

# "Court in the Act"

A regular newsletter for the entire Youth Justice Community

THE YOUTH COURT OF NEW ZEALAND | TE KŌTI TAIOHI O AOTEAROA

October 2008

## Specialist Youth Courts

The Youth Court has led the way in developing models of therapeutic specialist courts that address the specific needs of offenders, families, and victims. This month, *Court In The Act* focuses on the three specialist Youth Court initiatives: the Marae-based Youth Monitoring Court in Gisborne, the Auckland City Youth Court Intensive Monitoring Group, and the well-established Youth Drug Court in Christchurch.

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*"The underlying rationale is to create a continuity of involvement with the young person and his or her whanau in an attempt to directly address the disproportionate over-representation of Māori Youth recidivist offenders."*

Judge Heemi Taumaunu

## The Marae Youth Monitoring Court

The Marae Youth Monitoring Court is the newest specialist Youth Court. This article is summarised from *The Marae Youth Monitoring Court at Gisborne: A specialised, problem-solving Youth Court sitting at Poho-o-Rawiri Marae, Gisborne*, by His Honour Judge Heemi Taumaunu.

This specialised Youth Court is an initiative of Youth Liaison Judge Heemi Taumaunu. The pilot programme is aimed at addressing youth offending within the cultural setting of a marae in an attempt to address the current disproportionate over-representation of Māori recidivist youth offenders, and Māori youth offenders sentenced to both imprisonment and supervision with residence.

The pilot builds on marae based programmes for offenders such as Te Whanau Awahina, which takes referrals from the Waitakere District Court. Most offenders are Maori and the process incorporates Maori tikanga (customs and protocols). This is the first time that a NZ court has systematically conducted criminal cases on a marae.

### Purpose and goals

To honour and apply the objects and principles in the CYPF Act 1989.

- Hold the young person accountable and ensure victims issues and interests are addressed.
- Address the underlying causes of the offending behaviour.
- Seek solutions with the active involvement of whanau, hapu and iwi.
- Promote and maintain inter-agency co-operation and accountability.
- Keep communities safer by reducing recidivism.
- Use Māori language, culture and protocols as part of the Court process.

The project represents an attempt to incorporate Maori tikanga with the law. It is not designed to abandon the law and start a tikanga-based court. The court does not have the ability to do that.

### Process

The process prior to transfer to the marae is the same as for the normal

Youth Court. The charge is not denied or proved in the normal manner in the Youth Court. A family group conference (FGC) is convened and held in the normal manner and then the FGC plan is approved.

The FGC discusses whether the subsequent monitoring of the FGC plan should take place at the Marae. If so, and the Youth Court accepts the plan, the Court may order that subsequent hearings of the case take place on the Marae.



Judge Taumaunu (centre) presides at the first sitting of the Youth Monitoring Court, pictured with kaumatua from the Turanga-Nui-a-Kiwa Kahui Kaumatua

The marae hearings are designed to monitor the young person's performance of the FGC plan and to sentence the young person when the FGC plan is completed.

The marae process is open to anyone who opts into it, and where the Court approves. There is no mandatory requirement for young people to be dealt with on the marae.

### Court sittings

The Marae Youth Monitoring Court sits in Gisborne at Te Poho-o-Rawiri marae every second Friday as from mid 2008, commencing with the powhiri (formal Maori welcome) at 8.30am followed by Court commencing at 9.00am. All young people appearing on the day are required to attend the powhiri with their whanau, youth advocate, and lay

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advocate. A kuia (respected female elder) calls to the visitors to come onto the marae. A kuia from the visitor group will respond to the call of welcome. Everyone will then move inside the meeting house and formal speeches are conducted. Once completed everyone will go into the dining hall for a cup of tea.

The Court will be conducted inside the wharenui (meeting house) and will commence with a karakia (blessing). Each individual case will commence with a mihi (greeting). Each young person is dealt with on an individual basis and when each case is called, the kaumatua will give a special speech of welcome. The kaumatua sits next to the judge and assists in the court process. The young person is encouraged to respond to the welcome by saying a mihi (a Maori speech). This is aimed at re-establishing the young person in their identity as Maori. The young person and his or her family are invited to participate fully in the hearing, as are all the other professionals.

### Meeting of professional team

The Marae Youth Monitoring Court team is made up of the following members:

- The Marae Youth Monitoring Court Judge and Court clerk
- The Marae Youth Monitoring Court Police prosecutor
- Social Workers assigned to Marae Youth Monitoring Court work
- A representative from Youth Forensic Service Providers
- Service provider and Iwi Provider representatives
- Ministry of Education representative
- Youth advocates
- Youth justice co-ordinator(s)
- Lay advocates
- Kaumatua and Kuia who have volunteered to assist the Marae Youth Monitoring Court
- The police iwi liaison officer assigned to assist the Marae Youth Monitoring Court
- The victim advocate assigned to assist the Marae Youth Monitoring Court

### Evaluation

The Court will maintain accurate statistics of both the Marae Youth Monitoring Court and the regular Youth Court at Gisborne to enable a comparison of both Courts and to enable the performance of both Court's to be measured.

## Comment by Judge Taumaunu

It is early days yet, but it is hoped that by introducing an added dimension to a young person's court appearance (by assisting the young people to establish their sense of belonging and identity) their risk of re-offending will reduce. A Maori tikanga based programme is currently being developed to run in conjunction with the marae court. Participation in this programme will form part of the FGC plan for those young people being dealt with in the marae court.

### On the disproportionate over-representation of Maori in the criminal justice system

About 14% of the general population is Maori: 50% of defendants, victims and prisoners are Maori. So obviously the system has needed to attempt to address this issue of the disproportionate over-representation of Maori in the criminal justice system.



There is no quick fix to this problem as it is not a problem that has come around quickly.

In 1988, the Puaoteata report, produced by John Ragihau highlighted this issue and made recommendations for addressing that problem. As a result the Children, Young Persons and Their Families Act 1989 was created, but since then the disproportionate over-representation of Maori has remained unchanged. It is time for a new approach. We need to dismiss the idea that Maori have had their fair share. When Maori have had their fair share we will have proportionate representation in the prisons and proportionate representation in the courts.

In terms of process, the MYMC is going well. It is too soon to tell whether recidivism has been affected. This new Gisborne project is a start, but the task is far from complete.

## Interview with Senior Constable Russell Holmes, Youth Aid Officer, Gisborne

Senior Constable Russell Holmes is a Youth Aid Officer based in Gisborne. He has been a member of the Police force for 28 years, with approximately 14 years experience as a Youth Aid Officer.

CIA spoke with him about his role supervising the FGC plans as part of the Marae Youth Monitoring Court.

**CIA:** How do you see the MYMC working?

**SCRH:** At first there was some scepticism from people at the MOJ and questions over how success should be measured. But although it is early days there are identifiable positive effects that I can see.

**CIA:** What differences (in terms of process) are having an effect?

**SCRH:** The formalities such as the powhiri (a formal Maori welcome), the calling onto the marae, the formal speeches followed by a cup of tea that are part of the MYMC may have been looked upon sceptically by some (another free lunch). In fact, those formalities are only that and they serve a greater purpose. These formalities break down barriers quickly.

**CIA:** How do the young people react to the MYMC process?

**SCRH:** The most noticeable change that I have witnessed is the change in attitude of the young people. Of note is the increase in respect for the court process compared with a non-marae based Youth Court. For example, the wearing of gang colours to the court is greatly reduced. One young person was seen telling his siblings to be quiet at the court, a sign of respect that would not normally be seen in a YC. Another young person decided to take off his shoes although this was not a requirement at the marae. The general demeanour of the young people involved has changed in a positive way.

**CIA:** What do you see as positive about the MYMC?

**SCRH:** The three positives in respect of the MYMC are the consistency of staff involved, the frequency of the hearings (every two weeks) and the role of the Lay Advocates.

The Lay Advocates have taken on a mentoring role. While the social work-

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ers have weekly contact with the young person, the Lay Advocate is much more involved. In some cases this may be daily contact. In one case where a young person was having problems with his parents, a Lay Advocate brought him home in order to pre-empt any problems.

**CIA:** Your opinion overall?

**SCHR:** Maori youth offending is an old problem. The traditional police approach of "nail them and jail them" is clearly not working. It's time for a new, hands-on approach. The MYMC provides us with an opportunity to create meaningful change.

## Interview with Richard Brooking

Richard Brooking is employed in the Work and Income division of the Ministry of Social Development as a Strategic Advisor-Maori. Richard has 25 years experience in the public sector. His tribal affiliations are Ngati Porou and Ngai Tamanuhiri. He currently resides in Gisborne and his wife Nellie currently manages the High Court in Auckland.

Richard was recently Seconded to Te Puni Kokiri for two days a week to manage the Research Project supporting the Marae Youth Court at Te Poho-o-Rawiri Marae in Gisborne.

The project is supported by the Kahui Kaumatua (Council of Elders) for Te Runanga o Turanganui-a-Kiwa as well as Te Runanga o Ngati Porou.

The project was initiated by Judge Taumaunu and through meetings with local Maori leadership he has gained wide spread support for it. Discussions held by Judge Taumaunu with government agency representatives highlighted the need to also identify residential programmes, activities and providers that could be used for young offender referrals.

The key objective is to reduce the re-offending rate for youth and to achieve this the Marae Youth Court has been established. The research will inform the main project by providing immediate feedback on existing processes, recommendations on improvements to these processes as well as advice on new components which will contribute to the key objective.

### Areas of Research and Development

- Profiles of 3-4 residential programme options in the region

- Profiles of Youth Justice Providers in Tairāwhiti

- Development of a Youth Justice programme database

- Development of a planning tool for youth offenders

- Creation of an Evaluation Framework

- Development of a Marae based Maori-centric curriculum

- Analysis of the Lay Advocate role with recommendations for the formal review that is currently underway.

The research project has been funded



Inside Poho-o-Rawiri Marae.

by Te Puni Kokiri through the Effective Interventions Programme and is supported by an across government Project Team representing the Courts, Police, Te Puni Kokiri, Ministry of Social Development, Child, Youth and Family, Work & Income and Corrections.

### Early evaluation

It is too early to say if the project is successful in terms of reducing re-offending. It is intended that a cost-effectiveness study will be undertaken during the research phase which will provide an accurate assessment of the cost of a young offender being processed through the youth justice system.

It is hoped that the decrease in re-offending rates for young people going through the Marae Youth Court will translate into cost-savings for government and will provide a sound economic basis for continuing and possibly replicating the model.

Anecdotally, the Marae Youth Court is successful in terms of the change in attitude of the young people and their whanau to more positive feelings for the court and the other parties. Also the Marae community, the participants from all the government agencies, legal counsel, Maori elders and community people associated with the Marae Youth Court have been very positive about the initiative and the positive contribution it will make for the com-

munity.

## Comment from Gisborne solicitor Vicki Thorpe

My initial observations are that:

- Youths behave less "staunchly" at the marae and in the meeting house. At the Courthouse there is much more staunch posturing.

- the environment appears more comfortable for family, who are often a bit intimidated by the courtroom.

- there is more direct involvement of the young people in the process i.e. during the call on to the marae, powhiri, and then the individual mihi to which the young people have to respond.

-involvement of local kaumatua sends message to young people that the community is interested in their welfare.

- as to recidivism - time will tell!!

- the challenge for some youth advocates is to "let go" of the forum in which they are very comfortable and feel in control.

- it probably enables the lay advocates to build on their work with young people around tikanga and self-esteem issues, where there are clear goals regarding the expected behaviour and contribution to the marae court.



# The Auckland City Youth Court Intensive Monitoring Group (IMG)

This specialised Youth Court is an initiative of His Honour Judge Tony Fitzgerald. The Intensive Monitoring Group had its first sitting on July 16, 2007.

## Purpose and goals

- To honour and apply the objects and principles in the CYPF Act 1989.
- Hold the young person accountable and ensure victims issues and interests are addressed.
- Address the underlying causes of the offending behaviour.
- Seek solutions that are strength-based, child-centred, family focussed and culturally appropriate.
- Promote and maintain inter-agency co-operation and accountability.
- Keep communities safer by reducing recidivism.

## Process — Eligibility

After the entry of non-denial or charges proved, the entry criteria are:

The presence of moderate to severe mental health concerns (including conduct disorder); and

An assessment of the young person as being at medium to high risk of re-offending.

If, as a result of a forensic screen assessment, or a s333 report, a young person is assessed by the Regional Youth Forensic Service of the Auckland District Health Board, (RYFS) as meeting the above criteria, they are eligible for acceptance into the IMG.

## Family group conference (FGC)

The forensic assessment (or s333 of the CYPFA report) and treatment plan is considered at the FGC together with other available information.

An FGC plan is prepared which includes the means of addressing the victim's needs and concerns, accountability issues, the young person's treatment plan and other relevant matters (educational, cultural reports).

## Acceptance into IMG

The IMG Judge will then consider and approve the FGC plan and may offer the young person the opportunity of taking part in the IGM.

If the offer is accepted the young person will be remanded on appropriate bail terms to reappear on an IMG Court day.

## Continuity of involvement

That Judge will continue to be involved with the young person and if the young person fails to commit to the process the case will return to the usual Youth Court process.

## Outcome

The outcome will normally be in accordance with the agreement reached at the FGC.

## Professional Team

- The IMG Judge and Court clerk.
- The IMG Police prosecutor.
- Social Workers assigned to IMG work.
- A representative from RYFS.
- The service providers; eg: Youth Horizons Trust and Odyssey House.
- Ministry of Education representative.
- Youth advocates.
- Youth justice co-ordinator(s)

## Evaluation

All young people being considered for the IMG are assessed using a standard battery of measures for mental health issues, drug/alcohol dependency and risk of re-offending together with the other information routinely obtained when preparing a forensic report. There is a follow up assessment after 6 months and at 12 months both for young people who are involved in the IMG Court and those who are not. As well as that, young people referred from other Courts for assessments who may or may not meet the entry criteria, will be considered in the evaluation process.

## Anecdotal examples of the success of the IMG

1. The speed with which reparation is paid and community work is done compared to under the usual process is much faster.
2. The number of young people who adopt more positive attitudes to their futures and, for example, move on to obtain jobs or apprenticeships

## Interim evaluation

An interim evaluation report, delivered one year after the inception of the IMG, has shown a reduction in the risk of re-offending by 38% for IMG young people compared to 14% in a matched control group in a quasi-experimental study.

The information below was taken from a powerpoint presentation by Linda Gow (Clinical Psychologist, Auckland Regional Forensic Service) and Nick Mooney (Doctoral Student, Massey University) for the 2008 Auckland City YOT Workshop. These statistics are preliminary, and are used with the permission of the authors.

## Exclusion Criteria

- Outside of the wider Auckland Region
- Cognitive Difficulties due to Intellectual Disability or Traumatic Brain Injury
- Age outside 14 – 16 at the time of offending
- Declines participation (participation in the follow-up phase is voluntary)

## At initial assessment:

These results reflect a study period between 01 July 2007 and 30 April 2008. During this period approximately 85 young people were referred to the Regional Youth Forensic Service for a psychological assessment

12 young people (14% of total assessments) were from the IMG Court.

For comparison, there were 31 young people in the Matched Control Group (36% of total assessments).

The data was matched for: ethnicity, violent offences, total offending categories, YLS/CMI level, mental health diagnosis, drug and alcohol concerns, co morbidity, and conduct disorder.

Note: YLS/CMI is the Youth Level of Service/ Case Management Inventory. This is the youth risk assessment measure used to ensure the moderate to high risk entry criteria are being adhered to by the IMG court

The data was not matched for: age, previous police involvement, and gender.

## At six-month follow-up assessment:

All young people who meet IMG criteria are approached for a follow-up at six-months.

IMG: 10 out of 12 continued with this phase. Six have been followed up to date.

Matched Control: 14 of these 31 young people have been re-assessed to date.

## Results of the follow-up phase (so far)

The percentage drop in the YLS total level of risk for IMG young people at six-months is 38% compared to a 14% decrease in overall risk in the control group.

**Some Qualitative Observations:** IMG sample are more likely to access services to meet their identified needs

IMG sample self-reported less delinquent/ offending behaviour and contacts with Police when compared to the

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matched control group.

### Where to from here?

Extend the current follow-up period for IMG and Control Group to 12/18 months for existing IMG/Control group

clients

Monitor the progress of new young people entering the IMG

Involve the research team at MOJ to focus on the cost effectiveness of the IMG Court and the need for additional human resources.



## The Christchurch Youth Drug Court

The Youth Drug Court (YDC) is operating in the Christchurch Youth Court. It commenced on 14 March 2002 which makes it the longest running specialist Youth Court. The development of the YDC drew on experiences with drug courts in the USA, Australia and Ireland. His Honour Judge John Walker was the architect of the YDC, and the Court is now led by Her Honour Judge Jane McMeeken.

### Purpose and goals:

To honour and apply the objects and principles in the CYPFA 1989.

Hold the young person accountable and ensure victim's issues and interests are addressed.

Enhance the treatment of young persons who are repeat offenders and who have a serious drug dependency which is contributing to their offending. Alcohol is included within the term "drug".

### Therapeutic jurisprudence

This is the underlying philosophy of the YDC. Therapeutic jurisprudence is the use of the Court and the sanctions available to it in conjunction with treatment programmes to effect a reduction in re-offending. The proponents of therapeutic jurisprudence regard it as an important dimension in the law involving an interdisciplinary approach. It is a new role for a Judge attempting to change behaviour and acting in a preventative way by intervention. In exercising therapeutic jurisprudence the authority of the Judge is of considerable importance in the process, providing sanction for failure to engage in the treatment, and providing praise and reinforcement where progress is made.

### Consistency of Judge

The consistency of Judge means that each time the young person appears in Court he or she is faced with the same Judge. Not only does this mean that the Judge builds up a detailed knowledge of that person's case, it enables a relationship to be established between the Judge and the young person which enhances the treatment process. The fact that a single Judge is monitoring performance, reviewing the case on a regular basis and is clearly knowledgeable about the circumstances surrounding the young person does not go unnoticed by the young person. It is usually the first time when a person in authority has demonstrated such an inter-

est. The positive recognition of progress and the responses to failures are effective tools employed by the Judge.

### Immediacy of treatment

Immediacy of treatment ensures that any level of motivation on the part of the young person engendered by the Court process is harnessed as early as possible.

### The team approach

The team approach of the Drug Court and the agencies involved in it ensure immediacy of treatment.

The YDC is operated by the Drug Court Team comprised of:

- Police
- Social Worker
- Youth Justice Co-ordinator
- Education representative
- Youth Advocate
- Treatment provider
- Drug Clinician
- Judge

Consistency across the team enables the young person to build relationships with each of the team members and enables the building up of considerable team knowledge about the young person's case.

### Layout of YDC

The Drug Court itself is demonstrably different in its layout with the key feature being the young person's position in the Court closest to the Judge and sitting at the same level. This enables an easier communication between the Judge and the young person.

### Process - Entry into YDC: Identification

Repeat offending with a serious drug dependency contributing to offending.

The young person is screened by a

drug clinician based at Court on each Youth Court list day

The presiding Judge is advised of the result of the drug screening, and then makes a decision whether to transfer the young person to the next Drug Court

If the decision is to make that transfer then the young person is remanded, typically for three weeks, but certainly no more than four, to the next appropriate YDC.

### Full assessment of the young person and treatment plan

During the remand a full assessment is carried out in respect of that young person, in particular the drug dependency, but also including a detailed assessment of the young person's family situation, their education situation and any other aspect of their life which is likely to affect the treatment plan required.

A treatment plan is developed and funding for the treatment plan is arranged. If there is to be placement in a programme, that placement is arranged during the period of the remand.

Towards the end of that remand period a Family Group Conference is convened. This is primarily directed towards consideration of the treatment plan which is to be proposed to the Court. This provides an opportunity for family members and the victim of offending to be engaged early in the YDC process.

### YDC appearance

The Judge explains to the young person what is expected in the YDC, what the consequences of failure to comply with the programme may be, the fact that completion of the programme is a significant matter taken into account in the final outcome of the case, and the fact that failure to engage in the programmes can result in the Judge deciding to discharge the young person from the Drug Court programme and transfer back to the mainstream Youth Court.

Once accepted into the YDC the young person is released on bail with conditions which reflect in detail the programme required to be undertaken. The Drug Court Team is aware on a daily basis whether there has been compliance or not and any failure to comply can result in immediate arrest for breach of bail and return to Court. This immediate consequence is a very important feature.

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### **Ongoing and regular monitoring**

The young person is usually remanded, at least in the early stages of a treatment programme, for a period of two weeks to come back to the YDC for review of progress. These two-weekly remands reflect the intensity of the monitoring process. On each occasion that the young person comes to Court the same Drug Court Team is present and the same Judge.

On the day of each remand the Drug Court Team meets in the morning to discuss each of the cases that are to be considered in the YDC. The young person's youth advocate is invited to this meeting, but the young person is not present. In the course of that meeting full details of the progress of the treatment plan are discussed, any changes to the treatment plan considered, and the result is that when the young person appears in court everybody in the team has full knowledge of everything that has occurred. There are no arguments concerning treatment, funding issues or placement issues and there can be full concentration on the treatment needs of the young person at that point.

### **Process Evaluation**

(Source: **Child Youth and Family e-flash 17**)

The Process Evaluation examined the first 18 months of the pilot, tracking the 30 young people entering the pilot in its first year.

### **Key Findings**

The Process Evaluation identified the following findings about the success of the YDC processes:

The pilot facilitated efficient identification of young persons with alcohol and other drug problems through the on site Youth Social Services (YSS) clinicians screening.

The screening process and timeframes facilitated faster access to full assessments from YSS

The YDC increased timeliness of certain processes such as access to programmes and services.

- The ongoing monitoring allowed faster response to treatment needs than in the Youth Court.

- The YDC team based approach led to enhanced communication and co-

ordination between agencies.

The YDC processes provide intense monitoring of young persons and improved on Youth Court processes in the following ways:

- Regular remands provide intense monitoring

- Multidisciplinary team approach addresses issues more holistically

- Longer hearings allow more discussion by judge with offender and family

- The relationship between judge and Young Person was less formal

- The YDC social worker monitors and co-ordinates the treatment plan

### **Progress in Reducing Offending**

The process evaluation shows a decline in the drug and alcohol abuse and offending levels of participants, with around two thirds of the 30 young offenders having a lower level of offending, and seven having no further charges at all against them. Just under a third continued to offend at higher rates. These results appear quite positive, however it must be noted that there was no control group against which to test these participants.

### **Follow up assessment**

The second phase of the evaluation of the YDC is a follow up assessment. This assessment will observe the same sample group as in the process evaluation approximately 12 months after they have left the pilot. The information gained from this follow up assessment will provide more data on reducing re-offending in the long term amongst YDC participants.



## ***“Court in the Act”***

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