

Superdiversity Stocktake

Implications for Business,
Government and New Zealand

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Executive Summary

5.1 This section sets out key conclusions on the impact of superdiversity on government, based on a review of key government documents and a stocktake of government departments.

- a. The Government needs to move faster on superdiversity. New Zealand's transition to ethnic and linguistic superdiversity is generating a slower response from central government than it is from business. Even when superdiversity is considered, it is sometimes an afterthought, tacked on to mainstream policies and campaigns with minimal budgets attached. This is because central government is essentially a monopoly provider of services, so it is not subject to the same competitive pressures as commercially-focused organisations. But central government also has broader, non-commercial national interest roles and objectives, including maintaining the social capital essential to generating and maintaining financial capital and ensuring all New Zealanders are serviced by government. This should incentivise responsiveness.

Some public agencies may consider that they still have time to think about how best to address superdiversity, and its challenges and benefits, and to make the necessary adjustments to their operations. However, one of the key findings of this Stocktake is that parts of New Zealand are already superdiverse, so we do not have the luxury of time.

This is exacerbated by all areas of law and policy being affected by the transition to ethnic superdiversity (as is evidenced by the broad range of policy issues discussed at [3.1], and as identified by public agencies). The superdiversity challenges for government range from immigration and overseas investment policy to domestic security, the prevention of terrorism, business culture, money laundering, border control, and the protection of biodiversity, among many others. Many of the challenges ethnic diversity poses for central government are not new, such as discrimination against ethnic minorities (as is discussed at [2.123]), and public disquiet about the level of foreign direct investment in rural land or housing stock (as is discussed at [2.363]). But New Zealand's transition to superdiversity poses broader, systemic issues, because it represents a much larger and permanent change in New Zealand's overall demographic makeup.

- b. The Government needs to invest to get the superdiversity dividend. Successive New Zealand Governments have enjoyed the benefits of increased ethnic diversity, such as greater access to foreign financial capital, markets for our exports, consistent growth in international students and record high tourist numbers (as is discussed in the Business Implications section at [2.84]). However, government needs to invest in measures to mitigate the challenges from superdiversity to ensure that the diversity dividend is maximised and sustainable.

The challenges faced by migrants when interacting with government policy and law may be different, so laws and policies need to take that into account. At the same time, government must ensure that the positive aspects of New Zealand which attracted migrants to this country – such as the rule of law and the integrity of our capital markets, racial harmony, our pristine environment, and religious and ethnic tolerance – are preserved and are not eroded. Examples of an “investment approach” in practice include:

- i. Government departments and agencies with an enforcement role, such as the New Zealand Police, the New Zealand Customs Service, the Ministry for Primary Industries, and the Department of Conservation, better educating new migrants about their legal obligations, and helping them to understand the law, rather than just prosecuting them for non-compliance;
- ii. Law changes to increase assistance for New Zealanders with little or no English to vote in elections and referenda. Taking part in the national conversation around parliamentary elections, for example, is an important way for new migrants to participate in civic life and to feel part of their new home. As New Zealand's superdiversity increases, an increasing portion of New Zealanders risk being disengaged from political processes if they do not understand our system of government. Yet the ethnoburbs

in Auckland means that ethnic minorities may form a majority of some key electorates, potentially giving those voters a lot of political power.

- c. Superdiversity will pose challenges for the Treaty relationship. Māori and Asians will be the two largest minorities in New Zealand for the foreseeable future. Asians will start to overtake Māori in numbers from 2025. From a Treaty of Waitangi perspective, the changing face of the Crown is likely to pose challenges to the post-settlement relationship, in particular:
 - i. Migrants are typically only granted entry to New Zealand if they are highly skilled or cash-rich business investor migrants, exacerbating the average wealth and education differences compared with Māori;
 - ii. As the number of Asians increases, this will also increase their political clout, especially as many MPs in the all-important Auckland electorates will have a significant number or a majority of Asian constituents, as discussed at [1.91].
 - iii. New migrants are less likely to appreciate the importance of Māori culture and the Treaty, and not see a place for themselves in the Treaty relationship, especially if they are not taught New Zealand history. Māori rights and interests, including those currently protected by legislation, could be affected by a demographic transition away from a simple New Zealand European-majority/Māori-minority model. There is a risk that Māori, Asians and Pacific people will come to see themselves as competitors, not only in business but also in competing for government funding and influence in policy and law, which poses a risk to racial harmony.
 - iv. Māori, Asians, Pacific people and other visibly different ethnic groups have a shared experience of discrimination, but more needs to be done to ensure that the diverse do not discriminate against one another, especially given the negative Māori view of new migrants reflected in several surveys.¹¹²¹

The question is how do we ensure that the greater financial capital, innovation and productivity that superdiversity brings to New Zealand is sustainable in the context of the Treaty relationship? Ultimately, challenges to social capital may be overcome by greater trade, business and increasing rates of intermarriage between Māori and other ethnic groups, as is discussed at [1.38] in the section on cultural evolution.

- d. New Zealand needs a formal multicultural policy on a bicultural base. New Zealand does not have a formal multicultural policy, prompting the ad-hoc and uneven way government departments and agencies are analysing and implementing measures to take account of the needs of all New Zealanders and to communicate with them. Those agencies at the coalface, interfacing with New Zealanders, are responding better because they are directly exposed to how New Zealand is changing demographically. Other departments and agencies are aware that they will need to formulate responses to the challenges of superdiversity, but many are still exclusively working through greater Māori and gender diversity. I expect that most departments will have made significant progress on ethnic diversity within the next five years, but according to Statistics New Zealand's projections, superdiversity in New Zealand by that time will be even greater.

To effectively and systematically address New Zealand's demographic transition, the Government needs to consider adopting a formal multicultural policy on a bicultural base. The Treaty of Waitangi and the indigeneity of Māori must still be given constitutional priority; but the "Crown" is now superdiverse. This requires more responsiveness to the different needs, views, culture and values of other ethnicities, and proper resourcing to do so.

- e. The public sector needs to build capacity to respond to superdiversity. There are already talented diverse public servants in the public service, mainly in the bottom half of most organisational hierarchies, with a few notable exceptions. The best way for departments and public agencies to access the right cultural networks and identify suitable diverse prospective employees is through existing diverse staff and their networks. The public sector should reflect the ethnic superdiversity of contemporary New Zealand because

people invariably feel a deeper affinity with people and organisations that look like them and share their experiences. If New Zealanders do not feel that the public service reflects them, then over time, trust and confidence in the public service may be eroded.

The public service needs to recognise the value of employees not born in New Zealand, as their different culture and values and language helps build government capability to understand and service the needs of all New Zealanders. The cultural intelligence that many migrants display (as discussed at [2.84] and [1.45] in relation to the diversity dividend and the 1.5 generation respectively) is of value to government effectiveness in 21st century New Zealand. However, the following issues need to be addressed before the public sector can capitalise on the diversity dividend:

- i. Public agencies need to do more as employers to attract ethnic minorities and migrants– There is a feedback loop between an agency’s internal capability to respond to the diversity transition and its capability to engage with ethnically and culturally diverse clients, customers or stakeholders. Agencies which are perceived as unfriendly to the diverse will struggle to attract diverse applicants, and vice versa.¹¹²² Many within ethnic and migrant communities see working in the public service as a second-rate career, behind the private sector, which limits the public service’s ability to attract top superdiverse talent. For example, Asian candidates are often discouraged by their families from entering the public service, in part based on the perception of the government in their country of origin. However, ethnic diversity is not an end in itself. What is more important is that public sector staff are open to the ideas, perspectives and experiences of the diverse – not that organisations set and meet quotas for employing ethnically diverse staff at the expense of recruiting for talent.
- ii. Agencies are still working predominately on Māori and gender diversity issues – Many public agencies are still working through the ramifications of the Treaty of Waitangi relationship with Māori in their diversity policies and have yet to broaden their focus to respond to ethnic and cultural diversity in a wider sense. Agencies are also focussing on diversity issues around women, the disabled, and sexual identity and orientation.¹¹²³ While ethnic and cultural diversity is often acknowledged as an issue, the practical implementation of initiatives targeted to the needs of ethnic minorities and migrants to date has modest. There is also limited cognisance or work on doubly disadvantaged public servants and citizens such as coloured women (see [2.148] for discussion on the double disadvantage suffered by ethnic women).
- iii. Public agencies do not necessarily understand the business case for diversity – While many public agencies are aware that they should aim for ethnic diversity, they are not clear on the reasons why it is important. Not all public agencies recognise that they need the capability to assess the implications of superdiversity for their policy or operational responsibilities. Ethnically diverse organisations perform better than organisations that are not ethnically diverse, as ethnic diversity leads to diversity of thought, innovation, creativity, and productivity (see also the discussion at [2.84]). Many public officials not born here come from countries also with great ethnic diversity and social tensions, and have an understanding of the importance of racial harmony, and that it cannot be taken for granted.¹¹²⁴ Improving ethnic diversity within the public service will also help to reduce the risk of unconscious cultural bias within the public service and indirect discrimination, by improving public service agencies’ institutional cultural intelligence and agility.
- f. Stocktake of government departments and agencies. Most public agencies acknowledge that superdiversity will pose unique challenges which they will need to address, although that understanding is not always that superdiversity poses a systemic challenge rather than a range of distinct, ad-hoc challenges. Superdiversity is already affecting all public agencies – even those without a direct customer interface – although those public agencies responding to customer driven demand are the best adapted to our superdiverse population. There are some public agencies which are making good progress, and some which are improving rapidly. The key conclusions from the Stocktake of government departments and agencies are as follows:

- i. The New Zealand Police, the New Zealand Customs Service, the Ministry of Education and the Ministry of Business, Innovation and Employment were responding most effectively to superdiversity as at the time of this Stocktake. The Ministry of Defence was the most improved public agency. All of the best performing agencies have good internal leadership on superdiversity issues.
- ii. In general, more is needed from government departments and agencies to:
 - Systematically identify the impact that superdiversity has on the issues within that agency's role;
 - Determine what changes need to be taken account of in policy and law reform consideration and in implementation;
 - Ensure that the agency communicates with all New Zealanders about its role and policies and the laws it is responsible for overseeing; and
 - Build internal capability so that it has staff with the skills and cultural and language abilities to undertake the above analysis and implementation and communications with all New Zealanders who are citizens and with the customers of those agencies.
- iii. Those who have also built an internal culture welcoming of diversity include the Ministry of Education, the Education Review Office and New Zealand Trade and Enterprise.
- iv. Agencies that understand that Auckland requires a different approach and has unique needs due to its greater degree of superdiversity include the Police, Customs, the Ministry of Business, Innovation and Employment, the Education Review Office, the State Services Commission, the Serious Fraud Office, the Department of Conservation and the Crown Law Office, although the level of implementation is variable.
- v. Agencies who have undertaken some good initiatives include the Ministry of Foreign Affairs and Trade with its China Capability Project, the Ministry of Culture and Heritage's work on New Zealand identity and nation building, the Ministry of Business, Innovation and Employment's funding of CaDDANZ's project on Capturing the Diversity Dividend of Aotearoa New Zealand, and the New Zealand Police's work to engage with ethnic communities, particularly in Auckland.
- vi. Agencies that have done some good policy thinking on superdiversity include the Ministry of Business, Innovation and Employment, the Treasury, and the Education Review Office.
- vii. Agencies with above average levels of ethnic diversity across the entire organisation include Customs, the Ministry of Education, New Zealand Trade and Enterprise, Corrections, the Ministry of Business, Innovation and Employment, the Ministry of Transport, the New Zealand Transport Agency, the Department of Internal Affairs, the Inland Revenue Department, the Ministry of Justice, the Ministry of Pacific Island Affairs, the Ministry of Social Development and Te Puni Kōkiri.
- viii. Statistics New Zealand's work is critical to assisting other public agencies understand the changing superdiversity of New Zealand's population. The department is helpfully thinking through what data it needs to be collecting that is of the greatest relevance to keeping track of New Zealand's demographic disruption. The Ministry of Business, Innovation and Employment (in the Settlement Unit in Immigration New Zealand) produces the most useful research we have found to date in the public sector on superdiversity. The Office of Ethnic Communities within the Department of Internal Affairs also produces useful studies and guidance, but much of this work is dated. The Inland Revenue Department has started producing some useful research on superdiversity, particularly around migrant behaviour.
- ix. The work of the State Services Commission and the Office of Ethnic Communities within the Department of Internal Affairs is to assist other agencies to be capable in meeting the needs of all New Zealanders, and to include ethnic perspectives in policy

frameworks. This role is more critical than ever given that Auckland is already super-diverse, and that superdiversity is now diffusing throughout the rest of New Zealand. The Ministry of Foreign Affairs and Trade also has a wealth of expertise on dealing with people from other cultures and culturally intelligent personnel that could contribute greatly to other departments. The China Capability project is a great example.

- x. Agencies where investment is needed to ensure social capital remains high to maximise the diversity dividend from superdiversity through services provided to the public, and to provide the basic tools needed to adjust to rapidly changing demography include Statistics New Zealand, the Ministry of Education, the State Services Commission, the Office of Ethnic Communities and the Ministry of Culture and Heritage.

Summary of Findings on Superdiversity, Democracy and New Zealand's Electoral and Referenda Laws Paper

New Zealand already does more than most comparable countries to allow new migrants to vote because it allows migrants who are not yet citizens but who hold permanent residency to vote. Most countries restrict the franchise to their own citizens or to citizens of countries with whom they have a strong relationship (such as Commonwealth citizens or citizens of the European Union in the United Kingdom).

New Zealand can improve its accommodations in its electoral law to help those with little or no English language to vote. Although s 12 of the NZBORA, which affirms the right to vote, applies only to elections to Parliament, and not to elections held under the Local Electoral Act 2001 or the various referenda legislation, the accommodations it may require in respect of language represent best practice and should be applied in the context of the Local Electoral Act or the various referenda legislation, even if there is no legal obligation to do so.

New Zealand's electoral legislation should be revised to adopt consistent standardised approaches to linguistic diversity whether it is local or central government elections, or referenda. Voters with little or no English should receive consistent levels of information, and support to vote, regardless of where in New Zealand they live, or what language they speak.

In dealing with those with little or no English, New Zealand's electoral laws need to find a balance between giving electoral officials the discretion to respond to unique situations, while making sure that the overall application of measures to help those with little or no English to vote is consistent and fair. The worst case scenario is that officials exercising discretion do so in a discriminatory fashion.¹¹²⁵ New migrants with little or no English are unlikely to know how to complain or to whom.

Compared to other superdiverse jurisdictions, such as London, Singapore, Johannesburg, Toronto and Australia, despite its ad-hoc nature, New Zealand has a relatively sophisticated suite of measures to assist those with little or no English to vote. There are some aspects of particular measures which both New Zealand and some comparable superdiverse jurisdictions have adopted which are done better overseas, and which New Zealand should consider adopting, such as:

- a. Requiring the person providing assistance to a voter with limited or no English to cast their ballot to swear to follow instructions and maintain vote secrecy (Canada – at federal level);¹¹²⁶
- b. Requiring election information to be made available in every language spoken in 2 per cent or more of the homes in a city (Canada – Toronto). If New Zealand were to adopt Toronto's approach, election information for general elections would be required in English, Te Reo Māori and Samoan.¹¹²⁷ In Auckland elections, information would be required in English, Te Reo Māori, Samoan, Hindi, Northern Chinese, Yue, and other Sinitic languages;¹¹²⁸
- c. Requiring election information to be made available in multiple specified languages, instead of leaving it to the discretion of electoral officials (Singapore);¹¹²⁹

- d. Allowing voters to answer questions put to them to ascertain whether they are permitted to vote “satisfactorily”, which will allow a person to answer other than in English (United Kingdom); and
- e. Compulsory voting in elections (Australia and Singapore), provided that the penalties for non-voting are not unduly harsh.

Finally, New Zealand needs to keep its electoral laws, and the accommodations made for those eligible voters with little or no English, under regular review to ensure that they continue to minimise the language-related obstacles to voting. Changes in New Zealand’s linguistic make-up, or in the technology used to administer elections, may change what accommodations for those with little or no English are considered reasonable.

Many challenges remain to improving voter turnout. This includes systems constraints, such as the use of postal voting and the lack of online voter enrolment or voting, limited Electoral Commission and local government funding for a national awareness campaign, the salience and lack of trust in politicians (as indicated by some voter responses, such as “voting doesn’t change anything”; “I don’t know who these candidates are”; and “what does Auckland Council do?”). Ethnicity is also not recorded in enrolment or voting in local government elections.

Electoral Commission Initiatives to Improve Ethnic and Migrant Civic Participation

There have been increased attempts to educate migrant groups in civics to encourage participation and voting in recent years.

The Electoral Commission, established by s 4B of the Electoral Act 1993, is an independent Crown entity and is specifically required to act independently.¹¹³⁰ The Commission’s objective is to administer the electoral system impartially, efficiently, effectively, and in a way that facilitates participation in parliamentary democracy, promotes understanding of the electoral system and associated matters, and maintains confidence in the administration of the electoral system.

The Commission’s functions include (among others) carrying the provisions of the Electoral Act into effect, and promoting public awareness of electoral matters by means of the conduct of education and information programmes or by other means. To this end the Commission’s powers include initiating, sponsoring, and carrying out any studies or research, making any inquiries, consulting with any persons or classes of persons, and publicising its work, as well as its general powers as a Crown entity.

The 2014 general election was the first where all elements of electoral participation – enrolment, voter education and voting – were within the statutory responsibility of the Commission. The Commission’s report on the 2014 General elections stressed that promoting voter participation be made a whole-of-Government priority with multi-party support and for a long-term national strategy to nurture and celebrate our democratic culture and encourage participation to be developed to reverse the “particularly steep and persistent” decline.¹¹³¹

In terms of communications and outreach, the Commission noted:¹¹³²

There are some segments of New Zealand society who are harder to reach and engage in electoral processes. Research shows that enrolling and voting has less relevance in the lives of these groups, motivation to enrol and vote is low, and other things in their lives take priority. Specific approaches, work programmes and activities needed to be created to reach these groups.

Before the 2014 election, the Commission piloted a new community engagement programme, focussing on “geographical areas/communities with high concentration of those who are ‘hardest to reach’ with electoral information – Māori, Pasifika and ethnic communities”. The results were:

- a. 385 influencer relationships established;
- b. 378 influencer agreements established to promote the 2014 election;
- c. Influencers reached 377,000 members of the target population;

- d. 63 media engagements to promote the 2014 election; and
- e. Media engagements reached 506,000 members of the target population.

As part of the community engagement pilot programme, the Commission reported that contracts were established with the Chinese New Settlers Services Trust, NZ Federation of Multi-Cultural Councils Inc, Auckland Regional Migrant Services Trust, and Christchurch Migrant Centre to deliver enrolment, voting and motivational messages direct to their communities.

Enrolment and voting brochures were redesigned and available in 21 languages (as well as New Zealand's three official languages) through Commission staff, community organisations and other outreach contacts. The languages were chosen with the advice of Statistics New Zealand. The information for voters is developed and produced centrally without any discretion being exercised by registering officers who are temporary staff.¹¹³³

The Commission said it will be looking for ways to improve outreach and information for Asian, Pacific and young voters.¹¹³⁴ However, the Commission needs to be properly funded to communicate with all New Zealanders, especially as superdiversity makes this more complicated and expensive. Yet the Commission said in its Report on the 2014 General Elections that its overall budget for the public information campaign was broadly the same as for the last three elections, meaning a significant decrease in real terms.¹¹³⁵ There has been a significant increase in the last ten years of the number of New Zealand voters not born here and speaking a different language.

List of Recommendations for Central Government

The recommendations for central government agencies arising from the Stocktake are as follows:

Recommendations to Develop In-House Capability In Government Departments and Agencies

- New Zealand needs to develop a formal multicultural policy on a bicultural base to ensure that all arms of government have a consistent and coherent response to the challenges of superdiversity, and authorisation to resource the necessary initiatives. The need for a multicultural policy is pressing – New Zealand is already superdiverse now, and the challenges are already presenting themselves, limiting the ability to sequence our diversity focus.
- Central government agencies need to move faster to systematically assess how superdiversity impacts on their roles and functions.
- Relevant public agencies in the New Zealand Government should urgently undertake an Asia Capability survey (modelled on the one recently undertaken in Australia) to highlight areas where the gaps are that government and business need to invest in to more successfully engage with Asian trading partners and the growing Asian population in New Zealand.
- All government departments need to do more to develop in-house capability to understand and respond to the needs of ethnic minorities and migrants.
- The public service needs to represent contemporary New Zealand if it is to retain public confidence, and be relevant and effective.
- Public sector careers need to be made more attractive to ethnic minorities and migrants. Public agencies need to create an environment where these diverse officials can use their cultural backgrounds to make public departments and agencies more effective at carrying out their functions and duties to service all New Zealanders.
- Public agencies need to identify, plan and evaluate policies and services in order to ensure they are appropriate to ethnic communities, and to New Zealand's superdiversity.

- Public agencies need to work with the State Services Commission to implement the recommendations from their Performance Improvement Framework on diversity matters, and to use this feedback to better frame their Four Year Plan.
- The Government should implement a civics and historical education programme for new citizens and permanent residents to promote the successful integration of new New Zealanders. New citizens and permanent residents should also be required to learn about the Treaty and our political system, and the importance and mechanics of voting.
- New Zealanders' perceptions of migrants should be surveyed regularly in order to gauge whether attitudes are becoming more positive, particularly among Māori.
- The Government needs to communicate to Māori and New Zealand Europeans the benefits of migration, and the rights and protections our laws afford minority language, religion and culture.

Recommendations on Elections and Referenda

Parliamentary Elections

- Consideration should be given to whether forms for voter registration (which is compulsory) should be provided in languages apart from English, especially as New Zealand's superdiversity grows.
- The Electoral Commission should emphasise in training electoral staff that New Zealand is a superdiverse society with eligible voters who come from a range of different countries and cultural backgrounds, and who speak different languages but who all have the same right to cast a vote. The Electoral Commission should also emphasise the challenges faced by voters with little or no English, the accommodations in the legislation to assist them to vote, and how polling place officials and issuing officers can avoid unconscious bias and ensure that such voters can use the accommodations afforded to them.
- The recommendation of the Report on the Electoral Commission into the 2014 General Election that promoting voter participation be made a whole-of-Government priority with multi-party support and that a long-term national strategy to nurture and celebrate our democratic culture and encourage participation be developed to reverse the "particularly steep and persistent" decline should be adopted.
- Election staff pay rates should be reviewed, as the Commission also recommended, since there has been no increase since 2008 despite more self-study and training time being required of each staff member. Election staff have important responsibilities, including helping voters with little or no English to cast their ballot. Proper pay is needed to attract candidates of the right calibre.¹¹³⁶
- The Commission also recommended looking to expand Kids Voting and to continue to provide and develop curriculum linked resources.¹¹³⁷ Kids Voting is a programme for young New Zealanders that encourages them to experience and understand an authentic electoral event. Given that Māori, Pacific and Asian voters are younger than New Zealand European voters, this should help engage and inform them of the importance of voting and help to establish a habit of doing so.
- Consideration should be given to amending electoral legislation to require the Returning Officer or other relevant official to take account of the need to make available information in a language other than English to ensure that all electors qualified to vote have a reasonable and equal opportunity to do so, using s 75(3)(a) of the Local Electoral Act as a precedent.
- The provisions in the Electoral Regulations 1996 governing the availability of interpreters should be made less complex, with fewer preconditions that must be satisfied before an interpreter can be used, and the Electoral Commission should also seek to

employ more interpreters. However, it needs to be acknowledged that the Commission's preference, in line with its policy, is to ensure that issuing officers are employed who reflect the community and have the relevant language skills. ¹¹³⁸

- A person should be permitted to obtain assistance (from an interpreter or otherwise) to answer questions about their identity or whether they have already voted, or be permitted to answer questions to demonstrate their eligibility to vote through other means such as producing a passport or drivers' licence. The requirement should also be to give a satisfactory answer, which may allow a voter to answer the question in a language other than English.
- Ballot papers should be available in English and Māori, which are New Zealand's written official languages. As linguistic diversity grows, it may be appropriate to consider making ballot papers available in other languages used by a significant percentage of the population;
- Persons assisting those with little or no English should have to sign a declaration that they will follow the voter's instructions, and maintain the secrecy of the vote. Breaching this declaration should be an offence. This is a further preventative measure given that the Electoral Act already enables the voter to request that another person inspect the ballot paper before it is put in the ballot box to ensure their instructions are complied with, and it is an offence to say how someone voted if you were the person assisting;
- There should also, for the avoidance of doubt, be a specific offence created in s 170 of the Electoral Act for voting contrary to the instructions of the voter you are assisting, just as there is for divulging how they voted, in subsection (5).
- Provisions in New Zealand's electoral law should be reviewed to ensure they do not, directly or indirectly, discriminate on the basis of race or ethnicity against specific voters in elections or referenda in terms of ss 19 and/or 12, in a way that cannot be justified in terms of s 5 of the NZBORA.

Local Government Elections

- The recommendation from the Justice and Electoral Committee's report on the 2013 Local Authority Elections be implemented that the government review the available teaching material in civics education and investigate commissioning of research into the impact of civics education in New Zealand on voter turnout and voter behaviour.
- The Local Electoral Act 2001 should be amended so that the notice given about enrolment as a ratepayer elector, and about the election or poll, can be made available in languages other than English.
- The Local Electoral Act should be amended to make provision for the use of interpreters.
- Regulation 34 of the Local Electoral Regulations, which specifically deals with how a voting document or special voting document may be marked by voters with specified difficulties in voting, including "is not sufficiently familiar with any language or languages used on the document to vote without assistance", appears too narrow to extend to assistance in providing any necessary identifying details before the voter is issued with voting documents. Thus, such a provision needs to be added by law reform.
- Regulation 34 of the Local Electoral Regulations also appears too narrow to extend to assisting a special voter with little or no English to make a special voting declaration. Thus, such a provision needs to be added by law reform.

Referenda

- The Citizens Initiated Referenda Act should be amended to prohibit promoters of peti-

tions from deceiving voters into signing petitions that they do not understand if they have limited or no English. Using s 218 of the Electoral Act as a precedent, it should be a specific offence to, by abduction, duress, or any fraudulent device or means, compel, induce, or prevail upon any elector to sign or not sign a petition, similar to provisions prohibiting undue influence in other electoral legislation.

- As with parliamentary elections held under the Electoral Act, the provisions governing access to interpreters should be streamlined so that voters in referenda with little or no English are able to access an interpreter if necessary.
- The Referenda Regulations should be amended to at least make it legally possible to provide a ballot paper in Te Reo Māori, and consideration should be given to whether ballot papers should be available in other languages as New Zealand's demographic makeup shifts.
- The Referenda (Postal Voting) Act should be amended to require the Returning Officer to exercise his or her discretion under s 36(2)(b) taking account of whether information in other languages is needed to ensure that all electors who are qualified to vote have a reasonable and equal opportunity to vote, using s 75(3)(a) of the Local Electoral Act as a precedent.
- A person should be permitted in a referendum to obtain assistance to answer questions from scrutineers confirming their name (from an interpreter or otherwise), or be permitted to answer the question through other means such as producing a passport or drivers' licence. The requirement should also be to give a satisfactory answer, which may allow a voter to answer the question other than in English.
- The Schedules to the New Zealand Flag Referendums Act 2015 should be amended to make it legally possible to provide a ballot paper in Te Reo Māori and other languages. Section 25(2)(b) of the 2015 Act should also be amended to require the Returning Officer to exercise his or her discretion taking account of whether information in other languages is needed to ensure that all electors who are qualified to vote have a reasonable and equal opportunity to vote, using s 75(3)(a) of the Local Electoral Act as a precedent.

Comparable Superdiverse Jurisdictions

- New Zealand should consider the adoption of compulsory voting to improve voter participation rates, as in Australia and Singapore;
- New Zealand's Electoral Commission should be required to adopt a formal multicultural plan like Australia's Electoral Commission, which focusses on improving voter participation rates among new migrants, and be properly funded to implement such a plan. New Zealand's increasing superdiversity makes communicating with all voters more complicated and expensive;
- Where possible, decisions about how and in what languages information is to be provided should be made by the Electoral Commission, and be rules-based rather than discretion-based, provided that the rules are kept under review so that they can change to reflect New Zealand's changing demographic makeup;
- There should be a requirement during elections and referenda to provide information in particular languages based on a statistical analysis of the most commonly spoken languages in New Zealand. If the decision depends on a regulator's assessment of what is needed, then the main languages spoken in New Zealand should be a mandatory relevant consideration; and
- People assisting others to vote should be required to swear a declaration that they will follow the voter's instructions and preserve secrecy. Breaching this declaration should be an offence.

Key Point One: The Government Needs to Move Faster on Superdiversity

- 5.2 New Zealand's transition to ethnic and linguistic superdiversity is generating a slower response from central government than it is from business. This is evidenced by our review of how government agencies and departments are performing under the Performance Improvement Framework, discussed at [5.8] below.
- 5.3 Even when superdiversity is considered, it tends to be an afterthought, tacked on to mainstream policies and campaigns with limited funding. Central government is a monopoly provider of services, so it is not subject to the same competitive pressures as commercially-focussed organisations. But central government also has broader, non-commercial national interest roles and objectives, including maintaining the social capital essential to generating financial capital and ensuring all New Zealanders are serviced by government (see [2.344] for further discussion on the correlation between financial capital and social capital). This should incentivise responsiveness.
- 5.4 Government may consider that it still has time to think about how best to address superdiversity, and its challenges and benefits, and to make the necessary adjustments to how it operates. This may be due to the majority of officials advising government residing in Wellington, which is less diverse than Auckland, and has far fewer new migrants, as is discussed at [1.18]. However, Auckland is superdiverse now. By 2040, New Zealand's population will look even more different, and have different needs, as is discussed at [1.25]. Accordingly, government (as a whole) will be more effective at ensuring the ethnic and social cohesion of New Zealand society in 2040 if it reflects the makeup of that society in its culture, communications and personnel. Government agencies need to start thinking now about incorporating cultural intelligence into their recruitment practices if they are to secure superdiverse talent to cater to a superdiverse citizenry.
- 5.5 As discussed at [2.168] in the Business Implications section, the Australian Diversity Council, and NGO, has recently surveyed the "Asia capability" of Australian organisations' employees.¹¹³⁹ Developing Asia capability is relevant not just to the private sector, but also to public agencies and all New Zealanders. Relevant public agencies in the New Zealand Government should urgently undertake such a survey to highlight areas where the gaps are that government and business need to invest in to more successfully engage with Asian trading partners and the growing Asian population in New Zealand, who will comprise a growing portion of customers, the talent pool and citizens.
- 5.6 The need for central government to be responsive is exacerbated by most areas of law and policy being affected by the transition to ethnic superdiversity (as is evidenced by the broad range of policy issues discussed at [3.1], and identified by the Stocktake of public agencies at [5.115]). The superdiversity challenges for government range from immigration and overseas investment policy to security, the prevention of terrorism, business culture, money laundering, border control, and the protection of biodiversity, among many others.
- 5.7 Many of the challenges ethnic diversity poses for central government are not new, such as discrimination against ethnic minorities (as is discussed at [2.123]), and public disquiet about the level of foreign direct investment in rural land or housing stock (as is discussed at [2.363]). But New Zealand's transition to superdiversity poses broader, systemic issues, because it represents a much larger and permanent change in New Zealand's demographic makeup. The effect on Auckland has been profound, marked by the proliferation of self-contained ethnoburbs (as is discussed at [1.83]), and making Auckland very different to the rest of New Zealand. It is difficult for government departments and agencies without a presence in Auckland to make policy that reflects the needs of Aucklanders, as discussed at [1.16] and [5.87]. Superdiversity is also now permeating throughout the rest of New Zealand (see discussion at [2.270]), which will pose new challenges for the government to consider. The spread of diversity into the regions is also likely to be accelerated by the changes in immigration policy announced in July 2015, as discussed at [2.271].

The Performance Improvement Framework

5.8 The Performance Improvement Framework (“PIF”) measures how well agencies and departments are responding to government priorities. As noted at [2.197] in the context of best practice for businesses, ongoing monitoring of equality and diversity in the workforce at various points in the employment cycle enables departments and agencies, whether in the public or private sector, to examine how their employment policies, processes and strategies are working in practice and to identify areas where these appear to be disproportionately affecting certain groups of staff. Iain Rennie, the State Services Commissioner, said in the most recent 1 January 2014 version of the PIF that, “The public and the Government expect public services to be designed and delivered around the needs of New Zealanders, not around organisational boundaries”.¹¹⁴⁰

5.9 Lead question 22 of the PIF asks: “How well does the agency develop and maintain a diverse, highly committed and engaged workforce?” Under Diversity, the line of inquiry asks “How well does the agency encourage diverse ideas, cultures and thinking throughout the organisation?”¹¹⁴¹ Delivery would mean that “the agency is able to demonstrate how it has effectively incorporated diverse ideas, culture and thinking into its day-to-day activities”.¹¹⁴²

5.10 Our review of the most recent PIF results across government agencies undertaken for the purpose of the Stocktake indicated that almost 70 per cent of the government agencies reviewed under the PIF had received a negative rating in this area (18 receiving a “needing development” rating, seven receiving a “weak” rating), although it is noted that diversity makes up only one part of this inquiry. Further, several of the agencies which had received a positive rating in this area did not have any ethnically diverse staff.

5.11 Another relevant question is PIF lead question 18, which asks: “How well does the agency anticipate and respond to future capability requirements?”¹¹⁴³ The lines of inquiry are “How does the agency anticipate and plan for future capability requirements and workforce risks?” and “What approaches does the agency take to ensure that future capability requirements are implemented and workforce risks are mitigated?” Success would have the agency considering medium- and long-term scenarios, and managing risks and opportunities within them, to maximise value as required in developing Four Year Plans, and the agency having plans in place to either attract or develop the necessary future capability and to minimise future workforce risks.¹¹⁴⁴ As with question 22, it should be borne in mind that question 18 is only one strand of measuring a department’s future capability.

5.12 Under the heading “opening up to diversity can help strategic realignment succeed,” the PIF states:¹¹⁴⁵

Leading a different looking workforce will in turn need different leadership capability. Leadership development can include training in unconscious bias, which helps leaders understand the ways they make decisions that are not rational and how to counteract that process.

5.13 Our survey of public agencies’ performance in relation to this question found that around 75 per cent of agencies reviewed under the PIF had received a negative rating in this area (23 receiving a “needing development” rating, five receiving a “weak” rating).

5.14 Various agencies who were contacted in relation to the Superdiversity Stocktake have indicated that they have made significant improvements to staff diversity levels and leadership and workforce capability following their initial PIF reviews. For example, following its PIF review, Careers New Zealand has implemented a number of structural and cultural changes.¹¹⁴⁶ Approximately 85 per cent of its workforce is women, 20 per cent Māori and 12 per cent Pacific.¹¹⁴⁷ In terms of senior management (and subject to two forthcoming appointments), 75 per cent of staff are women, 25 per cent are Māori and 12 per cent are Pacific.¹¹⁴⁸ The Board of Careers New Zealand comprises 50 per cent women and 30 per cent Māori.¹¹⁴⁹

5.15 These new measures are a good starting point for more positive change in future, but more needs to be done across government agencies and departments to improve internal and external capacity to respond to superdiversity, as is discussed further at [5.85].

Recommendations

- Central government agencies need to move faster to assess how superdiversity impacts on their roles and functions.
- Relevant public agencies in the New Zealand Government should urgently undertake an Asia Capability survey (modelled on the one recently undertaken in Australia) to highlight areas where the gaps are that government and business need to invest in to more successfully engage with Asian trading partners and the growing Asian population in New Zealand.
- Public agencies need to work with the State Services Commission to implement the recommendations from their Performance Improvement Framework Review on diversity matters, and to use this feedback to better frame their Four Year Plan.

Key Point Two: The Government Needs to Invest to Get the Diversity Dividend

5.16 Successive New Zealand Governments have enjoyed the benefits of increased ethnic diversity, such as greater access to foreign financial capital and foreign markets for New Zealand businesses and exports, a consistent growth in New Zealand's export education industry as the number of international students grows, record high tourist numbers, and access to foreign and generally highly skilled labour markets for everything from the dairy industry to the Christchurch rebuild.¹¹⁵⁰ However, government needs to invest in measures to mitigate the challenges from superdiversity to ensure that the diversity dividend is maximised and sustainable, and to maintain social capital and racial harmony.

5.17 Migrants sometimes come from countries with different approaches to the rule of law, government, transparency, business culture and the environment, as is discussed at [2.294]. The challenges faced by these migrants when interacting with government policy and law may be different, so laws and policies need to take that into account.

5.18 At the same time, government must ensure that the positive aspects of New Zealand which attracted migrants to this country – such as the rule of law and the integrity of our capital markets, racial harmony, our pristine environment, and religious and ethnic tolerance – are preserved and are not eroded. Examples of an “investment approach” in practice include:

- a. Government departments and agencies with an enforcement role, such as the Police, Customs, the Ministry for Primary Industries, and the Department of Conservation, better educating new migrants about their legal obligations, and helping them to understand the law, rather than just prosecuting them for non-compliance. This is discussed in depth in the Stocktake of public agencies; and
- b. Law changes to increase assistance for New Zealanders with little or no English to vote in elections.

5.19 Further examples of the kinds of investment government may need to make in the context of the Treaty relationship to obtain the benefits of superdiversity while mitigating its challenges are discussed at [5.31].

Law Changes to Increase Assistance for New Zealanders with Little or No English to Vote

5.20 The Superdiversity Centre was funded by the New Zealand Law Foundation to conduct research into how New Zealand helps those with little or no English to vote. The Superdiversity Stocktake adopts the summary of findings and recommendations set out in the Law Foundation paper, which are set out above, as an example of the impact a more diverse population has on elections and referenda, and of the investment that is required.¹¹⁵¹

5.21 In addition to recommended changes to electoral laws, the following is a summary of initiatives being undertaken to improve ethnic and migrant civic participation which are not addressed in the Law Foundation paper on electoral laws.

Auckland Council Initiatives

5.22 Auckland Council is currently considering recording simple videos that can be shared on social media in languages such as Mandarin, Hindi and Samoan explaining what it does and why it is important to vote.¹¹⁵² Auckland Council is also considering a three-part communications campaign with a strong online presence with enhanced information on candidates, social media and the use of minority languages. It is also looking into:

- Grass roots community engagement workstreams;
- An enhanced candidate recruitment campaign (through the use of Seek/employment agency approach, informed by learnings from when Auckland Council appointed its advisory panel members);
- Making voting an event, such as “ballot box Saturdays” or a similar lead up to the elections;
- Exploring appointing community ambassadors to encourage youth and ethnic groups to take part;
- Greater use of council buildings, vehicles, services and ballot boxes;
- Telephone voting for the disabled if the online voting trial does not occur; and
- Electronic transmission of voting papers for overseas electors.

5.23 There is currently a proposal by Auckland Council to increase the number of local politicians in Auckland to ensure its increasing population is properly represented.¹¹⁵³ At the last Census in 2013, there was one city councillor to approximately 75,000 residents. By 2033, the representation will be one councillor to over 100,000 residents.

Civics Education

5.24 Unlike in other countries, civic and citizenship education is not a compulsory general education subject or course in New Zealand schools. Rather, it is a topic embedded in the principles, values and key competencies of the New Zealand curriculum. The New Zealand curriculum, implemented in 2010, states “the curriculum encourages students to look to the future by exploring such significant future-focussed issues as sustainability, citizenship, enterprise and globalisation”.¹¹⁵⁴

5.25 The Justice and Electoral Committee has recommended that the Government review the available teaching material in civics education and investigate commissioning of research into the impact of civics education in New Zealand on voter turnout and voter behaviour.¹¹⁵⁵ However, these recommendations have not been adopted.

5.26 Given the link between voter turnout and a sense of belonging, the Government should consider requiring new migrants to undertake civics education upon arrival to help them understand the New Zealand political system and the importance of voting. This in turn will help migrants to integrate into New Zealand society. For further discussion on the need for migrants to learn about civics, the Treaty of Waitangi and the status of Māori as tangata whenua, see [5.66].

Ethnic Advisory Bodies and Citizens’ Juries

5.27 One measure aimed at improving political engagement with ethnic communities is the establishment of specific ethnic advisory bodies. During the creation of the Auckland Supercity, an Independent Māori Statutory Board was established as an independent body alongside the Auckland Council.¹¹⁵⁶ One of the Board’s key purposes is to assist Auckland Council to make decisions by promoting “cultural, economic, environmental, and social issues of significance” for local Māori.¹¹⁵⁷ The Auckland Mayor was also required to establish advisory panels for Pacific people and for ethnic peoples following the enactment of the Local Government (Auckland Transitional Provisions) Act 2010.¹¹⁵⁸ The requirement to have Pacific and Ethnic Advisory Panels ceased on 1 November 2013: any further terms are at the Auckland Mayor’s discretion.¹¹⁵⁹ Auckland Mayor Len Brown has elected to continue with the advisory panels, and one of the Ethnic Advisory Board’s functions includes advising on

diverse candidates for the 2016 local government elections. However, the value of the advisory panels has been questioned. Indeed, the chair of the Ethnic Advisory Panel, Feroz Ali, recently resigned, citing concerns that the panel only existed for “token consultation” and was a waste of ratepayer money.¹¹⁶⁰ Ali’s departure was followed soon after by a second panel member.¹¹⁶¹ Despite this, after meeting with the advisory panel chairs, Len Brown confirmed that the panels would continue to operate in liaison with Auckland Council.

5.28 The Local Government Commission recommended in December 2014 that Wellington follow in Auckland’s footsteps and replace its nine existing councils with one council for the Greater Wellington Region.¹¹⁶² Although the Commission proposed the creation of a Māori Board to assist the Greater Wellington Council until at least the 2019 triennial election,¹¹⁶³ the Commission did not address whether ethnic advisory panels should also be established. This was despite the Local Government Review Panel’s acknowledgement of the fact that the Wellington region was second only to Auckland in terms of ethnic diversity.¹¹⁶⁴

5.29 Despite the establishment of ethnic advisory boards in Auckland, there are still concerns that the Supercity is suffering from a “democratic deficit”.¹¹⁶⁵ It was recently reported that 88 of the 99 positions (84 per cent) on Auckland Council are occupied by white men.¹¹⁶⁶ There was just one Asian and one Pacific person. The only ethnic group that was close to being representative of the Auckland population was Māori, with six board members and one executive. This represented 7 per cent of Auckland Council roles, close to the 10 per cent of Māori comprising the Auckland population. In response to these concerns, Auckland Council announced that a new community empowerment unit, which aims to better service Aucklanders and the community through engagement, consultation and collaboration on local activities and council initiatives, would be operational from 1 October 2015.¹¹⁶⁷

5.30 One measure that is being trialled in Australia to improve ethnic representation and engagement in local government is the establishment of “citizens’ juries”.¹¹⁶⁸ The Australian Citizens’ Parliament initiative began in 2009. Randomly-selected Australian citizens from each federal electorate were selected to participate in a large-scale three-day deliberation in Canberra on how the Australian Government could be strengthened to better serve the people.¹¹⁶⁹ Although the jury’s recommendations initially had little influence on government, around a dozen citizens’ juries have since been used with varying levels of success at city councils across Australia.¹¹⁷⁰ For example, in early 2014, a citizens’ jury was asked to consider how to ensure Sydney had a vibrant and safe nightlife.¹¹⁷¹ The jury received evidence from various experts as part of their deliberations, and several of the jury’s 25 recommendations were adopted by the local council and later endorsed by the New South Wales Parliament. Similarly, in late 2014, Melbourne City Council commissioned a citizens’ jury of 43 residents and business owners to review the council’s \$5 billion budget.¹¹⁷² The Melbourne People’s Panel was given open access to information and financial data about the council, together with expert briefings and, after six days of deliberations, finalised a 10-year financial plan for the council, which (with the exception of one recommendation) was unanimously endorsed and adopted.¹¹⁷³ A University of Melbourne survey of panel members found that 100 per cent of panel members expressed support for greater citizen involvement in the policy-making process. Further, panel members displayed increased levels of trust and confidence in the council and higher general satisfaction with where the city was heading.¹¹⁷⁴

Key Point Three: Superdiversity Will Pose Challenges for the Treaty Relationship

5.31 The key implications of superdiversity for the Treaty relationship in 2040 may include the following:

- a. Changes to the “face” of the Crown as a Treaty partner;
- b. Changes to the political concerns of the public, including issues that may be put to referendum, and how the majority votes on such issues;
- c. Greater support for constitutional change;
- d. Greater challenges to social capital as Māori and Asians compete even more for jobs,

resources and political priority, particularly in areas like immigration policy, overseas investment, international student policy and discrimination;

- e. Changes in market power and relationships between Māori and other ethnic groups. This is discussed at [2.329] in the Business Implications section; and
- f. Changes in ethnic identification, values and culture due to intermarriage and cultural evolution (see also the discussion at [1.38]).

The Changing Face of the Crown as a Treaty Partner

5.32 As discussed at [1.5], New Zealand's superdiversity is unique in having a large indigenous component to it. In 2014, Māori were reported to make up approximately 15 per cent of the population. One-third of people of Māori descent are under 15 years of age, and nearly a quarter live in the Auckland region.¹¹⁷⁵ In contrast, the total Aborigine population in Australia is estimated to be 3 per cent.¹¹⁷⁶ Native Americans make up 1.7 per cent of the population in the United States,¹¹⁷⁷ and in Canada, Aboriginal people make up 4.3 per cent of the population.¹¹⁷⁸

5.33 Under the Treaty of Waitangi, Māori have a partnership relationship with the Crown which puts them in a unique position vis-à-vis non-Māori citizens and businesses. As explained by Callister and Bromell:¹¹⁷⁹

Iwi have traditionally sought to leverage off the settlement process to gain concessions in the contemporary relationship, while the political will that exists to make settlements has usually seen the Crown prepared to oblige.

5.34 Though there are different perspectives with respect to the role of the Treaty in our constitutional framework, it is likely that New Zealanders' relationship with the Treaty will have changed by 2038. Fiona Barker considers that:¹¹⁸⁰

The post-Treaty settlement period is likely to see renegotiation of the country's political and constitutional foundations. Demographic change is important because it alters the composition of the citizenry debating such reform proposals.

5.35 In 2038, trends project that the "majority minority" group in New Zealand will not be Māori, but rather will be Asian, and that the general population will comprise considerably more Asian, Pacific and Māori (see discussion at [1.25]).¹¹⁸¹ The projections are that the Asian population will have overtaken the Māori population by then and, coupled with the Pacific population, will be over 30 per cent.

5.36 The question, therefore, is how we ensure that the greater financial capital, innovation and productivity superdiversity brings to New Zealand is sustainable in the context of the Treaty relationship.

Changes to Political Power

5.37 The Treaty of Waitangi and the tangata whenua status of Māori have ensured that biculturalism trumps multiculturalism in law and public policy. But will demographic change by 2038 change this political will when Māori comprise 20 per cent of the population and the combined Asian and Pacific demographics in particular are substantially larger?

5.38 As New Zealand's demography transforms, there will be two other major ethnic minority groups – Asians and Pacific people – who do not necessarily identify themselves as part of "the Crown" in the historical Anglo-Saxon sense and who have different cultures, values, history, needs and concerns.¹¹⁸² These new New Zealanders will have no, or a lesser, sense of being party to the Treaty, and yet will have increasing market power and political power as their numbers grow, particularly in Auckland's ethnoburbs (see discussion at [1.91]).

5.39 These groups may question why Māori are provided with greater funding and a greater ongoing role in political decision-making, even after Treaty grievances have been resolved. In my experience in private law practice, Asians and Pacific clients fighting for language and cultural rights are already raising such issues from an equity perspective. If these

groups were to vote on ethnic lines, it will be difficult for the Government to continue to prefer Māori and it may be difficult for Māori to gain majority support for Māori and Treaty issues, including through legislation.

5.40 The Treaty of Waitangi and the special status of Māori as tangata whenua – including Māori seats in Parliament (including the Māori Electoral Option), the Independent Māori Statutory Board on Auckland Council and the numerous Treaty settlement Acts which grant specific functions and powers to some iwi and hapū – are recognised in ordinary laws with no higher legal status. These special protections of Māori rights and interests in legislation can therefore be amended or repealed by a simple majority in Parliament.

5.41 Therefore, Māori rights and interests could be affected by a demographic transition away from a simple Pākehā-majority/Māori-minority model. For example, there is Asian sentiment that the Treaty does not have a place for them as they are neither the Crown nor Māori. For example, Steven Young, former National President of the New Zealand Chinese Association, wrote that, “the world has moved a long way since 1840 and the changes in the whole world wrought in the last 170 years cannot be undone.” He acknowledges that migrants become subject to the Treaty when they arrive in New Zealand. However, he considers that “it takes a very creative reading of the Treaty – even Article Three – to find a place for non-British migrants”. In his view, “[t]he Treaty as the centrepiece of a new Constitution for New Zealand would be seen to marginalise a significant part of the population which is potentially a crucial link with the nations of the Asia-Pacific region.”¹¹⁸³

5.42 Low voter turnout and representation in Parliament of Asian and Pacific peoples may temper the possible impact of these groups’ vote for now, but we cannot presume this will always be the case.

5.43 Following the 2014 General Election, Parliament comprises of only 22 per cent Māori MPs, 6 per cent Pacific MPs and 4 per cent Asian MPs.¹¹⁸⁴ Only two political parties have Asian MPs, and 84 per cent of Ministers (in and outside of Cabinet) are European.¹¹⁸⁵

Greater Support for Constitutional Change

5.44 It is not clear, with the demographic changes predicted for New Zealand, that “biculturalism”, currently framed as a Treaty partnership between Māori and the Crown, will continue to resonate with New Zealanders in 2040.¹¹⁸⁶ However, the potential for Māori values to be undermined or overwhelmed by New Zealand Europeans and other minority culture and values may provide a greater impetus for Māori to advocate for entrenching the Treaty as part of a higher law written constitution for New Zealand. Previous support for a written constitution has been stalled by an “if it ain’t broke, don’t fix it” mentality. Ensuring the Treaty and/or its principles are incorporated will be important to ensure that indigenous values form part of the new New Zealand’s changing value system.

5.45 Māori have always agitated for constitutional reform. It was the Māori Party’s desire for change to New Zealand’s constitutional arrangements which resulted in the establishment of a constitutional review panel in December 2010 as part of that party’s confidence and supply agreement with the National Government.¹¹⁸⁷

5.46 Hone Harawira, former MP and leader of the Mana Party, said in 2014 that Māori are worried about the effects of immigration on the place of the Treaty of Waitangi in New Zealand. He said:¹¹⁸⁸

[Māori] don’t see the Treaty is being properly protected. If more and more people come here that don’t know about it, then there is the likelihood that less people will want to care about it. But Māori people do.

5.47 The Hon Te Ururoa Flavell has previously remarked that:¹¹⁸⁹

Māori have a unique position in New Zealand and advancing their cultural and social needs must be put ahead of the needs of immigrants. [Are Māori] more important than anyone else? Possibly. I think that the most important thing is that the people of the country recognise our unique part in the fabric of this nation.

5.48 Māori leader Dr Ranginui Walker says the growing influence of new cultures in New Zealand will only be “surface deep” compared with the history and influence of Māori.¹¹⁹⁰

Biculturalism is the basic dynamic of New Zealand because the tangata whenua is the base culture. Those people that oppose that ideology try to diffuse it by talking multiculturalism. Their experience of multiculturalism is ethnic food.

5.49 This perspective was supported by the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous Peoples, James Anaya, who commented in 2010 that:¹¹⁹¹

... the principles enshrined in the Treaty of Waitangi and related internationally protected human rights must be provided with constitutional security ... the Treaty's principles appear to be vulnerable to political discretion, resulting in their perpetual insecurity and instability.

5.50 *The New Zealand Herald* has reported Senior Ratana leader Ruia Aperahama's fears that the Māori vote may lose “its mana as more foreigners are welcomed into the country”.¹¹⁹² It seems that, while some New Zealand Europeans may be worried by the increasing numbers of Māori, Pacific and Asians, some Māori are worried about the democratic consequences of this demographic transformation on the strength of the Māori vote. Māori are increasingly calling for the Treaty to be better protected in New Zealand's constitutional framework to ensure that, despite the predicted demographic change, the special status of Māori in New Zealand remains.

5.51 Superdiversity may create the “problem” which generates the will for supreme law by creating a coalition of interests between elements of Māori and the New Zealand European populations, both fearing that fundamental Māori and Kiwi values and culture will be overwhelmed by people who are not from here and may not respect the same rights and freedoms.

5.52 The Constitutional Advisory Panel, stated in its final report that:¹¹⁹³

The Panel had many conversations about the place of the Treaty within New Zealand's increasingly diverse population, and recommends further consideration of and conversations about a Treaty based multicultural future. This would include an inclusive conversation to clarify and recognise constitutional relationships and obligations. To this end, information and resources about the Treaty, te Tiriti would be an important element of the education strategy recommended earlier. This would be a conversation about developing a unique solution to our unique circumstances.

5.53 I am not of the view that better accommodating New Zealand's growing diversity requires constitutional entrenchment of minority rights, but if we adopt a supreme written constitution which includes the Treaty, the NZBORA and the Constitution Act 1986, then s 20 of the NZBORA, which affirms the rights of minorities, will give supremacy to those rights.¹¹⁹⁴ Minority rights would still not take precedence over Treaty rights in this scenario, but they would need to be considered more than they are now. The ethnic focus of government is still predominantly on the Treaty and Māori, as it should be, with some concern for Pacific underachievement, and little focus on other ethnic minorities.

Greater Challenges to Social Capital

5.54 New Zealand's demographic transition may create greater challenges to social capital as Māori and Asians compete for resources and political priority. Māori, Asians, Pacific and other visibly different ethnic groups have a shared experience of discrimination, but more needs to be done to ensure that the diverse do not themselves discriminate against one another.¹¹⁹⁵

5.55 A 2011 survey conducted on behalf of the HRC showed that 76 per cent of New Zealanders consider that Asians are discriminated against more than any other group.¹¹⁹⁶ The next most discriminated against were Māori and then Pacific peoples. This creates what Gendall and others describe as a “curious mix” of opposing economic competitors and empathy with respect to Māori attitudes towards Asians.¹¹⁹⁷

5.56 Recent findings from the New Zealand Attitudes and Value Survey indicate that New Zealand perceptions of Asians are slowly improving.¹¹⁹⁸ The survey is a 20-year longitudinal study into “social attitudes, personality and health outcomes”.¹¹⁹⁹ It was launched in 2009 by Dr Chris Sibley of the University of Auckland. As part of the survey, 5,000 New Zealand-born residents were asked to rate their warmth towards Asian people from one to seven.¹²⁰⁰ The average score rose from 4.3 in 2009 to 4.5 in 2014. Drawing upon the results, Nicole Satherley, a University of Auckland researcher, noted that up “until the end of 2010, the level of warmth was relatively stable, but from that point we saw a general increase”.¹²⁰¹ Dr Sibley opined that the growing warmth towards Asians may be attributable to increased interaction between Kiwis and Asians as the latter become increasingly part of New Zealand society. The more contact people have with Asian immigrants, the more positive their attitudes are towards them.¹²⁰² Another contributory factor may be decreased competition for jobs in the post-recession economy.

5.57 However, an Asia New Zealand Foundation report on New Zealanders’ perceptions of Asia and Asian peoples between 1997–2011 found that:¹²⁰³

If New Zealanders’ attitudes to Asian immigrants have generally become more positive over time, there is a significant caveat. The attitudes expressed by Māori respondents have not. Particularly since 2000, Māori attitudes in the Asia New Zealand Foundation polls have tracked negatively, especially when it comes to economic issues (Asian economic contribution, taking jobs from New Zealanders) and social/cultural issues (adapting to New Zealand culture, mixing). The attitudes of Māori towards Asian immigrants have also been the subject of comment in other attitude surveys. For example, a 2010 Department of Labour report notes that “Māori were most likely to disagree with positive statements about immigrants and most likely to agree with negative statements”.

5.58 This finding was confirmed in a recent report which sought to explore this issue by seeing whether these findings were affected by other independent variables. The results confirmed that:¹²⁰⁴

Māori are 50% less likely to support Asian immigration than non-Māori, even when income (and other independent variables of gender, age, level of contact, born in New Zealand, live in or out of Auckland) is taken into account. Since education and income are highly correlated, we can say that this “ethnicity” effect is just that, and is not an artefact of income or education.

5.59 As explained by Butcher and others with respect to the negative perception of Asians held by Māori:¹²⁰⁵

On one level, this finding seems contradictory: the links between Māori businesses and Asia are growing significantly as iwi and Māori organisations seek to develop closer trade connections with Asian countries. However, at another level, these attitudes reflect an economic reality that has had disproportionate impact on Māori, namely, the neoliberal reforms ... The economically driven concerns of Māori can be seen in the poll data concerning immigration, though there is also a concern with cultural identity and the growing connections between New Zealand and Asia.

5.60 The reasons for this more negative perception by Māori of Asian immigrants may include:

- a. A perception that Asian immigrants do not adequately acknowledge the Treaty of Waitangi, and anxiety about prioritising multiculturalism over biculturalism;
- b. A concern that Asian cultures and languages compete for attention and resourcing with tikanga and Te Reo Māori (see the discussion at [3.113] in regards to a national language policy);¹²⁰⁶
- c. A lack of coalescence between Māori and new Asian migrants (in contrast, Pacific peoples share Polynesian identities with Māori, and Pacific peoples have traditionally aligned themselves with Māori on a number of political issues);¹²⁰⁷
- d. The instability of the unique status of Māori in law as the country transitions from biculturalism to multiculturalism;¹²⁰⁸

- e. A perception of greater competition for employment, social welfare and political power between recent Asian arrivals and Māori;¹²⁰⁹ and
 - f. Concern about Asians buying up New Zealand houses and land (see the discussion at [2.363]).¹²¹⁰
- 5.61 These concerns are exacerbated by the fact that some Māori are already socio-economically disadvantaged in New Zealand.¹²¹¹ There is evidence that perceptions of “relative deprivation” motivate prejudice and outgroup hostility.¹²¹² Fifty-two per cent of Māori leave school without NCEA Level Two, and the Māori unemployment rate (as at March 2015) is more than double the general New Zealand unemployment rate at 12.6 per cent.¹²¹³ Māori are over-represented in industries, occupations and regions that are more vulnerable to recessions,¹²¹⁴ and tend to have lower levels of financial literacy than other ethnic groups.¹²¹⁵ Māori are also greatly over-represented in the prison population, making up over 50 per cent of the prison population, despite comprising only about 15 per cent of the general New Zealand population.¹²¹⁶
- 5.62 Asian migrants, on the other hand, tend to be better educated and wealthier than local-born New Zealanders, particularly Māori. Of Māori people over the age of 15, 10.08 per cent have a Bachelor’s degree or higher, compared with 30.99 per cent of Asian people.¹²¹⁷ This is, in part, due to New Zealand’s immigration policy, which generally only grants entry to skilled migrants and business investor migrants with greater capital to invest (see [2.100] and [3.3] for further discussion).¹²¹⁸ New Zealand’s migrants also often come from highly competitive societies which greatly value educational achievement. The result, however, is significant disparity between the socio-economic positions of Māori and Asians in New Zealand – a disparity which is likely to increase by 2038.

Need to Survey Attitudes towards Migrants

- 5.63 Ultimately, this indicates the importance of continuing to survey New Zealanders’ perceptions of migrants to see whether Māori still hold a more negative view of migrants than the rest of the population and, if so, the reasons for this. At present, the New Zealand General Social Survey (NZGSS) (conducted every two years by Statistics New Zealand) provides information on the well-being of New Zealanders aged 15 years and over, and in particular provides a view of how well-being outcomes are distributed across different groups (including ethnic groups) within the New Zealand population. Discrimination is one measure of well-being. The Government does not, however, at present gather comprehensive data on New Zealanders’ perceptions towards particular ethnic groups and/or migrants.
- 5.64 In the past, research on New Zealanders’ perceptions of Asians and Asian New Zealanders has been commissioned by the Asia New Zealand Foundation,¹²¹⁹ but it is important that the Government ensures that this data is regularly collected to enable perceptions and attitudes to be tracked, and to inform policy.
- 5.65 This data can then be used to inform policy, including immigration policy to ensure that social capital remains high and to avoid a breakdown in race relations.

Need for Improved Civics and Historical Education for Migrants

- 5.66 We need to educate new New Zealanders about the Treaty and the unique status of the indigenous people, but we also need to educate Māori and the New Zealand European population about the benefits of migration and the rights and protections our laws afford minority language, religion and culture.
- 5.67 Better civic education (inter alia) to new migrants should include information about New Zealand’s history, political system and constitutional framework, including the constitutional status of the Treaty of Waitangi and the status of indigenous people and of Te Reo Māori as a national language of New Zealand.¹²²⁰
- 5.68 At present, new citizens are not required to undergo a programme to ensure that they understand the constitutional and political history of New Zealand. Pursuant to s 8(1) of the Citizenship Act 1977, to receive citizenship by grant, a person must satisfy the Minister

of Internal Affairs that they know the responsibilities and privileges of citizenship. According to the Department of Internal Affairs' ("DIA") policy:¹²²¹

To clearly fulfil this requirement ... the applicant must correctly sign the citizenship application form, thereby confirming they understand the responsibilities and privileges of New Zealand citizenship.

5.69 In signing the declaration, a person does not need to have (or undertake to acquire) an understanding of New Zealand's constitutional and political history. Permanent residents (who can vote in New Zealand) are also not required to undergo a civics education programme prior to obtaining permanent residency.¹²²² An increasing number of children of new migrants (including migrants granted citizenship under s 8 of the Citizenship Act) are likely to be New Zealand citizens automatically, either by birth or descent. Of course, they are equally unlikely to undergo a programme to ensure that they understand the constitutional and political history of New Zealand unless it is delivered as part of their schooling.

5.70 As noted at [5.24], civics education is not a compulsory subject or course at school. According to the International Civic and Citizenship Education Study conducted in 2008/2009, New Zealand's approach in this respect is unlike 21 of the 38 countries that took part, for which civic and citizenship education is a compulsory general education subject or course. The study found that:

- While a majority of students overall (nearly two-thirds) agreed or strongly agreed with the personal importance of the Treaty of Waitangi, Māori students were more likely to (84 per cent), and Asian students were the least likely to (53 per cent).¹²²³
- "Native" students (that is, those who were born in New Zealand and have one parent also born here) had significantly higher achievement scores on average than students with an "immigrant" background. However, New Zealand-born Pacific and Asian students tended to have higher civic knowledge scores than their overseas-born counterparts.¹²²⁴
- Home language was identified as the likely key factor contributing to lower average achievement among students with an immigrant background in the study. A third of New Zealand's immigrant students did not speak English at home, and their mean civic knowledge score was significantly lower than that of immigrant students who spoke English at home.¹²²⁵

5.71 There is significant support for better civics education throughout New Zealand. The Constitutional Advisory Panel found:¹²²⁶

... almost universal support for better education and more accessible information about our constitutional arrangements and how decisions are made. People felt the education system does not adequately prepare citizens to fully participate in conversations about our constitution or to assess whether state action is "constitutional".

5.72 The Constitutional Advisory Panel published a set of information resources about New Zealand's existing constitutional arrangements. It also commissioned a set of teaching resources to support teachers in using the information resources, and teachers are encouraged to integrate them into their teaching. The teaching resources are linked to the level five social studies curriculum.¹²²⁷

5.73 The Government should, however, implement a civics and historical education programme for new citizens to promote the successful integration of new New Zealanders. For new citizens in particular, it should be a requirement to learn about the Treaty and the basics of our political system. We need to improve citizens' cultural intelligence: new New Zealanders with different cultures will have different core values, but by educating new migrants we can draw on their "flex", that is their capacity to accommodate difference.¹²²⁸

Changes in Ethnic Identification, Values and Culture due to Inter-marriage and Cultural Evolution

5.74 Challenges to social capital may be overcome by greater trade, business and increasing rates of inter-marriage between Māori and other ethnic groups.¹²²⁹

5.75 Greater ethnic diversity and the tradition of Māori intermarriage (discussed further at [1.38]) may dilute an “us and them” mentality and lead to a cultural evolution in terms of ethnic/cultural identity. This raises the question of what impact this cultural evolution will have on Māori culture and on race relations.

Recommendations

- New Zealanders’ perceptions of migrants should be surveyed regularly in order to gauge whether attitudes are becoming more positive, particularly among Māori.
- The Government needs to communicate to Māori and New Zealand Europeans the benefits of migration, and the rights and protections our laws afford minority language, religion and culture.
- The Government should implement a civics and historical education programme for new citizens and permanent residents to promote the successful integration of new New Zealanders. New citizens and permanent residents should also be required to learn about the Treaty and our political system, and the importance and mechanics of voting.

Key Point Four: New Zealand Needs a Formal Multicultural Policy on a Bicultural Base

5.76 The Government needs to consider responding to New Zealand’s growing diversity by formally recognising New Zealand as a multicultural society on bicultural foundations. See [4.117] for discussion of how the adoption of such a policy may be supported by s 20 of the NZBORA. The Treaty of Waitangi and the indigeneity of Māori must still be given constitutional status; but the “Crown” is now superdiverse. This requires more understanding and responsiveness to the different needs, views and culture of other major minority ethnicities. The formal policy will ensure departments systematically consider issues raised by superdiversity and provide resources to implement measures.

5.77 The ethnic focus of government is still predominantly on the Treaty and Māori, as it should be, and a concern with Pacific underachievement in education and the workforce.¹²³⁰ What needs to change is a broader focus on other ethnic minorities as they reach critical mass, especially in our largest city, Auckland, and in the health, IT and farming industries in particular.

5.78 This will require looking beyond the common juxtaposition of biculturalism and multiculturalism.¹²³¹ Gendall and others suggest:¹²³²

... [a] possible platform for the development of a policy of multiculturalism, provided it is compatible with both the notion of a common core culture for New Zealand society and the concept and practice of biculturalism supported by Māori.

5.79 Balancing the rights and interests of the indigenous and other minorities, especially when they together start forming a majority of New Zealanders, will be challenging.

5.80 In a series of workshops held this year in various forums, including in schools and local councils, while most participants considered that biculturalism and multiculturalism were not in competition and could operate in tandem, others considered that there were tensions between the two approaches, with some arguing that many of the issues relating to biculturalism remained unresolved and needed to be addressed before we can progress to multiculturalism.¹²³³ The Hon Te Ururoa Flavell agreed when interviewed that some within Māoridom were still focussed on ensuring the issues with the bilateral model were resolved, though he acknowledged the need for a formal multicultural policy to be developed.¹²³⁴

5.81 The issue is that the need for a multicultural policy is pressing – New Zealand is already superdiverse now, and the challenges are already presenting themselves, limiting the ability to sequence our diversity focus. There is an assumption that these issues will sort themselves out over time but, as emphasised by Mr Flavell, there is a need for an open

dialogue on these issues, so that tensions are not left unresolved to in turn undermine social capital. Competition between minorities is a significant risk to effective social integration.¹²³⁵

5.82 The final Constitutional Advisory Panel acknowledged in 2013 the special status of Māori in its final report, identifying Māori as the tangata whenua of Aotearoa New Zealand, and acknowledging the Treaty as providing the original legal basis for the right to live in this country.¹²³⁶ The report also explained, however, that New Zealand has become the home of many other cultures. The Panel received many submissions that highlighted concerns that the different histories in New Zealand may “privilege” some groups over others.¹²³⁷ As New Zealand becomes more diverse, this sentiment may increasingly lead to a “divide and rule” viewpoint as between Māori and other ethnic groups.

5.83 According to the 2015 Global Peace Index published by the Institute for Economics and Peace, New Zealand is the fourth safest country in the world to live. Among the factors identified as the reason for our high ranking was New Zealand’s “relative race harmony”.¹²³⁸

5.84 To help maintain New Zealand’s high ranking in this regard we need, as part of a formal multicultural policy, to:

- a. Predict where the racial tensions will come from;
- b. Survey and monitor to find out where tensions are building up and where more needs to be done;
- c. Help new New Zealanders better understand Kiwi and Māori culture and values;
- d. Ensure organisations like the HRC are well equipped and adequately funded to enforce anti-discrimination laws and protect and promote respect for, and observance of, human rights;¹²³⁹
- e. Provide more programmes to assist migrants to get jobs, like the Victoria University of Wellington Migrant programme;¹²⁴⁰
- f. Communicate about the contribution that migrants make to New Zealand; and
- g. Provide cultural intelligence programmes to public agencies and business.

Recommendation

- New Zealand needs to develop a formal multicultural policy on a bicultural base to ensure that all arms of government have a consistent and coherent response to the challenges of superdiversity, and authorisation to resource the necessary initiatives. The need for a multicultural policy is pressing – New Zealand is already superdiverse now, and the challenges are already presenting themselves, limiting the ability to sequence our diversity focus.

Key Point Five: The Public Sector Needs to Build Capacity to Respond to Superdiversity

5.85 New Zealanders are the customers of the public sector. The people who are servicing New Zealanders in terms of law and policy need to reflect the changing demographic makeup, values and expectations of New Zealand society due to superdiversity. Law and policy makers need to reflect the cultural evolution New Zealand is undergoing in order to cater for its customers’ diverse needs.

5.86 The Hon Bill English said that the Government is serious about getting better results for “customers”. The word “feels a bit uncomfortable because it implies someone who might have an opinion about the Government’s service, or might want a choice, or might have aspirations of their own that don’t suit us”.¹²⁴¹ The Hon Paula Bennett has also talked about incentivising a citizen-centred approach to delivery and accelerated cross agency/joint ministerial work serving the people.¹²⁴²

5.87 One key consideration is ensuring that central government initiatives, which are developed in Wellington, properly address the needs of Auckland's superdiverse population, as is discussed at [1.9] in the case study on Auckland. Doug McKay's *Review of Central Government Policy, Implementation, Strategy and Leadership Effectiveness in Auckland* concluded that "the time has never been better for government to apply senior leadership to priorities for which Auckland is pivotal to achieving national outcomes".¹²⁴³ In order to facilitate this, McKay recommended that an additional senior role should be established to provide oversight over collaborations between Auckland and Wellington.¹²⁴⁴ This recommendation has been implemented, with the appointment of Lewis Holden to the newly-created role of Deputy Commissioner of the State Services Commission on 13 March 2015, a role based in Auckland.¹²⁴⁵ State Services Commissioner Iain Rennie said that the appointment was the:¹²⁴⁶

... first step to the state services engaging more effectively with Aucklanders to better understand what they need from us and how they need us to deliver it. Auckland is the social and economic centre of a rapidly changing New Zealand and we need the state services to be thinking, organising and operating differently if we are to play a part in realising the potential of what is now one of the world's most diverse cultural cities.

5.88 Agencies need to consider in greater depth how to interface with superdiverse citizens, and how to communicate with them, consult with them and meet their needs, taking account of their different culture and values. The exercise is about building trust and not just passing on information. Agencies are still hesitant to acknowledge that in some circumstances it is appropriate to treat different ethnicities differently. One size does not fit all. A purportedly "colour-blind" approach to employment, engagement, education or enforcement can reflect unexamined assumptions which lead to unintentional indirect discrimination. The issues facing the public service as it adapts to New Zealand's superdiversity are exemplified in the following case study.

· · · Case Study: New Zealand Asian Leaders Roundtable for Asian Public Servants

· · · 5.89 On 25 June 2015, NZAL held a roundtable for Asian public servants. The discussion focussed on making the public service fit for the future given that Auckland is already superdiverse.

· · · 5.90 Successful, high-ranking Asian civil servants of the sort who participated in the NZAL Roundtable are role models of the value and influence a public service career can have, and can encourage those thinking of joining, or coming through the pipeline, that success is possible.

· · · 5.91 At the Roundtable, a survey was distributed to the junior public servants who attended. The survey asked:

- · · a. What are the main challenges for the public sector as a whole, or in your public agency, in getting better results in terms of the Performance Improvement Framework ("PIF") measurements?
- · · b. What needs to change in the public sector as a whole, or in your public agency, to secure better diversity outcomes?
- · · c. Do you have any suggestions as to policies, mechanisms or law changes which could be adopted to help the entire sector or your public agency develop internal capability to respond to the challenges of the new superdiverse New Zealand, or the capability to engage externally with customers, clients or other members of the public?
- · · d. Do you have any other views on the unique contribution which Asian public servants can make?

· · · 5.92 Respondents agreed that more concrete action was required from public agencies on diversity matters:

- . . *The public sector needs to do more of the “doey” and less of the hui – there is a lot of talk about diversity – not enough action. One key action is the PIF – need to make sure that recommendations are followed up.*
- . . *Need a free and open discussion on recognising the institutional racism within the Ministry. Overtly senior management talk the talk but they don’t walk the walk and privately admit they don’t really care about diversity.*
- . . *More willingness to canvass diverse views and to actually value this and do something with it.*
- . . *Having more confidence in the process – a mass of numbers.*
- . . *We are very monocultural. We need to do more than lip service on Treaty of Waitangi and diversity. We need to reach out to wider communities and consider delivering services to a diverse community.*
- . .
- . . 5.93 Respondents also agreed that more could be done to recognise and understand the unique contribution that Asian public servants could make:
- . . *Asian public servants bring a richness to the culture around teamwork, family values, love of learning, hard work and real expertise. All these are required for New Zealand to be culturally agile.*
- . . *[Asian public servants’] contribution is as valuable as everyone else’s – valuing it is what matters. If we don’t understand it, or think the Asian contribution is only a wider variety of restaurants, it’s a narrow understanding of diversity.*
- . . *Ensure managers understand how to utilise Asian staff. We are not here to just do translation, or even here to work hard. We are that familiar face and champions of diverse understanding with our migrant perspective.*
- . . *We might not have visited our Asian homes as many times as our colleagues who work in overseas markets, for example, but our cultural values and understanding goes deeper. I still struggle with an organisation which treats people who have been overseas for two years as experts, when we have colleagues who have lived the culture their entire lives.*

Public Agencies Need to Do More as Employers to Attract Ethnic Minorities and Migrants

- 5.94 As noted at [1.128], Pacific peoples are under-represented in the public service in proportion to the general population and are rarely found in senior management.¹²⁴⁷ There are 8.2 per cent of Asian public servants (compared with 12.5 per cent in the working-age population) and only 2.4 per cent Asian officials in senior management.¹²⁴⁸ Similarly, Pacific peoples make up 8 per cent of the total public sector workforce and only 1.8 per cent of senior leadership (see the Stocktake of public agencies for breakdowns of ethnic employees for individual departments and agencies).
- 5.95 Fostering a workforce and senior leadership team that reflect the superdiversity of contemporary New Zealand is essential for public agencies to effectively carry out their functions, and cater to the needs of their customers, citizens, clients and stakeholders.
- 5.96 There is a feedback loop between an agency’s internal capability to respond to the diversity transition and its capability to engage with ethnically and culturally diverse clients, customers or stakeholders. Agencies which are perceived as unfriendly to the diverse will struggle to attract diverse applicants, and vice versa.¹²⁴⁹ Many within ethnic and migrant communities see working in the public service as a second-rate career, behind the private sector, which limits the public service’s ability to attract top superdiverse talent. For example, Asian candidates are often discouraged by their families from entering the public service, in part based on the perception of the government in their country of origin.
- 5.97 There are already talented diverse public servants in the public service, mainly in the bottom half of most organisational hierarchies, with a few notable exceptions.¹²⁵⁰

The best way for departments and public agencies to access the right cultural networks and identify suitable diverse prospective employees is through existing diverse staff and their networks. The public sector should reflect the ethnic superdiversity of contemporary New Zealand because people invariably feel a deeper affinity with people and organisations that look like them and share their experiences. If New Zealanders do not feel that the public service reflects them, then over time, trust and confidence in the public service may be eroded.

5.98 Employees not born in New Zealand have different culture and values and language, and therefore have the cultural intelligence to build government capability to understand and service the needs of all New Zealanders.

5.99 Public sector employers already have additional obligations towards their staff to those under the ERA and other specific employment statutes.¹²⁵¹ For chief executives of government departments, this includes a requirement that they operate a personnel policy that complies with the principle of being a “good employer”.¹²⁵² This requires the department's personnel policy to give recognition to the aims, aspirations, employment requirements and cultural differences of ethnic or minority groups.¹²⁵³ Equal employment opportunities programmes aimed at eliminating barriers that perpetuate inequalities in respect to the employment of any person or group of persons must also be promoted, developed and reported on.¹²⁵⁴

5.100 However, ethnic diversity is not an end in itself. What is more important is that public sector staff are open to the ideas, perspectives and experiences of the diverse – not that organisations set and meet quotas for employing ethnically diverse staff at the expense of recruiting for talent.

Agencies Are Still Working Predominantly on Māori and Gender Diversity Issues

5.101 Many public agencies are still working through the ramifications of the Treaty relationship with Māori for their particular areas of responsibility. Only some have systemically thought through implementing measures to cater for the needs of other major minorities such as Asian or Pacific peoples. Agencies are also focussing on diversity issues around women, the disabled, and sexual identity and orientation.

5.102 Trans Tasman's *2015 New Zealand Government Department Briefing Report* says that the number of Māori senior leaders has risen from 8.3 per cent in 2010 to 12 per cent in 2015, and 44 per cent of senior roles are now filled by women and the average age is just over 44 years.¹²⁵⁵ It is not surprising that the improvements have come in the areas of departmental focus, that is on Māori and women.

5.103 While ethnic and cultural diversity is often acknowledged as an issue, the practical implementation of initiatives targeted to the needs of ethnic minorities and migrants to date has modest. There is also limited cognisance or work on doubly disadvantaged public servants and citizens such as coloured women (see [2.148] for discussion on the double disadvantage suffered by ethnic women).

Public Agencies Do Not Necessarily Understand the Business Case for Diversity

5.104 Most public agencies acknowledge, at least at a high level, that they should seek to foster a diverse staff. But they are not always clear on why they should do this, or how they should do it. High-level directions have often not been operationalised. There remains a perception that public agencies should seek to increase the ethnic and cultural diversity of their workforce solely for equity reasons (as discussed above at [5.99]), rather than doing so because fostering a workforce and senior leadership team that reflects the superdiversity of contemporary New Zealand is essential for public agencies to effectively carry out their functions, and to cater to the needs of their customers, citizens, clients and stakeholders.

5.105 Ethnically diverse organisations perform better than organisations that are not ethnically diverse, as ethnic diversity leads to diversity of thought, innovation, creativity, and productivity (see also the discussion at [2.84]). Many public officials not born here come from countries also with great ethnic diversity and social tensions, and have an understanding

of the importance of racial harmony, and that it cannot be taken for granted.¹²⁵⁶

5.106 An increased range of cultural and ethnic perspectives can help ensure that the public service treats everyone equally, even if in some circumstances that requires treating citizens differently. Improving ethnic diversity within the public service will help to reduce both the risk of unconscious cultural bias within the public service and indirect discrimination, by improving public service agencies' institutional cultural intelligence and agility. There does, however, need to be better training in cultural intelligence to guard against unconscious bias, as with the private sector (see the discussion at [2.234]). Otherwise, the metrics will not change and we will continue to have a public service that does not fully represent all New Zealanders.

Consultation with diverse communities during law and policy making process

5.107 Government also needs to consider the complex relationship between financial capital and social capital in areas such as immigration policy, overseas investment and international student policy.¹²⁵⁷ Apart from recruiting ethnically diverse staff, diversity is reflected in the public policy and law making processes through the requirement for government agency consultation with particular interest groups, communities and agencies. On the subject of government engagement with the public in the information age, State Services Minister, the Hon Paula Bennett, has remarked that "central to this focus has been driving the public sector to put New Zealanders at the heart of their thinking, constantly asking whether policy fits the needs of real people and not a set of processes or institutions in Wellington".¹²⁵⁸ For example, the OEC must be consulted on any Cabinet Papers about policies directed at specific population groups.¹²⁵⁹ TPK and MPIA were also set up to provide the Government with policy advice on issues relating to Māori and Pacific people, so that the perspectives of minority communities are taken into account in policy development.¹²⁶⁰ Likewise, the Regulatory Impact Analysis Handbook requires an analysis of the impact on particular population groups, though this rarely happens in practice.¹²⁶¹

5.108 Section 7 of the NZBORA also helps to ensure the rights of ethnic minorities are taken into account in law and policy development. This provision requires the Attorney-General to notify the House of Representatives of any provision in any Bill introduced into the House that appears to contravene the rights affirmed in the NZBORA. Section 7 ensures that legislation impacting upon fundamental rights and freedoms, such as the right to freedom from discrimination on the grounds of race or ethnic origin under s 19 of the NZBORA, is not enacted without proper consideration, and also ensures that NZBORA considerations are a key focus at the policy development and legislative drafting stages.¹²⁶²

5.109 In 2012, the OEC developed a best practice guide entitled *Ethnicity Matters* in order to assist government departments identify, plan and evaluate policies and services in order to ensure they are appropriate to ethnic communities. Although designed for policy work, the guide can be applied to a wider range of government work, for example:¹²⁶³

- Drafting laws and regulations;
- Developing strategies and initiatives;
- Assigning priorities and resources;
- Negotiating how services will be provided; and
- Implementing and administering the above.

5.110 The guide also recommends that policy makers utilise the frameworks developed by government agencies that focus on the needs of particular population groups, specifically TPK, MPIA, the Ministry for Women, the Office of Disability Issues, and the Office for Senior Citizens. For example, the MPIA has also developed specific consultation guidelines to help policy makers analyse public policy through a Pacific lens, with case studies to illustrate the application of the framework.¹²⁶⁴

5.111 The *Ethnicity Matters* guide is divided into three key steps:

- a. Compiling ethno-specific information;

b. Considering diversity and values; and

c. Consultation.

5.112 First, a sufficient amount of relevant ethno-specific information should be compiled throughout the policy development process to ensure policies are based on informed analysis. One consideration that should be borne in mind is that the information gathered should reflect the “nuances and differences within ethnic communities”. As discussed above at [1.78], the Asian community, for example, is not homogenous, and is comprised of a variety of subgroups, each with its own perspectives, needs and expectations.¹²⁶⁵

5.113 Second, policy makers should look at the policy issue from an ethnic perspective, again bearing in mind that diversity exists within different ethnic groups and that the broad values of an ethnic community may alter over time as members of the community integrate into New Zealand society.¹²⁶⁶

5.114 Finally, policy makers must ensure that they comply with the legal requirements for “effective consultation”; effective consultation with any ethnic community will hinge on whether trust has been established between the parties.¹²⁶⁷

Recommendations

- All government departments need to do more to develop in-house capability to understand and respond to the needs of ethnic minorities and migrants.
- The public service needs to represent contemporary New Zealand if it is to retain public confidence, and be relevant and effective.
- Public sector careers need to be made more attractive to ethnic minorities and migrants. Public agencies need to create an environment where these diverse officials can use their cultural backgrounds to make public departments and agencies more effective at carrying out their functions and duties to service all New Zealanders.
- Public agencies need to identify, plan and evaluate policies and services in order to ensure they are appropriate to ethnic communities, and to New Zealand's superdiversity.

Endnotes

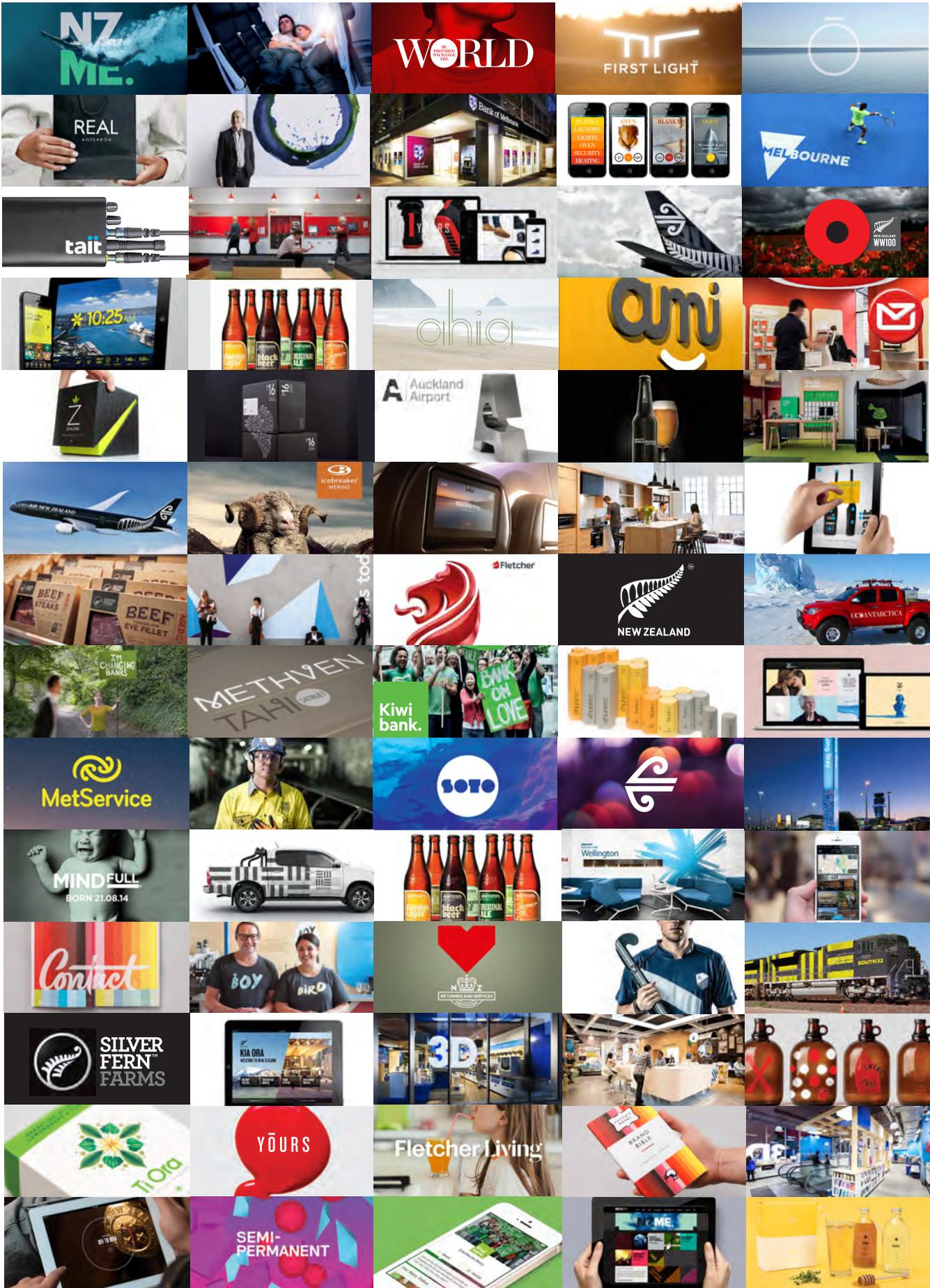
- 1121 See for example P Gendall, P Spoonley and A Butcher *New Zealanders' Perceptions of Asia and Asian Peoples: 1997–2011* (Asia New Zealand Foundation, October 2013). For discussion on discrimination against the diverse, see [2.123].
- 1122 This has been the case in the private sector. See [2.86].
- 1123 This limited view of diversity has also been an issue for business. See [2.165].
- 1124 For example, the Police's National Strategic Ethnic Advisor, Inspector Rakesh Naidoo, who was born in India, discussed his understanding gained in his workplace about the need to keep racial tensions under control. Our view is that he is key to the Police coming in at number one in the Stocktake of public agencies, at [5.139].
- 1125 See the recent movie called *Selma* about Martin Luther King and the white officials who used the need to answer questions showing knowledge of the US constitution as a way of keeping black citizens from being able to vote.
- 1126 Canada Elections Act 2000 (CA), s 155.
- 1127 See [1.66] for discussion of commonly spoken languages in New Zealand.
- 1128 City of Toronto Bylaw 1176-2009.
- 1129 Parliamentary Elections Act 1954 (SG), s 37; Presidential Elections Act 1991 (SG), s 20.
- 1130 The role of the Electoral Commission is covered in more detail in M Chen *Public Law Toolbox* (2nd ed, LexisNexis, 2014), ch 5, from which this section is adapted.
- 1131 Electoral Commission *Report of the Electoral Commission on the 2014 General Election* (2015) at ii and 51.
- 1132 Electoral Commission *Report of the Electoral Commission on the 2014 General Election* (2015) at [96].
- 1133 Communications with the Chief Electoral Officer, Electoral Commission, September 2015.
- 1134 Electoral Commission *Report of the Electoral Commission on the 2014 General Election* (2015) at [182].
- 1135 Electoral Commission *Report of the Electoral Commission on the 2014 General Election* (2015) at [122].
- 1139 Diversity Council Australia *Leading in the Asian Century: A National Scorecard of Australia's Workforce Asia Capability* (2015).
- 1140 See State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet *Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model* (January 2014) at 1.
- 1141 See State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet *Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model* (January 2014).
- 1142 See State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet *Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model* (January 2014) at 25.
- 1143 State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet *Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model* (January 2014) at 25.
- 1144 State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet *Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model* (January 2014) at 25.
- 1145 State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet *Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model* (January 2014) at 26.
- 1146 Email from Keith Marshall, Careers New Zealand, to Mai Chen regarding the Performance Improvement Framework review for Careers New Zealand (15 May 2015).
- 1147 Email from Keith Marshall, Careers New Zealand, to Mai Chen regarding the Performance Improvement Framework review for Careers New Zealand (15 May 2015).
- 1148 Email from Keith Marshall, Careers New Zealand, to Mai Chen regarding the Performance Improvement Framework review for Careers New Zealand (15 May 2015).
- 1149 Email from Keith Marshall, Careers New Zealand, to Mai Chen regarding the Performance Improvement Framework review for Careers New Zealand (15 May 2015).
- 1150 See the diversity dividend section on the implications of superdiversity for business at [2.84].
- 1151 Superdiversity Centre *Superdiversity, Democracy and Electoral Laws* (New Zealand Law Foundation, forthcoming).
- 1152 Interview with Glyn Walters, Manager Election Planning (13 March 2015).

- 1153 See M Slade "Auckland may get more politicians under council bid for law change" *Auckland Now* (online ed, 30 July 2015).
- 1154 For a discussion of the implications of superdiversity for the education system, see [3.53].
- 1155 Justice and Electoral Committee *Inquiry into the 2013 Local Authority Elections* (25 July 2014) at 5.
- 1156 Local Government (Auckland Council) Act 2009, s 81.
- 1157 Local Government (Auckland Council) Act 2009, s 81(a).
- 1158 Local Government (Auckland Transitional Provisions) Act 2010, s 86(1).
- 1159 Local Government (Auckland Transitional Provisions) Act 2010, s 86(5).
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- 1255 *Trans Tasman 2015 New Zealand Government Department Briefing Report* (2015) at 5.
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