

ANZSOG CASE PROGRAM – TEACHING NOTE

Please cite this Teaching Note as: *Shank, Sarah. (2024). Considerations in consultation and co-design: An assessment of Hāpaitia te Oranga Tangata Safe and Effective Justice Programme in Aotearoa New Zealand. [Teaching Note]. Australia and New Zealand School of Government, John L. Alford Case Library: Canberra.*

Considerations in consultation and co-design: An assessment of Hāpaitia te Oranga Tangata Safe and Effective Justice Programme in Aotearoa New Zealand

An ANZSOG Teaching Case by Dr Sarah Roth Shank

Author Affiliation: Aspen Restorative Consulting

Keywords: Hāpaitia te Oranga Tangata safe and effective justice; Māori, te ao Māori; Criminal justice reform; whole-of-government approach; public policy; consultation; codesign.

This Teaching Note references and provides a guide to: *Shank, Sarah. (2024). Considerations in consultation and co-design: An assessment of Hāpaitia te Oranga Tangata Safe and Effective Justice Programme in Aotearoa New Zealand. Australia and New Zealand School of Government, John L. Alford Case Library: Canberra. DOI: 10.54810/OPSO2883.*

Summary

This case examines the consultation and design phases of Hāpaitia te Oranga Tangata Safe and Effective Justice Programme (hereafter Hāpaitia Reform Programme) convened in Aotearoa New Zealand in 2018. The Hāpaitia Reform Programme was designed to 'provide a foundation for enduring change of the criminal justice system'

This case was commissioned by ANZSOG for the John L. Alford Case Library. Views expressed in it are not necessarily those of ANZSOG. This work is licensed under Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International Licence, except for logos, trademarks, photographs and other content marked as supplied by third parties. No licence is given in relation to third party material. Version 08032019. Distributed by the Case Program, The Australia and New Zealand School of Government, www.anzsog.edu.au



(Ministry of Justice, 2023) and was initiated as a result of rapidly rising incarceration rates in the adult sector with a disproportionate effect on Māori. Input into the reform and consultation was gathered through 2018 and into 2019, with findings and reports published in 2019. An expert advisory group convened gatherings with specific stakeholder groups, including survivors and victims of crime. A nation-wide Criminal Justice Summit and an online mechanism for public submissions served as other means of consulting with interested parties. Furthermore, a separate *hui* (gathering or meeting) - was held by Māori to address larger, enduring change by decolonising the justice system.

On one level, the Hāpaitia Reform Programme serves as an example of the significant undertaking required to pursue criminal justice reform through a whole-of-government approach, meaning cross-ministry and cross-sector input into the reform design and eventual implementation. On another level, from an Indigenous worldview, the initiative was criticised as upholding the dominance of a colonial criminal justice system, failing to disrupt mechanisms underpinning the overrepresentation of Māori in the system, and camouflaging partnership-informed discourse, namely the use of 'co-design' when there was little evidence of true power-sharing between Māori and the Crown. The ongoing consultation and transformational impact of the programme remains in question as government priorities continue to change. However, the information-gathering stage of the programme serves as an example of how the voices of those most impacted by government policies could be incorporated in the development of such policies.

Learning objectives

This case enables learning in the areas of criminal justice reform, including critical considerations from an Indigenous perspective, and public policy through the following activities:

1. First, critically engage with *concept application* in the criminal justice context. This case presents the larger cultural and social context within which the Hāpaitia Reform Programme was initiated, which included calls for reduced incarceration rates that had disproportionately impacted Māori and for more enduring transformation through decolonisation of the criminal justice system. Also, critically consider the initial premise of the programme, including who identified the need, the goals and the objectives of the reform.
2. Second, consider *process illustration* by looking at how the Hāpaitia Reform Programme was designed and conducted. It serves as an example of a reform process that was grassroots in nature and also exposes important considerations about partnership between Māori and the Crown. Consider how the Hāpaitia Reform Programme did or did not achieve co-design, consultation, and a whole-of-government approach based on the explanations provided.
3. Third, identify specific challenges that impact justice policy. In doing so, learners and public policy advisors may be more equipped to anticipate and account for such challenges when developing criminal justice policy.
4. Fourth, assess the strengths and limitations of the Hāpaitia Reform Programme through two dominant perspectives in Aotearoa New Zealand.

Intended audience

The intended audience for this case may include:

- Postgraduate students studying public policy, criminal justice, transformative and/or restorative justice and justice reform.
- Second- or third-year undergraduate students in any of the above areas.
- Public sector leaders, employees and policy-writers, specifically those across the justice sector.

Case value and approach

This case addresses criminal justice reform, which is a live and critical issue in Aotearoa New Zealand. It has been a feature of government policy and political discourse for decades, particularly as disproportionately high rates of incarceration of Māori has been seen to negatively impact *whānau* (families) and community networks, effectively perpetuating colonisation. Justice reform gained renewed recognition when incarceration rates on the whole were deemed harmful and unsustainable in 2017/2018. An assessment of this design and implementation is valuable to policymakers as they reflect and determine how to continue addressing what has been called a criminal justice crisis.

To fully engage with this topic, it is suggested that students do the following.

- Learn about the history and context of incarceration leading up to the government's deemed crisis, particularly the impact on Māori as *mana whenua* (the Indigenous people of Aotearoa New Zealand who have territorial rights and sovereignty of the land). Taking time to understand the context, history and culture of a place and its people is essential when developing policy for those whom the policy impacts.¹
- Learn about the reasoning behind a reform programme, and its design, development, and implementation. A critical assessment of these stages of policy design and the perspectives that feed into it will enable students to address these learnings in future policy development.

Suggested teaching strategies

Activity	Topic/Question
1 Videos (Appx. 20 minutes)	Watch these short videos about Hāpaitia, including highlights from the summit, input and responses from the public. Reflect on the following: - What are the key takeaways from these videos? - What stood out to you about the consultation process, including eliciting input from the general public and those most impacted by the justice system? - What is important about advisory members' Money and Jones' reference to co-design and partnership? - Consider what co-design looks like in a context impacted by complex history and where the ongoing effects of colonisation have been unaddressed. Background viewing and further reading: • Interview with Dr. Khylee Quince on the relationship between Indigenous Māori justice and the Western criminal justice system (1 hour) • Presentation by Moana Jackson, 'Why did Māori never have prisons?' (1 hour + 30 minutes Q&A) • King, P.T. & Cormack, D. (2023). Indigenous peoples, Whiteness, and the coloniality of co-design. In J. Ravulo, K. Olcoñ, T. Dune, A. Workman and P. Liamputtong, (Eds.), <i>Handbook of critical Whiteness</i> (pp. 1-16). Singapore: Springer.
2 Group discussion	Designing statutes to support a policy agenda. Ingram and Schneider (1990) distinguish between four common approaches to designing statutes that support a policy agenda, as described below: 1. In a <i>strong statute</i> approach, the institution defines the goal that the statute is intended to address and prescribes rules for how that should be accomplished.

¹ Te Tiriti o Waitangi, the Treaty of Waitangi, signed in 1840, served as a 'covenant' that, in theory, was meant to represent Māori partnership with the British Crown (Liu, 2007). However, this covenant was disregarded by the Crown forces as Māori were subjugated and their authority over processes, like designing and implementing preferred justice practices, severely undermined. The Waitangi Tribunal – an inquiry commission established in 1975 to provide a legal process to investigate Te Tiriti violations – has since concluded that the chiefs who signed the Māori-language version of Te Tiriti never ceded sovereignty to the Crown and, therefore, retained authority to make and enforce law for their own people (Waitangi Tribunal, 2020; Webb, 2017). The history behind the sovereignty of Māori has led to persistent calls for Māori-led solutions in the area of crime, justice and punishment, cautioning that any institutional actions adopted will be 'inappropriate if they do not recognise the wishes and mana of tribal tangata whenua who may be affected by their decisions' (Jackson, 1988, p. 170).

		2. By contrast, the <i>grassroots</i> approach includes vague and non-specific goals or direction in order to give the grassroots' actors autonomy over an issue. 3. In the <i>Wilsonian</i> approach, the goal is clearly stated by the institution, but there is wide discretion in implementation. 4. Lastly, a <i>support-building</i> approach is utilised when there is not clear agreement on a topic or implementation guidelines, so the design process itself serves to build consensus and understanding. Discuss which of these approaches were utilised in the design and consultation stages of the Hāpaitia Reform Programme. Are there some that would have been more useful than others at different stages? Discuss examples based on your own context where you've seen the various approaches to designing statutes to support a policy agenda. Further reading: - Blomkamp, E. (2018). The promise of co-design for public policy. <i>Australian Journal of Public Administration</i> 77(4), 729-743. - Eppel, E. (2013). <i>Collaborative governance: Framing New Zealand practice</i> [Working paper no: 13/02]. Institute for Governance and Policy Studies, Victoria University of Wellington. - Ingram, H., & Schneider, A. (1990). Improving implementation through framing smarter statutes. <i>Journal of Public Policy</i>, 10(1), 67-88.
3	News articles	Responses and updates. Read the following opinion pieces from 2020 shortly after the Hāpaitia Reform Programme was launched, and a more recent news article about updates to justice policy: • Decolonise the justice system – 'tinkering' won't do. Walters, 10 August 2020 • By community, for community – funding justice. Walters, 25 August 2020 • Govt needs to be braver on justice reform. Walters, 25 August 2020 • Prison reforms: Government ditches reduction targets and cultural reports RNZ, 8 February 2024
4	Group discussion	Factors that impact implementation. • Critically reflect on what it means when enacting reform of a system that disproportionately impacts Māori ultimately rests with the Crown. • What main impacts suggested in the case are reasons that Hāpaitia struggled to maintain its momentum? • What are some other challenges you think could contribute? • What are one or two specific ways these challenges can be anticipated and accounted for in justice policy in the future?
5	Group discussion	Strengths and learnings from the Hāpaitia Reform Programme. Identify the strengths in the consultation phase of the reform programme and identify the shortcomings. List specifics about what made this stage unique. Can you think of examples in other contexts that share similar features as the Hāpaitia Reform Programme?

		Background reading: Take time to review the websites Ināia Tonu Nei and the 'Hāpaitia Legacy website', and specifically the reports: • <i>He Waka Roimata</i> • <i>Turuki! Turuki!</i> • <i>Ināia Tonu Nei</i>
--	--	---

Feedback on Teaching Note use

To assist with continual improvement, if you've used this Teaching Note, we'd greatly appreciate your feedback and suggestions for improvement. To do so, please email caselibrary@anzsog.edu.au with the name of the case and your comments. Many thanks in advance.

This work is licensed under Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International Licence, except for logos, trademarks, photographs and other content marked as supplied by third parties. No licence is given in relation to third party material. Version 08032019. Distributed by the Case Program, The Australia and New Zealand School of Government, www.anzsog.edu.au



Australia &
New Zealand
School Of
Government

ANZSOG