way to achieve justice” *LawTalk* 881 (online ed, New Zealand, 11 February 2016) at 19.

<sup>70</sup> New Zealand Police “Police instructions: Te Pae Oranga”, above n 58, at 11.

<sup>71</sup> Rosalie Chamberlain “Te Pae Oranga” *LawTalk* 924 (online ed, New Zealand, 29 November 2018) at 89.

<sup>72</sup> David B Rottman “Does Effective Therapeutic Jurisprudence Require Specialized Courts (and Do Specialized Courts Imply Specialist Judges)” (2000) 37(1) *Court Review: Journal of the American Judges Association* 22 at 23.

<sup>73</sup> New Zealand Police “Police instructions: Te Pae Oranga”, above n 58, at 14.

<sup>74</sup> Kathy Douglas “Law Reform: Therapeutic Jurisprudence, restorative justice and the law” (2007) 32 *Alt LJ* 107 at 107; see also Francine Patricia Timmins “Therapeutic Jurisprudence, Justice and Problem Solving” in Warren Brookbanks (ed) *Therapeutic Jurisprudence: New Zealand Perspectives* (Thomas Reuters, Wellington, 2015) 121 at 143; see also David B Wexler “Therapeutic Jurisprudence: An Overview” (2000) 17(1) *T M Cooley L Rev* 125 at 134.

During the hui mātua, the panel identifies what is happening in the participant's life, what led them to offend and what support is required to address the underlying criminal behaviour.<sup>75</sup> This allows for a substantial consideration of the context in which the offending occurred. This holistic review is often neglected in other processes of the criminal justice system.<sup>76</sup> The actions of the panel members can promote therapeutic outcomes for the benefit of the participant. Winick noted:<sup>77</sup>

...if those involved in law-making, in law-applying, and in law-related [counselling] begin to see themselves as therapeutic agents, they can enhance considerably the potential of law as a helping profession.

The participant may be referred to support services to help address the underlying issues that led to the offending. These services may include driving lessons, counselling, employment advice or budgeting services.<sup>78</sup> The partnership with social workers, psychologists and driving instructors promotes healing for Māori as it is a multi-disciplinary approach to supporting and rehabilitating participants.<sup>79</sup> Te Pae Oranga promotes therapeutic consequences as it can “mobilize and coordinate treatment” with the community.<sup>80</sup>

## 6 *Victim empowerment*

Toki noted, “as Māori are also disproportionately represented as victims in the criminal justice system, it is recommended that therapeutic jurisprudence principles apply equally to the victim as the offender”.<sup>81</sup> The current justice process is perceived by victims as aggressive and intimidating. Seventy-nine per cent of victims report that they do not receive adequate information and support throughout the criminal justice process.<sup>82</sup>

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<sup>75</sup> New Zealand Police “Police instructions: Te Pae Oranga”, above n 58, at 14.

<sup>76</sup> The Hon Justice Joe Williams, above n 8.

<sup>77</sup> Winick “The jurisprudence of therapeutic jurisprudence”, above n 21, at 663.

<sup>78</sup> Chamberlain, above n 71, at 89.

<sup>79</sup> Douglas, above n 74, at 108.

<sup>80</sup> Rottman, above n 72, at 23.

<sup>81</sup> Toki, above n 20, at 232.

<sup>82</sup> Hāpaitia te Oranga Tangata: Safe and Effective Justice *Strengthening the Criminal Justice System for Victims* (August 2019) at 21.

Victims are often “treated as witnesses to crimes committed against them”.<sup>83</sup> This can lead to negative psychological impacts “manifested in feelings of anxiety, fear and powerlessness”.<sup>84</sup> An effective solution for Māori must restore the victim, rather than make them more vulnerable.

Te Pae Oranga offers a degree of therapeutic jurisprudence to victims as it encourages them to be a part of the process and have influence over the actions required of the participant to address the harm. This provides an opportunity for them to share their perspective and the impact the offending had on them. This empowers the victim to be a part of the process and may act as a means of catharsis. If there is a victim, they will be contacted and a victim impact statement will be prepared.<sup>85</sup> Where a victim chooses to participate in Te Pae Oranga, the police will provide information on the purpose of Te Pae Oranga, how it “can prevent the victim from being victimised again, and how wraparound services are used to support the participant, to prevent reoffending”.<sup>86</sup> The victim is invited to bring support people with them to the hui mātua and if the victim does not want to participate, someone else can stand in their place and discuss the impact the offending had on them.<sup>87</sup>

## 7 *Accountability*

Te Pae Oranga and therapeutic jurisprudence are based on accountability. To be eligible to be referred to Te Pae Oranga, the participant must have accepted responsibility for the offence.<sup>88</sup> The participant is held to account through agreeing to complete certain actions to compensate for their behaviour. These actions may include an apology to the victim, payment or community service. By encouraging the participant to own up to their actions it facilitates the “therapeutic goal of promoting self-determination and accountability”.<sup>89</sup> Francine Timmins contended that “self-determination has been found to be important in

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<sup>83</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 36.

<sup>84</sup> Toki above n 20, at 231.

<sup>85</sup> New Zealand Police “Police instructions: Te Pae Oranga”, above n 58, at 9.

<sup>86</sup> At 9.

<sup>87</sup> At 10.

<sup>88</sup> At 4.

<sup>89</sup> Timmins, above n 74, at 141.



promoting health, educational, employment and rehabilitative outcomes”.<sup>90</sup> An admission of accountability creates the opportunity of a “therapeutic moment” for the participant and reinforces the repercussions of their behaviour.<sup>91</sup>

The participant is encouraged to suggest actions they can take to address the harm caused by their offending. This promotes therapeutic consequences as “the patient's active involvement in negotiating and designing the treatment program is of tremendous importance to adherence”.<sup>92</sup> This facilitates what the participant perceives as a fair and just process that “promotes cognitive self-charge” and can increase the participant’s commitment to healing.<sup>93</sup>

The participant is invited to bring whānau with them to the hui mātua.<sup>94</sup> David Wexler noted that “involving significant others, such as family members, in the treatment process is also likely to enhance patient adherence”.<sup>95</sup> This encourages accountability to the community and promotes therapeutic consequences as whānau can support the participant and assume collective responsibility for the participant’s healing.<sup>96</sup>

#### 8 *Post panel support*

After the hui mātua, the kaikawe kōrero periodically checks in with the participant to ensure that they are making good progress and to address any barriers inhibiting the progress.<sup>97</sup> This promotes therapeutic consequences as it maintains the relationship with the participant and encourages them to continue working towards their agreed actions. The kaikawe kōrero reports the participants' progress to the police. Successful completion of the agreed actions means the participant will not be referred to the courts.

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<sup>90</sup> Timmins, above n 74, at 41.

<sup>91</sup> William Schma “Judging for the New Millennium” (2000) 37(1) Court Review: Journal of the American Judges Association 4 at 4.

<sup>92</sup> David B Wexler “Therapeutic Jurisprudence and the Criminal Courts” in David B Wexler and Bruce J Winick (eds) *Law in a Therapeutic Key* (Carolina Academic Press, Durham, North Carolina, 1996) 157 at 165.

<sup>93</sup> David B Wexler “An Introduction to Therapeutic Jurisprudence” in David B Wexler *Rehabilitating Lawyers: Principles of Therapeutic Jurisprudence for Criminal Law Practice* (Carolina Academic Press, Durham, North Carolina, 2008) 3 at 10.

<sup>94</sup> Chamberlain, above n 71, at 88.

<sup>95</sup> Wexler “Therapeutic Jurisprudence and the Criminal Courts”, above n 92, at 166.

<sup>96</sup> At 166.

<sup>97</sup> New Zealand Police “Police instructions: Te Pae Oranga”, above n 58, at 15.

Approximately 80 per cent of all Te Pae Oranga participants successfully complete their agreed actions.<sup>98</sup>

### *B Anti-Therapeutic Characteristics of Te Pae Oranga*

Te Pae Oranga also generates anti-therapeutic consequences that operate to the detriment of participants and victims. These anti-therapeutic consequences must be mitigated for Te Pae Oranga to be an effective solution for Māori.

#### *1 Limited in scope*

Te Pae Oranga is limited as an alternative to prosecution where the offence committed has a penalty of less than six months imprisonment and is not related to methamphetamine, family violence, driving charges with mandatory disqualification, firearm charges or second-hand dealer offences.<sup>99</sup> Te Pae Oranga cannot deal with serious offenders. This promotes anti-therapeutic consequences because it perpetuates a notion that these offences are considerably less serious as they can be dealt with outside of the courts. “For a therapeutic approach to criminal justice to be effective across-the-board, it should ideally be applied across-the-board, to every offender and every case that comes before the court”.<sup>100</sup> The offences that lead a participant to be referred to Te Pae Oranga still cause harm, mistrust and damage. A perception that suggests otherwise is anti-therapeutic.

In the context of restorative justice, Hannah Goodyer discussed:<sup>101</sup>

Applying it only to minor offences restricts reconciliation, healing, and reintegration to a limited group of crimes, thus diminishing its scope and impact on justice in general. Correspondingly, it reinforces societal belief that the only way to deal with serious crimes and convey appropriate disapproval is through imprisonment.

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<sup>98</sup> Chamberlain, above n 71, at 89.

<sup>99</sup> New Zealand Police “Police instructions: Te Pae Oranga”, above n 58, at 4.

<sup>100</sup> Timmins, above n 74, at 144.

<sup>101</sup> Goodyer, above n 34, at 197 (footnotes omitted).

The limitation in the scope of Te Pae Oranga promotes anti-therapeutic consequences as it does not provide healing and restoration to all offenders.<sup>102</sup> To be eligible to attend Te Pae Oranga, an offender must be over eighteen years old and “must not have active charges being pursued through Court”.<sup>103</sup> Those that are barred from attending Te Pae Oranga because of the referral criteria and those who commit crimes involving “deep hurt, fear, pain and disharmony” would benefit from the problem-solving, wrap-around approach Te Pae Oranga provides to low-level offenders.<sup>104</sup> An expansion of the referral criteria would promote therapeutic outcomes for all.

## 2 *Paternalistic*

Therapeutic jurisprudence attempts to divorce itself from paternalism, as that is recognised as “having the potential to have anti-therapeutic effects”.<sup>105</sup> Francine Timmins notes “the emphasis on treating what is seen as the underlying cause of offending has been criticised as coercive and paternalistic”.<sup>106</sup> Perhaps Te Pae Oranga generates anti-therapeutic consequences as the reach of the state impinges further into participant’s life by mandating action.<sup>107</sup> These anti-therapeutic effects will be amplified where the participant does not see the difference between retribution and rehabilitation and they view the process as punishment. Further, the participant may view that confronting their behaviour through story-telling is much more challenging than the impersonal experience of court. This has the potential to generate anti-therapeutic consequences such as feelings of resentment and a reluctance to commit towards healing.

## 3 *A pathway to prosecution*

Te Pae Oranga may have an anti-therapeutic effect for participants who do not complete their agreed actions. A failure to complete these actions will result in a review by the police who may decide that the appropriate option is to prosecute the participant through

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<sup>102</sup> Goodyer, above n 34, at 197.

<sup>103</sup> New Zealand Police “Police instructions: Te Pae Oranga”, above n 58, at 4.

<sup>104</sup> Goodyer, above n 34, at 197.

<sup>105</sup> Timmins, above n 74, at 133.

<sup>106</sup> At 136.

<sup>107</sup> Douglas, above n 74, at 108.

the court system.<sup>108</sup> This is an anti-therapeutic consequence for 20 per cent of participants who do not complete their agreed obligations.<sup>109</sup>

#### 4 *Burden on the victim*

Te Pae Oranga may have an anti-therapeutic effect on the victim as they may feel re-victimised when faced by the participant. As mentioned previously, this may manifest in feelings of anxiety or fear.<sup>110</sup> However, their participation is optional and they are empowered to be a part of the process through sharing the impact the offending had on them and suggesting ways to remedy the behaviour. The therapeutic consequences of healing and restoration overwhelm this burden.

### C *Tikanga Māori*

An alternative justice process that is effective for Māori is one that is based on tikanga Māori principles and philosophies. Toki identified that “therapeutic jurisprudence as a vehicle allows ... formal recognition of the validity and applicability of tikanga Māori ... and a system predicated upon tikanga Māori”.<sup>111</sup> Te Pae Oranga has the potential to uphold tikanga Māori in the state legal system.

#### 1 *Mana*

Mana refers to power and authority, but also encompasses human dignity.<sup>112</sup> The mana of a person is diminished where harm has occurred and it must be restored through accountability.<sup>113</sup> Mana is not restored through imprisonment.<sup>114</sup> The criminal justice

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<sup>108</sup> New Zealand Police “Police instructions: Te Pae Oranga”, above n 58, at 5 and 12.

<sup>109</sup> Chamberlain above n 71, at 89.

<sup>110</sup> Toki above n 20, at 231.

<sup>111</sup> At 233.

<sup>112</sup> Law Commission *Māori Custom and Values in New Zealand Law* (NZLC SP9, 2001) at 32-33; see also Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 16; see generally Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 154.

<sup>113</sup> Nin Thomas and Khylee Quince “Māori Disputes and their Resolution” in Peter Spiller (ed) *Dispute Resolution in New Zealand* (Oxford University Press, Oxford, 1999) 205 at 223.

<sup>114</sup> At 228.

system must develop new solutions that enhance the mana of those who harm and those who have been harmed.<sup>115</sup>

Te Pae Oranga seeks to enhance the mana of participants and victims.<sup>116</sup> Mana is upheld through alleviating the power imbalance between the participant and panel facilitators. Participants are treated as capable, autonomous human beings while also recognising that they must be held accountable for their actions. The mana of a victim is upheld as they are invited to the hui mātua to influence what the participant ought to do to repair the harm and restore their own mana. Te Pae Oranga promotes therapeutic consequences as it upholds the mana of the participant and victim.

## 2 *Utu*

The principle of utu is based on the framework of take-utu-ea. In te ao Māori there is a desire to achieve a constant state of ea.<sup>117</sup> Where the balance is disrupted by an action that causes harm, the balance must be restored to equilibrium.<sup>118</sup> This requires a positive action and is inherently linked with accountability. Committing an offence indicates that the balance is disrupted in the participant's life.<sup>119</sup> The criminal justice system must seek to restore that balance not only within the participant but also within the wider community who are affected by that disruption.

Te Pae Oranga recognises imbalances in participant's lives that upset the state of ea and lead to negative behaviour. Through the principle of utu, the panel seeks to restore that balance by addressing the underlying harms that lead to offending. The principle of utu is also reflected through recognising that the participant has caused harm and has an obligation to address their actions, repair relationships and be held accountable.

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<sup>115</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 16.

<sup>116</sup> Akroyd Research & Evaluation, above n 67, at 7.

<sup>117</sup> See generally Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 467-475.

<sup>118</sup> Thomas and Quince, above n 113, at 224.

<sup>119</sup> “Inaia Tonu Nei: Hui Māori Report” above n 3, at 7.

### 3 *Whanaungatanga*

The principle of whanaungatanga encompasses the rights and obligations that exist between individuals, communities and the natural world.<sup>120</sup> A stark difference between the state legal system and tikanga Māori are the different focuses on individualism and collectivism. An effective solution for Māori is one that is a “collective and inclusive decision-making process, ideally based on consensus, which directs the parties to the future”.<sup>121</sup> Before colonisation, in te ao Māori, “collective identity also meant collective responsibility for any offences committed”.<sup>122</sup> Nowadays, the settler law overlays tikanga Māori and prioritises individual rights at the expense of the collective and “dispenses justice to isolated individuals”.<sup>123</sup> An offender’s journey through the state legal system is commonly perceived as isolating and alienating, where they are viewed as distinct and separate from their communities.<sup>124</sup> Tikanga Māori recognises that “offending is situated within whānau and hapū” and by adhering to the principles of whanaungatanga, a collective approach can be realised.<sup>125</sup> As noted in *He Waka Roimata*, “the system has broken our families, but the marae can be the basis of healing them”.<sup>126</sup> Further, “the notion of isolating people from their whānau and disrupting whakapapa is not part of tikanga”.<sup>127</sup> John Braithwaite noted:<sup>128</sup>

There can be no justice in a world without connectedness and empathy; at the same time, social capital cannot flourish in a world without an infrastructure of security around human relationships that can only be guaranteed by institutions of justice.

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<sup>120</sup> Mead, above n 47, chapter 3; see also Carwyn Jones *New Treaty, New Tradition: Reconciling New Zealand and Māori Law* (Victoria University Press, Wellington, 2016) at 105; see generally Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 524.

<sup>121</sup> Thomas and Quince, above n 113, at 224.

<sup>122</sup> At 211 and 224.

<sup>123</sup> At 216-218 and 226.

<sup>124</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “He Waka Roimata” above n 6, at 37.

<sup>125</sup> Hāpaitia te Oranga Tangata: Safe and Effective Justice “Key insights: Māori” (19 December 2019) <[https://www.safeandeffectivejustice.govt.nz/assets/Uploads/b709426ec2/Key\\_Insight-Maori\\_1219.pdf](https://www.safeandeffectivejustice.govt.nz/assets/Uploads/b709426ec2/Key_Insight-Maori_1219.pdf)>.

<sup>126</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “He Waka Roimata” above n 6, at 26.

<sup>127</sup> At 24.

<sup>128</sup> John Braithwaite, ‘Doing Justice Intelligently in Civil Society’ (2006) 62(2) *Journal of Social Issues* 393 at 402.

Through the Te Pae Oranga process, one of the key aims is to build whanaungatanga, particularly with Māori participants.<sup>129</sup> By establishing whanaungatanga participants are embraced by the community and can be reintegrated into society with the support of the panel. Through Te Pae Oranga, participants may be taught the histories of their whakapapa and cultural identity. This can build whakawhanaungatanga.<sup>130</sup> and “motivate them to better understand their place within the community”.<sup>131</sup> Te Pae Oranga panels are held on the marae and karakia, kai, mihimihi and whakawhanaungatanga initiate every hui mātua.<sup>132</sup> Te Pae Oranga promotes therapeutic consequences as these processes establish the identity of the panel members and participants to allow the two parties to come together to build kotahitanga.<sup>133</sup>

#### *D Conclusion*

An effective solution for Māori is one that generates therapeutic consequences and upholds the principles of tikanga Māori. Te Pae Oranga promotes therapeutic impacts through non-stigmatising labels, providing extensive support, promoting accountability and empowering the victim. Te Pae Oranga also provokes anti-therapeutic consequences that negatively impact a minority of participants and victims. However, these anti-therapeutic impacts are overwhelmed by the therapeutic potential of Te Pae Oranga. Te Pae Oranga is underpinned by tikanga Māori and upholds the principles of mana, utu and whanaungatanga.

### ***IV Is Te Pae Oranga an effective solution for Māori?***

An effective solution for Māori is one that generates therapeutic consequences and withstands the following criteria, drawn from various criminal justice reports.<sup>134</sup> An effective solution for Māori must uphold the principles of the Treaty of Waitangi, give

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<sup>129</sup> Akroyd Research & Evaluation, above n 67, at 6.

<sup>130</sup> ‘A process of establishing relationships; relating well to others’ as defined in Māori Dictionary “Whakawhanaungatanga” <<https://maoridictionary.co.nz/word/12711>>.

<sup>131</sup> Greenland, above n 69, at 19.

<sup>132</sup> Akroyd Research & Evaluation, above n 67, at 9.

<sup>133</sup> ‘Unity; togetherness’ as defined Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 145-147.

<sup>134</sup> See Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5; “Inaia Tonu Nei: Hui Māori Report” above n 3; Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “He Waka Roimata” above n 6.

weight to the Māori experience of colonisation and must not cause harm. An effective solution must also reduce reoffending, be focused on healing and actively target Māori. At first glance, Te Pae Oranga appears to be an intervention that can transform the criminal justice system and provide a solution that is therapeutic for Māori.

#### *A Upholds the Obligations of the Treaty of Waitangi*

An effective solution for Māori must uphold the principles of the Treaty of Waitangi. Māori empowerment comes from being able to exercise tino rangatiratanga<sup>135</sup> over the design and facilitation of criminal justice reform.<sup>136</sup> The Crown has failed to deliver a justice system that accommodates and empowers Māori.<sup>137</sup> As recognised in *Inaia Tonu Nei*, “the justice system cannot be reformed, without leadership from te ao Māori”.<sup>138</sup> The Crown must honour the notion of partnership and balance the rights of kāwanatanga<sup>139</sup> and rangatiratanga as guaranteed by the Treaty of Waitangi.<sup>140</sup> An intervention that has sufficient power for Māori is one that is designed, facilitated and led by Māori, for Māori.

Initially, Te Pae Oranga seems to uphold the principles of partnership and rangatiratanga. Te Pae Oranga is an iwi-led intervention that allows Māori to exercise rangatiratanga over a process that aims to meet the needs of their people. This reflects the balance between the Crown’s right to govern and the right of Māori to develop and facilitate a tikanga-based process. Further:<sup>141</sup>

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<sup>135</sup> ‘Unqualified exercise of chieftainship; chiefly authority; self-determination and autonomy’ as defined in Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 331-334.

<sup>136</sup> “Inaia Tonu Nei: Hui Māori Report” above n 3, at 9; see also Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “He Waka Roimata” above n 6, at 24.

<sup>137</sup> “Inaia Tonu Nei: Hui Māori Report” above n 3, at 11.

<sup>138</sup> “Inaia Tonu Nei: Hui Māori Report” above n 3, at 26.

<sup>139</sup> ‘Govern; the exercise of governmental authority’ as defined in Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 132.

<sup>140</sup> Waitangi Tribunal “Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates”, above n 2, at 25.

<sup>141</sup> Sarah Croxford “A Theoretical Analysis of Iwi Justice Panels. Where Does the Authority for These Panels Come From?” (LLM research paper, Victoria University of Wellington, Faculty of Law, 2016) at 8.



The development of justice programmes based on tikanga theories and practice is very much part of re-empowerment, through reasserting the importance, vitality and significance of indigenous communities taking responsibility for caring for their own.

The principle of partnership “requires cooperation, compromise and the will to achieve mutual benefit”.<sup>142</sup> Te Pae Oranga is a partnership between iwi, community organisations and the police.<sup>143</sup> Te Pae Oranga hearings are led by Maori but rely on police support to refer participants to Te Pae Oranga, attend the hui mātua and report and review results.<sup>144</sup> The Crown must enhance the ability of Māori to exercise rangatiratanga whilst respecting Māori autonomy.<sup>145</sup> Te Pae Oranga does not wholly uphold the principle of rangatiratanga because it is entirely dependent on police referrals.

### *B Gives Weight to the Māori Experience of Colonisation*

A solution must give weight to the Māori experience of colonisation and have scope to encompass a contextual analysis of the circumstances that surrounded the offending. The justice system has been referred to as a “blunt tool of colonisation”<sup>146</sup> that continues to perpetuate racism and injustice.<sup>147</sup> *He Waka Roimata* noted that “for Māori, the impact of colonisation, neo-colonial practices and racism are everyday experiences that undermine, disenfranchise and frequently conspire to trap them in the criminal justice system”.<sup>148</sup> An effective solution for Māori is one that seeks to overcome and address the intergenerational barriers imposed on Māori that exist as the ripple effects of colonisation. These include a history of colonial dispossession, socio-economic deprivation, systemic bias, oppression of Māori culture, loss of te reo Māori and racism in the justice system.<sup>149</sup> As Jackson noted, “the criminal justice system and the Māori offender cannot be viewed

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<sup>142</sup> Waitangi Tribunal “Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates”, above n 2, at 28.

<sup>143</sup> New Zealand Police “Police instructions: Te Pae Oranga”, above n 58, at 4.

<sup>144</sup> At 4 and 8-12.

<sup>145</sup> Waitangi Tribunal *Te Whanau o Waipareira Report* (Wai 414, 1998) at 16.

<sup>146</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “He Waka Roimata” above n 6, at 24.

<sup>147</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 45.

<sup>148</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “He Waka Roimata” above n 6, at 24.

<sup>149</sup> Quince “Therapeutic Jurisprudence and Māori” above n 40, at 351-352.

in isolation from the social, economic, and cultural influences which shape the wellbeing of the Māori people”.<sup>150</sup>

Te Pae Oranga allows for a consideration of context that can include how the impact of colonisation and intergenerational trauma affects the participant. As the panels are led by Māori, the facilitators are aware of many of the injustices Māori participants face and have lived experience of the same struggles. This can be explained through an example. “Daniel had been institutionalised since he was five years old, having been brought up as a ward of the state and then spending most of his adult life in prison”.<sup>151</sup> Daniel was involved in a road rage incident and was subsequently referred to Te Pae Oranga. At the panel, Daniel shared his story and set out the actions he had taken such as counselling and anger management. In light of these actions, the panel “[was] motivated to help Daniel to continue on this positive pathway”.<sup>152</sup> Daniel apologised and offered a \$100 koha<sup>153</sup> to the victim.<sup>154</sup> This illustrates that Te Pae Oranga can act as a mechanism that intervenes and steers Māori away from the criminal justice process whilst also giving weight to the harm that affects the participant. Te Pae Oranga accommodates an analysis of the Māori experience of colonisation. This promotes therapeutic consequences for Māori.

### *C No Further Harm*

A solution that is effective for Māori is one that does not cause further harm at the point of intervention.

#### *1 Harm to participants*

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<sup>150</sup> Moana Jackson *The Māori and the Criminal Justice System: A New Perspective: He Whaiapaanga Hou: Part 2* (Policy and Research Division, Department of Justice, November 1988) at 2.

<sup>151</sup> New Zealand Police *Annual Report 2018/19* (November 2019) at 66.

<sup>152</sup> At 66.

<sup>153</sup> ‘Gift; donation’ as defined in Richard Benton, Alex Frame and Paul Meredith “Te Mātāpunenga: A compendium of references to the concepts and institutions of Māori customary law”, above n 44, at 137.

<sup>154</sup> New Zealand Police “Annual Report 2018/19”, above n 151, at 66.

Sending low-level offenders to prison is ineffective and unproductive.<sup>155</sup> The current pathway for offenders perpetuates further harm as prisons tend to “take wrecked lives and [wreck] them a little bit more”.<sup>156</sup>

Prisons are perceived as:<sup>157</sup>

...extremely expensive training grounds for further offending, building offenders’ criminal careers by teaching them criminal skills, damaging their employment, accommodation and family prospects, and compounding mental health and substance use issues.

Mental health disorders are closely linked with criminal offending.<sup>158</sup> *Turuki! Turuki!* suggested that the “demand on New Zealand’s justice system is a product of unmet mental health needs”.<sup>159</sup> Unresolved trauma can lead to minor offending, which is then the catalyst for serious offending.<sup>160</sup> Prisons fail to adequately address mental health and addiction disorders, resulting in trauma that is aggravated through the isolation of imprisonment.<sup>161</sup> Intervention, rather than punishment for low-level offenders is crucial to address underlying mental health disorders and divert offenders away from cycles of hopelessness leading to crime.

Te Pae Oranga allows participants to face accountability free from the stigma of a criminal conviction.<sup>162</sup> Te Pae Oranga acts as a turning point for participants to assess their needs that must be addressed. Te Pae Oranga allows panel facilitators to identify

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<sup>155</sup> JustSpeak “The Case Against Prisons”, above n 14, at 8-11.

<sup>156</sup> Hon Andrew Little, Minister of Justice “Speech to new direction for criminal justice reform announcement” (New Zealand Government, 12 December 2019).

<sup>157</sup> Sir Peter Gluckman and Ian Lambie *Using evidence to build a better justice system: The challenge of rising prison costs* (Office of the Prime Minister’s Chief Science Advisor, 29 March 2018) at 4.

<sup>158</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 46; see also Devon Indig, Craig Gear, Kay Wilhelm *Cormorbid substance use disorders and mental health disorders among New Zealand Prisoners* (Department of Corrections, June 2016) at 9.

<sup>159</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 50.

<sup>160</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 50.

<sup>161</sup> Gluckman and Lambie, above n 157, at 6.

<sup>162</sup> Greenland, above n 69, at 14.

any underlying mental health disorders that may be influencing a participant's susceptibility to offend. Participants can be connected to the relevant support services in the community. In one case a participant was referred to Te Pae Oranga because he stole a tray of cookies.<sup>163</sup> Through the sharing of stories, the panel identified that he had been unemployed for 12 years after witnessing a workmate's death.<sup>164</sup> He had "no benefits, unresolved trauma and a drug problem".<sup>165</sup> The panel referred him to drug and trauma counselling, assisted him in finding a job and "appointed a Whānau Ora navigator to support him as he completed these actions".<sup>166</sup> Te Pae Oranga seeks to intervene in an offender's life and provide the support services they require to ensure a productive and safe return to their community. Rather than perpetuate further harm, Te Pae Oranga generates therapeutic consequences.

## 2 *Harm for the wider whānau and community*

Sending offenders to prison has a wider effect on the whānau and community the offender belongs to.<sup>167</sup> Where mothers, fathers and caregivers are taken away from their whānau and imprisoned, their children face significant barriers and are more susceptible to poverty, social deprivation and subsequent criminal offending.<sup>168</sup> The Waitangi Tribunal suggested that over 10,000 Māori children have at least one parent imprisoned.<sup>169</sup> This perpetuates further intergenerational trauma.<sup>170</sup> Prisons are a response to harm that generates further harm.<sup>171</sup> Imprisonment causes monumental ripple effects that transcend the wider whānau. The default position of sending low-level offenders to prison must shift towards community-based responses with a focus on accountability and restoration. Te Pae Oranga does not separate participants from their whānau. Te Pae Oranga seeks to

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<sup>163</sup> Chamberlain, above n 71, at 89.

<sup>164</sup> At 89.

<sup>165</sup> At 89.

<sup>166</sup> At 89.

<sup>167</sup> Waitangi Tribunal "Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates", above n 2, at 14.

<sup>168</sup> Gluckman and Lambie, above n 157, at 6.

<sup>169</sup> Waitangi Tribunal "Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates", above n 2, at 14.

<sup>170</sup> "Inaia Tonu Nei: Hui Māori Report" above n 3, at 22.

<sup>171</sup> Tania Sawicki Mead "A World Without Prisons" (Tedx Wellington, 30 August 2019); see generally Moana Jackson "Why Did Māori Never Have Prisons?" (Wellington Girls College, November 2017).

promote therapeutic impacts for participants, whānau and victims and overcome the anti-therapeutic consequences that arise from imprisonment.

#### *D Focused on Rehabilitation*

A solution that is effective for Māori is one that is focused on rehabilitation. The criminal justice process in New Zealand is largely adversarial.<sup>172</sup> and “traditionally, by design, its purpose and objective was to generate outcomes that were punitive, retributive, deterrent and to a lesser extent rehabilitative”.<sup>173</sup> Where an offender poses a danger to themselves or others it is necessary to take measures to separate them from the community to ensure no further harm results.<sup>174</sup> However, in the context of low-level offending, it is not always necessary to isolate an offender from society. Rehabilitation may be better achieved through the establishment of community-led initiatives to address underlying health or social issues.<sup>175</sup> *Turuki! Turuki!* called for greater emphasis and investment in habilitation services.<sup>176</sup> The community centre model initially proposed in *Te Ara Hou* provides an opportunity for offenders to take responsibility for their offending productively while ensuring that they retain links to the community.<sup>177</sup>

Te Pae Oranga aligns with the call in *Turuki! Turuki!* as it “focuses on putting right the harm done to the victim and supporting participants to change their behaviour, rather than punish them”.<sup>178</sup> Offenders who are imprisoned for six months or less have little access to rehabilitation opportunities.<sup>179</sup> Te Pae Oranga operates as a safety net to capture these participants and lead them down an alternative path where rehabilitation is paramount. Evidence suggests that responding to harm therapeutically can divert offenders from the criminal justice system.<sup>180</sup> Te Pae Oranga offers this support through the partnership with

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<sup>172</sup> Goodyer, above n 34, at 180.

<sup>173</sup> Lutui, above n 34, at 89; see also Goodyer, above n 34, at 181.

<sup>174</sup> “Inaia Tonu Nei: Hui Māori Report” above n 3, at 22.

<sup>175</sup> At 21.

<sup>176</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 53.

<sup>177</sup> Sir Clinton Roper *Prison Review: Te Ara Hou: The New Way* (Ministerial Committee of Inquiry into the Prisons System, 1989) at 35-39.

<sup>178</sup> Chamberlain, above n 71, at 87.

<sup>179</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 56.

<sup>180</sup> Roper, above n 177, at 35.

community services who can provide the necessary rehabilitation measures to heal the participant, thus promoting therapeutic consequences.

### *E Reduces Reoffending*

A solution that is effective for Māori is one that instigates long-term behavioural change and reduces reoffending. Imprisonment is ineffective for meeting these goals. Following release, 66.7 per cent of the Māori prison population are reconvicted within two years.<sup>181</sup> Dissatisfaction with the Crown's efforts in reducing Māori reoffending initiated a report from the Waitangi Tribunal investigating the disproportionate reoffending rates. The Tribunal found that “the difference between Māori and non-Māori reoffending rates is substantial, undisputed and contributes to the disproportionate number of Māori in prison”.<sup>182</sup> The Waitangi Tribunal concluded that the Crown had breached the principles of active protection and equity through the failure to prioritise the reduction of Māori offending.<sup>183</sup> Subsequently, the police, Ministry of Justice and Department of Corrections announced a combined goal of reducing Māori reoffending by 25 per cent before 2025.<sup>184</sup> In light of the current reoffending rates, this target seems unattainable. Transformational change is required to ensure that the criminal justice system does more than “simply recycle offenders”.<sup>185</sup>

Te Pae Oranga is one of the interventions that police have developed to achieve this goal.<sup>186</sup> The initial Community Justice Panel in Christchurch realised a “31 [per cent] lower risk-adjusted reoffending rate within 12 months” for participants who had completed a panel.<sup>187</sup> However, a study conducted in 2019 found that iwi panel “participants did not reduce their rate of reoffending compared to matched controls”.<sup>188</sup>

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<sup>181</sup> Department of Corrections "Annual report 2018/19", above n 13, at 155.

<sup>182</sup> Waitangi Tribunal “Tū Mai te Rangi! Report on the Crown and Disproportionate Reoffending Rates”, above n 2, at x.

<sup>183</sup> At x – xi.

<sup>184</sup> Department of Corrections *Change lives shape futures: reducing re-offending among Māori* (2016-17) at 3 and 6.

<sup>185</sup> Thomas and Quince, above n 113, at 219.

<sup>186</sup> New Zealand Police “Annual Report 2018/19”, above n 150, at 37.

<sup>187</sup> New Zealand Police *Policing Excellence: The Transformation of New Zealand Police 2009-2014* (November 2014) at 14.

<sup>188</sup> Darren Walton, Samara Martin and Judy Li “Iwi community justice panels reduce harm from re-offending” (2020) 15(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 75 at 75 and 83.

Panel “participants are found to reoffend with minor offences”.<sup>189</sup> This finding undermines the success of Te Pae Oranga and does not show promise as an intervention to achieve the 25 per cent reduction in reoffending. However, Darren Walton suggested that viewing this statistic in isolation is misleading and fails to capture the advantages of restorative processes.<sup>190</sup> It was found that where participants do reoffend, there is a 22.25 per cent reduction of the harm associated with those offences when compared to a matched control group where harm is measured in relation to the New Zealand Crime Harm Index.<sup>191</sup> Walton determined that on this basis, iwi panels are an effective alternative resolution process in the criminal justice system.<sup>192</sup> When focused on reoffending alone, Te Pae Oranga does not generate therapeutic consequences for Māori. However, the reduction of harm in post-panel offending suggests that Te Pae Oranga has therapeutic potential for Māori.

#### *F Accessible*

A solution that is effective for Māori is one that is accessible and easy to understand. The language used in the court system is confusing, alienating and intimidating.<sup>193</sup> The heavy use of legal jargon illuminates the power imbalance between the offender and the lawyers and judges and “the professional culture of those at court gives the impression of indifference and superiority that privileges more educated and articulate people and disadvantages others”.<sup>194</sup> The system is accessible only for those with resources and knowledge of how the system works.<sup>195</sup> Unfortunately, the majority without this knowledge are subjected to a colonialist process with insufficient support. An effective solution for Māori is one that accommodates Māori and is accessible to Māori. An evaluation completed in 2014 of the panels in Manukau, Gisborne and Lower Hutt found that iwi panel participants were satisfied with the process and the support provided

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<sup>189</sup> Walton, Martin and Li, above n 188, at 90.

<sup>190</sup> At 88 and 90.

<sup>191</sup> At 88.

<sup>192</sup> At 90.

<sup>193</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “He Waka Roimata” above n 6, at 37.

<sup>194</sup> At 37.

<sup>195</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 13.

throughout the process.<sup>196</sup> There is greater scope for support and assistance in Te Pae Oranga. Panel participants are consulted by the kaikawe kōrero before and after the hui mātua to ensure the participant understands the process and the repercussions and obligations arising from the process.

A transformative solution must be accessible and widely available. Te Pae Oranga is offered in Auckland City, Waitemātā, South Auckland, Hamilton, Whakatāne, Rotorua, Gisborne, Hastings, Lower Hutt, Nelson, Christchurch and Invercargill.<sup>197</sup> Low-level offenders outside of these districts cannot experience the healing potential of Te Pae Oranga.

### *G Targets Māori*

An effective solution for Māori is one that is designed for Māori and is utilised by Māori. To appease the public, solutions tend to be available to all ethnicities. The greatest devastation is the disproportionate number of Māori caught in the criminal justice pipeline. If the true goal is to address the disproportionate overrepresentation of Māori in the criminal justice system, a solution must actively target Māori.<sup>198</sup>

Te Pae Oranga is an alternative resolution process open to Māori and non-Māori.<sup>199</sup> Though Te Pae Oranga is an intervention seeking to target the overrepresentation of Māori in the criminal justice system, to avoid public backlash, all ethnicities are eligible to participate.<sup>200</sup> Fifty-five to sixty per cent of all participants that are referred to Te Pae Oranga identify as non-Māori.<sup>201</sup> It is concerning that Māori constitute 52.8 per cent of the prison population and are known to be more likely to interact with police, yet less than half of Te Pae Oranga referrals are Māori.<sup>202</sup> It is contrary to the purpose of Te Pae Oranga for non-Māori to overwhelm the resources available through Te Pae Oranga. Te

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<sup>196</sup> Akroyd Research & Evaluation, above n 67, at 6.

<sup>197</sup> Chamberlain, above n 71, at 87.

<sup>198</sup> Toki, above n 20, at 225.

<sup>199</sup> New Zealand Police “Police instructions: Te Pae Oranga”, above n 54, at 4.

<sup>200</sup> Dawson, above n 23.

<sup>201</sup> Walton, Martin and Li, above n 188, at 76.

<sup>202</sup> Department of Corrections “Prison facts and statistics – March 2020: Prison population by ethnicity”, above n 11.



Pae Oranga must actively target and engage with Māori to be an effective solution for Māori.

#### *H Not Limited by the Exercise of Discretion*

A solution that has power for Māori is one that is not limited by the exercise of discretion. The bias initially recognised in *He Whaipaanga Hou* continues to pervade the police.<sup>203</sup> Māori are more likely to interact with police, be charged by police, be convicted and be sentenced to non-monetary penalties than non-Māori.<sup>204</sup> The power of a Māori solution cannot be solely dependent on the police.

Referral to Te Pae Oranga is subject to the discretion of the arresting officer at the time of the offending. In deciding whether to refer a participant to Te Pae Oranga, the arresting officer must have regard to the participant's prior offending, current offending circumstances, the victim's opinion and the wider public interest.<sup>205</sup> The arresting officer is more likely to refer a participant to Te Pae Oranga where they have identified that the offender would benefit from addressing the underlying causes of offending.<sup>206</sup> Instead of referring an eligible offender to Te Pae Oranga they may instead process and release without charge, issue a formal warning or order the offender to appear in court.<sup>207</sup>

One of the significant limitations of Te Pae Oranga is that it is entirely reliant on police to exercise discretion in favour of Māori. A solution that relies on the police to act as a gatekeeper is vulnerable due to the inherent bias and racism that is known to exist.<sup>208</sup> Perhaps this inherent bias explains why most participants referred to Te Pae Oranga

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<sup>203</sup> Te Uepū Hāpai i te Ora – the Safe and Effective Justice Advisory Group “Turuki! Turuki!” above n 5, at 45; see also Human Rights Commission *A fair go for all? Rite tahi tātou katoa? Addressing Structural Discrimination in Public Services* (July 2012) at 36; see also Justine O'Reilly for Māori, Pacific and Ethnic Services *A review of Police and iwi/Māori relationships: working together to reduce offending and victimisation among Māori* (New Zealand Police, October 2014) at 6.

<sup>204</sup> Policy, Strategy and Research Group, above n 9, at 27.

<sup>205</sup> Chamberlain, above n 71, at 88.

<sup>206</sup> At 88.

<sup>207</sup> Walton, Martin and Li, above n 188, at 77.

<sup>208</sup> JustSpeak *JustSpeak IDI Research – A Justice System for Everyone* (26 February 2020); see also Gabrielle Maxwell and Catherine Smith *Police Perceptions of Māori: A report to the New Zealand Police and the Ministry of Māori Development: Te Puni Kokiri* (Institute of Criminology, Victoria University of Wellington, March 1998) at 33.

panels are non-Māori.<sup>209</sup> The success of Te Pae Oranga is dependent on police shifting their mind-sets towards referring participants to Te Pae Oranga rather than defaulting to prosecution through the court system. The potential of Te Pae Oranga is limited as it is a creature of police discretion.

### *I Can Achieve the Objective of Dismantling the Cycle*

Ultimately, a solution that is effective for Māori is one that goes beyond punishment, is based on prevention and works towards achieving justice and restoration. A successful solution is one where an offender is caught at intervention, is made accountable for their actions and is supported to address underlying causes of offending to stimulate long-term behavioural change.

Te Pae Oranga is based on compassion, accountability and community responsibility. Te Pae Oranga acknowledges that “often people who commit low-level offending do so because they need some support but do not have the means to obtain it”.<sup>210</sup> A woman was referred to Te Pae Oranga for a theft incident. When she failed to turn up to the hui mātua, she was set to face prosecution in court.<sup>211</sup> The panel members were aware that her whānau was struggling so they went to check on her at her home. The police discovered that the home was cold and mouldy, the children were burning their clothes to keep warm and there was little food.<sup>212</sup> The officer discovered the woman was entitled to WINZ support.<sup>213</sup> The officer organised food, supplies, firewood and an emergency housing assessment.<sup>214</sup> When she attended the next Te Pae Oranga hui she explained her circumstances. She had moved to escape a violent relationship and had little money to find a suitable house for her whānau.<sup>215</sup> She “had succumbed to temptation when she saw money left unattended in a bar”.<sup>216</sup> She agreed to apologise, pay reparation and “work with Police, WINZ and other agencies to ensure her whānau’s needs were met”.<sup>217</sup> Had

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<sup>209</sup> Walton, Martin and Li, above n 188, at 76.

<sup>210</sup> New Zealand Police “Annual Report 2018/19”, above n 151, at 32.

<sup>211</sup> At 36.

<sup>212</sup> At 36.

<sup>213</sup> At 36.

<sup>214</sup> At 36.

<sup>215</sup> At 36.

<sup>216</sup> At 36.

<sup>217</sup> At 36.

this woman not been embraced by Te Pae Oranga, her whānau would have suffered greater harm through the prosecution process. This example illustrates the potential of Te Pae Oranga to intervene in times of hardship and dismantle the cycle of offending by supporting participants to change their behaviour. Te Pae Oranga has the potential to act as a therapeutic force in the criminal justice system and generate effective and meaningful change for Māori.

## *V Conclusion*

Te Pae Oranga is an intervention that can empower Māori and result in transformational change. Te Pae Oranga reflects tikanga Māori and allows Māori to exercise a degree of rangatiratanga over the facilitation of the process. Te Pae Oranga seeks to address the underlying causes of offending and provide a participant with the necessary support to overcome these causes. Te Pae Oranga invites victims to be involved in the process and influence the mechanism used to hold the participant to account. Te Pae Oranga is built on the principles of prevention, accountability, rehabilitation and restoration. Te Pae Oranga can lead to long-term behavioural change and alleviate the intergenerational trauma from whānau affected by the criminal justice system.

However, Te Pae Oranga does not result in a reduction of reoffending. Though there is a compelling reduction in the harm associated with reoffending, this statistic sheds doubt on the potential effectiveness of Te Pae Oranga. Te Pae Oranga is limited by the exercise of police discretion when deciding to refer a participant to a panel. Education and training is required to shift an officer's mind-set towards referring participants where the referral criteria is satisfied. Te Pae Oranga is limited in scope and is not available as an alternative resolution in many regions in Aotearoa.

A solution that is effective for Māori is one that upholds the principles of the Treaty of Waitangi, is consistent with tikanga Māori and therapeutic jurisprudence and withstands the criteria outlined above. At first glance, Te Pae Oranga appears to offer a degree of therapeutic jurisprudence for Māori. However, if Te Pae Oranga is truly to be a therapeutic force in the criminal justice system it would need to be more accessible across Aotearoa, it would not be a creature of police discretion and it would generate a substantial reduction in reoffending. Te Pae Oranga's potential to be a transformational

solution for Māori is undermined by its limitations. As it stands, Te Pae Oranga is not an intervention that is sufficiently effective for Māori yet. More work must be done to ensure that these limitations are overcome.

***Word count***

The text of this paper (excluding table of contents, footnotes, glossary and bibliography) comprises approximately 8,006 words.

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