

Access to justice for children and young people in Aotearoa New Zealand

Working paper No.4 – Pacific children and young people

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Introduction

This working paper forms part of an overall research project exploring the extent to which children and young people are able to access to justice in Aotearoa New Zealand. The findings of the research study are presented in three parts:

Part One contains my analysis of data from key informant interviews with adults with expertise in the justice system and/or working with particular groups of children and young people, as well as from a survey of children and young people aged 14 to 24.

Part Two discusses the meaning of access to justice and other related concepts such as legal empowerment as well as the specific meaning of access to justice for children and child-friendly justice. It then discusses the justice problems experienced by children and young people generally, as well as common barriers to accessing justice. The analysis in this report is based on my review of the research and literature in New Zealand and overseas as well as analysis of information obtained from the government and Crown entities.

This report is supported by a series of ten working papers discussing the justice problems and barriers to accessing justice experienced by particular groups of children and young people and is broken up into a series of reports relating to groups identified as likely to experience differing justice problems or barriers to access. These working papers are:

1. Children and young people in care or with care experience;
2. Disabled and neurodiverse children and young people;
3. Tamariki and rangatahi Māori;
4. Pacific children and young people;
5. Rainbow and takatāpui children and young people;
6. Girls and young women;
7. Boys and young men;
8. Poverty and socio-economic disadvantage;
9. Trauma; and
10. Intersectionality.

Part Three explores possible solutions or ways to close the justice gap for children and young people in Aotearoa New Zealand. This part of the study is also supported by a series of working papers in relation to possible solutions. At the time of writing these working papers consider the following topics with additional working papers likely to follow:

11. Strategic litigation;
12. Legal service delivery, non-lawyer services, and integrated services;
13. Data, evidence and measuring change;
14. Technology;
15. Training for professionals;
16. Legal education and continuing professional development for lawyers and judges; and
17. Law-related education for children and young people.

These reports and working papers are available at: <https://www.cypaccesstojusticenz.com/>

This working paper explores the justice problems and barriers to access experienced by Pacific children and young people followed by some of the possible solutions raised in the research

and literature from Aotearoa New Zealand and overseas. Unfortunately there is much less research and literature in relation to the justice needs and barriers experienced by Pacific children and young people although this is beginning to change as discussed further below.

Justice problems

Education

In 2021 the stand-down, exclusion, and expulsion rates for Pacific students were generally lower than Māori students but higher than European/Pākehā students, suspension rates for Pacific and European/Pākehā students were the same:¹

- The stand-down rate for Pacific students was 26.2 per 1,000 students as compared to a rate of 24.1 per 1,000 students for European/Pākehā students in 2020;
- The suspension rate for Pacific students was 2.5 per 1,000 students as compared to a rate of 2.5 per 1,000 students for European/Pākehā students in 2020; and
- Of the suspended Pacific students, the exclusion rate was 0.9 per 1,000 students; and the expulsion rate was 1.4 per 1,000 students as compared to an exclusion rate of 0.8 and an expulsion rate of 0.5 per 1,000 students for European/Pākehā students in 2020.

It is worth highlighting that the national Covid-19 lockdowns have had an impact on stand-down, suspension, exclusion, and expulsion rates. In 2019 the disparities between Pacific students and European/Pākehā students were more significant, for example the stand-down rate was 34.4 per 1,000 students as compared to a rate of 24.4 per 1,000 students for European/Pākehā students.²

Maquiso argues that these disparities reflect the fact that disciplinary measures disproportionately target and affect Pasifika students drawing on critical race theory to argue that this disproportionality is “likely because of factors such as racial stereotypes, lack of minority representation in governance, and poorly drafted laws and policies.”³ He notes that while the legislation does not explicitly target Pacific students and evidence is required to justify disciplinary action, the broad language in the statute allows for subjective judgments which can be affected by negative stereotypes about students of colour.⁴ The largely discretionary decisions made by both the principal and Board of Trustees are also subject to little oversight by the Ministry of Education.⁵ Maquiso also argues that the lack of adequate Pacific representation means that Pacific voices are not heard when decisions are made that could impact a Pacific student's educational outcomes and they are disadvantaged as a result.⁶ The most recent data shows that while proportional representation is increasing, in 2020 only 41% of schools had proportional Pacific representation on the school board.⁷

¹ Ministry of Education. (2022). [Stand-downs, suspensions exclusions and expulsions from school](#) at 4-5.

² Ministry of Education, (2021). [Stand-downs, suspensions exclusions and expulsions from school](#) at 5.

³ Maquiso, A. (2019). [Aotearoa, the Land of the "Long Tail": Exploring How Pasifika Students Are Underserved by the Education System through School Disciplinary Removals](#). *Public Interest Law Journal of New Zealand*, 6, 5-14 at 9.

⁴ Ibid at 11.

⁵ Ibid at 13.

⁶ Ibid.

⁷ Ministry of Education. (2021). [Pacific parent representation on school boards](#) at 2. Representation on a school board is considered to be “proportional” when the proportion of board seats held by Pacific parents is at least equivalent to the proportion of Pacific students in the school.

Criminal justice system involvement

Overall offending rates for Pacific children and young people are much lower than tamariki and rangatahi Māori, but higher than European/Pākehā children and young people.⁸ Research also suggests that Pacific youth are involved in higher levels of violent offending than other ethnic groups.⁹ Ioane et al.'s comparison of Pacific, Māori, and European violent youth offenders also identified other differences including that Pacific youth were generally older than Māori youth when they committed their first offence, were more likely to be living in deprived areas, more likely to reoffend, and more likely to commit a violent offence as a first time offence in comparison with Māori youth offenders.¹⁰

Barriers

Attitudinal Barriers

Racism

The historical context is important when considering Pacific peoples' experiences of racism in Aotearoa New Zealand. A recent New Zealand Human Rights Commission report on human rights issues for Pacific peoples cites a study carried out in 1985–86 that found Pacific peoples made up one third of overstayers but 86 percent of all prosecutions for overstaying during the Dawn Raids as compared with those from the United States and the United Kingdom, who also made up almost a third of those overstaying, but only five percent of prosecutions.¹¹ The Dawn Raids disproportionate emphasis on investigating Pacific communities was clearly discriminatory¹² and provides a backdrop to contemporary experiences of racism and discrimination in Aotearoa. As Maquiso argues:¹³

The policies that authorised the Dawn Raids not only allowed the law to significantly disrupt many Pasifika households, but also labelled Pasifika people as undesired aliens and the root cause of national crises such as unemployment and recession. 18 While today the law no longer encourages the explicit marginalisation of Pasifika peoples, disadvantage continues as a fact of life for many communities and has not yet reached equitable standards. Pasifika people continue to be overly represented in many negative indicators, such as economic deprivation and poor health, including obesity, diabetes and smoking. 19 The "special relationship" between Pasifika people and New Zealand is, in reality, an association of neo-colonialism and disempowerment.

⁸ See Ministry of Justice. (2023). [Youth Justice Indicators Summary Report](#) at 8-9.

⁹ Kaho, H. (2016). The family group conference: Tongan perspective. *New Zealand Law Review*, 2016(4), 687-722 at 701-702; Tuiburelevu, L. (2018). [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#). *New Zealand Women's Law Journal*, 2, 78-106 at 83-84.

¹⁰ Ioane, J., Lambie, I. & Percival, T. (2016). A Comparison of Pacific, Māori, and European Violent Youth Offenders in New Zealand. *International Journal of Offender Therapy and Comparative Criminology*, 60(6), 657-674 at 665.

¹¹ New Zealand Human Rights Commission - Te Kāhui Tika Tangata. (2020) [Talanoa: Human Rights issues for Pacific Peoples in Aotearoa New Zealand](#) at 8.

¹² Ibid at 8. See also Webb, R. (2009). [Māori, Pacific peoples and the social construction of crime statistics](#). *MAI Review*, (3), 1-4 at 1.

¹³ Maquiso, [Aotearoa, the Land of the "Long Tail": Exploring How Pasifika Students Are Underserved by the Education System through School Disciplinary Removals](#) at 9.

A study of Samoan youth in Hawaii found that non-Samoan respondents referred to Samoan female offenders as “more masculine in behaviour” or as acting “more manly”¹⁴ and that the Samoan respondents appeared to internalise such stereotypes using “being Samoan” as a mechanism to “suggest that violence, and the concomitant fear associated with it, was a source of cultural pride”.¹⁵

This disproportionate focus on Pacific people during the Dawn Raids has contemporary parallels such as the over-policing in South Auckland. For example, Tunufa’i points to the 2010 announcement by the National-led government of 255 new frontline police officers for the Counties-Manukau district, made despite the fact that Canterbury Metro, Waitakere and the Auckland City District all consistently recorded higher rates of crime.¹⁶ As with the Dawn Raids which labelled Pasifika people as undesired aliens, the decision to increase the police presence in South Auckland but not in other, higher crime areas, confirmed a stereotype that this area was “the “hub” of crime in Auckland, if not New Zealand”.¹⁷ As Tunufa’i argues, these labels are “not conducive for producing positive attitudes towards law enforcement and crime control.”¹⁸

Webb also argues that official statistics on offending behaviour do not just “record Māori and Pacific people as offenders; they also can reflect practices by state agencies towards ethnic minority groups” such as the “active policing” of Pacific peoples including during the Dawn Raids.¹⁹ The “over-policing of ethnic groups that are viewed as more criminally prone can have the effect of increasing their arrest rates and entry into the criminal justice statistics as offenders”.²⁰

Negative stereotyping can also have an impact on children and young people including by causing them to display hostile behaviour at school that is then used to justify disciplinary action.²¹ Some of the attendees at fono [meetings] held by the Human Rights Commission for their report considering Pacific peoples’ experiences of racism also “expressed that Pacific young people often feel that there are low expectations of Pacific peoples to succeed, especially in education and employment settings.”²²

Lack of Trust

The Human Rights Commission reported that Pacific people do not trust service providers to treat people without discrimination meaning they lacked the confidence to raise concerns or make complaints.²³ Tunufa’i makes a similar point in relation to young people and the police noting that experiences of racism and discriminatory police practices leads to more antagonistic relationships where Samoan youth find trusting the police to be very challenging.²⁴

¹⁴ Tunufa’i, L. (2017). Samoan Youth Crime. In A. Deckherdt & R. Sarre (Eds.), *The Palgrave handbook of Australian and New Zealand criminology, crime and justice*. Cham: Palgrave MacMillan at 180.

¹⁵ Ibid at 180-181 citing Mayeda, David T., and Scott K. Okamoto. 2008. Challenging the ‘Asian Pacific American’ Rubric: Social Constructions of Ethnic Identity among Samoan Youth in Hawaii. *Journal of Poverty* 6 (4): 43–62.

¹⁶ Tunufa’i, Samoan Youth Crime at 183-184.

¹⁷ Ibid at 183.

¹⁸ Ibid at 184.

¹⁹ Webb, [Māori, Pacific peoples and the social construction of crime statistics](#) at 1.

²⁰ Ibid at 2.

²¹ Maquiso, [Aotearoa, the Land of the "Long Tail": Exploring How Pasifika Students Are Underserved by the Education System through School Disciplinary Removals](#) at 12.

²² New Zealand Human Rights Commission - Te Kāhui Tika Tangata, [Talanoa: Human Rights issues for Pacific Peoples in Aotearoa New Zealand](#) at 14.

²³ Ibid at 14.

²⁴ Tunufa’i, Samoan Youth Crime at 183.

Tunufa'i's observation is supported by the results of recent surveys about the level of trust in the police. A 2019 report which examined trust and confidence in the New Zealand Police observed that like Māori, Pacific peoples tend to have reduced trust and confidence in police.²⁵ Another survey in 2020 also found that Pacific peoples were one of the groups who were significantly more likely to give a rating of not much or no trust and confidence in the Police.²⁶ Interestingly, they were also one of the groups who were significantly more likely to be very satisfied/satisfied with the overall quality of service delivery by the Police.²⁷ This difference may be related to age, with younger respondents more likely to report having not much or no trust and confidence in the Police and older respondents more likely to report being very satisfied/satisfied with the overall quality of service delivery by the Police.²⁸

Other attitudinal barriers

The Human Rights Commission also reported that fono participants “outlined they did not possess the information they needed to stand up for themselves. They internalised shame for experiencing discrimination and feeling helpless.”²⁹

Systemic barriers

Lack of cultural competence and/or awareness of cultural differences

Kaho contrasts the Western perspective in which a child “can be viewed independently of the family, as an individual with specific needs and rights that can be provided for through state intervention if necessary” with the Tongan “emphasis on collective familial responsibility and obligation” where “the state has a very limited role in protecting or providing for the child”.³⁰ She explains that children are considered to be the responsibility of the kāinga/extended family which includes “relatives living in different houses in the same village, or across several villages” or even several countries in the modern context.³¹ Kaho also describes how status differences operate within families with children having the lowest societal status and “learn to obey adult directives unquestioningly, and without hesitation”.³²

Kaho goes on to explain how these cultural differences do not align well with the FGC process. Despite claims about the flexibility and cultural appropriateness of FGCs, cultural elements are largely “window dressing” with Western cultural assumptions sitting under the legislation, and informing expectations about participants' behaviour.³³ For example, the expectation that the young person will actively and vocally participate in the process is not consistent with Tongan cultural norms in relation to the status of children in Tongan society.³⁴ Similarly:³⁵

[B]eing required in an FGC to put forth their views, proffer explanations for their behaviour, and contribute to and present a behavioural plan to the group all contradict Tongan beliefs about appropriate behaviour for children. This may cause

²⁵ Daniels-Shpall, A. (2019). [Strategies for \(re\)building community trust: A review of practices in the New Zealand Police](#). Fullbright New Zealand at 5-6.

²⁶ Gravitas Research and Strategy Ltd Research. (2020). [Citizens' Satisfaction Survey – Full Report for 2019/20 Fiscal Year Research Report](#). New Zealand Police at 12.

²⁷ Ibid at 89.

²⁸ Ibid at 12 & 89.

²⁹ New Zealand Human Rights Commission - Te Kāhui Tika Tangata, [Talanoa: Human Rights issues for Pacific Peoples in Aotearoa New Zealand](#) at 14.

³⁰ Kaho, The family group conference: Tongan perspective at 703.

³¹ Ibid at 705.

³² Ibid.

³³ Ibid at 713.

³⁴ Ibid at 713-714.

³⁵ Ibid at 714.

a clash between the expectation of participation in the FGC, and the expected role of the child for many Tongan families.

Kaho also describes the challenges that arise with the expectation that young people will admit guilt in front of authority figures in an FGC “as the thought of causing further fakama/embarrassment to their parents and family may be paralysing”.³⁶ It is difficult for any child to undertake the degree of critical self-reflection required to identify the causes of their behaviour, but this task is made even more difficult, if not unrealistic, if it would require them to place blame on their family or home environment when they have already caused shame and embarrassment.³⁷ Kaho also explains that the role of publicly taking responsibility “has great significance in the reconciliation process, and must be undertaken by a person with standing” whereas a child does not have appropriate status within the family to take on this role.³⁸

Sua’ali’i-Sauni raises similar issues around the role of shame and the barrier this can create for Samoan families. She found that:³⁹

Shame is cited by many of the participants of this study as one of the main barriers to Samoan family involvement in the New Zealand youth justice process. Knowing how to deal with the cultural dimensions of this shame factor is a recognised part of the argument, if not for cultural competency then at least for cultural awareness or sensitivity training.

Although this brief discussion highlights some of the ways that culture may be relevant to the youth and criminal justice process, section 27 cultural reports⁴⁰ are seldom used by Pacific offenders. It is unclear why this is or what impact this is having on their sentencing outcomes (if any) as there has been little research or literature on this question.⁴¹ However, as Tuiburelevu notes, obtaining a written cultural report is an expensive and time consuming endeavour which is likely to operate as a barrier for Pasifika people who are likely to earn lower incomes yet may not be eligible to receive legal aid.⁴² Tuiburelevu also suggests another possible barrier, the “dearth of public information available directing offenders to cultural report writers and services specifically for Pasifika people.”⁴³

Diversity within Pacific peoples

Kaho also makes the point that “[a]ssuming compatibility exists between restorative justice principles and traditional Pacific dispute resolution processes does not account for the diverse cultural protocols that exist between and among Pacific cultures. What may or may not be appropriate for Tongan families may have little relevance for Samoan or other Pacific island families and vice versa.”⁴⁴ As Kaho explains in another context, ‘Pacific people’ are not a homogenous ethnic group, rather it is an umbrella category referring to diverse groups, each with their own distinct, unique and cherished cultures, created and used for policy making purposes.⁴⁵ There are also additional sub-groups including people born or raised in New

³⁶ Ibid at 715.

³⁷ Ibid at 715-716.

³⁸ Ibid at 718.

³⁹ Sua’ali’i-Sauni, T. (2006). [*Le Matuamoepo: Competing 'spirits of Governing' and the Management of New Zealand-based Samoan Youth Offender Cases*](#) [Doctoral Thesis, University of Auckland] at 167.

⁴⁰ [Sentencing Act 2002, s27.](#)

⁴¹ Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 101-102.

⁴² Ibid at 105.

⁴³ Ibid at 105.

⁴⁴ Kaho, The family group conference: Tongan perspective at 717.

⁴⁵ Kaho, 'Oku hange 'a e tangata, ha fala oku lālanga' - Pacific people and non-violence programmes under the Domestic Violence (Amendment) Act 2013 at 186.

Zealand, those born or raised overseas, and people who identify with multiple ethnicities.⁴⁶ Tuiburelevu also notes that the plurality of Pacific cultures “means there is no singular Pacific legal jurisprudence for judges to draw upon”.⁴⁷

New Zealand born

Tunufa'i argues it is important to recognise that the Samoan population is increasingly New Zealand-born, perhaps even “second, third, fourth, and even fifth-generation” which means that “the cultural, educational, economic, and political exposure of these young people will be mostly ‘Kiwi’”.⁴⁸ This is not to say that these young people lose their Samoan identity, rather Tunufa'i describes how diasporic Samoans maintain their identity as Samoan people:⁴⁹

Whether we call it ‘customary law’ or ‘sense of justice’ may prove irrelevant because Samoan people, including diasporic Samoans, will always know it as fa’a Samoa and will take pride in the maintenance of at least some elements of it (Faleolo 2014; Vakalahi and Godinet 2008). In fact, some Samoan young people join gangs to enhance their knowledge of the Samoan language, siva Samoa (dance), and community fundraising activities that are conducted in accordance with fa’a Samoa (Faleolo 2014). One particular New Zealand-based Samoan youth gang, Mafia 1962, chose a name which reflected the year of Samoa’s independence (Tunufa’i 2013).

Tunufa'i goes on to explain how this gang functioned according to the Samoan principle of “taui ma sui” or the “law of private revenge” but that while this principle formed part of Samoan culture, other principles and protocols also acted to mitigate its effect and it was important for Samoan young people to have this fuller understanding:⁵⁰

However, the contention that the “revenge seeker cannot be negotiated with” is perhaps one-sided, if not completely dismissive of culturally valid and respected mitigating protocols in times of conflict. For example, the Samoan expression “Tatou te lauama tau pe tatou te lauama to’oto’o?”⁴ (Should we resolve our conflict through war or dialogue?) indicates that Samoan people do not always have to resort to revenge and violence to settle a dispute and therefore restore peace. It is important for Samoan young people to access comprehensive means of Samoan negotiating philosophies to broaden their cultural awareness, but it is even more salient to concentrate on the positive and developmental elements of such processes.

Tuiburelevu raises the lack of academic comment on the efficacy of the Pasifika Youth Court and in particular, whether it is responsive to young, urbanised Pasifika female offenders “who are largely disconnected from their respective cultures, the church and their family”.⁵¹

The Pasifika Youth Court arguably demands a level of cultural ‘buy-in’ in an environment which may prove alien for young urbanised Pasifika who, for whatever reason, are largely disconnected from traditional “Pasifika values” and cultural contexts. I query whether the Pasifika Youth Court is workable for this emerging

⁴⁶ Ibid at 186.

⁴⁷ Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 96.

⁴⁸ Tunufa'i, Samoan Youth Crime at 179.

⁴⁹ Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 96.

⁴⁹ Tunufa'i, Samoan Youth Crime at 178.

⁵⁰ Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 96.

⁵⁰ Tunufa'i, Samoan Youth Crime at 178.

⁵¹ Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 87.

*demographic of young Pasifika women, who are potentially poised to form a substantial portion of future youth offenders.*⁶¹⁵²

Lack of tailoring to women

Tuiburelevu also notes that while the Department of Corrections does offer some culturally responsive rehabilitative services, such as focus units for Pacific prisoners,⁵³ there are no “comprehensive culturally responsive rehabilitative options targeted specifically at Pasifika women” reflecting “the fact that they currently comprise a smaller portion of the female prison population”.⁵⁴ She also identifies a tendency to discuss Māori and Pacific women as though they are one in the same noting that while there are some commonalities in their experiences with racism and socioeconomic disenfranchisement, there are also critical differences.⁵⁵ In particular, the experience of wahine Māori women must be contextualised within their indigeneity and the impacts of colonisation, whereas, the experiences of Pacific women are centred in a “diasporic matrix”.⁵⁶

Tuiburelevu pointed to the Law Commission’s 1999 study on access to justice for women⁵⁷ which found that “Pasifika women experienced increased frustration with the system’s lack of responsiveness to their cultural needs” and that “Pasifika women reported having encountered patronising, ill-informed or racist attitudes among justice system personnel” before concluding:⁵⁸

While I cannot speak on behalf of all Pasifika women, I contend that if similar research was undertaken in 2018 the response(s) would be largely, and unfortunately, similar to that of 20 years prior.

Lack of cultural diversity

Tuiburelevu identifies the existing lack of cultural diversity of the bench as a potential barrier to accessing justice:⁵⁹

Where the bench is predominantly and historically occupied by an identifiable gender, ethnic and class demographic, it feeds unconscious bias into substantive decision-making despite a veil of neutrality and “colourblindness”. This alienates minority groups, many of whom are negatively overrepresented in the dock.

She contrasts this with a case study of a Pacific judge, Judge Moala, sentencing a Pacific offender in which the judge was able to draw on her own cultural knowledge to contextualise the offending against the offender’s cultural and family background in the absence of these issues being addressed in a s27 cultural report or being raised by defence counsel.⁶⁰ Tuiburelevu suggests that it is unlikely that this level of cultural understanding could have been achieved by a non-Pacific judge without a cultural report⁶¹ but is also careful to make it clear that she is not suggesting that non-Pacific judges cannot understand Pacific cultural values,

⁵² Ibid at 87.

⁵³ Ibid at 82.

⁵⁴ Ibid at 83.

⁵⁵ Ibid at 88.

⁵⁶ Ibid.

⁵⁷ Te Aka Matua o te Ture - New Zealand Law Commission. (1999). [Women and Access to Justice](#).

⁵⁸ Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 90.

⁵⁹ Ibid at 97.

⁶⁰ Ibid at 98-99.

⁶¹ Ibid.

rather than “unlearning entrenched unconscious biases and undergoing cultural competency training takes time and effort”.⁶²

Lack of Data

Academics have also identified a lack of data including a lack of disaggregated quantitative and qualitative data relating to each Pacific group,⁶³ the lack of a gender breakdown of violent offending by Pacific youth,⁶⁴ and limited information about Pacific peoples experiences in the criminal justice system generally, and in the family group conference process in particular.⁶⁵ These data gaps may make it more difficult to get an accurate and nuanced picture of the involvement of Pacific youth in the criminal justice system which in turn makes it more difficult to identify any issues, develop solutions to address those issues, and measure positive (or negative) change. For example, Tuiburelevu notes that the lack of a gender breakdown makes it “difficult to conclude whether Ioane and Lambie’s conclusions on Pasifika violent youth offending also apply to Pasifika female youth”⁶⁶ and where research does delineate between gender, little explanation is “given as to the nuanced contexts that may trigger Pasifika females to engage in criminal offending.”⁶⁷ She argues for further research to examine “what criminogenic, sociological and psychological factors are potentially driving New Zealand born and/or mixed-race Pasifika women to engage in criminal offending, particularly violent offences. This information “is necessary to provide information for targeted prevention and intervention of this vulnerable population”.⁶⁸

The Michael and Susan Borrin Foundation are currently funding research focussed on Pacific Peoples and the justice system which will begin to address this lack of data and evidence including research exploring:

- The overrepresentation of Pasifika people in the criminal justice system and the experiences of Pacific peoples in the system both as offenders and victims, as well as those working in the system;⁶⁹ and
- How restorative justice initiatives, including Family Group Conferences (FGCs), can be strengthened and improved for Pacific peoples.⁷⁰

Both of these studies also have a focus on identifying changes that will improve practice and the experiences of Pacific people in the justice system.

⁶² Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 97.

⁶³ Kaho, The family group conference: Tongan perspective at 701-702; Kaho, 'Oku hange 'a e tangata, ha fala oku lālanga' - Pacific people and non-violence programmes under the Domestic Violence (Amendment) Act 2013 at 186-187; Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 86.

⁶⁴ Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 83-84.

⁶⁵ Kaho, The family group conference: Tongan perspective at 701-702; Suaalii-Sauni, T., Tauri, J. & Webb, R. (2018). Exploring Maori and Samoan youth justice: Aims of an international research study. *Journal of Applied Youth Studies*, 2(5), 29-40 at 31-32.

⁶⁶ Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 83-84.

⁶⁷ Ibid at 84.

⁶⁸ Ibid at 87.

⁶⁹ Michael and Susan Borrin Foundation. (n.d.). *Pasifika and the Criminal Justice System in Aotearoa, New Zealand: Past, Present and Future*. <https://www.borrinfoundation.nz/pacific-peoples-and-the-criminal-justice/>

⁷⁰ Michael and Susan Borrin Foundation, *Towards Transformative Restorative Justice for Pacific peoples in Aotearoa New Zealand*.

Possible solutions

Introduction

In this section I discuss some possible solutions or ways of addressing some of the barriers to access raised in the research and literature from Aotearoa New Zealand and overseas. It is not a complete analysis, nor an attempt to identify ways to resolve all the access to justice challenges experienced by Pacific children and young people. The Part 3 report will undertake this analysis by bringing together the issues identified in the Part 1 and 2 reports and the series of working papers to make recommendations in relation to closing the justice gap for children and young people in Aotearoa New Zealand.

Cultural competence and increasing diversity

As Tuiburelevu argues, “[t]he provision of legal services is improved where lawyers understand and respect their client’s socio-cultural context(s). This leads to better communication between parties and ultimately fosters greater trust and confidence in the justice system.”⁷¹ I am aware of cultural competence training for working with Pacific peoples more generally but not any specific training for lawyers. For example, Le Va provide a Pasifika cultural competency training programme targeted at health and disability services.⁷²

Increasing diversity within the profession, or more specifically, encouraging and supporting more Pacific people to study and then practice law is another potential solution. The Michael and Susan Borrin Foundation are also funding a research study which aims to “increase the number of Pasifika in the legal profession and facilitate Pasifika legal practitioners as leaders in the profession by improving legal education.”⁷³ The first stage of this research is complete, a literature review bringing together existing research on barriers to Pasifika people entering the legal profession.⁷⁴ The literature review identifies a number of barriers, including gaps in the research and data, before concluding:⁷⁵

This literature review highlights the need for a framework that acknowledges both the cogency of cultural influences and the inherent challenges associated with a monocultural paradigm requisite to understanding how Pasifika law students, law graduates and law professionals may succeed. The review demonstrates the need for a collaborative, multidisciplinary and community-based understanding for improved Pasifika success in legal education and the law profession.

⁷¹ Tuiburelevu, [Legally Brown: The Experiences of Pasifika Women in the Criminal Justice System](#) at 91.

⁷² LeVa. (n.d.). [Engaging Pasifika](https://www.leva.co.nz/training-education/engaging-pasifika/). <https://www.leva.co.nz/training-education/engaging-pasifika/>

⁷³ Michael and Susan Borrin Foundation. (n.d.). *Equality, Belonging and Authority / Power – How can Law, Policy and Practice support best outcomes for Pasifika in Aotearoa New Zealand – Improving Pasifika Legal Education*. <https://www.borrinfoundation.nz/equality-belonging-and-authority/>. See also the research website: Victoria University of Wellington. (n.d.). *Pasifika Legal Education Research Hub*. <https://www.wgtn.ac.nz/pasifika-legal/research-themes>

⁷⁴ Tupuo-Vaitohi, M. & Gucake, W. (2022). [Improving Pasifika Legal Education Project: Literature Review on the barriers and interventions supporting Pasifika people succeeding in law school and taking up a career in the legal profession](#). Victoria University of Wellington.

⁷⁵ Ibid at 7.

The next stage will involve talanoa [conversations] with Pasifika law students and legal professionals followed by a further report which will make recommendations to increase the number of Pasifika lawyers.⁷⁶

Ethnicity matching

Sua'ali'i-Sauni identifies a series of complexities in relation to ethnicity matching for Samoan youth and the need to consider other characteristics than simply whether someone is also Samoan. She explains "Samoan ethnic culture is gerontocratically hierarchical and gender conscious, matching for ethnicity in Samoan cases would mean matching also for gender, age and/or hierarchical status."⁷⁷ Another potentially relevant factor is whether someone is New Zealand born or 'Island-born'. Sua'ali'i-Sauni describes the differing experiences of two of the participants in her study:⁷⁸

[T]he time spent by the 'Island-born' Samoan alcohol and drugs counsellor with Weysoth was minimal. This counsellor was also the counsellor for Jack. The counsellor noted that he was able to build better rapport with Jack than with Weysoth. Jack and the counsellor both being 'Island-born' may have contributed to the counsellor's ability to build easier rapport with Jack than with the 'New Zealand born' Weysoth. This raises a point of tension within understandings of cultural appropriateness from within an ethnic group. This tension centres on the layers of culture within ethnic identities (Anae, 1998).

When Sua'ali'i-Sauni discussed ethnic matching with Weysoth he explained that he thought sometimes it was wrong because Samoans "are going to look at it in their tradition". Sua'ali'i-Sauni concluded that an ethnic match for Weysoth "is perhaps more about getting someone who has identity markers like him - namely Samoan, New Zealand-born, young and male".⁷⁹

Sua'ali'i-Sauni also quotes a Samoan youth advocate who explained ethnic matching should be set in stone because it may not be a good approach in all cases:⁸⁰

I think it hinders when people see that [ethnic matching] (as a) policy set in stone. I think that's the biggest hindrance, when people get so bloody minded about it that they can't see that maybe a Samoan person isn't the best for this boy at this particular stage. Like we're wanting to take these young men on a journey and it may be that you get ethnic specific at some time down the track but not like right in your face. [They] are so disconnected from [their] people and so you need to blah, blah, blah...ifs a bit like trying to sell religion! Ifs kind of like on a par really for our young people, they are so divorced sometimes from both religion and culture, that it's like you're trying to preach to them...(Samoan Youth court youth advocate)."

Sua'ali'i-Sauni also explored the cultural identity of Samoan youth offenders more generally explaining that they drew from "both the culture of their parents and the culture of their urban surroundings, i.e. that of their peers, schools, church and/or neighbourhoods".⁸¹ She also identified that some Samoan youth offenders could experience a clash of cultures or expectations with their Samoan parents, or alternatively, the lack of a secure identity "where

⁷⁶ Victoria University of Wellington. (n.d.). *Pasifika Legal Education Research Hub: Literature Review*. <https://www.wgtn.ac.nz/pasifika-legal/research-themes/literature-review>

⁷⁷ Sua'ali'i-Sauni, *Le Matuamoepo: Competing 'spirits of Governing' and the Management of New Zealand-based Samoan Youth Offender Cases* at 171.

⁷⁸ Ibid at 171.

⁷⁹ Ibid at 172-173.

⁸⁰ Ibid at 170.

⁸¹ Ibid at 186.

they do not know or seem to have no firm footing in either their Samoan or New Zealand communities”.⁸² Another challenge with ethnicity matching is the potential for conflict between professionals such as lawyer’s responsibilities to their client and what they see as their cultural obligations.⁸³

Legal education and training for Pacific community organisations

An example of this sort of training is the Women’s Legal Service Victoria’s Women and the Law training program which “is specifically designed for family violence support and community health practitioners” and “aims to help practitioners identify potential legal issues their clients might be facing and confidently provide accurate legal information to them”.⁸⁴ Another example of New Zealand based tailored training is Pacific Peoples Legal Education Ltd, a company involving four Pacific female barristers practising in South Auckland. They deliver a free legal education programme aimed at Pacific service providers families involved with the Family Court, Criminal Court and/or Youth Justice called ‘Folau He Vahanoa’.⁸⁵

⁸² Ibid at 200.

⁸³ Ibid at 259.

⁸⁴ Women’s Legal Service Victoria. (n.d.). *Training*. <https://www.womenslegal.org.au/training/>

⁸⁵ Pacific Peoples Legal Education Ltd. (2023). *Pacific Peoples Legal Education Ltd* <https://pple.nz/>

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