

CHAPTER 7

RELATIONS BETWEEN WAIPAREIRA AND THE CFA

7.1 BACKGROUND

In chapter 6, we noted that Waipareira's venture into social service delivery started well. The old DSW provided significant funding to the trust in 1991–92, on terms that allowed the trust to pursue its vision of community development and which confirmed the trust's expectation that Te Whanau o Waipareira would benefit from the devolution of Government programmes to 'iwi authorities'.

The CFA was established in mid-1992, and, because its first full year of operation was very busy, in the 1992–93 year funding contracts were essentially rolled over at previous levels.¹ The agency's first task was to get its management systems in place, recruit staff, and get its area teams up and running. As it battled to its feet, it encountered a series of changes to the Government's fiscal reporting requirements – POBOCs were redefined and regrouped as NDOCS (see sec 6.2.2) and input contracting (eg, payments for community workers or facilities to be used as the community thought best) was changed to output contracting (the purchase of a specified quantity or quality of services). During that hectic first year it was developing its needs assessment and services planning procedures, but there was not enough time for a full round of consultation with community groups.

However, right from the advent of the agency, it became clear to the trust that there were several major changes in the CFA's approach, compared with that of the old Department of Social Welfare, which, from the trust's point of view, denigrated the trust's history, its status, and its vision for the future. The trust's main problems stemmed from the CFA's lack of recognition of the trust's rangatiratanga and the resulting lack of consultations with the trust, the CFA's operational policy of devolution to outreach workers, and its style of service development; all of which crystallised as a lack of opportunity for the trust's input to the CFA's needs assessment and services planning processes. These problems were aggravated by administrative and communication failures. Their differences came to a head over the agency's assessment of:

- (a) the needs of the trust's beneficiaries, and how to weigh them up against those of other communities;
- (b) what style of service delivery best meets their needs;

1. There was some dispute between the parties over the exact amount of CFA funding to the trust in 1992–93.

- (c) what type of service provider best meets the needs of the trust's beneficiaries; and
- (d) the level of service the trust's beneficiaries were entitled to, in particular the level of CFA funding for services.

The trust saw these as questions of who knew best what its community wanted, and how their aspirations could best be achieved. These were matters of rangatiratanga. The CFA's focus was on equitable funding, and it saw the trust's challenges to its decisions as bids for an unfair share of limited funds. The CFA assumed that if equitable funding was allocated to Maori groups, then its funding policies and procedures were consistent with its Treaty obligations, which in the case of Waipareira it saw as arising from article 3, and specifically from the guarantee of equal rights of citizenship.

Once such differences between the parties became apparent, the trust said they should be resolved by negotiation as between Treaty partners who shared power. The CFA's response was to defend its consistent funding policies and decisions on the basis of the integrity of its decision-making processes and, when the trust would not agree with it, the CFA asserted the Crown's Treaty right to govern and make decisions.

The trust's challenges to the CFA's funding *policies*, and the CFA's responses (or lack of responses), therefore led to further disputes between them over how the CFA managed its relationship with the trust. The CFA was accused of being poorly structured and managed, unresponsive, and of communicating poorly, all of which denied the trust effective input to its policy-making and breached the Crown's Treaty duty to protect the trust's rangatiratanga.

Finally, there were other disputes in which the parties disagreed on the facts of the matter, or which seemed to the Tribunal to be matters of carelessness or discourtesy aggravated by the poor relationship between the parties.

Thus there were profound differences between the parties as to how social welfare programmes should be designed and implemented, and the differences could not be resolved because of their divergent views over the trust's status as a Maori group under the Treaty of Waitangi.

A great deal of detailed evidence was presented on the parties' interactions and how they were understood on each side. Clearly, both the trust and the agency learned a great deal about one another in the process, and it is to their credit that as a result of the hearings the previous stand-off seemed to give way to greater optimism and commitment to a more constructive future relationship.

Having studied all the evidence in depth, we do not consider it fruitful to embark on a full account of each transaction and event in the short history of the dealings between the CFA and Te Whanau o Waipareira Trust before this claim was lodged. Instead, in this chapter, we outline a sequence of events, highlighting some significant misunderstandings and differences between them, which support the opinion of Mr Takerei, a CFA outreach worker, that the trust and the agency 'were on two different ships' at times; and which underline that Te Whanau o Waipareira was a square peg that did not fit into the round hole envisaged for it by the CFA.

7.2 DEVELOPMENT OF IWI SOCIAL SERVICES

7.2.1 Section 396 of the Children, Young Persons, and Their Families Act 1989

Under section 396 of the Children, Young Persons, and Their Families Act 1989, the Director-General of Social Welfare has power to approve any incorporated body established by an iwi as an 'iwi social service', previously called an 'iwi authority'.² Section 396 also empowers the director-general to approve an incorporated body established by one or more cultural groups which are not iwi as a 'cultural social service'. These powers have been delegated to the general manager of the CFA.

A feature of the Act's regime is that the Family Court can award sole guardianship of a child or young person to an approved iwi social service (or a 'cultural social service') without inquiry into its fitness for that responsibility. By contrast, a child and family support service – which is what the trust is approved to be – can ordinarily be awarded only joint guardianship (with the Director-General of Social Welfare or with a parent) of a child or young person.

Before it could approve the first 'iwi social services' under section 396, the agency had to develop policy to inform the approvals process. This work highlights the agency's, and the department's, understanding of both the Treaty relationship between the Crown and Maori and the recommendations made in *Puao-te-Ata-tu* which inspired the 1989 Act.

7.2.2 Rangatiratanga over children

The Director-General of Social Welfare explained how the approval of iwi social services as bodies able to be awarded sole guardianship of children had much broader implications in terms of the principle of rangatiratanga:

I see it as empowering Maori to have control over their own destiny, and that probably what we are doing with the approval of iwi social services is moving beyond what we have ever done before. . . . we're moving into a very exciting era in this country by handing the guardianship of children back to the iwi. I think that that is quite fundamental in terms of rangatiratanga, and I see that that's the hub of it.

What we are also looking at, though, is what else we are doing that can be handed over to Maori, and we've got the social workers in the Children and Young Person's Service looking . . . to give – the first two iwi we're working with are Ngati Porou and Ngati Ruanui. So in those two areas we've got the staff looking at what else . . . those [two] iwi could do and discussing with them what they would want to do and if there are things they see that they could be doing, and we see that when we get agreement, then we wouldn't be doing those things any more, and we won't have the resource any more . . . we will have given all the resource to Ngati Porou and Ngati Porou would look after Ngati Porou people.

So that's how I see it working . . . – we're not just giving lip service to it, we're working to really give self-management, the right to organise, to control their resources

2. An amendment to the Act late in 1994 changed the terminology to iwi social service, in response to Maori concerns about the connotation of the term 'iwi authority' (see s 2(5) Children, Young Persons, and Their Families Amendment Act 1994).

as their own to the iwi; and I believe that, as our staff do, that we're working on some very exciting trendsetting developments that are right at the cutting edge of handing resource from the State to the iwi, and really giving substance to the principle of rangatiratanga.³

She also explained that the devolution of social and welfare services to iwi was negotiated on a case-by-case basis:

it's section 396 in the Children, Young Persons, and Their Families Act that is the legal framework for what we're doing, and we haven't done it yet. We are right in the middle of talking with the two iwi to work out how we're going to do it because we're – it's very much a partnership in developing what we're going to do and it will be different for every area. We don't see that we're going to get a pattern for Ngati Porou that's then going to be applied everywhere else because it will be whatever is appropriate and required in each area, and that's what – where I believe this sovereignty of iwi becomes – is fundamental to it. But it is not something that has been driven in a blanket form from Wellington . . . It's being done at the local level.⁴

7.2.3 Trust aware of potential

The powers that an iwi social service may be awarded, to exercise sole guardianship over Maori children, represent a recognition in law of an important aspect of the rangatiratanga which the trust claimed to exercise. From the correspondence it is clear that the trust, too, saw recognition as an iwi social service under the Children, Young Persons, and Their Families Act as a direct way to establish itself as a 'Treaty partner' of the Crown, and to gain acknowledgement of its status from the CFA. The trust wanted to get out of 'the queue for handouts' from the CFA, and negotiate directly with the agency appropriate levels and terms for funding (as it had done previously with the Departments of Maori Affairs and Social Welfare under the policy of devolution).

7.2.4 Problems foreseen by DSW

It is apparent that, long before this claim was brought to the Tribunal, the department had foreseen difficulties arising from the director-general's power (delegated to the general manager of the agency) to approve iwi authorities and social services, and that Te Whanau o Waipareira had been active in putting its views on the matter.

7.2.5 The trust's application to become an iwi social service

In February 1993, Te Whanau o Waipareira Trust applied under section 396 of the Children, Young Persons, and Their Families Act 1989 to become an iwi authority, as it was then called.⁵

3. Transcript 4.2, pp 19–20

4. Ibid, p 20

5. Paper 2.50, para 1

Before it applied to be an iwi authority, it is evident from correspondence between the trust and the department that the trust had given considerable thought to the matter and was perturbed by the department's view of the essential attributes of an iwi authority. On 5 June 1992, Mr Tamihere wrote to the northern regional manager of the CFA, requesting:

urgent clarification over your perceived definition of an Iwi Authority [on the grounds that] it is quite important from our perspective that a number [of] your advisors obtain some clarity in dealing with organisations of our ilk.⁶

The letter also includes the statements:

It is submitted that Te Whanau o Waipareira is an iwi authority because it services the iwi within the West Auckland region. It does not differentiate on whether the iwi are Ngati Porou, Tuhoe, Ngati Whatua, Tainui or otherwise. I respectfully suggest to you that a common sense appraisal must occur. The Runanga a Iwi Act has been repealed and Te Whanau o Waipareira is a response of the Maori to articulate, advocate and facilitate the better and more meaningful direction and targeting of limited resources to a client base that clearly demonstrates a need to be serviced. If we are not an iwi, Hoani Waititi is not a marae.⁷

7.2.6 Call for debate

The later paragraphs of the letter state that the appropriate place for the debate on whether the trust is an iwi authority in the West Auckland area is on 'our Matua marae', Hoani Waititi. An invitation to debate the issue on the marae is extended to the regional manager and those of her advisors who differ with the trust's view of its philosophy and role. The letter continues that if 'certain people' are still not happy with that, they can refer the matter to the Waitangi Tribunal which, it is said, has powers relevant to cross-claims to refer it to the Maori Land Court where it can be determined. Mr Tamihere made plain the strength of his views when he concluded the letter in this way:

In effect, what I am submitting to you is that the Maori can sort the Maori problems out, the mechanisms and systems are there, just kindly allow us to get on with the job rather than having some advisors leading some of your senior managers into acting like schizophrenics.

I look forward to your responses to this issue because unless it is resolved very quickly friction will occur. It is preferable that the matter is addressed by way of a consensual round of talks and we have a preference for this.⁸

6. Document A19, app 9.2, p 1

7. Ibid, p 2

8. Ibid

7.2.7 Criteria for recognition spelt out

Near the time when the trust applied for recognition as an iwi authority, Mr Tamihere wrote to the general manager of the department's Social Policy Agency, requesting information under the Official Information Act about the origin of the department's policy on iwi and Maori and about the application of that policy to the approval of iwi authorities. The response, dated 24 February 1993, states that the department's policies in regard to iwi and Maori are influenced by *Puao-te-Ata-tu*.⁹ After discussing key objects and principles of the Children, Young Persons, and Their Families Act 1989 as well as recommendations and comments made in *Puao-te-Ata-tu*, the letter concludes by referring to an attached memorandum written in August 1992 by the former chief executive officer of the department:

This internal memorandum, along with *Puao-Te-Ata-Tu*, Ka Awatea and the recent report of Ken Mason et al, on the Ministerial Review of the CYP&F Act are documents which serve as reference material to the policy project. The latter reports are specifically what leads Social Welfare to form its view about Iwi Social Services approval being restricted to traditional tribally based Maori peoples. . . .

It is important to note that the proposal for approving Iwi Social Services has not been developed unilaterally. I would refer you to the report itself, [the Social Policy Agency's draft report to the Minister of Social Welfare on iwi social services] where the Iwi representatives with whom Social Policy Agency officials met are listed. It is also important to note that *Puao-Te-Ata-Tu*, while being a document that guides Social Welfare in its developing relationships with Iwi and Maori, is also a document that was developed after considerable, and country-wide consultation.¹⁰

7.2.8 Doubts about approval process dismissed

The internal memorandum from the then chief executive officer of the department was written in response to a Social Policy Agency paper dated 10 August 1992 which presented options on the role of iwi authorities (as they were then called) under section 396 of the Children, Young Persons, and Their Families Act. From the memorandum, it is plain that the Social Policy Agency's paper had noted 'a lack of skilled personnel to negotiate with iwi on services to be provided'.¹¹

This was dismissed as incorrect by the chief executive, however, who wrote:

The Community Funding Agency has as complete a services planning and contracting approach as exists and is well placed to provide the necessary skills as indeed it is doing.¹²

Having earlier referred to 'past inaction' within the department in the matter of approving iwi authorities¹³, the chief executive's memorandum concludes:

9. Document B3, app 3, para 1

10. Ibid, paras 3B ff

11. Ibid, app 3 attachment, para 7

12. Ibid

13. Ibid, para 5

In summary the option for approving (and funding) an Iwi Authority under present legislation seems to me to be relatively clear cut. The requirement is to establish with iwi the nature of the conditions which iwi seek to have specified in granting an approval and to reach agreement on these. The work of the Iwi authority might then be funded by Government, by the iwi or jointly. Government funding, which would entail some form of contract, is not in itself essential to approval.

In my view the approach to establishing Iwi Authorities under the law as it stands should be explored with iwi before the need for further legislation is assumed. The inclusion of an option or options outside the Act should arise only if the role of iwi as perceived by iwi cannot be accommodated under the present legislative framework.¹⁴

The draft report prepared by the Social Policy Agency had been ‘circulated to all Iwi Runanga, Maori Trust Boards and a sample of pan-tribal organisations for consideration and comment’.¹⁵

7.2.9 Iwi restricted by law to kin groups

The director-general at the time of the hearings was clear that the department is obliged by law to deal with iwi, in the sense of Maori groups related by kin, as Treaty partners, and she stated that she had received legal advice confirming that view. That obligation was sourced firstly to the terms of section 396 of the 1989 Act concerning iwi social services, and secondly to section 56 of the State Sector Act 1988. The director-general justified her interpretation of ‘iwi’ in the phrase ‘iwi social service’ on the grounds that iwi social services may be awarded sole guardianship of children and young persons and Maori opinion is not at all clear that pan-tribal groups should have that right.¹⁶

The northern regional manager of the CFA added:

I think iwi will take the opportunity to mandate in their own way within their own decision-making okay. Now the assumption I guess that’s running behind this, that because children and young people are seen as taonga, that it would be unlikely for iwi on a kinship basis to confer a mandate for sole guardianship to somebody else – another organisation or somebody who is not kinship linked. That’s an assumption. That assumption is a Pakeha assumption I guess. It’s also an assumption that is built into the legislation which as we heard yesterday came out of the views of Maori at the time. I would not like to presume anything further.¹⁷

The provision in section 56 of the State Sector Act that the director-general referred to – subsection (2)(d)(i) – requires a departmental chief executive to be a good employer by operating a personnel policy that includes provisions requiring the ‘Recognition of . . . The aims and aspirations of the Maori people’.

The director-general and senior agency witnesses emphasised that the preponderance of Maori opinion on this matter of iwi social services favours their

14. Ibid, paras 9, 10

15. Ibid, app 3, p 1

16. Transcript 4.2, pp 3-4, 7-8

17. Ibid, p 154

restriction to kin-based iwi groups. This opinion had been gathered through Maori input to major reviews of Government policy, such as occurred with *Puao-te-Ata-tu*, and by means of the consultative processes of the Social Policy Agency and Te Puni Kokiri: the agencies which have advised the director-general and the agency in this matter. In addition, the department's Maori staff had input into the policy underlying the approval of iwi social services.

7.2.10 Kin-based iwi have special status

The department's view of its legal obligations means that it pays particular regard to the needs and views of iwi in its work. This is not only borne out by *Te Punga* but also, in the particular context of the agency, by the clear focus upon iwi as opposed to other Maori groups in such matters as the development of consultation protocols between the agency and providers, and the consultation that is conducted in services planning. The language used by agency witnesses throughout the hearings of the claim impressed upon the Tribunal their sense of the pre-eminence of iwi amongst Maori groups.

7.2.11 'Dilemma' over pan-tribal groups for Maori to resolve

The department's legal obligation, it was said, poses a 'dilemma' concerning the status of 'pan-tribal' Maori groups, such as the trust, who are virtually certain to be ineligible for approval as iwi social services under the policy developed about those services. However, the department is clear that it is for Maori, not the department, to decide what is an iwi so that, for as long as Maori opinion continues to favour the view that only kin-based groups are appropriate sole guardians of Maori children, the department must 'pick its way through that dilemma'. It was said that even if section 396 was amended so that non-iwi services could legally be approved as the sort of services which may routinely be awarded sole guardianship by the Family Court, that would not be sufficient to persuade the department that it should begin approving such services: 'we would need to . . . have a clear steer from Maoridom that they in fact wished such things as sole guardianship to be given to pan-tribal groups'.¹⁸ In practice, the department deals with the dilemma by recognising the sovereignty of iwi while also dealing with pan-tribal groups, and a host of others.¹⁹

18. Transcript 4.2, p 7

19. Ibid, p 3. It was maintained that its focus on iwi had not caused the agency to fund iwi-based providers more favourably than all other Maori providers. Consistently, it was said that the agency's funding is allocated on the basis of the need established, around New Zealand, for services prioritised by the agency, acting on the basis of the information gathered from communities and from the needs indicator. The general manager did, however, comment that the agency's more concerted focus upon iwi than upon other Maori providers, such as in developing protocols and in consulting, could unwittingly and indirectly have a flow-on effect to their funding (ibid, p 55).

7.2.12 CFA contracts mainly with hapu

The general manager also observed that while agency funding for Maori groups in rural areas goes mainly to 'iwi-based groups', meaning representative bodies established by iwi in the sense of the now repealed Runanga Iwi Act:

we actually contract predominantly at hapu level . . . interestingly.

. . . service delivery seems to occur at an organisational level which is more associated with hapu, and so in terms of the iwi social services project that actually creates quite an interesting dynamic, that we haven't worked through yet, that if you give the approval at tribal level, how do they mandate hapu who are actually probably going to be the service deliverers? But we haven't got there yet but we're very conscious of that potential issue.²⁰

When asked why, in light of the fact that services were mainly delivered by hapu, the agency negotiated for the development of iwi social services with a wider tribal group, Ms Clark replied:

I guess we take our cue from the preamble to the [Children, Young Persons, and Their Families] Act which clearly identifies the need to reassociate . . . children and young people [with] and it specifically identifies iwi, hapu and whanau. If there is a hierarchy then I suppose that will have conditioned our thinking.²¹

7.2.13 Te Puni Kokiri concurs

The Te Puni Kokiri manager who gave evidence confirmed that it is the view of that agency that iwi and hapu alone are in partnership with the Crown under the Treaty of Waitangi and that, as a result, other Maori groups, notably urban groups, do not have the collective rights of iwi and hapu under article 2 of the Treaty but have rights under article 3 of equal access to social services.²²

On the particular matter of which Maori groups may exercise sole guardianship of Maori children and young people, Te Puni Kokiri's view again supported the interpretation of the DSW and the agency. It was explained that, while the Children, Young Persons, and Their Families Act was passed at a time when the meaning of 'iwi' was understood in the light of the Runanga Iwi Act 1990, which was repealed in May 1991, that understanding had continued to inform Te Puni Kokiri's view. Some difficulties with this view were acknowledged, however: 'it does have the danger of putting in rigidity in thinking about Maori – a changing, dynamic Maori reality'.²³

20. Ibid, pp 55, 56

21. Ibid, p 56

22. Ibid, pp 91, 92

23. Ibid, p 112

7.2.14 Iwi, hapu, whanau ‘mantra’

The agency emphasised that the department’s view of iwi and, in particular, their authority over their own children and young people, was supported by all the evidence that exists about the aspirations of Maori, including *Puao-te-Ata-tu*. However, the repetition of the phrase ‘iwi, hapu, whanau’ by agency witnesses at the hearing, and in departmental documents, caused the Tribunal’s expert witness on *Puao-te-Ata-tu*, Peter Boag, to describe it as a mantra. In his view, *Puao-te-Ata-tu*’s long-term aim to strengthen traditional Maori structures by a variety of means (consulting with appropriate Maori groups, actively involving Maori in policy-making, planning and monitoring of departmental activities, and tapping the resources of all Maori as well as Government and business institutions), had become distorted by the narrower and primary focus upon the development of iwi groups as service providers.²⁴

The trust’s view, derived from its knowledge of its own history and its vision for the future, was that *Puao-te-Ata-tu* urged the Government to support whatever groups were responding effectively to the Auckland crisis, which began with the breakdown of family and tribal networks.

7.2.15 CFA recognition limited

In line with the department’s understanding about iwi, the agency’s view of the sorts of bodies which may be approved as iwi social services is made plain by its published documents which state that approval is limited to two types of body. One is an incorporated body established by the tangata whenua of a particular area (ie, the people with manawhenua in that area) and mandated to deliver social services to the children and young persons of that particular iwi. The other is a taura here body – one delivering services to tribal members who live outside the tribe’s rohe or area – which has the agreement of the manawhenua iwi in the area in which the taura here body is to operate.²⁵

7.2.16 Waipareira unlikely to qualify

Although the director-general at the time of the hearings would not pre-empt the matter by giving a definite answer to the question whether the trust would be approved as an iwi social service, she clearly indicated that as the law and Maori opinion stood at present, the trust would not succeed in its application. She said:

there’s a much wider debate which I believe has to be sorted out in Maoridom because a lot of iwi do not agree with pan-tribal organisations serving the people.

... I don’t accept that that [the status of urban Maori organisations] is for a Government Department to resolve. From my position we recognise the sovereignty of iwi and we deal with pan-tribal groups and a host of other groups as well.²⁶

24. Transcript 4.4, pp 22–26

25. Document c1(b)(15), p 5

26. Transcript 4.2, pp 3, 4

Nevertheless, the standards for approval for iwi authorities (now ‘iwi social services’), published by the general manager of the CFA four months earlier, explicitly state that ‘Pan-tribal and Pan-Maori groups are not eligible to apply for Approval as an Iwi Authority’.²⁷

7.2.17 Trust says iwi paradigm does not match reality

The trust says that a policy of approving only kin-based groups as iwi social services divides Maori in a manner which is contrary to the reality of modern Maori life and contrary to the Treaty of Waitangi. It argued that the policy defines modern Maoridom by an iwi-based paradigm which is spurious for two major reasons. First, iwi was never, and is not now, the organisational level at which kin-based Maori communities operate to deliver what Maori would define as social and welfare services. Secondly, many Maori, especially young Maori, do not identify with iwi and those young Maori are over-represented in negative welfare statistics. The right to be fully responsible for their own children and young people is critical to Maori development. The adoption of an exclusive iwi paradigm in this matter is to deny that Maori can be Maori outside that paradigm and to deny Treaty rights to Maori who do not fit within it.

7.2.18 Urbanisation requires recognition of both kin-based and urban groups

In the words of Mr Tamihere:

The Department of Social Welfare has no policy in place to acknowledge and accept the reality that urbanisation has brought to Maori and the manner in which we have had to re-rationalise our position in light of wanting to preserve our Maoritanga.

In reading *Puao-te-Ata-tu* in my respectful opinion Waipareira as a response to urbanisation can be embraced within it. We can be embraced within the wording of any legislation. What needs to be borne in mind is that there must be a will to act in an even-handed fair manner.

I do not wish my comments to be seen as a detraction from the mana of iwi in the traditional sense. They have and will always have a position of great importance to us as Maori. But a policy which practices to ignore the reality we face here in West Auckland on a daily basis for the sake of tribal fundamentalism is a policy which is doomed to fail. As the Deloitte’s report . . . [reviewing child and family support services funded by the CFA, May 1994] notes ‘*the majority of Maori clients do not know their iwi*’ (P 30). To exclude Waipareira from the Treaty paradigm is to exclude the majority of Maori from the benefits guaranteed to them in that document. If the Treaty is truly to have life in our time then it must be capable of adapting to the realities of our time. There is no point in burying our heads in the sand. The reality is that the Treaty, government policy, and the Community Funding Agency are all amply big enough to accommodate both the mana of our traditional iwi and the needs of our people living in a non-tribal situation in urban areas. Both can and must be given a place in the sun. To accept one without the other is to court certain disaster. [Emphasis in original.]²⁸

27. Document c1(b)(15), p 6

28. Document B3, paras 7.2–7.4

7.2.19 How can the ‘dilemma’ be resolved?

Claimant counsel questioned the focus of past consultation and asked how Maoridom generally might be provided with the opportunity to discuss the particular issue raised before the Tribunal: the implications of current policy for non-tribal Maori groups like the trust and for those ‘orphaned and lost’ Maori who do not know their iwi. For them, the reality of being Maori is based on urban life, family or whanau relationships and, if fortunate, the relationship with a wider face-to-face community of Maori people living and working to assist one another. Neither the director-general nor the agency seemed to accept a direct responsibility to generate future opportunities for that discussion, although the CFA’s northern regional manager said that the director-general’s direction to collect statistics on the iwi affiliation of service providers’ clients would have the effect of stimulating that debate.²⁹ While acknowledging the contentiousness of the issue for Maori, and the difficulties for the department in being placed in the position of approving iwi social services, the department’s view was that Maori would decide the matter in their own way and that the department would learn of any change in the preponderance of Maori opinion on the matter.³⁰

Claimant counsel further suggested that a wider forum should have been provided by the agency for Maori service providers in the north-west Auckland area to define the full range of issues arising from the dislocation from iwi of urban Maori youth in the area. If it had been, the understanding of Maori and the agency on the implications of delivery of services by means of iwi social services would have been properly informed. That it was the agency’s responsibility to see the need for that forum and arrange it was said to arise from its unique position of knowing all the Maori ‘players’ or potential players in the north-west Auckland area. Also, from its position, the agency should have gained an awareness that its funding policy was effectively creating competition between Maori service providers, which was destructive of the greater good it seeks to achieve by its role in the provision of social services for Maori.

7.2.20 What about ‘cultural social services’?

Another line of questions put by claimant counsel to the director-general concerned the distinction in the Children, Young Persons, and Their Families Act 1989 between an iwi social service and a *cultural* social service, both of which, under the Act’s regime, can be awarded sole guardianship of children and young persons placed in their care. The director-general was very clear that Parliament’s recognition of cultural social services was never intended to cover non-iwi Maori groups: the category was created for Pacific Islands groups. However, later in the evidence the director-general referred to a Scottish group being approved as a cultural authority.

29. Transcript 4.3, pp 5–6

30. Transcript 4.2, p 5

It was put to the director-general that it seemed inconsistent that a group deriving its cultural identity from offshore could obtain sole guardianship of a child or young person on the mere basis of its membership of the same cultural group, whereas a Maori group had to satisfy a higher threshold and be united by kin links at iwi level in order to obtain the same recognition. The director-general's response, consistent with her earlier responses, was that it was her understanding that the iwi links of Maori children and young people are critical determinants of the groups which can assume full responsibility for young Maori. She referred again to legal advice obtained by the department on the meaning to be attributed to 'cultural social services', which confirmed her understanding.³¹

7.2.21 Social Welfare's criteria narrower than Maori Affairs'

Plainly, the DSW's understanding of iwi social services differs from the old Department of Maori Affairs' understanding as it applied to the iwi authorities which administered the Mana scheme. For the purposes of the Mana scheme, an iwi authority was defined, in a direction by the Minister of Maori Affairs issued pursuant to section 4 of the Maori Affairs Act 1953, to mean:

any tribal or other corporate body approved by the Minister (corporation aggregate or corporation sole) having lawful power to act generally as an agent or to act, for the purposes of the Scheme or generally as an agent for the Crown and engaged or appointed by the Minister or by the Secretary to act as the Crown's agent in any matter or matters pertaining to the Scheme and the Scheme's purposes.³²

7.2.22 DSW says Mana scheme was for different purpose

Agency witnesses pointed to the different purposes of iwi authorities under the Mana scheme and iwi social services under section 396 of the Children, Young Persons, and Their Families Act 1989: the iwi authorities under Mana were not dealing directly in a matter as central to Maoridom as the welfare of its children and young people.

As well, it would seem that another distinction arises from the director-general's view that the Crown's Treaty partner is defined by the reference in section 396 of the 1989 Act to 'iwi social services', and by section 56 of the State Sector Act 1988. Because those statutory provisions post-date the Mana scheme, and the term 'iwi authority' did not appear in the Maori Affairs Act, the Crown earlier had lawful latitude to deal with a variety of Maori groups when delivering Mana funding to those the Minister chose to call 'iwi authorities'.

31. Ibid, p 9

32. Document A19, app 2, p 2

7.2.23 DSW says access to funding not affected

Throughout the hearings, another response was made by agency witnesses to the trust's challenge to the policy underlying the meaning of 'iwi social services'. It was argued that since the agency allocates funds on the basis of needs to both iwi and non-iwi groups which provide social services, there was no disadvantage to the trust in not being recognised, now or in the future, as an iwi social service. The general manager did, however, comment that the agency's more concerted focus upon iwi than upon other Maori providers, such as in developing protocols and in consulting, could unwittingly and indirectly have a flow-on effect to their funding.³³

The clear tenor of the agency's evidence was that funding for iwi and other Maori providers was not a matter of 'either or' but 'as well as', a matter which could be verified by the statistics it produced which show an increase in the funding the agency had allocated to Maori service providers during each year of its operation. It did acknowledge that the 1994–95 appropriation for residential care 'growth' funding 'ring-fenced' \$1 million for the development of iwi social services.³⁴ But, it explained, the \$1 million set aside for iwi social services had not all been spent on just the two services recently approved. Rather, the money had been spread amongst a number of iwi who wished to 'start down the process' of reaching the standard required to be approved as an iwi social service.³⁵ Thus, although the trust was not eligible for a share of the \$1 million set aside for iwi social services, the agency argued it could not demonstrate that it was prejudiced. That argument, however, fails to meet the trust's central objection to the policy, which relates to the exclusion of non-kin groups, contrary to the reality of modern Maori life and the Treaty of Waitangi.

In the end, the trust's application for recognition as an iwi social service was bound to fail. For interconnected reasons, the CFA had decided that the trust was not entitled to special consideration in the consultation processes it adopted about service development or other matters.

7.3 DEVOLUTION TO OUTREACH WORKERS

In chapter 4, the reasons for the agency's policy of devolution to outreach workers have been outlined (see secs 4.2.4–4.2.6). In short, it was intended to prevent larger or more powerful service providers lobbying senior bureaucrats to secure 'special deals'. It was clear that Waipareira's approaches to CFA management, to discuss funding *policy*, were interpreted as attempts to secure special consideration, and were referred back down to the outreach worker (see sec 4.3.3).

Mr Takerei, the CFA outreach worker most closely associated with the trust before the Tribunal hearing, acknowledged that a great deal was happening, and at a rapid pace, within the agency in its early period of operation. He also acknowledged the magnitude of some of the issues raised for the agency by the trust's very existence and

33. Transcript 4.2, p 55

34. Ibid, p 39

35. Ibid, p 152; doc c1(b)(15)

philosophy and that these would require long-term attention at a policy level. The fact that Te Puni Kokiri and the Social Policy Agency of the department were regarded as the appropriate policy agencies on Maori issues further made it unlikely that there could be rapid responses to the trust's larger concerns. But he was also aware of the rapid pace of change within the trust and his description of the agency and trust being, at times, 'on two different ships' suggests he was in a position to foresee their imminent collision.³⁶

7.3.1 Trust refusing to work with outreach workers?

In chapter 4, we quoted witnesses for the agency to reveal how comprehensive is its view of the responsibilities it has devolved to the local level. It was acknowledged, however, that the policy had posed particular problems for Maori, particularly iwi who 'prefer to deal chief-to-chief, largely for reasons of protocol'.³⁷

The northern regional manager then stated:

I believe Te Whanau o Waipareira Trust has not fully recognised or appreciated the devolved authority and ethos created at the inception of the Agency – that decision-making has been devolved to local Agency staff. Indeed the Agency considers Te Whanau o Waipareira has demonstrated a refusal to work with local Agency staff although they have had the decision-making responsibility delegated for all interactions at the local level since May 1992.³⁸

7.3.2 A challenge to policy or a demand for more funds?

Claimant counsel put it to Ms Reid that Te Whanau o Waipareira Trust had in fact worked very well with its former outreach worker and that what it had refused to do was to accept the answers that local staff were giving it. Ms Reid replied that she saw that as a refusal to continue to work through the issues and an inability to accept the answers given. She adverted to the trust's efforts to take issues higher hoping or endeavouring, she presumed, to get a different answer.³⁹

Claimant counsel then focused on the 1993–94 funding bid (see sec 7.9.1) and referred Ms Reid to a letter the Minister had written to the trust on 25 May 1994 about that bid. Counsel's point was that the trust had been engaged in extensive dialogue at the lower levels of the agency, which did not demonstrate a refusal on its part to work with local staff. Ms Reid replied:

The issue I think I'm referring to here is that if you take, which is totally your prerogative, a case to the Minister then obviously there is an expectation again from the Trust that the Minister has another bucket of money or is able to do something about it when in fact the Minister works to support the integrity of the processes of NZCFA.

36. Transcript 4.5, pp 15, 16

37. Document c1(6), para 36

38. Ibid, para 37

39. Transcript 4.2, p 129

... I think ... what we've been dealing with here is an expectation ... that as NZCFA at the local level was unable to meet that expectation, quite rightly, the Trust took it further. And that has raised issues in terms of the local staff being able to work and deal with the issues around Te Whanau o Waipareira because there was this feeling like well we're doing – giving information but the expectation cannot be met by us and I believe that was a fundamental facet of what I see as became the impasse of the working relationship.⁴⁰

Claimant counsel questioned further whether the situation just described demonstrated a refusal to work with the agency or merely denoted a situation in which the answers the trust was getting from junior and middle officers within the agency were not the right answers from the trust's point of view, necessitating it going higher. Ms Reid replied that the answers given by local staff were the right answers from the agency's point of view and by refusing to accept them the trust, by default, refused to work with local staff.⁴¹

When asked whether there was any point of review beyond the area team, the northern regional manager explained:

we have a funding appeal process which – and there are the other mechanisms available to individuals as Waipareira have taken. You can go to the Minister, you can go to the Ombudsman, you can go to the Auditor-General's office. You used all those processes but at the end of the day none of those people have a bucket of money to resource your expectation.⁴²

7.3.3 Trust's motives misunderstood by the CFA

The Tribunal considers that those statements reveal a fundamental misunderstanding of the trust's motive in disputing the contract sum offered to it for the 1993–94 year. The references to the trust going higher in order to access non-existent 'buckets of money' fly in the face of the trust's consistent challenges, since 1992, to the policy adopted by the agency in allocating funding to Maori service providers. We find it difficult to comprehend that the northern regional manager could sincerely believe, early in 1995 after listening to the whole of the claimants' evidence, that the trust held the simplistic view throughout its dealings with the agency that if it could only get above the level of local staff it would somehow access a pool of money in the control of higher hands. The trust wanted access to the policy makers within the agency and other parts of the department: those who set the criteria which dictate the trend of local funding decisions.

7.3.4 CFA ought to have known better what trust wanted

In assessing the agency's reaction to the 1993–94 funding bid, the Tribunal believes it is relevant that it had prior knowledge of the trust's general line of argument with

40. Transcript 4.2, pp 129–130

41. Ibid, p 130

42. Ibid, p 131

regard to agency funding of Maori service providers. That much should have been plain as a result of the trust's communications in 1992 over the meaning of iwi authorities in section 396 of the Children, Young Persons, and Their Families Act 1989 (see sec 7.2.5). As well, from August 1992 the trust had written several letters to the northern regional manager and the area manager about its funding for 1992–93.⁴³ It had requested meetings with senior management about the matter and, after a visit by the area manager, had followed up with a request for information about the funding policy and criteria being developed by the agency. It had reacted to a telephone discussion with the team leader, in which the trust was informed that the 1992–93 service plan for the area was completed and that funding decisions would be concluded within the next three weeks, by writing to the area manager reminding the agency of the Maori statutory caseloads in West Auckland. As well, in a letter written to the northern regional manager in October 1992, the trust expressed concern over further reporting requirements of the agency and indicated that it did not find it appropriate that the agency dealt with it through an outreach worker who 'does not have delegations relevant to the decisions that have been made over and above his head'.⁴⁴

In addition to correspondence from the trust and occasional meetings between it and more senior agency staff, it was of course meeting regularly with its outreach worker in the period leading up to the first funding bid, and he was reporting back to his team, which in turn was reporting to management on any important issues that had arisen. We have earlier recorded the outreach worker's view that he took the opportunities available to him to bring to the agency's attention the issues raised by the trust but felt frustrated by the agency's responses. He specifically mentioned the opportunity provided, in March 1993 and thereafter, by the report he did on the trust's ability to comply with the approval standards for a child and family support service. Prior to that time, however, his own intimate knowledge of the trust's operations, values and expectations would have provided grounds for raising at team meetings some, at least, of the issues which the trust was itself raising in its correspondence to management.

7.3.5 Poor communication within the CFA

On the matter of his ability to take the issues back for the attention of the agency and its Maori policy advisors, Mr Takerei said:

Those lines of communication in being a new and developing organisation, at times weren't clear. The need for initiative played a lot from a personal view at that particular time in terms of accessing where and how things needed to go and how they were processed.⁴⁵

It was also said that the Auckland area had suffered from a lack of continuity in its management which meant that different individuals represented it at the agency

43. Document A19, apps 9.3–9.6

44. Ibid, app 9.6

45. Transcript 4.5, p 16

meetings at which policy issues were discussed.⁴⁶ As well, in the mix of formal and informal communication from outreach workers to management, including area managers' formal monthly reports to regional and national management meetings, it was not a requirement to feed back all issues raised by outreach workers.⁴⁷

7.3.6 Outreach worker powerless to avert problems

It was very clear from Mr Takerei's evidence that he empathised with the trust's mounting frustration in its dealings with the agency. He described the difficulties he had experienced as an outreach worker, taking back to the agency for its attention some of the challenges posed to its systems by the trust but finding that the information either did not filter up through the agency or did not receive a prompt response. In the approval report he had done on the trust's services in 1993, he had identified two challenges the trust posed for the agency: its wish to deliver services holistically; and its place, as a pan-Maori organisation, in the agency's policy thinking.

Mr Takerei described his own role in the complex and fast-moving situation as that of a 'toothless tiger'. He referred to the outreach worker's formal delegated responsibility in these terms:

And the reality is although you have been given the power to do things – . . . I believe that is there within the procedures handbook to do that and within the authority given to you by your seniors or whatever – but in reality [it is] those issues that we talk about, the wider issues or the bigger issues which are the important issues. At the outreach worker level we turned up and said what are the problems? Here are the problems, oh kia ora, I'll take that back and see what I can do about it. But hence, I suppose, the frustration at Waipareira at times to say well we are only dealing with the outreach worker who seems to not have the total authority on the wider issues, over his head. And I felt in that situation many times . . . I had no control.⁴⁸

7.3.7 Outreach worker in untenable position

The difficulty of Mr Takerei's position was brought into sharp relief in the process by which the north-west team responded to the trust's 'bid' for greatly increased funding for the 1993–94 year (see sec 7.9.1). In evidence, Mr Takerei said he recommended an increase in funding for the trust's provision of social services, and that he was supported in that recommendation by the other Maori outreach worker in the team.⁴⁹ The sub-team leader stated that the funding decision was made upon Mr Takerei's recommendation.⁵⁰ The sub-team may have believed it was slightly increasing the trust's funding by its decision, but that belief was not shared by the trust. The task

46. Document c6, pp 13–14

47. Transcript 4.3, pp 56–57

48. Transcript 4.5, p 16

49. Ibid, p 6; transcript 4.3, pp 94–95

50. Transcript 4.3, p 83

then fell to Mr Takerei, the trust's outreach worker at the time, to explain to the trust the level of funding that had been decided upon. When the trust did not sign the contracts by which that funding would have been accepted, Mr Takerei was eventually instructed by his area manager to deliver an 'ultimatum' to the trust: that it take or leave the agency's offer of funding.⁵¹

In his own words, by that direction Mr Takerei was required to be a 'hatchet man', despite his disagreement with that treatment of the trust and his belief that he knew what its reaction would be. In fact, the claim to the Tribunal was lodged 10 days afterwards. The direction given to Mr Takerei to deliver an ultimatum to the trust was subsequently dealt with at the highest levels in the agency and the Auckland area manager then became involved for the first time in a meeting with the trust. However, Mr Takerei expressed the view that had the northern regional manager met with the trust at that point, it would have helped to settle matters down. He suggested that the agency's strict policy of devolving to outreach workers all matters to do with service providers in their area worked against the regional manager becoming involved.⁵²

7.3.8 Devolution policy questioned

The lines of communication between the trust and the agency were not of a sufficient calibre to ensure that the policy matters raised by the trust were discussed in depth between the parties. We acknowledge that there were numerous contacts between 1 June 1993, when the 'funding' bid was received, and 20 December 1993, when the trust communicated to the agency its decision to lodge a claim with the Tribunal. As well, before 1 June, there had been meetings between Mr Stewart of the trust and Mr Takerei, the outreach worker, which canvassed matters relating to the 1993–94 funding bid.⁵³

Closer examination, however, shows the extent to which the outreach worker was involved, supported at infrequent formal meetings by the leader of the north-west Auckland sub-team, in attempting to resolve the fundamental policy issues raised in the trust's funding bid. The Tribunal believes that this matter calls into question the agency's devolution of policy questions to outreach workers.

7.4 LACK OF CONSULTATION PROTOCOL

7.4.1 Iwi protocols apply only to tribes

The agency, from the outset, required all area teams to develop protocols with iwi to ensure that they were aware of the services planning process and had opportunities to become involved if they wished.⁵⁴ Part of the claimants' grievance arose from the lack

51. Transcript 4.5, p 23

52. Ibid, pp 23–25

53. Document c1(14), app 2

54. Document c1(2), para 49

of any attempt by the agency to establish a protocol for dealing with Te Whanau o Waipareira Trust.

The general manager explained that the agency had made a commitment to keeping iwi informed of the agency's work regardless of whether they were involved in social service delivery. She also noted the agency's belief that iwi have a very good understanding of the needs of people in the community so that an important contribution to services planning is the identification by iwi of those needs.⁵⁵

7.4.2 Other protocols for non-iwi

It was further explained that the agency has protocols in place for groups other than iwi, and the protocol for dealing with the National Association of Citizens Advice Bureaux was produced as evidence.⁵⁶ The general manager said the agency was seeking a sound working relationship with providers and the question of whether a protocol was needed for a particular provider was one which the outreach workers would be expected to assess and respond to, whether the organisation 'be pan-tribal, Pacific Island or Pakeha or indeed iwi'.⁵⁷

Referring to a protocol negotiated with a pan-tribal organisation in the Central North region, the northern regional manager explained that the area manager there had interpreted her responsibilities for good practice, particularly in terms of *Puao-te-Ata-tu*, as requiring that protocol. The agency, it was said, is looking for innovation and best practice models which can be shared with other areas and other staff: 'it's an evolutionary process not a dictated process'.⁵⁸

When asked if the Tribunal's hearing process had caused the northern regional manager to think that she should dictate that the Auckland area team engage in the process of preparing a protocol for Te Whanau o Waipareira, she said, 'I think under the circumstances it seems to me to make good sense, and good practice'.⁵⁹

7.4.3 Trust's frustration growing

Against this background of profound differences between the parties over their status in relation to each other, and therefore what was appropriate philosophy and practice, all the other dealings between the parties became fraught with tension. The CFA, in particular, appeared to misunderstand what the trust wanted, because senior managers were not aware of the trust's history and did not recognise its rangatiratanga. The trust became increasingly frustrated and, as its correspondence shows, impatient and angry with the CFA. Delays, oversights and mistakes took on a greater significance, and became incapable of resolution by simple discussion. We look at several examples here.

55. Transcript 4.2, p 39

56. Document c1(6)(b)

57. Transcript 4.2, p 40

58. Ibid, p 120

59. Ibid

7.5 THE TRUST'S APPLICATION FOR APPROVAL AS A CHILD AND FAMILY SUPPORT SERVICE

7.5.1 Long delays annoyed trust

The protracted process, lasting from February 1993 until August 1994, by which Te Whanau o Waipareira Trust was granted unconditional approval by the agency as a child and family support service was a cause of vexation to the trust.

The precise causes were obscure. However, having gained conditional approval as a child and family support service early in 1993, it took until early 1994 for the trust to meet all the conditions which would entitle it to receive full approval.⁶⁰ Thereafter, difficulties of some sort within the agency precluded full approval being granted until August 1994.

7.5.2 No replies to correspondence

It is clear from a timeline of events supplied by Mr Takerei that, after the trust had received conditional approval early in 1993 but before it had met the necessary conditions, Mr Stewart of the trust wrote in June 1993 and again in August 1993 to the team leader of the north-west sub-team. It would appear that there was some dispute, which caused 'considerable tensions', about what was needed from the trust to meet the necessary conditions.⁶¹ It may have concerned difficulties which the trust foresaw over the agency's standards being 'culturally inappropriate'.⁶² The trust may also have been anxious to obtain full approval as quickly as possible in the belief that its funding for the 1993–94 year would be prejudiced by its continuing status as a conditionally approved service.

Neither of Mr Stewart's June and August 1993 letters seems to have been responded to but the agency's outreach worker met with Mr Stewart, some six weeks after the first letter and four days after the second letter, to discuss the matter further. It appears from Mr Takerei's timeline that, in other meetings with him later in the year, the trust was still awaiting some written response from the agency as to its approval status.⁶³

Having met the final approval conditions, at the end of February 1994, Mr Stewart wrote again to the agency, presumably to the north-west sub-team leader, requesting that full approval be granted. In mid-June, he wrote to the area manager asking for written confirmation of the trust's approval status. And in late July he wrote to the director-general asking for the same thing. It seems that none of those letters was responded to, but, early in August, a meeting was held between Mr Stewart and the new Auckland area manager and a full approval letter was sent from the area manager to the trust shortly afterwards.

60. Document c1(14), app 1

61. Transcript 4.2, p 197

62. Document B5, app 10, p 1

63. Document c1(14), app 1

7.5.3 CFA admits poor service – but funding not affected

The agency acknowledged that it had been remiss in its dealings with the trust over this matter. The northern regional manager said that the agency should match the expectations and demands of a customer by promptly responding to letters⁶⁴ and the general manager accepted the trust's criticism that the approval process was not conducted as well as it might have been.⁶⁵

The agency emphasised, however, that the trust was not prejudiced in terms of funding by the fact that it had only a conditional approval as a child and family support service from March 1993 until August 1994. That does not, as the agency acknowledged, make up for the failures in written communication and the delays on its part in its dealings with the trust, which may well have seemed to the trust to be further proof of the agency's lack of understanding and interest.

7.6 TE ROOPU MATAIHI TRUST FUNDING

In 1993–94, the trust's funding for family–whanau development (which incorporated the earlier homebuilders programme) was cut. When pressed for an explanation, the agency said that the money had been transferred to a former affiliate of the trust, Te Roopu Mataihi.

Te Roopu Mataihi is a Ngati Whatua group operating in south Kaipara. It had become affiliated to the trust, and had been supported from the trust's own funds and services, to the point where its staff were trained, it had accommodation and administrative systems in place, and it was in a position to seek its own contract with the CFA.

The trust challenged the agency's reason for cutting its own allocation in order to fund Te Roopu Mataihi. The trust said that this dispute showed that the CFA did not understand the trust's relationship with its affiliates – a matter that goes to the heart of the trust's rangatiratanga. It said service provision to south Kaipara had never been a part of the trust's contractual obligation to the CFA. It saw its support for Te Roopu Mataihi as an expression of rangatiratanga, a koha freely given to meet a recognised need and a return for Ngati Whatua's recognition and support of Waipareira. By its subsequent cut to Waipareira, the agency treated the trust's gift as if it were an allocation made by the CFA to Te Roopu Mataihi. Not only was funding lost, but the relationship between the Maori parties was disrupted by the CFA's action.

7.6.1 Funding for south Kaipara

There was a direct disagreement between agency and trust witnesses on whether the trust had been funded, prior to the formation of the agency, to offer services in the Kaipara area under the homebuilders programme. In the 1991–92 year, by contract

64. Document c1(6), para 40

65. Transcript 4.2, p 78

with the department's Henderson office community services team, the trust was allocated \$123,457 from that programme. No other Maori service provider was funded that year from the homebuilders programme in the then West Auckland area.⁶⁶ The contract between the trust and the department does not specify any particular area as being the area in which the trust is to deliver services under the homebuilders programme.⁶⁷

In the 1992–93 year, when the agency essentially 'rolled over' the contracts it had inherited, the trust received \$97,142.86 from the homebuilders programme. Services were also purchased 'for rural Maori' in the agency's north-west region. The value of that contract was \$18,000.⁶⁸

In the *National Services Plan: Funding Decisions, 1992–93*, Te Roopu Mataihi Trust of south Kaipara is listed as having contracted with the agency for \$36,000 to provide family-whanau services. the family-whanau development programme at the time encompassed the homebuilders and other programmes.⁶⁹ It would seem then that half of the \$36,000 allocated to Te Roopu Mataihi came from the homebuilders programme.

For the 1993–94 year, funding for homebuilders was again allocated from the family-whanau development programme. The trust received \$70,000 for this purpose and other Maori providers in West Auckland received a total of \$49,749.⁷⁰ In the *National Services Plan: Funding Decisions, 1993–94*, Te Roopu Mataihi Trust is again listed as having received \$36,000 from the agency for family-whanau development.

7.6.2 Trust support for Te Roopu Mataihi

The evidence of the trust, given by its financial manager Mr Tolich, was that in July 1992 there was a meeting between Mr Tolich and Connie Hanna on behalf of the trust, and the agency's Auckland area manager, its north-west sub-team leader and the outreach worker resident in the Kaipara area. The meeting discussed the trust's efforts to develop Te Roopu Mataihi as the deliverer of social services in the south Kaipara. Before that time, the trust had been helping to organise and set up Te Roopu Mataihi's structure. To that end, the trust had spent \$14,000 on outfitting two houses which Te Roopu Mataihi had secured from the Housing Corporation, had provided financial assistance in the development of Te Roopu Mataihi's systems, had trained two social workers from the south Kaipara area in the trust's first social workers course and had assisted in paying those workers.

Mr Tolich emphasised that the trust assisted Te Roopu Mataihi out of the trust's General Funds: 'At no time were Community [Funding] Agency funds used to pay them'.⁷¹

66. Document c1(13), para 16

67. Paper 2.44, attachment

68. Document c1(13), para 18, app 2

69. Document c1(b)(9), p 31; doc c1(13), app 2

70. Document c1(13), app 2

71. Document B4, p 4

7.6.3 Mataihi's services additional to trust's

Mr Tolich also said that at the July 1992 meeting, the trust outlined that it would assist Te Roopu Mataihi to obtain a separate contract with the CFA. It was made clear, however, that the current funding for the trust was seen as being for its area only and that any funding made available to Te Roopu Mataihi would be additional funding due to the people of southern Kaipara, whose lack of services was well known to all. The agency people did not indicate that if such funding was to be given to Te Roopu Mataihi a subsequent reduction in trust funding would occur.⁷²

7.6.4 Trust says its funds cut unfairly

However, in response to an official information request made by the trust about the policy relevant to the funding of the trust and others in its area in the 1993–94 year, a letter dated 23 June 1994 from the general manager of the agency was received, which states:

Family/Whanau Development: There has been an increase in funding to Maori services in West Auckland from the Family/Whanau Development programme. Whilst actual funding to Te Whanau o Waipareira Trust has decreased in this programme area, funding previously included in that contract has now been contracted separately to an affiliate of Te Whanau o Waipareira Trust.⁷³

Mr Tolich gave evidence that the separate contract referred to in the letter was the contract for \$36,000 with Te Roopu Mataihi. Agency witnesses did not dispute that. The trust's complaint is that:

none of the funding allocated to the Trust was ever tagged for service provision to the South Kaipara. Waipareira contributed to that organisation from its own funds. Having done so, CFA now insists that the existence of Te Roopu Mataihi justifies a reduction in funding to Waipareira. I have no difficulty with funding being provided to Te Roopu Mataihi over and above that being provided to Waipareira but actually reducing Waipareira's allocation using that group as a justification is particularly unfair in my view.⁷⁴

7.6.5 Original contract covered Kaipara – CFA

Ms Gillard, sub-team leader for the north-west team, stated that the area served by the Henderson departmental office that first contracted with the trust for the homebuilders programme (in 1991–92) included the Kaipara and that the original contract with the trust therefore would have included the offering of services in the Kaipara. However, she stated, since the agency came into existence, it has contracted with Te Whanau o Waipareira only for services within the urban area and has

72. Document B4, p 4

73. Document B5, app 9, p 3

74. Document B4, p 4

contracted separately for the provision of services in the rural area. Because of this, she said, the earlier and later contracts could not be compared with one another. She also referred to the fact that there was an overlap of funding between funding years such that, although the contract for the 1992–93 year may have been only for urban services, the addition of funding that moved forward complicated the issue.⁷⁵

7.6.6 Tribunal's comment

A chart provided by the Auditor-General's office of Te Whanau o Waipareira Trust's contracts with the agency between 1991–92 and 1993–94 does not clarify whether, and if so how much, funding moved forward into the 1992–93 year from the 1991–92 year.⁷⁶ However, the trust is not arguing over the level of funding received in 1992–93: it is concerned that its 1993–94 allocation was reduced from the 1992–93 level for the reason that the agency was contracting separately with an affiliate of the trust, Te Roopu Mataihi, to provide services in the Kaipara. The general manager's letter to the trust, which explains the basis of funding decisions in the 1993–94 year, says as much quite plainly.⁷⁷

The Tribunal considers it significant that the agency was contracting separately with Te Roopu Mataihi in the 1992–93 year. This bears out the sub-team leader's statement that, from its inception, the agency contracted with Waipareira for services in the urban area and contracted separately for rural services. But it appears to contradict the general manager's statement, in her letter of 23 June 1994, that, for the 1993–94 year, funding to the trust in the family–whanau development programme decreased because funding previously included in its contract had been contracted separately to Te Roopu Mataihi. Since the agency had been contracting separately for rural services since 1992–93, a reduction in the funding of the trust's urban services in 1993–94 could not be justified on the ground that its 1992–93 contract had previously included rural services.

The only other possible explanation of the general manager's letter is the convoluted one that the trust's 1993–94 funding was lowered because it had been funded, prior to the agency's formation, to provide services for urban and rural areas but had not done so, therefore its 1993–94 funding was reduced to take account of the past overfunding, with the balance being allocated separately to Te Roopu Mataihi. This seems highly improbable for the following reasons.

First, if it was the Henderson office's understanding in 1991, or the agency's upon its formation in 1992, that the trust's homebuilders funding was to be used to provide services in the urban and rural areas covered by the office, then this was not communicated to the trust. Secondly, it would not be a natural assumption on the part of either the department or the trust that the area covered by the Henderson office would determine the area in which the trust was to provide services: the fact that Te Roopu Mataihi is Ngati Whatua would have dispelled that notion. Thirdly, it

75. Transcript 4.2, pp 201–202

76. Document B4, app 3

77. Document B5, app 9, p 3

would be extremely bad business practice to make a decision of this nature more than a year after the agency was established, based on pre-agency funding decisions, not communicate the reason for it for another 12 months, and then only in response to an official information request.

The Tribunal is satisfied that a meeting was held in July 1992 between the trust and the agency and that the agency did not demur from the view expressed by the trust that the agency's funding of Te Roopu Mataihi should not prejudice the trust's funding. Indeed we believe the agency's agreement that the trust should not be financially responsible for the development of Te Roopu Mataihi's services is borne out by its separate contract with Te Roopu Mataihi in 1992.

As a result, the Tribunal finds the explanation given by the general manager to the trust in June 1994, to the effect that its funding for 1993–94 had been cut because funding previously allocated to the trust had been contracted separately to Te Roopu Mataihi, to be spurious. The trust's concern about this matter is justified.

7.7 REPORTING AND COMPLIANCE DISPUTES

The trust's financial manager, Mr Tolich, said that 35 percent of the funding the trust receives from the CFA is spent on reporting and compliance costs. He said that figure was so high because of the vagueness of the agency's reporting requirements, and because of regular changes in those requirements. On occasions, he said, the trust was notified of what reports the agency required only at the end of the contract period, when assembling the necessary data was very difficult. He said the trust had to bear the costs of compliance.⁷⁸

The agency disputed this figure, saying the compliance costs it had monitored are nothing like this. The general manager said a pilot study carried out by the agency, which she emphasised was not reliable but indicative only, showed compliance costs were considerably less than 35 percent. She added, however, that providers of level 1 residential care for children in need of care and protection, which the trust is, have to meet very high standards and are rigorously monitored because of the need to ensure that such children are placed in a safe environment.⁷⁹

On the other hand, Maryanne McGee for the CFA said that in one year the trust did not report according to the agency's requirement that reporting be broken down into the CFA's categories of funding.⁸⁰ Mr Tolich seemed to acknowledge this but observed that he had not received any complaint from the CFA about that. In response to a further allegation, that the trust had not reported on the 1993–94 contracts at the time of the September 1994 hearings, Mr Tolich observed that the contracts had not been entered into until a few months before the end of the financial year, and that 13 days before the end of the contract the CFA had changed the reporting requirements. While the trust was working on its report and did not foresee

78. Document B10, pp 58–59

79. Transcript 4.2, pp 55, 84

80. Document C1(13), para 22

any problems meeting the new requirements, Mr Tolich said the late change, coupled with the trust's pursuit of its claim to the Tribunal, accounted for the delay. He was critical of the CFA's failure to specify its new reporting requirements earlier, and referred to a Deloitte report done for the agency that had made a similar point. While he said the CFA's shortcomings had contributed to the trust's problems, he accepted that 'it's a learning exercise'.⁸¹

At the March 1995 hearing, there was a further allegation by the CFA that the trust had been late in meeting its reporting requirements in respect of the 1993–94 year. The agency's evidence on this matter was not clear but it appeared to the Tribunal that the trust's audited accounts had been submitted on time. It also appeared that its report on its contract performance had also been submitted within the time period, measured by reference to the trust's annual general meeting, and anticipated by the agency's own reporting requirements.⁸²

These disputes on financial reporting were of a technical nature, and there was no evidence given nor suggestion made to the Tribunal of any irregularity in the trust's finances.

7.8 TWO MISCONCEPTIONS ABOUT AGENCY FUNDING

Two grievances relating to the agency's funding that were raised in the claimants' evidence were not justified by all the evidence before the Tribunal but are sufficiently significant to warrant mention here.

7.8.1 'Voluntary cut' in the department's budget

The first misconception relates to what the claimants referred to as a 'voluntary cut' of \$535 million in the DSW's spending in 1993–94. The claimants asserted that this was a cut in the department's expenditure on social services.⁸³ The general manager of the agency explained that the sum of \$535 million was not a cut of any sort but the difference between forecast expenditure and actual expenditure that year. She elaborated:

That frequently happens and if you look at NZCFA's operating budget for example you will find that in the financial year 93/4, we underspent our operating budget by nearly \$1 million. So the difference between what was budgeted by Government to spend on NZCFA and what we actually spent was just under \$1 million. That happens throughout the Department both on operating budgets and happens in relation to the appropriations in respect of [POBOCs]. In terms of my colleagues in the Income Support Service, whilst we've got a fair degree of accuracy in reporting in relation to superannuation claimants for example, there can be quite marked changes during the year in relation to unemployment benefit, domestic purposes benefit, sickness benefit

81. Document B10, pp 43–45, 46

82. Transcript 4.3, pp 94–97

83. Document B6, pp 10–11

and invalids benefit. Now all of those have a compounding impact on the cumulative budget for the Department when you take both the programme expenditure and the operating expenditure together. . . . we do end up with a situation where we constantly review, in fact on each quarter, we review the forecast expenditure against the actual expenditure and if we're forecasting an end of year out-turn of significantly less than we actually budgeted for, that money is returned to the Crown early in the financial year . . . because that reduces borrowing requirements. It's fiscally prudent to do that.⁸⁴

The Tribunal accepts the agency's explanation.

7.8.2 'Underspending in West Auckland'

Another misconception advanced by the claimants was that a substantial amount of the agency's northern regional budget was left uncontracted at the end of the 1993–94 financial year. This conclusion was based in part on a letter written by the northern regional manager to the trust on 12 August 1994 which stated:

The total Northern Regional Fiscal 94 budget for the Families in Need of Support and Community Welfare sectors covered six programmes and amounted to \$17,704,383. Of this \$325,161 or 1.83% was underspent.⁸⁵

As well, Mr Stewart for the trust stated his understanding that:

a significant proportion of that under-spending related to Central and West Auckland. It appears that the CFA was unable to deliver this money as it had taken a restrictive view of which Maori services qualify especially in West Auckland. This I understand is in regard to their philosophical position on what constitutes an Iwi. . . . This apparent refusal to make unspent money tagged to Iwi available to Waipareira demonstrated to me that CFA saw provision for the need for urban Maori in West Auckland as a low priority matter. . . .⁸⁶

Ms Reid corrected this misapprehension by explaining that of the total underspending of \$354,753 in the two sectors relevant to the trust's funding, only 16 percent (\$60,060) related to the Auckland team. Also, the variations occurred largely as a result of account coding problems experienced following the POBOC restructuring and partly because of inaccuracies in the personal computer spreadsheets used by area teams prior to the introduction of a networked computer database.⁸⁷ Further:

The underspending was largely in the POBOC for Community Welfare General, which in the 1993/94 year purchased public education & training programmes, victim support programmes, information & advice programmes and refugee services. No services able to be funded from this POBOC have been purchased by NZCFA from Te Whanau O Waipareira Trust.

84. Transcript 4.2, p 35

85. Document B5, app 6, p 1

86. Document B5, para 5.3

87. Document c1(6), para 63

There is therefore no substance to Mr Stewart's inference that the Auckland Central and North West Auckland sub-teams significantly underspent, nor any substance to the conclusions drawn later in his evidence, that this underspending occurred at the expense of Te Whanau O Waipareira Trust.⁸⁸

The Tribunal accepts the agency's explanation.

7.9 ALLEGED FLAWS IN SERVICES PLANNING

The crux of the problem which flowed from the trust's inability to raise policy issues with the agency was the lack of the trust's input to the CFA's services planning (see secs 4.5–4.7). The trust argued that, in the absence of consultation, the agency adopted needs assessment and service development procedures which prejudiced the trust, but the trust's criticisms went unheeded. In another effort to place these issues on the table for discussion with the agency in June 1993, the trust submitted to the CFA a funding bid for the 1993–94 year.

7.9.1 The trust's 'funding bid'

(1) *A basis for discussion of differences*

On 1 June 1993, the trust made a 'funding bid' to the agency which set out its view of the services needed in West Auckland and the amount of funding it required to continue providing those services and develop further services. The bid was particularly significant because while it was intended by the trust to provide the platform for its discussions with the agency about its 1993–94 contracts, it was the breakdown in those discussions that was the catalyst for the claim being made to the Tribunal.

(2) *Did not fit with procedure*

From the agency's point of view, the trust's 'bid' was not entirely in accord with its services planning process. The northern regional manager explained:

... NZCFA no longer accepts applications for funding. So the direct 'put in an application and expect a response' is not part of our process any longer. Our process is that we complete services planning and having assessed and prioritised the needs we then look to who [is] out there to meet that need and we're moving – we've moved more to a request for proposal position from those providers we identify [as] best able to meet those needs.⁸⁹

Ms Reid speculated about the reasons the trust submitted the funding bid:

... I think again it was the change in our practice that I take responsibility [for] that the agency obviously did not communicate well enough to the Trust that we are not in a

88. Ibid, paras 64, 65

89. Transcript 4.2, p 133

position to respond to a bid per se, until the budget night, until the allocations are made, and then we do the matching process.

... there's been a lot of confusion on the part of organisations who for years have been trained by the State to fill in application forms. So this change is quite major and it takes some communicating and each year as we go on and get feedback people are understanding this better.⁹⁰

However, the outreach worker working with the trust in 1993, Mr Wiremu Takerei, stated in evidence that he would have told all service providers that a proposal would be needed from them for the 1993–94 funding year. He stated:

The service proposal and funding bid received in June 1993 contained a detailed outline of the organisational structure and the many and varied services that Te Whanau O Waipareira were providing. . . .

At the time there was no standard proposal format available nationally from New Zealand Community Funding Agency. However the Te Whanau O Waipareira proposal which was submitted in their own format contained the key elements considered to be relevant by the team.

In terms of timing, the lodging of the Te Whanau O Waipareira funding bid was prior to the formal requests to all service providers for proposals. This occurred in approximately June/July 1993. The initiative shown by Te Whanau O Waipareira pre-empted a need to request a service proposal at this time.⁹¹

(3) Bid was an assertion of rangatiratanga

Contrary to Ms Reid's perception of the reason why the trust submitted its funding bid, Mr Tamihere made plain that it had been prepared by the trust in response to its perception, at that early time, that its previously healthy relationship with the DSW was deteriorating with the advent of the agency:

A new arrogance pervaded the Community Funding Agency and was evidenced by significant policy shifts, in the appointment of senior staff in the organisation and the lack of consultation in regard to our communities over the appointment process. The community's involvement was removed absolutely with the demise of the District Executive Committee wherein community elected and representative persons highly knowledgeable at the community provider base were removed without consultation.⁹² These committees were actually the conscience of the community in regard to funding decisions. The transparency and participation of the community as a consequence was denied.

This was a backward step and immediately painted a picture for a very poor relationship. . . .

Our Community Services Manager was instructed to pre-empt servicing plans from bureaucracies centred away from our community and to place before this bureaucracy,

90. Transcript 4.2, pp 133–134

91. Document E2, para 3

92. Agency witnesses emphasised that the decision to disband the district executive committees preceded the formation of the CFA.

the Community Funding Agency, a very well articulated service plan exhibiting quite clearly the type of service required to be delivered to our community.

It is accepted that there will never be enough resource to satisfy everybody's inclination to settle the difficulties that we suffer under in the Social Service interface. This claim is not about resource. It is about recognition of our status as an urban whanau and Treaty partner. There are certain consequences that follow from our relationships with Community Funding Agency being in the nature of Treaty partnerships. First, Community Funding Agency should consult with us before making any decisions which affect the interests of the people we represent. And I mean real consultation. Not token hui. I mean a proper process of open honest dialogue about the needs of our people and how they can be met. It is also about our right to an equitable share of a limited resource. We are not just another charity in the queue waiting for handouts. We are a Treaty partner with our own direct relationship with the Crown.⁹³

7.9.2 Contents of the trust's 1993–94 bid

The 1993–94 funding bid from the trust set out its view of what was required to service West Auckland Maori. The bid describes the trust's structure, the rationale for its evolution, its affiliates which deliver social services, and its management philosophy. It then criticises departmental funding of Maori social services in West Auckland since 1991 for not being based upon any credible estimation of the real cost to set up or operate an appropriately resourced service to Maori people of West Auckland.

As well, the department is said to lack, then or now:

any credible notion of how a Maori service should function. The service must retain the cultural imperatives of its people whilst being able to meet the requirements set by policy and statute.⁹⁴

(1) *Outline of community's need*

The trust quotes statements from the agency's 1992–93 *National Services Plan* which reveal the agency's commitment to increasing Maori management over their own social service delivery and of allocating resources to Maori-based structures that take into account the proportion of Maori in the client group and their need for social services. Using the figures in that 1992–93 plan, the trust concludes that only \$144,000, or 14.28 percent of the total West Auckland funding, was made available to Maori social service providers in 1992–93.

Next, the trust's bid sets out a statistical profile of Maori in West Auckland showing the high proportions who are on low incomes, have no qualifications, are unemployed, sole parents, or subject to pre-sentence reports. Justice and Social Welfare statistics are used to highlight the high Maori prison population generally and, specifically, the proportion of Maori in the Henderson Children and Young Persons Service intakes over a three-month period in 1993.

93. Document A19, paras 6.6, 6.7, 6.9

94. Document B5, app 7, p 27

(2) Budget includes voluntary contribution

The funding bid then lists the costs of the trust's services, which total \$293,000, and provides breakdowns of the costs of the new programmes for which it has identified a need.

It is noteworthy that the 1993–94 funding bid includes the sum of \$80,000 in the trust's service costs, which sum is said to be the cost of 13,500 hours work at \$10 per hour. A note to that figure reads: 'This is a realistic estimate of the costs of service fees based upon current paid and unpaid hours.'⁹⁵

Since the actual cost of supplying 13,500 hours at \$10 per hour would be \$135,000, it is plain that the trust had built into its 1993–94 funding bid a significant labour component for which agency funding was not expected to provide. It is also plain that a fee of \$10 an hour for workers delivering social services is not excessive.

(3) Demands on trust growing

Part of the conclusion to the bid states:

On the basis of any analysis Maori services in West Auckland have been grossly underfunded, resourced and supported by agencies of the state charged in statute to ensure this occurs. Resources to the Maori community in West Auckland has been drastically reduced since 1989. This is firstly with the closure of the Maori Affairs office and has culminated with the loss of one position now two positions in Maatua Whangai in West Auckland. It is into these gaps without the resourcing that Te Whanau O Waipareira Social Services has had [to] step. Notwithstanding any impressions to the contrary these were significant resources to our community.

The comparative novelty of the trust's social services is then emphasised, and the dedication that has been required to deliver them to the level attained. Referring to the 'continuing catch 22' of satisfying the demands of its people for services and the ever increasing demands of statutory agencies in relation to standards, the bid concludes:

We at all times are open to the scrutiny of anyone but . . . only by continued negotiation and with credible resourcing will we be able to meet the ongoing demands of our society.⁹⁶

7.9.3 Failure of the bid

The 1993–94 bid failed as an attempt to open up negotiations between the parties. What it did do was set out the trust's main arguments against key agency policies and procedures, arguments which were elaborated during the hearings, and which we now summarise.

The trust claimed that a philosophy of service development which ignored community values could not measure the cost-effectiveness of service providers. This

95. Document B5, app 7, p 30

96. Ibid, p 35

had led the CFA to pursue the Government's social goals by funding a range of competing service providers instead of developing proven achievers like the trust; to develop measures for assessing the appropriateness of services and for screening potential providers which were not based on providers' accountability to the community; and to decline to fund the trust's alternative school because parts of its holistic service fell outside the CFA's criteria. Finally, Waipareira said the CFA had adopted flawed procedures for assessing the needs of both the Waipareira community and Maori service providers in general, with the result that inadequate funding was allocated to West Auckland Maori and to the trust. In particular the CFA's decisions on funding for the trust's care services shows poor coordination and information exchange between the business units of the DSW.

7.10 SERVICE DEVELOPMENT

The CFA is charged with purchasing social and welfare services in order to achieve social goals set for it by the Government.

In its service development role, the agency works to 'fill gaps in services needs which are a priority'. It does this by contracting with other agencies, and with providers, to bring in additional expertise so that providers' services and systems are enhanced.

The trust challenged the agency's process for deciding which agencies or providers should be invited to provide new or extended services.

7.10.1 Funding a range of services

Among the 12 outcomes that the Government desired of the department in the 1993–94 year was that:

The community has access to a range of social service providers and social services which are appropriate to individual and family circumstances and the cultural backgrounds of recipients.⁹⁷

By its express wording then, this outcome supported a CFA policy of providing a choice to consumers of appropriate services and service providers.⁹⁸

From the evidence it was clear that the CFA regarded the trust as one among many service providers in West Auckland, albeit a large and well-organised one. Claimant witnesses emphasised that the trust was more than that. They said that, while it did provide services, the trust was established by the community as an umbrella

97. Document c1(3), app 1

98. In the 1994–95 statement of outcomes desired by the Government (which was not in effect when the present claim was filed but became operational during the hearings of the claim), the comparable outcome omits the reference to consumers having access to a range of service providers and services. Instead, it only requires voluntary welfare services funded by the Government to be accessible and appropriate to the needs of their client groups and to complement services provided by the State (doc c1(b)(7), p 3).

organisation, to assist affiliates to meet the reporting requirements of the Crown, and at the same time to monitor affiliates and hold them accountable to ensure that the community got full value from the CFA funding:

It is absolutely crucial in the funding of the Maori community in urban West Auckland that the organisation being funded is accountable to and has a mandate from its community. Without that accountability and mandate the funding dollar will be wasted.⁹⁹

7.10.2 Agency view ‘unbiased’

Naturally, the agency too is concerned that its funding not be wasted. However, its role allows, or even demands, that it be more detached about the matter than the trust is able to be. The agency’s view is that in a partial funding environment, service providers have a vested interest in promoting their own services and the needs of their own community but are often unaware of the circumstances prevailing in other parts of the country. This makes it difficult to convince providers that the partial funding allocations made around the country are equitable.

7.10.3 Assessing effectiveness of services

It is self-evident that ineffective services will not achieve desired social outcomes and therefore must always be inappropriate. In chapter 6, we noted the trust’s view that any assessment of the effectiveness of social and welfare services required consideration of the community’s values and the accountability of providers to their community. The trust claimed that it was an efficient and effective provider because it was part of its community, it was accountable to its beneficiaries and attuned to their needs. The extent to which the trust and its workers identified with their own community was expressed, by Mr Tamihere, in these words:

Some people have the luxury of being able to turn the key at 9.00 am and having the same opportunity and luxury of turning the key at 5.00 pm and walking away from problems. Regretfully our Whanau, its operatives, its workers and the people we service have to wallow in our difficulties 24 hours a day and as a consequence we are motivated and passionate about the way in which we desire to deliver our services in a most efficient, effective and well measured way.¹⁰⁰

Despite the trust’s track record and status as a key Maori service provider in West Auckland, Mr Stewart, the trust’s community services manager, said the trust had never been approached by the CFA to discuss developing or extending the services offered by the trust:

99. Document B3, para 6.5

100. Document A19, para 5.22

I have heard of services planning, but service development as such in terms of how it's affected our service is developed, where it's planning to go, has not been part of the consultation process between ourselves and the CFA.¹⁰¹

The trust was concerned about the policy of funding a range of providers on two counts: first, in a climate of rationed Government funding for much-needed social services, precious funds may be wasted on ineffective services; and secondly, effective providers may not get funding to extend their service capacity and to achieve economies of scale.

The trust alleged that in West Auckland both these things had happened: the CFA had funded a number of providers, but funded each of them inadequately so they collapsed and their service stopped; moreover, allocations to other providers (including direct funding to affiliates of the trust) were used to justify a reduction in the trust's own funding, which meant the trust's capacity to support and monitor providers to its community was undermined, and consequently the ability of the community to hold service providers accountable was diminished:

the Community Funding Agency will not shrink from a policy of dividing and ruling us. As I have said the Community Funding Agency is not interested in accountability to the community or mandate from community, it is just interested in outputs. The reduction in funding to Waipareira has reduced the effectiveness of accountability processes between affiliates, Waipareira, and the community. Over the course of our difficulties two of our major affiliates, both used as excuses by the Community Funding Agency to reduce our funding, have collapsed. We lack the resources now to hold them up or to repair them.¹⁰²

7.10.4 Funding appropriate services for Maori

The agency generally aims to fund a 'culturally appropriate range of services'. When asked what that meant, the northern regional manager said:

Basically that really means that people who are Maori, people who are Pacific Island, should have the right to choose a service provision that meets their cultural norms, that . . . they should be able to access a service that responds culturally appropriately to them from whatever base they are. So if we were to contract just purely with Pakeha organisations we would not be providing that. It's about a matter of choice and about a matter of matching and it also acknowledges that while the service may be the same, ie it may be a counselling service, the way it will be delivered will be different depending on cultural norms.¹⁰³

101. Document B10, p 68

102. Document B3, para 6.4. The agency did not know of any local groups that had 'fallen over' for that reason (transcript 4.2, p 214). It is relevant to note, however, that the Deloitte report commissioned by the agency expresses similar concerns to those of the trust and also refers to two groups that had failed for want of securing a viable level of funding (doc B4, app 7, p 15).

103. Transcript 4.3, p 20

(1) Identifying the 'culture' of providers

The notion that the cultural appropriateness of services depends primarily upon providers and clients sharing the same ethnicity was reiterated by senior agency witnesses throughout the hearing.

The general manager described how the agency could determine a 'match' between client bases and providers by comparing the information collected about the ethnicity of clients with the information collected about the ethnicity base of each provider. The process by which a provider's ethnic base is determined involves asking them:

whether they would consider themselves to be iwi-based, pan-tribal, Pakeha, 50/50 Pakeha/Maori – because there are some organisations that do work as a genuine partnership – Pacific Island and other, because we're also dealing with refugees, so there's Vietnamese, Cambodian and other Asian communities. . . .
 . . . we ask for the ethnicity of staff. We also ask for the ethnicity of trustees, and we also ask for the ethnicity of clients. So if you collect all of that information, you are in a position to form a view. The [agency's] staff . . . are primarily community based, and many of them have good local knowledge in terms of local iwi and so are able to confirm and consult if they are in doubt.¹⁰⁴

Services to Maori were seen to be complicated by the 'iwi' factor. In the case of care and protection services for Maori, iwi affiliation data is integral to service development (see sec 7.11.5(2)). However, for most services the agency has contracted with both iwi, where iwi have decided to become involved in social service, and with other Maori groups:

It is recognised . . . that in urban areas, there are needs for service from Maori people who do not exercise mana whenua and NZCFA has consistently contracted with both iwi and pan-tribal groups to ensure coverage of service, choice of service for Maori and quality services.¹⁰⁵

Because of the complexities, the agency further assesses the cultural appropriateness of a service by taking into account two things: the use which clients make of the service and the feedback which outreach workers receive about it:

One of the things that I think happens a lot is that people – the consumer votes with their feet. If the service provider is meeting their need, and they can choose a service provider, they will go to the provider who is best meeting their needs, they will judge whether that meets their needs in a culturally appropriate way. What we try to do is have a range – in terms of Maori – of iwi-based services, Maori-based services and services to meet other needs. Therefore the client chooses. At the end of the day the accountability of that provider will be 'were they used by those people?'
 . . . It's part of our needs assessment process, it's part of our services planning process. We are not going to fund a group who is actually not delivering a service. If clients are not using them – and that is one of the benefits of having our outreach staff in the

104. Transcript 4.2, pp 40–41

105. Document c1(2), para 54

community, they are constantly picking up that information. They are constantly saying, 'look stop' – they will get messages 'why are you funding that group? People aren't going there but you should be funding this group.' I mean it's a constant flow of information. So again it's not one thing, it's a package of information.¹⁰⁶

(2) Criteria for approval of providers

When asked how the agency would determine from the outset – before it purchased services from a particular organisation – whether that potential service provider had community support, it was said that the approval process served that end.¹⁰⁷

The process aims to establish that the potential provider can do what it is setting out to do and that it has clear accountability back to its client group, including by means of customer complaints procedures. Features of the organisation that are taken into consideration include who is on the board, who the target population is, its links with other groups, and the observance of the requirement that there be an annual general meeting.

The northern regional manager said that she did not see a great deal of difference between the features of the organisation which were assessed in the agency's approval process and the features stressed by the claimants as being important to establish what the claimants referred to as the 'mandate' of Maori groups.¹⁰⁸

However, the Tribunal detects a sizeable difference between the agency's approval assessment of providers and the type of assessment advocated by the claimants. Further, we note that Dialogue Consultants Limited, commissioned by the agency to review the family-whanau resource development funding programme, recommended a review of a pertinent aspect of the agency's approval process. The consultants' stage one report stated:

an on-going monitoring system is no replacement for appropriate screening of the approach and methods of potential providers to the NZCFA at the approvals stage. In the interests of protecting the clients, service providers (to the extent that they refer on their clients to other service providers), and the NZCFA from inappropriate providers, it would be better if the approvals process ensured that the NZCFA had a clear understanding of the philosophy and methods of potential providers at the outset so that dubious organisations could be screened out.¹⁰⁹

The footnote to that passage stated that the report was not advocating a particular set of formal skills as the basis of approval and that a blanket assertion of the appropriate skills was really not adequate. It is in this regard that the consultants concluded that a review of the agency's approval process appeared to be needed.¹¹⁰

106. Transcript 4.3, p 21

107. Ibid, p 63

108. Ibid, p 64

109. Document c1(b)(24), p 13

110. Ibid, fn 7

(3) Criteria for funding services

The impasse reached over the funding of the trust's alternative school (see secs 2.4.9, 6.4.3) highlights the problem of an effective service not meeting the CFA's criteria, which are narrowly specified to meet the reporting requirements of the Public Finance Act. The trust's frustration was expressed by Mr Tamihere in these terms:

The Crown continues to allege that the Community Funding Agency has no responsibility for the education of these children. That might well be the case, but why invest in children between the hours of 9.00 am and 4.00 pm with an education dollar when you know quite clearly that they are going to go into dysfunctional and difficult backgrounds after school? The education they have received during the day must be secured by providing an environment after hours that reinforces it. Our funding bid takes into account the services which needed to be provided to ensure that the education being provided to these children during day light hours is supported by whanau support workers in the early hours of the morning and late hours of the night.

The bottom line is, education dollars spent during the day are wasted if they are not backed up by social services outside school hours. This seems fairly straight forward to us and you will excuse us if we become impatient and intolerant with those who say Community Funding Agency does not provide education funding. What really makes us angry . . . is that just down the road at Glenburn School, Community Funding Agency *is* providing exactly the sort of funding that we are looking for with our school. In that example Community Funding Agency seems to be able to make the connection, but not in ours. [Emphasis in original.]¹¹¹

As that passage reveals, the trust's frustration at being denied agency funding for the alternative school had been compounded by its knowledge that at the time of the hearing, the agency was funding Glenburn, a so-called 'national' facility (see sec 4.4.2(1)), which the trust believed provided comparable services to that of its own school. Glenburn comprised a school and three residences serving the whole region north of the Bombay Hills. Its target group was six- to 12-year-olds who were failing at home, in school, and in the community. The objective of the programme was to rehabilitate children into behaviours which allowed participation in family, school, and the community. Glenburn had been subject to various evaluations and had been shown to be extremely effective in meeting the needs of its client group.¹¹²

The general manager described Glenburn as a very good example of an 'holistic service' being offered through a tripartite partnership.¹¹³ Glenburn received substantial funding from the agency's residential care NDOC: \$521,772 in the 1992–93 year and \$580,500 in both of the 1993–94 and 1994–95 years.¹¹⁴ The Te Whanau o Waipareira Trust's budget of the costs it would incur during the 1994 year in supporting its Alternative Unit was \$229,985.¹¹⁵ The cost of national services, however, affected the funding available to all agency areas, and the agency told the hearing that

111. Document B3, paras 4.4, 4.5

112. Document D5(e), paras 1, 2

113. Document C1(2), para 84

114. Document D5(e), para 3

115. Document A26, app 1, p 28

it was trying to eliminate or renegotiate national contracts or ‘special deals’ such as Glenburn.

The trust had tried to promote an interdepartmental agreement to fund its Alternative Unit, and had organised a visit by the Minister of Social Welfare. By the end of the hearings some progress had been made but the outcome was inconclusive.

7.10.5 Needs assessment process flawed

Both parties accepted that equitable funding decisions depend on a sound decision-making process, and that a simple comparison of how much money different providers received gives no indication of whether or not decisions are fair and proper (for reasons, see sections 4.6.3 and following). At the hearings, the trust claimed that the agency’s procedures used flawed census data and unreliable iwi affiliation statistics, and failed to acknowledge the relative disadvantage faced by both Maori service providers and cash-strapped Maori communities in managing and funding their own social services. The thrust of the trust’s argument was, therefore, that the CFA cannot claim its funding decisions to be equitable unless it takes account of all those factors.

(1) Census data criticised

The trust contended that in addition to flaws in the ‘subjective’ process by which the CFA gathers information about community needs from service providers and others, its ‘objective’ measure for comparing the different needs of various communities (the needs indicator) is unreliable. The census data used (which are gathered at five-yearly intervals) were said to get out-of-date between censuses; and the needs indicator failed to incorporate localised measures of welfare need which are already available nationwide – such as caseloads of the police and the Children and Young Persons Service. The trust contended that Statistics New Zealand, in conjunction with appropriate Maori experts, should be contracted to develop local social needs indicators of the quality needed to inform the decisions of Government and communities.¹¹⁶

(2) Iwi affiliation statistics incomplete

The trust also questioned the validity of the CFA’s iwi affiliation data. The director-general has directed the agency, since 1994, to require providers to supply the ethnicity or iwi affiliation or both of their clients. The reason is connected to the

116. Document B6, pp 13–14. Claimant witnesses also suggested, however, that the agency’s funding allocations to West Auckland Maori could be assessed for their equitableness, at least generally, by equating funding levels with the level of Maori representation in the statutory caseload statistics of key social agencies. On this basis, because West Auckland Maori account for 35 percent of the caseloads of the area’s police, Children and Young Persons Service, and Community Corrections, an equitable level of agency funding for social services for West Auckland Maori would be 35 percent of the West Auckland allocation. By the trust’s calculations, only 14.28 percent of the total West Auckland allocation had been made available to Maori service providers in the 1992–93 year (doc B5, app 7, p 28).

agency's obligations under the Children, Young Persons, and Their Families Act 1989.¹¹⁷

It was emphasised that the Act itself was the product of the recommendations made in *Puao-te-Ata-tu*. Its general import was summarised as requiring the DSW to 'promote and resource services to enable children and young people to be cared for by their whanau, hapu and iwi'.¹¹⁸ By gathering statistics about the ethnicity or iwi (or both) of service providers' clients, the agency aims to track the amount of funding going to consumers on the basis of ethnicity and to monitor the 'cultural appropriateness of providers to their client base'.¹¹⁹

Difficulties in obtaining information about clients' ethnicity and iwi affiliation were noted by the general manager: some clients do not wish to provide it and some service providers have difficulty asking for it.¹²⁰ It was said there can be a raft of reasons why iwi affiliation data is difficult to collect, even in the census. The agency was primarily seeking to overcome providers' and clients' reticence to provide it. That reticence was attributed to lack of understanding of the reasons why the agency needs the information and also to a sense of shame in providing it.¹²¹

The claimants highlighted another reason. They referred to a May 1994 report prepared for the agency by Deloitte Touche Tohmatsu which states that the majority of Maori clients of agency-funded child and family support services 'do not know their Iwi'.¹²²

This suggestion was supported by the Te Puni Kokiri manager who gave evidence for the agency. She referred to the 1991 census results which reveal that 13 percent of the people who identified as Maori did not identify their iwi affiliation. That percentage does not include the group, which is almost as large again, who have both Maori and some other ancestry but who did not identify themselves as Maori. The 13 percent who identified as Maori but did not state their iwi affiliation in the census were assumed by the Te Puni Kokiri manager not to know their iwi. Many were in the younger age groups and this would support the statement, made in the Deloitte report, that most clients of child and family support services do not know their iwi.¹²³

Whatever the reason in particular cases, the inability or failure of service providers to record their clients' ethnicity poses difficulties for the agency's work under the Children, Young Persons, and Their Families Act, such as the purchase of appropriate placements for Maori children and young persons requiring care. At the hearings, however, the agency made plain that the fact that clients might not know their iwi was

117. Under the terms of a protocol recently established between the Children and Young Persons Service of the department and the agency, the service actually places children and young people in care but it is the agency's responsibility to ensure that services exist for appropriate placements to be made (transcript 4.3, p 8). The previous coordination between the service and the agency on this matter had been extremely problematic, causing the director-general to commission a review of the situation. The resulting report – the Weeks report – led to the new protocol (doc C1(1), paras 10–12).

118. Document C1(2), para 60

119. Ibid, para 57

120. Ibid, para 62

121. Transcript 4.3, p 6

122. Document B4, app 7, p 30

123. Transcript 4.2, pp 92–93

not seen as a significant reason why iwi affiliation data could not be collected from many young clients of service providers.

(3) Affirmative action required for Maori

The trust claims that the CFA's needs assessment and services planning processes should have to compensate for the fact that the provision of Government social and welfare services aimed at Maori has been eroded over the last decade. The trust says that, in the new mainstreamed environment of community group service provision, it is vital that Government agencies fully recognise the plight not only of Maori consumers of services but also of Maori service providers.

The plight of Maori consumers of services, it said, is reflected in the statutory case loads (eg, pre-sentence reports and referrals of children and young people in need of care and protection) in which Maori are disproportionately represented. And further, the plight of Maori service providers, it was said, is that they are starting up a considerable distance behind long-established, Pakeha-based providers whose longer experience in the social services arena has produced a pool of skilled managers, staff, facilities, and systems. These resources are beyond the reach of new Maori providers unless they are assured of significant State funding throughout a realistically determined developmental period.¹²⁴ Also, Maori service providers typically operate in a particular geographic area, which precludes their reliance upon wider fundraising appeals.

(4) Communities' differing abilities to contribute

Besides facing criticism of its methods for assessing the different needs of various communities, the agency was alleged to have failed to take full account of those communities' differing abilities to contribute to the cost of their social services. The trust emphasised that while Maori communities generally are typically short of cash as well as management and other formal skills, they are rich in voluntary, formally unskilled, labour – especially that of Maori women. The trust's own records show that for every paid hour that is worked in delivering its social services, between six and seven unpaid hours are worked by its volunteers.¹²⁵

The trust said the CFA promoted an assumption that the formally untrained labour component of Maori services will continue. While the trust conceded that the assumption might be correct in the sense that Maori will always volunteer their labour in order to assist their communities, it questioned the wisdom of such an assumption when Maori are under-represented in positive welfare statistics and over-represented in negative statistics.

To the trust, promoting, even if indirectly, the continued reliance of Maori service delivery upon the formally untrained labour of Maori volunteers, is counterproductive to the broad goal of reversing the cycle of Maori dependency upon welfare, which both Maori and Government share. Rather, it would be to the benefit of all Maori and

124. Document B5, p 13; doc B10, pp 77, 87

125. Document B4, app 6, p 3. Elsewhere, Mr Tolich says trust staff work five hours for each hour paid (doc B4, para 28).

so for New Zealand as a whole for an increasing number of Maori community workers to be trained and paid for their work. This is an example of the trust's holistic view of welfare goals and the need for a community development vision to achieve them.

7.11 SUFFICIENCY OF FUNDING TO TE WHANAU O WAIPAREIRA TRUST

Mr Tamihere explained the claimants' reliance upon funding statistics in support of this aspect of its claim:

This claim is not about money. Regretfully to evidence our allegations, funding will be utilised to demonstrate inequitable treatment. The claim is essentially about fairness, due process and equality of opportunity. It is about our right as a pan-tribal whanau in the urban area to be acknowledged as a Treaty partner and our right as urban Maori to organise ourselves in accordance with our own tikanga to address our own problems our way.¹²⁶

7.11.1 Parties compare figures differently

The trust and the agency disagreed on how to compare the amount of funding the trust received from the DSW and then from the agency in the three financial years from 1991–92 to 1993–94. As a result, they reached different conclusions about the trend that was revealed by the trust's funding over the three-year period. Further, they did not agree on the relevance of any trend that might be ascertained.

7.11.2 Difference of GST

One cause of their difficulty in agreeing on the amount of funds the trust received in each of the three years between 1991–92 and 1993–94 was that before July 1992 payments excluded GST whereas since that time payments included GST. From a table supplied to the trust at its request by the Audit Office, the funding the trust received for social services in 1991–92 is stated to be \$163,957.14. To make that 1991–92 GST-exclusive figure comparable with the GST-inclusive amounts received in the following two years, Mr Tolich's table of the trust's funding for social services added 12.5 percent to that amount. The total he reached by that method was \$184,451.78 for the 1991–92 year.¹²⁷

7.11.3 Establishment grants and discontinued services

Mr Tolich then compared the 1991–92 GST-inclusive total with the total amounts the trust received from the agency in the next two years and, by that means, revealed a decline of 21.21 percent in the trust's funding over the three-year period. While the

126. Document A19, para 1.2

127. Document B4, apps 3, 4

agency also relied upon the table compiled by the Audit Office, it did not accept that merely comparing the Auditor-General's figures over the three years between 1991–92 and 1993–94 revealed the true trend of its funding to Te Whanau o Waipareira Trust. In its view, one-off establishment grant funding, finite funding for information and resource services, as well as funding for community housing contracts (a service no longer provided by the trust), should be deducted from the 1991–92 total before it could be compared with the agency's funding of trust services in the next two years. By these means, the agency put the trust's funding for 1991–92 at \$138,600.¹²⁸

The Audit Office put the total amount received by the trust from the agency in 1992–93 at \$157,514.44. The trust reached a higher total: \$168,407.30.¹²⁹ The Audit Office identified the cause of this discrepancy in a letter to the trust accompanying its table of figures. Briefly, it appears that adding GST to the 1991–92 figures had a flow-on effect on the 1992–93 total Mr Tolich reached because a key services contract entered into in 1991–92 was for two years.¹³⁰

While accepting the Auditor-General's total for the funding received by the trust for social services in 1992–93, again the agency disputed the validity of using it to compare the trust's funding in 1992–93 with its funding in other years. The sum it gave as the total value of the trust's funding in 1992–93 for comparative purposes was \$135,361. Again, the difference is explained by the agency's deduction of one-off establishment grant funding, finite funding for information and resource services and community housing contracts.

The Auditor-General's total of the funding received by the trust for social services in 1993–94 is the same as the trust's total: \$145,332.78. Again, the agency put forward a lower figure to be used for the purposes of comparing the trust's funding over the three-year period. That figure is some \$8000 lower: \$137,119.¹³¹

For ease of reference, the various figures put to the Tribunal as representing the trust's funding for social services over the three-year period are as follows:

	1991–92	1992–93	1993–94
Auditor-General	\$163,957.14*	\$157,514.44	\$145,332.78
Agency	\$138,600.00*	\$135,361.00	\$137,119.00
Trust	\$184,451.78†	\$168,407.30	\$145,332.78

* Excluding GST

† Including GST

7.11.4 Trust funding has declined

From that table, it can be seen that none of the three versions of the figures reveals an increase in the trust's funding for social services over the three years. All show a

128. Document c1(6)(c)

129. Document B4, apps 3, 4

130. Ibid, app 3

131. Document c1(6)(c)

decline between 1991–92 and 1993–94 but the agency’s figures show the least decline – some \$1500 or less than one percent – while the trust’s figures show a decline of nearly \$40,000 or 21.21 percent. The Auditor-General’s figures for the 1991–92 and 1993–94 years, being different from the trust’s only because of the earlier figure being GST-exclusive, show a decline of 12.5 percent over the period.

The Tribunal has not attempted to establish the ideal way to determine, for comparative purposes, the funding received by the trust over those three years. It believes it is significant, however, that the trust was of the view that its funding had been decreased substantially over that period.

7.11.5 CFA’s position changed

As well, it is significant that the agency’s position at the hearing of the claim was very different from its position in February 1994 – just two months after the trust had lodged its claim with the Tribunal. In a letter from the then Auckland area manager to the trust’s chairperson, dated 10 February 1994, the value of the trust’s contracts with the agency in 1992–93 is given as \$97,210.95 – some \$40,000 less than the figure given by the agency at the hearings, and some \$60,000 less than the Auditor-General’s figure and \$70,000 less than the trust’s figure. The letter states that, for the 1993–94 year, the agency has offered or already contracted with the trust for contracts to the value of \$135,333.35 and that a further \$10,000 is available subject to the receipt of an overdue report from the trust. It then states that the 1993–94 funding level ‘in fact represents a 33% increase in funding to the Trust for the services purchased from our agency this financial year, compared with last year’.¹³²

It was as a result of receiving this letter that the trust requested the Audit Office to audit its own and the agency’s accounts of the trust’s funding levels since 1991–92. It also obtained an audit from a chartered accountant. The accountant’s prompt response, by letter dated 14 February 1994, identified an error in the agency’s tallying of the 1992–93 contracts: it had omitted a contract to the value of \$62,178.00. The Auditor-General confirmed, by letter dated 28 April 1994, that the agency had made that error.¹³³

7.11.6 Basis of agency’s stance mistaken

While the positions taken by the trust and the agency at the hearings of the claim differed, they did not differ to anything like the same extent that they had nearer the time when the impasse over the trust’s 1993–94 funding occurred. In the increasingly tense atmosphere of that time – during the second half of 1993 – it seems that the agency was dealing with the trust either on the basis of a significant error about the level of funding it had allocated the trust the year before or on the basis that the trust’s tally of its 1992–93 funding did not need to be checked because it was of little relevance to the funding allocation process.

132. Document B4, app 1

133. Ibid, apps 2, 3

7.11.7 Trust watching trends

By contrast, in its dealings with the agency over funding for the 1993–94 year, the trust was very much focused on comparing the amount it was offered with past funding levels: it was well aware of the contribution it had made to its own delivery of social services in the previous two years and was eager to provide more services in the future on the basis of what it regarded as an equitable (larger) share of agency funding. And both the trust and the agency were also well aware that the trust was the largest deliverer of social and welfare services to Maori in West Auckland and that it was, by the agency's own standards, effective in its service delivery.¹³⁴

7.11.8 CFA says trust expected full funding

A major point made by the agency about its role as a partial funder was that its funding is a finite resource to be allocated amongst numerous service providers, most if not all of whom will believe their services to be deserving of more funding than is allocated. However, a particular point made by the northern regional manager was that Te Whanau o Waipareira Trust had, at least in the hearing of the claim, displayed an expectation that the Government should fully fund organisations delivering social and welfare services.¹³⁵ Crown counsel reiterated this point in closing submissions.¹³⁶

7.11.9 Tribunal view of the evidence

The Tribunal was surprised at the assertion that the trust expects the Government to fully fund its services. The claimants' evidence spelt out that the trust contributes a great deal of voluntary labour, as well as funding from its corporate activities, to its social services programmes.¹³⁷ That level of contribution was plainly regarded to be inequitable by trust witnesses but they explicitly accepted that there is never enough money to go around and that it is necessary for the trust to 'chip in' to provide its services.¹³⁸ Even the trust's 1993–94 'funding bid', in which it laid claim to a larger share of agency funding than had been allocated to it in the past, made provision for the trust's supply of voluntary labour to the value of \$55,000.¹³⁹ As Ms Reid later noted, the trust also expressed its aspiration to become fully self-supporting in time so that it would not need to look to the Government for funding of the services it provides to the people of West Auckland.¹⁴⁰ The confusion over the trust's expectations of the Government and the agency might have been less had the northern regional manager read the trust's funding bids. In response to questions from claimant counsel, she acknowledged that she had not done so.¹⁴¹

134. Transcript 4.2, p 127

135. Document c1(6), para 67

136. Document e7, para 140

137. Document B3, paras 2.1, 2.2, 3.8; doc B4, para 28; doc A19, para 6.9

138. Document A19, para 6.9

139. Document B5, app 7, p 30

140. Document B10, p 56; transcript 4.3, p 70

141. Transcript 4.2, p 140

7.11.10 Poor communication evident

Such disjunction between the agency and the trust, on such basic matters as the amount, and the relevance, of the trust's previous funding for social and welfare services, persisted for at least 18 months after the agency's establishment. We consider that very fact to be further proof that the quality of interaction between them on matters of agency funding policy was poor indeed.

We cannot reach a definite conclusion about what effect the agency's error in tallying its 1992–93 funding had on its 1993–94 offer to the trust. Nevertheless we certainly appreciate that, to the trust, the discovery of the error tended to confirm its belief that its 1993–94 funding level was inequitable.

7.12 AGENCY FUNDING OF MAORI IN WEST AUCKLAND

Ms Maryanne McGee, a former outreach worker working on contract for the agency at the time of hearings, provided an analysis of the funding allocated between 1991–92 and 1993–94 to West Auckland providers of services in areas of the families in need of support sector in which the trust was involved. The providers were grouped into two categories – Maori-based organisations and non-Maori based organisations – with average funding levels given for each category of provider in each programme area.¹⁴² It was explained that Maori-based organisations, for this purpose, included organisations with a board, staff, and target client group who are largely Maori and who have Maori views, ethics, and beliefs. Non-Maori based organisations are 'everybody else'.¹⁴³

7.12.1 Maori providers funded fairly

The agency said that its figures for Maori funding:

appear to refute the allegation that because Maori organisations have to compete for funding with non-Maori organisations, and are required to comply with changed criteria and the contractual demands of NZCFA and other government agencies, Maori are being denied the opportunity of deciding what is best for their own people.¹⁴⁴

The agency also said that the figures demonstrate that urban Maori are not ignored by agency policy: funding of iwi and urban groups is a matter not of 'either or' but of 'as well as'.¹⁴⁵

However, it was accepted by the agency that its 'bottom line' figures for the years 1992–93 to 1994–95 are of little value in illustrating the effectiveness of the social and welfare services delivered to Maori. As has been noted, monitoring of the consequences (outcomes) for clients of agency-funded services is not required by the

142. Document c1(13), paras 4–22, app 1

143. Transcript 4.3, p 109

144. Document c1(6), para 116

145. Ibid, para 100

Government and, apart from the needs indicator's ability to detect long term changes in need between and within areas, the agency is still in the early stages of developing client-focused measures of the outcomes of its funding. In the absence of those measures, many factors bedevil attempts to compare the positions of different groups of providers and consumers on the basis of the funding allocated by the agency (see sec 4.6.4).

Ms McGee acknowledged that a comparison of average funding levels for Maori and non-Maori organisations in West Auckland was of limited value because providers, and their client bases, would be very different. The point in providing those comparative figures, she explained, was to highlight any 'radical difference' in the average amounts of money going to Maori and non-Maori groups.¹⁴⁶ However, no evaluation was supplied as to whether the differences so highlighted did amount to radical differences which the agency should address or had addressed.

7.12.2 Trust disagrees with CFA conclusions

The trust's response to the agency's comparative funding statistics included both general and specific arguments. At a general level, the trust asserted that the agency's figures showed that funding in West Auckland, in the service areas identified in Ms McGee's evidence, had risen by 50 percent over the three years from 1991–92 to 1993–94. By contrast, it was said, the same figures showed that funding to West Auckland Maori organisations had increased less than 5 percent over the same period. Ms McGee responded that a large proportion of the total increase in West Auckland funding was attributable to the inclusion, in the West Auckland figures, of funding already assigned to other groups. As a result, she denied the validity of the conclusion drawn by the trust.¹⁴⁷

The trust noted, however, that the increase in West Auckland's funding included money transferred from programmes previously dedicated to Maori, including the koha placement and Maatua Whangai programmes. It contended that the small increase in funding to Maori groups over the period did not reflect the transfer of funding from Maori sources.¹⁴⁸

7.12.3 CFA says trust funded fairly

The trust's claim of inequitable funding by the agency related to the amount allocated to West Auckland Maori – whether or not by way of contracts with the trust. However, some of the agency's statistics compared the level of funding received by the trust relative to other agency-funded providers throughout New Zealand. Ms Reid summarised the import of these statistics by saying they showed:

146. Transcript 4.3, p 108

147. Ibid, p 122

148. Document E6, para 9.15

that the value of the NZCFA contracts with Te Whanau o Waipareira was amongst the largest of NZCFA contracts compared with the average value of contracts with all other service providers, both Maori and non-Maori.¹⁴⁹

The statistics highlighted were as follows:

- The level of funding allocated by the agency to the trust is available to only 2 percent of service providers contracted by the agency throughout the Auckland and Central North Areas. Nationwide, less than 10 percent of providers have contracts with the agency valued at over \$100,000. The trust is in the ‘highest category’ of providers.
- The trust’s ‘bid’ for additional agency funds in 1993–94 was equal to the total funding of 8.8 other groups receiving the average contract amount of \$23,925 in West Auckland for the provision of services in the areas in which the trust is involved.
- Of the 32 West Auckland providers funded by the agency to provide services in the areas the trust is involved in, the trust received 14.3 percent of the total budget of \$765,592 in the 1993–94 year.¹⁵⁰

The overall conclusion drawn by Crown counsel from the comparative statistics presented by the agency was that there were no grounds for the trust’s claim that the agency had acted unfairly to the trust or breached an alleged Treaty duty by reducing the trust’s funding. It was submitted that:

... Maori in West Auckland have been equitably funded by the NZCFA for social and welfare services in relation to funding allocated to other groups in Auckland; and in particular Te Whanau o Waipareira Trust has had equality of access to the resources available from the NZCFA.¹⁵¹

7.12.4 Waipareira’s response

A general response was made to Crown counsel’s mention, based on the statistics provided by Ms McGee, of the trust receiving 14.3 percent of the total funding available in West Auckland in 1993–94 to the 32 groups providing services in programmes in the families in need of support sector.¹⁵² Claimant counsel provided a context for that percentage amount by noting that, for the same programmes, the trust had received 32.1 percent of the West Auckland pool in 1991–92 and 25.5 percent of that pool in 1992–93. He concluded:

Waipareira could be forgiven for believing that in light of this significant and consistent decline in its ‘share of the pie’, its position was being progressively and severely downgraded.¹⁵³

149. Document C1(6), para 209

150. Ibid, paras 213–216

151. Document E7, para 147

152. Ibid, para 145

153. Document E8, para 41

The trust's main response, however, was to analyse in detail the CFA's funding to the trust under two categories: homebuilders and family-whanau development, and care services.

7.12.5 Homebuilders and family-whanau development funding

(1) Trust originally only Maori provider

The first, and most significant in dollar terms, of the more specific challenges made by the trust to the agency's comparative statistics related to the funding of home-based services in West Auckland between 1991-92 and 1993-94. Ms McGee's evidence was that in 1991-92, before the agency was set up, the trust was the only Maori provider of Homebuilder services and:

received a very high proportion of funding from what was then the [DSW's] Community Services team as opposed to any other provider, Maori or Non-Maori. . . . the average funding for Non-Maori providers of home based services in 1991/92 (1 Pacific Island and 1 Pakeha) was \$57,482. In that same funding year Te Whanau o Waipareira Trust received \$123,457 which was 51.8% of the total funding for the Homebuilder services.¹⁵⁴

That high proportion of funding in that year has created problems for subsequent years where funding was required to be provided on the basis of caseload need.¹⁵⁵

In the 1992-93 year, the trust's funding for home based services was \$97,142.86 and another Maori provider received \$18,000 for those services.¹⁵⁶ Therefore, the total funding to Maori providers that year was \$115,142.86 or 54.9 percent of the West Auckland allocation for those services. A single non-Maori provider received the \$94,568.63 allocated to non-Maori groups for such services.¹⁵⁷

(2) Funding programmes restructured

The restructuring of funding programmes for the 1993-94 year led to the creation of the family-whanau development programme. Because it absorbed funding from areas previously classified differently, it is difficult to compare 1993-94 funding with that allocated from the earlier homebuilders programme. Ms McGee suggested that the total amount allocated to Maori providers in 1992-93 for both homebuilders and family resource services (\$120,928.86) could be compared with the total allocations made to Maori providers in 1993-94 from the new family-whanau development programme (\$119,749.00). She noted, however, that the 1993-94 figures were

154. It is notable that the trust's 1991-92 allocation for homebuilders services included the \$40,000 one-off establishment grant that was a major element in the difference between the parties' tallies of the trust's funding for that year (doc E7, para 146).

155. Document C1(13), para 17

156. The other Maori provider in 1992-93 was Te Roopu Mataihi Trust of south Kaipara, and the matter of its funding that year and subsequently was the subject of the disagreement between the agency and the trust, as discussed at section 7.6.

157. Document C1(13), para 18, app 2

distorted by the inclusion in the family–whanau development programme of national contract, community housing and other funds.¹⁵⁸

(3) *Sharp decline in West Auckland share – trust*

Using the basis for comparison suggested by Ms McGee, the trust totalled the funding it had received from the relevant programmes in each of the three years. In 1991–92 it received \$125,957 (42.1 percent of the total funding available for those services in West Auckland); in 1992–93 \$102,928 (34.5 percent of the West Auckland total for those services); and in 1993–94 \$70,000 (15.6 percent of the West Auckland total for those services). Claimant counsel said these figures ‘represented a massive decrease which CFA has still not explained’.¹⁵⁹

(4) *Holistic service prejudiced*

He also drew attention to the fact that family–whanau development services are ‘in essence ordinary Social Worker casework’ and that, in practical terms, while funding for the trust’s services comes from different funding programmes, the delivery of services is closely interlinked:

If a child comes into care with Waipareira, it will be important to maintain a case worker to assist the child in reestablishing their links with family and being ultimately de-institutionalised. Thus without the case work [family–whanau development] component to back up the care category or the youth category, the overall effectiveness of the service is significantly diminished.¹⁶⁰

Although the agency gave additional reasons for the particular level of funding allocated to the trust from other programmes in the families in need of support sector (see sec 7.12.6(2)), its explanation of what the trust referred to as ‘a massive decrease’ in its funding in this area was supplied by the general evidence it had given about the basis of agency funding. The two major components of that explanation are that the agency funds on the basis of the needs, assessed both nationally and within areas, identified in the services planning process; and that, on that basis, the trust’s 1991–92 funding level – which in effect set the 1992–93 level – was inflated.

7.12.6 Care services

(1) *Trust’s share declines*

The second of the more specific challenges made by the trust concerned the funding of care services in West Auckland between 1991–92 and 1993–94. The trust and one other Maori group received agency funding for care services in West Auckland in 1991–92 and 1992–93. The \$38,000 allocated by the agency to the two Maori providers in 1991–92 represented 26.4 percent of the funding allocated for care services in West Auckland. Of that \$38,000, the trust received \$30,000. In 1992–93, \$45,000 (20.4

158. Document c1(13), paras 19–20

159. Document E8, para 44

160. Ibid, para 45

percent of care service funding in West Auckland) was allocated by the agency to the two Maori providers, with the trust receiving \$40,000. In 1993–94, the other group ceased providing care services and the trust was allocated \$30,000 (12.8 percent of West Auckland’s care service funding).¹⁶¹

(2) CYPS places children within whanau?

The reduction in the trust’s level of funding for care services between 1992–93 and 1993–94 was partly explained by the advice given to the agency by the Henderson office of the Children and Young Persons Service (CYPS) that it preferred to place Maori children within their whanau in line with the Children, Young Persons, and Their Families Act 1989 and so did not require a greater supply of Maori care services.¹⁶²

(3) CYPS advice to CFA wrong – trust

Mr Stewart of the trust, advertent to difficulties caused by the reduction in agency funding for its care services, said that, if the agency had been told there was no need for a Maori care service in West Auckland because Maori children were being placed with their whanau, then it had acted on inaccurate information. The trust, he said, had clearly demonstrated the need for such a service but that information had not ‘filtered through’.¹⁶³ The claimants questioned CYPS ability to readily place Maori children and young people within their whanau, hapu or iwi, in light of the evidence that providers were having difficulty collecting iwi affiliation statistics (see sec 7.10.5(2)).

The agency acknowledged that in the 1992–93 year, a large proportion of the trust’s care service clients had been referred from out of the West Auckland area and that this made it difficult to trace any links to their whanau, hapu, and iwi. As a result, it was difficult to know whether those referrals to the trust were appropriate in terms of the Children, Young Persons, and Their Families Act 1989 which promotes the placement of Maori children and young persons within their whanau. However, the agency’s experience was that the Henderson CYPS office made every attempt to find out the whanau, hapu, and iwi of Maori youngsters and place them appropriately.¹⁶⁴

(4) CYPS still uses trust

Although not focused on at the hearings, the trust also put in evidence its response to the questionnaire about child and family support services that had been distributed by Deloitte Touche Tohmatsu in advance of preparing its report.¹⁶⁵ Written early in 1994, after the trust lodged its claim with the Tribunal, the trust’s response notes that:

161. Document c1(13), paras 6–8, app 1

162. Ibid, para 9

163. Document B10, p 70

164. Transcript 4.3, pp 100, 123; doc c1(13), para 10

165. Document B4, app 6

There has been a marked increase in CYPS referrals both for care and for other services. Further there has been a noticeable increase in the complexity of cases both from our own referrals, from lawyers and from CYPS.

There has been a marked increase in the referral of adolescents most noticeably from outside our area.¹⁶⁶

(5) Trust under pressure

In his final submissions to the Tribunal, counsel for the claimants spelt out the basis of the trust's concern over the agency's funding of its care services. It was said that, despite the advice the CYPS had given the agency – and the reduction in trust funding which occurred as a result – the CYPS had continued to place unabated demand upon the trust's care services.¹⁶⁷

Neither the Tribunal nor the Crown had fully appreciated the trust's concern over the funding of its care services until counsel made his final submissions. The Tribunal requested that claimants' counsel clarify the matter in writing and undertook to provide the agency with an opportunity to respond.

In a letter dated 18 July 1995, claimant counsel informed the Tribunal that the trust had provided 2492 bednights in the 1993–94 year and that the number of bednights provided in 1994–95 would exceed 2500.¹⁶⁸ The letter was duly copied to Crown counsel. No response was received.

(6) Needs assessment by Runanga o Ngati Whatua

Another reason that was given for the reduction between 1992–93 and 1993–94 of the level of agency funding for the trust's care services was that, at the time funding decisions were made, the agency was awaiting the results of a needs assessment which Te Runanga o Ngati Whatua had requested be carried out and which it was conducting. The assessment was to include information about the possible need for care services among Maori in the areas covered by the Ngati Whatua rohe. The delay in the needs assessment caused the agency to delay making decisions about possible changes in resource allocation to care services.¹⁶⁹

At the time of the Tribunal's hearing in March 1995, it appeared that the agency-funded needs assessment was still not complete. Although a final draft of a first needs assessment had been completed in 1993, its results were very general and had necessitated a second assessment focusing specifically on social service needs. Some difficulties had been experienced in obtaining the services of a person to conduct that assessment. Ms McGee said that the trust had not lost any funding as a result of the delay with the needs assessment. Further, she did not believe it was meaningful to ask if the trust had lost access to extra funding as a result.¹⁷⁰

166. Document B4, app 6, p 4

167. Document E8, para 42

168. Document E11(a), p 2

169. Document C1(13), para 12

170. Transcript 4.3, pp 101–102, 112

(7) '*A tangle of disagreements*'

The parties had disagreements in all aspects of their relationship. They disagreed over the facts of the claim, beginning with the amounts of money that had passed between them, and therefore they disagreed on the trend of funding decisions and what that showed about their dealings. There were vexatious matters of communication and courtesy which appeared not to affect the funding position – for instance, delays (which the agency acknowledged were unacceptable) in processing correspondence from the trust, and some misconceptions on the trust's part about agency funding. There were more serious misunderstandings or failures of communication such as that over the requirements on the trust to report to the agency on its expenditure and results.

Under ordinary circumstances, all these problems were capable of being resolved by straightforward discussion between the parties. But the difficulty in this case was that, in the background, the parties disagreed over more important issues. The trust thought that the CFA's funding policies, which promoted service development rather than community development, infringed on its right (and its responsibility) to design and implement the programs that it felt would be most cost effective for its community. The trust also felt that the CFA's services planning was inadequate in that it relied on flawed data and focused on service outputs rather than social outcomes, to the detriment of the trust's community. The policy differences, in turn, overlaid their disagreements over the structural relationship between the parties, which crystallised in this claim as a dispute over the trust's status as a Maori group under the Treaty of Waitangi and its expectation that it should be consulted and have input into the CFA's policy.

In the next chapter, we outline our conclusions as to why an impasse between the parties resulted; we identify the relevant Treaty principles and make our findings on the extent to which they were breached; and we make recommendations which we hope will guide the parties towards a more constructive relationship.

