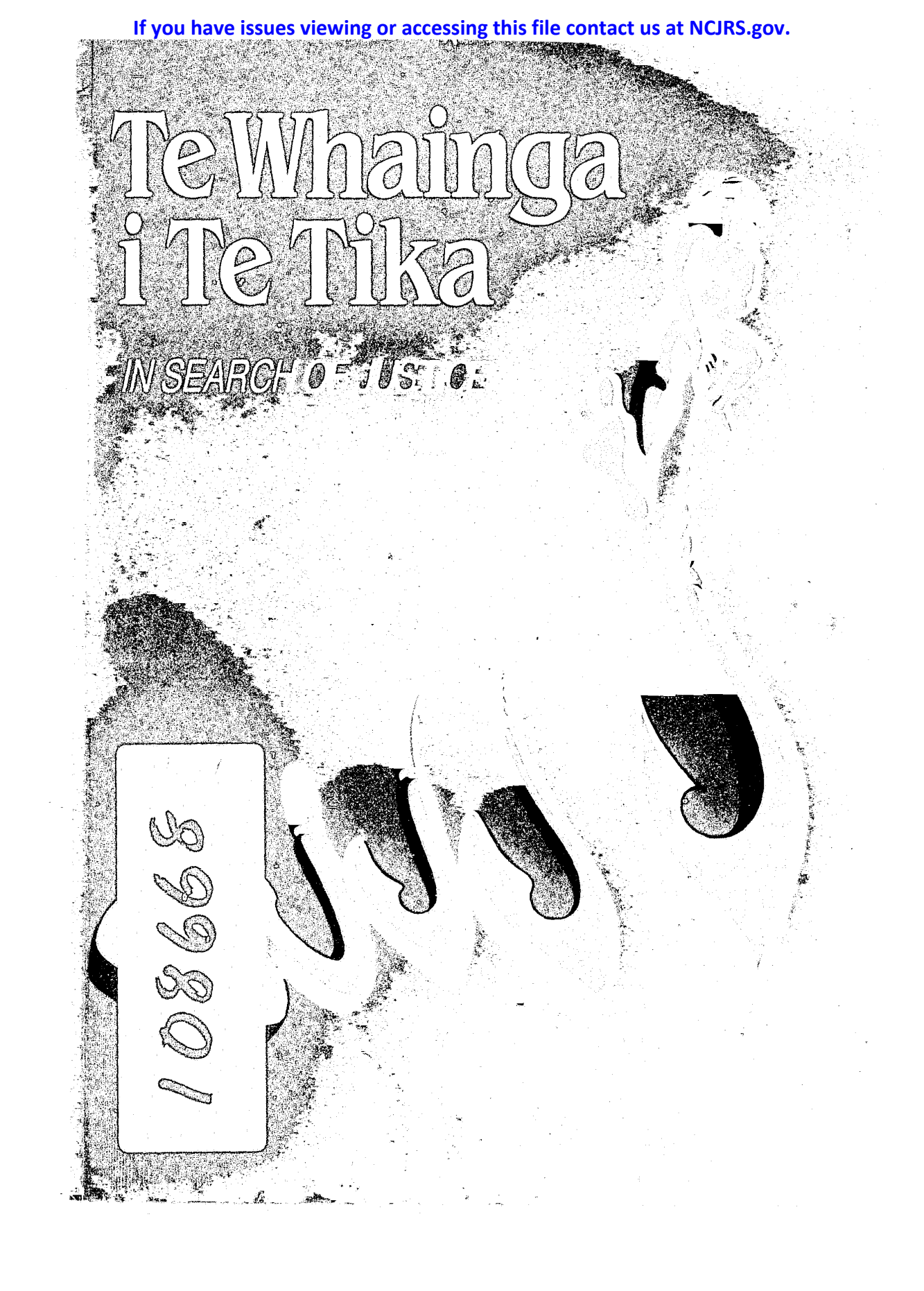
Te Whainga i Te Tika

IN SEARCH OF JUSTICE



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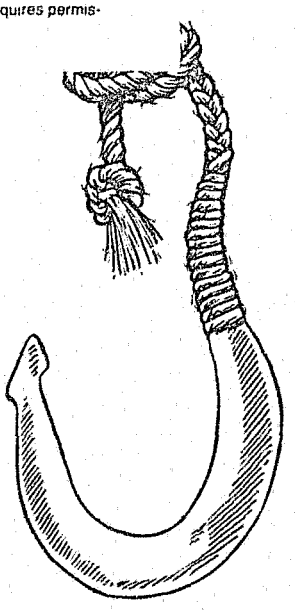

FOREWORD

Since the publication in 1982 and 1983 of the interim and final reports of the Working Party on Access to the Law which discussed the provision of government assisted and community-based legal services in New Zealand there have been a number of changes in those services but much remains essentially the same.

Two of the key recommendations of the final report were the introduction of a new Legal Services Act to replace the Legal Aid Act 1969 and Offenders Legal Aid Act 1954 and the establishment of a Legal Services Board to oversee and co-ordinate legal services in New Zealand. Many of the other recommendations were to be incorporated in the new Act and the Legal Services Board itself was to further consider a number of the report's proposals.

During the preliminary look by the Department of Justice at the policy issues involved it became apparent that because a new Legal Services Act would have such extensive implications it would benefit from being preceded by a wide ranging community consultation on the public needs for legal services. Accordingly I invited Ms Jane Kelsey to stimulate that process.

At her initiative the Advisory Committee on Legal Services was formed in February this year. This committee was independent of government (although departmental administrative and budgetary assistance was provided) and relied principally on the efforts of 12 regional co-ordinators chosen for their wide knowledge of and standing in the communities from which they were drawn. Operating under considerable pressure these co-ordinators through working groups and hui were able to draw on and report the experience of people drawn from a broad range of sectors and geographical locations and particularly those in the community with least access to justice. The co-ordinators' reports together with written submissions to the committee have formed the basis for the final document presented here. It represents a tremendous commitment on the part of all those involved.

As a report to government "Te Whainga i te Tika—In Search of Justice" represents an extremely valuable resource document. There may well be different views on the conclusions and recommendations in the report. There are certainly other and less critical attitudes in the community towards the law and the legal system than those described in the report. But no one involved in any part of the current legal system can afford to ignore the perceptions of the system it records. In fact those perceptions and the issues raised have implications that extend beyond the area of law and justice to the fields of social policy, race relations, health and the environment.

Neither I nor the Government are committed to any of the approaches or proposals put forward in the report. I am confident, however, that its publication will stimulate a timely and, I hope, consiructive debate on some major issues relating to our legal system today. It is being given wide distribution for this purpose. I believe that such a discussion, drawing on the important material and ideas in this report, should assist the development of proposals for a new Legal Services Act that will enjoy broad support in the community. Time may not allow all the issues and recommendations in the report to be considered immediately in the context of a new Legal Services Act. If that proves to be the case, however, I would regard it as important that the new Act provide a mechanism for ensuring that any outstanding issues from the report and any other matters that arise from public discussion of it are given full and careful consideration.

I should like to record my thanks to the Advisory Committee for their dedication and hard work in producing in such a relatively short time this wide ranging and thought

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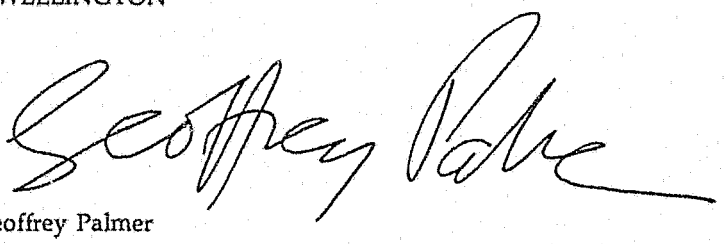
provoking report. I should also like to express my thanks to all those individuals and organisations that made submissions to the Advisory Committee. The time and effort they have taken to contribute to this subject are a measure of its importance and of their own commitment to a more just New Zealand.

Public submissions should be forwarded by 15 January 1987 to:

Secretary
Advisory Group on Legal Services
Department of Justice
Private Bag
WELLINGTON



Geoffrey Palmer
Minister of Justice

Ki te Minita,

Tena koe,

I runga i te haringa ngakau ka tukuna atu matou tenei ripoata—TE WHAINGA I TE TIKA: IN SEARCH OF JUSTICE—ki a koe, me to matou whakapono kei roto e whakaahua ana ko nga tino auetanga me nga wawata o ratou kahore nei e whiwhi ana ki te tika.

E whakahonore ana matou i a ratou kua huri ki tua o te arai; tae ano ki nga uri whakatupu. Otira, te hunga na ratou enei korero, me te hunga kei ia ratou nei te mana ki te whakawhiwhi i te tika ki te katoa.

Ko ta matou e tumanako nei, ko tenei ripoata kia haere ki roto ki nga iwi hei putake whiriwhiri, wananga hoki, kia puta a tona wa he kaupapa whakawhiwhi i tenei taonga i te tika ki te katoa e noho ake nei i Aotearoa.

Kia ora.

To the Minister of Justice,

Greetings,

We are pleased to present to you this report—TE WHAINGA I TE TIKA: IN SEARCH OF JUSTICE—with our belief that it reflects the deeply felt views, concerns and aspirations of those denied access to justice.

We wish to honour those who have gone before, and those generations still to come; those who have placed their trust in us to convey their message, and those with the power to deliver the right to justice.

We trust that this report will be widely distributed amongst the people, and provide the source for constructive debate and enlightened decisions to ensure justice for all in Aotearoa.

ADVISORY COMMITTEE ON LEGAL SERVICES

Dickson Chapman, Youth Worker ..	Co-ordinator Wairarapa/Wellington/Manawatu
Piers Davies, Barrister and Solicitor ..	Convenor
Edward Douglas, Demographer ..	Co-ordinator Waikato/Maniapoto
John Hippolite, Community Officer ..	Co-ordinator Nelson/Marlborough/West Coast
Milton Hohaia, Farmer	Co-ordinator, Taranaki
David Hurley, Barrister and Solicitor ..	Representative, New Zealand Law Society
Jane Kelsey, Lecturer in Law	Secretary/Research Co-ordinator
Eruera Tahuaroa, Community Officer	Co-ordinator Tamaki Makaurau
Hana Maxwell, Community Worker ..	Co-ordinator Tai Tokerau
David Miller, Community Education Officer	Co-ordinator Otago/Southland
Sandra Morrison, Probation Officer ..	Co-ordinator Rotorua/Bay of Plenty
Rev. James Tahere, Anglican Missioner	Co-ordinator Canterbury
Sam U'Tai, Community Worker Maggie Ryland, Community Worker Don Hutana, Community Educator	Joint Co-ordinators Tai Rawhiti

TERMS OF REFERENCE

To inquire into, and report on, community needs for access to justice, and specifically for legal services, and measures which can be adopted to meet those needs in a Legal Services Act.

The Advisory Committee is to consider types of services needed, and the means and structures for their provision and funding.

The Advisory Committee shall take into account Labour Party policy on access to justice, which is:

'To render our system of law and justice comprehensible, affordable, and accessible to all citizens by:

(a) including 'Law and Justice' as a core curriculum subject in all schools to the 5th form;

(b) funding a comprehensive network of community law centres, which will be free, independent and entitled to represent citizens in courts of law in their own right;

(c) funding and promoting community based and controlled legal self-sufficiency and para-legal training programmes, to ensure that all people in rural and urban areas enjoy the right of access to justice.'

CONTENTS

A. INTRODUCTION

"For people of goodwill these are exciting times."

This report recognises that present legal structures and processes deny many people their right of access to justice. It argues for positive and creative change, where dependency is replaced by self-reliance and self-determination, and where Maori are truly recognised as tangata whenua o Aotearoa. It does not claim to provide a blueprint for the future. Rather, it seeks to create a framework which can guide and actively advance the transition from a mono-cultural, disempowering system of law to a bi-cultural, empowering process of justice. It offers the exciting prospect of making equal access to justice a reality.

1. Consultation Process

1.1 The preparation of this report reflects that philosophy. The process of consultation and the report's proposals have been determined by people drawn from, and accountable to, communities with least access to justice. Views of local communities, and of concerned groups and organisations, were sought by combining regional community-based consultations with nation-wide distribution of a short discussion paper. Priority was placed on hearing the distress and demands of those with greatest unmet need for legal services. In particular we sought out the views of Maori, rural people, children and young people, women, victims, Pacific peoples, unemployed and low income earners, the elderly, prisoners and psychiatric patients. Consultation co-ordinators were chosen for their empathy with those communities, and their majority on the Advisory Committee has ensured power of decision-making remained in their hands.

1.2 Well over a thousand groups and individuals from a wide range of perspectives have contributed their views. These included marae committees, Maori Committees, Matua Whangai, Maori Wardens, tribal Runanga and Trust Boards, Maori Womens' Welfare Leagues, Kohanga Reo, Waitangi Action Committee, Parihaka Peace Foundation, Pacifica, Pacific Islands networks, Pacific Islands resource centres, Pacific Islands students, womens' centres, Rape Crisis, womens refuges, Maori women's groups, political party branches, local authorities and councils, community committees and councils, social services councils, government department solicitors, probation officers, lawyers, community law centres, Citizens Advice Bureaux, Friends at Court, prisoners, mental health support groups, prisoners' support groups, children's rights groups, anti-racism groups, social workers, organisations for the aged, Justices of the Peace, a High Court Judge, church organisations, alcohol advisory services, Community Volunteers, unemployed workers centres, trade unions, Workers Educational Associations, work trusts, STEPS schemes, GELS workers, detached youth workers, Y.W.C.A., Y.M.C.A., youth trusts, students and many other individuals and groups. Throughout the report we have endeavoured to reflect the depth and range of views they expressed to us, and have highlighted these with extracts from the regional consultation reports and submissions we received.

1.3 The serious limitations on time and funding, and reliance yet again on unpaid volunteer labour, mean that some people with valuable insights may not have been heard. However, the very strong agreement which emerged throughout the country about peoples' basic problems and legal services needs, make the

Committee confident that the process has provided a sound and comprehensive foundation for this report.

1.4 The New Zealand Law Society, which was a participant and contributor during the consultation process, retains an independent view on a number of matters raised in the report, and will be making its own comments on the report when it is published. We hope that any people or organisations who feel they have something further to contribute will also take advantage of the opportunity to comment on our report.

> *"Concern was expressed that this consultation was another government whitewash and it was questioned how forceful and influential the peoples' views would really be."*

1.5 It is important to note that this process has also come at a time when people, especially the Maori community, are cynical about consultations which do not yield results. Those involved here have placed their credibility on the line in asking people once more to have faith that their views will be listened to and acted upon. Without that trust, this report could never have been written. Tribute is paid to all those who have given of their time and energy in so many different ways to bring it into being.

B. FUNDAMENTAL PRINCIPLES FOR LEGAL SERVICES

Five principles emerged from the consultation as fundamental to building an effective system of legal services.

1. Legal services providing access to justice must actively promote structural change.

> *"There is plenty of evidence that the justice system is out of control, that it isn't working, that many of our people are not getting an equal and fair share of the existing services and that ideas about the future are usually a re-run of existing systems or continuing attempts to maintain power and privileges for a few. If we are to have a justice system that works then we must be prepared to look from the beginning at what we want and what will work, economically, socially and practically."*

> *"Law is about people. All legal services should reflect our basic concern as humans for each other and not be dominated by economic, political or for that matter legal concerns."*

1.1 Our Terms of Reference called on us to establish *"community needs for access to justice, and specifically for legal services"*. It became very clear that legal services for those currently denied access to justice means much more than the availability of legal aid. A system of legal services is sought which will address the legal aspects of their problems within their social and human context, and which will make a major contribution to the quest for social and economic justice.

> *"Throughout the consultation process, it was obvious that the law was viewed as a negative, suppressive force that people knew little about. They were not able to use it for their own benefit and only realized its force when confronted with an urgent legal issue."*

> *"The law was seen as a structure put in place, refined and used by elderly, middle class, white males, to control other citizens of Aotearoa. The use of large amounts of money to buy 'justice' is a classic example."*

1.2 People experience failure of the present legal aid system as one aspect of the overall failure of the legal system to deliver justice.

> *"What we urge, must earnestly, is that the institutions of power in our society must urgently come to grips with the most fundamental problems within our society. By this we mean the often institutionalised injustice, racism and inequality which dehumanise and degrade a substantial proportion of disadvantaged New Zealanders."*

1.3 For many, especially Maori, that system embodies institutionalised racism, as recognised in the recent Maori Perspectives Advisory Committee report *"The most insidious and destructive form of racism, though, is institutional racism. It is the outcome of monocultural institutions which simply ignore and freeze out the cultures of those who do not belong to the majority. National structures are evolved which are rooted in the values, systems and viewpoints of one culture only. Participation by minorities is conditional upon their subjugating their own values and systems to those of "the system" of the power culture."*[1]

> *"The Advisory Committee must recognise the fact that instead of pouring more money into the formal, traditional areas of legal services which have proved to be ineffectual in providing an accessible service to a large proportion of society, time and money must be spent in order to humanise and demystify the legal services area."*

1.4 Therefore, for any legal services to provide effective access to justice they must actively promote changes to those structures.

2. Legal services must reflect our bi-cultural heritage

> *"Existing legal services do not provide for the needs of Maori people. Evidence of this is the fact that we are the second most imprisoned people in the world. The first most imprisoned are the Aboriginal of Australia. It is interesting the parallels of our two people. We are both being made landless in the country of our ancestors. Tangata whenua whose turangawaewae have been and still are being taken by law, theft and corruption."*

> *"To call this a crisis of credibility in the legal system of this country may suggest that we are in an acute situation. We are not—this is a chronic situation which has existed since 1840."*

2.1 In the submissions made to us, access to justice for Maori people was equated with recognition of Maori as tangata whenua and of the guarantees embodied in Te Tiriti o Waitangi. We agree with this, and believe than an acceptable system of legal services must reflect this bi-cultural heritage.

> *"The present system is based wholly on the British system of law and justice completely ignoring the cultural systems of the Maori and in fact breaking down completely that system, completely alienating the Maori, leaving them in a complete state of confusion and at the whim of the existing system."*

> *"Legal services should work from a base line philosophy of Te Tiriti o Waitangi, which should be recognised as part of the Legal Services Act."*

2.2 Some feared that bi-culturalism will ignore the needs of other cultures and disadvantaged groups. Throughout this report, we recognise that many who are not Maori are disadvantaged in securing access to justice, and in our recommendations we seek to provide legal services which will meet the needs of all.

2.3 However, we acknowledge the special position of Maori as the indigenous people of this country in relation to the Tauiwi, or those who came afterwards. This point was strongly argued before the Waitangi Tribunal in its recent hearings on te Reo Maori: *"The claimants say that they are not just part of an ethnic minority. They say*

that they are not to be treated like migrant groups who have recently come to this country from other lands. They say that they belong here, that they and their culture have no other home, that they are the tangata whenua of New Zealand and that by the Treaty they made with the colonising English they and their culture were given promises in writing that they expect and demand to be kept."[2] The Waitangi Tribunal agreed, confirming that *"Because of the Treaty Maori New Zealanders stand on a special footing, reinforcing, if reinforcement be needed, their historical position as the original inhabitants, the tangata whenua of New Zealand, who agreed to allow our European forebears to come and settle here with them."*[3]

2.4 A bi-cultural system of legal services requires Pakeha to acknowledge the injustice of a mono-cultural system, which is run by and under the values of the Pakeha, but most of whose victims are Maori. Ultimately, it challenges the Pakeha to pass over to the Maori community *on trust* some of the power that system gives them.

2.5 It was stressed that a bi-cultural system is one which will benefit all New Zealand's citizens, not just the Maori.

> *"The Maori has much to offer to make this corner of our world a better place in which to live, but considers that Maori strengths have perhaps been overlooked. We live together, play together, work together, commune together—indeed we have laid down our lives for each other. As opposed to the belief of many, Maori philosophy is love of their people, their country, their God and to share the good things in life with their fellows. The non-Maori may wish to accept this generosity and to share in this wonderful cultural experience and revival.*
> *Ma te awhina o te tangata i te tangata*
> *Ma te aroha o te tangata ki te tangata*
> *Ma te mahi tahi*
> *Ka u te waka ki uta."*

3. Legal services must promote participatory justice

"We need to empower communities and demystify and humanise the legal process, to provide encouragement, confidence, support and education so people can deal with their own legal problems."

3.1 People strongly criticised the present approach for making those who cannot afford private lawyers dependent on institutionalised legal aid. Their ignorance of the law, and its mystique, leaves them feeling vulnerable and alienated. The overwhelming call was for law to be brought to the level of ordinary people. Priority was constantly placed on legal services which would promote legal literacy and self-reliance.

4. Consumer control over legal services

> *"I strongly urge that this consultation process be followed by coherent, planned and integrated action on the broad spectrum of legal services, and not a repeat of past, piecemeal tinkering with present inadequate schemes. The most urgent need is for the establishment of the legal services and structures that are identified by the community for itself, rather than what is seen to be good for the community by those bodies which presently control services. Any structures which are set up to provide legal services in the future must be responsive to the communities they serve."*

4.1 Many felt that the present system of legal aid was designed less for their benefit than to serve the needs of lawyers, courts and the Justice Department. For any new system of legal services to meet the present and future needs of consumers, they felt that their communities must be trusted with the power of decision-making

over their needs and how to best provide for them. There was also strong agreement that decisions on priorities for resources and services must be made at the regional and local level, to guarantee sufficient flexibility to meet different and changing needs of consumers and regional areas.

5. Government has a duty to provide effective legal services as an essential social service

5.1 Legal services involve issues of freedom, future life chances and conflict with the State. People claimed a right of free access to protections afforded by the rule of law. When the state creates a legal system to which only the wealthy and powerful have access, they considered that the State has the positive duty to redress these injustices by providing access to all, and changing the system to give justice to all.

5.2 It became clear that a truly cost-effective system of justice, in human and financial terms, can only be achieved by building self-reliance and revesting control of justice in the community. Short-term investment in such developments will pay major long-term dividends. Funding such positive initiatives should replace the current emphasis on financing negative experiences and outcomes. However, people also made it clear that this must be motivated by commitment to the principle, not a cynical use of communities as cost-saving devices. Any savings which result must be redirected to support and promote those processes, so impoverished communities are not forced back on their own minimal resources.

6. Legal Services Act

6.1 To ensure the ongoing commitment of legal services to these principles, they should be explicitly embodied within the Legal Services Act.

6.2 Consistent with the principle of recognition of te reo Maori as having equal status to English under te Tiriti o Waitangi, we strongly believe that this report should be published in both Maori and English.

7. International developments

7.1 We note that this quest is not unique to Aotearoa, but follows the path towards social justice being opened in many other parts of the world. It is timely to note that England, traditionally the most conservative country in delivery of legal aid, has just announced a major restructuring of legal services.[4] It advocates a shift in priority to community based legal services from private solicitor legal aid, and increased use of lay advocates, within a national legal services administered by a body independent of the Law Society. We believe it is overdue for this country, too, to take up the challenge.

C. SUMMARY OF MAJOR RECOMMENDATIONS

PRINCIPLES (Part B)

(1) The five principles fundamental to building an effective system of legal services are:

(a) Legal services providing access to justice must actively promote structural change.

(b) Legal services must reflect our bi-cultural heritage.

(c) Legal services must promote participatory justice and self-reliance.

(d) Legal services must be controlled by and responsive to consumers of those services.

(e) Government has a duty to provide effective legal services as an essential social service.

(2) These principles should be explicitly embodied within the Legal Services Act. Consistent with recognition of te reo Maori, this report should be printed in both Maori and English.

LAWYERS, COURTS AND ACCESS TO JUSTICE (Part E)

(1) Positive action should be taken by lawyers to overcome their image as inaccessible, insensitive, disempowering, over-priced, self-interested and unaccountable. The Legal Services Commission should work alongside the Law Society to design and implement remedial programmes.

(2) Courts are seen as negative, dehumanising, intimidating, inefficient, overloaded, culturally alien and insensitive, and designed to meet the needs of those in the legal industry instead of the consumers. Court processes should be dramatically restructured to meet the needs of the consumer and foster community participation.

(3) As a means to alleviate pressures on the police, courts and legal services, and provide a more constructive approach to dealing with minor criminal offending, the following structural changes are proposed:

(i) Arrests and criminal convictions for trivial and public order offences are selective, futile, and often counter-productive. They waste police, court and duty solicitor's time and resources, and usually result in fines less than a lawyer's fee for the case. Language and behaviour offences not involving violence should be repealed;

(ii) Young people, and those accused of offences under the Summary Offences Act should not be subject to arrest, but should be sent a notice of offence;

(iii) Consistent, flexible community-based alternatives to courts should be developed which can provide a positive and culturally appropriate outcome for victims, offenders, whanau and communities. Community hearings should be available for all matters under the Summary Offences Act, traffic offences not carrying imprisonment, breaches of probation and periodic detention, and all matters affecting children and young people. Before being charged, a person must choose whether to appear before a community panel or District Court. Community panels will not decide on guilt or innocence, but seek to discover the specific and general factors behind the incident. They

may order community-based penalties or fines, but cannot enter criminal convictions.

(4) All who are taking part in hearings in any legal forum should have the right to have the case heard in Maori, consistent with its recognition as a taonga under te Tiriti o Waitangi;

(5) The Legal Services Act should require all present and future judges, all lawyers intending to undertake state funded legal work, and all people before being admitted as lawyers from this time onwards to undertake a course in 'te tikanga Maori'.

(6) Family Court structures, procedures and values, should change to reflect the needs and diversity of people appearing there. Whanau based and other cultural forms of resolution must be actively developed, to place responsibility for decisions and on-going support back with communities.

(7) Development of community based, culturally appropriate and accountable alternative forums should be encouraged, in particular:

(i) small claims tribunals;

(ii) community mediation services;

(iii) Maori mediation and counselling services.

MAORI LEGAL SERVICES (Part F)

(1) A Runanga Tikanga Maori/Maori Lore Commission should be established to assist transition towards a bi-cultural justice system. It should advise government on steps towards implementing te Tiriti o Waitangi; monitor proposed legislation; consult and promote law reform on matters directly affecting Maori; interpret laws; monitor legal and judicial services to Maori people; promote development of bi-lingual courts; and administer the proposed Maori Legal Service.

(2) A Maori Legal Service should be established to provide advice, research, information and education on Maori legal matters, with priority on developing legal self-reliance. It should aim to be largely self-financing, and be administered by the Runanga/Commission.

(3) Better access to justice for matters involving Maori land should be provided through:

(i) Restructuring the Maori Land Court to become more accessible and inexpensive in the short-term, and to return decision-making power to the whanau, hapu and iwi in the longer-term;

(ii) Granting warrants to Maori Land Court Judges to allow them to exchange with other appropriate Judges for cases in the District, Family and C&YP Courts and Planning Tribunal;

(iii) Making civil legal aid available, with the present restrictions removed and eligibility extended to groups and representatives, for those not wishing or able to use Maori Legal Service or other assistance for Maori Land Court cases.

(4) Access to justice before the Waitangi Tribunal must be significantly improved by:

(i) Government showing a more sincere commitment to redressing grievances under te Tiriti o Waitangi than it has to date, and immediately providing the powers and resources needed to make the Tribunal effective;

(ii) Priority should be placed on supporting claimants and non-lawyers in researching, preparing and presenting their claims, in preference to use of private lawyers and legal aid.

CRIMINAL LEGAL SERVICES (Part G)

(1) Many people are denied the protection of long established rights when dealing with the police because of their ignorance, police non-co-operation and lack of

statutory recognition of those rights. The right to silence, communication with lawyers and family, independent medical attention, and a telephone call should be written into law. Courts should not admit statements not made in the presence of an independent adviser, and all such interviews should be videotaped.

(2) Rostered para-legal advisors should be available at all police stations to provide people detained there with basic legal advice and to be present at all interviews. The public advocates office should co-ordinate the roster and provide an on-call service for specialist legal advice.

(3) An independent, community-based police complaints procedure must be established with adequate resources, full powers of investigation and the right to recommend or take action against police.

(4) A co-ordinated system of non-police prosecutors is needed for all courts in the country, to ensure greater independence in prosecution. By reducing the number of minor cases before court, the extent and expense of this service should be minimised.

(5) Criminal legal aid should be provided through a salaried Public Advocates scheme:

(i) A well-staffed, well-funded and well-administered Public Advocates office will provide integrated and coherently planned criminal legal services. It should operate from community-based legal services centres, ensuring community accountability and access to support services. It should support and promote legal self-reliance and education as well as providing lawyers' services;

(ii) The Public Advocates office should co-ordinate legal services for the police station; advice prior to pleading; duty solicitor work; entering pleas; bail; defended hearings; sentencing; appeals; youth advocates; psychiatric patients; prisoners; and young people in substitute care;

(iii) Services should be provided through salaried Public Advocates, para-legal workers, and selected private lawyers and lay advocates retained on contract. People facing Crimes Act charges will enjoy the right of choice of a public advocate or a lawyer from the private criminal legal aid register.

(6) In recognition that appropriate legal services will not always be available and the cost of private lawyers may well exceed any likely fine, people should have a right to be represented by a Kai Awhina or lay advocate of their choice. This option should apply in cases before the District Court, Family and CYP Courts, tribunals, and with discretion of the Judge in the High Court.

(7) Reasonable costs should be awarded to successful defendants.

COMMUNITY LEGAL SERVICES (Part H)

(1) Development of easily understood, culturally relevant, up-to-date legal resources should be contracted to local communities, groups and organisations.

(2) Wide-ranging legal education should be promoted throughout the community, with priority on introduction of legal education into the school core curriculum at intermediate level upwards.

(3) Intensive legal wananga should be held on request in rural and urban communities where other legal services are unavailable, providing advice, information and education on general or specific subjects, in a context which will provide a learning experience for both the community and the resource people.

(4) A comprehensive network of community based and controlled Legal Services Centres should be established throughout the country, combining advice, education, resource development, and Public Advocate services provided by para-legals, community workers and public advocates.

(5) A network of trained para-legal workers should be appointed to service rural and depressed urban areas, providing information, advice, resources, education, and

liaison with other legal services. The workers must be drawn from, nominated by and accountable to their local communities.

(6) Appropriate training programmes should be provided for para-legal and legal services workers, and be available to all others involved directly or indirectly in provision of community based legal services.

NON-CRIMINAL LEGAL SERVICES (Part I)

(1) Legal advice should be provided on three levels:

(i) freely available community based advice through legal services centres;

(ii) lawyer-based advice under the Law Society 'Law Help' scheme, for a nominal fee;

(iii) free civil legal aid for advice from lawyers to people in prison and psychiatric institutions, children in substitute care, social welfare beneficiaries, the unemployed, superannuitants with no other income, victims of violence, and cases involving government departments.

(2) Encouragement should be given to use of community based services and lay advocates in areas of Tribunals and the Maori Land Court. However, restrictions on civil legal aid should be removed, with eligibility extended to groups in certain situations.

(3) The Legal Services Commission should evaluate the need for civil legal aid, given other available services, for:

(i) dissolution of marriage;

(ii) Commissions of Inquiry.

(4) Lay alternatives to civil legal aid should be promoted through:

(i) A Kai Tiaki or Child's Advocate, appointed on agreement of all concerned, to advocate on behalf of a child in place of counsel for the child;

(ii) Lay advocates in environmental, planning and related cases.

(5) An Environmental Defenders Office should be established to provide advice, assistance and where necessary advocacy from lay and legal people on environmental protection. This must be under the control of consumer groups with a strong bi-cultural base.

ADMINISTRATION AND FUNDING (Part J)

(1) These proposals aim to combine effective short, medium and long-term legal services; a rationalised unbureaucratic structure under community control; and cost-efficiency.

(2) A Legal Services Commission should be established to make policy, and co-ordinate and administer legal services. Its membership should reflect eligible client communities, and largely comprise representatives of Regional Legal Services Committees. Its operation, staffing and administration will be bi-cultural, appropriate, community based and monitored, and non-bureaucratic.

(3) Criteria for eligibility should be standardised, cost-effective, consistent, inflation indexed and regularly reviewed. They should be set and annually reviewed by the Legal Services Commission, who should also establish a procedure for processing applications for legal services. The Law Society will remain responsible for vetting lawyers fees.

(4) Legal services should be available on the following basis:

(i) Community legal services and services of the Public Advocate prior to pleading should be free for all.

(ii) Legal advice from lawyers, services of the public advocate, and legal aid for civil matters will be provided free for people within specified categories.

(iii) Clear but flexible eligibility criteria should apply in all other cases. This will be based on income testing, with exceptions in cases of priority need which meet specified criteria. A graduated scale of contributions is proposed to meet the needs of low to middle income earners, whose disposable income is above the basic income level set by the Legal Services Commission.

(5) Basic principles for funding these proposals should be: priority funding for programmes providing justice for Maori as tangata whenua; community control of funding, independent of government and lawyers; quality and economy; incompatibility of "user pays" with legal services as an essential social service; redirection of legal services funding to redress the imbalance towards lawyer-based services by emphasising legal literacy and self-reliance programmes; funding of positive in place of negative outcomes; and long-term planning.

(6) The Runanga Tikanga Maori/Maori Lore Commission should be provided with an initial lump sum of $15 million, for it to invest and draw from in its operations. Maori Legal Services aim to be largely self-financing. This should be viewed as part recognition that this country has been built largely on the proceeds of Raupata lands.

(7) Costs of the operation of the Legal Services Commission itself must be minimised to ensure that funding is used on provision of legal services rather than administration.

(8) Supplementary sources for funding should include:

(i) Interest on solicitors' trust accounts;

(ii) A 'legal services' levy on all stamping transactions above a certain value, within minimum and maximum levels.

D. PRIORITY SECTORS AND LEGAL SERVICES

While many problems are shared by all those who lack effective access to justice, some groups suffer disproportionately from the failings of legal services. Their concerns are outlined below. Wherever possible, we have allowed people to speak for themselves, presenting their views as they were put to us.

1. MAORI

1. Laws

> *"The laws of this country, I believe, are based on the needs of the majority of the society within it. Statistics show that Maori people are a minority. Therefore, our laws are not given the importance within the community that I feel they should. I believe that because of this, the difference in our cultures, our differing senses of values, a lot more Maoris than Europeans find themselves on the wrong side of the law. This belief is reinforced by the fact that there is a far greater percentage of Maori people incarcerated in this country's penal institutions."*

1.1 For legal services to provide Maori people with access to justice, it became very clear that they must be capable of challenging institutional racism, and bringing about change to legal structures. Changes which merely improve delivery of services within the existing system were condemned as futile and cosmetic.

> *"Most people saw this disproportionate representation as the result of the lack of consideration of TAHA MAORI in law making and decision making. Others bluntly stated that this result occurred because of the existence of inherent racism throughout Aotearoa... As tangata whenua of Aotearoa the Maori voice has a right to be an active participant in all structures and at all levels of decision making. The administration of laws and systems has and continues to operate on a monocultural basis. Taha Maori must be an integral part of this administration."*

1.2 Many submissions pointed out the urgent need for revision and updating of laws affecting Maori people. Existing laws were criticised as being written by Pakeha and reflecting the Pakeha perspective; new laws must be written by Maori people to reflect te tikanga Maori. A number of specific laws were mentioned, with perhaps greatest concern expressed over use and control of ancestral waters and lands.

2. Police

> *"Many offences, that Maori people are convicted of, arise from racial altercations. Verbal attacks are made, quite regularly, by police officers. These often result in a physical attack being made in return."*

2.1 Frustration and anger about the police is very high within many Maori communities. Allegations were made of physical, verbal and racial abuse, which resulted in Maori people being arrested and convicted.

> *"As a result [of an unlawful police search] I immediately contacted a solicitor who came and took a series of photographs. A few days later he rang me and said that it would be in my best interest to forget the whole incident. He said that the choice was mine, but it was his opinion that the police could make things more difficult for me if I pursued the matter. I was told that because they didn't have an arrest, or search warrant, I could lay charges but, this would cost me a lot of money. I had no money so that was the end of it."*

2.2 The lack of any independent, culturally sensitive procedure for investigating complaints against the police was constantly condemned. People saw no point in complaining, yet could not afford to take any other legal action against police.

2.3 Problems of statements used by the police were linked to the absence of any independent legal support at the police station. Such statements remain unchallenged at court because of the inadequacies of duty solicitor and legal aid services.

> *"Based on my own experience, I believe that young Maoris, who are suspected of criminal activities, are denied many of their rights when in police custody. Being unaware of the importance of legal representation and denied access to elders, in whom they have great respect, they are often at the mercy of the police."*

> *"I was in a situation once when I was beaten by police officers because I denied committing a series of offences. I was denied a phone call and I was not offered legal advice. Because of the treatment I received I made a statement admitting guilt while in fact I was innocent. I appeared in court and was represented by a duty solicitor. After telling him that I was innocent, and the reason I had made a statement, he advised me to plead guilty. He said that because I had made the statement, admitting guilt, I had no other alternative but to plead guilty. I did so.*
>
> *I have met many other Maori people who have related similar experiences to me. Many of us are given advice by incompetent or unfeeling lawyers. Legal aid lawyers make up the majority of this category. Often advice is taken with the only merit being "He's a lawyer, so he should know..." "*

3. Lawyers

3.1 When faced with a legal problem, Maori people rarely know a lawyer, especially a Maori lawyer, or how to make contact with them. Fear of high fees mean few Maori will approach a lawyer even in desperation. There is an overwhelming feeling that lawyers lack sensitivity to Maori needs, and their attitudes, offices and ways of working were seen as alien and alienating to most Maori people. They have difficulty communicating and tend to talk over Maori heads, making Maori people feel they have no control over the decisions lawyers make. Failure to keep them informed of what is happening leaves people feeling 'ripped off' when they get the bill.

3.2 Poor communities with high Maori populations are least served by private lawyers. A 1985 report highlights the problem in Auckland.[5] Mangere, with a population of 47,000 has only one law firm, that being a sole practitioner—meaning one lawyer for 47,000 people. Otara has two solo lawyers for 30,000 people. Pakuranga has one lawyer for every 4,000; Howick has 7 law firms for 13,000 people. Rural areas are at times totally unserved, except by small

numbers of private lawyers who are generally not interested in the minor problems of the poor.

3.3 More Maori and Pacific Island lawyers were called for, along with more accountability among many of those now in practice. Greater encouragement was suggested for Maori to attend law school. This included changes to entry criteria and course content which recognise special Maori skills and needs, and academic credit for Maori students spending time with their hapu at some stage during their course. This would give them practical experience and keep them in touch with the issues affecting their people.

4. Legal Aid

4.1 Lack of access to private lawyers means that most Maori rely on criminal legal aid, or have no representation at all. Maori defendants make up almost 60% of those on legal aid.[6] Maori on legal aid are at high risk of receiving an inferior service to those with private lawyers, and are likely to suffer more severe treatment as a result. In 1981 the discussion paper on Access to Law commented *"it can be concluded that legal aid defendants are remanded in custody, convicted and sentenced in custody more than privately and unrepresented defendants are. (This) remained the case when seriousness of offence and previous penalties were taken into account. High court results were not so definite... Finally it can be said that defendants on legal aid tended to be younger, Maori, unemployed and of lower occupational status."*[7]

> *"There is a virtual colour bar in such courts with white legal professionals sitting in the working section of the court and Maori people only being permitted into that territory for the purposes of standing in the dock. The reality of the person charged with a criminal offence is generally that their relationship with their lawyer is quite formal. They sit at the back of the court room and look across the colour bar to the general camaraderie between the police and their lawyers on the other side and draw obvious conclusions."*

4.2 Courts were seen as yet another Pakeha institution. Very deep anger and pain was expressed over the lack of accountability for what people see as cultural insensitivity, and at times racism, on the part of judges. Positives efforts by some judges, especially Maori judges, were welcomed.

4.3 We heard concern that recognition and funding for programmes like Matua Whangai and other services are inadequate, and that policy statements of support are not always put into practice. There is also a serious lack of co-ordination between different groups working in court.

4.4 The criminal justice system was viewed as negative and harmful to Maori people, especially the young. There was very strong support for an alternative for Maori which is constructive in a holistic sense, and which is Maori led and operated without the presence of police, lawyers and District Court Judges. It would be responsive to whanau needs and aim to restore quality of life by developing identity, self-esteem and self-reliance through tikanga Maori. Maori people had no doubt that this would provide a positive alternative to the destructive cycle of courts, sentencing and prisons.

5. Maori Legal Problems

> *"There is widespread misunderstanding about the nature of leasehold land and the obligations and responsibilities of lessees and lessor. When it comes to the time leases are to be renewed and rents go up, there is a good deal of anger and resentment. The reason that this is a cause of concern to me is that the argument very easily becomes a difference expressed in racial terms. The bulk of the land is Maori owned... There is no doubt in my mind that lawyers and land agents have*

generally been remiss in pointing out the differences between freehold and leasehold land. The only written information lessees of the Whakarewa Board have for instance, is the lease document, which is as fine a piece of legal gobbledegook as you could ever hope to see.... I feel lawyers should be told to advise clients who buy leasehold land what a leasehold title means, and that this advice should be in writing; and that the Housing Corporation should prepare and have available a document about different types of titles, including freehold, leasehold and cross-leasing."

5.1 Very few lawyers understand laws which specifically affect Maori people. Maori land matters are almost always viewed as too complex, time consuming and uneconomic. Lawyers who do take such cases frequently charge amounts disproportionate to the value of the land involved. Nor can most lawyers give skilled advice to Trust Boards, Incorporations or Trustees, on their daily operations or important decisions. People in rural areas and small towns, especially in the South Island, have particular difficulty finding someone knowledgeable in Maori law. Failure by some lawyers to explain to Pakeha the legal and cultural implications of Maori land transactions can create major problems.

5.2 Absence of legal resources and services gravely undermines Maori peoples' right to defend or regain their land. Grievances included the inability to demand redress for land confiscations; the absence of effective means to require return of land taken under the Public Works Act and no longer used for that purpose; and the lack of time and skills for research into often complex and technical land titles and claims. When faced with crises Maori people feel they have nowhere to turn.

"Another area of concern is in Waipukurau where Lake Hatuma is now in the ownership of a farmer, a solicitor, an accountant and an Insurance Agent. I visited the local Lands and Survey Department and checked out the Waipawa District Council as to the sale of the 5 acre access to the lake which has been sold to a farmer. This was once used by the local hapu as an access to their fishing grounds. Although the previous Land Commissioner was sympathetic to this issue and made some good suggestions it was merely lip-service. In addition I attempted to search the title but all records were destroyed in the Napier earthquake so I'm told. At this stage the people of the area are making a request to the Maori Affairs to do a complete search of title and to come back with a full composite report. Meanwhile the feelings are once again—despondent."

5.3 Major difficulties arise in cases before the Maori Land Court. Lawyers' fees for routine matters are beyond the means of most landholders. Where one party has legal assistance, other parties often cannot afford equally competent representation. The expedient practice of one solicitor appearing for both "so-called" sellers and purchasers was strongly criticised.

"Many firms are not familiar with the workings and functions of the Department or the Maori Land Court, nor are they interested in becoming interested. The client 'pays' for these delays... Solicitors are charging upwards of $500 for simple Section 213 and Section 440 vestings, and more for straight forward Partitions... In truth, most matters simply require application forms to be filled in and filed and a brief appearance in Court. Most of the work is done by the staff of the Maori Land Court even to the extent of telling Solicitors how to fill in forms... I have long thought that in this respect outside Solicitors are 'riding a pig's back'."

5.4 According to Maori Affairs' solicitors the use of Maori agents has declined, largely because better trained Court staff are now available to help. However, advice on matters like applications for successions and vestings orders is limited to those with easy access to the Court, and fails to provide for people in rural areas.

5.5 Few, if any, Maori people are aware that civil legal aid is available for the Maori Land Court. If they do know, they find it virtually impossible to obtain. There is no written information available from the Court section, or staff with any knowledge of legal aid procedures. According to Maori Affairs' staff it is almost never used. Applications are usually made through lawyers. But Maori people rarely know a lawyer, especially one skilled in Maori land law; fear the cost of an initial visit; and have difficulty seeing lawyers in town during office hours. If the matter is taken no further, or legal aid is declined, they must carry the cost.

5.6 As civil legal aid is only available to individuals, grave problems arise in cases of collectively owned land or where many individual shareholders have only small interests in one piece of land. The High Court has recently rejected an attempt by the Maori Land Court to circumvent this by appointing trustees to retrospectively represent small shareholders.[8] Special rules also apply before civil legal aid will be granted for Maori Land Court cases. The District Legal Aid Committee, comprised of Pakeha members of the local Law Society, must agree that a lawyer is needed and that injustice would result without one. These criteria and procedures were condemned as effectively denying Maori people the right to legal services, resulting in further alienation of Maori land.

5.7 The Maori Land Court itself was strongly criticised for putting its convenience before the needs of landowners. No written information is available on Land Court proceedings. Since it abandoned the practice of holding hearings on local marae, many people have faced extra expense and time off work to travel to sittings, in addition to any lawyers' fees. Where these cost more than the value of shares in the land, land may be lost by default. Although a special Judge's Fund exists, costs are rarely awarded. This requires an application to Wellington and several weeks processing, and is usually only done at the instigation of the Judge. We were told by staff that at one Court grants have only been made twice in the last seven years.

6. Waitangi Tribunal

> *"With Maori fisheries, waterways, forestries and lands coming under threat more and more, it is crucial that legal services be made available to help people protect their rights as guaranteed in the Treaty."*

6.1 The credibility of the Waitangi Tribunal appears to be in very grave danger unless government provides immediate evidence of greater commitment. There is growing impatience with slow progress in completing hearings and actioning their reports, and over the recent delays in appointing new members which meant that the Tribunal did not exist for over seven months from December 1985. At current rates the 30 cases which already await hearing will take ten years to be heard. Dissatisfaction over inaction on reports has already resulted in two cases being referred by claimants back to the Tribunal.

6.2 Refusal of the Justice Department to provide more than $150 a week to cover costs of the hearings on the marae leaves a huge financial burden on the claimants, and has deterred potential claimants from seeking redress from the Tribunal. Those who have brought claims are in serious debt with little to show for it. Government was seen as being prepared to accommodate Maori processes and kawa only when Maori people pay the bill.

6.3 There is a desperate need for sensitive, skilled people to assist with research into possible claims, and to make submissions on behalf of applicants. The current policy to provide research only after claims are lodged was viewed as a device aimed to restrict the number of claims being brought. Payment of legal aid only to lawyers to present cases was criticised, as people within the Maori community could provide a better, more appropriate service. There was a strong feeling that use of lawyers should be discouraged, to avoid hearings becoming legalistic and excluding the people from participating.

7. Environment and Planning

> *"Near Te Puke the Kaituna river towards Makutu was flooding local pakeha farms, so the Bay of Plenty Catchment Board cut away the corner of the river by the village. This cut through a wahi tapu. It also lowered the level of the river cutting the existing water supply to the village. The village was then ordered to pay a $1,000 levy per household to be put on town supply water. The local people asked why they should have to pay that levy, and why the farmers who benefitted from the change in the river were not made to pay. They were given no chance to express their concerns at any stage in the process, and now don't know what they can do.*

> *"Another group I spoke with were young families from the Waipatu marae who were experiencing extreme difficulty in getting assistance legal or otherwise to build homes on their own land. They say that over a year ago they approached a local kaumatua to help them with submissions to the Hawkes Bay County Council. For various reasons these submissions were either not received or the Council kept coming up with excuses to put them off, the latest one being that the Hastings City Council will not allow it unless each house in the area came up with $2,000 to help put in a new sewer. Some have become so dissatisfied they will probably have to sell their land and be part of the City Council's new housing development of "igloos"... This is, of course, another example of institutional racism with Local Body Authorities unwilling to listen to reason."*

7.1 People see tribunals and local body procedures as bureaucratic machines which work, at times deliberately, against Maori interests. Lack of resources and information leaves Maori people powerless to take part in hearings or challenge decisions. Concerns ranged across town planning and by-laws; water and catchment authorities; development and energy proposals; projects involving timber, mining and other natural resources; historic and archaeological designations; tourism; and pollution.

> *"Presently Regional Water Boards operate under the Water and Soil Conservation Act 1967. They have their own interests at heart, and operate side by side with the Catchment Commission. The Catchment Commission issues licences for industry and individuals to take water and discharge water in a polluted state. However, they do not own the water, since Maori claim custodianship over water as a taonga."*

7.2 Hearings are viewed as too structured, intimidating, adversarial and Pakeha dominated for Maori people to comfortably take part. Tribunal Judges were considered largely ignorant of and insensitive to Maori values and concerns, making few efforts to encourage Maori participation. As Maori people can rarely afford to pay lawyers, they are effectively excluded from participating in the process.

8. Economic Development

8.1 Development initiatives and small enterprise schemes are increasing among Maori communities, using Maori land and labour. However, people frequently lack economic, legal and consultancy advice on the range of issues arising in business, co-operatives, companies, and trust enterprises. This includes vital areas like tax, mortgages, contracts, employment rights and obligations, unionism, hire purchase and debt servicing. Lawyers are simply not available in many rural areas, and private lawyers are too costly to seek out until a crisis has arisen.

8.2 One such situation was described to us. Local Maori provided land and labour for joint venture grape farming schemes, with funding from Maori Affairs and expertise from a major wine producer. Faced with over-production of grapes, government reached a compensation agreement with the producers of uprooting excess vines. However, the deal failed to provide for the costs to Maori landowners of removing the posts which they had already paid to put in. Although they now have no income they must raise thousands of dollars to make the land usable again. As the ventures employed 80 percent of the district's population their communities are now reduced to the extra-rural poor.

9. Wills and Succession

> *"Sometimes a family suffers the loss of their inheritance due to circumstances where in effect the will requirements have been handled (perhaps inadvertently) by the lawyer not understanding the thoughts and word patterns of another culture. Further, it can involve the family in a considerable amount of legal fees to rectify."*

9.1 Lawyers rarely understand the cultural and technical legal issues involved with Maori succession. At times the client's instructions are rephrased in a way which the lawyer believes still reflects the client's wishes, but is easier to administer. This creates stress for the deceased's family when they know that the working of the will is not what was intended. Lawyers' failure to understand whanau relationships, especially informal adoptions, creates further problems of succession.

> *"I suffered the loss of both my parents who lived a very humble existence. However, because they have small shares of land they both incurred estate or death duties and so it cost the family $20,000 for them to die. Because my father had been brought up to believe in karanga mate (i.e., if you call for the dead it will come) they did not make a will—hence the high cost of letters of administration etc. Although estate duties have been alleviated considerably since then I mention this because I am appalled at how solicitors have been like parasites on the backs of Maoris with their right to claim a percentage of the estate as their costs. The importance of making a will should be part of one's education so that Maori people are made aware of whose pockets they could be filling for nothing."*

9.2 Unless an estate is administered, succession orders to land are unlikely to be applied for. But people cannot afford the expense, where the only real asset is an interest in land. There was concern that delays in administering estates through the Maori Trustee forced people to seek advice from lawyers whose fees consume most of the interest due to the beneficiaries.

10. Te Reo Maori

10.1 The status of te Reo Maori as a taonga guaranteed under Te Tiriti o Waitangi is clearly interpreted by Maori people as requiring equal status for the language with English in all official proceedings.

11. Legal Information

11.1 Maori communities are starved of legal knowledge. There was a strong demand for information on a wide range of areas such as land, Town and Country Planning Act, local authority by-laws, rights dealing with local authorities and government departments, housing, domestic purposes benefit, maintenance, non-molestation, matrimonial property, loans, hire purchase and consumer rights, wills, civil rights and criminal law. An extensive and ongoing community education programme was considered vital, where people can learn from each other through a variety of culturally appropriate methods.

12. Government Departments

12.1 Department of Maori Affairs Solicitors were asked to share more widely amongst the Maori community the large amount of important information and resources they hold. There was support for them to play a more active role outside the Department offices by helping with legal advice, especially about land, and holding regular clinics around the district. The Maori Trustee was criticised as centralised, out of touch and unaccountable. People felt the Trustee should be more readily available within communities, and should provide services free to Maori people on areas such as land transfers, title search, land courts, legal advice, housing loans, finance, and succession.

13. Funding Maori Services

13.1 Maori people seek funding from government to implement their own programmes and initiatives. Present procedures were seen as denying Maori people the right to control resources, being insensitive to tribal identity and designed to suit the administrative needs and organisation of government departments. There was strong feeling that Maori legal services must not be placed in the hands of the Department of Maori Affairs.

13.2 While 'aroha' is the main factor in caring for people, its abuse was also recognised and condemned. As Maori people make up at least half of those processed through the criminal justice system, it was seen as logical that they should receive at least half of the resources spent on legal services. Funding of negative outcomes, such as policing and prisons, should be redirected to positive outcomes through whanau and community based programmes.

2. RURAL

1. Access to lawyers

1.1 Rural people were very critical of inadequate servicing by courts, lawyers, and government departments. Although those in remote areas and small towns have special and urgent needs for access to justice, these have traditionally been ignored for practical and economic reasons. Innovative ways to meet their needs were proposed. Stress was placed on developing legal literacy and self-reliance through community-based education, intensive legal wananga and para-legal workers.

1.2 Visits to small towns and rural areas by lawyers and government departments are infrequent, unreliable and not co-ordinated. Emergency services are difficult to obtain, especially over holiday periods. People in rural areas are therefore required to travel to the lawyers in major towns and cities. This requires either expensive toll calls, lengthy exchanges of letters which are often difficult to write and understand, or travel to the nearest town or city. People on the East Coast told us that travel to Gisborne to see a lawyer costs between $11 and $36 by bus and $36–50 by car, while the average income in the area is little over $100 per week. In addition, an overnight stay is involved, which requires time off work and koha for accommodation. Those who are employed often need more than one day off work to catch the only available public transport which will deliver them to town on time for their appointment. If people do retain private lawyers, and are then unable to pay their fees, they are likely to face costs of collection agencies and more legal expenses.

> *"Courts sit every 3 months in Ruatoria. A Duty Solicitor is available... The time given to each person of 5 to 10 minutes does not satisfy the individual needs. Because it is the only service available it is accepted, but it does not provide the real need. Offenders usually plead guilty and are fined accordingly."*

1.3 Poverty and high unemployment mean many rural people cannot afford lawyers, and become dependent on legal aid. This creates special problems in criminal

cases, where people face inadequate duty solicitor services, delays in processing legal aid applications, and appointments of lawyers from out of town when no local lawyers will take their cases.

1.4 As lawyers were considered unlikely to provide legal services to many rural areas, the right to lay representation was strongly advocated. So, too, were mobile, trained para-legal workers to provide information, education, basic advice and liaison with lawyers and other services.

2. Courts

2.1 Closure of small country courthouses was strongly criticised, especially in its impact on low income earners and the unemployed.

> *"Accessibility and quality of justice provided was reduced when small country Court Houses were closed in towns such as Motueka. These closures disregarded the need for legal services to be within the financial reach of users, thus disadvantaging those on lower incomes... This did reduce costs for Government but increased them for everyone else, i.e. the more numerous defendants, lawyers and witnesses."*

2.2 Hearings before District, High, Family and Maori Land Courts all create travel, cost and employment problems. This affects victims, witnesses, defendants, and families. Women, and those with dependents, face additional problems organising time away and arranging and paying for child care. Remands for defended hearings were seen to compound these difficulties, causing people to plead guilty because they cannot afford to attend court again. Rural people therefore face severe penalties above those which the court may impose if they are convicted. Community based and whanau hearings; reopening local courthouses; evening and weekend sittings; time-tabling of cases; and a rural bus service to pick up people due to attend the court were also proposed as partial solutions.

> *"The bus service provided only reaches Timaru in late afternoon which means that people appearing before the Court have to stay for two nights to catch the return connecting bus the next day. Oamaru is closer but is out of the jurisdiction of Twizel."*

2.3 Greater access to support services such as Family Court counsellors and small claims tribunals, and information on services such as Matua Whangai or community care programmes were sought for rural areas. Copies of relevant Acts are also hard to obtain, which rural people felt limited their ability to make submissions and take part in law reform.

3. Farmers

3.1 The present economic difficulties in the farm sector mean a substantial percentage of farmers are in difficulty. The Guide to The 1986 Rural Policy Measures estimates 10 percent are in a critical position and a further 30 percent will have difficulty lasting beyond the next 3 seasons. Many of these are now being dragged into complex legal situations with mortgagee sales, debenture and hire purchase agreement seizures, receiverships and bankruptcies. If they are to resist mortgagee sales and the like, they need expensive and complex assistance. While their assets at issue are very valuable, their available cash funds are increasingly incapable of paying the lawyers' fees. Civil legal aid is seldom available to such people, because their assets on paper are still high. By the time they reach the stage of being eligible for legal aid, it is too late.

3. CHILDREN AND YOUNG PEOPLE

1. Children's Rights

1.1 Deep concern was expressed in many submissions that children lack any effective legal protections.

1.2 Ignorance of the law was blamed on the failure of schools and training programmes to teach young people about the law, especially legal rights. They were seen to then have no option but to learn by their own, usually negative, experiences.

> *"A deep division is developing between some young people and the police, these young people see the police as adversaries, they have a "them and us" attitude based on strong feelings of fear and suspicion. Young people see the police as authoritarian, arrogant, threatening bullies who unfairly harass and provoke. Moreover these young people see the police as dishonest, using covert rather than overt tactics against them and relying on psychological pressure."*

2. Police

2.1 Relations between young people and the police were a matter of great anguish. Police were accused of using psychological and physical intimidation on the streets and in the police station. Diversion of young people from arrest and processing at the police station was endorsed. An effective complaints procedure, independent support during questioning and legal advice for young people at the police station were considered matters of urgency.

3. Children in Court

> *"For some young people, entering the court system is like entering an alien world, they often do not know why they are there, or what they are being charged with, only that they may have done something wrong...*
>
> *To many people who made submissions, the court system appears to be farcical. The duty solicitor scheme is not readily explained, it operates in an erratic and self-serving way, and the accused young people are processed in much the same way as carcasses of meat at Horotiu freezing works.*
>
> *Experienced legal advisors should be available for all youth cases, prior to the case being heard, and subsequently. As a society, we need to intervene in positive ways in youth affairs, our reason for intervention must be because we care for our young people, and we do not want them to be seen as potential court-fodder and goal-fodder."*

3.1 Many young people seem to have no idea of what is going on in the courtroom. They are put off by the jargon used by lawyers, judges, police and court staff and the intimidating court procedures. Judges were seen to have difficulty in communicating with young people and identifying with their situation, and some specialist training for Judges was sought. The unpleasant court environment, and the long periods spent by children in cells while awaiting assistance, also drew criticism.

3.2 Negative experiences of legal services were seen to result in many young people having no legal representation and the vast majority pleading guilty. This was put down to ignorance, resignation and embarrassment. Criticims focused on the absence of duty solicitors in many Children and Young Persons (C & YP) Courts; lack of time spent with duty solicitors; inexperience of legal aid lawyers; lack of choice over lawyers; lawyers' insensitivity and difficulty in communicating with young people; and the complicated process of applying for legal aid. It was pointed out that few young people have the resources to follow up injustices with appeals.

3.3 Inevitably, concern over failure to meet legal needs of young people focused on young Maori. Accusations of institutional racism are borne out by the recent report of the Child Advocate study. This showed that less than a third of the children appearing in the CYP court in 1985 were Pakeha, while almost 50 percent were Maori, and 18 percent were Pacific Islands children.[9] In the Auckland area they found that *"Maori children are appearing in the children's court at a rate of over four times their share of the New Zealand population. Pacific Islands children are appearing at court at a rate which is six times greater than their percentage of the population. And Pakeha children are appearing two and a half times less than their share of the national population."*[10] Young Maori were least represented by private lawyers, and were disproportionately dependent on stated funded legal services.

3.4 *"Almost 59 percent of custody remands involved Maori children, considerably higher than their share of remands would suggest... In general, there is a tendency for Maoris to be placed in custody, or with Pacific Islanders in the care of kin or guardians, while Pakehas tend to receive more community remands."*[11] Almost half of those remanded will not ultimately receive custodial sentences. This was seen to raise questions concerning the adequacy of legal services provided, and the approach of judges to remanding those young people in custody. There was a strong demand for community, whanau and other alternative remand placements to be used in place of social welfare and penal custody. Full support by the police and Social Welfare Department and adequate funding were seen as essential.

> *"I have enclosed a letter from a young girl to her father which for me is the paramount example of a young kid's feelings in jail. She wrote to her father from remand in prison, asking him to come to court 'I am going up for all sorts of things. I would rather you be there to tell me how to go about doing things or something, and to explain a few things. Cause half the time I don't really know whats going on.'*
>
> *I went with the father to the court last Tuesday and because he felt that he was sort of to blame he asked Court Staff if he could speak on her behalf and the Clerk told him that he would inform the judge. The father looked at the offences with the help of Matua Whangai staff and after talking to his daughter they agreed to enter no pleas on all charges. When the girl was asked to go into the dock the father once again took it as part of his role to stand next to her in support in the dock. The judge asked if the girl had a lawyer and she said she wanted her father to speak on her behalf as he was familiar with Court procedures and had defended himself successfully previously when being served a Notice to Quit a rented property. The Judge then asked the clerk to read the charges and when the girl was asked 'How do you plead?' the girl looked questioningly at her father. He asked the Judge if he could enter pleas on her behalf to which the Judge replied 'Why? Is there some sort of communication problem here?'. The father replied 'There might be but we are not going to suffer the embarrassment of saying so in Court'. The judge adjourned the Court for 15 minutes and the girl and her father spoke to a duty solicitor who then went about saying the very things to the Judge that the father had intended. Problems here were lack of sensitivity by judge; duty solicitor wasting energy, after all the father also wanted to help Court procedures; Matua Whangai did not have a full list of all the charges... The message is coming through loud and clear that Court procedures are going far too fast for kids to 'know what's going on'."*

3.5 Young people appearing in the adult court were also seen to be specially disadvantaged by inadequate legal services, and insensivity of the process to their fears and needs. There was also concern that name suppression for young people ceases as soon as they are old enough to appear in the adult court.

3.6 A specialist legal service for young people was supported, and concern expressed that the Child Advocate scheme had been confined to Auckland.

3.7 There was also very strong support for diversion of young people to community and whanau based processes, instead of processing them through the formal courts. This would provide positive social solutions, rather than imposing negative legal penalties.

4. Children in substitute care

4.1 Children and young people under the control of government departments were identified as specially vulnerable. They have no legal rights, no independence, no money, and no credibility. Those in institutions are in effect prisoners, with minimal access to outside assistance. Their legal guardians are often the very people who are holding them in custody.

4.2 The Social Welfare Department apparently now accepts a duty to provide young people in its care with adequate legal representation, and recognises that duty solicitors' services may fail to reach that standard. However, no formal arrangements exist for legal services to young people beyond that. These young people were seen to have priority needs for legal services to ensure: they know their rights and those of the institution; those rights are being met; appropriate procedures are being carried out; those making decisions are accountable; the young people have some power over what happens to them; and they have ready, free access to appropriate remedies. The parents of any child held in social welfare custody also need to know their rights.

4.3 Recent questions on the legality of holding thousands of young people a year in social welfare "secure" cells[12] highlighted the lack of legal services to protect their rights. It also focused attention on the absence of effective independent monitoring. The fact that the vast majority of these young people are Maori raises once more the spectre of institutional racism.

4.4 Concern was also raised over the legal service needs of young people in other forms of substitute care, especially foster homes.

> *"Some children still of school age are placed in Foster Care and are verbally and physically abused by the foster parents... These children are often not aware of their legal rights and the Police tend to disbelieve a child's complaint unless it is corroborated by an adult. Again, these children do not have the knowledge necessary to obtain a lawyer and they feel ill at ease when trying to communicate their problem to a short tempered obviously busy lawyer who often does not assist because of the legalistic language and cross examination techniques they employ at such an interview."*

4.5 We also heard from the Foster Care Association about the high legal costs they face when taking legal action to benefit the foster child. They sought legal aid as of right for foster parents in all matters relating to the child.

4.6 Independent legal services, and a community-based monitoring process with strong Maori participation, were seen as matters of urgency for young people in all forms of substitute care. Sensitive and culturally appropriate legal assistance on matters internal to institutions or homes was considered equally important as other forms of legal service. It was felt that young people would relate best to para-legal services provided by people drawn from their own communities.

5. Other concerns

5.1 Several other matters were raised on behalf of young people. Funding through community service groups was sought for community programmes for those youth who are not eligible for benefits or state wards, and to help run co-operative houses and work trusts. These provide a secure base for young people, and are vital avenues for providing legal advice and information.

5.2 There was also concern that young people and their parents should have a right to representation at any formal Education Board proceedings, or informal school administration proceedings, which affect the right of young people to education at a school of their choice.

4. WOMEN

1. Legal information

> *"Many women are limited by their inadequate knowledge of legal remedies open to them... They are vulnerable to wrong and bad advice, unsympathetic lawyers and unnecessary expense. It is apparent that many women in lower socio-economic groups have difficulty with transport, childcare and keeping appointments through no fault of their own."*

1.1 It was clear that women are not being adequately catered for by traditional legal services. There is a lack of legal education across the board for women of all backgrounds. Many women do not know their basic rights as women, such as whether they can enter into hire purchase contracts without their husband's signature, or how to find that information. Women victims of domestic violence especially have very little knowledge of their rights.

2. Lawyers

2.1 The law was seen as very much a male system. It was explained that women often feel uncomfortable sharing experiences with lawyers of the opposite sex. Many felt that lawyers were not working for women, and gave them a low quality service. This was especially so with male lawyers in domestic violence cases. The view was also expressed that lawyers give advice which is easiest for them, and do not properly explain to women the options or consequences. There was particular concern that many lawyers and judges have little awareness of the reality and urgency of family violence situations. Young lawyers were considered ignorant about the law and how to handle such situations.

2.2 Women often require information immediately. However, problems of making and keeping appointments, transport, and child-care often deter women from going to lawyers. The setting and procedures of lawyers' offices are also considered intimidating, and are seen as disempowering of women.

> *"The financial burden such fees create can deter a woman from seeking legal assistance. Without such assistance many women remain victims both of violence and the justice system".*

2.3 Many women are deterred from seeking a lawyer for fear of the expense, and are not aware that legal aid exists. Those women who are still within a relationship are often ineligible for legal aid because of their partner's income, to which they have no access. For example, women not on a benefit must pay full legal fees for non-molestation, non-violence, occupancy and furniture orders due to violence. Refusal to provide legal aid for dissolution hearings because of the cost to government, was seen as illogical and unfairly penalising to women.

2.4 Community based legal services were strongly supported as being more relaxed in decor and attitudes, and encouraging to women; more accessible and available; flexible on appointments; demystifying; and involving lawyers and non-lawyers. They could carry out advice, education and publicity roles and help women to help themselves.

> *"Critical support such as friends, relatives and women's groups, which many women have relied on in their endeavours to escape an abusive relationship, is*

removed at a time when they must be in their ex-partner's presence. The fear evoked by the presence of the partner can and does account for many women agreeing to access and separation agreements which they cannot live with."

3. Family Court

3.1 The Family Court was still seen as formal and intimidating for women, and very much a male domain. There were strong calls for women to have support persons with them as a matter of right, not at the judge's discretion. Family Courts were urged to tell women of helping agencies available, like Rape Crisis, Maori Womens' Support Services, Womens' Refuges and Womens' Centres. There was also concern that waiting facilities fail to take account of problems women face when their partners are present in the same room.

3.2 Women usually do not realise that they, or their former partners, have a right to appeal or plead hardship, or to seek a review of maintenance if circumstances change.

4. Other Concerns

4.1 Affirmative action was promoted for appointments to legal positions, such as judges, lawyers, court staff, probation officers, social workers and police.

4.2 The Equal Pay, and Maternity Leave and Employment Protection Acts were considered ineffective due to ignorance of their content, lack of enforcement and unavailability of legal services to women. The same applied to sexual harassment and other areas of discrimination against women.

4.3 Demands were also made for easier redress and legal services in cases of medical abuse, such as injury caused by contraceptive devices. Discrimination against women in lesbian and de facto relationships, especially in areas of custody, wills, inheritance, adoption and joint property, and the lack of uniformity across the country of certifying consultants for abortion were other matters of concern.

5. VICTIMS

1. Legal Information

"Because of the nature of rape and its immediate and severe effects on women, we believe it is imperative that sensitive and comprehensive legal services be provided for raped women".

1.1 Victims felt that inadequate information is available about their legal position or rights, leaving them powerless over decisions made about their case. Assistance independent from the prosecutor was seen as essential to protect the victim's interests, including submissions on bail for those accused of violence. Some saw this as an extension of legal aid. Others sought greater involvement and recognition of victim support services at all stages of questioning, examination and court. Greater anonymity for victims at all stages of the process was also sought.

1.2 The new sentence of reparation was welcomed as a way of bringing home to offenders the human dimension of their crime, and to introduce some accountability to their communities for their actions. However, there is very little information on its availability or its operation.

2. Police

2.1 Victims also felt very vulnerable when dealing with police and the justice system. They complained of a reluctance of police to attend domestic violence incidents, or to enforce non-molestation orders and prosecute men who breach them. Police,

lawyers, judges and court staff were seen to lack sensitivity and training to deal with women and children victims of sexual and other violence.

3. Incest

3.1 There was very grave concern over the withholding of counselling services from child incest victims until they have given evidence in court. Where both the victim and offender are Maori, reference of the case to the whanau katoa was seen as far more constructive and appropriate.

> *"Too often the child victim is denied several months of adequate counselling and support service until she appears in court to face her aggressor. We would much prefer depositions being taken from the victim early in the process of uncovering the incestuous behaviour, so that the chance to repair her damaged self-respect and rebuild family and whanau relationships can proceed."*

4. Other concerns

4.1 Victims have very little information and advice available to them, and need to be made aware of rights to accident compensation, counselling and other assistance. As support services such as Rape Crisis and Womens' Refuges are the only legal services available to most victims, there was concern that lack of funding would endanger this work.

4.2 Courts were encouraged to refer violent men to culturally appropriate community education and counselling programmes.

6. UNEMPLOYED AND PAID WORKERS

1. Information and Advice

1.1 For the unemployed, economic survival carries with it a range of problems, many of which involve the law. Inability to pay for basic services such as housing, power and transport often turns into legal battles over tenancies, bonds and letting fees, debts, hire purchase repossessions and refinancing. People know little about the powers of debt collectors, landowners, bailiffs and police. Stresses of unemployment also spill over into domestic disputes, separation, custody and protection proceedings. For young people especially, demoralisation, boredom and high visibility may result in drug or solvent abuse, "anti-social behaviour" or serious offending, mental breakdown or suicide.

1.2 Dealing with government departments is a major issue for the unemployed. People lack information and support to pursue their rights to benefits or work, obtain access to their files, know what information departments can legally demand, take action against discrimination or complain about departmental actions or attitudes.

1.3 Community based programmes, especially Unemployed Workers Rights Centres, are vital for providing legal information and advice to the unemployed on a wide range of problems. The decision by government to reduce funding to the U.W.R.C.s was considered a short-sighted move which will remove an essential legal service to the unemployed.

2. Workers Collectives

2.1 Workers collectives were welcomed as positive responses to unemployment and worker dissatisfaction, especially amongst Maori communities. Access to basic legal information is needed, to ensure that people know the benefits and implications of all aspects of these developments.

3. Paid Workers

3.1 For most people in paid employment, attending court hearings as witnesses, defendants, land-holders, parents or jurors, means time off work, loss of wages and often draws employer hostility. It was suggested that workers should be granted paid leave for attending court.

3.2 Many unions do not enjoy ready access to advice from trained staff lawyers, and cannot afford private lawyers. Their workers have very few legal resources available on areas like maternity leave, discrimination, and interpretation of awards written in legal jargon.

3.3 Basic legal training was sought for unionists, delegates, workers and those involved in employment programmes. It was suggested that the new Trade Union Education Authority should incorporate basic legal education into its programme.

7. ELDERLY

1. Legal information

1.1 The elderly lack basic information on matters of particular concern, such as benefits, powers of the health system, powers of attorney, mortgages, investments, tax, wills and estates, and their position when their partner becomes incapacitated or incompetent. Advice at an early stage was seen as essential to pre-empt serious legal problems.

1.2 Visits to lawyers are often confusing, intimidating, and costly for elderly people who are dependent on limited income and savings. Those lacking mobility, especially the housebound elderly, have increasing difficulty finding lawyers who will do house-calls. Since funding was withdrawn for field officers for the elderly, there have been no outreach services available to provide legal information, advice or contact with lawyers.

1.3 It was felt that many lawyers of elderly people who are institutionalised, immobile or mentally incapacitated are unaccountable. Where the aged are unable or unwilling to challenge a lawyer, and have no family whom they will ask to do so, there is no safeguard over the quality of service they are being given. This is especially difficult where the lawyer holds a power of attorney, and controls their investments. When elderly people raised questions about lawyer's practices or fees, they felt they were treated in a patronising or disbelieving way.

2. Legal aid

2.1 The elderly are largely unaware of the existence of civil legal aid, and many problems fall outside its scope. A typical situation brought to our notice involved an elderly person who wanted to challenge a partner's will, but was distraught, destitute and overwhelmed by the thought of taking her own family to court. Even if she had been aware of her right to challenge the will, the fear of large lawyer's fees and of the law itself would have deterred her from taking the matter any further. It was strongly felt that legal aid should be available as of right to people with no income other than National Superannuation, or other age-related means-tested benefits.

3. Town Planning

3.1 Town planning and land use proposals often affect the elderly and their properties, but they do not know their rights in such situations. Even if they do attend a council or planning hearing, elderly people are easily deterred from taking an active part by their lack of legal knowledge and the intimidating nature of the proceedings.

4. Elderly in Institutions

4.1 Protection of the rights of elderly people in institutions was seen as haphazard and ineffective. While many places treat the elderly well, others do not and the residents are powerless to take action to protect themselves. Some independent monitoring was sought, with the power to take legal action on behalf of the elderly against those who mistreat them.

4.2 Residents in institutions were also seen to lack information about the rights of the administrators to manage their affairs, deduct money directly from their benefits, order them to undertake medication or treatment, discuss their affairs with relatives, provide basic comforts, or evict them. It was suggested that a positive obligation should be placed on management to provide clear and simple information to all residents about their basic rights within the institution.

8. PSYCHIATRIC PATIENTS

1. Access to Lawyers

> *"Although there is no group more in need of legal services, in fact no group receives less."*

1.1. Detention in a psychiatric institution involves an extraordinary loss of human rights for an indefinite period, with no regular access to independent review. Sometimes this exceeds the loss of rights by prisoners. Restrictions include control over personal liberty; consent to treatment; property; drivers' licence; mail and communication; visiting; and compulsory treatment in hospital and in the community.

1.2 The Mental Health Foundation told us of their recent study of civil committal proceedings, carried out jointly with the Victoria University Institute of Criminology. This showed that only 2 of 207 patients subject to civil committal applications during a 12 week period were represented at hearings, both at Carrington. Over the longer term they found that less than 10 percent of patients at Carrington were represented, despite the role of the Patients' Affairs Office to arrange a lawyer at a committal hearing if the patient wants one. No lawyer has attended a civil committal hearing at Tokanui or Kingseat hospitals in many years. In cases where patients do have a private lawyer and psychiatrist, the hospital may agree to alternative placements outside the institution. Those without lawyers are therefore seriously disadvantaged.

1.3 Many barriers which prevent access by patients to private lawyers were highlighted. Often people have little education or may be intellectually handicapped. Their ability to communicate effectively has usually been impaired by their condition or medication. Often they are held in seclusion or secure confinement, with a number of psychiatric institutions located in rural areas. Communication may be censored by staff under Mental Health Act powers. When patients cannot contact lawyers themselves they must rely on psychiatric hospital staff. It was claimed that staff often do not arrange lawyers for patients even if they are asked, as lawyers are viewed as obstacles to the 'right decision'.

1.4 Family members are the people most likely to organise a lawyer for someone who is incapacitated. But in these cases the family often favour committal, and may even have initiated the process. By the time cases come up for review, few committed patients have close contact with their families, and only 19 percent in the Mental Health Foundation survey were married.

> *"Many committed patients know exactly what they want and communicate it very forcefully: they want out! The lawyer's role is not to decide whether their discharge is appropriate, but to represent the patient's viewpoint."*

1.5 It was felt that most lawyers know, and want to know, nothing about mental health law. They share popular misconceptions on the nature of mental disorder and the infallibility of clinicians. Poverty makes patients unattractive clients, demanding of lawyers' time. Further, civil committal processes do not encourage lawyers' participation.

2. Civil legal aid

> *"Patients need an informed advocate who has legal expertise and training. They need not necessarily be a lawyer, but could be trained social workers or specially trained para-legals. Representation by non-legal representatives must be allowed."*

2.1 It became clear that although civil legal aid is in theory available to psychiatric patients, it is almost never used. According to a member of the Auckland Legal Aid Committee, he had *"never seen a legal aid application approved for this purpose in his ten years on the Committee"*. A specialist legal service was strongly advocated, to provide advice and assistance on all matters internal and external to the institution.

2.2 The barriers to obtaining legal aid at the committal stage appear formidable. Civil legal aid requires a $25 down-payment. However, psychiatric patients are probably the poorest group in New Zealand. Their need for legal help frequently arises before any social welfare benefits are arranged. Most simply do not have the initial $25 contribution. In any case the Legal Aid Act requires applications by people of "unsound mind" to be made by someone else, who will sign an undertaking to pay the contribution. If someone has no friends, and their family is unco-operative, no application can be lodged.

2.3 The patient must then establish the merits of the case before legal aid is granted. We were told this would probably involve a medical opinion supporting the patient's view, and a covering letter from a lawyer. This puts an impossible burden on the patient. Psychiatrists are unwilling even to examine another doctor's patient, let alone testify against each other. Indeed, it is unethical for doctors in the same hospital to publicly contradict each other. In addition, the patient faces the problem of contacting and paying a lawyer for this initial stage, as legal aid is not available for advice only.

2.4 Calling the situation of psychiatric patients "civil" was seen as misleading, as their basic liberty is at stake. Often they are detained in prison conditions, like Oakley Hospital or Lake Alice Maximum Security Unit, for many years. The right of patients to prompt and skilled legal services was seen to equal that of defendants facing imprisonment under the Criminal Justice Act.

2.5 Legal assistance for review proceedings, and for matters internal to the institution, was seen as indispensable. In 1983 the Access to Law report rejected demands for a legal advice scheme which extended to cover liberty issues.[13] They claimed that complaints procedures already exist, and that visiting lawyers need to maintain good relations with institution staff. This rationale drew angry condemnation.

> *"I find it difficult to comment on those recommendations in a restrained way... The effect of the recommendations is that lawyers may get involved in peripheral matters such as property and family issues (although many patients have neither property nor family) but should not get involved in issues of most importance to patients such as their liberty interests. As to current complaints mechanisms, it is common knowledge that they are entirely inadequate. The Oakely Committee of Inquiry said so in as many words."*

3. Legal advice

3.1 Psychiatric patients' needs also extend to more general legal advice. Their poverty, and its consequences create a special need for general legal assistance to psychiatric patients. Although they are eligible for sickness benefits, after 12 weeks that benefit is reduced to $9 a week. Patients who have ongoing commitments while inside the institution, such as a flat or hire purchase, are simply unable to pay them. On release, the patient is destitute. Problems of family breakdown, custody disputes, wills, powers of attorney, investments, tenancies or mortgages, other debts or commitments are common. However, although patients are denied the right to control these matters themselves, they have no access to free legal advice or services to protect their interests.

4. Maori and Pacific Peoples

> *"Those brought up in Maori institutions absorb the concepts of wairua from early childhood and respect and understand its meaning. The number of Maori people entering mental institutions is growing and often because the problem is viewed from a European viewpoint and not a Maori one."*

4.1 The high number of Maori in psychiatric institutions was seen as another example of institutional racism. No attempts are made to involve a Maori perspective or to recognise mate Maori in the committal and review processes, where the lawyers, judges, psychiatrists and doctors involved are almost always Pakeha. Proposals for assessment by tohunga and recognition of taha Maori at all stages of dealing with Maori people in the psychiatric process will be passed on to those carrying out the current review of Mental Health legislation.

4.2 Pacific Islands people encounter serious language and communication problems, in addition to facing a lack of cultural awareness at all stages of the mental health process.

5. Monitoring

5.1 The absence of effective complaints procedures and independent monitoring, especially of the use of E.C.T., was also strongly criticised. The "Official Visitors" who are unpaid, ill-defined, untrained, culturally inappropriate and appointed at the discretion of the Minister, were seen as total inadequate.

6. Review of Mental Health Laws

6.1 The Mental Health legislation is currently under review. It seems that patients' rights to free legal representation at committal and review will be recognised. However, no machinery appears to have been provided for ensuring appointment of trained and sensitive advocates, or for meeting patients' other legal needs, including internal matters. The monitoring and complaints procedure is likely to remain largely discretionary and in-house. While some changes to the review process will reflect Maori and Pacific Islands concerns, they do not appear to have been addressed at any other stages of dealings with such patients.

7. Access to Information

7.1 Psychiatric patients are often denied access to the reports on which committal is based, so they are in no position to challenge their content. Changes to the Official Information Act were proposed to ensure people have the right to see their own records at any stage of proceedings against them.

9. PRISONERS

1. Lawyers and legal aid

1.1 The closed nature of institutions, their isolation and the cost of lawyers can make contacting, and maintaining contact with, lawyers almost impossible. This especially affects those on remand awaiting sentence or appeals, but also includes non-criminal matters such as child custody and access, separation, tenancy, accident compensation, tax and hire purchase.

1.2 Internal disciplinary charges can have serious implications for those in prison. The point was made that under the Criminal Justice Act no person can be sentenced to imprisonment unless they have had the opportunity of legal representation, including legal aid. As disciplinary hearings can effectively impose an additional term of imprisonment through loss of remission or refusal of a parole hearing, it was felt that the same right to representation must apply. There was a strong plea for state funded legal assistance for all inmates appearing before a Prison or Parole Board or any more informal proceedings.

> *"The present law on internal disciplinary charges is farcical. Any defendant is adjudged guilty unless he can prove himself innocent. He is denied legal advice and cannot be represented by a lawyer. Further if witnesses are not available at the time of hearing they simply do not appear and the charge is heard without them. In all cases the inmate does not get a fair hearing."*

1.3 Delays in hearing appeals also drew criticism. People may serve a part, or even all, of their sentence before their appeal is heard. As there is no way to compensate for time spent in custody when an appeal succeeds, it was felt that legal advice, approval of legal aid and appeal hearings should be accorded priority.

> *"People in my position are being charged and, unable to afford lawyers, granted legal aid, then either pleading guilty or convicted on various charges and sentenced heavily. Then we have it pointed out to us we may appeal. We do so and apply for legal representation. However now the real problems start. The Appeal Court in their wisdom decline us legal representation and whilst realising that their world of $68,000 salaries is far removed from our world of poverty and unemployment and that they can never be acutely aware of our real situation is not much recompense to us.*
>
> *However they, as no doubt required, order us to make written submissions to support our appeals. Very nice of them except when one considers many of us do not speak fluent English, maybe unable to read or write, may have lower than average intelligence and of course but not least that none of us have the benefit of legal training and our written submissions may carry no weight in law and may be far from the real issues that only a lawyer would be aware of. So in fact our submissions may be quite worthless.*
>
> *We then post off our submissions in the allotted time. However, once again we are confronted by what we feel an injustice, the court does not acknowledge receipt of the submissions so we never know if they are received. Then in due time we are notified that our appeals are quashed. However once again another injustice. We are not given a copy of the judgment. One of my friends... in writing and asking for the judgment was informed that there was no judgment. So one may feel justified in suspecting that our appeals are never heard, and that what appears to be a formality in refusing legal aid for appeals against sentence, is in fact a refusal for a fair hearing... or perhaps an avenue that can be effectively blocked without ramifications, thus saving the State money paid to a lawyer.*
>
> *We have illiterate men ordered to write, laymen asked to be lawyers, those of limited intelligence expected to become intelligent for the duration of writing submissions and a completely hostile attitude to convicted men. Any government*

office or private business acknowledges receipt of mail, and the Appeal Court sees fit to only mass produce replies with no room set aside to insert the appellant's name when his appeal has failed. With justification this is felt to be an unjust procedure geared against those without money and would perhaps remind some people of articles written about Russia. However this is New Zealand and whilst there is a large difference between chauffeur driven judges earning more than the Prime Minister and people such as I at the bottom of the social scale, this cannot be justification for the judiciary to wipe the poor. After all ours is a country of equal opportunity.

I have asked a friend to help me write this letter to voice my dismay at this intolerable situation in the hope that you may assist we who find ourselves in this predicament. I'm sure these things are not widely known. . . I for one and I know of others will pursue this matter until we are treated justly and in accordance with the law."

2. Priority needs

2.1 The majority of those in prison[14] are Maori. For them, the inaccessibility of legal services is combined with the mono-culturalism of the prison, lawyers and legal system. Pacific Islands inmates face similar cultural alienation. They also lack advice and information about their cases, internal matters, family and other external problems and the law affecting their release.

2.2 Information regarding options on release, parole and community care are also inadequate, and are urgently needed by inmates in light of the new Criminal Justice Act. It was felt that the funding allocation to community based rehabilitation services should better reflect the fact that half the prison population is Maori, to provide a time for adjustment and to rediscover their rights and obligations to whanau, hapu or iwi after release.

2.3 Women on remand and under sentence frequently face traumatic struggles to retain custody of their children. The emotional stress of isolation and powerlessness are combined with ignorance of her rights, and absence of legal help. Similar problems face young women who bear children while in prison, who often face heavy pressure over fostering. On release, there often follows a battle for the return of the child and very few women know where to turn for legal advice or support. There was further concern that women in prisons, borstals, remand homes, and other institutions lack avenues for independent inquiries into grievances such as abuse and harassment.

3. Other concerns

"Through my experiences, both within and outside the limits of the law, I firmly believe that there is a large number of Maori people confined in penal institutions, throughout this country, solely because they lack knowledge of the law and their basic rights as individuals. Many don't know that they have any rights until they are incarcerated. Most of my own knowledge of the law was taught to me by other inmates."

3.1 Time in prison was identified as an ideal opportunity for basic legal education, especially on areas like housing, tenancy, consumer, and Maori land.

3.2 Inmates expressed concern that their families need urgent legal advice but rarely know where to turn.

10. PACIFIC PEOPLES

Financial resources should be made available to ensure adequate Pacific Island consultation in appropriate areas of legal services, to identify Pacific Island people and to put together a programme incorporating a community education package about the law. Present structures must alter to enable consistency with cultural components and to see that the community's commitment to the task is acted on, rather than treated with tokenism.

1. Legal information

1.1 There is a severe lack of knowledge and information about the law in general, and especially about rights under employment, housing, hire purchase, and the Race Relations Act. Funding was seen as essential for Pacific Islands communities to teach their own people about their rights, legal services, and how to deal with the legal system.

1.2 Pacific Islands communities were strongly in support of having their own members trained as para-legal workers to provide information, advice, assistance and contact with formal legal services.

1.3 There was support for community law centres which link legal and other support services to be available throughout the country. Involvement by more Pacific Islands people in management and staffing of centres was encouraged. The possibility of a specialist law centre dealing with matters affecting Pacific people, especially immigration, also drew support.

2. Police

2.1 There was serious concern that Pacific people are not adequately informed of their rights in their own languages at point of arrest. It was suggested that police should be required to first contact someone from the Pacific Islands community before processing, who should be present at any questioning of Pacific Islands people. This was considered essential in all immigration cases.

3. Immigration

3.1 Information and advice in the immigration area are vital. It was felt that many problems and misunderstandings could be dealt with at an early stage, if legal resources and information were available in appropriate formats and languages. This would help the families of those whose members wish to come to this country, and those whose relations are subject to immigration proceedings.

3.2 There was concern that Pacific Islands people are exploited by some lawyers in immigration cases. Some kind of specialist service was supported, along with an extension of legal aid to ensure it was available, in practice, to those facing immigration and deportation hearings.

3.3 The practice of arresting people facing immigration appeals when they report to the police station was condemned. People facing arrest for immigration charges were seen as having a priority need for culturally sensitive legal advice, and for independent, trained interpreters. This applies at all stages of immigration proceedings, from the time of questioning and search, at the police station, in court and at the airport.

4. Lawyers

4.1 Communication problems with lawyers frequently arise because of language, cultural and cost barriers. More Pacific Islands lawyers, who would be responsible to their communities, were considered essential to overcome language and culture barriers.

4.2 There was general disenchantment with legal aid and duty solicitors, who were seen as unhelpful and of no benefit to the clients. Lawyers were criticised as insensitive to language and cultural needs, appearing disinterested in taking the cases, and spending insufficient time on cases. Information about legal aid is not widely advertised or readily available in languages and forms which Pacific people can understand. Many Pacific people are apparently not aware that duty solicitors or legal aid exist, or of the difference between civil and criminal legal aid.

5. Courts

> *"This goes against the grain of Pacific Island support systems where family and relations accompany whoever through especially difficult situations e.g. court appearances."*

5.1 The New Zealand Court system is seen as alienating and threatening, in which Pacific Islands people are unfairly disadvantaged. The procedures are culturally alien, especially by isolating people from family and community support. Mispronunciation of names is seen as both offensive and the cause of added stress and injustice. There is no appropriate information available for Pacific people on procedures in court. More full time interpreters, and court workers who can liaise between the family, lawyers, and court, are needed. They are essential for all stages of the court process, and in all courts. Acknowledgment was sought of more appropriate cultural ways of handling offending within Pacific Islands community groups.

> *"More confidence is in a group of consultants or a collective, who have some knowledge of the person or their families' background which could have led to the situation."*

5.2 Sentences bearing no relation to the causes of situations, were seen to reflect judges' lack of understanding of Pacific peoples' cultural backgrounds.

> *"We think that the way most sentencing and court proceedings are reported negatively and a lot of our negative image comes from especially the negative reporting of petty cases which only adds to statistical counting of Pacific Islands offenders."*

5.3 The media were accused of creating negative images of Pacific Islands people. Hearing more cases in the absence of media, and more responsible reporting, were advocated.

6. Prison

6.1 More involvement by Pacific Island communities in prison programmes was supported to provide support and cultural input to Pacific Islands prisoners. There was concern over the lack of multi-lingual information on prison procedures and release programmes.

E. LAWYERS, COURTS AND ACCESS TO JUSTICE

Dismantling the structural barriers which deny access to justice is integral to any effective review of legal services. This section of the report identifies these barriers, and advocates changes which will benefit both the consumers and the process of justice itself.

1. LAWYERS

1. Access to Lawyers

> *"Going into a solicitor's office people are immediately confronted with symbols of power and prestige and plushness, almost universally associated with solicitors. The trappings of law offices, desk and seating arrangements, reception facilities and the demeanour of staff, while intended to reinforce prestige and evoke confidence on the client's part, apart from raising the costs of the service itself, tend to alienate or distance lawyers, and the law, from their clients, especially their poorer clients."*

1.1 The failings attributed to lawyers go far beyond the problem of cost, and we believe will only be resolved by major changes within the legal profession itself, and in the processes which create dependency on lawyers. Criticisms made to us include pre-occupation with profit, reputation and status; lack of commitment to justice; inability to relate to human realities of other classes and cultures; ignorance and disinterest in cases which are unattractive and financially unrewarding, such as immigration, tenancy, mental health, children's rights and domestic violence; elitist and patronising attitudes to women, Maori, Pacific people and non-professionals generally; gross cultural insensitivity and arrogance; basic failure to communicate; use of technical legal jargon which excludes lay clients from understanding and taking control; plush offices which make commercial clients comfortable, and ordinary people uncomfortable; restricted opening hours causing serious inconvenience to workers and rural dwellers; unavailability in emergencies; and lack of child care facilities and flexibility to meet women's needs.

> *"There is anger that while running a "closed shop" lawyers provide such a bad and at times non-existent service in some areas. Getting representation in court is particularly difficult in provincial and rural areas."*

> *"The legal profession has dominated access to information for far too long and given limited services to the community."*

1.2 The legal profession's monopoly as the exclusive intermediaries between people and the law was denounced as making people dependent on a small elite of predominantly Pakeha male lawyers. Vested with this power and responsibility,

those lawyers were accused of being neither interested, willing, nor competent to serve the needs of those forced to rely on them.

> *"Money is seen as being the main motivating factor for many lawyers with justice for the client coming a poor second. The fact that "lawyers cost more than fines" means that many people have no choice about defending a case."*

1.3 People clearly viewed justice as a commodity to be bought, with fear of crippling costs deterring people from approaching a lawyer. Unwillingness of lawyers to discuss likely fees and explain their bills, appeared to increase suspicion that people were being 'ripped off'. A guide to acceptable fees, and more effective monitoring of charges, were sought from the Law Society.

> *"The feeling of approaching a solicitor should not be one of 'how much will this cost me?' Rather, it should be on the basis of 'how can I have this solicitor help me?' "*

1.4 Lawyers' attitudes, offices and ways of working were seen as alien and alienating, especially to Maori and Pacific people. This brought a strong call for more Maori and Pacific Islands lawyers, and greater accountability among many of those now in practice. Subsidies for lawyers based in uneconomic locations and communities were proposed, to encourage Maori lawyers to return to their communities. Changes were also advocated to entry criteria for law school and to course content to recognise special Maori needs and skills. We support both those proposals.

2. Training

2.1 Training of lawyers was seen as an academic process where they *"are socialised into regarding clients more as objects than equals"*. A shift of emphasis in training for lawyers was sought, to increase their social and cultural sensitivity, and their ability to understand and respond to the human questions they will encounter in practice. We share this concern, and propose the following steps towards achieving this:

(a) All law students should be required to spend time with a community based legal programme, such as the proposed Legal Services Centres, Public Advocates, specialist legal services or legal wananga. For Maori, Pacific Islands or other students this may involve time spent assisting their communities.

(b) Compulsory training in negotiation, mediation and communication skills.

(c) Practice at 'problem solving', integrating the practical, cultural and diverse legal dimensions of fact situations.

(d) Incorporation of the Maori aspects of all legal subjects, including land, wills and succession, family law, criminal law, planning and environmental law.

(e) A course in te tikanga Maori must become compulsory for all potential lawyers before admission to the bar, especially given the imminent introduction of te reo Maori to court proceedings. A dispensation would be provided for those who have taken a course in Maori in their 'law intermediate' year. Such courses should also be made available to present members of the profession and judiciary.

(f) Law professionals should include a segment on legal services to ensure that lawyers are familiar with the range of services available.

2.2 Specialist post admission training should be provided, including:

(a) Training courses for lawyers on how to deal sensitively with issues such as rape, incest, sexual abuse, children and family law. Lawyers intending to work in these areas should undergo training in working with and

understanding children, young people and family dynamics within diverse cultural contexts. This should be an extra part of the degree, law professionals or post-graduate training. As almost 88 percent of civil legal aid clients are women,[15] we propose that participation in such a course should be required before lawyers are able to undertake civil legal aid or work as Child Advocates.

(b) Specialist courses and certificates should be offered to lawyers and non-lawyers in areas such as family law, mediation, and Maori land.

2.3 We propose that all lawyers should be required to complete a course in te tikanga Maori before undertaking any state funded legal aid work.

3. Accountability

> *"While the New Zealand Law Society has been willing to respond to issues affecting the interests of practitioners,... it is seldom that they take up the interests of clients."*

3.1 The legal profession was seen as totally unaccountable to those who are made dependent on it. Greater consumer involvement at all levels of Law Society policy and decision making was demanded, especially in the areas of fees, ethics and discipline. It was felt that the institutions engaged in law—Law Society, lawyers, Justice Department—should take greater responsibility for de-mystifying the law.

> *"While much of the profession is near the top of the social heap and therefore a beneficiary of the System, lawyers are not solely responsible for the social ills which make their services necessary in the criminal law process. Society as a whole must take responsibility for a properly funded legal service, instead of throwing a disproportionate burden on the legal profession."*

3.2 Overall, people had little faith that lawyers would ever be able or willing to adequately provide for those currently denied access to justice. Nor did they feel that such a duty should fall solely on the legal profession. However, it was made very clear that if lawyers are unable to meet peoples' needs, they cannot expect to continue enjoying their monopoly over legal services.

2. CRIMINAL COURTS

1. The Court Experience

1.1 Most comments on the courts related to criminal proceedings. However, we believe that many comments apply equally to the civil jurisdiction.

> *"In total the court system tends to denigrate and alienate rather than elevate the humanness of those who are compelled to attend court hearings. The system is bizarre to the uninitiated, merciless to those who are culturally different and demeaning to all but the most hardy."*

1.2 The court experience was overwhelmingly seen as negative, dehumanising and counter-productive.

> *"Courts are where the Police take their packages. All the relatives and friends are welcome to attend but must keep quiet or cry quietly. The police, the judge and the lawyers are the only ones allowed to speak.*
>
> *In comes the Judge and in front of him are six more baskets full of paper. The papers are done up in bundles about twenty bundles to the basket, with a label on the outside of each bundle. The Court Clerk picks up a bundle, reads the label and*

up comes a package delivered by the police (which is recognised by a relative or a friend at the back as a person they once knew). The bundle is opened, the Court Clerk reads out what's on the inside, the package says "guilty". This is the only word that he or she is allowed to say that is going to be believed. The Judge says "you are convicted", pronounces punishment or tells the package to come back for punishment.

The Clerk picks up the next bundle and so it goes on. This is really a factory that drums out convictions or maybe its a place where the police come to get their blessing for the previous night's/day's work. But like any production line it has its hiccups. These hiccups occur when a package/person occasionally mutters "not guilty". It's really a total nuisance and what it really means is that the police must come and give the judge the information they couldn't give him today. When the Judge has got that, he will block his ears, wait until the lawyer shuts up, say "I find you guilty, you are convicted", pronounce punishment or tell the package/person to come back for punishment."

1.3 People felt totally confused and degraded by the impersonal nature and almost indecent haste of court proceedings.

"The Court environment itself, particularly in the criminal jurisdiction, is often cold and hostile. The facilities are bad and over-crowded, with people "herded into courts". It is rushed and confusing, leaving people numbed. There is a general lack of understanding of what's happening or how to find out, with a lack of staff around to explain procedures. The structure and staff are impersonal, intimidating and insensitive. The physical layout of the court is inappropriate and off-putting. The formal language and jargon is unintelligible and increases lack of understanding. The dock should be done away with as it is an indignity. The practice of seating the defendant next to police or prison officer is not necessary unless the person is sufficiently dangerous. The elevated seating of judges and ornate bench lowers the mana of the defendant. The pomp, wigs and gowns are outdated and inconsistent with bi-cultural society. The facilities are bad and over-crowded, with people "herded into courts."

1.4 There was strong condemnation of a perceived assumption of guilt, in place of the presumption of innocence. Those who plead not guilty felt they were often treated as if they were trying to subvert the justice system.

"Guilty pleas are too readily obtained in the courts. Too often a guilty plea is entered because it is expedient... As a result, some accused persons end up in prison because they have pleaded guilty to something which they have not done, either because they had been advised or even coerced into doing so by officers of the court, such as the police or solicitors, or because they do not wish to nark on their mates."

"The majority of rules and the procedural requirements affecting the operation of a court room are geared to suit the interests and convenience of judges and lawyers alike. Reverence for the law clearly predominates over reverence for people."

1.5 There was an overwhelming impression that the court was organised to meet the needs of the lawyers, Judges and police, and with the defendant a rather irrelevant by-stander. The familiarity and in-house jokes between prosecution, defence, Judge and court staff were seen to emphasise the bias of the process.

"It is very authoritarian and patronising where the judge sits above; the lawyers have their back on the offender. The present system is so impersonal and

threatening that P.I. people hate the court system so much that it doesn't really matter what they should learn from their punishment."

1.6 The court layout was criticised as culturally insensitive, by isolating people from their support at a time when it is most needed. Its intimidating effect was seen as largely responsible for peoples' sense of powerlessness, and compliance with the court's expectation that they will plead guilty.

"The way the court is set up gives advantage to the police and lawyers rather than the person appearing. The defendant has to stand alone in the box without support when he/she needs it most."

"There have been cases where people have missed out on appearing because they don't recognise their names when mispronounced. Consequently they hang around all day and then if they don't ask and quite often are embarrassed to, they go away and can be chased by a warrant of arrest!"

1.7 The present court system was seen as *"racist and glaringly mono-cultural"*, making no attempt to recognise that Maori are different, even given their high proportion before the courts. Pacific people felt the same. Lack of cultural sensitivity and basic courtesy by court staff was seen as exemplified in the constant failure, and at times refusal, to pronounce peoples' names correctly. An immediate policy of affirmative action was proposed to employ more women and members of diverse cultural groups within the court system and Justice Department. Specially trained people were seen as vital to bridge the communication gap between court staff, Judges, clients and professionals. This was of particular concern to Pacific Islands communities. We support these proposals.

1.8 Skilled interpreters are needed for all languages, rather than just using bi-lingual people. Appointment of Maori interpreters must be on the recommendation of their community.

1.9 The lack of any effective court organisation means parties, witnesses and supporters are often forced to wait most of the day. Delays and remands are stressful, time consuming and expensive to all. People often suffer loss of income, by being required to take another day off work, and travel back to court. There were many requests for timetabling of cases, and court sittings in the evening and on weekends. They also felt that criminal cases which are unable to proceed should be dismissed, unless they involve serious offences. Reopening of rural courthouses or use of other facilities were seen as essential to ensure that courts are within the reach of local people. We endorse these suggestions.

"They don't know about people's backgrounds and just rely on bits of paper and make a sentence which affects their life forever!"

1.10 Despite changes to the Criminal Justice Act people and their communities still feel powerless to take an effective part in determining an appropriate sentence. There was also concern over wide variations and inconsistency in sentencing. We recommend that Judges take positive initiatives to remedy this.

"When I was sentenced I had read my probation report and was asked by the presiding judge if I had anything to say. I was unrepresented by a solicitor and although there were many things I wanted to say I could not put the words together properly and decided to wait until I heard what the judge had said. I thought I may be able to answer what the Judge said but that was not the case.

There are some things I think that judge should have been aware of before sentence . . ."

1.11 We consider it a right for Maori, as for everyone else, to be judged by their peers, and favour the enlargement of the Maori element of the jury rolls to ensure that Maori jurors are as well represented in the courts as are Maori accused.

"We have observed that the Crown prosecutor nearly always challenges Maoris, acting in a way that disadvantages Maori accused. If a lawyer challenges a potential juror, the reason for the challenge should be stated in open court. Although we realise that few prosecuting lawyers will admit to ethnic or racial bias in the empanelling procedures, we need greater safeguards for Maori accused than the present system allows."

"There is doubt, even amongst the legal profession, of exactly how judges, both in the District and High Courts are appointed and this should be clarified. The public sometimes perceives the appointment of judges as another part of the "old boys" network and as being both sexist and racist. Many judges have little or no knowledge of Maori and Pacific Island cultures, and the methods within those cultures of hearing and treating an offender."

1.12 Serious concern that many Judges are socially and culturally insensitive, and lacking in communication skills was intensified by the feeling that Judges are totally unaccountable. The effect appears to be an increasing disregard and at times contempt for the courts. A more open process of appointment was sought, where people were selected for their special skills to understand and relate to those appearing in court and their communities. Special care should be taken to appoint appropriate judges on rural circuits. With increased community participation under the Criminal Justice Act 1985, and the advent of the Maori Language Bill 1986, we strongly recommend that bi-lingualism and specialist training become a pre-requisite for judicial appointments at all levels. This should result in more Maori and Pacific Islands and women judges being appointed, including some on a part-time basis. Participation in regular exposure programmes and refresher courses is also essential.

3. CRIMINAL LAWS

1. Restructuring minor offences

1.1 Many, if not most, of the above concerns cannot be remedied within the current framework of the formal courts and legal profession. Further, the overload on courts and legal services will continue to increase along with the number of arrests. Pressures to clear this backlog can only further diminish the quality of justice people receive, by providing less time for each case, overcrowded facilities and inadequate services. Ironically, a more thorough legal service may contribute to this by slowing the process down, as each case is given deeper consideration. We believe the answer cannot lie in merely pouring more money into negative funding to build more courthouses and employ more Judges. Nor will more efficient organisation through scheduling cases and extending court hours provide any more than short-term, superficial relief.

1.2 We are convinced that access to justice can only be attained through significant structural changes, diverting many of the cases currently brought before the formal courts to a more constructive and appropriate forum.

1.3 We advocate a combination of repealing certain trivial offences, use of a notice of offence in place of arrest in minor cases, and the development of culturally

appropriate community resolution processes. This would then reserve the formal court process and legal services for serious cases of criminal misconduct. For those cases which remain in the formal courts, more time for each case; significant changes to procedures, layout, language and services; the appointment of more appropriate and trained personnel; and greater encouragement of community participation should alleviate at least some of the major points of concern.

2. Impact of minor offences on legal services

> *"In the past, and still at present there are offences on the statute books which have been used to justify apprehension by the police. There are statute book trivia which are neither preventative nor conducive to improving standards of behaviour in the young. Charges of using obscene language are a case in point. A number of young people pointed out that language usage is rapidly changing, nowadays we hear the coarsest and most explicit four letter words on radio, television and movies. Even toddlers, infants hear them and use them, sometimes to the amusement of their families, but in the presence of a police officer, as likely as not it will result in a court appearance. The long term effect of this sort of trivial prosecution may well be opposite to what was hoped for, an alienation of the young person from 'proper' society, from the law and from the officers of law enforcement."*

2.1 Arrest and conviction for trivial offences was condemned as counter-productive and wasteful of resources. Matters such as insulting language, disorderly or offensive behaviour are everyday occurrences throughout the country. While they may not be desirable activities, they are sufficiently common to make criminal convictions for their commission appear arbitrary and unjustifiable. Arrest, processing at the police station, the court appearance and sentencing require a major commitment of police, duty solicitor and court resources. We believe this is simply not justifiable when viewed from the perspective of any of the participants in this process.

2.2 For the police, this involves a significant input from personnel on the street and in the police station. Selective enforcement in highly policed areas was seen to damage relations with police, and fuel accusations of racism and harassment. At a time when police resources are stretched to deal with serious and violent crime, and demands are being made for more staff, it seems untenable for much needed resources to be devoted to such trivial and unproductive tasks.

2.3 The overload on duty solicitors is intensified by the number of people appearing on petty charges after overnight arrests. Their role is usually limited to entering guilty pleas and brief pleas in mitigation, due to the widely acknowledged futility of pleading 'not guilty'.

2.4 The backlog in the District Court is compounded by the presence of these cases which draw the routine response of a conviction, fine, and order for court costs. It was commented that the 'rapid-fire' procedure does nothing to foster respect for the court or the justice process in general.

2.5 For the arrested person, such a charge involves time spent in police custody, often until the early hours of the morning; time away from work to appear in court the next morning; and perhaps travel some distance to the court. There is no point in hiring a private lawyer to defend them, or to make a mitigation plea, as virtually everyone on these charges will be fined less than $300 when they are convicted.[16] There is also little point in pleading not guilty, because the cost of a lawyer and taking another day off work would amount to far more than the fine. There is little point in applying for legal aid in public order cases, as 47 percent who do apply have it refused.[17] As a result, as the Access to the Law discussion paper reported, 80 percent of those appearing on public order charges are unrepresented,[18] and the vast majority plead guilty.

2.6 It was pointed out that many young people accumulate lengthy records comprised largely of trivial public order matters. In addition, people quite often face charges such as obstruction, resisting arrest or assault resulting from their reaction to arrest on those minor charges. This places further unnecessary stress on legal resources, and we believe produces only negative results. It was made clear to us that if lifestyle or other problems are causing such behaviour, processing them through the District Court will make no contribution to finding a solution.

2.7 The end result of arrests on these charges is an acquittal rate of about 10 percent. Another 15 percent will be discharged without conviction or convicted and discharged. A total of 97 percent of those arrested on language charges, and 92 percent of those on public disorder charges, will be dealt with by less than a $300 fine.[19]

3. Powers of search in minor cases

3.1 A number of young people indicated that their major source of conflict with the criminal law involves search without warrant for possession of cannabis. Powers of search without warrant are major deviations from basic human rights, intended to be reserved for the most serious and exceptional of circumstances. This is hard to justify when 85 percent of cases for cannabis possession result in a fine or less.[20] Their apparent routine use was seen as harassment, which undermines respect for the law and provokes responses which result in arrest for other offences.

4. Rationalisation of minor criminal laws

4.1 As a step to rationalising access to justice, we propose:

(a) That public order offences which do not involve violence be repealed.

(b) Police should not have powers of arrest on charges under the Summary Offences Act. Peoples' names and details should be taken in the manner already provided for some offences under that Act, and an offence notice sent to them by registered mail. Where people are arrested and bailed, they should not be required to appear in court to plead until at least 7 days later. Proposals for diversion of summary offences and young persons' cases to community panels are outlined below. This procedure will ensure that people have adequate time to consider their options, and to seek out legal assistance from the public advocate or private lawyer if they wish to pursue their case through the formal courts.

(c) Children and young people should never be arrested and detained in the police station. Where it is necessary for them, or an adult on Summary Offences matters, to be detained at a scene, contact should immediately be made with an appropriate community group and arrangements made for them to take responsibility for the person concerned.

(d) The power to search for cannabis possession should be revoked.

4. COMMUNITY HEARINGS

> *"Petty offences such as stealing 20c, bananas, graffiti is such a waste of time and money for families and surely for the government. Often families have their own traditional and cultural systems of punishment but what often happens is that the persons concerned are put through the system unnecessarily."*

1.1 People saw little benefit in merely moving existing courts onto marae or into community buildings. There was wide-ranging support, however, for alternative community-based processes to deal with minor criminal cases, and those involving young people. This is consistent with the trend occurring in other legal processes,

such as the development of Small Claims Tribunals and the new Tenancy Tribunals. It also provides a more appropriate means for implementing the newly introduced sentences of community care and reparation.

1.2 The traditional processes of Maori, Pacific Islands and other ethnic groups when dealing with disputes and offending provide valuable models for this approach, and should be recognised and used as an important resource in the justice system. This is already recognised in the Maori Community Development Act 1975, which provides powers to locally elected Maori Committees to deal with minor criminal offences. They have broad discretion on how they proceed, with the only legal requirement being that the person accused of an offence is given a reasonable chance of putting forward a defence. The accused person must be given the choice of hearings before the Maori Committee or District Court, and cannot be punished by both. They also have the right to demand a rehearing before the District Court. However, the scope of sentences available to the Maori Committees is very unclear, with the maximum fine being a seriously outdated $20. The procedure for referring cases to the Maori Committee is not set out in the Act, and is also very vague. The long-standing legal recognition of this process sets a clear precedent which we believe should be actively built upon to provide an innovative system of justice for all cultures and communities within the country.

> *"Whanau and marae hearings are a positive and constructive alternative to the negative and destructive formal courts. By involving kaumatua they link the old and young, and cater for the spiritual aspect of the whole being. They restore quality of life by promoting taha wairua, tikanga, Maori Mana Tangata. We see this as a self-sufficiency programme to develop identity, self-esteem and self-reliance."*

1.3 Community hearings aim to avoid the negative effects of the present criminal justice system, which clearly leaves the accused, the victim and the community dissatisfied. Their appeal lies in their ability to focus on the factors causing an event, and the means of resolving it to the satisfaction of all who are affected. Their other benefits include more time spent on each case; speedier hearings; more effective participation and communication by all concerned in a more relaxed environment; greater cultural sensitivity; a positive role for victims; and the sharing of responsibility for making and giving effect to the decision amongst the offender, their family and their community. More flexible venues and times provide easier access to justice for those in rural areas and isolated townships. Further, they can help alleviate the serious overload on police station, legal services and C & YP and District Court resources.

1.4 We propose a system for community based hearings which we believe will be sufficiently consistent to ensure justice to all parties, but flexible enough to recognise the needs of the accused, the victim and their communities. We also believe it can provide a framework within which traditional resolution processes can operate, with the goal that they will ultimately be recognised as valid on their own account.

1.5 In urban areas we propose that a broad-based group of community people should be available in each community, from whom an appropriate panel would be selected for any case. Those people would be nominated through bodies which are genuinely community-based, and should be sufficiently diverse to ensure that people can be effectively judged by a panel of their peers. In rural areas or specific ethnic communities, panels should be established through whanau, hapu and iwi, or other appropriate community processes.

1.6 The panel for each case should comprise five members: two Justices of the Peace, from the same origin as the accused; two senior members of the accused's community (kuia and koro); and a young person. Both the victim and the offender would be consulted on the choice, and have some rights of veto. To provide a

sufficient pool, more Maori, Pacific Islands, women and young Justices of the Peace will need to be appointed promptly.

1.7 As this is a system which is particularly suited to young people, we recommend that it be available for all proceedings affecting young people, not just criminal cases. Community hearings should also be available for all matters under the Summary Offences Act; traffic offences which do not carry imprisonment; and breaches of probation and periodic detention.

1.8 For some, the process of accountability and reparation is a far more demanding process than a routine appearance in the District Court. For others, the opportunity provided by the process, and the absence of a stigmatising conviction, will be preferable. We therefore believe that people must have the choice of being brought before the District Court or a community hearing. While community hearings should be based on mediation and healing, rather than adversarial conflicts, the person brought before them must retain the right to dispute the facts or their interpretation.

1.9 Community panels should possess formal recognition and full powers over decisions and penalties, without need for ratification by a District Court Judge. The involvement of J.P.s should assist in gaining acceptance for the process in its early stages. Power to impose penalties must include orders for restitution, reparation, community work or fines up to specified limit. No conviction would be entered as a result of the hearing, and no entry would be made on the Wanganui computer. So long as people have the choice of referral to a community hearing, we believe that those who elect to go to the District Court and receive a criminal conviction are not unfairly disadvantaged.

1.10 We feel that little would be achieved by only referring people to community hearings once they appear in court to plead. It has already been proposed that people accused under the Summary Offences Act should be dealt with by a form of offence notice, rather than arrest. It would be simple to outline in that notice the option of appearing in the formal court or at a community hearing. For those arrested the concern is that they have the choice put to them before they are formally charged, as otherwise the case would have to go to court. Once the community hearing has been elected, a summary of the facts of the incident should be provided by the police involved to the liaison person responsible for the local community panels.

1.11 Community hearings must not be seen as a cost-saving device, with the community left once more to fund programmes for those whom the present system fails. Funding must be equivalent to that of other informal resolution processes, such as Small Claims Tribunals, with part of any fines being retained to help cover costs. Clerical services, training for panel members and legal resources must also be provided. We propose that the panels would be generally co-ordinated through a liaison person at the Public Advocate's office.

1.12 For Maori communities, this would be consistent with the trend to return to whanau and hapu responsibility and self-reliance. The base for this remains largely intact in rural areas. However, whanau or marae hearings are more difficult in the urban situation where the strong whanau and hapu base are often not available, and where many tribal groups are present. Adaptations clearly need to be possible to meet varying circumstances. Some urban and rural communities are currently operating such hearings, under traditional whanau and hapu processes, through Maori Committees, or as a result of courts informally diverting cases to community panels.

1.13 The approach was seen to suit Pacific Islands communities which still have strong traditional links. There was some doubt over how positively young people would respond to such an option, but the general belief was that any culturally sensitive alternative to the present courts would be welcomed.

5. FAMILY COURT

1.1 The new Family Court structure has operated since 1981. According to the Minister of Justice, *"Our court system is accessible to the whole community... The Family Court is required by statute to be informal. In practice it also has an egalitarian flavour in keeping with our New Zealand ethos. It is neither intimidating nor bureaucratic. It is a court in tune with the local community and makes use of the resources available in that community. The position of the Counselling Coordinator provides this link and is a major reason for the success of the Family Court."*[21]

1.2 Submissions made to us indicate that many, especially women, still find the Family Court adversarial and intimidating with its formal seating, distance between parties and the judge, and a larger seat for the judge. It is a setting in which women continue to feel powerless. Judges were criticised for being unaware and insensitive in matters of violence against women, and ignorant of different cultural backgrounds, values and family relationships. There were also criticisms of the refusal of many Judges to allow women, especially victims of violence, to have support from someone of their choice during the hearings. The failure of lawyers and Judges to inform them of their right to appeal, and the long and stressful delays caused by waiting for the same judge to be available to continue the case, were other common concerns.

1.3 We urge that immediate attention be given to Family Court structures, procedures and values. The procedure and layout should be made truly informal, with all parties placed on an equal level in a non-confrontational setting where they are in a position to fully participate. There should be a right to have someone in support present at the hearing. The problems of women with children getting to court should be taken into account when arranging hearings, and child-care facilities should be provided at court. Improved waiting rooms need to provide privacy and separate facilities for situations of domestic violence. Specific and ongoing specialist training is needed for judges, and more consistency of attitudes and interpretations of the law should apply.

> *"Family Courts need to select able Pacific Island people from the communities to be used as counsellors—however the whole structure needs to be altered to accommodate Pacific Islanders and other perspectives to enable consistency, e.g., judges and training needs to reflect the cultural component."*

1.4 The Minister of Justice has also observed *"However, the Family Court is an institution which does not necessarily reflect the multi-cultural nature of our society,. This may be an area where some adjustment is needed to ensure that the court responds sensitively to the families of all cultures."*[22]

1.5 Views expressed to us confirm that view. We strongly recommend a whanau approach to matters affecting Maori children or families which would replace the present intimidating, individualised mono-cultural Family Court structure. Responsibility must be returned to whanau or hapu to find long term solutions to their problems. Pacific Islands submissions indicated support for similar changes, in addition to restructuring the procedures and setting of the court itself.

1.6 The Family Court counselling service has expanded rapidly under the new Family Court structure, and is generally viewed as successful in resolving matters out of court. However, it is only available for legal marriages, and excludes the over 1600 de facto partners who make custody applications each year.[23] There are mixed feelings about the use of the counselling process, especially where women from violent relationships feel coerced by Judges and lawyers to undergo counselling against their wishes. Access is also difficult for those in rural areas and small towns.

1.7 A Maori mediation, counselling and referral service was seen as essential to ensure Maori mediators and methods are used where Maori families are involved. We

recommend that the proposed Maori Legal Service be responsible for co-ordinating this service. Pacific Islands communities were also critical of the use of Palangi Judges, lawyers and counsellors in cases involving Pacific Islands families. We believe that active recruitment of counsellors from a variety of cultural backgrounds is urgent, with preference to be given to people drawn from their communities rather than professional private counsellors.

6. CHILDREN AND YOUNG PERSONS COURTS

> *"Conditions in some courts are appalling. The Otahuhu court is grossly overcrowded with young people spilling onto the streets, sitting on fences and footpaths. There is absolutely no privacy. Recently there was no light in the toilet, which meant either leaving the door open or adding to the mess. Making contact with lawyers, or duty solicitors when they are there, is almost impossible. Interview facilities do not exist. If young people don't hear their name called out, they may have a warrant put out for their arrest or be held in the cells until help arrives. The holding cells for those held overnight or remanded in custody are atrocious. Complaints have been made, but no action seems to follow."*

> *"Most Maori youths have not had training in social graces and usually dress in what they feel comfortable in, i.e. sneakers, jeans, etc. They tend to slouch and look down at the floor, and this is often though of as being discourteous, instead of shame and discomfort. They feel let down when the deciding factor on the fine or sentence was the result of their limited vocabulary, dress and stance. Judges should ignore these and concentrate on punishment to match the offence committed."*

1.1 All of the problems outlined with adult courts apply to Children and Young Persons Courts. We believe there will be no effective solution until young peoples' cases are taken out of the formal courts and placed in a more human, constructive community environment.

7. SMALL CLAIMS TRIBUNALS

1.1 There was general support for the extension of small claims tribunals, with wider scope to provide prompt justice. The Tribunal's scope should be broadened to include debts once they have been acknowledged, and neighbourhood disputes. Use of the tribunals by business interests should be limited to one day per week, so its function does not become distorted into a debt collection agency for businesses. A regular inflation-indexed review of the upper limit for claims is needed, with an increase in the current limit to $2000.

1.2 More publicity is needed about the availability and procedures of small claims tribunals, and more guidance given in making claims. A standardised claim form should be produced along with easy to read instructions.

1.3 Hearings should become more informal. Community settings and marae should be used. There should also be more flexibility about allowing support persons to be present, without hearings becoming an open forum. Hearings held at night and on Saturdays are essential.

1.4 More referees from more diverse backgrounds are needed, to more accurately reflect the general community. Alternative referees should be available where small populations do not justify tribunals on a regular basis. Nominations should be sought from Maori and Pacific Islands communities, community groups or by advertising, with community organisations consulted before referees are appointed.

1.5 Training is urgently needed for referees and court staff. This should include cultural awareness, listening skills and methods of conciliation.

1.6 Reasons for decisions should always be given to the people involved. It was suggested that appeals and rehearings should be available. However, this carries the danger of abuse by more powerful parties, and of hearings becoming more legalistic. Lawyers should not be involved in either, to ensure that the philosophy of the tribunals is not undermined. Better means of enforcement are also needed.

8. COMMUNITY MEDIATION

> *I still believe very strongly in the value of community mediation particularly insofar as it has the potential to empower people in dispute: both by enabling them to take control of their own disputes, and by imparting skills to them through the dispute resolution process. To me, these things are far more significant than the numbers of agreements chalked up, which seems, by dint of political necessity no doubt, to be the central concern of justice system mediation.*

1.1 Greater use of community mediation services could reduce demands on legal services, by resolving disputes before legal action is begun or even considered. There was support for more widespread community mediation services, provided they are truly community controlled and accountable. The Legal Services Commission should investigate and promote this development, taking into account the forthcoming evaluation of the Christchurch Mediation Service Pilot Project.[24]

1.2 The Maori Legal Service should include a mediation and counselling service before Family and Maori Land Court cases to try to reach out-of-court settlements.

9. TE REO MAORI

1.1 There were very strong demands for Maori to be given equal legal standing to English, thus creating the right of Maori people to use their own language at every stage in legal proceedings, and to have proceedings conducted in Maori.

1.2 At present te reo Maori cannot be spoken in any court except the Maori Land Court and the Waitangi Tribunal, unless the speaker is unable to talk and understand English adequately. The right to Maori translations is restricted to documents.

1.3 As the Waitangi Tribunal recently confirmed, this breaches guarantees to te reo Maori contained in Article 2 of te Tiriti o Waitangi:

"A prohibition on the use of the language in the Courts is completely inconsistent with the guarantee or recognition given by the Crown under the Treaty. It may also be less than just especially when the person concerned feels that his Maori expression is superior to his facility in English. Because of the court's decision in this matter the rule that a Maori person who can speak and understand English may not use Maori in the courts is a matter of law, and the law as it exists is a policy of the Crown. As such we find that policy to be inconsistent with the principles of the Treaty and we uphold the claim that the claimants are prejudiced thereby."[25]

1.4 Te Pire o te Reo Maori: The Maori Language Bill 1986 seeks to provide limited recognition to te reo Maori. The introductory notes to the Bill make clear that the present law does not reflect the position of the language under the Treaty of Waitangi:

"The Preamble traces this Bill directly from the Treaty of Waitangi. The Court of Appeal has stated that the Treaty does not deal with the use of the Maori language. No doubt, the Court was relying on the English translation of the Treaty. However, in the Maori version, in the second article the Crown confirmed and guaranteed to the Maori people "ratou kainga me a ratou taonga katoa".

This can be translated as *"all their estates and things of great worth (or things highly cherished)"*. There is today little doubt among speakers and scholars of the Maori language that the term "taonga" is not limited to physical things of value, but

includes things having great spiritual value. In particular, few such people doubt that the term would have been understood by the chiefs who signed the Treaty to include te reo Maori, the Maori language.

1.5 We believe that the Bill is weak, even as a transitional step towards bi-lingual legal proceedings. It essentially fails to give te reo Maori equal status with English, so continuing to breach the guarantee in te Tiriti o Waitangi. There are numerous serious short-comings.

1.6 Any judge, party or witness in the hearing may choose to speak in Maori. Other participants in the case, such as lawyers, can only speak Maori with permission of the judge. This covers legal proceedings before any courts or tribunals, and relevant Commissions of Inquiry. However, it omits local bodies, councils or authorities from its scope. Here, perhaps more than anywhere else, the right to speak Maori is of vital practical and symbolic significance.

1.7 The Courts must ensure a competent interpreter or translator is available. It can make rules requiring people to give the Court reasonable notice, but no-one can be denied the right to speak Maori if they have not given that notice. We are very concerned that those who choose to speak Maori run the danger of being labelled disruptive and suffering the hostility of the Judge, prosecution and other court staff.

1.8 Most seriously, there is nothing requiring those working within the courts to make a commitment to bi-lingualism or to educate themselves about te tikanga Maori. While it allows people to speak in Maori, they are given no right to be talked to or answered in Maori, or to be recorded in Maori. Hearings will almost inevitably remain mono-cultural, except for the token procedure of translating what the speaker says. As has been seen with the Treaty of Waitangi, translating Maori and English involves far more than substituting words. While these may convey somewhat crudely the words used, the concepts being used will often defy direct translation and unless they are understood the true meaning will be lost or distorted. Injustice is bound to follow.

1.9 Moves towards bi-lingual courts will have far-reaching implications for the legal profession and for legal education. We have already proposed that lawyers be required to undertake a course in te tikanga Maori before admission to the bar, and before being allowed to undertake state funded legal work, either civil or criminal. Several other professions have already adopted similar requirements. The Anglican church now requires all clergy to undertake a course in Maori language and culture before being ordained.[26] The Waitangi Tribunal reported that at Teachers' Colleges there is a compulsory course for all primary teachers in Maori language and Maori culture occupying 100 hours per annum, and for secondary teachers a similar course of 50 hours per annum.[27]

1.10 We have also proposed that all future Judges should be bi-lingual. As those presently on the bench may be there for many year to come, they also have a positive obligation to become both bi-lingual and bi-cultural. As the Waitangi Tribunal observed:

"Perhaps the understanding between two people that the Treaty sought to endorse will not be complete until it is the judges themselves who are bi-lingual. We understand that at present there is only one High Court Judge who is able to speak the Maori language fluently. We would see great advantages in the instruction of judges in the Maori language as well as in the maintenance of the right to speak the language in the Courts. He who also speaks the language will understand the movements of the mind."[28]

SUMMARY OF MAIN RECOMMENDATIONS

(a) Positive action should be taken by lawyers to overcome their negative image as inaccessible, insensitive, disempowering, over-priced, self-interested and

unaccountable. The Legal Services Commission should work alongside the Law Society to design and implement remedial programmes.

(b) Courts are seen as negative, dehumanising, intimidating, inefficient, overloaded, culturally alien and insensitive, and designed to meet the needs of those in the legal industry instead of the consumers. Court processes should be dramatically restructured to meet the needs of the consumers and foster community participation.

(c) As a means to alleviate pressures on the police, courts and legal services, and provide a more constructive approach to dealing with minor criminal offending, we propose the following structural changes:

(i) Arrests and criminal convictions for trivial and public order offences are selective, futile, and often counter-productive. They waste police, court and duty solicitor's time and resources, and usually result in fines less than a lawyer's fee for the case. Language and behaviour offences not involving violence should be repealed;

(ii) Young people, and those accused of offences under the Summary Offences Act should not be subject to arrest, but should be sent a notice of offence;

(iii) Consistent, flexible, community-based alternatives to courts should be developed which can provide a positive and culturally appropriate outcome for victims, offenders, whanau and communities. Community hearings should be available for all matters under the Summary Offences Act, traffic offences not carrying imprisonment, breaches of probation and periodic detention, and all matters affecting children and young people. Before being charged, a person must choose whether to appear before a community panel or District Court. Community panels will not decide on guilt or innocence, but seek to discover the specific and general factors behind the incident. They may order community-based penalties or fines, but cannot enter criminal convictions.

(d) All who are taking part in hearings in any legal forum should have the right to have the case heard in Maori, consistent with its recognition as taonga under te Tiriti of Waitangi.

(e) The Legal Services Act should require all present and future judges, all lawyers intending to undertake state funded legal work, and all people before being admitted as lawyers from this time onwards to undertake a course in 'te tikanga Maori'.

(f) Family Court structures, procedures and values, should change to reflect the needs and diversity of people appearing there. Whanau based and other cultural forms of resolution must be actively developed, to place responsibility for decisions and on-going support back with communities.

(g) Development of community based, culturally appropriate and accountable alternative forums should be encouraged, in particular:

(i) small claims tribunals;

(ii) community mediation services;

(iii) Maori mediation and counselling service.

F. MAORI LEGAL SERVICES

Access to justice for Maori people is inseparable from honouring te Tiriti o Waitangi and recognising Maori as tangata whenua o Aotearoa. Legal services must therefore actively promote and foster the development of a new bi-cultural process of justice, whilst also ensuring effective Maori participation in present legal structures. The following proposals seek to meet that challenge.

1. TE RUNANGA TIKANGA MAORI/MAORI LORE COMMISSION

> *"Because of the dual cultures that we, as Maoris, have to contend with, we often find ourselves at a loss trying to distinguish them in their own environments. Sometimes what is a highly acceptable action to a Maori is quite often illegal or offensive to a European."*

> *"The present justice system is mono-cultural. Bi-cultural development is urgent. Maori lore must be carried through to all levels of judicial systems. The most important thing is Government must recognise and acknowledge Maori Lore in the Law Books. It must accept customary claims and Treaties and also representations to Tribunals. The Justice Department must become bi-cultural. Taha Maori must be an integral part of any policy and decision making."*

1.1 We believe that the time has come when practical decisions must be made on a transition process for recognition of Maori as tangata whenua, and honouring Te Tiriti o Waitangi, within the legal system. We propose the establishment of Te Runanga Tikanga Maori/Maori Lore Commission, to perform the following functions:

(a) Advise government on steps to be taken to implement te Tiriti o Waitangi.

(b) Actively seek the views of Maori communities on areas of major concern involving justice, and develop processes for informed Maori participation in all stages of law-making.

(c) Monitor the implications of proposed legislation for the rights guaranteed under Te Tiriti o Waitangi.

(d) Review legislation affecting Maori people to ensure it reflects te tikanga Maori, and meets the needs identified by Maori people. Among areas identified to us as priorities include laws on fisheries; immediate release of tupapaku for tangi; Maori land; and the Waitangi Tribunal. The newly established Law Commission, comprised exclusively of Pakeha lawyers, was rejected as inappropriate and unacceptable for such tasks.

(e) Translate and interpret legislation and local by-laws into Maori language and formats which Maori communities can easily understand.

(f) Co-ordinate the Maori Legal Service.

(g) Actively monitor provision of legal services to meet Maori needs, receive complaints of incompetence and racism within the justice system and recommend appropriate action. This would include co-ordinating training programmes in te tikanga Maori for those involved in delivery of legal services.

1.2 The Runanga/Commission will be responsible for setting its own direction and priorities, and making all policy decisions. It must have the resources and powers to be effective, and be based on Maori kaupapa stressing Maori lore rather than Pakeha law. Members of the Runanga/Commission will be nominated by, representative of, and responsible to the whole Maori community. As such, it will be a body of mana and commitment. Further discussion is needed within the Maori community on how best to ensure that tribal and urban communities are effectively represented. A strong proviso was added that the Runanga/Commission must not merely become a Pakeha-style structure in the hands of bureaucrats whose real role is to subvert effective change. It must remain flexible to changing conditions, and responsive to the needs of the people. To ensure this, its operation and direction should be reviewed by the Maori community after its first five years of operation.

1.3 While a secretariat will be required, it must be kept to a minimum. A large amount of its work would be done by contracting people with specialist skills and knowledge to carry out consultations, reviews and research, as well as translation and resource development work.

1.4 The Runanga/Commission would complement and enhance the work of the Law Commission, and should enjoy equal standing and resources. Together, they can develop a truly bi-cultural working process of law reform.

2. THE MAORI LEGAL SERVICE

1.1 Traditional legal services are clearly unable, and often unwilling, to provide Maori people with the specialist legal information and services they require. This situation is unlikely to change markedly. To ensure access to justice for Maori people, we propose that a Maori Legal Service be established. It would handle most, if not all, the business now directed by the Department of Maori Affairs and the Maori Trust office to outside solicitors. In addition, it would work towards building self-reliance and promote Maori control of Maori resources.

1.2 The role envisaged for the Maori Legal Service is to:

(a) Advise Maori people on the law as it affects specifically Maori legal problems; how to research and find information on Maori land and related matters; the function and procedures of the Waitangi Tribunal; and taking their own applications before the Maori Land Court;

(b) Assist people to draw up basic documents such as wills, trust deeds, and loan and housing applications and to prepare and lodge claims before the Waitangi Tribunal;

(c) Provide lawyers or para-legals skilled in Land Court affairs to travel 10 working days ahead of the Land Court to meet with and advise people involved in those hearings, and help them prepare and present their claims;

(d) Facilitate whanau and hapu based mediation processes to resolve disputes and difficulties involving Maori people, especially regarding land;

(e) Represent those who are not sufficiently confident to act for themselves in Maori Land Court proceedings, and in some situations act as Kai Awhina for those appearing before the Waitangi Tribunal;

(f) Refer Maori people with legal problems to skilled and sensitive lawyers, para-legals and other services, selected from a register compiled by the Service;

(g) Educate Maori people about the law by co-ordinating legal wananga and hui, and training programmes for people in specifically Maori areas of law; and work alongside other legal services in developing broader based legal education programmes and resources.

1.3 Te Runanga Tikanga Maori/ Maori Lore Commission should control the policy and operation of Maori Legal Services. The scope, location, administration, and staffing of its services should be determined after consultation with the potential

consumers. One proposal made to the Committee was that Maori Legal Centres be set up in each Maori land district. People were adamant that it should not be administered by the Department of Maori Affairs. We agree, as such administration has undermined such services in both Australia and the United States.[29]

1.4 The Runanga/Commission should also determine fees for the services provided. Those such as advice on circuit prior to the Maori Land Court hearings, assistance from para-legal workers and provision of resources and educational materials should probably be provided free. Beyond that, two options were suggested. All advice could be given free, and charges for services set at a nominal rate. This would ensure people had access to the services they needed, irrespective of their income. Alternatively, a nominal fee could be charged for preliminary advice from a lawyer along the lines which law firms provide under the Law Help scheme. A competitive fee or scale of charges could be established for routine work, such as succession orders or making wills. This would give the M.L.S. a guaranteed source of income, but still cost Maori people significantly less for skilled and sensitive services than they currently pay to private lawyers. Such an approach should also encourage those lawyers who are doing Maori legal work to provide a more competitive streamlined service.

1.5 We believe that this proposal is highly cost efficient, especially when compared to the options. When the current restrictions on legal aid for the Maori Land Court are removed, and its availability publicised, the potential costs of civil legal aid through private lawyers is very high. This, combined with the fact that private lawyers skilled in Maori law are simply not available, makes a salaried, skilled Maori Legal Service the preferable option.

1.6 Maori people must still have the choice of using the M.L.S. or seeking help elsewhere under civil legal aid, especially where a lawyer or other person is already involved in the case. More information on the availability and scope of legal aid for Maori matters must be provided.

1.7 In recognition of whanau, hapu and iwi, eligibility for civil legal aid should be extended to groups and representatives of groups, or people who have a real interest in the proceedings. That decision must be in the hands of people sensitive to the interests and concerns of Maori people, with a right of appeal. This process should be determined by the Legal Services Commission in consultation with the Runanga Tikanga Maori/Maori Lore Commission.

3. MAORI LAND

1. Maori land

1.1 Many of the deep-seated problems with Maori land arise from the fragmented individual titles and breakdown of collective or tribal ownership. An overhaul of Maori land law is an urgent matter for Te Runanga Tikanga Maori/Maori Lore Commission.

2. Maori Land Court

2.1 The Maori Land Court was seen as a bureaucratic and inaccessible Pakeha structure. We believe priority should be placed on returning the decision-making power to the whanau, hapu and iwi. The Land Court should be moving towards a process where the tribal runanga, or some similar representative body, considers the issues raised, works through the possible options, and reaches a preferred solution. The role of the Maori Land Court would then be to facilitate this process and give force to the decision reached by the people.

2.2 In the short-term the Maori Land Court should resume hearings on marae in the area where most claims for that sitting arise. Evening and weekend sittings, and paid leave to attend Maori Land Court cases, would ensure people are not

penalised while defending their remaining land. More precise records should also be kept and better notice more in advance of hearings is required.

2.3 We recommend the introduction of a whanau/hapu mediation process to discuss and reach agreement on land disputes and other contentious issues, before matters reach the Court.

2.4 Protecting the little Maori land which remains in Maori hands must be given priority. An adequate fund must be available and regularly used to contribute towards the peoples' costs, including recognition of non-lawyers assisting as Kai Awhina. The present Special Aid Fund of $5,000 per annum must be significantly increased. Charges on Maori land for legal costs should not be permitted.

2.5 A Maori Affairs solicitor should always travel with the court, so they are available should queries arise and people are not forced to contact them in the cities. We also see the concept of Maori agents as still having value in the area of Maori land. They should be recognised as having a right to appear in all legal proceedings affecting Maori land in all forums, not solely in the Maori Land Court.

2.6 More Maori input is needed in the District and Family Courts and the Planning Tribunal, along with a broadening of perspectives across all courts. We propose that some Maori Land Court Judges should be given warrants to sit in those Courts, and some District Court Judges with a special knowledge of Maori land should be able to preside in land and planning cases.

4. WAITANGI TRIBUNAL

1.1 This society is facing increasing tension and stress as a result of the failure to honour Te Tiriti o Waitangi. For the future health of us all, past wrongs must be redressed. The Waitangi Tribunal at present provides the vehicle for peaceful resolution of this conflict. It has become clear to us that many Maori people view the Waitangi Tribunal as a "soft option" for bringing about change. Its current lack of powers and resources is clearly endangering that role.

1.2 Government failure to act on Waitangi Tribunal recommendation has already resulted in claimants referring two cases back to the Tribunal. Recommendatory powers alone are clearly not providing adequate redress. We believe that some powers of binding decision-making, enforcement and review have become unavoidable.

1.3 Recent delays in appointment of Waitangi Tribunal members has compounded the backlog of claims awaiting hearing. The Treaty of Waitangi Act must be amended to ensure that future resignations or removal of individual members does not suspend the operation of the entire Waitangi Tribunal. We suggest that regional Tribunals be established urgently, with the National Tribunal acting as an appeal authority with the power to order any recommendations to be binding.

1.4 Priority should be placed on supporting non-lawyers to prepare and present claims as Kai Awhina before the Waitangi Tribunal, in preference to legally aided lawyers. The services provided by kaumatua to the Tribunal should also be recognised through payment of consultancy fees.

1.5 The Waitangi Tribunal's new research unit is only available once a claim has been lodged with the Tribunal. Potential claimants still lack the resources to research and formulate their claims. We see the Maori Legal Service as performing an advisory function to supplement the work of the Tribunal's own research unit. We also recommend that priority be given to funding for claimants, or someone of their choice, to carry out the research.

> *"These claims are brought because of a failure by the Crown to fulfill its obligations under the Treaty of Waitangi. Therefore it seems appropriate for the Crown to contribute towards the cost of remedying breaches of the Treaty. Special consideration should be given in the course of this review to ways of meeting the*

Crown's obligations to the Maori people in respect of legal services and Treaty of Waitangi claims."

1.6 Failure to fund Waitangi Tribunal hearings places a shameful financial burden on the claimants. We believe there is little point in expanding the powers and scope of the Tribunal if people cannot afford to present their claims. The avenue which promised Maori people some real access to justice is now becoming as remote as the rest of the legal system. For the sake of our whole community we urge government to make a positive, priority commitment to making the Waitangi Tribunal work to redress Maori grievances.

SUMMARY OF MAIN RECOMMENDATIONS

(a) A Runanga Tikanga Maori/Maori Lore Commission should be established to assist transition toward a bi-cultural justice system. It should advise government on steps towards implementing te Tiriti o Waitangi; monitor proposed legislation; consult and promote law reform on matters directly affecting Maori; interpret laws; monitor legal and judicial services to Maori people; promote development of bi-lingual courts; and administer the proposed Maori Legal Service.

(b) A Maori Legal Service should be established to provide advice, research, information and education on Maori legal matters, with priority on developing legal self-reliance. It should aim to be largely self-financing, and be administered by the Runanga/Commission.

(c) Better access to justice for matters involving Maori land should be provided through:

  (i) Restructuring the Maori Land Court to become more accessible and inexpensive in the short-term, and to return decision-making power to the whanau, hapu and iwi in the longer-term;

  (ii) Granting warrants to Maori Land Court Judges to allow them to exchange with other appropriate Judges for cases in the District, Family and C&YP Courts and Planning Tribunal;

  (iii) Making civil legal aid available, with present restrictions removed and eligibility extended to groups and representatives, for those not wishing to use Maori Legal Service or other assistance for Maori Land Court cases.

(d) Access to justice before the Waitangi Tribunal should be significantly improved by:

  (i) government showing a more sincere commitment to redressing grievances under te Tiriti o Waitangi than it has to date, and immediately providing the powers and resources needed to make the Tribunal effective;

  (ii) priority should be placed on supporting claimants and non-lawyers in research, preparing and presenting their claims, in preference to use of private lawyers and legal aid.

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G. CRIMINAL LEGAL SERVICES

For many people legal services meant police, duty solicitors and criminal legal aid. The overwhelming sense of powerlessness and injustice places grave responsibility on those who have ignored their past pleas for change. These proposals are the minimum which can provide at least some short term relief. The remedy, however, can only lie in real and effective structural change.

1. POLICE

1. Policing

1.1 No subject drew more expressions of pain, anger and frustration than that of the police. They came from people seen as conservative as well as liberal, old and young, rural and urban, Maori, Pacific Islanders and Pakeha. People felt impotent to bring about any effective changes, as genuine concerns about methods and policies of policing inevitably become caught up and submerged in the debate on 'law and order'.

1.2 Many of the proposals which follow aim to make effective the long established protections which people possess in theory, but which are available only to the educated or wealthy in practice. It would be unfortunate if they were viewed as introducing something 'new' which would hinder police effectiveness—they merely seek to provide universal access to what some already have. It is hoped that they will be welcomed by all as another step in achieving equality of access to justice.

1.3 A number of proposals were made regarding changes to police training, policy and direction. In particular, a Maori Advisory Committee on Policing was advocated, to advise the Police Commissioner on policy, act as a channel for Maori concerns, and foster positive initiatives within the police towards bi-culturalism. These proposals will be passed on the Minister of Police, and we trust that they will meet with a positive response.

2. Civil Rights

2.1 It is very clear to us that there is massive ignorance on legal rights. Unequal knowledge means unequal justice. An effective education programme on legal rights and responsibilities, with information in a wide range of languages and formats, is absolutely vital. A more effective means of communicating peoples' rights to them on arrest is also urgently needed. This is of special concern where people are English second language speakers, and we suggest that police should be required to first make contact with someone from the person's community before any processing or questioning takes place. Police themselves also need to be better educated on the legal limits of their powers. These matters should be given priority by the Legal Services Commission.

3. Police station

3.1 Police General Instructions allow access to a solicitor, on request, at all times, and a list of local practising lawyers is meant to be available.[30] However, this provision is only useful to those few people who are aware of it, and can afford to pay the lawyer. Others must wait until free legal aid becomes available, by which time

many, especially the young, will have admitted being guilty whether they are or not.

> *"In this police-dominated stage, often in the worrying atmosphere of the police station, the potential "consumer" of the later criminal process is at his or her most vulnerable. Almost all the cards are stacked in favour of the police. It is at this stage that most convictions are secured, usually by obtaining a statement or confession when the suspect does not have his or her lawyer present."*

> *"Access to legal counsel has never been offered to me personally during, before, or after a police interview or arrest. In a large number of instances that I am aware of, and some that I have unfortunately been part of, legal counsel during an interview has been denied when requested."*

3.2 There was very strong demand for an independent person to be available on a 24 hour basis to provide basic legal advice at the police station, and to be present during all interviews. This is accepted practice in many countries, and can be provided equally well by trained para-legal workers or lawyers. We recommend that each Public Advocate's office be required to co-ordinate rosters for their local police stations. The services should be provided primarily through para-legal workers, with lawyers "on call" when specialist legal advice is required.

4. Police questioning

> *"The questioning process involves an alien environment, by people who are not independent, and who are older, bigger and more powerful than the young person. Even in a situation of such inequality, young people have few rights."*

4.1 There was special concern over police questioning practices, especially with young people and those with English as a second language. The presence of an independent witness during any questioning was considered absolutely vital, with support for interviews to be video-taped. We recommend that the presence of the police station advocate or someone chosen by the arrested person should be required at all interviews, with no statement admissible unless made in their presence. This would help deal with other concerns raised with us over police "verbals".

4.2 We also propose that taking of statements from young people should only occur when a Crimes Act offence is alleged. A parent, guardian or advocate must be present at all stages of questioning. Once more, no statement from a young person should be admitted in court unless it was made in the presence of that independent adult.

5. Telephone calls

5.1 Many people criticised the lack of any legal right to a telephone call. Once more, people must rely on the provision in Police General Instructions that one should be given as soon as practicable. A recent Victoria University study on prosecutions[31] showed that telephone calls were frequently not asked for, and where they were they were often refused. The sample studied showed:

Asked for	34.5%	granted	15.4%
		denied	19.1%
Not asked for	65.5%		

There were a variety of reasons given for this—that people did not know they could ask for a phone call, felt it was not worth while, did not know a lawyer, or

did not expect to be allowed to use the phone. It also observed that *"It would seem that phone calls are seldom permitted until after questioning has been completed."*[32]

5.2 Arranging a telephone call is not a major administrative exercise, and is essential so people detained can make contact with those who can provide or arrange advice or assistance. We believe it should be mandatory for people to be offered phone calls immediately on arrival at the police station.

6. Statutory protection of rights

6.1 People clearly felt that their legal rights were not protected at the police station, and that they needed to be spelt out in statute. Specifically they sought a statutory right to a phone call immediately on arrival at the police station; to receive free legal advice; to remain silent except in the presence of a legal adviser or person of their choice; and to see an independent medical practitioner. We endorse this approach on the ground that rights to legal services will not be effective unless they are enforceable. The statute should impose a legal responsibility on police to fully and promptly inform people of those rights, and to ensure they can be exercised immediately and effectively. Police should also be required to explain immediately the nature and implication of the charge, and the person's right not be detained unless they are under arrest. We propose that these rights, as aspects of legal services, should be embodied in the Legal Services Act.

6.2 Once more we stress that we are not attempting to impose new fetters on police to inhibit their effectiveness. Rather, we are seeking means to ensure that procedures already recognised in Police General Instructions and in law are made available to all people, in practice, as of right, and to provide them with an effective remedy if they are withheld.

7. Police accountability

> *"The police system of accountability is not satisfactory and looks suspiciously like a cover-up."*

7.1 Lack of police accountability was a constantly aired grievance. Many people are reluctant to bring questions or complaints to police notice, and feel that any complaints which are made are dealt with ineffectively. There was consistent demand for a complaints and monitoring procedure which is totally independent of the police.

> *"At present the "System" is heavily loaded against "consumers" of the criminal process who wish to complain about injustice, affront or outrage caused by alleged abuse of police powers. There is no right to independent investigation of these complaints. It is long overdue."*

7.2 We believe that current proposals for an "Independent Examiner of Police Practices" who is a senior lawyer, selected by and responsible to the Police Commissioner, do not address these concerns. Failure to actively consult with Maori communities over this proposal is strongly condemned.

7.3 We recommend that government immediately establish a truly independent procedure for monitoring police policies and practices. Each community where a police unit is based should have a police monitoring committee, made up of people from and selected by the local community. It should be able to receive and respond to complaints quickly. It should have adequate resources, and full powers of investigation, and the right of access to all relevant police information. It should have the legal right to recommend action to the appropriate authorities, or take a matter to courts. This role would relate to individual cases of police misuse of power, and to general matters of policy and practice.

7.4 We also propose that people taking legal action against the police should have free access to legal advice, and be eligible for legal aid.

8. Victims

8.1 The same rights and services must be available to victims as to offenders, including the right to legal advice at the police station. A woman should be present with raped and sexually abused victims at all times. Raped women reporting to the police should immediately be informed of support services such as Rape Crisis and given the opportunity to contact someone for support.

2. PROSECUTION

1. Independent prosecutors

1.1 *"The practice in New Zealand which appears to have developed in the colonial era has been for the police to prosecute their matters in Resident Magistrate's Courts, the Magistrate's courts, and their current equivalent, the District Courts... The principal reason given by advocates of a system involving an independent prosecutor is that justice must not only be done but be seen to be done."*[33]

1.2 We endorse moves towards a co-ordinated system of independent prosecutors for all courts. They would examine the merit of all prosecutions and pursue those which disclosed a serious prima facie case. They should also be under a special duty to monitor charges laid by the police, to ensure that inappropriately severe charges are not laid to avoid proposed restrictions on arrest and prosecution for Summary Offences Act matters.

1.3 This is consistent with the trend identified by Michael Stace of the Victoria University Institute of Criminology in his recent study on prosecutions, towards a prosecution process independent of the investigatory agency. There was criticism that the Stace study has not received the attention it should.

1.4 Stace's comments raise serious concerns over the implications of the current system for equal access of justice. *"The rhetoric of the adversary system suggests that the prosecution and the defence should as far as possible be in positions of equal strength and that the rules of due process should counteract any inequality between them.*

With the vast majority of criminal prosecutions this is not so: not only are prosecution and defence on unequal footing in terms of their respective resources, experience and strategic position, but in addition both the formal and informal rules to which the parties must adhere further reinforce that inequality. Such rules serve to subordinate the defendants to other actors in the prosecution process and to render them very dependent upon the decisions of those others. As the process is organised in the implicit expectation that most defendants will and should plead guilty, it is scarcely surprising that in consequence most defendants indeed do. Yet this is not because they are outgunned or out-manoeuvred by a better equipped or more experienced prosecution. It is because they must and do play the roles prepared for them by the process itself and imposed on them by other actors. Thus the police dominance of the process is not simply a result of the fact that they determine the course of the investigation of crime and have few practical limits upon their ability to do so. It also stems from their involvement as prosecutors within a system designed to minimise conflict...

Defence counsel, too, depend to a large degree on co-operation from the police, which requires them to accept the prosecution ethic that the guilty plea is the norm in summary cases. This ethic permits a certain number of defended hearings, but only in circumstances where the police prosecutor is prepared to accept that there is some realistic expectation of a successful defence. Defence counsel who violate this ethic jeopardise the working relationship essential to their jobs."[34]

2. Summary of Facts

2.1 The other major concern over prosecution services was denial of access to the police summary of facts. People are currently required to plead to a charge without any right to know specifically what they are accused of. If they plead guilty, and then discover they disagree with the police statement of facts, they are in practice powerless to dispute it.

2.2 Stace observed that *"Arrested but unrepresented defendants or defendants represented only by the duty solicitor, were unlikely to be aware of the details of the charge or the prosecution summary of facts prior to entering a plea. In Wellington, an effort was made to hand defendants a copy of the information as they entered the dock. But as this was followed almost immediately by the reading of the charge, the defendant had minimal opportunity to study it. As well, it was a legal document conforming to the language of the Act which created the offence, and thus not necessarily in everyday English. Occasionally, a duty solicitor might have the opportunity and the enthusiasm to read through the summary of facts, but that was the exception rather than the rule."*[35]

2.3 At present, police prosecutors do allow some lawyers to see the summary of facts, but they view this as a privilege not as a duty. We heard complaints that police frequently refuse to show the summary of facts to people defending themselves. Such discretions and favours inevitably mean inequality of access to justice. We recommend that the Public Advocates office, the defendant's own lawyer, Kai Awhina or the defendant in person have a right of access to the police summary of facts before they plead, and an outline of the prosecution evidence which will be called. This already occurs in jury trials, where defendants have a full preview of the evidence at the depositions hearing, and is one of the incentives to elect trial by jury.

3. CRIMINAL LEGAL AID

> *"Because the rate of Legal Aid payment is very low it leads to a situation where lawyers appearing do so out of social conscience or the need to gain practical Court experience. The people we work with often express real frustration about needing to be rich in order to buy good and adequate legal representation. We believe this is an unacceptable situation. People with very little money are usually those appearing in Court, and usually those with the greatest personal need and often at times those who require most time and support during their Court appearances. Because of the pressures on the Criminal Legal Aid system they often receive the worst service."*

1. Dissatisfaction with 'offenders' legal aid

1.1 Most consumers viewed legal aid and duty solicitor services as the least preferred option, but felt they were also their only option as few were confident enough to defend themselves. The routine result was a guilty plea and a fine. Lawyers were also highly dissatisfied with legal aid fees which fall far below market rates.

1.2 Successive governments have recognised the system's inadequacies, but cost saving has always taken priority over effective change. Its survival is largely due to the goodwill of the legal profession, and those few changes which have been made are largely the result of threats by lawyers to withdraw their services. Not surprisingly, debates on reform have focused on the need to increase legal aid fees to maintain lawyers' support and participation. The concerns raised by consumers during this consultation point to quite different solutions.

2. Duty Solicitor

2.1 The Duty Solicitor scheme was described to us as "Russian roulette". It is seen as overloaded, understaffed, impersonal and insensitive to peoples' needs. A large number of legal aid lawyers and duty solicitors were felt to have an uncaring attitude, hold negative stereotypes and assume that people seeing duty solicitors or on legal aid are more likely to be guilty. They have inadequate time to see everybody before court begins, resulting in people being stood down until later. Possible defences are overlooked because of lawyers' inexperience, lack of time or failure to ask the right questions. The lack of privacy and confidentiality for interviews with duty solicitors inhibits people from talking frankly. There is no time to go into details or causes of the incident. There was a common complaint that duty solicitors did not say what the client told them. People were also concerned over the lack of choice and continuity between the duty solicitor and legal aid lawyers.

3. 'Offenders' Legal Aid

> *"In a lot of cases, due to inadequate finances, we are assigned legal counsel by the court. I have had many assigned counsel who I have found to be inexperienced or in who I have had no confidence. I have found that paid solicitors always perform better than assigned counsel. I am aware of people who have committed crimes just to get finances to pay a lawyer."*

3.1 Since "Offenders legal aid" was set up in 1954 as a pragmatic response to demands for greater equality of justice, it has limped along with only minor adjustments to its fees and administration. Under the present system the Judge determines eligibility for criminal legal aid. In addition to a basic means test the Judge considers whether *"it is desirable in the interests of justice to do so"* having regard to the gravity of the offence, and *"any other circumstances that in the opinion of the court are relevant"*. Lawyers are appointed to each case from a roster held by the court. There is no choice of lawyer, and no contribution is required except in rare circumstances. No one can be sentenced to a term of imprisonment without being given the opportunity of being legally represented.

3.2 It has been undisputed for some years now that criminal legal aid provides a service seriously inferior to that available to fee-paying clients. The Access to Law discussion paper in 1981 *"concluded that generally legal aid defendants are remanded in custody, convicted and sentenced to a custodial penalty more than privately and unrepresented defendants are, even when controlled for seriousness of offence and severity of previous penalties. It seems reasonable with the experience and knowledge we have at present to conclude that offenders legal aid is failing to provide the equal protection in the district courts as originally intended. The same cannot be said of the High Court where it is generally accepted that legal aid assignments go to more experienced lawyers".*[36]

3.3 The disproportionate reliance by Maori, young and unemployed on legal aid is a further example of institutional racism in action. The Access to Law study showed that in 1980 those represented on legal aid were likely to be young, unemployed, Maori men and women; and those most likely to have private lawyers were older, employed Pakeha men. In the District Court 24 percent of Maori were represented on legal aid, compared to 9 percent of Pakeha. In the High Court that rose to 78.5 percent Maori and 36 percent Pakeha.[37] For the Auckland Childrens Court in 1984-5, 64 percent of Maori were on legal aid and 27 percent of Pakeha.[38] Of "offenders" legal aid applicants, 62 percent were unemployed. This carried through to types of cases. Over half of traffic cases involved private lawyers. This compared to a quarter of arrest cases, with 80 percent of those on public order charges being unrepresented.[39]

3.4 Many people, especially amongst Pacific Islands communities, were not aware that criminal legal aid exists, and on what terms. Very little clear multi-lingual information is available.

3.5 While there are undoubtedly some committed and concerned lawyers taking legal aid, many are seen to be uninterested in the defendant and the case. People felt they had no control over the quality of services they received. Lack of choice of lawyers meant they could not avoid lawyers who are inexperienced, insensitive, racist, sexist or lacking in commitment. Nor could they be represented by someone who had acted for them previously.

3.6 Legal aid lawyers are rarely assigned before the first court appearance, and administrative problems often mean long delays before people know who their lawyer is and can arrange to see them. Lack of enthusiasm on the part of each makes contact even more problematic. Those on legal aid therefore often need remands, and have to make additional appearances at court.

3.7 Legal aid is simply not available in some rural areas and small towns, where there are a limited number of lawyers who are willing to do criminal work. The long delays in Judges approving legal aid applications in rural areas leads to remands until the next sitting so the lawyer can be seen. In isolated places where the court sits every three months, this causes lengthy and stressful delays. At times, no lawyers will take such cases and a lawyer has to be found from some distance away. For those in rural areas the time off work and travel costs to contact a lawyer make it impossible for many to see their lawyer before the hearing. Almost inevitably, they only meet on the morning of the hearing.

3.8 For people in prison the situation is even worse. Legal aid lawyers can spend less time in general preparation and arranging witnesses, and those remanded in custody are in no position to do this for themselves. As the lawyer's travel expenses are not covered, people on remand often spend little time with their lawyers and may only see them immediately before their hearing. Similar problems arise with appeals.

4. Appeals

4.1 Before legal aid will be granted for an appeal, the court must be convinced that there is a case worth arguing. As there is no legal assistance for inmates or other appellants to make those submissions, they must prepare persuasive legal arguments for themselves. If they cannot make a satisfactory case, legal aid is not granted. If legal aid is not granted, they are effectively denied the right to appeal. In 1980, applications for legal aid for appeals to the Court of Appeal amounted to over half of all the appeals lodged, but only 19 percent of the appeal cases which eventually went ahead. 49 percent of applications for legal aid were granted, 44 percent were refused.[40] At present the chances of winning an appeal therefore depend on having money for a lawyer. We strongly recommend that appellants have access to competent legal advice on appeals as a matter of right.

4. KAI AWHINA/LAY ADVOCATES

"The courts are places for justice for everyone, and lawyers should encourage and help people to represent themselves. If someone chooses to represent themselves, this should not prejudice their case in any way. Similarly, if a person chooses to have a person who is not a lawyer to represent them then this should not prejudice their case, and all possible information should be made available to them."

1. Proposals for Kai Awhina/Lay Advocates

1.1 A significant number of people appearing in our courts are ineligible for legal aid, unable to find lawyers willing to take their cases, or have no faith in those lawyers. This is especially so in small towns. Further, the cost of lawyers exceeds the likely fine in many cases. We calculate that two-thirds of all non-traffic charges in the District Court are either dismissed or receive a total penalty less than a $500 fine. For several categories of public order offences, almost every case attracts a fine less than $300. The cost of a private lawyer for a defended hearing is bound to be at least that. Nor can they easily obtain legal aid. Access to Law reported the refusal rate for public order offences was 47 percent, compared to 16 percent overall, with the result that 80 percent of cases were unrepresented.[41] Many people faced with this position feel they have no choice but to plead guilty. We believe that the repeal of some trivial public order offences will provide a partial solution. However, a satisfactory alternative is needed for other Summary Offences charges which remain before the court.

1.2 A public advocate or improved criminal legal aid system is not an appropriate or economic solution to this problem. We believe that the only realistic option is to support people to defend themselves, or to allow them the right to choose to have a non-lawyer or Kai Awhina to act on their behalf. Many people will not choose that option, and we are not advocating that they be required to accept lay representation. However, people must be allowed to decide for themselves whom they want to speak on their behalf, given the options available.

1.3 The most basic solution is for people to defend themselves, and wherever possible, people should be supported and assisted to take their own cases. At present, few people have the confidence, information and skills to do so. The challenge therefore is to provide those resources, and change our court processes so those most directly affected can understand and participate in them. We view this as a vital area for the Public Advocate in Legal Services Centres to work for change. Realistically, however, in the short term this will be an option which may appeal to only a small number of defendants.

1.4 We therefore believe that capable and interested non-lawyer representatives are likely to provide better assistance to those defendants than disinterested legal aid lawyers. They would also ensure support and advocacy comes from people familiar with the cultural and community aspects of the case. By involving people who are more sensitive to the defendant's situation than lawyers tend to be, the Judge would also be better placed to make an informed decision. In addition, both self-defence and lay representation will significantly reduce the demand on Public Advocates, freeing them to deal with other cases in more depth.

1.5 We propose that lay people who are confident and experienced in advocacy, or trained in court procedure should be available to represent defendants if they are wanted. They should also be available to help people wishing to represent themselves in preparing and presenting their own cases. These Kai Awhina or lay advocates could include para-legal workers, community workers, Matua Whangai, friends at court, amongst others. Kai Awhina or lay advocates would be available to people in the District Court, and in "closed" courts such as C & YP, Family Court, small claims tribunals, social welfare appeal board, planning and other tribunals, and accident compensation. Judges in the High Court should have a discretion to allow defendants representation by a Kai Awhina/lay advocate.

1.6 Training must be readily available and actively encouraged. This will provide people with basic skills and understanding of the law and court process. It will also mean that defendants and judges may have more confidence in those acting as advocates. However, we also feel that people should still be able to choose someone to represent them who does not have recognised training. Placed within the realities of the communities concerned, both options have merit and should work side by side. For Kai Awhina who are likely to be used by Maori or Pacific

Islands defendants, training programmes must be devised and controlled by those communities. They would be co-ordinated through the legal services centres.

1.7 Control by courts over the conduct of Kia Awhina/lay advocates is provided by the existing rules of contempt of court, which protect against deliberate abuses of process. To provide an additional element of control, any payment for Kai Awhina/lay advocates should come from the legal services budget, not directly from defendants.

2. Precedents

2.1 Various forms of lay participation, such as Justices of the Peace, are already integral to the legal process. Lay advocates routinely appear before a number of quasi-judicial bodies such as the Arbitration Court, Tribunals and Appeal Authorities. These involve legal as well as factual issues, and their outcomes can have significant impact. The new Criminal Justice Act has also recently given statutory recognition to the right of community people to speak at the time of sentencing.

2.2 In 1984 the Court of Appeal decided that under present law no one currently has the right to present a case in court unless they are a party to the case or a qualified lawyer. Courts, however, have a discretion to allow unqualified advocates to appear before them: *"I would accept that all courts have a residual discretion to allow unqualified advocates to appear before them... In general, and without attempting to work out hard and fast rules, discretionary audience should be regarded in my opinion, as a reserve or occasional expedient, for use primarily in emergency situations when counsel is not available or in straightforward matters where the assistance of counsel is not needed by the court or where it would be unduly technical or burdensome to insist on counsel. Especially in minor matters, cost saving could also be a relevant factor."*[42]

2.3 It is uncertain how far this presently applies in the District Court, as the District Courts Act 1947 says that someone may appear for themselves or be represented by a lawyer, *"and not otherwise"*. The Law Practitioners' Act 1982 also restricts the right of people to appear in court on behalf of others. Nevertheless, it is important to note that the principle of lay advocates is not unknown to New Zealand law.

3. "McKenzie Friends"

3.1 There is also the longstanding concept of the "friend in court" which allows a person without legal qualifications to sit beside their friend in court; take notes; quietly make suggestions and give advice to their friend; suggest questions and submissions to their friend to ask. However, they are not allowed to actually take part in the hearing by asking questions or making submissions.

This is a right established several centuries ago, and has been recognised by our High Court[43] and court of Appeal,[44] and in 1979 by a memorandum sent to all District Court Judges. Some confusion was created by a decision not to allow them in a trial in 1982,[45] but a 1986 High Court decision has firmly restated the *right* to this friend, often called a "McKenzie friend".[46]

3.2 Many people do not know about the possibility of using a "McKenzie friend", and confusion is created by some Judges wrongly refusing to allow them. To remedy this, we recommend that it be given statutory recognition and be available to assist those electing to defend themselves under the general concept of the Kai Awhina/lay advocate.

5. PUBLIC ADVOCATES

"Some type of public defender system was widely favoured, with salaried lawyers being available on call 24 hours a day to deal with matters from the time a person is taken to the police station until the case is finally dealt with. Representation of this type would then cover the duty solicitor/legal aid roles. Issues which would

need to be carefully dealt with include the need for the person to retain some choice as to lawyer. This could perhaps be handled by having a modified legal aid system, run concurrently, which would enable the defendant to go elsewhere if necessary."

1. Proposals for Public Advocates

1.1 A Public Advocate scheme, or Public Defender as it is often called involves salaried lawyers funded by government specifically to defend criminal cases. At times, private lawyers are contracted to supplement staff lawyers of the Public Advocate's office. Variations on this system operate in many countries, including the United States, Australia and Canada.[47] There was very strong support for some form of Public Advocate to replace the present private lawyer based system of criminal legal aid.

"We are concerned that the development of such a scheme would lead to a Government Department structure which would have the risk of being as inaccessible, remote and impersonal as private practice law firms or Government Departments are to many of our clients. Consequently we believe there should be a strong commitment to providing relaxed and informal office settings which are accessible to people as the base for operation of Public Advocate schemes."

1.2 We have carefully weighed up the benefits and drawbacks of such a system, bearing in mind the available options for reform of criminal legal aid. The only other proposal forthcoming was to pay private lawyers higher fees to ensure a better quality of service. This may mean either paying the equivalent of civil legal aid, or fixing a scale of payments taking account of market rates. Both these alternatives would involve high and continually increasing costs, competition between legal aid and the other priorities of private practitioners, continued fragmentation of services, lack of quality control by consumers, detachment of legal aid from other support services, and lack of incentives for self-reliance.

1.3 The Public Advocate system also has its problems. It could become merely another centralised bureaucracy, inaccessible, unaccountable and alien to the community. Clients have little choice of lawyer, and still may be forced to accept an inexperienced or incompetent lawyer. Routine court work may lead to a lack of independence in dealings with the police and prosecution. It may be difficult and costly to establish in areas other than main cities. However, many of these difficulties also exist under the present system, and would continue under an up-graded system of private lawyer legal aid.

1.4 A Public Advocate system has considerable advantages. It offers an integrated and coherently planned service in place of the present fragmented, ad hoc system. This makes it simpler to co-ordinate and monitor criminal legal services to ensure consistent quality. A salaried office creates a pool of specialist criminal lawyers, who can commit themselves to defending clients without the need for concern over profit or other interests of private law firms. It offers individualised and continuous client representation. Its status allows it better access to scientific and other resources than individual, private law firms. While it does not allow clients total choice some scope for choice can be built into the system. Continuity of services can be offered from the time of arrest through to the conclusion of the case.

Community based Public Advocates offices provide opportunities for clients and their communities to exercise quality control and monitor staff performance. Criminal casework can operate alongside self-representation, lay advocates and extensive use of para-legal workers. Links with community support services and other assistance can be provided.

Public advocates offices can also provide an exciting new avenue of work for lawyers. The team environment encourages lawyers to work and develop ideas collectively, and provides for planned and regular training, especially for young lawyers. It is encouraging that overseas experience indicates Public Advocates do not feel compromised or lacking in independence, and tend to zealously guard their independence. Their greatest danger appears to be total exhaustion or 'burnout', unless they work for limited terms and strict control is maintained over workloads.

1.5 One of the factors weighing most strongly in favour of the public advocate is its cost-efficiency. Comparisons between salaried and private lawyers depend, of course, on the level of payment being made to both. But there now seems to be clear evidence that salaried legal services, if run efficiently, are much cheaper than private lawyer based fee-for-service legal aid.

The most comprehensive study comparing salaried and private lawyers' costs was carried out by the Research and Education Section of the South Australian Legal Services Commission in 1980. This study indicated that *"services can always be provided more cheaply through efficiently organised salaried lawyers than through private practitioners."* It considered that *"any decision to use private practitioners rather than salaried staff must be based on some factor other than cost, and that a substantial increase in the amount of legal aid provided could be achieved by diverting funds from paying private practitioners to employing additional staff. For example: the cost of 10 criminal cases assigned to private practitioners would allow for 34 assigned to staff lawyers, including additional employment, accommodation, and support costs. (Moreover) the difference increases exponentially: 20 assignments to private lawyers would allow 68 to staff and so forth. On present South Australian spending patterns (i.e. 1980) the Commission is only taking 410 criminal cases per month instead of the 1394 which could be handled if all were assigned to staff lawyers."*[48] It also found no evidence that the services offered were in any way inferior to those offered by private lawyers. Where imbalance of funding goes to private practitioners *"the great danger is that legal aid has really become aid for lawyers not clients"*.

1.6 While we believe a Public Advocate does not offer the perfect system, we have concluded that it is the best option available. We stress, however, that it will only work if it is well funded, well staffed, well administered and community based, and minimises reliance on supplementary private lawyers' services.

2. Operation of Public Advocates

2.1 We propose that the Public Advocate be responsible to carry out the following functions, consistent with the goal of promoting maximum self-reliance:

(a) Co-ordinate the roster of para-legal workers to serve as police station advocates, and of lawyers available "on call" to assist them.

(b) Provide advice at the Public Advocate's office to defendants before their first appearance in court.

(c) Operate a "duty solicitor" type service at court, utilising a range of resource people including public advocate staff, para-legals, law students, Kai Awhina/lay advocates and, where necessary, contracted lawyers.

(d) Enter pleas where people are unable to do so themselves or through a Kai Awhina/lay advocate.

(e) Apply for bail and enter appeals against remands in custody.

(f) Represent defendants in defended hearings at all levels, where people are not otherwise represented.

(g) Advise on, and where necessary present, pleas in mitigation in a manner which promotes community involvement as provided under the Criminal Justice Act.

(h) Advise and represent people wishing to appeal, especially those in custody.

(i) Participate in a range of self-reliance activities including education, information, resource development, and the training of defendants, and Kai Awhina/lay advocates in basic court procedures and concepts.

2.2 The following specialist services should also be co-ordinated through the Public Advocate:

(a) The details of the new Children and Young Persons Act are not yet public. We trust that the primary emphasis will be on other than formal court processes. However, some form of court hearing will clearly remain for some criminal offences, and legal services must be provided for these.

There was strong support for a specialist Youth Advocate service. A six-month pilot "Child Advocate" service operated in the Auckland Children and Young Persons Court during 1984–5. Its recent evaluation[49] provides a useful basis for designing a more extensive service by highlighting problems which any future service must address. While the scheme increased levels of legal representation in the court, its "success" in other terms was difficult to assess. Problems it identified included cross-cultural communication, lack of specialist skills and training in dealing with children, absence of choice of advocate, difficulties of keeping pre-court appointments, failure to involve whanau and community, and administration.

It is vital that these defects are remedied before any similar scheme is implemented elsewhere. We propose that the Public Advocate's office either provide such a service through salaried staff, or have funds available to contract specially trained lawyers for children. The Advocate's office should aim to develop teams of specialist lawyers and non-lawyers, chosen for their ability to communicate with and understand the young, especially Maori and Pacific Islands youth. All should take part in an orientation course and regular in-service training. If private lawyers are to be involved in the scheme, consideration should be given only to those prepared to undertake the same training and dedicate 50 percent of their practice to CYP court work.

(b) Ongoing criminal legal assistance should be provided to people in all prisons, including advice and representation for internal disciplinary and parole hearings. Again, a Kai Awhina will be more appropriate in many of these situations, and the Public Advocate should facilitate this.

(c) Appropriately skilled and sensitive people should be available to represent psychiatric patients at committal and review proceedings. Given the lack of lawyers with special interest, qualifications and sensitivity in this area, a para-legal worker will often be more appropriate. Resourcing and co-ordination will be greatly assisted if a Mental Health legal centre is established.

(d) Young people in substitute care fall between the boundaries of "criminal" and "civil". In recognition of the special position of these young people, each Public Advocate's office should in consultation with the local community appoint a person or people in their area to act as a Child Rights Advocate. Their role would be to investigate, intervene and advocate on behalf of all young people in "substitute care". This should cover social welfare institutions, foster homes, health camps and community homes for children. They should have the responsibility to report to the Ministers of Justice and Social Welfare on needs to protect and promote the rights of the child and to comment publicly where necessary. They should also have the power to take legal action against any substitute care-giver abusing the rights of the child, and obtain an order removing the young person from that situation pending investigation. The Child Rights Advocates should replace the current ineffective and impotent Visiting Committees for Social Welfare homes.

(e) The Public Advocates office should work with the Legal Services Centre to co-ordinate a roster of volunteer lawyers and advisers to provide general legal

advice to people in local prisons, psychiatric institutions and for young people in substitute care.

> *"While the Public Defender should be legally trained, it is imperative that they be assisted by Maori community workers, given the lack of legally trained Maori people available. The Maori community worker must be government funded and will assist in dealing with cultural conflict which may arise."*

3.1 To avoid a purely legalistic approach, all public advocates' offices should include lawyers, community and para-legal workers. Public Advocate staff must reflect the clientele, with a high percentage of Maori. Where there are strong communities from other cultures, staff must be employed who can relate to, and translate for, those people.

3.2 Offices must include experienced and capable lawyers, and provide a supportive environment for training of younger lawyers. However, care must be taken to ensure that this does not return to the present practice of young lawyers learning on the poor. Consideration should be given to appointing workers for a limited term, to help guard against burnout and provide regular new energy. Staff numbers should be carefully related to local caseloads, with a standard formula established by the Legal Services Commission to ensure adequate time can be spent on each case. Half-time staff and job-sharing could be employed to attract able people, especially in rural areas. This would also encourage women with child-care responsibilities to return to practice, and men to undertake those responsibilities. We propose that all staff be paid according to appropriate public service salaries.

3.3 In its early years at least, a combination of salaried and private lawyers would be needed, with cases allocated through the Public Advocate's office. Some rural areas and large cities may have ongoing difficulty attracting sufficiently experienced and committed lawyers and would need to call on private practitioners. They would also need to be appointed where there is a conflict of interest between co-defendants, or where specialist representation is needed. Where there are insufficient experienced staff, it may be necessary to contract experienced private criminal lawyers to take jury trials and other serious cases. A mixed system does have the benefit of providing some increased choice for defendants, retains the valuable services of skilled and sensitive criminal lawyers, and reduces the burden on a newly established service. Increasing use of non-lawyer options for minor criminal matters should help prevent the system becoming unduly weighted towards use of private lawyer services.

However, care must be taken to ensure this does not develop into a private lawyer dependent system under the guise of a Public Advocate service. In other countries which run such a system, 40 percent, 60 percent or 75 percent of criminal legal aid work continues to be allocated to private lawyers. We believe that a ceiling should be set on the level of private work to be allocated. The role, use and payment of non-salaried lawyers will need careful consideration and monitoring by the Legal Services Commission.

3.4 Although a salaried system should offer a better legal service, it also provides little scope for choice. As far as possible, people should be able to choose from the advocates available. We propose that in cases involving Crimes Act offences, defendants should have a choice amongst staff members, and private criminal legal aid lawyers listed on a register.

4. Administration

4.1 Initiatives must be taken to ensure early and effective contact is made between defendants and the Public Advocate. This could reduce the responsibility placed on defendants to seek out legal assistance, which results in the present last-minute rush for advice. Police Station advocates should provide a vital link. In addition,

the community, Legal Services Centres, para-legal workers and the media would be essential contact and reference points.

4.2 The Public Advocate service must be seen to be independent from government control. It must also be decentralised and available in as many areas as possible. We therefore propose that the Public Advocates' offices be located in the proposed Legal Services Centres. This will rationalise the cost, encourage establishment in small towns, and guarantee community involvement and accountability. To prevent city offices from becoming too large and bureaucratic, and provide ease of client access, they should also be located amongst suburban and satellite Legal Services Centres. They must be available outside normal office hours. An effective avenue for complaints and some level of self-monitoring by lawyers must also be established.

4.3 A special problem arises with appeals. To avoid Public Advocates having to travel to Wellington, or establishing a special office there to handle appeals, we strongly advocate that the Court of Appeal go on circuit.

4.4 The Legal Services Commission should co-ordinate its operation, and establish some basic standards to ensure uniformity of service throughout the country. Local Public Advocates would be accountable to their Regional Legal Services Committee, appointed by client communities. Cultural sensitivity of the service will be monitored generally by the Runanga Ture Tika/Maori Lore Commission.

6. COSTS IN CRIMINAL CASES

> *"It is my experience that the Courts have operated the discretions under this Act in a very conservative manner. The result has generally been to deprive citizens whose financial level may be only just above the level which qualifies them for criminal legal aid of any compensation for the expenditure which they have undertaken to defend themselves on serious or important criminal charges. In order to ensure complete justice for defendants at this level, I believe that provision has to be made for awards of costs to at least successful defendants in at least the vast majority of cases. The statute should be rewritten to make it plain that the Courts are to award costs to a successful defendant, unless there are strong countervailing circumstances. . . In my experience, the Crown almost always vigorously defends these costs applications (why, I have never understood), and, in many cases, the amount of the costs awarded does not even cover the costs to the client of making the (often written) submissions on the costs question. Obviously the maximum level prescribed should be removed or at least substantially revised upwards."*

1.1 Even when people are found not guilty, they still have to pay any lawyer's fees, as well as carrying the cost of time off work and travel to court for themselves, their witnesses and those who come to support them. This is often greater punishment than they would have received if they had pleaded guilty to the charge and been fined. Courts routinely order convicted defendants to pay court costs, often require witnesses' expenses and sometimes order costs of prosecution. In the interests of justice, Courts must be equally ready to exercise their power under the Costs in Criminal Cases Act 1967 to order costs towards the defence. These must be set at a realistic level. The current rate was set in 1970 and has not been revised since. It can only be exceeded where the court is satisfied that *"having regard to the special difficulty, complexity, or importance of the case, the payment of greater costs is desirable"*. This leaves clients bearing often crippling legal costs for proving their innocence.

SUMMARY OF MAIN RECOMMENDATIONS

(a) Many people are denied the protection of long established rights when dealing with the police because of their ignorance, police non-cooperation and lack of statutory recognition of those rights.The right to silence, communication with

lawyers and family, independent medical attention, and a telephone call should be written into law. Courts should not admit statements not made in the presence of an independent adviser, and all such interviews should be videotaped.

(b) Rostered para-legal advisors should be available at all police stations to provide people detained there with basic legal advice and to be present at all interviews. The Public Advocates' office should co-ordinate the roster and provide an on-call service for specialist legal advice.

(c) An independent, community-based police complaints procedure must be established with adequate resources, full powers of investigation and the right to recommend or take action against police.

(d) A co-ordinated system of non-police prosecutors is needed for all courts in the country, to ensure greater independence in prosecution. By reducing the number of minor cases before court, the extent and expense of this service should be minimised.

(e) Criminal legal aid should be provided through a salaried Public Advocates scheme:

  (i) A well-staffed, well-funded and well-administered Public Advocates' scheme will provide integrated and coherently planned criminal legal services. It should operate from community-based Legal Services Centres, ensuring community accountability and access to support services. It should support and promote legal self-reliance and education as well as providing lawyers' services;

  (ii) The Public Advocates office should co-ordinate legal services at the police station; advice prior to pleading; duty solicitor work; entering pleas; bail; defended hearings; sentencing; appeals; youth advocates; psychiatric patients; prisoners; and young people in substitute care;

  (iii) Services should be provided through salaried public advocates, para-legal workers, and selected private lawyers and lay advocates retained on contract. People facing Crimes Act charges should enjoy the right of choice of a public advocate or a lawyer from the private criminal legal aid register.

(f) In recognition that appropriate legal services will not always be available and the cost of private lawyers may well exceed any likely fine, people should have a right to be represented by a Kai Awhina/lay advocate of their choice. This option should apply in cases before the District Court, Family and CYP Courts, tribunals, and at the discretion of the Judge in the High Court.

(g) Reasonable costs should be awarded to successful defendants.

H. COMMUNITY LEGAL SERVICES

Legal literacy and self-reliance programmes are only possible if they are designed, operated and controlled by communities for their own benefit. By being creative and flexible, they can often resolve problems without recourse to a lawyer, or the legal system. In the longer term they can wean people from dependence on such services, and provide the basis for truly participatory justice.

1. LEGAL INFORMATION

> *"Knowledge empowers us to make our own considered decisions; frees us from complete reliance upon legal professions; and enables us to enter into informed debate about the legal framework of our country."*

1.1 We firmly believe that new legal services will have no impact unless they include or are accompanied by an extensive information and education programme about the legal system, rights and responsibilities.

> *"Unless you are aware of your right of decent treatment by the law and access to legal counsel, these rights will be denied to you. Therefore we must either educate the people about their rights or teach them in ways that they will not need them."*

1.2 Currently, the Justice Department confines its resource development role to information on specific legislation and aspects of the formal legal system. Production of legal information and resources for communities is left to a small number of voluntary organisations, working within very limited budgets. A number of submissions commended their work. However, the resources they produce are severely restricted in availability and scope.

1.3 More education and information is urgently needed on a wide range of areas such as legal rights and criminal law; legal services; rights as citizens in dealing with local authorities and government departments; housing; domestic purposes benefit, maintenance, non-molestation, matrimonial property; loans, hire purchase, consumer rights and small claims courts; wills and estates; land, conveyancing, mortgages; Town and Country Planning Act; local authority by-laws; rights of women and children; services of the Ombudsman's office, J.P.s and Maori Wardens; rights to information under the Official Information Act; procedures for complaints against police, government departments, and lawyers.

1.4 People also require better access to the content of legislation, in a language they can understand without needing to resort to a lawyer. Language in legislation, by-laws, union awards, documents and court procedures needs to be simplified. Translations into commonly used languages must be freely available. Many people also feel unable to participate effectively in the law-making process, which they viewed as exclusive, elitist and expensive. More information about proposed legislation, and a revamped submissions process, are vital to ensure greater popular and consumer participation. Local agents should also be appointed to ensure that legislation can be obtained by people who live outside major cities.

1.5 Maori people need easily understood information to guide them in areas like succession, vesting, appointment of Trustees, powers and duties of Trustees, Roads, Incorporations, in addition to general education about the law. Some

information, like the Maori Planning Kit is difficult for lay people to obtain and to understand. Clear bi-lingual and practical explanations of law and legal services must be provided. Education and information programmes for Pacific people are urgently needed, as many are unaware of the law and the seriousness of crimes. These must be designed and run by Pacific people themselves.

1.6 Legal resources must provide easily understood, culturally relevant, up-to-date information. All written resources should conform to UNESCO standards of minimum functional literacy. Resource development should be contracted to community groups who can relate to their members' needs, and are able to produce information more economically and effectively than government departments. The Legal Services Commission should be responsible for co-ordinating production and distribution of legal resources, and funding community based resource development.

2 LEGAL EDUCATION

1.1 People were emphatic that education on law, legal rights and responsibilities, and legal services must start at school. Current teaching on law was criticised as haphazard and unresourced. Law in schools was considered as important as peace studies, trade union, sex education and the new health syllabus. This is consistent with recommendations of numerous previous reports, including the Advisory Committee on Youth and Law in our Multicultural Society and the final report of the Access to the Law committee.

1.2 Previous government failures to respond to these proposals deserve strong censure. A Law Related Education Committee comprising representatives from the Departments of Education, Justice, Police, Social Welfare, Health, Internal Affairs, the Ministry of Transport, the New Zealand Law Society, the Consumers' Institute, the New Zealand Education Institute and the Post Primary Teachers Association, was established in 1976. It has conspicuously failed in its stated purpose to encourage and facilitate the introduction of more and better law related material into schools. According to the Justice Department *"Despite the committee's existence, however, the departments and organisations concerned have to date continued to operate in very much a piecemeal fashion, with either going it alone, or being merely reactive, with individual officers responding to requests on a one-off basis."*[50] Justice Department has allocated a mere $9,000 a year to this work, and even this amount was not paid out for several years.

1.3 We believe that compulsory legal education in schools is fundamental to legal services, and note that this is consistent with long-standing Labour Party policy. Legal education should form an integral part of the core curriculum and begin well before school leaving age. It is vital that all areas of relevance to young people at school and in the future should be covered. Teaching should be in co-operation with local resource people, such as those in community law programmes, rather than dependent upon teachers who are not well-versed in the subject. Speakers from outside, such as Womens Refuges, Rape Crisis, CLCs, CABx, should be brought in to talk realistically about law and what is involved.

1.4 Education should not stop at schools, but must be ongoing. Community education is vital. Programmes should be organised through local community groups and education centres, with Legal Services Centres, para-legal workers and other community organisations providing contact points and distribution outlets. Legal education should extend into such areas as employment training schemes, workplaces, prisons and youth institutions. Programmes should also be devised for people such as retailers and landlords to familiarise them with their legal obligations to consumers.

1.5 The content and location of programmes must be appropriate to local communities. They should cover general or specific aspects of the law, and provide for up-dated training when major changes are made to relevant laws. This should be achieved through a variety of approaches, appropriate to the situation. Regular

hui (for general discussion) and wananga (for intensive learning) should be held over 2 or 3 days, to share knowledge on various aspects of law and try to pre-empt serious problems. Other means would include pamphlets, simple leaflets, posters and comic strips; self-help kitsets on common areas like divorce and separation, and house purchase; regular newspaper coverage in local and national papers; specific items for Access radio, commercial radio, national programme and daytime television, with scope for lawyers taking part in such programmes and being available to answer questions; advertising and role-playing through the T.V.N.Z. Community Service to explain legal rights and options.

1.6 A wide range of specific groups have urgent needs for basic training in the law. They include voluntary workers involved in whanau programmes; unionists; community workers; workers in rape crisis, womens refuge and womens support groups; youth workers; court workers; Maori wardens; Matua Whangai; community development officers; city and county council staff; workers in domestic violence, alcohol abuse, incest, and rape. Such training should also be available to the many people within the community who provide information, advice, and education on the law, and all other interested adults, community groups and workers. This is particularly important for people in rural areas, where other community law programmes such as legal centres may take time to establish.

1.7 Training for Maori workers must be arranged in consultation with tribal authorities and community groups to ensure its relevance, and a methodology which is culturally and socially acceptable. This should involve all forms of contact and shared knowledge, including hui, group discussions, research, reading or sharing experiences, and spending time with kaumatua to gain guidance, support and knowledge.

1.8 The Legal Services Commission should be responsible for assisting communities to develop and implement training programmes both at local and national level, provide funds, resource persons and information. Training and resources must be provided free when necessary.

3. LEGAL WANANGA

1.1 Legal services hui or wananga should be organised regularly within rural and urban communities which are without ready access to legal services. They would provide two or three days of intensive legal advice, education and information on general or specific subjects. In certain situations those present may also facilitate settlements and other forms of problem-solving.

1.2 Different resource people should be called upon according to the kaupapa and the location, including community advisers, lawyers, judges, law students, para-legal trainees, government employees and people from other disciplines. Law students in universities and those undertaking para-legal training in community colleges and other centres should be involved as part of their education. Maori Affairs solicitors should also take the initiative to set up regular clinics around their districts to give advice, especially about land. They would also involve people from other government departments, such as Social Welfare, Inland Revenue, Commercial Affairs section of the Justice Department or Housing, to discuss specific policies or problems facing the people.

1.3 These forums should become mutual learning experiences for those involved. The community would benefit from education and advice. The resource people would be exposed to new environments where they will gain more social and cultural awareness. This would be especially valuable where wananga are held on marae or in other non-Pakeha settings.

1.4 Organisation of hui would need to take place on a local basis. This should be the responsibility of the Legal Services Centres working with local para-legal workers. Adequate funding must be provided to cover the wananga and transport. As they are deprived of access to other legal services the cost must not fall back on the communities.

1.5 This is an approach used very successfully in India, where the need for rural outreach is a primary concern. As the present Chief Justice of the Indian Supreme Court has emphasised, *"We attach considerable importance to the organisation of such legal aid camps in rural areas... because we believe that only by this strategy... we shall be able to reach legal services to the poor and oppressed segments of the community and solve their problems and difficulties."*[51] These Indian initiatives received specific commendation in a submission received from a New Zealand High Court Judge.

4. LEGAL SERVICES CENTRES

1.1 We propose a comprehensive network of community controlled Legal Services Centres be developed throughout the country. Each centre must be established through the local community, and operate in a way which is truly accountable and responsive to the needs identified by its local client community. Lawyers and others with vested interests in the provision of legal services must play a minority role in management and policy decisions. This reflects widespread recognition that centres set up without the active participation of communities perpetuate paternalism and dependence, and reduce self-reliance.

1.2 Legal Services Centres should provide information, education, training programmes, resources, and advice in a wide range of areas. These include debts and hire purchase, dealings with government departments, tenancy, immigration, discrimination, welfare, family disputes, victims, trusts and incorporations, trade unions and consumer rights. Services would be provided by salaried staff, including public advocates and para-legal workers, and through rostered volunteer lawyers. They should also be responsible for organisation of legal wananga within surrounding communities and co-ordinating the development of locally relevant legal resources. The public advocate, and associated services, would also operate from these centres.

1.3 Specialist legal centres should also be developed to provide skilled legal assistance, information and resources in priority areas. We propose the establishment of Maori legal services centres and an environmental defenders office. We also recommend that the Legal Services Commission give serious consideration to other such centres for childrens' rights, women, mental health, tenancy, welfare, and consumers. These may be jointly funded by the appropriate government department.

1.4 The Centres should operate as a central base, with rural or urban outreach through para-legal workers. Satellite centres, or community legal resource bases should also be developed on marae, community centres, suburbs and small towns, and located within areas of greatest need. Wherever possible, Legal Services Centres should be based on marae to ensure Maori participation in their work and direction. Their operations must be flexible, informal and culturally appropriate, and collectively based. They should provide a service outside normal office hours for those unable to take time from work, and provide child care facilities. They need to be well-publicised and visible. Workers must liaise with other parts of the community to ensure they are genuinely used as a community resource.

1.5 Priority must always remain on promoting informed and responsible self-reliance. A balance would need to be maintained between individual case work and community legal development. Specific role designations, especially for public advocate work, is essential to prevent case work from taking disproportionate resources.

1.6 Legal Services Centres should be staffed by a combination of trained para-legal and community workers, salaried lawyers, lay people and volunteers. Some private and volunteer lawyers would also be involved where needed, especially with the public advocates' work. Staff must have a strong cultural awareness, and reflect the make-up of the client community. Affirmative action employment is

therefore essential. All workers, including lawyers, must be accountable to the local community for the service they provide.

1.7 The Legal Services Commission should set broad national criteria for operation and accountability of the Centres, and monitor procedures for community and client control and accountability. This would ensure sufficient autonomy to meet local needs, combined with some standardisation and quality control over services. Funding should be allocated regionally, allowing scope for variations in local priorities.

1.8 The services provided through Legal Services Centres would be inexpensive and cost-efficient when compared with private lawyer based options. With the public advocate operating from Legal Services Centres, administrative expenses will be minimised whilst providing an integrated service. If they are able to work effectively, their medium term effect should be a reduced demand for expensive specialist legal services.

1.9 Previous government commitment to community law programmes has been pathetic. In 1985 only about $109,000 was allocated to such programmes out of a total legal aid budget of almost $14,000,000. Of this $100,000 went to the four community law centres then existing.[52] A significant proportion of the new legal services budget must be committed to Legal Services Centres.

> *"While Community Law Centres may be of value in an urban setting, they are limited in the provision of legal services in rural areas. This is because they are centre-based and people must travel to receive the service. Even in urban settings, we would argue that their value is limited. . . If the 'lawyer' is there, then people choose to see the lawyer and the expert syndrome is reinforced. . . The people who work in such centres are often idealistic young people, straight out of university who have limited experience of the legal system that prevails in this country. Te Runanga o Ngati Porou are not in favour of a system that enables legal advice to be given by a person who must learn the system off the backs of those who can ill-afford that type of lesson."*

1.10 In making this proposal we have born in mind lessons to be learnt from the experiences of community law centres both here and overseas. There are currently five community law centres in Grey Lynn, Wellington, Porirua, Christchurch and Dunedin. They carry out a mixture of case-work and education work on a range of legal issues, and employ lawyers and non-lawyers. The Centres have many positive aspects. However, they face constant funding crises, serious work overloads, limited resources and high staff turnovers due to burnout, low rates of pay and lack of career prospects. Their processes of community control and accountability are still largely undeveloped. Their expansion was not generally welcomed by the legal profession. Before receiving Justice Department funding they have been required to obtain an exemption from certain Law Society requirements. We see no justification for continued Law Society control over such centres, as any lawyers practicing within them will still fall under Law Society disciplinary powers.

1.11 Overseas experience with law centres has been mixed. Their benefits as a pre-emptive service, and their potential to build community self-reliance, are now widely recognised. However, lessons must also be learnt from the many problems which have arisen over their goals and operation. The most important stumbling blocks have been inadequate and insecure funding; lack of co-ordination; absence of clear policy and direction; failure to ensure real community control; continued dependence on specialists and experts; and over-commitment to case-work, while neglecting self-reliance programmes and other positive initiatives.

5. CITIZENS ADVICE BUREAUX

1.1 An estimated 30 percent of C.A.B. inquiries directly or indirectly relate to the law. If they cannot be dealt with immediately, they are referred to the C.A.B's volunteer legal advice service, a lawyer or other service. The present system of referral faces the serious problem of a "fall-off" rate, where only about 60 percent follow-up their initial referral.[53] The free legal advice service provides a limited service. It generally operates only two hours a week by appointment, which often must be made a week in advance. This cannot meet the needs of people who have immediate problems, or those unable to commit themselves to appointments in advance.

1.2 The Pakeha middle-class image of the C.A.B. and its workers was considered off-putting for many people. They felt such services must be appropriate to, and actively involve, local client communities at all levels of their operation.

1.3 The C.A.B. will continue to offer an important service, although their role will change as community legal initiatives develop. The proposed training programmes should better equip staff to deal with basic legal problems, and new legal services will provide important sources of information and points of referral.

6. PARA-LEGAL WORKERS

1.1 It seems clear that private lawyers will not be able to meet the legal service needs of rural and depressed urban areas, which are considered unappealing and uneconomic. This presents a challenge which demands innovative ideas. Although it will be difficult to provide permanent legal services for these communities, we believe a combination of para-legal workers and legal wananga will ensure that their needs are not neglected. Such initiatives will complement and streamline services which are provided by lawyers.

1.2 We propose a network of paid, trained para-legal workers be established to provide their communities with information, advice, resources, education and liaison with other services. They should also be available to act as Kai Awhina or lay advocates for people appearing in court. The workers would be drawn from, and based in the communities they work within. Some may specialise in working amongst priority groups, such as Maori, Pacific communities, women, unemployed workers, or youth. Others would work within a geographical or tribal region. Their priorities should be determined by their communities, with the goal to empower the people to deal with their own problems, by building legal literacy and self-reliance.

1.3 Para-legal workers would also fulfil a vital role in the Public Advocates' work. They should be the mainstay of the proposed police station advocate; assist people due to appear in court; provide support and liaison with court and other community services; and help co-ordinate and run education and self-defence programmes on criminal law.

1.4 Their work must evolve at the local level, within broad national guidelines. They must operate with the people at ground level, and not be allowed to develop into office bound workers. Regular and appropriate training, designed in consultation with consumer communities, is essential. Para-legal services, and training, should be co-ordinated by the National Legal Services Commission.

1.5 Para-legal workers would undoubtedly be cheaper than providing full-time lawyers paid at private rates. However, we stress that the programme must not be viewed as a cost-cutting exercise which forces communities to support the workers from their meagre resources. There must be secure and adequate funding for wages, resources, administration and support for those undertaking this burdensome role. Provision of vehicles is absolutely essential as there is no other way a community-based worker, especially in rural areas, can operate.

1.6 Other programmes reflect a similar approach of community-based resource workers fostering informed self-reliance. These include the Labour Department's

G.E.L.S. scheme, the public health nurses and itinerant teachers programmes, and the Internal Affairs Detached Youth Workers' scheme. Recent evaluations of these schemes will provide helpful guides to designing a community based and controlled para-legal programme. Para-legal programmes are highly successful in countries such as India, Philippines and Indonesia.

7. COMMUNITY INITIATIVES

1.1 In making this proposal, we wish to acknowledge the many volunteers who already do para-legal work, without payment, resources, training, or recognition.

1.2 The story of the Tamaki Kokiri Court Workers shows the potential, and the despair of those involved in community legal services.

> *"Tamaki Makaurau Kokiri court workers scheme is a community initiative, which arose out of the peoples' concern over what was happening to young people. It became clear that there was an urgent need for Maori in court, to be there to talk with the young people, and monitor and challenge the failure of the legal system to cater for their needs. Young people themselves must decide on their needs and programmes to meet them, allowing them to take responsibility for themselves. The leadership role which young women can play must also be recognised. The Kokiri court workers are young Maori, mainly women. It is obvious that pakeha social agencies and government departments are not catering for those needs.*
>
> *Despite the barriers put in their way, Kokiri court workers have shown again that Maori people can work together effectively and get things done, when pakeha departments and agencies cannot. Court workers don't work for their own sake, but for the* **tamariki** *and their community. They don't work a 9 to 5 job; they have to be there to respond when they're needed.*
>
> *The main funding for Kokiri court workers now comes from CEIS. CEIS arose out of the 1981 gang report, and created a fund of $150,000 per annum for 3 years to be granted to three communities. In Grey Lynn this money provided a locally controlled economic base. The community ran for CEIS very fast because until then they had been living out of each others pockets, borrowing money from each other that no-one really had to spare. Decisions allocating money and setting priorities were made by local people, and they had total control of what was done. Groups who were funded were accountable for money and use of it to each other, rather than to funding agencies. While it is easy to rip off money from departments—when your own people and community are involved, you don't take from each other and you're accountable to each other for what you are doing every day."*

1.3 We believe it is government's responsibility to fund a co-ordinated network of court workers across the country. Priority should be given to liaison between court officers and Maori, Pacific Islands and people from other cultures. Court workers must have recognised standing in the courts, and access to the cells, the police summary of facts, the interviewing room, a list of lawyers, and the court library. They must be encouraged to make submissions on bail applications, pleas in mitigation and submissions on placement before the Children and Young Persons Court.

1.4 Many voluntary workers are despondent, burnt out, and fed up with always doing the "ambulance work" in court. More court workers are needed, but they must be paid. People have worked too long for no salaries or expenses. This includes Kaumatua, Matua Whangai, Maori community workers, Maori wardens, and community support agencies such as womens refuges, rape crisis centres, and other community based organisations. Beyond that, whanau and hapu must be recognised as having the skills and talents to administer, plan and control their own programmes and funding. Many communities need more information about the scope of such agencies, and the support available.

SUMMARY OF MAIN RECOMMENDATIONS

(a) Development of easily understood, culturally relevant, up-to-date legal resources should be contracted to local communities, groups and organisations.

(b) Wide-ranging legal education should be promoted throughout the community, with priority on introduction of legal education into the school core curriculum at intermediate level upwards.

(c) Intensive legal wananga should be held on request in rural and urban communities where other legal services are unavailable, providing advice, information and education on general or specific subjects, in a context which will provide a learning experience for both the community and the resource people.

(d) A comprehensive network of community based and controlled Legal Services Centres should be established throughout the country, combining advice, education, resource development, and Public Advocate services provided by para-legals, community workers and Public Advocates.

(e) A network of trained para-legal workers should be appointed to service rural and depressed urban areas, providing information, advice, resources, education, and liaison with other legal services. The workers must be drawn from, nominated by and accountable to their local communities.

(f) Relevant and appropriate training programmes should be provided for para-legal and legal services workers, and be available to all others involved directly or indirectly in provision of community based legal services.

I. NON-CRIMINAL LEGAL SERVICES

The perversity of the present legal services system was seen to lie in the availability of civil legal aid only once a problem has reached the stage of a likely court case. People were far more concerned with access to services at the stage of advice, and in assistance and advocacy in various civil forums. Proposals for change seek to meet this broader range of needs, in a way which promotes both self-reliance and cost-efficiency.

1. LEGAL ADVICE

1.1 Civil legal aid is available only for matters which will result in a court hearing. There is no legal aid for non-court matters, or for legal advice. Recent moves towards informal legal processes, such as the Small Claims and Tenancy Tribunals, make this continued distinction hard to justify. Further, failure to provide free legal advice is a false economy, as many serious legal problems could be pre-empted or diverted to other forms of resolution. Nevertheless, the cost of merely extending current civil legal aid to cover advice is potentially enormous. Other options which provide effective advice at minimum cost must be sought.

1.2 We propose that legal advice be made available on three levels:

(a) Priority should be placed on providing advice through community based services. They can offer an informal, culturally appropriate and easily accessible service, with links to other forms of support and advice. These services should not be solely centre-based, and must have community and rural outreach. We propose that they be provided through the proposed Legal Services Centres, para-legal workers, and legal wananga, and through better trained and resourced workers within C.A.B. and other specialist support agencies. Special arrangements need to be made for those in institutions, and responsibility for co-ordinating this should be placed on the Legal Services Centres.

(b) Those who are unable to gain easy access to community legal services, or who need to be referred for more specialist advice, should have available an expanded and revamped version of the Law Society's 'Law Help' scheme. Under this scheme, law firms offer 20 minutes legal advice for $10. It is currently little known and rarely used. We recommend that the New Zealand Law Society actively recruit law firms into the scheme, especially those who are not otherwise involved in legal services work, with the aim of 'Law Help' being available in every city, suburb and rural area. Much more effective and sustained publicity, and prominent advertising would also be needed. This would be assisted by referrals and information provided to consumers by community based legal services.

(c) 'Last resort' legal advice beyond Law Help should be available under civil legal aid to the following specific categories of people and cases:

(i) People in prison and psychiatric institutions;

(ii) Children in substitute care;

(iii) Beneficiaries and the unemployed not on benefits;

(iv) Superannuitants with no other income;

(v) Victims of violence for related legal problems;

(vi) Dealings with government departments, including the police.

1.3 Advice on specialist areas of law affecting Maori people, such as Maori land, will be provided through the proposed Maori Legal Service, with the precise terms of the service to be decided by the Runanga Tikanga Maori/Maori Lore Commission.

2. CIVIL LEGAL AID

1. Access to civil legal aid

1.1 Since the present Legal Aid Act was passed in 1969 there has been a massive increase in numbers of cases, and their cost. Between 1976 and 1981 the cost increased by 210 percent. The nett increase over 1984-5 was $1,381,524, or almost 37 percent.[54] As lawyers fees continue to increase, so will the cost of civil legal aid. About 94 percent of all applications for civil legal aid are for "domestic" proceedings.[55]

1.2 Most people seem unaware that civil legal aid exists, and there appeared to be total ignorance of its availability for the Maori Land Court and other Tribunals. There is also a serious lack of knowledge amongst Pacific Islands communities, and confusion about the difference between civil and criminal legal aid. No appropriate information appears to be available, and people are dependent on lawyers to inform them of its availability. People who are fearful of the cost of initially approaching a lawyer are therefore effectively denied legal aid.

1.3 The major problems with civil legal aid related to its unavailability for matters involving dissolution hearings and the environment, and the restrictions placed on eligibility for the Maori Land Court and Tribunals.

2. Domestic proceedings

2.1 Civil legal aid is available for all stages of domestic proceedings, except for the dissolution hearing itself. Domestic proceedings dominate civil legal aid, being over 90 percent of cases granted and 90 percent of total civil legal aid costs. Of the domestic proceedings applications 86 percent were from women, mainly homemakers and beneficiaries. Most of these are for separations.[56]

2.2 We are concerned that continued dominance of civil legal aid by domestic proceedings will severely reduce funding available for other legal services. However, we also find the arbitrary cut-off at the point of dissolution impossible to justify, and feel it unfairly penalises women. Once more, innovative solutions are required.

2.3 The goal of building self-reliance must remain a priority. This requires urgent action to restructure the Family Court to ensure that women feel they can truly participate on an equal basis. Use of Kai Awhina or lay advocates, and supporters in the "McKenzie friend" capacity, should relieve the need to rely on lawyers' services. Widely available "dissolution kits" in an easily understood format, and "role-play" sessions for those wanting to take their own cases should also assist. We suggest that this approach be adopted regarding all aspects of domestic proceedings, not just the dissolution hearing.

2.4 However, we are concerned about forcing women into self-reliance by denying legal aid without providing the resources, training and forum where they can survive on their own. We therefore recommend that serious consideration be given by the Legal Services Commission to removing the restriction on legal aid for dissolutions until such resources are available, and structural changes have been made. Hopefully, the cost factor will introduce urgency into this process.

3. Maori Legal Needs

3.1 Maori people need access to legal assistance, as of right, where legislation impinges on traditional Maori rights. The Runanga Tikanga Maori/Maori Lore Commission should take main responsibility for this through the Maori Legal Service, and people should be encouraged to seek its assistance. For cases where the Maori Legal Service is not appropriate or available, people should be eligible

for civil legal aid. Current restrictions on legal aid for Maori Land Court hearings, requiring proof that a lawyer is needed, should be removed. Legal aid should also be made available for groups of owners, and for a person or body (such as a Trust) representing the collective interests of owners. Decisions on such applications must be made by a bi-cultural body.

4. Extension of civil legal aid

4.1 We welcome initiatives to reduce the high cost of conveyancing, in particular, the opening of "Law Shops" where law firms provide a more modest service at a lower fee. This should alleviate the need for state funded legal services in this area.

4.2 While the principle of legal aid for Commissions of Inquiry is supported, there is grave concern that the cost for lengthy hearings in a small number of cases will consume a disproportionate amount of the legal services budget. Whether a ceiling should be placed on the cost of such services is a matter which the Legal Services Commission should investigate more fully.

4.3 We recommend that civil legal aid be available at all levels of disputes with government departments such as immigration, social welfare and police, applications under the Official Information Act and enquiries to the Ombudsman. However, people should be encouraged to use alternative legal services to pursue such matters.

5. Administration

> *"Finally, on the civil legal aid system, I would hope that any new system would be administered in some other way than through District Legal Aid Committees. My experience of the .... Legal Aid Committee has left me most unimpressed with the way in which they operate. In my view, a full-time body, with some feel for the services it's providing, would be vastly preferable."*

5.1 The present system of administration of civil legal aid by District Law Societies drew strong criticism. There are serious regional inconsistencies in granting waivers of contributions and assessing further contributions. While the considerable time volunteered by members of those committees is appreciated, there is an obvious need for more consistent oversight of policy and administration. There was particular concern that these committees were empowered to make value judgments on the merits of a case, the need for legal assistance and the likely injustice which would result from a refusal of legal aid. As a Committee of predominantly Pakeha male lawyers they were seen as quite inappropriate to make such decisions, especially in tribunal and Maori land matters.

5.2 We recommend that the District Law Societies continue to control the vetting or "taxing" of fees of those providing civil legal aid. Decisions on whether to grant legal aid, however, will be carried out through a process established and monitored by the Legal Services Commission. This will ensure that non-lawyers and community people are involved in the decisions on eligibility and allocation of legal aid.

3. ENVIRONMENT AND PLANNING

> *"At present there appears to be an inherent unfairness where the applicant (be it the Crown or any other developer) has unlimited funds for representation and the calling of witnesses and the objectors who have nothing but their own land or interest to call upon. A modest government fund would ensure that those possessing rights of participation in the planning process would be able to effectively exercise those rights."*

1.1 The public's right to participate in planning, resource exploitation and local body decisions appears to be seriously undermined, and at times nullified, by ignorance, cost and the intimidating nature of proceedings. Balanced planning should take full account of cultural, community and environmental interests. Instead, people complained that the system is designed to protect the vested interests of developers, local authorities and government.

1.2 People are rarely informed of proposals in sufficient time to collect the necessary information and prepare their arguments. The form and language of the notification they receive is difficult for many lay people to understand without legal or specialist assistance. As there is no legal aid for advice, or for the initial levels of such hearings, many have no option but to let the matter pass.

1.3 The serious imbalance in resources between parties is most dramatic in major hearings, where counsel and experts can be paid massive fees by proposers, with which people and watchdog groups simply cannot compete. But we were reminded that this is equally true for routine decisions which affect the lives of individuals or small communities. In addition to the financial cost, the formal and adversarial nature of hearings effectively excludes people such as the elderly, Maori and other local residents from being heard.

1.4 The appeals procedure compounds these biases and drew accusations that the hearings were cosmetic. The procedures set down in the "Practice Directives for Appeals to Planning Tribunals" make it almost impossible for people without resources to successfully object to Planning Applications. On appeal, the entire case must be argued again from the beginning, including all the evidence or argument already raised at the initial hearing. If people cannot afford the time or expense of doing that, they are likely to lose by default. We agree that this defeats the purpose of public participation and creates the appearance of justice being bought by those with power and resources.

1.5 The Planning Tribunal's practices on costs raise further disincentives. Should communities or watchdog groups succeed in their case, they will rarely be awarded costs, even in part. By contrast, the recent award of $14,000 costs against the Environmental Defence Society to the Liquigas Corporation will act as a significant deterrent to mounting such challenges in the future.

1.6 We believe that positive action is required to redress the current imbalance favouring developers in major projects. Those seeking planning and related consents usually do so in expectation of profit. The cost of proving the community benefit and environmental safety of their enterprise should fall on them, and they should not be eligible for awards of costs. Those seeking to protect cultural, community or environmental interests should be encouraged by provision of legal services to assist them, and by awards of appropriate and realistic costs where they have had to seek specialist legal or other expert services.

1.7 The Labour Party's election policy in 1984 promised that conservation organisations would be eligible to apply for legal aid. In March 1985 E.D.S. agreed to establish a 6-month pilot "environmental aid" service for northern N.Z. It reported to the Minister for the Environment in March 1986,[57] and has been provided with funding until the end of the year. The purpose of the pilot was not to decide whether there should be access to legal services, but how best to provide it.

1.8 The pilot study report recommended the establishment of a Public Defenders Office type of operation with salaried employees and independence from political or departmental influence, to:

(a) assess suitable projects of regional and national importance for self-initiated intervention;

(b) provide advice to community groups and individuals on request;

(c) assess requests for grants to help community based environmental intervention;

(d) provide advocacy help to groups or individuals where appropriate;

(e) engage lawyers willing to take work on a free basis to help salaried staff advocates/lawyers;

(f) make sure some staff have special expertise and understanding of Maori values to assist Maori groups.[58]

Advantages of this approach include fixed costs through salaried staff, stable administration costs and independent community-based operation. It combines the skills of both non-lawyers and lawyers. Legal services can be delivered at a fraction of full legal aid costs. At the same time it can provide informed and rational advice to build up community groups' experience and expertise.

1.9 This proposal is supported, with the strong proviso that its structure, control, staffing and operation be truly community controlled and recognise and reflect the priority concern of protecting Maori rights guaranteed in te Tiriti o Waitangi. Its primary emphasis should be on building peoples' ability to take their own cases, with resources and advice provided through the E.D.O. Where this is not feasible, support people to appear with the party or lay representation should be the preferred options. Use of lawyers should be reserved for technical or legally complex cases. To ensure this, and that its services are available to all throughout the country, we propose that it be administered through the Legal Services Commission.

1.10 Maori people strongly condemned the inadequate statutory recognition of Maori rights and values in planning, environmental and local authority procedures. These related to a wide range of matters including ancestral lands and waters, pollution of water and soil, destruction of native forests, timber logging, spray drift from pesticides and herbicides, fisheries, desecration of wahi tapu, excavations, denial of traditional access rights and the return of taonga. They felt the situation was institutionally racist, excluding Maori participation by too many judges being ignorant and insensitive to Maori values and concerns; overly formal, intimidating and inappropriately adversarial proceedings; and discriminates against objector groups who are unable to marshall expert evidence or assistance because they lack resources and money. Under the present procedures people still felt they needed professional expertise to be effective. Maori people can rarely afford lawyers, and there are few who are sensitive to te tikanga Maori.

1.11 Local authorities, Water Boards, and other agencies were seen to work in their own and each others' interests, rather than the interests of those they purport to serve. Effective Maori representation on such bodies was sought. This would operate alongside a requirement that Maori submissions be actively sought on all matters affecting rights guaranteed under te Tiriti o Waitangi, which should be given equal weight to all other submissions combined. Maori expertise should be recognised by way of realistic koha or consultancy fee to local Kaumatua, iwi or hapu for giving expert evidence, and for marae hosting hearings. The Waitangi Tribunal in the decision on the Manukau waters also recommended changes to overcome these major deficiencies, including the extension of the Tribunal's procedures to any hearings affecting Maori rights. We endorse their proposals.

1.12 A number of suggestions were made for changes to the composition and operation of Catchment Authorities, Water Boards, and Local Authorities and these have been passed on to the appropriate Ministers.

1.13 Advice and information on planning and related issues should be provided through the Maori Legal Service, the proposed Environmental Defenders Office and by staff within relevant government departments. This should include assistance with preparing and presenting submissions and available evidence to appropriate bodies, boards and tribunals. Simple and easily understood resources, including self-help kitsets, should be developed as a matter of urgency. There is

concern that the proposed Maori Secretariat of the Ministry of the Environment, with only 5 percent of the Ministry's total staff, may be unable to meet this need. The Runanga Tikanga Maori/Maori Lore Commission should liaise with the Secretariat and E.D.O. to co-ordinate this work, and press for the required structural changes to planning procedures.

1.14 We suggest that specialist tribunals should also employ lawyers to be available to local communities before hearings are held, to help prepare and present legal submissions, along the lines already suggested for the Maori Land Court.

1.15 We support the proposals made to us for providing mediation conferences, at the request of objectors, at the initial stages of projects or proposals with significant environmental impacts. This would allow the airing of grievances and give people early access to information on proposals. It may help streamline consent/approval procedures, and would help reduce the costs of legal services. Developers may also be encouraged to take better account of issues of public concern in formulating their proposals. Disputes not resolved by mediation would then be dealt with in hearings.

1.16 Primary reliance for legal services should be placed on the E.D.O., lay advocates, the M.L.S. and self-representation. However, there will be situations where they are not able or appropriate to assist people, and civil legal aid must therefore still be an option. Legal aid is currently only available for matters involving the Acts specifically mentioned in Section 15 of the Legal Aid Act 1969. We regard these restrictions as arbitrary and unjustifiable. We recommend that the scope of legal aid be broadened to cover all situations where natural resource or environmental issues, or rights under te Tiriti o Waitangi may arise.

1.17 Legal aid is also currently limited to individuals, yet planning issues affect hapu, iwi, communities and groups. Class actions are also effectively excluded. We propose that eligibility be broadened to include community-based organisations representing areas of public interest, especially Maori and environmental organisations. There will be a need to develop criteria to screen out clearly vexatious claims.

4. KAI TIAKI/CHILD'S ADVOCATE

1.1 Courts can appoint a lawyer to represent the interests of a child in a case before it. This is done frequently. The cost of counsel for the child in 1985/6 was over $1.8 million, at a rate of almost $900 per case.[59] According to the Minister of Justice *"The appointment of counsel for the child, at state expense, ensures that the adversarial rights of the parents do not dominate court proceedings."*[60] This assumes, however, that lawyers are appropriate people to perform that task, when lawyers are not trained for this role and come from an adversarial tradition. Complex legal matters rarely arise at this stage. People with cultural sensitivity, communication skills and an ability to identify with the needs and concerns of the child are needed. Non-lawyers are likely to be more appropriate in many cases.

1.2 The recent report of the Ministerial Advisory Committee on a Maori Perspective for the Department of Social Welfare observed: *"The Maori child is not to be viewed in isolation, or even as part of a nuclear family, but as a member of a wider kin group or hapu community that has traditionally exercised responsibility for the child's care and placement. The technique, in the Committee's opinion, must be to reaffirm the hapu bonds and capitalise on the traditional strengths of the wider group.*

This needs emphasis. The guiding principle in the current legislation is that the welfare of the child shall be regarded as the first and paramount consideration. There need be no inherent conflict between that and the customary preference for the maintenance of children within the hapu. The current principle is seen in practice as negating the right of the group to care for its own or to be heard in the proceedings."[61]

It recommended *"that the child or the child's family should be empowered to select Kai Tiaki or members of the hapu with a right to speak for them".*[62]

1.3 We endorse that recommendation in relation to all young people and their broader families. All those within the child's recognised family and community, especially the child, should be asked to agree on an acceptable person to act as Kai Tiaki or Children's Advocate. This would ensure the involvement of someone who has an understanding of the background and context of the situation, is aware of those who have a contribution to make to finding a solution, has the trust of all parties, and has the necessary cultural understanding and sensitivity. While it is vital that they should be paid, provision should be made for some form of payment in kind for those who would not accept money for this role.

1.4 If cases involve complex legal issues, counsel for the child could still be appointed to assist the Kai Tiaki or Children's Advocate. Those concerned, or the child, could also still choose to have counsel for the child perform that role.

1.5 The Foster Parents Association asked for legal aid to be made available for matters affecting the foster child. We agree that this should be provided, on the basis that it is a service for the child not the foster parents.

1.6 Legal aid for parents involved in proceedings affecting their children currently comes under civil legal aid. The delays this involves often make it pointless to apply for legal aid. A 1980 survey in Christchurch showed that only 15 percent of parents had legal advice.[63] This service should come within the responsibility of the public advocate. Where the public advocate is acting for the child, it should arrange assistance from an appropriate private lawyer.

5. ACCIDENT COMPENSATION

1.1 Simple and readily available information is needed on procedures for accident compensation claims and reviews of decisions. Accessible information is also needed on other services available to accident victims or victims of crimes, such as the right to psychologists and counselling services in incest cases. Both the A.C.C. claim form, and the "notes for guidance" it provides to people in review cases, need to be simplified.

1.2 A.C.C. has no policy on legal representation, viewing availability of legal aid as the responsibility of the claimant's lawyer. Once more, this requires an initial approach to a lawyer, which many will feel reluctant to make. Access to advice from Legal Services Centres, para-legal workers and Law Help should remedy this. However, the use of lay advocates before the Tribunal should be encouraged, with resort to lawyers being necessary only in cases involving complex legal issues.

1.3 The other major difficulty with Accident Compensation relates to awards of costs. It was felt that many people were not aware that their lawyers' costs would not be reimbursed in full, even if they succeeded. It was considered unfair that where non-lawyers assist claimants, they are only eligible to claim their actual expenses, and some recognition of their services should be made. A further concern was the requirement that people wishing to claim lost wages and travel expenses must bring their receipts to the hearing itself, and lodge a claim for costs at that time. This was seen as unreasonable and impractical, and a more flexible approach was advocated.

SUMMARY OF MAIN RECOMMENDATIONS

(a) Legal advice should be provided on three levels:

(i) freely available community based advice through Legal Services Centres;

(ii) lawyer-based advice under the Law Society 'Law Help' scheme, for a nominal fee;

(iii) free civil legal aid for advice from lawyers to people in prison and psychiatric institutions, children in substitute care, social welfare beneficiaries, the unemployed, superannuitants with no other income, victims of violence, and cases involving government departments.

(b) Encouragement should be given to use of community based services and lay advocates in the areas of Tribunals and the Maori Land Court. However, restrictions on civil legal aid should be removed, with eligibility extended to groups in certain situations.

(c) The Legal Services Commission should evaluate the need for civil legal aid, given other available services, for:

  (i) dissolution of marriage;

  (ii) Commissions of Inquiry.

(d) Lay alternatives to civil legal aid should be promoted through:

  (i) A Kai Tiaki or Child's Advocate, appointed on agreement of all concerned, to advocate on behalf of the child in place of counsel for the child;

  (ii) Lay advocates in environmental, planning and related cases.

(e) An Environmental Defenders Office should be established to provide advice, assistance and, where necessary, advocacy from lay and legal people on environmental protection. This must be under the control of consumer groups with a strong bi-cultural base.

J. ADMINISTRATION AND FUNDING

The ability of the services proposed in this report to deliver access to justice will ultimately depend on the availability of adequate funding and resources and capable, supportive administration. In addressing the question of eligibility, funding and control we have been guided by the basic principles of self-reliance, bi-culturalism, decentralised control and community accountability.

1. LEGAL SERVICES COMMISSION

> *"Monopoly control by a private enterprise based legal profession inevitably leads to this unjust distribution of legal skills and resources, and legal justice will only be obtained when a publicly owned and accountable legal service is provided (funded by Government, but administered independently of any Department of State)."*

1. Legal Services Commission

1.1 We believe that any credible legal services system must be, and be seen to be, independent of the Justice Department (which controls the coercive aspects of the legal system) and the Law Society (which has a vested interest in control of legal services). Independent bodies control the funding and operation of legal services in many other countries, including almost every Australian state, the United States, India, and Canada. We propose that legal services be administered through an independent Legal Services Commission.

1.2 The Commission should reflect the emphasis on regional and consumer control, and bi-cultural power sharing, with the majority of its members being regionally elected representatives of eligible consumers. There should always be a majority of non-lawyers on the Commission. It should meet regularly, in its initial stages at least quarterly. Its operation must be kept under regular review by consumers of its services.

1.3 The Commission should have 15 members:

2 members from the Runanga Tikanga Maori/Maori Lore Commission
2 people appointed by the Minister of Justice
1 representative of the New Zealand Law Society
10 representatives of Regional Legal Services Committees

A Convenor should be elected by the Commission from amongst them. Regional representatives must be eligible consumers of legal services.

1.4 We propose that the Legal Services Commission should have the responsibility to:

(a) Make general policy on direction and priorities for legal services.

(b) Monitor community needs for legal services, and promote programmes which best meet the needs as identified by consumers.

(c) Regularly liaise and consult with the Runanga Tikanga Maori/Maori Lore Commission on provision of legal services for Maori needs

(d) Consult with the Law Society, government departments, and community organisations, regarding the direction and adequacy of legal services.

(e) Report to the Minister of Justice on structural changes to the legal system which will better promote access to justice.

(f) Make general policy regarding the division and allocation of legal services funding.

(g) Set, and annually review, eligibility criteria for legal services.

(h) Maintain a balance between centre-based and outreach programmes.

(i) Oversee the operation of the Public Advocates scheme.

(j) Co-ordinate the activities of Legal Services Centres throughout the country, whilst providing maximum local autonomy.

(k) Monitor procedures to ensure effective consumer participation in decision-making and operation of Legal Services Centres.

(l) Administer the appointment, training, and resourcing aspects of the para-legal programme, and monitor supervision and support of workers.

(m) Oversee the operation of the civil legal aid system.

(n) Co-ordinate and promote development of legal resources.

(o) Promote effective community legal education, and devise and implement a programme of legal education in schools in co-operation with the Department of Education.

(p) Develop training programmes for workers within legal services.

(q) Receive, investigate and respond to complaints regarding all aspects of legal services.

1.5 The Legal Services Commission should have a duty to consult with government departments on policy proposals which impinge on the activities of those departments. The Commission should also develop a panel of other consultants with a range of experiences and skills. Any such consultative or advisory group must be 'on tap, not on top'.

1.6 The secretariat should be structured to avoid a centralised bureaucratic administration, and ensure effective decentralisation of decisions on priorities, resource allocation and delivery of services. In keeping with the principles of legal services, the offices of the secretariat should be accessible, appropriate, community located, non-bureaucratic. Staff and environment should reflect the clientele, with positive priority on appointment of Maori, Pacific Islands, women and minority group workers. They should have constant contact with those providing and consuming services. All appointments should be subject to regular community evaluation, to protect against 'burnout' and ensure accountability.

1.7 Salaried staff should oversee the operation of the public advocate system, Legal Services Centres, para-legal workers, civil legal aid, resource development, legal education and training. The secretariat's role should be kept to a minimum wherever possible, with emphasis placed on providing services through the regional and local level. Wherever possible, resource development work should be contracted to community groups, using community skills and perspectives.

1.8 Expenditure on the Legal Services Commission should be minimised, to ensure that maximum amount is available for delivery of legal services.

2. Regional Legal Services Committees

2.1 Regional Legal Services Committees should provide a voice for the regions, and a means of monitoring provision of local legal services. They should each have a full time worker, but to avoid unnecessary bureaucratisation, they should not have any formal office. Regional boundaries would need to be sensitive to urban/rural, tribal, and North/South Island factors.

2.2 Regional Committees should be appointed annually by eligible consumers of legal services. There are several possible procedures for achieving this. Specific groups and categories of consumers could each be asked to nominate a representative for

the Committee. This would ensure a range of representation, but it gives ordinary consumers little chance to participate. Alternatively, meetings of local consumers could be held where local priorities are identified and a representative elected from each community to the regional legal services body, as is done in parts of America.

2.3 The Regional Legal Services Committees should be required to:

(a) Identify regional needs for legal services;

(b) Monitor provision of legal services;

(c) Oversee the procedure of the legal services office for processing applications for civil and criminal legal aid.

(d) Receive and investigate complaints about all aspects of legal services, and where appropriate refer complaints or recommendations for action to the Legal Services Commission;

(e) Represent the legal service needs of the region on the national Legal Services Commission.

2. ELIGIBILITY

"Eligibility for legal aid also needs to be examined. Generally it was felt that eligibility needed to be extended so that it covers those who, although earning a wage, do not have the resources to pay the going rate for a lawyer. Eligibility should be according to fixed criteria with a right to appeal, and decided administratively rather than by arbitrary decision of a judge. Such aid needs to be available even for minor offences."

1. Principles

1.1 A wide range of concerns over eligibility were voiced, including:

(a) Current eligibility for legal aid, especially for criminal cases, is too restrictive;

(b) Civil and criminal legal aid should be governed by uniform eligibility criteria;

(c) People are unaware of their right to legal aid, so the decision to apply for civil legal aid is often left to the lawyer's discretion;

(d) Delays in processing applications create difficulties for those with urgent legal problems, most of whom are unaware of provision for emergency legal aid;

(e) Application forms deter applicants through intimidating language, and questions geared for those in paid work when the majority of applicants are unemployed;

(f) It is unnecessary and undesirable for a judge to grant criminal legal aid, especially where this causes delays as in rural areas;

(g) "Claw back" from successful clients to repay the costs of legal aid may take up the bulk or all of the money they are awarded. A District Legal Aid Committee may also profit by recouping the entire fee the lawyer set for the case, but only pay the lawyer the 'taxed' fee less 15 percent.

1.2 We propose that eligibility should be based on the following principles:

(a) Legal services must be made available as of right to those who are denied access to justice because of financial or other reasons.

(b) Criteria must be cost-effective, and disproportionate resources must not be committed to assessing eligibility.

(c) Criteria for legal services must be standard throughout the country. Eligibility for different forms of services must be appropriate and compatible.

(d) Applications for legal assistance must be dealt with on a local level. To ensure consistency, criteria must be clear and their application monitored by the

Legal Services Commission. There must be sufficient flexibility to meet urgent needs without delay.

(e) Eligibility criteria must be linked to an inflation index. Rules on levels of income and allowances should be set down in regulations, rather than the Legal Services Act, to make for easier reviews.

(f) The "user pays" philosophy is incompatible with the concept of state-funded legal services. These services are provided by the state because people cannot afford to pay for them. Requiring a contribution from people towards those services in most situations is unrealistic.

2. Eligibility criteria

2.1 We recommend that the Legal Services Commission be given responsibility for setting levels of eligibility, and be placed under a statutory duty to carry out a full annual review of those criteria. It will determine the most efficient, cost-effective and accountable method of processing applications for legal assistance. No application should be refused without first being screened by a panel which has a majority of non-lawyers. Vetting or 'taxing' of lawyers' fees should continue to be the responsibility of the District Law Societies. Legal assistance for Maori Land Court and Waitangi Tribunal applications should be dealt with by the Maori Legal Service.

2.2 Application forms should require only the minimum relevant information, in a simple, sensitive and appropriate way. All paperwork should be available in all languages likely to be required.

3. Eligibility levels

3.1 We recommend that the following services be available free:

(a) Basic information and educational resources;

(b) Advice from community based sources including Legal Services Centres, para-legal workers and legal wananga, with people encouraged to make a koha or contribution;

(c) Services at the police station, those currently provided by the duty solicitor, and the initial consultation with the public advocate prior to the defendant's first appearance in court;

(d) Legal advice from lawyers, public advocate services, and legal aid for civil cases for people in prison and psychiatric institutions, children in substitute care, social welfare beneficiaries, the unemployed, superannuitants with no other income, victims of violence, and cases involving government departments.

3.2 We recommend that eligibility tested services be provided for legal services not falling within the above categories, including public advocate, civil legal aid and tribunal cases. Clear but flexible criteria must be devised. Consumer participation in setting a reasonable base-line level of disposable income, inflation indexing and constant reviews is essential to avoid the demeaning effects of means-testing.

3.3 However, income testing would not guarantee to provide for all those sectors whose needs we have identified as having priority. To remedy this we recommend alternative criteria, adopting the approach taken by the 1984 British Columbia Task Force:

"Where an individual would not be eligible under these criteria, they will still be eligible where the applicant:

"(i) cannot obtain the needed services from another source;

(ii) agrees to make a financial contribution, where possible;

and

(A) has ethnic, cultural, linguistic or other special needs;

(B) is geographically isolated from legal services;

(C) has a case where the Legal Services Society has decided that the outcome could benefit individuals, the majority of whom would be financially eligible, and has determined that the case would not proceed without its involvement;

(D) is physically or mentally disabled and thereby unable to obtain legal services elsewhere; or

(E) is a member of a non-profit group or organisation, where the services are determined to be in the interests of individuals, the majority of whom would be financially eligible."[64]

3.4 We reject a test based on the merits of each case as too subjective. Instead, a panel including eligible consumers should consider applications for cases suspected of being frivolous.

3.5 Those in the low to middle income bracket above the disposable income level for free legal services can be financially crippled by legal costs. We rejected proposals for a direct subsidy collected by and paid to lawyers, similar to subsidised health care from medical practitioners. A scheme along the lines of health insurance, where clients pay the fee and then apply for a refund, was considered too complex administratively. Our recommendation is for a graduated scale of contribution depending on the level of the applicant's disposable income. Such a scale, with a fee of $1,000, would look something like:

Disposable Income	Rate of Contribution	Maximum Contribution
Base Eligibility Level ..	NIL	NIL
1st $2,000	50%	$1,000
2nd $2,000	60%	1,200
3rd $2,000	70%	1,400
4th $2,000	80%	1,600
5th $2,000	90%	1,800
6th $2,000	100%	2,000

3.6 Payment in instalments should be provided for where necessary. Contributions should be channelled back to the legal services fund, rather than the consolidated fund as at present.

4. Maori Legal Service

4.1 The Runanga Tikanga Maori/Maori Lore Commission should set the eligibility criteria for the Maori Legal Service, and for assistance before the Maori Land Court, Planning and Waitangi Tribunal. It follows from the commitment to retention of Maori land, that such land should not be counted as an asset when eligibility is assessed.

5. Groups

5.1 Excluding groups from eligibility deprives Maori, other communities and public interest groups of the right to representation. Legal aid should be extended to groups, and to representatives such as Trustees, under the special terms outlined above. Appropriate criteria would need to be considered by the Legal Services Commission.

6. Contributions

6.1 As we received no specific objections to the present initial contribution of $25 levied on those granted civil legal aid, we propose to retain it for purely pragmatic economic reasons. Provision would be made for waiver in the case of those categories for whom legal aid is available as of right.

6.2 The 1981 Link report claimed overwhelming support for a fixed application fee for criminal legal aid. But the report largely reflected the views of people in authority positions within the legal system. In 1985 the Justice Department observed that a $10 contribution *"could well be controversial. There may also be difficulties in determining what is to happen where a defendant is granted criminal legal aid but fails to make the initial contribution, particularly in relation to section 13A of the Criminal Justice Act."*[65]

6.3 We find an initial contribution for criminal legal aid unacceptable in principle. The majority of recipients are beneficiaries or unemployed. Many will simply be unable to pay at the time of application, and therefore not apply for legal aid and plead guilty. To allow later payment and/or a discretion to exempt people from payment would involve collection costs which may well exceed the amount of the contribution making it uneconomic as well as unjust.

7. Fees

7.1 We recommend that the Legal Services Commission investigate the possibility of allowing tax relief for legal fees to those on moderate incomes, who have not received legal aid. A tax incentive scheme encouraging lawyers to establish practices in uneconomic areas also merits serious investigation.

3. FUNDING

1. Recognition of Economic Realities

1.1 The present legal aid system promises to be a continuing drain on government funds, and will do nothing to wean people from their dependence on costly and disempowering lawyers' services. The legal services system proposed in this report aims to combine effective short, medium and long-term legal services; a rationalised unbureaucratic structure under community control; and cost-efficiency.

1.2 We have been mindful throughout of economic constraints, and have rejected potentially extravagant options. While we recognise that the proposed new services will require some additional funding, this must be viewed realistically in light of the available options. If the current reliance on private lawyer based services continues, and fees are raised to reflect market levels, the cost will be enormous and limitless. This Report's proposals should be highly economic by comparison. By building legal self-reliance, and fostering community based processes the demand for expensive lawyer-based services will be minimised, and the overload on formal court and law enforcement agencies reduced. It is only through this process that we have a chance of building a truly bi-cultural system which guarantees access to justice for all.

2. Funding Principles

2.1 Funding of legal services in this country has always been grossly inadequate, and dominated by private lawyer-based civil legal aid. New Zealand's expenditure on legal aid, and the proportion spent on criminal compared to civil, is far below that spent in other countries. Figures provided by the Access to the Law discussion paper show that in 1981/82 New Zealand spent 17 percent of its total legal aid budget on criminal legal aid, and 67.5 percent on civil. This is compared to England where 43.5 percent was spent on criminal, and 37 percent civil. Expenditure on legal aid per person in New Zealand in 1979-80 was $1.30, while England spent 2.43 pounds, and Australia $3.31, per person.[66]

As the Chief Justice of India in his report on access to justice observed: *"The lack of finances for the legal services programme is largely a consequence of the low priority which it enjoys in economic planning. Once it is realised that legal aid and advice is an*

essential tool for an acceptable framework of equal justice in our society, the argument of lack of resources is bound to recede into the background."[67]

2.2 We propose that future funding for legal services should be based on the following principles:

(a) Recognition of te Tiriti o Waitangi, and Maori as tangata whenua, carries with it an obligation for full funding of programmes which actively promote Maori self-determination;

(b) Control over funding policy, eligibility and distribution must be independent from government and those with vested interests in the provision of legal services;

(c) A high quality service should be sought at minimum cost, without stigmatising or demeaning consumers who cannot afford to pay for justice;

(d) Legal services are an essential social service, and are incompatible with the "user pays" concept. Government must carry the primary responsibility for ensuring access to justice, including the funding of a wide variety of legal services, independent from government control;

(e) The direction of legal services funding must be determined by the needs of the consumers of legal services, rather than the demands of the legal profession for profit and status;

(f) Funding of negative outcomes must be replaced by funding for positive programmes, to raise people who are currently dependent on legal services from their marginal economic and social position;

(g) Legal services must be planned with medium and long-term development in mind, as short-term economic expediencies ultimately prove wasteful in human and financial terms.

3. Community legal services

3.1 Government spending on legal services has been almost exclusively directed to traditional lawyer-based legal aid, at the expense of all other legal services which serve a large sector of the public. In 1985/86 out of a gross expenditure on legal aid services of almost $14 million, the Justice Department spent only $109,000 on community legal services.[68] Time which should have been spent on providing legal services was then spent by community based programmes on finding funding.

3.2 As lawyers' fees increase, there is a real danger of this imbalance continuing. A minimum proportion of funding should be provided for non-lawyer legal services, with an emphasis on programmes promoting legal self-reliance. These services are not expensive, especially when compared to lawyers' services. Failure to adequately resource them will seriously undermine their impact and potential to reduce costs of lawyer-based services in the future. However, any money saved through community processes, or through use of salaried lawyers, should go back to legal services. Community based services must not be used as a cost-saving device, forcing communities to fall back on their own meagre resources.

3.3 The Legal Services Commission should investigate standard funding formulae for specific services or programmes. This will provide certainty and equity of funding, but must also ensure sufficient flexibility to respond to local priorities on resource allocation. Grants should be paid in full at the beginning of any year, so programmes are not forced to run on "credit". Salaries of para-legal workers, community workers, and administrative staff should be paid according to the appropriate state services salary scale.

3.4 Specialist legal centres, such as Mental Health, Women, Welfare, Workers, Pacific Islands, should be jointly funded by the relevant government department and the budget allocation for Justice.

4. Maori legal services

4.1 A significant proportion of total funding must be provided for Maori Legal Services and other areas of law specifically affecting Maori people. We note that the Aboriginal Legal Service receives 17 percent of the Australian Federal Government legal aid budget,[69] The rights of Maori people as consumers of legal services must be recognised through guaranteed Maori input at all stages of decision-making.

4.2 We endorse the principle that funding should be redirected from negative to positive outcomes, as set out by the Maori Economic Development Commission:

"The estimated cost of direct negative funding by the Department of Justice for 1985-6 is $45.1 million, and the Police Department $40.3 million. . .

The major reasons of the high cost of direct funding for Maori people are the high costs for custodial sentencing and the disproportionately high (52 percent of all inmates are Maori people) numbers of Maori people receiving custodial sentences. . . Disproportionately high representation in prisons is a symptom of Maori under-development. Unless the causes of Maori under-development are addressed, offending rates among Maori people are not likely to change. More resources to cope with the symptoms of Maori under-development will continue to be required so long as resources are denied to enable Maori people to move from under-development to independence and self-reliance. . .

The cost to the State on the basis of 5 major Departments for 10 years 1985-86—1994-95 of direct negative funding of Maori people and Maori subsidisation through under-representation is $3,737 million. . . The average annual increase in negative funding from 1985-86 to 1994-95 is $1.8 million due to increasing costs associated with custodial treatment in institutions of Maori people.

Continuation with negative funding of the order indicated in this report will reduce the State's ability to provide funds to positive Maori development. The point that needs to be realised is that expenditure on proposals for positive Maori development needs to increase, to obtain a long term and permanent reduction in State expenditure for negative Maori outcomes. The funds to promote positive Maori development can arise through increased taxation or reduction in other expenditure programmes. State funds address the symptoms of Maori under-development rather than the causes which perpetuate negative Maori outcomes. In effect therefore, redeployment of resources needs to occur from programmes that compound negative Maori outcomes to proposals that enable positive Maori development."[70]

4.4 We propose that the Runanga Tikanga Maori Lore Commission be funded by an initial lump sum grant, which would be invested and drawn upon at the discretion of the Runanga/Commission. This would ensure autonomy and Maori control over the development of the Runanga/Commission, and certainty of income irrespective of fluctuations in government policy and funding. A sum of around $15 million was seen as a realistic base from which the Runanga/Commission could operate effectively without having to draw on capital. This would be used to fund all the Runanga/Commission's operations except the Maori Legal Service. This is not an unreasonable sum when viewed in the context of government's recent commitments to capital expenditure, such as $50 million for a new courthouse in central Auckland. We see it as proper that government money which had its origins in Raupatu lands should now be used positively for the benefit of Maori people.

4.4 The Maori Legal Service is intended to be self-financing as far as possible. Any short-fall should be funded by the government as a legal service, through the Rununga Tikanga Maori/Maori Lore Commission. This should not be viewed as a new service which may involve added expenditure, but as a long overdue move to provide Maori people with equal legal services for matters arising in both Maori and Pakeha legal forums.

5. Criminal legal services

5.1 Funds spent on criminal legal services are insignificant compared to those spent on prosecution, judges, 'corrections' and policing. As the Access to the Law discussion paper observed, in relation to public advocates, *"A scheme as comprehensive as this will cost more than the present allocation to criminal legal aid. However, proportions spent overseas show the level here has been kept unusually low, due largely to the rate of payment to lawyers for criminal compared to civil legal aid."*[71]

5.2 Without genuine financial commitment public advocates would suffer from the same inadequacies as the present system. Sufficient funds must be available to obtain and retain committed public advocates, support staff and community workers; contract private lawyers where necessary; and provide simple but good working conditions. We believe this will provide value for money, and produce long-term benefits which far exceed those attainable through the present approach.

5.3 The Law Society and a number of lawyers have advocated merging civil and criminal legal aid schemes, paying all lawyers at civil rates (85 percent of private fees). However, as lawyers' costs constantly increase so would the legal aid budget, without any corresponding increase in legal services. By proposing a salaried Public Advocate service, paid on state services salary scales, we aim to reach a balance between appropriate payments and managed expenditure. This will be assisted by extensive use of non-legal personnel. However, their value must also be recognised by paying appropriate salaries under the state services scale. The unresolved question remains the amount to be paid to private lawyers who continue to provide some criminal legal services to the Public Advocates office. We believe this is a matter which the Legal Services Commission and the New Zealand Law Society will need to resolve urgently, consistent with the general and funding principles outlined in this report.

6. Lawyers' fees

> *"A constant cause for concern was the level of expenditure on private lawyer civil legal aid as a proportion of the total legal services budget and as the most rapidly increasing cost. This is linked to both the high rate of payment to lawyers based on fees to private clients (85 percent) which continually increases along with lawyers' private rates; and to the absence of any ceiling on the maximum fee paid to lawyers in such cases. Unless these two factors are addressed the drain on the total budget of civil legal aid will continue to the detriment of other preventive and community based services."*

6.1 There is a tension between the need to pay lawyers sufficient to ensure they continue to provide a good quality legal aid service, while keeping expenditure on civil legal aid in proportion with other legal services. There is unfortunately no simple solution. Reducing the percentage of fees paid to lawyers would only provide a short-term monetary benefit, and would draw hostility and possible withdrawal of co-operation from the legal profession. The possibility of setting a scale or ceiling on civil legal aid rates should be given urgency by the Legal Services Commission, in consultation with the New Zealand Law Society. Ultimately, a major reduction in civil legal aid costs will only be achieved by simplifying legal procedures, reducing the need to rely on lawyers and supporting people to deal with their own legal problems.

7. Environmental legal services

7.1 The Environmental Defenders Office should be jointly funded by the Ministry for the Environment and the budget allocation for Justice.

7.2 We propose that this be supplemented by a development levy to be imposed on all major projects which interfere with the environment. This levy would be used specifically to fund the Environmental Defenders Office and provide grants to communities trying to rebuild their environment.

7.3 The Environmental Council fund for project-specific grants to community environmental organisations needs expansion. It should be administered through the Environmental Defenders Office. The office would assess the merit of applications, the distribution of project-specific grants and provide direct assistance with legal, planning and technical advice.

7.4 In addition, the Maori Secretariat of the Ministry of the Environment must have a significant budget allocation for grants to Maori groups wishing to take cases or lodge objections to protect their taonga.

8. Subsidies

8.1 There is a serious lack of lawyers in areas unprofitable for private practice. Some of these will now be provided through para-legals and Legal Services Centres. However, encouragement should be given to lawyers who wish to set up practice in remote or depressed areas. In particular, support should be provided for Maori lawyers returning to rural areas. The Legal Services Commission should consider providing lawyers along similar lines to those doctors supported by the Health Department to enter practice in areas of special need.

9. Legal insurance

9.1 Legal insurance may provide for the needs of middle class consumers in the same way as other schemes such as health insurance. There would, however, be difficulties with the limited size of the New Zealand population. Legal service needs are not actuarily calculable and coverage offered would be likely to have a very restricted scope. As with health insurance it would not be available to the poor and may result in even greater inequalities in access to justice.

10. Interest on Solicitors' Trust Accounts

10.1 There is very strong feeling that the interest on solicitors' trust accounts, currently retained by the banks, should be used to supplement government funding for legal services. This is done in Australia, and parts of Canada and America.[72] Decisions have been sought from government on the use of this potential source of funds for the past decade, but none have been forthcoming.

10.2 Clearly such interest belongs foremost to solicitors' clients, and wherever possible should be returned to them. However, it is not feasible to require all interest to be returned to clients. Even where it would be, the extra banking and administration charge may make it not worthwhile.

10.3 We recommend that a feasibility study be urgently carried out to establish the amount available from interest on solicitors' trust accounts. This should take into account loss to government of tax revenue currently paid by banks on profit from free use of solicitors' trust accounts. We stress that this interest must not be used as a replacement for government funding.

11. 'Legal Services' Levy on Stamping Transactions

11.1 As a further supplement to the Legal Services Commission budget, we recommend a special 'legal services' levy should be placed on all stamping transactions, and paid directly to the Commission. The levy would be imposed on transactions above a certain value and below a maximum level. These limits should be set down in regulations and regularly updated.

11.2 Such a levy has several advantages. The upper and lower limits of its application ensure that it is not imposed on those who cannot afford it, nor is it excessive when imposed on those who can. It also provides a separate fund earmarked for

legal services. This can act as a safeguard against future retrenchments of the legal services budget, as is currently happening in the United States. It is stressed that the present budget must not be reduced in the light of this new source of revenue.

This approach has been adopted in the new Indian Legal Services Bill:

"The State Government may also levy and collect a cess for the purpose of legal services programme. The cess would be payable by every person making an application or appeal before any tribunal, local or other authority or administrative agency, at such rate not exceeding one percent of the amount or value of the subject-matter in cases where it is capable of valuation, and in other cases, not exceeding the fee payable on such application or appeal as the State government may by notification specify. But in no case would the cess payable by any person in relation to any application exceed R100 ... (The cess) would be paid by the Government to the State Board for being utilised for purposes of legal services programmes."[73]

12. Administration of Funding

12.1 The Legal Services Commission should have overall responsibility for policies on funding. Details of funding allocation should be decided on a regional level to ensure flexibility and responsiveness to local needs. Members of the regional allocation committee must be representative of the potential consumers of those services, and be nominated and selected by their communities.

12.2 All control, finances and resources for programmes aimed specifically to benefit Maori people must be in Maori hands.

12.3 The Legal Services Commission, in consultation with the Law Society, should determine the level of payment for private lawyer based criminal and civil legal aid, and encourage competitive rates. Pay rates and eligibility must be reviewed yearly, along with eligibility criteria, to avoid the danger of the present situation where both become grossly outdated.

4. IMPLEMENTATION

1.1 The Legal Services Advisory Committee will monitor the progress and process of implementing the proposals in this Report, in consultation with people and groups in local areas who have taken an active part in bringing the report into being.

1.2 We have not placed priorities on any of our recommendations, as we view each legal service as part of a network which can only operate effectively as a whole. Nor do we support the concept of pilot schemes to test their viability. These delay implementation of major changes, and require other interim measures to deal with short-term concerns. Little would be gained from pilot studies which cannot be gleaned from experience with such programmes elsewhere.

1.3 However, we are concerned that programmes are not put into operation without the appropriate resources, training and support in place. Services which are launched without the necessary groundwork place unfair burdens on workers, are easily discredited and are often doomed to fail.

1.4 The appointment of the Legal Services Commission and its Secretariat must take place immediately the Legal Services Act is passed. Delays will mean the prolonged existence of a fundamentally defective system of access to justice, and will profoundly disillusion those communities who expect so much to result from this Report.

SUMMARY OF MAIN RECOMMENDATIONS

(a) These proposals aim to combine effective short, medium and long-term legal services; a rationalised unbureaucratic structure under community control; and cost-efficiency.

(b) A Legal Services Commission should be established to make policy, and to co-ordinate and administer legal services. Its membership should reflect eligible client

communities, and largely comprise representatives of Regional Legal Services Committees. Its operation, staffing and administration should be bi-cultural, appropriate, community based and monitored, and non-bureaucratic.

(c) Criteria for eligibility should be standardised, cost-effective, consistent, inflation indexed and regularly reviewed. They should be set and annually reviewed by the Legal Services Commission, who should also establish a procedure for processing applications for legal services. The Law Society will remain responsible for vetting lawyers fees.

(d) Legal services should be available on the following basis:

(i) Community legal services and services of the public advocate (prior to pleading) should be free for all;

(ii) Legal advice from lawyers, services of the public advocate, and legal aid for civil matters will be provided free for people within specified categories;

(iii) Clear but flexible eligibility criteria should apply in all other cases. This will be based on income testing, with exceptions in cases of priority need which meet specified criteria. A graduated scale of contributions is proposed to meet the needs of low to middle income earners, whose disposable income is above the basic income level set by the Legal Services Commission.

(e) Basic principles for funding these proposals should be: priority funding for programmes providing justice for Maori as tangata whenua; community control of funding, independent of government and lawyers; quality and economy; incompatibility of "user pays" with legal services as an essential social service; redirection of legal services funding to redress the imbalance towards lawyer-based services by emphasising legal literacy and self-reliance programmes; funding of positive in place of negative outcomes; and long-term planning.

(f) The Runanga Tikanga Maori/Maori Lore Commission should be provided with an initial sum of $15 million, for it to invest and draw from in its operations. Maori Legal Services aim to be largely self-financing. This should be viewed as part recognition of the debt owed by the State and the Pakeha for building this country on the proceeds of Raupata lands.

(g) Costs of the operation of the Legal Services Commission itself must be minimised to ensure that funding is used on provision of legal services rather than administration.

(h) Supplementary sources for funding should include:

(i) Interest on solicitors' trust accounts;

(ii) A 'legal services' levy on all stamping transactions above a certain value, within minimum and maximum levels.

(i) The Advisory Committee on Legal Services will monitor the progress and process of implementing this report.

TABLE 1

Dispositions of Minor Offences—Penalties Less Than $500 Fine[1]

Result	Disorder	Language	Cannabis [2]
Dismissed	385	143	705
Discharged w/o conviction	103	26	78
Convicted and discharged	201	156	184
Come up for sentence	93	40	189
Order [3]	5	–	519
Fine:			
$1–19	26	3	
$20–49	270	383	
$50–99	1,015	488	
$100–199	797	247	3,769
$200–299	221	40	
$300–399	47	3	
$400–499	35	1	
Total penalties under $500 fine	3,198	1,530	5,444
Total charges	3,384	1,567	6,423
Percent total charges/under $500 fine	94.5%	97.6%	84.5%

[1] Figures drawn from latest published Justice Department statistics 1983, Tables 1 and 12.
[2] Includes use of cannabis, possession of cannabis and of instrument for use of cannabis.
[3] Usually orders for confiscation of evidence; likely to be accompanied by an additional penalty.

TABLE 2

Dispositions of Non-Traffic Charges (District Court)—Penalties Less Than $500 Fine[1]

Result	No. of Charges	Percent Total Charges (121,062)	Percent Total Convictions (100,148)
Dismissed and withdrawn	18,857	15.5	
Discharged w/o conviction	2,057	1.7	
Convicted and discharged	5,179	4.3	5.2
Come up for sentence	3,960	3.3	3.9
Fine under $500	50,632	41.8	50.5
Total penalties less than $500 fine	80,685	66.6	59.6

[1] Figures drawn from latest published Justice Department statistics, 1983, Tables 1 and 12.

TABLE 3
Current Expenditure on Legal Services

	1983/4	1984/5	1985/6	1986/7	1987/8	1988/9
Criminal legal aid	1,805,600	2,089,100	4,200,198	7,343,000	8,187,000+	9,284,000+
Duty Solicitor	502,900	528,600	659,383			
Child Advocate	–	41,179	80,000 ?	?	?	?
Civil Legal Aid	4,210,900	5,252,900	6,858,603	9,614,000	12,828,000	17,119,000
Counsel for the child	1,006,989	1,377,754	1,837,729	?	?	?
Community law centres	–	98,134 [1]	100,000 [1]		?	?
Law related education	9,000 [2]	9,000 [2]	9,000	18,000 [3]	?	?
Maori Land Court Special Aid Fund [4]	5,000	5,000	5,000	?	?	?
Waitangi Tribunal	–	–	–	?	?	?
Total known expenditure	6,533,400	8,023,913	13,749,913	19,000,000 +	21,015,000 +	26,403,000+

[1] paid to 4 community/neighbourhood law centres
[2] budgeted but not paid out
[3] one grant to outside group
[4] From 'Vote: Maori Affairs'

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