



## Superdiversity Stocktake

Implications for Business,  
Government and New Zealand

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Centre include: Superdiversity, Democracy  
and New Zealand's Electoral and Referenda  
laws, 3 November 2015, funded by the  
NZ Law Foundation and also published  
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- 3.1 Superdiversity affects all areas of law and policy. Having reviewed the research and writing on the implications of superdiversity globally, the following discussion focuses on a selection of key policy and legal challenges, as they apply to New Zealand, to give a flavour of the issues superdiversity can create in every area of life, law and policy:
- a. Immigration law and policy;
  - b. The compulsory school system, faith in schools and export education;
  - c. Language policy;
  - d. The health system, including the recognition of the health needs of minorities, cultural and religious attitudes towards best medical practice, and cultural competence in patient care and staff relations;
  - e. The criminal justice system, including the relevance of racial, religious and cultural considerations at trial and sentencing, and the needs of a diverse prison population;
  - f. Family and child law and policy, including issues around marriage, adoption, burial practices and female genital mutilation; and
  - g. Animal rights law.
- 3.2 As the Stocktake continues to be periodically updated, more areas that are impacted by superdiversity will be added.

### List of Recommendations for Policy Section

Recommendations coming out of the policy challenges include:

- More guidance and assistance is needed for investor migrants to ensure they can maximise the value of their investments to the New Zealand economy. The requirements around the types of investments investor migrants must make may also need to be further reviewed to ensure higher growth investments for New Zealand.
- Government agencies, led by Immigration New Zealand, need to give due attention to the shortcomings in support for new migrants, particularly in English language tuition and job search support. Although the Government already funds a number of settlement programmes and services, this would enable migrants to make the greatest possible contribution to New Zealand's financial and social capital. While there is a language benchmark for permanent migrants, those holding temporary visas are not required to demonstrate competence in English at all and they cannot necessarily access or afford tuition to improve their English while they are here. New Zealand should recognise the value of investing in a broad spread of English language support for the range of needs of those here in workplaces and in the community. Consultation with migrants needs to underpin these services, and migrants need an opportunity to report whether they are satisfied with the settlement services they receive.
- The Government needs to continue to monitor public concern about immigration, and help migrants to settle in New Zealand to preserve social capital.
- The Government's target of doubling its export education earnings by 2025 requires tertiary education organisations to be well equipped to provide care and support for international students to ensure New Zealand maintains a high quality education system and reputation in the global market.
- Education New Zealand should survey international students to New Zealand to ensure responsiveness to any concerns or issues they raise. This will also keep our education sector high quality and competitive with other countries.
- The Government should develop and implement a national languages policy. The policy should recognise that New Zealand is becoming linguistically diverse, and focus on adult literacy and numeracy, English as a second language and the impact of English on multilingualism. Extensive and urgent work is required to determine the

objectives of such a policy and who should be responsible for it given 160 languages are now spoken in New Zealand. Such a policy would result in:

- a. Improved student achievement in school;
  - b. Reduced barriers to trade and economic development;
  - c. Greater integration and inclusion of migrants and refugees;
  - d. Status, support and protection for languages and cultures;
  - e. Better career and employment prospects for young people in New Zealand and overseas;
  - f. Enhanced social cohesion and harmony; and
  - g. Reduced barriers to civic engagement and accessing public services.
- As the electoral rolls are used to compile jury lists, ensuring better civic participation by ethnic minorities, particularly migrants who are eligible to vote, is one measure to improve the representativeness of juries.
  - English language proficiency requirements should be established for jurors so that migrant jurors can meaningfully participate in the jury process. The court system needs to improve assistance for jurors with limited English.
  - Settlement programmes for new migrants need to ensure that migrants understand their civic responsibilities in relation to jury service and that they understand how the court system works in New Zealand and the role of juries.
  - The Government should seek to appoint more qualified applicants from among ethnic minority groups to judicial office, so there is some correlation between the proportion of judges from ethnic minorities and their proportion of New Zealand's population.

## Immigration Law and Policy

3.3 Immigration to New Zealand is a privilege, not a right. The Government determines how many migrants we take, and provides them with information to assist them to settle. The Government sets the preconditions for their entry and the period they can stay, whether permanent or temporary. However, immigration policies must be ethnically neutral. New Zealand's policy of granting residence to migrants based on their race formally ended in 1987.<sup>669</sup>

3.4 The Immigration Act 2009 is the key legislative instrument governing immigration into New Zealand. Temporary entry visas allow people to come to New Zealand to work, study or visit. Residence class visas provide permanent entry for skilled workers, business investors and entrepreneurs, family reunification or humanitarian reasons.

3.5 There are four key conclusions regarding immigration policy and superdiversity in this section:

- a. Immigration is used by the Government as a part of economic policy, not just because an increase in population drives economic activity, but as a driver of the diversity dividend.
- b. Given the wide range of programmes that are already funded by government, public agencies need to regularly review the needs of migrants, and how settlement programmes are targeted, to ensure that funds are being focussed on programmes that enable migrants to make the greatest contribution to New Zealand's economic and social capital.
- c. More monitoring and communication on the benefits of migration needs to be undertaken to ensure that financial and social capital are not eroded by poor understanding of immigration policy and outcomes.
- d. There is now good legislation and policy in place to stop migrant employers from exploiting migrant workers.

## Point One: Immigration as a Tool of Economic Policy

- 3.6 MBIE's *Briefing to the Minister of Immigration 2014* emphasises that immigration is important for New Zealand's future as it helps grow a stronger economy, creates jobs and builds diverse communities.<sup>670</sup> Immigration supports two of New Zealand's biggest export earning sectors: international education and tourism.<sup>671</sup> Accordingly, policy developments continue to focus on attracting migrants to fill skill shortages in both high-skilled and low-skilled occupations, on the attraction and retention of international students, and on attracting business investor and entrepreneur migrants to New Zealand.<sup>672</sup>
- 3.7 Immigration New Zealand is currently undertaking an in-depth review of key immigration policy settings to ensure they take account of economic development, infrastructure and tourism, humanitarian considerations, security and risk, foreign affairs and trade.<sup>673</sup> Strategic reviews of immigration policies have tended to focus on regulating immigration flow and better integrating immigrant populations.<sup>674</sup> Immigration New Zealand's Briefing Paper on its vision for 2015 stipulates that the department will put more effort into attracting people with skills, talent and capital to New Zealand.<sup>675</sup>
- 3.8 Migrants bring global skills and talent which help make a wide range of local firms more productive and globally competitive.<sup>676</sup> Not only do migrants provide a stable and reliable workforce for employers in industries essential to New Zealand's economy, but they also help to fill labour shortages, notably in the aged care and health sectors, dairy, agriculture, horticulture, viticulture and the Canterbury rebuild (though the aim is to reduce long-term reliance on migration, especially temporary migration in lower productivity and lower wage industries.<sup>677</sup> In exchange for their contribution to the New Zealand economy, migrants gain a sense of belonging by becoming catalysts for economic growth in New Zealand.<sup>678</sup>
- 3.9 Immigration New Zealand is planning to put greater efforts into marketing New Zealand as a destination for business investor migrants and linking them to growing sectors.<sup>679</sup> Fifty-seven per cent of residence approvals in the 2014/2015 reporting year were from the business/skilled migrant category.<sup>680</sup> New Zealand's business investor and entrepreneur immigration policies have also recently been revised to attract higher value and better quality businesses.<sup>681</sup> Business investor migrants and entrepreneurs can bring capital, commercial expertise, international linkages and networks to boost the economy.<sup>682</sup>
- 3.10 The Government has announced plans to adopt new immigration rules that will encourage the spread of migrants to boost the economic growth of the regions. As discussed at [2.271], the new rules are designed to support local economies by reallocating the number of bonus points used to calculate whether residency requests should be approved or denied. Under the new rules, skilled migrant workers who take jobs in the regions will be eligible for an extra 30 bonus points (up from 10).<sup>683</sup> In exchange, migrants will have to commit to stay in the region for at least 12 months (up from three months). Further, migrants applying for entrepreneur work visas will get 40 extra points towards the 120 required if they set up or expand their businesses outside of Auckland (from 20 points).
- 3.11 Immigration New Zealand expects to approve up to 200 people next year under this visa. Encouraging migration to the regions will not only equip regions to deal with the issues arising from these challenges and stimulate economic activity, but will also send the clear message that we, as a national community, "care about the future of every community and region in New Zealand".<sup>684</sup>
- 3.12 The Primary Production Committee has recommended that the Minister of Immigration reconsider the immigration status of halal slaughterers to simplify the complex and repetitive visa renewal process.<sup>685</sup> Over 240 halal slaughterers work in New Zealand, and their work is critical to ensure that meat exported from New Zealand is suitable for Muslim countries. There are insufficient numbers of local halal slaughterers, so many migrate here from overseas. However, the visa application process is expensive and requires workers to reapply each year, even though many have established themselves in New Zealand and have families here.
- 3.13 Julie Fry and Hayden Glass, in their forthcoming book on the transformation of migrants and migration, contend that changing New Zealand's immigration policies

can transform our national economic performance, in particular, the economic contribution of self-directed and economically motivated migrants.<sup>686</sup> This is because high levels of “on paper” skills do not necessarily translate to successful settlement. Even hybrid selection models have their limitations: the most well devised “points system” predicts only a modest proportion of successful economic impact.

3.14 As a result, some countries, such as Canada, are turning to more experimental evidence-based approaches to immigration policy designed to attract high value migrants, particularly entrepreneurs. Fry and Glass argue that, in line with these developments, New Zealand should take bolder steps with immigration policy to improve its contribution to national economic development. They argue that we need to focus less on just filling jobs in the labour market, but instead devise new methods of attracting modest numbers of very “high value” migrants (that is, those who bring not only financial capital and skills, but also networks, social capital and job creation) who can help transform our economic prospects.

3.15 As discussed above at [2.100], we may not be fully maximising the potential of our investor migrants, both intellectually and financially. These migrants report that they would invest more in New Zealand if they had better financial information. It has been suggested that the majority of investment from investor migrants is placed in low-growth investments such as bank bonds. In contrast, Australia requires 10 per cent of such investment to be made into growth assets. MBIE is currently formulating high-level proposals for change to acceptable investments for investor migrants as part of the Business Growth Agenda.<sup>687</sup> Matters under consideration include whether “acceptable investments” should require investment in the regions or in growth assets, and how that might work in practice.

## Point Two: Regular Review of Settlement Programmes Needed

3.16 New Zealand already has a lot of settlement and integration strategies and programmes to help new migrants contribute to the economy and to society. In order for settlement interventions to contribute to a cohesive society, they need to focus on both migrants and the host community.<sup>688</sup> For example, the New Zealand Government funds settlement programmes to help employers retain migrant employees.

3.17 The key policy document governing integration of migrants and refugees is MBIE’s New Zealand Migrant Settlement and Integration Strategy (“the Strategy”) and its five integration outcomes, which Cabinet agreed to on 23 July 2014. The Strategy focuses exclusively on migrant needs, as refugees have different settlement needs and experiences, which are catered to through the New Zealand Refugee Settlement Strategy 2012.<sup>689</sup> Specific initiatives are tailored to the pre-arrival, arrival, and settlement and integration stages. Settlement programmes are funded both by the Government and by migrants (through a levy) and/or are provided by Immigration New Zealand, the Ministry of Education, the Tertiary Education Commission (“TEC”), and the Ministry of Social Development. A comprehensive list of government settlement and integration initiatives is set out in Appendix Three, including for example:

- Settlement Information Services – Face to Face;
- Canterbury Skilled Migrant Business Services;
- Language Link Multilingual Information service;
- Auckland Regional Coordination Initiative;
- Settlement Information Programmes for Chinese and Korean Newcomers;
- New Kiwis Programme;
- Wellington Regional Skilled Newcomers Programme;
- Connecting Canterbury Employers and Newcomers Skills Programme;
- ESOL funding and support to schools, including professional development and provision of ESOL teaching;

- Adult Community Education and subsidised ESOL classes; and
- English for Migrants programmes, such as the Skilled Migrants Programme (see discussion at [3.24]).

3.18 The Strategy’s five integration outcomes – employment, education and training, English language, inclusion, and health and wellbeing – strongly correlate and act to facilitate the achievement of the Strategy’s overarching outcome, that is for “migrants [to] make New Zealand their home, participate fully and contribute to all aspects of New Zealand life”.<sup>690</sup> The Strategy also includes a number of success indicators under each integration outcome.

3.19 New strategic governance arrangements were also introduced under the Strategy in order to monitor progress towards the integration outcomes. There is greater cross-agency oversight, collaboration and coordination through the Skilled and Safe Workplaces Chief Executives’ Group and the Migrant Settlement and Integration Senior Officials’ Group.

3.20 In November 2013, the Office of the Auditor-General undertook a review of how support for the Strategy was operating.<sup>691</sup> The audit concluded that Immigration New Zealand and its government partners needed to enhance the targeting of resources and better understand the outcomes being achieved from the delivery of settlement services. In response, MBIE led the development of the cross-government Strategy and in its first year of implementation issued a revised assessment of government services to identify gaps and inform changes to service provision.<sup>692</sup> The report found that although most migrants were eligible to access settlement services in the areas of inclusion, education and training, and health and wellbeing, there were eligibility gaps in English language services and employment.

3.21 For example, in terms of funding for English language initiatives, there was a lack of programmes for migrants who already had good English language proficiency but required further support to develop higher level language skills desired by employers.<sup>693</sup> Further, the review identified the need to better spread services so they were not all concentrated in one region.<sup>694</sup> Employment initiatives were not available nationwide, and the level of services available varied by region. This is concerning given that employment is both a “means and marker” of social integration for migrants.<sup>695</sup> Further, the report noted that the increased focus on and usage of online services have resulted in a decrease in reliance on face-to-face support. Nevertheless, this support continues to be offered throughout New Zealand as it better supports positive settlement outcomes for certain migrants. It further noted that temporary migrants, in particular, are often ineligible for services that are key to successful settlement and maximising the skills New Zealand needs to prosper.

3.22 Agencies are currently in the process of revising, or are about to review, their programmes to realign key services to the Strategy’s priorities and meet identified gaps in service provision.<sup>696</sup> Of course, institutional response is just one factor relevant to successful settlement outcomes; social capital needs to be fostered in communities as well, and forms part of the “retention picture”.<sup>697</sup>

3.23 Ultimately, future policies in this area will need to focus on ensuring settlement services are targeted to address these issues. Enhancing migrants’ ability to access appropriate settlement programmes will not only be crucial to ensuring social cohesion in an increasingly diverse New Zealand, but is also necessary for this country to gain the full benefits of the diversity dividend.<sup>698</sup>

• • •  
 • • **Case Study – Skilled Migrant Programme,**  
 • • **Victoria University of Wellington**

• • 3.24 Nicky Riddiford, the course coordinator and teacher of the Skilled Migrant  
 • • Programme at the Victoria University of Wellington, said in an interview on 30  
 • • June 2015 that the programme is aimed at providing opportunities for skilled migrants  
 • • to understand and improve communication skills in specific New Zealand workplace  
 • • environments. Workplace Communication for Skilled Migrants is a non-credit, one  
 • • •

trimester programme which aims to help skilled migrants understand and develop appropriate communication skills in New Zealand workplaces, to understand employment conditions in New Zealand and to gain New Zealand workplace experience.

3.25 The main obstacles to obtaining suitable work in New Zealand, as identified by participants in the course, are as follows:<sup>699</sup>

- Lack of New Zealand work experience and referees;
- Lack of specific professional knowledge (for example, working knowledge of the Resource Management Act 1991);
- Lack of familiarity with communication style of New Zealand workplaces, including understanding the Kiwi accent;
- Difficulty finding a position that fits with background and experience, and difficulty interpreting the seniority of advertised positions;
- Lack of professional and personal networks/connections, and a lack of opportunities to interact with fellow professionals;
- Lack of familiarity with job interview styles in New Zealand (particularly the behavioural style of interviews);
- Unfamiliarity with job search skills relevant for New Zealand (including CV writing, cover letter writing, registering with recruitment agencies);
- Lack of cultural knowledge of New Zealand;
- Employer prejudice;
- Computer skills not at level expected in New Zealand; and
- Lack of confidence after many rejections.

3.26 The course is aimed at unemployed or underemployed skilled migrants or refugees who:

- Have a Bachelor's degree qualification or higher (most who undertake the course have a Master's level qualification or a PhD);
- Already have a good level of language proficiency, around a 6.0 on the International English Language Testing System ("IELTS");
- Are actively seeking full-time employment in their professional field in New Zealand;
- Have at least two years' previous experience in their field overseas; and
- Have not been able to break into their professional field in New Zealand.

3.27 The major components of the course are five weeks' classroom preparation and a six-week internship with a Wellington employer. Participants return to the classroom for the 12th and final week. Two groups of mentors support participants in the Skilled Migrant Programme. First, during the internship module, each participant is assigned a mentor from his or her employer. Secondly, the Rotary Club of Wellington appoints job mentors to support participants on graduation as they seek permanent employment.

3.28 The Programme is funded by Immigration New Zealand's Settlement Unit, which is part of MBIE, as well as the TEC. Previous funding sources have included the Ministry of Social Development ("MSD") and WINZ.

3.29 The course has no budget for advertising, but government and voluntary agencies in the Wellington region are well aware of it and refer suitable candidates. Also, graduates of the course refer friends and acquaintances.

- 3.30 There are 12 places on each intake to the course. Preference is given to applicants who hold permanent residence (for whom the course is fully funded), but applicants on work visas can also be accepted. Since 2005, there have been 204 participants over 19 intakes. Countries of origin for participants include: China, Taiwan, Hong Kong, India, Sri Lanka, Pakistan, Bangladesh, Russia, Portugal, Poland, Hungary, Germany, France, Spain, Colombia, Argentina, Brazil, Chile, Mexico, Malaysia, Indonesia, Philippines, Vietnam, South Korea, Thailand, Japan, Ethiopia, Somalia, Syria, Jordan, Bhutan, Nepal, Belgium, Algeria, Iran, Iraq and Cambodia. The occupations of participants are wide ranging, and include law, medicine, accounting, engineering, IT and so on.
- 3.31 Occasionally contract work emerges from the internship placement, but more commonly graduates of the programme find work on their own initiative. On average, 75 per cent of each intake of skilled migrants find employment in their professional area within a few months of their graduation, and graduates report high levels of satisfaction with the programme.<sup>700</sup>
- 3.32 Nicky Riddiford's view is that the course is effective in helping skilled migrants into appropriate work because it is small, meaning that each migrant receives customised assistance, and the wide networks through the Rotary Club enable migrants to access business networks and opportunities that might otherwise be closed to them.
- 3.33 The internship programme helps skilled migrants understand New Zealand business culture, including, but not limited to, discourse analysis, small talk and greetings, communications strategies, slang and idiom, business communications, and interview techniques. Improving communication skills in a practical way is often instrumental in helping skilled migrants into work. Ultimately, it is the combination of measures that has ensured the success of the Programme in helping migrants to find work.

### Point Three: Immigration Raises Issues of Social Capital

- 3.34 How can immigration law and policy be used to increase the diversity dividend without jeopardising social capital?
- 3.35 The benefits of increased migration need to be balanced against the possible risks to social capital. Immigration status is an important factor in the formation of social capital but it is also a potential barrier to the formation of economic and social ties.<sup>701</sup> Policy makers need to consider how immigration policies can be drafted to maximise the integration of short-term immigrants, for example in rural industries or in the Christchurch rebuild. Many immigration statutes set specific time limits on a person's stay in a country and most integration policies and programmes do not apply to people with temporary status.<sup>702</sup> The proper social integration of migrants is important given that subjective wellbeing (that is, how satisfied a person is with his or her life on a scale of zero to 10) is relevant to migrant behaviour. Younger and more highly educated people especially are more likely to migrate to locations where they have high subjective wellbeing, whereas people become less mobile as they age.<sup>703</sup>
- 3.36 Another important consideration for policy makers is to ensure that "immigration does not reduce the incentive of firms to invest in training" or to lift wages, which may in turn discourage young New Zealanders from seeking training, or drive New Zealanders overseas.<sup>704</sup> We also need to ensure that the proportion of work visas with open work rights (so the person is able to work regardless of whether it is a job that a New Zealander can fill) does not result in expanding the supply of migrant labour for low-skilled jobs in industries like hospitality and agriculture. This may discourage increased capital investment, training and improved management practices, and also has the potential to take jobs off Kiwis.<sup>705</sup>
- 3.37 There is a perception among some New Zealanders that migrants are a drain on the social welfare system, take jobs from hard-working New Zealanders, or receive free education and then leave. While this may be true of a few migrants, research has shown that migrants make a net positive contribution to New Zealand's economy.<sup>706</sup>

3.38 There are also claims that Chinese buyers are putting the housing market out of reach of average Kiwis, as discussed at [2.368].<sup>707</sup> There is concern from some members of the public that migrants who are coming to New Zealand with capital to inject into the market are able to outspend New Zealand-born residents in the property market. Although the focus is on those not living in New Zealand, at an auction who can tell the difference between permanent residents, citizens and foreigners?

3.39 As noted in MBIE's *Briefing to the Minister of Immigration 2014*, various global developments, such as "increasing people mobility, the changing mix of migrant source countries and strong 'push' factors in many regions of the world are increasing the risk of illegal migration, transnational crime and exploitation", which in turn threatens to undermine social capital.<sup>708</sup>

3.40 In order to protect the diversity dividend and ensure that New Zealand continues to attract skilled migrants, students and visitors, New Zealand's immigration policies and laws need to protect migrants from exploitation, as discussed below at [3.43] and at [2.130], and encourage their retention and integration into local communities and the labour market.<sup>709</sup> The OECD's latest economic survey of New Zealand observed that this country had a good record of integrating migrants into labour markets and society, which was largely attributable to the emphasis of New Zealand's immigration policy on skills shortages, employment and work experience.<sup>710</sup>

3.41 In order to further improve labour market integration, it recommended that greater weight be placed on English language proficiency, either in the migrant selection process or post-migration in the form of language training support and monitoring.<sup>711</sup> Although people who wish to enter New Zealand through the skilled migrant category need to meet Immigration New Zealand's English language requirements (that is, a score of 6.5 in IELTS, a recognised English language qualification, or ongoing skilled employment in New Zealand for 12 months, together with an IELTS score of at least 5), their partners and/or children are subject to less stringent requirements.<sup>712</sup>

3.42 We also need to recognise that the majority of migrants currently in New Zealand are on temporary visas and do not have to demonstrate competence in English at all. Should they wish to improve their English while they are in New Zealand, temporary visa holders often find it difficult to access or afford English language tuition. New Zealand therefore needs to invest in a broad spread of English language support for the range of needs of migrants in workplaces and the community.

#### Point Four: Migrants Exploiting Migrants

3.43 In 2013, the Labour Inspectorate and Immigration New Zealand reported an increase in complaints involving the exploitation of migrant workers, and emphasised the need for additional protections for migrant workers.<sup>713</sup> This included reports of international students and temporary visa holders being underpaid, trapped on their employers' premises and in extreme cases, forced into prostitution.<sup>714</sup>

3.44 Temporary migrant workers are particularly vulnerable to exploitation, as they have lesser access to social services such as income support, and can be hesitant about approaching authorities out of fear that this may have adverse implications for their immigration status.<sup>715</sup> Migrant workers also tend to be more reliant on employers, requiring their support to remain in New Zealand, thus creating a significant power imbalance between employer and employee.<sup>716</sup> Many migrants are also unfamiliar with their employment entitlements under New Zealand law, for example under the Minimum Wage Act 1983. A number of these exploitation cases have involved employers who themselves were former migrants.<sup>717</sup>

3.45 A Regulatory Impact Statement by MBIE exploring how to resolve this issue noted that there is currently an uneven response to exploitation depending on the immigration status of the relevant migrant: while those who exploit illegal workers are subject to heavy sanctions,<sup>718</sup> those who exploit *lawful* migrant workers face only "low risks of being held to account."<sup>719</sup> This led to the enactment of the Immigration Amendment Act 2015.

- 3.46 The Immigration Amendment Act 2015 has increased penalties and search powers in relation to migrant employers in order to counteract migrant exploitation.<sup>720</sup> Initially, Labour and the Green Party declined to support the Bill over concerns about the proposed wide-ranging powers for immigration officers, including the ability to conduct warrantless searches of migrant homes. This concern prompted the Government to amend the Bill to include provisions requiring stringent reporting around the use of these powers.<sup>721</sup>
- 3.47 The Act also makes the exploitation of migrants on temporary entry class visas with work conditions an offence, and makes employers who hold residence class visas liable for deportation if they are convicted of exploiting migrant workers or of knowingly employing migrant workers without the right to work. The latter amendment aims to deter migrant employers from exploiting migrant employees.
- 3.48 The proposed strengthening of minimum employment standards has also largely been brought about in response to exploitation of migrant workers, particularly in relation to the non-payment of the minimum wage.<sup>722</sup> The proposed changes include enhanced information sharing powers for labour inspectors in relation to other regulators, such as Immigration New Zealand, in order to better investigate claims of employer wrongdoing.
- 3.49 In 2015, MBIE undertook a study on temporary migrants working in the Canterbury construction industry.<sup>723</sup> Participants confirmed that exploitative practices were taking place, although there were mixed perspectives on the extent of these practices.<sup>724</sup> Participants reported the following:
- Excessive amounts of money paid to recruitment agents, particularly in the Philippines;
  - Contract substitution;
  - Failure to meet minimum employment standards;
  - Issues concerning 90-day trial periods;
  - Poor employment practices; and
  - Deductions and withholding of wages.
- 3.50 The research identified that the following categories of migrants were the most vulnerable to exploitative practices: those with poor English skills, in debt, reliant on specific work visas and Filipinos. However, low pay was less prevalent in construction occupations, with just one per cent of essential skills workers earning less than a 30 hour minimum wage per month in 2014. Those more likely to be underpaid included: women, migrants working for businesses with fewer than five employees, Brazilian migrants and migrants working for migrant employers.<sup>725</sup> Many migrants were reluctant to report exploitation because they feared being deported if they lost their job. Many also reported low awareness of acceptable employment practices.
- 3.51 MBIE is currently implementing its Migrant Exploitation Action Plan in response to these issues, which includes the following initiatives:
- Education and empowerment, for example, through migrant and employer guides;
  - Increasing the likelihood of employers being caught (see the above discussion of the new amendments to the Immigration Act);
  - Ensuring appropriate penalties for offending through the Employment Standards Review; and
  - Improving knowledge about the issue and investigating effective responses.
- 3.52 The Minister of Immigration, the Hon Michael Woodhouse MP, has recently announced reforms to immigration policy to make it easier to recruit and retain migrant workers for the Canterbury rebuild.<sup>726</sup> The changes announced include allowing holders of Essential Skills visas issued from 1 July 2015 working in Canterbury to change employers (within the same occupation without having to apply for a variation of their visa conditions. An accreditation scheme will also be introduced for labour hire companies employing migrants on Essential

Skills visas for work on the Canterbury rebuild, requiring them to prove their compliance with good workplace practices, thereby reducing the potential for migrant exploitation.

## Recommendations

- More guidance and assistance is needed for investor migrants to ensure they can maximise the value of their investments to the New Zealand economy. The requirements around the types of investments investor migrants must make may also need to be further reviewed to ensure higher growth investments for New Zealand.
- Government agencies, led by Immigration New Zealand, need to give due attention to the shortcomings in support for new migrants, particularly in the realm of English language tuition and job search support. Although the Government already funds a number of settlement programmes and services, this would enable migrants to make the greatest possible contribution to New Zealand's financial and social capital. While there is a language benchmark for permanent migrants, those holding temporary visas are not required to demonstrate competence in English at all and they cannot necessarily access or afford tuition to improve their English while they are here. New Zealand should recognise the value of investing in a broad spread of English language support for the range of needs of those here in workplaces and in the community. Consultation with migrants needs to underpin these services, and migrants need an opportunity to report whether they are satisfied with the settlement services they receive.
- The Government needs to continue to monitor public concern about immigration, and help migrants to settle in New Zealand to preserve social capital.

## The Education Sector

### Compulsory Education

- 3.53 Schools are becoming more ethnically diverse, which brings greater religious diversity, creating more issues around the place of faith in school.
- 3.54 In a series of workshops held in various forums by Multicultural New Zealand, including in schools and local councils, many participants perceived education as one of the:<sup>727</sup>

*... key drivers of a successful multicultural society. While participants referred to opportunities for adults to acquire greater knowledge and skills (through the media, public awareness campaigns, multicultural events and educational opportunities) and to the role of families in value formation and cultural maintenance, there was a consistent emphasis on the importance of schools in equipping children from a very young age with the values, knowledge and skills for life in a multicultural society, training the teachers to undertake this task with sensitivity and skill and creating a school environment that is safe, inclusive and affirming of children from all ethnicities, cultures and beliefs. It was widely felt that the education system does not meet these expectations as well as it could.*

### Point One: Schools Are Becoming More Ethnically Diverse

- 3.55 The ethnic composition of students in compulsory education has changed dramatically over the last few years. The increasing numbers of students from ethnic minorities and from overseas has various implications for schools, who are dealing with a growing proportion of students for whom English may not be a first language and who come from very different cultures. New Zealand boards of trustees are gradually becoming more ethnically diverse.<sup>728</sup> In 2014, 18.7 per cent of board members were Māori, 4.6 per cent were Pacific people and 1.25 per cent were Asian, compared with 15.7 per cent, 3.07 per cent and 0.75 per cent respectively in 2004.<sup>729</sup> The teaching workforce is also slowly becoming more ethnically diverse. In 2015, 9.8 per cent of teachers identified as Māori, up from 9.2 per cent in 2004; 2.7 per cent identified as Pacific peoples, up from 2.06 per cent in 2004; and 3.5 per cent identified as Asian, up from 2.73 per cent in 2004.<sup>730</sup>

- 3.56 Just as with the labour market, overseas studies have found evidence of a “diversity dividend” in schools where there are diverse students and staff. Overseas research indicates that a diverse education faculty enhances teaching and research, as diverse groups are more productive, innovative and creative than homogenous groups.<sup>731</sup> Further, minority viewpoints encourage discussion from multiple perspectives, leading to better critical analysis.<sup>732</sup> Diversity has been revealed to benefit students (irrespective of ethnicity) and their educational outcomes.<sup>733</sup> Further, cultural inclusiveness in the classroom is linked to more intercultural friendships and more positive intergroup attitudes.<sup>734</sup>
- 3.57 In the New Zealand context, a 2015 New Zealand study found there was no clear link between diverse boards of trustees and student performance.<sup>735</sup> The authors of the study attributed this to the small size of boards, which made it difficult to apply diversity measures. That said, the study found that New Zealand European students performed better in North Island schools (which are typically more diverse than South Island schools) and that Māori students performed better when diversity was high among minorities.<sup>736</sup>
- 3.58 The increasingly superdiverse composition of New Zealand citizens and residents has also resulted in challenges for the education system. Elite schools, which are sometimes private, are experiencing very high enrolments from domestic Asian students, whose parents greatly value education and are prepared to pay handsomely. Auckland Grammar currently has 36.4 per cent Asian students,<sup>737</sup> for example, and the concern is whether “Asian” quotas may be imposed if it gets above 50 per cent, as has been done unofficially in some American educational institutions.<sup>738</sup>
- 3.59 Further, Māori and Pacific students have consistently poorer participation rates in the education system and poorer educational outcomes than their New Zealand European counterparts. As at March 2015, only 91 per cent of Pacific children had participated in early childhood education (“ECE”) compared with 98 per cent for New Zealand Europeans and 93.8 per cent for Māori. Māori and Pacific students also have lower rates of achievement at primary school in terms of literacy and numeracy.<sup>739</sup> As well, while the proportion of Māori and Pacific school leavers with NCEA Level Two or above has been increasing since 2008, fewer Māori and Pacific are leaving school with NCEA Level Two compared with other ethnic groups.
- 3.60 In 2014, Asian students had the highest percentage of school leavers attaining at least NCEA Level Two or equivalent (89.7 per cent), which was 8.7 per cent higher than New Zealand Europeans (81.0 per cent).<sup>740</sup> Pacific and Māori had the lowest rates at 71.9 per cent and 58.6 per cent respectively. This indicates that, although the disparities between most ethnic groups have reduced slightly over time, a large achievement gap still remains for Māori and Pacific students.

### Accommodating Diversity: The New Zealand Curriculum and the Legal Framework

- 3.61 New Zealand has already made significant steps towards accommodating diversity in the compulsory education sector. Superdiversity brings with it the need for schools to incorporate Asian and Pacific perspectives into teaching and learning programmes. The *New Zealand Curriculum* and *Te Marautanga o Aotearoa*, the official policy documents concerning teaching and learning in New Zealand schools, incorporate the principle of diversity, which requires the valuing of the diverse histories, heritage and traditions of all people.<sup>741</sup> They also incorporate the principle of inclusion, which aims to ensure that students’ identities, languages, abilities and talents are recognised and affirmed and that their learning needs are addressed.<sup>742</sup> These principles form part of the foundations of curriculum decision making, and are closely interlinked, obliging teachers to value students as individuals and celebrate the diversity they bring.
- 3.62 These principles are also reflected in the legal framework for the education system. For example, rules 7(b) and 7(c) of the Education (Stand-Down, Suspension, Exclusion, and Expulsion) Rules 1999 require every participant in such processes to be guided by the following principles:

a. the need for every participant to treat every other participant with respect, which includes recognising and respecting New Zealand's cultural diversity:

b. the need to recognise the unique position of Māori:

3.63 Further, under s 61(3)(a)(i) of the Education Act 1989, schools must each prepare a school charter with a section that includes the "aim of developing, for the school, policies and practices that reflect New Zealand's cultural diversity and the unique position of the Māori culture".

3.64 However, although the legal and policy framework in place aims to accommodate and promote New Zealand's cultural diversity, there have been concerns around the practical implementation of these principles. In July 2012, the Education Review Office ("ERO") found "limited evidence" of the cultural diversity curriculum principle at both school level and in classrooms.<sup>743</sup> ERO suggested the reason for this could be that cultural diversity is being overlooked as teachers focus on meeting bicultural, Treaty of Waitangi obligations. It noted that "many teachers appeared to lack knowledge about how to engage with culturally diverse families and use the resource these students and their families can potentially provide to enrich the learning of all students".<sup>744</sup> This was a particular issue in culturally homogenous schools, where it proved difficult to provide students with culturally diverse experiences. ERO's response to superdiversity in Auckland is discussed further at [5.380].

3.65 In contrast, cultural diversity was more likely to be provided for in schools whose boards had developed charters expressly requiring the celebration of cultural diversity and stating that all children had the right to be culturally safe. These boards had sought representation from all the cultures of their school community and the staff reflected the schools' many cultures, providing practical opportunities for different cultural contexts to be incorporated into teaching and learning programmes and the classroom environment. Special character secondary schools and those with large international student contingents were also more likely to demonstrate a commitment to cultural diversity.

3.66 Developing proficiency in English and other languages is a central focus of the Government's diversity strategy. The curriculum emphasises that languages link people locally and globally and provide a portal to new, distinct streams of thought, beliefs and cultural practices.<sup>745</sup> Although English and Te Reo Māori are the mediums of instruction in New Zealand schools, all schools with students in Years 7–10 should aim to offer students opportunities for learning a second or subsequent language.

3.67 The Government launched the Asian Language Learning in Schools initiative in 2014, providing \$10 million over the next four years to provide targeted support to increase student engagement with Asian languages, and to increase the number of Asian language learners across primary and secondary schooling.<sup>746</sup> This is additional to the Learning Languages learning area of the New Zealand curriculum. The Government has also recently announced that 20 New Zealand schools will receive \$50,000 in total to strengthen their relationships with their Chinese sister schools. Chinese Language Week is also being held for the first time this year.<sup>747</sup> Minister for Tertiary Education, Skills and Employment Steven Joyce observed that it was important that New Zealand build strong relations with China:<sup>748</sup>

*Having more New Zealand school students building a personal understanding of China and its people is an investment in the future of New Zealand in this Asia-Pacific century. In China strong personal relationships are essential. The initiatives supported by this funding will foster learning opportunities and links between our two countries.*

3.68 The curriculum also acknowledges that New Zealand's close relationship with the Pacific means that Pacific languages hold a "special place" in the curriculum.<sup>749</sup> However, this special relationship has not stopped funding cuts. Concerns have been raised, for example by the Bilingual Leo Pacific Coalition, regarding cuts in funding for the production of Pacific language and literacy materials, as discussed further at [4.111].<sup>750</sup> A subsequent select committee inquiry concluded that the promotion of Pacific languages primarily remained the responsibility of Pacific communities, not the Government.<sup>751</sup> However, the MoE's *Pacific Education Plan* for 2013–2017 aims to increase the number of Pacific ECE Language Services teaching in a Pacific

language or culture over 50 per cent of the time by 2016. Although this target is limited to ECE and the focus is on ensuring Pacific students effectively transition into English medium schooling, there are already a range of support measures targeted at Pacific students.<sup>752</sup>

### ESOL Measures

- 3.69 English for Speakers of Other Languages (“ESOL”) resources and supports, including bilingual teacher aides and language assistants, bilingual assessments, and scholarships for teachers to build their knowledge of teaching language, are one key initiative for English language learners.
- 3.70 In addition to the standard operational funding that each student generates, there are other special funding entitlements available to schools to address the particular needs of migrant and refugee background students. Schools apply, on behalf of individual eligible students, for ESOL funding to provide language support programmes (with additional teachers, teacher aides or language assistants) and resources.
- 3.71 In 2015, there were 34,477 students on the database from 1,342 schools provided with ESOL-funded tuition. These students represented 157 different ethnic groups from 166 different countries of birth, speaking 126 different languages. Of these students 68.8 per cent were in the northern region of New Zealand.
- 3.72 Of the 1,342 schools funded in 2015, the numbers of ESOL-funded students vary greatly:
- a. One Auckland school had over 300 ESOL-funded students;
  - b. Seven schools had 200 to 299 students (all in Auckland);
  - c. 60 schools had 100 to 199 students (all in Auckland);
  - d. 137 schools had 50 to 99 students;
  - e. 292 schools had 20 to 49 students;
  - f. 222 schools had 10 to 19 students; and
  - g. 623 schools (46.4 per cent) had one to nine students (215 schools only have one or two students). The largest region for schools with one or two students is Otago/Southland with 42 schools, followed by Waikato with 32 schools. Auckland has the least amount of schools with one or two students (11 schools).
- 3.73 Individual funding levels range from \$650 plus GST to \$1,900 plus GST per annum, with the different funding levels determined by the differing status of the students (according to year level, migrant or refugee background, date of arrival in New Zealand etc). Students may be eligible for up to five years of funding.<sup>753</sup> The total ESOL funding for the 2014/15 year is \$28.114 million.

### Other Targeted Funding Initiatives

- 3.74 In addition to the ESOL funding support the MoE provides for each eligible student, funding is available for additional initiatives to meet the needs of migrant and refugee background students. This includes bilingual tutor funding to enable schools to employ bilingual tutors to provide support with mainstream class programmes.
- 3.75 The Refugee Flexible Funding Pool is another source of discretionary funding that enables schools to implement a further range of support initiatives for students from a refugee background. These include the employment of education coordinators in schools, the employment of bilingual liaison workers to assist schools in making contact with families and communities, and supporting refugee homework centres. This funding pool is in the amount of \$592,000 annually.
- 3.76 The Refugee Pathways and Career Planning support initiative for refugee background students may also be implemented in targeted schools. This initiative assists schools to provide specialised individual support in planning appropriate learning pathways towards

tertiary study or employment. It recognises the extra support that students from refugee backgrounds may require as their parents and communities may not have the knowledge and resources to support them to make appropriate decisions.

3.77 The Bilingual Assessment Service enables schools to access specially trained resource teachers in learning and behaviour to administer bilingual assessments for students with English as a second language. A bilingual assessment can distinguish between language learning needs, additional special learning needs and social/emotional needs, through dual assessment in the student's first language and English. The Migrant, Refugee, and International Education team at the MoE evaluates and approves applications, and develops and administers the use of the bilingual assessment materials required. Ongoing monitoring and professional support is also provided by the Ministry to schools.

3.78 School boards must also report English language learners' progress and achievement in relation to National Standards in their school level data. This allows the MoE to have a view of the whole population of students and to target resources to those students not making expected progress, or alternatively extending those students with special abilities and talents. When reporting to parents in relation to National Standards, as required under National Administration Guideline 2A, schools or kura can use the English Language Learning Progressions to describe "finer grained" progress, which values students' first or strongest language ability.<sup>754</sup> This reflects the fact that language difficulties may make progress challenging for students, not only in literacy but also in numeracy, and teachers are expected to consider this when assessing learner progress and achievement.

## Point Two: Faith in Schools

3.79 The greater ethnic diversity of students means that there is greater religious diversity. The place of religion in New Zealand schools "has proved one of the most regular sources of enquiries and complaints to the Human Rights Commission and the New Zealand School Trustees Association".<sup>755</sup> Once academic specialising in this area has concluded that the "practical challenges of adapting an education system to reflect a religiously and culturally plural society are enormous".<sup>756</sup>

3.80 School boards of trustees are subject to the Education Act 1964, the NZBORA and the HRA. Issues with faith and diversity in a human rights context are discussed at [4.59].<sup>757</sup> School boards must not make rules that discriminate against students on the grounds of religious belief (or a lack of religious belief), but this can sometimes require careful attention to a range of legislative instruments and some practical compromises.

## Public Primary and Secondary Schools

3.81 Primary schools in New Zealand are required by s 77 of the Education Act 1964 to be secular; however, the Act does make provision for limited religious instruction to take place if approved by the relevant school board.<sup>758</sup>

3.82 Section 78 of the Act authorises the technical "closure" of school for up to one hour a week so that religious instruction or religious observances can be provided in a manner approved by the school board. The instruction must be carried out by voluntary instructors, but it can take place within school buildings. Section 78A allows "additional religious instruction" if the majority of the parents of pupils attending a school wish their children to receive additional religious instruction and providing it will not be to the detriment of the school curriculum. Under s 79, attendance at religious instruction is not compulsory. A parent can "opt-out" of the religious instruction on behalf of their children.

3.83 There is no legal requirement that secondary schools be secular in New Zealand. Under s 72 of the Education Act 1989 ("1989 Act"), boards of trustees have considerable discretion regarding the provision of religious instruction. However, secondary schools are required to comply with the NZBORA and the HRA, so if religious instruction is offered, it must be offered in a non-discriminatory manner.

3.84 In the case of both primary and secondary schools, the legislative protections afforded by the NZBORA and the HRA apply to all religions. As explained by the HRC, a school should accept or refuse offers to provide instruction by representatives of any religious community. This is reflected in the HRC's *Statement on Religious Diversity*, which states that: "Schools should teach an understanding of different religious and spiritual traditions in a manner that reflects the diversity of their national and local community".<sup>759</sup> Therefore, while boards have the right to decline anyone that they deem unacceptable, they must make decisions regarding which representatives can provide religious instruction in schools in a fair and consistent way.<sup>760</sup>

3.85 Issues can arise in schools with regards to the school curriculum. The teaching of faith in schools is an obvious area of contention, but issues can also arise in the delivery of subjects such as physical education, sex education and science.<sup>761</sup>

3.86 Under s 25A of the 1989 Act, where the school curriculum offered conflicts with certain religious beliefs, a student or his or her parents (if the student is under 16 years of age) may request that the student be released from tuition on religious or cultural grounds. In such cases, the beliefs must be sincerely held and adequate supervision must be able to be arranged for the student. Before agreeing to release a student following a parental request, the principal must "take all reasonable steps to find out the student's views on the matter".<sup>762</sup>

3.87 Compulsory uniforms can raise issues if they do not conform with religious practices (such as, knee-length skirts or a ban on facial hair). It is up to the school board to decide whether a school uniform will be compulsory, and the nature of the uniform. The school board must not, however, breach the NZBORA or HRA. Requiring strict adherence to a uniform code which conflicts with certain religious practices (for example, a blanket ban on religious symbols or dress, or a ban on facial hair) without "good reason" would violate s 65 of the HRA. The wearing of religious symbols at school is another issue that has resulted in legal disputes overseas. Butler and Butler note that:<sup>763</sup>

*Assessing these [overseas] trends holistically, it seems more times than not judicial bodies are ready to allow state autonomy regarding religious symbols in schools. If state decisions result in limitations on people's choices regarding religious garments, they are found to be justified...In a domestic New Zealand context...the government could probably place limits on religious garments that would not breach religious freedoms. In the authors' view, in an increasingly multi-cultural world, tolerance in regard to wearing of religious symbols is necessary. Wearing a religious symbol can make up part of a person's identity. With that in mind, the right to manifest one's religion should not be limited due to the sensitivities of others who do not wish to be presented with religious symbols.*

3.88 Further, National Administrative Guideline 5, made pursuant to the 1989 Act, requires the school board to provide a safe physical and emotional environment for students. Requiring students to dress in clothes contrary to their religious beliefs, or remove religious items or symbols, would likely be contrary to this standard.

3.89 Another issue in this area is prayer and attendance at religious festivals. Under s 25 of the 1989 Act, students are required to be at school whenever it is open. There is no specific exemption from attendance for religious reasons and boards must "take all reasonable steps to ensure that students who are required by [the Act] to attend the school whenever it is open do so".<sup>764</sup>

3.90 Parents can, however, apply for students to be granted an exemption from attendance. A principal may release a student who has been at school for at least four hours in any school day to go home early, where he or she is satisfied there is good reason for the student to leave early.<sup>765</sup> For longer periods, a principal may exempt a student from attendance up to five days if satisfied that a student's absence is justified. Whether an exemption is justified will depend on the circumstances.

3.91 Examples where there has been controversy around religion in New Zealand schools include:

- In 2004, Hagley Community College in Christchurch was the subject of parliamentary questions after it came to light that the school had spent public funds on building a prayer room for Muslims on school grounds.<sup>766</sup>
- In 2005, a bible study group had its application to continue operating lunch sessions in a state school declined by the school's board of trustees.<sup>767</sup>
- A Christchurch mother pulled her son out of a school in 2012 after he was allegedly made to wash dishes after opting out of religious classes.<sup>768</sup>
- An Auckland father made a complaint to the HRC alleging that his son was being “ostracised” after opting out of religious lessons.<sup>769</sup>
- There is currently a case before the High Court challenging the provision of religious instruction in public schools on the basis that religious instruction disproportionately affects non-Christian children in an adverse way, which therefore constitutes direct discrimination under s 65 of the HRA.<sup>770</sup>

### Private and Integrated Primary and Secondary Schools

3.92 Private schools are not obliged to provide a secular education in New Zealand. Integrated schools receive limited state funding, but are not obliged to provide a secular education.

3.93 Where religious observances and religious instruction form part of the education with a special character provided by an integrated school (established under the Private Schools (Conditional Integration) Act 1975 (“Integration Act”)), these continue to form part of the school programme in accordance with the terms and conditions set out in its integration agreement.<sup>771</sup>

3.94 Parents who have a particular or general philosophical or religious connection with an integrated school have preference of enrolment for their children at the school.<sup>772</sup> However, the Integration Act states that, subject to this:<sup>773</sup>

*... no prospective pupil shall be refused enrolment at an integrated school on the grounds of religion, race, socio-economic background, or lack of willingness of the parent to make financial contributions to the school.*

3.95 Further, the Integration Act requires that schools be:<sup>774</sup>

*... responsive to the sensitivities of pupils and parents of different religious or philosophical affiliations, and shall not require any such pupil to participate in religious observances and religious instruction concerned with particular observances if the parents of that pupil state at any time that they do not wish that pupil so to participate.*

### Point Three: Export Education and International Students

3.96 The Government’s focus on the “internationalisation” of tertiary education is reflected in its *Leadership Statement for International Education*.<sup>775</sup> Summary proposals are set out in Appendix Two of the Leadership Statement for each group of providers (that is, universities, schools and PTEs).

3.97 Government actions undertaken to support the *Leadership Statement* include:<sup>776</sup>

- Increased investment in international education by \$40 million over four years in the 2011 Budget, and a further \$40 million over four years in the 2013 Budget;
- The establishment of Education New Zealand in 2014, a new Crown agency for international education;
- The strengthening of enforcement powers for New Zealand Qualifications Authority (“NZQA”), the Government’s education quality assurance body;
- The Immigration Online project and immigration partnerships with education providers to enable streamlined visa processing;

- e. Funding the international student barometer to assess international student satisfaction with their New Zealand study and living experience;
- f. Establishment of a new regulatory framework for the care and support of international students;
- g. Establishment of the Prime Minister's Scholarships for Asia to support student mobility to our key trading partners;
- h. Implementation of the International Education Growth Fund to support new developments by education providers and businesses;
- i. Extension of work rights to all English language students enrolled in Category One providers effective from January 2014;
- j. Government-to-government education bilateral agreements; and
- k. A greater emphasis on the internationalisation of education as one of the six priorities of the Tertiary Education Strategy.

3.98 In the 2013/14 reporting period, the number of international students increased by 15 per cent from 2012/13, following decreases over the previous two years.<sup>777</sup> International students comprised 14 per cent of tertiary enrolments in New Zealand in 2014.<sup>778</sup> In contrast, international student enrolment rates in 2014 were markedly lower in the primary, composite and secondary school sectors, where international students formed only 0.23 per cent, 1.63 per cent and 2.96 per cent of total enrolments respectively.<sup>779</sup>

3.99 Students from a university that fosters diversity are more likely to be prepared for the various demands of the working environment and will be better able to participate as global citizens in our rapidly changing and increasingly pluralistic world (see also the discussion at [3.56]).<sup>780</sup>

3.100 However, the rapid increase in international students brings with it risks to social capital and other challenges. In order to retain and maximise the financial capital from international students, we need to properly understand the challenges and mitigate them, and look after the students that come to New Zealand. The President of the Tertiary Education Union, Sandra Grey, has remarked that teaching overseas students is not always straightforward and adds to staff workloads.<sup>781</sup> There is concern that the market is driving teaching and learning, rather than the teaching and learning being the core focus.

3.101 The Code of Practice for the Pastoral Care of International Students sets out various requirements for providers aimed at ensuring the welfare and protection of international students.<sup>782</sup> It sets out requirements relating to the manner in which providers, and their agents, may assess and recruit prospective international students. It also establishes the International Education Appeal Authority and the International Education Review Panel to investigate and determine complaints from international students about alleged breaches of the Code once a provider's internal grievance procedures have been exhausted.<sup>783</sup>

3.102 There have recently been concerns about Immigration New Zealand data indicating an increasingly high visa decline rate for Indian international students due to inadequate English language proficiency.<sup>784</sup> In response, NZQA sought comment from providers about amending Rule 18 of the New Zealand Qualifications Framework Programme Approval and Accreditation Rules 2013, which sets out the English language proficiency requirements for international students.<sup>785</sup> The rule was amended in June this year. Rule 18, as it stood, was fairly clear, and allowed providers to verify English proficiency in various ways, including through evidence of previous study in English. The problem appeared to centre around the rule's implementation by certain providers and their recruitment agents. Ultimately, while the changes will encourage providers to monitor compliance more closely, it is unclear whether the issue was isolated to a handful of providers and their agents, or was widespread. The changes to the rule now require students to take internationally recognised tests to demonstrate proficiency. This is likely to reduce student numbers from countries with low visa approval rates, such as India, due to the costs of taking such tests. This is significant given India is New Zealand's second

largest and fastest growing international student market. Some have argued that the higher rates of declines are a sign of an unsustainable bubble, though others have argued that it shows the systems New Zealand has in place are robust and working effectively.<sup>786</sup>

## Recommendations

- The Government's target of doubling its export education earnings by 2025 requires tertiary education organisations to be well equipped to provide care and support for international students to ensure New Zealand maintains a high quality education system and reputation in the global market.
- Education New Zealand should survey international students to New Zealand to ensure responsiveness to any concerns or issues they raise. This will also keep our education sector high quality and competitive with other countries.

## Language Policy

3.103 As noted at [1.66], superdiversity has also resulted in greater linguistic diversity, and an increasing number of New Zealanders with English as a second language.

3.104 This has implications for a variety of areas, including the ability of those with little or no English to vote (see [5.21]) and gain employment (see [2.123]), and their access to education, justice (for example in criminal matters, see [3.130]) and other state services. The protection afforded to linguistic minorities under s 20 of the NZBORA has also been discussed at [4.101].

3.105 As noted by Professor Sharon Harvey, New Zealand language policies, where they exist, tend to be disparate, sector specific, and partial. Mostly though, language policies are de facto: they are "just the way we do things around here". Despite the increase in linguistic diversity, languages such as Hindi are not on the national curriculum and New Zealand does not have a national language policy.

3.106 The Royal Society of New Zealand's paper *Languages in Aotearoa New Zealand* summarised some of the issues as follows:<sup>787</sup>

*There is no official status for languages not native to the New Zealand mainland, but to which New Zealand could be seen to have a responsibility, such as the associated state and territory languages: Cook Islands Māori, Tokelauan and Niuean. The question of whether there should be any defined responsibilities for these languages further than those set out in international conventions is still unresolved.*

*Other languages in New Zealand include those of migrant communities, predominantly Pacific, Asian and European languages. Whilst there is little formal recognition of these languages in legal, cultural and educational settings, these linguistic skills make up an important part of the asset base that migrant settlers bring to New Zealand.*

*New Zealand is home to a distinctive dialect of English, commonly referred to as New Zealand English, which will continue to evolve within New Zealand society. New Zealand English is not currently declared to be official, but is the main language of communication in Aotearoa New Zealand and as such acts as a de facto official language. It is important for full societal participation and realisation of potential that all New Zealand residents have access to learning advanced levels of English.*

3.107 New Zealand needs to develop a national languages strategy that recognises that this country is becoming linguistically diverse, with a focus on adult literacy and numeracy, English as a second language and the impact of English on multilingualism. Extensive and urgent work is required to determine the objectives of such a policy and who should be responsible for it.

3.108 There has been a significant decline in secondary school students learning a second language – only 20.3 per cent, the lowest since 1993. Further, although programmes such as ESOL are in place to ensure that overseas-born students develop their English language proficiency, nothing is done to help those students to develop their other languages, and they do not get credit for being able to speak multiple languages. This means that

New Zealand is one of only a few countries where the majority of students leave school with proficiency in only one language.

3.109 That said, our education system does have some success stories with language. More people in the 2013 Census claimed to be able to carry on a conversation in French and Japanese than the number of people identifying themselves as French or Japanese.

3.110 The Tāmaki Makaurau Auckland Languages Strategy Working Group’s development of a Language Strategy for Auckland, *Ngā Reo o Tāmaki Makaurau*, is another positive step in this area. The Strategy’s central purpose is to promote and facilitate Auckland’s diverse languages and cultures, so that all languages are valued, maintained, learned by all and used in a variety of social domains. Potential benefits of implementing the Strategy include:<sup>788</sup>

- Improved student achievement in school;
- Reduced barriers to trade and economic development;
- Greater integration and inclusion of migrants and refugees;
- Status, support and protection for languages and cultures;
- Better career and employment prospects for young people in New Zealand and overseas;
- Enhanced social cohesion and harmony; and
- Reduced barriers to civic engagement and accessing public services.

3.111 The Strategy aims to eliminate current barriers to Auckland as a multilingual city, including language loss, lack of language maintenance at home, declining language learning in schools and universities, limited access to translation and interpreting services and lost economic opportunities in tourism and business.<sup>789</sup>

3.112 The Strategy’s Action Plan includes:

- Ensuring Pacific Island and community languages are afforded appropriate status and recognition alongside English, Te Reo and New Zealand Sign Language;
- Advocating for the development of a national languages policy;
- Establishing a Languages Advisory Panel to advise Auckland Council, lead implementation of the Action Plan and monitor progress;
- Promotion of all languages in a variety of social and economic domains, including education, arts and culture and the labour market.

### A National Languages Policy?

3.113 The development of a national languages policy is an important consideration for citizenship in a superdiverse society, and is integral to ensuring cultural competency and social cohesion in a number of key areas, including employment and education.<sup>790</sup> The correlation between migrant employment rates and earning capacity, and their English language ability, indicates that there is a need for institutional responsiveness and investment in this area.<sup>791</sup> Race Relations Commissioner Dame Susan Devoy has remarked that promoting language diversity is an “insurance policy” for New Zealand’s future. This is because the global economy is not monolingual – rather, the majority of the world has always been multilingual.<sup>792</sup> Further, the ability to communicate with others is a precursor to social bridging and social cohesion.

3.114 To date, however, the development of language policy in New Zealand has been piecemeal and there is little unification of policies across different areas such as education, housing, law, foreign affairs and immigration.<sup>793</sup>

3.115 Ultimately, there is a strong case for an overarching national policy in this area. The promotion of linguistic diversity has a number of social and economic benefits, including improving educational achievement, promoting a sense of cultural identity and enhancing labour force and international trade opportunities. See [4.117] for discussion of how the state’s

obligations under s 20 of the NZBORA may support the development and implementation of a national languages strategy.

3.116 So, what should a national language policy look like? In a Royal Society workshop on languages and superdiversity held this year, Professor Sharon Harvey from the Auckland University of Technology noted that, while languages are important for trade, economic imperatives should not be the only consideration in language learning. English language needs to form part of a national language policy. In particular, there needs to be greater focus on adult literacy and numeracy, English as a second language and the impact of English on multilingualism. Even though diversity is, for the most part, concentrated in cities, the education system needs to teach everyone languages.<sup>794</sup>

3.117 The policy must be drafted in a way that it can handle complexity, dynamism and change. It must also reflect the changing language economy of New Zealand. We also need to determine the appropriate objectives of such a policy and who should be responsible for it. Australia's national languages policy, which was adopted in 1987, may be a helpful model for developing a national language policy of our own.

3.118 One barrier to the development of a national language policy is the generally low levels of support for community language promotion (for example, the promotion of non-Pacific migrant languages) among representatives of other minority language communities. For example, in a qualitative study involving interviews with government department representatives, according to the interviewee for TPK, the arguments in favour of promoting Asian languages were "even less convincing" than those for promoting Pacific languages.<sup>795</sup> While speakers of these languages could get resources from their home countries or the Internet to support language maintenance, this was not the case for Māori.<sup>796</sup> Similarly, the interviewee for the Ministry of Pacific Island Affairs ("MPIA") was "circumspect" about the possibility of government support for migrant languages other than Pacific languages: although there was a "clear" rationale for the promotion of Pacific languages in New Zealand, this was not the case for Asian communities, who had a completely different background and history. Further, the presence of Asian languages in New Zealand was seen as a risk to Pacific languages, partly due to Asian languages being perceived as useful for trade. The study concluded that:

*Community languages are placed at the bottom of the minority language hierarchy, given a lack of any significant government policy activity in their favour and a low level of conviction among most representatives of other language communities interviewed as to the value of their claims.*

3.119 The biggest challenge in developing a language strategy, however, will invariably be implementing it and ensuring enough resources are allocated to achieve its objectives.

## Recommendation

- The Government should develop and implement a national languages policy. The policy should recognise that New Zealand is becoming linguistically diverse, and focus on adult literacy and numeracy, English as a second language and the impact of English on multilingualism. Extensive and urgent work is required to determine the objectives of such a policy and who should be responsible for it given 160 languages are now spoken in New Zealand. Such a policy would result in:
  - a. Improved student achievement in school;
  - b. Reduced barriers to trade and economic development;
  - c. Greater integration and inclusion of migrants and refugees;
  - d. Status, support and protection for languages and cultures;
  - e. Better career and employment prospects for young people in New Zealand and overseas;
  - f. Enhanced social cohesion and harmony; and
  - g. Reduced barriers to civic engagement and accessing public services.

## The Health System

### Legal Issues

3.120 Health law is fraught with issues surrounding culture, which can raise tensions between different cultural and religious attitudes to “best practice” by both patients and practitioners.<sup>797</sup> In *B v Director-General of Social Welfare*, doctors treating a three-year-old boy considered that he needed a blood transfusion due to a severe nose bleed.<sup>798</sup> His parents, who were Jehovah’s Witnesses, objected. The Court of Appeal dismissed the parents’ appeal against a High Court order making the boy a ward of the Court. The Court of Appeal held that the scope of the parents’ right to manifest their religion under s 15 of the NZBORA could not extend to endanger the child’s welfare, health or life. However, the Court also noted that before the Court, as guardian, authorised transfusion over parental objections:<sup>799</sup>

*... there must be real or substantial risk that the patient’s condition will in the course of medical care be such as, on accepted medical practice, would call for blood transfusion and that in the event that condition develops a blood transfusion will be necessary.*

3.121 In another case, *Hallagan v Medical Council of NZ*, a group of medical practitioners with conscientious and religious objections to abortion contended that the New Zealand Medical Council’s (“NZMC”) proposed endorsement of a statement dealing with the personal beliefs of medical practitioners – *Beliefs and Medical Practice* – imposed obligations on practitioners to act in a manner inconsistent with their beliefs and values in respect of abortion.<sup>800</sup> Justice MacKenzie, in concluding the statement did overstate the duties of practitioners with a conscientious objection, noted that the rights of practitioners under ss 13 and 15 of the NZBORA had been recognised and provided for in s 174(2) of the Health Practitioners Competence Assurance Act 2003 (“HPCA Act”).<sup>801</sup> Section 174(2) affords practitioners a right of conscientious objection by enabling them to refer a patient to another practitioner in the event that they object to providing certain health services, such as abortion.

3.122 There is a need to establish cultural competency in the medical profession. For example, in one case examined by the Coroner and the Health and Disability Commissioner, a Samoan patient, Moresby Fonoti, died after being assaulted because no one at the hospital checked with his wife, who could have explained that Mr Fonoti was acting uncharacteristically and did not appear to be speaking either English or Samoan.<sup>802</sup> The Commissioner concluded that an earlier diagnosis of Mr Fonoti’s true condition could have been made had someone consulted with Mr Fonoti’s wife at the hospital about Mr Fonoti’s behaviour.<sup>803</sup> The NZMC has issued specific guidelines for practitioners when dealing with Pacific and Māori patients,<sup>804</sup> but has yet to do so for Asian patients.<sup>805</sup>

3.123 Primary maternity services must be provided in a manner that recognises cultural differences and is sensitive to the cultural traditions, protocols and customs of the woman (including her family/whānau).<sup>806</sup> The birth rates for the Asian, Pacific and Māori populations are greater than the New Zealand European population, and pregnant women from these communities have different, and sometimes more complex, health and care needs compared to New Zealand European women, including around translation and cultural expectations relating to birth. For example, maternity carers may need to engage interpretive services for pregnant women with little or no English. Māori, Pacific and Indian women are at greater risk of experiencing a perinatal death.<sup>807</sup> Māori and Pacific women are more likely to have co-morbidities than New Zealand European women, and are more likely to experience issues leading to complications such as obesity, diabetes, hypertension, preeclampsia, smoking, and alcohol and substance use. As a result, these pregnancies require greater monitoring and care, more screening and referrals to specialist care, and further obligations to educate pregnant women and mothers (for example, around best sleeping practice to prevent sudden infant death syndrome). This results in increased demands on maternity carers, and greater time commitments.

3.124 In determining who to appoint to the role of Health and Disability Commissioner, the Minister of Health must have regard to the person’s knowledge of the “aims and aspirations” of Māori, and the person’s recognition of the “social, cultural, and religious values of different cultural and ethnic groups in New Zealand”.<sup>808</sup>

3.125 With an increasingly diverse population, there is also greater demand for access to traditional medicines and care. To protect patients, regulation is needed. For example, there is currently an application before the Minister of Health for traditional Chinese medicine practitioners to be regulated under the HPCA Act.<sup>809</sup> Regulation involves cost and requires practitioners to have good English language and communication skills.<sup>810</sup>

3.126 As at 30 June 2015, the *DHB Employed Workforce Quarterly Report – June 2015* set out the ethnic breakdown of the DHB workforce as follows:

Occupation	Other	Asian	Maori	Pacific	Unknown
Nursing	64.9%	16.8%	4.7%	2.5%	11.2%
Corporate and other	66.4%	8.4%	8.5%	4.8%	11.9%
Allied and scientific	71.4%	11.2%	4.1%	2.7%	10.5%
Care and support	50.6%	12.4%	14.7%	8.6%	13.7%
Senior Medical	67.3%	25.9%	2.6%	2.3%	16.5%
Junior medical	52.6%	25.9%	5.9%	1.0%	9.4%
Midwifery	80.2%	3.5%	5.9%	1.0%	9.4%
Total	64.6%	13.6%	6.1%	3.5%	12.2%

## Existing Policies

3.127 A report commissioned by Auckland Council in 2013, *Ethnicity and Migration in Auckland*, identified that the health needs of Asian, Middle Eastern, Latin American and African people were being overlooked in regional and national health-related policy, planning and monitoring.<sup>811</sup> The report also identified the need for better health-related education, targeted health services and enhanced access to primary health care services for these groups. In order to facilitate this, cultural and language barriers, such as discriminatory attitudes, needed to be reduced in the provision of health care services to these groups.

3.128 Better Pacific representation in the health care sector is also necessary. There is research indicating that patients experience better health outcomes when they are the same ethnicity as their health provider. Only 3 per cent of the nearly 60,000 people employed by district health boards are Pacific peoples. Even in Auckland, only 7 per cent of the health workforce identify as Pacific, despite comprising around 12 per cent of the population. In addition, the majority of Pacific employees are employed in administrative or nursing roles.<sup>812</sup>

3.129 Policies on intercultural awareness and cultural competence (in staff and patient interactions) vary according to individual district health boards, and there is a lack of national guidance on this issue.<sup>813</sup> As noted above at [3.122], the NZMC has issued guidelines for practitioners when dealing with Pacific and Māori patients,<sup>814</sup> but has yet to do so for Asian patients.<sup>815</sup> It has recently commissioned a review of the resources it publishes that are intended to help doctors to work successfully with patients of different cultural background. The NZMC is now proposing to make some changes to these resources, including its *Statement on Cultural Competence*, to ensure that they remain current and up to date. The Ministry of Health (“MOH”) also offers interactive cultural competency training courses free online.<sup>816</sup>

## The Criminal Justice System

3.130 There are four key conclusions regarding the criminal justice system and superdiversity:

- Increased ethnic, religious and cultural diversity is likely to result in different kinds of criminal offending;
- Ensuring better civic participation by ethnic minorities, including those eligible to vote,

will improve the diversity of juries, but consideration should be given to imposing English language requirements before somebody can be chosen as a juror, and settlement programmes for new migrants need to do more to ensure that migrants understand their civic responsibilities in relation to jury service;

- Government should seek to appoint more qualified applicants from among ethnic minority groups to judicial office; and
- Different considerations must be taken into account for prisoners from diverse backgrounds.

### Point One: Different Cultural Offending

3.131 Increased ethnic, religious and cultural diversity is likely to lead to different kinds of criminal offending. Higher rates of corruption and administration of justice offences, as discussed at [2.294], are one example of this, as are reports of “honour-based” violence, extremism, female genital circumcision and mutilation (“FGM”), witchcraft,<sup>817</sup> polygamy, and underage marriages.<sup>818</sup> Some of these issues are being considered by the Ministry of Justice (“MoJ”), as discussed at [5.479].

3.132 The greater religious diversity typical in superdiverse societies poses challenges for our justice system, which is predicated on secularity. For example, in *Police v Razam-joo*,<sup>819</sup> the District Court had to grapple with a situation where two women wished to wear a burqa while giving evidence for the prosecution.<sup>820</sup> Defence counsel argued that allowing the women to remain veiled would prevent the defence from assessing facial demeanour while the women gave evidence. Defence counsel also claimed that there was the “potential to infiltrate New Zealand’s legal system by creating a separate justice system for Muslims in what is essentially a secular society”.<sup>821</sup>

3.133 Ultimately, Judge Moore decided that the two women should give evidence without a burqa but behind screens to ensure that only the Judge, counsel and court staff could observe their faces.<sup>822</sup> This was because it is fundamental to the values of a free and democratic society that criminal justice be administered publicly and openly, which in general means that the public should be able to see and hear the participants.<sup>823</sup> However, the Judge also observed that the Court could not determine the theological validity of the practice of wearing a burqa; it is no business of the Court to pronounce as to the correctness or otherwise of any person’s faith or culture.<sup>824</sup>

### Point Two: Improved Ethnic Representation on Juries

3.134 Another challenge that superdiversity presents for the criminal justice system is ethnic representation on juries. As observed by the Law Commission:<sup>825</sup>

*The core value underlying all the various functions of the jury is their democratic nature. They allow members of the community to participate in the criminal justice system and to bring a diverse range of perspectives, personal experiences and knowledge to bear in individual criminal cases.*

*... The diversity of knowledge, perspectives and personal experiences of a representative jury enhances the collective competency of the jury as fact-finder, as well as its ability to bring common sense judgment to bear on the case. In a democratic society, the legitimacy of the jury system, and the wider criminal justice system, rests on all groups in the community participating in the jury system.*

3.135 In other words, representative juries promote public confidence in the legitimacy and impartiality of the criminal justice system.<sup>826</sup> Accordingly, it is important that juries continue to be representative of New Zealand’s superdiverse society and its values.<sup>827</sup>

3.136 In addition, given that a large proportion of New Zealand’s ethnic minorities migrate here from overseas, ensuring that juries are sufficiently representative of the community also raises issues in circumstances where overseas-born have little or no English proficiency.<sup>828</sup> Under s 74 of the Electoral Act 1993, every person over the age of 18 who has lived continuously in New Zealand for one year may register to vote, so resident non-citizens

may sit on juries if registered to vote. It is estimated that nearly four in 10 juries of 12 people could include someone who cannot hold an everyday conversation in English.<sup>829</sup>

3.137 A 2015 study on jury service by New Zealanders from migrant and refugee backgrounds found that respondents had difficulties understanding the New Zealand legal system, the jury process, and courtroom and jury room language due to low levels of English language proficiency.<sup>830</sup> The court may discharge a person's summons before a jury is constituted if satisfied that the person is incapable of acting effectively as a juror because he or she has difficulties understanding or communicating in English.<sup>831</sup> However, it is unclear how effectively this provision works in practice, and issues may still arise particularly in relation to persons with low levels of English language ability.<sup>832</sup> The 2015 study concluded that even conversational English was insufficient for the role of a juror given the complexity and specialised nature of the English language used in jury trials.<sup>833</sup> It recommended that specific guidelines for minimum levels of English necessary for jury service be developed with reference to international benchmarks such as the IELTS test, and for improvements to be made to the process for approaching court officials to discuss issues around jury service.<sup>834</sup>

3.138 Issues for migrants and refugees participating in jury service in New Zealand are not limited to low levels of English language ability. Respondents in the 2015 study reported that the nature of the issues before the courts could also make it difficult for people from some cultures to make objective decisions about the evidence before them, especially in areas relating to child discipline, relationships between husbands and wives, relationships with the Police, and the presumption of innocence.<sup>835</sup> Respondents also pointed out that many people from migrant and refugee backgrounds have a fear of legal and court systems, and their experiences of unsafe legal systems in their countries of origin made them nervous about participating in jury service in New Zealand.<sup>836</sup>

### Point Three: Ethnic Representation in the Judiciary

3.139 Ethnic minorities are also under-represented in the judiciary. Data on ethnic diversity in the judiciary is not officially collected, but the last official count in 2008 of District Court judges found that just two of 130 judges were of Asian descent.<sup>837</sup> The lack of ethnic diversity in the judiciary has been acknowledged by the Attorney-General, the Hon Chris Finlayson, who has subsequently encouraged expressions of interest for appointment to the bench from under-represented ethnic groups.<sup>838</sup> As with juries, judicial diversity is essential to enhance the legitimacy of the courts and improve public confidence in the legal system, subject to appointments being based on merit. Further, as noted by the Law Commission:<sup>839</sup>

*... quite apart from how judges actually rule, it has to be recalled that there are many other manifestations of the judge's role where a diversity of viewpoints is a welcome and even necessary thing. Judges make numerous "corridor" contributions to the work of each other and how things are presented. For instance, a simple reminder that what is being done will have to be acceptable to a variety of cultures is sometimes of great importance.*

### Point Four: Treatment of Prisoners in Custody

3.140 There is extensive recognition in the relevant regulations and in the Prison Operations Manual of the right of prisoners to register and practise their faith while in custody.

3.141 Religious dietary requirements have presented difficulties in the past for the Department of Corrections ("Corrections"). As noted in a report *Human Rights and Prisons: A Review to the Human Rights Commission*:<sup>840</sup>

*Between January 2002 to April 2009, the Human Rights Commission received 17 complaints with regards to religious beliefs, many of which focused on dietary concerns relating to religious observance. Corrections have attempted to address kosher diet requirements, including consultation with a Rabbi on different options. Corrections have also recently confirmed that their food is now 100% halal accredited.*

3.142 Further, as per the Operations Manual:<sup>841</sup>

*Prisoners can make regular purchases of basic goods for personal use or consumption and have*

*access to a range of items not provided by the prison, in accordance with the offender's plan and are able to purchase, within reason, goods of a cultural or religious nature.*

3.143 Another issue facing minorities in prison is isolation due to language barriers. As at 2012, only around 3 per cent of the prison population identified as Asian.<sup>842</sup> This also has implications for minority participation in education and rehabilitation programmes in prison, which in turn may affect a prisoner's prospects of parole and effective reintegration into society (though some of these prisoners are not residents and are therefore likely to be deported on release).<sup>843</sup> Other issues superdiversity poses for treatment of prisoners in custody are discussed in the interview with Corrections at [5.347].

3.144 The United Nations Committee against Torture in its *Concluding Observations on the Sixth Periodic Report of New Zealand* recently reiterated its concerns about the persistent over-representation of Māori at all stages of the criminal justice system.<sup>844</sup> The Committee urged the New Zealand Government to increase efforts to address this over-representation and to reduce recidivism by addressing the underlying drivers of crime.

## Recommendations

- As the electoral rolls are used to compile jury lists, ensuring better civic participation by ethnic minorities, particularly migrants who are eligible to vote, is one measure to improve the representativeness of juries.
- English language proficiency requirements should be established for jurors so that migrant jurors can meaningfully participate in the jury process. The court system needs to improve assistance for jurors with limited English.
- Settlement programmes for new migrants need to ensure that migrants understand their civic responsibilities in relation to jury service and that they understand how the court system works in New Zealand and the role of juries.
- The Government should seek to appoint more qualified applicants from among ethnic minority groups to judicial office, so there is some correlation between the proportion of judges from ethnic minorities and their proportion of New Zealand's population.

## Family and Child Law Policy

### Female Genital Mutilation/Female Circumcision

3.145 Though there is no documented evidence that FGM is practised in New Zealand, New Zealand has a growing number of refugees and migrants from countries that practise FGM, and many of these women have already undergone FGM.<sup>845</sup> The main groups affected by FGM in New Zealand are Ethiopian, Somali, Egyptian, Eritrean, Sudanese and some Muslim Indonesian groups.<sup>846</sup>

3.146 In January 1996, the practice of FGM was made illegal pursuant to an amendment introducing s 204A of the Crimes Act 1961. This provision states that, subject to certain medical exceptions:<sup>847</sup>

*Every one is liable to imprisonment for a term not exceeding 7 years who performs, or causes to be performed, on any other person, any act involving female genital mutilation.*

3.147 The provision specifically states that, in determining whether a person is liable under s 204A:

*... no account shall be taken of the effect on that person of any belief on the part of that person or any other person that the procedure is necessary or desirable as, or as part of, a cultural, religious, or other custom or practice.*

3.148 There are still no cases in New Zealand concerning s 204A, and very few successful prosecutions in comparable OECD countries. In Australia, the Department of the Attorney-General reviewed the Australian legal framework for dealing with FGM in 2013. The

Department noted that, although FGM is criminalised in every Australian jurisdiction, “very few, if any, female genital mutilation offences have been successfully prosecuted in Australian courts”.<sup>848</sup> The Australian Capital Territory reported an “apparent disconnect between the number of female genital mutilation prosecutions across all Australian jurisdictions and the reports of health workers who treat women and children who have undergone female genital mutilation”.<sup>849</sup> In New Zealand, the MoJ is keeping this issue under review, as discussed at [5.491].

3.149 FGM is prohibited in the United Kingdom by the Female Genital Mutilation Act 2003 (UK), which replaced the Prohibition of Female Circumcision Act 1985 (UK). However, the first prosecution for FGM (which resulted in an acquittal) was not brought until 2014.<sup>850</sup> The Home Affairs Committee noted that, “there has rightly been increasing public outrage at the failure to achieve a prosecution in the 29 years that FGM has been a crime”.<sup>851</sup> The Committee considers that the lack of prosecutions is attributable to the fact that there have been “very few investigations by the Police” into allegations of FGM.<sup>852</sup> The Police told the Committee that this was because victims and witnesses are unlikely to report FGM to the Police, as victims are typically young and often are unaware FGM is a crime.<sup>853</sup> The Police also considered that “health, education and social care professionals” had failed to refer suspected FGM cases to the Police.<sup>854</sup> The failure of professionals to refer suspected cases of FGM to the Police has been attributed to “a lack of awareness of the indicators” of FGM.<sup>855</sup> Professionals aware of FGM indicators “may be reluctant to intervene because of cultural sensitivity and a fear of being seen as racist or because they are unsure how to make a referral”.<sup>856</sup>

3.150 Australia and the United Kingdom have both experienced a discrepancy in the number of women and girls at risk of FGM and prosecutions of FGM, despite both jurisdictions having longstanding legislation in place.<sup>857</sup> This represents a failure by the Police and health care and educational communities to communicate both with each other and with minority groups affected by FGM. It also illustrates that, for some members of the affected communities, FGM is considered an acceptable cultural practice rather than a crime.

## Marriage and Immigration

3.151 While the Marriage Act 1955 requires that a marriage be between two people, the Act is flexible in terms of how a marriage must be performed. While the Act sets out general requirements that must be complied with to formalise a marriage, the Act permits religious bodies to apply for an exemption from those requirements.

3.152 Immigration New Zealand is at the coalface of our superdiverse society. As Samantha Knights explains:<sup>858</sup>

*Family law issues arise in many cases involving the entry clearance of spouses, partners and children. This is an area where issues of freedom of religion may indirectly come into play as the system is designed to recognise family law based upon Judeo-Christian heritage, which may discriminate in its effects upon other religions.*

3.153 There are several rules which address the different cultural and religious practices of people who are already living in New Zealand and who wish a family member and/or partner to join them, or people who are trying to come to New Zealand. For example, partners in a culturally-arranged marriage may apply for a special visitor category to allow the foreign partner to stay for three months, during which time the partners must be married.<sup>859</sup>

3.154 With regards to polygamous marriages, r 2.1.25 of Immigration New Zealand’s Residential Operational Manual states:

*As an exception to the exclusivity requirement which forms part of the definition of a genuine and stable partnership (see F2.10 (on page 15-2)) principal applicants in polygamous marriages or relationships (i.e., marriages or relationships with more than one partner) may have only one partner included in their application for residence.*

3.155 The Police have also developed new guidelines to the Police Manual to address the emerging problem of forced and underage marriages among immigrant communities.<sup>860</sup> The Manual also warns officers to be aware of coercive relationships, dowry-related abuse, bride-burning and acid attacks (classified as “honour-based violence”). The Manual advises

that, if a family files a missing person report and an officer suspects the person is endangered or might be sent overseas for a forced marriage, the officer may be legally justified in not telling the family they have been found.

## Adoption Law

3.156 As New Zealand's society becomes more superdiverse, issues relating to overseas and intercountry adoptions will become more common. Section 5(f) of the Care of Children Act 2004 ("COCA") recognises the principle that the child's identity, including his or her culture, language, and religious denomination and practice, should be preserved and strengthened. This principle must be taken into account when determining what is in the welfare and best interests of the child in question.<sup>861</sup> Section 133(2) of the COCA also permits the court to direct that a cultural report on the child be obtained. This includes examination of a child's religious denomination and practice.<sup>862</sup>

3.157 Where a person has adopted a child overseas before coming to New Zealand, s 17 of the Adoption Act 1955 will usually apply. Section 17(1) provides that a legal adoption recognised in a person's country of origin will have the same effect as a legal adoption in New Zealand. For example, in *Sharif v Attorney-General*, the High Court held that a Pakistani customary adoption was legally valid under New Zealand law.<sup>863</sup> This was despite the fact that Pakistan, as a Muslim state, prohibited the "blurring of bloodlines and the loss of inheritance entitlements", both of which are consequences of an adoption order under the Adoption Act 1955.<sup>864</sup>

3.158 However, the issue becomes more complicated when a person who has moved to New Zealand wants to adopt a child from their country of origin (including where the child is a member of the person's extended family, such as a niece, nephew or grandchild) and that country is a contracting state in terms of the Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993. In that case, because the person seeking to adopt the child is habitually resident in New Zealand, the Adoption (Intercountry) Act 1997 will apply.

3.159 As noted by the Court of Appeal in *U v Attorney-General*,<sup>865</sup> referring to an article by Jane Mountfort and Claire Achmad:<sup>866</sup>

*... awareness of the Convention requirements in States of Origin is sometimes not widespread at the judicial level and this can lead to New Zealanders obtaining foreign domestic adoption orders outside of Convention processes ... this is most difficult to guard against where applicants though actually resident in New Zealand are nationals or former nationals of the State of Origin of the child and courts in the State of Origin fail to recognise the adoption as being one to which the Convention would apply.*

3.160 The Convention has strict process requirements which must be followed in order for an adoption to be recognised as valid, including that assessments must be carried out by the Central Authorities of both contracting states.<sup>867</sup> As New Zealand becomes more superdiverse and the prevalence of intercountry adoptions increases, the New Zealand Central Authority's workload will increase and the Family Court is likely to receive increasing numbers of applications involving intercountry adoption issues.

## Burial Practices and Death

3.161 Finally, burial practices have raised cultural and religious issues. Different cultural and religious groups have different methods for the disposal of their dead. For example, while the dispersal of ashes in rivers is a Hindu and Sikh tradition, many Māori find this practice unacceptable.<sup>868</sup> Last year, there was public protest over Wellington and Auckland Council bylaws and policies requiring families to seek (and pay for) council permission before scattering ashes in specific public spaces.<sup>869</sup> Auckland Council subsequently enacted the proposed bylaw.<sup>870</sup>

3.162 The Coroners Act 2006 explicitly recognises the "cultural and spiritual needs of family of, and of others who were in a close relationship to, a person who has died".<sup>871</sup> A

coroner may also appoint a specialist cultural advisor to sit with and help the coroner at the inquest.<sup>872</sup> See [4.125] for discussion of the *Takamore* decision, which involved a burial dispute between the deceased's partner and his Māori family, who wished for him to be buried in accordance with Tūhoe custom.<sup>873</sup>

## Animal Rights Law and Halal Slaughter

3.163 The Animal Welfare Act 1999 makes provision for codes of welfare establishing minimum requirements for how people are to care for animals and conduct themselves towards such animals. The minimum standards set are designed to ensure that animals do not suffer “unreasonable” or “unnecessary” pain or distress when slaughtered. The statute contemplates that standards that fall below the usual minimal standards for best practice in animal slaughter may be set in exceptional circumstances. In considering whether exceptional circumstances exist and adjusted standards should be permitted, the statute expressly requires the National Animal Welfare Advisory Committee to have regard to meeting the requirements of religious practices or cultural practices or both.<sup>874</sup>

3.164 Under the Animal Welfare (Commercial Slaughter) Code of Welfare 2010 (“the Animal Welfare Code”), in order to prevent animals from feeling any unnecessary pain during the slaughter process:<sup>875</sup>

*Prior to slaughter, all animals must be stunned so that they are immediately rendered insensible and must be maintained in that state until death supervenes. This includes a method of stunning that results in immediate insensibility and death.*

3.165 The introduction of the Animal Welfare Code has, however, caused controversy. As a result of the blanket rule on pre-slaughter stunning, shechita, the Jewish method of slaughtering animals permitted for food could not be practised in New Zealand. After the Jewish community issued judicial review proceedings against the Minister at the time (then Hon David Carter MP), the Minister agreed to an interim arrangement to allow the limited practice of shechita on poultry. The Government also agreed to negotiate the ban on sheep.<sup>876</sup>

3.166 Halal slaughter, however, sits comfortably with the Animal Welfare Code, and while there are no official statistics on halal production in New Zealand, nearly all of New Zealand's red meat export slaughter premises are certified to undertake slaughter in compliance with halal requirements.<sup>877</sup> It is estimated that halal meat makes up 25 per cent of beef and sheep meat exports.<sup>878</sup> Halal is an Islamic custom which requires that the animal dies from the “halal cut” to the throat. This means that animals can be stunned prior to slaughter, but that the stun not be powerful enough to kill the animal. In premises that undertake halal slaughter in New Zealand, reversible electrical stunning is used to ensure that animals are rendered unconscious instantaneously and remain unconscious at the time of slaughter, thus complying with both animal welfare and halal requirements.

# Endnotes

- 669 R Bedford, E Ho and J Lidgard *International Migration in New Zealand: Context, Components and Policy Issues* (Discussion Paper No 37, Population Studies Centre, October 2000).
- 670 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [3].
- 671 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [5].
- 672 Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2012/2013* (2013) at 16; Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2013/2014* (2014) at 1 and 69; Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [37].
- 673 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [50].
- 674 Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2012/2013* (2013) at 14; Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2013/2014* (2014) at 1 and 2.
- 675 Ministry of Business, Innovation and Employment *Immigration New Zealand's Vision 2015: What It Means For You* (2015) at 1.
- 676 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [3].
- 677 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [3]. See also S Dunstan "Immigration in the context of MBIE's wider policy goals and objectives" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015). For an overview of Pacific and Asian source countries for seasonal work visas, see R Bedford and C Bedford "RSE: Just the beginning? Some reflections on a decade of managed seasonal work programmes" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015). The main Pacific source countries between 2005 and 2015 were Samoa, Tonga and Vanuatu, and the main Asian source countries were Thailand, Malaysia and Indonesia. 80 per cent of seasonal work visas over this period were granted to Pacific workers, and the remaining 20 per cent were granted to Asian workers.
- 678 R Simon-Kumar "Difference and Diversity in Aotearoa/ New Zealand: Post-neoliberal constructions of the ideal ethnic citizen" (2014) 14(1) *Ethnicities* 136 at 144.
- 679 Ministry of Business, Innovation and Employment *Immigration New Zealand's Vision 2015: What It Means For You* (2015) at 1.
- 680 See S Dunstan "Immigration in the context of MBIE's wider policy goals and objectives" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 681 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [37].
- 682 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [3].
- 683 Rt Hon John Key, Prime Minister "Address to the National Party Conference" (speech to National Party Conference 2015, Auckland Sky Centre Convention Centre, 26 July 2015); J Stanford "Immigration changes expected to boost regions" *New Zealand Herald* (online ed, 27 July 2015).
- 684 A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army Social Policy and Parliamentary Unit, May 2015) at 11.
- 685 "Select Committees" *Trans Tasman Political Alert* (15/2001, 30 July 2015).
- 686 The book is currently untitled, and is scheduled for release in February 2016 by Bridget Williams Books.
- 687 Ministry of Business, Innovation and Employment *Business Growth Agenda Future Direction 2014* (2014).
- 688 P Spoonley and others "Social cohesion: A policy and indicator framework for assessing immigrant and host outcomes" (2005) 24 *Social Policy Journal of New Zealand* 85 at 86. There needs to be sufficient investment in settlement initiatives in order to obtain the diversity dividend, as positive adaptation outcomes rely on there being sufficient institutional support for migrants pre-arrival, upon arrival and post-arrival, for example in the form of information services: C Ward *Nau mai haere mai ki Aotearoa: Information seeking behaviour of New Zealand immigrants* (Centre for Applied Cross-cultural Research, 2007) at vi.
- 689 Auckland Council *Ethnicity and Migration in Auckland* (Technical Report 2013/012, February 2013) at [12.1].
- 690 Ministry of Business, Innovation and Employment *Stock-take of Government-funded Settlement Services for Migrants* (November 2014) at 3.

- 691 Controller and Auditor-General *Immigration New Zealand: Supporting New Migrants to Settle and Work* (2013).
- 692 Ministry of Business, Innovation and Employment *Stock-take of Government-funded Settlement Services for Migrants* (November 2014).
- 693 Ministry of Business, Innovation and Employment *Stock-take of Government-funded Settlement Services for Migrants* (November 2014) at 18–19.
- 694 See J Altinkaya “Here for good?” (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 695 Auckland Council *Ethnicity and Migration in Auckland* (Technical Report 2013/012, February 2013) at 41.
- 696 J Altinkaya “Here for good?” (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 697 J Altinkaya “Here for good?” (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 698 Immigration New Zealand has developed a number of online tools to allow easier access, and is investigating use of social media.
- 701 S Vertovec “Super-diversity and its implications” (2007) 30(6) *Ethnic and Racial Studies* 1024 at 1040.
- 702 S Vertovec “Super-diversity and its implications” (2007) 30(6) *Ethnic and Racial Studies* 1024 at 1040.
- 703 A Grimes “Working in Wall Street or Relaxing in the Mines” (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 24 July 2015).
- 704 Ministry of Business, Innovation and Employment *Growing New Zealand for All: MBIE’s Narrative* (January 2015) at 48.
- 705 Ministry of Business, Innovation and Employment *Growing New Zealand for All: MBIE’s Narrative* (January 2015) at 17.
- 706 Department of Labour *New Zealand Research on The Economic Impacts of Immigration 2005–2010: Synthesis and Research Agenda* (Economic Impacts of Immigration Working Paper Series, 2010, Wellington).
- 707 See for example A Gibson “We’ve got Chinese buyers” *New Zealand Herald* (online ed, 11 July 2015); C Trevett “Little backs home-buyer stats” *New Zealand Herald* (online ed, 13 July 2015); “Editorial: Chinese role in house boom needs checking” *New Zealand Herald* (online ed, 13 July 2015).
- 708 Ministry of Business, Innovation and Employment *Briefing to the Minister of Immigration 2014* (2014) at [2].
- 709 Ministry of Business, Innovation and Employment *Briefing to the Minister of Immigration 2014* (2014) at [2].
- 710 OECD *Economic Surveys – New Zealand* (June 2015) at 19.
- 711 OECD *Economic Surveys – New Zealand* (June 2015) at 19.
- 712 Any partner or child (aged 16 or over) must have an IELTS score of at least 5, or must pay for English language tuition in New Zealand.
- 713 Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Protecting Migrant Workers from Exploitation* (2013) at [3] and [6].
- 714 (26 November 2014) 702 NZPD 916 per Sue Moroney MP; (10 February 2015) 703 NZPD 1434 per Jan Logie MP; N Jones “Opposition puts curbs on immigration officer powers” *New Zealand Herald* (1 April 2015) at A23.
- 715 Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Protecting Migrant Workers from Exploitation* (2013) at [1].
- 716 Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Protecting Migrant Workers from Exploitation* (2013) at [3].
- 717 Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Protecting Migrant Workers from Exploitation* (2013) at [7].
- 718 Section 351 of the Immigration Act 2009 provides that employers who seriously breach the Holidays Act 2003, the Minimum Wage Act 1983 or the Wages Protection Act 1983 while employing an unlawful migrant worker may be liable for up to 7 years’ imprisonment and/or a fine of up to \$100,000.
- 719 Ministry of Business, Innovation and Employment *Regulatory Impact Statement: Protecting Migrant Workers from Exploitation* (2013) at [10].
- 720 Immigration Amendment Bill (No 2) 2015 (156–3). Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2015) at [53].
- 721 See Supplementary Order Paper 2015 (65) Immigration Amendment Bill (No 2) 2015 (156–3), which inserted new ss 277A to 227C in the Bill. See also N Jones “Opposition puts curbs on immigration officer powers” *New Zealand Herald* (1 April 2015) at A23.
- 722 See Ministry of Business Innovation and Employment “Strengthening Enforcement of Employment Standards” (26 March 2015); Cabinet Paper “Strengthening enforcement of employment standards”, available online at <www.dol.govt.nz>. The Government proposes to introduce a bill later this year.
- 723 Ministry of Business, Innovation and Employment *Vulnerable Temporary Migrant Workers: Canterbury Construction Industry* (2015).
- 724 W Searle “Vulnerable migrant workers in New Zealand – What do we know?” (presentation to Pathways,

- Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 725 See A Cleland and V Burns "Christchurch Rebuild Workforce: A Baseline of their characteristics" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 726 See New Zealand Government "Immigration changes to support rebuild" (press release, 12 May 2015).
- 727 Multicultural New Zealand *Our Multicultural New Zealand: New Zealanders Talk About Multiculturalism* (August 2015) at 13.
- 728 J Poot, A Day and L Wright "Does the power of diversity in governance apply to schools?" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 24 July 2015).
- 729 Education Counts "Boards of Trustees: Number of Trustees by Ethnicity and Sex (1997–2014)" (2015) <www.educationcounts.govt.nz>.
- 730 Education Counts "Teacher Headcount by Designation (grouped), Gender and Ethnicity Group in State and State Integrated Schools, as at April 2004" (2012) <www.educationcounts.govt.nz>; Teacher Payroll Data Warehouse, Ministry of Education.
- 731 E Fine and J Handelsman *Benefits and Challenges of Diversity in Academic Settings* (2nd ed, University of Wisconsin System, 2010) at 3.
- 732 See CJ Nemeth "Dissent as Driving Cognition, Attitudes and Judgments" (1994) 13 *Social Cognition* 273; AL Antonio and others "Effects of Racial Diversity on Complex Thinking in College Students" (2004) 15 *Psychological Science* 507.
- 733 E Fine and J Handelsman *Benefits and Challenges of Diversity in Academic Settings* (2nd ed, University of Wisconsin System, 2010) at 4.
- 734 EY Lin "Immigration, Acculturation and National Identity in New Zealand" in EJ Liu and others (eds) *New Zealand Identities: Departures and Destinations* (Victoria University Press, Wellington, 2005) 155, cited in C Ward and A-M Masgoret "Attitudes toward Immigrants, Immigration and Multiculturalism in New Zealand: A Social Psychological Analysis" (2008) 42 *International Migration Review* 227 at 243.
- 735 J Poot, A Day and L Wright "Does the power of diversity in governance apply to schools?" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 24 July 2015).
- 736 CaDDANZ is currently undertaking participatory research in two Auckland schools to examine the impact of, and responses to, diversity, as well as detailed analysis of school demographics: P Spoonley "Super-diversity in Aotearoa: Institutional Responsiveness to Diversification" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 24 July 2015).
- 737 See "Auckland Grammar" Find The Best <nz-schools.findthebest.co.nz> (accessed 13 March 2015).
- 738 R Unz "Statistics Indicate an Ivy League Asia Quota" *New York Times* (online ed, 3 December 2013). More than 60 Chinese, Indian, Korean and Pakistani groups filed a federal complaint with the civil rights office against Harvard University and other Ivy League institutions in May this year alleging racial discrimination. See Associated Press "Asian American groups file racial quotas complaint against Harvard University" *The Guardian* (online ed, 16 May 2015).
- 739 K Johnston "Pacific, Māori, boys lagging behind at primary school" *New Zealand Herald* (online ed, 24 July 2015).
- 740 Education Counts "School leavers with NCEA Level 2 or above" (July 2015) <www.educationcounts.govt.nz>.
- 741 Ministry of Education *New Zealand Curriculum* (2007) at 7 and 9.
- 742 Ministry of Education *New Zealand Curriculum* (2007) at 7 and 9.
- 743 Education Review Office *The New Zealand Curriculum Principles: Foundations for Curriculum Decision-Making* (July 2012) at 19–20.
- 744 Education Review Office *The New Zealand Curriculum Principles: Foundations for Curriculum Decision-Making* (July 2012) at 19–20.
- 745 Education Review Office *The New Zealand Curriculum Principles: Foundations for Curriculum Decision-Making* (July 2012) at 19–20.
- 746 New Zealand Government "More Asian languages in schools" (press release, 11 August 2015).
- 747 See <nzclw.com>.
- 748 New Zealand Government "Strengthening school relationships with China" (press release, 10 April 2015).
- 749 Ministry of Education *New Zealand Curriculum* (2007) at 24.
- 750 Bilingual Leo Pacific Coalition "Call for Recognition of Pacific Languages" (press release, 24 March 2011).
- 751 Education and Science Committee *Inquiry into Pacific Languages in Early Childhood Education* (November 2013) at 5.
- 752 Ministry of Education *Pacific Education Plan 2013–2017* (February 2013) at 6. This information was provided by Pauline Barnes, Group Manager, Curriculum Teaching and Learning, Ministry of Education by email dated 15 April 2015.

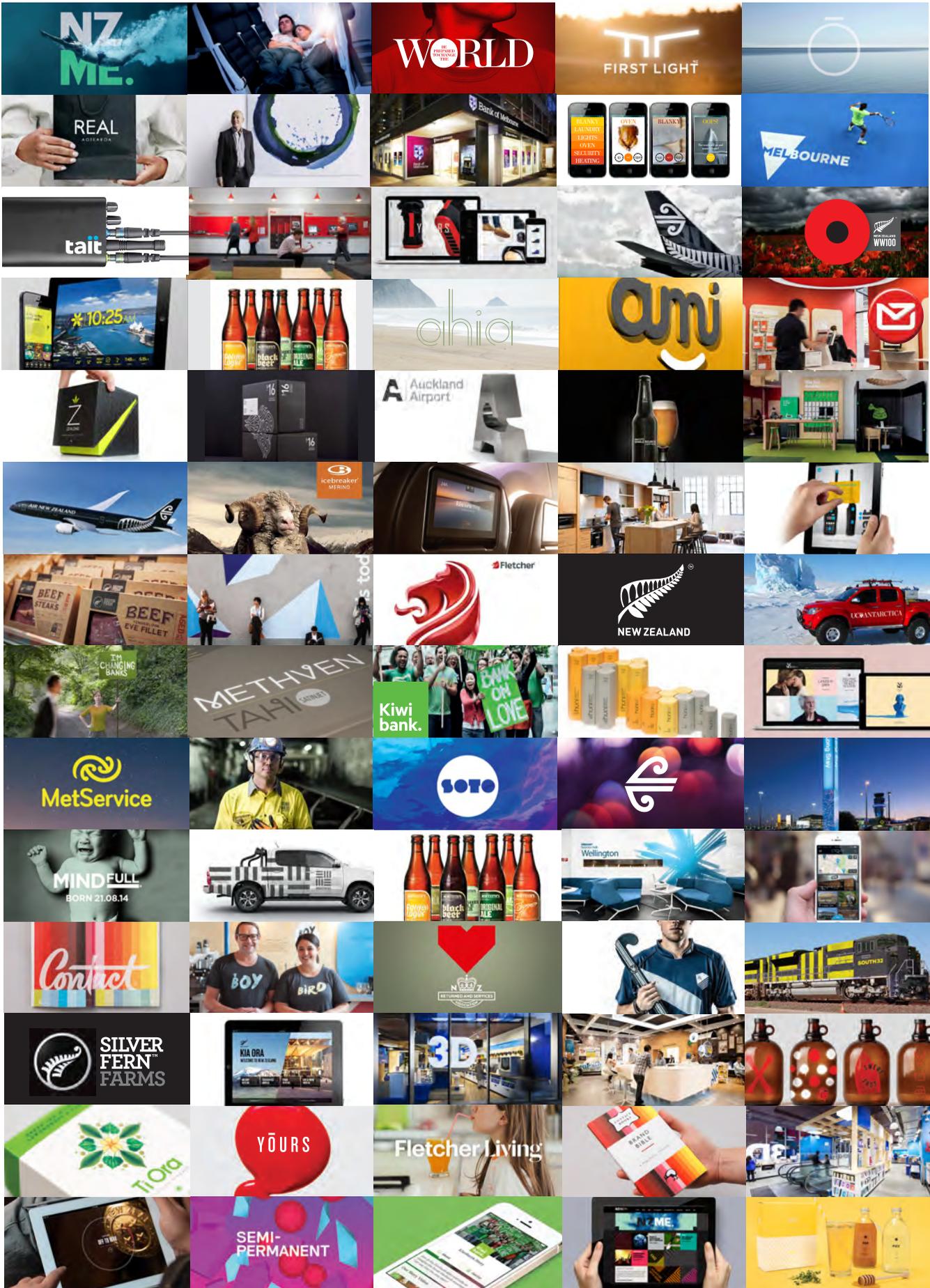
- 754 D Nusche and others *OECD Reviews of Evaluation and Assessment in Education: New Zealand 2011* (OECD Publishing, 2012) at 48.
- 755 Human Rights Commission *Religion in New Zealand Schools: Questions and Concerns* (August 2009) at 1.
- 756 S Knights *Freedom of Religion, Minorities and the Law* (Oxford University Press, Great Britain, 2007) at 90.
- 757 See also A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.10] for discussion of the issues that have arisen overseas.
- 758 See A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.10.25]–[14.10.35] for discussion of overseas case law on religious instruction in state schools.
- 759 Human Rights Commission *Religious Diversity in Aotearoa New Zealand: Statement on Religious Diversity* (27 August 2009) at 3.
- 760 Human Rights Commission *Religion in New Zealand Schools: Questions and Concerns* (August 2009) at 11.
- 761 There has recently been controversy at one Christchurch school where students were given safe sex materials produced by an American-based Baptist group which included anti-gay rhetoric. The literature drew criticism from the Ministry of Education, which said it did not fit with the sexuality education curriculum. See M Hume "Women in de facto relationships 'cheap prostitutes', children told at school" *Stuff.co.nz* (17 May 2015). See A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.10.39]–[14.10.45] for discussion of sex education and religious belief in New Zealand and overseas.
- 762 Education Act 1989, s 25A(3).
- 763 A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.10.12].
- 764 Education Act 1989, s 25(2).
- 765 Education Act 1989, s 25B.
- 766 Rodney Hide MP to the Prime Minister (8 March 2004) and Hon Winston Peters MP to the Minister of Education (24 November 2004). The school, which was seeking to cater to the needs of its 130-strong Muslim migrant community, constructed a two-room classroom space for worship. Education Minister and Minister for Race Relations at the time, Hon Trevor Mallard, said the use of public funding for the prayer room was "inappropriate", but was forced to apologise to the school after being informed that the Ministry of Education had "approved and assisted" the school in its endeavour.
- 767 On its face, the decision was not contrary to any provision of the Education Act 1964, as decisions on religious instruction were at the board's discretion. However, that discretion had to be exercised in accordance with the NZBORA. A legal opinion sought by the bible study group found that the decision limited the children's rights to freedom of thought, conscience and religion (s 13) and to manifest their religion and belief (s 15), so the board would have to show the limitation to be reasonable and demonstrably justified in a free and democratic society under s 5 of the NZBORA. As the teaching offered by the group was non-compulsory, unobtrusive and amounted to a fraction of the limits prescribed under s 78 of the Education Act 1964, it could be argued that the board was not justified in prohibiting the group's activities by declining their application.
- 768 J O'Callaghan "'Kitchen work' for no-bible student" *Stuff.co.nz* (23 June 2014).
- 769 D Satherley "Father faces dilemma over school's Bible classes" *3 News* (online ed, 14 January 2014).
- 770 L Walters "Bible lessons lead to court" *Stuff.co.nz* (22 February 2015). Another case, *David Hines and Tanya Jacob v Ministry of Education*, is currently in mediation. See Secular Education Network (NZ) "Legal Challenges" <religioninschools.co.nz>.
- 771 Private Schools (Conditional Integration) Act 1975, s 32.
- 772 Private Schools (Conditional Integration) Act 1975, s 29(2).
- 773 Private Schools (Conditional Integration) Act 1975, s 29(2).
- 774 Private Schools (Conditional Integration) Act 1975, s 32(2).
- 775 New Zealand Government *Leadership Statement for International Education* (2011).
- 776 New Zealand Government *Leadership Statement for International Education* (2011) at 5; Auckland Council *Ethnicity and Migration in Auckland* (Technical Report 2013/012, February 2013).
- 777 Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2013/2014* (December 2014) at i and 13.
- 778 Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2013/2014* (December 2014) at 12.
- 779 See Education Counts "School Rolls – One-on-One Dimensional Tables for Student Numbers" <www.educationcounts.govt.nz>. Charts were adjusted by Student Type and Sector.
- 780 SA Ambrose *The Benefits of Diversity for Education at Carnegie Mellon* (President's Diversity Advisory Council, Carnegie Mellon, 2005) at 1.

- 781 J Gerritsen "Insight for 22 March 2015 – Overseas Students – Boom or Bubble?" *Radio New Zealand* (22 March 2015).
- 782 The Code was established pursuant to s 238F of the Education Act 1989.
- 783 See Code of Practice for the Pastoral Care of International Students, Part 7.
- 784 Immigration New Zealand *2014 Student Visa Application, Approval and Decline List by Nationality* (26 March 2015).
- 785 NZQA *Consultation on Proposed Changes to the NZQF Programme Approval and Accreditation Rules 2013* (2015).
- 786 J Gerritsen "Insight for 22 March 2015 – Overseas Students – Boom or Bubble?" *Radio New Zealand* (22 March 2015).
- 787 The Royal Society of New Zealand *Languages in Aotearoa New Zealand* (March 2013) at 3.
- 788 Tāmaki Makaurau Auckland Languages Strategy Working Group *Ngā Reo o Tāmaki Makaurau – Auckland Languages Strategy* (May 2015) at 11–12.
- 789 Tāmaki Makaurau Auckland Languages Strategy Working Group *Ngā Reo o Tāmaki Makaurau – Auckland Languages Strategy* (May 2015) at 11.
- 790 As noted by Harmut Esser in *Migration, Language and Integration* (AKI Research Review 4, Programme on Intercultural Conflicts and Societal Integration, 2006) at 27, a tolerant, cohesive and welcoming society has a positive effect on migrant motivation to acquire English language proficiency.
- 791 Office of Ethnic Affairs *Language and Integration in New Zealand* (2014) at 1.
- 792 The Royal Society of New Zealand *Languages in Aotearoa New Zealand* (March 2013) at 2.
- 793 The Royal Society of New Zealand *Languages in Aotearoa New Zealand* (March 2013) at 2.
- 794 But see [2.270] for discussion on how superdiversity is diffusing throughout New Zealand.
- 795 See J de Bres "The hierarchy of minority languages in New Zealand" (2015) *Journal of Multilingual and Multicultural Development* 1 at 12. See also Multicultural New Zealand *Our Multicultural New Zealand: New Zealanders Talk About Multiculturalism* (August 2015) at 16.
- 796 See J de Bres "The hierarchy of minority languages in New Zealand" (2015) *Journal of Multilingual and Multicultural Development* 1 at 13.
- 797 See generally New Zealand Medical Council *Beliefs and Medical Practice* (March 2009); New Zealand Medical Council *Good Medical Practice* (April 2013) at 12–13. See [1.73] for discussion of New Zealand's increasing religious diversity.
- 798 *B v Director-General of Social Welfare* [1996] 2 NZLR 134, [1996] NZFLR 337 (CA). This case is also reported as *Re J – An Infant*.
- 799 *B v Director-General of Social Welfare* [1996] 2 NZLR 134 (CA) at 143. This decision was recently followed in *Auckland District Health Board v W* [2012] NZHC 1563, [2014] NZFLR 381 and *Auckland District Health Board v E* [2013] NZHC 2154, [2014] NZFLR 451, both Jehovah's Witness cases. See also *Re Norma* [1992] NZFLR 445, where the parents of a young child suffering from cancer refused to allow her to undergo further hospital testing, preferring to treat her at home according to traditional Samoan medicine; *Director General of Social Welfare v J HC Auckland M708/97*, November 1997, where the parents of a two-year-old boy with cancer believed that he could be cured through Cambodian herbal treatments; and *Auckland Healthcare Services Ltd v Liu HC Auckland M812/96*, 11 July 1996, where the Christian parents of a 12-year-old boy with a detached retina rejected surgery, believing that God would heal his sight.
- 800 *Hallagan v Medical Council of NZ HC Wellington CIV-2010-485-222*, 2 December 2010.
- 801 *Hallagan v Medical Council of NZ HC Wellington CIV-2010-485-222*, 2 December 2010 at [23].
- 802 Health and Disability Commissioner *Canterbury Health Limited* (April 1998) at 82.
- 803 Health and Disability Commissioner *Canterbury Health Limited* (April 1998) at 82.
- 804 See New Zealand Medical Council *Best Health Outcomes for Māori: Practice Implications* (October 2006); New Zealand Medical Council *Best Health Outcomes for Pacific Peoples: Practice Implications* (May 2010).
- 805 The NZMC has, however, published excerpts from Ian St George (ed) *Cole's Medical Practice in New Zealand* (12th ed, NZMC, 2013) on the specific health needs of Asian patients, including ways of engaging with Asian migrant patients.
- 806 "Maternity Services Notice Pursuant to Section 88 of the New Zealand Public Health and Disability Act 2000" (12 April 2007) 41 *New Zealand Gazette* 1026 at cls 3, 4 and CB3.
- 807 See Perinatal and Maternal Mortality Review Committee *Ninth Annual Report of the Perinatal and Maternal Mortality Review Committee* (2015) at 1. See also Ministry of Health *New Zealand Maternity Clinical Indicators 2012* (2014); Ministry of Health *Annual Update of Key Results: New Zealand Health Survey 2013/14* (2014).
- 808 Health and Disability Commissioner Act 1994, s 10(1)(f) and (g).
- 809 See Ministry of Health "Registering a new profession" (17 June 2014) <[www.health.govt.nz](http://www.health.govt.nz)>. See "New Zealand Medical Council Statement on complementary and

- alternative medicine" (March 2011). Also see the comments of the Director General of Health at [5.465] in the Government section.
- 810 See Ministry of Health *Proposal that Traditional Chinese Medicine Become a Regulated Profession under the Health Practitioners Competence Assurance Act 2003: Invitation to submit comments on the proposal to regulate traditional Chinese medicine* (July 2011) at 3.
- 811 Auckland Council *Ethnicity and Migration in Auckland* (2013) at 44.
- 812 Human Rights Commission "A fair go for all" <www.hrc.co.nz>.
- 813 For example, the need for greater recognition of Asian health needs has been identified by the three DHBs operating in Auckland. See Northern DHB Support Agency *Health Needs Assessment of Asian People Living in the Auckland Region* (August 2012).
- 814 See New Zealand Medical Council *Best Health Outcomes for Māori: Practice Implications* (October 2006); New Zealand Medical Council *Best Health Outcomes for Pacific Peoples: Practice Implications* (May 2010).
- 815 The NZMC has, however, published excerpts from Ian St George (ed) *Cole's Medical Practice in New Zealand* (12th ed, NZMC, 2013) on the specific health needs of Asian patients, including ways of engaging with Asian migrant patients.
- 816 Ministry of Health "Cultural Competency Training Tool available" (press release, 3 July 2012).
- 817 There have been increased reports of unethical and extortionate conduct by witch doctors and black magic practitioners, especially in Auckland's Indian community. See "Witch doctors 'liable for deportation' – Immigration New Zealand" *New Zealand Herald* (online ed, 29 July 2015); J Williamson "Indian community leaders form 'Sadhu busters' to out witch doctors" *Auckland Now* (online ed, 1 August 2015).
- 818 See [3.145] for further discussion of FGM and polygamy in New Zealand.
- 819 *Police v Razamjoo* [2005] DCR 408 (DC).
- 820 *Police v Razamjoo* [2005] DCR 408 (DC). For further discussion on the case, see D Griffiths "Pluralism and the Law: New Zealand Accommodates the Burqa" (2006) 11 *Otago Law Review* 281.
- 821 *Police v Razamjoo* [2005] DCR 408 (DC) at [54].
- 822 *Police v Razamjoo* [2005] DCR 408 (DC) at [110].
- 823 *Police v Razamjoo* [2005] DCR 408 (DC) at [103].
- 824 *Police v Razamjoo* [2005] DCR 408 (DC) at [66]–[67].
- 825 Law Commission *Juries in Criminal Trials: Part One* (NZLC PP32, 1998) at [7] and [24].
- 826 Law Commission *Juries in Criminal Trials: Part One* (NZLC PP32, 1998) at [10].
- 827 There have been concerns around the representativeness of New Zealand juries since the 1990s, particularly in relation to Māori. See S Dunstan, J Paulin and K Atkinson *Trial By Peers? The Composition of New Zealand Juries* (Department of Justice, Wellington, 1995). Several Māori defendants have unsuccessfully challenged the court's jurisdiction on this basis. See for example *R v Pairama* (1995) 13 CRNZ 496, (1996) 2 HRNZ 464 (CA); *R v Cornelius* CA405/93, 12 November 1993. Section 24(e) of the NZBORA affirms the right of persons charged to trial by jury, and s 25(a) affirms the right to a fair and public hearing by an independent and impartial court. The Law Commission noted in *Juries in Criminal Trials* that, while the NZBORA contains no explicit reference to a defendant's right to trial by his or her peers, in other jurisdictions where the constitutional right to trial by an impartial jury exists, that right has been interpreted to mean the right to a jury drawn at random from sources representing a fair cross-section of the community. Overseas case law has established that, if a significant amount of the population is excluded from eligibility for jury service on a discriminatory basis with no objective justification (for example, women, particular races, and non-property owners), then the representativeness of the jury list may be diminished, potentially undermining the aims of the jury system. See *Taylor v Louisiana* 419 US 522 (1975); *Lockhart v McCree* 476 US 162 (1986); *Rojas v Berlaque* [2004] 1 WLR 201 (PC). But see *R v Pairama* (1995) 13 CRNZ 496, (1996) 2 HRNZ 464 (CA), where the Court of Appeal held that the courts did not have jurisdiction to order a jury with any particular ethnic composition because the jury ballot system was predicated on random selection. See also *Ellis v R* [2011] NZCA 90, where the appellant unsuccessfully argued that his trial was unfair and in breach of s 25(a) of the NZBORA because he had been tried by a jury unrepresentative of the population. The Court rejected the argument that a significant section of the population, specifically the rural community, was ineligible for jury selection by virtue of the geographical constraint placed on jury districts in s 5(3) of the Juries Act 1981. The Court concluded at [28] that Parliament had enacted s 5(3) because residents should not be inconvenienced by having to travel significant distances in order to be available for jury service. Further, it was consistent with the principle that the jury should be drawn from the community in which the alleged offence occurred, not the place where the accused resides. Finally, the principle that the jury should be drawn from the community in which the alleged offence occurred was only to be applied "so far as practicable".
- 828 Section 24(g) of the NZBORA affirms the right of persons charged to have the free assistance of an interpreter if the person cannot understand or speak the language used in court.

- 829 H Smith "English language issues for jury service by New Zealanders from migrant and refugee backgrounds" (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 58.
- 830 H Smith "English language issues for jury service by New Zealanders from migrant and refugee backgrounds" (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 65–66.
- 831 Juries Act 1981, s 16AA.
- 832 H Smith "English language issues for jury service by New Zealanders from migrant and refugee backgrounds" (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 59.
- 833 H Smith "English language issues for jury service by New Zealanders from migrant and refugee backgrounds" (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 63.
- 834 H Smith "English language issues for jury service by New Zealanders from migrant and refugee backgrounds" (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 65.
- 835 H Smith "English language issues for jury service by New Zealanders from migrant and refugee backgrounds" (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 62.
- 836 H Smith "English language issues for jury service by New Zealanders from migrant and refugee backgrounds" (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 62.
- 837 Ministry of Justice *The District Courts New Zealand* (2008) at 10.
- 838 See Ministry of Justice "Expressions of interest: Judges of the High Court" <[www.justice.govt.nz](http://www.justice.govt.nz)>.
- 839 Law Commission *Review of the Judicature Act 1908: Towards a Consolidated Courts Act* (NZLC IP29, 2012) at [3.31].
- 840 E Stanley *Human Rights and Prisons: A Review to the Human Rights Commission* (July 2011) at 36.
- 841 Prison Operations Manual at [F.05].
- 842 See Statistics New Zealand "New Zealand's prison population" at Table 2 <[www.stats.govt.nz](http://www.stats.govt.nz)>.
- 843 The courts are able to recognise the potential hardship to offenders in prison due to their personal circumstances, such as language and cultural difficulties, under s 8(h) of the Sentencing Act 2002. See for example *R v Lin* [2013] NZHC 2837 at [28].
- 844 United Nations Committee against Torture in its *Concluding Observations on the Sixth Periodic Report of New Zealand* (May 2015) at [14].
- 845 FGM in New Zealand "Female Genital Mutilation: Information for Health and Child Protection Professionals" (2011) <[fgm.co.nz](http://fgm.co.nz)>.
- 846 From 1979 to 2010, New Zealand accepted the following number of refugees per country of origin: 1764 Somalians, 1161 Ethiopians, 419 Sudanese and 361 Eritreans. See Office of Ethnic Communities "Ethnicity Data Online Resource" <[www.ethniccommunities.govt.nz](http://www.ethniccommunities.govt.nz)>.
- 847 Crimes Act 1961, s 204A(4).
- 848 Department of the Attorney-General *Female Genital Mutilation Legal Framework: Final Report* (Australia, March 2013) at 4.
- 849 Department of the Attorney-General *Female Genital Mutilation Legal Framework: Final Report* (Australia, March 2013) at 15.
- 850 "Doctor found not guilty of performing FGM" *BBC News* (online ed, 4 February 2015).
- 851 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [35].
- 852 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [24].
- 853 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [25].
- 854 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [24].
- 855 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [28].
- 856 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [28].
- 857 Around 20,000 girls are estimated to be at risk of FGM in the United Kingdom. See Home Office *Female Genital Mutilation: The Facts* (2 April 2014) at 2. For discussion of legal developments concerning circumcision overseas and the rights to religious freedom and to manifest religious belief, see A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.14.4]–[14.14.8].
- 858 S Knights *Freedom of Religion, Minorities and the Law* (Oxford University Press, Great Britain, 2007) at 179.
- 859 Immigration New Zealand *Form for Partners Supporting Partnership-Based Temporary Entry Applications* (Form 1146).
- 860 T Shadwell "Police get guidelines on investigating forced marriages" *Stuff.co.nz* (23 May 2015).

- 861 Care of Children Act 2004, s 4(2)(a)(ii). See A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.15] for discussion of religion and family law, including the role of religion in custody disputes.
- 862 Care of Children Act 2004, s 133, definition of "cultural report".
- 863 *Sharif v Attorney-General* [2011] NZFLR 145 (HC). But see also *Re X* [2004] NZFLR 865 (FC), where the Family Court declined an application for X to adopt his three sisters from Pakistan and bring them to New Zealand. X argued that Islamic law and custom imposed a responsibility on X to care for his sisters after his father's death. The Court held that allowing the application would circumvent immigration policy.
- 864 *Sharif v Attorney-General* [2011] NZFLR 145 (HC) at [56]. Interestingly, Māori whāngai adoptions have no legal status according to s 19 of the Adoption Act 1955. The courts have noted that the idea of whāngai adoption is inconsistent with the concept in the Adoption Act that adoption severs the child's links to their biological family (despite increased efforts towards "open adoption"). See *Keelan v Peach* [2003] 1 NZLR 589 (CA). Usually whāngai arrangements are recognised through guardianship status only.
- 865 *U v Attorney-General* [2012] NZCA 616 at [31].
- 866 J Mountfort and C Achmad "Intercountry adoptions under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption" (2010) 6 NZFLJ 316.
- 867 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993, art 17.
- 868 V Gangan "New laws for dispersing ashes in NZ concerning" (*The Global Indian*, 6 June 2014) <[www.theglobalindian.co.nz](http://www.theglobalindian.co.nz)>.
- 869 Funeral Directors Association of New Zealand "City Council must not charge for scattering of ashes, say funeral directors" (press release, 7 August 2014); W Thompson "Bid to limit scatter of ashes" *New Zealand Herald* (online ed, 5 June 2014).
- 870 The proposed bylaw was the Auckland Council's Cemeteries and Crematoria Bylaw 2014 and the associated *Cemeteries and Crematoria Code of Practice 2014* (31 July 2014).
- 871 Coroners Act 2006, s 3(2)(b)(i). Immediate family is broadly defined in s 9 to include members of the deceased's family, whānau, or other culturally recognised family group, who were either in a close relationship with the deceased or "had, in accordance with customs or traditions of the community of which the person was part, responsibility for, or an interest in, the person's welfare and best interests".
- 872 Coroners Act 2006, s 83(1).
- 873 *Takamore v Clarke* [2012] NZSC 116; *Takamore v Clarke* [2011] NZCA 587, [2012] 1 NZLR 573; *Clarke v Takamore* [2010] 2 NZLR 525 (HC).
- 874 Animal Welfare Act 1999, s 73(4). Advice from Chen Palmer to Rabbi Jeremy Lawrence, Auckland Hebrew Congregation (29 April 2002).
- 875 Animal Welfare (Commercial Slaughter) Code of Welfare 2010, Minimum Standard Numbers 6 and 12.
- 876 D Fisher "MP Carter makes quick u-turn" *New Zealand Herald* (online ed, 28 November 2010). As at last year, the settlement arrangement regarding poultry continued and no negotiations had been entered into with regards to the kosher killing of sheep. See "SAFE condemns kosher sheep kill" *Radio New Zealand* (17 May 2014). For discussion of whether the law reform would have constituted a limitation on the rights affirmed by ss 13 and 15 of the New Zealand Bill of Rights Act 1990, and a discussion of the position to animal slaughter overseas, see A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.9.21]–[14.9.33]. New rules relating to export requirements for halal products were introduced in June 2015 under the Animal Products (Overseas Market Access Requirements for Halal Assurances) Notice (No 2) 2015.
- 877 Meat Industry Association "Frequently Asked Questions: Halal" <[www.mia.co.nz](http://www.mia.co.nz)>.
- 878 "Select Committees" *Trans Tasman Political Alert* (15/2001, 30 July 2015).



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