

CHAPTER 6

CHANGES TO WIDER STATE SECTOR

6.1 SUMMARY

Part of the background to the claim is provided by the State sector reforms that have occurred since the late 1980s; in particular, the introduction of the State Sector Act 1988, which preceded the restructuring of the DSW and major changes made in the former Maori Affairs area of State, and the creation of a new regime of financial accountabilities under the Public Finance Act 1989.

The claimants did not allege that the statutes themselves were inconsistent with Treaty principles; rather, their claim was that the path the agency chose to follow to meet the requirements of statute did not lead to proper consideration being given to the needs of the Waipareira community and how they should be met. It was the agency's style of adherence to the statutes that was allegedly in breach.

There were four major themes that ran through claimant witnesses' evidence:

- (a) *Accountabilities*: The claimants said there was no formal mechanism to make the agency accountable to Waipareira. The claimants pointed to school boards of trustees, regional health authorities and Crown health enterprises, and other structures operating in the education and health sectors that provided for community input, were accountable both to the Crown and to the community, and were also consistent with the reformed State sector. They said there was no equivalent in the social and welfare sector since the DSW's district executive committees had been abolished (prior to the advent of the CFA). The claimants also argued that, because of the way that the agency reported to Parliament under the Public Finance Act, Maori were given no useful information for monitoring the performance of the CFA or the service providers it funded against the social goals set by the Government.
- (b) *Fragmentation*: The restructuring of the State sector has fragmented the Government's welfare operations and State sector managers are not making sufficient efforts to coordinate their policies and programmes to achieve broad welfare goals; in short, while the legislation did not require the CFA to cooperate better with other agencies, neither did it prohibit proper cooperation, and the claimants argued that the CFA could have and should have done more to this end.
- (c) *Disruption*: The restructuring has also disrupted the networks by which Government workers used to collaborate.

- (d) *Mainstreaming*: The reduction since the late 1980s in the value of Government's targeted programmes for Maori, coupled with the effects of mainstreaming, have reduced the amount of Government funding and services specifically available to Maori and made access to whatever is provided more complicated.

6.2 THE PHILOSOPHY OF STATE SECTOR RESTRUCTURING

A succinct overview of the governmental framework within which the Community Funding Agency operates was provided by State Services Commission and Treasury managers.¹

6.2.1 The State Sector Act 1988

(1) *Framework*

The basic effect of the State Sector Act 1988 is that the chief executive of a Government department (eg, the Director-General of Social Welfare) enters into a purchase agreement with the Minister responsible for that department. By that agreement, the Government (through the Minister) purchases or funds the activities of the department. The chief executive also enters a performance agreement with the Minister and is accountable for the department's conduct in terms of both agreements. The State Services Commission and the Treasury are involved in monitoring compliance with those agreements. Audit New Zealand is contracted to audit the department's performance and to provide information to the State Services Commission and Parliament.²

In departmental terminology, the Government purchases 'outcomes' in the purchase agreement with a department's chief executive. In each of the 1993–94 and 1994–95 fiscal years, the statement of outcomes desired by the Government from the Department of Social Welfare is prefaced by these words:

The services provided by the Department of Social Welfare will contribute to the Government's goal of a fair and just welfare system, taking into account other demands on national resources. The services are to be delivered in strict conformity with legislation and in a manner which might reasonably be expected of an efficiently run organisation.³

Then follows a list of the outcomes – general statements which, when read together, capture the direction of Government policy in the social welfare area.

The outcomes Government desires a department to achieve are associated with the 'outputs' expected of that department. Generally, the CFA's outputs are to produce a purchase plan for social and welfare services; to approve service providers who meet

1. Document c1(3),(4)

2. Document c1(3), paras 3, 4

3. Document c1(3), app 1

the agency's service delivery standards; to contract with approved service providers; and to monitor those providers' performance. Each output is subject to specified quality and quantity measures, against which the agency's performance is measured.⁴

In sum then:

The New Zealand Community Funding Agency, as a business unit of the Department of Social Welfare, is expected not only to deliver the agreed outputs to meet the desired outcomes, but also to contribute to the purchase of social and welfare services consistent with the requirements for payment on behalf of the Crown (POBOC/NDOC) under s 32A of the Public Finance Act.⁵

(2) Reporting on outputs not outcomes

Under the State Sector Act, the agency's performance is monitored against its outputs. Those outputs are associated with the broad social welfare outcomes that the Government desires the DSW to achieve. However, there is no direct monitoring of the agency's performance in terms of those outcomes.⁶ The quality and quantity measures that are set for each of the agency's outputs do not seek to assess the consequences of agency-funded services upon the lives of consumers.

The agency's northern regional manager explained this situation:

the agency has not been required to report on outcomes, it only is required to report on outputs, and our outputs at this stage are how many programmes we bought, how many counselling hours, those things, and they are measured in our contract monitoring processes. Since the move last year to output contracting we now contract for, for example, a hundred counselling hours, and we can measure whether we got that through our reporting stats. . . .

We set out to get x number of counselling hours because our needs assessment processes shows that's what we needed, this is what we contracted for, these were the quality service indicators we needed to ensure that we got a quality service return and that's what we got. It doesn't take us to the next step which says, how did that impact on the outcome for family life or in terms of the Government's outcomes which are at a higher level where there is no measurement mechanism yet in place for that and no requirement of any Department to report at that level as yet.⁷

The agency was unaware of any work being done within the Government to enable the measurement of the extent to which its desired outcomes are being achieved, although the agency said there was a growing awareness of the need for that work to be done (but see sec 6.5.1(3)).⁸

4. See doc c1(3), app 2

5. Document c1(3), para 9

6. Document c1(2), para 26

7. Transcript 4.3, p 15

8. Ibid, p 16

6.2.2 The Public Finance Act 1989

Since 1989, outputs such as those supplied by the agency (where third parties – community organisations – actually provide the services which will contribute to meeting the Government’s desired outcomes), have been appropriated to Ministers by a type of appropriation formerly known as a POBOC (payment on behalf of the Crown) but now known as an NDOC (non-departmental output class).

(1) Input contracting changed to output contracting

Before 1994, the CFA reported on the funding allocated to service providers from each POBOC it managed by specifying the inputs for which service providers had used the money. For example, the agency would report in terms of how much money had been spent on the wages, administration costs, training and travel of service providers. Accordingly, its contracts with service providers were also couched in terms of the inputs funded.⁹

As a result of an amendment to the Public Finance Act, from 1 July 1994 the agency was required to change its method of financial reporting. Instead of reporting on the allocation of funding in terms of service providers’ inputs, it is now required to report in terms of the actual services (outputs) – such as the number of counselling hours – purchased from service providers.

Consequently, the agency has had to change its method of contracting with service providers. Instead of contracting to fund service providers’ inputs, it must now contract to purchase particular outputs (of a specified quantity and quality) supplied by service providers. This change has required new data to be gathered from service providers so the agency can report on the quality and quantity of their services. The Government review panel responsible for implementing these changes accepted that the agency could not supply all the new information by 1 July 1994.¹⁰

(2) Funding programmes redefined

The agency inherited some 27 different funding programmes in 1992, a list that was reduced to 21 for the 1992–93 year. In the 1993–94 year, those POBOCs were simplified and reduced in number to 18.¹¹ The Public Finance Act required a formal review of POBOCs before the 1994–95 year to ensure that there was homogeneity of outputs and that quality and quantity measures were specified for each one. The review, conducted by a panel of representatives from the Treasury, the State Services Commission, and the Department of Prime Minister and Cabinet, took place between September 1993 and March 1994. The general manager of the CFA was called before that panel on two occasions to discuss the way in which the agency’s outputs were proposed to be grouped and specified. In addition to those formal meetings, dialogue took place between Treasury officials and agency staff.¹² The general

9. Document c1(10), paras 6, 20

10. Document c1(4), para 13

11. Ibid, paras 27–30. A list of the POBOCs and NDOCS managed by the agency in the three financial years between 1992–93 and 1994–95 was provided at document c1(2), appendix 3.

12. Document c1(4), paras 9–11, 33, 35

manager of the agency stated that throughout this review process, the agency ‘went to great lengths to ensure the definitions were such that cultural appropriateness could be retained’.¹³

The ‘enormous number of changes in the funding descriptions’ during the first three years of the agency’s operation, especially in conjunction with major changes in the agency’s contracting and reporting requirements, must have caused difficulties both for providers and for agency staff.¹⁴ A further consequence of the redefinition of the POBOCs and NDOCS is that it is now difficult to trace and compare some elements of the agency’s funding over the years.¹⁵

(3) Accountabilities more specific

The agency favoured the current system of contracting for outputs over the previous system of contracting for inputs. The general manager referred to the benefits of the funding programmes’ definitions for the agency’s accountability to the Government and so for its bids for increased funding. The ‘cultural appropriateness’ of the programme definitions was also asserted. As well, the agency’s non-prescriptive approach to proposals for the development of services, which allows for flexibility in the design and delivery of services within each programme area, was emphasised.¹⁶ The agency also highlighted the steps it has taken towards monitoring the effectiveness on consumers’ lives of services it funds, even though the Public Finance Act does not specifically require that.

The general manager gave a summary of the regime established by the Public Finance Act 1989, and her opinion of its effect, when she said:

Government puts funding into POBOCs. Through NZCFA this money is put into services by way of a contract. The contract is written to ensure the input of funding secures a specified number of outputs. In selecting those outputs to be purchased, NZCFA is mindful of the potential outcomes or impact on the community of these outputs. I believe the changes brought about by the amendments to the Public Finance Act are focussed and beneficial both to NZCFA and the provider community. A much better connection is made between funding, outputs and outcomes, and these arrangements are consistent with other Government funding arrangements.¹⁷

6.3 ACCOUNTABILITIES

6.3.1 Government monitoring of the CFA

On its establishment, the CFA consciously abandoned a community development philosophy in favour of service development in order to maintain tighter Crown control over funding for social and welfare services. Its style of service development,

13. Document c1(2), para 35

14. Ibid, para 66

15. Document c1(13), paras 19, 20; doc c1(6), para 94

16. Document c1(2), para 35

17. Ibid, para 37

which was consistent with the reporting requirements of the State Sector Act and the Public Finance Act, measured performance not against the achievement of social outcomes but against the outputs specified in the agency's bid in the previous budget round (see sec 4.4).

In the words of Patrick Hanley of Waipareira: 'The assumption is that these outputs will achieve the desired outcomes, as determined by government, both in terms of efficiency and effectiveness.'¹⁸

6.3.2 Efficiency is not effectiveness

Citing the work of 'a recognised authority in this field',¹⁹ Mr Hanley defined an organisation's efficiency as the relationship between its inputs and outputs and described this as being relatively easy to measure. By contrast, an organisation's effectiveness – the relationship between outputs and outcomes, or the value of the goods and services to the community – is far more difficult to measure, yet 'it is this measure which is critical particularly in respect of social service provision'.²⁰

Mr Hanley emphasised the absence of a requirement that the CFA report on the outcomes achieved by its purchase of outputs (services):

Government is now organised in such a way that agencies like the Community Funding Agency are concerned with the management of inputs, processes and outputs (efficiency) but they are not directly responsible for the impact or outcomes for society as a whole (effectiveness).²¹

6.3.3 Measuring effectiveness involves value judgements

Mr Hanley listed the components of the public sector management model, including the mission statement, goals, objectives, inputs, outputs, outcomes, and net social benefit. With regard to the Treaty, he observed:

Each component of the model ... involves value judgments and these value judgments, and who makes them and the manner in which they are incorporated into programmes administration and delivery are critical to the overall impact on the community and the specific groups within the community, for example Maori. Given the decisions and judgments which have to be made within the context of this management process it is difficult to imagine how any government department or agency can meet its responsibilities under the Treaty of Waitangi unless there are clear lines of accountability between the Treaty partners at each stage of the decision-making and resource allocation processes. Thus systems of accountability are critical if the needs of different client groups and different communities are to be addressed

18. Document B6, p 7

19. Professor Ian Eggleton, *Performance Measurement*, New Zealand Society of Accountants, June–July 1990 (see doc B6, p 8)

20. Document B6, p 8

21. Ibid, p 12

effectively and to prevent the values of one group, particularly the bureaucracy, overriding the needs and values of others.²²

6.3.4 Power sharing vital to community development

The trust argued that the community and the Government would benefit if funding allocation decisions were to be devolved. In its experience, service providers are rarely in direct competition with one another, and the networks that exist amongst service providers, as well as their shared motivation, make them receptive to the plight of others. It was suggested that if the best information available about the 'bigger picture' of needs in this country was shared amongst Government agencies and with communities, and if those communities were truly consulted about the matter, the atmosphere would be ripe for a broad consensus to be reached about the most appropriate allocations of Government funding. The trust's vision of equitable funding allocation within a community development context could take into account the different stages of different communities' development at any one time.²³ It was said that if a sufficient information base and consultation process underlay the funding allocation process, it could be expected that communities would agree to accept lower funding at certain stages of their own development in order that others could get higher funding when they needed it. An example of such informed decision-making was given where the residents of one area which lacked certain health services did not insist that the services be relocated to their area; they supported the development of the services in their existing location together with an enhanced transport system which would improve access to them.²⁴

In Mr Hanley's view, the restructuring of the Government over the last decade could continue to provide real opportunities for Maori, if power is shared:

The new structure of the Public Service is not a straight jacket. There are many variations already in place which reflect the ability of the general model to be adapted to meet a range of needs. There are over 2,600 locally elected School Boards of Trustees in this country responsible for the delivery of educational programmes with accountability relationships to both government and their communities. There are COGS committees, CHE's, RHA's, Lottery Grants Board, and so on all organised in a variety of ways to meet different needs. Perhaps the best known example in respect of Maori programmes is the structure of Te Kohanga Reo. It is whanau based but includes a National Trust who is contracted by the Ministry of Education to administer and maintain standards. There is a formal tripartite monitoring agreement between the National Trust, Te Puni Kokiri and the Ministry of Education.²⁵

22. Ibid, p 7

23. Document B10, p 30

24. Ibid, pp 116-117

25. Document B6, p 15

6.3.5 The agency's monitoring of social services

The agency's northern regional manager adverted to the difficulties of measuring 'success' in the social welfare arena. She said cultural diversity is a key component in producing a variety of positive outcomes. As a result, the agency would not expect service providers to work in identical ways but would want to demonstrate that there was 'a value added' to a consumer by their interaction with a service provider.²⁶ At the time of the hearings, the agency was developing two indicators of success in achieving social outcomes.²⁷

6.3.6 Expert witness's view

The Tribunal's expert witness, Peter Boag, commented upon the evidence presented to the Tribunal about the definition of, and relationship between, community development and service development. As Secretary for Internal Affairs from 1986 until 1990, Mr Boag was responsible for that department's community development role. In response to a question from Crown counsel about the differences between community development and service development, he stated:

I don't think they need to be separated, in fact they can't be separated. It seems to me that if an agency of whatever sort is approving funding for what[ever] particular social service, it must be done in the context of a community development policy. There is no way that the agency would fund the development of the service [if] that would run contrary to what it saw as a desirable community development.²⁸

Crown counsel put it to Mr Boag that the Government's present day financial management requirements assisted the process of accounting for the use of taxpayers' money by ensuring that community organisations had responsibility for good financial management, instead of relying on the sort of 'benevolent oversight' provided by a Government employee board member.²⁹ Mr Boag responded:

It depends how the outcomes and outputs, to use the current jargon, are identified. One of the nervous reactions I got was that in some ways the [Public Finance] Act had been operated to tie down far too tightly what agencies like the CFA were trying to achieve. If you tie things down into very narrow boxes and remove the ability of managers in an agency like CFA to move money from one box to another, which has happened, then you're working against, I think, good Government administration . . .³⁰

26. Document c1(6), paras 194, 196

27. These were the needs indicator, which ranked geographic areas according to social need (and was expected to be able to track changes that might result from the agency's service development), and a review of the family-whanau development NDOC, which was not completed by the time the hearings ended (doc B6, paras 199–207).

28. Transcript 4.4, p 11

29. Ibid, p 8

30. Ibid, p 9

6.3.7 Community goals provide the benchmark for assessing social services

The trust's view is that the agency needs to employ a community development model to discharge its functions, and that it must measure the cost-effectiveness of services against the social outcomes which are sought. Communities will pursue those outcomes in different ways, so the funding, monitoring, and reporting mechanisms would have to recognise the values underlying each community's chosen path. For example, Mr Hanley pointed out that the values that inspired Kohanga Reo would be ignored if it were assessed as if it were nothing more than a childcare or pre-school education service.³¹

For these reasons, the trust clearly regarded as inadequate the mechanisms by which the agency currently reports and accounts to the community (see sec 4.7).

6.4 FRAGMENTATION

Inevitably, the trust's concern for the cost-effectiveness of services, not merely their cost, caused it to be critical of the monitoring and reporting conducted by the agency in accordance with State sector imperatives. The trust claimed that its holistic style of integrated service delivery was cost-effective. However, the narrow output focus of the various NDOCs administered by Government agencies, including the CFA, disrupted the trust's broad vision of the integrated set of services required by Maori clients and frustrated its holistic plan.³²

6.4.1 The CFA acknowledges the problem

Alongside its expressions of support for the current system, the agency emphasised the 'strictures' arising from the individual financial accountability of each State agency. The 'strictures' of the POBOC-NDOC regime were said to arise because individual departments are now 'solely responsible for performance of their POBOCs'.³³

6.4.2 Holistic approach 'ideal'

The agency noted that the trust's holistic approach is replicated by a number of organisations in different areas of the country and described it as an "'ideal" but not yet a reality'.³⁴ It was said that the approach makes 'good business sense' and is one which Government departments should aspire to. However, two matters were identified as posing problems for the achievement of such an approach. The first is the extent of the coordination that is needed between Government departments to achieve holistic service delivery. The other is the 'fit' between the Government's

31. Document B10, p 128

32. Ibid, pp 108-109

33. Document E7, para 90

34. Transcript 4.2, p 135; doc c1(6), para 221

priorities and the aspirations and expectations of community groups which have an holistic vision.³⁵

At one point, the agency said it regarded the lack of coordination of funding programmes as a short-term consequence of the Public Finance Act; a consequence that is already abating as a result of the commitment of the DSW to rebuilding links between Government departments.³⁶ Elsewhere, some suggestion was made that nothing short of the creation of one State agency with responsibility for all community-based service provision could overcome the ‘strictures’ of the need to maintain control and accountability for the resources involved.³⁷ The possibility of future interdepartmental initiatives such as the Crime Prevention Strategy was alluded to and accepted as beneficial. However, the trust was unconvinced of the agency’s resolve or capacity to initiate and maintain links of the kind that it believes are necessary to enable Maori social needs to be addressed in Maori terms.³⁸

6.4.3 Alternative school suffered from fragmented funding regime

The difficulty the trust experienced in coordinating support and attracting funding for its alternative school (described in section 2.4.9) was a graphic illustration of the problem caused by a fragmented funding regime.

The school was opened to cater for a group of young people – regular truants from mainstream schools – whom the community identified as needing support and guidance to get them out of a pattern of antisocial and criminal behaviour. The Waipareira Alternative Unit offered a mix of conventional schooling, counselling, and therapy, and life and work skills to cater for the needs of individual students. The trust’s plan envisaged participation and support from several Government agencies and funding from several different sources, all contributing to a holistic service.

The restructuring of the public sector and the ‘strictures’ of the Public Finance Act made the task of coordinating this effort almost impossible. Because the school did not qualify as a ‘national service’ (see sec 4.4.2(1); note the efforts that the CFA was making to dismantle national services), the trust tried to secure funding for it from the various funding programmes administered by different Government agencies, each of which sets its own criteria for funding. This creates particular problems for providers of ‘holistic’ services like the trust’s alternative school, which crosses the boundaries between several funding programmes.

The trust was unsuccessful in its efforts to secure agency funding for the school because it did not meet the criteria for services that are purchased by the agency, yet staff from another part of the same department – the Children and Young Persons

35. Transcript 4.2, p 135

36. Document E7, para 90

37. Document c1(6), para 223

38. Document B6, pp 14–15. For example, the trust challenged the agency’s reliance upon a needs indicator which it had developed in isolation from other Government agencies with welfare responsibilities (in the broad sense of that term). One possible consequence of this, it was said, is that other Government agencies will develop their own needs indicators using different criteria, which will create different sets of rules for the various activities of service providers such as the trust.

Service – were referring children to the school. And while the trust received valuable support from education services, its approaches to the Ministry of Education for direct funding proved fruitless – partly, at least, because it had not found acceptable the conditions the Ministry imposed on education funding. Meanwhile, the alternative school was receiving referrals from the Special Education Service, from boards of trustees, and from school guidance counsellors, and its work was being praised by the Special Education Service and at least one local school.

Further, this situation was not novel in the trust's experience. Its concern at the reduction in the agency's funding of its care services (discussed at section 7.12) stemmed from its view that a similar situation prevailed there.

Granted the situation with the trust's alternative school, the Tribunal had considerable sympathy with Mr Tamihere's statement:

Given the fragmentation of the state sector under reforms it is difficult even for experienced Maori to firstly locate the appropriate area or responsible individual in government and secondly to pin down accountability.³⁹

The trust plainly felt that it had tried to promote an interdepartmental arrangement for the school by inviting the previous Minister of Social Welfare to visit it. The Minister visited in September 1993 accompanied by the northern regional manager of the agency. At the Minister's request, officials from the Ministry of Education and the Children and Young Persons Service were also present.⁴⁰ Michael Tolich, who was at the school when the Minister visited, thought Justice Department officials had also been in attendance and believed the outcome of the visit was that the Minister had said to the various officials that they should get together and sort something out.⁴¹

However, the northern regional manager, who was part of the visiting party, stated that the focus of the Minister's discussions about the alternative school had been on whether there should be a mechanism by which resources follow students who leave one school to attend another type of education or training facility. Also discussed was the Ministry of Education's policy regarding activity centres, which were being phased out because they provided schools with a means of avoiding their responsibilities to meet the needs of all students.⁴² Ms Reid summarised the outcome of the meeting in this way:

At the close of the meeting Mrs Shipley suggested that perhaps there was still a need for some Activity Centres and that the Ministry of Education could undertake further work on both this and the issue of the release of resources to follow school age students. Mrs Shipley then specifically advised me that she saw no further role for the Agency, and that I was not required to take any further action unless her office contacted me

39. Document B3, para 8.2

40. Document C1(6), para 49

41. Document B10, p 52

42. Document C1(6), paras 50–52

directly again on the matter. No-one in the NZCFA has been contacted by the Minister's office, or requested to undertake work on this matter, since the date of that visit.⁴³

Mr Tamihere acknowledged that some progress had been made in the latter part of 1994 with the Ministry of Education, which had put together a group to consider the school's future. The bureaucracy, he said, makes haste very slowly, but 'they are meeting on it right now. . . . Whether it's going to be worthy of achieving funding or not, I don't know.'⁴⁴

By the time of the hearing at the end of January 1995, Ms Reid was able to provide more information about the content of the visiting party's discussions in September 1993. She reported that the group had identified several options for obtaining Education funding or further support for the school. She also reported that the group had plans to meet further.⁴⁵

6.4.4 Coordination with the Department of Internal Affairs

Agency witnesses stated that the wider role of community development is carried out by the Department of Internal Affairs.⁴⁶ The department, through its Link offices, was said to provide information for voluntary organisations and to offer a comprehensive resource kit giving detailed information about the establishment, funding, and development of organisations.⁴⁷

The agency had established formal links with the Department of Internal Affairs to coordinate funding of community groups under the community organisations grants scheme (COGS) and the Lotteries Board.

The agency's sub-team leader in north-west Auckland stated that, in her experience, COGS funding was available locally for services funded by the agency. Claimant counsel, however, referred to conflicting advice from Mr Tolich (the financial manager of Te Whanau o Waipareira Trust and the national chairperson of COGS) to the effect that COGS national policy was not to fund such services.⁴⁸

Lotteries Board funding is available for the types of services funded by the agency, but in the context of only partial funding being available from the agency, the position of service providers that seek funding from both sources appears to be beset by complexity and uncertainty. The agency's role in Lotteries Board grants was explained as follows:

At the request of Cabinet NZCFA has for some time reviewed all funding applications in relation to social and welfare services to the Lotteries Board . . . and provided comments regarding the match of the proposed service to the Agency's funding priorities, and information about the applicants Approval status with NZCFA

43. Document C1(6), para 53

44. Document B10, p 25

45. Document C1(6), paras 54–56

46. Ibid, paras 8, 12

47. Ibid, para 80

48. Transcript 4.2, p 216

and funding levels available from NZCFA for such services. This information is collated at the national level and forwarded to the appropriate Lottery Committee. NZCFA will also support the applications of organisations to Lottery Welfare or Lottery Youth when these fall outside of the Agency's funding responsibilities, but only when value in a proposal at a more strategic level is recognised.⁴⁹

Beyond the coordination of funding decisions to prevent so-called 'double dipping' by community groups, very little evidence was presented that showed the extent of coordination between the CFA and the Department of Internal Affairs.⁵⁰

6.4.5 Summary on fragmentation

In closing submissions, Crown counsel cited the division of functions between the Departments of Social Welfare and Internal Affairs as an illustration of some of the difficulties arising from individual departments being solely responsible for performance of their POBOCs.⁵¹ On the matter of how these difficulties might be overcome, Crown counsel submitted that:

Actions are now underway to overcome these limitations with pro-active collaboration amongst departments. The Director-General gave evidence of the development of these partnerships, with their inter- or multi-departmental links, for example, the New Zealand Crime Prevention Strategy designed to enable the Government and the community to better manage the resources involved in working towards a positive solution, of this problem. It is expected there will be more such initiatives. Such developments should enable greater complementarity of funding, with more holistic service delivery as sought by the claimants. . . .⁵²

It was not clearly explained why the 'strictures' of the Public Finance Act should preclude departments from engaging in joint ventures and devising accountability mechanisms suitable for that purpose; or why other measures to 'enable greater complementarity of funding, with more holistic service delivery as sought by the claimants' were not routine, given the agency's acknowledgement that that would be 'ideal' and is 'good business sense'.⁵³ In sum, the agency's evidence of the causes and effects of the 'strictures of the POBOC/NDOC regime', and how they might be overcome, left a great deal to conjecture.⁵⁴

49. Document C1(6), para 45

50. Although it goes beyond the matter of interdepartmental links, it may be noted here that the agency, in recognition of service providers' need for information about alternative funding sources, has contributed to the development by Te Ratonga Whakamarama Putea (Funding Information Service Incorporated) of a computer database of such sources. The database is updated regularly and copies are held by each outreach worker and at each of the Department of Internal Affairs' Link Centres (doc C1(6), para 79).

51. Document E7, para 90

52. Ibid

53. Document C1(6), para 221; transcript 4.2, p 135

54. Document E7, para 90

6.5 DISRUPTION OF STATE SECTOR NETWORKS

The agency was far more forthcoming about the breakdown of links between State agencies in the aftermath of the restructuring of the State sector. It was acknowledged that the operational links between the DSW and other Government agencies that deliver funding or services to community organisations are underdeveloped. The Director-General of Social Welfare, presenting evidence at the end of 1994, identified the need for the restructured State sector to quickly re-establish viable working networks across the various departments.⁵⁵

The agency's northern regional manager gave an indication of the practical difficulties involved in re-establishing links between agencies in the wake of restructuring:

Improving collaboration between government departments at the local level essentially means re-establishing working relationships with all departments following on from the state sector reforms which have dislocated many staff and have broken down many interdepartmental networks. For example, in the Health sector this rebuilding only became possible in the later months of 1994 as final key appointments within Regional Health Authorities have been made.⁵⁶

6.5.1 Te Puni Kokiri and the DSW

(1) Introduction

Bearing in mind the findings of *Puao-te-Ata-tu*, the relationship between the DSW and the agency that replaced the Department of Maori Affairs is of particular importance. When the end of the Department of Maori Affairs was first discussed publicly, iwi development was the thrust of Government policy. It was said that the operations and funding of the department could be devolved to iwi groups, including, where appropriate, the transfer of experienced staff. The Government Maori Affairs agency that remained was to provide policy advice to the Crown and to monitor the implementation of Maori affairs programmes by iwi groups or mainstream Government agencies.

Te Puni Kokiri came into existence in 1992, replacing the short-lived Iwi Transition Agency and Manatu Maori, which were created in 1989 upon the disestablishment of the Department of Maori Affairs. No evidence was given about the relationship between the DSW and the predecessors of Te Puni Kokiri. However, it may be surmised that for at least five years from 1988, from the time when the demise of the Department of Maori Affairs was anticipated through to the time when Te Puni Kokiri divested itself of many of the funding programmes it inherited from the Iwi Transition Agency,⁵⁷ the dramatic changes wrought in the previous Maori Affairs portfolio must have been severely disruptive, both internally and for relationships

55. Document c1(1), para 28

56. Document c1(6), para 46

57. In the first year of its operation, Te Puni Kokiri was focused upon the tasks of divesting itself of such programmes while building its own staff (transcript 4.2, pp 106–107).

with other State agencies. Certainly, there is a dearth of official information about the programmes previously administered by the Department of Maori Affairs and then passed through two successors' hands into the NDOCs administered by the CFA, including information about the number of personnel previously employed by the Department of Maori Affairs in the Maatua Whangai programme and other community services.⁵⁸

Also during that time, a new Government suspended plans for devolution to iwi groups (see sec 6.6).

(2) Social welfare not high priority for Te Puni Kokiri

Te Puni Kokiri's monitoring and evaluation policy manager gave evidence about the role of Te Puni Kokiri and its relationship with Government departments, particularly the DSW. Of note is the fact that Te Puni Kokiri's highest priorities do not include social welfare. Instead:

the key areas that Te Puni Kokiri are focused on include education, health, manager training and economic development, particularly resource issues. The other area of course is the Crown/Maori relationship. For some reason . . . Social Welfare and perhaps Justice issues were not seen as the highest priority when Te Puni Kokiri was established. So that while Te Puni Kokiri would work with mainly social policy agencies [such] as the policy arm of DSW, the range of issues that Te Puni Kokiri could be involved in is huge. The resource that we have to put to that is not as huge and we obviously choose – select certain issues in which we will come in and be involved in. In the specific case of the iwi social services . . . as it relates to the Children, Young Persons, and Their Families Act I know we do have a policy manager attending those particular meetings. So that's seen as given some priority in view of our resources.⁵⁹

Te Puni Kokiri was also involved in the development of the CFA's needs indicator.

(3) Te Puni Kokiri to start monitoring the CFA

Reference was made at the hearings to preliminary discussions that had taken place between the chief executives of Te Puni Kokiri and the DSW about the future involvement of Te Puni Kokiri in monitoring the department's outputs against the outcomes desired of it by the Government. It was hoped that an agreement would be reached that in the 1995–96 year Te Puni Kokiri could 'look at some evaluation process'. However, some difficulties were envisaged in that future task owing to the poor quality of information about the impact of earlier Government activities upon Maori and the different focus of past monitoring efforts.⁶⁰

58. Transcript 4.2, pp 101–102

59. Ibid, p 115

60. Ibid, pp 101, 106, 108. The Crown filed evidence on this matter after the hearings were completed. Document E14 summarised a contract that had been drawn up and signed on 18 December 1996. Under that contract, the agency and Te Puni Kokiri were to develop and test a methodology for the agency to monitor and report on any improved outcomes for Maori as a result of the agency's funding of iwi- and community-based welfare services. The contract specified the scope of the report and set out a timetable leading to a final test report by the end of October 1997, which was intended to lead to annual reports from the CFA to Te Puni Kokiri.

(4) *Te Puni Kokiri and the Social Policy Agency*

Some links exist between Te Puni Kokiri and the Social Policy Agency of the department. *Te Wakahuia o Puao-te-ata-tu* states that the Social Policy Agency should invite Te Puni Kokiri and Te Ohu Whakatupu (the Maori secretariat of the Ministry of Women's Affairs) to participate in any interdepartmental project but notes that their participation will depend on the priority they place on the project. It also states that where a project involves a submission to Cabinet, Te Puni Kokiri and Te Ohu Whakatupu must be given the chance to comment and that their comments must be reflected accurately in the Social Policy Agency's paper. Early and active involvement of Te Puni Kokiri and Te Ohu Whakatupu is encouraged so that their comments can be integrated in the agency's submission. Input from the Maori units of other Government agencies is identified as a matter to be considered in individual projects.⁶¹

6.5.2 Summary of disruption**(1) *Problems acknowledged***

Overall, the tenor of the agency's evidence about the difficulties caused by the severing of links between State agencies was that they were transient and that their worst effects had now passed:

It is acknowledged that community groups have sometimes been the innocent bystanders while the major restructuring process has occurred across government departments over recent years. There has as a consequence been some loss of momentum or continuity at the interface between government and the community during this period. That is an essentially transitional impact of restructuring and one that is now behind us.⁶²

(2) *Better consultation promised*

In this same vein, the director-general outlined her expectation of departmental managers that they would proactively initiate planning and information-sharing forums at the local level. The forums would involve representatives of iwi, the voluntary sector, relevant Government agencies, and local Government councils – which could adopt a facilitative role.⁶³

(3) *The CFA to improve coordination of Government agencies*

The CFA confirmed that it accepts a responsibility to work to achieve better coordination between the various arms of the Government in order to ensure that the needs of consumers are met. It was noted that the agency had asked all staff to look at ways in which they could improve collaboration between Government departments.⁶⁴

61. Document c3, ch 9, p 5

62. Document c1(6), para 47

63. Document c1(1), para 29

64. Document c1(6), para 44

The agency's general manager also spoke positively of existing mechanisms that seek to ensure continuity between departments in the funding or provision of services for members of the community. She referred to the quarterly meetings she attends with representatives of other departments 'to make sure there aren't gaps' and to the interdepartmental initiative that led to the establishment of the family service centres, where services provided by a number of Government agencies are delivered in one place. As well, the coordinating role of the Treasury's review process was noted: 'they look at each departmental set of outputs and make sure there is no duplication or overlap, and that process extends into the appropriation process'.⁶⁵

(4) Some systems already in place

An example was given whereby the existing processes had led to Health and Social Welfare officials discussing their future responsibilities for drug and alcohol abuse services and reaching the decision that Social Welfare should not continue its limited role with regard to adolescent abusers. When asked if the consequences of such senior level collaboration had filtered down to the work being done in the community, the agency's general manager said it had filtered both ways and cited the same drug and alcohol overlap situation as an example: the overlap had been identified by the agency's Auckland team as posing a risk to ongoing service provision because of the lack of clarity about accountability and responsibility for funding and the standards set within that service delivery.⁶⁶

6.6 DEVOLUTION AND MAINSTREAMING

6.6.1 Background to mainstreaming

Te Puni Kokiri's policy and evaluation manager, Ria Earp, gave an overview of the entire history of the Department of Maori Affairs as well as presenting financial information about the immediate effects of mainstreaming.

Ms Earp described mainstreaming as reversing the earlier Government policy of devolution and introducing the concept that mainstream departments or agencies must be accountable for the delivery of services to Maori:

Through mainstreaming, the Government aimed to become more effective, reduce the replication of service provision, and ensure Maori had better access to existing State programmes.⁶⁷

6.6.2 A loss of resources

Trust witnesses claimed that with the disestablishment of the Department of Maori Affairs in 1989, and the later policy shift from devolution to mainstreaming, there was

65. Transcript 4.2, p 182

66. Ibid

67. Document c1(15), para 23

a decline in Government funding, as well as Government-provided services, for Maori. As a result, it was said that the pool of ‘Maori money’ that was mainstreamed in 1992 was much smaller than the pool that had earlier been available.⁶⁸ As well, the effect of the loss of Maori Government employees who previously worked in the community, as Maatua Whangai officers for example, was not accounted for in the transfer of funding to mainstream agencies. Instead, Maori communities had to ‘fill the gaps’ left by the disappearance of those positions. This has been a particularly difficult task in the absence of those individuals’ knowledge and networks.⁶⁹

6.6.3 Te Puni Kokiri has fewer resources

Ms Earp’s information lent weight to trust witnesses’ accounts of the impact that mainstreaming had ‘on the ground’ upon services in West Auckland. Agency witnesses seemed to be unfamiliar with much of the information presented by the Te Puni Kokiri manager.⁷⁰

Te Puni Kokiri is a policy-oriented Ministry rather than a service delivery department. It employs 240 staff and has a budget of \$34 million (including the Maori Trust Office, which employs 40 staff and has a budget of \$5 million). When compared with the previous Iwi Transition Agency’s staff of 880 and budget of \$205 million (including the Maori Trustee’s staff of 80 and budget of \$5 million), Ms Earp concluded: ‘the total budget for Maori Affairs has been reduced directly by \$181 million’.⁷¹

Financial details were presented to the Tribunal of the ‘visible consequences’⁷² of mainstreaming: the transfer or wind down of programmes and the transfer of programme funding to mainstream agencies.⁷³ To fully explain the conclusion that mainstreaming directly reduced the total budget for Maori Affairs by \$181 million, Ms Earp produced a table (‘Summary of Funding Transferred During Mainstreaming’), which lists:

- the 1992–93 budgets for the various targeted Maori programmes transferred by Te Puni Kokiri;
- the amount of funds transferred from each programme;
- the department or agency which received each programme’s funding; and
- the funds returned to the consolidated fund.

From that summary, the total budget for Maori programmes in 1992–93 is shown as being more than \$116.577 million. Of that amount, \$66.350 million was transferred to mainstream Government agencies and \$45.777 million was returned to the consolidated fund. The figure of \$181 million, the ‘loss’ to the Government’s budget for Maori Affairs, is reached by totalling the amount transferred (\$66.350 million), the amount returned to the consolidated fund (\$45.777 million) and the amount of \$68.873 million – which Ms Earp gave as the amount by which Te Puni Kokiri’s

68. Document A19, paras 6.3 ff; doc A24, para 30; doc B4, para 14; doc B5, para 5.3

69. Document A19, para 6.1; doc A25, paras 67 ff

70. Transcript 4.2, pp 70, 142

71. Document C1(15), para 14

72. Ibid, para 25

73. Document C1(15)(a), p 1

operating budget was reduced compared to that of the Iwi Transition Agency and Manatu Maori.⁷⁴

6.6.4 Loss in West Auckland

Many trust witnesses gave evidence of their personal experiences of the changes produced by mainstreaming upon the availability of services and funding for Maori in West Auckland.⁷⁵ Albert Williams, an employee of the Department of Maori Affairs for 20 years until 1988 and the director of Maori Affairs in the Auckland region from 1978 until 1985, gave evidence for the trust about the department during the time he was employed by it, including the changes in the philosophies upon which its activities were based, and the programmes for which it was responsible. In his estimation, as a result of the shedding of many functions from the Department of Maori Affairs, 'the Auckland Maori population has as a region lost about 17 million dollars. West Auckland as a whole would have lost about 400 thousand dollars'.⁷⁶

6.7 DEVOLUTION AND THE DSW

The devolution of Maori programmes and funding to Maori community groups was supported by the DSW. Patrick Hanley, the trust's first coordinator in 1987–88, traced the development of Government policy on devolution in the late 1980s. This devolution was evidenced by the publication in 1988 of the discussion document *He Tirohanga Rangapu* ('partnership perspectives') and the State Services Commission's Task Group Report on devolution, *Sharing Control*, which was signed by the permanent heads of eight social service departments: Social Welfare, Internal Affairs, Labour, Women's Affairs, Maori Affairs, Education, Health, and the National Library.

6.7.1 Maori promised power

The thrust of Mr Hanley's evidence was that the trust was encouraged to develop in the way it did by the Government's commitment to continue to share with Maori the power to design and deliver programmes that accorded with the community's own definition of development. The Mana Enterprises scheme and the later Maori Access scheme both gave the trust that power by devolving responsibility for the whole of the programme to Maori authorities:

The key distinction is that unlike a provider under the current contracting regime, Te Whanau o Waipareira under the MANA and MACCESS schemes had, by way of its contract with the Crown, 'Lawful power . . . in any matter or matters pertaining to the Scheme and for the Scheme purposes' (See MANA contract . . .)⁷⁷

74. Ibid, p 2

75. Document A19, para 6.2; doc A21(h), ch 2; doc A22, paras 47–49; doc B5, para 5.3

76. Document A24, para 36

77. Document B6, p 14

6.7.2 DSW started out on the right track

The community services manager of Te Whanau o Waipareira Trust, Mr Kimball Stewart, previously a DSW senior social worker in the West Auckland area and then a CFA outreach worker in South Auckland, stated that the process of development of Maori social services by the DSW began in West Auckland at the end of the 1980s. He said community development remained an important role for community services social workers there right up until the formation of the CFA. Referring to the period between April 1988 and mid-1990, when the DSW's south-west regional community services team was responsible for administering all programmes then current in the region, Mr Stewart said:

The team also had a community development role in the development of policy and operations by the Department and within the community to produce the services consistent with commitments in *Puao-te-Ata-tu* and the emerging new funding programmes. This role was carried out until the formation of the CFA.

They were also responsible for overseeing and involving themselves in the development of new programmes which were to be tailored to the up and coming introduction of the Children, Young Persons, and Their Families Act. These were specifically Homebuilders and Child and Family Support Services funding.

... It was the time also when the Department began to undertake a commitment to move funds away from traditional providers in order to support and develop Maori and Pacific Island services.⁷⁸

Elaborating on what this meant 'on the ground', Mr Stewart continued:

It was evident in this process that there were very few Maori or Pacific Island providers in existence in the terms of the service guidelines of the Department. Hence the Department had to work out ways in which to develop these sufficient to meet the emerging requirements of contract and approval and to make those organisations competitive with those agencies already existing.

It was during this period that Te Whanau o Waipareira was identified as an organisation with the infrastructure potential and the representational capacity to develop Maori social services delivery in West Auckland. This was a perception not just held by the South West Regional Community Services Team but also by the District managers of New Lynn and Henderson.

It was at this time that a process was begun to negotiate for the development of Maori social services in West Auckland. Up until this time no attempt had been made by the Department to do this and indeed prior to 1990 no money was forthcoming for this purpose other than the small discretionary funds managed by District Executive Committees.⁷⁹

78. Document B5, para 3.2

79. Ibid

6.7.3 Waipareira and the DSW collaborated well for a while

Mr Stewart described the period between November 1990 and April 1992 as the only period when a favourable relationship existed between the DSW and Te Whanau o Waipareira Trust in regard to the manner in which contracts were negotiated:

This was because there was a management structure [in the department] aware and supportive of Maori desires and processes.

It is clear to me that management viewed Waipareira as the body representative of and capable of delivering to urban Maori community needs. Further they were aware of the scale and infrastructure needed in the delivery of social services. It is my view that they were farsighted enough to see that social services of the future would not rest upon small agencies. Rather larger agencies that could achieve some economies of scale were the ones likely to be successful. Waipareira fitted the latter category.⁸⁰

6.7.4 Trust's expectations grew

Mr Tolich, the trust's financial manager, highlighted how the encouragement given to the trust by the department in the few years before 1992 and, in particular, the funding it was given to 'kick off' programmes had created an expectation in the trust about the future size of, and State funding to be provided for, its services:

I appreciate that the CFA contracts talk about contributions towards particular programmes and not total funding for certain programmes, right. But there is an expectation, I guess, if you are encouraged to set something up, and the Trust was encouraged to set up a social service arm by the old Department of Social Welfare. . . . Now, the problem arises as to how big that grows. . . . one of the issues here is who determines how big the Trust social service arm will become, because on the one hand the CFA is saying, 'We will decide how much money you get.' On the other hand the Trust, if it goes back to the 1992 year, when it signed the original contracts with the old Department of Social Welfare, . . . it was given funding of \$40,000, \$150,000 in bulk amounts to kick off this programme.

Now, when I say the Trust continues to develop the social service arm, it was working along that particular line. The problem occurred . . . in that the Trust expectation on how big that service should get and therefore how much CFA or the social service arm of Government should contract to it, and what CFA decided was a fair amount of money, in its opinion, but those two points of view are miles apart.⁸¹

6.7.5 CFA did not appreciate the background

Mr Tolich's point was that the funding the trust received from the department in the 1991-92 year 'kicked off' the provision of much-needed services by an organisation that then became eager to meet the demand for additional services. He questioned whether the department foresaw the growth in the trust's capacity to deliver social services and whether the CFA appreciated that the department's prior dealings with

80. Ibid, para 5.2

81. Document B10, p 46

the trust had created in it an expectation that its growing capacity to deliver services would be met by increased funding.⁸²

6.8 CONCLUSION

At the time the CFA came into existence, Te Whanau o Waipareira clearly saw itself as having a growing part to play in social service delivery. This claim focuses on the CFA's dealings with Te Whanau o Waipareira, to which State sector change provides the backdrop.

In the light of our earlier finding that Waipareira exercises rangatiratanga, the central question for the Tribunal to consider is whether the Crown, through the CFA, exercised its kawanatanga in such a way as to protect the trust's rangatiratanga. Clearly, the environment in which the CFA operates must affect its ability to do so. At this point, we turn to examine those dealings between Waipareira and the agency that were more directly within the agency's ability to manage.

82. Document B10, pp 46-47