

Superdiversity Stocktake

Implications for Business, Government & New Zealand

By Mai Chen



**SUPER
DIVERSITY
CENTRE**

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Government and New Zealand

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Chair, Superdiversity Centre
for Law, Policy and Business

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<i>King-Ansell v Police</i> [1979] 2 NZLR 531 (CA)	4.31 (Endnote 40), 4.89 (Endnote 918, 1006)
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<i>Lansmann v Finland</i> Comm No 511/1992, 26 October 1994 (UNHRC)	4.91 (Endnotes 1010–1011)
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<i>R v Cornelius</i> CA405/93, 12 November 1993	3.135 (Endnote 827)
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<i>R v Hansen</i> [2007] NZSC 7, [2007] 3 NZLR 1	4.58 (Endnotes 967–968)
<i>R v Lee</i> HC Auckland T10974, 3 December 2001	4.74 (Endnotes 984–985)
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<i>R v Pairama</i> (1995) 13 CRNZ 496, (1996) 2 HRNZ 464 (CA)	3.135 (Endnote 827)
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<i>Religionsgemeinschaft der Zeugen Jehovas v Austria</i> (40825/98) Section I, ECtHR 31 July 2008	4.70 (Endnote 981)
<i>Rojas v Berllaque</i> [2004] 1 WLR 201 (PC)	3.135 (Endnote 827)
S	
<i>Satnam Singh v Shane Singh and Scorpion Liquor</i> (2006) [2015] NZHRRT 8	4.31 (Endnote 918)
<i>Seales v Attorney-General</i> [2015] NZHC 1239	4.95 (Endnote 1019)
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T	
<i>Tahaafe v Commissioner of Inland Revenue</i> HC Auckland CRI-2009-404-102, 10 July 2009	4.143 (Endnote 1101)
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U, V	
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*Dedicated to Jack Chen-Sinclair,
The face of New Zealand's future*

Foreword

Former New Zealand Prime Minister, and current United Nations Development Programme Administrator, Helen Clark, said in delivering this year's Commonwealth Lecture that 2015 was a good time for countries to be "resetting compasses".

In recent months, the results of New Zealand's 2013 Census have been published, and followed by many pieces of work describing present New Zealand demography and noting particularly the considerable and recent rise in numbers of new Asian and Pacific New Zealanders.

Now comes this latest book by well-known public lawyer and author, Mai Chen, with a central thesis that many entities could do a great deal more to face what is termed superdiversity. Superdiversity occurs when a significant percentage of the community are from overseas and when suburbs and workplaces, to take two examples, show this in their makeup. The book argues that there would be economic benefits from catering for this new set-up in a better way, such as higher levels of employee productivity and innovation, and a boosted demand for goods and services sought by new New Zealanders.

In the course of the last 250 years, New Zealand's population mixture has seen a number of significant changes. In Captain Cook's time, the original Māori population numbered 100,000. That diminished to some 70,000 by the time of the signing of the Treaty of Waitangi and, following the disruption of that century, went as low as 42,000 by 1896.

It is a tribute to the spirit of New Zealanders that 100 and more years on from that troublesome time of upheaval, the Māori dimension can be said to be front and centre in the New Zealand way of life, with that being evidenced in governmental and community cultural expression, and recognition of the Treaty of Waitangi. The national anthem is sung in Māori first and then in English, and many government and civic organisations readily express who they are in both languages.

A question being posed is whether our country has the capacity to deal with an increasingly diverse future. Former UN Secretary General, Kofi Annan, said after a visit to New Zealand a little over a decade ago that New Zealand is one country that works “not without problems but with solid frameworks of law and trained personnel to deal with those problems.”

Based on the most recent 2013 Census, New Zealand’s 4.3 million population retains a European majority of nearly 75 per cent, but with active growing sub-groups of Māori (700,000), Pacific peoples (340,000), and Asians (540,000). The book focuses on minorities and processes of government and business in dealing with their everyday lives. Hence arises the title of the book, which is a stocktake.

This book will inform and generate debate and rejoinder, starting with whether we have indeed reached a stage of superdiversity and will the inclusive New Zealand way of life, which our new arrivals join and embrace, be able to deal with what is called for. The future will be a test of Kofi Annan’s compliment. The book addresses a number of areas, from immigration to voting, from health procedures to various business settings, and provides evidence, states issues and makes recommendations. Future and periodical additions are promised.

This foreword ends with the same challenge used by the Royal Society in its 2015 study of the most recent Census Results called *Our Futures: Te Pae Tāwhiti*. It is expressed by Sir Mason Durie, and says “Ko te pae tata, whakamaua kia tīnā. Ko te pae tāwhiti, whaia, kia tata”. Translated, that means “Secure the horizons so that they may become close”, or more succinctly, “Manage today and shape tomorrow”. New Zealanders may be interested to consider this and this book is an excellent start.

Sir Anand Satyanand, Patron of the Superdiversity Centre for Law Policy and Business and Former Governor General of New Zealand, Judge and Ombudsman.

“New Zealand is at a race relations crossroads. As well as one of the most rapidly changing, ethnically diverse nations on earth, we also live in one of the most peaceful. If we fail to understand, plan for and make the most of diversity then opportunities will be lost and our future will be put at risk. As a changing nation we urgently need insight, leadership and courage from our statesmen and stateswomen, as well as our business and community leaders. Crossroads are about choices, if we don’t plan for our future now we leave our future up to chance. Mai Chen’s Superdiversity Stocktake is quite simply leadership in action, it’s the kind of tool Kiwi decision makers will need as they chart our nation’s next 200 years.”

Dame Susan Devoy,

New Zealand Race Relations Commissioner

“Mai Chen’s Superdiversity Stocktake will undoubtedly attract considerable attention. The wealth of evidence she presents from interviews, surveys and research is impressive and the report makes some very timely recommendations. The Stocktake highlights the immense demographic changes that have occurred in Auckland and other parts of New Zealand, the policy and legal issues that arise, and the need for new approaches from government and business leaders. It makes for compelling reading.”

Professor Andrew Stockley,

Dean, Faculty of Law, University of Auckland

Preface

I shifted to Auckland in 2012 because, although I could see the demographic disruption from Wellington, I wanted to be up close and personal, living here and practising public and employment law in Auckland, to understand the gap in analysing the legal and policy challenges and implications of superdiversity for government, as well as the advantages to and implications for business. So, after five years writing two editions of my book *Public Law Toolbox*, the *Superdiversity Stocktake* is my next contribution to the country I immigrated to as a child.

I do not believe the status quo is sustainable; there can be no “business as usual” when the nature of New Zealand society is changing rapidly. It is clear that superdiversity, and its benefits and challenges, are here to stay. Many agencies, organisations and businesses are enjoying the diversity dividend from superdiversity. But investment is now needed to keep that diversity dividend high and sustainable because New Zealand’s superdiversity has reached a critical mass; never before has New Zealand had living here such a large number of people who were not born here, and this puts us in a small group of nations. We have crossed the Rubicon. It is important that we understand what the demographic statistics show us and understand that the diversity dividend will not continue if we do not invest and remain responsive to New Zealand’s cultural evolution.

It is also critical to take the perspectives of the superdiverse – Asians, Pacific peoples and other ethnic minorities, as well as indigenous people – into account in discussing these issues. When I was six years’ old, I migrated with my family from Taiwan to Christchurch, and then moved to Dunedin when I was eight years’ old, so I have personally experienced the challenges as one of the ‘1.5 generation’ (those who migrate with their parents between the ages of six and 18). My dad was an ace Olympics gymnastics coach and he was headhunted to train

the New Zealand gymnastics team. I believe that an understanding of the challenges faced by the superdiverse is what has been largely missing from the discussion of superdiversity to date, and also an understanding that their cultural intelligence and knowledge of different cultures and languages are needed to bridge the gap.

That said, I have been delighted that the public and private sectors have taken many more steps in response to New Zealand's superdiversity than I expected. Even though many are new to the journey, they understand the importance of embarking on it. In my view, having committed to a superdiverse future New Zealand, the government needs to adopt and implement a formal multicultural strategy on



Photo of the Chen Family being naturalised in 1975 to become New Zealand citizens. From left to right: Professor Peter Chen, Sir James Barnes (then Mayor of Dunedin), Mrs Jean Chen, Mai Chen (the youngest of the four daughters), eldest sister Annie Chen-Green (nee Chen), third sister Angel Nicholson (nee Chen) and second sister Mindy Chen-Wishart (nee Chen).

a bicultural base. This will give New Zealand's superdiversity official acknowledgement and status, and will provide a systematic basis for resource allocation and strategic development to ensure the diversity dividend is kept high.

As a public lawyer and policy specialist of almost 30 years standing, I have learned that the evidence is always the

key. This Superdiversity Stocktake gathers the evidence so all New Zealanders can read it and assess for themselves what is happening to their country and what we need to do to ensure it remains economically strong and racially harmonious – and to ask how do we want this country to be and to help shape our own future.

Mai Chen
September 2015

Superdiversity Stocktake

Implications for Business,
Government and New Zealand

Scope

The inaugural edition of the Stocktake will focus on issues of particular relevance to the Asian population and Asian migration. While much has been written on the experience of Māori, and on gender, there is a gap in systematically analysing the experience of Asians, the biggest non-indigenous minority group in New Zealand. The second edition of the Stocktake, to follow periodically, will focus more on the Pacific population and Pacific migration, of which there is also little written. Likewise, I have only touched on the experience of refugees and asylum seekers, which is generally very different from that of other migrants. Rather, the inaugural Superdiversity Stocktake focuses on the majority of migrants – who do not fall into these categories.

Refugees and asylum seekers generally come to New Zealand with few belongings and resources, and they may not have skills and experience that are easily transferable to the New Zealand labour market, in contrast to migrants who come to New Zealand through the skilled migrant, investor and entrepreneur categories. Accordingly, refugees and asylum seekers will generally require additional support services and assistance compared to other migrants in order to integrate successfully into local communities.

The intention is that the information contained in the Stocktake will be reviewed periodically to ensure statistics and material are kept accurate and up to date as further research and initiatives are developed and implemented. This ensures that businesses, departments and New Zealanders wanting to become fit for the future will always have the best information to draw upon, especially as superdiversity is rapidly evolving and changing our country.

If we have omitted any relevant research, surveys, analysis or studies on superdiversity that should have gone into this Stocktake, please get in touch and we will endeavour to ensure it is in the next Stocktake.

The predominant focus of the Superdiversity Stocktake is on the legal, public policy and business challenges of superdiversity and the extent to which government has the capacity to meet those challenges to maximise the benefits of migration and ethnic diversity. A global review of the mainly academic literature on superdiversity indicates that the literature has tended to focus on tracking the demographic and sociological changes of New Zealand's superdiversity, with limited consideration of the implications for public policy makers. Although there has been some consideration of the challenges for ethnic minorities and migrants in the labour market (particularly entrepreneurial migrants), these studies have so far been small scale. The Ministry of Business, Innovation and Employment is also currently doing some important research on investor migrants, the skilled migrant category and the exploitation of migrants in the labour market.⁵

Little has been written on the impact on government. There is also a gap in analysing the legal and business and policy implications of New Zealand's superdiversity. The purpose of the Superdiversity Stocktake is to fill these gaps and set out best practice so that business, government and New Zealand can be fit for the future. The aim is to encourage businesses to leverage off New Zealand's diversity to enhance their business bottom line, to ensure government understands the challenges that superdiversity poses so it can keep social capital high to keep financial capital flowing into New Zealand. The Stocktake does, however, cite the important work on demographic and sociological changes already done. For example, Professor Paul Spoonley has written extensively on the demographic ramifications of superdiversity. Spoonley examined New Zealand's transition to a superdiverse society through a "nation-building project" centred on mass migration and skills-focussed immigration policies, noting that diversity in New Zealand is characterised by a significant indigenous population and increasingly diverse immigration flows.⁶

Several studies have examined public attitudes towards immigrants and diversity. The findings have been mixed, although several studies indicate that on the whole the New Zealand public has a positive attitude towards immigrants.⁷ Earlier surveys revealed negative attitudes towards immigration from non-traditional sources such as Asia and the Pacific Islands.⁸ Attitudes

towards immigrants also vary from ethnicity to ethnicity, with Māori reporting a greater sense of concern about immigration.⁹ To date, studies about public attitudes towards immigrants have been published on an ad-hoc basis.

Sara Hansen is currently undertaking qualitative research at Victoria University of Wellington on how cultural identities and diversities (differences) develop in New Zealand's superdiverse society.¹⁰ Her research examines how people in an everyday multicultural context identify themselves and others, and how culture and/or ethnicity are relevant in such processes of identification. It also asks how people navigate cultural politics in everyday situations (for example, how people react to racial and/or ethnic discrimination), and how an ethnographic account of multiculturalism is reflected in the current political approach to cultural diversity in New Zealand.

There has been some discussion of the phenomenon of “ethnoburbs” as a corollary of the increasing demographic diversity of New Zealand, especially in Auckland, as is discussed at [1.83]. Professor Spoonley and Dr Carina Meares have examined the emergence of Asian business precincts in Auckland, focussing on purpose-built and converted shopping centres.¹¹ Spoonley and Meares have also pointed out the reluctance on the part of policy makers to appreciate the advantages of immigrant businesses. Other studies, using a particular case study, have also considered the policy implications of developing ethnic precincts, and made policy recommendations at the local government level.¹² The degree to which Auckland residents exhibit spatial sorting according to indicators such as ethnicity, income, age, education and country of birth has also been analysed.¹³

Other than these studies, little consideration has been given to the implications of superdiversity for policy making, particularly at a national level. Professor Spoonley, Robin Peace, Andrew Butcher and Damian O'Neill considered how social cohesion may be incorporated into New Zealand policy. They proposed a social cohesion indicator framework to monitor the effects of settlement policies on social cohesion.¹⁴ In addition, the Royal Society of New Zealand has advocated for the development of a national language policy, especially in light of New Zealand's growing linguistic diversity.¹⁵ As discussed at [1.13], the Max Planck Institute for the Study of Ethnic and Religious Diversity, in partnership with Massey University, is currently undertaking a study on Auckland, the focus of which is primarily on sociological and demographic trends, as well as institutional responsiveness to diversity.¹⁶ Capturing the Diversity Dividend of Aotearoa/New Zealand (“CaDDANZ”), a research programme led by teams from the University of Waikato, Massey University and the Motu Economic and Public Policy Research Unit, is also undertaking a number of research projects on the themes of ethno-demographic diversity, societal impact and opportunities and institutional implications and responsiveness, though this research is still in the preliminary stages.¹⁷

A full review of the literature on the business implications of superdiversity is set out at [1.107] and from [2.195]. In short, there has been no systematic review or analysis of the implications of superdiversity for business in New Zealand, especially for large businesses. To date, only small-scale studies have been undertaken on the experiences of ethnic entrepreneurs.

Methodology

The following research was undertaken for the purpose of the Stocktake:

- Qualitative surveys were distributed to a range of different sectors to understand how they were maximising the opportunities of superdiversity and dealing with its challenges, including commercial mediators, small to medium size enterprises and larger organisations in various regions, the dairy farming industry, and Pacific and Asian leaders;
- Interviews were conducted with businesses that are model “fit for the future” companies. These companies have adapted to superdiversity and are leveraging off it to benefit their bottom line, and the diverse employees and customers they are hiring and servicing;

- Interviews were conducted with representatives of government departments and agencies on how they are responding to New Zealand's growing ethnic diversity in terms of internal capability and external interface with all citizens;
- Publicly available information, including statistics, reports and other documents were collated from New Zealand Government agencies (particularly from Statistics New Zealand), about ethnic diversity and the Government's current policy settings;
- Literature reviews were completed on writing on superdiversity issues globally to assist in the selection of policy and legal issues commonly raised which this Stocktake should focus on;
- New Zealand and overseas writings on best practice for businesses and organisations in response to increasingly diverse employees and customers were examined;
- Legal research was then undertaken on relevant legislation, case law and academic commentary on selected issues relevant to superdiversity, both in New Zealand and overseas; and then the same process was undertaken for selected policy issues of relevance to superdiversity.

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- Brijesh and Nivedita Sethi;
- Nick Siu, Director, The Agency 88;
- Professor Shaun Hendy; and
- John Dickson, economist.

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Overview of the Stocktake

Are business and government currently standing on a burning platform concerning New Zealand's superdiverse population?¹⁸ Academics have defined superdiverse cities and countries as those where more than 25 per cent of the resident population is comprised of migrants or those where more than 100 nationalities are represented.

New Zealand is superdiverse now – predominantly in Auckland, where almost 50 per cent of the population are Māori, Asian and Pacific peoples; where 44 per cent were not born in New Zealand; and where there are over 200 ethnicities.¹⁹ New Zealand is now home to 160 languages, and this is forecast to increase. Auckland will become younger and browner as the New Zealand European population ages and shrinks, and the projections out to 2038 show that Māori, Asians and Pacific peoples will go from being 34 per cent of New Zealand's total population now to 51 per cent of New Zealand's total population. The European population will still remain over 50 per cent of New Zealand's total population because ethnicity is self-identified, and people may identify with more than one ethnicity.

The higher birth rate of the Māori, Pacific and Asian populations (who are younger and predominantly of child-bearing age), together with a high rate of intermarriage between different ethnicities, means faster cultural evolution will occur in New Zealand than in most other countries.

Business and government need to be quicker off the mark to seize on the opportunities from superdiversity, and to capitalise on them, for the benefit of New Zealand's economy. There can be no business as usual, as the talent pool, customers and citizens have changed.

The result is that New Zealand needs to adjust faster and invest now in measures to ensure we are maximising the benefits of superdiversity (the diversity dividend) while managing the risks and challenges from a large number of new migrants living in New Zealand, some of whom come from very different linguistic and cultural backgrounds. The need for that investment is greatest in Auckland, where most of these new migrants are arriving, whereas Christchurch is attracting more migrants from the United Kingdom and Ireland who have more similar cultural backgrounds and who have English as a first language. The diversity in Wellington, where most of the officials advising government live, tends to comprise second or third generation migrants who speak English and understand the New Zealand culture well. The 80:20 per cent ratio of new Asian migrants compared to New Zealand-born Asians means that the challenge as new Asian migrants learn English and about New Zealand culture should be easier over time.

Most of the benefits from superdiversity, such as greater innovation, productivity and investment, increase New Zealand's financial capital, whereas most of its challenges adversely impact New Zealand's social capital. The Treasury has emphasised the importance of social capital and building social infrastructure in its report *Working Towards Higher Living Standards for New Zealanders*.²⁰ "Social infrastructure" describes the features of social organisation that can improve the efficiency of society by facilitating coordinated actions, such as trust, norms and networks.²¹ It is similar to the concept of social capital, which Statistics New Zealand describes as a social resource embodied in the relations between people that resides in and stems from the contact, communication, sharing, co-operation and trust that are inherent in ongoing relationships.²² Discrimination in employment, for example, limits social and economic

opportunities from greater diversity, causes markets to work less efficiently and marginalises the diverse. It also reinforces inequalities, resulting in social cost and lost economic opportunities. It may also mean fewer international students, who represent a lucrative export earner in New Zealand, as many come for good job opportunities and a safe and welcoming environment after graduating from high quality educational institutions in New Zealand. Similarly, not adequately informing migrants about New Zealand's different business and government environment, where the rule of law will be enforced, creates risks where these migrants are employees and customers.

Mitigating these challenges to social capital is essential, as a certain level of social capital is needed both to sustain financial capital gains from the diversity dividend and to maximise economic opportunities. Institutional investment and responsiveness is needed to support the development and maintenance of social cohesion. Businesses and government also need to capitalise on the unique skills and experience of members of the 1.5 generation (young people between the ages of six and 18 who migrate here with their parents) and second and multi-generational who can play a critical role in bridging the gap between new migrants and local communities.

There is currently a gap in analysing the legal and policy challenges of superdiversity and the implications for business, from reviewing the existing literature. The Superdiversity Stocktake is designed to help us adapt to a superdiverse New Zealand, and make sure we are fit for the future.

The good news is that New Zealand already has laws to prevent discrimination, and some policies that seek to maximise new migrants' contribution to our economy. What is needed is a formal multicultural policy on a bicultural base which allows government to ensure we are addressing these issues systematically. Given the inextricable relationship between language, culture and evolving social change, we also need a national language policy.

We cannot gain the benefits of superdiversity without addressing the challenges that come with it. It is likely that, as New Zealand becomes more and more superdiverse, there will be more challenges, and there will be a need for more measures and investment to maintain and enhance the diversity dividend. We cannot take the diversity dividend for granted.

Summary of Findings

Implications of Superdiversity for Business

The key impacts of superdiversity on business from reviewing studies, statistics and New Zealand and overseas business practice, and from surveying small to medium-size New Zealand businesses (businesses employing 20 people or less) and human resources managers in larger organisations are as follows:²³

- a. **Superdiversity means that there is no “business as usual” for organisations if they want to keep winning great customers and staff.** Although New Zealand's diversity is not a new phenomenon, the level of migration that has occurred in the last five years, spurred on by the increase in global migration, means that those not born here have passed the point of critical mass. The opportunities and challenges are already here and are presenting themselves in a competitive market.

The status quo, where New Zealand European-staffed businesses service New Zealand European customers, is unsustainable given New Zealand's ongoing demographic disruption. The market has changed, with almost 50 per cent of Auckland already Māori, Asian and Pacific, and by 2038 over 50 per cent of New Zealand's population will be Māori, Asian and Pacific. Businesses will only retain market share if they win more diverse customers. Migrant customers, including tourists, represent a significant, untapped revenue stream for some businesses. The advantage of migrant customers is that they

are new in New Zealand, so businesses do not have to win them away from competing businesses – they just have to win them in the first instance, and then hold onto them. New Zealand's focus on attracting investor migrants also represents an opportunity for businesses seeking capital, and for service industries wanting high value customers.

The talent pool to service diverse customers will also be increasingly comprised of the diverse. It also makes sense to recruit from the market to service the market. If businesses want to break into ethnic networks for prospective customers, they can recruit ethnic workers who are part of those networks. Employers and managers will need to learn how to evaluate and assess foreign CVs and to recruit for culture, values and language abilities. Employers need to allow for the fact that new migrant employees may take longer to adjust to the New Zealand working environment. Employers should see this time as an investment rather than a cost, given the extraordinary performance companies like Beca have managed to achieve from using a culturally diverse workforce as a competitive market advantage, as discussed below at [2.50].

- b. **The diversity dividend.** Diverse employees can bring benefits to businesses, including:
 - i. *Access to a wider, diverse customer base* – Diverse employees share the same language, culture and values as diverse customers, and are therefore more capable of interacting with those customers. Diverse customers, in turn, may prefer dealing with those like them due to familiarity and greater ease of being understood. But the key is to understand what diverse customers want, and that may differ depending on whether they are new, 1.5 generation or second generation migrants. There is no substitute for direct engagement with customers about the type of engagement, products and services they want. The Bayleys case study (below at [2.57]) also illustrates that New Zealand European vendors sometimes prefer Asian sales agents because they can tap into the market for potential overseas Asian purchasers.
 - ii. *Innovation* – Diverse employees have different cultural and language skill sets, perspectives and ideas (particularly those from the skilled migrant and entrepreneurial categories), which may help grow or seed new business, as is illustrated by the experience of Brijesh and Nivedita Sethi, Oregon Group, Smile Dental and Nirvana Health Group, discussed at [2.64], [2.76], [2.81] and [2.90] below;
 - iii. *Greater export potential* – Diverse employees can give New Zealand businesses a competitive advantage in the export market by providing access to international contacts and by better understanding how to succeed in their birth country's market (as found in a New Zealand study, discussed below at [2.91]); and
 - iv. Migrant employees can be loyal, hardworking and willing to do jobs that New Zealanders will not do, for example in the health care and rural sectors (as discussed at [2.272] and [2.176] in the Xero qualitative study).

New Zealand also benefits from greater access to foreign capital, foreign markets, international students and high tourist numbers. However, in order to capitalise on the diversity dividend, businesses need first to address challenges such as discrimination in recruitment and in the course of employment.

- c. **Businesses are conscious of diversity, but their focus is limited to gender.** Although many businesses are aware of the importance of gender diversity, to date there has been little focus on other types of diversity, such as ethnicity. A pressing diversity risk for New Zealand companies and boards is ethnic diversity given New Zealand's changed demography and greater focus on Asian markets. The available data indicates that there is poor ethnic representation in senior management and on boards, and few companies have an ethnic diversity policy or initiatives in place. For many, diversity is not seen as a pressing concern within their organisation, or a market advantage. Further, the intersection between more than one diversity strand, for instance the issues for ethnic women, is often overlooked. The pay data also shows that ethnic women often earn the least, and that the double disadvantage can create unique challenges in terms of conscious and unconscious bias and stereotyping.

- d. **How to create a fit for the future business to retain and grow market share:**
 - i. *Target the most accessible customer base in the first instance* – Businesses should target the lowest hanging fruit amongst the diverse as potential customers, such as those customers who have good English language proficiency. For example, the two biggest Asian subgroups in New Zealand are Indians and Chinese. The Indian population, in general, has good English language proficiency because English is an official language in India,²⁴ and because of their Commonwealth history,²⁵ whereas North Asian migrants (particularly from China) are the most likely to face barriers due to English language ability.²⁶ The Philippines also has a history of American occupation, so Filipinos tend to have good English proficiency,²⁷ as do migrants from Singapore, where English is an official language.²⁸ Businesses also need to adapt their services and products to the different culture and values of diverse customers.
 - ii. *Understand differences between migrant groups* – Migrants have different needs depending on whether they are first generation, 1.5 generation or second generation, which has implications for employers recruiting migrant staff and for how businesses target migrants as customers. For example, after undertaking market research, Foodstuffs identified three core customer types that it needed to target: Westerners who wanted to learn about Asian food, “Western Asians” (that is, those born in New Zealand or well settled in New Zealand), and “Asian Asians”.²⁹ New migrants bring their consumer habits with them from their individual home countries. Businesses accordingly need to disaggregate the data they collect on their customer base.
 - iii. *Effective communication is not limited to getting an interpreter* – Effective communication also means recognising particular cultural needs and expectations. Customers of different ethnic backgrounds may be unable to speak English, or may feel more comfortable being served or advised by someone they find familiar. This means that businesses should have employees who are able to speak the required language. The company as a whole should have cultural knowledge and understanding. Managers, in particular, need to have CQ or cultural intelligence, the ability to deal with people not like them, to manage diverse staff, and to understand diverse customers. A survey to determine the penetration of the ethnic media into the communities, the crossover in consumption of ethnic and mainstream New Zealand media, and the most popular titles for each demographic found that consumption of ethnic media is very high in communities where ethnic options are available. This was the case even with migrants who have been living in New Zealand for long periods of time. So using ethnic media to communicate with diverse New Zealanders matters for reaching that customer segment.
 - iv. *Intersection between digital and demographic disruption* – New Zealand’s growing pool of ethnic minorities, who tend to be more youthful than the New Zealand European population, are used to being serviced online. The intersection between demographic and digital disruption will affect the way customers expect businesses to engage with them.
- e. **Superdiversity is a New Zealand-wide phenomenon not just an Auckland phenomenon.** Although Auckland is the most superdiverse city in New Zealand, followed by Wellington and Christchurch, superdiversity is also diffusing throughout regional New Zealand and the rural sector (as discussed at [2.270]), especially with the Government’s recently announced immigration policies, which allocate extra bonus points to migrants who work or settle outside Auckland and allow foreign rural workers to gain permanent residence (see discussion at [2.271]). Accordingly, superdiversity is not simply an “Auckland issue”: it is a New Zealand-wide phenomenon that will increasingly affect all parts of a national business.
- f. **Superdiversity can challenge New Zealand’s business culture.** Issues may arise from some migrants not understanding that bribery is illegal, and that the rule of law culture in New Zealand means that laws will be enforced. Problems also arise from migrants not understanding what the law means, especially in a different cultural context, and thus how to act legally, which may be exacerbated by low English proficiency. This may also

require more training and oversight by employers of new migrant employees, and more explanation to new migrant customers.

- g. **Increased risk of business conflict due to cultural differences.** Increased business between ethnically diverse parties may create more cultural and language misunderstandings and therefore conflict. For example, there might be a breakdown in communication where messages have been interpreted differently or around the enforceability of oral contracts and business ethics. Further, cultural differences may also shape parties' expectations and understandings of conflict and the actions required to resolve it.
- h. **We need to increase the business interface between Māori and ethnic minorities and migrants.** Māori businesses have already benefitted from increased trade with Asia, but there remains huge potential for growth. Deeper business relations between Asians and Māori will contribute to improved social capital between these two groups, and to the socio-economic position of Māori in New Zealand, which will benefit New Zealand as a whole.
- i. **Business needs government to keep social capital high so that it can sustain high financial capital.** The financial capital brought by the diversity dividend is dependent on a minimum level of social capital. International students, tourists, and skilled and business investor migrants will not be attracted to New Zealand if there is significant discrimination and hostility towards foreigners. Accordingly, institutional support and investment in the form of settlement services, legal protections in the labour market and social cohesion initiatives promoting the benefits of migration are necessary for businesses to obtain and keep financial capital.

Policy Implications of Superdiversity

Superdiversity affects all areas of law and policy. Having reviewed the research and writing on the implications of superdiversity globally, the following discussion focuses on a selection of key policy and legal challenges, as they apply to New Zealand, to give a flavour of the issues superdiversity can create in every area of life, law and policy:

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

Other policy areas affected by superdiversity that are discussed in the Stocktake include:

- b. The compulsory school system, faith in schools and export education;
- c. Language policy;
- d. The health system, including the recognition of the health needs of minorities, cultural and religious attitudes towards best medical practice, and cultural competence in patient care and staff relations;
- e. The criminal justice system, including the relevance of racial, religious and cultural considerations at trial and sentencing, and the needs of a diverse prison population;

- f. Family and child law and policy, including issues around marriage, adoption, burial practices and female genital mutilation; and
- g. Animal rights law.

Legal Implications of Superdiversity

As the diversity of the population increases, it is likely that the legal framework against discrimination and for the protection of minority rights in New Zealand, which includes the Human Rights Act 1993, the New Zealand Bill of Rights Act 1990 and the Employment Relations Act 2000 will be utilised more frequently.

The Employment Relations Act prohibits employers from discriminating against their employees and requires them to protect employees from racial harassment. It allows employees to bring personal grievance claims against current or former employers on grounds including the employee being discriminated against in their employment³⁰ or being racially harassed.³¹

Most legal challenges to date have been resolved under the Human Rights Act, which contains anti-discrimination provisions designed to protect the rights of minorities, particularly in the employment context. Those that have been brought under the New Zealand Bill of Rights Act have, for the most part, invoked ss 13 (freedom of thought, conscience and belief), 15 (freedom to manifest religious belief) and 19 (non-discrimination) rather than s 20, which provides protection for the rights of minorities and, in particular, their right to enjoy their culture, to profess and practise their religion, and to use their language. Section 20 is not as potent as the Treaty of Waitangi as a source of protection for Māori rights, but it is legally enforceable against the Crown in a way that the Treaty is not, unless the Treaty is expressly incorporated into law, and may add positive obligations beyond the protections in the Human Rights Act for non-indigenous minorities.

Impact of Superdiversity on Central Government

The key conclusions on the impact of superdiversity on government are as follows:

- 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-focussed 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 [2.89]). 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 (as is discussed in Chapter 5). 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.³²

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.³³ 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 super-diverse 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.³⁴ 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.³⁵ 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.
 - 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 New Zealand Bill of Rights Act 1990, 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.³⁶ 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);³⁷
- 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.³⁸ In Auckland elections, information would be required in English, Te Reo Māori, Samoan, Hindi, Northern Chinese, Yue, and other Sinitic languages;³⁹
- c. Requiring election information to be made available in multiple specified languages, instead of leaving it to the discretion of electoral officials (Singapore);⁴⁰
- 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, is an independent Crown entity and is specifically required to act independently.⁴¹ 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.⁴²

In terms of communications and outreach, the Commission noted:⁴³

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.⁴⁴

The Commission said it will be looking for ways to improve outreach and information for Asian, Pacific and young voters.⁴⁵ 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.⁴⁶ 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.

Summary of Recommendations

List of Recommendations concerning Demographic Case Studies

- There needs to be more government investment to meet the challenges of non-English speaking migrants, who usually settle in Auckland. New migrants do not generally settle in Wellington, and the new migrants settling in Christchurch tend to be from England and

Europe. Auckland's growing new migrant population will bring benefits and opportunities, but also challenges. New migrants create the most challenges while they are learning a new language (if they speak little or no English) and culture.

- We need to sustain the Supercity concept of “joined-up thinking” to tackle the challenges of superdiversity and maximise the benefits from it, with all of the key central and local government decision makers in the same room finding solutions, with a shared interest in helping New Zealand progress.
- There also needs to be more senior government officials based in Auckland who understand the benefits and challenges of Auckland's superdiversity and who can ensure that ethnic minorities and migrants are being taken into account in policies and laws at a central government level.
- There is a need for further research and analysis of the experiences of ethnic and migrant youth in New Zealand. The youth perspective will be increasingly important as an increasing proportion of our population will be younger and ethnically diverse, and it is important to distinguish between the views of different ethnic groups.
- Business and government need to make better use of the 1.5 generation, that is young people between the ages of six and 18 who migrate here with their parents, as the bridge between new migrants and other New Zealanders. We also need to make more use of second and multigenerational migrant families as bridges.
- We need more surveys of what diverse groups think, so we better understand their issues and factor that into keeping social and financial capital high. We need to move beyond talking about the diverse and presuming what they think and need, and ask them instead. We also need to recognise that ethnic minorities and migrants, and especially the 1.5 generation, have expertise and insight into understanding the challenges because of their position between the two cultures – that of their country of birth and that of their country of residence now.
- The Superdiversity Centre will run a survey periodically to capture the views of the diverse. The results evidence, and give visibility to, the difficulties that the diverse (particularly those who are visually different) experience. They are best placed to know where the shoe pinches, and their views should be sought and accorded weight.
- We need to increase the depth and the sophistication of our understanding of Asians so that we understand what part of Asia they are from, their values, their culture and their needs as customers, citizens and as employees. For example, see the recommendation about conducting an Asia Capability survey across New Zealand organisations like that recently completed in Australia below.

List of Recommendations for Business

- Businesses should capitalise on the diversity dividend brought by migrant and ethnic employees, particularly migrants from the 1.5 generation and multigenerational migrants, and those in the skilled and business investor migrant categories.
- Migrants in the business and entrepreneur categories say they need better information on arrival about financial services and investing in New Zealand to maximise their potential contribution to New Zealand. This is a significant opportunity for the private sector, but also an important gap for public agencies to plug to grow New Zealand's economy.
- We need to consider how best to attract and retain international students in fields where there are shortages of New Zealand-born workers. We also need to recognise such students as future high value customers, especially as many apply to be skilled migrants and then for permanent residence.
- Surveys of the diverse reveal key concerns about discrimination, especially in employment, for themselves and their New Zealand-born children, despite high qualifications and sometimes relevant experience. The Office of Ethnic Communities could assist more

in promoting the benefits of hiring diverse staff, and increase its efforts to advise employers on how to make cultural diversity into a competitive advantage.

- More research needs to be conducted on the extent of the double disadvantage faced by migrant and ethnic women, particularly around pay equity and representation on public and private sector boards. Government departments such as the Ministry for Women, the Office of Ethnic Communities and Statistics New Zealand collect data on ethnic or female representation on public boards, but there is little available data on the intersection between ethnicity and gender.
- Migrants need English assistance post-settlement to maximise their contribution to New Zealand's economy, and job search support. Programmes such as the skilled migrant course (which is discussed in depth at [3.24]) show the beneficial job outcomes of teaching new migrants how to communicate in New Zealand workplaces. Good English proficiency alone may not be enough to secure employment. It would be beneficial if the skilled migrant course could be provided for all new migrants wanting assistance.
- Regulatory change requiring NZX companies to publish gender diversity statistics should be considered, as is presently the position in Australia for ASX companies. Consideration should also be given to extending this requirement to include publication of ethnic diversity statistics.
- As discussed at [2.246], businesses should consider adopting the following measures to develop sufficient internal capability to adapt to an increasingly diverse workforce:
 - a. Regular collection and monitoring of ethno-specific data on the composition of the workforce and the business's client or customer base.
 - b. Workplace policies and practices should be informed by and developed in accordance with this data.
 - c. A diversity strategy should be developed (in addition to an anti-discrimination policy), where appropriate, to promote ethnic equality, diversity and inclusion in the workplace, in consultation with relevant internal and external stakeholders. This strategy should include the following components:⁴⁷
 - i. The objectives of the strategy;
 - ii. The business case for a diversity programme;
 - iii. The scope of the policy (for example, the types of discriminatory treatment addressed);
 - iv. The rights and responsibilities of employers and employees in terms of implementation of the diversity programme;
 - v. Proactive measures; and
 - vi. Reasonable accommodation measures.
- In terms of diverse customers, businesses may need to target the lowest hanging fruit, but should consider adapting their services and/or products to reflect the needs of their changing ethnic customer base, after direct engagement with customers about what they want.
- To communicate with, and access, ethnic markets, businesses should consider implementing the following measures:
 - a. Recruiting for cultural intelligence and language ability. Ethnic customers may feel more comfortable dealing with people similar to them, who speak the same language;
 - b. Providing cultural intelligence training for employees;
 - c. Translating print and online material into other languages and/or basic English; and
 - d. Making use of ethnic media outlets, and companies with expertise in diverse communications.

- There should be a regular review of numbers of migrants to the regions.
- Migrants should be consulted on their settlement needs on a regular basis. This data should then be used to inform policy development.
- There should be greater funding available for migrants to access ESOL classes, so they can be more effective workers on farms. Currently, government funding is available for permanent residents, but English proficiency is a requirement for entry under the skilled migrant category.
- Regulatory agencies need to be aware that new migrants from some countries with different government and business cultures may need more education on New Zealand's government and business culture.
- More assistance and education need to be provided to Kiwis doing business with migrants to help them recognise the cultural differences in business practice, communication and values. In turn, migrants to New Zealand should receive more information on New Zealand's business culture.
- More people from diverse backgrounds should be encouraged to train as mediators, and all mediators would benefit from training in cultural intelligence given the likely increase in disputes exacerbated by cultural misunderstanding with New Zealand's growing superdiversity.
- Organisations such as Te Puni Kōkiri, the Office of Ethnic Communities, New Zealand Trade and Enterprise and the Ministry of Business, Innovation and Employment need to encourage Māori and Asian companies to do business together and to help reduce any cultural gulf which may impede or undermine business deals.
- Government agencies such as the Office of Ethnic Communities within the Department of Internal Affairs and the Ministry of Business, Innovation and Employment should publish information about the value of diversity for business, and should increase initiatives such as conferences and knowledge workshops to encourage interface between ethnic and mainstream businesses as New Zealand's superdiversity grows.
- Presently, financial or physical capital is officially defined as "fixed assets in production processes, which can be tangible (for example, machinery, buildings, houses, roads) or intangible (for example, computer software, intellectual property)" and includes "equities, assets and liabilities that have a degree of liquidity, such as bank deposits, debt, and government bonds".⁴⁸ The potential for low social capital to undermine financial capital indicates the need to develop a new definition of "financial capital" with a social capital component to reflect the interrelationship between the two concepts.
- There needs to be active investment by government to ensure racial harmony in a super-diverse society. This includes ensuring the Human Rights Commission is adequately funded to carry out its primary statutory function to advocate and promote respect for, and an understanding and appreciation of, human rights, and to encourage the maintenance and development of harmonious relations among diverse groups in New Zealand society. This role will be more challenging as New Zealand's superdiversity grows. Superdiversity can create multiple potential challenge points, as set out in the section on social capital at [2.341].

List of Recommendations for Policy Section

Recommendations coming out of the policy challenges include:

- More guidance and assistance is needed for investor migrants to ensure they can maximise the value of their investments to the New Zealand economy. The requirements around the types of investments investor migrants must make may also need to be further reviewed to ensure higher growth investments for New Zealand.
- Government agencies, led by Immigration New Zealand, need to give due attention to

the shortcomings in support for new migrants, particularly in English language tuition and job search support. Although the Government already funds a number of settlement programmes and services, this would enable migrants to make the greatest possible contribution to New Zealand's financial and social capital. While there is a language benchmark for permanent migrants, those holding temporary visas are not required to demonstrate competence in English at all and they cannot necessarily access or afford tuition to improve their English while they are here. New Zealand should recognise the value of investing in a broad spread of English language support for the range of needs of those here in workplaces and in the community. Consultation with migrants needs to underpin these services, and migrants need an opportunity to report whether they are satisfied with the settlement services they receive.

- The Government needs to continue to monitor public concern about immigration, and help migrants to settle in New Zealand to preserve social capital.
- The Government's target of doubling its export education earnings by 2025 requires tertiary education organisations to be well equipped to provide care and support for international students to ensure New Zealand maintains a high quality education system and reputation in the global market.
- Education New Zealand should survey international students to New Zealand to ensure responsiveness to any concerns or issues they raise. This will also keep our education sector high quality and competitive with other countries.
- The Government should develop and implement a national languages policy. The policy should recognise that New Zealand is becoming linguistically diverse, and focus on adult literacy and numeracy, English as a second language and the impact of English on multilingualism. Extensive and urgent work is required to determine the objectives of such a policy and who should be responsible for it given 160 languages are now spoken in New Zealand. Such a policy would result in:
 - a. Improved student achievement in school;
 - b. Reduced barriers to trade and economic development;
 - c. Greater integration and inclusion of migrants and refugees;
 - d. Status, support and protection for languages and cultures;
 - e. Better career and employment prospects for young people in New Zealand and overseas;
 - f. Enhanced social cohesion and harmony; and
 - g. Reduced barriers to civic engagement and accessing public services.
- As the electoral rolls are used to compile jury lists, ensuring better civic participation by ethnic minorities, particularly migrants who are eligible to vote, is one measure to improve the representativeness of juries.
- English language proficiency requirements should be established for jurors so that migrant jurors can meaningfully participate in the jury process. The court system needs to improve assistance for jurors with limited English.
- Settlement programmes for new migrants need to ensure that migrants understand their civic responsibilities in relation to jury service and that they understand how the court system works in New Zealand and the role of juries.
- The Government should seek to appoint more qualified applicants from among ethnic minority groups to judicial office, so there is some correlation between the proportion of judges from ethnic minorities and their proportion of New Zealand's population.

Recommendation for Legal Implications Section

- New migrants should be educated about employment laws, the Human Rights Commission and the Human Rights Review Tribunal and its powers to enforce the prohibitions on discrimination in the Human Rights Act 1993. The education programme should also explain the dispute resolution role of the Human Rights Commission, and that the Director of Proceedings can bring a case on behalf of an applicant.

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 Review 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.⁴⁹
- The Commission also recommended looking to expand Kids Voting and to continue to provide and develop curriculum linked resources.⁵⁰ 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.⁵¹
- 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 petitions 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 in a language other than 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.

What is
Superdiversity?

S U P E R D I V E R S I T Y

- 1.1 Superdiversity refers to the substantial increase in the diversity of ethnic, minority and immigrant groups in a city or country,⁵² “especially arising from shifts in global mobility”.⁵³ It also results in the “multiplication” and complication of variables such as different rights, isolation of minority groups, different experiences in the market and business, and divergent experiences with government.⁵⁴ There is nothing that is not affected by superdiversity, as this Stocktake evidences. Professor Spoonley has observed that ethnic diversity raises a host of issues in the political, socioeconomic, health and employment spheres in particular.⁵⁵
- 1.2 Superdiverse cities have been defined as cities where more than 25 per cent of the resident population is comprised of migrants.⁵⁶ Other academics have alternatively defined superdiverse cities as those where more than 100 nationalities are represented.

New Zealand’s Unique Superdiversity

- 1.3 Over the past two decades, New Zealand has become one of a small number of culturally and linguistically superdiverse countries.⁵⁷ There are 213 ethnicities in New Zealand as at the last Census in 2013, and New Zealand is now home to 160 languages.⁵⁸ The largest five ethnic groups are New Zealand European, Māori, Chinese, Samoan and Indian, and the biggest increases since 2006 come from groups within the broader Asian category, led by the Chinese, Indian and Filipino ethnic groups.
- 1.4 New Zealand is the fifth most ethnically⁵⁹ diverse country in the OECD.⁶⁰ One in every four residents in New Zealand was born overseas,⁶¹ and New Zealand has one of the highest immigration rates in the world.⁶² Auckland is now one of the most diverse cities in the world.⁶³

Table: Percentage of foreign-born compared to total population, selected OECD economies⁶⁴

Country	2001 (%)	2006 (%)	2011 (%)	2013* (%)
Australia	23.1	24.6	26.7	27.7
Austria	13.8	14.7	16.0	16.6
Belgium	10.8	12.5	14.9	15.8
Canada	17.6	19.0	20.1	N/A
France	10.5	11.4	12.6	11.6
Germany	N/A	12.7	13.1	12.2
Hungary	2.9	3.4	4.7	4.5
Italy	3.9	N/A	9.0	9.4
The Netherlands	10.4	10.6	11.4	11.6
New Zealand	18.0	21.0	23.6	25.0
Spain	6.4	11.9	14.6	12.8
Sweden	11.6	12.9	14.1	15.9
UK	8.2	9.6	12.0	12.5
USA	11.1	12.6	13.0	N/A

* Figures from European Union countries accurate as at 1 January 2014.

- 1.5 The large indigenous component of New Zealand’s superdiversity makes it unique compared to other ethnically diverse countries: at the last Census, Māori comprised 15 per cent of the total New Zealand population.⁶⁵ In contrast, the total Aborigine population in Australia is estimated to be 3 per cent.⁶⁶ Native Americans in the United States make up 1.7 per cent of the total population,⁶⁷ and often live in reservations.⁶⁸ In Canada, Aboriginal people

make up 4.3 per cent of the population. Eight out of 10 Aboriginal people live in Ontario and the western provinces, and 56 per cent live in urban areas. The city with the largest Aboriginal population is Winnipeg (78,420), followed by Edmonton (61,765), Vancouver (52,375) and Toronto (36,995).⁶⁹ In addition, Aboriginal people form the majority of the population in Nunavut and the Northwest Territories at 83.6 per cent and 51.9 per cent respectively.

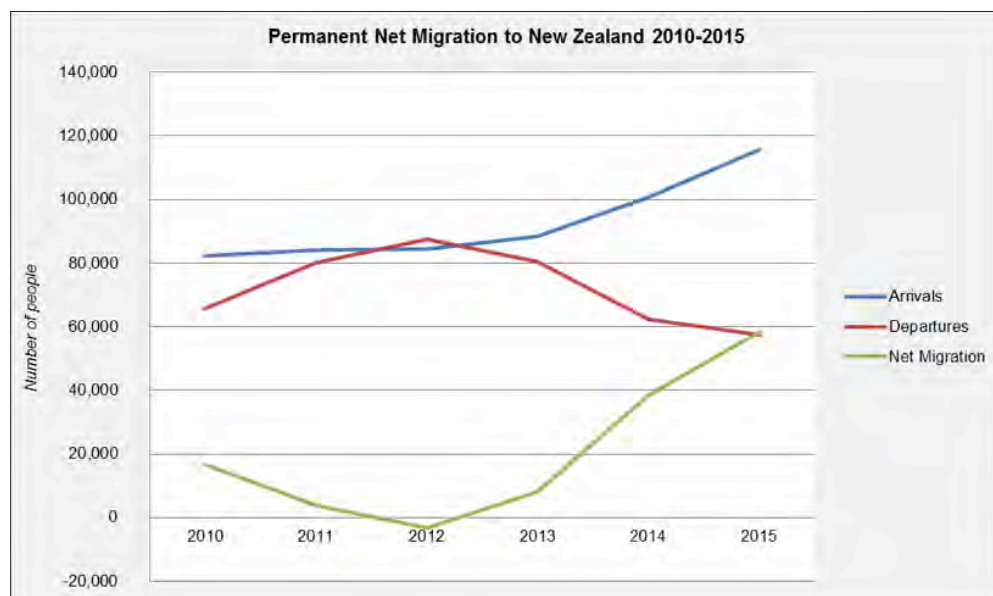
1.6 Unlike other settler societies such as Canada and Australia, colonial settlement in New Zealand was dominated by British and Irish settlers up until the 1950s.⁷⁰ New Zealand began to experience superdiversity in the mid-1990s, as the sources of immigration expanded from Pacific Islanders to include a significant proportion of immigrants from Asia.⁷¹ Many of the challenges reported by Asian migrants upon arrival in New Zealand have previously been experienced by Pacific peoples in the first wave of migration to New Zealand from the 1950s, as exemplified by events such as the Dawn Raids, and this, to some extent, has paved the path for Asian migrants.⁷²

1.7 This growth in immigration was primarily a result of the Immigration Act 1987, which replaced source-country criteria with criteria focussed on educational, business, professional and age factors.⁷³ For example, the level of migration from India to New Zealand increased rapidly in the late 1990s to the extent that India became one of New Zealand's three most significant migrant source countries.⁷⁴ New Zealanders are also great travellers and many return home with spouses or partners not born here.⁷⁵

Recent Migration Figures

1.8 In the 12 months to August 2015, New Zealand gained 60,000 people from overseas who were intending to stay for longer than 12 months (classed as "permanent arrivals"), well in excess of the Treasury forecast of 30,000.⁷⁶ Although this figure includes New Zealanders returning to New Zealand and a spike in international students intending to stay for a limited time (though more than 12 months), this is the highest number of permanent arrivals to New Zealand recorded since the colonial era. This was also the first time immigration overtook natural increase (that is, births outnumbering deaths) as the biggest factor in population growth for the annual reporting period. It is important to bear in mind, however, that New Zealand's population growth is not solely attributable to migration: New Zealand's net migration balance continues to be volatile, and "periods of sustained net migration gains have been interspersed with periods when more people left New Zealand than arrived".⁷⁷ As illustrated by the chart below, the number of people departing New Zealand has also been steadily decreasing since 2012, which has contributed to higher net migration.⁷⁸ As observed by Statistics New Zealand, since 1970 natural increase has caused approximately four-fifths of New Zealand's population growth, with net migration comprising only one-fifth.⁷⁹ Natural increase is projected to account for three-fifths of Auckland's growth by 2033, and net migration for the remaining two-fifths.⁸⁰

Figure: Permanent net migration to New Zealand 2010–2015



List of Recommendations concerning Demographic Case Studies

- There needs to be more government investment to meet the challenges of non-English speaking migrants, who usually settle in Auckland. New migrants do not generally settle in Wellington, and the new migrants settling in Christchurch tend to be from England and Europe. Auckland's growing new migrant population will bring benefits and opportunities, but also challenges. New migrants create the most challenges while they are learning a new language (if they speak little or no English) and culture.
- We need to sustain the Supercity concept of "joined-up thinking" to tackle the challenges of superdiversity and maximise the benefits from it, with all of the key central and local government decision makers in the same room finding solutions, with a shared interest in helping New Zealand progress.
- There also needs to be more senior government officials based in Auckland who understand the benefits and challenges of Auckland's superdiversity and who can ensure that ethnic minorities and migrants are being taken into account in policies and laws at a central government level.
- There is a need for further research and analysis of the experiences of ethnic and migrant youth in New Zealand. The youth perspective will be increasingly important as an increasing proportion of our population will be younger and ethnically diverse, and it is important to distinguish between the views of different ethnic groups.
- Business and government need to make better use of the 1.5 generation, that is young people between the ages of six and 18 who migrate here with their parents, as the bridge between new migrants and other New Zealanders. We also need to make more use of second and multigenerational migrant families as bridges.
- We need more surveys of what diverse groups think, so we better understand their issues and factor that into keeping social and financial capital high. We need to move beyond talking about the diverse and presuming what they think and need, and ask them instead. We also need to recognise that ethnic minorities and migrants, and especially the 1.5 generation, have expertise and insight into understanding the challenges because of their position between the two cultures – that of their country of birth and that of their country of residence now.
- The Superdiversity Centre will run a survey periodically to capture the views of the

diverse. The results evidence, and give visibility to, the difficulties that the diverse (particularly those who are visually different) experience. They are best placed to know where the shoe pinches, and their views should be sought and accorded weight.

- We need to increase the depth and the sophistication of our understanding of Asians so that we understand what part of Asia they are from, their values, their culture and their needs as customers, citizens and as employees. For example, see the recommendation about conducting an Asia Capability survey across New Zealand organisations like that recently completed in Australia below.

Case Study: Superdiverse Auckland

1.9 Auckland, New Zealand's largest city generating one-third of the country's GDP and the gateway to migration, is one of the most superdiverse cities in the world together with a uniquely large indigenous population. Auckland is where the majority of New Zealand's new migrants arrive and settle, which makes its diversity distinct from other cities and regions. In the 2013/2014 reporting year, Auckland had the highest net migration gain in New Zealand with 17,800 people.⁸¹

1.10 The 2013 Census figures revealed that persons identifying as Māori, Asian or Pacific now make up almost 50 per cent of Auckland's population.⁸² Asians and Pacific people now comprise a larger share of the population than Māori. Of New Zealand's Māori population, 24.3 per cent lived in the Auckland Region in 2013. Sixty-five per cent of New Zealand's Pacific community lived in Auckland. Almost 40 per cent of Aucklanders were born overseas, the third highest rate in the OECD. The MBIE Briefing to the Incoming Minister on Vote Immigration reported that migrants comprise 44 per cent of the Auckland workforce.⁸³ If the locally-born children of these foreign-born residents are included, the figure rises to 56 per cent.⁸⁴ One-third of Aucklanders speak one or more languages other than English.⁸⁵ Māori and Pacific populations also tend to be young, whereas the European population tends to be older, and is shrinking.⁸⁶

1.11 Auckland's demographic transformation looks set to continue. It is estimated that its Asian population will grow by 130,000 by 2021.⁸⁷ By 2038, the "European or other" population share in Auckland will have fallen 12 per cent to 47 per cent.⁸⁸ Of Auckland's projected population growth, Asians are estimated to comprise 60 per cent and Pacific people 23 per cent.⁸⁹ The Asian birth rate recently surpassed the European birth rate for the first time,⁹⁰ and the Asian population is projected to increase to the extent that about one in three persons in Auckland will be Asian by 2038.⁹¹

1.12 The large indigenous component of Auckland's superdiversity (10.7 per cent of Auckland's total residents in 2013 were Māori) makes it a unique case study compared to other superdiverse cities around the world.

1.13 As a result of Auckland's unique superdiversity, the Max Planck Institute for the Study of Ethnic and Religious Diversity, in partnership with Massey University, has recently named Auckland as the fourth city in a global superdiversity study, alongside New York, Johannesburg and Singapore.⁹²

Convergence between Urbanisation and Superdiversity

1.14 Urbanisation is another trend which is converging with New Zealand's demographic and accelerated cultural evolution (discussed below at [1.38]). Auckland has a disproportionately high number of New Zealanders, migrants and growth, while the other main city centres have a lesser pace of growth or are static, and the regions are shrinking. Over 76 per cent of New Zealanders are based in the North Island.⁹³ The 2013 Census figures indicated that around 43 per cent of New Zealanders lived in the Auckland, Hamilton and Tauranga areas, and these areas accounted for 64 per cent of New Zealand's population growth between 2001 and 2013.⁹⁴

In contrast, rural areas and provincial towns (such as Northland, the East Cape, Manawatu, Gisborne and Wanganui) are experiencing little growth, while middle tier cities such as Dunedin and Palmerston North are growing only “modestly”.⁹⁵

1.15 No other city in the OECD, except Dublin, dominates nationally to the extent that Auckland does.⁹⁶ In the next 25 years the city will grow to account for 38 per cent of the total population, possibly surpassing even Dublin’s dominance.⁹⁷ In the same period, half of New Zealand’s regions will reduce in population.⁹⁸ Auckland’s growth has far outstripped the growth of any other region in New Zealand, accounting for almost half of New Zealand’s overall population growth between 2004 and 2014.⁹⁹ This trend is set to continue due to Auckland’s relatively young population and because its size and economic scale make it attractive to over 50 per cent of overseas migrants,¹⁰⁰ such that the majority of growth is centred there.¹⁰¹

1.16 As noted by Doug McKay, the inaugural CEO of Auckland Council, in the paper *Review of Central Government Policy, Implementation, Strategy and Leadership Effectiveness in Auckland*, “the time has never been better for government to apply senior leadership to priorities for which Auckland is pivotal to achieving national outcomes”.¹⁰² In order to facilitate this, McKay recommended that an additional senior role should be established to provide oversight over collaborations between Auckland and Wellington. This will help ensure that Auckland-focussed policies are developed that reflect the needs of Auckland’s superdiverse population. Lewis Holden has now been appointed Deputy State Services Commissioner with particular responsibility for Auckland as of 13 March 2015.¹⁰³

1.17 A 2015 study commissioned by the Salvation Army found that while Auckland is undergoing rapid growth and will be increasingly diverse, the rest of the country is declining and has lesser diversity. The study cautioned that:¹⁰⁴

... in general, Aucklanders will be younger, wealthier, better skilled and more ethnically diverse than the rest of New Zealand. Within such differences are the seeds for a growing divide in values and expectations.

Recommendations

- There needs to be more government investment to meet the challenges of non-English speaking migrants, who usually settle in Auckland. New migrants do not generally settle in Wellington, and the new migrants settling in Christchurch tend to be from England and Europe. Auckland’s growing new migrant population will bring benefits and opportunities, but also challenges. New migrants create the most challenges while they are learning a new language (if they speak little or no English) and culture.
- We need to sustain the Supercity concept of “joined-up thinking” to tackle the challenges of superdiversity and maximise the benefits from it, with all of the key central and local government decision makers in the same room finding solutions, with a shared interest in helping New Zealand progress.
- There also needs to be more senior government officials based in Auckland who understand the benefits and challenges of Auckland’s superdiversity and who can ensure that ethnic minorities and migrants are being taken into account in policies and laws at a central government level.

Case Study: Superdiversity in Wellington

1.18 The Wellington region is second only to Auckland in terms of ethnic diversity, but unlike Auckland, Wellington is not generally a gateway for new migrants and is instead home to many second, third and fourth generation migrants.¹⁰⁵ The 2013 Census indicated that Wellington had the second highest proportion of Asian people at 10.5 per cent, and the second highest Pacific population (7.7 per cent of Wellington’s population).¹⁰⁶ By 2038, 19 per cent of Wellingtonians will identify as Asian, and 10 per cent will identify as Pacific peoples.¹⁰⁷ A total of 31.6 per cent of respondents in the Wellington region identified with the Māori, Pacific or Asian ethnic groups at the last

Census. By 2038, a total of 47 per cent of the Wellington population will identify with those groups. A quarter of Wellington's population was born overseas. Wellington also reported net gains in the working age population from internal migration.

1.19 Of adult respondents in the 2012 Wellington Region Genuine Progress Index (WR-GPI) 2001–2013, 59 per cent considered that having an increased number of people with different lifestyles and cultures made their local area a better place to live.¹⁰⁸ This figure declined from 75 per cent in 2010, but remains above average for New Zealand cities surveyed.

1.20 As the seat of central government and the base of the public sector, the ethnic diversity of Wellington is relevant to officials' understanding of superdiversity and thus the government's response to superdiversity. As discussed in the Government section of the Stocktake at [5.94], government departments need to do more to grow their internal capacity to respond to the challenges of superdiversity, understand the needs of ethnic minorities and migrants, and to communicate with them to effectively discharge their responsibilities.

1.21 Given the levels of diversity in the Wellington region, the relativeness slowness of government in responding to New Zealand's superdiversity transition compared to business cannot be attributed to being based in a non-diverse city. On the contrary, it would appear that there are significant untapped diversity resources in the Wellington region which could be drawn on by government. The delayed response is more likely due to Wellington not being home to many new migrants who have the most urgent needs, and suffer the greatest discrimination.

Case Study: Superdiversity in Christchurch

1.22 Christchurch is experiencing significant immigration as it rebuilds following the 2011 earthquake.¹⁰⁹ Prior to the first major Canterbury earthquake, the main occupations of migrants arriving in Canterbury were teaching, hospitality and the food trade. As at June 2014, bricklayers, carpenters and joiners were the leading occupation group for arrivals to Canterbury, while engineering professionals were the second leading occupation group.¹¹⁰ The number of migrants arriving in Canterbury on work visas increased from 1,900 in 2004 to 4,200 in 2014, and the Canterbury region had the second largest net gain of migrants behind Auckland over the last decade. The 2013 Census revealed that almost 12 per cent of Christchurch's overseas-born population had arrived in the two years prior to the Census.¹¹¹ Since the 2011/2012 reporting period, there was a 49 per cent increase in arrivals to the Canterbury region.¹¹² In contrast, just over 9 per cent of Auckland's overseas-born population had arrived in the two years preceding the Census.¹¹³

1.23 However, Christchurch's new migrants are less ethnically diverse than those in Auckland, with 28 per cent coming from the United Kingdom and Ireland, compared to fewer than 12 per cent for Auckland.¹¹⁴ New Zealand Europeans continue to dominate in the South Island, with 90 per cent of South Islanders identifying as "European" or "Other" in the 2013 Census, compared to only 61 per cent of Aucklanders.¹¹⁵ In the Canterbury Region, 86.9 per cent of people belong to a European ethnic group compared to 74 per cent for New Zealand as a whole.¹¹⁶ By 2038, this percentage is projected to fall to 83 per cent.¹¹⁷ Of the Canterbury population, 8.1 per cent identifies as Māori, 6.9 per cent as Asian and 2.5 per cent as Pacific peoples. By 2038, Māori are projected to comprise 12 per cent of the Canterbury population, with Asians comprising 10 per cent and Pacific peoples, 4 per cent. Although the focus of the Stocktake is on Asians and Pacific people, migrants from other parts of the world, such as Eastern Europe, the Middle East and Africa, may also present challenges (and bring benefits) due to their very different language and culture.

1.24 That said, following the Canterbury earthquake, there has been an increase in Asian workers, particularly from the Philippines (29 per cent of total migrants arriving from Asia in 2014, compared to just 8 per cent of arrivals previously).¹¹⁸ The

- Census also showed that the Asian population in Southland more than doubled from 1.3 per cent in 2006 (1,149 people) to 3.2 per cent in 2013 (2,841 people), and Asian migrants are increasingly working on farms and in the construction sector. Filipinos are the largest group of essential skills category migrants to Christchurch.¹¹⁹
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Long-Term Superdiversity in New Zealand: Demographic Projections to 2038

- 1.25 Immigration will continue to be determinative of New Zealand's demographic makeup, particularly the Asian population. Migration is projected to account for three-fifths of the Asian population growth in the next 25 years, with natural increase accounting for two-fifths.¹²⁰ While population growth is forecast to drop below 1 per cent in 15 years' time, migration is predicted to have an average net gain of 12,000 people a year.¹²¹ In contrast, the increase in the Māori and Pacific populations will be mainly driven by those groups' high birth rates, natural increase (births minus deaths) and ethnic intermarriage.¹²²
- 1.26 On 21 May 2015, new ethnic population projections released by Statistics New Zealand indicated that an increasing proportion of New Zealanders are likely to identify with Māori, Asian and Pacific ethnicities.¹²³ Thus, about 51 per cent of New Zealanders are likely to be Asian, Māori and Pacific peoples by 2038 (in 25 years' time) as compared with almost 50 per cent Māori, Asian and Pacific peoples in Auckland now.
- 1.27 The proportion identifying as Māori is projected to grow from 16 per cent in 2013 to 17 per cent in the mid-2020s, and to nearly 20 per cent in 2038. Those identifying with an Asian ethnicity are likely to grow from 12 per cent in 2013 to 17 per cent in the mid-2020s, and to 21 per cent in 2038. And those identifying with a Pacific ethnicity will likely grow from 8 per cent in 2013 to 9 per cent in the mid-2020s, and to 11 per cent in 2038. Statistics New Zealand has predicted that "the number of people identifying with Asian ethnicities is likely to exceed the number identifying with the Māori ethnicity from the mid-2020s."¹²⁴
- 1.28 The number of people identifying with a European ethnicity or as a "New Zealander" is projected to increase, but at a relatively slow rate. As a result, the proportion identifying with these ethnicities is projected to drop from 75 per cent in 2013 to 70 per cent in the mid-2020s, and to 66 per cent in 2038. Another 1 per cent of the population currently identify with Middle Eastern, Latin American, or African ethnicities.
- 1.29 As noted by Statistics New Zealand's Population Statistics Manager, Vina Cullum, the "considerable overlap of these ethnic populations" is because "people can and do identify with multiple ethnicities, especially people aged under 30 years".¹²⁵ This, in turn, can make it difficult to properly measure diversity.¹²⁶ The different projected growth rates reflect a combination of different patterns of fertility (Asians, Māori and Pacific people all have younger populations of childbearing age, as is discussed below at [1.31]), migration patterns, age structure, and ethnic identification.
- 1.30 At a subnational level, by 2043 the North Island population is predicted to increase from 3.4 million in 2013 to 4.4 million (an average increase of 0.9 per cent each year).¹²⁷ Approximately three-quarters of this growth will be in the Auckland region. The Auckland region is projected to account for three-fifths of New Zealand's population growth between 2013 and 2043, representing about two-fifths of the "European or Other" population growth, and about one-quarter of the Māori population growth in this time.¹²⁸ In contrast, the South Island population is projected to increase at a slower rate of 0.6 per cent per year, growing from 1.0 million in 2013 to 1.3 million in 2043.¹²⁹

Convergence between Age and Superdiversity

- 1.31 New Zealand's, and predominantly Auckland's, future population will increasingly be younger, and of Asian, Māori and Pacific ethnicity.
- 1.32 The median age for each of the key ethnic groups in 2013 was:¹³⁰
- European – 41.0 years

- Māori – 23.9 years
- Pacific people – 22.1 years
- Asian – 30.6 years.

1.33 While all groups are projected to age, by 2038 the median “European or other” age will be 43, the median Māori age will be 29, the median Pacific age will be 28, and the median Asian age will be 37.¹³¹ In general, the fastest growing age cohort in New Zealand is that of 65 years and over.¹³² A third of Auckland’s future growth is projected to be in the 65+ years’ age group.¹³³ The 2013 Census noted that the trend of an ageing population is unlikely to reverse due to declining birth rate and increasing longevity.¹³⁴ Nevertheless, it also noted a “demographic dividend” provided by the largely youthful Māori and Pacific populations.¹³⁵ Twenty-four per cent of the population who were 14 and under identified with Māori, 12 per cent as Pacific peoples, and 12 per cent with the Asian ethnicity (38 per cent in total). Auckland has the youngest regional age structure in New Zealand, with just 11.5 per cent of the population aged 65 and over (though age structures vary markedly within the region, both at local board areas level and by ethnic group and country of birth).¹³⁶

1.34 That said, the influx of migrants will not be enough to overcome the general demographic trend towards an ageing population. As migrant fertility tends to be the same as or lower than that of the host population, migrants are not replacing themselves, and therefore are adding to structural ageing.¹³⁷

1.35 The overall trend towards an ageing population, combined with a demographic dividend of ethnic minorities, has various consequences for schools, the working age population and talent pool, businesses’ customer base, and succession planning, particularly in regional and rural industries such as the agricultural sector (see discussion at [2.272]).¹³⁸ The labour market entry/exit ratio (that is population aged 15–24:55–64 years) for the Auckland region has been declining steadily since 1996, from 20.4 people at labour market entry age for every 10 in the retirement age zone, to just 15.5 in 2011 (a decrease of 24.2 per cent).¹³⁹ In comparison, the total New Zealand labour market still has 13 people at entry age per 10 at exit age. The implications are further detailed in a paper by Professor Natalie Jackson comparing the age structures of New Zealand’s Pākehā and Māori populations:¹⁴⁰

The collateral dividend will arise as the total population ages. Young New Zealanders, disproportionately Māori, will be in ever-shorter supply and ever-greater demand, as each successively larger cohort of baby boomers retires and is replaced by a successively smaller cohort of labour market entrants. A deep, largely migration-driven “bite” in the present New Zealand age structure across the young adult age groups will compound increasing competition for labour market participants (both nationally and globally) and will arguably result in higher wages – and also higher labour and consumption costs that will need to be factored in. This situation is argued to be already pronounced in the non-urban areas where Māori have a high level of social, cultural and economic interest, and will provide Māori with many opportunities: already 42 per cent of New Zealand Territorial Authorities have fewer people at labour market entry than exit age.

1.36 In order to capitalise this demographic dividend, Jackson recommends urgent strategic investment in the education, training and social needs of young Māori.¹⁴¹ She further observes that:¹⁴²

It is more difficult from these data to make a call on the extent to which the youthful bulge at 20–29 years in the Asian-origin population will remain a disproportion, as it can be expected that many are students and may return home. More certain is that many of the 0–14 year old Pacific Island children, who today comprise approximately 11 per cent of all 0–14 year olds, will look to a future in the New Zealand workforce.

1.37 Ultimately, New Zealand’s ability to respond to its ageing population will be heavily reliant on its investment in its youthful population, as its current large “youthful cohorts (aged 15–19 years and also [those] being born) are the last that New Zealand is assured of”.¹⁴³ This youthful population will be increasingly comprised of more Māori, Pacific peoples and Asians.

New Zealand's Accelerated Cultural Evolution

Increasing Intermarriage

1.38 New Zealand has had historically high rates of intermarriage across both ethnic and religious divides.¹⁴⁴ There is a shift towards identification with multiple ethnicities, which is unsurprising given the high incidence of intermarriage.¹⁴⁵ Intermarriage rates have historically been high between Māori and non-Māori,¹⁴⁶ and two-thirds of babies born in New Zealand with Māori ethnicity in 2013 were also registered with at least one other ethnicity.¹⁴⁷ Statistics New Zealand reported the following last year (emphasis added):¹⁴⁸

In 2014, 74 percent of births registered belonged to only one ethnic group, 23 percent belonged to two ethnic groups, and 4 percent belonged to three or more ethnic groups. Just over half as many mothers (14 per cent) as babies (26 per cent) identified with more than one ethnic group. In the December 2014 year, 70 per cent of Māori babies and 52 per cent of Pacific babies belonged to two or more ethnic groups. In contrast, 65 per cent of European babies and 75 per cent of Asian babies belonged to only one ethnic group.

1.39 In the 2013 Census, 4,011,399 people reported 4,450,356 ethnic identities, meaning that 10 per cent of those reporting an ethnicity claimed two or more ethnic identities.¹⁴⁹ Of course, the fact that ethnicity is self-defined, as well as the possibility that people may change their declared ethnicity from one census to the next, makes it difficult precisely to identify long-term trends in the distribution of ethnic populations.¹⁵⁰

1.40 Dr Polly Atatoa Carr, the Associate Director of the University of Auckland's longitudinal study, Growing Up in New Zealand, is tracking the development of nearly 7,000 children in the context of their diverse families and environments from before their birth until they are young adults.¹⁵¹ This study is measuring how parents identify and self-prioritise their own ethnicity or ethnicities as well as those of their children, and is also considering how the child population will identify themselves, and how this identity is changing over time. The preliminary findings of the study revealed that half of the children involved in the study are identified (by their parents) as belonging to more than one ethnicity and, within specific ethnic groups, particularly Māori and Pacific groups, the diversity was even greater. For example, 83 per cent of children who identified as Māori also identified with at least one other ethnic group.

1.41 Accordingly, by 2040, New Zealand culture will have changed as a result of having a large population born overseas and high levels of immigration, together with high rates of intermarriage between all ethnicities. The Ministry of Social Development ("MSD") defines culture as "the customs, practices, languages, values and world views that define social groups such as those based on nationality, ethnicity, religion or common interests".¹⁵² The culture and values of these people are not just the culture of their home countries or Kiwi culture, but a blend of both, a cultural evolution. This means that New Zealand is experiencing, and will continue to experience, an accelerated pace of cultural evolution.¹⁵³ This is highly relevant to business and government, which need to understand and adapt to the culture of New Zealanders as customers and citizens.

Consequences of Demographic Changes for Families

1.42 A 2013 report by the Families Commission on the status of New Zealand families and whānau found that "for society and the economy as a whole, the consequences of shifts in population structure, dynamics and location on future policy choices will be immense and wide-ranging", including:¹⁵⁴

- The impact of baby-boomer retirements on replacement needs in key occupations, such as nursing and farming;
- A shift in the capacity of the tax base;
- Rising levels of investment in regional infrastructure needed in order to match the needs of fast-growing populations in a few areas of New Zealand;

- A need for a strengthened capacity in those regions that are declining and those that are rapidly growing to manage changing resource needs, including schools, housing, utilities and health services (including aged care);
- A high risk of unplanned urbanisation and unfocussed urban economies;
- A higher level of integration of market, community and household economies;
- A larger skill diaspora, leading to constraints on talent pools; and
- Pressures on social cohesion as the diversity of the population extends beyond the metropolis of Auckland, mitigated by the high rate of intermarriage between cultures.

1.43 As a result of greater global mobility, the “New Zealand family is likely to be increasingly mobile and not necessarily New Zealand-based. Implicit in this is a potential tension in trying to meet family obligations over physical and cultural distances”.¹⁵⁵ For example, Filipino migrant workers on farms often send remittances home to extended family members.¹⁵⁶ The report further noted that:¹⁵⁷

... multigenerational immigration and cross-national parenting also raises the issue of New Zealand citizenship for non-residents. They may feel that they are New Zealanders but may not meet the current eligibility criteria.

1.44 There will also be greater internal mobility, as young people move to areas where there are better employment opportunities, leaving behind older family members in rural or provincial areas.¹⁵⁸ This, in turn, will reduce the “available caring workforce which might supplement the family support system”.¹⁵⁹

Superdiversity and Youth: Ethnic and Migrant Youth and the 1.5 Generation

1.45 The experiences of ethnic and migrant youth are integral to New Zealand’s accelerated cultural evolution, which business and government need to understand to service customers and citizens. Their experiences and views will increase in importance as their numbers grow.

1.46 According to a 2010 international comparative study on ethno-cultural youth, there are four major acculturation profiles, that is “ways in which migrant and ethnic youth balance pressures for the maintenance of their heritage culture and the challenges posed in connection with their participation in New Zealand society”.¹⁶⁰ Data was collected from young people born in New Zealand and overseas aged 12 to 19. For New Zealand-born youth, 396 participants were New Zealand European and 114 were Māori. For migrant youth, 145 were Chinese, 188 were Korean, 147 were Samoan, 102 were Indian, 111 were from the United Kingdom, and 101 were South African. The four acculturation groups are as follows:

- Integrated – Those in this group display strong ethnic and national identities, strong ethnic peer contacts and good English language proficiency. This group endorsed integration as an acculturation strategy.
- National – Those in this group displayed moderately strong national identity but weak ethnic identity, and had strong national, but weak ethnic peer contacts. They were highly proficient in English and used it frequently at home. This group rejected separation as an acculturation strategy.
- Ethnic – Those in this group were oriented towards their original culture. They displayed relatively strong ethnic identity but a weak national identity, strong ethnic peer contacts but weak national peer contacts. This group had poor English language proficiency but

good ethnic language proficiency.

- d. Diffuse – This group had poor English language proficiency, weak ethnic identity and endorsed separation, assimilation and marginalisation.

1.47 The study found that migrant youth adapted as well, or better, in terms of life satisfaction, psychological wellbeing, school adjustment and behavioural problems than national youth. Further, while migrant youth increasingly orient themselves towards mainstream New Zealand society and tend to retain their cultural identity, their ethnic language skills diminish over time.¹⁶¹ Despite visible migrant groups experiencing more discrimination in New Zealand than New Zealand European young people, they still had good educational outcomes.¹⁶² Diffuse youth, in contrast, reported poorer school adjustment, more psychological symptoms, lower life satisfaction and more behavioural problems than other young people.

1.48 The study found that Muslim youth are more likely to experience discrimination than those from other faiths, and are most likely to engage with other Muslims from the same ethnic background. Despite this, 85 per cent of Muslim youth were “integrated”, in that they had strong Muslim identity and a strong identity as New Zealanders.¹⁶³ Muslim youth also had more positive outcomes in terms of life satisfaction, school adjustment, behavioural problems and psychological wellbeing than both Māori and New Zealand European youth. Strong association with Muslim identity acted to ameliorate the negative impact of discrimination on life satisfaction.¹⁶⁴ However, successful adaptation was contingent on New Zealanders’ acceptance of diversity and “‘social permission’ for the expression of Muslim identity and practices”.¹⁶⁵ Similarly, the reinforcement and valuing of Pacific cultural identity (for example, through Polynesian clubs and cultural activities in schools) is positively associated with stronger educational participation and outcomes.¹⁶⁶

The 1.5 Generation: Those Who Come to New Zealand Aged between Six and 18

1.49 As is the case with ethnic communities generally, ethnic and migrant youth are not a homogenous group, and will have different needs and expectations. For example, young people between the ages of six and 18 who migrate to another country with their parents – known as the “1.5 generation” – represent a “departure from the conventional process of migration”, who deserve particular attention.¹⁶⁷

1.50 For many children of migrants, “the realisation that their non-white status produces social distance between themselves and the majority population in New Zealand” results in a “sense of ‘in-betweenness’ that operates and manifests on a number of levels”.¹⁶⁸ One study on Asian migrant youth found that, despite expressing satisfaction with life in New Zealand, few participants indicated a desire to pursue careers in New Zealand.¹⁶⁹ In many respects, despite attending school and becoming immersed in the culture of the host society, the 1.5 generation were similar to first generation children. This was attributed to problematic concepts of settlement, belonging and “home” facing both new migrants to New Zealand and the host society.

1.51 In another study of 1.5 generation East Asian adolescents in Auckland, all participants reported that they had experienced discrimination and racism, which undermined any feelings of belonging in New Zealand.¹⁷⁰ For example, the participants in the study struggled with the need to make sense of their identity as migrants, and all reported having to actively come to terms with their “Asianness” or being cast as “other” by New Zealanders due to their visibly different appearances.¹⁷¹ Despite this, 75 per cent of participants indicated that they preferred being described as a Taiwanese or Korean New Zealander (and so on) as opposed to the generic “Asian” label.¹⁷² Many reported difficulties truly settling in New Zealand due to competing demands of “allegiance and attachment” between New Zealand and their home country.¹⁷³

1.52 However, this sense of “in-betweenness” does not always manifest itself negatively. Research on Chinese youth from the 1.5 generation found that participants valued their dual heritage as Chinese and New Zealanders, and saw this as an “asset and an opportunity to bridge the gap between the two”.¹⁷⁴ Children of migrants are frequently relied on to be “culture

and language brokers – that is, to mediate between parents and the host society, often in the role of interpreter or translator”.¹⁷⁵ This equips this group with valuable life-skills that their peers may not possess or need until later in life. That said, this role reversal, whereby parents are forced to “cede a degree of power to their children ... far beyond simple acknowledgement that their children’s acculturation is further advanced than their own” can be a source of significant conflict within families.¹⁷⁶ This is because there is often a substantial decline in:¹⁷⁷

... the social status of many East Asian migrants to New Zealand: their considerable social capital – respected qualifications, valued experience in high-status professions, academic and professional fluency – encounter an unfavourable “exchange rate” in New Zealand, where they struggle with the language, their qualifications are often unrecognised by professional bodies ... and they are shunned by employers for lacking “New Zealand experience.”

1.53 Further:¹⁷⁸

... as a result of curtailing their use of their origin language, and of not yet fully mastering English, some 1.5 generation adolescents may find themselves lacking sufficient skills in any language to articulate, and therefore make sense of, the myriad physical, emotional, psychological and social changes that accompany puberty and young adulthood.

1.54 The relevance of these studies is that they show that members of the 1.5 generation are different from new migrants. The 1.5 generation is the lowest hanging fruit in terms of recruitment (as is discussed further at [2.261]), and they are the best bridge to ensuring social cohesion and servicing the migrant market, as second generation migrants often either do not speak English or have only low English proficiency.

1.55 However, as noted by Spoonley and Bartley, the:¹⁷⁹

... special features of the 1.5 generation experience must be explored empirically if theorists are to draw conclusions about the future of transnational migration as an enduring feature of the social landscape. Furthermore, while most of the scholarly work addressing the 1.5 generation has so far come from the United States, New Zealand manifestations of the experiences of 1.5 generation migrants occur in a very different cultural, economic, political and historical context, which makes the New Zealand experience unique.

1.56 Businesses and policy makers need to understand this unique experience to address the challenges relevant to the 1.5 generation as customers and citizens.

Transnational Migrants – Those Who Live Cross-Border Lives

1.57 Transnational migrants are migrants who live their lives across borders and maintain their familial, economic, social, organisational, religious and political ties to home, “even where their countries of origin and settlement are geographically distant”.¹⁸⁰ As discussed above at [1.50], migrants from the 1.5 generation often have a “transnational outlook and aspirations”, either due to feelings of “in-betweenness”¹⁸¹ or because transnationalism is seen as “a normal and pragmatic response to the desire to fulfil both economic and lifestyle aspirations of experiencing the best the world can offer”.¹⁸²

1.58 For example, a 2011 study of 1.5 generation Taiwanese migrants who immigrated to Canada or New Zealand as children in the 1980s and 1990s, and later returned to Taiwan, found they returned to Taiwan because of employment opportunities, family and marriage, and personal aspirations.¹⁸³ Many interviewees reported that they experienced culture shock upon returning to Taiwan, and that they had plans to return to the country to which they had emigrated, or to emigrate elsewhere. As a result, the author of the study concluded that these young migrants represented a “floating population”.¹⁸⁴

1.59 Similar motivations were mentioned in a study examining the experience of 1.5 generation South Korean New Zealanders who immigrated to New Zealand as children or adolescents and then returned to Korea as young adults.¹⁸⁵ Short-term reasons for returning to South Korea included moving home to begin a career, gaining new experiences and finding a future spouse.¹⁸⁶ Difficulty in finding employment in the New Zealand labour market was a common theme among interviewees who returned to Korea for economic reasons.¹⁸⁷ Several

participants considered that it was harder for Asian persons to find a job in New Zealand, and nine participants used the metaphor of a “wall” to “describe various barriers between Korean immigrants and the rest of ‘Kiwi’ society”.¹⁸⁸ Long-term reasons for returning to New Zealand included the sense of isolation that comes from being a minority in New Zealand and the idealisation of Korea as “home”.¹⁸⁹ For further discussion of discrimination against the diverse in the labour market, see [2.123].

1.60 As travel becomes faster and cheaper, transnational migration will become increasingly common and easier than ever before.¹⁹⁰ At the time of writing, the Government had just approved a new alliance between Air New Zealand and Air China, which includes the launching of a new daily direct route between Auckland and Beijing, and the introduction of lower fares for air travel between New Zealand and China.¹⁹¹ The Internet has also changed the nature of migration: it has facilitated the increased rate of migration, as well as enabling migrants to report their experiences to their family back home.

1.61 As noted by Spoonley and Bartley:¹⁹²

Given both the increasing ease with which people may move through “transnational social spaces,” and the heightened emphasis on ethnic pluralism in many countries of immigration, contemporary migrants no longer need to submit to normative regimes of assimilation. Cultural hegemonies are able to be contested, ethnic identities are more fluid, and notions of belonging, settlement and “home” are made more contingent. They are further complicated by the diversity of options available to middle-class, professional transnationals, as well as to their children. Facilitating these, for example, are the prospects of dual or multiple citizenship, and in New Zealand, very few official restrictions governing migrants’ civic, economic and political integration.

1.62 The international trends towards greater “globalisation, hyper-connectivity and digital innovation are [also] changing the nature of consumption, competition, how markets work and what consumers expect”.¹⁹³ Businesses need to realise that New Zealand’s growing pool of ethnic minorities, who tend to be more youthful than the New Zealand European population, will expect to be serviced online. The intersection between demographic and digital disruption will affect the way customers expect businesses to engage with them.

1.63 Domestic businesses need to be alive to the composition, needs and expectations of overseas and international consumer markets, which will also be ethnically and culturally diverse. The use of the Internet for e-commerce potentially enlarges markets and contributes to a more globalised world.¹⁹⁴ However, businesses may need to adapt their product message or image depending on what is most appropriate for a specific community, region or country, and “language, timekeeping in business dealings, religion, product packaging, labelling, colour choices and size are only some of the many aspects to consider”.¹⁹⁵ This is discussed in detail at [2.7] and [2.259] of the business section of the Stocktake.

1.64 The issue in respect of transnational migrants is that, having invested in them, how do we ensure that they stay so New Zealand gets the benefit of its investment and not simply depart home to their source countries?¹⁹⁶ As pointed out by Professor Manying Ip, the very qualities which make transnational migrants desirable from an immigration policy standpoint also make them desirable to other countries seeking to attract skilled migrants, as well as to the countries from which they have emigrated.¹⁹⁷ Accordingly, it is unsurprising that transnational migrants are able to pursue opportunities across borders, even simultaneously.¹⁹⁸

1.65 Several academics have argued, however, that the adoption of an “astronaut lifestyle” by transnational migrants is driven by economic necessity, pointing to the difficulties faced by migrants in establishing business ventures or gaining employment in New Zealand commensurate with their qualifications and experience.¹⁹⁹ Attracting and retaining skilled workers is discussed in the section on immigration law and policy at [3.3]. The challenges faced by ethnic entrepreneurs and businesses are discussed below at [2.111].

Recommendations

- There is a need for further research and analysis of the experiences of ethnic and

migrant youth in New Zealand. The youth perspective will be increasingly important as an increasing proportion of our population will be younger and ethnically diverse, and it is important to distinguish between the views of different ethnic groups.

- Business and government need to make better use of the 1.5 generation, that is young people between the ages of six and 18 who migrate here with their parents, as the bridge between new migrants and other New Zealanders. We also need to make more use of second and multigenerational migrant families as bridges.

Linguistic Superdiversity

1.66 New Zealand's growing ethnic diversity has resulted in a corresponding increase in linguistic diversity. As at 2013, New Zealand residents reported speaking 160 different languages.²⁰⁰

1.67 English is still the most common language in which people hold everyday conversations, with 3,819,972 speakers (96.1 per cent of the total population).²⁰¹ After English, the next most common languages spoken are Te Reo Māori (148,395 speakers or 3.7 per cent of the New Zealand population), Samoan (86,403 speakers or 2.2 per cent) and Hindi (66,309 speakers or 1.7 per cent). Between 2001 and 2013, the number of people who could speak Hindi in New Zealand nearly tripled (from 22,749 people in 2001 to 66,309 in 2013). 81.7 per cent of all Tongan speakers, 74.7 per cent of Hindi and 74.2 per cent of Northern Chinese language speakers lived in Auckland in 2013.²⁰²

1.68 The number of people who could speak Northern Chinese (including Mandarin) almost doubled between 2001 and 2013 (from 26,514 people in 2001 to 52,263 in 2013).

1.69 In 2013, however, more than 87,000 people did not speak English at a basic level.²⁰³ Of those who did not include English as one of their spoken languages, 65.3 per cent lived in the Auckland region, and most identified with at least one Asian ethnicity (63.8 per cent or 55,320 people). The most common languages spoken by non-English speakers were:²⁰⁴

- Sinitic not further defined (including Chinese) (13.7 per cent of all non-English speakers or 11,961 people)
- Yue (including Cantonese) (12.1 per cent or 10,551 people)
- Northern Chinese (including Mandarin) (11.7 per cent or 10,218 people)
- Samoan (11.2 per cent or 9,825 people)
- Te Reo Māori (10.2 per cent or 8,916 people).

1.70 Around 62 per cent of Asians, however, speak a second language (compared with 19 per cent of all New Zealand residents), and four times as many Asians speak a third language compared to the total population.²⁰⁵

1.71 According to the 2013 Census, Samoan was the most commonly spoken Pacific language among the Pacific population, with 60 per cent of New Zealand's Samoan population reporting that they could speak Samoan. This was followed by Tuvalu (66 per cent of the Tuvaluan population in New Zealand), Tongan (53 per cent), Fijian (43 per cent), Tokelauan (34 per cent), Niuean (19 per cent) and Cook Islands Māori (13 per cent).

1.72 The increased linguistic diversity in New Zealand has implications for multiple areas, including the ability of those who do not speak English (or have low English speaking proficiency) to vote (see [5.21]) and gain employment (see [2.123]) and their access to education, justice (for example, in criminal matters, see [3.130]) and other state services. The need for a national languages policy is discussed at [3.103].

Religious Superdiversity

1.73 With superdiversity comes increasing religious diversity. Although the 2013 Census figures reveal that New Zealand is becoming increasingly secular as the number

of people reporting no religion increases, New Zealand is simultaneously becoming more religiously diverse as traditionally minority religions continue to grow.²⁰⁶

1.74 For example, the number of people affiliating with the Sikh religion has doubled since 2006, and the number of people affiliating with Hinduism has grown by almost 40 per cent since 2006.²⁰⁷ The number of people affiliated with Islam has increased by almost 30 per cent since 2006 and, of those who reported being affiliated with Islam, over a quarter were born in New Zealand.²⁰⁸

1.75 Auckland is the only city in New Zealand that is becoming more religious, with a 1.2 per cent increase in religious residents in the 2013 Census compared to 2006. Around 60 per cent of Aucklanders are affiliated to at least one religion. In contrast, 47.7 per cent of those in Wellington and 45.5 per cent of those in Christchurch reported no religious affiliation. The increased religious affiliation in Auckland has been attributed to the increased number of Pacific and other migrants to the region, particularly refugees who enter New Zealand under the humanitarian categories.²⁰⁹ Religion can hold particular appeal for migrants because it helps them cope “with the isolation of migration” and is one way of reinforcing cultural and ethnic values.²¹⁰

1.76 The increasing religious diversity of New Zealand society may pose challenges to social cohesion. Incidents such as a man’s installation of a 30-tonne statue of the Hindu god Shiva in his backyard, which angered the man’s Catholic neighbours, will become all the more frequent as New Zealand’s superdiversity grows.²¹¹

1.77 Increased religious diversity also has legal and policy implications for the education sector (see [3.79]), the labour market (both in the public and private sectors, see [4.7]), the health sector (see [3.120]) and the justice system (see [3.130] and [4.135]). For discussion of the legal protection for religious freedom under the New Zealand Bill of Rights Act 1990 (“NZBORA”), see [4.59].

Asian New Zealanders

1.78 For Census purposes, the term “Asian” refers to people whose ethnicities originate in the Asian continent, which stretches from Afghanistan in the west to Japan in the east and from China in the north to Indonesia in the south. It excludes people whose ethnicity originates from the Middle East and Asian Russia.²¹²

1.79 A significant number of Asians in New Zealand are born overseas.²¹³ In 2006, for example, 80 per cent of Asians were born overseas, while 20 per cent were born in New Zealand. This ratio was largely similar across the Asian subgroups.²¹⁴ In 2013, approximately 78 per cent of people identifying as Asian were born overseas, while 22 per cent were born in New Zealand.²¹⁵ As in 2006, this ratio was similar across the Asian subgroups.²¹⁶ The percentage of overseas-born people living in New Zealand who were born in Asia rose to 31.6 per cent in 2013 (up from 28.6 per cent).²¹⁷

1.80 The demographic characteristics of Asian subgroups in Auckland show the Chinese and Indian populations are by far the biggest, and were as follows in 2013:²¹⁸

Table: Demographic characteristics of Asian subgroups in Auckland

Ethnic group	Population number	Median age	Percentage aged under 15	Percentage aged 15–64	Percentage aged over 65	Sex ratio (males/100 females)
Chinese	117,795	32	17.8	73.5	8.7	89
Indian	105,942	31	20.5	74.1	5.4	106
Korean	21,981	31	16.9	79.3	3.8	90
Filipino	20,502	30	23.9	73.7	2.4	81
Japanese	6,720	30	27.9	69.5	2.7	61
Sri Lankan	6,393	32	19.7	74.1	6.2	104
Vietnamese	4,359	28	21.4	74.5	4.1	87
Cambodian	4,188	30	23.4	69.9	6.7	92
Thai	4,155	31	20.0	78.4	1.6	55
Malay	2,508	29	17.1	80.1	2.8	89
Indonesian	2,484	31	22.2	73.9	3.9	86
Afghani	2,421	22	35.6	61.7	2.7	102
Pakistani	2,253	26	35.2	63.2	1.6	112
Total Asian	307,230	31	19.8	74.0	6.2	93
All ethnic groups	1,415,550	35	20.0	68.3	10.8	94

1.81 It is important to bear in mind that, just as those identifying with an Asian ethnicity are not homogenous, there is also diversity within the different Asian subgroups. For example, the diversity of New Zealand’s Indian population is evidenced by its linguistic diversity. Even though the numbers speaking commonly spoken languages such as Hindi, Gujarati and Punjabi have increased significantly, so too has the number of speakers of languages originating from northern, central and southern India, including Bengali, Marathi, Tamil, Telugu and Malayalam.²¹⁹ Further, groups such as Fijian Indians may identify with both the Asian and Pacific communities.

1.82 The degree of knowledge of Asia needs to grow so we have the sophistication to understand who makes up the superdiverse population, and that population’s needs as customers and citizens.

New Zealand’s Ethnoburbs and Ethnic Precincts

1.83 A 2015 Asia New Zealand Foundation Report entitled *Asian Auckland* has reported the tendency of Asian migrants to congregate together in distinctive “ethnoburbs”.²²⁰ For example, the top five areas in Auckland for people of Chinese ethnicity are Pinehill (23.4 per cent of the area’s population), New Lynn (20.8 per cent), Mission Heights (18.5 per cent), Epsom Central (18.2 per cent) and Pigeon Mountain North (17.9 per cent). For people of Indian ethnicity, the top five areas are Hillsborough West (18.3 per cent of the area’s population), Papatoetoe Central (17 per cent), Lynfield North (16.7 per cent), Puhinui North (14.8 per cent) and Lynfield South (14.1 per cent). For people of South Korean ethnicity the areas are Northcross (12.2 per cent of the area’s population), Forrest Hill (12.2 per cent), North Harbour West (11.9 per cent), Pinehill (11.7 per cent) and Newmarket (11 per cent). For people of Filipino ethnicity, it is Glenfield Central (10.6 per cent of the area’s population), Glenfield North (10 per cent), Kaipatiki (7.4 per cent), Mt Wellington North (7.1 per cent) and Donegal Park (7 per cent).²²¹ The maps below show the ethnic clustering of the Asian, Pacific and Māori communities across Auckland as at the last census.

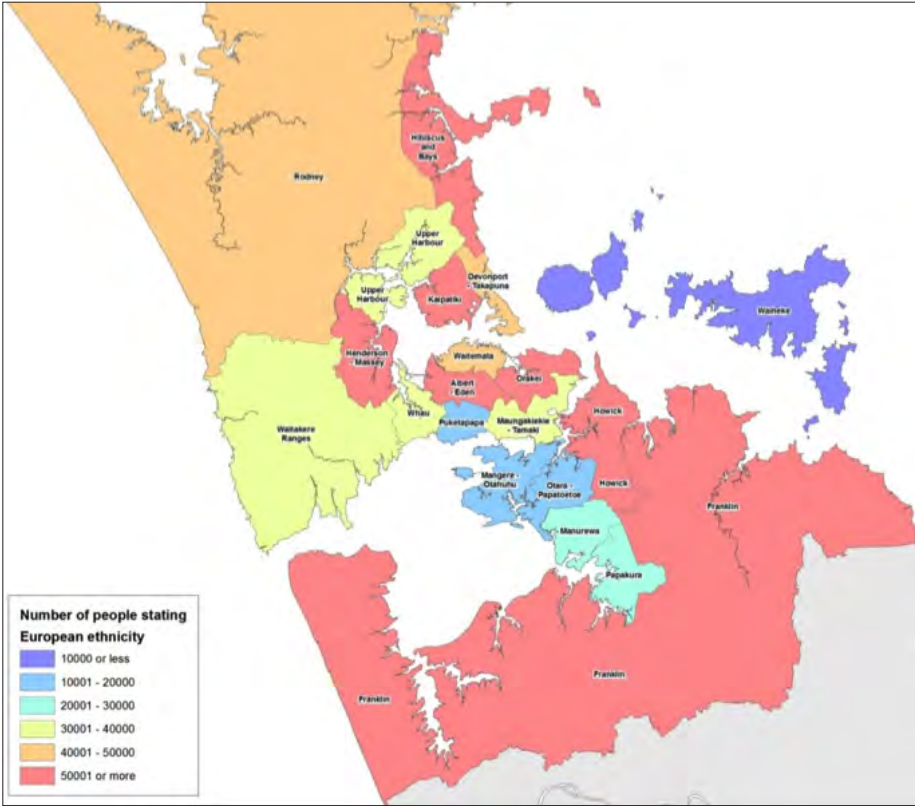
1.84 The rise in ethnoburbs is a continuation of a trend picked up in a longitudinal study examining the neighbourhood clustering of Auckland's main ethnic groups between 1991 and 2006.²²² The study found that the clustering of Pacific Islanders and Asians increased significantly over this period, a time of significant inward migration to New Zealand.²²³ For example, Pacific peoples were strongly grouped in South Auckland suburbs typically characterised by low-cost housing, such as Manukau, reflecting income stratification within housing markets (or discrimination in the housing market).²²⁴ In contrast, while Asian migrants were also highly concentrated in certain areas (though not to the same degree as Pacific Island migrants), the clustering instead was in areas with higher than average land prices, despite the fact ethnic Asians tend to earn lower than average incomes.²²⁵ The authors of the study concluded that:²²⁶

... given many Asian residents of Auckland are recent migrants, this possibly indicated a desire by new migrants to live in areas over-represented with other Asians, and a willingness to pay a premium to do so.

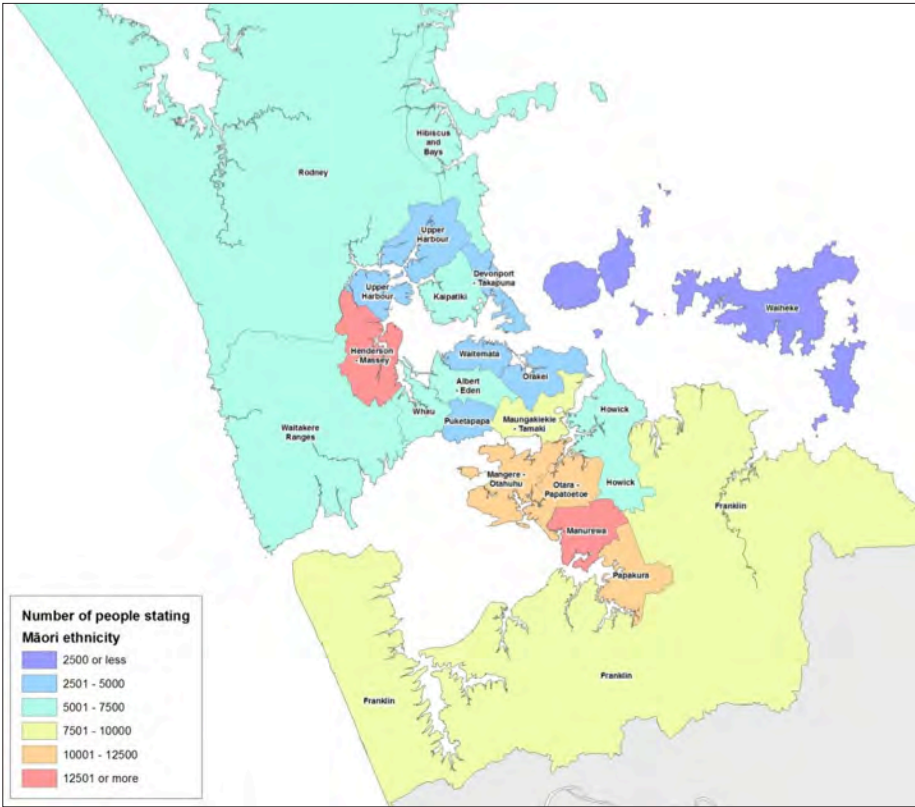
1.85 This suggests that the clustering of Asians could be motivated by different reasons than the clustering of other ethnic groups, such as Pacific people.

Figures: Regional distribution of Māori, Asian, Pacific and New Zealand European populations in Auckland Region as at 2013 Census ²²⁷

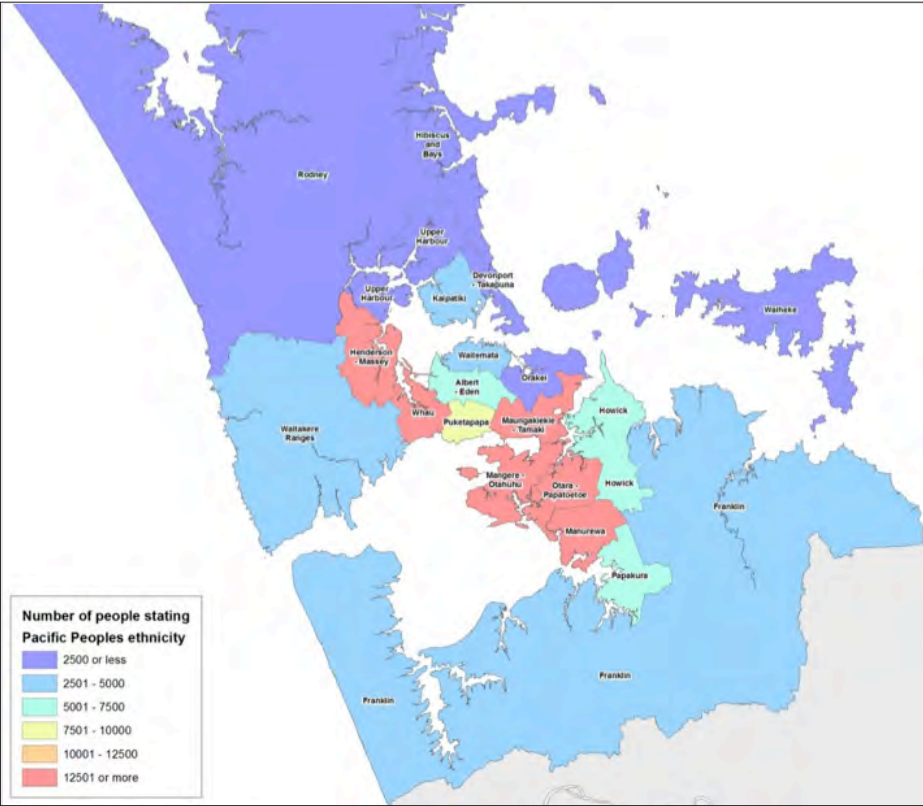
New Zealand European



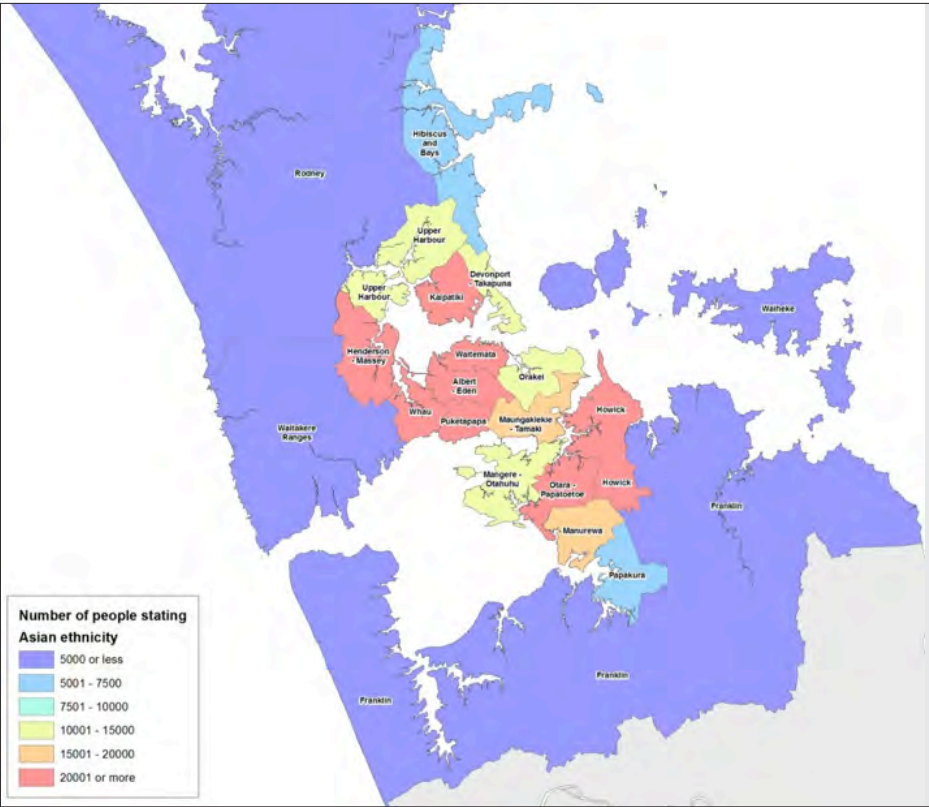
Māori



Pacific



Asian



1.86 One explanation for clustering is that there are services specific to the needs of that ethnicity in one place, such as restaurants and food outlets, elite schools, ethnic community centres and places of religious worship.²²⁸ In a small-scale study where people on Dominion Road were asked what they appreciated most about shopping there, the majority of participants cited convenience as the most important factor.²²⁹ In particular, nearly half of the Chinese-born participants liked that Dominion Road was close to home, and a further 10 per cent appreciated its close proximity to their work.

1.87 However, a 2015 Auckland Council study on the function of the Balmoral shops, a precinct with a large number of Asian restaurants, found that convenience was a key factor in a range of shoppers choosing to shop in the precinct (including non-Asian shoppers):²³⁰

During the day, particularly before noon, the precinct acts as a local service centre, meeting the needs of a broad range of customers from the surrounding community. During this time, 80 per cent of the total spend originates from households located within seven kilometres of the precinct. Daytime spending patterns are evenly spread over a range of retail categories, with only a third of the overall spend going on food hospitality. These patterns suggest that the Balmoral shops function as a local centre during the day, broadly consistent with the role and function of other Auckland centres of a similar size and structure. During the evening, however, the centre emerges as a destination food hospitality precinct. The night-time trade is highly concentrated (74 per cent) in this sector, with people travelling from across Auckland to dine in the precinct's Asian restaurants, many of which are Chinese. The average distance travelled to access the centre increases into the evening, with 80 per cent of the 8pm–midnight spend originating from households located within 15 kilometres of the precinct.

1.88 Ethnoburbs enable new migrants with limited English to settle, access established networks and find work, as “ethnic businesses” often employ workers from their own ethnic group.²³¹ Spoonley and others have suggested that the rapid growth of Asian ethnoburbs since the 1990s is, in part, the result of “the neo-liberal inclinations of post-1986 immigration policy”, where the emphasis was (and still is) on attracting the “‘economic’ migrant who will meet the labour market, finance and globalised interests of capital”, and where “the development of service and small business functions as evidence of entrepreneurial selves and market sovereignty”.²³²

1.89 Ethnic clustering may also arise if groups prefer to live close to people similar to themselves, or separate from people who are different.²³³ The issue is whether discrimination contributes to the clustering: is it because migrants feel safer with their own, or is it just that they feel more comfortable in areas where they have specific ethnic food outlets, elite schools and ethnic businesses which cater to them, and people who speak their native language? It is possible that the primary motivation for clustering is that people want to live with people who have the same cultural norms and assumptions as themselves, though further research is needed in this area.

1.90 Unlike previously, when there were only small numbers of migrants coming to New Zealand, there is no need now for ethnic communities to embrace mainstream infrastructure, as they have developed their own ethnic media channels (as is discussed at [2.251]), food outlets, schools and businesses. Ethnic communities are therefore becoming increasingly self-reliant and there is less need for migrants to adapt to New Zealand’s language and culture upon arrival.

1.91 The practical implication of clustering is that Auckland electorates in particular may be dominated by Asian or Pacific people, such that the electorate MP needs to reflect their policy priorities to win their vote. For example, in Auckland the following electorates have a significant proportion of Asians and Pacific compared to their proportion of the general population (12 per cent and 7.4 per cent respectively as at the 2013 Census):²³⁴

Table: Auckland electorates with significant proportion of Asians and Pacific Peoples

Electorate	Asian representation in electorate (%)	Pacific representation in electorate (%)	MP	Cabinet MP
Auckland Central	30.5	-	Hon Nikki Kaye	✓
Botany	39.7	12.2	Jami-Lee Ross	-
East Coast Bays	23.9	-	Hon Murray McCully	✓
Epsom	30.2	-	David Seymour	✓
Kelston	22.1	23.9	Carmel Sepuloni	-
Mangere	16.9	60.3	Su'a William Sio	-
Manukau East	31.1	44.8	Jenny Salesa	-
Manurewa	23.2	36.5	Louisa Wall	-
Maungakiekie	24.7	22.1	Hon Peseta Sam Lotu-liga	✓
Mt Albert	19.4	10.4	David Shearer	-
Mt Roskill	39.1	14.9	Hon Phil Goff	-
New Lynn	36.5	12.3	Hon David Cunliffe	-
Northcote	24.1	-	Hon Dr Jonathan Coleman	✓
North Shore	18.9	-	Hon Maggie Barry	✓
Pakuranga	31.6	-	Hon Maurice Williamson	-
Papakura	14.5	15	Hon Judith Collins	-
Tamaki	15.3	7.5	Simon O'Connor	-
Te Atatu	23.5	18	Phil Twyford	-
Upper Harbour	23.6	10.5	Hon Paula Bennett	✓

1.92 Thirty-five per cent of the current Ministers in Cabinet are Auckland electorate MPs, which enhances the political influence of Asian constituents.

Asian Workers

1.93 As the population of New Zealand-born Asians and those who have lived here for generations increases, they will be better able to integrate into the labour market.²³⁵ Around 25 per cent of New Zealand's employed people were born overseas.²³⁶ A 2011 National Business Review article reported that half of Auckland residents of working age were born overseas.²³⁷ The Asian workforce in particular forms a crucial part of New Zealand's current and future workforce. By 2026, the Asian working-age population is projected to make up 15 per cent of New Zealand's total working-age population.²³⁸

1.94 International students, a large proportion of whom come from Asia, also come to New Zealand because of better job opportunities, as well as for a safe and friendly environment.²³⁹ As the New Zealand-born migrant population increases and more international students enter the workforce, the issues preventing migrants from fully engaging in the workforce will decrease. The labour pool in New Zealand will accordingly become more diverse.

1.95 Asian migrants tend to be more highly qualified than the average New Zealander because of the emphasis on attracting skilled workers as part of the migrant selection process. Recent statistics from Immigration New Zealand indicate that one in five migrants to Auckland has a university degree or equivalent qualification, compared with 15 per cent of those born in New Zealand. Similarly, while 10 per cent of Auckland migrants have an honours or post-graduate degree, only 6 per cent of the local population hold this qualification level.²⁴⁰

Asians have double the prevalence of Bachelor's degrees compared to the European population.²⁴¹ Asian migrants are also over-represented in the computing and health professions. For discussion of discrimination against Asians in the labour market and their over-representation in lower skilled professions, see [2.125]. For further discussion of immigration policy, see [3.3].

Perspectives of Asian New Zealanders: Survey

1.96 The Superdiversity Centre, in conjunction with New Zealand Asian Leaders ("NZAL"), put out a survey as part of the Stocktake to learn about the experience of the superdiverse population in New Zealand. This important perspective is often missing in data collected on superdiversity.

Methodology

1.97 The survey was sent out to people on the NZAL database, a professional organisation for Asian New Zealanders who are leaders and for high-achieving Asians in New Zealand who aspire to become leaders.²⁴²

1.98 The survey comprised of a set of open-ended questions designed to obtain feedback from Asians about their experience in New Zealand, the challenges they faced and the benefits and opportunities offered by superdiversity.²⁴³

Findings

1.99 Respondents identified the following key benefits and opportunities from superdiversity:

- Different perspectives, ideas and innovation, experience, knowledge and skills (which in turn leads to business opportunities and enhancement of the wellbeing of all New Zealanders);
- Social benefits, including "CQ"/cultural intelligence (the ability to deal with people not like you), good "social governance", the promotion of broader world views, tolerance and inclusion; and
- Economic benefits, including access to global markets and investments and access to global and ethnic networks, which in turn made New Zealand "more relevant on the global stage".

1.100 In terms of the key challenges of superdiversity (especially for those who are visually different), respondents identified the following issues:

- Lack of equal job opportunities and professional networks;
- Integrating into mainstream culture without assimilating, and retention of cultural identity;
- Conscious and unconscious bias, stereotyping, discrimination and stigma;
- Ensuring organisations and local communities are not only representative of the diverse, but also embrace and encourage diversity;
- Migrants may lack knowledge of New Zealand's legal and regulatory requirements, or fail to appreciate the importance of compliance;
- Resistance to change or a failure to accept non-white values as "New Zealand values";
- General lack of awareness of diversity; and
- Communication, cultural and language barriers.

1.101 In terms of the key challenges in the labour market, language proficiency issues were a commonly cited issue, as were differences in business culture and communication style. At the recruitment stage, respondents commented that there was a reluctance among New Zealand employers to take on people with overseas experience and credentials, and that entry into the workforce was difficult because they lacked professional networks (or the ability to enter New Zealand European cultural networks) or faced bias (for example, because of foreign looking names on CVs). In the course of employment, participants said they were given

little opportunity for progression and promotion. The themes of “inclusion without assimilation” and bias were evident as well.

1.102 For those doing business in New Zealand, in addition to the issues experienced generally in the labour market, problems included gaining access to capital and financial advice, gaining acceptance in the business community and difficulties around legislative and regulatory compliance.

1.103 The measures respondents wanted to see introduced to help ethnic minorities and migrants in the labour market included:

- Getting proper recognition of overseas qualifications within industries and professions;
- More access to financial advice, support and mentoring;
- Changing perceptions of, and attitudes towards, the diverse in the workforce, particularly in human resources and recruitment teams;
- Better language and CQ training and/or diversity awareness programmes; and
- Publication of ethnicity data by businesses and public sector agencies.

1.104 Some respondents also expressed concerns about tokenistic measures being introduced.

The vast majority of respondents said they did not think the New Zealand public understood the benefits and opportunities of diversity, though several thought that the situation was improving, particularly in Auckland and other urban centres, due to greater visibility of ethnic minorities. This deficit in understanding was attributed to a variety of things, including:

- Migrants representing a threat to the status quo;
- The lack of informed, rational public debate around diversity issues (for example, around the Auckland housing crisis);²⁴⁴
- Misrepresentation and/or a lack of appreciation of diversity by politicians and the media;
- The lack of diversity coverage in the education system;
- The rapid increase in diversity had left little time to adjust; and
- Many respondents saw diversity as an “Auckland issue” rather than a nationwide phenomenon.

1.106 There was a mixed response on whether discrimination had increased over the past five years. Some said there had been increased discrimination against certain communities, for example the Chinese and Muslim communities, while others thought that the situation was gradually improving. About two-thirds of respondents reported personally experiencing some form of direct or overt racism and/or institutional racism (particularly in employment situations) in this time.

1.107 Respondents wanted to see the following measures introduced to assist their participation (and their family’s participation) in public life:

- The holding of large-scale cultural events;
- Providing more accessibility to services and promoting a multicultural framework;
- Changing the representation of what it means to be “Kiwi” through political discourse and the media;
- Further research on the advantages of superdiversity;
- More information about diversity and inclusion in the education system;
- Better English language proficiency teaching programmes; and
- The provision of accessible information tailored to the specific needs of migrants upon settlement.

1.108 In respect of their interface with Māori, many saw the relationship between Māori and other minorities as limited or poor. This was attributed primarily to limited interactions and engagement between Māori and other minorities. Those who reported a positive relationship between Māori and ethnic minorities tended to emphasise the growing trade and business relationship between the two. However, several respondents (8.24 per cent) said that, just as with any ethnic group, the answer varied from person to person or according to the context.

1.109 Several respondents (7.06 per cent) said the issue was political rather than social: they considered that Māori thought that the Treaty of Waitangi and biculturalism should take precedence over multiculturalism, and thought that Māori were stuck in a “grievance world view” where there was no room for the issues of ethnic minorities and migrants while issues for the Māori community were still being sorted out. In other words, the diverse were seen as competitors for government resources and attention.²⁴⁵ The potential issues that superdiversity poses for Māori and the Treaty relationship are discussed further at [5.31].

1.110 In sum, we need more surveys of what diverse groups think. We need to move beyond talking about the diverse and presuming what they think and need, and ask them instead. We also need to recognise that ethnic minorities and migrants, and especially the 1.5 generation, have expertise and insight into understanding the challenges because of their position between the two cultures – that of their country of birth and that of their country of residence now.

1.111 The Superdiversity Centre will run a survey periodically to capture the views of the diverse. The results evidence, and give visibility to, the difficulties that the diverse (particularly those who are visually different) experience. They are best placed to know where the shoe pinches, and their views should be sought and accorded weight.

Pacific New Zealanders

1.112 Just as with Asian New Zealanders, the Pacific population in New Zealand is diverse and comprised of a number of subgroups. The majority of the Pacific population resides in Auckland (65.9 per cent), followed by Wellington (12.2 per cent).²⁴⁶ In 2013, 62.3 per cent of people identifying with at least one Pacific ethnicity were born in New Zealand. The Pacific population is younger than the Asian and New Zealand European populations. Unlike the Asian population, a larger proportion of Pacific New Zealanders are born in New Zealand rather than overseas. The key question is whether the same thing will happen to Asians over time.

1.113 As at 2013, the key demographic characteristic of New Zealand’s Pacific population was the domination by Samoans, and then Cook Islanders and Tongans.

Table: Key demographic characteristics of New Zealand's Pacific population

Ethnic group	Population number	Median age	Sex ratio (males/100 females)	Percentage born in New Zealand	Percentage residing in Auckland region
Samoan	144,138	21.5	96.4	62.7	66.5
Cook Islands Māori	61,839	20.0	94.8	77.4	59.5
Tongan	60,336	19.4	100	59.8	77.8
Niuean	23,883	20.4	94.6	78.9	77.7
Fijian	14,445	26.3	98.4	39.9	58.8
Tokelauan	7,716	19.2	91	73.9	27.3
Tuvuluan	3,537	19.2	93.6	46.5	72.4
Kiribati	2,115	20.6	88.7	32.8	45.0
Tahitian	1,407	22.1	77.7	76.4	64.2
Papua New Guinean	807	22.4	81.8	31.1	34.6
Rarotongan	792	15.8	93.7	91.6	33.6
Rotuman	783	25.9	80.8	49.8	59.0
Solomon Islander	603	22.0	90.22	34.5	34.0
Ni Vanuatu	492	27.7	221.6	26.1	22.6
Australian Aboriginal	432	21.8	88.6	53.8	18.6
Hawaiian	336	20.9	89.8	62.2	37.5
Pitcairn Islander	177	37.2	87.19	80.7	22.7
Nauruan	129	19.1	74.3	35.7	76.2
All ethnic groups	1,415,550	35	94		

Perspectives of Pacific New Zealanders: Survey

The Superdiversity Centre, in conjunction with COMET and Raise Pasifika, put out a survey as part of the Stocktake to learn about the experience of Pacific peoples in New Zealand.

Methodology

1.114 A survey was sent out to people on the COMET and Raise Pasifika databases. In total, 19 responses were received. COMET is a council-controlled organisation of Auckland Council and was an organising partner of the Fono, an organisation which provides affordable services including medical, dental, pharmacy, health promotion, social services, education and Whānau Ora across four Auckland clinics and a Northland Pacific Whānau Ora Service. Raise Pasifika is a community-driven initiative, advocating for Pasifika education aspirations in Auckland, led by Pasifika educators and community stakeholders.

1.115 As with the NZAL survey, the survey was comprised of a set of open-ended questions designed to obtain feedback from Pacific peoples about their experience in New Zealand, the challenges they faced and the benefits and opportunities offered by superdiversity.²⁴⁷

Findings

1.116 Thirty six per cent of respondents were born in New Zealand. All of those born overseas had resided in New Zealand for at least 15 years.

- 1.117 Participants identified the following benefits and opportunities from having a superdiverse New Zealand population:
- Opportunities to learn about different worldviews, cultural traditions, knowledge, beliefs and customs, skills (linguistic, academic, sporting and arts), dress and food; and
 - Economic benefits, including innovation, expertise and knowledge for economic growth and global connectivity.
- 1.118 Respondents identified the following as the key challenges facing ethnic minorities and migrants in New Zealand (especially for the visually different):
- Language barriers;
 - Inadequate skill level;
 - Finding a job and conducting oneself well in job interviews;
 - Racism, intolerance, bias, misunderstanding and stereotyping;
 - Obtaining access to housing, health and education;
 - Difficulties maintaining harmony across different communities;
 - Competition for resources and political priority between new migrant communities and established ethnic communities;
 - Lack of ethnic representation in public decision-making roles; and
 - Lack of attempt to integrate by new migrants.
- 1.119 Participants reported that they wanted to see the following measures introduced to assist ethnic minorities and migrants participate in public life:
- More diverse public figures;
 - More respect for, and honouring of, different perspectives and backgrounds;
 - The introduction of a culturally and linguistically diverse education system and curriculum;
 - More opportunities to speak diverse languages in everyday life; and
 - Government support for a languages strategy.
- 1.120 All (except for one) of the respondents considered that the New Zealand public did not understand the benefits and opportunities of superdiversity. Reasons cited for this lack of understanding included negative portrayal by certain ethnic groups in the media, lack of coordinated leadership in the diversity space, a failure to truly embrace diversity as the norm and ongoing prejudice and stereotyping.
- 1.121 All except for one of the respondents reported personally experiencing racism and/or discrimination in the past five years, particularly in the workplace (90 per cent of respondents).²⁴⁸ Many commented that the discrimination experienced was subtle rather than overt (for example, difficulties gaining employment or getting a promotion were more frequently experienced than physical or verbal harassment). Despite this, the majority of respondents did not think that people from ethnic minorities and migrants had encountered greater discrimination and/or racism over the past five years, and considered that New Zealand was becoming more open to diversity.²⁴⁹ One respondent observed that new migrant groups had encountered less discrimination upon arrival than Pacific people in the 1970s. Those who thought discrimination and/or racism had got worse attributed this to the fast growing nature of the migrant population, which had left little time to adjust, and the increased competition for resources, for example housing.
- 1.122 Respondents reported the following key challenges facing ethnic minorities and migrants in the labour market:
- Lack of local experience;
 - Lack of digital and/or literacy skills;

- Language barriers;
- Resistance by employers to hiring diverse candidates;
- Lack of intercultural understanding;
- Racism and discrimination; and
- Lack of familiarity with New Zealand business culture.

1.123 In order to address these issues, participants wished to see the following measures introduced:

- More work experience and apprenticeship opportunities for diverse candidates;
- Greater governmental support for particular industries, such as trades;
- Allowing a greater variety of languages to be spoken in the workplace;
- Education for employers on other cultures;
- Access to settlement classes for migrants prior to arrival in New Zealand;
- More social cohesion measures to encourage local communities to accept new migrants, such as more localised community activities;
- The introduction of a culturally and linguistically diverse education system and curriculum, including at tertiary level. One respondent commented that an acknowledgement and appreciation of diversity in the education system could filter through to workplace culture upon students' transition to the workplace; and
- The adoption of positive discrimination measures.

1.124 Respondents considered that the key challenges facing ethnic minorities and migrants doing business in New Zealand included understanding New Zealand's taxation and labour laws (and regulatory compliance more generally), financial and cultural literacy, racism, obtaining start-up capital, and a lack of understanding of the New Zealand financial market.

1.125 In terms of interface between ethnic minorities and migrants, and Māori, the majority of respondents (approximately 70 per cent) thought that the relationship could be improved.²⁵⁰ One respondent said that the focus was still on biculturalism as opposed to multiculturalism. About one-third of respondents thought that all migrants should have to learn about the Treaty of Waitangi and learn some Te Reo Māori so that they could learn about the importance of the tangata whenua status in New Zealand.

Pacific Workers

1.126 Pacific people are significantly over-represented in the lowest skilled occupational groups and in skill groups with low future demand.²⁵¹ For example, Pacific people are over-represented in labourer and machinery operator jobs, which are concentrated in manufacturing, wholesale and retail, transport and warehousing.²⁵²

1.127 As discussed at [1.31], the Pacific population is young in comparison to the general population. As a result, although the number of young New Zealand workers is in decline, the number of young Pacific employees is on the rise.²⁵³ However, similarly to the adult Pacific workforce, Pacific youth are over-represented in industries such as retail, administration, labour and trades.²⁵⁴ Pacific people are also under-represented in the public service: while 8 per cent of the public service workforce is of Pacific descent, Pacific people only represent 1.8 per cent of senior leaders.²⁵⁵

1.128 As a result of their over-representation in "dangerous" industries, Pacific workers, together with Māori workers, have high rates of workplace injury claims.²⁵⁶ Further, Pacific employees earn lower wages than their non-Pacific counterparts, even when factors such as age and qualification level are taken into account.²⁵⁷ There is also evidence that Pacific workers are more vulnerable to unemployment in times of economic downturn.²⁵⁸ Pacific people experienced the worst rates of unemployment from March 2008 to 2009 as a result of the

global financial crisis, experiencing a 4.4 per cent increase in the unemployment rate.²⁵⁹

1.129 The Pacific population will make up an increasing proportion of New Zealand's future workforce, particularly in Auckland. Research conducted by the Auckland Council indicated that highly skilled occupations are projected to grow.²⁶⁰ The research identified the need to close the gap in educational attainment for Pacific students, and found that the greatest potential for up-skilling was in the areas of science, technology, engineering and health.

Recommendations

- We need more surveys of what diverse groups think, so we better understand their issues and factor that into keeping social and financial capital high. We need to move beyond talking about the diverse and presuming what they think and need, and ask them instead. We also need to recognise that ethnic minorities and migrants, and especially the 1.5 generation, have expertise and insight into understanding the challenges because of their position between the two cultures – that of their country of birth and that of their country of residence now.
- The Superdiversity Centre will run a survey periodically to capture the views of the diverse. The results evidence, and give visibility to, the difficulties that the diverse (particularly those who are visually different) experience. They are best placed to know where the shoe pinches, and their views should be sought and accorded weight.
- We need to increase the depth and the sophistication of our understanding of Asians so that we understand what part of Asia they are from, their values, their culture and their needs as customers, citizens and as employees. For example, see the recommendation about conducting an Asia Capability survey across New Zealand organisations like that recently completed in Australia.

B U S I N E S S

Executive Summary

2.1 This section sets out the key impacts of superdiversity on business from reviewing studies, statistics and New Zealand and overseas business practice, and from surveying small to medium-size New Zealand businesses (businesses employing 20 people or less) and human resources managers in larger organisations.²⁶¹

- a. Superdiversity means that there is no “business as usual” for organisations if they want to keep winning great customers and staff. Although New Zealand’s diversity is not a new phenomenon, the level of migration that has occurred in the last five years, spurred on by the increase in global migration, means that those not born here have passed the point of critical mass. The opportunities and challenges are already here and are presenting themselves in a competitive market.

The status quo, where New Zealand European-staffed businesses service New Zealand European customers, is unsustainable given New Zealand’s ongoing demographic disruption. The market has changed, with almost 50 per cent of Auckland already Māori, Asian and Pacific, and by 2038 over 50 per cent of New Zealand’s population will be Māori, Asian and Pacific. Businesses will only retain market share if they win more diverse customers. Migrant customers, including tourists, represent a significant, untapped revenue stream for some businesses. The advantage of migrant customers is that they are new in New Zealand, so businesses do not have to win them away from competing businesses – they just have to win them in the first instance, and then hold onto them. New Zealand’s focus on attracting investor migrants also represents an opportunity for businesses seeking capital, and for service industries wanting high value customers.

The talent pool to service diverse customers will also be increasingly comprised of the diverse. It also makes sense to recruit from the market to service the market. If businesses want to break into ethnic networks for prospective customers, they can recruit ethnic workers who are part of those networks. Employers and managers will need to learn how to evaluate and assess foreign CVs and to recruit for culture, values and language abilities. Employers need to allow for the fact that new migrant employees may take longer to adjust to the New Zealand working environment. Employers should see this time as an investment rather than a cost, given the extraordinary performance companies like Beca have managed to achieve from using a culturally diverse workforce as a competitive market advantage, as discussed below at [2.50].

- b. The diversity dividend. Diverse employees can bring benefits to businesses, including:
 - i. Access to a wider, diverse customer base – Diverse employees share the same language, culture and values as diverse customers, and are therefore more capable of interacting with those customers. Diverse customers, in turn, may prefer dealing with those like them due to familiarity and greater ease of being understood. But the key is to understand what diverse customers want, and that may differ depending on whether they are new, 1.5 generation or second generation migrants. There is no substitute for direct engagement with customers about the type of engagement, products and services they want. The Bayleys case study (below at [2.57]) also illustrates that New Zealand European vendors sometimes prefer Asian sales agents because they can tap into the market for potential overseas Asian purchasers.
 - ii. Innovation – Diverse employees have different cultural and language skill sets, perspectives and ideas (particularly those from the skilled migrant and entrepreneurial categories), which may help grow or seed new business, as is illustrated by the experience of Brijesh and Nivedita Sethi, Oregon Group, Smile Dental and Nirvana Health Group, discussed at [2.64], [2.76], [2.81] and [2.90] below;
 - iii. Greater export potential – Diverse employees can give businesses a competitive advantage in the export market by providing access to international contacts and by better understanding how to succeed in their birth country’s market (as found in a New Zealand study, discussed below at [2.91]); and
 - iv. Migrant employees can be loyal, hardworking and willing to do jobs that

New Zealanders will not do, for example in the health care and rural sectors (as discussed at [2.272] and [2.176] in the Xero qualitative study).

New Zealand also benefits from greater access to foreign capital, foreign markets, international students and high tourist numbers. However, in order to capitalise on the diversity dividend, businesses need first to address challenges such as discrimination in recruitment and in the course of employment.

- c. Businesses are conscious of diversity, but their focus is limited to gender. Although many businesses are aware of the importance of gender diversity, to date there has been little focus on other types of diversity, such as ethnicity. A pressing diversity risk for New Zealand companies and boards is ethnic diversity given New Zealand's changed demography and greater focus on Asian markets. The available data indicates that there is poor ethnic representation in senior management and on boards, and few companies have an ethnic diversity policy or initiatives in place. For many, diversity is not seen as a pressing concern within their organisation, or a market advantage. Further, the intersection between more than one diversity strand, for instance the issues for ethnic women, is often overlooked. The pay data also shows that ethnic women often earn the least, and that the double disadvantage can create unique challenges in terms of conscious and unconscious bias and stereotyping.
- d. How to create a fit for the future business to retain and grow market share:
 - i. Target the most accessible customer base in the first instance – Businesses should target the lowest hanging fruit amongst the diverse as potential customers, such as those customers who have good English language proficiency. For example, the two biggest Asian subgroups in New Zealand are Indians and Chinese. The Indian population, in general, has good English language proficiency because English is an official language in India,²⁶² and because of their Commonwealth history,²⁶³ whereas North Asian migrants (particularly from China) are the most likely to face barriers due to English language ability.²⁶⁴ The Philippines also has a history of American occupation, so Filipinos tend to have good English proficiency,²⁶⁵ as do migrants from Singapore, where English is an official language.²⁶⁶ Businesses also need to adapt their services and products to the different culture and values of diverse customers.
 - ii. Understand differences between migrant groups – Migrants have different needs depending on whether they are first generation, 1.5 generation or second generation, which has implications for employers recruiting migrant staff and for how businesses target migrants as customers. For example, after undertaking market research, Foodstuffs identified three core customer types that it needed to target: Westerners who wanted to learn about Asian food, "Western Asians" (that is, those born in New Zealand or well settled in New Zealand), and "Asian Asians".²⁶⁷ New migrants bring their consumer habits with them from their individual home countries. Businesses accordingly need to disaggregate the data they collect on their customer base.
 - iii. Effective communication is not limited to getting an interpreter – Effective communication also means recognising particular cultural needs and expectations. Customers of different ethnic backgrounds may be unable to speak English, or may feel more comfortable being served or advised by someone they find familiar. This means that businesses should have employees who are able to speak the required language. The company as a whole should have cultural knowledge and understanding. Managers, in particular, need to have CQ or cultural intelligence, the ability to deal with people not like them, to manage diverse staff, and to understand diverse customers. A survey to determine the penetration of the ethnic media into the communities, the crossover in consumption of ethnic and mainstream New Zealand media, and the most popular titles for each demographic found that consumption of ethnic media is very high in communities where ethnic options are available. This was the case even with migrants who have been living in New Zealand for long periods of time. So using ethnic media to communicate with diverse New Zealanders matters for reaching that customer segment.

- iv. Intersection between digital and demographic disruption – New Zealand's growing pool of ethnic minorities, who tend to be more youthful than the New Zealand European population, are used to being serviced online. The intersection between demographic and digital disruption will affect the way customers expect businesses to engage with them.
- e. Superdiversity is a New Zealand-wide phenomenon not just an Auckland phenomenon. Although Auckland is the most superdiverse city in New Zealand, followed by Wellington and Christchurch, superdiversity is also diffusing throughout regional New Zealand and the rural sector (as discussed at [2.270]), especially with the Government's recently announced immigration policies, which allocate extra bonus points to migrants who work or settle outside Auckland and allow foreign rural workers to gain permanent residence (see discussion at [2.271]). Accordingly, superdiversity is not simply an "Auckland issue": it is a New Zealand-wide phenomenon that will increasingly affect all parts of a national business.
- f. Superdiversity can challenge New Zealand's business culture. Issues may arise from some migrants not understanding that bribery is illegal, and that the rule of law culture in New Zealand means that laws will be enforced. Problems also arise from migrants not understanding what the law means, especially in a different cultural context, and thus how to act legally, which may be exacerbated by low English proficiency. This may also require more training and oversight by employers of new migrant employees, and more explanation to new migrant customers.
- g. Increased risk of business conflict due to cultural differences. Increased business between ethnically diverse parties may create more cultural and language misunderstandings and therefore conflict. For example, there might be a breakdown in communication where messages have been interpreted differently or around the enforceability of oral contracts and business ethics. Further, cultural differences may also shape parties' expectations and understandings of conflict and the actions required to resolve it.
- h. **We need to increase the business interface between Māori and ethnic minorities and migrants.** Māori businesses have already benefitted from increased trade with Asia, but there remains huge potential for growth. Deeper business relations between Asians and Māori will contribute to improved social capital between these two groups, and to the socio-economic position of Māori in New Zealand, which will benefit New Zealand as a whole.
- i. **Business needs government to keep social capital high so that it can sustain high financial capital.** The financial capital brought by the diversity dividend is dependent on a minimum level of social capital. International students, tourists, and skilled and business investor migrants will not be attracted to New Zealand if there is significant discrimination and hostility towards foreigners. Accordingly, institutional support and investment in the form of settlement services, legal protections in the labour market and social cohesion initiatives promoting the benefits of migration are necessary for businesses to obtain and keep financial capital.

List of Recommendations for Business

- Businesses should capitalise on the diversity dividend brought by migrant and ethnic employees, particularly migrants from the 1.5 generation and multigenerational migrants, and those in the skilled and business investor migrant categories.
- Migrants in the business and entrepreneur categories say they need better information on arrival about financial services and investing in New Zealand to maximise their potential contribution to New Zealand. This is a significant opportunity for the private sector, but also an important gap for public agencies to plug to grow New Zealand's economy.
- We need to consider how best to attract and retain international students in fields

where there are shortages of New Zealand-born workers. We also need to recognise such students as future high value customers, especially as many apply to be skilled migrants and then for permanent residence.

- Surveys of the diverse reveal key concerns about discrimination, especially in employment, for themselves and their New Zealand-born children, despite high qualifications and sometimes relevant experience. The OEC could assist more in promoting the benefits of hiring diverse staff, and increase its efforts to advise employers on how to make cultural diversity into a competitive advantage.
- More research needs to be conducted on the extent of the double disadvantage faced by migrant and ethnic women, particularly around pay equity and representation on public and private sector boards. Government departments such as the Ministry for Women, the Office of Ethnic Communities (“OEC”) and Statistics New Zealand collect data on ethnic or female representation on public boards, but there is little available data on the intersection between ethnicity and gender.
- Migrants need English assistance post-settlement to maximise their contribution to New Zealand’s economy, and job search support. Programmes such as the skilled migrant course (which is discussed in depth at [3.24]) show the beneficial job outcomes of teaching new migrants how to communicate in New Zealand workplaces. Good English proficiency alone may not be enough to secure employment. It would be beneficial if the skilled migrant course could be provided for all new migrants wanting assistance.
- Regulatory change requiring NZX companies to publish gender diversity statistics should be considered, as is presently the position in Australia for ASX companies. Consideration should also be given to extending this requirement to include publication of ethnic diversity statistics.
- As discussed at [2.246], businesses should consider adopting the following measures to develop sufficient internal capability to adapt to an increasingly diverse workforce:
 - a. Regular collection and monitoring of ethno-specific data on the composition of the workforce and the business’s client or customer base.
 - b. Workplace policies and practices should be informed by and developed in accordance with this data.
 - c. A diversity strategy should be developed (in addition to an anti-discrimination policy), where appropriate, to promote ethnic equality, diversity and inclusion in the workplace, in consultation with relevant internal and external stakeholders. This strategy should include the following components:²⁶⁸
 - i. The objectives of the strategy;
 - ii. The business case for a diversity programme;
 - iii. The scope of the policy (for example, the types of discriminatory treatment addressed);
 - iv. The rights and responsibilities of employers and employees in terms of implementation of the diversity programme;
 - v. Proactive measures; and
 - vi. Reasonable accommodation measures.
- In terms of diverse customers, businesses may need to target the lowest hanging fruit, but should consider adapting their services and/or products to reflect the needs of their changing ethnic customer base, after direct engagement with customers about what they want.
- To communicate with, and access, ethnic markets, businesses should consider implementing the following measures:

- a. Recruiting for cultural intelligence and language ability. Ethnic customers may feel more comfortable dealing with people similar to them, who speak the same language;
 - b. Providing cultural intelligence training for employees;
 - c. Translating print and online material into other languages and/or basic English; and
 - d. Making use of ethnic media outlets, and companies with expertise in diverse communications.
- There should be a regular review of numbers of migrants to the regions.
 - Migrants should be consulted on their settlement needs on a regular basis. This data should then be used to inform policy development.
 - There should be greater funding available for migrants to access ESOL classes, so they can be more effective workers on farms. Currently, government funding is available for permanent residents, but English proficiency is a requirement for entry under the skilled migrant category.
 - Regulatory agencies need to be aware that new migrants from some countries with different government and business cultures may need more education on New Zealand's government and business culture.
 - More assistance and education need to be provided to Kiwis doing business with migrants to help them recognise the cultural differences in business practice, communication and values. In turn, migrants to New Zealand should receive more information on New Zealand's business culture.
 - Organisations such as Te Puni Kōkiri ("TPK"), OEC, New Zealand Trade and Enterprise ("NZTE") and MBIE need to encourage Māori and Asian companies to do business together and to help reduce any cultural gulf which may impede or undermine business deals.
 - More people from diverse backgrounds should be encouraged to train as mediators, and all mediators would benefit from training in cultural intelligence given the likely increase in disputes exacerbated by cultural misunderstanding with New Zealand's growing superdiversity.
 - Government agencies such as the OEC and MBIE should publish information about the value of diversity for business, and should increase initiatives such as conferences and knowledge workshops to encourage interface between ethnic and mainstream businesses as New Zealand's superdiversity grows.
 - Presently, financial or physical capital is officially defined as "fixed assets in production processes, which can be tangible (for example, machinery, buildings, houses, roads) or intangible (for example, computer software, intellectual property)" and includes "equities, assets and liabilities that have a degree of liquidity, such as bank deposits, debt, and government bonds".²⁶⁹ The potential for low social capital to undermine financial capital indicates the need to develop a new definition of "financial capital" with a social capital component to reflect the interrelationship between the two concepts.
 - There needs to be active investment by government to ensure racial harmony in a superdiverse society. This includes ensuring the Human Rights Commission ("HRC") is adequately funded to carry out its primary statutory function to advocate and promote respect for, and an understanding and appreciation of, human rights, and to encourage the maintenance and development of harmonious relations among diverse groups in New Zealand society. This role will be more challenging as New Zealand's superdiversity grows. Superdiversity can create multiple potential challenge points, as set out in the section on social capital at [2.341].

Key Point One: Superdiversity Means That There is No “Business as Usual” for Organisations

- 2.2 Superdiversity means that there is no “business as usual” for organisations if they want to keep winning the best customers and staff. The status quo, where New Zealand European-staffed businesses service New Zealand European customers, is unsustainable given New Zealand’s ongoing demographic disruption. The market has changed, with almost 50 per cent of Auckland already Māori, Asian and Pacific and, by 2038, over 50 per cent of the population will be Māori, Asians and Pacific people. Businesses will only retain and grow market share if they win more diverse customers. Migrant customers, including highly skilled and business investor migrants, and tourists, represent a significant, untapped revenue stream for some businesses. For example, Comvita exceeded their target by achieving 28 per cent annual profit due to purchases by Asian tourists visiting New Zealand buying manuka honey and medicinal natural products.²⁷⁰
- 2.3 It is estimated that by 2050, more than 20 of the world’s top 50 cities in terms of GDP will be located in Asia, an increase from just eight in 2007. The redistribution of wealth, trade and influence from West to East will see Asia become home to two-thirds of the world’s middle class by 2030, compared to just one-third today.²⁷¹ The advantage of migrant customers is that they are new in New Zealand, so businesses do not have to win them away from competing businesses – they just have to win them in the first instance, and then hold onto them.
- 2.4 The question for companies and small to medium-size enterprises (“SMEs”) not currently thinking about superdiversity in terms of customers or staff is whether their competitors are doing so, and whether they are damaging their bottom line by failing to tap into a lucrative income stream of potential high value customers.
- 2.5 Another consideration, which is explored in the Foodstuffs case study at [2.10], is how businesses can win more diverse customers without alienating their traditional customer base. Catering to superdiverse customers does not necessarily have to push existing customers away. One way to carve out specialist treatment for diverse customers, which Foodstuff is considering, is to create specialist sections in stores catering to these customers. It is important for businesses to ascertain diverse customers’ needs (and whether they actually differ from their existing customers’ needs) before changing their products and/or services, or marketing them in a different way.
- 2.6 The mixing of different populations will lead to more specialisation in business, and will change New Zealand’s domestic and international trade patterns. The barrier of geographical distance is lessening as transnational travel becomes faster and cheaper (as discussed at [1.60]).
- 2.7 The costs of marketing have also reduced due to the rise of social media (see [1.62] for discussion of digital disruption). This means that companies can now reach millions of diverse customers in different countries, but also means that, in terms of risk, a company can accidentally destroy its reputation with diverse customers overnight through marketing mistakes (see [2.254] for discussion of ethnic marketing). Not understanding superdiversity means that businesses may fail to factor these things into their business strategy, which decreases their competitive advantage over competitors who do understand superdiversity.
- 2.8 Employers need to understand that Asians, Māori and Pacific peoples will comprise a growing proportion of the talent pool from which they hire staff. It makes sense to recruit from the market to service the market. For example, 56 per cent of the talent pool in Auckland comprises of migrants and their New Zealand-born children, and the number of Asian New Zealand citizens and permanent residents is steadily increasing. Indians are the largest group of skilled migrants entering the country, comprising 46 per cent of all residence approvals in the 2013/2014 reporting period. As discussed at [2.273], Filipinos are the largest group of essential workers in Christchurch and foreign workers on farms, and many are also employed in the health sector as aged care workers. By 2030, China will have more university graduates than the entire United States workforce, and by 2020, India will be producing four times as many university graduates as the United States.

2.9 Many New Zealand businesses have been slow to shift from servicing a predominantly New Zealand European population to adapting their products and services to New Zealand's superdiverse population, and to hiring more diverse staff. The following case studies are of those who are leading the pack. In some cases that is due to an Asian senior in the company guiding the business, as in Bayleys' case, or because the business is owned by a migrant.

Case Study – Foodstuffs²⁷²

Foodstuffs' approach to meeting the needs of its diverse customer base demonstrates the following lessons:

- To connect with the growing Asian population, businesses must engage with Asian leaders and gain a better understanding of Asian communities;
- Adapting to the diverse market may involve making only small changes to what the company is already doing;
- The Asian customer base is not homogenous, and businesses must cater their products to the individual needs of each demographic subgroup; and
- Catering to superdiverse customers does not necessarily entail pushing away existing customers.

2.10 Foodstuffs was established in 1922, and is New Zealand's largest grocery organisation. Its portfolio of companies includes New World, PAK'nSAVE, Liquor Land, and Gilmours. It is a 100 per cent Kiwi-owned cooperative with retail sales in excess of \$7 billion, has more than 360 stores, and employs more than 1,850 people.

2.11 As part of becoming more influential in the grocery industry, Foodstuffs recently started to look at how well it was meeting the needs of its diverse customer base, in particular its Asian customer base. It found that while it was doing "alright", it could do much better. It wanted to connect more with the growing Asian population in New Zealand. To do that, it knew it had to connect more with Asian leaders, and gain a better understanding of the Asian communities in New Zealand.

2.12 The 2013 Census statistics show that there has been an enormous growth of Asians in New Zealand, particularly in Auckland. But who is "Asian"? And what characteristics do they share? Foodstuffs found the following:

- a. 20 per cent are actually New Zealand-born Asians;
- b. The median age is younger than the rest of the New Zealand and European population (average age is 30.6 years);
- c. Asians have a higher birth rate than European New Zealanders;
- d. Asians tend to be overeducated, more qualified and also are more likely to under-report their income; and
- e. They tend to live in "ethnoburbs" (suburbs with a high proportion of Asians).

2.13 For Foodstuffs, the Asian growth in New Zealand amounts to a transformational opportunity. Asian customers account for 51 per cent of the population growth this decade.

2.14 Therefore, Foodstuffs has identified three target markets:

- a. Westerners who want to learn about Asian food;
- b. Western Asians – those who were born in New Zealand, or who are well settled in New Zealand; and
- c. Asian Asians – those Asians who are still very strongly attached to the culture and way of life of their home country, or parents' home country.

- 2.15 Foodstuffs therefore conducted some research to find out more about these target markets, and its research findings are set out below.
- 2.16 Asian customers tend to prefer foods from their place of origin, and are driven by high price consciousness, quality ingredients, and freshness. Importantly, what Foodstuffs noticed during its research was that while Asians tend to buy their staples (like flour, sugar and rice), toiletries, cleaning products and “Kiwi” food (milk, bread, snacks, drinks and frozen conveniences) from the supermarket, they tend to buy their meat, fish, fruit, vegetables and specialised ethnic products from specialty stores. This means that Foodstuffs is not fully capturing the potential market of its Asian customer base.
- 2.17 The strategy for capturing that market therefore is to:
 - a. Improve the range “in situ: – by providing a greater range of goods for Asian customers in the general aisles, and in the sizes they want;
 - b. Improve the international section by providing a greater range of authentic ethnic foods;
 - c. Consider providing a store in store for specialty goods; and
 - d. Consider creating dedicated stores for specialty goods.
- 2.18 Forty-two per cent of North Auckland is Asian, and there are four key Asian groups: Chinese, Korean, Indian and Filipino. To better cater for this local market, Foodstuffs has been looking at how it can improve the shopping experience for its Asian customers at the:
 - a. Pre-shop stage by marketing the availability of the goods at their store by being more welcoming to Asian customers;
 - b. In-store stage by channelling the relevance; and
 - c. Post-shop stage by focussing on the local community, building personal relations and going digital.
- 2.19 The most scope for improvement is at the in-store stage – though often the improvements needed simply require small changes to what stores are already doing. For example, PAK’nSAVE has been selling fish for 90 years, but it is now selling fish in different cuts, such as fish heads. It is the same for the meat section: PAK’nSAVE is now considering whether to stock chicken feet to meet the desires of its Chinese customers. Signage in different languages is also being considered, as is the need to carry key international and authentic brands sold in customers’ home countries to win the shopper.
- 2.20 PAK’nSAVE Albany, part of the Foodstuffs group, is a good example of how this research may be put into action. PAK’nSAVE Albany is one of the most successful stores throughout the entire group.
- 2.21 Paul Blackwell is the owner-operator of PAK’nSAVE Albany, but his Merchandise Manager, Yew Hsin Cheng, a Malaysian Chinese Manager, has been leading much of the change within the store as it strives to become more ethnic friendly and representative of its increasingly diverse customer base. We, together with Nick Siu, Director of The Agency 88, interviewed Yew Hsin Cheng, Merchandise Manager.²⁷³
- 2.22 Over time, Mr Cheng said the PAK’nSAVE team had noticed a significant change in the overall customer demographic and had realised that with population change comes different shopping habits, needs and wants within each of their customer’s shopping baskets.
- 2.23 From a business perspective, the goal is always to grow the customer pool, which currently sits at around 36,000 across all the different departments, from dry goods, to fresh produce, fish and butchery. However, as an organisation

PAK'nSAVE Albany did not expect to see such an explosion in the Asian population over such a short timeframe (despite having previously anticipated steady growth for the North Shore district). Now the business must deal with new challenges and maximise the opportunities that lie ahead as it strives to meet the needs of this growing customer demographic.

2.24 A real surprise for the management team at PAK'nSAVE Albany was that the evening shopping demographic was 90 per cent Asian. This is potentially linked to the cultural habit of shopping later in the day, which is different to the traditional European preference for shopping earlier in the day. As a consequence, staffing rosters had to evolve to ensure Mandarin-speaking employees were always on the floor at this time. Likewise, the product mix changed, with fresh produce becoming better organised and more available; and the in-store butcher staying later in case specific cuts of meat were required. In the seafood department, where fish would normally be sold out by 6pm, extra stock was required to be on hand, as the demand had shifted to later in the day.

2.25 In the seafood department, it became obvious to Mr Cheng and his managers that the fish offering in the seafood department had to be improved for the Chinese customers who were frequenting the supermarket. Rather than the traditional European customer who would seek out fresh fish fillets, different cultural cues demanded different presentation and offerings. Asian customers predominantly demanded whole fish, such as blue cod and flounder, and before purchasing would determine the freshness of the product by wanting to check the eyes, gills and overall presentation. Interestingly, price was not the biggest factor, as customers were willing to pay for the knowledge and reputation that the produce was excellent and wanted the ability through open cabinet presentation to personally inspect the offering. Cleaning services and packing into self-sealing bags were also offered so customers had an assurance around quality, thereby generating repeat business. Since making these changes, the seafood department has been growing 20 per cent year on year.

2.26 Likewise, with rice being a staple product for the Asian consumer, PAK'nSAVE Albany has not only increased its range, but has been very aggressive in pricing compared to competitor supermarkets. Traditionally, items such as wine were used as a price leader, but with the change in demographics, it became apparent a different strategy was needed. Customers also no longer purchase the five or 10 kilogram bags of rice; the focus has shifted to the 25 kilogram bags. PAK'nSAVE Albany also realised the importance of not lumping "Asians" together as one homogenous group. The offering needed to be created in such a way that Indian customers could be served basmati rice, long grain was available to customers of South East Asian descent and Calrose and short grain were available to Korean, Japanese and Chinese. All are priced differently depending on the individual needs of each demographic.

2.27 Targeting customers through significant cultural events such as Chinese New Year has proved successful for PAK'nSAVE Albany. Mr Cheng works to ensure that suppliers are overstocked in the seafood department (as over 300 kilograms of blue cod can be sold in a single weekend). Citrus fruit such as pomelo and mandarins, rather than oranges, are also in additional supply, and the floral department ensures that they have adequate supplies of chrysanthemums. Because many of the products are gifted as tokens of appreciation, effort is placed into packaging and presentation in gold and yellow colours to ensure that customers are attracted and proud to purchase and gift.

2.28 Still, amidst all these wins, Mr Cheng reiterated that PAK'nSAVE Albany is at the beginning of its journey to better cater to the changing population. It is an incremental process, as the store is mindful not to alienate its current customer base, and one of the biggest issues it faces is compliance and labelling from potential ethnic suppliers. Food safety is of paramount importance for the Foodstuffs group, and this can sometimes limit the acceptability and accessibility of fresh produce and other ranges that smaller ethnic stores may choose to stock.

2.29 With an ever-increasingly diverse Asian customer mix, Korean, Filipino, Japanese, Indian, Pakistani, Chinese and South East Asian staff are all represented throughout the store and have been given more responsibility within the management team, such as Mr Cheng and another senior buyer of Malaysian heritage. One comment Mr Cheng reflected upon was that this diversity does come with challenges, but, in his experience at PAK'nSAVE Albany, everyone is given an equal opportunity to earn respect from each other's peers. Asian people by nature are typically non-confrontational and he himself had to learn how to be more upfront and question his boss. Likewise, his owner had to understand that Kiwi humour is different from the Asian style, and that sometimes stepping back and thinking about the wider cultural context is important. With a more than 16-year working relationship together, Mr Cheng believes it is clear that cultural integration and learning has proved to be very successful within the store.

Case Study – Kitchen Things

The Kitchen Things case study demonstrates the following lessons:

- Businesses need to adapt their services and products to the different cultures and needs of its diverse customers. Businesses should be careful to understand the precise needs of diverse customers, as these needs may not conform to cultural stereotypes;
- Diverse customers may find it easier to speak with others who speak their language. It is therefore important for businesses to ensure that their employees represent a diverse range of cultures, and that special measures are in place to cater to diverse customers; and
- There may be challenges associated with embracing diversity, and it is important to help diverse staff integrate into the company's business culture. Having managers with diverse backgrounds and/or high cultural intelligence can assist a business to minimise difficulties caused by cultural differences.

2.30 Kitchen Things is a 100 per cent family-owned New Zealand network of 19 premium retail appliance stores. Founded in 1986, the business was one of the first specialists to import European appliances into the New Zealand market and one of the first businesses to provide cooking demonstrations and classes in store. Rachel Louie, who was interviewed by Nick Siu, Director of The Agency 88, is part of the Jones family who founded the business, and now serves as Director of the group and Managing Director of the importing business, Applico Ltd.

2.31 Kitchen Things recognised an opportunity with the changing demography in New Zealand quite early due to a personal interest in multiculturalism. Mark Jones (founder and Rachel's father) was a regular traveller around the world, including visits to China. Ms Louie has lived and worked in Japan, as well as joining her father on many of his international trips, and had noticed a change in the customer mix entering the stores. The increase in Asian consumers seeking a premium kitchen appliance offer, combined with natural growth in consumer desire for premium brands, led the group to identify a strong need to cater for this different ethnic segment.

2.32 Ms Louie and her father were two of the drivers of change within the organisation to ensure that there was a diversity of cultures amongst staff and a policy requiring a Chinese (and/or other Asian language) speaking member of staff in every store. They noticed that Asians found it easier during the sales and consultation process to communicate with others who could speak their language and that, during sales, customers would queue up in order to speak to an assistant in Cantonese or Mandarin. As a result, specific events were held in store catering for these customers, such as Chinese guest chef cooking demonstrations and targeted classes teaching use of steam ovens as alternatives to traditional bamboo steaming methods.

- 2.33 One surprising observation Ms Louie had was that many migrants expressed a desire to cook European food with European appliances. When Kitchen Things first embarked on understanding the changing demography, it changed its product mix to include more rangehood models similar to those sold in China, thinking they would be instantly popular. However, it soon discovered that sales were less than forecasted because migrant customers wished to integrate more into the Western style of living and entertainment. Accordingly, demand for combination appliances grew substantially. Ms Louie also attributed this to the westernisation of China itself. During business trips, she observed that, while many Chinese families traditionally used a single wok or rangehood, in new housing developments many properties were furnished with a full suite of new Western appliances, increasing awareness and acceptability of such products.
- 2.34 Kitchen Things has made key wins in the combination steam and standard oven category and, although there was initial apprehension around lack of familiarity with such products, the use of multilingual cooking demonstrations ensured that this apprehension was soon overcome. Multiple ovens have also proved popular, as multiple family members live in Asian households across different generations, and Asian eating habits mean that several dishes are often on the table at the same time. Multiple ovens mean, for example, that a whole fish can be cooked in the steam oven and a whole roast in another, giving the family flexibility and the ability to entertain easily.
- 2.35 Kitchen Things has also noticed an increasingly strong demand from New Zealanders wanting to understand, cook and eat more Asian food. With increased tourism flows to popular destinations such as Vietnam, Thailand and Japan, many locals were coming back and wanting to recreate the tastes they had experienced overseas. Consequently, more powerful gas cooktops that could accommodate woks alongside new induction technologies have become increasingly popular, as have more powerful rangehoods and external motors that extract odours and steam from curry dishes out of the kitchen.
- 2.36 Additionally, significant resources were spent in making the Kitchen Things website and associated collateral bilingual. Kitchen Things has also invested in targeted advertising on Chinese radio, television and in local newspapers, particularly in communities with high Asian populations, such as Botany Downs and Dannemora. Ms Louie also understands that networking is highly valued and important within the Asian community and so made a conscious effort to develop relationships with real estate companies to help cross-database referrals and increase touch points.
- 2.37 Community engagement is important for Kitchen Things, so last year the organisation sponsored the Miss China beauty pageant and managed to leverage off its involvement by having the winner participate in endorsements for in-store demonstrations. Kitchen Things also supports “Hands Across the Water”, a charity that helps children affected by the Thailand tsunami. Ms Louie commented that the fact the beneficiaries were children resonated with important core values of their family-owned business, and that this connection was important not only for management, but also for the Thai and other Asian staff within the organisation.
- 2.38 Internally, Kitchen Things employs a range of different nationalities. The Northern Regional Manager hails from the Philippines and has been a part of the organisation for over 15 years. He is involved with training all new employees, and is able to empathise well when English is not a new employee’s first language. He also provides invaluable advice to management. Ms Louie also noted that, when they previously had a number of Muslim-faith employees within their call centre, management took action to ensure that there were adequate rooms that could be used for prayer. In addition, during Ramadan, an internal note is sent around the entire organisation explaining the meaning of the occasion so as to increase intercultural awareness throughout the business.

2.39 Bilingual employees are not only hired to deal with in-store customers, but targeted property developers as well. By being able to communicate with developers in their own language and represent the brand story (that is, of an established family-owned business with diversity values), Kitchen Things found that many developers were more willing to invest in large long-term developments.

2.40 Ms Louie acknowledged that embracing diversity has its challenges, one being the need for active engagement and repeating instructions to diverse employees and stakeholders to ensure they understand what is being communicated. For example, she observed that Filipino and Indian staff could, at times, be overeager to please and would reprioritise tasks based on cultural values of hierarchy, speeding up the service of customers in order to fulfil a request from a manager. Accordingly, she said, it was important to help diverse staff to integrate into the group's business culture, which was based on the principle of equality between employees.

2.41 As a final comment, Ms Louie mused on the possibilities for Kitchen Things' future such as increasing presence within Chinese social media platforms, website enhancements, and real time click-to-chat facilities in multiple languages on the website when servicing website enquiries – all innovative developments for a retailer already with its finger on the pulse of catering to the diversifying customer mix of Auckland.

Case Study – Bank of New Zealand (“BNZ”)

The BNZ's approach to managing and building on ethnic diversity demonstrates the following lessons:

- To take advantage of the business opportunities created by superdiversity businesses need to ask “tough questions” about their employment practices and identify barriers to the equitable representation of minority cultures among its staff;
- Staff from ethnic minorities need to be involved in the process of examining and developing diversity strategies; and
- Leveraging off ethnic diversity to achieve market advantage requires a multifaceted and well-considered strategy.

2.42 The BNZ has made an institutional commitment to valuing diversity. BNZ started by taking steps towards increasing gender diversity, with the plan to build upon this with measures to increase recognition of cultural diversity in light of the changing face of New Zealand. BNZ considers that cultural diversity “has a hugely valuable role to play in the generation of diverse thinking and in underpinning our ability to anticipate and exceed client or customer needs and expectations.”²⁷⁴

2.43 BNZ also recognised that it needed to ask “tough questions” about its own practices in order to take advantage of the opportunities presented by New Zealand's changing demographic composition.²⁷⁵ For some years, BNZ has undertaken an annual survey of employees to measure their engagement and develop its people strategy. This allows the BNZ to collect data about their employees by business group, gender and ethnicity. In 2012, BNZ conducted extensive research to identify the barriers which might be preventing more cultural representation in its senior management. This involved:

- Conducting a series of one-on-one interviews;
- Conducting focus groups for specific ethnic groups and focus groups with mixed ethnic composition;
- Analysing BNZ's engagement survey results; and
- Reviewing best practice from domestic and international organisations.

2.44 As a result of its research, BNZ learned that culture is about more than a person's country of birth. It also encompasses ancestry, language, faith, citizenship, personal affiliations and intercultural capability (CQ) (which includes attributes such as global mind-set and language ability). The research showed that, while BNZ was good at presenting opportunities to its staff members, the prevailing dominant masculine and/or Pākehā culture and norms determined career progression and talent identification.²⁷⁶ In other words, it may have prevented members of some demographic groups from joining BNZ or putting their hand up for promotion because doing so was not the norm in their own cultures.

2.45 In response to the research, BNZ developed an approach to managing cultural diversity across six areas:²⁷⁷

- a. Leadership and management would provide a vision for promoting, and strategies for implementing, ethnic diversity within BNZ;
- b. BNZ would move beyond equal employment opportunity data collection;
- c. People would be recruited on merit, irrespective of ethnic identity;
- d. BNZ would retain, grow and promote talented staff, including those from ethnic minorities;
- e. BNZ would use diversity to facilitate innovative product and service design;
- f. BNZ would use diversity to facilitate community outreach.

2.46 BNZ has created several initiatives to deliver on this approach, such as appointing BNZ leaders from the largest ethnic groupings as "cross-cultural ambassadors" to manage and lead the strategy and implementation of cultural diversity.²⁷⁸

2.47 As well as facilitating workforce engagement with diversity, BNZ's diversity strategy focuses on engaging with the diverse as customers. For example, BNZ has taken a multifaceted approach to engaging with the Asian and migrant communities in response to New Zealand's changing demographic composition and increasing trade ties with China and other Asian countries.²⁷⁹ BNZ has established a migrant and Asian banking division. BNZ also supports thought leadership in this area. For example, it funded the appointment of Professor Siah Hwee Ang as Victoria University Business School's BNZ Chair in Business in Asia. The BNZ also sponsors the Chinese Business Awards.

2.48 BNZ also established an Indian Banking Community team within BNZ in April 2013, headed by Ansuya Naidoo. BNZ is conscious that the Indian community has a different approach to banking than other cultures. It also recognises that this community is not homogenous, and endeavours to recognise the "diversity within diversity" of the Indian community. BNZ has undertaken a range of activities to promote goodwill and visibility among the Indian community, including becoming title sponsor of Indian Newslink Indian Business Awards, which recognise and reward business success within the Indian community.

2.49 In addition, BNZ has a long-term strategy to develop a whole of bank culture which invests in, and embraces, Māori business. BNZ recognises that Māori are playing a significant role in New Zealand's economy and that the rise in Māori business means that there is increased demand for banking services and advice from Māori clients. Accordingly, the BNZ appointed Pierre Tohe as Head of Māori Business in 2011. As part of its strategy, BNZ made a commitment to developing awareness of Māori culture internally, starting from the top down. As well as special training for senior leadership, BNZ delivers a range of training across the organisation on Māori language, culture, protocol and relationships. BNZ places importance on listening to the opinions of its Māori employees and providing the support that they need, as well as supporting its Māori clients' business and investment growth, including some of the largest and most commercially successful iwi in the country. BNZ has also made a

commitment to supporting Māori initiatives, building on its extant community visibility among Māori. For example, BNZ provides national financial literacy workshops each year in partnership with the Commission for Financial Literacy and Retirement Income and the Māori Women's Welfare League.

Case Study – Beca

The Beca case study demonstrates the following lessons:

- Diverse staff can give businesses a competitive advantage;
- In order to gain this competitive advantage, businesses may need to invest time and effort to help migrant staff adapt to and succeed in the New Zealand workplace, as migrants may have an understanding of workplace culture that does not align with their employer's expectations; and
- Leaders within the business should actively promote the benefits of a culturally diverse workforce. Executive commitment to the business's diversity practices can help demonstrate that the business is truly committed to a diverse workforce.

2.50 Beca is a 3,000 strong professional services firm operating throughout the Asia-Pacific region, with headquarters in Auckland. The firm was established in 1918 and has grown into one of the region's most successful consulting engineering businesses. Beca is 100 per cent employee-owned, and as at 2015 had more than 50 nationalities and 70 languages spoken in its New Zealand based offices. There is a global skills shortage of experienced engineers, and part of Beca's competitive success has been to attract the best talent from around the world.

2.51 Beca has undertaken a number of steps to ensure that the cultural diversity of its workforce is a competitive advantage for the firm. Matt Ensor, who is currently Beca's Business Director for Advisory Services, formerly the General Manager of Transportation, has been a leader in this space. During the 2000s, there was a boom in global engineering and it was almost impossible to recruit candidates in sufficient numbers from the English-speaking countries where Beca had traditionally sourced its talent. In order to facilitate the growth of Beca's transportation consulting business, Mr Ensor actively recruited staff from Asia, and travelled to India and Singapore to conduct interviews. The percentage of migrants in the team grew from almost none in 2002 to approximately 50 per cent of the team a few years later.

2.52 The challenges of a culturally diverse team were readily apparent to Beca and presented as "problems that needed solving". This included issues such as the standard of written communications and limited contribution to the team beyond technical project delivery tasks. To create a competitive advantage, Mr Ensor implemented numerous changes in his part of the business. What proved to be most transformational was the discovery that many migrants had a limited or incorrect understanding of what would make them successful in the New Zealand workplace culture.

2.53 Mr Ensor developed an internal development programme which identified nine "cultural mysteries" that make people successful in a New Zealand business, beyond just doing one's technical work well. He invited all staff with less than five years' experience (including both migrants and New Zealand-born employees) to a series of sessions discussing each of these nine success factors. For example, one session discussed the meaning of "initiative" in the New Zealand workplace. For many migrants, "initiative" meant doing one's job well, working hard, and finding the best ways to complete tasks. From a New Zealand employer's perspective, however, "initiative" is more about doing things that one is not asked to do, including tasks that are not in one's job description.

2.54 The sessions informed Beca's employees of the firm's expectations, which assisted employees with both their current and future careers. The format of

the programme included members of Beca's executive talking to the group about how each of the nine success factors had been important in their career development. This demonstrated the company's respect and commitment to fostering success for migrant staff.

2.55 The programme helped staff to understand how to lead culturally diverse teams, and fostered increased levels of creativity and engagement. The team became the most successful of its type in New Zealand, and is now a talent magnet that attracts the best transport engineers in the world.

2.56 Mr Ensor moved on from the leadership role of the transportation team in 2012, but now, in addition to his role as Business Director, continues to work within the firm and externally to promote the benefits of effective cultural diversity leadership practices to New Zealand businesses and organisations.

Case Study – Bayleys

Bayleys' adaptation to the changing real estate market demonstrates the following lessons:

- To maintain a competitive advantage, businesses must identify and capitalise on the changing demographics of the New Zealand market;
- Adapting to the diverse market involves taking a multifaceted approach by, for example, building a dedicated international team, undertaking bilingual marketing and ensuring that the business has a presence in the local community;
- Diverse employees are inherently more capable of interacting with diverse customers, as they share the same language, culture and values, and can understand the ethos motivating diverse customers' purchases; and
- Adapting to the Asian market is not possible without building long-term relationships and making a true commitment to an "Asia strategy".

2.57 Bayleys is New Zealand's largest full service real estate company with the group having more than 800 salespeople and over 1,300 employees. It remains entirely New Zealand owned, with one of its leadership team, James Chan, acting as the head of its international sales and leasing division. Mr Chan is an industry pioneer in connecting with the Asian community, and has led much of the change and initiatives relating to service improvements within Bayleys' customer base as it has noticed New Zealand's shifting demography. Nick Siu, Director of The Agency 88, interviewed Mr Chan on how Bayleys was responding to New Zealand's growing ethnic diversity.²⁸⁰

2.58 Bayleys first recognised the need to look at diverse markets some 20 years ago when the market had significant mortgagee sales, an interest rate of 20 per cent and a dearth of local buyers. Initially, Graham Bayley had the vision to work with Japanese buyers, and then his sons, John and David, identified, together with Mr Chan, the potential opportunities represented by Chinese buyers. Although Mr Chan studied at Melbourne University, he was born in Hong Kong, so not only does he have people skills but also the ability to speak fluent Cantonese, Mandarin and English. Now he leads an international team of 12 sales people from Guangzhou, Shanghai, India and Korea – driven by the increased demand from these Asian communities. There are now Chinese-speaking agents within all the key Auckland branches in Mt Albert, Remuera, Pt Chevalier, Ponsonby and Mt Eden.

2.59 Mr Chan mentioned that it was hard to quantify the exact percentage of turnover coming from Asian buyers, as many were locally born, and others potentially acted for offshore partners and friends. But he had noticed that Asian business had increased throughout Christchurch, Tauranga and Wellington. He attributed this to China's large and growing middle class, its polluted environment, and a desire by families to provide a better opportunity for their children's education. He also noticed that many of his high net-wealth offshore clientele placed a high importance on migration

to English-speaking countries such as Canada, the United States, Australia and New Zealand, over other non-English speaking countries. This was because English is regarded as the international language of business and the language of choice for education purposes. Even if those clients could not speak English, their children could. Other factors such as air travel frequency, cultural education exchanges through high school and universities, and high-speed Internet access were also factors that made New Zealand an attractive destination.

2.60 In Mr Chan's view, many of his buyers applied the ethos of what was best for family above strict investment principles. For example, he currently had on the market a project of over 2,000 apartments to be built in New Lynn by a Guangzhou-based development company. The company was willing to take a risk on such a substantial project because, not only did the project fit within its expertise and design strengths, but also because much of its team had migrated to live in Auckland so had seen first-hand the opportunity to capitalise on the lifestyle the city offered.

2.61 As a consequence, Mr Chan and his team at Bayleys invested significant internal resources not only to develop a dedicated international team, but also to provide as much bilingual marketing collateral as possible. This included printing Chinese brochures and information memorandums, team profiles in both Chinese and English, as well as video introductions and bilingual website portals. He made significant efforts to promote the multilingual aspect of the team by ensuring that email introductions and business cards reflected this. Bayleys also makes sure to have a presence in the local community by sponsoring a Chinese Doctor Day annually at Selwyn College in Auckland's Eastern suburbs, where over 300 people attend free seminars run by doctors, eye specialists and other medical professionals. Bayleys has also partnered with organisations such as the Make A Wish Foundation and donated to local Asian football tournaments. This has facilitated both community involvement and staff engagement.

2.62 Mr Chan commented that many non-Asian buyers saw the value of Bayleys' strength in the Asian market and this consolidated their competitive position to win sole agencies on properties. He stressed the value of long-term relationships and that making reactive changes as an organisation without true management commitment towards an Asian strategy was unlikely to be successful.

2.63 While education was an important part of the hiring process in the international team, and linguistic ability was a must, the most important thing was knowledge of property. Internal systems were set up to be diversity friendly and solely performance driven. As a result of all of these measures, Bayleys has experienced few cultural conflicts and has become a leader in the New Zealand property industry, with a cornerstone on the Asian market.

Case Study – Brijesh and Nivedita Sethi

This case study demonstrates the following lessons:

- The opportunities to capitalise on the diverse market are varied and manifold;
- Adapting to the diverse market requires businesses to build transnational contacts and partnerships; and
- The diverse have innovative perspectives and ideas which may help found or grow a new business tailored to diverse markets.

2.64 Brijesh Sethi, a Production Engineer from Mumbai, and his wife, Nivedita, arrived in New Zealand with just enough money to sustain them for two months. Mr Sethi has now built an education organisation that employs about 75 plus full-time staff and has had 3,000 students graduate over a period of 10 years.

2.65 Mr Sethi is the Managing Director and owner of New Zealand School of Education ("NZSE"). NZSE is one of the leading private training establishments in

New Zealand, specialising in ICT, Design, Business, Digital Media, Early Childhood, Foundation Studies and English Language. NZSE now has six schools for these streams catering to both domestic and international students (mostly from India and China). NZSE has three campuses across Auckland and is looking to expand further with an opportunity to open a campus in Wellington. NZSE has direct relationships with institutions overseas for students wanting to study in New Zealand with options to complete a degree at a local University or Polytechnic. In 2009, NZSE was awarded the Exporter of the Year Award for export education.

2.66 Mr Sethi is also a Director at Travel Point NZ Limited, a travel agency that specialises in travel to the sub-continent of India. Travel Point offers a 24/7 personalised service to migrants, usually in their own language, and it has become the largest travel company operating in the migrant community.

2.67 Mr Sethi has also recently ventured into a winery production line specialising in innovative fruit wines. The winery produces fruit wines made of kiwifruit, feijoa and boysenberry, which are then exported to China, Japan and other countries.

2.68 Ms Sethi is the founder and Managing Director of Kuddles In-Home Childcare & Education, which predominantly services Indian, Chinese and Korean children. Ms Sethi started this home-based childcare service in 2008 with the aim of helping children less than five years old get quality early childhood learning at home while maintaining and strengthening their language and culture, and found a strong market for such services.

2.69 Kuddles plays an integral part in sustaining the culture and values of young children and supporting families to keep their language and culture.

Case Study – Perpetual Guardian

The Perpetual Guardian case study demonstrates the following lessons:

- Businesses need to reflect the diversity of the communities they serve, not just for commercial benefit, but to be thought leaders and “do the right thing”;
- Adapting to diverse markets may require changing online services and content, and hiring foreign-speaking staff to liaise with members of superdiverse communities who are not comfortable being serviced online;
- Embracing diversity requires working towards a workplace which reflects society, and undertaking recruitment free of any racial, cultural or gender bias; and
- Businesses should engage in ongoing conversations with the key stakeholders in New Zealand’s diverse communities.

2.70 Perpetual Guardian, a fiduciary services company, has over 140,000 will relationships and administering or supervising assets valued over \$100 billion. The Perpetual Guardian team wants to ensure that every adult New Zealander has a will and every child is protected by one, by making them affordable and accessible to everyone. In 2013, Perpetual Trust was acquired by Andrew Barnes, and in 2014 he also purchased Guardian Trust. The two companies were merged to form Perpetual Guardian.

2.71 Mr Barnes knows from personal experience about New Zealand’s growing ethnic diversity, and this has helped him to understand the importance of adapting Perpetual Guardian’s fiduciary services to the distinctive needs and expectations of New Zealand’s superdiverse communities. Mr Barnes has worked in Sydney, London and now Auckland, all very diverse cities with large migrant populations. This experience has meant that he has always led teams of people with diverse work and cultural experiences. He has learnt first-hand that not only does a business need to reflect the community of its customers for commercial benefit, but this is the right thing to do as a good corporate citizen and thought leader.

- 2.72 Mr Barnes' own children are from Sri Lankan descent on their mother's side, one of whom was born in Australia. So, both professionally and personally, he believes in treating each person on their merits irrespective of ethnic background.
- 2.73 Charlotte Lockhart, Perpetual Guardian's Sales and Marketing Director, says the company has had to adapt the way it engages with ethnically diverse communities seeking fiduciary services. Perpetual Guardian knows that to engage with New Zealand's diverse communities, it must have ongoing conversations with the leaders, supporters and role models for these communities. For example, many Asian communities are superstitious about death, and so might be hesitant about making a will or planning their estate. In order to address this challenge, Perpetual Guardian is working with New Zealand Asian Leaders ("NZAL") to help lead discussion in these communities about the importance of preparing for such matters. In addition, it is working to engage with Māori and Pacific communities in a meaningful way which is reflective of their culture. Perpetual Guardian also recognises that the younger generations, who are increasingly Māori, Asian and Pacific peoples, are disengaging with estate planning, so are developing products and service processes to reverse this trend, like the purchase of "My Bucket List", where wills can be made online.
- 2.74 Part of adapting to the Asian market has meant having the website translated into Mandarin. Perpetual Guardian is also working with NZAL to make videos in Mandarin to upload alongside the online Mandarin portal to explain, in a way which meets Chinese cultural needs, why estate planning is important in New Zealand, and how it differs from back in Asia. They have also hired a Singaporean mobile branch manager who speaks Mandarin and Cantonese to liaise with those in Asian communities who may not be used to, or comfortable, being serviced online.
- 2.75 Perpetual Guardian recognises that the New Zealand market has changed, and its workforce is beginning to reflect that change. It believes that diversity is not just about race or gender, but is about actively working towards being a workplace which reflects society and its customers. Each person is hired on merit and without cultural, gender or age bias, and having an Asian-born Human Resources Coordinator helps to ensure unconscious bias is mitigated.

Case Study – Nirvana Health Group

The Nirvana Health Group's emphasis on celebrating cultural diversity demonstrates the following lessons:

- Having a culturally diverse workforce is an asset, as diverse staff can communicate and empathise with linguistically and culturally diverse customers;
- Businesses need to "interweave" multifaceted policies in order to accommodate cultural diversity; and
- Businesses need to encourage cultural intelligence and religious tolerance within management and generally among staff to promote social cohesion in the workplace.

2.76 The Nirvana Health Group was established in 1977 by a young Indian couple, Kanti and Ranjna Patel, who started a medical practice in Otara. At that time, Mr Patel, who had trained as a doctor in India, was a new immigrant to the country. The Nirvana Health Group now owns a large network of primary health organisations, including organisations working under the banner of West Auckland Healthcare, Mt Roskill Healthcare and White Cross.

2.77 As a result of the cultural diversity of the communities it serves, and within its own workforce, the organisation's ethos places great emphasis on celebrating ethnic diversity. For many years, the Nirvana Health Group has had a high proportion of foreign-trained employees, mainly from South East Asia, the Middle East, the Pacific Islands and the Philippines. The organisation has only recently started recruiting more

- • locally-trained graduates. The acquisition of the White Cross Clinics in 2007 further
- • increased the cultural diversity of its workforce, as the majority of White Cross em-
- • ployees are of New Zealand European descent.
- •
- • 2.78 The organisation's diversity slogan states that "We celebrate diversity of race,
- • religion, culture and believe that different perspectives enrich our work and the
- • services that we provide." This reflects the Nirvana Health Group's recognition that
- • the ethnic and religious diversity of its staff allows the company to effectively serve its
- • patients and the community.
- •
- • 2.79 The Nirvana Health Group interweaves a number of policies to meet the vary-
- • ing needs of its culturally diverse workforce. The management team works to
- • accommodate the ethnic and religious practices of its staff in a number of ways. For
- • example, staff members are given extended leave when tradition requires them to
- • mourn bereavement over several days. The company also celebrates its staff mem-
- • bers' numerous religious and cultural festivals. On the morning of the holy feast of Eid,
- • Muslim staff members visit their colleagues with sweets and gifts. Similarly, the office
- • celebrates Christmas, Easter, Diwali and Chinese New Year. As the company's clinics
- • operate seven days a week, 365 days a year, employees often offer to work extra hours
- • to allow their colleagues to take time off for religious or cultural festivals. As a fami-
- • ly-orientated organisation, Nirvana Health Group also ensures that it looks after the
- • families of its staff by adjusting rosters to accommodate special family circumstances.
- •
- • 2.80 The Nirvana Health Group also acts to ensure that it has a presence in the local
- • community. The organisation's leaders encourage staff members to regularly
- • undertake community outreach initiatives, and the company believes that promoting
- • cultural diversity in the workplace can facilitate social cohesion.

• • Case Study – Smile Dental

- • 2.81 Smile Dental, founded and run by Dr Jacky Lam, who migrated to New Zealand
- • at an early age, is another example of the diversity dividend that migrants can
- • bring to New Zealand. After he graduated from dental school, Dr Lam saw the need for
- • a dental health provider that catered to ethnic minorities, and reflected the cultural
- • diversity of Auckland. In 1996, he bought a practice from a retiring dentist in Otahuhu
- • and rebranded it into Smile Dental Otahuhu.
- •
- • 2.82 Smile Dental is now the largest private dental clinic servicing the migrant com-
- • munity, with 11 branches across Auckland in Albany, Auckland CBD, Avondale,
- • Henderson, Manukau, Papakura, Ranui, Remuera, Somerville, Sylvia Park, and Taka-
- • nini. Smile Dental actively recruits from the global talent pool, with around 90 per cent
- • of its staff coming from Hong Kong, China, Taiwan, India, Dubai, Sri Lanka, Singapore,
- • Korea, Malaysia, Cook Islands, Samoa and Iraq. As a result, many of the dentists at
- • Smile Dental speak more than one language, including Mandarin, Cantonese, Korean
- • and Malay.
- •
- • 2.83 Smile Dental provides employment opportunities to both skilled and un-
- • skilled migrants, while also creating first-job opportunities and mentoring for
- • New Zealand qualified dentists. In 2012 and 2013, Smile Dental was the largest em-
- • ployer in private practice for new graduates in Auckland.

Key Point Two: The Diversity Dividend

"A lot of people in our industry haven't had very diverse experiences. So they don't have enough dots to connect, and they end up with very linear solutions without a broad perspective of the problem. The broader one's understanding of the human experience, the better design we will have."

Steve Jobs (1955–2011)

- 2.84 The “diversity dividend” describes cities and regions with large immigrant populations experiencing higher rates of productivity and innovation,²⁸¹ as diversity provides “an environment for the cross-fertilization of ideas that contribute to creativity and innovation”.²⁸² Investment and the increased local aggregate demand created by diversity foster “product and process innovation”, and can involve a transfer of managerial or technological expertise, or a commercial buying or selling of connections as part of a global value chain (as is discussed further below).²⁸³
- 2.85 A 2014 study examining 366 public companies across a range of industries in Canada, Latin America, the United Kingdom and the United States found that:²⁸⁴
- a. Companies in the top quartile for racial and ethnic diversity were 35 per cent more likely to have financial returns above their respective national industry medians;
 - b. Companies in the bottom quartile both for gender and for ethnicity and race are statistically less likely to achieve above-average financial returns than the average companies in the data set (that is, bottom-quartile companies are lagging rather than merely not leading).
- 2.86 A 2014 study in the United Kingdom found that 69 per cent of young adults did not want to work for establishments lacking ethnic diversity, and a significant majority of teachers preferred recommending an organisation with a reputation of promoting ethnic diversity in the workplace.²⁸⁵
- 2.87 A global survey of private companies likewise found that greater diversity on boards is associated with higher equity returns, higher prices-to-book valuations and superior stock price performance.²⁸⁶
- 2.88 Accordingly, there will be a diversity dividend for regions that receive immigrants, depending on the level of diversity, the source countries, the level of worker skills and experience, employment status, and the accessibility of support services for migrants.²⁸⁷
- 2.89 The potential benefits of superdiversity for New Zealand are wide ranging. Increased diversity underpins two of New Zealand’s largest export earning sectors: international education and tourism.²⁸⁸ Record numbers of migrants and tourists are predicted to support New Zealand’s domestic economic growth for the next year, as the export goods sector faces uncertainty in global markets and softness in commodity prices.²⁸⁹ Between 2013 and 2014, 2.2 million visitors arrived in New Zealand and the tourism industry is worth \$9.8 billion to the New Zealand economy.²⁹⁰ China is predicted to overtake Australia as New Zealand’s biggest tourism market in terms of expenditure within the next seven years, increasing to 23.6 per cent of New Zealand’s tourism spending by 2021 (up from 14 per cent in 2014).²⁹¹ Export education is New Zealand’s fifth largest export earner, supports 28,000 jobs, and is worth \$2.6 billion to the economy each year, 63 per cent of which is generated in Auckland.²⁹² This figure is expected to grow to \$5 billion by 2025.²⁹³
- 2.90 Migrant communities can play an important role in export and international trade, as they are often well connected internationally through their “prior experiences, family connections and wider business activities”.²⁹⁴ These communities can drive an increase in exports with their knowledge of relevant source countries and those countries’ needs. For example, Thomas Song from Oregon Group was born in Malaysia and came to New Zealand 25 years ago. Because he was born in Malaysia and because he understood China, he realised that there was a growing Chinese middle class who were going to want to build houses and apartments, which would require a large supply of timber and other raw materials. So Thomas came to New Zealand and he set up Oregon Group, which is now a major owner of forests in New Zealand, and exports the wood to China.
- 2.91 The benefits of the diversity dividend in the New Zealand context are being measured in research by the Te Pūnaha Matatini Centre of Excellence at the University of Auckland, which includes measuring the effect of increased migration on export success.²⁹⁵ The main findings on employee characteristics and international engagement are:

- Firms that employ a higher fraction of high-ability foreigners (and thus a lower fraction of high-ability natives) are more likely to export.
- Firms that employ a higher proportion of people who previously worked for an exporter are more likely to export.
- The proportions of foreign employees and employees with export experience are correlated with many other types of international engagement by firms.
- Employees from Australia and the Pacific and from Europe are positively correlated with firm exporting. The correlations are absent for foreign employees from Asia.
- The probability that a firm earns income in a given country is more correlated with its fraction of employees from that country than with its total fraction of foreign employees.
- A firm with a higher fraction of employees from a given country is more likely to earn income in that country only if the country is developed.

2.92 Although these relationships are correlations only and should not be interpreted as proof of causality, they do suggest that the experience and specialised knowledge of employees may be relevant to firms' decisions to engage internationally, and that such engagement may act as a conduit for foreign knowledge to enter the country. Similar findings were reported in a 2014 study conducted by Motu.²⁹⁶

2.93 New Zealand's immigration policy favours highly-skilled migrants, and it is not clear whether the benefit to business is because the immigrants are highly skilled (meaning there would be the same impact for a highly-skilled non-immigrant), or whether it is because they are immigrants.

2.94 There are clear benefits in having a diverse workforce when targeting a diverse customer base. These benefits include: access to a wider customer base and wider skill set, international competitive advantage, gaining international contacts, broader perspectives and a more innovative and adaptive work environment, developing a reputation as an "employer of choice", greater customer satisfaction and an increased sense of corporate citizenship and trust.²⁹⁷ Many New Zealand employers also report that their migrant employees are loyal, hardworking and are willing to do jobs that New Zealanders will not do, for example in the health care and rural sectors. For discussion of the challenges faced in the agricultural sector, see [2.272].

2.95 According to Immigration New Zealand, it is important to ensure that the Auckland region in particular remains an attractive place to work and live for skilled overseas migrants, particularly as other countries are increasingly competing with New Zealand for skilled labour.²⁹⁸ Incentives such as employment opportunities, competitive salaries and favourable work environments are needed, but so too are initiatives to address discrimination in employment so that migrants do not simply go home, or immigrate elsewhere when they fail to get a job commensurate with their qualifications and experience in New Zealand. Research conducted in the United States found that cities and regions that are more tolerant and inclusive of migrants are able to attract more talent.²⁹⁹ As a result, these areas displayed higher levels of innovation.³⁰⁰

2.96 A 2012 study on the increasing numbers of immigrants in 12 European countries found that "innovation levels are ... positively associated with migrant diversity", an effect that only occurs when there is a "minimum level of diversity".³⁰¹ The study further found that diversity can enhance local aggregate demand for goods and services; new investment fosters product and process innovation; and migrants, especially skilled migrants, add to the "capital stock" of host communities.³⁰²

2.97 Another study relying on aggregate data from 12 European countries found that cultural diversity positively influences production and consumption.³⁰³ The study also found that there was growing evidence that Americans are more productive when they live in culturally diverse regions.³⁰⁴

- 2.98 Research conducted by AsiaLink and the Australian Industry Group in 2010 across 380 businesses found that the greater the proportion of senior leaders who have undertaken cultural training, can speak an Asian language and have lived or worked in Asia, the greater the reported business performance in Asia.³⁰⁵
- 2.99 At present, New Zealand businesses could utilise the 1.5 generation and multigenerational migrant talent pool more. A key finding in our survey of ethnic minorities and migrants is that migrants are discriminated against in the job market, particularly if they look visibly different and have foreign-sounding names denoting ethnicity from Asia, Africa or the Pacific.³⁰⁶ If businesses want to reap the diversity dividend, they will need to address issues such as discrimination, as discussed further below at [2.123].

Business Investor Migrants

- 2.100 New Zealand's focus on attracting business investor migrants represents an opportunity for businesses seeking capital. Immigration New Zealand is planning to put greater efforts into marketing New Zealand as a destination for business investor migrants and linking them to growing sectors.³⁰⁷ There were 439 approved business category applications for the 2014/2015 financial year, comprising approximately 6 per cent of total residence approvals for that period.³⁰⁸ New Zealand's business investor and entrepreneur immigration policies have also recently been revised to attract higher value and better quality businesses.³⁰⁹ Business investor migrants and entrepreneurs can bring commercial expertise, international linkages and networks to boost the economy.³¹⁰
- 2.101 In 2014, 46 per cent of business migrants approved in the investor category were Chinese.³¹¹ A 2014 MBIE survey of investor migrants found that approximately 65 per cent of those surveyed invested more capital in New Zealand than the amount required by the investor policy.³¹² However, the type of investment chosen for residence application tended to be passive, such as through investment in government, corporate or bank bonds (50 per cent) rather than active, for example through purchase of shares, company equity or venture capital (20 per cent). A study by KPMG found that around 80 per cent of migrant investor funds currently end up in government and corporate bonds.³¹³
- 2.102 According to the MBIE survey, migrants who spent more time in New Zealand were more likely to make active investments, but most opted for passive investment due to a lack of networks and knowledge about the New Zealand economy and business culture. Just 31 per cent felt that New Zealand made the most of investors' talent and networks. Further, even though 85 per cent expected to be able to make a significant contribution to New Zealand, just 65 per cent felt they had the opportunity to make a sizable contribution. Many reported that they did not think their education or skills were relevant in the New Zealand context and welcomed greater engagement by organisations such as NZ Inc, which works with industry leaders, business, and government to help New Zealand businesses and business leaders to succeed internationally.³¹⁴ A number of respondents said they would be interested in either setting up their own business or providing equity for other businesses once they were settled in New Zealand and had a better understanding of the business landscape. These findings indicate that we are not fully maximising the potential contribution from investor migrants, both intellectually and financially.
- 2.103 Andy Hamilton, Chief Executive of The Icehouse, and KPMG, have called for at least 10 per cent of wealthy migrant capital to go into growth investments such as angel investment, venture capital or private equity growth funds.³¹⁵ It is estimated that changing New Zealand's policy settings could bring in between \$50 million and \$100 million annually for New Zealand growth companies.³¹⁶
- 2.104 The Government is currently considering changing the rules around investor migrants to ensure wealthy migrant capital is channelled into productive assets.³¹⁷ The Government's recently approved Investment Attraction Strategy indicated that a review of migrant visa categories would be conducted to ensure they were attractive to entrepreneurs and investors.³¹⁸ At the same time, however, Economic Development Minister, the Hon Steven Joyce, has

cautioned that any changes should avoid deterring high net-worth investors from coming to New Zealand.³¹⁹

The balance will be in to what extent you can direct that investment without putting people off... It's a balancing act...some [investment] is more active than others and has the potential to create more spill over benefits.

2.105 For example, following the introduction of a rule change in Australia requiring investor migrants to invest in growth assets such as venture capital from 1 July 2015,³²⁰ the Financial Times reported that just seven investor visa applications had been received.³²¹

2.106 Immigration New Zealand's Talent (Accredited Employers) Work Policy also enables businesses which are accredited employers to recruit globally and fast-track the processing of employees' talent visas.³²² In order to become accredited, employers must demonstrate that they are financially viable, committed to training and employing New Zealanders, and have sound human resource and workplace policies and practices.³²³ Immigration policy in New Zealand is further discussed at [3.3].

Ethnic Businesses and Migrant Entrepreneurs

2.107 MBIE's latest report on the small business sector found that around 97 per cent of enterprises in New Zealand are SMEs.³²⁴ These 459,300 enterprises include those with no employees, micro enterprises (one to five employees), and small (six to 19 employee) enterprises. SMEs make a significant contribution to the New Zealand labour market: more than 584,000 people are employed in enterprises with fewer than 20 people, comprising 30 per cent of the New Zealand workforce.

2.108 SMEs play a "distinct role" in New Zealand's economy, often providing a method of entry into business for new entrepreneurial talent and a career for those who value economic independence.³²⁵ They also act as specialist suppliers of goods and services to large companies, and contribute to variety and consumer choice for customers by serving niche rather than mass markets.

2.109 According to MBIE, in the entrepreneur category, the top source countries for those earning income from self-employment are the United Kingdom (34 per cent), South Korea (20 per cent) and China (17 per cent).³²⁶ The rate of approved applications from the United Kingdom has declined since 2010, from approximately 37 per cent receiving approval to 22 per cent in 2014. In contrast, the rate of approvals for applications from China and South Korea has increased significantly since 2010, from 20 per cent and 9 per cent respectively to 60 per cent and 59 per cent in 2014.

2.110 The main industries for migrants earning in self-employment were "other" (46 per cent), professional, scientific and technical services (17 per cent), construction (14 per cent) and low productivity industries. Fifty-eight per cent of migrant businesses have no employees. In 2014, 53 per cent of migrants with long-term business visas transitioned to residence, though there were higher transition rates for migrants from South Korea and China (67 per cent and 58 per cent respectively). Eighty-six per cent gained residence through the entrepreneur category. However, only a small proportion of migrants in the entrepreneur category actually earn income from self-employment – the majority of migrants earning from self-employment fall under the skilled migrant category. Only 2 per cent of those earning self-employment income gained residence through the entrepreneur category.

2.111 A longitudinal study on migrants taking up residence in New Zealand between 2004 and 2005 found that the proportion of skilled and family partner migrants earning through self-employment increased to between 7 and 9 per cent after 36 months in New Zealand.³²⁷ The small-scale studies completed on migrant entrepreneurship to date indicate that the increased level of entrepreneurship displayed by migrants is partly due to their ability to identify gaps and leverage market opportunities and access different markets (see for example the case studies on Brijesh and Nivedita Sethi, and Smile Dental, at [2.64] and [2.81]) and partly, for Asian migrants, because they find it difficult to access (or may be discriminated against in) the mainstream labour market.³²⁸ These studies indicate that a large number of

migrants from Asian ethnic minority groups venture into entrepreneurship after struggling to break into the New Zealand job market post-arrival, or failing to find career options that are commensurate with their skills and qualifications.

2.112 For example, the highest rates of unemployment among migrants were for recent Chinese migrants (those resident in New Zealand for less than five years), whereas those who had been resident in New Zealand for five years or longer were more likely to be self-employed, predominantly within service industries.³²⁹ The self-employment rates for Chinese-born migrants almost doubled for those who had resided in New Zealand for between five and 10 years, and unemployment reduced by 70 per cent as their period of residence increased.³³⁰ A similar pattern of time-delayed business venture creation was also evident for migrants from Hong Kong and Taiwan.³³¹ In contrast, Pacific migrants are significantly less likely to be self-employed (4.3 per cent as at 2013 compared to 12.1 per cent of the general New Zealand population).³³²

2.113 It is common practice for ethnic businesses to receive assistance, financial or otherwise, from friends and family based in New Zealand and overseas, rather than from banks or government agencies. In a 2011 study, many Chinese and Korean business owners reported that they did not feel that the host organisations which represent and engage with businesses understood their particular circumstances and needs.³³³

2.114 Chinese and Korean business owners, in particular, are more likely to rely on co-ethnic networks for capital, supplies, information, labour and for a customer base.³³⁴ This is facilitated by “co-location with co-ethnics” in ethnic precincts, which permits businesses to take advantage of the ethnic networks in which they are situated.³³⁵ A 2014 qualitative study by IRD found that:³³⁶

Indian and Chinese business owners tended to rely more on their accountant/tax agent (who was usually from the same ethnic background as themselves) to manage their tax affairs and provide tax advice.

The UK and Australian business owners, however, were more likely to seek tax information through Inland Revenue channels, and used a wider suite of business systems to manage their accounts and paperwork. They were also more likely to receive overseas income.

... the UK and Australian business owners appeared to have integrated better into New Zealand society. For example, a higher proportion of UK and Australian business owners earned household income that was greater than \$100,000 while a higher proportion of Chinese and Indian respondents reported that they were struggling financially. Chinese and Indian respondents tended to feel that they were being treated “differently” because of their ethnicity and reported lower levels of life satisfaction than their UK and Australian counterparts.

2.115 Similarly, a 2010 study of 24 Chinese businesses found speaking English, employing staff, obtaining finance and start-up capital and operating within the local business environment to be the most commonly experienced problems.³³⁷ All the businesses employed at least one Chinese staff member and supplier, and 95 per cent used Mandarin as the main language in the workplace. Almost 90 per cent of the businesses had Chinese customers, though most reported that they had a multicultural client base. Half of the employers travelled overseas, predominantly to China, to support their businesses. Strategies employed by Chinese employers to set up and develop their businesses included:

- a. Engaging local experts to obtain licences;
- b. Employing non-Chinese staff to create a multicultural image;
- c. Employing young Chinese graduates to lower employee costs and enhance the quality of customer service; and
- d. Selling company shares to business migrants as an alternative to securing bank loans.

2.116 In contrast, while South African, British and Indian business owners reported challenges as they sought to establish themselves in the New Zealand business environment (in particular, obtaining local knowledge relating to business practice and local culture), their

English language proficiency, together with their greater familiarity with New Zealand business practices meant that they were less dependent on their co-ethnic relational networks.³³⁸ A 2011 study on British employers likewise found that British employers experienced “little displacement on arrival in New Zealand” because they were often in similar occupations to their pre-departure work and accessed a wide range of local business organisations and government services upon arrival (unlike Chinese and Korean businesses).³³⁹

2.117 New Zealand's migrant entrepreneur policy underwent significant changes last year. The policy is now a points-based system, with a minimum capital requirement of \$100,000. Points are granted for business experience, creating full-time positions, providing unique products or services to New Zealand, capital investment and for businesses based outside of Auckland.³⁴⁰ This, in combination with the increased number of bonus points allocated to migrants based outside of Auckland, means that businesses and employers in the regions should be able to capitalise on the diversity dividend that migrants offer.

International Students – Managing the Transition from Study to Work

2.118 International students transitioning from studying to working in New Zealand is another aspect of the diversity dividend. Approximately 30 per cent of former international students remain in New Zealand for at least five years after completing study on a work or residence visa.³⁴¹ In 2005, a range of policy changes were introduced aimed at making New Zealand a more competitive destination for international students, including a graduate job search permit and the post-study practical experience permit. Further changes to these policies extending the right to work for certain groups of students post-study were made in 2007 and 2011. In 2012, students attending institutes of technology and polytechnics were the most likely to transition from study to work/residence (62 per cent). However, in terms of numbers, students from private training establishments (“PTEs”) represented both the largest number of leavers and also the largest number of students transitioning (approximately 6,000 students or 51 per cent transition).

2.119 The number of PTE students transitioning has gradually increased from approximately 7.5 per cent in 2005 to 51 per cent in 2012. Universities had the second largest number of leavers in 2012 but, due to a lower transition rate, had the smallest number who transitioned (just 25 per cent). The highest number of students transitioning to work or residence comes from India, with 82 per cent transitioning in 2012, compared with just under 50 per cent of Chinese students and 6 per cent of students from the United States.³⁴² The higher transition rate aligns with the increased number of international students from India since 2009. Most students who transition study at diploma or level 7 graduate certificate and diploma level.

2.120 The management and commerce fields had the highest number of international student leavers transitioning to work or residence in 2012, followed by society and culture and food, hospitality and personal services. The contrasting transition rates and number of leavers between both fields of study and levels of study has implications for various agencies and groups. For example, if there is a shortage of a particular skill level, or those trained in a particular field, the number of leavers and the transition rate can be used to investigate whether this is due to the fact that we are not attracting enough of these students to complete this level or train in this field (an attraction issue) or because these students are choosing to leave New Zealand post-study (a retention issue).

2.121 For example, if we wanted more people working in the IT profession, one possibility would be to try and attract more students to come to New Zealand to study IT, as 70 per cent of persons studying in this field transition to work or residence, or to find ways to better retain those students already coming to New Zealand to study IT. The engineering and related technologies field was the fifth highest field in terms of the number of graduates in 2012, but only 36 per cent of students transitioned to work or residence.

2.122 Another issue that has been identified is tertiary education organisations blurring the division between study, work and immigration by enticing international students with the possibility of working rights and permanent residence, despite providers not being

able to guarantee either. Some providers have said that such offers are necessary to ensure New Zealand is able to compete with other countries for international enrolments.

Recommendations

- Businesses should capitalise on the diversity dividend brought by migrant and ethnic employees, particularly migrants from the 1.5 generation and multigenerational migrants, and those in the skilled and business investor migrant categories.
- Migrants in the business and entrepreneur categories say they need better information on arrival about financial services and investing in New Zealand to maximise their potential contribution to New Zealand. This is a significant opportunity for the private sector, but also an important gap for public agencies to plug to grow New Zealand's economy.
- We need to consider how best to attract and retain international students in fields where there are shortages of New Zealand-born workers. We also need to recognise such students as future high value customers, especially as many apply to be skilled migrants and then for permanent residence.

Key Point Three: Challenges to Obtaining the Diversity Dividend

Discrimination against the Diverse

2.123 Discrimination is differential treatment based on race, religious or ethical belief, and national and/or ethnic origins³⁴³ that results in a material disadvantage to a person or group in comparable circumstances, which cannot be justified.³⁴⁴

2.124 The amount of discrimination experienced by the diverse is a good measure of whether we need to do more to ensure social cohesion given New Zealand's superdiversity. For discussion of the legal framework relating to discrimination, see Chapter Four.

Discrimination

2.125 Almost three-quarters of interviewees in Statistics New Zealand's General Social Survey 2014 reported that they would feel comfortable with a neighbour from a racial or ethnic minority.³⁴⁵ Despite this, various studies indicate that ethnic minorities are more often subject to discrimination, particularly in the labour market, as is discussed below.

2.126 In terms of complaints to the HRC, the number of complaints from each area is roughly proportionate to population, with the Auckland region the origin of most HRC complaints, followed by Christchurch, Wellington and other urban centres.³⁴⁶ There has been a change in the nature of complaints from allegations of overt racism to complaints of harassment or discrimination of a more covert nature.³⁴⁷ The number of HRC complaints has actually been declining over the past four years, possibly due to greater public awareness about alternative forums for such complaints, such as the Office of the Ombudsman and the Broadcasting Standards Authority, greater use of social media to record concerns, and reluctance to make a complaint in the course of employment.

2.127 The Race Relations Commissioner, Dame Susan Devoy, says that despite the overall decrease in race-related complaints, there are often spikes in reported racial abuse after particular events. For example, the Muslim community has reported increased harassment of women and children after ISIS attacks, as has the Jewish community after attacks in the Gaza Strip, and the Chinese community after comments by the Labour Party on the Auckland housing market.³⁴⁸ It is important to bear in mind, however, the limitations of discrimination complaint statistics. There is no mandatory obligation for complainants to the HRC to specify their ethnicity or ethnicities, which affects the completeness of HRC data.³⁴⁹ A person's culture and ethnicity may play a role in whether they actually report discrimination at all. People from Asian and Pacific cultures, for example, tend not to speak out for fear of losing face, or because being discriminated against is considered shameful.³⁵⁰ Others may not know how to complain to the HRC.

2.128 A 2012 survey found that racial discrimination is the most common form of discrimination people experience, with persons who identified as Asian reporting the highest level of racial discrimination.³⁵¹ Likewise, 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.³⁵² The next most discriminated against were Māori. In 2013, the Race Relations Commissioner said that: “Although the New Zealand Human Rights Commission aims for the best practice in combating racism, we do not claim to have achieved it.”³⁵³ A TV3 poll in 2013 also found that 76 per cent of respondents believed New Zealand was a racist country.³⁵⁴

2.129 The most disturbing reports are of migrants and refugees experiencing blatant racism through verbal and physical abuse. One incident reported in a study by Girling, Liu and Ward is of an Asian boy being assaulted inside a fish shop. When he picked himself up and asked the New Zealand European man why he had pushed him, the man said that it was because the boy looked Asian.³⁵⁵ There are other accounts of migrants who cannot go on a walk or outing without being physically or verbally abused by a member of the general public for being of a visibly different ethnicity.³⁵⁶ Being stopped by Customs when returning from overseas travel is also a particular issue raised by migrants.³⁵⁷ If left unaddressed, discrimination and racial abuse can lead to negative mental health problems and marginalisation.³⁵⁸

2.130 Recent incidents such as New Zealanders dragging Asians out of cars and assaulting them prior to confiscating their keys for alleged erratic driving will have an adverse effect on New Zealand’s export education and tourism markets.³⁵⁹ Discrimination against international students in Australia certainly had a negative effect on its export education market.³⁶⁰ Parents will not send their children to destinations that are not safe and where they will suffer discrimination in finding jobs. MoE surveys conducted on the experience of international students between 2011 and 2012 found that personal safety is one of the key factors leading international students to choose to study in New Zealand.³⁶¹

2.131 New Zealand also has a history of discriminatory laws based on “preferred country of origin” and it is important that we do not revert to that in breach of our national and international commitment not to discriminate on the basis of race.³⁶²

Discrimination in Employment

2.132 The key challenge in the labour market from the perspective of the diverse is discrimination: diverse candidates and their New Zealand-born children struggle to get jobs commensurate with their skills, experience and qualifications due to conscious and unconscious bias. In my own experience, the deep concern from the diverse is that, having sacrificed to get their children the best education, and their children having attained good qualifications and training, these young people are still suffering discrimination in employment. This was confirmed when I interviewed Dr Anwar Ghani, President of the Federation of Islamic Associations of New Zealand, who stressed that the inability of highly qualified young people from Muslim communities to get jobs commensurate with their qualifications was a key problem.³⁶³ In its latest concluding observations on New Zealand, the Committee on the Elimination of Racial Discrimination also expressed concern at the persistent discrimination against migrants, particularly of Asian descent, in the labour market, including reports of inadequate recognition of their educational qualifications.³⁶⁴

2.133 These concerns are reflected in the discrimination complaint statistics: discrimination in the labour market, both at the recruitment stage and in the course of employment, is still the most common type of race-related complaint received by the HRC.³⁶⁵ The legal prohibitions on discrimination in employment are discussed at [4.7] and [4.37]. In 2014, complaints to the HRC concerning racial discrimination at the pre-employment stage made up 23 per cent of complaints (behind disability and sex).³⁶⁶ Complaints concerning racial discrimination in employment still make up the majority of complaints to the HRC (38.2 per cent or 117 complaints in 2014), followed by disability and sex.³⁶⁷ In terms of the nature of complaints, complaints on issues to do with English language policies, failure to be appointed because of race or ethnic origin and lack of managerial intervention in workplace harassment have become more common.³⁶⁸

- 2.134 A 2013 survey found that migrants from the South East Asia region were most likely to report workplace discrimination (14.6 per cent), followed by those originating from the Middle East, Latin America or Africa (12.8 per cent).³⁶⁹ Only 4.4 per cent of New Zealand-born Europeans reported experiencing workplace discrimination.³⁷⁰ As is discussed further at [2.148], women were more likely to experience discrimination than men, whether foreign-born or New Zealand-born, indicating that migrant women are subject to a “double disadvantage”.³⁷¹ The study concluded, however, that the situation did generally improve for migrants the longer they lived in New Zealand, probably due to greater English fluency.³⁷²
- 2.135 There is evidence of applicants with foreign-sounding names not getting interviews when the same CV submitted by “John Smith” gets a more positive response.³⁷³ One study revealed that New Zealand European candidates were three times more likely to be contacted by prospective employers than Chinese candidates, despite being similarly qualified.³⁷⁴ Others report being shortlisted and interviewed on several occasions, but not being able to secure the job.³⁷⁵
- 2.136 Another study found that accounting graduates from an ethnic minority group find it more difficult to enter the accounting industry in Wellington than their New Zealand counterparts.³⁷⁶ In particular, Chinese and Indian nationals were more likely to be excluded from entering the workforce on the basis of their ethnicity, though Middle Eastern, African and graduates from other Asian countries were more likely to experience discrimination than New Zealanders. The study ascribed this to New Zealand employers’ tendency to place too much emphasis on an applicant’s social and cultural attributes, such as their mannerisms, oral language skills and local experience (which are usually determined by the applicant’s ethnic background), rather than their technical knowledge, skills and qualifications. It has also been reported Auckland has the most well-qualified taxi drivers in the world and that highly educated and qualified migrants lose self-esteem having to resort to earning their living in this way.³⁷⁷ Their children are also ashamed at school, which in turn affects social capital (discussed at [2.341]) and engenders feelings of isolation. These accounts indicate that employers need more training on how to assess migrant CVs properly.
- 2.137 Asians with a Bachelor’s degree were three times more likely to be working as clerks than the national average (33 per cent versus the national average of 11 per cent) in 2010.³⁷⁸ A Department of Labour study attributed this to a lack of New Zealand work experience, a lack of recognition of overseas qualifications and possible language difficulties, but also acknowledged that discrimination might play a role.
- 2.138 Pay equity is also a challenge for ethnic minorities in the employment context. Research conducted in 2009 concluded that the “migrant effect” meant overseas-born Pacific peoples earned 31 per cent less than New Zealand-born Europeans, and overseas-born Asians earned up to 24 per cent less.³⁷⁹ As is discussed at [2.148], there is evidence of the double disadvantage suffered by workers who are women of colour ending up at the bottom of the scale in terms of pay and conditions and promotions.³⁸⁰
- 2.139 Although migrants tend to earn less, the children of Asian migrants earn comparable incomes to the general population.³⁸¹ This suggests that new migrant status is the most important factor in the conversion of education into income for Asian New Zealanders, though age at arrival, years of residence and language proficiency are also important. A 2014 Office of Ethnic Communities report found that employment rates and the earning capacity of migrants correlate with their English language ability.³⁸² Migrants from North Asia (particularly from China) were more likely to encounter employment barriers because of their English language ability than migrants from other regions.

Table: Difference between population average income and Asian average income in 2015³⁸³

Ethnicity	No qualification	School only	Post-school	Bachelor's degree	Post-graduate study
Indian	\$9,500	\$11,300	\$13,700	\$15,200	\$18,900
Chinese	\$12,900	\$14,200	\$15,400	\$15,300	\$19,200
Filipino	\$9,700	\$12,400	\$16,100	\$20,800	\$26,400
Korean	\$11,700	\$19,000	\$20,100	\$26,500	\$31,900
Other Asian	\$12,500	\$14,500	\$16,300	\$17,300	\$16,200

2.140 The difficulty migrants face securing employment in New Zealand commensurate with their qualifications is reflected in the unemployment statistics issued by Statistics New Zealand, which indicate that a higher proportion of Asians, Māori, Pacific, and Middle Eastern, Latin American and African (“MELAA”) people of working age are unemployed compared to New Zealand Europeans.³⁸⁴

Table: Unemployment rate by ethnic group between 2011 and 2014³⁸⁵

Ethnicity	2011	2012	2013	2014
NZ European	5.1	5.4	4.9	4.4
Māori	13.4	14.1	12.9	12.1
Pacific	13.9	15.6	15.2	11.8
Asian	8.3	8.9	6.4	6.7
MELAA	13.1	11.5	9.3	12.7
Other ethnicity	4.7	6.6	4.5	4.3

2.141 Finally, there is evidence that, even after being hired, workers of Asian ethnicity struggle to break through the “bamboo ceiling” of middle management, with employers thinking that they are hardworking technicians but not really strategic or leadership material. There are relatively few Asian leaders in senior management roles in the private and public sector and on the boards of New Zealand companies, even in companies doing regular business with Asia. An EY survey in conjunction with NZAL in 2014 found that only 5 per cent of the top 100 NZX companies have Asians on their boards.³⁸⁶ As at 1 May 2015, only 4.7 per cent of all governance appointments to Crown companies and Crown entities were of “other” ethnicity (not New Zealand European, Māori or Pacific).³⁸⁷ In the public service, Asians make up only 8.2 per cent of officials and just 2.4 per cent of senior managers.³⁸⁸ Just 3 per cent of seats on public boards are occupied by Pacific people (62.7 per cent of whom are women, 37.3 per cent of whom are men).³⁸⁹ Of the seats occupied by Pacific people, 46 per cent of these seats are on boards which the Minister of Pacific Island Affairs (“MPIA”) is solely or jointly responsible for, such as the Pacific Cooperation Foundation and the Pacific Development Conservation Trust.

Law and Policy Changes to Facilitate Diversity Hiring

2.142 As discussed in Chapter Four, New Zealand already has a comprehensive legislative framework in place to ensure the rights of minority groups are protected, and there are tribunals and dispute resolution mechanisms available which are already being utilised to resolve complaints of discrimination in the employment context. NZX companies are required to provide a breakdown of gender composition for their boards of directors and officers, and a statement evaluating progress towards their diversity policies (if applicable), but there is no obligation to publicly release such information.³⁹⁰

2.143 Improvements in the ethnic composition of workplaces in countries such as Canada and the United Kingdom are being driven, at least in part, by extensive reporting requirements requiring the public service and larger companies to collect diversity data at the application and hiring stages, and to report regularly on the ethnic composition of their workforces. This has led to better awareness of the benefits of diversity, and companies have become more open to discussing what steps they need to undertake to become an employer of choice and a good corporate citizen.

2.144 In Australia, the ASX Corporate Governance Council requires ASX companies to benchmark their corporate governance practices and to publicly disclose where they do not comply and the reasons for non-compliance, either on the company's website or in its annual report (though they stop short of compelling companies to comply).³⁹¹ The Australian Council of Superannuation Investors, which represents non-profit super funds worth A\$400 billion, also intends to release a list "naming and shaming" 32 companies on the ASX200 which lack female directors.³⁹² The Council has notified the chairmen of these companies that unless they recognise that the absence of women on their boards represents a governance risk and present a credible plan to fix it, the Council will consider advising their boards to vote against their next bid for re-election.

2.145 Despite the absence of such public reporting requirements, a number of companies in the United States (particularly in the Silicon Valley) have voluntarily published information on their workforce composition and engaged in discussions about the implications of workplace diversity, even if these discussions are partly self-critical.³⁹³ Companies which publish information on the diversity of their workforce are making diversity an integral part of their corporate branding, and those without it risk being perceived negatively. For example, Tim Cook, the CEO of Apple, remarks on the company's website that:³⁹⁴

Apple is committed to transparency, which is why we are publishing statistics about the race and gender makeup of our company. Let me say up front: As CEO, I'm not satisfied with the numbers on this page. They're not new to us, and we've been working hard for quite some time to improve them. We are making progress, and we're committed to being as innovative in advancing diversity as we are in developing our products.

2.146 The experience of some Canadian firms is that formal regulation as opposed to self-regulation has the potential to lead to a "compliance culture and a backlash which may discourage proactive action".³⁹⁵ The Norwegian statutory requirements mandating gender diversity on boards have not led to any improvements in female representation outside of the boardroom or in narrowing the gender pay gap.³⁹⁶

2.147 At the very least, central government should provide further assistance by publishing guidance and resources for businesses. Some materials have already been produced by the OEC on specific areas, such as recruitment.³⁹⁷ The United Kingdom's Civil Service is attempting to become a leader in this area, and regularly produces resources on diverse recruitment and retention, collection and use of ethnographic data and diversity policies. Such materials will be of particular assistance to smaller businesses that might not necessarily have the resources to seek professional advice on a targeted diversity plan. As discussed at [5.307], the OEC runs business conferences and knowledge workshops in Auckland and Wellington designed to foster connections between ethnic and other New Zealand business communities.

Ethnic Women, the "Double Disadvantage" and Pay Equity

2.148 In New Zealand, the gender wage gap has been slowly declining, but still sat at 10.1 per cent in 2013.³⁹⁸ According to recent news reports, the gender pay gap rose to almost 12 per cent in 2015.³⁹⁹ Men are persistently paid more than women overall and within ethnic groups.⁴⁰⁰ The discrimination that is at the heart of the pay equity issue has a disproportionate impact on diverse employees, who face a double disadvantage. Since 2009, Statistics New Zealand has been collecting data that allows wage comparisons by both gender and ethnicity, which clearly illustrates the impact of the dual or compounding disadvantage.

Table: Average and median hourly earnings for those earning income from wage/salary jobs as at June 2014⁴⁰¹

Ethnicity	Men	Women
European		
Average hourly earnings	\$30.40	\$25.46
Median hourly earnings	\$24.53	\$21.50
Māori		
Average hourly earnings	\$24.08	\$21.81
Median hourly earnings	\$20.00	\$18.94
Asian		
Average hourly earnings	\$24.10	\$23.48
Median hourly earnings	\$19.61	\$19.44
Pacific Peoples		
Average hourly earnings	\$22.85	\$20.07
Median hourly earnings	\$19.04	\$17.50
MELAA ⁴⁰²		
Average hourly earnings	\$24.16	\$25.97
Median hourly earnings	\$20.00	\$22.06
All ethnicities		
Average hourly earnings	\$28.70	\$24.70
Median hourly earnings	\$23.00	\$20.73

2.149 European women earn 16.25 per cent less in average hourly earnings than European males; Asian women earn 22.76 per cent less than European males, while Māori and Pacific women earn 28.26 per cent less and 33.98 per cent less than European males respectively.

2.150 The results are similar when one compares average weekly income between ethnic groups:

Table: Average weekly income for people in paid employment from wages and salaries at June 2014⁴⁰³

Ethnicity	Men's average weekly income	Women's average weekly income
European	\$1,006	\$753
Māori	\$900	\$729
Asian	\$813	\$727
Pacific Peoples	\$868	\$692
MELAA	\$821	\$831
All ethnicities	\$969	\$746

2.151 New Zealand European women earn 25.15 per cent less on a weekly basis than New Zealand European men, Asian women earn 27.73 per cent less than New Zealand European men, Pacific women earn 31.21 per cent less, and Māori women earn 27.53 per cent less.

2.152 Even taking account of differences in terms of full-time and part-time employees, there is an hourly gender pay gap, which is also more pronounced for minority ethnic women. As noted by Professor Judy McGregor in a 2014 speech:⁴⁰⁴

[New Zealand's] overall gender pay gap ... is approximately 13 per cent based on average hourly earnings. However, this metric disguises wide variability including the double disadvantage of

gender and ethnicity. For example, the gender pay gap between the highest hourly rate (European men) and the lowest (Pacific women) is 24.4 per cent.

2.153 In a 2013 study on perceptions of workplace discrimination, workplace discrimination was higher among overseas-born compared with New Zealand-born: 9.8 per cent versus 5.2 per cent.⁴⁰⁵ Among those born overseas, women were more likely to report workplace discrimination than men: 10.3 per cent and 9.2 per cent respectively. There are differences between men and women with respect to workplace discrimination. Those who migrate from Asia are more likely to be exposed to workplace discrimination than other New Zealand workers. However, Asia is too broad a classifier: for men, only those born in South and Other Asia (predominantly India) experience more discrimination, whereas for women, this applies to those from South East Asia (predominantly from the Philippines and Malaysia). For men from North East Asia (predominantly from China) the discrimination may be reflected in lower employment rates.⁴⁰⁶

2.154 The intersection of more than one ground of discrimination presents complexities, for example in terms of the role played by unconscious bias. However, the extent of the “double disadvantage” is difficult to measure due to the lack of empirical data. For example, although the MfW and the HRC collect gender and ethnic specific data, no data is collected on the intersection between gender and ethnicity in diverse representation on public boards. Similarly, analysis of the trends in the skilled migrant category:⁴⁰⁷

... does not account for their gendered identities and can only provide a very distorted and partial picture of the experiences, strategies and achievements of these prized individuals ... The lack of any comprehensive analysis of these gendered data means that the implications of a preponderance of women being recruited into service and care industries (the feminisation of flows) are overlooked, as are the implications of skilled principal migrants being more likely to be male.

2.155 As noted by Meares, Bell and Peace:⁴⁰⁸

... it is apparent that both quantitative and qualitative methods are crucial to providing a well-rounded account of the interplay between new migrants and the society and workplaces within which they seek work and settlement. Quantitative research can provide the “big picture” data of patterns of migrant characteristics and employment across locations. The patterning such data make visible can identify sites of disadvantage in labour force participation rates, occupational status and earnings, and longitudinal data collection results in rich data sets with which to investigate change over time.

2.156 In 2012, the Committee on the Elimination of Discrimination Against Women requested the New Zealand Government provide, within two years, data and information on women from ethnic minority groups, including their access to employment.⁴⁰⁹ Before solutions can be devised, visibility is needed: we need to quantify the issue, otherwise we cannot discuss it and it will not be addressed, which risks undermining social capital among ethnic minorities and, in turn, the financial capital brought by superdiversity.⁴¹⁰

2.157 The double disadvantage experienced by ethnic women in the employment sector raises the possibility that a pay equity case such as Terranova Homes & Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc will arise in the context of a class of women of colour earning below white women.⁴¹¹ In Terranova, the Service and Food Workers Union argued that wage rates did not provide equal pay on the basis that aged-care givers were being paid lower rates of pay than if aged caregiving was not work predominantly performed by women. The Court of Appeal referred the case back to the Employment Court to determine the applicable principles.⁴¹² The case was brought under the Equal Pay Act 1972, which affirms that:⁴¹³

No employer shall refuse or omit to offer or afford any person the same terms of employment, conditions of work, fringe benefits, and opportunities for training, promotion, and transfer as are made available for persons of the same or substantially similar qualifications employed in the same or substantially similar circumstances on work of that description by reason of the sex of that person.

2.158 A pay equity claim brought by Māori, Pacific and/or Asian workers in certain industries would fall under the NZBORA rather than the Equal Pay Act, which is limited to pay discrimination on the basis of sex.

Recommendations

- Surveys of the diverse reveal key concerns about discrimination, especially in employment, for themselves and their New Zealand-born children, despite high qualifications and sometimes relevant experience. The Office of Ethnic Communities could assist more in promoting the benefits of hiring diverse staff, and increase its efforts to advise employers on how to make cultural diversity into a competitive advantage.
- More research needs to be conducted on the extent of the double disadvantage faced by migrant and ethnic women, particularly around pay equity and representation on public and private sector boards. Government departments such as the Ministry for Women, the Office of Ethnic Communities and Statistics New Zealand collect data on ethnic or female representation on public boards, but there is little available data on the intersection between ethnicity and gender.
- Migrants need English assistance post-settlement to maximise their contribution to New Zealand's economy, and job search support. Programmes such as the skilled migrant course (which is discussed in depth at [3.24]) show the beneficial job outcomes of teaching new migrants how to communicate in New Zealand workplaces. Good English proficiency alone may not be enough to secure employment. It would be beneficial if the skilled migrant course could be provided for all new migrants wanting assistance.
- Regulatory change requiring NZX companies to publish gender diversity statistics should be considered, as is presently the position in Australia for ASX companies. Consideration should also be given to extending this requirement to include publication of ethnic diversity statistics.

Key Point Four: Fit for the Future Businesses Need to Build Internal and External Diversity Capability to Reap the Diversity Dividend

2.159 Fit for the future businesses need to build internal and external diversity capability to reap the diversity dividend. Not only must a business adapt its services and products to what diverse customers want, but it needs to be capable of effectively communicating with a diverse customer base. Otherwise it risks losing market share.

2.160 New Zealand's open trading economy, in which having to meet the needs of overseas customers makes business very focussed on what is driving profit in diverse populations, means that the incentives to understand and turn internal population diversity into an advantage are also strong. Great Britain (as it then was) was New Zealand's top export country for dairy and agricultural products up until the United Kingdom entered the European Union in 1973.⁴¹⁴ This impacted on Britain's trade with New Zealand (and Australia), and stimulated greater efforts by New Zealand exporters "towards diversification of both products and markets ... in Australia, Asia (especially Japan), the Middle East and Latin America".⁴¹⁵ Retaining this global outlook in the 21st century in order to remain domestically and globally competitive means we need to better understand those we are exporting to and trading with and, as China overtakes Australia as our number one export destination, it is crucial that we use our internal superdiversity to gain a more sophisticated understanding of the China and Asian markets.⁴¹⁶

2.161 We have used the findings from research on New Zealand and overseas businesses to develop a best practice model for building internal diversity capability for New Zealand businesses. The model sets out how businesses can maximise the benefits and opportunities of superdiversity, and also address its challenges.

Successfully Recruiting the Best Diverse Workforce

2.162 New Zealand businesses need to better equip themselves to harness and maximise the advantages of having Asian employees, including providing better links with future markets in Asia, diverse thinking and CQ (intelligence about other cultures and values).

2.163 In order to unlock the full economic potential of the superdiverse population, businesses need to be proactive in tackling issues such as discrimination (discussed above at [2.123]). As the customer base of ethnic minorities and migrants grows, businesses will likely need to discriminate in favour of diverse candidates already equipped with CQ and linguistic ability to serve the changing market. For example, employing from the 1.5 generation will be important, as these candidates already come equipped with English and other language skills, a good understanding of New Zealand culture, CQ and a global outlook. They are also used to bridging the cultural divide, as many from this generation have experience acting as language and cultural brokers for their first generation parents.⁴¹⁷

2.164 The following sections set out the key challenges of superdiversity faced by business employers in New Zealand and overseas, and the best practice for preventing and mitigating these challenges to allow businesses to become fit for the future. Best practice recommendations to ensure external capability are set out under Key Point Five. Looking at the experience of businesses in other superdiverse countries and cities is helpful in identifying challenges that New Zealand businesses may face from superdiversity, and the measures that they can implement to adapt to and address these challenges. However, it is important to bear in mind that New Zealand's superdiversity is unique and includes a large indigenous component, so overseas learnings still need to be adapted to our local conditions.

2.165 Although many businesses are aware of the importance of gender diversity, to date there has been little focus on ethnic diversity. Thus, a pressing diversity risk for New Zealand companies and boards is ethnic diversity given New Zealand's changed demography. The available data indicates that there is poor ethnic representation in senior management and on boards and few companies have an ethnic diversity policy or initiatives in place.

2.166 Part of the issue with getting businesses to broaden their view of diversity beyond gender is "diversity fatigue": a disinterest in diversity activities after months or years of diversity programmes. A study by Hays Recruitment found that causes include a lack of executive involvement, failure to link programmes with a business case, or lack of accountability.⁴¹⁸ Thirty-four per cent of respondent organisations reported that diversity was not seen as a genuine concern for their organisation, 29 per cent said the public face for diversity is a goal rather than a reality and 24 per cent said line managers failed to genuinely embrace policies such as diversity in recruitment.

2.167 Managers, in particular, need to cultivate CQ, as internal capability enhances businesses' external capability to deal with its diverse customer base. This means that businesses which want to tap into the potential diverse customer base need to have employees on hand who are able to speak the required language or be of the same background. The company as a whole must also be able to convey a sense of cultural knowledge and understanding.

Asia Capability Survey

2.168 In Australia, the Diversity Council has developed a survey tool which allows individual organisations to measure the "Asia capability" of their workforce, and enables national benchmarks of Asia capability to be generated.⁴¹⁹ The seven key domains for measuring whether an organisation has an Asia capable leadership team, and generating an organisation's Asia Capability Scorecard are as follows:⁴²⁰

- a. *Cultural Intelligence*: A person's ability to adapt effectively to new cultural contexts. Indicators include cultural knowledge, skills and meta-cognition;
- b. *Asian Cultural Knowledge*: A person's knowledge of Asian cultures and how culture can affect oneself and others. Indicators include cultural beliefs, regulatory/legal systems, economic relationships, political and diplomatic relationships, and managing in Asian business contexts;
- c. *Asian Cultural Experience*: A person's experience living in Asian countries and working in culturally diverse teams which include people from Asian cultural backgrounds. Indicators

include living and working in Asia, travelling/studying in Asia, working in culturally diverse teams including Asian individuals, and managing culturally diverse teams including Asian individuals.

- d. *Asian Language Proficiency*: A person's ability to comfortably meet and greet colleagues/clients, and have a conversation in one or more Asian languages. Indicators include the ability to read, speak and/or write in one or more Asian languages;
- e. *Asian Social Capital*: A person's trusted relationships and regular contact with people from Asian cultural backgrounds. Indicators include Asian networks that can assist work, Asian colleagues and/or clients, Asian relatives and/or friends, and involvement in Asian organisations/social groups;
- f. *Asian People Management Lens*: A person's ability to recruit, reward, and promote individuals from all cultural backgrounds, including Asian backgrounds. Indicators include valuing Asian professional experience, building diverse professional networks, valuing Eastern and Western leadership models, and working knowledge of Asian employment practices; and
- g. *(Asian) Multicultural Identity*: A person's identity is made up of more than one cultural background. Indicators include multicultural identity, particularly Asian multicultural identity.

2.169 The Diversity Council found that there was clear scope for Australian organisations to better cultivate their workforce Asia capabilities.⁴²¹ It found that:

- One in three Australian workers have little or no Asia capability;
- Two out of three have no or little working knowledge of how to manage in Asian business contexts;
- Only 5.1 per cent are fluent in one or more Asian languages; and
- Organisations were more likely to value the Asia capabilities of their workforce than to know about, invest in, or effectively use these capabilities.

2.170 As discussed below at [2.197], businesses should, as part of their in-house surveys, examine the Asia capabilities of their workforce, to build their internal capability to leverage of the increasingly diverse talent pool and improve engagement with Asian clients and customers.

Survey on Internal Capability of New Zealand Businesses

2.171 The Superdiversity Centre undertook a survey in partnership with EY of New Zealand businesses and found that most are not capitalising on the growing ethnically diverse talent pool as a competitive business advantage.⁴²²

Methodology

2.172 The survey posed a series of qualitative questions (with pre-selected possible options for some questions, with the option for further comment), to approximately 279 potential participants on the internal capability of their organisation in regards to the recruitment and management of diverse staff. Ninety-eight organisations responded. The survey was sent to organisations on EY's database of varying sizes (primarily medium to large organisations), predominantly in the private sector. The focus of the questions was on collection of ethnicity data, whether organisations had a diversity strategy and/or policies in place, whether CQ was a relevant factor in the recruitment process, whether organisations were facing challenges from an increasingly diverse workforce and, if so, the best practice for dealing with those challenges. All data was anonymised to protect confidentiality.

Limitations

2.173 The accuracy of the data may be affected by drop-off rates in responses from those organisations surveyed. There was a drop-off in response for questions relating to:

- a. Barriers in collecting diversity information;
- b. Use of data;
- c. Diverse recruitment policies/CQ training;
- d. Challenges from diverse workforce; and
- e. Customer base ethnicity.

Results

2.174 The key findings from the survey, which is included in **Appendix One**, were as follows:

- a. *Collection of data*: 46.9 per cent of the surveyed organisations collect ethnicity data on their staff, while 17.3 per cent are planning to in the near future;
- b. *Barriers in collecting diversity information*: 16.1 per cent of organisations who did not collect ethnicity data said that their organisation did not have a central system where this information could be stored and easily accessed, and 16.1 per cent reported that they did not focus on ethnicity as a priority within their organisation; 9.7 per cent said that they did not see the importance of collecting this information.⁴²³
- c. *Use of data*: Where collected, this information was primarily used for internal reporting on diversity programmes (21.9 per cent), informing the organisation's diversity policies/practices (20.3 per cent) and targeting change in the organisation's diversity programme (15.6 per cent); 10.9 per cent of respondents only collected the data for "general use".
- d. *Staff diversity*: 58.92 per cent of organisations reported that less than 5 per cent of their organisation was comprised of Asian, Māori and Pacific peoples; 16.1 per cent of organisations had 6 to 10 per cent Māori, Asian and Pacific staff, 14.28 per cent had between 11–15 per cent, and only 3.57 per cent had over 16 per cent Māori, Pacific and Asian staff.
- e. Diverse recruitment policies/CQ training:
 - i. 75 per cent of respondents did not have specific policies on recruiting diverse staff/ those who could speak other languages. Several organisations mentioned recruiting for values.⁴²⁴
 - ii. Only 31.1 per cent of those who responded to this question trained HR/recruitment to manage foreign CVs (though 33.8 per cent said they provided equal weighting in the recruitment process to overseas experience). Only 9.5 per cent trained all managers and recruitment staff on conscious/unconscious bias. Only 1.4 per cent covered identifying features (that is, names/photos) from CVs; 5.4 per cent communicated their policy on candidate diversity on their recruitment website and through external recruitment partners.⁴²⁵
 - iii. Eighty-three per cent of respondents did not test for CQ when recruiting, and only 23.9 per cent trained existing staff on CQ; 4.3 per cent planned to recruit for CQ in the near future, and 13 per cent planned on training existing staff in CQ in the near future.
 - iv. Only 8.5 per cent had policies in place to ensure the progression/promotion/retention of diverse staff, with 12.8 per cent planning to in the near future.⁴²⁶
- f. *Challenges from diverse workforce*: 45.3 per cent of respondents reported not experiencing any challenges from recruiting diverse staff. The key challenge reported was resistance to change by existing employees (18.9 per cent), followed by lack of CQ resulting in confusion and/or a lack of teamwork (13.2 per cent) and difficulties getting traction around diversity within the organisation (11.3 per cent).⁴²⁷
- g. *Measures to counteract challenges*: The most common measure adopted to address challenges from diverse staff was having zero tolerance of bullying in the workplace (31.4 per cent), followed by having leadership/role models for diversity and inclusion (17.8 per cent) and promoting cultural events (11 per cent). Three organisations (2.5 per cent) surveyed

had implemented accountability measures to encourage leadership/management to reach diversity/hiring targets.⁴²⁸

- n. *Customer base ethnicity data:* Only 9.1 per cent of respondents collected information on the ethnicity of their customer base.⁴²⁹
- 2.175 This survey of New Zealand businesses indicates that, although many businesses are aware of the importance of gender diversity, to date there has been little focus on other types of diversity, particularly ethnic diversity.

Xero Qualitative Research Study on SMEs' Views of Migrant Workers

Methodology

- 2.176 Xero aims to be a small business thought leader by providing small business with evidence-based advice on how to work on the business to achieve their goals. To that end, Xero, together with Colmar Brunton, undertook qualitative research on the impact of migrant workers joining the New Zealand workforce, for the Superdiversity Stocktake.
- 2.177 In total 15 in-depth interviews were conducted with opinion leaders and small business owners who have had first-hand experience with migrant workers and their impact in New Zealand. Participants came from industries where the effects of migrant workers are felt most deeply: transport, storage, retail, healthcare and social assistance, cleaning, hospitality, businesses for sale and other areas such as trade and construction. The majority of participants (12 out of 15) were immigrants themselves.
- 2.178 The research looked at the key issues facing immigrant workers and perceptions of immigrant workers. It found that while participants told many stories about prejudicial attitudes and feelings (racial stereotyping), blatantly racist attitudes were rarely described.
- 2.179 The study identified the following issues faced by immigrant workers:
 - a. **Institutional hurdles which migrant workers must overcome:** New Zealand qualifications and experience in a New Zealand context are more valued than international qualifications from places such as India and other Asian countries. This forces many first-generation migrants to downplay their qualifications to find work in low entry roles. As part of the study, each participant was provided with identical CVs containing equivalent qualifications – one from Mr Smith and another from Mr Patel. All of the participants, even participants who expressed strong opinions against prejudice and bias, preferred Mr Smith's CV on the perceived basis that Mr Smith would more easily fit into their businesses culture. This reflects the fact that even an open-minded employer or human resources director who embraces diversity has to consider whether a foreign-trained employee will fit with their colleagues and interact well with customers. Therefore, unless there is a whole-of-organisation approach to diversity, it takes significant investment on the part of businesses to integrate foreign trained employees or employees with different accents and attitudes.
 - b. **Language is a big hurdle for many migrants:** Strong foreign accents can be perceived as a risk to a business, and employers can use this as an excuse to decline hiring foreign-born and/or trained job applicants on the basis of internal fit and engagement with clients. In this sense, language is the biggest "confirmation bias". Further, hiring staff with English language difficulties can require extra effort on the part of employers to communicate internally amongst staff. Employers may also avoid placing new migrants in managerial roles and be wary of potential complaints from customers and clients.
 - c. **Religious and cultural practices are not as great a hurdle as language barriers:** The study found that business owners and employers were often amenable to accommodating cultural differences, so long as this did not interfere significantly with business. For example, accommodations are made where employees need to wear certain attire or avoid certain food for religious reasons. Some difficulties caused by cultural differences can be easily resolved through open communication. For instance, one participant gave the example of a young Asian employee who was an extremely efficient and reliable worker

but would often sleep at her desk between jobs. When the employer challenged this habit and explained that she should not sleep at her desk, the employee explained that she only did so between jobs and requested more work.

- d. **There is a sense of misalignment between employment laws and immigration laws:** The study found that, at an institutional level, there is a gap between immigration and employment law. For example, some migrants consider buying businesses as a means to take advantage of loopholes in New Zealand's immigration laws. Further, human resources directors often lack adequate knowledge of immigration laws and processes, which may lead them to prefer the easiest choice between job applicants, often to the detriment of migrant workers. This employment-immigrant disparity means that, if the Government seeks to plug skills-shortages through immigration (as has been the case in the agricultural sector and the Canterbury rebuild), it should ensure that correct migrant qualifications are matched to the right job field.
- e. **Buying a business can be the only means to a Kiwi future:** Many first-generation migrants find it easier to "buy a job" through buying a business, than applying for one. Many migrants therefore buy businesses such as lunch bars, lawn mowing franchises, cleaning franchises and operator-cab drivers because language is less of an issue in these businesses and the business can often be shared amongst family members. Owning a business can also provide the desired "Kiwi experience" while allowing migrants to earn a living.
- f. **There is insufficient understanding of the reasons why people come to New Zealand:** There is insufficient understanding of why immigrants come to New Zealand, which can lead to assumptions that reinforce prejudices and biases. One participant, a proactive employer of migrants, advised that it is important to listen to migrants and, in particular, understand why they left; listen to what they hope to achieve in their new home; talk openly and directly; and focus on the individual rather than the culture. The study also found that, rather than taking "Kiwi jobs", many first-generation immigrants are taking the jobs left behind by New Zealanders. These immigrants feel that they do not have a fall-back option and therefore have a greater fear of failure than their New Zealand-born contemporaries.
- g. **Experienced migrants are the worst perpetrators of abuse against newer migrants:** Participants noted plenty of experience with prejudice and stereotyping that limited the job options of migrants, but did not have much first-hand experience with abuse of migrants by employers. However, those stories of abuse that were told often involved the abuse of new migrant workers by experienced immigrants. These abusive employers often used familiar culture and language to manipulate the situation, paying migrants low wages, displaying threatening behaviour and using misinformation and false promises.
- h. **Some institutional support is misguided:** Much of the training available to migrants, especially in relation to entrepreneurial and business owner support, is outdated. It focuses on skills such as how to write CVs or put an advertisement in the Yellow Pages. There is great scope to provide more relevant areas of training such as language skills, franchisee models, managing Generation Y as staff, "dos and don'ts" of Kiwi business and seminars teaching employers to value different cultures.

2.180 The study also looked at perceptions of migrant workers. It found that while there may be functional impediments and emotional reasons behind negative perceptions of migrant workers, the line between the two is very fine. It also found that, despite prejudice, migrant workers are known as enthusiastic and hardworking employees. Participants often drew on the "cat versus dog" analogy to distinguish between migrant and "Kiwi" workers: migrant workers were perceived as having a strong drive and work ethic, while "Kiwi" workers are seen as more friendly and open, although lacking drive. Participants shared many examples where the migrant employee was considered the better choice. However, this positive opinion of migrant workers can be marred by a few bad experiences which can stay with employers, such as a migrant worker with language difficulties or a different attitude. As one participant put it, "perceptions lead opinions", and until perceptions are changed, employers will be reluctant to maximise the benefits presented by migrant workers.

2.181 The study concluded that demystifying the process for both parties can shift the focus to the positive aspects of hiring migrant workers. To that end, culture needs to be embraced on both ends. It is likely that successful migrant workers will become thought leaders in this space as they increasingly become the employer. While prejudice is an important barrier, migrants also have a role to play in resolving the difficulties that they face in the job market. Reluctance on the part of migrants to learn the language and change their habits can make things difficult for employers. Finally, moving past a culture of “passive-aggressive” communication to open and direct conversation will be critical to this shift.

2.182 Using the results of the study, Xero and Colmar Brunton also came up with a number of measures to promote the further integration of migrant workers in New Zealand:

- Small business should provide:
 - a. Areas and opportunities for sharing cultures in the workplace;
 - b. Consider conducting pre-employment English proficiency testing; and
 - c. Encourage migrant employees to familiarise themselves with immigration and employment issues as part of their training.
- Migrant workers should also be able to access training programmes to improve their English proficiency, and should be provided with opportunities to attend multicultural events and seminars.
- On a larger scale, there are a number of initiatives that could also help, such as
 - a. Setting up seminar opportunities to provide advice about hiring migrant workers;
 - b. Making existing information more accessible and public;
 - c. Providing seminars and courses on buying a franchise and managing a casual workforce; and
 - d. Aligning immigration law with employment law.

Surveys on Challenges facing SMEs

2.183 There is a gap in comprehensively analysing ethnic businesses and how SMEs are addressing the challenges of superdiversity. The following survey of SMEs was conducted by the Superdiversity Centre in partnership with the following Chambers of Commerce:

- a. Wellington Employers’ Chamber of Commerce;
- b. Gisborne Chamber of Commerce;
- c. Hawke’s Bay Chamber of Commerce;
- d. Eastern Bay of Plenty Chamber of Commerce;
- e. Nelson Tasman Chamber of Commerce;
- f. Queenstown Chamber of Commerce; and
- g. Southland Chamber of Commerce.

Methodology

2.184 Small to medium-sized businesses on Chamber of Commerce databases in various regions were sent a short survey comprised of qualitative questions regarding how their business was dealing with superdiversity in terms of internal and external capability.⁴³⁰ The focus of the questions was on the diversity of the business owners and staff members, whether the businesses had policies in place for recruiting employees regardless of ethnicity, the challenges of a superdiverse workforce and customer base, and changes which the businesses had made to adapt to these challenges.

2.185 A copy of the survey and a full set of results are set out in Appendix One.

Limitations

2.186 In some cases, the surveys only had a limited response rate or there was a significant drop-off in question response rates. We have included these surveys but acknowledge that further research is needed in this area to fully understand the challenges faced by businesses in certain regions.

Summary of Findings

2.187 The majority of business owners across all regions surveyed identified as New Zealanders, New Zealand European, Caucasian or Pākehā, and the majority were also New Zealand born. Even where business owners were born overseas, most had resided in New Zealand for many years, with only a fraction migrating here in the past two years (1.5 per cent or four respondents). This could be because new migrants with limited English could have found a written survey challenging.

2.188 In terms of the diversity of respondent businesses' employees, Wellington businesses were the most likely to employ persons from an ethnic minority or to employ migrant staff (84.7 per cent of respondent businesses), followed by Gisborne (83.3 per cent), Hawke's Bay (56 per cent), Queenstown (43.3 per cent) and Southland (41.2 per cent). Gisborne businesses had the highest proportion of Māori employees, with 60 per cent of respondents reporting that more than 20 per cent of their employees were Māori. Employees of Wellington businesses spoke the largest range of languages other than English.

2.189 Of Wellington businesses, 47.5 per cent reported experiencing challenges as a result of an increasingly diverse workforce. In contrast, only around a third of businesses in the Hawke's Bay and Queenstown regions had encountered challenges, and just over one in five respondent businesses in Southland. None of the businesses in the Eastern Bay of Plenty or Gisborne indicated that they had experienced any challenges.

2.190 For those businesses that had experienced challenges from an increasingly diverse talent pool, the main issues centred around:

- a. Language and/or communication barriers, particularly due to lack of English proficiency or misunderstanding of the New Zealand workplace communication style;
- b. Intercultural misunderstandings and accommodations for employees' religious and/or cultural requirements;
- c. Regulatory and/or legal compliance issues, for example adapting to New Zealand's transparent and anti-corrupt business culture, and issues with visa renewal;
- d. Difficulties matching up foreign qualifications with the New Zealand equivalent; and
- e. Resistance of existing employees to diverse staff and/or discrimination and racism.

2.191 Wellington businesses were the most likely to have a specific policy in place relating to diversity recruitment, such as an Equal Employment Opportunities policy (54.7 per cent). Of respondent businesses in the Wellington survey 13.7 per cent said that, although they had no specific diversity recruitment policy, equal opportunity principles were observed (that is, the best candidate was hired irrespective of ethnicity, age, sex and so on). Outside of the Wellington region, only a handful of respondent businesses had implemented a specific diversity recruitment policy or undergone some kind of training to assess foreign CVs in the Hawke's Bay and in Queenstown.

2.192 Across all regions, the majority of participants indicated that they had not implemented any specific measures to address challenges from recruiting ethnically diverse staff, or any specific practices or policies to accommodate their staff's cultural, religious and/or linguistic needs. This was the case even in regions such as Wellington, where a larger proportion of respondent businesses hired diverse employees and indicated experiencing challenges from the changing talent pool; 34.7 per cent of Wellington businesses had adopted specific policies and/or practices, and 9.03 per cent indicated that informal policies and/or practices existed. Examples of specific policies and/or practices adopted across the different regions included:

- a. Intercultural awareness and language training (including training in different languages and encouragement of verbal as opposed to written communication);
- b. Publication of materials in languages other than English, in basic English and/or with diagrams;
- c. Facilitating a culture of tolerance and zero tolerance for bullying policies;
- d. Giving time off for cultural/religious holidays, creating prayer rooms and accommodating cultural/religious dietary requirements;
- e. Orientation and mentoring programmes for diverse staff; and
- f. Using in-house translators or interpretive services.

2.193 Respondent businesses based in Hawke's Bay, Wellington, Queenstown and Gisborne were the most likely to report changes to their customer or client base in the past five years in terms of ethnic diversity (50 per cent, 37.4 per cent, 33.3 per cent and 33.3 per cent respectively). Hawke's Bay and Queenstown businesses reported an increase in Asian consumers, particularly from China, India and Indonesia. Wellington businesses also reported an increase in Asian customers, but also mentioned greater numbers of Pacific, Māori, Latin Americans, South Africans and Islamic people in the region. In contrast, Gisborne-based businesses noticed higher numbers of Māori and South African, British and European migrants. Almost one-quarter of Southland businesses noticed increased ethnic diversity in terms of their customer base, primarily from farming communities or international students studying at the Southern Institute of Technology.

2.194 Across all regions, the primary challenge reported from an increasingly diverse customer base was communication and/or language difficulties, followed by cultural misunderstandings and differences in business practice. Notably, the vast majority of respondents surveyed reported experiencing no challenges from the changing customer base. For those that had made changes to address the challenges and/or maximise the opportunities, the following types of measures were adopted:

- a. Using interpreters (including family and friends) or specifically employing staff who could speak languages other than English and/or who had international experience;
- b. Intercultural training for staff members;
- c. Taking more time to explain things to customers with English as a second language;
- d. Advertising in different languages or in ethnic media channels and/or translating promotional materials and online materials and/or using basic English phrases or diagrams; and
- e. Adapting products and/or services to suit customer demand.

Comparative Experience of Challenges from a Diverse Workforce

2.195 Many of the challenges faced by New Zealand businesses as a result of an increasingly diverse workforce, as well as by ethnic people and migrants in the labour market, are also occurring overseas. In sum, the following challenges have been reported in Canada, Australia and the United Kingdom:

- a. Communication difficulties, including lack of English fluency and intercultural misunderstandings;
- b. Resistance to change from predominantly Caucasian employees;
- c. Discrimination and unconscious bias in employment, both at the recruitment stage (for example, difficulties gaining jobs commensurate with skills, qualifications and experience, or getting interviews) and in the course of employment (for example, a lack of opportunity for progression and promotion, the "glass ceiling");
- d. Perception among employers/businesses that there is no business case for investing in diversity initiatives or embracing workplace diversity (as opposed to only tolerating it);

- e. Lack of ethnically diverse role models at senior level within the business or organisation and/or lack of any explicit diversity policy;
 - f. Lack of knowledge around operational and/or regulatory procedures by migrant employees;
 - g. Diversity policies being limited in focus to indigenous candidates and employees; and
 - h. Issues around the adoption of English language policies.
- 2.196 For a full overview of the challenges faced by overseas businesses and ethnic/migrant candidates in the labour market, see Appendix Two.

Best Practice: Developing Ethnically Diverse Internal Capability

Data Collection

Gathering Data

- 2.197 Just as with the development of public policy, business practice strategies and policy should be based on sufficient and relevant ethno-specific data, so as to make informed analysis. Data on current workforce ethnicity should be compiled and analysed to determine whether any ethnic groups are under-represented, or whether any ethnic groups have effectively been segregated by their role in the organisation.⁴³¹ This is what is known as a “diversity scorecard” or “diversity stocktake”.
- 2.198 In addition to information on staff, data on the ethnic and cultural makeup of a business’s customer or client base should be collected to determine that it has the right people, skills and approaches in place to meet their needs and expectations (as well as the appropriate services and products).
- 2.199 Surveys are often the best tool for acquiring information, though discussions with employees and customers are a close second best, and may be easier to undertake.

What Data to Collect

- 2.200 Diversity data can help businesses and organisations achieve the following goals, and surveys should be designed with these in mind:⁴³²
- a. Build reputation;
 - b. Improve productivity by valuing and supporting people’s backgrounds and making the most of their contribution to the business;
 - c. Recruit and retain the best talent;
 - d. Create awareness;
 - e. Provide support for specific adjustments, training, or interventions;
 - f. Identify and address any inequalities in application of employment practices; and
 - g. Avoid or mitigate legal, financial and reputational harm.
- 2.201 The International Labour Organisation recommends that the following types of qualitative and quantitative information be gathered as part of a diversity stocktake or ethnic diversity audit:⁴³³
- a. *Quantitative information* – The proportional representation of ethnic groups in terms of: staff profile; job offers; permanent and non-permanent contracts; wage and benefit packages; performance evaluation categories; training; promotions; succession pools or groups of workers identified for more senior positions in the enterprise; scholarship and study loans; trade unionisation and collective bargaining agreements; disciplinary hearings; dismissals; resignations; turnover; and, length of stay and tenure.
 - b. *Organisational culture* – The organisational norms, attitudes, policies, processes and practices regarding human resources and other practices in the organisation, including: diversity and anti-discrimination initiatives; diversity readiness; inclusive culture;

- management participation in enterprise diversity initiatives; tolerance of discrimination; recruitment, selection, and promotion; job assignments and transfers; training opportunities and career development; performance reviews; racial discrimination complaints procedure; work–family balance initiatives; and cutbacks, hiring freezes and downsizing.
- c. *Systemic barriers to ethnic diversity and legal compliance* – Data on aspects of the enterprise ethos, structures and values that are barriers to the promotion of ethnic and cultural diversity. These might include, in the New Zealand context, symbols and artefacts of New Zealand European culture and its history; the use of language, terms, euphemisms and so on which effectively exclude certain groups; high levels of indirect discrimination; organisational norms based solely on norms typically held by New Zealand Europeans; and lack of “reasonable accommodation” of different beliefs, practices and customs of ethnic groups, such as language and food preferences and religious holidays.
- 2.202 Businesses should also collect data about gaps in business leadership and management, including complaints about discrimination in service and job entry, employment grievances and more formal complaints (such as to the HRC). The number of complaints about discrimination at job entry level, leadership rates of diverse employees in senior management and government roles, and the number of work discrimination complaints is one effective indicator of a business’s success in the diversity space.⁴³⁴ In surveying Māori, Asian and Pacific employees, the following may serve as a template of relevant questions to ask:

Table: Questions template

Question	Response
Do you think our workplace welcomes people from diverse cultures?	
What does an ethnically diverse workforce mean to you?	
Would you describe this workforce as being ethnically diverse? How do you think this organisation can improve in terms of ethnic diversity?	
How does this workplace compare to any previous workforce you have worked for in terms of ethnic diversity?	
Do you think our job advertisements target diverse ethnic groups?	
Did you experience any direct or unconscious discrimination during the recruitment process?	
Do you think our top management supports ethnic diversity?	
Do you think our recruitment processes are fair?	
Do you think promotions are fairly distributed among all ethnicities?	
Do you think ethnic workers are fairly considered for promotion to senior management positions?	
Do you always participate openly in discussions, and feel free to express your ideas, suggestions or initiatives? If not, what barriers do you believe have prevented you from doing so?	
Do you think our workplace has strong anti-discrimination measures in place?	
Does our workplace adequately accommodate workers from different ethnic groups? Do you have any suggestions as to how this might be improved?	
Do you think our human resources department has a strong commitment to ethnic diversity?	
Do you think there is reasonable accommodation in the workplace for ethnic workers of different beliefs, customs, and practices?	

- 2.203 Businesses should consider breaking down ethnicity into overall groupings and subgroupings in accordance with New Zealand’s Standard Classification for Ethnicity, as this will allow the information collected to be compared to Census and other Statistics New Zealand data. Businesses should also make it clear that there is an option to select multiple ethnicities.

Table: Ethnicity New Zealand Standard Classification⁴³⁵

Level 2	Level 3	Notes
European	European (not further defined)	
	New Zealand European	
	Other European	
Māori	Māori	
Pacific Peoples	Pacific Peoples (not further defined)	
	Samoan	
	Cook Islands Māori	
	Tongan	
	Niuean	
	Tokelauan	
	Fijian	
	Other Pacific Peoples	
Asian	Asian (not further defined)	
	Southeast Asian	
	Chinese	
	Indian	
	Other Asian	
Middle Eastern/Latin American/African	Middle Eastern	
	African	
	Latin American	
Other Ethnicity	Other ethnicity	
Residual Categories	Prefer not to say	

Confidentiality and Publication of Data

2.204 In collecting this information, it is important to explain to employees why this information is needed, and the benefits of collecting the information. Assurances should be given about confidentiality, how the information will be stored and used, and who will have access to the information.⁴³⁶ Employees will also need to be given a written guarantee that the information will not be used against them in their employment, particularly when it comes to matters such as promotion, performance, or selection for new positions or redundancy. Given the personal nature of the information, it is best practice for businesses to consider whether the category “prefer not to say” should be included.⁴³⁷ Employees should be encouraged to complete and regularly update equality and diversity information through formal and informal channels.

2.205 It is vital that the data collected is used and is seen to be used, for example to inform the business or organisation’s vision going forward.⁴³⁸ As well as encouraging further participation, regular reporting of the data collected (provided it is anonymised) can help reassure employees that the information they provide is going to be put to valuable use.⁴³⁹ Individual responses should not be singled out as examples unless the individual gives his or her consent.

Monitoring

2.206 Once data has been collected, and recruitment has been undertaken, it is necessary to monitor the progress towards retaining a diverse workforce and a workplace culture of inclusiveness. Businesses and organisations need to be confident that they understand the changing composition of their workforces, and that they are well placed to take advantage of the benefits that a diverse workforce offers.⁴⁴⁰ Monitoring equality and diversity in the workplace enables businesses and organisations to see how their employment policies and processes are working in practice, and to identify areas where policies and processes appear to be disproportionately impacting upon certain groups of staff.⁴⁴¹ In particular, continuous monitoring is required to ensure the success of the business or organisation's diversity strategy.

2.207 The extent of monitoring required will depend on the overall size and capacity of the organisation or business concerned.⁴⁴² Businesses and organisations should take into account available quantitative and qualitative data from a range of sources including employee turnover data, levels of recruitment and promotion, staff interviews, customer satisfaction surveys, and other internal metrics automatically collected (for example, when operating and maintaining client accounts).⁴⁴³

2.208 Businesses should undertake monitoring at the appropriate transitional points in the employment process, including recruitment, training, promotion, staff surveys, performance management, grievances, and upon the exit of the employee from the business.⁴⁴⁴ Customers can be targeted in a similar way. For example, when customers purchase a new product or discontinue a service, these circumstances can be used to initiate a discussion.

Using Collected Data

2.209 Data can be used for a multitude of functions. For example, data can be cross-referenced in order to analyse multiple diversity characteristics. The United Kingdom's Civil Service recommends a three-stage process for data analysis:⁴⁴⁵

- a. The first cut of data is examined for trends; for example, that employees from diverse backgrounds leave certain departments within the business at a greater rate than others;
- b. The second level of analysis might look for patterns within this trend; for example, employees with diverse backgrounds who have flexible working arrangements may have longer tenure; and
- c. The third level of analysis considers methods of obtaining targeted feedback (such as focus groups) that will help the business to formulate an appropriate response to be implemented to address the particular issue.

2.210 Businesses might also be able to use external benchmarking (that is, comparing the results of their workplace monitoring with other companies with similar ethnic composition) in order to see whether comparable progress has been made.⁴⁴⁶

2.211 In particular, organisations and businesses should use the collected data to determine whether they are experiencing any of the following issues:

- a. Over-representation or under-representation of certain ethnic and cultural groups in areas such as: staff profile, staff movement, development, promotions, disciplinary hearings, tenure, type of employment contract, trade unionisation, scholarships, succession pools, wages, benefits, performance evaluation criteria, and their evolution over time;⁴⁴⁷
- b. Inconsistent application of policies;
- c. High levels of indirect discrimination and/or lack of accommodation of diverse cultural practices (for example, if organisational communication is only in English, religious holidays are defined in terms of the religion of New Zealand European culture, or vacancies are advertised in newspapers read primarily by mainstream New Zealanders);
- d. Tolerance of discrimination;

- e. Salary and benefit gaps between workers from different ethnic groups;
 - f. Widely diverging views regarding the place of diversity in the workplace;
 - g. Inability to appropriately manage discrimination complaints; and
 - h. Other discriminatory human resources practices.
- 2.212 If the data indicates that certain ethnic demographics are under-represented, or that direct or indirect discrimination is prevalent, then the business or organisation should investigate the reasons behind this and should implement appropriate strategies and initiatives to combat these issues as part of a diversity strategy.

Developing a Diversity Strategy

- 2.213 Once demographic data has been sought and collected, the business or organisation needs to identify the relevant issues and the action/s it will take in response. One way in which such data might be used is to inform the development of (or amendment of) the business's diversity strategy.
- 2.214 However, it is important to note that a diversity strategy may not be necessary for all businesses, and is no substitute for direct engagement with customers or clients. The better approach may be simply to talk to customers and ask what they want in terms of engagement, products and/or services.⁴⁴⁸
- 2.215 An ethnic diversity strategy is fundamentally different to an anti-discrimination policy, which every workplace should already have in place. An ethnic diversity strategy is not just about the elimination of discrimination, but is also concerned with the promotion of ethnic equality in the workplace, in both a cultural and representative sense. From a best practice perspective, a diversity strategy should incorporate the organisation's anti-discrimination policy, rather than the other way around.
- 2.216 The ASX Corporate Governance Council in Australia has recommended that all Australian companies have a diversity policy encouraging diversity hiring, and that they publicly report staff composition against diversity goals on an annual basis.⁴⁴⁹ A progress report released by the Corporate Governance Council in 2014 found that:⁴⁵⁰
- a. 69 per cent of participating organisations with graduate recruitment programmes achieved gender balance;
 - b. 58 per cent of participating organisations with mid-level talent development programs achieved at least 40 per cent female representation;
 - c. 71 per cent of participating organisations improved the gender balance of their external hiring; and
 - d. 76 per cent of organisations had put in place formal sponsorship programs to ensure women have the same access to opportunities and advocacy as men.
- 2.217 Each organisation will have its own barriers to address, and should adapt their diversity strategies accordingly. Some organisations may have very specific targets to have a certain number of women and/or ethnic minorities in senior management positions by a particular date.⁴⁵¹ As observed by Salt Funds Management joint managing director, Matthew Goodson, "diversity of experience and knowledge is very important on a board and ultimately ... that includes female board members ... The last thing you want on a board is everyone looking and sounding alike and agreeing with each other".⁴⁵² Others may have broader goals to eliminate discrimination or foster a culture of inclusiveness in the workforce. Examples of relevant goals may include:⁴⁵³
- a. Minimising and eliminating bias in the selection process for new employees;
 - b. Attracting and retaining talent from a diverse range of ethnic and cultural backgrounds;
 - c. Management at all levels demonstrating effective leadership and due regard to equality, diversity and inclusion;

- d. Developing potential of under-represented groups to create a diverse, representative workforce at all levels;
- e. Promoting an inclusive working environment where staff respect and value each other's diversity; and
- f. Delivering services in a way that promotes equality and respects diversity and inclusion, and leveraging the diversity of the business's workforce.

Elements of a Diversity Strategy

2.218 The International Labour Organisation recommends that a comprehensive and well-drafted policy include the following components:⁴⁵⁴

- a. The objectives of the strategy. Relevant objectives will include:
 - i. Increasing ethnic diversity at all levels of the organisation;
 - ii. Increasing organisational understanding of ethnic diversity;
 - iii. Educating and informing stakeholders about the organisation's approach to ethnic diversity;
 - iv. Ensuring fair and equitable human resources practices, policies and procedures;
 - v. Ensuring a broad understanding of all behaviours that are discriminatory towards ethnic and cultural groups, particularly at the higher levels of management; and
 - vi. Providing a framework for workers who experience discrimination.
- b. The business case for a diversity programme.
- c. The scope of the strategy.
- d. The types of discriminatory treatment addressed in the strategy. In particular, the strategy should expressly make clear to all employees that discriminatory behaviour will not be tolerated in the workplace, including:
 - i. Exclusion from certain jobs in the organisation on grounds of ethnicity;
 - ii. Stereotyping or making derogatory jokes or slurs in relation to a staff member's ethnicity;
 - iii. Refusing to take into account any linguistic differences or difficulties an employee may have;
 - iv. Refusing to work with, or excluding, people of certain ethnic groups; and
 - v. Retaliating against workers for bringing a complaint of racial discrimination.
- e. Rights and responsibilities of employers and employees.
- f. Proactive measures. This includes positive action to redress the effects of past discrimination or rectify any demographic imbalances in the organisation through:
 - i. Hiring or promotion targets;
 - ii. Accelerated training and development programmes for (in the New Zealand context) employees of Māori, Pacific, or Asian backgrounds;
 - iii. Recruitment or mentoring programmes targeted at candidates or employees from Māori, Pacific or Asian backgrounds;
 - iv. Forming alliances with ethnic community groups; and/or
 - v. Targeted recruitment campaigns.
- g. Reasonable accommodation measures. This includes ensuring that, in the New Zealand context, employees from non-European New Zealand backgrounds are able to meaningfully and equally compete in all spheres of employment through measures such as

the following:⁴⁵⁵

- i. Ensuring access to workplace policies, rules and meetings in various languages;
- ii. Catering for diverse food preferences;
- iii. Providing time off for religious holidays or traditional ceremonies;
- iv. Recognition for achieving ethnic diversity; and/or
- v. Procedures to report, and for dealing with, racial discrimination.

2.219 As well as relying on ethno-specific workplace data, all diversity strategies and policies should be developed in consultation with senior management, frontline staff, and other relevant stakeholders.⁴⁵⁶ External stakeholders, such as migrant and community groups, could also be consulted during the development of diversity strategies to ensure that all ethnic and cultural needs are being met and that the strategy does not simply reflect mainstream views.

2.220 Finally, in drafting a diversity strategy, consideration should be given not only to the content of the strategy, but also to its presentation. While any diversity strategy will invariably be drafted in English, depending on the particular business's current workplace composition (and the types of people the business wishes to attract), consideration should also be given to publishing the strategy in Te Reo Māori, Hindi, Mandarin, Cantonese or any other relevant language. While the publication of diversity measures is not statutorily required, as in countries such as Canada, publicising a diversity strategy (and the progress towards its objectives) is one measure businesses can undertake to effectively market themselves to prospective employees and customers as a diversity leader.⁴⁵⁷

The Role of Proactive Measures

2.221 An employer might take the following proactive measures to improve recruitment of ethnic candidates within an organisation:⁴⁵⁸

- a. The implementation of agreed targets in all appointments;
- b. The formation of alliances with professional organisations for specific ethnic groups; and/or
- c. The implementation of scholarship programmes targeted at students from Māori, Asian or Pacific backgrounds.

2.222 Although proactive measures may involve an element of differential treatment between New Zealand European employees and Māori, Asian or Pacific employees, the Human Rights Act 1993 ("HRA") and the NZBORA recognise that such measures will not be considered discriminatory or unlawful where they are implemented in good faith for the purpose of assisting or advancing persons or groups of persons who need assistance or advancement in order to achieve an equal place compared with other members of the community.⁴⁵⁹ This is discussed further in **Chapter Four**. Initiatives aimed at recruiting Māori, Pacific, and Asian employees, including hiring targets, accelerated development programmes, mentoring programmes and targeted recruitment campaigns, are therefore unlikely to be unlawful where they can be rationally linked to the objectives outlined in the business's diversity strategy. This underlines the importance of having a clear and comprehensive diversity strategy in place.

2.223 In introducing any proactive measures, it is good practice to accompany any announcement of these measures with a general summary of the diversity strategy, in particular its overall objectives.

Effectiveness of Proactive Measures

2.224 Overseas, proactive measures such as diversity targets are more common with respect to gender than ethnic representation. A 2014 study of Australian employers revealed that, while 14 per cent of employers had targets for gender representation, only 6 per cent had targets for multicultural employees.⁴⁶⁰ It is unknown how many New Zealand employers implement similar voluntary target systems.

2.225 The most frequently cited example of the efficacy of workplace targets in action has been the experience in Norway, where government departments and agencies and publicly-held companies are statutorily required to ensure that 40 per cent of their boards are women, with penalties for non-compliance.⁴⁶¹ Prior to the enactment of 2003 legislation, Norwegian women held just 6 per cent of board seats on Norway's publicly-listed companies. By 2010, the share of female board members of the 500 affected companies was greater than 40 per cent, and women filled more than 25 per cent of board seats of Norway's 65 largest privately-held companies.⁴⁶²

2.226 Targets for ethnic diversity, if accompanied by similar penalties for non-compliance, would be likely to yield a similar effect. However, such measures should be adopted with some degree of caution. While recruiting targets might have the advantage of increasing the overall rates of Māori, Pacific, and Asian employees in an organisation, there is the danger that, from an overall recruitment perspective, they might become a ceiling rather than a floor. Employers may be led to assume that it is simply enough to meet the specified targets and fail to do anything more to foster a genuine workplace culture of diversity, by, for example, increasing the cultural awareness of all staff and eliminating all forms of conscious and unconscious discrimination. This would, in turn, have a negative impact on Māori, Asian and Pacific staff retention rates and could lead to a lack of diversity at the higher levels of the organisation.

2.227 The introduction of targets – or “quotas” as they are often pejoratively called – without the implementation of any further cultural awareness initiatives may also lead to the negative stereotyping of ethnic employees and harm rather than help the promotion of ethnic diversity in the workplace.⁴⁶³

Recruitment

2.228 Recruitment is a vital part of any diversity strategy in terms of ensuring high rates of ethnic representation within a business or organisation. Businesses and organisations should be reflective of the community in which they operate and the customers or clients they serve.

2.229 However, as discussed at [2.123] and [2.195], candidates from ethnic minorities often experience both direct and indirect discrimination in the recruitment process across a variety of industries, both in New Zealand and overseas.⁴⁶⁴ It is important to recognise that unconscious or systemic biases may also inhibit the development of an ethnically diverse workforce.⁴⁶⁵

2.230 Where systemic biases may have historically limited employment opportunities for members of a particular group, organisations and businesses should consider more effective ways to recruit candidates from these groups.

2.231 When recruiting for a position, employers should:⁴⁶⁶

- a. Consider the extent to which a role could be reshaped to attract greater numbers of ethnic candidates;
- b. Include testimonials on the company website of candidates from ethnic backgrounds;
- c. Have the job description and person specification outline focus on transferable skills that will be of benefit to the organisation as a whole rather than a specific role;
- d. Rigorously assess “essential criteria” for relevance to the role in terms of delivery and remove unnecessary qualifications;
- e. Take a manageable risk when recruiting people from migrant backgrounds, recognising that they may bring greater cultural intelligence to the job;
- f. Ensure that positions are advertised in such a way as to be readable and accessible to those from non-English speaking backgrounds, for example through:
 - i. Use of neutral language;
 - ii. A focus on transferable skills rather than personal attributes and/or work experience;

- iii. Ensuring any images represent a diverse workforce;
 - iv. Offering flexibility for the right application (except where performance during certain hours is essential to the position);
 - v. Advertising through targeted non-mainstream channels.
- g. Provide assistance in the application process to those who do not speak English as a first language;
 - h. Mitigate any unconscious or cultural biases which may exist in the application process that may unfairly prejudice applicants from different cultural backgrounds, for example through unconscious bias training; and
 - i. Ask job applicants relevant questions, and refrain from irrelevant questioning based on race or ethnic stereotypes.
- 2.232 Employers should also consider recruiting for values. This challenges those involved in the recruitment process to step away from the familiar boxes, and to think more deeply about seeking out and hiring candidates with different capabilities. It also helps mitigate unconscious bias, as it encourages employers to find commonalities with those who appear different, but who share similar goals, values and experiences.⁴⁶⁷ In order to effectively achieve values-based recruitment, businesses should consider:⁴⁶⁸
- a. Having a values statement for the business. Values need to speak to one's best-performing staff, and to desirable prospective candidates;
 - b. Being clear that the business recruits for values, not just for technical skill sets;
 - c. Having a behaviour framework so that staff know what the values mean, how the values relate to delivering core services and the conduct expected from all staff;
 - d. Articulating both values and desired behaviours in job advertisements, job descriptions, shortlisting criteria, interview questions, and assessments;
 - e. Ensuring that successful candidates can demonstrate that they live, and put into action, the business's values;
 - f. Being willing to evaluate and change the recruitment process if it is not delivering the desired results; and
 - e. Engaging with all staff about what values mean to them in their role, and creating a culture where colleagues feel that it is safe and acceptable for them to address behaviour that does not fit with their values.
- 2.233 Candidates within a particular migrant group may have different strengths in relation to positive qualities the organisation may wish to focus on. As addressed above, it is well recognised that employees of different cultural backgrounds have the potential to bring a number of different qualities to an organisation, including diverse thinking and innovation, greater productivity, enhanced connections with home communities and cultural intelligence.
- 2.234 As well as at the recruitment stage, employers should consider strategies and methods to eliminate the operation of unconscious bias in the workplace more generally to help ensure the retention of diverse employees. This is particularly important given biases can affect a variety of people-related decisions, including "what clients to work with, what social networks to join, and what contractors to hire".⁴⁶⁹ Common types of bias include ingroup bias – perceiving people who are similar to you more positively – and outgroup bias – perceiving people who are different from you more negatively. Although individuals cannot consciously monitor their own biases, organisations and teams can "become aware of bias in ways that individuals cannot. Team-based practices can be redesigned to help identify biases as they emerge, and counteract them on the fly, thus mitigating their effect".⁴⁷⁰ Preventative measures are necessary to mitigate biases, as it is difficult to manage for bias in the moment when making a decision.
- 2.235 Examples of strategies to mitigate unconscious bias include:⁴⁷¹

- a. Providing company-wide unconscious bias training to all employees. Where staff from ethnic minorities report during the data collection process that they have experienced disadvantages due to hidden biases and unfairness, it may be appropriate to tailor this training to address these particular concerns;
- b. Encouraging the free discussion of unconscious biases among employees, and informing employees as to the effect of these biases on the overall progress of the workplace;
- c. Initiating a resume study within the organisation to see whether resumes with similar career and educational qualifications are weighed equally when the names are ethnically or culturally distinct; and
- d. Rewarding employees who take steps to eliminate, reduce, or even show an awareness of, unconscious biases in the workplace.

Education and Training

- 2.236 Education initiatives are necessary to ensure that staff understand their role in making the goals outlined in the organisation's diversity strategy a reality.
- 2.237 All employees should be "champions" of ethnic and cultural diversity within the organisation and be made aware of the organisation's aims and objectives, relevant diversity policies, the importance of cultural diversity, and the impact of conscious and unconscious discrimination in the workplace.⁴⁷²
- 2.238 It is possible that staff members, particularly from dominant ethnic groups, may have questions or concerns in terms of what is expected of them. Care should therefore be taken to communicate clearly, and regularly, what is expected and why.

The Role of Leaders

- 2.239 Managers charged with responsibility for implementing equality and diversity initiatives should be given special training to encourage ethnic and cultural diversity in the workforce. Managers should have the following key qualities and responsibilities:⁴⁷³
 - a. To implement the organisation's vision and strategy in terms of ethnic and cultural diversity;
 - b. To promote the benefits of ethnic and cultural diversity for both employees and customers;
 - c. To take the lead on specific ethnic and cultural diversity issues within the business;
 - d. To represent the cultural and ethnic diversity agenda for the organisation at board meetings and at external events;
 - e. To seek out community opportunities to reinforce learning and promote the business's reputation as a diverse workforce;
 - f. To research best practice in ethnic and cultural diversity initiatives and use these findings to inform discussions;
 - g. To actively support employee networks and mentoring within the organisation and make use of internal ethnic and cultural diversity networks as a sounding board for issues;
 - h. To review ethnic employee opinion survey results and develop, implement and adapt the business's diversity strategy where appropriate;
 - i. To identify specific barriers to ethnic and cultural representation in the workplace and formulate strategies for their mitigation and elimination;
 - j. Have the ability to listen and understand what is happening within the organisation and proactively take appropriate action on cultural issues or inequalities;
 - k. Be willing to admit what has worked and what has not and the ability to learn from experiences;

- i. Be prepared to allocate ample time and commitment to ensuring cultural and ethnic diversity in the workplace; and
- m. To acknowledge the importance of cultural difference – and the value of cultural intelligence – as opposed to forcing diverse employees to “fit” the culture of the organisation, the latter of which can lead to high levels of turnover in an organisation.⁴⁷⁴

Developmental Opportunities

- 2.240 Diverse employees within an organisation should be provided with career development opportunities so that diversity can filter through to the top levels of the organisation. This might be achieved through internal or external training, or one-on-one mentoring with senior members of the organisation to provide support and career guidance.⁴⁷⁵
- 2.241 Support networks among ethnic employees should be established and supported by senior management to allow workers from these backgrounds to share common experiences and career goals.⁴⁷⁶ For example, the United Kingdom group, Race for Opportunity, encourages the adoption of mentoring circles, in which small groups of employees from an ethnic or migrant background are paired up with a senior mentor in the organisation to assist with their career development.⁴⁷⁷

Accountability Measures

- 2.242 For true change to occur, leadership must come from the top down. Many leaders in the diversity space consider that without investment in dedicated diversity and inclusion staff, accountability, and visibility, change cannot be achieved.⁴⁷⁸ The development, implementation and monitoring of diversity policies and strategies should be considered an element of good governance practice for all businesses.
- 2.243 Accordingly, overarching diversity targets for improving the number of ethnic employees should be communicated to all staff by senior leaders. Company board members should personally assume responsibility for both the creation and implementation of the business's diversity strategy, as senior management makes the ultimate decisions about allocation of resources, desired standards of performance, and accountability for progress and outcomes.⁴⁷⁹ Accountability for recruitment of ethnic candidates should rest with managers. The requirement to meet diversity targets should be incorporated into managerial job descriptions and performance should be measured against the progress towards such targets.⁴⁸⁰
- 2.244 Prior to communications to staff, it is important to ensure that key stakeholders, including senior management, are aware of any diversity initiative, have been briefed on how to proactively support it, and how they will be measured on its implementation.⁴⁸¹ These issues should be explicitly reflected in departmental and person performance review schemes so as to ensure accountability.⁴⁸² Firms should also work with human resources and recruitment to promote transparent practices and hold staff accountable for any discrimination where it might exist.
- 2.245 As well as holding senior management accountable for any failure to implement the company's diversity strategy, they should also be rewarded and incentivised for supporting it. In the United Kingdom, for example, the supermarket chain Safeway Incorporated increased its representation of women from 12 per cent to 25 per cent over a five-year period. Part of the company's diversity strategy included a rigorous accountability framework to ensure the management and tracking of gender diversity targets. Managers are assessed on their progress towards diversity goals and the highest rating affects a manager's bonus pay by up to 10 per cent.⁴⁸³

Best Practice Diversity Model for New Zealand

- 2.246 In order to have sufficient internal capability to adapt to an increasingly superdiverse workforce, businesses should adopt the following objectives:
 - a. Managers at all levels should demonstrate effective leadership and due regard to equality, diversity and inclusion;

- b. The potential of under-represented groups should be developed to create a diverse, representative workforce at all levels; and
 - c. An inclusive working environment should be promoted where the staff respect and value each other's diversity.
- 2.247 In sum, businesses and organisations should consider implementing the following measures in order to achieve the above objectives:
- a. Regular collection and monitoring of ethno-specific data on the composition of the workforce and the business's client or customer base;
 - b. Workplace policies and practices should be informed by and developed in accordance with this data;
 - c. A diversity strategy should be developed (in addition to an anti-discrimination policy), where appropriate, to promote ethnic equality, diversity and inclusion in the workplace, in consultation with relevant internal and external stakeholders. This strategy should include the following components:⁴⁸⁴
 - i. The objectives of the strategy;
 - ii. The business case for a diversity programme;
 - iii. The scope of the policy (for example, the types of discriminatory treatment addressed);
 - iv. The rights and responsibilities of employers and employees in terms of implementation of the diversity programme;
 - v. Proactive measures; and
 - vi. Reasonable accommodation measures.

Key Point Five: Communicating with Ethnic Minorities and Migrants as Customers is Not Limited to Getting an Interpreter

2.248 New Zealand's growing superdiversity makes targeting migrant customers one obvious way to grow market share. Businesses may need to communicate differently with migrants. Communication is not just about translating English into migrants' own language (for those who do not speak English), but involves taking account of their different culture, values and expectations as customers. The following section discusses challenges for businesses in communicating with ethnic minorities and migrants as customers, and possible strategies to assist businesses in such interactions.

2.249 For example, Mike Jewell, a senior researcher from TNS (the world's largest project-based market research firm) said that understanding the growing middle class of modern, independent Asian women will be key to the failure or success of many premium food and beverage exporters in the future:⁴⁸⁵

"They are a very significant group more in evidence in some markets than others. They are focused on making the most of their good educations, getting careers, and building their lives on their terms rather than traditional expectations." They, like their Western counterparts, are having fewer babies, and leaving childbirth later. They are also focused on living healthy lives ... "It is filtering through to a lot of different societies and it is starting to filter through to South East Asia as well."

2.250 Businesses should bear in mind that their internal capability to attract and retain a diverse workforce is integrally linked to effectively communicating with the diverse population they wish to target as employees, customers and clients. Finally, businesses may need to adapt their products and services to address diverse customers' needs and expectations.

Importance of Ethnic Media

2.251 Niche Media, a specialist multicultural marketing firm, along with the Office of Ethnic Communities, recently commissioned a survey into the media consumption habits of

the Indian, Chinese, Pacific and Korean communities in Auckland.⁴⁸⁶ The purpose of the survey was to determine the penetration of the ethnic media into the communities, the crossover in consumption of ethnic and mainstream New Zealand media, and the most popular titles for each demographic. The results indicated that consumption of ethnic media is very high in communities where ethnic options are available. This was the case even with migrants who have been living in New Zealand for long periods of time. For example, in terms of the Chinese community, which accesses a range of media types (including radio, print, television, online and social media), 78 per cent of those surveyed consumed at least half of their media in Mandarin or Cantonese, and 76 per cent preferred their advertising in Mandarin or Cantonese. For the Indian, Pacific and Korean respondents, this figure ranged from 56 to 78 per cent.⁴⁸⁷ 18 per cent of the Indian respondents preferred their advertising in Hindi or Punjabi, 32 per cent of the Pasifika respondents preferred their advertising in Samoan or Tongan and 81 per cent of Korean respondents preferred their advertising to be in Korean.

2.252 The result is that business and government wanting to communicate with migrant communities need to use ethnic media. Otherwise, significant proportions of New Zealand's diverse communities will be missed by simply communicating through mainstream media. The problem will get worse as migrant numbers increase, as they have sufficient critical mass to congregate in ethnoburbs and to live in self-sufficient communities of their own people speaking their own language. As discussed at [1.83], ethnic precincts which have their own ethnic food outlets, schools, and ethnic media services, ethnic communities can effectively operate in a self-contained manner without the need to integrate into mainstream communities.

2.253 The influx of new migrants has resulted in a proliferation of ethnic media outlets in recent years, particularly in Auckland, which publish written, online and broadcasting material in languages other than English or on issues relevant to ethnic and/or migrant communities. Languages include Mandarin, Cantonese, Filipino, Hindi, Punjabi, Japanese, Korean and Samoan. Settlement Support New Zealand has released a short directory of ethnic media.⁴⁸⁸ Many ethnic media publications, radio and television programmes have relatively large readerships, listenerships and viewers. For example, the Samoan Times Newspaper has an estimated readership of over 20,000, the Global Indian Magazine has around 40,000 page views per month and Radio Tarana, a Hindi radio show, has around 80,000 listeners every month. The United Chinese Press, the Chinese Herald, the Vision China Times and the Mandarin Pages, together, have an estimated readership of around 70,000 people. SkyKiwi, a Chinese portal website, generates over 700,000 daily page views, and two Chinese language television channels, TV33 and World TV, were established in 2010 and 2007 respectively.

Ethnic Marketing and Cultural Competency

2.254 The concept of "ethnic marketing" gained popularity in the United States as early as the 1980s, and subsequently in the United Kingdom in the 1990s, with the recognition that those who are marginalised or excluded in any society cannot be reached by mainstream marketing approaches.⁴⁸⁹ As a result, marketers realised the need for businesses to adapt to the use of "niche strategies" to reach marginalised minorities.⁴⁹⁰

2.255 In practice, ethnic marketing can cause various human resource management ("HRM") issues for businesses if not carefully tailored to the needs of ethnic markets. HRM encompasses "the broad tasks of managing employee assignments and opportunities, competencies, behaviours and motivation".⁴⁹¹ Failures may occur in a service interaction, for example, in close physical proximity where one person misunderstands another's non-verbal cues, or where a business seeking to apply well-intentioned practices does not fully understand the differences between and within ethnic groups.⁴⁹²

2.256 Businesses need to develop cultural intelligence and competency to effectively communicate with a diverse customer base. Developing cultural competency is effective adaptation to cultural differences rather than seeking to remove the "cultural gap".⁴⁹³ A business's capability for cultural competency will vary according to a number of factors, including:⁴⁹⁴

... the number of minority ethnic groups to be targeted, the current stock of skills within the

business, the degree of competition and barriers to entry, the availability of suitable bilingual [or multilingual] ethnic personnel available for employment, the relative importance (strategically or otherwise) of the ethnic market in the overall market, the resources available to the business ...

- 2.257 Cultural competence is needed at all levels of an organisation, at the internal and external interface, in order for business to achieve long-term credibility with the public.⁴⁹⁵
- 2.258 A study on language use and practice in European companies found that, in order for expatriates to function effectively in foreign markets, they required the following skills:⁴⁹⁶
- a. Interpersonal skills, particularly the ability to form relationships;
 - b. Linguistic ability (although the study concluded that having total command of other languages may not be feasible and may be less important than trying to understand what matters to others);
 - c. Genuine interest in other countries;
 - d. Tolerance for uncertainty and ambiguity;
 - e. Flexibility in responding to customer needs and preferences;
 - f. Patience, as learning new methods takes time, and different cultures may hold “distinct horizons”;
 - g. Respect or a “non-ethnocentric” approach;
 - h. Cultural empathy;
 - i. A strong sense of self, so as to allow for cross-cultural interaction without losing one’s identity; and
 - j. A sense of humour, as a mechanism for coping with a sometimes hostile and always different environment, and for relationship building.

Successful Adaption of Products and Services

2.259 Migrants have different needs and expectations depending on whether they are first generation, 1.5 generation, second or multigenerational migrants, which has implications for employers recruiting migrant staff and for how businesses target their customer base.⁴⁹⁷ New migrants tend to bring their shopping habits and preferences with them from their native countries, so it is a “challenge and an opportunity to identify innovative ways to connect with these preferences”.⁴⁹⁸ For example, Asian customers who are new migrants are not used to having a narrow range of items on offer, and expect customisation. But a second generation Chinese person is likely to be a very different customer.

2.260 Businesses should collect data on the ethnic and cultural makeup of their customer or client base, and this data should be disaggregated. As observed by Nick Siu, Director of The Agency 88:

... when designing a multicultural business strategy, it is not all plain sailing, as it is important to not sweep a broad brush approach at classifying a continent’s origins and assume they all have the same wants and needs. Data should be disaggregated as much as possible to reflect the characteristics of different sections of the population, for example geographical location, gender, income level, social characteristics, ethnicity and origin, religion, age, etc. Disaggregated data will allow the creation of policies and commercial initiatives that could be directed toward specific groups with the increasing ethno-racial, religious and linguistic diversity (such as Mandarin to Cantonese) we are seeing in Auckland.

2.261 In the first instance, businesses should target the lowest hanging fruit of their superdiverse customer base, for example those customers who have good English language proficiency. For example, as is discussed at [1.80], the two biggest Asian subgroups in Auckland are Indians and Chinese.⁴⁹⁹ The Indian population, in general, has good English language proficiency because of their Commonwealth background.⁵⁰⁰ Likewise, Filipinos also tend to speak good English because of their history of American occupation,⁵⁰¹ as do migrants

from Singapore, where English is an official language.⁵⁰² In contrast, North Asian migrants (particularly from China) are the most likely to face barriers to consumption due to low English language ability.⁵⁰³ Thus, Hindi or Filipino translation may be less essential than Mandarin and Cantonese. In order to fully capitalise on this new diverse customer base, however, businesses need to go further and sync their services and products with the different culture and values of diverse customers.⁵⁰⁴ Such decisions should be made on an informed, empirical basis, for example from customer surveys, to confirm that migrants want something different.

2.262 For example, in Japan, products retailing for ¥9.99 are unlikely to sell because the number nine (ku) is a homophone for suffering and thus is to be avoided. In such a scenario, the business would need to investigate the reason why the number nine is viewed differently in Japan, and then could seek to relate to that explanation by looking for an example of similar number bias influencing consumer decision in the majority culture, such as products retailed for \$6.66 or floors labelled 13.⁵⁰⁵

2.263 There have been many success stories of global corporations changing their products for new local markets that they have entered, also known as “glocalisation”.⁵⁰⁶ For example, domestic appliance manufacturer Whirlpool Corporation incorporated specially designed agitators into its washing machines when it entered the Indian market. This enabled Indian women to wash their saris without them getting tangled. It also formed a joint venture with a local partner to produce washing machines and refrigerators in bright colours to suit local taste and culture.⁵⁰⁷

2.264 As is discussed in the Foodstuffs case study at [2.10], major New Zealand super-markets now stock 25 kilogram bags of rice as well as half kilogram bags to prevent customers going to ethnic supermarkets. The biggest selling item in some areas of Auckland is rice, not potatoes or flour. Loyalty programmes may need to explain their programme not just in English, but also in Mandarin and Samoan, which are amongst the most commonly spoken languages in New Zealand by residents likely to have little or no English proficiency. Another example is the increasing demand for “sharia-friendly mortgages” from financial institutions.⁵⁰⁸ Paying or receiving interest on loans is forbidden in Islam.⁵⁰⁹ “Sharia-friendly mortgages” are where the customer pays for the home in instalments at a premium rather than taking out a traditional mortgage with interest. As New Zealand’s Muslim population grows, there is likely to be greater demand for such products.

2.265 It is also important for businesses to look at product categories in context. For example, research on how to target Chinese customers for the Royal Bank of Canada found that it was better to target Chinese customers in the mainstream language (English) rather than Mandarin or Cantonese. As noted by Mark Cleveland, an entrepreneur and business executive:⁵¹⁰

The reason they [Chinese communities] wanted to bank with this Canadian bank was because it was felt it was trustworthy and that it had the virtues that were desirable in the host population. They didn’t want to be targeted in their own language. They just said, ‘You know, you’re not trying to sell me food here or trying to sell me clothing. That’s when you want to target me in [Mandarin or Cantonese] ... not when you’re trying to sell me financial products’ ... When you’re targeting with mixed marketing messages you really have to consider not only the context – the geographical context where they’re living – but also the product category as a context.

2.266 In terms of service adaptation, new migrants may need more assistance as customers to understand, say, an insurance product or a banking facility. So, planning 30 minutes per customer may not work for some new migrants as they may require double this time. Further, the best target for the greater assistance or explanation may not be migrant parents who may have limited English, but their children who tend to learn English very rapidly once in New Zealand (see also the discussion of 1.5 generation migrants at [1.45]). As noted by Ikuo Takahashi, a Professor of Marketing at Keio University in Japan:⁵¹¹

Our parents teach us their values and attitudes, what is good, what is acceptable behaviour, the aesthetics of life. Perhaps we don’t forget those things regardless of whether we migrate to another country or stay in our home country. Ethnic groups will remain different from other ethnic groups.

2.267 A study on the experience of migrant children in New Zealand found that language acquisition was the primary factor in their parents' adjustment difficulties:⁵¹²

Many of these young people had been called upon to serve their families as interpreters: if phone calls needed to be made to the bank, insurance brokers, or real estate agents, they did the talking. They also did much of the shopping, or at least were required to accompany their parents, in the event that they might be needed to interact with English speakers.

2.268 It is also important for businesses not to spread their efforts too widely. As observed by Morag McCay, Beachheads adviser to NZTE, in an article for the *New Zealand Herald*:⁵¹³

"New Zealand can't produce enough in any context to be anything other than a very small player and the crunch point is finding a way to make that sustainable, which is actually about understanding the channel to market that will get you to that niche in a way that is cost effective and is defensible." Doing something well in a "narrow way" ... could be a more successful strategy for a New Zealand business ...

2.269 Although McCay agreed that it was important for businesses not to have all their eggs in one basket, she remarked that it was also possible to "spread yourself too thinly internationally, and be only average as a result".

Recommendations

- In terms of diverse customers, businesses may need to target the lowest hanging fruit, but should consider adapting their services and/or products to reflect the needs of their changing ethnic customer base, after direct engagement with customers about what they want.
- To communicate with, and access, ethnic markets, businesses should consider implementing the following measures:
 - a. Recruiting for cultural intelligence and linguistic ability. Ethnic customers may feel more comfortable dealing with people similar to them, who speak the same language;
 - b. Providing cultural intelligence training for employees;
 - c. Translating print and online material into other languages and/or basic English; and
 - d. Making use of ethnic media outlets and companies with expertise in diverse communications. Consumption of ethnic media is very high in communities where ethnic options are available. This is the case even with migrants who have been living in New Zealand for long periods of time. So using ethnic media to communicate with diverse New Zealanders matters for reaching that customer segment.

Key Point Six: Superdiversity is a New Zealand-Wide Phenomenon Not Just an Auckland Phenomenon – Regions and the Rural Sector

Regional New Zealand

2.270 A 2012 study found that the majority of Asian migrants seeking permanent residence in New Zealand enter the country through Auckland, New Zealand's gateway city, and settle there rather than dispersing throughout the rest of New Zealand.⁵¹⁴ However, an Asia New Zealand Foundation report, which was yet to be released at the time of writing, on Invercargill (and Southland), Queenstown, Nelson, Napier-Hastings, Rotorua and Tauranga (and Western Bay of Plenty) confirms that, while Auckland's population is changing at a faster rate and to a greater extent, superdiversity is also diffusing to New Zealand's regions and smaller urban centres.⁵¹⁵ The rapid growth and diversification of Asian populations in these areas has resulted from the arrival of permanent residents, students, workers on temporary permits, and in some cases, refugees. Although Asian populations are smaller in these regions than in the

larger cities, they have had significant tangible and less tangible impacts on the ethnoscapes of these cities and adjacent towns and rural areas.

2.271 The Government's recently unveiled proposal to introduce new immigration rules will help speed the spread of migrants to the regions. The new rules are designed to boost local economies by increasing bonus points used to calculate whether residency requests should be approved or denied. Skilled migrant workers who take jobs in the regions will have bonus points bumped up from an extra 10 points to an extra 30 points, and entrepreneurial migrants who set up or expand their businesses outside of Auckland will be eligible for 40 bonus points towards their visa requirements, up from 20.⁵¹⁶ This means that the benefits and challenges of superdiversity are not solely relevant to Auckland, and will apply to the rest of New Zealand. Immigration policy is discussed further at [3.3].

The Rural Sector

2.272 The critical challenge facing New Zealand's agricultural sector – which is mainly dairy farming, followed by beef and sheep farming and horticulture – is the lack of succession as the current generation of farmers retires.⁵¹⁷ For every 10 people leaving the agricultural sector, there are around three to five people entering the industry.⁵¹⁸ The 2015 Federated Farmers Farm Confidence Survey found that 20.6 per cent of dairy farmers had found it difficult to find skilled and motivated staff over the preceding six months.⁵¹⁹ This is exacerbated by New Zealand's ageing population and the trend of internal migration away from the regions to urban centres, in particular Auckland.⁵²⁰ Research also suggests that young New Zealanders do not find farming to be an attractive career prospect, due to the long hours and labour-intensive nature of farming.⁵²¹

2.273 As a result, many farm managers use migrants from countries such as the Philippines to meet growing labour shortages. Most New Zealand farms are staffed by migrants of Asian (primarily Filipinos, Indians and Sri Lankans) and South American descent.⁵²² It has been reported that around a quarter of dairy workers in the Canterbury region are migrants on temporary visas, 42 per cent of whom are Filipino.⁵²³ Until the 2014/15 reporting year, the number of visas for dairy cattle farmers approved by Immigration New Zealand was steadily increasing. In 2009/10, 1,423 visas were approved, growing to 1,785 in 2013/14 (but then declining to 1,249 approvals in 2014/15).⁵²⁴ A similar trend is evident for dairy cattle farm workers, with 366 approvals in 2009/10, increasing to 966 approvals in 2013/14 (but declining to 813 approvals in 2014/15).⁵²⁵ Since the early 1990s, the decline in traditional North Island family-owned and run farms with few labour needs and the growth of large South Island herd dairy farming, "often of a corporate nature", has led to demand for greater numbers of farm workers.⁵²⁶ However, although temporary migrants provide a short-term stop-gap as farm workers, particularly in the dairy sector, they do not necessarily provide a secure, sustainable workforce for the future.⁵²⁷

2.274 Migrant farm workers are generally only eligible for temporary work visas.⁵²⁸ Migrants on these visas do not have the same rights as citizens and permanent residents to access certain public services, such as health care and public housing.⁵²⁹ This in turn creates difficulties for employers, for example if their employees become sick and cannot work. Migrants on temporary visas are required to pay international student fees at tertiary institutions, and are ineligible for benefits such as student allowance and student loans, jobseeker support, Working for Families and New Zealand superannuation.⁵³⁰ Farm owners report that they want migrant workers to stay on and to buy into their farms, but this is difficult because they are not permanent residents. Farm owners also struggle to get workers' visas extended by Immigration New Zealand, which in turn makes it difficult for them to sustainably grow their farms for the future because their workforce is not secure.⁵³¹ Many farm owners nevertheless prefer migrant staff because they are loyal and hardworking.⁵³² A large number of migrants live on farms in accommodation provided by their employers and come to be treated as family members.⁵³³

2.275 The Government has recently announced plans to help 600 long-term foreign workers who have been rolling over short-term temporary visas for more than five years to secure a permanent future in the South Island. This may go some way to addressing farmers' concerns around the struggle to renew temporary visas and the lack of succession potential

for migrants on temporary visas. However, the new policy applies to only 600 migrant workers at this stage, and does not come into force until November this year.⁵³⁴ The current succession issues will therefore continue, unless the Government expands the number of eligible migrants beyond 600.

2.276 Migrant workers are also part of the Canterbury Mayoral Forum's economic development strategy for the region.⁵³⁵ The Strategy notes that, for the Canterbury region to sustain its "economy and way of life", it needs to "attract and retain skilled migrants/newcomers and their families, and ensure they can settle quickly and well, and integrate into cohesive, resilient communities".⁵³⁶

2.277 A 2014 study analysing retention of migrant workers on dairy farms identified the following six factors as the most important factors motivating migrants to remain in New Zealand:⁵³⁷

- a. Pride in the industry;
- b. Career advancement opportunities;
- c. The opportunity to enhance skills and knowledge;
- d. Commitment to the industry;
- e. Enjoyment of the job; and
- f. A good relationship with supervisors and co-workers.

2.278 Other important factors included general life satisfaction, whether employers cared about employees' wellbeing, and feeling connected to the local community.⁵³⁸ Accordingly, effective and sustainable deployment of migrants on farms requires:⁵³⁹

- a. the recruitment of capable and skilled employees;
- b. the need for farm management to be sensitive to, understand and resolve, cross-cultural and relationship issues; and
- c. workplace and community acceptance and support of migrants and their ability to integrate into community life.

2.279 Competition for skilled workers in other industries and from other countries also represents a threat to the supply of migrant workers in the agricultural industry. However, this threat may be mitigated if the industry ensures it has a reputation as a "caring and socially responsible industry".⁵⁴⁰ Corrupt practices by overseas recruitment companies which help prospective migrants locate work and handle the visa application process is another issue which has been highlighted in the media.⁵⁴¹

2.280 The high level of migrant workers in the agricultural sector requires farm owners and operators to learn CQ. For example, an Immigration New Zealand guide for dairy farmers recruiting migrant workers noted that:⁵⁴²

Migrants might be used to different employer-worker relationships than we have in New Zealand, so your style of managing them might need to differ from that used for a New Zealand employee ... Some migrants may not be used to a female manager. Some migrant dairy farm workers come from countries where they are used to being told exactly what to do and they find Kiwi workers and managers very different from what they're used to. [Most] Filipinos ... like being told exactly what to do ... [Most] Kiwis ... like to be left to get on with the job.

Some cultures think status is very important and might find it difficult to speak freely to the boss. When they do speak to the boss they can be very formal, and they often don't say what they really think.

2.281 Migrants may have limited experience of working on New Zealand dairy farms and might need additional training, particularly where their English proficiency is limited.⁵⁴³

The issue is that migrant workers are not eligible for government-funded ESOL classes until they gain permanent residence.⁵⁴⁴ Yet English language proficiency is a requirement for entry under the skilled migrant category.⁵⁴⁵ Understanding English and having the confidence to

converse with people in the local community underpin migrants' ability to access social services and integrate into the community, "which in turn reduces social isolation and influence of this isolation on mental health and farm safety".⁵⁴⁶

2.282 In addition, Filipino migrant workers often bring their families with them to New Zealand,⁵⁴⁷ as they are permitted to do so under Immigration New Zealand's skilled migrant policy for the duration of their visa.⁵⁴⁸ It is also common practice for Filipinos to send remittance payments back to their extended families in their home countries.⁵⁴⁹

2.283 Immigration New Zealand's guide for dairy farmers recruiting migrant workers includes the following strategies:⁵⁵⁰

- a. Employ migrant workers before workload peaks so they have time to settle in;
- b. Provide migrant workers with some information about living and working on the farm and about the local area and community, including use of slang and/or technical terms on farms;
- c. Give migrant workers training about working on dairy farms, and inform existing staff so that they can assist migrant workers to adapt;
- d. Find out how migrants prefer to be managed;
- e. Be aware that migrants usually arrive with only a suitcase, so providing fully-equipped accommodation is helpful (including appliances like rice cookers);
- f. Advise prospective migrant workers about the need for lots of warm clothing in New Zealand and how to adapt to living conditions in New Zealand generally; and
- g. Be aware that migrant workers may want to bring their family to live with them on the farm.

2.284 Federated Farmers also has an Immigration Pack with information and application forms related to the visa and permanent residency process to assist dairy farmers with migrant recruitment.⁵⁵¹ It provides position specific information for dairy farmers looking to hire migrants as dairy farm assistants, assistant herd managers, herd managers and farm managers, and market salary information for migrant workers.

2.285 Other implications of superdiversity for the agricultural sector include foreign direct investment into farm purchases (as discussed at [2.357]) and changes in domestic and overseas consumption of agricultural products. For example, there is high overseas demand for goats' milk infant formula because of the high rates of lactose intolerance in Asian populations.⁵⁵² Demand from China for such products remains strong.⁵⁵³

Survey on Rural Sector with the Assistance of Federated Farmers and SIDE

Methodology

2.286 This survey was sent to farm managers in New Zealand on the Federated Farmers and SIDE (South Island Dairy Event) databases. It consisted of qualitative questions on the ethnic composition of the farm's employees, the key benefits and opportunities from a diverse workforce (where applicable), the key challenges faced (if any), and the best practice for maximising the benefits and opportunities from a diverse workforce. A copy of the survey questions is set out at Appendix One.

Limitations

2.287 Altogether, 415 farms responded to the survey. There was a drop-off rate of 90 respondents after the first question, which related to whether the farm employed migrant employees. There were also minor differences between the surveys sent out to SIDE and Federated Farmers, which may affect the accuracy of some responses.

Findings

2.288 Of farms surveyed, 72.3 per cent had migrant employees or had employed migrants in the past; 37.1 per cent of farms surveyed employed Filipinos, followed by South

Americans (15.9 per cent) and Indians (11.6 per cent).

2.289 A significant proportion of migrant employees (35.4 per cent) at the farms surveyed intended on staying in New Zealand for five years or more, and 43.6 per cent of farms reported that their migrant employees had applied for permanent residence.

2.290 Almost a third (29.6 per cent) of total farms surveyed indicated that their migrant employees brought their family with them to New Zealand.⁵⁵⁴ The amount migrant employees sent home in remittances varied depending on migrants' personal circumstances from between around 15 per cent of their total wages to as much as 80 per cent of their wages.

2.291 Commonly cited benefits of employing migrant staff included:

- a. Migrant staff were loyal, hardworking and keen to learn;
- b. They fill a gap and do jobs Kiwis do not want to do;
- c. They bring diverse cultural perspectives; and
- d. They bring technical skills.

2.292 Commonly cited challenges for farms from employing migrant staff were as follows:⁵⁵⁵

- a. Issues around the renewal and transfer of work visas (which are generally only valid for a short time and only issued in respect of certain categories of farm worker, such as "dairy farm manager"), proving the need to hire migrant staff as opposed to New Zealanders, obtaining a pathway to permanent residence and liaising with officials in migrants' home countries. This, in turn, created uncertainty for farms around staffing levels and difficulties in employing migrants on short notice;
- b. Communication issues around language and culture;
- c. Behavioural differences compared to Kiwi workers, for example Filipinos tended to adopt a non-confrontational working manner, which sometimes meant they failed to speak up when issues arose;
- d. Expense of accommodating staff on farms;
- e. The need to provide time off work for English classes;
- f. Migrant employees sometimes struggled to adapt to the tough working conditions involved in farming;
- g. Distance from family and friends overseas; and
- h. Sometimes migrant workers displayed a lack of initiative, so farm managers did not see these workers as valuable in terms of succession potential.

2.293 In order to address the challenges of having migrant staff, measures adopted by farms included:

- a. More written instructions, photographs and welcome folders;
- b. Supporting the visa application process and other support services upon arrival, including providing warmer clothing, transport, accommodation, home appliances, and help setting up bank accounts and IRD payments (including helping send remittance payments home), arranging health care, and finding play centres or schools for their children;
- c. Adopting a different communication and/or managerial style, for example repeating instructions, refraining from using swear words and/or farm jargon, providing greater oversight, training managers in CQ and learning non-English phrases;
- d. Using existing or past migrant employees to source new migrant employees. These employees also provided support to new migrants in the local community upon their arrival. Many farms mentioned facilitating introductions to established migrant communities in the area who could provide support;
- e. Including migrant employees and their families in family dinners, celebrations and events

such as Christmas, and local community events (particularly sports clubs and church). Several respondents mentioned specific community events designed to welcome migrants to the region;

- f. Giving migrant employees more time off to visit home (some even funded trips home or loaned their employees funds for fares) and/or helping them to access Skype to easily contact their families;
- g. Providing time off for religious holidays and/or church attendance;
- h. Providing more extensive onsite farm training;
- i. Adapting meals to meet religious and/or cultural requirements; and
- j. Only employing staff with good English proficiency, providing financial assistance with English lessons and/or having a translator available.

Recommendations

- There should be a regular review of numbers of migrants to the regions.
- Migrants should also be consulted on their settlement needs on a regular basis. This data should then be used to inform policy development.
- There should be greater funding available for migrants to access ESOL classes, so they can be more effective workers on farms. Currently, government funding is available for permanent residents, but English proficiency is a requirement for entry under the skilled migrant category.

Key Point Seven: Superdiversity Can Challenge New Zealand's Business Culture

2.294 New Zealand has a well-earned reputation for low levels of corruption in the public sector and in business. In 2014, New Zealand ranked second on the Transparency International Corruption Perceptions Index.⁵⁵⁶ In contrast, the ratings of the top source countries of skilled principal immigrants to New Zealand⁵⁵⁷ have mixed results on the Index.⁵⁵⁸ For example, China was ranked at 100, India and the Philippines at 85 equal, the United Kingdom at 14, and South Africa at 67.⁵⁵⁹

2.295 An MBIE survey of investor migrants found the key reasons why investor migrants left their home countries included the state of investors' home countries (including the economy, environment, policy and politics) and fear that their circumstances would worsen.⁵⁶⁰ Around 90 per cent reported that New Zealand's financial and business culture was an important factor in their choosing to invest here, with 63 per cent citing political stability and 52 per cent mentioning transparent investment options as factors behind their choice to invest in New Zealand.

2.296 However, there is concern that some immigrants might bring corrupt practices from their home country to New Zealand, especially in the business and environmental contexts. There is research indicating that migration can have an impact on corruption in destination countries and that immigration from corruption-ridden countries boosts corruption in destination countries.⁵⁶¹

2.297 A 2014 Deloitte survey of 269 public and private organisations across New Zealand and Australia found that companies with overseas operations had experienced an increase in corruption outside of New Zealand.⁵⁶² Only 31 per cent of companies conducting business overseas had a proper understanding of relevant overseas bribery and corruption laws, and 40 per cent reported not having a formal bribery and corruption compliance programme in place.⁵⁶³ Deloitte's Associate Director Ian Tuke said that one possible explanation for the increase was due to the influx of migrants from countries with negative ratings on the Transparency International Corruption Perceptions Index, such as China: "Where people are migrating to New Zealand from countries with high corruption levels, they may expect New Zealanders to

behave in a similar way as they did back home”.⁵⁶⁴

2.298 However, it is important to bear in mind that not all migrants’ source countries are corrupt, and not all migrants will necessarily bring corrupt practices with them when they arrive in New Zealand. For example, Singapore has consistently ranked in the top 10 countries on the Transparency Index, and in 2014 was ranked 7th.⁵⁶⁵

2.299 From my own experience acting for clients in private practice, issues arise from new migrants not understanding that bribing government is illegal, and that the rule of law culture in New Zealand means laws will be enforced. Issues arise from new migrants not understanding what the law means, especially in a different cultural context, and thus how to apply the law in order to act legally. Problems have included signing false declarations, not complying with legal requirements to hold professional licences, wanting to make backhanded payments instead of complying, and not submitting the right documentation to get professional registration.

2.300 This represents a possible risk for businesses and government agencies employing and dealing with new migrant customers, which businesses and agencies need to plan for. For example, the Serious Fraud Office (“SFO”) recently charged a Chinese man, Johnson Yuejun Li, with corruption and bribery of an official for allegedly attempting to influence the decision of an Auckland Council resource consents officer on his application to subdivide a property.⁵⁶⁶ The SFO also recently charged an Immigration New Zealand border control officer, Meng Yam Lim, a Singapore-born migrant who had lived in New Zealand for the past 40 years, and his associate, Hong Kong national Kooi Leng Pan, with corruption and bribery for allegedly receiving \$26,500 to assist with immigration.⁵⁶⁷ In response to the case, SFO Director, Julie Read, commented that:

Bribery is bad for New Zealand businesses and citizens and bad for New Zealand Inc. This is plain in the case where a bribe is paid to secure a contract – but a bribe paid to circumvent the rules also causes significant harm. The rules, whether they are about immigration or anything else, are intended to apply to everyone equally. Circumvention of the rules undermines any fairness in society. The SFO is committed to ensuring that corruption does not flourish and will pursue cases such as this to send that message to all those who may be tempted to engage in corrupt conduct.

2.301 The SFO has emphasised the importance of educating migrants about appropriate business culture in New Zealand so that they understand corruption is not acceptable.⁵⁶⁸ Read has said that “cooperation between government agencies in these matters is critical to ensure we prevent corruption from flourishing and to protect New Zealand’s reputation as a safe place to invest and do business”.⁵⁶⁹

2.302 A study by IRD in 2014 found that:⁵⁷⁰

Regarding tax compliance attitudes, Chinese and Indian business owners reported higher levels of trust, generally held more positive perceptions of Inland Revenue, and were more likely to believe that Inland Revenue would be effective in “catching” tax cheats. Believing that others were not necessarily honest with their tax obligations was one of the strongest predictors of Hidden Economy participation. Other predictors included: specific demographic characteristics (e.g., age, gender, ethnicity); having received cash payments; seeking tax information from one’s own migrant/ethnic/industry group; and having received overseas income ...

2.303 In order to facilitate tax compliance by Chinese and Indian business owners, participants in the study recommended greater customer engagement by IRD, and the provision of tax information through multimodal and multilingual channels.⁵⁷¹

2.304 A Chartered Accountants Australia New Zealand report released this year warned that complacency was not an option for business and government, and that increased regulation was unlikely to resolve corruption.⁵⁷² The report recommended the following measures to prevent and mitigate corruption:

- a. Increasing transparency in awarding public sector contracts, including not awarding contracts to those with past convictions for fraud and/or corruption and not awarding contracts to companies without anti-corruption policies;

- b. Increasing the use of asset confiscation;
- c. Encouraging anti-bribery and corruption policies and practices in the private sector;
- d. Considering rewards for whistle-blowers when they disclose illegal activity;
- e. Enhancing cross-border cooperation on bribery;
- f. Applying harsher sanctions more broadly;
- g. Limiting the tax deductibility of “facilitation payments”; and
- h. Requiring anti-bribery and corruption policies in NZX listing rules.

2.305 Changes in the corruption policies and laws of migrants’ home countries may also have an impact on migrant behaviour in New Zealand. For example, following its ratification of the United Nations Convention against Corruption, China made it a criminal offence to bribe foreign officials and officials of international public organisations in 2011, and has since been enforcing these laws.⁵⁷³ This proactive stance should in turn reinforce anti-bribery and corruption laws in New Zealand for new migrants from China. In New Zealand, at the time of writing the Organised Crime and Anti-corruption Legislation Bill had just undergone its second reading in Parliament. The Bill, which aims to strengthen the law to combat organised crime and corruption, is still facing strong lobbying to ban all “facilitation payments”. There is currently an exemption for small payments which do not give an undue advantage.⁵⁷⁴

2.306 The Chief Executive of the Financial Markets Authority (“FMA”), Rob Everett, says that the main issue the FMA has seen new migrants experience as they adjust to the business environment in New Zealand is related to English language proficiency.⁵⁷⁵ The FMA’s response to New Zealand’s superdiversity is discussed below at [5.398]. As New Zealand’s regulatory framework focuses on disclosure as a way of ensuring buyers of financial products or services understand the risks of those products or services, those coming to New Zealand with limited English are exposed, as the product disclosures or offer documents will be in English. This is exacerbated by the highly technical nature of the financial jargon used in such documents.

2.307 New migrants conducting financial affairs and investments within their own ethnic community and in their native language can create problems for regulators from a monitoring perspective. For example, are those giving financial advice licensed, or do they even know that they need to be licensed, and do those customers on the receiving end of illegal behaviour know to complain to the FMA? In another example, some licensed financial advisors have expressed concern that their client base comes from one community (such as the Chinese community) and do not speak English. The documents financial advisors are required to provide are all in English, and there is no obligation to translate documents into other languages. This means clients are completely reliant on their financial advisor. This also creates difficulties for financial advisors if they have to prove they believed their client was aware of the relevant investment risks when they speak little English.

2.308 According to Everett, the FMA handles these concerns pragmatically: financial advisors will not run afoul of the FMA provided they can show they explained the investment risks to the client (through business records, such as file notes) and provided the investments are simple and make sense.

2.309 However, unscrupulous financial advisors create greater difficulties. The FMA does not have the resources to conduct extensive investigations into small organisations that operate in languages other than English. Similarly, the groups being exploited may not report such misconduct to the FMA because they do not have sufficient English proficiency, they are unaware of the legal requirements, or they are simply unaware of the FMA’s existence. There is no high level strategy across the relevant government agencies which recognises and aims to address these issues.

2.310 Everett says that offshore investment scams targeting New Zealanders have become increasingly common. Anecdotally, the FMA has seen a relatively high proportion of Indian and South East Asians who have fallen victim to scams perpetrated from outside

of New Zealand, especially those luring people into foreign exchange trading or buying foreign exchange trading software. However, it is uncertain whether these customers are New Zealand-born or migrants, and it is unclear why they seem to be more susceptible to such scams (for example, whether some cultural factor is at play). Although the FMA does not have jurisdiction over scammers operating offshore, it is considering the best way to provide education about offshore investment scams, which could include providing information in other languages.

2.311 The FMA is working on raising investor awareness through an investor portal with MBIE and other relevant agencies. These resources could potentially be made available in other languages.⁵⁷⁶

Recommendations

- Regulatory agencies need be aware that migrants from some countries with different government and business cultures may need more education on New Zealand's government and business culture.
- More assistance and education needs to be provided to Kiwis doing business with migrants to help them recognise the cultural differences in business practice, communication and values. In turn, migrants to New Zealand should receive more information on New Zealand's business culture.

Key Point Eight: Increased Risk of Business Conflict due to Cultural Differences

2.312 Increased dealings between ethnically diverse businesses may result in a breakdown in communication where messages have been interpreted differently by people coming from different language and cultural backgrounds.⁵⁷⁷ Further, cultural differences may also shape parties' expectations and understandings of conflict and the actions required to resolve it.⁵⁷⁸

2.313 The potential for difficulty in intercultural relations has been discussed extensively in the field of mediation, as well as the importance of understanding and appreciating the role of culture when mediating disputes.⁵⁷⁹ Although cross-cultural commercial mediation has tended to arise in the context of cross-border business disputes, as the population becomes more superdiverse, mediators are increasingly likely to be engaged in domestic disputes between people from different ethnic, religious, linguistic and/or cultural backgrounds.⁵⁸⁰

2.314 In mediation, culture is "a set of values and beliefs acquired from learning, experiences and social upbringing, which creates implicit social rules or a code of ethics and behaviour within a specific group".⁵⁸¹ Essentially, something which is common to one culture may not be common to another – leading to different expectations and understandings between parties. Communication issues may also stem from differences in parties' verbal and non-verbal communication, language and interpretation, eye contact, silence, space and time.⁵⁸² It is important for cross-cultural differences to be acknowledged and addressed at the outset of the parties' business relationship, otherwise these differences, "if ignored, can become a source of conflict at the bargaining stage or later when the relationship is established" and formalised.⁵⁸³

2.315 For example, I have assisted a large Chinese company to settle a contractual dispute it had with a Māori company due to different understandings as to what had been agreed. The Chinese company understood that it was entering into a land conversion agreement, and that the land in question was owned by the Māori company, who would ensure the Chinese company got ownership of the land. However, in reality, the Māori company did not own the land and in fact the land was being contested by eight hapū. The Māori company had asked for the consultancy payment for making introductions and helping the Chinese company negotiate in good faith with whichever of the eight hapū might end up owning the land.

2.316 Mediation is often preferable to litigation in cross-cultural disputes, as it allows for greater responsiveness to the particular cultural needs and expectations of the parties.

The parties' cultural background may in fact influence the choice of dispute resolution process, and how the parties engage in that process.⁵⁸⁴ For example, Asian cultures have a long history of engaging in alternative dispute resolution ("ADR") in preference to litigation. Mediation has been used in China for more than a thousand years to resolve disputes, as Chinese culture is "heavily influenced by the Confucian ideology that seeks to avoid conflict and embraces collectivism in preserving harmony".⁵⁸⁵

2.317 Cross-cultural issues have the potential to undermine the efficacy of ADR processes.⁵⁸⁶

As noted above, the way in which the parties perceive conflict can influence the outcome of the mediation. For example, while parties from Western cultures tend to view conflict as something that needs a final resolution, many Aboriginal communities tend to perceive conflict as an essential part of maintaining long-term relationships.⁵⁸⁷ Accordingly, seeking a final resolution is considered inappropriate. The way in which the parties engage in the mediation may also be influenced by their respective cultures. Parties from Asian cultures, for instance, tend to prefer an indirect communication style, whereby key information lies in the context and must be inferred. In contrast, parties from Western cultures tend to discuss important issues explicitly, irrespective of the sensitivity of the subject matter.⁵⁸⁸

2.318 The following table summarises the general differences between the approach of Asian and Western parties in negotiating and mediating a dispute.⁵⁸⁹

Table: General differences between approaches in negotiating and mediating a dispute

Western	Asian
Low context (direct) communication style	High context (indirect) communication style
Low power distance (having and maintaining power is not a critical interest)	High power distance (having and maintaining power is a critical interest)
Individualism	Collectivism
Masculinity (assertive)	Femininity (cooperative)
Short-term orientation (value short-term commitments)	Long-term orientation (value long-term commitments)
Monochromatic time (limited consideration of outside factors)	Polychronic time (consideration of outside factors)
Space – far apart	Space – close
Risk takers	Risk avoiders
Universalism (systematic imposition of rules, laws and norms on all members of a society to ensure efficiency)	Particularism (searches for what is different, unique or exceptional in order to create something incomparable/of special quality)
Achievement-oriented (respect for hierarchy/status where the superior is competent/effective)	Ascription-oriented (respect for hierarchy/status for their own sake)
Specific (direct, to the point)	Diffuse (indirect, ambiguous)
Brief rapport building time (short)	Extensive rapport building time (long)
Aggressive	Passive
Contract focussed	Relationship focussed
Win-lose approach	Win-win approach
Informal approach	Formal approach
Show emotions	Hide emotions
Preference for specific agreement	Preference for general agreement
Contract is fixed	Re-negotiation is possible
Individual decision-making	Group decision-making
Logical decision-making	Emotional decision-making
All equals	One leader
Face saving	Face giving
Inductive logic	Deductive logic
Low government involvement	High government involvement
Linear-active (good listeners, deference to others' opinions, allow ideas to develop, do one thing at a time in an organised/planned manner)	Multi-active/Reactive (unplanned, people oriented, prioritise courtesy and respect, react to others' opinions once they have established others' position and have formed their own view)

2.319 Ultimately, the ability of ADR to resolve cross-cultural disputes will be subject to the ability of the mediator, the parties and their lawyers to understand and address the different cultural issues involved in the relevant dispute at all stages of the ADR process. Cultural stereotypes may be a useful starting point, but parties may deviate from these stereotypes, so it is crucial to understand the actual people involved in the dispute.⁵⁹⁰ Ideally, mediators will

bridge communication and understanding gaps between the parties in order to clarify the messages being conveyed, help the parties save face, and find a way forward.⁵⁹¹ However, more assistance and education needs to be provided to Kiwis doing business with Asians, for example, to help them recognise the cultural differences in business practice, communication and values. In turn, migrants to New Zealand should receive more information on New Zealand's business culture. Negative business relations due to cultural misunderstandings are also likely to undermine trust and social capital between different cultural groups, as both groups may feel as if they have been ripped off.

2.320 The rising popularity of and preference for ADR means that more mediation services will be needed in New Zealand. As New Zealand becomes more diverse, mediators will need to be trained in CQ. Further, as global migration increases, it is likely that there will be an increasing number of disputes with global and intercultural aspects. There may need to be a particular education module on cross-cultural communication. The criteria developed below by the International Mediation Institute for mediators to gain Inter-Cultural Certification may be a helpful starting point for New Zealand institutions offering courses in mediation:⁵⁹²

- a. *Cultural frameworks* – Mediators must have the ability to apply at least one recognised cultural theory in order to identify relevant Cultural Focus Areas for facilitating intercultural mediations.⁵⁹³ The theory and approach shall include an appreciation of similarities and differences among cultures.
- b. *Self-awareness* – Mediators must have the ability to recognise one's own cultural influences and their possible effect on the mediation.
- c. *Multicultural perspectives* – Mediators should have the ability to:
 - i. Recognise each participant's culturally-shaped perspectives of behaviours or events;
 - ii. Understand and appreciate participants' similar and different cultural perspectives, and possible imbalances between them;
 - iii. Manage ambiguities and mistakes that may emerge in multicultural situations; and
 - iv. Use the mediator's understandings of these possible differences and similarities to create a workable environment for all participants, including one that optimises communication among them.
- d. *Communication* – Mediators must have the ability to adjust one's own communication style to the preferred styles of participants from other cultures, and to help participants communicate optimally with each other, including establishing suitable processes to facilitate communications.
- e. *Preparation* – Mediators must be able to prepare for mediation by identifying possible cultural patterns and preferences (for example, identifying specific Cultural Focus Areas for each mediation) and designing potentially appropriate processes and possible interventions.
- f. *Managing the process* – Mediators must have the ability to detect whether, when and how cultural considerations may impact on the mediation process as the mediation progresses, and must be capable of adapting the process accordingly and designing appropriate interventions that also encompass any settlement and compliance phases.

Survey on Intercultural Disputes in Commercial Mediation in New Zealand

2.321 Currently, there are a limited number of mediators from ethnic minorities in New Zealand. As part of the Centre's Superdiversity Stocktake, a brief survey was sent to all mediators on the New Zealand Law Society, LEADR and AMINZ databases.

Methodology

2.322 Respondents were asked to identify their ethnicity/ethnicities and were asked to provide observations on whether they had encountered any challenges from an

increasingly diverse population in the context of commercial mediation and, if so, to elaborate on the issues encountered in such disputes. Respondents who had already received the survey from the New Zealand Law Society, AMINZ or LEADR were asked not to complete the survey twice. The following results are based on comments from 98 respondents.

Findings

2.323 The first question asked mediators to identify their ethnicity or ethnicities

- The vast majority of respondents (90.8 per cent) identified as New Zealanders, New Zealand European/Pākehā or other European;
- Only 1 per cent of respondents identified as Asian, 2 per cent identified as Middle Eastern, 3.1 per cent identified as African, 5.1 per cent identified as Māori, and 6.1 per cent identified as Pacific people.⁵⁹⁴

2.324 The second question asked: “Have you had to deal with an increasing number of disputes arising from intercultural misunderstandings?”

- 28.6 per cent of respondents replied “Yes” to this question and 68.4 per cent replied “No”. One per cent of respondents were unsure, and 2 per cent did not answer. One respondent commented that “people are people ... the struggle for control, monetary advantage or fairness is colour blind”.

2.325 In regards to the third question, which asked for further comment on intercultural disputes, the following comments were made:

- Respondents reported that Asian and European disputants displayed different perspectives in terms of:
 - a. What was agreed and done – for example, different perspectives as to the enforceability of oral agreements;
 - b. Basic concepts of business honesty and cultural expectations of commercial activity – this resulted in misunderstandings about compliance with regulations (3.1 per cent attributed this to a different regulatory environment back in migrant disputants’ source countries). One respondent said that non-European groups will assert that they did not understand the underlying deal or relationship, or their obligations, despite clear evidence they did understand;
 - c. Decision-making authority (for instance, having to refer a matter to elders);
 - d. Formality in terms of business relationships (for example, the Chinese concept of *guanxi*, which is about relationships, compared to the more formal Western way of doing business can result in misunderstandings and a lack of trust);
 - e. Status/who gets to sit where/matters such as loss of face (particularly in Asian cultures);
 - f. Different communication style – for example, Asians did not tend to raise matters at issue directly and spoke in hypotheticals; and
 - g. Mismatch of cultural values – parties sometimes misunderstood why another party acted the way they did due to lack of awareness of cultural matters or not placing enough importance on them. Stereotyping and prejudice also played a role.

2.326 The types of disputes encountered by respondents included

- a. Property and business disputes between New Zealand Europeans and Asian clients;
- b. Contractual disputes, for example when disputants speak English as a second language;
- c. Issues within cultural/ethnic groups – examples given included a Chinese migrant suing a Chinese migrant lawyer for professional negligence and an Arab man suing another Arab man regarding a contractual dispute; and

- d. Disputes between iwi and farmers around land and water issues, and other disputes arising from the conflict between Māori culture, tikanga and law.
- 2.327 Finally, when respondents were asked to comment further on the challenges diversity poses in commercial mediation, the following themes emerged:
- a. There were language and cultural barriers in the interface between the mediator and the parties to a dispute, and as between the parties themselves. This often set the “context” for the dispute. Gaining intercultural awareness (or CQ) was characterised as half the battle in mediation.
 - b. One respondent mentioned that the role of interpreters in mediation ranges from pure translation to the provision of de facto cultural advice. 3.1 per cent of respondents noted that some traditional mediation techniques may not work via an interpreter, such as reflection, questions focussed on shifting perspective from first to second person and strategies to deal with people exhibiting high conflict behaviour.
 - c. Getting the right ADR practitioner is critical. Sensitivity and the ability of the mediator are often crucial to reaching a solution. However, the mediator has a cultural perspective which may make it difficult to see the conflict as having a cultural component. One respondent mentioned that sometimes assumptions are made that the professionals supporting the process should have the same ethnic background as the parties, but this assumption can be counterproductive, as the cultures of the parties can be very different even when they are ethnically similar. Another mentioned that, while it was easy to identify possible cultural misunderstandings where disputants were visually different, non-visual and non-verbal cultural differences could be easily overlooked.
 - d. Disputants from migrant communities sometimes displayed fear of being sent home and/or fear of authorities.
- 2.328 More ethnic mediators should be encouraged to train and all mediators should have some form of CQ training. Courses in cultural competency have increased in popularity in New Zealand in the past five years as ADR practitioners have come to learn the growing importance of CQ (whereas previously such skills were seen as unnecessary).⁵⁹⁵

Recommendation

- More people from diverse backgrounds should be encouraged to train as mediators, and all mediators would benefit from training in cultural intelligence given the likely increase in disputes exacerbated by cultural misunderstanding with New Zealand's superdiversity.

Key Point Nine: We Need to Increase the Business Interface between Māori and Ethnic Minorities and Migrants

- 2.329 Māori businesses have already benefited from increased trade with Asia, but there remains huge potential for growth. Deeper business relations between Asians and Māori will contribute to improved social capital between these two groups, and the socio-economic position of Māori in New Zealand, which will benefit New Zealand as a whole. As is discussed further at [5.58], research shows that Māori attitudes to immigrants and immigration are consistently less positive and more negative than those of non-Māori. Better communication of the benefits that migrants could present to Māori, including through access to lucrative markets for Māori produce, would help maintain positive social capital between these two groups. Such a strategy helps diminish the sense of threat often associated with immigration.⁵⁹⁶
- 2.330 Māori are growing in political power and wealth due to Treaty settlements and the growth of Māori businesses. Provisions in settlements providing for co-governance and first options to purchase Crown land and resources give Māori a significant advantage, as evidenced by Ngāti Whātua's litigation against the Crown for allegedly breaching their first right of refusal to surplus Crown land in Tāmaki Makaurau.⁵⁹⁷ (The potential ramifications of superdiversity for the Treaty relationship are discussed below at [5.31].)

2.331 The key contributors to the Māori asset base – fishing, forestry, agriculture and tourism – are all known to be New Zealand’s biggest export earners and have a natural interface with Asia. In 2010, the asset base of enterprises in the Māori economy totalled at least \$36.9 billion. This was an increase of \$20.4 billion from the 2006 estimate of \$16.5 billion.⁵⁹⁸ Post Treaty of Waitangi settlements now see Māori in control of 37 per cent of New Zealand’s total fish quota. Māori also control 36 per cent of New Zealand’s forests. Iwi are investing in telecommunications, infrastructure, retail property and tourism.⁵⁹⁹ If the Māori economy invests successfully in science and innovation, BERL predicts an additional \$12.1 billion per annum in GDP by 2061.⁶⁰⁰

2.332 In the latest Statistics New Zealand report on Māori authorities in 2015, the asset base of Māori authorities continued to grow in 2013, up 9.1 per cent from 2012 to reach \$12.5 billion.⁶⁰¹ The total income for Māori authorities increased \$430 million (18 per cent) from 2012, to reach \$2.9 billion in 2013.⁶⁰² In 2014, Māori authorities exported \$526 million in goods to 58 countries (up from 54 in 2013), up \$16 million (3.1 per cent) from 2013.

2.333 Kaimoana was the top export commodity, followed by dairy, and meat and fish preparations. The growth and diversification into new export markets:⁶⁰³

... comes not only from a strong, responsibly-managed asset base but also from investing in business and cultural relationships in external markets. Products and services produced from the Māori asset base for export are associated with Māori branding, providing a point of difference in global markets.

2.334 Māori are reaping benefits by welcoming immigrants from a diverse number of countries, not necessarily on the Treaty ground, but rather in the boardroom and in the entrepreneurial space.⁶⁰⁴ An ANZ survey of 3,500 businesses in 2015 found that 14 per cent of Māori businesses planned to operate internationally in the next two years, compared with 5 per cent of non-Māori respondents.⁶⁰⁵ Another 28 per cent had aspirations to operate internationally in the future, more than three times the number of non-Māori respondents.

2.335 In 2014, China was the top export partner for Māori authorities, representing 44 per cent of exports, a total of \$231 million.⁶⁰⁶ Māori are already investing and working with Chinese businesses in a range of sectors, including:⁶⁰⁷

- a. Māori-owned New Zealand Manuka’s partnership with the Chinese pharmaceutical powerhouse Tong Ren Tang Pharmaceuticals to retail New Zealand’s Manuka’s products through 1,700 outlets in China.
- b. Ngāi Tahu has joined Sichuan Agricultural giant New Hope Group in an innovative joint venture to take an equity in New Zealand’s largest rural services company, Agria.
- c. Leaders of Ngāti Kahungunu have secured deals to send five tonnes of dried mussel meat to the Shandong Province.
- d. Māori iwi with major forestry interests have been in talks with China National Building and Materials to discuss a possible future partnership that could see major plants established and the creation of hundreds of jobs.
- e. Chinese investors through Axin New Zealand are working alongside three northern tribes, including Ngāti Whātua, on New Zealand’s first Māori-owned fibre optic network that will soon connect Auckland and Whangarei.

2.336 The Crown–Māori Economic Growth Partnership Strategy to 2040 identified the need for Māori to seek greater connectivity and new opportunities abroad to improve their socio-economic position in New Zealand – and those new opportunities will increasingly lie in Asia.⁶⁰⁸ Earlier this year, China announced its plans to establish the Asian Infrastructure Investment Bank, a multilateral development bank that will invest in new infrastructure across Asia. New Zealand has already agreed to become a founding member of the Asian Infrastructure Investment Bank.⁶⁰⁹

2.337 The Government also recently announced the New Zealand Investment Attraction Strategy, a national strategy aimed at attracting overseas business investment.⁶¹⁰ The

Strategy outlines a series of “cross-cutting actions” across multiple government departments to support the underlying investment attraction infrastructure, which includes a commitment to grow the Māori economy.⁶¹¹ The Strategy will:⁶¹²

... ensure the whole of New Zealand benefits from our investment attraction efforts by working with regional and Māori partners to progress investment opportunities and enable sufficient investment attraction capability in the regions to help draw in and connect investors to regional opportunities.

2.338 Further, within the next seven years, China is predicted to overtake Australia as New Zealand's biggest tourism market in terms of expenditure, increasing to 23.6 per cent of New Zealand's tourism spending by 2021 (up from 14 per cent in 2014).⁶¹³ Māori already derive significant income from tourism, and New Zealand Māori Tourism aims to grow the industry from its current annual foreign exchange earnings of \$550 million to a \$2 billion target by 2025. It sees maximising links with China as key to achieving that target.⁶¹⁴

2.339 Māori business can therefore benefit from the “diversity dividend”. The challenge for Māori is to ask: What can we turn our asset base into? How can we grow those assets? And how can we future proof our Taniwha Economy for future generations? It is in answering these questions that the importance of pathways with Asia becomes clear. Yet, a recent report by the Independent Māori Statutory Board into the Māori economy in Auckland identified potential for significant growth, but none of the report's recommendations mentioned the need to strengthen the economic connection with Asian communities (either domestically or overseas) or to leverage off Auckland's status as New Zealand's gateway of migration.⁶¹⁵

2.340 Encouragement needs to take the form of greater assistance from TPK, for example, and the OEC, to ensure that deals entered into between the parties are well understood on both sides, that there are shared understandings of the deal entered into and that the contract succeeds.

Recommendation

- Organisations such as Te Puni Kōkiri, the Office of Ethnic Communities, New Zealand Trade and Enterprise and the Ministry of Business, Innovation and Employment need to encourage Māori and Asian companies to do business together and to help reduce any cultural gulf which may impede or undermine business deals.

Key Point Ten: Business Needs Government to Keep Social Capital High so That it Can Keep Financial Capital

2.341 Business needs government to invest in social capital so that financial capital from migrants remains high, by providing settlement services, legal protections in the labour market and employment law protections for diverse employees, and ensuring New Zealanders understand the benefits migrants can bring.

2.342 Social capital has been defined as:⁶¹⁶

... the social resource that is embodied in the relations between people. It resides in and stems from the contact, communication, sharing, co-operation and trust that are inherent in ongoing relationships. It is described as “capital” because it can be accumulated over time and then drawn on in the future for use in achieving certain goals. Social capital is a collective resource rather than one accruing to an individual. However, the circumstances surrounding an individual or household may result in their having access to greater or lesser stocks of the community's social capital.

2.343 It is important for businesses to talk to their superdiverse customers and tell government they need to keep investing in social capital so that migrants keep investing, and sending their children to New Zealand to study as international students, and continue to visit as tourists.

Social Capital, Cohesiveness and Nationhood

2.344 The Treasury has emphasised the importance of social capital and building social infrastructure in its report *Working Towards Higher Living Standards for New Zealanders*.⁶¹⁷ “Social infrastructure” describes the features of social organisation that can improve the efficiency of society by facilitating coordinated actions, such as trust, norms and networks.⁶¹⁸ It is similar to the concept of social capital, which the OECD defines as “networks, together with shared norms, values and understanding which facilitate cooperation amongst groups”.⁶¹⁹ Social capital is a “prerequisite to social cohesion because social cohesion requires high levels of cooperative social interaction amongst citizens, groups and institutions based on trust and respect”.⁶²⁰ Accordingly, trust is typically treated as representative of the level of social infrastructure or social capital present in a community.

2.345 In 2013, the Treasury noted in its *Living Standards: A Short Guide to Social Infrastructure* that:⁶²¹

By international standards, New Zealand is seen as having relatively high levels of social infrastructure, but this should not be taken for granted and there is still room for improvement in some areas. It may be that for some key outcomes the government wants to achieve, the lack of social infrastructure is the binding constraint to improvements.

2.346 In a report for the Chief Executives Governance Group, *Review of Central Government Policy, Implementation, Strategy and Leadership Effectiveness in Auckland*, former Auckland Council CEO, Doug Mackay, noted that:⁶²²

... ethnic diversity can increase social distrust, crime and lead to discrimination, division and, ultimately, unrest. The result of poorly settled migrants can be generational cycles of social cost and lost economic opportunity. There are signs now in Auckland of increasing discrimination of recent migrants from Asia. As a result, they withdraw back into their communities. Should this continue, there is the potential for Auckland to become increasingly segregated.

2.347 The Treasury noted that:⁶²³

Low levels of social infrastructure:

- *may limit social and economic opportunities, cause markets to work less efficiently and marginalise some groups*
- *can reinforce existing inequalities, and*
- *may lead to less growth in the level of living standards than there otherwise would be, all other things being equal.*

Because of its impacts, social infrastructure (and variations on this theme) is increasingly being seen as important in a policy context.

2.348 As the figures on election voting indicate, a sense of belonging is key to integration and social cohesion.⁶²⁴ Inclusion requires adjustment by both ethnic minorities or immigrants and the host community.⁶²⁵ Race Relations Commissioner Dame Susan Devoy has remarked that “by 2040, there will be no one majority ethnic group in Auckland, and we must prepare for these changes”.⁶²⁶ The Royal Society of New Zealand’s report *Our Futures* asks the pertinent question whether the thinking of those of European descent has kept pace. The report’s authors state that: “A longstanding and deep-seated desire on the part of the majority community to identify all New Zealanders with a single set of values and practices will be even less apt than in the past.”⁶²⁷

2.349 Social cohesion also needs to be encouraged between migrants and Māori and Pacific communities. As discussed at [5.58], Māori tend to hold more negative perceptions of Asians than other New Zealanders, due in part to the lack of engagement between Māori and migrant communities, but also because Māori tend to perceive migrants as a threat for resources and political priority. Similar concerns have been reported by Pacific people in the context of resource allocation for Pacific language learning (see discussion at [3.118]).

2.350 The superdiversity challenges to social capital in Auckland are compounded by a growing divide between Auckland's rapid growth and diversity and the rest of the country's decline and lesser diversity. As discussed above at [1.17], a recent Salvation Army study found that, "in general, Aucklanders will be younger, wealthier, better skilled and more ethnically diverse than the rest of New Zealand. Within such differences are the seeds for a growing divide in values and expectations".⁶²⁸ This increases the risks to social capital.

2.351 Official policies based on the concepts of multiculturalism and social cohesion have been criticised by some academics, who prefer the notion of "commonplace diversity".⁶²⁹ Wessendorf defines commonplace diversity as a "normalcy of diversity", where "diversity has become habitual and part of the everyday human landscape ... rather than seeing cultural diversity as something particularly special, it forms out of the everyday reality and is not perceived as unusual".⁶³⁰ However, as is discussed at [3.16], the current focus in New Zealand settlement policy is on social cohesion and integration.

2.352 It may be that a new concept of capital is required, one that merges the concept of trust implicit in financial investment with that of the sense of long-term common cause/ownership implicit in social capital; both are about future commitments and promises.

Social Bridging by Longer-Term Migrants

2.353 Superdiversity raises the need to improve and accelerate the "social bridging" of minority groups.⁶³¹ Social bridging is where New Zealand-based ethnic minorities (who were either born in New Zealand or have migrated and integrated into local communities) act as bridges between mainstream New Zealanders and recent migrants. As discussed at [1.45], young people in particular will play an important role in New Zealand's cultural evolution, especially the 1.5 generation. We also need to better utilise Asian New Zealanders who have lived in New Zealand for a significant period to act as "bridges" between the mainstream Pākehā populations, the Māori and Pacific populations and new migrants.⁶³² This was the idea behind the creation of organisations such as New Zealand Asian Leaders.⁶³³

• • Balmoral Shops – Dominion Road Case Study

- • 2.354 The importance of social bridging and the need for government involvement in building social capital is illustrated by the findings of a 2015 Auckland Council study on the Balmoral shops, an ethnic precinct in Auckland with a multitude of Asian food outlets.⁶³⁴ The study found that:
 - • a. Although the non-Chinese customers interviewed supported the idea of the precinct being called "Auckland's Chinatown", Chinese customers were opposed to the idea because they felt that "such branding would problematically mark Chinese people as different".⁶³⁵
 - • b. The majority of non-Chinese shoppers thought the precinct was a good place for ethnic groups to mix, but Chinese respondents were far less certain. Some Chinese respondents questioned whether eating different foods in a shared restaurant space amounted to social integration, while others were unsure whether New Zealanders really liked Chinese people and considered that the precinct did not contain enough "Kiwi stuff".
 - • c. Non-Chinese respondents reported that the precinct was a place for Asian or Chinese people rather than the broader community. Although some interviewed viewed this in a positive sense, others considered it "alienating" or "uninviting".

2.355 The report noted that, in contrast to other countries such as Australia and Canada, there has been little attempt at either central or local government level in New Zealand to market ethnic precincts to appeal to a broad and diverse customer base. Overseas, the ethnic diversity of these areas serves as a "commodity" which can be capitalised on in order to extend economic productivity, particularly in tourist revenue, for example through ethnic

markers such as Chinese gates and lanterns.⁶³⁶ The report concluded that, in order to ensure that all Aucklanders could participate equally in the city's growing and diverse economy and enjoy its benefits (that is, obtain financial capital), Auckland Council needed to foster a stronger sense of community and belonging (that is, build social capital). Recommendations included promoting local cultural events and projects, engaging with the local community to find out how to improve perceptions of safety in the area, and working with the business community when planning events so as to leverage the expertise of local business owners and ensure their active participation in such events.⁶³⁷ The potential to promote opportunities for social cohesion through "place-space" initiatives in urban governance is also being examined as part of the Max Planck Institute's global diversity study.⁶³⁸

2.356 Various local and central government initiatives that aim to promote social cohesion and integration are either being developed or have already been implemented, as discussed at in the Stocktake of public agencies in **Chapter Five**. A sense of security and acceptance of migrants by Māori is a vital precursor to New Zealand as a whole embracing multiculturalism.⁶³⁹

Overseas Investment

2.357 Foreign investment in New Zealand, and how it is regulated, is a key example of how the financial capital benefits from superdiversity can challenge social capital.

2.358 On the one hand, New Zealand benefits from access to foreign capital for investment. Foreign investors enable asset holders in New Zealand, such as farmers, to obtain prices for their property they would not be able to obtain from an exclusively domestic market. New Zealand has obtained over \$100 billion in investment since 2005 that would otherwise not have been available to New Zealanders.

2.359 On the other hand, foreign investment in New Zealand, if not well managed, threatens social capital because of public concerns about losing control of strategic assets, changes to New Zealand's value system, and xenophobia.

Access to Financial Capital

2.360 It has been claimed that the "relaxation" of the rules in 2005 – whereby Overseas Investment Office ("OIO") involvement was only required when foreign investment involved expenditure of more than \$100 million – has seen foreign ownership in New Zealand increase from \$9.7 billion in 1989 to \$101 billion in 2014.⁶⁴⁰ Between 1989 and 2007, foreign ownership of the New Zealand share market increased from 19 per cent to 41 per cent but has since dropped back to 33 per cent.⁶⁴¹

2.361 It is difficult to accurately measure foreign direct investment ("FDI") for a number of reasons, including:⁶⁴²

- a. A number of OIO transactions are deemed confidential;
- b. Some New Zealand listed companies may be included in data sets because their share register contains overseas investors;
- c. Takeovers occurring in overseas markets and initial public offerings can trigger OIO applications because of a change in control;
- d. Certain Australian investors are no longer required to make an OIO application where the consideration is less than \$477 million, and the investment does not include sensitive land or fishing quota;
- e. Not all OIO decisions necessarily proceed to settlement or result in investment;
- f. In small markets such as New Zealand, just one large investment can change which country tops the list of FDI by source country.

2.362 According to KPMG, Canada was New Zealand's most significant source of FDI for the 2013/2014 period (comprising 22 per cent of total FDI).⁶⁴³ This was the result of two major transactions, namely the sale of a property portfolio of 18 assets held by AMP Capital

Property Portfolio to the Public Sector Pension Investment Board ("PSP"), and an increase in PSP's investment in Kaingaroa Timberlands Limited. Approximately 59 per cent of FDI originated from the United States, Canada, Australia and Europe, with Asia accounting for 33 per cent of total FDI (up from 16 per cent since 2012). China and Japan remained the key sources of FDI from Asia, making up 42 per cent and 20 per cent of total investment from Asia.⁶⁴⁴ The focus of Chinese investment was on agribusiness (49 per cent of total agribusiness investment), while Canada and the United States made significant confidential investments in forestry in the reporting period.⁶⁴⁵ The United States was the largest acquirer of land for the 2013–2014 period (46 per cent of land acquisitions), followed by China (11 per cent) and The Netherlands (9 per cent).

Threats to Social Capital from Overseas Investment

2.363 The controversy surrounding the volume of land, business and strategic assets approved for purchase by foreigners has eroded trust, and thus social capital.

2.364 Higher levels of foreign investment have generated public controversy. At the time of writing, the Government had just declined the sale of Lochinver Station, a farming station near Taupo, to China's Shanghai Pengxin Group, against the recommendation of the OIO (though Chinese investors are still expressing interest in New Zealand farmland, despite the decision).⁶⁴⁶ That decision did not involve any changes to the rules governing overseas investments in sensitive land. But it did appear to signal a change in approach, with Ministers using the discretion conferred on them under the Overseas Investment Act 2005 to decline the application on the grounds that it would not generate sufficient benefits for New Zealand. In particular, the decision raises questions about how the OIO will apply the counter-factual test used for assessing the benefits of a proposed transaction.

2.365 The decision is likely to deter some overseas investors from purchasing sensitive land. The cost and delay of seeking consent is already a disincentive, and an increase in regulatory uncertainty will increase the perception that it is too difficult to buy sensitive land in New Zealand. But it should be borne in mind that the Lochinver decision was highly unusual in its scale (it involved over 13,000 ha of land) and it therefore remains to be seen whether the decision will have any long-term consequences.

2.366 An Asia New Zealand Foundation survey undertaken in 2014 reported that fewer New Zealanders believed that investment from Asia would have positive impacts on New Zealand's economy – down from 74 per cent the previous year to 64 per cent.⁶⁴⁷ Forty-one per cent of respondents also thought that New Zealand was allowing too much investment from Asia, up from 36 per cent the previous year.⁶⁴⁸ This is despite the fact that, as discussed above, the majority of FDI in New Zealand comes from Australia, Europe, the United States, Canada and the United Kingdom. According to a BNZ survey, 54 per cent of overseas home buyers come from Australia, Europe, the United Kingdom and South Africa, not Asia.⁶⁴⁹

2.367 Auckland's housing shortage has also been in the media spotlight this year. The latest OECD economic survey on New Zealand noted that the projected annual demographic housing demand in Auckland was roughly double the pace of recent building permit issuance.⁶⁵⁰

2.368 Although there has been a housing supply deficit for some time, migrant demand for housing has contributed to the issue.⁶⁵¹ There is concern from some members of the public that migrants coming to New Zealand, particularly from Asia, with capital to inject into the market are able to outspend New Zealand-born residents in the property market.⁶⁵² The decision made under this year's Budget to more rigorously monitor existing tax rules for property traders, particularly foreign buyers, discussed in more detail below, reflects the political tension among some Auckland MPs in this area.⁶⁵³

2.369 In July this year, Labour's housing spokesman, Phil Twyford, released leaked real estate data to the media suggesting that people of Chinese descent accounted for 39.5 per cent of the property transactions in Auckland between February and April 2015.⁶⁵⁴ Many expressed concern not only about the legitimacy and accuracy of the data (which was compiled by comparing Census data to buyers' surnames on the electoral roll), but about Labour's approach to the issue of foreign ownership, which was seen to target the entire Chinese

community, not just foreign buyers.⁶⁵⁵ This illustrates the difficulty in ensuring that financial capital does not come at the expense of social capital.

2.370 Professor Paul Spoonley has remarked that, while the media has exaggerated the extent of the issue, increasing migrant demand for housing has nevertheless added a new dimension to the housing market. Around half of the growth in households between 2011 and 2031 is projected to take place in Auckland.⁶⁵⁶ If the high rates of migration are the new norm, then Auckland in particular will need to adjust its housing policies, as the status quo is unsustainable.⁶⁵⁷ However, as discussed at [1.8], New Zealand's net migration is volatile, and in the past 20 years has ranged between a net gain of 41,600 one year to a net loss of 12,600. As noted in a Productivity Commission inquiry into using land for housing, "this volatility can result in unpredictable fluctuations in housing demand".⁶⁵⁸ Other factors such as the increase in demand for one-person and couple-only households, driven in part by New Zealand's ageing population, has also contributed to the growing imbalance between supply and demand and rising house prices.⁶⁵⁹ The issue is, ultimately, a multifaceted one.

2.371 The Government also recently proposed to release several hundred hectares of Crown land in the Auckland region for development. In addition, the Government is considering opening up the skilled migrant category to allow migrant carpenters and builders to assist with the development, as was done in the Canterbury rebuild.⁶⁶⁰

2.372 Historically, there have been three key drivers behind controversy concerning overseas investment in New Zealand and consequent regulatory change: strategic assets, national identity and xenophobia.

Strategic Assets

2.373 Control of assets perceived as "strategic", such as airports, has caused public concern in the past. This concern is not unusual. Governments, such as those in Australia and the United States, tend to be extremely anxious to retain control over key assets which are important to national security.⁶⁶¹ For example, foreign investors were recently ordered to sell six properties valued between A\$152,000 and A\$1.86 million in Sydney, Brisbane and Perth.⁶⁶² The buyers broke Australia's prohibition on foreign investors purchasing existing homes. New Zealand's legislation, however, does not identify what assets might be considered strategic, or clearly address how concerns about ownership might be dealt with. This raises the question, should we be more concerned about overseas investors being able to control certain industries?

Value System/National Identity

2.374 The large-scale "buying-up" of land by foreigners, as the media often portrays it, taps into fears informed by a settler mentality held by New Zealanders that they are losing control over their own land. With no chance of owning land in Britain, British settlers came to New Zealand to secure land and work hard. The freedom with which land was acquired and subsequently farmed informs New Zealanders' relationship with the land. When large tracts of land are acquired by foreigners, New Zealanders feel they are losing control and autonomy – tapping into a fear of being locked out again. Local communities, especially, want to know that they are not losing control when foreign investors buy up rural land around them – they want to be reassured that their futures are secure.

Xenophobia

2.375 Finally, controversy surrounding overseas investment proposals in the past appears to have been informed, at least in part, by a sense of xenophobia – a fear of losing control over our land to people who "look different", and thus do not understand our culture.

2.376 Overall, what we have seen over the course of the OIO's operation are periodic changes to the overseas investment regulations and rules to add more criteria in a process of "accretion". There are now around 30 criteria requirements to meet in the law and regulations. In practice, this does not necessarily mean that the bar is higher for applicants, but it does mean that applications are more complicated. This has been accompanied by a tightening up of compliance monitoring by the OIO: the OIO is actively checking whether the relevant

investor is complying with the conditions of its consent, and is making compulsory divestment a condition for failure to do so.⁶⁶³

2.377 As part of its Budget package, the Government has announced changes to property taxation rules, including requiring the registration of foreign investors.⁶⁶⁴ From 1 October 2015, the following changes will be implemented:

- All non-residents buying and selling property other than their main home must provide a New Zealand IRD number as part of the land transfer process with Land Information New Zealand;
- All non-resident buyers and sellers must provide their tax identification number from their home country, along with current identification requirements such as a passport; and
- Non-residents must have a New Zealand bank account before they can get a New Zealand IRD number, so as to ensure all New Zealand's anti-money laundering rules apply.

2.378 Despite this, concerns have been raised by some MPs and the banking industry that foreign buyers may be able to get around the Government's attempts to gather information by opening bank accounts which are then never used.⁶⁶⁵ The Government has since indicated that, depending on whether the data collected indicates that high numbers of foreigners are buying in New Zealand, it may be open to following Australia's approach of imposing restrictions on foreign buyers.⁶⁶⁶

Recommendations

- Government agencies such as the OEC and MBIE should publish information about the value of diversity for business, and should increase initiatives such as conferences and knowledge workshops to encourage interface between ethnic and mainstream businesses as New Zealand's superdiversity grows.
- Presently, financial or physical capital is officially defined as "fixed assets in production processes, which can be tangible (for example, machinery, buildings, houses, roads) or intangible (for example, computer software, intellectual property)" and includes "equities, assets and liabilities that have a degree of liquidity, such as bank deposits, debt, and government bonds".⁶⁶⁷ The potential for low social capital to undermine financial capital indicates the need to develop a new definition of "financial capital" with a social capital component in order to reflect the interrelationship between the two concepts.
- There needs to be an active investment by government to ensure racial harmony in a superdiverse society. This includes ensuring the HRC is adequately funded to carry out its primary statutory function to advocate and promote respect for, and an understanding and appreciation of, human rights, and to encourage the maintenance and development of harmonious relations among diverse groups in New Zealand society.⁶⁶⁸ This role will be more challenging as New Zealand's superdiversity grows. Superdiversity can create multiple potential challenge points.

P O L I C Y

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

List of Recommendations for Policy Section

Recommendations coming out of the policy challenges include:

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

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

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

Immigration Law and Policy

3.3 Immigration to New Zealand is a privilege, not a right. The Government determines how many migrants we take, and provides them with information to assist them to settle. The Government sets the preconditions for their entry and the period they can stay, whether permanent or temporary. However, immigration policies must be ethnically neutral. New Zealand's policy of granting residence to migrants based on their race formally ended in 1987.⁶⁶⁹

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

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

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

Point One: Immigration as a Tool of Economic Policy

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

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

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

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

Point Two: Regular Review of Settlement Programmes Needed

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

3.17 The key policy document governing integration of migrants and refugees is MBIE's New Zealand Migrant Settlement and Integration Strategy (“the Strategy”) and its five integration outcomes, which Cabinet agreed to on 23 July 2014. The Strategy focuses exclusively on migrant needs, as refugees have different settlement needs and experiences, which are catered to through the New Zealand Refugee Settlement Strategy 2012.⁶⁸⁹ Specific initiatives are tailored to the pre-arrival, arrival, and settlement and integration stages. Settlement programmes are funded both by the Government and by migrants (through a levy) and/or are provided by Immigration New Zealand, the Ministry of Education, the Tertiary Education Commission (“TEC”), and the Ministry of Social Development. A comprehensive list of government settlement and integration initiatives is set out in Appendix Three, including for example:

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

- Adult Community Education and subsidised ESOL classes; and
 - English for Migrants programmes, such as the Skilled Migrants Programme (see discussion at [3.24]).
- 3.18 The Strategy's five integration outcomes – employment, education and training, English language, inclusion, and health and wellbeing – strongly correlate and act to facilitate the achievement of the Strategy's overarching outcome, that is for "migrants [to] make New Zealand their home, participate fully and contribute to all aspects of New Zealand life".⁶⁹⁰ The Strategy also includes a number of success indicators under each integration outcome.
- 3.19 New strategic governance arrangements were also introduced under the Strategy in order to monitor progress towards the integration outcomes. There is greater cross-agency oversight, collaboration and coordination through the Skilled and Safe Workplaces Chief Executives' Group and the Migrant Settlement and Integration Senior Officials' Group.
- 3.20 In November 2013, the Office of the Auditor-General undertook a review of how support for the Strategy was operating.⁶⁹¹ The audit concluded that Immigration New Zealand and its government partners needed to enhance the targeting of resources and better understand the outcomes being achieved from the delivery of settlement services. In response, MBIE led the development of the cross-government Strategy and in its first year of implementation issued a revised assessment of government services to identify gaps and inform changes to service provision.⁶⁹² The report found that although most migrants were eligible to access settlement services in the areas of inclusion, education and training, and health and wellbeing, there were eligibility gaps in English language services and employment.
- 3.21 For example, in terms of funding for English language initiatives, there was a lack of programmes for migrants who already had good English language proficiency but required further support to develop higher level language skills desired by employers.⁶⁹³ Further, the review identified the need to better spread services so they were not all concentrated in one region.⁶⁹⁴ Employment initiatives were not available nationwide, and the level of services available varied by region. This is concerning given that employment is both a "means and marker" of social integration for migrants.⁶⁹⁵ Further, the report noted that the increased focus on and usage of online services have resulted in a decrease in reliance on face-to-face support. Nevertheless, this support continues to be offered throughout New Zealand as it better supports positive settlement outcomes for certain migrants. It further noted that temporary migrants, in particular, are often ineligible for services that are key to successful settlement and maximising the skills New Zealand needs to prosper.
- 3.22 Agencies are currently in the process of revising, or are about to review, their programmes to realign key services to the Strategy's priorities and meet identified gaps in service provision.⁶⁹⁶ Of course, institutional response is just one factor relevant to successful settlement outcomes; social capital needs to be fostered in communities as well, and forms part of the "retention picture".⁶⁹⁷
- 3.23 Ultimately, future policies in this area will need to focus on ensuring settlement services are targeted to address these issues. Enhancing migrants' ability to access appropriate settlement programmes will not only be crucial to ensuring social cohesion in an increasingly diverse New Zealand, but is also necessary for this country to gain the full benefits of the diversity dividend.⁶⁹⁸

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Case Study – Skilled Migrant Programme, Victoria University of Wellington

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

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

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

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

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

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

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

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

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

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

Point Three: Immigration Raises Issues of Social Capital

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

- 3.38 There are also claims that Chinese buyers are putting the housing market out of reach of average Kiwis, as discussed at [2.368].⁷⁰⁷ There is concern from some members of the public that migrants who are coming to New Zealand with capital to inject into the market are able to outspend New Zealand-born residents in the property market. Although the focus is on those not living in New Zealand, at an auction who can tell the difference between permanent residents, citizens and foreigners?
- 3.39 As noted in MBIE's *Briefing to the Minister of Immigration 2014*, various global developments, such as "increasing people mobility, the changing mix of migrant source countries and strong 'push' factors in many regions of the world are increasing the risk of illegal migration, transnational crime and exploitation", which in turn threatens to undermine social capital.⁷⁰⁸
- 3.40 In order to protect the diversity dividend and ensure that New Zealand continues to attract skilled migrants, students and visitors, New Zealand's immigration policies and laws need to protect migrants from exploitation, as discussed below at [3.43] and at [2.130], and encourage their retention and integration into local communities and the labour market.⁷⁰⁹ The OECD's latest economic survey of New Zealand observed that this country had a good record of integrating migrants into labour markets and society, which was largely attributable to the emphasis of New Zealand's immigration policy on skills shortages, employment and work experience.⁷¹⁰
- 3.41 In order to further improve labour market integration, it recommended that greater weight be placed on English language proficiency, either in the migrant selection process or post-migration in the form of language training support and monitoring.⁷¹¹ Although people who wish to enter New Zealand through the skilled migrant category need to meet Immigration New Zealand's English language requirements (that is, a score of 6.5 in IELTS, a recognised English language qualification, or ongoing skilled employment in New Zealand for 12 months, together with an IELTS score of at least 5), their partners and/or children are subject to less stringent requirements.⁷¹²
- 3.42 We also need to recognise that the majority of migrants currently in New Zealand are on temporary visas and do not have to demonstrate competence in English at all. Should they wish to improve their English while they are in New Zealand, temporary visa holders often find it difficult to access or afford English language tuition. New Zealand therefore needs to invest in a broad spread of English language support for the range of needs of migrants in workplaces and the community.

Point Four: Migrants Exploiting Migrants

- 3.43 In 2013, the Labour Inspectorate and Immigration New Zealand reported an increase in complaints involving the exploitation of migrant workers, and emphasised the need for additional protections for migrant workers.⁷¹³ This included reports of international students and temporary visa holders being underpaid, trapped on their employers' premises and in extreme cases, forced into prostitution.⁷¹⁴
- 3.44 Temporary migrant workers are particularly vulnerable to exploitation, as they have lesser access to social services such as income support, and can be hesitant about approaching authorities out of fear that this may have adverse implications for their immigration status.⁷¹⁵ Migrant workers also tend to be more reliant on employers, requiring their support to remain in New Zealand, thus creating a significant power imbalance between employer and employee.⁷¹⁶ Many migrants are also unfamiliar with their employment entitlements under New Zealand law, for example under the Minimum Wage Act 1983. A number of these exploitation cases have involved employers who themselves were former migrants.⁷¹⁷
- 3.45 A Regulatory Impact Statement by MBIE exploring how to resolve this issue noted that there is currently an uneven response to exploitation depending on the immigration status of the relevant migrant: while those who exploit illegal workers are subject to heavy sanctions,⁷¹⁸ those who exploit *lawful* migrant workers face only "low risks of being held to account."⁷¹⁹ This led to the enactment of the Immigration Amendment Act 2015.

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

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

Recommendations

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

The Education Sector

Compulsory Education

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

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

Point One: Schools Are Becoming More Ethnically Diverse

- 3.55 The ethnic composition of students in compulsory education has changed dramatically over the last few years. The increasing numbers of students from ethnic minorities and from overseas has various implications for schools, who are dealing with a growing proportion of students for whom English may not be a first language and who come from very different cultures. New Zealand boards of trustees are gradually becoming more ethnically diverse.⁷²⁸ In 2014, 18.7 per cent of board members were *Māori*, 4.6 per cent were Pacific people and 1.25 per cent were Asian, compared with 15.7 per cent, 3.07 per cent and 0.75 per cent respectively in 2004.⁷²⁹ The teaching workforce is also slowly becoming more ethnically diverse. In 2015, 9.8 per cent of teachers identified as *Māori*, up from 9.2 per cent in 2004; 2.7 per cent identified as Pacific peoples, up from 2.06 per cent in 2004; and 3.5 per cent identified as Asian, up from 2.73 per cent in 2004.⁷³⁰

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

Accommodating Diversity: The New Zealand Curriculum and the Legal Framework

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

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

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

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

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

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

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

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

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

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

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

ESOL Measures

3.69 English for Speakers of Other Languages (“ESOL”) resources and supports, including bilingual teacher aides and language assistants, bilingual assessments, and scholarships for teachers to build their knowledge of teaching language, are one key initiative for English language learners.

3.70 In addition to the standard operational funding that each student generates, there are other special funding entitlements available to schools to address the particular needs of migrant and refugee background students. Schools apply, on behalf of individual eligible students, for ESOL funding to provide language support programmes (with additional teachers, teacher aides or language assistants) and resources.

3.71 In 2015, there were 34,477 students on the database from 1,342 schools provided with ESOL-funded tuition. These students represented 157 different ethnic groups from 166 different countries of birth, speaking 126 different languages. Of these students 68.8 per cent were in the northern region of New Zealand.

3.72 Of the 1,342 schools funded in 2015, the numbers of ESOL-funded students vary greatly:

- a. One Auckland school had over 300 ESOL-funded students;
- b. Seven schools had 200 to 299 students (all in Auckland);
- c. 60 schools had 100 to 199 students (all in Auckland);
- d. 137 schools had 50 to 99 students;
- e. 292 schools had 20 to 49 students;
- f. 222 schools had 10 to 19 students; and
- g. 623 schools (46.4 per cent) had one to nine students (215 schools only have one or two students). The largest region for schools with one or two students is Otago/Southland with 42 schools, followed by Waikato with 32 schools. Auckland has the least amount of schools with one or two students (11 schools).

3.73 Individual funding levels range from \$650 plus GST to \$1,900 plus GST per annum, with the different funding levels determined by the differing status of the students (according to year level, migrant or refugee background, date of arrival in New Zealand etc). Students may be eligible for up to five years of funding.⁷⁵³ The total ESOL funding for the 2014/15 year is \$28.114 million.

Other Targeted Funding Initiatives

3.74 In addition to the ESOL funding support the MoE provides for each eligible student, funding is available for additional initiatives to meet the needs of migrant and refugee background students. This includes bilingual tutor funding to enable schools to employ bilingual tutors to provide support with mainstream class programmes.

3.75 The Refugee Flexible Funding Pool is another source of discretionary funding that enables schools to implement a further range of support initiatives for students from a refugee background. These include the employment of education coordinators in schools, the employment of bilingual liaison workers to assist schools in making contact with families and communities, and supporting refugee homework centres. This funding pool is in the amount of \$592,000 annually.

3.76 The Refugee Pathways and Career Planning support initiative for refugee background students may also be implemented in targeted schools. This initiative assists schools to provide specialised individual support in planning appropriate learning pathways towards

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

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

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

Point Two: Faith in Schools

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

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

Public Primary and Secondary Schools

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

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

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

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

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

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

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

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

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

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

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

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

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

Private and Integrated Primary and Secondary Schools

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

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

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

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

3.95 Further, the Integration Act requires that schools be:⁷⁷⁴

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

Point Three: Export Education and International Students

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

3.97 Government actions undertaken to support the *Leadership Statement* include:⁷⁷⁶

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

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

3.98 In the 2013/14 reporting period, the number of international students increased by 15 per cent from 2012/13, following decreases over the previous two years.⁷⁷⁷ International students comprised 14 per cent of tertiary enrolments in New Zealand in 2014.⁷⁷⁸ In contrast, international student enrolment rates in 2014 were markedly lower in the primary, composite and secondary school sectors, where international students formed only 0.23 per cent, 1.63 per cent and 2.96 per cent of total enrolments respectively.⁷⁷⁹

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

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

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

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

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

Recommendations

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

Language Policy

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.112 The Strategy's Action Plan includes:

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

A National Languages Policy?

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

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

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

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

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

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

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

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

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

Recommendation

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

The Health System

Legal Issues

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

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

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

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

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

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

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

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

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

Existing Policies

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

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

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

The Criminal Justice System

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

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

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

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

Point One: Different Cultural Offending

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

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

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

Point Two: Improved Ethnic Representation on Juries

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

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

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

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

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

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

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

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

Point Three: Ethnic Representation in the Judiciary

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

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

Point Four: Treatment of Prisoners in Custody

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

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

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

3.142 Further, as per the Operations Manual:⁸⁴¹

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

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

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

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

Recommendations

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

Family and Child Law Policy

Female Genital Mutilation/Female Circumcision

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

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

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

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

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

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

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

3.149 FGM is prohibited in the United Kingdom by the Female Genital Mutilation Act 2003 (UK), which replaced the Prohibition of Female Circumcision Act 1985 (UK). However, the first prosecution for FGM (which resulted in an acquittal) was not brought until 2014.⁸⁵⁰ The Home Affairs Committee noted that, “there has rightly been increasing public outrage at the failure to achieve a prosecution in the 29 years that FGM has been a crime”.⁸⁵¹ The Committee considers that the lack of prosecutions is attributable to the fact that there have been “very few investigations by the Police” into allegations of FGM.⁸⁵² The Police told the Committee that this was because victims and witnesses are unlikely to report FGM to the Police, as victims are typically young and often are unaware FGM is a crime.⁸⁵³ The Police also considered that “health, education and social care professionals” had failed to refer suspected FGM cases to the Police.⁸⁵⁴ The failure of professionals to refer suspected cases of FGM to the Police has been attributed to “a lack of awareness of the indicators” of FGM.⁸⁵⁵ Professionals aware of FGM indicators “may be reluctant to intervene because of cultural sensitivity and a fear of being seen as racist or because they are unsure how to make a referral”.⁸⁵⁶

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

Marriage and Immigration

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

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

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

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

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

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

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

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

Adoption Law

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

3.157 Where a person has adopted a child overseas before coming to New Zealand, s 17 of the Adoption Act 1955 will usually apply. Section 17(1) provides that a legal adoption recognised in a person's country of origin will have the same effect as a legal adoption in New Zealand. For example, in *Sharif v Attorney-General*, the High Court held that a Pakistani customary adoption was legally valid under New Zealand law.⁸⁶³ This was despite the fact that Pakistan, as a Muslim state, prohibited the "blurring of bloodlines and the loss of inheritance entitlements", both of which are consequences of an adoption order under the Adoption Act 1955.⁸⁶⁴

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

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

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

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

Burial Practices and Death

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

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

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

Animal Rights Law and Halal Slaughter

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

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

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

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

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

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Existing Legal Framework for the Protection of Minority Rights

- 4.1 As the diversity of the population increases, it is likely that the legal framework against discrimination and for the protection of minority rights in New Zealand, which includes the HRA, the NZBORA and the Employment Relations Act 2000 (“ERA”) will be utilised more frequently.
- 4.2 The ERA prohibits employers from discriminating against their employees and requires them to protect employees from racial harassment. It allows employees to bring personal grievance claims against current or former employers on grounds including the employee being discriminated against in their employment⁸⁷⁹ or being racially harassed.⁸⁸⁰
- 4.3 Most legal challenges to date have been resolved under the HRA, which contains anti-discrimination provisions designed to protect the rights of minorities, particularly in the employment context. Those that have been brought under the NZBORA have, for the most part, invoked ss 13 (freedom of thought, conscience and belief), 15 (freedom to manifest religious belief) and 19 (non-discrimination) rather than s 20, which provides protection for the rights of minorities and, in particular, their right to enjoy their culture, to profess and practise their religion, and to use their language. Section 20 is not as potent as the Treaty of Waitangi as a source of protection for Māori rights, but it is legally enforceable against the Crown in a way that the Treaty is not, unless the Treaty is expressly incorporated into law, and may add positive obligations beyond the protections in the HRA for non-indigenous minorities.

Recommendation for Legal Implications Section

- New migrants should be educated about employment laws, the HRC and the Human Rights Review Tribunal (“HRRT”) and its powers to enforce the prohibitions on discrimination in the HRA. The education programme should also explain the dispute resolution role of the HRC, and that the Director of Proceedings can bring a case on behalf of an applicant.

The Human Rights Act 1993

- 4.4 The HRA prohibits discrimination on grounds including religious belief,⁸⁸¹ ethical belief (which means the lack of a religious belief, whether in respect of a particular religion or religions or all religions),⁸⁸² colour,⁸⁸³ race,⁸⁸⁴ or ethnic or national origins (which includes nationality or citizenship).⁸⁸⁵

Discrimination by the Government

- 4.5 Part 1A of the HRA applies to acts or omissions by the legislature, judiciary or the executive, or any person or body in the performance of any public function, power, or duty conferred or imposed on that person or body by or pursuant to law.⁸⁸⁶
- 4.6 The HRRT can grant remedies for breaches of the HRA,⁸⁸⁷ including declarations of inconsistency where enactments are in breach of Part 1A.⁸⁸⁸

Discrimination by Private Individuals or Entities

- 4.7 Part 2 applies to acts or omissions by private entities and prohibits discrimination on prohibited grounds in various circumstances, including, in particular, employment.
- 4.8 The HRA states that, where an applicant for employment or an employee is qualified for work of any description, it shall be unlawful for an employer, by reason of any prohibited ground of discrimination:⁸⁸⁹
- a. to refuse or omit to employ the applicant on work of that description which is available; or
 - b. to offer or afford the applicant or the employee less favourable terms of employment, conditions of work, superannuation or other fringe benefits, and opportunities for training, promotion, and transfer than are made available to applicants or employees of the same

or substantially similar capabilities employed in the same or substantially similar circumstances on work of that description; or

- c. to terminate the employment of the employee, or subject the employee to any detriment, in circumstances in which the employment of other employees employed on work of that description would not be terminated, or in which other employees employed on work of that description would not be subjected to such detriment; or
- d. to retire the employee, or to require or cause the employee to retire or resign.

4.9 The HRA also protects against indirect discrimination:⁸⁹⁰

Where any conduct, practice, requirement, or condition that is not apparently in contravention of any provision of this Part has the effect of treating a person or group of persons differently on 1 of the prohibited grounds of discrimination in a situation where such treatment would be unlawful under any provision of this Part other than this section, that conduct, practice, condition, or requirement shall be unlawful under that provision unless the person whose conduct or practice is in issue, or who imposes the condition or requirement, establishes good reason for it.

4.10 In assessing whether an employer has discharged his or her obligations under the HRA, the relevant tribunal or court will engage in an evaluative analysis of the reasonableness or proportionality of the employer's response, which will involve considering the significance of the right in question and the purpose of the HRA.⁸⁹¹

4.11 There are various exceptions to the general rule against discrimination in employment matters in ss 24–34 of the HRA, including, for example, national security work, work in organised religion, or the armed forces (among others).

4.12 Pursuant to s 28(3), employers must accommodate practices that are required by an employee's religious or ethical belief, so long as any adjustment of the employer's activities "does not unreasonably disrupt the employer's activities".

4.13 In *Nakarawa v AFFCO New Zealand Ltd*, the employer had made no effort to accommodate the employee's religious practices, and was thus found to have breached the HRA.⁸⁹² The plaintiff, who was a member of the Church of God, was fired for not working on Friday nights and Saturdays prior to sunset in order to observe the Sabbath. The HRRT, in examining the meaning of "unreasonably disrupt", concluded that the term was "relative" and could not be given a "hard and fast meaning".⁸⁹³ The Tribunal explained that "[e]ach case will necessarily depend on its own facts and circumstances and it will come down to a determination of 'reasonableness' under the unique circumstances of the particular employer-employee relationship".⁸⁹⁴

4.14 Referring to the Canadian Supreme Court's decision in *McGill University Health Centre (Montreal General Hospital) v Syndicat des employés de l'Hôpital général de Montréal*, the Tribunal noted that the scope of the individualised nature of the duty to accommodate "varies according to the characteristics of each enterprise, the specific needs of each employee and the specific circumstances in which the decision is to be made".⁸⁹⁵ The Tribunal was clear, however, that it is not only incumbent on the employer to try to find a suitable solution in such cases, but "[t]he search for an accommodation must also involve the employee and the employee concerned must, to a certain extent, help out with efforts to arrive at an accommodation".⁸⁹⁶

4.15 Section 28(3) is also engaged when the religious practice of employees requires them to wear certain pieces of clothing, for example, a turban, hijab or yarmulke. Difficulties arise when a neutral dress or grooming code requirement has adverse impacts on employees whose religious belief requires them to observe a particular dress or grooming code.⁸⁹⁷ If the code conflicts with one particular cultural or religious code, this may constitute indirect discrimination under s 65 of the HRA. However, where an employer can show "good reason" for the code (for example, on grounds of health, safety or hygiene), that indirect discrimination can be justified.

4.16 The HRA also establishes other exceptions to the prohibition of discrimination on the basis of religion in relation to employment matters. For example, the HRA does not prevent different treatment based on sex where the position is for the purposes of an organised religion and is limited to one sex so as to comply with the doctrines or rules or established customs of the religion.⁸⁹⁸ The HRA also does not prevent different treatment based on religious or ethical belief in the employment of principals or teachers in private or integrated schools, or of social workers by particular faith-based organisations.⁸⁹⁹

4.17 However, even where an exception is provided for in relation to employment matters, the HRA states that the exception cannot be used:⁹⁰⁰

... if, with some adjustment of the activities of the employer (not being an adjustment involving unreasonable disruption of the activities of the employer), some other employee could carry out those particular duties.

4.18 An employer therefore must act reasonably when confronted with requests to accommodate different cultural and/or religious practices in the workplace.

4.19 In *Haupini v SRCC Holdings Ltd*, the plaintiff, a Māori employee, was asked to cover up a moko on her left forearm at a social catering event.⁹⁰¹ The plaintiff claimed that her employer had afforded her less favourable conditions at work and/or subjected her to detriment on the basis of her race and/or ethnic or national origins, which constituted direct discrimination contrary to the HRA. The HRRT held that the employer's request for the plaintiff to cover up was not so closely linked with her ethnicity or race that it could be said to be an act of direct (or for that matter, indirect) discrimination.

4.20 The Tribunal considered that the plaintiff's direct discrimination claim may have had greater prospects of success had "culture" been a prohibited ground of discrimination under the HRA.⁹⁰² However, the Tribunal concluded that it would be wrong to force what was really a claim for direct discrimination on the basis of culture into concepts of race and/or national or ethnic origin.⁹⁰³ Even if culture had been a prohibited ground, the Tribunal was reluctant to accept the plaintiff's general proposition that Māori would consider the employer's "no tattoos" policy to be "disrespectful of their whakapapa, cultural tradition and custom" in the absence of evidence supporting such a contention.⁹⁰⁴

4.21 In light of the Tribunal's comments, would the plaintiff in this case have fared better by relying on s 20 of the NZBORA, which specifically protects minority rights to the enjoyment of culture?⁹⁰⁵ The likely answer is that, even if a breach of s 20 had been established – which was by no means certain in this case given that evidence would have been required to establish that a sufficient proportion of Māori would have seen the "no tattoos" policy as a denial of their right to enjoy their culture – the limit the employer imposed may, in any case, have been held to be reasonably justified under s 5 of the NZBORA. Although the Tribunal expressed no final view on whether the employer had "good reason" for the policy, it did note that there was certainly room for such a view.⁹⁰⁶

Enforcement

Human Rights Review Tribunal

4.22 Where a dispute about compliance with the requirements of Parts 1A and 2 of the HRA cannot be resolved by the HRC's own dispute resolution process, the complainant may ask the Director of Human Rights Proceedings to represent them in proceedings before the HRRT.⁹⁰⁷ Even if the Director decides not to provide representation to the complainant, the complainant or the HRC may still bring civil proceedings before the HRRT.

4.23 The details of how the Tribunal operates, along with some of its significant decisions, are addressed in detail in the second edition of the *Public Law Toolbox*.⁹⁰⁸ In short, the Tribunal sits with a Chair and two lay members appointed from a panel by the Chairperson for the purposes of each hearing.⁹⁰⁹ The Tribunal operates much like a court in terms of the treatment of evidence and persons entitled to be heard.⁹¹⁰

- 4.24 The Tribunal must act according to the substantial merits of the case, without regard to technicalities, and must act:⁹¹¹
- *in accordance with the principles of natural justice; and*
 - *in a manner that is fair and reasonable; and*
 - *according to equity and good conscience.*
- 4.25 If the Tribunal finds that there has been a breach of Part 1A of the HRA, the only available remedy is a declaration of inconsistency with the NZBORA.⁹¹² Otherwise, the Tribunal may grant one or more of the remedies listed in s 92I(3), including:
- A declaration that the defendant has committed a breach of Part 1A or Part 2 or the terms of a settlement of a complaint;
 - An order restraining the defendant from continuing or repeating the breach, or from engaging in, or causing or permitting others to engage in, conduct of the same kind as that constituting the breach;
 - Damages in accordance with ss 92M–92O;
 - An order that the defendant perform any acts specified in the order with a view to redressing any loss or damage suffered by the complainant or, as the case may be, the aggrieved person as a result of the breach;
 - An order that the defendant undertake any specified training or any other programme, or implement any specified policy or programme, in order to assist or enable the defendant to comply with the provisions of the HRA;⁹¹³ and
 - Any other relief the Tribunal thinks fit.⁹¹⁴

Recommendation

- New migrants should be educated about employment laws, the HRC, and the HRRT and its powers to enforce the prohibitions on discrimination in the HRA. The education programme should also explain the dispute resolution role of the HRC, and that the Director of Proceedings can bring a case on behalf of an applicant.

Racial Hostility

- 4.26 Section 61 of the HRA makes it unlawful to excite hostility or bring into contempt a group of people by reason of their colour, race, or ethnic or national origins. Section 61(1) states:

(1) *It shall be unlawful for any person—*

(a) *to publish or distribute written matter which is threatening, abusive, or insulting, or to broadcast by means of radio or television words which are threatening, abusive, or insulting; or*

(b) *to use in any public place as defined in section 2(1) of the Summary Offences Act 1981, or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting; or*

(c) *to use in any place words which are threatening, abusive, or insulting if the person using the words knew or ought to have known that the words were reasonably likely to be published in a newspaper, magazine, or periodical or broadcast by means of radio or television,— being matter or words likely to excite hostility against or bring into contempt any group of persons in or who may be coming to New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.*

- 4.27 Section 61(2) provides an exemption for the media if they report material accurately.

4.28 Racial harassment is also unlawful under s 63 of the HRA. Section 63(2) provides an exhaustive list of areas in which racial harassment is unlawful for the purposes of s 63, specifically:

- a. The making of an application for employment:
- b. Employment, which term includes unpaid work:
- c. Participation in, or the making of an application for participation in, a partnership:
- d. Membership, or the making of an application for membership, of an industrial union or professional or trade association:
- e. Access to any approval, authorisation, or qualification:
- f. Vocational training, or the making of an application for vocational training:
- g. Access to places, vehicles, and facilities:
- h. Access to goods and services:
- i. Access to land, housing, or other accommodation:
- j. Education:
- k. Participation in fora for the exchange of ideas and information.

4.29 Section 131 of the HRA creates a criminal offence of inciting racial disharmony in substantially similar terms to s 61 of the HRA. However, in contrast to s 61, it is necessary to establish mens rea, that is, that the offence was committed with intent to excite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons. A person convicted under s 131 is liable to imprisonment for a term not exceeding three months or to a fine not exceeding \$7,000.

4.30 As I wrote in the second edition of the *Public Law Toolbox*, the threshold for the offence of inciting racial disharmony is high, and prosecution requires the consent of the Attorney-General.⁹¹⁵ The justification given for the Attorney-General's approval is that laws criminalising speech are undesirable.⁹¹⁶ For example, Kyle Chapman (leader of the Right Wing Resistance group and former leader of the New Zealand National Front) organised pamphlet drops attacking Asian minorities in Auckland, New Plymouth and Christchurch. The Race Relations Commissioner publicly said that the statements and pamphlets were despicable, but Mr Chapman had the right to free speech, and this had not crossed the line and breached the HRA.⁹¹⁷

4.31 Sections 61, 63 and 131 have rarely been used since the introduction of the HRA.⁹¹⁸ This contrasts with the high number of complaints alleging race discrimination. In the 2014 reporting year, the HRC received 456 enquiries and complaints alleging racial discrimination, which comprised 30 per cent of the total complaints received by the HRC.⁹¹⁹ Between 1 July 2014 and 30 June 2015, the HRC received 419 complaints about unlawful discrimination on race-related grounds, or 34 per cent of the total complaints received (see [2.123] for further discussion of discrimination complaints to the HRC).⁹²⁰

4.32 Where the threshold in ss 61, 63 and 131 cannot be met, however, other legislation may still apply. For example, if a publication represents (directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by virtue of their race, nationality, ethnic origin or religious beliefs, this must be taken into account in determining whether the publication is "objectionable" for the purposes of the Films, Videos and Publications Classification Act 1993.⁹²¹ It is an offence to make, copy, import, supply, distribute, possess, display or exhibit an objectionable publication.⁹²²

4.33 A person who acts in an offensive or disorderly manner towards a person because of their ethnicity or religious beliefs in a public place may also be liable for an offence under s 3 or s 4 of the Summary Offences Act 1981, which criminalise disorderly behaviour and offensive behaviour or language respectively.⁹²³ In order to be liable for disorderly behaviour, a

person must behave (or incite or encourage another person to behave) in a riotous, offensive, threatening, insulting or disorderly manner that is likely to cause violence against persons or property. A person will only be liable for offensive behaviour if the offence caused disturbance or disrupts public order.⁹²⁴ Whether a person has committed an offence will depend on the nature and circumstances of the case and whether the behaviour has offended against contemporary community standards of propriety and decency.⁹²⁵

4.34 Racial, religious and cultural considerations are also relevant at the sentencing stage and when determining whether to bring a prosecution. Under the Solicitor-General's Prosecution Guidelines issued by Crown Law, it is a public interest consideration in favour of prosecution "[w]here the offence was motivated by hostility against a person because of their race, ethnicity, gender, sexual orientation, disability, religion, political beliefs, age, the office they hold, or similar factors".⁹²⁶

4.35 Further, under the Sentencing Act 2002, it is an aggravating factor in sentencing where the offence is motivated by hostility towards a certain group of people (for example, racially motivated). Section 9 states:⁹²⁷

(1) In sentencing or otherwise dealing with an offender the court must take into account the following aggravating factors to the extent that they are applicable in the case:

... that the offender committed the offence partly or wholly because of hostility towards a group of persons who have an enduring common characteristic such as race, colour, nationality, religion, gender identity, sexual orientation, age, or disability; and

(i) the hostility is because of the common characteristic; and

(ii) the offender believed that the victim has that characteristic ...

4.36 Superdiversity may also challenge quasi-judicial bodies such as the Advertising Standards Authority's ("ASA") view of community standards. The majority of the ASA's members continue to be from New Zealand European backgrounds.⁹²⁸ For example, the ASA's refusal to uphold a complaint by the New Zealand Chinese Association ("NZCA") and others regarding AA Smartfuel's card advertisements is a good example of the need for legal institutions to remain apprised of evolving community standards as the population becomes more superdiverse.⁹²⁹ The advertisements featured an Asian taxi driver driving various customers around while speaking to the audience in broken English with an exaggerated accent and over-the-top hand gestures. The NZCA contended that the advertisements portrayed Asian people in a stereotypical manner that was reasonably likely to cause serious or widespread offence in contravention of Principles 3, 4 and 6 of the Code for People in Advertising. The NZCA also argued that the rapid growth of Asian communities since 2006 had resulted in a "significant shift in the values, expectations and standards held by the New Zealand community as a whole", and that New Zealanders now had a more sophisticated and better understanding of ethnic diversity. However, the Authority concluded that the allowance provided for humour under Principle 6 of the Code offset any negative racial connotations caused by the driver's accent and behaviour, which meant that the advertisements did not reach the threshold of causing serious or widespread offence to Asians on the basis of their ethnicity.

The Employment Relations Act 2000

4.37 As well as the general prohibition on discrimination in the workplace under the HRA, and the obligation under s 28(3) of the HRA on employers to try and accommodate the religious practices of an employee (insofar as doing so does not cause the employer unreasonable disruption), under the ERA, parties to an employment relationship have an overriding obligation to deal with each other in good faith.⁹³⁰ This will therefore overlay any negotiations within the workplace regarding faith or cultural requirements.

4.38 The issue of migrant employers exploiting migrant employees, and failing to comply with New Zealand's employment laws, is discussed at [3.43].

Time Off

4.39 More ethnically-diverse staff means more issues arising from religious diversity. The religious practices of employees can raise tensions between employers and employees. For example, a religious employee may require time off to attend a religious festival, or require regular “time-out” to pray, which can cause disruption for employers and to the normal functioning of the workplace.

4.40 Since 1 April 2011, employees and employers can agree in writing to transfer public holidays to another working day in order to celebrate a religious festival.⁹³¹ In addition, where an employee suffers bereavement, the employer must take into account any cultural responsibilities the employee might have in relation to the death in determining whether to allow a request for bereavement leave.⁹³²

Promotion or Imposition of Religious Practices at Work

4.41 The right to have a religious belief and the right not to hold religious beliefs are equally protected under the law.⁹³³ Accordingly, workers should not be required to attend a religious activity or act in accordance with a certain religious practice in the workplace. This could extend to, for example, the recitation of karakia or the singing of hymns in the workplace.

4.42 In *Proceedings Commissioner v Boakes*, an employer who belonged to the Exclusive Brethren terminated the employment of an employee because it was against his religious beliefs to employ married women.⁹³⁴ The Complaints Review Tribunal (the predecessor of the HRRT) concluded that this act was discriminatory and therefore amounted to a breach of the Human Rights Commission Act 1977 (the precursor of the HRA), as the dismissal occurred in circumstances where other employees with work of the same description would not have been dismissed.⁹³⁵

Health and Safety

4.43 Health and safety requirements in a workplace may also conflict with particular religious practices. For example, the requirement to wear a hard hat presents difficulties for Sikhs, who are required to wear a turban. Under the Land Transport (Road User) Rule 2004, the Land Transport Agency can grant a “person a written exemption from the requirement to wear a safety helmet [for cyclists] on the grounds of religious belief or physical disability or other reasonable grounds”.⁹³⁶

Personal Grievance Claims

4.44 Of particular relevance to superdiversity is the ability of an employee to bring a personal grievance claim against a current or former employer where the employee has been discriminated against in the employee’s employment⁹³⁷ or has been racially harassed in the employee’s employment.⁹³⁸

Discrimination

4.45 Subject to the exceptions in s 106, an employee is discriminated against in his or her employment if the employer (or the employer’s representative):⁹³⁹

(1) ... *by reason directly or indirectly of any of the prohibited grounds of discrimination specified in section 105 ...*

(a) *refuses or omits to offer or afford to that employee the same terms of employment, conditions of work, fringe benefits, or opportunities for training, promotion, and transfer as are made available for other employees of the same or substantially similar qualifications, experience, or skills employed in the same or substantially similar circumstances; or*

(b) *dismisses that employee or subjects that employee to any detriment, in circumstances in which other employees employed by that employer on work of that description are not or would not be dismissed or subjected to such detriment; or*

(c) *retires that employee, or requires or causes that employee to retire or resign.*

- 4.46 “Detriment” is defined as encompassing anything that has a “detrimental effect on the employee’s employment, job performance, or job satisfaction”.⁹⁴⁰
- 4.47 The prohibited grounds of discrimination in s 105 mirror those set out in s 21 of the HRA, and include religious or ethical belief, colour, race and ethnic or national origins. A personal grievance claim may allege indirect or direct discrimination, as is the case under the HRA.

Racial Harassment

- 4.48 Section 109 of the ERA provides that an employee may bring a personal grievance claim against an employer where the employee has been racially harassed in the course of employment if:

... the employee’s employer or a representative of that employer uses language (whether written or spoken), or visual material, or physical behaviour that directly or indirectly—

- (a) expresses hostility against, or brings into contempt or ridicule, the employee on the ground of the race, colour, or ethnic or national origins of the employee; and*
- (b) is hurtful or offensive to the employee (whether or not that is conveyed to the employer or representative); and*
- (c) has, either by its nature or through repetition, a detrimental effect on the employee’s employment, job performance, or job satisfaction.*

- 4.49 An employer may be liable even where a person other than the employer or his or her representative carried out the harassment.⁹⁴¹ If an employee experiences harassment at work, he or she is entitled to complain to the employer.⁹⁴² The employer must undertake an inquiry into the alleged harassment and,⁹⁴³ if satisfied that the harassment occurred, he or she must take “whatever steps are practicable to prevent repetition of the harassment”.⁹⁴⁴ If the employer fails to take such steps, the employee is deemed to have a personal grievance for the purposes of the ERA.⁹⁴⁵

Remedies

- 4.50 Where the Employment Relations Authority (“ERA”) or the Employment Court determines that a claim for personal grievance is made out, it may order one or more of the remedies set out in s 123 of the ERA, including:

- Reinstatement of the employee to his or her former position, where this is reasonable or practicable;⁹⁴⁶
- Reimbursement of wages lost as a result of the grievance;⁹⁴⁷ and
- Payment of compensation for humiliation, loss of dignity and injury to the employee’s feelings, and loss of any benefit the employee might reasonably have been expected to obtain if the grievance had not arisen.⁹⁴⁸

- 4.51 In addition, where the ERA or the Employment Court finds that any workplace conduct or practices were a significant factor in the grievance, it may issue recommendations to the employer setting out how to prevent similar employment relationship issues arising in the future.⁹⁴⁹ In the case of racial harassment, recommendations may be made setting out the actions the employer ought to take in respect of the employee and the person responsible for the harassment.⁹⁵⁰ This may include transferring the harassing party, taking disciplinary or rehabilitative action against him or her, or “about any other action necessary” to prevent further harassment against the complaining employee or any other employee.⁹⁵¹

The New Zealand Bill of Rights Act 1990

- 4.52 Operating in concert with the HRA, the NZBORA provides specific protection for minority rights, alongside its protection of democratic and civil rights.
- 4.53 The Government has also responded to New Zealand’s increasing ethnic diversity over the years by ratifying a number of international conventions based on the affirmation

of fundamental human rights for all citizens, including minority groups, and the elimination of discrimination. This includes the International Convention on the Elimination of All Forms of Discrimination, the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights.

4.54 Unlike the HRA, the NZBORA only applies to acts done by the legislative, executive or judicial branches of government, or by any person or body in the performance of a public function, power or duty.⁹⁵² The evolution of what constitutes a “public function”,⁹⁵³ however, means the reach of the NZBORA extends to the whole of government, to all public entities, and to private entities where the government has contracted out or privatised such services.⁹⁵⁴

Sections 4, 5 and 6

4.55 The rights affirmed in the NZBORA of relevance to superdiversity include:

- The right to freedom of thought, conscience, religion and belief;⁹⁵⁵
- Freedom of expression;⁹⁵⁶
- The right to manifest a person’s religion or belief (in worship, observance, practice, or teaching either individually or in community with others whether in public or in private);⁹⁵⁷
- Freedom of peaceful assembly;⁹⁵⁸
- Freedom of association;⁹⁵⁹
- Freedom of movement;⁹⁶⁰
- Freedom from discrimination;⁹⁶¹ and
- The rights of minorities.⁹⁶²

4.56 As I said in the *Public Law Toolbox*, these rights are not, however, absolute.⁹⁶³ Section 5 states that the rights and freedoms contained in the NZBORA may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society. That is, any limit on rights must be not only “reasonable”, but must also meet the separate requirement of being “prescribed by law”.

4.57 Section 6 of the NZBORA provides that, where possible, legislation will be interpreted consistently with the rights and freedoms contained within the NZBORA.⁹⁶⁴ However, s 4 preserves Parliament’s supremacy in law making, by stating that a court may not hold any enactment (or provision thereof) to be impliedly repealed or revoked, or to be in any way invalid or ineffective, or decline to apply any provision of the enactment, by reason only that the provision is inconsistent with any provision of the NZBORA. The rights and freedoms contained in the NZBORA are therefore subordinate to inconsistent enactments.

4.58 Reconciling ss 4 and 6 involves a “fine constitutional balancing act”.⁹⁶⁵ An NZBORA-consistent interpretation may only be authorised under s 6 where such an interpretation is “reasonably”, “properly” or “tenably” available: s 6 does not authorise a “strained” interpretation.⁹⁶⁶ The Supreme Court in *R v Hansen*,⁹⁶⁷ established how the interrelationship between ss 4, 5 and 6 is to be approached in judicial decision making:⁹⁶⁸

Step 1. Ascertain Parliament’s intended meaning.

Step 2. Ascertain whether that meaning is apparently inconsistent with a relevant right or freedom.

Step 3. If apparent inconsistency is found at step 2, ascertain whether that inconsistency is nevertheless a justified limit in terms of s 5.

Step 4. If the inconsistency is a justified limit, the apparent inconsistency at step 2 is legitimised and Parliament’s intended meaning prevails.

Step 5. If Parliament’s intended meaning represents an unjustified limit under s 5, the Court must examine the words in question again under s 6, to see if it is reasonably possible for a meaning that is consistent, or less inconsistent, with the relevant right or freedom to be found. If so, that meaning must be adopted.

step 6. If it is not reasonably possible to find a consistent or less inconsistent meaning, s 4 mandates that Parliament's intended meaning be adopted.

Right to Freedom of Thought and Religion

4.59 New Zealand's growing ethnic diversity has also meant growing religious diversity, which engages ss 13 and 15 of the NZBORA.

4.60 Section 13 provides that "[e]veryone has the right to freedom of thought, conscience, religion, and belief, including the right to adopt and to hold opinions without interference". Section 15 provides that "[e]very person has the right to manifest that person's religion or belief in worship, observance, practice, or teaching, either individually or in community with others, and either in public or in private".

4.61 The protection afforded by ss 13 and 15 will have particular importance in a super-diverse society, where the religious observances of some ethnic minorities may be objectionable to other groups.

4.62 The meaning and scope of ss 13 and 15 has not been widely addressed by the New Zealand courts, though international jurisprudence and commentary on similar provisions is instructive given the similarity with comparative provisions. The long title to the NZBORA expressly states that it is an Act "to affirm New Zealand's commitment to the International Covenant on Civil and Political Rights".

4.63 Article 18 of the ICCPR states that:

1. *Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.*
2. *No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.*
3. *Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.*
4. *The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.*

4.64 Article 9 of the European Convention on Human Rights ("ECHR") states that:

1. *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
2. *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others.*

4.65 The scope of ss 13 and 15 has been described by the UNHRC as "far-reaching and profound".⁹⁶⁹ The scope of these provisions' protection "is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions".⁹⁷⁰ Rather, the rights encompass "freedom of thought on all matters, personal conviction and the commitment to religion or belief, whether manifested individually or in community with others".⁹⁷¹

4.66 Sections 13 and 15 are premised on what has been described as the "elementary distinction between having thoughts and expressing them".⁹⁷² Section 13 of the NZBORA provides protection for the internal expression of thought, religion and belief. On the other hand, s 15 provides protection for the outward expression of a person's religion and

belief through worship, observance, teaching and practice (within reason), but not the outward expression of thought and conscience, which is protected by s 14 (freedom of expression). Importantly, the exercise of s 13 cannot be limited, while the exercise of s 15, by virtue of its implicit effect on others, can be.⁹⁷³

4.67 Butler and Butler contend that the right to freedom of thought would protect recording one's own thoughts for personal use, including taping oneself or writing down one's thoughts in a diary.⁹⁷⁴ ECHR jurisprudence suggests that s 13 may also oblige the state to protect vulnerable individuals against improper coercion or indoctrination aimed at changing their beliefs, for instance through improper pressure. In *Larissis v Greece*, the European Court of Human Rights ("ECtHR") concluded that art 9 of the ECHR restrained commanding officers in the Greek Air Force from proselytising their subordinates, as it would be difficult for the subordinates to rebuff persons of a superior rank in a military setting.⁹⁷⁵ Similarly, state warnings and reports informing the public about dangerous sects across Europe also raise issues as to freedom of thought and religion.⁹⁷⁶

4.68 With regards to s 15, the MoJ has issued the following guidelines with respect to what is afforded protection:⁹⁷⁷

- "Worship" includes building places of worship, using ritual formulae and objects, displaying symbols, and observing holidays and days of rest.
- "Observance" includes dietary regulations, wearing of distinctive clothing, participation in rituals associated with certain stages of life, and use of particular language customarily spoken by a group.
- "Practice" and "Teaching" include choosing religious leaders, priests and teachers, establishing seminaries or religious schools, and preparing and distributing religious texts or publications.

Positive or Negative Duties?

4.69 Sections 13 and 15 do not impose positive duties on the state; rather, they affirm freedoms of the individual which the state is not to breach. As noted by the Court of Appeal in *Mendelssohn v Attorney-General*, the very nature of these rights and freedoms means that they are freedoms from state interference.⁹⁷⁸ However, this requirement may nevertheless place limitations on the state in certain circumstances. For example, in *Mendelssohn*, the Court noted that the state may be obliged "under international law or on a more general basis, to intervene to protect religious freedom against private oppression or coercion".⁹⁷⁹

4.70 Where the state has adopted an official state religion or ideology, this must not result in the impairment of a person's rights who does not follow that religion, or who holds a different belief.⁹⁸⁰ Further, where the state offers privileges for certain religions, it may be required to offer those benefits to all religions. In the case of *Religionsgemeinschaft der Zeugen Jehovas v Austria*, the ECtHR found that Austria had violated the rights of Jehovah's Witnesses.⁹⁸¹ This finding was based, among other things, on the long waiting period imposed on "new" religious communities by the state before the religious community could acquire "religious society" status, which offered substantial benefits.

4.71 The freedom of religious communities to choose employees or to approve persons as leaders according to criteria specific to that community is afforded statutory protection in New Zealand by way of ss 28 and 39 of the HRA. In *Gay and Lesbian Clergy Anti-Discrimination Society Inc v Bishop of Auckland*, the HRRT had to decide whether the Bishop of Auckland had breached the HRA by refusing to allow the plaintiff to participate in the process of discernment because he was in an unmarried relationship, and therefore could not be ordained into the ministry.⁹⁸² The Tribunal found against the plaintiff on the basis of ss 38 and 39 of the HRA and the religious freedom provisions of the NZBORA, stating that this was the only possible outcome. To find otherwise:⁹⁸³

... would undermine in the most fundamental way the religious autonomy of the Church, its right to be selective about those who will serve as the very embodiment of its message and its voice to the faithful.

Limitations

4.72 There are no recognised limitations to ss 13 and 15 in the NZBORA itself, but limitations recognised in comparable international provisions provide some guidance as to what the New Zealand courts might consider to be “justified limits” under s 5.

4.73 In relation to the right to manifest religion, art 18(3) of the ICCPR states that the right may be subject to limitations “*as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others*” (emphasis added). The ECHR includes similar recognised limitations.

4.74 In *R v Lee*, the High Court was required to consider whether a religious practice or ritual must still conform to the general law.⁹⁸⁴ The defendant faced alternative counts of manslaughter for his role in the death of a person on whom he was conducting an exorcism. In discussing the defendant’s right to manifest his religion, the Court noted that:⁹⁸⁵

The right does not override the provisions of the Crimes Act 1961. Thus, while Mr Lee had the right to practise exorcism in this country as part of his religion or belief in worship, he does not have the right when doing so to commit offences under the provisions of the Crimes Act. Mr Lee has therefore no legal right to carry out exorcisms in a manner which is likely to cause serious bodily harm to the person being exorcised.

4.75 On appeal, the Court of Appeal noted that it would be no defence to a charge of murder for a defendant to claim that his religion required ritual sacrifices. In those circumstances, s 63 of the Crimes Act 1961, which provides that no person has the right to consent to death, would apply and s 15 of the NZBORA would give way to the right to life affirmed in s 8.

4.76 In another case, *B v Director-General of Social Welfare*, the Court of Appeal recognised that the right to manifest religion extends to bringing up and educating children in that religion.⁹⁸⁶ However, the Court emphasised that “the parents’ right to practice their religion cannot extend to imperil the life or health of the child”.⁹⁸⁷ The scope of s 15 thus excludes doing, or omitting to do, anything likely to place at risk the life, health and welfare of the child (see also discussion at [3.120]).⁹⁸⁸

4.77 Finally, in *Feau v Department of Social Welfare*, the appellant appealed against a sentence of periodic detention, arguing that it was manifestly excessive because of the effect it would have on his rights under s 15 of the NZBORA.⁹⁸⁹ The appellant was a committed Seventh Day Adventist, which required him to rest on Saturdays, the Sabbath. The induction programme for the periodic detention took place on Saturday. Though the Court recognised that “some incursion of the appellant’s religious beliefs is entailed in requiring him to attend the induction course on a Saturday”, the Court took the view that “this is a limitation on his general right which is reasonable within the meaning of s 5” of the NZBORA.⁹⁹⁰ The Court did note, however, that the approach taken by the Periodic Detention Centre had been “somewhat inflexible”.⁹⁹¹

Interface with Right to Freedom of Expression

4.78 In *Browne v CanWest TV Works Ltd*, the High Court was required to consider the interrelationship between ss 14 and 15.⁹⁹² The case concerned the broadcasting of a cartoon on television which depicted the Virgin Mary menstruating over a cardinal and the Pope. The Broadcasting Standards Authority found that the programme was not in breach of the relevant standards. The Catholic Bishops Conference appealed this decision. On appeal, the High Court considered that an assertion that the broadcasting of the show was an unjustified infringement on the religious freedom provisions of the NZBORA was implicit in the Conference’s arguments.⁹⁹³

4.79 In dismissing the appeal, Wilde J noted that the right to manifest a religious belief must extend to the right of others not to uphold those religious beliefs.⁹⁹⁴ It had been open to the Authority to find that the right to freedom of expression was a weightier consideration than religious rights under the NZBORA, as the Authority was better qualified than the Court to strike the balance between the competing rights and apply the relevant standards in this context.⁹⁹⁵ Citing the majority decision in *Otto-Preminger-Institut v Austria*, Wilde J held that:⁹⁹⁶

The issue before the Court involves weighing up the conflicting interests of the exercise of two fundamental freedoms guaranteed under the Convention, namely the right of the applicant association to impart to the public controversial views and, by implication, the right of interested persons to take cognisance of such views, on the one hand, and the right of other persons to proper respect for their freedom of thought, conscience and religion, on the other hand. In so doing, regard must be had to the margin of appreciation left to the national authorities, whose duty it is in a democratic society also to consider, within the limits of their jurisdiction, the interests of society as a whole.

4.80 Whether the right to religious freedom extends to the right to have others respect that religion was not directly addressed by the Court. Citing the dissenting opinion in *Otto-Preminger-Institut v Austria*, however, the Court noted that:⁹⁹⁷

The [ECHR] does not, in terms, guarantee a right to protection of religious feelings. More particularly, such a right cannot be derived from the right to freedom of religion, which in effect includes a right to express views critical of the religious opinion of others.

Nevertheless, it might be accepted that it may be “legitimate” for the purpose of Article 10 [freedom of expression] to protect the religious feelings of certain members of society against criticism and abuse to some extent; tolerance works both ways and the democratic character of a society will be affected if violent and abusive attacks on the reputation of a religious group are allowed. Consequently, it must also be accepted that it may be “necessary in a democratic society” to set limits to the public expression of such criticism or abuse.

Non-Discrimination and Minority Rights

4.81 Affirming the strength of the legislative protection against discrimination provided by the HRA, s 19 of the NZBORA provides that everyone has the right to freedom from discrimination on the grounds of discrimination set out in the HRA. Affirmative action measures taken in good faith are also protected by s 19, which affirms that such measures do not constitute unlawful discrimination for the purposes of the HRA.⁹⁹⁸

4.82 Section 19 is central to the protection of minority rights in New Zealand. However, s 20 of the NZBORA provides specific protection for minorities in New Zealand, and to date has received very little attention. Accordingly, s 20 will be the key focus in the following analysis.

4.83 Section 20 of the NZBORA provides that a person belonging to an:

... ethnic, religious, or linguistic minority in New Zealand shall not be denied the right, in community with other members of that minority, to enjoy the culture, to profess and practise the religion, or to use the language, of that minority.

4.84 The questions that arise are:

- What does s 20 add in terms of the minority rights protection afforded by the HRA and other more general NZBORA rights?
- Does s 20 afford additional protection over that in ss 13 and 15 for the rights of religious minorities?
- Is s 20 especially relevant to ethnic and linguistic minorities given there are no other specific rights to language or culture in the NZBORA?

Scope

4.85 The purpose of s 20 is to prevent “oppressive government action which would pursue a policy of cultural conformity by removing the rights of minorities to enjoy those things which go to the heart of their very identity – their language, culture and their religion”.⁹⁹⁹ The UNHRC has further observed that art 27 of the ICCPR, on which s 20 is based, is “directed towards ensuring the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole”.¹⁰⁰⁰

4.86 As the Royal Society of New Zealand noted in *Languages in Aotearoa New Zealand*:¹⁰⁰¹

The social and institutional tolerance for an individual or group to use a language has been understood as a human right for many decades (United Nations 1966). Since this recognition, international consensus has moved towards the philosophy that it is not enough for a language to be tolerated, but that it should be actively provided for and promoted (United Nations 1992). This is partly in recognition that even with tolerance-based language rights, languages are becoming extinct at increasing rates (Austin et al. 2011). This is in recognition that people need proficiency in their own language/s for important social and cultural reasons such as intergenerational communication and security of personal identity.

4.87 There has been little case law in New Zealand under s 20. Rather, actions breaching minority rights have tended to be analysed by the courts in the context of the right to be free from discrimination (s 19) and the right to freedom of religion (s 13). Thus, we have to refer to overseas and international case law to determine the scope of s 20.

4.88 The word “minority” is not defined in the NZBORA or in the ICCPR. However, the UNHRC has observed that “minority” tends to relate to a group “numerically inferior” to the rest of the national population.¹⁰⁰² Further, minority rights are not restricted to citizens or permanent residents of a country.¹⁰⁰³ Thus, the rights of migrants and visitors to New Zealand would also be protected under s 20. This is highly important given the huge number of migrants and visitors to New Zealand, particularly the growing international student population.¹⁰⁰⁴ As export education is New Zealand’s fifth largest export earner, it is essential for New Zealand to have sufficient legal protections in place to protect international students.¹⁰⁰⁵

4.89 In terms of identifying an “ethnic minority” for the purposes of s 20, the test adopted by the Court of Appeal in *King-Ansell v Police* is likely to be useful.¹⁰⁰⁶ First, members of the group must hold a subjective belief that they are alike and share historical bonds. Second, other people must recognise the group as sufficiently distinct in the community. The use of this mixed objective/subjective test has been approved by the House of Lords.¹⁰⁰⁷

4.90 Although the meanings of “religious minority” and “linguistic minority” have not been subject to such consideration by the courts, MoJ Guidelines suggest that these terms will be given a broad and liberal construction.¹⁰⁰⁸ The Guidelines suggest that most religions in New Zealand would constitute a religious minority, “particularly if denominations were counted separately”. Similarly, groups that use a language other than English are likely to qualify as linguistic minorities for the purposes of s 20.

4.91 The right affirmed in s 20 is not absolute and nor can it be used to circumvent other rights affirmed in the NZBORA.¹⁰⁰⁹ Accordingly, interference with the right is capable of being justified in accordance with s 5 of the NZBORA. The UNHRC has taken into account the relevant degree of the interference in assessing whether there has been an unjustifiable denial of minority rights. For instance, where the interference has only had a limited impact on the minority’s right, this will not necessarily represent a denial of the right.¹⁰¹⁰ The UNHRC has also paid regard to whether the relevant minority group has been meaningfully consulted where state actions have the potential to interfere with the group’s enjoyment of its cultural activities.¹⁰¹¹

Does s 20 Impose Positive Obligations on the State?

4.92 Section 20 is expressed in negative terms, which suggests that the only obligation on the state is to refrain from interfering in particular minority activities: the state has no positive duty to foster a minority’s enjoyment of its culture, religion or language. This was essentially the conclusion of the Court of Appeal in *Mendelssohn v Attorney-General* in rejecting the plaintiff’s contention that the Government was obliged to protect his religious beliefs from criticism.¹⁰¹² The Court considered that, in contrast to other rights in the NZBORA (such as the rights of persons charged with criminal offences), s 20 affirmed a negative freedom and therefore did not impose a positive duty on the state to act.¹⁰¹³ This can be contrasted with, for example, the Crown’s duty of active protection under the Treaty of Waitangi.

4.93 However, some commentators have contended that s 20 is similar to a number of other NZBORA rights, such as the right to life (s 8) or the right not to be subject to cruel treatment (s 9), both of which require the state to “avoid known threats in particular

circumstances”.¹⁰¹⁴ This interpretation appears to have been endorsed in the ICCPR jurisprudence. For example, the UNHRC, in discussing the scope of art 27, observed that, “[a]lthough the rights protected under article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion”.¹⁰¹⁵

4.94 Consequently, the state might be required in some circumstances to implement positive measures, not only in relation to government acts but also in respect of third party acts, in order to ensure that the “existence or exercise of this right are protected against their denial or violation”.¹⁰¹⁶ This is a greater duty than simply “guaranteeing tolerance or non-interference with expression of minority rights: ‘specific action’ must be embraced to address the practical burdens applicable to minority groups”.¹⁰¹⁷ For instance, the UNHRC has recommended that the United States Government strengthen programmes aimed at reducing “the high incidence of poverty, sickness and alcoholism among Native Americans” in discussing its obligations under art 27.¹⁰¹⁸

4.95 Whether such an approach will be adopted by the New Zealand courts is uncertain. However, the courts have typically been reluctant to extend the scope of other negatively expressed NZBORA rights to impose positive duties on the state. For example, in *Seales v Attorney-General*, the Court held that the right to life (s 8) and the right not to be subjected to torture or cruel treatment (s 9) could not be interpreted to require the state to guarantee terminally ill individuals the right to die by euthanasia.¹⁰¹⁹

Enjoyment of Culture, Religion and Language

Religion

4.96 It is arguable whether s 20 affords additional protection for the rights of religious minorities in light of ss 13 and 15.¹⁰²⁰ As addressed above, ss 13 and 15 do not place any positive obligations on the state; rather, they affirm individual freedoms which the state must not breach. However, if the New Zealand courts were to follow the UNHRC’s approach to art 27 when interpreting s 20, this would suggest that s 20 does in fact provide additional protection for religious minorities beyond that afforded by ss 13 and 15. Specifically, the state would not only have a duty not to interfere with the freedom of religious minorities, but it would also have a positive obligation to protect a minority’s rights to practise its religion in community with the other members of the group.

Culture

4.97 In contrast to the situation of religious minorities, who are also afforded rights under ss 13 and 15, there are no specific rights to language or culture elsewhere in the NZBORA. Accordingly, s 20 is especially relevant to ethnic and linguistic minorities.

4.98 The term “culture” is not defined in the NZBORA or the ICCPR. The UNHRC has emphasised that whether there has been a breach of a person’s right to enjoy a minority culture must be determined on a case-by-case basis.¹⁰²¹ However, the UNHRC has found that spiritual activities and economic activities crucial to the minority’s culture, including hunting and fishing, fall within the ambit of minority cultural rights.¹⁰²² Further, the right also protects modern practices and technologies, not just “traditional means of livelihood” for minorities.¹⁰²³

4.99 In *Mahuika v New Zealand*, the applicants alleged that the 1992 Sealord Fishing Settlement between Māori and the Crown denied them the ability to exercise their traditional fishing rights.¹⁰²⁴ However, the UNHRC concluded that art 27 had not been infringed, as the Settlement benefited a substantial majority of the minority group, despite creating divisions within it.¹⁰²⁵ The UNHRC has also taken into account whether the minority group has been able to meaningfully participate in the making of decisions potentially interfering with the enjoyment of their minority rights. For example, in *Mahuika*, the UNHRC considered that there had been no denial of the applicants’ right to enjoy their culture, as the New Zealand Government had engaged in broad consultation with Māori over the sustainability of Māori fishing practices.¹⁰²⁶

4.100 In another case, *New Zealand Underwater Association Incorporated v Auckland Regional Council*, the Council granted the Ports of Auckland the right to dump harbour dredgings

onto the seabed of the Hauraki Gulf.¹⁰²⁷ The Hauraki Māori Trust Board contended that dumping the dredgings in this location would be offensive to Māori religious and spiritual values.¹⁰²⁸ The Planning Tribunal concluded that, while local iwi may have been “profoundly affronted” by the discharge, this did not in itself amount to a denial of their enjoyment of their culture or the practice of their religion.¹⁰²⁹

Language

4.101 The UNHRC has distinguished the right of linguistic minorities to enjoy the use of their language from the general right to freedom of expression, as the latter right is available to every person, regardless of whether they belong to a minority.¹⁰³⁰ The UNHRC has also taken the view that the minority right to enjoyment of the use of language encompasses the right of members of a linguistic minority to use their language among themselves, both in public and private, and is distinct from the right of accused persons to the assistance of an interpreter if the person cannot understand or speak the language used in court.¹⁰³¹

4.102 There have been few cases examining the rights of linguistic minorities under art 27.¹⁰³² The UNHRC’s approach to date has been to focus on art 26, which prohibits discrimination on various grounds, similar to s 19 of the NZBORA.¹⁰³³ The protection offered by anti-discrimination provisions such as s 19 and art 26 is far narrower than that offered by s 20 and art 27: while the former provisions are geared towards ensuring procedural due process and equality, the latter provisions create a substantive protection for minorities.

4.103 It is unclear what kinds of measures the state might be required to implement to protect the rights of linguistic minorities. The *Guide on the Language Rights of Linguistic Minorities* developed by the Office of the High Commissioner for Human Rights in response to a 2013 report by the Special Rapporteur on minority issues¹⁰³⁴ suggested that initiatives focussed on promoting the use of minority languages in education were crucial, as:¹⁰³⁵

... [e]ducation deals with what is perhaps the central linguistic rights for minorities, as well as [being] fundamental for the maintenance of linguistic diversity: a language which is not taught is a language which ultimately will vanish.

4.104 The UNHRC in *Mavlonov v Uzbekistan* has also observed that “in the context of article 27 [of the ICCPR], education in a minority language is a fundamental part of minority culture”.¹⁰³⁶

4.105 Overall, the key question is, does s 20 require the state to take positive steps to protect language, religion and culture and, if so, in what circumstances?

Relationship between ss 19 and 20

4.106 In order to properly assess the nature and scope of the state’s duties under s 20, it is necessary to examine the relationship between ss 19 and 20. The relationship between these two provisions, both of which are grouped under the subheading of “non-discrimination and minority rights”, has not yet been addressed by the courts. It is important to note that s 20 only applies to individual members of a class of persons qualifying as a “minority”, whereas s 19 protects the right of “everyone” to be free from discrimination.

4.107 Affirmative action measures taken to benefit groups of persons disadvantaged due to discrimination are protected under s 19(2). This is likely to encompass individuals belonging to a minority for the purpose of s 20, as a person’s race, ethnic or national origins, and ethical and religious beliefs are all prohibited grounds of discrimination under s 21 of the HRA.¹⁰³⁷

4.108 Butler and Butler argue that the “combined effect of these provisions is that the state must not discriminate as between different minorities in how it protects them from the denial of cultural, religious or language practices”.¹⁰³⁸ This means that, if the state adopts any positive measures to prevent the denial of a minority’s s 20 rights, these measures must not be discriminatory as between different minorities, unless this differential treatment is justifiable in accordance with s 5 or s 19(2) of the NZBORA.¹⁰³⁹ This interpretation is consistent with the approach of the UNHRC to arts 26 and 27 of the ICCPR.

4.109 The distinction between arts 26 and 27 is illustrated by the UNHRC's decision in *Di-ergaardt v Namibia*.¹⁰⁴⁰ In that case, the applicants, who were members of the Baster community, claimed that Namibia had violated arts 26 and 27 of the ICCPR by denying them the right to use their mother tongue, Afrikaans, in "administration, justice, education and public life", and by forcing them to use English instead.¹⁰⁴¹ They further claimed that the state had "instructed [its] civil servants not to reply to the authors' written or oral communications with the authorities in the Afrikaans language, even when they were perfectly capable of doing so".¹⁰⁴² The UNHRC held that art 26 had been breached, as state policy "intentionally targeted against the possibility" of using Afrikaans but had not done so with the multiple other minority languages spoken in Namibia.¹⁰⁴³ Accordingly, the UNHRC ordered that the state permit its officials to respond in languages other than the official language "in a non-discriminatory manner".¹⁰⁴⁴ The UNHRC was therefore focussed on ensuring the protection of "procedural fairness and state neutrality, not the importance of cultural diversity or the protection and promotion of the Basters' minority language" under art 27.¹⁰⁴⁵

4.110 It is difficult to envisage how the state could actively protect a minority's language, culture or religion, without falling foul of s 19. Where the state undertakes positive steps in relation to one minority, s 19 would suggest that it is required to provide equivalent measures in respect of other similar minorities. It is possible that it is only in such circumstances (that is, where the state has provided one minority active protection, but not others) that a claim for positive duties under s 20 might be brought. Any such case, however, could equally rely on s 19. Therefore, it is difficult to see how s 20 could be invoked to require the state to take positive action in the absence of a parallel s 19 claim. The following examples taken from the New Zealand context are used to assess what a successful claim brought under s 20 might look like.

Examples of Possible s 20 Claims

Example One: Funding of Pacific Language Resources in Early Childhood Education

4.111 In 2010, the MoE cut funding for the future production of Pacific language and literacy materials. Public outcry from Pacific families, teachers and organisations led to the formulation of the Bilingual Leo Pacific Coalition, which submitted a petition to Parliament in 2011 requesting that the Government continue production of Pacific language resources and fund Pacific languages literacy and English literacy development through bilingual education programmes for Pacific students.¹⁰⁴⁶ The Coalition considered that the lack of special status for Pacific languages (in contrast to Te Reo Māori and New Zealand Sign Language) was also inconsistent with New Zealand's growing Pacific community and its unique constitutional relationship with Pacific Island nations. Consequently, the Coalition began drafting a Pacific Languages Bill, which would have resulted in Pacific languages gaining the status of official minority languages of New Zealand.¹⁰⁴⁷

4.112 As a result of the Coalition's efforts, the Education and Science Committee launched an inquiry into the promotion of Pacific languages, though its scope was limited to ECE.¹⁰⁴⁸ Although a majority of the Committee concluded that the promotion of Pacific languages primarily remained the responsibility of Pacific communities, not the Government, it recommended that the Government consider how equity funding could be used more effectively to support heritage language learning, for example to target an increase in the number of Pacific language teachers, and that it encourage growth in the number of Pacific Island language immersion early childhood centres.¹⁰⁴⁹

4.113 Had the Coalition attempted to rely on s 20 to secure its objectives, it is likely that such a claim would have been unsuccessful: the ICCPR jurisprudence suggests that s 20 cannot be relied on to insist that the Government fund the advancement of a minority language or give it special legal status in the absence of providing similar status for other minority languages. The role of the state in determining its own official languages was acknowledged in *Di-ergaardt*.¹⁰⁵⁰ In that case, various members of the UNHRC emphasised that "each sovereign State may choose its own official language and ... the official language may be treated differently from non-official languages ... this differentiation constitutes objective and reasonable

distinction which is permitted under article 26".¹⁰⁵¹ These observations suggest that the state would not be required to give a minority language official legal status in order to comply with s 20.

Example Two: ECE Teacher Qualifications for Pacific ECE Centres

4.114 Under the Education Act 1989, the New Zealand Teachers Council ("NZTC") must determine standards for teacher registration and establish and maintain standards for qualifications that lead to teacher registration. In exercising this statutory function, the NZTC has determined that candidates for whom English is a second language must be able to show that they are proficient in English or Te Reo Māori by attaining Level 7 or higher in an internationally recognised English language test, such as IELTS. This accords with the NZTC's requirement that candidates must be proficient in English or Te Reo Māori in order to be eligible for provisional registration.

4.115 Say candidates who had secured employment in Pacific ECE centres after graduating from a specialised Pacific ECE course were refused provisional registration by the NZTC on the basis that they did not meet the requisite English language proficiency requirement. Most Pacific ECE services are managed and run by Pacific communities, and teaching is in at least one Pacific language (as opposed to English) and culture.

4.116 In terms of s 20, it could have been argued that the NZTC's requirement for teachers to reach Level 7 in an IELTS test essentially prevented Pacific ECE centres from hiring appropriate staff for their particular needs, thereby amounting to a denial of the minority right to enjoyment of their language. However, even though the NZTC's requirement may have represented a prima facie breach of s 20, it would probably have been held to be a reasonable limitation on the minority's s 20 rights under s 5 of the NZBORA. In order to teach in a New Zealand school or ECE centre, where English is an official language, it would arguably be reasonable to require prospective teachers to have a sufficient level of English proficiency.

Example Three: Adoption of a Formal Multicultural Policy

4.117 As discussed in the Stocktake of public agencies, the state's approach to diversity in the policy arena to date has been fragmented, with most departments and agencies left to implement their own strategies (which, for the most part, have focussed on the Treaty of Waitangi and working with Māori) rather than working under one overarching diversity strategy.

4.118 It is recommended at [5.76] and [3.113] respectively that the Government should consider adopting a formal multicultural policy and a national languages strategy. The adoption of such policies may be supported by the state's obligations under s 20 of the NZBORA.

4.119 Assimilationist policies which fail to acknowledge diversity are illegal under ss 19 and 20 of the NZBORA. But if it is accepted that ss 19 and 20 require the state to undertake positive steps to support minority groups, it is arguable that the state is not only obliged to refrain from implementing assimilationist policies, but is required to develop and implement a formal multicultural diversity strategy accommodating and promoting the cultural, religious and linguistic rights of Māori and other ethnic minorities. This is because, if social cohesion is not actively promoted, for example in the form of public education campaigns, there is the risk that migrants and ethnic minorities will be forced to conform to New Zealand's culture and values to escape hostility, and discrimination at work.¹⁰⁵² This, in turn, undermines the ability of minorities to practise their religion, culture and language in breach of their rights under the NZBORA.

4.120 However, it could be argued that the broad functions conferred on the HRC and the Race Relations Commission regarding the promotion of public education and human rights fulfils any responsibility on the state to take positive action under ss 19 and 20. The HRC's primary functions under the HRA 1993 are:¹⁰⁵³

- a. to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and
- b. to encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.

4.121 This includes promoting and protecting respect for, and observance of, human rights through education and publicity, for example through the making of public statements and developing a national plan of action, in consultation with interested parties, for the promotion and protection of human rights.¹⁰⁵⁴ Similarly, the Race Relations Commissioner's primary responsibilities involve leading discussions of the HRC in matters of race relations and providing advice and leadership on matters relating to race relations when consulted.¹⁰⁵⁵

4.122 The question is whether the HRC and the Office of the Race Relations Commissioner receive sufficient funding to carry out these functions. For example, despite the decreasing number of complaints to the HRC, the resources allocated to the HRC's dispute resolution function have not been redistributed, for example, to the HRC's focus on public education.¹⁰⁵⁶ On the contrary, the HRC has posted budget deficits in 2012/13 and 2013/14, together with a reduction in overall staff levels.

Legal Pluralism

4.123 The rights of minorities under s 20 are particularly relevant to the concept of "legal pluralism". Since its emergence in the 1970s, the concept of legal pluralism has been subject to much debate.¹⁰⁵⁷ Put simply, legal pluralism refers to a situation where multiple "legal orders" exist within a population and/or geographic area.¹⁰⁵⁸ In contrast, "legal centralism" is the idea that there should be one uniform law imposed by the state on all persons, "exclusive of all other law, and administered by a single set of state institutions".¹⁰⁵⁹

4.124 Various studies have found that legal pluralism is particularly prevalent in colonial and post-colonial nations, such as New Zealand, where customary legal norms or institutions have either been accommodated or recognised within state law or have operated independently alongside it.¹⁰⁶⁰ Globalisation, including increased migration across national borders, has also given rise to a "wave" of legal pluralism.¹⁰⁶¹ 1062

Recognition of Māori Customary Law

4.125 As I wrote in *Public Law Toolbox*, the s 20 rights of minorities have recently been considered by the Supreme Court in *Takamore v Clarke*.¹⁰⁶² This was the final decision in a long-running legal dispute. Mr Takamore and his partner, Ms Clarke, had lived in Christchurch for a long time and, after his death, she arranged for him to be buried there. Before the funeral, Mr Takamore's family took his body to the North Island for burial in accordance with Tūhoe custom. His partner and children applied to the High Court for an order requiring the return of Mr Takamore's body.

4.126 The High Court held that the body should be returned to Ms Clarke for her to arrange burial in Christchurch.¹⁰⁶³ The Court of Appeal agreed.¹⁰⁶⁴ The majority of the Supreme Court (Tipping, McGrath and Blanchard JJ) considered that the decision relating to the deceased's burial is for the personal representative, subject to the Court's ability to intervene if that decision is inappropriate.¹⁰⁶⁵ The minority (Elias CJ and William Young J) considered that any dispute should be determined in the High Court.¹⁰⁶⁶

4.127 On the one hand, the majority held that the common law still applies when the deceased is of Māori descent, but that Māori burial practice must be taken into account where it is relevant.¹⁰⁶⁷ However, Elias CJ, dissenting, stated that it would be "paying lip service to the importance of culture recognised by the New Zealand Bill of Rights Act and in particular the importance of Māori society and culture in New Zealand ... to conclude that the wishes of the spouse will always prevail over other interests".¹⁰⁶⁸ However, in this particular case, Elias CJ considered that Ms Clarke should be given the right to determine where Mr Takamore should be buried, because he had put his Christchurch family first in his life, rather than maintaining strong family connections in the North Island.¹⁰⁶⁹

4.128 *Takamore* was considered in the 2013 Court of Appeal case of *Mason v R*, where the appellant, who had been convicted of murder and attempted murder, appealed his conviction on the basis that he should have been dealt with in accordance with tikanga Māori.¹⁰⁷⁰ The appellant based his argument on the right to self-determination in art 1 of the IC-CPR and the protection of the right of ethnic minorities to enjoy and practise their own culture

in art 27 of the ICCPR and in s 20 of the NZBORA. In giving the Court's reasons, Ellen France J distinguished the case of *Takamore*, saying it "illustrates the role of custom in informing the common law",¹⁰⁷¹ and concluded that the Māori system for dealing with wrongdoing relied on by the appellant had been extinguished by the Crimes Act 1961. The Court of Appeal found that neither the ICCPR nor the NZBORA altered that position.¹⁰⁷²

Recognition of Other Cultural Traditions, Attitudes and Customs

The Court System

4.129 The New Zealand courts do appear to have been willing to take into account different cultural traditions, attitudes and customs in the criminal and family law context, but only to the extent that these values are consistent with New Zealand laws and values. The reasoning of the courts in these cases suggests that the public interest in a uniform, even approach to criminal and inheritance matters irrespective of cultural background would have been held to be a reasonable limit on the right to the enjoyment of culture under s 5 of the NZBORA. Such an approach is also consistent with New Zealand's obligations under art 5 of the Convention on the Elimination of All Forms of Discrimination against Women, which requires state parties to take all appropriate measures to:

... modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women ...

4.130 For example, in *Young v Young*, Tompkins J concluded that the deceased's will failed to adequately provide for his daughters in breach of the Family Protection Act 1955.¹⁰⁷³ The Court accepted that the deceased had acted in accordance with Chinese custom, which dictates that daughters' husbands are meant to provide for them, not their fathers.¹⁰⁷⁴ However, while the Court considered that it should take into account different cultural attitudes where appropriate, it was ultimately bound to assess the case with regard to the "moral standards of the New Zealand community".¹⁰⁷⁵

4.131 The same conclusion was reached in *Cartlidge and Khandu v Khandu*,¹⁰⁷⁶ where the parties were of Indian heritage. According to Indian custom and tradition, the bulk of a deceased's estate is given to his or her male heirs, because upon marriage a daughter joins the family of her husband, whose obligation it then becomes to provide for her.¹⁰⁷⁷ The Court held that a wise and just testator whose judgement reflects the "norms of conduct morally acceptable to the community at large" would "reject the concept of preferment of male heirs to the virtual exclusion of female heirs irrespective of their relative needs, so as to leave the daughters of a family to benefit only by the goodwill of their brother or brothers".¹⁰⁷⁸ Accordingly, the deceased was in breach of her "moral duty" to make adequate provision for her daughters.¹⁰⁷⁹

Alternative Dispute Resolution Processes

4.132 One interesting example of legal pluralism operating overseas is the establishment of "sharia courts" in the United Kingdom. These tribunals, which usually operate from mosques, can settle financial and family disputes according to religious principles, which can then be enforced through the state courts. The jurisdiction of these tribunals derives from the Arbitration Act 1996 (UK), which permits parties to elect their own rules to determine a dispute. It is estimated that there are around 85 sharia courts currently operating in the United Kingdom.¹⁰⁸⁰ The tribunals have generated considerable public controversy, largely due to fears that women in particular are being coerced into settling private disputes in accordance with sharia principles, under which women do not hold equal status to men.¹⁰⁸¹

4.133 Similar concerns arose in the Canadian province of Ontario in late 2004 after a report for the Ontario Government by the former Attorney-General recommended that disputes be allowed to be arbitrated in accordance with religious law in family and inheritance law cases.¹⁰⁸² The public backlash resulting from the report's recommendations was such that the Arbitration Act 1991 (ON) was quickly amended to prohibit any form of religious-based arbitration in February 2006.¹⁰⁸³

4.134 There is theoretically scope for a similar development to occur in New Zealand. The Arbitration Act 1996 provides that the parties to a dispute can elect the rules of law to apply.¹⁰⁸⁴ However, according to Dr Anwar Ghani, President of the Federation of Islamic Associations of New Zealand, the development of sharia courts is not a pressing issue for the Muslim community in New Zealand, and the Muslim population abides by New Zealand laws.¹⁰⁸⁵ For instance, Muslim couples are being married in mosques by religious leaders, but only once they have reached the age of 18 – the legal age of marriage in New Zealand.¹⁰⁸⁶ Rather, the key issues facing the Muslim population are discrimination in daily life and in employment, particularly among young people (who are not being employed despite their high-level qualifications),¹⁰⁸⁷ and the Government's lack of consultation with the Muslim community over recently enacted terrorism laws.¹⁰⁸⁸

Cultural Defence

4.135 Cultural and religious diversity has raised a multitude of issues in the criminal law context. For example, overseas jurisdictions have increasingly had to grapple with the concept of “cultural defence” in recent years; that is the idea that cultural or religious norms are factors which may influence a person's thoughts and actions in such a way as to “render them less blameworthy in the relevant legal sense”.¹⁰⁸⁹ Thus, in circumstances where a person's violation of criminal law is motivated by that person's cultural values, he or she may have a partial or total defence to criminal liability or a basis for arguing he or she should receive a reduced sentence.

4.136 Although the idea of a “cultural defence” to criminal offending has been subject to only limited consideration in New Zealand, the courts have only accommodated different cultural practices and views to the extent that these are compatible with New Zealand law and standards, as in the family law context. The primary reason for this approach has been to ensure that the law is applied equally and evenly to all persons, regardless of race, religion or cultural background – in other words, “one law for all”. In the criminal law context, this has meant that cultural considerations have been taken into account at the sentencing stage as a potential mitigating factor rather than as a partial or total defence to liability for an offence.

4.137 Framing this in terms of s 20, the individuals in the following cases could have relied on s 20 to support an argument that their cultural values were relevant in determining the appropriate punishment, on the basis of their right to the enjoyment of their culture. However, even if the courts had concluded that s 20 required them to take such a course of action, the courts are likely to have gone on to find that the countervailing public interest in ensuring the law is applied evenly to all individuals, irrespective of race, religion or cultural background, was a justified limitation on s 20.

4.138 In *R v Talataina*, the defendant pleaded guilty to sexually violating the complainant. Both parties were Samoan, and the Samoan custom of ifoga was subsequently undertaken, whereby the defendant's family presented significant gifts to the complainant's family in order to effect reconciliation.¹⁰⁹⁰ The ritual of ifoga operates in place of a formal criminal justice system.¹⁰⁹¹ The Court of Appeal considered that, although the ritual certainly held value in its ability to mend relationships, the law of New Zealand had to be administered in the interests of society as a whole.¹⁰⁹² The serious nature of the offending and its long-term emotional consequences for the complainant could not be “expunged even by the most sincere acts of reconciliation”.¹⁰⁹³ Thus, the ritual could only be taken into account as an indication of a defendant's genuine remorse or capacity for rehabilitation.¹⁰⁹⁴

4.139 In another case, *Police v O*, two Samoan boys were charged with sexual violation by rape, indecent assault and detaining a girl under the age of 14 years with the intent to have sexual intercourse.¹⁰⁹⁵ The defence requested the Court to exercise its discretion under s 275 of the Children, Young Persons, and Their Families Act 1989 to have the matter heard in the Youth Court. Counsel for the defendants submitted that the Youth Court system, where the emphasis is on family empowerment and dealing with offending within the offender's community, was more compatible with the traditional Samoan manner of dispute and conflict resolution.¹⁰⁹⁶ The defendants would receive significant terms of imprisonment between four to six years if found guilty of the charges in the District Court, but would only face a maximum of three years'

imprisonment if the charges were proved in the Youth Court.

4.140 Although the victim, her family and the community preferred the matter to be resolved in the traditional Samoan manner, Judge Harvey expressed concern at adopting this approach given the seriousness of the offending.¹⁰⁹⁷

Should a defendant's cultural background and the adoption by a defendant and his or her family of a particular method of dispute resolution mean that an otherwise appropriate but culturally different course be put to one side or discounted? The problem that such a course of action raises is in overall evenness and equality of approach. New Zealand is a country that has wide cultural diversity. It is an aspect of our society that gives it richness and vitality. New Zealanders have prided themselves for some time upon their ability to accept a diversity of cultures under the umbrella of a common legal system. To use another metaphor, the law is the glue that binds all members of society together. Regardless of race, religion, or cultural background, the law is applied evenly to all.

4.141 Accordingly, although the parties considered the matter to essentially be resolved, the state would be seen to be failing in its duty to protect members of the community if the matter was transferred to the Youth Court; the public interest demanded that allegations of such a serious nature were determined in the appropriate forum.

4.142 The Court of Appeal also rejected the idea of a cultural defence in the cases of *R v Fui-moana*¹⁰⁹⁸ and *R v Matefeo*, both of which involved serious child abuse.¹⁰⁹⁹ In the latter case, an appeal against sentence, the appellant submitted that the sentencing judge should have taken into account that disciplining children through the application of force was an accepted Samoan cultural practice. The Court rejected this argument, concluding that violence of this nature could not be a "legitimate means of discipline in any section of the community".¹¹⁰⁰

4.143 In *Tahaafe v Commissioner of Inland Revenue*, the appellant appealed against his convictions for tax evasion under the Tax Administration Act 1994.¹¹⁰¹ The Inland Revenue Department found that a number of taxpayers had claimed rebates on the basis of receipts indicating donations to "Tongan Anglican Mission Saint Columer Grey Lynn" or "Tongan Mission Anglican Church Auckland". These churches were not on the department's list of donee organisations, which prompted further investigations revealing that some of the rebates had been credited to the appellant's bank account. The appellant, relying on ss 13, 14 and 15 of the NZBORA, argued that the trial judge had failed to consider his actions in the context of Tongan Christian church culture and practice, which he alleged differed "greatly from mainstream Christian cultures and practices of the secular population".¹¹⁰² He argued that, viewed in the context of Tongan Christian culture, his actions in believing that church members had made legitimate and significant donations to the church (when they had not done so) were reasonable. On appeal, Chisholm J acknowledged that, while ss 13, 14 and 15 of the NZBORA conferred freedoms on the appellant in terms of religion, those provisions did not provide him with a defence to the charges faced.¹¹⁰³

4.144 Finally, a Muslim man and his wife have recently been charged and convicted for repeatedly beating their teenage daughter because they thought she was gay.¹¹⁰⁴ The charging document's summary of facts stated that the man was angry because homosexuality is "contrary and in direct conflict to his interpretation of the Islamic faith". The fact that prosecutions are brought in cases such as this indicates that cultural and religious differences will not be tolerated where these differences are irreconcilable with New Zealand's prevailing community standards.

Freedom of Association, Assembly and Movement

4.145 Although not directly related to protecting minority rights, these rights complete the framework of legal protection for minorities.

4.146 The rights to freedom of assembly and association are likely to be particularly engaged in a superdiverse society, for example in situations where a cultural, ethnic, religious or linguistic minority group wish to gather to protest a particular cause important to that group. The right to freedom of movement has been particularly relevant in the context of foreign

terrorist fighters. As discussed at [1.73], the higher rates of religious diversity in New Zealand and the increased opportunity for extremism means this right may be invoked more frequently in the future.

Freedom of Peaceful Assembly

4.147 The right to freedom of peaceful assembly has long been recognised by the common law, and comparable provisions can be found in both the ICCPR¹¹⁰⁵ and the ECHR.¹¹⁰⁶

Though it tends to be associated with protest, it is widely thought to have a broader application, encompassing any gathering of two or more people for a common purpose,¹¹⁰⁷ held in either a public or private space.¹¹⁰⁸

4.148 The right to freedom of assembly requires the state not to prevent people from assembling peacefully. Overseas courts have also held that the right imposes a positive duty on the state to ensure that the appropriate infrastructure is in place so people might exercise the right. For example, the ECtHR in *Appleby v United Kingdom* (in discussing the right to freedom of expression) observed that:¹¹⁰⁹

... genuine, effective exercise of this freedom does not depend merely on the State's duty not to interfere, but may require positive measures of protection, even in the sphere of relations between individuals.

Limitations

4.149 Freedom of peaceful assembly is not an absolute right, and is subject to reasonable limitations in the circumstances under s 5 of the NZBORA. The Court in *Police v Beggs*, in considering whether the Speaker of the House could warn protesters to leave Parliament grounds, observed that:¹¹¹⁰

If a protest assembly is unlawful or individuals behave in a disorderly manner, or breach or threaten to breach the peace, or unreasonably infringe the rights of others, or create a civil nuisance, then the Speaker could not be said to be acting unreasonably in requiring their departure.

4.150 The Court also considered the following other relevant factors to the reasonableness inquiry:¹¹¹¹

- i. Whether the assembly is unreasonably prolonged ...
- ii. The rights and freedoms of other people ...
- iii. The rights of the occupier and those whose business and duties take them to Parliament ...
- iv. The size of the assembly and its duration ...
- v. The content of what is being expressed ... [for example] where the message is one of hatred, racial abuse, intolerance or obscenity ...
- vi. The concept of “ordre public”.

4.151 In addition, art 21 of the ICCPR provides that restrictions may be imposed on the right to freedom of peaceful assembly which are:

... imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

4.152 However, provided that the relevant assembly is “peaceful” (that is, where there is no actual violence intended by the participants), the content of what is being expressed during a protest is generally treated as irrelevant.¹¹¹² As such, the subject of the assembly can be unpopular, or even offensive. In *Bradford v Police*, the Court observed that the right to freedom of peaceful assembly “is a right for everyone, whether their cause is attractive or unattractive and whether the form of protest is attractive or unattractive”.¹¹¹³ On this basis, a peaceful group protest in favour of ISIS would be permissible in theory, though the Government might be able to legitimately prevent it from occurring on the grounds that such an activity:¹¹¹⁴

- Is likely to seriously disrupt public order to the extent that the activity is an offence under the Summary Offences Act 1981, the Crimes Act 1961 or some other legislation;
- Is actually violent or is likely to be violent;
- Is in breach of a clear statutory obligation or prohibition, such as the Trespass Act or the Terrorism Suppression Act 2002; or
- Is occurring on private property without the consent of the land owner.

Freedom of Movement

4.153 Section 18 states that:

- (1) *Everyone lawfully in New Zealand has the right to freedom of movement and residence in New Zealand.*
- (2) *Every New Zealand citizen has the right to enter New Zealand.*
- (3) *Everyone has the right to leave New Zealand.*
- (4) *No one who is not a New Zealand citizen and who is lawfully in New Zealand shall be required to leave New Zealand except under a decision taken on grounds prescribed by law.*

Limitations

4.154 Though recognised as fundamental to a democratic society, the right to freedom of movement is not unlimited and is subject to extensive statutory limitations.

4.155 Section 18 protects the right to leave and enter New Zealand and the right to move freely within New Zealand. It is worth noting, however, that the position in international human rights law has long been that foreign nationals have no inherent right to enter or remain in a country, and there is no right preventing their removal from a state.¹¹¹⁵ Rather, states have a considerable discretion in relation to immigration policy, provided individual rights are respected.¹¹¹⁶

4.156 For example, the phrase “lawfully in New Zealand” in s 18(1) and (4) is one significant limitation on the right to freedom of movement. Under the Immigration Act 2009, a person is only “lawfully in New Zealand” if he or she is a citizen, holds a valid permit or has been granted entry permission to be in New Zealand.¹¹¹⁷

4.157 Most recently, the Countering Terrorist Fighters Legislation Bill, which has passed into law, contains several limitations on s 18, as was recognised in the s 7 report prepared for the Attorney-General on the Bill’s consistency with the NZBORA. The Bill amended the Passports Act 1992, the New Zealand Security Intelligence Service Act 1969 and the Customs and Excise Act 1996, with the aim of ensuring they were adequate to respond to the threat posed by foreign terrorist fighters and other violent extremists. With regards to the limitations on freedom of movement, the s 7 report stated that:¹¹¹⁸

The objective of restricting movement of FTFs [foreign terrorist fighters] is proportional to the protection of national security, public order and the rights and freedoms of others. This is especially the case where violent extremists are involved in gross and extensive violations of human rights and international humanitarian law.

4.158 In particular, the Bill limited a person’s ability to leave New Zealand in prescribed circumstances. The right to leave has been held to encompass a person’s right to choose his or her destination, subject to the chosen state’s agreement (irrespective of whether the person is lawfully in New Zealand), and the right to a passport.¹¹¹⁹ Despite this, the Minister of Internal Affairs may now refuse to issue a New Zealand passport to a person if the Minister believes on reasonable grounds that the person intends to engage in or facilitate terrorism, the proliferation of weapons of mass destruction or unlawful activity likely to cause devastating economic damage to New Zealand.¹¹²⁰

GOVERNMENT

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-focussed 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 Election 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. The Commission said in its report on the 2014 General Election 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, an 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.

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Key Point Six: Stocktake of Government Departments and Agencies

- 5.115 There are four broad areas impacted by the transition to superdiversity for government agencies and departments:
- Public policy reform:* How can government ensure that its policy settings are effectively meeting the needs of a superdiverse society like New Zealand, and make sure that the voices of all New Zealanders, including the diverse, are heard in consultation on policy formulation?
 - Law reform:* How can government ensure that laws made to implement policies are effective in achieving the policy outcomes against the background of a superdiverse society, and take account of the views of all New Zealanders?
 - Operational policy:* How does government implement policy and law and interface with all New Zealanders, taking account of New Zealand's changing demographic makeup, and citizens' different approaches to language, the rule of law, transparency, business culture and the environment?
 - Enforcement:* How can government ensure that the rule of law is preserved through the detection and punishment of those who choose not to comply with the law, when both offenders' and victims' understanding of the law, and its enforcement, may be affected by little or no English proficiency, and ignorance of the law?
- 5.116 Every department and agency will face slightly different challenges under these four headings. But, in general, the solution to these challenges will be to improve the capability to understand the needs of, and to interface and communicate with, ethnic minorities and migrants by attracting more and better staff from these groups to public agencies, and up-skilling the cultural intelligence of existing staff.
- 5.117 The Superdiversity Centre wrote to the Chief Executives of all public service departments (with the exception of the Government Communications Security Bureau and the New Zealand Security Intelligence Service) and invited them to provide information about how their particular agency was responding to the challenges of superdiversity – both in terms of ensuring that the agency had the internal capacity to respond to the challenges of superdiversity, and what steps the agency was taking to improve its external capacity to engage with ethnic minorities and migrants as it performed its function or functions. The following non-public service departments were also approached, as they were repeatedly raised by public service departments as important to interview: the New Zealand Police, the New Zealand Transport Agency, New Zealand Trade and Enterprise, and the Financial Markets Authority.

Methodology

- 5.118 The Superdiversity Centre interviewed all public service departments, except for the Government Communications Security Bureau. Centre staff interviewed either the department's Chief Executive or a senior manager recommended by the Chief Executive. The Centre then prepared an outline of the department's main superdiversity initiatives, incorporating the findings from the interview, and the department's accountability and reporting documents such as the PIF reports discussed at [5.8], Four Year Plans, Annual Reports and other public documents where these were relevant.¹²⁶⁸ The final review was sent to the department for comment and their comments, if any, were incorporated before publication.
- 5.119 The content of each review is therefore determined both by what information is publicly available about the public agency's response to superdiversity and what information public agencies have chosen to provide to us. Each review is followed by an analysis of how the agency is responding to superdiversity and recommended potential areas for improvement, measured against:
- The need for systematic identification of the issues within that agency's role created by superdiversity;

- Whether those issues have been taken into account in operational, policy and law reform exercises;
- Whether the agency is communicating with all New Zealanders in its role; and
- Whether the agency has the internal capability to carry out the above.

Summary of Findings

5.120 While most agencies acknowledge that superdiversity will pose unique challenges which they will need to address, that understanding is not always that superdiversity reflects a systemic challenge rather than a range of distinct, ad-hoc challenges.

5.121 Not all public agencies recognise that superdiversity will have ramifications for their policy or operational responsibilities, even though there are few areas of law and policy unaffected by superdiversity, and despite the fact that there is a business case for public agencies to enhance their internal and external capacity to respond to New Zealand's demographic transition (as noted at [5.2]).

5.122 Among the public agencies recognising the implications, only some have specific, implemented strategies or policies with measurable deliverables specifically targeted at the transition to superdiversity, although some initial work is being done in this space.

5.123 Although some good work is being done, 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.

5.124 The following table sets out a breakdown of ethnic representation according to government department.¹²⁶⁹

Table: Asian, Pacific and Māori employees according to government department

Government Department	Asian (%)	Māori (%)	Pacific People (%)
Police	3.1	12.5	5.9
Customs	11.5	8.2	7.9
Ministry of Education	6.28	12.65	3.50
Crown Law Office	6	6	1
Department of Conservation	1	10.5	0.4
Department of Corrections	N/A	21	8
Department of the Prime Minister and Cabinet	0	13	3
Education Review Office	3	23	5
Financial Markets Authority	N/A	N/A	N/A
Inland Revenue Department	13	12	7
Land Information New Zealand	4	7	2
Ministry of Business, Innovation and Employment	16.1	5.3	7.4
Ministry of Culture and Heritage	1	12	N/A
Ministry of Defence	3	3	2
Ministry of Foreign Affairs and Trade	5	13	4
Ministry of Health	9	9	4
Ministry of Justice	N/A	13.1	6.7
Ministry of Pacific Island Affairs	0	6	78
Ministry for Primary Industries	8	6	3
Ministry for Social Development	9	23	13
Ministry of Transport	8	5	12
Ministry for Women	5	14	0
New Zealand Trade and Enterprise	23.6	3	0.4
New Zealand Transport Agency	7.3	5.1	1.4
Serious Fraud Office	7	5	0
Te Puni Kōkiri	2	75	4
Treasury	7	5	2
Department of Internal Affairs	7	8.2	4.5
State Services Commission	5	9	0
Statistics New Zealand	17	6	4

5.125 Superdiversity is already affecting all agencies – even those without a direct customer interface, and those who have not identified those effects, although those agencies responding to customer driven demand are the best adapted to New Zealand's superdiverse population.

- 5.126 Building internal capability by employing staff who understand superdiversity issues and have the cultural, language and diverse thinking abilities to undertake the policy thinking and implementation and communications is an urgent priority as most recruitment initiatives are still focussed on women and Māori and Pacific people (as noted at [5.101]).
- 5.127 There are some departments and agencies which are making good progress, and some which are improving rapidly. I have concluded that the following state sector agencies are responding most effectively to superdiversity as at the time of this Stocktake:
- New Zealand Police;
 - New Zealand Customs Service;
 - Ministry of Education; and
 - Ministry of Business, Innovation and Employment.
- 5.128 Most of the other public agencies have started on the journey, but need to undertake all of the measures set out above at [5.123] at a faster pace of change. As noted at [1.9], Auckland is superdiverse now. By 2021, one in three Aucklanders will be Asian. By 2025, Asians will start overtaking Māori as the biggest minority ethnic group.¹²⁷⁰ By 2038, over 50 per cent of the population will identify as Asian, Māori and Pacific peoples. Therefore, the Government does not have the luxury of time.
- 5.129 Agencies who have built an internal culture welcoming of diversity include the Police, Customs, the New Zealand Transport Agency, the Ministry of Education and New Zealand Trade and Enterprise.
- 5.130 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.
- 5.131 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.
- 5.132 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.
- 5.133 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.
- 5.134 We have also identified the Ministry of Defence as the most improved agency.
- 5.135 All of the best performing agencies have good internal leadership on superdiversity issues.
- 5.136 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 produces the most useful research we have found to date in the public sector on superdiversity. The Office of Ethnic Communities 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.

5.137 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 superdiverse, 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.

5.138 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.

New Zealand Police – Best Superdiverse Public Agency

5.139 Inspector Rakesh Naidoo, National Strategic Ethnic Advisor, and Fiona Michel, Deputy Chief Executive People, at the New Zealand Police (“Police”) spoke about the Police’s response to superdiversity.

Key Superdiversity Issues for the Police

- What steps have the Police taken to improve their internal capacity to respond to the challenges of superdiversity?
- What steps have the Police taken to improve their external outreach capacity to engage with ethnic communities?
- The Police must be equipped to deal with issues specific to some communities. Certain issues are difficult to police due to different cultural attitudes, perceptions of police and language barriers. For example, some communities migrate to New Zealand from countries where there are no family violence laws or where the police organisations in their country are corrupt.
- New Zealanders have increasing links and networks overseas. This increases the risk of transnational crime. Policing these crimes may require work with multiple agencies across jurisdictions.
- Police will also need to keep abreast of ethnic and community tensions to maintain social cohesion and prevent hate crimes.

What Steps Have the Police Taken to Improve Their Internal Capacity to Respond to the Challenges of Superdiversity?

5.140 Of the 12,000 Police employees in New Zealand, approximately 70 per cent have provided the organisation with information on their ethnicity. Of those who have provided ethnicity information, 12.5 per cent are Māori, about 5.9 per cent are Pacific peoples and 3.1 per cent are Asian. Over 100 ethnic groups and iwi are currently represented within the Police. Employees in the Police speak 60 different languages.

5.141 Two-thirds of the 12,000 employees hold constabulary powers. There are currently 8,907 “police officers” in the Police, of whom 11.8 per cent are Māori, 4.9 per cent are Pacific peoples, and 2.6 per cent identify as Asian.

5.142 The Police’s 2012 PIF identified a need to “open up police careers to those with a wider set of career options and skill sets ... in the future Police may also look to a broader experience base as desirable for its leaders”.¹²⁷¹ The 2014 follow-up review found that, although strategies were in place to improve diversity within the Police workforce, Māori, Pacific peoples and other ethnicities continued to be under-represented in the constabulary workforce, particularly at senior level (including in highly visible roles, such as District Commander and on

the national Police Executive).¹²⁷² An officer of Māori ethnicity (Superintendent Wallace Hauma-ha QSM) was appointed as Deputy Chief Executive (Māori) in May 2014 to reflect the Police's change of operating model.

5.143 The Police have entered into a memorandum of understanding with Te Wānanga o Aotearoa ("TWOA") for an 18-week certificate course to help Police increase diversity on the front line and within its ranks. The TWOA programme targets young Māori, Pacific and ethnic people – helping them improve their understanding of tikanga Māori, leadership communication skills, numeracy and fitness – for a career in the Police. Since the TWOA programme began in 2009, more than 70 students who finished the course have been hired by the Police and gone on to graduate from the Royal New Zealand Police College.

5.144 As part of a "Turning of the Tide" Whanau Ora crime and crash prevention strategy, the Police have appointed 12 Māori Responsiveness Managers to improve the way they engage and respond to crime and victimisation in our diverse communities.

5.145 The Police currently have in place advertising campaigns targeted at recruiting officers from Māori, Pacific and ethnic communities. The Police are currently evaluating their recruitment processes to determine whether more can be done to attract ethnic candidates, including understanding the perceptions of the Police among ethnic communities which may discourage people from those communities from applying to the Police. Police are also reviewing the "conversion process" to work out at what point in the application process it is abandoned by potential superdiverse applicants.

5.146 The Police have implemented unconscious bias training with recruitment staff, and are rolling the training out to key promotion and decision-making boards. Recent staff engagement surveys (which form part of the PIF reviews) are now being broken down by ethnicity. This is important to ensure that the perspectives of minorities are taken into account.

5.147 In 2015, the Police added "valuing diversity" and "empathy" to its core values of professionalism, respect, integrity, and commitment to Māori and the Treaty. The addition of these two new values is recognition by Police of the diversity that now exists in our country and the organisation, as well as the need for the Police to be more victim focussed. These values were translated into Te Reo Māori, Simplified Chinese, Hindi, and Samoan and published on the Police's public webpage.

5.148 The Police are currently updating their national ethnic strategy, *Working Together with Ethnic Communities – The Future*. This ethnic strategy builds upon the ethnic strategy that was first drawn up in 2005. The strategy was updated to ensure the Police are ready and capable to respond to the needs and emerging issues of our increasingly diverse ethnic communities. This strategy will be launched in the latter part of 2015. The ethnic strategy complements the strategies also in place for working with Māori and Pacific communities.

5.149 The Police established the Office of Māori Pacific and Ethnic Services ("MPES") in 2003. MPES consists of strategic advisors for the respective areas, and contributes towards setting the Police direction for working with Māori, Pacific and ethnic communities. MPES is a direct report to the Police Commissioner and is represented in the Commissioner's Executive through the Deputy Chief Executive (Māori).

5.150 The Police have signed a letter of agreement with UNITEC in Auckland to deliver four pre-recruitment courses a year to facilitate increased members of the diverse communities joining the Police.

5.151 The Police have established an internal support network for Māori, Pacific and ethnic staff in 2011. The network exists to develop the Police's capability and capacity to work in, and with, Māori Pacific and ethnic communities. The network connects the wider Police community with the unique perspectives and experience of the Police's diverse employees to enhance the delivery of Police services.

5.152 The Police have produced resources such as the Practical Reference to Religious Diversity and a multilingual phrasebook to assist staff when working with diverse communities. The Police have also implemented cultural training at the Police College, and in the

regions, so staff have the skills to work with New Zealand's diverse communities.

5.153 The Police have developed protocols to facilitate diverse communities joining the Police, including the introduction of uniform protocols around members of the Sikh faith wearing specially designed turbans as part of their official uniform.

5.154 In 2015, the Police opened a multi-faith prayer room at the Police College in Porirua. The room provides an inclusive space for visitors and Police staff to practise their faith. The Police College also has a cultural responsiveness programme to deal with any dietary and cultural needs of people studying at the College. The Police are also expanding their chaplaincy support service to include all major faiths to better support the welfare needs of its diverse staff.

What Steps Have the Police Taken to Improve its External Outreach Capacity to Engage with Ethnic Communities?

5.155 The Police have adopted a prevention-based model of policing excellence. In the context of ethnic communities, this means that it is important that Police officers are seen as visible, relevant and responsive to the needs and concerns of those communities. Early intervention and involvement by the Police in issues which matter to those communities limits the risk of those communities feeling marginalised and turning to crime or being victimised.

5.156 The Police have a national Commissioner's Ethnic Focus Forum, where 12 key ethnic representatives provide strategic advice to the Commissioner of Police directly. This mirrors the Commissioner's Forums already in place for Māori and Pacific communities, which provide the same specific functions in relation to Māori and Pacific issues.

5.157 The Police have regional district advisory boards in place for Māori, Pacific and ethnic communities, and in the Auckland region are also moving to area advisory boards.

5.158 The Police have established specialised liaison officer roles for Māori, Pacific and ethnic communities. These officers spearhead the organisational engagement of the Police with the particular ethnic communities they come from. These liaison officers have specifically been chosen because of their cultural competence. The officers provide strategic advice to the Police, lead engagement and initiatives with communities and serve as a bridge between the community and the Police.

5.159 The Police are active participants in the interfaith arena, and participate both at a regional as well as national level with religious community groups and representatives.

5.160 The Police are annual sponsors of the New Zealand Diversity Forum that is organised by the HRC. This forum provides a national platform for key issues to be openly discussed in the area of diversity. The forum brings together the key partners that are leading initiatives nationally in the field of diversity.

5.161 The Police recognise that sport is an important mechanism to assist with engagement, recruitment and integration of communities. Annually, the Police host the New Zealand Communities Football Cup, which brings together all the regional winners of community football tournaments to compete at the national level. The national tournament is the culmination of more than 1,000 games of regional football played by more than 250 teams.

5.162 To build and foster positive race relations in New Zealand, the Police are sponsors of the Race Unity Speech awards. This national speech competition for students in Years 11–13 was founded by the Baha'i community in 2001, and other key partners include the HRC, UNESCO and OEC. Approximately 170 students compete annually.

5.163 The Police have an established relationship with ethnic media in New Zealand and are regular contributors to ethnic newspapers, television channels, magazines, radio and social media. The Police recognise the need to communicate to communities in their own language and therefore regularly provide information to communities via ethnic media.

5.164 The Police website is available in 13 different languages.¹²⁷³ Police have also produced numerous multilingual resources for business owners, visitors and communities. These

resources have included printed publications as well as safety and crime prevention videos.

5.165 The Police have signed strategic memoranda of understanding with community organisations to further their engagement and partnership programmes with ethnic communities. Some of these memoranda of understanding are with Multicultural New Zealand and the Federation of Islamic Associations of New Zealand.

5.166 The Police work closely with their government agency partners to assist with service delivery as well as being responsive to the needs of our diverse communities. The Police have ensured they have included safety and wellbeing outcomes into key government strategies including the Migrant Settlement and Integration Strategy, Refugee Resettlement Strategy and the International Students Framework.

5.167 The Police have also established patrol groups to assist with community safety, integration and engagement. In Auckland, the Police have Auckland Safety Patrols, Community Safety Ambassadors and International Student Ambassador programmes. These programmes are comprised of ethnic volunteers and mirror the successful Pacific patrols and Māori Wardens programmes.

5.168 The Auckland Safety Patrollers come from approximately 30 different countries and speak 50 different languages. Seventy of the patrollers have joined the Police to date.

5.169 The Community Safety Ambassadors consist of 66 senior citizens from South East Asian and Chinese communities, who walk alongside Police officers visiting business precincts and neighbourhoods in Onehunga and Epsom to provide crime prevention information.

5.170 The 68 International Student Ambassadors represent 36 international schools in Auckland City. They receive monthly Police safety and crime prevention briefings and exchange mutual issues of concern. The ambassadors then pass that information onto fellow students in their schools. There are currently 15 “Uncles and Aunties” – ethnic community leaders who provide mentoring to international students in Auckland City to assist with settlement.

5.171 There have been calls for more interpreters at 111 communications centres following the death of Cissy Chen.¹²⁷⁴ Ms Chen’s husband, Mr Liu, was on the phone to emergency services for 12 minutes. While the initial part of the call was managed by the 111 communicator, the majority of the call was managed with the assistance of a translator.

5.172 In response to the case, the Police said there were no dedicated translators to deal with emergency 111 calls at communications centres in New Zealand. The Police note that, due to their extremely diverse and knowledgeable workforce, it had a number of staff able to speak approximately 18 languages that are currently employed at the call centre, including most of the commonly-spoken languages in New Zealand (for example Japanese, Korean, Mandarin, Hindi, Cantonese, Dutch, German, French, Māori and Afrikaans). Where no staff member is able to translate, the Police have access to other translation services such as Language Line, a service run by the OEC. District watch houses also have access to approved translators. The Police noted that it is currently unaware of any complaints that have been made regarding language difficulties.

Analysis

The Police are the best performing public agency in the Stocktake because they have systematically thought through the measures superdiversity requires and implemented them.

The Police have considered the relevant issues arising from superdiversity more thoroughly than any other agency, and have holistically implemented strategies and programmes to build internal capability and the ability for external engagement with all New Zealanders. This has allowed the Police to implement measures to prevent racial disharmony and to understand and meet the needs of all New Zealanders.

What is needed now is a continuation on this journey and a growth of internal capability to

implement. The Police are actively working on why more diverse candidates do not apply and become employees, and this is where the effort needs to continue.

The Police also provide significant support to other agencies such as the New Zealand Customs Service as they develop their own responses to superdiversity. This interagency cooperation across the public sector is an important part of developing a broader and more effective response to the challenges of superdiversity in the most efficient way. Many public agencies we spoke to cited assistance received from the Police in responding to the challenges of superdiversity, so the thinking and work that is being done is not occurring in a silo. The role played by Inspector Rakesh Naidoo, National Strategic Ethnic Advisor (himself a migrant to New Zealand), in leading the Police's response to superdiversity has been pivotal.

New Zealand Customs Service – Second Best Superdiverse Public Agency

5.173 Scott Rennie, Principal Advisor Workforce Planning, and Sarah O'Grady, Senior Organisational Development Advisor, spoke about the New Zealand Customs Service's ("Customs") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for Customs

- What steps has Customs taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has Customs taken to improve its communication with external stakeholders?

5.174 Customs recognises it will need to manage "volume growth and resource pressures". Customs' Four Year Plan identifies that:¹²⁷⁵

Growth in service demands include:

- *Trade and travel with emerging economies, particularly Asia, which is expected to significantly outpace growth from New Zealand's traditional source countries; presenting increased risks and new service challenges*
- *Increasing diversity of the customer base, including individual importers, and more travellers who speak little or no English and with different cultural norms*
- *Changing business models, such as rapid growth of internet shopping for goods from overseas and impacts on the fast freight industry*
- *The uptake of New Zealand's free trade agreements, particularly with China; and related increase in service demands both in New Zealand and off-shore*
- *Significant government policy decisions that impact the border*
- *Dynamics in the shipping, ports, and airports sectors*
- *Increasing risk of revenue leakage, particularly from deliberate under-valuing of imports*
- *More organised and sophisticated trans-national criminal offending*
- *Changes in the operating environment that challenge the effectiveness of the Customs and Excise Act 1996.*

5.175 Customs addressed "supporting diversity" in its Four Year Plan:¹²⁷⁶

The renewed focus on improving customer experience recognises the diverse needs of Customs' clients ... [including] the ethnicity and home country of individuals, where English is not the first language. Customs is considering ways to improve communication and capacity to communicate more effectively with Asian clients in particular, as trade and travel increases from Asia. This may mean, for example, recruiting more staff with relevant skills; actively recruiting Asian staff and improving networks with Asian communities. Over the four year period, Customs will also engage with other Border sector agencies to look at ways these skills and capabilities can be present at

the border in support of all agencies.

... Customs recognises the importance of having diverse perspectives reflected across its teams. The benefits from this diversity include the potential for improving a view of Customs' services and operations from a customer's perspective, improved problem-solving and increased creativity by staff, and enhanced decision-making by Customs' leaders.

5.176 Customs approaches diversity both in terms of capability requirements and in terms of representing the community.

5.177 Customs has had a Diversity and Inclusion Council in place for 18 months. The Council is an internal group comprised of staff members from diverse backgrounds and includes members of the Senior Leadership Team. It provides advice and supports diversity and inclusion initiatives.

5.178 The Council is focussed on communication and removing barriers to senior leadership. It aims to open a dialogue with staff. The Council is about to undertake a series of workshops with staff to understand their thoughts on diversity and inclusion. It has also organised unconscious bias training and considered the effect of Customs' internal policies.

5.179 Customs staff are diverse. However, Customs has recognised its leadership teams are not as diverse as it would like and is taking steps to address this. The Four Year Plan notes:¹²⁷⁷

The talent pool for potential leaders as managers is being recognised, and efforts are underway in 2013/14 to ensure that matters relating to diversity are not barriers to leadership appointments; and that the benefits that can be gained from having a more diverse mix are given due recognition. The aim is for leadership teams that are able to meet the future challenges deriving from an increasingly diverse organisational make-up and customer base. Leaders are actively encouraged to support Customs' beliefs and values that recognise the importance of diversity, belonging and connectedness.

5.180 Customs is also looking at the work other agencies are undertaking in the diversity area, particularly the Police. The Police's National Strategic Ethnic Advisor, Inspector Rakesh Naidoo, has spoken to Customs about the Police's work. Customs is considering strategies to match the demography of its staff to the general population, as done by the Police. Customs is also using Statistics New Zealand's diversity work to undertake its workforce planning.

5.181 Customs has done significant work to educate staff about the impact of superdiversity. For example, Customs held a "diversity and inclusion month" last year, which included talks from Mervin Singham, the former Director of the Office of Ethnic Affairs (as it then was), and also Professor Paul Spoonley on the changing demography and superdiversity of Auckland.

5.182 Customs will host an NZAL Public Sector Forum on 6 October 2015 to discuss communicating with ethnic minorities and migrants, and invited the Chair of the Superdiversity Centre to speak about superdiversity at its Executive Board meeting on 27 August 2015.

What steps has Customs taken to improve its communication with external stakeholders?

5.183 Customs considers staff should be comfortable communicating with diverse groups and diverse travellers to New Zealand and traders should be comfortable communicating with Customs.

5.184 Customs' Principal Advisors on Māori Responsiveness work closely with the wider Māori community and stakeholders on Customs matters. They also advise on cultural matters and contribute to building a sense of belonging, connectedness and inclusion.

5.185 Customs staff need to understand cultural nuances, and other languages, to conduct interviews related to border protection. Similarly, as trade volumes expand, particularly into Asia, Customs staff need to be able to communicate well with the increasing diversity of importers and exporters. The ethnic breakdown of Customs staff (as at 30 June 2015) is:

- New Zealand European: 65.0 per cent

- Non-New Zealand European: 16.9 per cent
- Asian: 11.5 per cent
- New Zealand Māori: 8.2 per cent
- Pacific peoples: 7.9 per cent
- Other: 7.8 per cent
- Not stated: 4.7 per cent

5.186 Customs staff based in Auckland are more diverse:

- New Zealand European: 58 per cent (73 per cent not in Auckland).
- Non-New Zealand European: 16 per cent (18 per cent not in Auckland).
- Asian: 15 per cent (7 per cent not in Auckland).
- Pacific peoples: 12 per cent (2 per cent not in Auckland).
- Māori: 9 per cent (7 per cent not in Auckland).
- Other: 8 per cent (8 per cent not in Auckland).

5.187 The majority of Asian and Pacific staff members work in operations roles such as at the border, in investigations and intelligence and in trade assurance roles.

5.188 In terms of language, of Customs' 1,122 staff:

- 159 can interpret a language/dialect other than English with 44 languages/dialects covered;
- 156 can translate a language/dialect other than English with 42 language/dialects covered.

5.189 Customs aims to recruit more staff with the ability to speak other languages. During the job interview, potential staff members are asked what languages they speak.

5.190 When necessary, Customs works with culturally competent staff from other agencies (such as the Police, MPI, and Aviation Security). Customs is a member of the Oceania Customs Organisation and undertakes work to support Customs departments in the Pacific.

Analysis

Customs provided the best list of key issues raised by superdiversity, and showed a good understanding of where the shoe is likely to pinch in its portfolio. Customs is also doing the work to systematically predict future issues arising in its portfolio from superdiversity.

It is also open to adopting best practice to increase its internal capability, but the lack of superdiversity in its senior leadership needs more attention. Customs is also continuing to work on improving its connections with diverse communities and improving its communications with all New Zealanders.

Customs is thinking through better investment in education about customs laws and regulations to prevent breaches, as compared with a sole focus of prosecution. It will be exciting to see where this organisation will be in three years' time.

Ministry of Education – Third Equal Superdiverse Agency

5.191 Ellen MacGregor-Reid, Deputy Secretary, Strategy, Planning and Governance at the Ministry of Education ("MoE"), spoke about the Ministry's response to the challenges of superdiversity. We also received information about specific programmes from Pauline Barnes, Group Manager, Curriculum and Teaching. Policy issues for education arising out of superdiversity are discussed at [3.53].

Key Superdiversity Issues for the MoE

- What steps has the MoE taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has the MoE taken to improve its capacity to communicate with external stakeholders?

What Steps Has the MoE Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.192 Voluntary ethnicity data is collected from employees when they start with the Ministry. Employees are not asked what languages they speak. The breakdown of the Ministry's staff is as follows.

Table: Ethnic breakdown of Ministry of Education staff

Ethnicity	Percentage (%)	Headcount
Asian	6.28	199
Māori	12.65	401
Pacific	3.50	111
New Zealand European	57.52	1,824
European Other	14.00	444
Other	1.40	33
Unknown	5.01	159

5.193 In 2014, the Ministry established targets to focus and track activity on how effectively the Ministry provides for diversity in its workforce. The Ministry used representation in the general population (from 2013 where available) as a point of comparison, established its baselines (using 2014 data) and set targets for 2015.

5.194 Alongside this framework it also identified actions needed to make progress against these targets. The People Capability team will monitor performance against the targets with regular reporting to the Ministry's Performance Governance Board. This will facilitate senior leadership awareness, ownership and oversight of diversity matters. Targets cover gender and ethnic diversity in the general workforce as well as management, pay ratios, employees with notified disabilities, turnover and percentage of workforce less than 30 years of age.

Staff Development

5.195 The Ministry supports the development of all staff within the organisation through a variety of opportunities for professional development. There are a number of frameworks open to all staff, including:

- **Backing you to win:** Included in the overarching professional development framework "Backing You to Win" are a variety of developmental streams and opportunities including formal support for tertiary study including study leave options and financial support. During the 2014/2015 financial year the Ministry made a total contribution of \$232,645 in support of staff tertiary fees. A total of 125 contributions were made across a variety of study areas.
- **Scholarship Academy:** The Ministry's Scholarship Academy enables staff to undertake a series of management and leadership opportunities designed to support them in their leadership development. Since 2013, a total of 15 people have completed programmes within the Scholarship Academy and there are currently nine staff enrolled in the Scholarship Academy. Each of the programmes is aimed at different levels within the organisation and include:

- i. Australia and New Zealand School of Government (“ANZSoG”) Executive Masters in Public Administration;
 - ii. Leadership Development Centre (“LDC”) Fellowships;
 - iii. ANZSoG Executive Fellows Programme;
 - iv. ANZSoG Towards Strategic Leadership; and
 - v. Leadership in Practice (learning about diversity is part of this course).
- **Essential Leadership:** The Ministry’s Essential Leadership programme includes a series of introductory courses, as well as programmes of various lengths and topics to develop leadership and management across various tiers within the Ministry. 123 Ministry staff have either participated in, or are currently enrolled in an Essential Leadership programme. Programmes included in Essential Leadership are:
 - i. LDC Leadership Development Programme;
 - ii. LDC Management in Action;
 - iii. Aspiring Leaders;
 - iv. Advisory Leadership programme; and
 - v. Leading for achievement.
- 5.196 Other development options available to Ministry staff include coaching, mentoring, job shadowing and secondment opportunities. These options generally take a longer-term view and are usually designed in consultation with individual staff members to determine what options within these streams best suit their developmental aspirations. Within these activities people may choose to focus on developing their cultural intelligence.

Cultural Intelligence in the Policy Community

- 5.197 The Ministry has a comprehensive programme focussed on building policy capability. Recently, as part of this programme, the Ministry conducted a survey on cultural intelligence within its policy community. The results show that understanding and responding to different cultural contexts is very important to people in the Ministry’s policy community and there is a strong commitment to improving cultural intelligence. The working group for the Building Policy Capability programme will use these findings to design practical tools to build cultural intelligence, which build on the range of existing training and tools already in place, including Tātai Pou.
- 5.198 Tātai Pou is a set of competencies for Ministry staff that focus on work-based capability to deliver on the Māori Education Strategy, Ka Hikitia, and to contribute towards raising achievement and reducing disparity. The competencies are aimed at supporting the Ministry’s development and performance in this priority area.
- 5.199 The Ministry has sought a diverse group of candidates for its 2016/2017 Graduate Programme by creating tailored and targeted advertisements. Alongside the usual advertisement channels, advertisements designed to appeal to Māori candidates were created with advice from the Māori Strategic Policy team. These were directly provided to every Māori or Pacific department/faculty within each university, and also every careers advisor in every New Zealand university. The Ministry is building on this approach for future graduate intakes.
- 5.200 Other examples of the activities that the Ministry is undertaking to support a diverse staff composition include:
- Te Reo Māori Classes – 10 weeks of two-hour sessions held at the Ministry for staff who wish to get a basic level of language skills or improve their current skill levels;
 - Including Asian staff representation in diversity target reporting to the Performance Board each month;
 - Establishing mentoring opportunities for Asian staff;

- Establishing leadership development plans for those Asian leaders in Manager and Team Leader roles;
- Opportunities for staff to act as ambassadors at the Education Festivals and Te Matatini Kapa Haka Festivals;
- People Capability Business Partners work with Deputy Secretaries to establish group plans for achievement of diversity targets, including Asian staff representation;
- Diversity is included in Ministry recruitment branding;
- Four speakers are scheduled for Treaty 175 discussions in 2015;
- Tātai Pou competencies are included in recruitment conversations;
- Membership of the National and 10 Regional Cross-Sector Forums comprises representatives from across the education system, including the wider social and business sector, national representative bodies, regional representation, providers, and cross-government and sector stewardship advisors. The Ministry does not ask forum members their ethnicity, but it makes sure that key stakeholder organisations representing its diverse population are invited. This includes, for example, the New Zealand Pacific Principal Association, iwi and Rise Up Trust. Membership reflects each region's and community's diversity.

What steps has the MoE taken to improve its communication with superdiverse external stakeholders?

5.201 The Ministry is responsive to the diversity of the New Zealand education community, parents, families and whānau, communicating through a wide variety of language resources, activities and initiatives in support of New Zealand students, examples of which include:

- The Bilingual Assessment Service provides specialised resource teachers to assess the learning needs of students from language backgrounds other than English;
- Lead and Senior Advisors Refugee and Migrant Education, across the Ministry's regional network, provide ongoing support for students, families and whānau;
- National Standards Multilingual Information;
- Multilingual notices and forms;
- Supporting Your Child's Learning – multilingual information to support parents' understanding of educational processes in New Zealand;
- Teaching English in Schools To Speakers of Other Languages ("TESSOL") tuition fees scholarships (approximately 120 awarded annually);
- The Ministry's website has available content of specific relevance to different cultures, including information on immersion settings (for example, kura), policy frameworks (for example, Ka Hikitia), and supporting the educational achievement of priority learners (including Māori and Pacific learners);¹²⁷⁸
- Some content is translated into non-English languages case-by-case (driven by individual business units), most notably into Te Reo Māori;
- Social media – Tweets sent from the corporate Twitter account (@EducationGovtNZ) are sometimes translated into Te Reo Māori where the topic is of direct relevance to Māori language, culture and identity. Tweets sent from the Ministry's corporate account profile a range of topics relevant to educators, learners, and families on specific cultural interests, such as targeted scholarships and awards, *Education Gazette* articles, and other items;
- The Ministry's YouTube channel includes a number of videos that are representative of ethnic diversity and which discuss specific cultural matters;¹²⁷⁹
- *Education Gazette* – The Education Gazette alternates issue-by-issue between the Te

Reo Māori-dominant and English language-dominant masthead of the printed magazine. Articles reflect topics relevant to educators about Māori and Pacific students and their communities as priority learner groups. Articles also reflect aspects of diversity across many cultures, including topics on language learning, ESOL, language weeks, targeted teacher and student scholarships and awards, international education strategy, and international teacher and student exchanges.

5.202 The Ministry also funds a range of ESOL programmes for new migrants, which are set out in more detail at [3.69].

5.203 Multilingual publications to parents, family and whānau are available in:

- | | |
|-----------------------|-----------------------|
| • Arabic; | • Somali; |
| • Burmese; | • Gagana Samoa; |
| • Chinese; | • Tagalog; |
| • Cook Islands Māori; | • Thai; |
| • Dari; | • Karenic; |
| • Farsi; | • Pashto; |
| • German; | • Spanish; |
| • Hindi; | • Gagana Tokelau; |
| • Japanese; | • Te Reo Māori; |
| • Korean; | • Lea Faka-Tonga; and |
| • Vagahau Niue; | • Vietnamese. |

Analysis

The Ministry’s leadership is responsive to Māori and Pacific diversity, with a range of measures implemented to develop an internal culture welcoming of different cultures and languages and to develop Māori and Pacific leadership. More focus on the needs of other major minority groups in New Zealand is warranted by the protection of minority languages, culture and religions under the NZBORA (see [4.81] for further discussion), by the growing importance of diverse migrants to the New Zealand economy and their proportion of the population. Education is a key way to grow social capital through teaching about the value of diversity and the contributions made by migrants, and to deepen understanding of different cultures, helped in part by the increasing diversity of boards of trustees and school teachers (discussed at [3.55]).

Thus, the work the Ministry is undertaking on all of these fronts, as set above, is critical. The Ministry devises policy at the migrant coalface, as schools are often the best source of migrant education available for the children of migrants who are the first to learn to speak English and then assist their parents. The problem understandably remains resourcing, but the importance of the Ministry’s role means that they are a prime place for investment to ensure we sustain and maximise the diversity dividend.

Ministry of Business, Innovation and Employment – Third Equal Superdiverse Agency

5.204 Kate Wareham, General Manager, Human Resources, spoke about the Ministry of Business, Innovation and Employment’s (“MBIE”) response to New Zealand’s transition to superdiversity. We also received information from Judi Altinkaya, National Manager Settlement, Christine Hyndman, Manager Immigration Policy, Keith McLeod, Principal Analyst, Migration Research, Evaluation and Analysis, and Michael Hampl, Principal Analyst.

Key Superdiversity Issues for MBIE

- What steps has MBIE taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has MBIE taken to improve its capability to engage with external stakeholders?
- How is MBIE taking advantage of superdiversity to improve business, innovation, and employment in New Zealand?
- How is MBIE taking advantage of superdiversity to improve New Zealand's labour force?
- How is MBIE alleviating the risks superdiversity presents to New Zealand's labour force?

What Steps Has MBIE Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.205 MBIE's Annual Report describes MBIE's workforce as follows:¹²⁸⁰

The Ministry has a diverse workforce with 2,805 employees, just over 6 per cent of the public service workforce. As an international business, we have 23 sites overseas in addition to the 57 sites in New Zealand.

The Ministry is committed to having a workforce that reflects the diversity of the whole community and is a member of the Equal Employment Opportunities Trust ...

5.206 MBIE's workforce (as at 30 June 2015) is:

- 5.3 per cent Māori;
- 7.4 per cent Pacific peoples; and
- 16.1 per cent Asian.

5.207 MBIE's Quarterly HR Dashboard notes that:

MBIE has ethnic diversity, but we see some ethnicities absent in higher management tiers. We are also significantly behind the public sector and New Zealand population in representation of Māori.

5.208 Half of MBIE's staff are based outside of Wellington, and about 11.5 per cent are located offshore.¹²⁸¹

5.209 In June 2014, MBIE launched its diversity strategy via the MBIE intranet to give a high level of visibility and priority amongst staff of internal diversity and inclusiveness. The foundational element of the strategy is the engagement, support and promotion of existing organically formed networks, groups and initiatives, to encourage progress in the areas of diversity and inclusiveness.

5.210 Other key elements of the diversity action plan include:

- Creation of a diversity governance group.
- Development of a Diversity HUB (intranet site), with links to information tools and resources, including other existing diversity related pages.
- Publishing key statistics about MBIE diversity in comparison to the whole public sector and all of New Zealand.
- Video blog by the Chief Executive launching the campaign.
- Engaging the business as to what diversity means to them via published feedback posts.
- An online quiz to help staff reflect on their own views and knowledge around diversity and inclusiveness.
- Reporting back on progress via the intranet home page and hub.
- A conscious effort to reflect the diversity of MBIE in the content and focus of the whole MBIE intranet.

- Redrafting MBIE's diversity policy documents.
- Internal MBIE Award category for diversity.

5.211 In its recent recruitment round for senior and principal analysts, the Commercial and Consumer Branch trialled blind CVs. The panel members reflected that it was a good exercise, and that it assisted in changing the nature of conversations, reporting that "doing little things like this can help identify some of the unconscious assumptions that we might be making".

5.212 Other diversity initiatives undertaken by MBIE include:

- The Matariki and Māori Language week intranet hub, including Māori language tools and resources, phrase cards, labels and links to Māori language champions within MBIE;
- Te Reo Māori lessons;
- Cultural competency workshops;
- Treaty of Waitangi workshops;
- Matariki events;
- Te Rito bicultural learning resource installed on all MBIE computers;
- The Pacific Hub (intranet site) which includes links to news and resources, Pacific language tools and seminars;
- Learn Samoan, Fijian, Tongan, a video learning series;
- Le Tanoa Pacific – A five seminar series to discuss the economic development of New Zealand's Pacific community. It looked at top ideas for lifting Pacific people's economic participation particularly in relation to public, private and community partnerships;
- Pacific internship opportunities for graduates;
- A whole of MBIE Pacific Community of Practice was established in August 2013, which has internal and external members. The Pacific Community of Practice provides advice on the strategic direction for Pacific work in MBIE and the effectiveness and efficiency of its services to Pacific customers. It includes three elements:
 - Pacific Strategic Think Tank* – An internal and external mix of Pacific and non-Pacific peoples engaging with communities around MBIE work for Pacific people. Academics bring a different mix of skills to contribute to a macroeconomic view. Objectives of the think tank include identifying future trends, challenges and opportunities for Pacific communities that impact on MBIE's work, including informing and aligning Pacific work with MBIE's strategic direction and its contribution to addressing Pacific trends, and providing options on how opportunities and challenges can be addressed by MBIE's work.
 - Pacific Operational Advisory Group* – This internal group of Pacific and non-Pacific staff provide integrated advice from across MBIE to ensure the Pacific Economic Strategy's objectives and initiatives are relevant, efficient and effective for Pacific communities.
 - MBIE Pacific Staff Network* – This both supports Pacific MBIE staff internally, and brings together different cultural perspectives.
- In partnership with the MBIE graduate programme, MBIE is active in universities talking to Māori and Pacific students to present MBIE as a desirable career opportunity.

5.213 On 25 March 2015, a group of MBIE general managers and fourth tier managers participated in a pilot workshop looking at unconscious bias. The workshop focussed on recruitment, moderation and performance evaluation, and involved the managers reflecting on results of an online test identifying unconscious bias.

5.214 MBIE is actively participating in a cross-agency project (led by MFAT and discussed below at [5.455]), aimed at delivering a range of interventions designed to lift capability

and better position the public sector to exploit opportunities, manage risk and more effectively share resources and intelligence relating to China. MBIE has contributed to the business case for this project, and has senior staff on the project steering group. It has also been involved in hosting workshops for operational parts of the business tasked with describing MBIE's China-related business needs, providing feedback and other input into the project.

5.215 A small group is currently establishing an Asian-focussed diversity initiative, which is being supported by the Deputy Chief Executive (Finance and Performance). The programme is under development.

5.216 MBIE has started work on their Vision 2015 for Immigration New Zealand. According to MBIE's Four Year Plan this includes:

- Implementing a global service delivery model which rationalises our network of local offices, outsources the visa application receipt functions and centralises processing. This is being done to enable us to be more agile, extend our reach into global markets to support the goals of bringing the best people to New Zealand (skilled workers, investors, students, tourists) and to ensure maximum economic impact from immigration.
- The new Immigration Global Management System (IGMS), a major technology project (\$105 million of capital expenditure), replaces our ageing computer systems. When it is fully operational, it will simplify the visa application process and provide a self-service online channel for visa applicants and employers.
- Implementing the Vision 2015 programme will also reduce the annual operating costs of immigration services on an ongoing basis by around \$22m from 2018/19.

What Steps Has MBIE Taken to Improve its Capability to Engage with External Stakeholders?

5.217 MBIE's Annual Report describes its work to build capability to engage with Māori and Pacific peoples:¹²⁸²

Over the year the Ministry has identified a particular requirement to build our capability to engage actively and effectively with Māori and Pasifika. Our Māori Economic Development Unit, Pacific Centre of Excellence and Chief Advisor Pasifika are addressing this by helping each business group to understand its role in relation to Māori and Pasifika economic development. Their work has included delivery of staff workshops on how to do business with Māori, arranging Māori business guest speaker sessions, development of links between our leaders and the Māori-Inc leaders, and establishment of a Ministry-wide Pasifika community of practice to identify how the Ministry can make the biggest difference for Pasifika people.

5.218 MBIE launched the Pacific Economic Strategy and Action Plan in August 2015, which highlights its focus areas over the next five years as well as the actions that MBIE plans to implement for Pacific communities. The strategy aims to improve Pacific people's involvement and contribution to the New Zealand economy through more sustainable job opportunities for Pacific people, more affordable and suitable housing for Pacific people and more sustainable Pacific-owned businesses.

5.219 MBIE recently launched its first Pacific e-newsletter, Tabana Nius, which aims to regularly inform stakeholders about Pacific work in MBIE and also as an avenue for stakeholders to communicate with MBIE.

How is MBIE Taking Advantage of Superdiversity to Improve Business, Innovation, and Employment in New Zealand?

5.220 Increasing Auckland's contribution to the economy is a priority for MBIE. MBIE's Four Year Plan notes:¹²⁸³

Large, densely populated and diverse cities are associated with higher rates of productivity and wages.

A successful Auckland is critical to a successful New Zealand. The scale and density of Auckland,

as well as its international connections, can improve productivity and generate employment that pays higher wages.

- 5.221 MBIE developed the Entrepreneur Work Visa to replace the Long-Term Business Visa. According to MBIE's Annual Report:¹²⁸⁴

The aim is to attract higher-calibre people who can create high growth and innovative businesses with export potential.

The new Visa will operate under a new points-based system. Points will be offered for criteria including job creation, export potential, and business experience. To help with regional development, there will also be extra points for expanding or starting businesses outside of the Auckland region.

- 5.222 MBIE's Annual Report describes its work to build capital markets. This includes:¹²⁸⁵

This year we signed the Asia Region Funds Passport Statement of Intent with Australia, Singapore and South Korea. Work is now underway to create commonly agreed regulatory framework for selling managed funds across borders in the Asia-Pacific region.

- 5.223 As well:¹²⁸⁶

In 2010, Immigration New Zealand set itself the target of attracting \$700 million of potential investment capital via the investor policies. We have been working closely with our New Zealand Inc partners (in particular MFAT and NZTE) to attract high quality migrant investors. Events have been attended or hosted around the world with this objective in mind. This target has been surpassed with over \$3 billion in funds currently in the pipeline. Of that over 400 applications have completed processing representing over \$1 billion funds alone. The attraction of investor migrants led to active collaboration between government agencies and the private sector, both in New Zealand and markets such as the US, UK, Germany, India and Japan. The impact on New Zealand's capital markets has also been significant with the entry of international investors with commercial expertise and international market connections that help firms grow and access new global markets.

- 5.224 MBIE undertakes work to attract international students. According the Annual Report:¹²⁸⁷

International education contributes \$2.4 billion a year to New Zealand's economy and supports 28,000 jobs. During the year we supported the development of new initiatives to encourage further growth in the sector. These included the extension of work rights to more international students studying at high-quality providers in order to make it easier for them to support their study through work.

The Ministry is also trialling an industry partnership initiative with New Zealand universities, a small group of polytechnics, private training providers and schools. Providers that are part of the initiative are able to nominate individuals for streamlined and prioritised visa processing if they are satisfied that the application is a genuine student with sufficient funds for maintenance. In return, they are accountable for the immigration outcomes of their international students.

- 5.225 MBIE's Annual Report also describes its work "maximising benefits from international flows of ideas", "maximising benefits from international flows of trade", and "maximising the net economic value of New Zealand's relationship with China".¹²⁸⁸ In addition, it is working to encourage tourist spending and prevent overstayers.¹²⁸⁹

- 5.226 In terms of New Zealand's relationship with China, MBIE's PIF Review found:¹²⁹⁰

MBIE is well placed to support the China Strategy in terms of both its immigration and tourism activities and is widely seen as doing a good job in both areas. While there is more to do, eg, facilitating higher-value tourists and quality investments and working with trusted partners in-market, MBIE is well engaged with stakeholders and travelling in the right direction.

- 5.227 MBIE is funding the CaDDANZ research programme. CaDDANZ is led by Waikato University and Massey University teams and includes staff from Motu Economic and Public Policy Research:¹²⁹¹

[CaDDANZ] is a research programme that will identify how New Zealand can better prepare for, and respond to, these demographic changes in order for the country to maximise the benefits associated with an increasingly diverse population.

The research measures, maps and analyses the complex societal impacts of diversity and the implications for businesses, households and communities of mobility, migration indigeneity, ethnic identity, demographic change (including structural ageing and fertility) and urban/regional disparities. A significant component of the research is concerned with the implications of diversity for Māori and how Māori engage with diversity.

5.228 MBIE will provide \$5,519,123 for the study.

How is MBIE Taking Advantage of Superdiversity to Improve New Zealand's Labour Force?

5.229 MBIE supports temporary migration programmes to alleviate gaps in the labour market. It reviews the Long-Term Skill Shortage List and Immediate Skill Shortage List annually.

5.230 MBIE implements the Refugee Resettlement Strategy.

The five goals of the Strategy are:

1. **Self-sufficiency** – all working age refugees are in paid work or are supported by a family member in paid work
2. **Participation** – refugees actively participate in New Zealand life and have a strong sense of belonging here
3. **Health and wellbeing** – refugees and their families enjoy healthy, safe and independent lives
4. **Education** – English language skills help refugees participate in education and in daily life
5. **Housing** – refugees live in safe, secure, healthy and affordable homes, without needing government housing assistance.¹²⁹²

5.231 MBIE focussed on the exploitation of migrant workers in the 2013/2014 reporting period. MBIE undertook research on issues for temporary migrants. MBIE also supported the Immigration Amendment Act which addressed the exploitation of migrant workers.

5.232 A full list of all the settlement and integration programmes funded or provided by Immigration New Zealand is set out at **Appendix Three**.

How is MBIE Alleviating the Risks Superdiversity presents to New Zealand's Labour Force?

5.233 MBIE is working to improve economic outcomes for Māori. According to the Annual Report:¹²⁹³

The Crown Māori economic growth partnership strategy and action plan, He Kai Kei Aku Ringa provides a blueprint for supporting better employment, housing, science and innovation, energy and resource management outcomes for iwi and Māori. The Ministry is working closely with more than 20 government and 15 non-government agencies to ensure a coordinated approach to support realising Māori economic potential in the following areas:

- Greater educational participation and performance
- Skilled and successful workforce
- Increased financial literacy and savings
- Government, in partnership with Māori, enables growth
- Active discussions about the development of natural resources
- Māori Inc (Māori/Iwi economic entities as a driver of economic growth).

5.234 Similarly, MBIE aims to unlock the science and innovation potential of Māori. According to MBIE's Annual Report:¹²⁹⁴

The Vision Matauranga Capability Fund helps to unlock the science and innovation potential of Māori knowledge, resources, and people. During the year, we allocated investment of \$2.4 million in 18 proposals. These included environmental monitoring of Māori land, better comprehension of traditional calendars, enhancing the prosperity of Māori-owned kiwifruit orchards and creation of a Māori research collective to develop marine and land use in the Bay of Plenty and East Cape regions.

5.235 MBIE also works to improve economic outcomes for Pacific peoples. According to MBIE’s Annual Report:¹²⁹⁵

The Ministry, working with the Pacific Community of Practice has developed a Pacific Outcomes Framework and a coordinated action plan, which is in the final stages of approval. Key outcomes identified include:

- More Pacific people owning sustainable businesses
- More Pacific people in sustainable employment
- More Pacific people in quality and affordable housing
- Coordination across the sector.

5.236 MBIE aims to raise the skill levels of Māori and Pacific peoples through programmes like the Māori and Pasifika Trades Training Initiative. MBIE’s Annual Report notes:¹²⁹⁶

Māori and Pasifika peoples will make up a larger proportion of the national workforce in future. The new Māori and Pacific Trades Training Initiative which the Government announced in the 2013 Budget aims to ensure more Māori and Pasifika learners, aged 18 to 34, can obtain meaningful trades qualifications and apprenticeships. The end goal is that all participants gain a level 4 trade qualification and employment.

5.237 MBIE also supports the programmes administered by the Royal Society of New Zealand in order to attract and retain highly skilled scientists in New Zealand.

Analysis

MBIE’s role is right at the coalface of superdiversity with its portfolio of responsibilities including Immigration New Zealand, employment and skills, economic development, and its priority of increasing Auckland’s contribution to the economy.

MBIE has many relevant projects underway to ensure it is meeting the external challenges and maximising the benefits of the diversity dividend. The next step is to get systemic identification of superdiversity issues across this important and pivotal organisation so there is consistency. There also needs to be more focus on growing MBIE’s internal capability to understand the superdiverse population and how to maximise their economic output, especially outside gender, Māori and Pacific groups. More focus on building Asian leadership capability in the organisation is important given the importance of Asia to most facets of MBIE’s role.

Ministry of Defence – Most Improved Superdiverse Public Agency

5.238 Helene Quilter, Secretary of Defence and Chief Executive, and Bryn Gandy, Deputy Chief Executive, Strategy, Governance and People, spoke about the Ministry of Defence’s (“MoD”) response to New Zealand’s transition to superdiversity.

Key Superdiversity Issues for the MoD

- What steps is the MoD taking to build its internal capacity to respond to the challenges of superdiversity?
- What steps has the MoD taken to improve its communication with external stakeholders?

What Steps is the MoD Taking to Build its Internal Capacity to Respond to the Challenges of Superdiversity?

5.239 The MoD is a relatively small department. The Ministry is working to improve the diversity of its staff, particularly in the acquisitions and policy areas, where it considers that there is potential to generate better outcomes through a more diverse and vibrant workforce.

5.240 The MoD is the civilian voice on defence matters. It has five statutory functions under the Defence Act 1990:¹²⁹⁷

- a. to be the principal civilian advisor on defence to the Minister and other Ministers;
- b. to formulate advice, in consultation with the Chief of Defence Force, on defence policy;
- c. to prepare, in consultation with the Chief of Defence Force, and submit to the Minister, from time to time a defence assessment;
- d. to procure, replace, or repair ships, vehicles, aircraft, and equipment used or intended for use by the Defence Force, where that procurement, replacement, or repair has major significance to military capability; and
- e. to arrange for the assessment and audit of the Defence Force in relation to any function, duty, or project.

5.241 As at December 2014, the ethnic makeup of the Ministry of Defence was 92 per cent New Zealand European, 3 per cent Asian, 3 per cent Māori, and 2 per cent Pacific peoples. The MoD understands the need to improve the diversity of the Ministry and is working to improve diversity across the Ministry, including in particular the acquisitions function. The Secretary has an overall plan to improve the Ministry's diversity, including recruitment.

5.242 The essential diversity challenge from the MoD has been to diversify away from reliance on male New Zealand European staff aged in their late 40s, and work on this is ongoing. The percentage of women in the Ministry has increased from 33 per cent to 42 per cent over the last two years, and there is a growth in the number of younger people in the organisation. The Ministry anticipates an ongoing programme to grow diversity.

5.243 The security clearance vetting procedure can present difficulties for diverse New Zealanders to obtain employment at the MoD, as they may not have been in the country long enough for their referees to be acceptable.

5.244 The MoD's Four Year Plan notes:¹²⁹⁸

Most Ministry work is produced through partnerships, and this requires its staff to manage highly asymmetrical relationships with a number of larger organisations. The Ministry has made it a priority to invest in this capability, and has established three top-level leadership priorities of people, teamwork and partnerships. In 2014 these will be formally embedded into the Ministry's performance management systems.

A new talent management system was introduced in 2013 and is owned directly by the Leadership Team. A key expectation of moving to shared HR services with other sector agencies is that talent will be managed in a whole-of-sector context. The operating of a Sector Board of Chief Executives will be a major step.

5.245 The MoD's 2014 Annual Report notes:¹²⁹⁹

The Ministry has equal employment opportunity policy and procedures in place to ensure fairness and equity of opportunity for Ministry employees. The Ministry monitors its equal employment indicators to ensure employees are treated equitably. Equity metrics are also reported to the State Services Commission each year.

What Steps Has the MoD Taken to Improve its Communication to External Stakeholders?

5.246 As part of the consultation on the most recent Defence White Paper, the MoD held a round of consultation which attracted over 350 submissions.¹³⁰⁰ The Ministry considers that the public consultation part of the process is very important. The MoD is considering

whether to consult in languages other than English as part of the next Defence White Paper consultation process.

5.247 The Ministry is looking to develop the opportunity for staff to develop cross-sector careers across the national security apparatus, which it hopes will lead to improved diversity across the sector. The Ministry also seeks to give staff the opportunity to work overseas as part of its broader security relationships.

5.248 The MoD is part of NZ Inc. The Ministry's follow up PIF report noted:¹³⁰¹

In geopolitical terms, the Ministry, along with other NZ Inc. agencies, operates in an evolving and uncertain strategic context. Longer-term trends include a shift in the distribution of power to the Asia-Pacific region, alongside fragility of states in the Pacific, increasing challenges to the rules-based international order and the need for a more sophisticated approach to balancing New Zealand's trade and security interests. These trends imply a strongly multilateral defence environment, an active role in the region and increasing investment in defence and security architecture. They also suggest a need for more dynamic and normalised approaches to ongoing defence assessment.

5.249 The Ministry's Four Year Plan noted that "strong international links are central to New Zealand's security".¹³⁰² New Zealand's transition to superdiversity underscores the strategic and economic importance of Asia to New Zealand and to New Zealand's defence policy. The Ministry of Defence understands that it needs to have the capability to carry out its functions in that context. The Ministry of Defence seeks to amplify its impact and reach through the system of defence attachés and the military advisor network, including through staff colleges run by New Zealand's regional partners.

5.250 The Ministry's Annual Report describes its work to maintain New Zealand's international defence engagements as follows:¹³⁰³

Advancing New Zealand's global interests through international defence engagements is a priority for the Ministry. Major bilateral developments in 2013/14 included advancing the relationship with the United States through the re-establishment of bilateral defence talks and increasing the level of bilateral defence engagement with China.

The Ministry continued to lead New Zealand's international defence engagements through regular bilateral talks with partner countries and supporting a busy programme of high level visits in both directions. At the regional level, New Zealand completed a successful term co-chairing the ASEAN Defence Ministers' Meeting Plus Experts' Working Group on Peacekeeping Operations and took up the co-chair role for Maritime Security. Our first activity was to host a regional counter-piracy workshop in Auckland.

Working with the Ministry of Foreign Affairs and Trade and the NZDF, the Ministry provided advice to Ministers on New Zealand's overseas deployments, including in particular the draw down of forces from Afghanistan and the deployment of assets and personnel to counter-piracy operations in the Gulf of Aden/Indian Ocean. A Cabinet review of New Zealand's international peace support operations policy was completed, refreshing New Zealand's policy in this area.

5.251 Similarly:¹³⁰⁴

The Ministry supported travel by the Minister of Defence on bilateral visits to China, Vietnam, the US, Italy, Singapore, the UN in New York and participation in the ASEAN Defence Ministers' Meeting Plus meeting, NATO/ISAF Defence Ministers' meeting, the Shangri La Dialogue and the Five Power Defence Arrangements Ministers' meeting.

New Zealand's contribution to enhancing trust and confidence through regional security arrangements was demonstrated through our co-chairing of the ASEAN Defence Ministers' Plus Experts Working Group on Peacekeeping Operations with the Philippines, and then moving to co-chair with Brunei the Experts' Working Group on Maritime Security.

Defence cooperation was promoted through the conclusion of defence agreements with the Republic of Korea, Japan and France. The Ministry continued to lead the programme of bilateral defence consultations with a range of partner countries from across the region.

Analysis

The MoD, under Secretary Helene Quilter's leadership, has done the most to refresh its internal capability to be better equipped to deal with the challenges that superdiversity might pose for defence policy, although as the Ministry acknowledges, there is still some distance to go before the MoD will be able to tap into the diversity dividend.

However, the Secretary understands what is needed and has a plan to achieve the change needed. Much has already been done in a short time under her leadership. Interviewing the Secretary convinced me that she clearly understands what needs to be done to make the Ministry fit for the future ethnically, as well as in terms of youth and gender.

Statistics New Zealand – Critical Data to Assist Other Public Agencies Adapt to Superdiversity

5.252 Liz Macpherson, Chief Executive, spoke about Statistics New Zealand's response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for Statistics New Zealand

- What steps has Statistics New Zealand taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has Statistics New Zealand taken to improve its communication with external stakeholders in response to the challenges of superdiversity?
- Has Statistics New Zealand reviewed what it measures to ensure it has statistics relevant to superdiversity issues?

What Steps Has Statistics New Zealand Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.253 Statistics New Zealand is utilising the State Services Commission's refreshed Leadership Success Profile. Statistics New Zealand is preparing to align the Leadership Insight assessment approach, with its Leadership Behavioural Framework to enable the development and benchmarking of leaders against a common model. Statistics New Zealand plans to integrate this work into the business and map and translate the concepts into a Statistics New Zealand context to ensure diversity is embraced across the appointment process.

5.254 Statistics New Zealand promotes a diverse and engaged workforce through family-friendly and flexible working policies and EEO recruitment practices. A 2014 internal audit found Statistics New Zealand had the components of EEO in hand. However, it did not yet have an overall EEO framework to hold EEO activity together and encourage diverse ideas, cultures and thinking throughout the organisation.

5.255 As at December 2014, the ethnic makeup of Statistics New Zealand's staff was 17 per cent Asian, 6 per cent Māori, 4 per cent Pacific peoples, and 73 per cent European.

5.256 In August 2014, Statistics New Zealand conducted an engagement survey that included an ethnicity category, in addition to gender and age. This allows Statistics New Zealand to analyse staff engagement through different diversity lenses to identify if any specific diversity based initiatives are required.

5.257 Of Statistics New Zealand staff, 16.9 per cent identified as Asian in the 2014 engagement survey. Staff identifying as Indian and Chinese had higher than average engagement scores. Staff identifying as Indian had significantly higher than average engagement scores. Statistics New Zealand has established a number of internal networks, including a Pacific Island network and an Asian network. The Asian Network was formed in 1995 and now includes over 55 members from 12 different countries. These networks provide staff with social contacts and a means of sharing ideas.

5.258 Statistics New Zealand is in the process of creating a new leadership position at Director level, with a team of four people allocated to supporting Māori Responsiveness, within the Office of the Government Statistician. This team previously was situated outside the Office and led at Principal level.

What Steps Has Statistics New Zealand Taken to Improve its Communication with External Stakeholders in Response to the Challenges of Superdiversity?

5.259 Statistics New Zealand produces infographics on a range of subjects to ensure the information it produces can be accessed by a wide range of people, including those with little English.

5.260 For the collection of the 2013 Census, Statistics New Zealand delivered a strategy to reach statistical under-counts (groups that are underrepresented in the participation rates) across Māori, Pacific peoples and other ethnic communities.

5.261 This involved recruiting people from a range of ethnic backgrounds who could influence their communities to complete their Census forms. Statistics New Zealand placed Community Liaison Advisers in strategic geographic locations to target high under-count populations for each ethnic group.

5.262 Statistics New Zealand provided material providing information and promoting the census in over 25 different languages.

5.263 Statistics New Zealand won the EEO Trust Walk the Talk Diversity in Action Award for its approach to the 2013 Census. The same approach has been adopted by the Electoral Commission to increase voter participation among ethnic groups.

5.264 The areas of capability Statistics New Zealand will focus on until 2018 are:

- Responsiveness and innovation
- Access/security
- Technical (geospatial and data integration)
- Leadership.

5.265 Statistics New Zealand will focus on responsiveness and innovation in 2015 and 2016. It is taking a customer-focussed approach. Statistics New Zealand completed a review of products and services in late 2014. It is currently in the process of translating this review into a workforce strategy.

5.266 Statistics New Zealand has adopted an 'outside in' approach and applied this to its external communications. This has resulted in a number of initiatives including:

- Building capability by delivering the National Certificate in Public Services (Official Statistics) to five Pacific nations in four locations over five years.
- Collaborating with the Ministry of Health and DIA on the development of an Asia-Pacific Action Framework for Civil Registration and Vital Statistics.
- Providing customised demography data to a range of organisations (including local councils, NGOs and health sector agencies) to assist them in providing targeted services. Superdiversity type variables comprise 60 per cent of customised requests.

Maintaining Up-To-Date Demographic Statistics

5.267 Successful public policy development requires accurate statistics. Statistics New Zealand plays a vital role in policy development across government. Statistics New Zealand must maintain accurate and in-depth demographic statistics for policy makers addressing superdiversity to use.

5.268 Statistics New Zealand recognises data analytics has grown as a discipline. This means it needs to balance its role supporting the growth of this capability for the good of the

overall data ecosystem, with the need to retain these skills in house.

5.269 Statistics New Zealand has convened a workgroup to review the existing statistical capability framework by the end of December 2015, including extending the framework to include data science and data integration. Statistics New Zealand will benchmark existing capability and intends to develop a workforce strategy to address any gaps.

5.270 The capability reviews are being undertaken by cross-functional workgroups combining senior management, functional owners and Human Resources staff.

5.271 Statistics New Zealand provides analysis on sub population groups. Examples include:

- The General Social Survey – information is available by ethnicity, gender and age
- Longitudinal Immigration Survey NZ
- Iwi profiles
- He Arotahi Tatauranga – a statistical framework to meet Māori information needs.

Analysis

Statistics New Zealand plays an essential role in assisting public agencies adapt to superdiversity by providing the statistical data and trends needed to evidence what is happening demographically, and where the demographic trends are pointing.

It needs to continue to ask questions about what data would best help us to better understand the challenges posed by superdiversity, such as surveying Māori attitudes to new migrants and collecting data on the income performance of men and women of colour. Getting the cultural input of its diverse staff is important, and ensuring that diverse staff are senior enough to be involved in decision making is key.

State Services Commission – Critical Central Role in Assisting Other Public Agencies Build Ethnic Diversity Capability

5.272 Ginny Baddeley, Acting Government Chief Talent Officer, and Andrew Hampton, Acting Deputy State Services Commissioner, spoke about the State Services Commission's ("SSC") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for the SSC

- How can the SSC help the New Zealand public service as a whole be fit for the future as New Zealand transitions to superdiversity?
- What steps are required to ensure that the public service is able to attract and retain first class superdiverse talent?

What Steps Has the SSC Taken to Respond to the Challenges of Superdiversity?

5.273 The SSC says that it is developing in its role as a leader in diversity and inclusion in the public service. The SSC's vision for diversity and inclusion is a public service that accesses the whole range of potential perspectives, experiences and opportunities that our diverse communities provide. The Commission's role includes supporting and monitoring diversity and inclusion practice across and within agencies.

5.274 As at December 2014, the ethnic makeup of the SSC's staff was 9 per cent Māori, 5 per cent Asian and 86 per cent New Zealand European.¹³⁰⁵

5.275 The Commission considers that it is well aware of the challenges posed by superdiversity. In speeches given to the New Zealand Asian Leaders Forum and the OEC's young leaders programme, Government Chief Talent Officer, Andrew Hampton, observed:

Over the last 20–30 year period New Zealand has changed dramatically. Today we are more diverse, older in some respects, our cities are larger, and technology has become a part of our everyday life, even for our children. Our largest city reflects the vibrancy of this change with its large, diverse and relatively young population. The diverse Asian communities are a growing force in Auckland and across New Zealand as a whole. As you well know, 25% of people in Auckland and 11% of New Zealanders identify as Asian in our latest census. The growth in our Asian communities is projected to continue.

As New Zealand changes, the way we deliver our public services needs to be responsive to this change. Some of our government agencies have looked at their front line operations and the capability needed to serve diverse community groups. The Police are a good example of an organisation moving in this direction. But a responsive State service is more than reflecting New Zealand's diversity at the front line, it is ensuring the needs of diverse populations are understood and fully considered at all levels of decision making.

What we know is that a diverse workforce (including leaders) makes good business sense and, if carefully harnessed, can foster a work culture that considers the broadest range of perspectives to inform decisions. This is really important to ensuring our agencies are tailoring their services to an increasingly diverse New Zealand.

Executive Management

5.276 The SSC is responsible for the appointment of public service chief executives. In recent years, there has been a marked shift in the number of female chief executives appointed by the Commission. Between 2010 and 2015, the percentage of female chief executives grew from 16 per cent to 39 per cent. Ethnic groups, however, are still under-represented at chief executive level, notwithstanding the recent appointment of New Zealand's first Asian Director-General of Health.

5.277 Progress toward greater diversity is also being made in the wider senior leadership cohort in the public service. The SSC's Human Resource Capability Survey 2014 shows that progress has been made over the last five years across the monitored diversity groups. Women now constitute 42 per cent of the senior leadership cohort, while in 2010 that figure was 39.8 per cent. Māori representation in senior leadership has grown from 8.3 per cent to 12 per cent, Pacific peoples representation has grown from 1.5 per cent to 1.8 per cent, and Asian representation has grown from 1.7 per cent to 2.4 per cent.¹³⁰⁶

5.278 Public service chief executive performance expectations agreed with the State Services Commissioner are also evolving to include a greater focus on the chief executive's role in developing more diverse and inclusive workforces. For 2015/2016, the Chief Executive Expectations asks chief executives to "set the priorities to make your department a healthy, diverse, inclusive, productive and innovative workplace".¹³⁰⁷

Leadership Development

5.279 In 2013, the SSC produced a Leadership Strategy for the State Services. That Strategy notes:¹³⁰⁸

Our communities are becoming increasingly diverse and have high expectations that government agencies will engage effectively with them on a wide range of issues.

5.280 The completion of historic Treaty settlements is resulting in an increasing number of mandated iwi organisations, and a greater variety of interactions with government agencies. This, together with the growing Māori economy and the impact of Whānau Ora, are contributing to a dynamic and evolving Crown–Māori relationship. Government agencies are working with iwi, hapū and whānau in new and different ways to deliver government services.

5.281 Not only are governmental and citizen expectations changing, the context within which government agencies must operate is very different from previous decades.

5.282 The Commission is leading a significant programme of work to give effect to the leadership strategy called the Leadership Capability Development and Deployment ("LCDD")

programme. This programme aims to identify, develop and deploy a pipeline of public service leaders who are equipped to lead the public service of the 21st century. This involves both fostering a more diverse cohort of leaders at all levels of the public service and ensuring public service leaders, whatever their backgrounds, are confident at responding to an increasingly diverse New Zealand. Key commitments of the LCDD programme are:

- A revised leadership success profile that describes the qualities required of public service leaders, including the need to put customers at the centre of everything the public service does.
- A common assessment approach to assess the leadership capability and potential of the public service, called Leadership Insight.
- A common talent management information system to retain information about public service leaders to assist with their development and deployment across agencies.
- A “toolkit” to assist agencies to put in place their own talent management processes and practice, including fostering greater diversity in agency leadership.
- A series of career boards where public service chief executives meet on a regular basis to steward the development of senior leaders, including promoting greater gender and ethnic diversity among senior leaders.

5.283 The Auckland Regional Career Board is tasked with stewarding a cohort of leaders for our largest and most diverse city. In addition to the public service agencies with a strong presence in Auckland, it includes representation from Crown entities such as ACC and Housing New Zealand and Auckland Council. It has a target of fostering a cohort of leaders who match the demographic composition of Auckland's communities.

Monitoring and Supporting Agencies

5.284 The SSC's Human Resource Capability Survey is published annually and provides up-to-date insights on the public service workforce. The report includes information on gender, ethnicity and age within the public service. The 2014 Human Resource Capability Survey identifies:

- Māori make up 16.6 per cent of the public service, whilst making up 12.7 per cent of the working age population. Māori representation in the public service has increased from 16.4 per cent since 2010.
- Pacific peoples hold 8 per cent of public service roles, whilst making up 5.5 per cent of the working age population. Pacific people's representation in the public service has increased from 7.6 per cent in 2010.
- Asian people hold 8.2 per cent of public service roles, whilst making up 12.5 per cent of the working age population. Asian representation in the public service has increased from 7.4 per cent since 2010.
- There is a gender pay gap of 14.1 per cent in the public service.

5.285 The Human Resource Capability Survey is being continuously developed, and the 2015 report is to be released later in the year. The data will be expanded to enable broader discussion including the overlap of gender and ethnic pay gaps, disability and flexible work practice, amongst other topics. The HRC database also provides career boards with gender and ethnic data on the public service leadership cohort.

5.286 The SSC encourages agencies to profile their diversity and inclusion practice through the Four Year Plans. The Four Year Plans enable effective discussions both within agencies and between agencies and central agencies to assist agencies in developing a longer-term diversity and inclusion focus.

5.287 The Commission considers that it is active in promoting diversity and inclusion. SSC, with the support of MfW, has established a practitioner network for diversity and inclusion that meets regularly to share and develop practice in the public service. Both the EEO

Trust and BNZ were also co-hosted at separate events last year to discuss the compelling case for diverse organisations.

5.288 To support public service agencies and recognise excellent thinking in New Zealand practice, the Commission has recently become an Alliance partner to the EEO Trust. The Trust provides EEO information and tools to employers and helps raise awareness of diversity issues in New Zealand workplaces. As part of their raising of awareness, the Trust hosts the annual Diversity Awards in Auckland. For the last two years (2014 and 2015), SSC has proudly sponsored an award at this event.

The SSC as an Agency

5.289 As a small agency SSC faces a challenge to reflect the diversity it looks for in other agencies. SSC recognises that improving the diversity of its workforce will strengthen its credibility and effectiveness. Recently the Corporate Centre (SSC, Treasury and DPMC) jointly took part in shared unconscious bias training organised by the Treasury.

5.290 The SSC is also evolving to better serve Auckland, through the recent appointment of Lewis Holden to the Deputy Commissioner, Auckland role. This role is in part to “ensure government services are meeting the needs of Auckland and its diverse communities”.

In the Future

5.291 The SSC is currently framing and developing its short- to medium-term diversity and inclusion intentions. A key project in this is developing and promoting flexible work practices in the public service. The initial focus will be on women, and the SSC will conduct work to strengthen part-time/flexible options and career paths to address factors that can disadvantage women in the workplace.

5.292 The Commission is also considering how to support agencies’ development of recruitment and sourcing processes to attract and retain people from more diverse backgrounds. This will involve promotion and collaboration to promote the public service, as well as further work to enhance the public service employee-value proposition.

5.293 The Commission will also continue to take opportunities through the Great Workplaces initiative with the PSA to further develop positive, inclusive and connected workplaces. This follows the recent development of a standard policy for the public service on sexual harassment. The Commission is also supporting the Mental Health Foundation with the development and promotion of their Employer Toolkit for addressing mental health issues in the workplace.

Analysis

The SSC understands that ethnic superdiversity will challenge the public service and that more will be needed. At the operational level, the Commission’s diversity initiatives are still predominantly aimed at women, and thus the Commission will need to develop an equivalent suite of initiatives for ethnicity capability as a matter of urgency.

The creation of a Government Chief Talent Officer role and the work done as part of the Corporate Centre to create cross-agency public service careers and talent pools are a very good start. But our interviews with departments show that many of them require more guidance and leadership on matters related to ethnic diversity. This is an area where the SSC can provide more assistance.

Particular challenges for departments include understanding how to attract and recruit superdiverse staff and, having recruited them, how to retain them. Some departments need more guidance on what an effective strategy to improve their internal capacity to respond to the challenges of superdiversity would look like, and more guidance as to best practice.

Department of Internal Affairs – Office of Ethnic Communities' Expert Advisor on Ethnic Perspectives in Policy

5.294 Mervin Singham, Deputy Chief Executive, Strategy and Governance, spoke about Department of Internal Affairs' ("DIA") response to New Zealand's transition to superdiversity. We also interviewed Berlinda Chin, Director of the Office of Ethnic Communities ("OEC"), and received extensive information from Anukool Sathu, Team Leader Stakeholder Capability, which is set out below and at **Appendix Three**. The OEC forms part of the DIA. It works with businesses to help them build a relationship with government agencies, and works to foster social capital in New Zealand by improving understanding and relationships between ethnic and mainstream communities.

Key Superdiversity Issues for DIA

- What steps has DIA taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has DIA taken to improve its communication with external stakeholders?

What Steps has DIA Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.295 As at 30 June 2015, the ethnicity of DIA was 7 per cent Asian, 65.4 per cent European, 8.2 per cent Māori, 4.5 per cent Pacific peoples, with 14.8 per cent other or unknown.

5.296 DIA's Four Year Plan notes:¹³⁰⁹

Internal Affairs has a strong tradition of delivering core services valued by New Zealanders. It has a unique role in nurturing the country's nationhood, identity and culture. The Department maintains the collective memory of the nation and has a leadership role in shaping the way people will interact with government in the future.

5.297 The DIA understands New Zealand's changing demographics will influence the way public services should be delivered. According to DIA's Four Year Plan:¹³¹⁰

In order to successfully deliver on its goals the Department is transforming its system of service delivery. The "digital shift" programme is a key component of this. It requires investment in lower cost service delivery channels and the reduction of service levels in more expensive channels. For example, moving information to a digital platform means that the Department can optimise delivery of outreach and reading room services, to more accurately reflect the way people access information in the digital age.

5.298 DIA's Workforce Strategy identifies four action themes to focus effort and build workforce capability:¹³¹¹

Developing leaders to meet the challenge of change

Internal Affairs has a recognised role across government in leading change at a time when there are great opportunities and challenges for the public sector. Across the Department's branches leaders will be involved in taking forward new business models. Transformational change will be a leadership theme in some areas of our business. This means outward facing, creative and engaging leadership to build new ways of working and a strong organisational culture.

Building a strong organisational culture

We are now beginning to design the work we will do to identify the organisation culture we need for the future. We have a good understanding of our current culture. The next step is to work with our people to consider how our future culture can be shaped. This will be completed in the 2012 calendar year and initiatives will then be developed based on first stage findings

Developing workforce capability to meet the needs of our changing business

Over the next four years we will continue to invest in developing our people capability. The

Department will continue to develop the specialised knowledge sets and skills required to deliver across our many functions. But we also need a broader focus. In the future technical skills will need to be enhanced by capabilities in working collaboratively across the Department, across government and with the private sector. We will need to be more adaptable and creative, more able to engage, more ready to work in different ways with our customers...

Currently our workforce is less diverse than the public service as a whole with 8.7% of employees who identify as Māori compared to a public sector average of 16.4%. Pacifica peoples are underrepresented at 5.6% compared to a public sector average of 7.6% (see also Annexe 1). The Department will consider a medium to longer-term strategy to increase the ethnic /cultural diversity of our workforce. In the context of New Zealand's changing population structure across ethnicities and cultures this is an essential part of ensuring that we can work effectively with our customers and continue attract those we will need as part of our future workforce.

Optimising workforce capacity to deliver results

Managing capacity and sustaining our workforce in a tight fiscal environment means that decisions around capacity must be based on good information and clear roles, responsibilities and performance expectations. We need systems and processes and a strong organisational culture that support new ways of working and enable our people to make their best contribution. Building our reputation as a great place to work and looking at ways to offer more flexible employment options will help retain our people and attract the capabilities we will need for the future. Connected to this action theme is the need to support the workforce by continuing to increase our effectiveness and efficiency through robust systems and processes which enable rather than constrain performance.

5.299 DIA's long-term objectives are that:

- New Zealand's diverse people and communities/hapu/iwi are resilient and prosperous;
- New Zealand is recognised for creating, sharing and using knowledge for social, cultural and economic wellbeing;
- The people of New Zealand have a strong and valued national identity, culture and heritage.

5.300 As part of its work to achieve these objectives:¹³¹²

The [then] Office of Ethnic Affairs has continued to promote the potential benefits of ethnic diversity in developing prosperity for every New Zealander. Ethnic women's and youth leadership programmes are designed to equip women and young people from ethnic communities with the skills and confidence to participate in all aspects of NZ Life.

5.301 In 2014, the OEC launched the Young Leaders programme. The programme is designed to prepare young people for leadership careers, particularly in the government sector. The OEC also runs the Ethnic Women's Leadership Programme.

What Steps Has DIA Taken to Improve its Communication with External Stakeholders?

5.302 The OEC collaborates with other government departments and non-government organisations. It provides expert advice to central government staff on how to include ethnic perspectives in their policy framework.

5.303 The OEC runs the Language Line telephone interpreting service for agencies which provide government services.

5.304 The OEC has held EthnicA conferences since 2011. These conferences:¹³¹³

Are designed to raise awareness and encourage sophisticated debate about diversity issues in New Zealand. They also provide an opportunity for the Minister for Ethnic Affairs, the Office and other central and local government agencies to engage with ethnic communities, and provide a forum for learning, sharing information and pan-ethnic networking.

- 5.305 The theme for EthnicA 2014 conferences in Auckland, Hamilton, Wellington and Christchurch (April to May) was “leadership and building a stronger New Zealand”. Each regional programme tapped into the personal experiences and expertise of a range of speakers and panellists from local communities.
- 5.306 The EthnicA conferences allow the OEC to interact efficiently with a large number of stakeholders. As well as organising many face-to-face meetings, the OEC can also host a few large events to attract a larger number of people.

5.307 The OEC also runs EPIC NZ conferences in Auckland and Wellington:¹³¹⁴

These business conferences are networking events which foster connections between ethnic and other NZ business communities in order to reap the benefits of the skills, knowledge and connections of New Zealand’s ethnic businesses. This year the Auckland conference EPIC NZ Go Global was the flagship event resulting from an agreement between the Office of Ethnic Affairs, Export New Zealand, and the Employers and Manufacturers Association.

5.308 The EPIC NZ programme also involves knowledge workshops, a website designed to connect ethnic and mainstream businesses through business matching, and the Connecting the Regions programme.

5.309 Other OEC initiatives include:

- An ethnic diversity management programme called Riding the Wave, delivered in collaboration with the New Zealand Institute of Management;
- Intercultural Awareness and Communication Training for Trainers programme; and
- Ethnic specific conscious parenting programmes.

5.310 The OEC has also published a range of research and other material, including:

- *The Strengths and Needs of the Ethnic Women’s Network Project* (Office of Ethnic Affairs, 2008);
- *E Pio Caste Away? Unfolding the Māori Indian* (Office of Ethnic Affairs, 2008);
- *E Pio Longing & Belonging* (Dunmore Publishing, Auckland, 2010);
- VW Verheijen, H Nguyen and B Chin “The making of ethnic migrant women entrepreneurs in New Zealand” (2014) 23(3) *International Journal of Entrepreneurship and Small Business* 296;
- N Murphy *The Poll-Tax in New Zealand* (2nd ed, Office of Ethnic Affairs, 2001);
- Office of Ethnic Affairs *Ethnic People in Commerce – EPIC NZ* (2012);
- Office of Ethnic Affairs *Portraits* (2005);
- Office of Ethnic Affairs *Portraits 2: Cultural Diversity Dialogue*;
- Office of Ethnic Affairs *Ethnicity Matters: Ethnic Perspectives in Policy* (2012);
- Office of Ethnic Affairs *Trailblazers: Inspirational Journeys of Migrant Woman Entrepreneurs in New Zealand* (2011);
- M Singham “Multiculturalism in New Zealand – the need for a new paradigm” (2006) *Aotearoa Ethnic Network Journal* 33;
- Office of Ethnic Affairs *Riding the Wave* (2010);
- Office of Ethnic Affairs *A Foot in the Door: Opening the Door to Ethnic Diversity* (2011);
- Office of Ethnic Affairs *Building Bridges* (2013);
- Office of Ethnic Affairs *Working with Ethnic Diversity – Maximising New Zealand’s Economic Potential* (2014);
- Office of Ethnic Affairs *Ethnicity Data Online Resource* (2012); and

- Office of Ethnic Affairs *Weaving New Zealand's Future* (2010).

5.311 DIA, through the Ministry of Civil Defence and Emergency Management ("MCDEM"), in the 2013/2014 reporting year provided new and updated guidelines for the Civil Defence Emergency Management Sector including on how to include culturally and linguistically diverse communities. MCDEM has now transferred to the DPMC, however DIA maintains its links with MCDEM through its local government portfolio.

5.312 DIA works internationally on digital preservation and record keeping including through:

- Contributing to the International Council on Archives Pacific Branch;
- The Arrangement on Cooperation with the National Library of China.

5.313 Other international contributions include:

- Engagement with international partners on anti-money laundering and countering the financing of terrorism;
- A leadership role in the International Civil Aviation Organisation's travel document working groups;
- Work with the United Nations Working Group for Civil Registrations and Vital Statistics in Asia and the Pacific; and
- Work to improve the exchange of Birth, Death, and Marriage data with the Secretariat for the Pacific and the Cook Islands.

Analysis

DIA's key contribution to helping government get ready for superdiversity is the OEC. It is the role of the OEC to provide expert advice to central government staff on how to include ethnic perspectives in their policy framework, and its role has never been as critical as it is now with New Zealand's growing superdiversity.

Our stocktake shows that most departments need more assistance to better adapt to superdiversity by growing internal and external capability so there is great scope for the OEC to build on and strengthen the good work it is doing in this area. This needs to be done as a matter of urgency, and I would recommend a survey of what public agencies most need help on so the OEC's modest budget can be targeted on assistance of the greatest relevance and that most urgently sought.

It would also be good for the OEC to refresh the research and statistics it provides on its website, and to expand the role of its translation service, which is now relied on by many departments.

Ministry of Culture and Heritage – New Zealand Identity and Nation-Building

5.314 Helen Wyn, Acting Chief Executive, and Todd Kriebel, Principal Advisor, spoke about the Ministry of Culture and Heritage's ("MCH") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for the MCH

- How will New Zealand's transition to superdiversity affect how the MCH provides strategic leadership to New Zealand's cultural sector?
- How will New Zealand's transition to superdiversity affect the relevance of culture and heritage to New Zealanders?
- How can the MCH better communicate with ethnic minorities and migrants and take into account their views in formulating New Zealand's cultural policy?

What Steps Has the MCH Taken to Respond to the Challenges of Superdiversity?

- 5.315 The MCH's staff makeup as at December 2014 was 12 per cent Māori, 1 per cent Asian and 77 per cent New Zealand European.¹³¹⁵
- 5.316 The MCH's Cultural Sector Strategic Framework, published in August 2014, notes that:¹³¹⁶

Our vision recognises that our distinctive culture is core to what makes New Zealand a great place to live. Cultural expression, engagement and understanding are fundamental to a vibrant and healthy society and help define what it is to be a New Zealander.

Culture is produced by creative and innovative individuals, groups and organisations. The activities, goods and services they create, produce, distribute and present to the world have a value which is social and economic, as well as cultural. Cultural expression expands individual capacities, helps bind society and provides jobs and innovation in the economy.

Māori culture is central to our sense of New Zealand's uniqueness as a place, a society and a nation. Strong partnerships between Māori and the Crown will ensure Māori culture is protected and flourishes.

- 5.317 The Framework further states that "in advising ministers and partnering with the cultural sector, to achieve [its] enduring outcomes", MCH's work is guided by various principles, including among others:¹³¹⁷

- **New Zealand stories and talent:** High quality New Zealand content shines through in a crowded cultural landscape, revealing our distinctiveness and encouraging new voices, new forms of expression and new stories.
- **Recognition of Māori as Tangata Whenua:** Te Tiriti o Waitangi frames the Crown-Māori relationship and guides our on-going commitment to supporting iwi-Māori aspirations.
- **Diversity of perspective:** Freedom of cultural expression is critical for a well-functioning democracy.

- 5.318 The Framework also identifies a number of sector priorities, including:¹³¹⁸

- **Fostering inclusive New Zealand identity:** New Zealand's demographic profile is changing in terms of age, ethnicity and location. There is a new sense emerging of what it is to be a New Zealander, how we see ourselves and how we present to others as an attractive place to live, work and visit. The Ministry is working with other departments and cultural agencies to support examination and expression of what it means to be a New Zealander and to foster an inclusive New Zealand;
- **Supporting Māori cultural aspirations:** Māori culture and heritage is a defining feature of New Zealand identity in the world. The preservation and expression of Māori language, arts culture and heritage needs to be well supported. Cultural agencies are committed to working in partnership with iwi-Māori to advance their long term cultural aspirations for the benefit of Māori and all New Zealanders. In the post settlement environment iwi are better positioned to advance their own cultural aspirations and will demand a high level of responsiveness from government and its agencies; and
- **Measuring and maximising public value:** Cultural expression contributes to a vibrant and healthy democratic society. The cultural agencies are working together to better understand the public value of cultural goods and services, including their economic and social benefits. This will ensure better decisions and choices can be made to maximise public benefit from the government investment in the sector.

- 5.319 As part of the response to the 2014 PIF report, MCH stated:¹³¹⁹

We face some significant challenges and opportunities as a result of digital production and distribution being placed in the hands of everyone, New Zealand's rapidly diversifying population, a new phase in relations with iwi-Māori, cultural asset sustainability and maximising the value of government investment under resource constraint.

5.320 The PIF report also noted:¹³²⁰

Māori stakeholders see MCH as embryonic in its development of programmes and services for iwi, whānau and hapū. This is highlighted in the Treaty settlement process which will result in over 50 separate agreements with cultural obligations. MCH is seen as willing and positive in its approach but at the beginning of the journey of engagement at a Treaty level in terms of conceptual framework, staff numbers, policy focus, relationships, programme delivery and funding. The work on Te Ara and the Māori Battalion is seen as very successful. The Treaty histories project is also a very positive initiative. However MCH has the mandate to help a future nation which is younger and more diverse, and regionally based in the case of iwi, whānau and hapū, engage with the nation's culture and heritage. MCH's leadership role is very important as New Zealand enters the post Treaty settlements phase.

5.321 In terms of engagement with the public, the PIF report commented:¹³²¹

The environment in which MCH works is subject to significant change, including globalisation, social and demographic change, and rapidly evolving technology. The voice of the customer is crucial for the policy work as MCH attempts to understand these changes and decides what should be delivered, to who and how to deliver it (for example comparing the relative priorities of war histories, New Zealand music, book fairs, digital archiving, opera funding, heritage buildings and cultural programmes in schools). Understanding the public's expectations is also important as MCH articulates the value of culture and heritage to New Zealand.

There has been a significant increase in the number of visits to MCH's websites in recent years. Total visits have increased from 3.737 million in 2008/09 to 7.774 million in 2012/13, representing a 108% increase. MCH operates websites which are largely of a traditional style and its public face will need to continue to evolve and take different forms to particularly meet the needs of some groups in society and younger users. As noted under the Information Management element below, this will require a considerable and ongoing commitment.

5.322 Finally, the PIF report noted that:¹³²²

MCH workforce diversity is roughly in line with the Public Service except for Māori who at 12% are under-represented relative to the norm of 16%.

5.323 Examples of the work that MCH, and the Crown entities it monitors, undertake around New Zealand cultural identity and cultural engagement include:

- a. The *Te Ara* online encyclopaedia, which aims to connect New Zealanders (new and old) to New Zealand;¹³²³
- b. The Civics and Media Project, which is about ensuring communities and citizens get the news and information needed to participate in society;¹³²⁴
- c. The Cultural Diplomacy International Programme, which aims to help establish and/or maintain a New Zealand cultural presence in key overseas regions or countries to boost New Zealand's profile and economic, trade, tourism, diplomatic and cultural interests;
- d. NZ On Air's Digital Media Fund, which focuses on special interest audiences, specifically children and youth, ethnic and other minorities in the community, arts and Māori;
- e. Creative New Zealand's Diversity Fund for Auckland, which will offer \$600,000 for projects that engage with Māori, Pacific and Asian communities and artists in the region; and
- f. Radio NZ International, which broadcasts stories to the Pacific and from the Pacific.

Analysis

The MCH has rightly identified that the expression of what it means to be a New Zealander and to foster an inclusive New Zealand is likely to become more important as New Zealand's demographic makeup shifts. A clear understanding of what New Zealand identity is and how it is changing will underpin much of the work to be done by other agencies over the next five years to adjust policy, law, communication and citizen engagement to the challenges of superdiversity.

At an organisational level, as a small organisation, the MCH is likely to continue to struggle to attract superdiverse public servants who can provide the input that it needs to make sure it can effectively understand and communicate with ethnic migrants and minorities. The MCH will require support from larger government agencies and across the whole public service to build organisational capacity. But given the importance of its role for building social capital and in including all New Zealanders in this country's identity, as well as in assisting other public agencies to understand how superdiversity will change the country, investment in the MCH is warranted so that it can build capability to undertake its work.

Crown Law Office

5.324 Solicitor-General Michael Heron QC explained how the Crown Law Office is responding to the transition to ethnic superdiversity.

Key Superdiversity Issues for the Crown Law Office

- How will New Zealand's transition to superdiversity affect the legal work that the Crown Law Office is required to do?
- What steps is the Crown Law Office taking to improve its internal capacity to respond to the challenges of superdiversity?

How Will New Zealand's Transition to Superdiversity Affect the Legal Work that the Crown Law Office is Required to Do?

5.325 Crown Law is increasingly advising government agencies on human rights issues and human rights litigation in particular. The issues which are arising do not necessarily have a superdiversity focus, but Crown Law is detecting signs that the transition to superdiversity is having an impact on the cases it handles and is likely to have a greater impact over time. Examples occur in the areas of international criminal work, human rights and immigration cases. Issues of cultural difference are also arising in the context of Crown Law's criminal appeal work.

What Steps Has the Crown Law Office taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.326 As at December 2014, the ethnic makeup of the Crown Law Office's staff was 87 per cent New Zealand European, 6 per cent Asian, 6 per cent Māori and 1 per cent Pacific.¹³²⁵

5.327 While Crown Law has a workforce strategy, it does not currently make express provision for the recruitment of ethnic minorities and migrants to Crown Law. However, one of the motivations for Crown Law's expansion into Auckland was to access a more diverse legal talent pool, and Crown Law is already beginning to see the benefits of doing so.

5.328 Crown Law has workforce planning as part of the Four Year Planning process each year. This year, Crown Law is looking at two aspects related to diversity:

- a. Demographics patterns for law graduates; and
- b. Language and cultural capability needs for the Office and how best to meet them. This could lead to changes in recruitment and/or training of existing staff.

Analysis

Crown Law is increasingly encountering superdiversity-related issues as it represents the Government, especially in criminal law, human rights, employment, and immigration cases. Crown Law should expect the impact of superdiversity on its workload to increase.

Crown Law's initial work to develop its internal capacity to respond to the challenges of superdiversity is a good start. However, it will need to do more to ensure it attracts and retains lawyers who have cultural intelligence to understand the new law and policy issues raised by superdiversity. A systematic consideration of the legal challenges that superdiversity is likely to create and how that impacts the current law would also assist in preparing the organisation for when the challenges eventuate.

Department of Conservation

5.329 Shaun O'Connor, Director Organisational Development, Geoff Ensor, Director Commercial Partnerships, and Meg Poutasi, Partnerships Director Auckland, spoke about the Department of Conservation's ("DOC") response to the challenges of superdiversity.

Key Superdiversity Issues for DOC

- What steps has DOC taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has DOC taken to improve its outreach capacity to respond to the challenges of superdiversity?
- How is DOC managing increasing numbers of people with different cultural attitudes to conservation and different conservation values?
- Will DOC invest in education, for example, as compared to prosecuting people for breaching regulations?
- How is DOC taking advantage of superdiversity to grow New Zealand's tourism sector?

What Steps Has DOC Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.330 The Director-General of DOC is leading the push for DOC to do better in enabling partnership with Maori, including through shifting behaviours at the leadership level. DOC is working to develop its internal capacity to partner with Māori through its Māori internship programme. DOC has also recently refreshed its foundational programme covering skills needed by departmental staff to build and maintain effective relationships with tangata whenua.

5.331 The focus is on changing DOC's internal culture at this stage, rather than making changes through DOC's recruitment or its workforce strategy. There is a general intention to do more as New Zealand changes.

5.332 Because of the relationships and demographic changes in the tourism sector, DOC is considering what is required for its visitor centre network, but has not yet actioned workforce development changes.

5.333 DOC is aware of need for diversity in workforce capability, such as "community for community" recruitment (as in the social sector). Improving diversity at an operational level is a priority. DOC's 2014 Annual Report stated that DOC's staff were 10.5 per cent Māori and 0.4 per cent Pacific peoples. The percentage of Asian staff was not recorded.¹³²⁶

5.334 DOC is in the process of developing an urban conservation strategy. Although DOC is science based, it does not have a lot of social scientists. This will change with time as the department considers "who is the community."

What Steps Has DOC Taken to Improve its Outreach Capacity to Respond to the Challenges of Superdiversity?

5.335 DOC is undertaking conceptual framing around new customers and markets. Initial work is being undertaken on how to better communicate and partner with Asian customers, which may, over time, include developing conservation partnerships with Asian

businesses and companies. However, the priority is on developing partnerships which can deliver conservation outcomes.

5.336 There is currently a focus on the Treaty partnership, with Māori as the first priority. DOC intends to do more with Asian and Pacific communities in the future. It is shifting its leadership model and will establish stretch goals around partnerships and tourism, which will encourage more outreach to these communities.

5.337 The 2014 PIF review notes that:¹³²⁷

To achieve these objectives, DOC is implementing a new engagement growth strategy. At this stage, the Conservation Partnerships Group is in the development phase of its approach to partnerships – this will include a process of determining the agencies, sectors, community or business groups where the greatest gains can be achieved through joint work. The aim is to determine this in the first quarter of 2014. At first, the major purpose will be to ensure current partnerships are developed and sustained, rather than accelerating multiple new partnerships. DOC is undertaking a stock-take of current local level partnerships to look for further opportunities and particularly to scale up to national priorities. The thinking to develop the partner framework is under way but at an early development stage. Therefore targets and measurements remain to be developed. Internal processes for setting priorities are at a similarly early development stage.

Tourism

5.338 DOC is effectively the country's largest tourism operator. DOC is working to balance its overall conservation responsibilities with the reality of a changing visitor mix, who predominately come from Asia.

5.339 As a result, DOC is moving towards demand-led design of its various tourism assets, which are worth about \$1.2 billion. For example, DOC's new visitor mix currently appear to prefer two or three-hour short walks instead of multi-day tramps, and additional capital investment by DOC will seek to reflect the expectations of Asian tourists.

5.340 DOC draws heavily on the experience of Chinese tour operators, some of which have been in New Zealand for 15 to 20 years, and are considered experienced and credible. DOC is aiming to improve its partnerships with the private tourism sector through an initiative called 'Groundswell' which aims to improve relationships with the 200 Asian tourism operators in New Zealand through commercial contact, communication with the sector, and delivering better conservation outcomes. DOC also draws on the experience of Tourism New Zealand and its Visitor Centre Network.

5.341 DOC's priority is to develop a coordinated approach to tourism. DOC is working to ensure that growth can be managed in such a way that local communities see that it is good for them, and tour operators feel a sense of responsibility towards the conservation estate.

5.342 A particular area of Asian focus for DOC is visitor safety. DOC has established a Visitor Safety Group, which is currently considering steps to improve tourist safety on the conservation estate. This has been driven by a number of cases where Asian tourists have found themselves in dangerous situations. As well as signage and asset design, the group is considering how the marketing, images and messaging around the conservation estate might be changed to discourage dangerous behaviours like fording rivers. DOC is considering whether the language of signage should also be changed – however, this is an expensive and slow process, and DOC is aware that the ethnic makeup of tourists may continue to shift.

Auckland

5.343 DOC has 19 individual partnerships with iwi in Auckland. Iwi partners are involved in marine spatial planning and other collaborative fora. DOC implements Treaty settlements and has Treaty obligations under s 4 of the Conservation Act 1987 to give effect to the principles of the Treaty of Waitangi. Being a good Treaty partner is at the forefront of its diversity strategy.

- 5.344 DOC will continue to look at how people experience our nature. Once DOC understands the demand for engagement, it can move people along the engagement pipeline.
- 5.345 DOC realises Auckland is different due to ethnic diversity – while it does not have a specific strategy, it is working on one. The urban conservation strategy will be a key part of this.
- 5.346 DOC considers that New Zealand's nature is part of our identity and culture. All New Zealanders have a stake in it. DOC's role in leading conservation is to work with others to preserve our natural environment for future generations. As New Zealand's culture shifts, DOC's leadership will need to shift and adapt to meet the needs of future New Zealand.

Analysis

As an agency with a frontline interface, DOC has made some positive steps at an operational level to interact effectively with Asian tourists and tourism operators in particular. DOC is also making a good start in understanding the differing perspectives and understandings that ethnic minorities and migrants bring to their interactions with the environment.

At an organisational level, more is needed from DOC to improve internal diversity and its organisational capacity to respond to the challenges of superdiversity, which will only increase as New Zealand's demographic makeup shifts. There appears to be some promising work being done at a strategic level around internal capability, Auckland, urban conservation and interactions with superdiverse customers, but these strategies will need to be finalised and then implemented as soon as possible. DOC's own definition of its role as the country's largest tourism operator means that internal Asian capability building is urgent given the importance of tourism to New Zealand's export earnings and to jobs.

Department of Corrections

- 5.347 Dr Peter Johnston, Director Research and Analysis, spoke about the Department of Corrections' ("Corrections") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for Corrections

- What is the current ethnic makeup of the New Zealand prison population?
- What are the trends in the ethnic makeup of New Zealand's prison population, bearing in mind the projected shifts in New Zealand's overall demographic makeup through to 2025 and towards 2038?
- What are the current challenges Corrections is facing as a result of the ethnic makeup of prisons?
- What are the new challenges that Corrections anticipates facing due to the ethnic changes projected through to 2025 and towards 2038?
- What more is needed, given the challenges facing Corrections, as a result of the transition to superdiversity?

What is the Current Ethnic Makeup of the New Zealand Prison Population?

- 5.348 New Zealand's current prison population does not reflect New Zealand's ethnic make-up. The prison population is approximately 50 per cent Māori, 36 per cent European, 10 per cent Pacific peoples and 3 per cent Asian.
- 5.349 New Zealand's overall incarceration rate is approximately 192 prisoners per 100,000 of population. But on an ethnicity basis, incarceration rates are very different:
- There are 93 New Zealand European prisoners per 100,000 New Zealand Europeans;
 - There are 660 Māori prisoners per 100,000 Māori in New Zealand;

- There are 340 Pacific prisoners per 100,000 Pacific peoples in New Zealand; and
- There are 47 Asian prisoners per 100,000 Asians in New Zealand.

What Are the Trends in the Ethnic Makeup of New Zealand's Prison Population, Bearing in Mind the Projected Shifts in New Zealand's Overall Demographic Makeup through to 2025 and towards 2038?

5.350 Corrections have already seen some shifts in the ethnic makeup of New Zealand's prison population as New Zealand transitions to superdiversity. For example, while the percentage of Māori prisoners has remained relatively static since the 1980s, the percentage of Asian prisoners has increased from 1 per cent 15 years ago to 3 per cent in 2015. Corrections understands that such shifts are likely to continue as New Zealand's ethnic makeup shifts – even assuming that incarceration rates remain the same, an increase in the overall number of Asians and Pacific peoples in New Zealand will logically lead to an increase in the total number of Asian and Pacific prisoners.

5.351 There are likely to be more Māori and Pacific prisoners by 2038 as the European population ages and shrinks, since by 2038, 51 per cent of New Zealanders are projected to identify with a non-European ethnicity (see [1.25] for further discussion of New Zealand's long-term demographic projections).

What Are the Current Challenges Corrections is Facing as a Result of the Ethnic Makeup of Prisons?

5.352 Corrections' workforce is more diverse than many other public sector employers: 21 per cent are Māori, Pacific peoples make up 8 per cent, and around 18 per cent are of "other" ethnicities (including Asian).

5.353 There are some particular challenges, such as radicalisation of prisoners, to which Corrections is responding. Although the number of such persons is currently low, the issue is of considerable interest to the Corrections system.

5.354 Gangs are an ongoing area of focus; it is known that Asian gangs have a foothold in New Zealand and, whilst quiet in the prisons at this time, it is expected that this could change. Corrections' intelligence sources are aware that Asian gangs are well-funded, well-connected and very business-minded in their approach. Though less visible and of lower profile than major ethnic gangs (they do not wear patches), Asian gangs still pose risks.

5.355 Rehabilitation and reintegration inside correctional facilities currently require a level of cultural competency among Corrections staff. There are particular programmes which are focussed on Māori and Pacific prisoners, and Corrections is working to improve the effectiveness of these programmes.

5.356 Corrections does not have a specific strategy to attract prison staff from ethnic minority and migrant communities, although part of its attraction work involves going into local communities that reflect its prison population ethnicities in search of good candidates. Corrections does this particularly in the northern and central regions of the North Island.

5.357 Corrections also has diversity obligations under the State Sector Act 1988. Personnel responsibilities of chief executives under the Act include being a "good employer", the obligation to implement an EEO policy,¹³²⁸ and the duty to act independently of Ministers in "matters relating to decisions on individual employees".¹³²⁹

What Are the New Challenges that Corrections Anticipates Facing due to the Ethnic Changes Projected through to 2025 and towards 2038?

5.358 Corrections does not seek to project the future shape of New Zealand's prison population, but rather extrapolates from current trends and makes decisions accordingly.

5.359 At present, Corrections does not generally employ interpreters, but relies on the language skills of existing staff and other inmates. This can limit the ability of prisoners

without proficiency in English to engage in some prison activities, especially rehabilitation. However, many non-English speaking prisoners are deported at the end of their sentence.

5.360 However, the proportion of non-English speaking prisoners who are New Zealand residents may increase, and this could pose issues in terms of prison management, safety, and access to rehabilitation and reintegration programmes.

What More is Needed, Given the Challenges Facing Corrections as a Result of the Transition to Superdiversity?

5.361 Some examples of the issues superdiversity raises for the prison system are discussed above at [3.140].

5.362 The Corrections Act 2004 poses few practical obstacles to Corrections' response to superdiversity, although conversely the Act does not specifically enable or require Corrections to do so. While the Act implicitly assumes that the majority of prisoners will speak English and be familiar with Kiwi cultural norms, it does not necessarily follow that prisons must be administered in a monocultural, monolingual environment.

5.363 As the ethnic makeup of prisons shifts as a result of the transition towards diversity, Corrections will need to consider if and how its policies and procedures should be adjusted to ensure that the corrections system continues to meet its statutory purpose of improved public safety and contribute to the maintenance of a just society by administering custodial sentences in a "safe, secure, humane, and effective manner", and "assisting in the rehabilitation of offenders and their reintegration into the community".¹³³⁰

5.364 For example, Corrections may need to consider whether it will become necessary to employ interpreters and other culturally competent staff as the number of prisoners who are unfamiliar with New Zealand's dominant culture increases. Certainly, the majority of prisoners in future will not be New Zealand European, which raises challenges in relation to the ethnic makeup of Corrections staff.

5.365 New methods of rehabilitation and reintegration may need to be devised to ensure that all prisoners have the opportunity to access and benefit from such programmes. The Operations Manual will require regular revision to ensure it reflects the needs of a corrections system in a superdiverse New Zealand.¹³³¹

Analysis

Corrections is at the coalface of superdiversity given the ethnic composition of the prison population, and is currently doing what is needed, when it is needed, to meet those challenges.

But Corrections needs to conduct a more systematic consideration of the challenges that are likely to increase because of superdiversity, and what it needs to do to meet those challenges over the long term. Currently, the measures are relatively ad hoc.

Corrections will also need more internal capacity in the future to understand different cultures and languages as the ethnic makeup of the prison population shifts to include more Māori, Pacific peoples, Asians and other ethnicities. It should be working to develop that capacity now.

Department of the Prime Minister and Cabinet

5.366 Ann James, Human Resources Business Partner, spoke about the Department of the Prime Minister and Cabinet's ("DPMC") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for the DPMC

- What steps has the DPMC taken to improve its internal capacity to respond to the challenges of superdiversity

- How can the DPMC better take advantage of the skills of ethnic minorities and migrants to improve its internal capacity to deliver high quality policy and operational outcomes across the five business units it is responsible for?
- What new challenges will the DPMC's five business units face as a result of New Zealand's demographic transition to superdiversity, and how can the DPMC respond to those new challenges?
- How can the DPMC use its coordination role to lead other government agencies in improving their internal capacity and to take advantage of the superdiversity talent dividend?

What Steps Has the DPMC Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.367 As at December 2014, the ethnic makeup of the DPMC's staff was 13 per cent Māori, 3 per cent Pacific and 84 per cent European.¹³³²

5.368 The 2013 PIF Review of the DPMC observed that:¹³³³

To be able to provide balanced and well-rounded advice to the Prime Minister and the Government it is important that the PAG [Policy Advice Group] team, in particular, is able to understand and reflect the diversity of New Zealand society and its members are professionally and culturally competent. Ideally, this would see the PAG group having a mix of staff from the public or private sectors, representation of diverse ethnicities, including Māori and Pasifika, and a good gender mix. Similarly, having regard to the Governor-General's community leadership role, we would also expect Government House staff to reflect the diversity of the wider community. In a small team achieving good representation will always be a challenge but it is one that should be recognised and actively addressed where possible.

5.369 The same report ranked the DPMC's leadership and workforce development as "needing development", noting that:¹³³⁴

We recommend that consideration should also be given to ensuring that DPMC staff have a broad base of diverse experience and cultural competency. This is particularly important for the PAG team, which needs to have appropriate skills and aptitude to develop stronger relationships beyond Government and the wider State Services, with local government, private sector and academic leaders.

5.370 However, the report ranked the DPMC's engagement with staff, which includes how well the agency develops and maintains a diverse, highly committed and engaged workforce, as "well placed", observing in particular that the DPMC is rated highly by its employees for "integrity" and "equal employment opportunities".

5.371 The 2015 PIF Follow-up Review said that:¹³³⁵

Most of the identified people development change priorities remain "work in progress". The changes needed to ensure a resilient DPMC, whose staff reflect the diversity of the New Zealand community, remain incomplete. Although the Executive team has been strengthened DPMC needs to build its "fitness for change" capability. There is still some concern that the links between DPMC's performance goals and individual objectives, rewards and recognition processes are under developed.

5.372 The Follow-up Review also commented that:¹³³⁶

DPMC is often involved in discussions involving national commemorations and on projects designed to enhance New Zealanders' sense of nationhood and identity. To this end, DPMC will often bring together and facilitate discussions from a range of organisations and groups. This central role requires skill and a deft hand; this is demonstrated by the team. A new challenge is the support required for the New Zealand flag project, which will place pressure on this unit.

... Importantly, DPMC needs to ensure it has a physical presence in both Auckland and Christchurch to support its emergency management capability and also to ensure DPMC is well-grounded in these communities. DPMC needs to be seen as an agile, modern organisa-

tion that attracts and retains people from a wide range of backgrounds able to work well with New Zealanders generally. DPMC staff should represent diversity in thought, experience and skills, as well as diversity of age, gender and ethnicity.

5.373 As one of the central agencies and part of the Corporate Centre, the DPMC works closely with the Treasury and the SSC. In particular, the DPMC is currently working on improving staff awareness of unconscious bias for recruitment purposes, and is currently trialling an Australian educational provider called the Centre for Ethical Leadership.

5.374 The DPMC wishes to avoid making hiring decisions entirely on the basis of ethnicity, or otherwise adopting de facto quotas. There are no “diversity targets”, for example. The DPMC also monitors its succession pipeline at all levels, and runs engagement surveys of staff to get feedback on its performance. The last survey was run in September 2014 and will be reported in the DPMC’s Annual Report for 2015. The DPMC is also in the process of identifying the “drivers and restraints” on its performance as a whole, of which diversity is possibly one.

5.375 The 2014 Annual Report states the DPMC is actively seeking to become a more diverse organisation, and that one of the DPMC’s Departmental Health and Capability work-streams is to increase diversity in its workforce.¹³³⁷ During 2014, the Chief Executive chaired a working group which is looking at diversity within the DPMC, with three aims:

- Gaining a better understanding of the DPMC’s current diversity;
- Developing an understanding of the DPMC’s desired state; and
- Leading the changes necessary to achieving the DPMC’s desired state to become a more diverse department.

5.376 It is anticipated that this group “will initiate and lead the actions required to develop DPMC into the diverse organisation that it needs to be to advance an increasingly diverse New Zealand”.¹³³⁸

5.377 Last year the DPMC considered a range of diversity initiatives, including around ethnicity. For example, the DPMC is considering whether they can use ethnicity data collected during recruitment processes to better understand how to access diverse talent.

What Steps Has the DPMC Taken to Improve its External Outreach Capacity as New Zealand Transitions to Superdiversity?

5.378 As part of the Corporate Centre, the DPMC’s main external contribution is in sharing its experiences and initiatives with other government agencies to help them recognise the importance of diversity and respond appropriately. To date this role has been in an advisory capacity. The current view is that there is unlikely to be a single, one-size-fits-all approach which is right for all agencies.

5.379 The DPMC has found that, when sharing information and stories about diversity, some agencies require or request more assistance or advice than others.

Analysis

The DPMC needs to identify issues and themes raised by superdiversity across government that need a systematic public sector response. The DPMC, along with the SSC and the Treasury, is best placed to strategically guide departments affected, and to provide coordination. As a key central agency, it is important that the DPMC develops its ability to show strategic leadership on superdiversity matters.

The DPMC needs to build its capability to provide this leadership, to ensure that appropriate measures and investment are undertaken to keep the diversity dividend sustainable and maximised for the benefit of “NZ Inc”.

Education Review Office

5.380 Karen Carding, Acting Review Services Manager, and Brenda Hannay, Review Services Manager, spoke about the Education Review Office's ("ERO") response to New Zealand's transition to superdiversity. See also the impact of superdiversity on the education sector at [3.53] above.

Key Superdiversity Issues for ERO

- How is ERO improving its own internal capability to meet the challenges of superdiversity?
- How does superdiversity affect educational quality, and how should education quality be measured?
- How is superdiversity changing the makeup of schools in Auckland and nationwide, and what particular challenges and opportunities do these schools face?

How is ERO Improving its Own Internal Capability to Meet the Challenges of Superdiversity?

Internal and External Evaluation Indicators

5.381 Learners are central to ERO's work and the evaluation of outcomes for those children at risk of poor education outcomes are a priority. ERO evaluates what schools and early childhood centres understand about their learners and consider each institution's response to the language, culture and identity of their communities in every evaluation.

5.382 ERO has a growing evidence base in New Zealand that shows what matters most in supporting and promoting excellence and equity for diverse learners, in particular Māori and Pacific learners. School and classroom practices that improve outcomes for Māori learners are also likely to improve outcomes for all learners.

5.383 The review and revision of ERO's evaluation indicators for use in school evaluation reflects its deepening understanding of how schools improve and the role of evaluation in that improvement process.

5.384 This revision of the evaluation indicators, intended to be used by ERO's review officers and schools in their evaluation activities, provides a significant opportunity for the New Zealand education system to refocus on what matters most in improving schools and outcomes for all students.

5.385 The learner-focussed outcome indicators are organised in terms of the vision of the *New Zealand Curriculum* and *Te Marautanga o Aotearoa*: "confident, connected, actively involved, lifelong learners".¹³³⁹

5.386 The indicators framework incorporates the Māori concepts of manaakitanga (support), whanaungatanga (kinship), ako (reciprocal learning) and mahi tahi (collaboration). Together, these concepts frame how ERO approaches education provision in the New Zealand context, challenging ERO to recognise and respond to the educationally limiting effects of deficit theorising about students and their potential.

5.387 The concepts provide a lens through which the cultural responsiveness of school activities and practices in supporting and promoting equitable outcomes for all learners can be evaluated. These indicators are drawn from the *New Zealand curriculum* and *Te Marautanga o Aotearoa*, and reflect the education system's aspirations for every learner.

5.388 Similarly, for early childhood services, the evaluation indicators focus on factors that contribute to positive outcomes for children and also focus on diverse groups of children and their families.

Leadership

5.389 In November 2014, ERO's Executive Leadership team visited a variety of Auckland schools and early childhood centres and met with sector leaders to discuss the challenges and opportunities arising from superdiversity. Other agencies interested in the education of Auckland's children were also involved.

5.390 ERO recognises that the ethnic makeup of Auckland is sufficiently different to the rest of the country that the challenges schools and centres face are different. The rapid and ongoing change in Auckland city has led ERO to plan for and undertake two Auckland-specific evaluations relevant to superdiversity. These will provide a picture of the current situation, what needs to improve, and information about effective practices to inform the sector.

5.391 These evaluations are:

- How well schools and early childhood centres are responding to the diversity of languages within their learning community. ERO commenced a project on this in July 2015.
- How do educators promote understanding about living in New Zealand and what does it mean to be a Kiwi?

5.392 While Auckland specific, ERO's reports of these evaluations will contribute to a national body of knowledge and provide a practical tool to assist the sector to respond appropriately to these children and their families. They should also inform other sector agencies and policy development. ERO will publish findings on these three evaluations during 2016.

Internal Capability Building

5.393 ERO's staff makeup as at December 2014 was 69 per cent European, 23 per cent Māori, 5 per cent Pacific peoples and 3 per cent Asian.¹³⁴⁰ Of senior management, 16.3 per cent is Māori.

5.394 ERO's 2014 Annual Report states that ERO reviewers, where appropriate, reflect the makeup of the community.¹³⁴¹ ERO recruits specialist Māori staff, who work in mainstream teams or join Te Uepū ā-Motu, ERO's Māori team, which reviews Māori immersion settings. Staff from Pacific nations have regular fono and provide information and support to guide the implementation of ERO's *Pacific Strategy 2013–2017*.¹³⁴² ERO is aware that Mandarin immersion classes are emerging in Auckland and recognises the need to grow the language diversity of its teams so that it can effectively evaluate in that context.

5.395 ERO continues to focus on the recruitment of staff of different ethnicities to increase its diversity. While attracting very good numbers of applicants for positions within ERO, very few applicants are representative of the range of ethnic communities in New Zealand. ERO is also conscious that promoting education success for all children is the duty of all of its employees.

5.396 A recent review by the HRC aimed at improving equal opportunity in the public service commended ERO for having less occupational segregation than most of the public service.¹³⁴³ It further noted that ERO was the only department that looked at both ethnicity and gender in their pay and employment.

Communication

5.397 ERO has a wealth of rich information about the quality of education in schools and services, and is currently considering further strategies to socialise this information. ERO sees its role as involving not only evaluation of the quality of education, but also sharing good practice, raising awareness about key opportunities and challenges in the sector, and affecting policy outcomes. ERO works closely with the MoE and other agencies to ensure that its data is useful and being used to bring about positive outcomes for learners.

Analysis

The work that ERO is doing in and around Auckland is important because it recognises that

superdiversity has changed the face of our biggest city, such that Auckland is now different to the rest of the country and schools in Auckland need to be reviewed differently to ensure they are catering to the needs of superdiverse students.

The two evaluations that ERO is currently undertaking in Auckland will be key to ensuring that Auckland's education system continues to be fit for the future as Auckland's demography shifts.

At an organisational level ERO appears to have been successful in tapping into the talent of its Māori and Pacific staff, and now needs to build other ethnically diverse staff capability. There is a significant Māori presence in senior management. It is also positive that ERO is seeking to tap into the expertise of its Pacific staff in implementing ERO's Pacific strategy. Although ERO needs to attract sufficient numbers of Mandarin-speaking staff to review Mandarin immersion classes, it is good that this need has been identified ahead of time.

Financial Markets Authority

5.398 Rob Everett, Chief Executive, spoke about the Financial Markets Authority's ("FMA") response to New Zealand's transition to superdiversity. See also the discussion at [2.294] in relation to business culture.

Key Superdiversity Issues for FMA

- What steps has the FMA taken to improve its external communication with stakeholders, especially people who cannot speak English?
- How has the FMA's work been affected by increasing numbers of New Zealanders coming from countries with different business cultures?
- What steps has the FMA taken to improve its internal capacity to respond to the challenges presented by superdiversity?

What Steps Has the FMA Taken to Improve its External Communication with Stakeholders, Especially People Who Cannot Speak English?

5.399 The FMA's work is highly technical. This creates difficulties for ESOL speakers, given many native English speakers struggle with financial language.

5.400 There is evidence that some migrant business owners either do not understand the legal requirements of running a financial services business in New Zealand, or do not know there are legal requirements that must be complied with and will be enforced. In that context, whilst the FMA has so far seen little evidence, it is likely that there are people offering financial advice or services, who should be registered with, or licensed by, the FMA, but are not. This is a communication problem for the FMA, as many migrants do not know where to look for this information whether as potential providers of financial services or users of those services.

5.401 The FMA is looking at how to create resources for people wishing to make investments or to seek financial advice. They are also working on raising investor awareness more generally through an investor portal with MBIE and other relevant agencies such as the Commission for Financial Capability. These resources could potentially be made available in other languages.

5.402 Offshore investment scams targeting New Zealanders are a particular issue. The FMA has anecdotal evidence that migrants make up a large proportion of the victims of offshore scams, especially those from jurisdictions aligned with the migrant's country of origin. The FMA does not have jurisdiction over scammers operating offshore. However, it is considering the best way to provide education about offshore investment scams, which could include providing information in other languages.

How Has the FMA's Work been Affected by Increasing Numbers of People from Different Business Cultures?

5.403 There is a tendency for migrants to conduct their financial affairs and investments within their own ethnic community and in their native language. This creates problems for the FMA from a monitoring perspective.

5.404 Some financial advisors have expressed concern that their client base comes from one community (such as the Korean community) and does not speak English. The documents that financial advisors are required to provide are all in English. This means clients are completely reliant on their financial advisor, and this creates difficulties for financial advisors to prove they took appropriate steps to ensure their client was aware of investment risks and that the products in question were suitable for them.

5.405 The FMA handles these concerns pragmatically. Generally speaking, financial advisors will not run afoul of the FMA provided they can show what they did to explain the investment to clients (through their business records, such as file notes) and that the investments are suitable for those clients.

5.406 However, unscrupulous financial advisors create greater difficulties. The FMA does not have the resources to conduct extensive investigations into small organisations that operate in languages other than English. Similarly, those being taken advantage of may be unwilling or unable to complain to the FMA because they do not have sufficient English ability, they are not aware of the legal system, or they are not aware the FMA exists.

5.407 FMA works with other agencies such as the SFO and MBIE to respond to areas of vulnerability amongst investors, and to ensure that they do not duplicate work. There is no high level strategy across agencies recognising these issues for migrants and people who cannot speak English.

Analysis

The FMA is starting to experience the issues that superdiversity is causing in financial markets, but is taking more of a reactive than proactive approach, due to its large number of other priorities and with new jurisdiction under various law reforms coming into effect. As superdiversity grows, and more issues arise given the very different business cultures of some new migrants (see also the discussion at [2.294]), a more proactive and systematic approach to identifying and dealing with these issues needs to be adopted. Capability building is also needed to recruit staff with an understanding of different languages and with access to ethnic networks in order to undertake the necessary analysis, obtain intelligence about diverse community engagement in the financial markets, and to implement solutions.

Inland Revenue Department

5.408 Craig Thomas, Manager Engagement, Māori and Diverse Communities, spoke about the Inland Revenue Department's ("IRD") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for IRD

- What steps has IRD taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has IRD taken to improve its external outreach capacity as New Zealand transitions to superdiversity?
- What changes are needed at IRD to preserve New Zealand's historically good rates of compliance with the tax system as New Zealand transitions to ethnic superdiversity?
- What steps has IRD taken to ensure that, as a representative of government to citizens, it

continues to reflect the makeup of contemporary and future New Zealand society?

- How can IRD ensure that it attracts, retains, and makes the best use of first-rate superdiverse talent at all levels of the organisation?

What Steps has IRD Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.409 IRD's workforce as at December 2014 was 68 per cent European, 13 per cent Asian, 12 per cent Māori, and 7 per cent Pacific peoples.¹³⁴⁴

5.410 While IRD has no formal superdiversity capacity-building strategy, it says that it understands the need to develop responses to demographic change, including the needs of its staff. IRD says that its workforce planning acknowledges the impact of changing demographics in its population and customer base, and it intends to ensure that its workforce remains representative of the community so that it is sensitive to the needs of different people.

5.411 IRD's Four Year Plan states that:¹³⁴⁵

We know the future will be considerably different and that we need to adapt and be active participants in shaping that future. To be successful we need to do things differently.

5.412 The Plan also notes that Inland Revenue has a number of underlying workforce-related frameworks and strategies, one of which is its Diversity and Inclusion Framework:¹³⁴⁶

The framework aims to:

- promote a greater understanding and awareness of diversity and inclusion at IRD;
- attract, retain and enable talented people who represent and respond to our diverse range of customer needs.

5.413 IRD's Four Year Plan also notes that after Wellington (38 per cent), the next biggest concentration of Inland Revenue's staff is in Auckland (19 per cent).¹³⁴⁷ About 47 per cent of staff work in customer service roles.

5.414 IRD's IR for the Future guiding strategy, launched in March 2011, sets out six strategic priorities for Inland Revenue, including:¹³⁴⁸

We retain, develop and attract high-calibre people with the skills required in the future - enabling a culture of service and excellence.

5.415 IR for the Future also states that one of the four key culture statements for IRD is "valuing people", which includes recognising and valuing the diversity of its people.

5.416 IRD does make use of the skills of its superdiverse staff in a fairly ad-hoc way – such as getting Korean and Mandarin speakers to translate videos and deliver services in those languages – and it is looking to formalise this process.

5.417 IRD also hosted the NZAL Public Sector Roundtable on 25 June 2015, discussed above at [5.89].

What Steps Has IRD Taken to Improve its External Outreach Capacity as New Zealand Transitions to Superdiversity?

5.418 IRD acknowledges that New Zealand's demographic transition presents opportunities but it also poses risks to the integrity of the New Zealand tax system. IRD has to effectively carry out education and compliance activities among ethnic minorities and migrants to leverage opportunities to deliver better services for its diverse customers and mitigate risks.

5.419 IRD is a compliance-based organisation, so most of its outreach is about raising awareness of tax obligations and social policy entitlements. Compliance activities (education and traditional enforcement) are about managing risks to compliance as and when they are identified.

5.420 IRD recently introduced a new compliance model, which drives a more customer-centric approach to understanding compliance. In addressing a customer's compliance

behaviour, the model seeks to better understand the customer's motivation, opportunity and capability. Taking this customer-centric approach allows IRD to be more responsive to particular customer needs.

5.421 Some other examples of outreach activities include:

- IRD introduced business videos on YouTube in Te Reo Māori, New Zealand Sign Language, Mandarin and Korean, which focus on raising the awareness of business structures, tax obligations, treatment of expenses and depreciation, and record keeping.
- IRD produces a range of guides and general information in Mandarin, which includes information on property transactions and a guide for the café and restaurant trade. These are available online and IRD is using them proactively with the Chinese community. They are also useful for those from China thinking about moving to New Zealand.
- IRD has been translating some of its standard presentations on tax obligations and social policy entitlements into Mandarin, which it is using in outreach with migrant communities.
- IRD is making use of Chinese community magazines and media to advertise its events and provide other education and information.
- IRD has also run seminars with Auckland Regional Migrant Services and at Migrant Expos to raise awareness of tax obligations and social policy entitlements.
- IRD has used stands at cultural festivals (such as Chinese New Year) and had its Mandarin speakers provide information about tax obligations and social policy entitlements.
- IRD has regular engagement meetings with various Chinese community groups and business associations.

5.422 IRD continues to conduct ongoing research on the business challenges arising from superdiversity. For example, in 2013 it worked with Massey University to produce a literature review on immigrant entrepreneurship and tax compliance,¹³⁴⁹ and it has just released a report on understanding migrant businesses.¹³⁵⁰

5.423 IRD is about to begin a process to develop a long-term approach for Māori and diverse communities. The intention is that this will provide an overarching approach for how it thinks about and addresses issues of the growing diversity in New Zealand.

Analysis

At an operational level, IRD is working to engage with the diverse and particularly Asian New Zealanders. It has also recently undertaken some useful research on migrant tax compliance behaviour. However, the lack of an overall strategy means that there is a risk that these approaches will be ad hoc and inconsistent. Development of a consistent strategy would be likely to improve the effectiveness of IRD's operations in reaching all New Zealanders.

IRD's "process to develop a long-term approach for Māori and Diverse Communities" needs to be accelerated, as Auckland is already superdiverse and, given the speed of demographic transition throughout the rest of New Zealand, taking proactive steps to retain the high level of voluntary compliance with the tax system is critical.

IRD also needs to build the internal capacity to identify the issues and challenges and to be able to respond.

Land Information New Zealand

5.424 Simon Rice, Deputy Chief Executive (Corporate), and Keri Titherington, Group Manager Human Resources, spoke about Land Information New Zealand's ("LINZ") response to the superdiversity transition.

Key Superdiversity Issues for LINZ

- How will the transition to ethnic superdiversity affect the demand for LINZ's services?
- How will LINZ need to change in order to cater to the needs of ethnically superdiverse customers?
- What internal changes at LINZ are required to ensure that LINZ continues to attract first-rate superdiverse global talent into key technical roles, such as surveying and spatial science?

What Steps Has LINZ Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

- 5.425 LINZ does not presently have a specific strategy to respond to the superdiversity transition. Superdiversity is not identified as a particular area of focus in the 2013 PIF report, the 2014 Follow-Up report or its 2014 Annual Report.¹³⁵¹
- 5.426 As at December 2014, the ethnic makeup of LINZ's staff was 87 per cent New Zealand European, 4 per cent Asian, 7 per cent Māori and 2 per cent Pacific peoples.¹³⁵²
- 5.427 LINZ is in the process of developing a People Strategy to address the ethnic diversity issue, and will incorporate a 10-year vision. LINZ's Four Year Plan acknowledges that "the adoption and development of a new skill set that could position LINZ as an influencer and enabler to comfortably engage with stakeholders and partners", will require developing capacity in strategic thinking, entrepreneurial ability, storytelling, and relationship building.¹³⁵³
- 5.428 LINZ's Annual Report 2014 notes that LINZ has developed and piloted the Whakapakari programme, focussed on strengthening the capability of people to undertake business with Māori and iwi across the organisation.¹³⁵⁴
- 5.429 As part of its Business with Māori Strategy, LINZ raises staff awareness of day-to-day engagement and doing business with Māori, but does not do anything similar for Asian and Pacific communities.¹³⁵⁵ Several staff within LINZ are tikanga advisors who provide advice and support to its business units. LINZ has also appointed a kaihautu (business with Māori navigator) to develop and manage some of the initiatives, both internally and externally, in its Business with Māori Strategy.

What Steps Has LINZ Taken to Improve its External Outreach Capacity as New Zealand Transitions to Superdiversity?

- 5.430 LINZ's engagement with the public tends to be mediated through professional advisors such as lawyers or surveyors so they have less experience of communicating directly with diverse communities than many other departments.
- 5.431 LINZ's Annual Report 2014 notes that Māori and iwi own about 5.5 per cent of New Zealand's total land area, or 1.466 million hectares.¹³⁵⁶ Memoranda of Understanding with the Federation of Māori Authorities ("FoMA") and Te Tumu Paeroa ("TTP") were drafted towards the end of the 2013/2014 reporting period.
- 5.432 The agreement with TTP was signed in July 2014, and the FoMA agreement was signed in August 2014. LINZ has now secured formal agreements with three of the five strategic partners outlined in He Whāriki Maurua, LINZ's Business with Māori strategy. Discussions on developing relationships as part of the memorandum of understanding signed with Ngāi Tahu and Waikato-Tainui, are ongoing.
- 5.433 During the first part of the 2013/2014 reporting period, LINZ identified its new strategic direction, the "Power of Where". LINZ has identified the key strategic stakeholders necessary to help it achieve its vision. This included developing its strategic relationships with Māori and iwi organisations. These relationships are in their infancy, with both sides looking for projects they can work together on.
- 5.434 LINZ's 2013 PIF report noted that, in the context of the National Geospatial Strategy:¹³⁵⁷

Given the wider benefits of a national SDI and the diversity of likely stakeholders, the plan should identify stakeholder investors and outline their roles. These parties should be identified early and engaged as soon as possible.

5.435 LINZ noted in their Four Year Plan that capability development is a key challenge:¹³⁵⁸

Capability: LINZ has a good core capability and a high level of staff engagement. However, to drive accelerated development of the location system, LINZ needs to increase our capabilities to lead, engage, and influence with other stakeholders in the location system. We also face challenges in attracting and retaining the right level of capability within our technical teams, and many of the senior roles are particularly hard to fill, being in demand internationally. Development of talent from within is a key strategy in addressing this.

5.436 Similarly, its Four Year Plan identifies engaging with stakeholders as a critical area of capability:¹³⁵⁹

Relationship Building: LINZ will need to collaborate with other organisations in the central government, local government and private sectors to achieve our objectives. Such a diverse set of stakeholders will necessitate effective stakeholder management capabilities and the skill to manage relationships at different levels. Additionally a key priority is the enhancement of our customer capabilities, i.e. the skills to better understand the needs of our customers and to create a clear line of sight for all staff.

Analysis

LINZ needs to urgently determine how superdiversity affects its role to understand why it needs to go faster than addressing the issue of ethnicity as part of its 10-year vision. Issues include providing information to property owners who will increasingly not be born in New Zealand and who speak English as a second language, and ensuring that the OIO has staff with cultural intelligence to deal with overseas applicants.

LINZ has made positive steps in integrating Māori staff. It is important for LINZ staff to have cultural intelligence about tikanga Māori and to incorporate this into its interactions with Māori stakeholders, given its role in effective use of Māori land and other natural resources. However, there are no specific measures to ensure proper engagement with Asians or Pacific peoples, who are becoming major minority groups in New Zealand.

LINZ also needs to build its internal capacity to understand the needs of ethnic minorities and migrants, and to communicate with them, as New Zealand's demographic makeup continues to rapidly change.

Ministry for the Environment

5.437 Hamish Ongley, Human Resources, spoke about the Ministry for the Environment's ("MfE") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for MfE

- What steps has MfE taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has MfE taken to improve its communication with external stakeholders?

What Steps Has MfE Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.438 In 2014, MfE staff was 4 per cent Asian, 4 per cent Māori, and 1 per cent Pacific peoples. MfE is aware of the importance of diversity, however, it is "early in the journey." MfE's 2012 Performance Improvement Framework report noted that:¹³⁶⁰

MfE has identified weaknesses in its workforce diversity, with a particularly low number of Māori (3% compared to the public sector average of 16%) but does not have an explicit plan to address this.

[...] It is unclear whether MfE's workforce plan anticipates the 'implementation bow wave' from the current policy work, which will require a very different skillset and a change in focus for future workforce plan.

5.439 MfE has been developing a business case for diversity, as it has been considering its future workforce needs. While not yet finalised, MfE is considering three aspects of diversity:

- Diversity in advice – Understanding how diversity of thought will enhance advice to government on environmental matters.
- Diversity in implementation – Understanding how a diverse workforce will lead to richer and more rounded considerations when implementing policy decisions.
- Validity – a government department should where possible be representative of the New Zealand population.

5.440 MfE's 2012 Performance Improvement Framework report noted that:¹³⁶¹

The brief experience of seconding significant capability from other agencies, as a result of the setting up of the Water Directorate, has yielded some interesting insights into the culture, behaviours and values of MfE. Firstly, it proved the organisation can be very agile in changing its structure, accountabilities and ways of operating if there is a strong business need to do so. Secondly, it has drawn attention to the advantages that diversity of perspective, challenge and robust debate can bring and the inference that there has not been enough of this at MfE.

5.441 However, the 2012 report also noted that:¹³⁶²

Valuing its existing performers and attracting star performers will result in a considerable organisational pull to high performance and MfE should have confidence that it now has in place the culture and HR processes to manage difficulties that arise from diversity and operating at a high performance level.

What Steps Has MfE Taken to Improve its Communication with External Stakeholders?

5.442 The increasing numbers of people in New Zealand with different cultural attitudes to the environment and environmental protection is a challenge for MfE presented by superdiversity. This is inherent in MfE's business case, although it has not been explicitly referred to.

5.443 MfE has significant engagement with Māori. This includes work with the Office of Treaty Settlements on resource related redress in Treaty of Waitangi settlements and co-development of policy options to address iwi rights and interests in water.

Analysis

MfE is on the right track, but more urgency is needed to embark in earnest on its journey to understanding the challenges and investing in getting New Zealand's superdiverse population understanding environmental laws and policies, especially as our pristine environment is a key pull factor for many migrants wanting to live in New Zealand.

The approach to environmental protection in the source countries of the superdiverse is often different, so investment in more education needs to be undertaken to ensure laws and rules are not being broken due to ignorance, or people continuing to operate under the understandings they had in the source countries. On the other hand, New Zealand should capitalise on the habits of greater recycling and greater conservation of water that Asians in general have due to expensive charges. These reforms should become easier as the ethnic minorities and migrants form a greater part of New Zealand's population.

Ministry of Foreign Affairs and Trade

5.444 Centre staff interviewed John McArthur, the Principal Capability Adviser to the Ministry of Foreign Affairs and Trade's ("MFAT") Chief Executive.

Key Superdiversity Issues for MFAT

- What steps has MFAT taken to build its capacity to respond to the challenges of superdiversity?
- What steps has MFAT taken to improve its communication with external stakeholders?

What Steps Has MFAT Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.445 As at December 2014, MFAT's ethnic makeup was 78 per cent New Zealand European, 13 per cent Māori, 5 per cent Asian and 4 per cent Pacific peoples.¹³⁶³

5.446 MFAT's Annual Report 2014 describes its commitment to equal employment opportunities as follows:¹³⁶⁴

We place a strong emphasis on fostering a diverse and inclusive workplace. In representing New Zealand it is important we have a diverse workforce that reflects our role and position in the Pacific and the cultural diversity of New Zealand.

We are committed to the principle and practice of equality. We base appointments on merit, while recognising the employment aspirations of Māori, Pacific people, ethnic and minority groups, women, and people with disabilities. We ensure fairness in employment for all persons and groups of persons.

5.447 Similarly, MFAT's Four Year Plan refers to "specific recruitment initiatives" to:¹³⁶⁵

... attract Māori and Pacific Island staff to the Ministry and to promote career opportunities within the Ministry, consistent with defined business needs.

5.448 The Annual Report describes MFAT's achievements in "building people capability" as including:¹³⁶⁶

Establishing a Language Capability Advisory Group; and procuring and rolling out an online language tool.

5.449 The Annual Report also describes MFAT's work to build "Māori capability":¹³⁶⁷

MFAT is invested in building the capability of its people to effectively represent the interests of tangata whenua and tangata Tiriti offshore.

5.450 In October 2013, MFAT contracted with Whitireia Polytechnic to deliver NZQA accredited Te Reo training for its staff. The total number of enrolments for the Kete Aorere Levels 1 and 2 Te Reo modules since April 2013 is 107. Ninety per cent of staff who enrolled have either completed or are about to complete the NZQA assessment. If the current number of enrolments to the end of 2014 is maintained, this will lift the percentage of staff who have completed formal training in Te Reo from 6 per cent in April 2013 to at least 15 per cent by the end of December 2014.

What Steps Has MFAT Taken to Improve its Communication with External Stakeholders?

5.451 MFAT's Four Year Plan notes:¹³⁶⁸

Depth of country knowledge, expertise and, in some cases, language skills for growing and new markets is a capability need, to the extent the growth in demand exceeds MFAT's current level of supply. The Ministry is focussed on growing capability to keep pace with demand.

5.452 The Four Year Plan identifies building "cultural, language and associated capability in relation to growing and emerging markets" as a priority area of capability development.¹³⁶⁹

- 5.453 MFAT has nine strategic priorities. All of these priorities require the ability to engage effectively with external stakeholders. These are described in the 2014 Annual Report:¹³⁷⁰
- Build a more intimate and coordinated relationship with Australia that provides demonstrable and sustainable benefit to us both
 - Pursue trade and economic integration in the Asia-Pacific
 - Act to strengthen the international rules-based system to protect and advance New Zealand's interests
 - Achieve proactive relationships of influence with both the United States and China, including to allow us to position New Zealand to greatest advantage both regionally and globally
 - Achieve influential relationships with key emerging economies
 - Improve prosperity and reduce risk in the Pacific region
 - Enhance New Zealand's international standing and influence through a reputation for effective and focussed development assistance
 - Build comprehensive partnerships with the European Union and the Middle East
 - Help New Zealand firms to internationalise and export.
- 5.454 The strategic priorities are intended to support five outcomes:¹³⁷¹
- New Zealand's ability to influence key relationships and safeguard our interests enhanced
 - Economic growth and international competitiveness advanced through New Zealand's international connections
 - New Zealand's interests secured through regional and multilateral engagement and effective international rules
 - Sustainable development in developing countries, in order to reduce poverty and to contribute to a more secure, equitable and prosperous world
 - New Zealanders' safety and wellbeing protected in offshore environments.

• • Case Study: China Capability Project

- • 5.455 This is a case study of MFAT's project to build a "China Capable Public Sector".
- • 5.456 The project is an interagency project intended to build a public sector capable of interacting successfully with China. It is a result of concern within the government that the public sector is not prepared for New Zealand's closer relationship with China. The focus of the project is growing the domestic capacity of the New Zealand public service to engage with China and Chinese issues.
- • 5.457 China capability is important due to offshore factors, such as our trading and political relationships with China, and due to the growing number of Chinese New Zealanders.
- • 5.458 The project has been given the green light to go ahead with design and implementation of its first tranche of initiatives. The business case has been approved and the SSC has offered its support. The SSC's Acting Government Chief Talent Officer, Ginny Baddeley, will join the project's steering group. There was initially a focus on core agencies with an interest in New Zealand's relations with China (including MFAT, NZTE, MBIE, the MoD, Customs and the Police), but it is now intended to include the whole public service.
- • 5.459 Project co-ordinators envisage a public sector with various degrees of China capability:

- • • At the highest level, the public sector will be able to draw on a pool of people with a strong understanding of China. These staff members will speak Chinese and have spent postings in China;
- • • The second tranche will be staff who have experience dealing with China's bureaucracy and growing corporate sector; and
- • • At the lowest level, all staff will have a better understanding of China and how to interact successfully with Chinese people.
- • • 5.460 To achieve this, the project will involve:
 - • • A core academic component. This will be delivered through a university or other provider;
 - • • Extensive online learning tools; and
 - • • Experiential learning through increased secondments inside and outside the public sector.
- • • 5.461 Further in the future, project co-ordinators intend to provide “on the ground” experience, for example attachments to New Zealand companies in China. It might be possible, in the future, to find opportunities for placements in the public sector for people from China.
- • • 5.462 This is a large project, with a timeframe of over 10 years. However, work on the “early deliverables” has already started. For example, work undertaken by MPI to build capability for staff visiting China could be applied across the wider public sector. Secondments might be able to start soon.
- • • 5.463 The project is considering workforce planning to ensure the public sector has a pool of “China savvy” staff. The project will consider how to draw on the talent pool in New Zealand, including how best to encourage young Chinese New Zealanders to join the public sector.
- • • 5.464 This project is focussed on China capability in the first instance. The aim, however, is that the model developed will be scalable, so that departments will be able to use the model to build capability towards other key countries. Project co-ordinators also hope to work with New Zealand businesses who are interested in improving their ability to respond to China and Chinese issues.

Analysis

The leadership on the China Capability Project is the standout measure undertaken by MFAT. MFAT has made a good start, but leading more initiatives of this sort is needed from the Ministry to help the rest of the public service with its adaptation to superdiversity.

MFAT already has a wealth of practical experience in dealing with people from other cultures, and needs to consider how it can transplant its considerable relevant expertise and cultural intelligence in superdiversity to assist the broader public.

Ministry of Health

- 5.465 Centre staff spoke with Chai Chuah, Director-General of Health, about how the Ministry of Health (“MOH”) is responding to the challenges of superdiversity.

Key Superdiversity Issues for the MOH

- What steps has the MOH taken to improve its internal capacity to respond to the challenges of superdiversity?
- What are the challenges that the transition to superdiversity poses for the health system,

and how is the MOH responding to them?

What Steps Has the MOH Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.466 The Ministry's 2014 Annual Report states:¹³⁷²

The Ministry recognises that equality and diversity are important for organisational success. The differences that all staff bring to the workplace represent benefits to the Ministry that need to be understood, appreciated and realised. The Ministry's rules and processes for recruitment, selection, terms of employment, performance management, capability development and promotion aim to promote equity and diversity. For instance, the Ministry is proud to have a gender-balanced Executive Leadership Team (ELT), ensuring that equality and diversity are considered as a matter of course. Further to this, a recent addition to all advertisements advises candidates that the Ministry of Health is a disability-friendly organisation.

5.467 The MOH records ethnic data about its employees but does not use it often for staff management. While there are no Asian Deputy Directors-General, there are a number of Asians at third and fourth tier leadership roles, which are senior roles with a high level of responsibility.

5.468 In terms of the health workforce employed by DHBs, the table below shows how DHB staff identified as at June 2015.¹³⁷³

Table: DHB employees by ethnicity as at June 2015 (%)

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

What Are the Challenges that the Transition to Superdiversity Poses for the Health System, and How is the MOH Responding to Them?

5.469 The MOH recognises the importance of engaging ethnic and migrant communities differently to New Zealand Europeans. Their needs and expectations are different, and the Ministry must be able to respond to them. The MOH is increasingly tracking its performance against public health metrics on an ethnicity basis.

5.470 The three largest district health boards ("DHBs") in the country are located in Auckland, which has led this to become a point of focus for the Ministry.

5.471 The Ministry's 2014 Annual Report notes that:¹³⁷⁴

The New Zealand population is growing by about 110 people per day. The size of all major ethnic groups is increasing, with particularly fast growth in the Asian ethnic group. New Zealand has a high proportion of overseas-born people. The 2013 Census showed that one in four New Zealanders (25 percent) was born overseas, up from one in five (20 percent) in 2001.

5.472 The Annual Report also notes that:¹³⁷⁵

As well as increasing in size, the Asian ethnic group is becoming more heterogeneous. The fastest

growing Asian subgroups are Indian and Filipino. The health status of Asian subgroups is hugely variable, so data for the total Asian ethnic group often masks important differences. For example, all-cause mortality for the Indian ethnic group is about 40 percent higher than for the Chinese ethnic group (Jatrana et al 2014). This difference is partly explained by higher rates of diabetes and cardiovascular diseases in the Indian ethnic group.

5.473 The Ministry's 2014 Four Year Plan notes that, among the seven intentions underpinning the Ministry's work programme, one is:¹³⁷⁶

Meet the diverse needs of the population – by responding to demographic change and to the increasingly diverse population. For example, responding to the high levels of Rheumatic Fever in Māori and Pacific populations, better supporting older people in the community, and delivering the new model of support for disabled people.

5.474 The Four Year Plan also notes that, across the whole health sector workforce:¹³⁷⁷

Ensuring the ongoing supply of the right kind of workers as and where needed is a key factor in maintaining a sustainable workforce. A workforce that reflects the demographics of the communities they work in helps make services more accessible to all the community.

5.475 The Ministry's contact centre, which primarily deals with service providers, does not have a translation service. However, customer-facing contact lines such as Healthline are able to access translation services as required.

5.476 Many new migrants and their families value complementary and other therapies including acupuncture and traditional Chinese medicines. There are a number of opportunities for regulation of individuals providing the therapies, or the products involved. This could be achieved through the Natural Health and Supplementary Products regime, or as part of the work underway on therapeutics.

5.477 The Ministry's Four Year Plan also notes that:¹³⁷⁸

New Zealand is part of a competitive international labour market for health professionals. Significant flows in and out of the country arise in response to changes in economic conditions both here and overseas. We rely heavily on foreign-born and foreign-trained health professionals, so the New Zealand health and disability sector must remain an attractive place to work, and we may need to do more to ensure that workers return to New Zealand.

5.478 For example, the MOH is also providing funding support for programmes designed to facilitate the recruitment and retention of Māori and Pacific medical graduates.

Analysis

The MOH's Chief Executive understands well the need to adjust to the new superdiverse New Zealand; the DHBs are at the coalface and have already had to adapt rapidly to demographic change, particularly in Auckland, as have other parts of the public health system. But there are many implications of superdiversity for health, including different health status for different ethnic populations, different communication styles needed in languages apart from English, different co-morbidity, and different cultural and religious approaches to health issues (as discussed at [3.120]).

The next step for the Ministry is to systematically identify the issues raised by superdiversity for the broader health sector, and to front foot these issues. This will require more staff with the capability to understand and respond to superdiversity issues across the health sector.

Ministry of Justice

5.479 Rajesh Chhana, Deputy Secretary Policy, and Heather Morrell, Organisational Psychologist and Senior Advisor, Strategy and Change, at the Ministry of Justice ("MoJ") spoke about the MoJ's response to superdiversity. See also the discussion of implications of superdiversity for criminal law at [3.130] above.

Key Superdiversity Issues for the MoJ

- What changes are necessary at the MoJ to ensure that it has the internal capacity to respond to the policy challenges of superdiversity and continues to attract first-rate talent?
- How is the MoJ preparing to address the new challenges that superdiversity will bring to the Justice portfolio, such as money laundering, honour killings, female genital mutilation and culturally-based pleas in mitigation?

What Steps Has the MoJ Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.480 The 2013/14 Annual Report notes that the Ministry's workforce is currently 47 per cent New Zealand European, 13.1 per cent Māori, 6.7 per cent Pacific peoples, 6.6 per cent Other European, and 7.3 per cent "other". The gender profile of Ministry staff is 66.8 per cent female and 33.2 per cent male.

5.481 The MoJ conducts regular internal reviews of the ethnicity of its workforce. These are provided to the Chief Executive and the Ministry's senior leadership team. Ethnic minorities currently have less representation in the senior leadership team than they do in the rest of the organisation.

5.482 The diversity of the Ministry's workforce has been identified as an area of focus in the Ministry's workforce strategy, which is currently under development, although there is currently no "target" for the Ministry's ethnicity profile.

5.483 The MoJ's Annual Report states:¹³⁷⁹

The Ministry values diversity and remains committed to building a workplace where all individuals can access opportunities to develop and achieve.

How is the MoJ Preparing to Address the New Challenges that Superdiversity Will Bring to the Justice Portfolio?

5.484 The Ministry's main point of contact with the general public is through the courts and tribunals. This may be in the criminal jurisdiction (as defendants, victims, witnesses, jurors, or fines defaulters) or in the civil jurisdiction (including Disputes and Tenancy Tribunals, and the Family Court). In this context the MoJ has worked to ensure that suitably qualified and trained interpreters are available for those appearing before the courts without English, and through cooperation with the Language Line service provided by the OEC.

5.485 Similarly, information to support victims of crime has been made available in 12 languages, including for victims of homicide, sexual violence, and the parents, carers, family and whānau of young witnesses.¹³⁸⁰

5.486 The over-representation of Māori and Pacific peoples in the criminal justice system (both as victims and offenders), and for offences such as domestic violence, continues to be a concern for the Ministry.

5.487 The MoJ anticipates that the pressure on specialised language and cultural services in the courts will continue to grow, and is considering how best to respond to this.

5.488 The Ministry is also occasionally responsible for consulting with the public on various policy proposals. The process that the MoJ follows reflects Ministerial expectations, and some issues are consulted on through the relevant Minister's office. Discussion documents are not generally translated into languages other than English. With much of the Ministry's policy work resulting in legislation, often the expectation is that the "consultation" will take place as the legislation proceeds through Parliament, namely through the select committee process.

5.489 Where possible, the Ministry does seek to engage with ethnic communities to ensure that their views are represented. It uses its own networks (including the community

providers that the Ministry funds) and engages with the OEC to identify key leaders in particular communities and hear their views, as opposed to providing them with written material on proposals. The Ministry's experience is that providing written material and requesting written comments has not always prompted responses. Hearing views in person can be more productive.

5.490 The Ministry is developing a strategy that will enable it to engage successfully with the majority of ethnic communities on key policy issues, but also ensures that communities are aware of the full range of services offered by the Ministry.

5.491 The Ministry is also considering how the criminal justice system might need to change to respond to New Zealand's shifting demographic makeup and respond to issues such as honour killings and female genital mutilation. Offenders can raise cultural issues as mitigating factors in the context of criminal offending under the Sentencing Act 2002 (see [3.143], endnote 843). The Ministry is considering whether any emerging issues may need attention either legislatively or as a matter of practice and procedure.

5.492 There is a regional and international dimension to consider with some policy matters. For example, the MoJ is responsible for leading the implementation of New Zealand's anti-money laundering obligations. The Deputy Secretary Policy recently co-chaired the Asia Pacific Group on Money Laundering, made up of 41 Asia-Pacific states, which works towards the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism.

5.493 The Ministry currently has a number of initiatives to support Māori and Pacific peoples:

- **Rangatahi and Pacific Courts** – The marae-based process in these courts works within the existing Youth Court framework but requires young people to stand up in a marae (or community hall), in front of their whānau and their kaumātua and account for what they have done. These courts monitor the performance of Family Group Conference plans and, when appropriate, will apply sentencing options available to the Youth Court. There are currently 13 Rangatahi Courts across New Zealand and two Pacific Courts in Auckland.
- **Lay Advocates** – Lay advocates are statutory appointments made by a Youth Court judge on a case-by-case basis. They assist the courts in understanding cultural matters relating to the child or young person, and to represent the interests of their family or whānau.
- **The Matariki Court** – The Matariki Court, based at the Kaikohe District Court, aims to reduce reoffending by offering defendants the use of s 27 of the Sentencing Act 2002. Section 27 allows any person (whānau, hapū and iwi of a defendant) to address the court at sentencing on the personal, family, whānau, community, and cultural background of the offender, including the way in which that background may be relevant to the offending. It also provides the opportunity to hear about processes that have been tried to resolve the issues relating to the offence, and whānau or community support that may be available to help prevent further offending by the offender.
- **Māori Land Court** – The Māori Land Court plays an important role in the administration of Māori land in accordance with the provisions of Te Ture Whenua Māori Act 1993. Consistent with the principles of the Act, the Māori Land Court endeavours to assist Māori landowners to promote the retention, use, development and control of Māori land as taonga tuku iho by Māori owners, their whānau, their hapū and their descendants through the delivery of core services.
- **Cultural Report Writers** – Cultural reports, which may be requested by a court under s 187 of the Children, Young Persons, and Their Families Act 1989, provide a holistic assessment of a child's cultural heritage, environment, affiliation, needs and wishes, within the context of their whānau. This expert cultural information helps courts to decide how best to meet the child's welfare and best interests, when taken together with other specialist reports (such as psychologists' reports) and other information available to the Family Court.
- **Office of Treaty Settlements** – On behalf of the Crown, the Ministry continues to negotiate

the settlement of historical Treaty of Waitangi claims with iwi groups. The Ministry continues to advise the Government on broader Treaty-related issues, and on individual settlements.

- **Post-Settlement Commitments Unit** – The Ministry established a Post-Settlement Commitments Unit in June 2013. The unit works with other agencies, local government and iwi to build on the opportunities settlements create. The unit focuses on meeting Treaty settlement commitments to make sure a strong platform is built for future engagement.

Analysis

The MoJ oversees important policy issues affected by superdiversity such as criminal justice, crime prevention, victim support, the wider court system, the electoral system, constitutional policy and human rights, and private international law. A more systematic approach to identifying the issues and ensuring the MoJ has the diverse thinking capability internally to understand the issues created by superdiversity and how to take them into account in law and policy consideration and reform is critical.

Engagement with all New Zealanders is also an urgent priority requiring more consideration and accommodation, since justice issues affect everyone and ethnic minorities and migrants sometimes have very different perspectives and viewpoints on justice and constitutional matters.

Ministry of Pacific Island Affairs

5.494 Pauline Winter, Chief Executive, and Richard Selave, General Manager Capability Development, spoke about the Ministry of Pacific Island Affairs' ("MPIA") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for the MPIA

- What steps has the MPIA taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has the MPIA taken to improve its communication with external stakeholders?
- How is the MPIA maximising opportunities provided by superdiversity to grow Pacific wealth?

What Steps Has the MPIA Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.495 As at December 2014, the ethnic makeup of MPIA staff was 78 per cent Pacific peoples, 6 per cent Māori and 16 per cent New Zealand European. In addition to ethnic diversity, the MPIA has a high representation of New Zealand-born staff, with a good proportion who are fluent in their heritage languages. There is also intergenerational diversity, with a blend of age groups and institutional knowledge and tenure.

5.496 The MPIA has undertaken a number of steps to improve its internal capacity to respond to the challenges of superdiversity, which include:

- Improving Pacific outcomes by investing more resources in its Auckland operation to build on its engagement with Pacific communities and key partners in the region. Auckland, with its significant Pacific population, is a key focus for the MPIA (see [1.9] and [1.112] for discussion of Auckland's Pacific population). This focus is premised on the belief that improving Pacific outcomes in Auckland will enable improved Pacific outcomes nationally.
- Embedding a new operating model that focuses on building the MPIA's capability to be

agile and nimble, proactive, outward facing and better connected. The operating model is designed to better equip the MPIA to advance the cause of Pacific New Zealanders. This will mean developing the necessary systems, processes, and capability that will help the MPIA create enduring partnerships, facilitate knowledge and expertise between groups, and focus resources in areas that need it.

- Leveraging off the diverse range of cultural capability amongst staff to support key Pacific language, culture and identity projects and activities, in particular the MPIA's flagship Pacific Language Week's programme. At an organisational level, utilising the diverse types of staff cultural capability enables the MPIA to infuse Pacific values, beliefs and norms as part of its organisational culture. This benefits MPIA staff and ensures the MPIA's engagement with Pacific communities and the MPIA's stakeholders is effective.

What Steps Has the MPIA Taken to Improve its Communication with External Stakeholders?

5.497 The MPIA has begun to strengthen its connections with Pacific communities and build trusted relationships with government partners and stakeholders. To drive this approach, the MPIA has, in the last six months, developed a communications strategy designed to support the MPIA's new positioning, including pathways for engaging with all its stakeholders and using virtual and contemporary mediums of communications, including social media. The steps taken include:

- Using Facebook and Instagram;
- Rejuvenating the MPIA's "hang-out zone" at key Pacific festivals;
- Publishing a new Fetu Pasifika e-newsletter on a fortnightly basis; and
- Offering its video conferencing facility for community meetings connecting across the main cities.

5.498 The MPIA's support for Pacific communities in the maintenance of their heritage languages and cultures has improved. At the heart of this engagement is a spirit of co-design and shared delivery of innovative programmes that bring benefits to communities. These joint initiatives have provided valuable learnings which have informed the MPIA's policy advice. This approach demonstrates the positive outcomes possible through the MPIA's focus on partnerships that promote direct and smarter engagement with Pacific communities. This approach will also support key government partners and other organisations that have a vested interest in enabling "Successful Pacific Peoples" through their policy development and service delivery models.

5.499 The MPIA has advanced collaborative partnerships with various agencies, private sector organisations and Pacific communities to instigate positive change for Pacific New Zealanders and improve the MPIA's communications with its external stakeholders. Examples include the following:

- The MPIA, together with the Ministry of Social Development, led the delivery of workshops supporting beneficiaries with dependent children to participate in quality early childhood education. The MPIA contributed a total of 107 referrals, exceeding the target of 80 set for the last financial year;
- In partnership with the Ministry of Education, the MPIA led the establishment of new community, church and parent-led language playgroups through its Pacific community stakeholders to promote the benefits of early learning education;
- Together with the New Zealand Qualifications Authority, the MPIA delivered NCEA ma le Pasifika workshops to students and parents regarding the benefits of NCEA (including in Samoan, Tongan and Niuean);
- Through the Pacific Business Trust and Young Enterprise Scheme, the MPIA has supported the creation of Pacific entrepreneurial pathways for students interested in business and enterprise, which has led to increased participation by Pacific students compared with previous years; and

- In partnership with Creative New Zealand, ACE Aotearoa, ASB Trust and Pasifika Futures, the MPIA has jointly led the delivery of workshops with funders and community groups across New Zealand, which has resulted in a total of \$300,000 for Pacific community groups in the last year.

How is the MPIA Maximising Opportunities provided by Superdiversity to Grow Pacific Wealth?

5.500 The Pacific population in New Zealand is fast outgrowing all other population groups.

As discussed at [1.31], the Pacific population is youthful, and in 15 to 20 years, one in five New Zealand children will be Pacific, and one in eight workers under 39 will be Pacific. This means that Pacific peoples will become a more integral part of New Zealand's identity and its economic wellbeing. To maximise the contribution and potential of the Pacific population, the MPIA's focus will continue to be on educational achievement, employment and entrepreneurship, and language, culture and identity.

5.501 To date, the MPIA has contributed in the following ways:

- *Pacific Education Plan 2013–2017*.¹³⁸¹ The MPIA is committed to supporting the development and delivery of this plan in support of the Ministry of Education and the education sector.
- *Pasifika Power Up* initiative in 2013 with the Ministry of Education. This initiative piloted eight-week study hub sessions across New Zealand that were designed to promote the critical role that parents and families play in championing their children's learning. The success of Pacific achievement is driven by the will of parents, family and the wider school community.
- *Prime Minister's Pacific Youth Awards*. These awards were established in 2010, and recognise and reward high-achieving young Pacific New Zealanders, with over 100 nominations submitted in the previous financial year. The award categories recognise leadership and inspiration, business and enterprise, arts and creativity, learning and teaching, and sports and fitness.
- *Pacific Employment Support Service, Pacific Trades Training, and the Young Enterprise Scheme*. These programmes support Pacific young people to access, participate in and complete opportunities for employment, scholarship to train in various trades, and business enterprise and entrepreneurship.
- *The MPIA Nominations Service*. This service aims to increase representation of Pacific peoples on public sector boards and Pacific nominees for the New Zealand New Year's and Queen's Birthday Honours lists.

5.502 The MPIA will continue to grow Pacific leadership capacity and celebrate the successes of Pacific people in government, business and in the community. The MPIA will also continue to support the Minister for Pacific Peoples Pacific Advisor Council, the Pacific Business Trust and appointments for the Pacific Education Centre Board. The CEO of the MPIA has always attended NZAL events with a view to deepening understanding and forging those links, which is a very good start.

Analysis

The MPIA's specific role and limited resourcing and staffing means that its focus, understandably, is resolutely on Pacific issues. However, the Chief Executive has also shown a clear understanding of the importance of MPIA being aware of, and considering, the interface of Pacific people with other major minority groups as New Zealand's superdiversity increases.

The reason is that Māori have pioneered a path to greater cultural accommodation for other races like Pacific peoples, and Asians have shared experiences with Pacific peoples as migrants. The Asian, Pacific and Māori communities have all experienced discrimination, and understand the importance of home, community, culture and language, as well as the opportunities to do business together.

Ministry for Primary Industries

- 5.503 Erin Clayton, Human Resources Manager, Corporate Services, spoke about the Ministry of Primary Industries' ("MPI") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for MPI

- What steps has MPI taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has MPI taken to improve its communication with external stakeholders?
- How is MPI maximising opportunities provided by superdiversity to increase exports of primary products?
- How does MPI manage increasing visitor numbers and migrants from cultures with different attitudes to biosecurity and food safety?

What Steps Has MPI Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

- 5.504 As at December 2014, the ethnic makeup of MPI's staff was 73 per cent New Zealand European, 8 per cent Asian, 6 per cent Māori, and 3 per cent Pacific peoples.

- 5.505 MPI now has a formal strategy to build its internal capability. It is also working "hand in hand" with MFAT to build a China Capability Strategy. MPI's Annual Report describes the strategy as follows:¹³⁸²

The strategy guides MPI's interactions with the Chinese trade environment. This will improve how MPI responds to market challenges, while providing opportunities to support and maintain trade growth with China. It provides a complete picture of the MPI-China relationship and describes the necessary high-level actions required to achieve this vision. To date, the focus has been on post-ing more MPI staff in China. In the longer term, MPI will build wider organisational capability.

- 5.506 MPI has an off-shore presence. Its Annual Report notes:¹³⁸³

MPI has boosted its presence in some of New Zealand's important off-shore markets – China in particular. A new position of Deputy Director – General China Relations was established along with a larger team both on-shore and off-shore.

- 5.507 Similarly, MPI has:¹³⁸⁴

Established a new position in the New Zealand embassy in Jakarta and will be rolling out an increased MPI presence in other markets, such as the Middle East and Latin America, to provide greater in-market support for New Zealand exporters.

- 5.508 MPI has also started to develop a Māori agribusiness strategy.

What Steps has MPI Taken to Improve its Communication with External Stakeholders?

- 5.509 MPI has found communication issues arise with people declaring goods at the border. For example, New Zealand biosecurity requirements provide "food" must be declared but Chinese visitors do not consider goods such as spices to be food.

- 5.510 Currently, MPI accesses interpreters rather than employing them in-house.

- 5.511 MPI runs programmes for marae-based food safety. MPI is hoping to extend this initiative to Pacific Island food sources and to Asian food sources.

How is MPI Maximising Opportunities provided by Superdiversity to Increase Exports of Primary Products?

- 5.512 The Director-General of MPI, in his response to MPI's PIF Review, said:¹³⁸⁵

MPI will continue to partner with New Zealand's exporting primary industries, including Māori, to

help them to identify how the sector can grow its volumes and value add, and how we can best enable them to achieve export growth. As part of this we will:

Align our capability and producer capabilities with the needs, wants and desires of overseas consumers.

5.513 There are country specific issues for export products. Food safety is a huge concern for MPI. The Annual Report describes the response to the whey protein concentrate incident:¹³⁸⁶

MPI led the response to the incident, working with others such as the Ministry of Health, and the Ministry of Foreign Affairs and Trade.

After the initial response, MPI undertook a compliance investigation into the matter. As a result of the investigation, MPI filed four charges against Fonterra in relation to breaches of the Animal Products Act 1999, to which Fonterra pleaded guilty in March 2014. A separate government inquiry was also commissioned.

The first stage of the inquiry concluded that New Zealand's food safety regulatory model is consistent with international principles and is among the best in the world. Twenty-nine recommendations were made to further strengthen the system, all of which MPI agreed to implement. Most of these were not directly linked to the incident, but were intended to prepare New Zealand for the changing export and food production landscape.

5.514 MPI's Annual Report describes its contributions to growing export markets in the 2013/14 reporting period. During the past year, MPI made significant contributions to the BGA Building Export Markets workstream by:¹³⁸⁷

- Developing and maintaining market access, including helping negotiate new free trade agreements ("FTAs") and promoting current FTA uptake;
- Boosting representation in China and South East Asia;
- Going live on the Trade Single Window component of the Joint Border Management System in conjunction with Auckland International Airport, airlines and other border agencies; and
- Leading the development of guidelines to support companies producing manuka honey.

5.515 MPI provides assurances about New Zealand's primary products for exporters. In the 2013/14 reporting period:¹³⁸⁸

One new assurance was requested and completed – an open-ended letter confirming New Zealand's conservation and management of sharks to address international concerns about shark-finning.

5.516 MPI is undertaking work in the policy space on labour markets for primary producers. This has a superdiversity component, given the transition to an Asian workforce on New Zealand farms.

How Does MPI Manage Increasing Visitor Numbers and Migrants from Cultures with Different Attitudes to Biosecurity and Food Safety?

5.517 MPI considers it needs more officials at the border due to increasing visitor numbers.

5.518 MPI maintains statistics on rates of visitor compliance with biosecurity requirements by country. For example visitors from Japan are highly compliant while visitors from China are highly non-compliant.

5.519 MPI recognises that biosecurity must be the responsibility of all New Zealanders. MPI therefore focusses on educating people to comply with requirements rather than prosecution. They use the VADE (Voluntary, Assisted, Directed, Enforced) model to ensure compliance with biosecurity requirements.

5.520 MPI's PIF Review discussed the effectiveness of MPI's approach to compliance:¹³⁸⁹

The Ministry's approach to achieving public compliance is structured around the VADE model: voluntary, assisted, directed and enforced compliance. Each step on the VADE progression is associated with different types of compliance interventions. Effective provision of information to the public and (in some cases) social marketing, reinforced by penalties for non-compliance, are core to achieving voluntary compliance.

Increasingly, the information collected by the Ministry on the public's perceptions and behaviours is being focused on the informing assessment of the effectiveness of the different compliance interventions and their improvement, including the effectiveness of risk profiling. For instance:

- *A recent survey of air passengers entering New Zealand confirmed the current approach to risk screening for direct exit is effective in identifying those unlikely to pose a biosecurity risk.*
- *The Ministry records information on people not complying with fisheries regulations following an initial warning (assisted compliance), which informs fisheries compliance interventions.*
- *Some limited monitoring of the impact of regulatory requirements on the public is undertaken, for instance time taken to clear biosecurity and customs processes at Auckland International Airport.*

5.521 MPI also runs campaigns to educate people about biosecurity, including some targeted at new migrants.

Analysis

Superdiversity has a critical impact on the MPI's role.

MPI is on the superdiversity journey, but a more systematic consideration of the issues superdiversity raises and how best to meet those challenges would help MPI be proactive and less reactive. More staff with superdiverse understanding and capability are also urgently required, including at the top levels of this organisation. This would also assist with MPI's dealings with foreign officials in countries New Zealand exports to. Leveraging off the expertise of diverse New Zealanders could greatly help MPI to better manage the increasing proliferation of issues arising with trade and export, food safety, and bribery and corruption, so greater partnerships with ethnic groups should be built.

Ministry of Social Development

5.522 We met with Dorothy Adams, Acting Deputy Chief Executive Organisational Solutions, Ministry of Social Development ("MSD").

Key Superdiversity Issues for MSD

- How will the makeup of MSD's customer base change as New Zealand transitions to ethnic superdiversity?
- How will MSD ensure that its services meet the needs of diverse New Zealanders?
- How will MSD ensure it has the internal capability to meet the needs of all New Zealanders?
- How can MSD communicate better with ethnic minorities and migrants?
- What steps does MSD need to take, if any, to ensure that the views of ethnic minorities and migrants on law and policy are heard?

What Steps Has MSD Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

- 5.523 MSD is already tracking the ethnic breakdown of its staff. MSD makes up about 25 per cent of the core public service, but compared to the public service as a whole, the Ministry is disproportionately ethnically diverse. MSD's 2013/14 Annual Report states that its staff identify as 62 per cent New Zealand European, 23 per cent Māori, 13 per cent Pacific peoples and 9 per cent Asian. Staff in the public service as a whole identify as 8.2 per cent Asian, 8 per cent Pacific peoples and 16.6 per cent Māori. In June 2015, MSD started work on a People Strategy to identify what its workforce needs would be, bearing in mind the anticipated changes to the nature of its client base. The Strategy is due to be finalised in September 2015.
- 5.524 MSD launched a Talent Management and Succession Planning project in March 2014. This project will also inform the development of a Talent Strategy for the Ministry.
- 5.525 MSD also has particular leadership programmes aimed at ethnic minorities, such as Te Aratiatia, which supports Māori and Pacific high-performing individuals to move into their first management or leadership role. More than 140 Māori and Pacific staff have graduated from Te Aratiatia since its launch in 2002. MSD also runs Te Aka Matua, which supports five Māori and Pacific managers who will complete their Master's degree in Public Management from Victoria University of Wellington every three years. The latest intake took place in late 2013 and the next is scheduled for 2016.
- 5.526 MSD is working to develop its internal capability in terms of translation services. MSD currently relies heavily on translation services from the DIA, and has an informal system to utilise the translation skills of ethnically diverse staff.
- 5.527 MSD also keeps in regular, albeit informal, contact with partner agencies in other Association of Southeast Asian Nations countries to share expertise and experience.

What Steps Has MSD Taken to Ensure its Services Meet the Needs of Diverse New Zealanders?

- 5.528 MSD's response to superdiversity is not specifically addressed in either its 2011 PIF report or the 2013 Follow-Up report, although MSD received "strong" ratings in the key questions which relate to superdiversity.
- 5.529 As at March 2015, a total of 284,260 New Zealanders were receiving Jobseeker Support, Sole Parent Support, Supported Living, Youth Payment and Young Parent, and other "main benefits". In total, 42.2 per cent of recipients were New Zealand European, 34.6 per cent were Māori, 7.8 per cent were Pacific peoples, and other ethnicities made up 13.2 per cent. Māori were even more disproportionately represented as recipients of Sole Parent Support and Youth Payment and Young Parent benefits (46.8 per cent and 50.6 per cent respectively).
- 5.530 MSD does seek to project the future shape of New Zealand's beneficiary population, using predictive modelling and extrapolating from current trends, and to make decisions accordingly. The People Strategy which MSD has commissioned, discussed above, aims to improve MSD's internal capability to respond to changes in its client base. Part of that strategy will be attracting and developing staff in such a way that MSD reflects the ethnic diversity of contemporary New Zealand.
- 5.531 The Ministry's Four Year Plan sets out a proposed "people-centred approach", which will require a "flexible agile workforce (including its specialist skills) that can be deployed to different parts of the business to respond to changing demands". There is no specific superdiversity strategy.

Analysis

The MSD has done a lot to build its internal capability to understand and properly service its diverse customers who are predominantly Māori and Pacific. More concerted consideration of

ethnic customers who are not Māori or Pacific peoples is warranted as superdiversity grows, to ensure all New Zealanders who need to access the social welfare system can do so even if they have little or no English, and that we protect the system from those who might see it as an easy target for abuse.

Ministry of Transport

5.532 Martin Matthews, Chief Executive, Ministry of Transport (“MoT”), spoke about the Ministry’s response to New Zealand’s transition to superdiversity.

Key Superdiversity Issues for MoT

- What steps has MoT taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has MoT taken to improve its communication with external stakeholders?
- How is MoT dealing with increasing visitor numbers and increasing levels of international trade?

What Steps Has MoT Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.533 According to MoT’s Annual Report 2013/14 staff are:¹³⁹⁰

- 66 per cent New Zealand European
- 5 per cent Māori
- 1 per cent Pacific peoples
- 8 per cent Asian
- 13 per cent “other” European
- 3 per cent other ethnic groups
- 4 per cent undeclared

5.534 MoT is working to strengthen its strategic capability to ensure it can respond to the transport issues facing New Zealand. The Ministry is focussed on the “future of demand” for transport. The Annual Report describes the future demand project as follows:¹³⁹¹

This project looks at possibilities for future travel demand in New Zealand. The Future demand project is exploring factors causing change in travel demand, to better understand the uncertainties that lie ahead. Better understanding will inform the ongoing development of New Zealand’s transport systems, and allow the Ministry to provide robust advice on investment decisions for transport infrastructure.

5.535 MoT also offers a professional development suite to build its internal capability and capacity. The suite consists of a structured programme of professional development, on the job learning, rotation, secondment, and acting up opportunities. In addition, the Ministry has recently mapped out staff experience to capture and share “hidden” knowledge to make it easier to find expertise and appropriate resource to work on particular policy issues. The mapping exercise has identified that several staff are proficient in Chinese, Mandarin, Tamil, Hindi, French and New Zealand Sign Language. The mapping will also identify knowledge gaps which will help to create other professional development opportunities to ensure MoT has the full range of skills and experience required to deliver high quality policy.

What Steps Has MoT Taken to Improve its Communication with External Stakeholders?

5.536 MoT invested in a stakeholder engagement expert to help lift the visibility of the Ministry’s work in 2013/14. The Engagement and Communications team developed

a Stakeholder Engagement toolkit which provided a range of best practice material which is integral to supporting quality policy development.

5.537 The Annual Report describes the Ministry's work to engage with stakeholders:¹³⁹²

During 2013/14, the Ministry invested time and resource in developing stakeholder relationships to ensure our work is more visible ...

We held a series of workshops around New Zealand to talk to stakeholders about the development of the Government Policy Statement on Land Transport and the National Freight Demand Study. The end result is that local government has been more involved, were able to make more informed submissions during formal engagement, and are more supportive of the policy development process undertaken. This is a good example of how we have turned stakeholder views around by 180 degrees from some quite sharp criticism.

5.538 MoT has increased its collaboration with other departments:¹³⁹³

Infrastructure collaborations, expertise and resource sharing, and greater informal networks have been established across the agencies. A strong culture of collaboration is emerging. Encouraging a sector rather than agency perspective also provides the framework for future collaboration initiatives to take place.

5.539 The Ministry also works closely with local government and other organisations. The Ministry's Chief Executive is a member of the Chief Executives Group on Disability Issues. The Ministry also engages with the Accessible Transport Action Committee when developing policy.

5.540 In addition, MoT is part of a multi-agency approach to supply a range of solutions (including technology) to help international visitors keep themselves and others safe on New Zealand roads.

5.541 MoT's Statement of Intent 2015–2019 notes:¹³⁹⁴

Intelligent transport systems are revolutionising transport globally, and these technologies offer some of the best prospects for improvements in safety, efficiency and environmental outcomes

The Government will have an important role in helping to realise the benefits of these technologies – as an investor, facilitator and regulator. However, in most cases, the development of new technologies will be led by the private sector. Their success or otherwise will be determined by whether or not consumers value them, and there may not be any need for the government to be involved.

5.542 The Ministry also works internationally. The Annual Report describes:¹³⁹⁵

In addition to having a strategic leadership role in New Zealand's transport sector, the Ministry works on an international stage. In May 2014, New Zealand assumed the Presidency of the International Transport Forum. This Forum is part of the Organisation for Economic Co-operation and Development and is a strategic think tank for transport policy.

We are working with a range of other countries to lift the value of the Forum. The focus has been on increasing opportunities to share insights from experience, and research and expertise between countries.

After assuming the Presidency, we began planning for the Forum's Annual Summit which will be held in Leipzig Germany, in May 2015. The Presidency has provided us with the opportunity to shape the theme of this Summit to one of greatest value to New Zealand. The theme will be "International Transport, Trade and Tourism".

New Zealand's meaningful participation in the Asia Pacific Economic Co-ordination (APEC) forum is an ongoing foreign policy imperative. The Ministry hosted a successful 39th APEC Transportation Working Meeting in Christchurch from 31 March–4 April 2014. Around 220 delegates and speakers attended this meeting. The main theme was resilience, and delegates had the opportunity to learn how local aviation, maritime and land infrastructure coped in the aftermath of the Canterbury earthquakes.

5.543 The Ministry attended the 38th Transportation Working Meeting in July 2013, and will attend the 40th meeting in August 2014.

5.544 Further to this, MoT received international praise for its active ITF presidency role, which was regarded as a success for New Zealand bringing with it reputational gain.

How is MoT Dealing with Increasing Visitor Numbers and Increasing Levels of International Trade?

5.545 The Ministry has worked to improve driver awareness for international visitors. According to the Annual Report:¹³⁹⁶

As part of the Safer Journeys Signature Programme, we are working to improve visiting drivers' awareness of New Zealand driving conditions. Over the next year the Ministry will be reviewing the policy around our international obligations and the law around provisions on unsafe driving.

5.546 The Annual Report also describes the Ministry's work to open markets by promoting the liberalisation of air services:¹³⁹⁷

The international regulatory environment requires that an air services agreement is in place between New Zealand and each other country involved before international air services may be operated. The Ministry leads the New Zealand teams negotiating these agreements.

In 2013/14, we once again successfully negotiated a record number of new or amended air services agreements in accordance with the International Air Transport Policy. These agreements provide opportunities for airlines to offer additional services, increasing New Zealand's connectivity with the rest of the world.

We have put in place entirely new open skies agreements with eight countries, and enhanced existing agreements with a number of key or emerging economies including Hong Kong, the Philippines and Vietnam. New agreements have allowed code-share services from airlines in markets as diverse as Finland and Ethiopia.

Over 2014/15 we will continue to enter into negotiations to put in place or liberalise bilateral air services agreements. The focus will continue to be on new and emerging markets as well as enhancing existing agreements which are not fully open skies, particularly where these present a potential barrier to airlines looking to inaugurate or expand services.

5.547 The Ministry considers ensuring its investment in transport infrastructure is consistent with economic development is a key challenge. The Four Year Plan notes:¹³⁹⁸

Transport has a critical role in supporting economic growth. As a country we depend on international aviation and maritime links to connect us to the global marketplace. Alongside that, the government has a target of growing exports from 30 percent to 40 percent of GDP. We need to avoid unnecessary regulatory barriers to international freight and ensure that our policies encourage the smooth operation of our ports.

Analysis

The MoT recognises some of the issues raised by superdiversity, and has started putting measures in place and building internal capability. The next step is to think more systematically about the issues created by superdiversity in its policy development and to build the in-house diverse thinking capability to do so.

Ministry for Women

5.548 Centre staff contacted the Ministry for Women ("MfW"), which provided the following information on how it was adapting to New Zealand's demographic transition.

Key Superdiversity Issues for the MfW

- What steps is the MfW taking to improve its internal capacity to respond to the challenges of superdiversity?
- What steps is the MfW taking to improve its communication with external stakeholders?
- How is the MfW improving economic outcomes for women in diverse communities?

What Steps is the MfW Taking to Build its Internal Capability to Respond to the Challenges of Superdiversity?

5.549 As at December 2014, the ethnic makeup of the MfW's staff was 81 per cent New Zealand European, 14 per cent Māori and 5 per cent Asian.

5.550 The Ministry said in their Four Year Plan that “focus[sing] on better serving target groups” is one of their medium-term intentions.¹³⁹⁹ A success measure will be that:¹⁴⁰⁰

The Ministry can confidently serve Māori and Pacific women, and other target groups.

5.551 The Ministry's 2013 follow up PIF report found the MfW needs:¹⁴⁰¹

... [to make] further progress on key target groups, which is insufficient at present, eg, Māori and Pasifika women. Opportunities to partner with other agencies with overlapping interests need to be vigorously pursued, including large operating agencies and smaller agencies, such as Te Puni Kōkiri and Ministry of Pacific Island Affairs.

5.552 According to the Ministry's 2014 Annual Report:¹⁴⁰²

We developed a programme to grow employees' capabilities to incorporate Māori and Pacific perspectives into our work programmes.

5.553 The SSC, with the support of the MfW, has established a practitioner network for diversity and inclusion that meets regularly to share and develop practice in the public service.

5.554 There is an intersection between gender and ethnicity in the area of violence against women. Māori women are twice as likely as other New Zealand women to be victims of intimate partner violence and sexual violence. In February 2015, the Ministry launched a research report on the primary prevention of violence against Māori women: *Wāhine Māori, Wāhine Ora, Wāhine Kaha: Preventing Violence Against Māori Women*.¹⁴⁰³ This report highlights what Māori women told the Ministry were the key factors in ensuring that they live violence-free lives. The report reinforces the importance of whānau and community in keeping women and their children safe. It also discusses the role of education and employment in supporting women's safety.

5.555 The Ministry is currently undertaking work on Samoan people's understanding of primary prevention of violence against women. This work will provide a platform for government to work further in this area and support Samoan communities to have open discussions on how to prevent violence against Samoan women and girls.

What Steps is the MfW Taking to Improve its Communication with External Stakeholders?

5.556 The MfW is aware Māori women are more likely to be victims of domestic violence than other groups. The Ministry is undertaking research on primary prevention approaches for Māori women. According to the Annual Report:¹⁴⁰⁴

As a result of us initiating research in this internationally emerging area of work, MSD requested that we partner on this work, mainly for the engagement phase.

Our cultural approach to thinking about primary prevention raised awareness for service providers and Māori communities. While some service providers and Māori communities are engaged in primary prevention initiatives within kaupapa Māori settings, our engagement has meant a sharing of practice and discussion on the impacts. There are also more service providers and Māori communities considering primary prevention approaches as a result of research engagement.

Other government agencies, particularly MSD, have highlighted the validity of our work by citing our research findings in their research.

The Māori Reference Group to the Taskforce for Action on Violence within Families is an influential Māori stakeholder that supports the project and its progress.

5.557 The Ministry works with international stakeholders and provides support for New Zealand to maintain its international treaty obligations. The Annual Report notes:¹⁴⁰⁵

We began work on the report to [Convention on the Elimination of All Forms of Discrimination against Women] (CEDAW) on two areas outlined for further progress as a result of our 2012 presentation.

These two areas are the collection of data on disadvantaged groups of women and responses to the issue of forced marriage. The report on these areas is due for completion in late 2014.

In consultation with the Ministry of Foreign Affairs, we completed the review and survey of New Zealand's implementation of the Beijing Declaration and Platform of Action. This review documents New Zealand's progress in implementing the 12 critical areas of concern in the Beijing Declaration and Platform for Action.

International Organisations such as the OECD, United Nations and Commonwealth Secretariat sought advice and input on best practice examples of policies and processes to improve outcomes for women.

How is the MfW Improving Economic Outcomes for Women in Diverse Communities?

5.558 The Annual Report notes that the Ministry:¹⁴⁰⁶

... published a report, E Tu Ake! Stand Tall and Proud, to increase awareness about the needs of, and what works for, women with low or no qualifications.

We worked closely with government and non-government agencies to implement initiatives to support more women into sustainable work.

This led to the Ministries of Education, Business Innovation and Employment and the Tertiary Education Commission implementing specific plans with their providers to recruit women to the Māori and Pacific Trades Training programme.

We also worked closely with a range of non-government organisations (NGOs), especially Māori and Pacific organisations and providers, to consider what they can do to support women into sustainable work.

5.559 The Ministry is undertaking work to support more women and girls into education and training. The focus includes Māori and Pacific women. This work includes the Māori and Pacific Trades Training Programme and other similar government programmes.

Analysis

The MfW remains focussed on European, Māori and Pacific women, when Asian women may be the largest group of minority ethnic women by Statistics New Zealand projections in 2038 (see discussion at [1.25]). The Ministry's work on violence against Māori and Pacific women is a good start, but much more will be needed to address the fact that all women of colour are the most disadvantaged women in New Zealand.

The Ministry needs to broaden its focus in adapting to New Zealand's superdiverse population.

New Zealand Trade and Enterprise

5.560 Peter Chrisp, Chief Executive, and Liz Te Amo, Pouārahi/Director Māori Business, spoke about New Zealand Trade and Enterprise's ("NZTE") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for NZTE

- What steps has NZTE taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has NZTE taken to improve its communication with external stakeholders?
- How is NZTE using the advantages of superdiversity to grow Māori business?
- How does NZTE manage business in countries with high levels of corruption?

What Steps Has NZTE Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.561 From NZTE's perspective, superdiversity is a major advantage. The Chief Executive considers New Zealand should "run towards it". Asia is a core focus for NZTE. The China team is NZTE's largest team. NZTE is putting more members of staff "on the ground" in China.

5.562 Other areas of focus for NZTE include the growing markets in South East Asia, Japan, South Korea and Taiwan. They have marketing managers in each key region.

5.563 NZTE is a diverse office. According to NZTE's Annual Report 2013/14 staff are:¹⁴⁰⁷

- 23.6 per cent Asian;
- 56.6 per cent European;
- 2 per cent Māori;
- 2.1 per cent Middle Eastern;
- 8 per cent other ethnicity;
- 0.4 per cent Pacific peoples; and
- 7.4 per cent not declared.

5.564 Staff identifying as Asian hold 9 per cent of NZTE leadership positions.

5.565 NZTE recruits "the best person for the job" regardless of ethnicity or gender. However, they use weighted recruitment pools as a tool to ensure there is diversity in their staff. NZTE's Annual Report notes:¹⁴⁰⁸

We value our diverse workplace, our inclusive culture and our commitment to equality. In particular, our commitment to increased diversity is driven by both the diversity of our customer base and the importance of reflecting a range of perspectives in our decision-making processes. Our appointments are based on merit, to ensure fairness in employment for all people ... the two areas on which we have a specific focus are increasing the proportion of women in leadership positions, and increasing the total number of Māori and Pacific peoples coming into the organisation as a whole.

What Steps Has NZTE Taken to Improve its Communication with External Stakeholders?

5.566 NZTE's PIF report notes:¹⁴⁰⁹

NZTE has based its operating model on that of a professional services firm in a distributed global network. It is based around a core methodology for engagement with customers, which applies a common language and toolkit to assessing F700 customer needs and delivering differentiated services to meet these.

- 5.567 NZTE has 36 offices around the world. Peter Chrisp said this necessitates culturally competent staff.
- 5.568 NZTE does not advertise widely. Māori business is the only business group they “chase”. Other groups must seek NZTE’s services. NZTE is involved in the Chinese New Year Festival and Diwali. It hopes to expand to other events. NZTE also works with community groups such as the Indian Business Council, and works with a number of government departments (MPIA, TPK, MBIE, MPI, Education New Zealand, Tourism, Callaghan Innovation, and Treasury).

How is NZTE Using the Advantages of Superdiversity to Grow Māori Business?

- 5.569 NZTE has adopted a Māori business strategy. Around 80 per cent of the strategy involves growing companies. It also involves getting better performance through the NZ Inc strategies, and supporting trade missions such as Māori Development Minister Hon Te Ururoa Flavell’s planned trip in November 2015.
- 5.570 NZTE works closely with TPK, and provides support for its Crown–Māori strategy for Māori Economic Development, *He kai kei aku ringa*.
- 5.571 NZTE takes an active role in developing partnerships with Māori businesses. They work to build relationships, rather than wait for businesses to request their help.
- 5.572 NZTE aims to lift the capability of all staff to support Māori businesses, rather than relying on a single Māori business team. NZTE produced a cultural kit, Te Kete Tikanga Māori, to provide guidance and context for people working with Māori business delegations. NZTE also created an App to teach Māori pronunciation and deliver Kia Kaha every 12 weeks, which is a two-day experience on a marae to build understanding of NZTE staff. This allows NZTE to better represent Māori business.
- 5.573 NZTE’s job is growing international markets. It also aims to improve its work in net-working Māori businesses with domestic migrants, as these networks provide good opportunities for business growth.
- 5.574 NZTE has found diverse audiences are particularly receptive to Māori culture. Māori culture provides an important point of difference for NZ Inc so the growth of Māori business is beneficial to all New Zealand export businesses.
- 5.575 NZTE’s work with Māori business provides a blueprint for NZTE to work with other ethnic businesses.

How does NZTE manage business in countries with high levels of corruption?

- 5.576 NZTE will not engage in corrupt practices or do business with those who do. NZTE will not maintain relationships with “customers” who engage in corrupt practices overseas.

Analysis

The leadership of Peter Chrisp has turned NZTE around so that it is strongly Māori focussed in terms of its culture, and the organisation is working hard on its mission to grow New Zealand trade within our Asia–Pacific rohe, and around the world. Broadening the internal capability focus of NZTE to growing top Asian talent amongst its staff would help NZTE’s success in fulfilling its statutory role, although the internal culture already values different cultures, values and languages. That is a good start.

New Zealand Transport Agency

- 5.577 Centre staff met with Sara Broadhurst, Group Manager, People and Capability, and Cathy De Jongh, People and Capability Manager, to discuss the New Zealand Transport Agency’s (“NZTA”) response to New Zealand’s transition to superdiversity.

Key Superdiversity Issues for NZTA

- What steps has NZTA taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has NZTA taken to improve its communication with external stakeholders?

What Steps Has NZTA Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.578 According to NZTA's 2014 Annual Report, the overall ethnic profile of staff (as at 30 June 2014) was:¹⁴¹⁰

- 7.3 per cent Asian;
- 5.1 per cent Māori;
- 0.6 per cent Middle Eastern/African/Latin American;
- 14 per cent not stated;
- 54 per cent New Zealand European;
- 1.7 per cent other ethnicity;
- 15.9 per cent other European; and
- 1.4 per cent Pacific peoples.

5.579 NZTA is thinking about the impact of superdiversity on New Zealand's transport system. It is focussed on having inclusive policies.

5.580 NZTA is considering diversity in the context of recruitment and training leaders. NZTA has included unconscious bias in its new recruitment e-learning module, which is aimed at up-skilling hiring managers. Professor Paul Spoonley has also spoken to New Zealand Transport Authority executives about Auckland's demographics.

5.581 NZTA aims for NZTA to be a place people from different backgrounds would like to work. The NZTA workforce skews older, which presents a challenge for the recruitment of younger staff.

5.582 NZTA tracks the diversity profile of new hires and maintains ethnicity data for current staff. NZTA's Auckland region office is markedly different to the other offices. Twelve per cent of staff identify as Asian in the Auckland region office, compared to less than 5 per cent of staff in the Southern region office. There is less diversity seen in senior leadership at NZTA.

5.583 NZTA does not collect statistics on the languages spoken by its staff. However, its contact centre actively recruits staff who can speak languages other than English.

5.584 NZTA has a low staff turnover. NZTA is aware of private sector groups working in the transport sector that recruit overseas, such as Downer and Fletcher, which do extensive work to promote cultural competency.

What Steps Has NZTA Taken to Improve its Communication with External Stakeholders?

5.585 According to NZTA's Annual Report:¹⁴¹¹

Significant steps have been taken to improve our Māori engagement practice in the development of the 2015–18 NLTP [National Land Transport Programme]. A set of guidelines have been developed for relationship managers to use when engaging with Māori across the country in the NLTP's development, and staff are aware of their obligations to ensure Māori are well engaged throughout the process.

5.586 NZTA outsources most of its customer interfacing roles. For example, NZTA recently entered into a contract with a driver licence organisation. The organisation's ability to work with people from different backgrounds was part of the conversation.

5.587 The two major areas of customer interface for NZTA are:

- NZTA's contact centre: The centre receives 80–120 calls a day from a diverse range of customers; and
- Community meetings: NZTA considers its ability to engage with the community is a major strength. It is aware that the bulk of the community will not be present at community meetings, so they also use other media such as letterbox drops, Facebook and Twitter.

How is NZTA Dealing with Increasing Visitor Numbers and Increasing Levels of International Trade?

5.588 Accidents caused by tourist drivers have been discussed extensively in the New Zealand media this year. NZTA is actively working with tourism organisations and the Police to ensure visitors to New Zealand have a better understanding of New Zealand driving conditions before they get here.

5.589 NZTA's website describes the Visiting Driver Safety project as:¹⁴¹²

[o]ne example of the Transport Agency, its road safety partners and the tourism industry working together. The focus of the project is on improving road safety for visiting drivers, while maintaining our reputation as an attractive and safe tourist destination ...

Initiatives that have already been rolled out nationally as a result of this project include a "steering wheel safety tag", similar to a luggage tag, fitted to the steering wheel of hire vehicles, reminding drivers of key New Zealand road rules.

The rental vehicle industry has also amended its standard form rental vehicle agreements, making it easier for rental vehicle operators to immediately cancel hire agreements if drivers pose a danger to others. A range of work is planned over the next three years including changes to road signs and markings so they are more visitor driver-friendly, to the more effective provision of information to help keep visitor drivers safe on our roads.

5.590 In January 2015, the NZTA published a brochure about driving in New Zealand available in multiple languages. The brochure is available online in English, Samoan, Tongan, Tuvaluan, Spanish, Portuguese, French, German, simplified Chinese, traditional Chinese, Japanese, Korean, Thai and Arabic. The printed brochure is available in Spanish, Portuguese, French, German, simplified Chinese, traditional Chinese, Japanese, Korean, Thai and Arabic.

5.591 NZTA and the MoT maintain data on crashes involving overseas drivers. This data shows people new to New Zealand driving conditions have more accidents, irrespective of whether they are tourists or New Zealand citizens. Data published by the MoT shows:¹⁴¹³

Over the 5 years, 2010–2014, 5.7 percent of fatal and injury crashes involved an overseas licence holder. Over the same time-period, 3.8 percent of all drivers involved in crashes were overseas licence holders.

At a local level the proportion of crashes that involve an overseas licence holder can vary markedly due to regional differences in the size of the visitor and immigrant populations and their driving patterns. In the South Island tourist areas crashes involving an overseas driver make up a quarter or more of all road crashes.

About three-quarters of overseas licence holders in crashes (78 percent) are short-term visitors to New Zealand, 13 percent are overseas students and 9 percent are migrants (Visitor status is not recorded for about 40 percent of overseas licence holders).

... Overseas licence holders (5 percent – 7 percent for drivers from countries that drive on the right and 3 percent for countries that drive on the left) are more likely to fail to keep left than New Zealand drivers (2.3 percent). For fatal crashes these rise to 18 percent for overseas licence holders and 12 percent for New Zealand drivers.

About half the overseas licence holders at-fault in crashes are from countries that drive on the right.

There can be many reasons for being on the wrong side of the road including driving too fast,

inattention and fatigue. The number of New Zealand at-fault drivers in crashes who fail to keep left is about 10 times the number of overseas licence holders who fail to keep left.

Another major difference is that overseas licence holders (5 percent) are less likely to be affected by alcohol and drugs than New Zealand drivers (15 percent). For fatal crashes these rise to 4 percent and 34 percent respectively.

Analysis

NZTA is responding to the unique issues that superdiversity poses in relation to the New Zealand transport system, such as driver safety, but it needs to systematically and proactively consider the issues that are arising now, and will arise in the future. It also needs to more actively consider the capability it needs to meet the challenges of a superdiverse population and to continue the good start it has made on communicating with all New Zealanders.

Serious Fraud Office

5.592 Julie Read, Chief Executive of the Serious Fraud Office (“SFO”), spoke about the SFO’s response to New Zealand’s transition to superdiversity.

Key Superdiversity Issues for the SFO

- How will New Zealand’s transition to superdiversity affect the investigations that the SFO is required to undertake?
- What steps is the SFO taking to improve its internal capacity to respond to the challenges of superdiversity?

How Will New Zealand’s Transition to Superdiversity Affect the Investigations that the SFO is Required to Undertake?

5.593 Differing business cultures pose a particular challenge to the SFO. There are issues around how to best communicate and respond to cultures with different approaches to and definitions of corruption. These views can vary not only from culture to culture, but also from sector to sector. This can make education and enforcement difficult, because practices that one culture considers corrupt can be considered ordinary business practice or good manners in another culture.

5.594 Governance is also relevant in this context. New Zealand has a relatively unsophisticated governance culture, which is a concern because effective corporate governance and oversight is a key method of preventing fraud. But once again, different cultures have different approaches to governance, and what level of oversight is necessary or appropriate. Not all directors come from jurisdictions with a strong rule of law culture.

5.595 Some cultures take a more consultative approach to governance which can limit the ability of directors to intervene when there is a problem. Issues around conflicts of interest and undue influence are often perceived differently across cultures.

5.596 The SFO is increasingly working with the Office of the Auditor-General and across the state sector in a preventative role, to help organisations across the wider public sector develop appropriate mechanisms to prevent serious fraud.

What Steps is the SFO Taking to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

5.597 The SFO is based in Auckland, which gives it broad access to the diverse Auckland talent pool. In 2015, there are approximately 17 ethnicities employed in various roles across the SFO, including some new migrants.

- 5.598 As at December 2014, the ethnic makeup of the Serious Fraud Office was 88 per cent European, 7 per cent Asian, and 5 per cent Māori.¹⁴¹⁴
- 5.599 The SFO has adopted a number of training programmes which aim to teach its staff to take into account the importance of diversity and identifying and avoiding unconscious bias in conducting investigations.
- 5.600 While the SFO has some internal Mandarin-speaking capacity, it also makes use of independent translators where that is necessary to protect the rights of the people it interviews.

Analysis

The SFO is very aware of the challenges that superdiversity might bring to its statutory role, especially being located in Auckland, and it is working hard to understand where the issues might come from to increase its strategic abilities to detect and successfully prosecute serious fraud.

The next step is to build deeper capability as the superdiversity of the population grows to deal with issues of different business culture, which may increase serious fraud.

Te Puni Kōkiri

- 5.601 Centre staff met with Taria Tahana, Manager, Economic Wealth, to discuss Te Puni Kōkiri's ("TPK") response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for TPK

- What steps has TPK taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has TPK taken to improve its communication with external stakeholders?
- How is TPK maximising opportunities provided by superdiversity to grow Māori wealth?

What Steps Has TPK Taken to Improve its Internal Capacity to Respond to the Challenges of Superdiversity?

- 5.602 As at December 2014, the ethnic makeup of TPK's staff was 75 per cent Māori, 4 per cent Pacific peoples, 2 per cent Asian and 19 per cent European.¹⁴¹⁵
- 5.603 TPK is in the process of changing its operating model. TPK's Four Year Plan describes this as follows:¹⁴¹⁶

To deliver better results we need to work in new ways to support and enable these focus areas and related outcomes. The proposed operating model is designed to ensure we:

- *Develop ways of working together in a more interconnected and integrated way;*
- *Be more deliberate about what we focus on;*
- *Create improved processes that support clear decision making and prioritisation; and*
- *Build a learning and development culture to deepen our skills and knowledge on a multiplicity of kaupapa.*

In addition we need to make sure our structures and processes are fit for purpose to achieve the above, enhancing our strengths and helping to make doing our jobs easier.

- 5.604 TPK's new framework encompasses:¹⁴¹⁷

- Mua (strategy)
- Kaupapa (core drivers)
- Rawa (services)

- Tikanga (policies)
- Whakapapa (our past)
- Taonga (our assets)
- Mana (the platforms on which TPK stands with confidence, dignity and authority).

5.605 The Four Year Plan describes the context for change as including:¹⁴¹⁸

The maturing of Crown-Māori relationships: The shift in focus of Māori intellectual leadership, versed in the workings of government, and with expectations regarding the accessibility, quality and effectiveness of services provided by the social sector; and future investment and growth opportunities, will continue to have a significant impact on iwi and Māori expectations of government, and post settlement relationships

Economic opportunity: The growth of the Māori asset base, most recently quantified at \$36.9 billion, has been significant, with real growth between 2006 and 2010 calculated at 4.3% per annum. This asset base contributes 5.9% of production GDP.

Social and economic wellbeing: Despite these changes, Māori as a population group, continue to experience adverse disparities across key social and economic indices, and as a result are over-represented as consumers of publicly funded services.

Demographic profile: The Māori population is growing at a faster rate than the rest of New Zealand. Failure to address the social and economic wellbeing of Māori will have an increasing and lasting cost to Māori, other taxpayers, and the economy.

5.606 The Four Year Plan describes TPK's intention to integrate matauranga Māori into everyday practices:¹⁴¹⁹

Te Puni Kōkiri's ability to connect with the Māori world is an essential part of its value to government. It will integrate matauranga Māori more into its everyday practices, and will accordingly provide opportunities and incentives for staff to receive training, coaching and mentoring. The core sets of knowledge include te reo Māori, tikanga Māori and an understanding of contemporary Māori society and culture.

What Steps Has TPK Taken to Improve its Communication with External Stakeholders?

5.607 TPK's 2014 report in relation to selected Non-Departmental Appropriations notes that their approach to whānau planning includes work to build cultural competency:¹⁴²⁰

Whanau Planning has proven to be an effective tool for whanau to focus on addressing immediate needs and working towards aspirational goals. Collectives have highlighted innovative approaches to working with whanau on key priority areas including employment, youth, leadership/development, and cultural competency.

5.608 The Asia New Zealand Foundation found Māori attitudes towards Asian immigration track much more negatively than the rest of the population. The Foundation said:¹⁴²¹

... there were several dimensions to these concerns among Māori, including competition for employment between recent Asian arrivals and Māori ... the concern that Asian cultures and languages competed for attention and resourcing with tikanga and te reo Māori, and the perception that Asian immigrants did not adequately acknowledge the treaty.

5.609 TPK needs to communicate the importance of the Treaty of Waitangi and tikanga to Asian (and other) migrants both to ensure the special position of tangata whenua in New Zealand is retained and to maintain social cohesion. TPK's work to strengthen Māori cultural wealth is important for this area. TPK described its approach to this work in its Four Year Plan as:¹⁴²²

Our proposed activities in this priority area will be focussed on maximising the mandate and resources TPK currently has to support Māori in the protection, maintenance and development of their culture. On a departmental front, we intend to lead policy development to support Māori cultural outcomes, administer and promote legislation to this end and support and guide the con-

tributions of our three Māori language entities: *Te Taura Whiri i te Reo Māori*, *Te Māngai Pāho* and the Māori Television Service.

How is TPK Maximising Opportunities Provided by Superdiversity to Grow Māori Wealth?

5.610 TPK is one of the government agencies involved with NZ Inc strategies, which promote economic and political linkages with New Zealand's international partners. NZ Inc has developed China and India strategies, and is working on others.

5.611 Hon Dr Pita Sharples, the former Minister of Māori Affairs, led the inaugural Māori business delegation to China in 2010. This was successful and further Māori business delegations followed. TPK and the current Minister intend to continue leading these delegations.

5.612 TPK promotes the unique distinction Māori culture and business brings to NZ Inc. TPK's former Chief Executive Leith Corner noted, "[o]verseas markets are increasingly responsive to cultural distinctiveness".

5.613 At the "pointy end", TPK delivers individuals and businesses looking for business opportunities to NZTE and Callaghan Innovation.

5.614 TPK's Māori Business Facilitation Service provides support for Māori businesses looking to expand into new markets domestically and for export. For example, TPK assisted Maraeroa C with their ginseng plantation by supporting forest owners to implement ginseng trials. TPK also provided them with a Māori Business Facilitation Service accredited marketing manager to provide advice on the Chinese market.

Analysis

TPK's focus on Māori would be enhanced by systematically considering the benefits of superdiversity to create a wealth base for iwi, hapū and whānau, and to drive Māori entrepreneurialism. TPK is well placed to support those initiatives and to bridge the cultural gulf for business success between Māori, Pacific and Asian groups, and it has already started doing so.

Superdiversity may also challenge Māori concerns about being overwhelmed by the next wave of colonisation, and TPK can help ensure racial harmony through greater engagement between the indigenous people and New Zealand's largest ethnic minority groups.

The Treasury

5.615 Tim Ng, Director, Economic System, and Toby Cooper, Principal Advisor of Organisation Development, spoke about the Treasury's response to New Zealand's transition to superdiversity.

Key Superdiversity Issues for the Treasury

- How will New Zealand's transition to superdiversity affect how the Treasury acts as the government's lead advisor on economic, financial and regulatory policy?
- How can the Treasury ensure that it continues to attract and make the best use of first-class superdiverse talent to perform its functions and ensure diversity of thought?
- What steps has the Treasury taken to improve its internal capacity to respond to the challenges of superdiversity?
- What steps has the Treasury taken to improve its communication with external stakeholders in response to superdiversity? In particular, how does the Treasury take account of diverse views on policy and law making?

What Steps Has the Treasury Taken to Improve its Capacity to Respond to the Challenges of Superdiversity?

5.616 The Treasury says that it takes diversity and inclusion seriously. The Treasury sees a strong connection between diversity of thinking, an inclusive culture, and the quality of its work.

5.617 As at December 2014, the ethnic makeup of the Treasury's staff was 86 per cent New Zealand European, 7 per cent Asian, 5 per cent Māori and 2 per cent Pacific peoples.¹⁴²³

5.618 The Treasury's diversity and inclusion work is sponsored by one of its senior leaders, and its CEO, Gabriel Makhoul, is personally connected through his involvement in diversity-related organisations such as the 25 Percent Group and Diverse NZ Inc. The Treasury has also brought in external speakers and diversity consultants to help the Treasury think about, frame, and progress its work.

5.619 The Treasury's 2013 Four Year Plan notes that:¹⁴²⁴

The Treasury is a people business. How it deploys and uses its people is its biggest challenge. It needs to maintain sufficient critical mass and capability in the enduring aspects of its business (such as budget advice and forecasting) and in its core role in advising on economic, regulatory and financial matters. It also has to maintain enough critical mass and adaptive skills and capability to be responsive and adapt quickly to shifts in priorities (such as housing reform) and to surge resources where it is needed. The Treasury has a workforce strategy which sets out how it will develop and maintain these capabilities.

5.620 The Plan also identifies the "risk of inability to attract and/or retain sufficient numbers of people with appropriate skills and experience, and/or to achieve an appropriate range of diversity" as "high/possible", and as a result the Treasury was developing an active campaign to attract suitable candidates.

5.621 The Treasury has an organisational change programme as one of its seven core strategic intentions. This is an umbrella programme that coordinates a number of initiatives from across the business that aim to embed the Treasury's values and therefore improve its performance as an organisation.

5.622 The Treasury's 2014 Annual Report says that:¹⁴²⁵

Our leaders have a central role in ensuring our strategic advice has sufficient:

breadth – adopting a systemic rather than partial focus, integrating advice across the economic and public sector outcomes

depth – looking beneath immediate events and preoccupations to underlying drivers and trends

reach – anticipating medium-term risks and opportunities and getting results by influencing others, and

diversity – bringing in others' viewpoints, brokering solutions that are going to work for New Zealanders to lift their living standards.

5.623 In 2012, the Treasury launched a diversity strategy with a focus on three key areas: diversity of thinking including new approaches to problem solving and creativity; cultural diversity to better reflect the views of the broader society that it serves; and the proportion of women in senior leadership roles.

5.624 During 2013/14, the programme focussed on two main areas: first, lifting the level of ownership that teams and individuals have in the change initiatives, and to be more specific about how they could change, and create change in how the Treasury does business. Secondly, the Treasury began to look further into how it would support the diversity of thought and experience by employing people with a diverse range of backgrounds. These include people from different ethnic backgrounds, with experience in different community groups, as well as different types of work experience, such as international and commercial markets and programme management.

5.625 The Treasury's 2014 Annual Report stated that:¹⁴²⁶

Our focus now is on creating a culture in which differences and people can thrive; one that supports fresh thinking and innovation in our work. We see the pursuit of diversity and inclusiveness as a key way of lifting our performance, and this is supported by research that shows that diversity of thinking is a key driver of performance in successful teams and organisations.

We see diversity as a performance advantage; it makes teams stronger. In order to perform our role and advance ideas to solve policy problems, we stand to benefit from a diversity of skills and perspectives. That same diversity will also help us to make sure those ideas are practical and that we can see them through to implementation. A more diverse and inclusive culture will accelerate progress in all of the areas that we have identified as priorities to make it more influential: it will help the organisation to be more collaborative and outward facing (through new connections to stakeholders and society), better at its core business and more productive (through new perspectives and ideas).

To achieve this we have begun to focus more directly on the factors that impact on diversity and inclusion, and factors that contribute to success and career progression and influence our demographic profile. During the 2013/14 year we focused on being more aware of our unconscious biases and characteristics that would support an inclusive workplace culture. An awareness of this will help us to attract, retain and harness the depth and breadth of technical, management and leadership capabilities of a diverse culture. In particular, we have been working to incorporate Māori perspectives into our work; not only our work on outcomes for Māori, but to all of our advice.

5.626 The 2014 PIF report considered that the Treasury was well-placed in terms of its engagement with staff, but noted:¹⁴²⁷

Another recent initiative has been to address the challenges of diversity and inclusiveness. The Treasury recognises, to be more influential and valuable as an organisation, it must reflect and understand the legitimate needs and aspirations of all New Zealanders. The Living Standards Framework is a good start to frame up the Treasury's approach to policy advice but it must be sure it is being sufficiently aspirational and inclusive in framing its priorities.

To be truly effective the Treasury must represent New Zealand and New Zealanders in the 21st century. As well as gender equality at all levels of the organisation it needs to have a much more representative cultural and ethnic mix that better reflects the diversity of New Zealand society.

Analysis

The Treasury has done quality thinking and good implementation in terms of Māori and gender diversity, but it needs to speed up its adaptation to New Zealand's superdiversity.

The thinking about superdiversity has begun, but given that Auckland is superdiverse now and the importance of Auckland to the New Zealand economy, the pace needs to quicken.

The focus needs to broaden from thinking about Māori issues and biculturalism, to thinking about multicultural policy issues for financial and social capital, and whether a new definition of financial capital needs to be devised with a minimum level of social capital in it, as is discussed at [2.344].

The Treasury needs to continue to build its internal capability to do the thinking on superdiverse issues.

A P P E N D I C E S

Appendix One – Full Copies of Surveys Distributed for Stocktake and Findings

Survey Questions on Internal Capability

1. Does your business collect information on its staff's ethnicity? (Y/N)
2. If you answered "yes" to Q1, please describe the ethnic breakdown of your workforce.
3. If you answered "yes" to Q1, how does your organisation use this data? (please select all that apply)
 - a. We use this data to analyse our recruitment and retention rates for diverse staff to identify and address any inequalities in application of employment practices;
 - b. We use this data to measure wage and benefit packages, performance reviews, training opportunities and career development, and promotions to ensure those from diverse backgrounds are provided support and the most is made of their contribution to the business;
 - c. We use this data to inform our organisation's diversity policies and practices;
 - d. Other.

If you selected "other", please outline in the box provided below.

4. Does your business collect information on the ethnicity of its customer base? (Y/N)
5. If you answered "yes" to Q4, has your customer base become more diverse over recent years? (Y/N)
6. If you answered "yes" to Q4, how does your organisation use this data? (please select all that apply)
 - a. We use this data to develop marketing and communication strategies that are more responsive to our diverse customer base;
 - b. We use this data to ensure our organisation's staff reflects our customer base;
 - c. We use this data to develop and adapt products and/or services targeted to our diverse customers' needs and expectations;
 - d. Other.

If you selected "other", please outline in the box provided below.

7. How does your organisation manage applications from candidates who are from overseas and/or who have ethnic-sounding names during the recruitment process? (please select all that apply)
 - a. We train all managers and recruitment staff on conscious and unconscious bias;
 - b. Our HR and recruitment teams are trained on how to manage CVs from candidates originating from overseas;
 - c. Our recruitment process ensures we provide equal weighting to experience and qualifications gained in overseas locations as well as New Zealand;
 - d. All identifying features are removed from CVs, that is, names and photos to ensure all candidates are treated on an equal basis;
 - e. We have a policy of ensuring we actively encourage a diverse range of backgrounds and ethnicity when recruiting for roles in key areas;

- f. We communicate externally on our recruitment website and through our recruitment partners our policy on candidate diversity in the recruitment process;
 - g. We make sure recruitment advertisements are distributed in different languages and/or through ethnic non-mainstream media channels;
 - h. What other actions does your organisation take to ensure candidates from overseas locations and/or who have ethnic sounding names are treated fairly and equitably in the recruitment process? Please outline in the box provided below.
8. Do your workplace's recruitment criteria include "diversity criteria"? (Y/N) If yes, please select all that apply:
- a. Our recruitment criteria include recruiting people with diverse perspectives who are from diverse backgrounds;
 - b. Our recruitment criteria include employing persons who have the ability to speak languages other than English;
 - c. Our recruitment criteria include employing those who have cultural intelligence (that is, the ability to work with people not like them, also known as "CQ"), not just IQ and EQ;
 - d. Other.

If you selected "other", please outline in the box provided below.

9. Does your workforce have in place any policies or processes to promote the retention (and progression) of diverse staff? (Y/N) If yes, please outline these policies and processes briefly in the box provided below.
10. Has your business faced any other challenges as a result of an increasingly diverse workforce? Please select all that apply.
- a. Diverse employees in our workplace have reported experiencing discrimination and/or harassment from other staff and/or customers/external stakeholders;
 - b. Existing staff have refused to work with, or excluded, people from certain ethnic groups;
 - c. There have been issues due to linguistic and/or other communication differences;
 - d. Other.

If you selected "other", please outline in the box provided below.

11. What measures has your business adopted to address these challenges and ensure best practice? Please select all that apply.
- a. We have implemented a diversity policy/policies and/or processes, including procedures to report discrimination;
 - b. All our staff, including those in leadership and management, have undergone conscious and/or unconscious bias training;
 - c. We have internal events to celebrate ethnic/cultural events such as Matariki, Chinese New Year and Diwali;
 - d. We have implemented hiring and/or promotion targets for diverse staff;
 - e. We have implemented training and development programmes and/or mentoring programmes targeted at diverse employees;
 - f. We provide workplace policies, rules and meetings in various languages;
 - g. Our organisation caters for diverse food preferences;
 - h. Our organisation provides time off for religious holidays or traditional ceremonies;

- i. We have implemented accountability measures to encourage leadership and management to reach diversity hiring/promotion targets, for example bonuses for achieving ethnic diversity;
- j. Other.

If you selected “other”, please outline in the box provided below.

12. Please record any further comments on how your business is dealing with and maximising the opportunities from an increasingly diverse staff and customer base in the box provided below.

Survey for SMEs in Partnership with Chambers of Commerce

Methodology

A copy of the survey questions below was sent to various Chambers of Commerce across New Zealand. The questions were qualitative and asked businesses to identify the benefits, opportunities and challenges they had experienced from New Zealand’s increasingly superdiverse workforce and customer base.

Limitations

Some regions, such as Eastern Bay of Plenty and Nelson Tasman, only returned a small number of responses, so further research is needed into the experience of businesses in these areas.

The accuracy of the data collected may also be affected by drop-off rates in responses from the businesses surveyed. Where there was a drop-off in response rate, this is noted in the findings for each region, where applicable. Percentages were calculated using the total number of actual responses received for each question so as not to skew the findings.

Survey Questions

Owner/Operator

1. What ethnicity or ethnicities do you identify with?
2. Were you born in New Zealand or overseas? If born overseas, please state where you were born and how long you have been in New Zealand.

Staff

3. What is the ethnic breakdown of your business’s staff in terms of percentage?
4. Do your staff members speak any languages other than English? If so, which languages?
5. Does your business undergo any training or have any recruitment policies in place to interpret foreign CVs and/or hire the best candidates regardless of ethnicity? For example, do you cover names or photos on CVs you receive?
6. What challenges has your business faced as a result of an increasingly superdiverse workforce?
7. What measures has your business adopted to address these challenges and ensure best practice? For example, have you had to adopt different workplace practices or policies to accommodate your staff’s cultural, religious or linguistic needs?

Customers

8. Have you noticed any changes to your customer base in terms of ethnic diversity in the last five years (or since your business was established)? If so, please describe these changes.
9. Has your business had to change the way it communicates with its customer base? For

example, has your staff needed to use languages other than English to interact with your customers?

10. What challenges has your business faced as a result of an increasingly diverse customer base?
11. What measures has your business adopted to address these challenges and ensure best practice? For example, have you had to adopt a new marketing strategy or adapt your products or services to suit this increasingly diverse customer base?

Further comments

12. Do you have any further comments on how your business is dealing with and maximising the opportunities from an increasingly diverse staff and customer base?

Hawke's Bay Chamber of Commerce Survey

The key findings from the 60 survey participants are as follows:

- a. *Ethnicity of business owners:* The majority of participants who answered this question identified as New Zealand European (33.9 per cent), "New Zealander" (19.6 per cent) or European/Caucasian (23.2 per cent).¹⁴²⁸ Few participants identified as Māori or New Zealand Māori (7.14 per cent) or with multiple ethnic identities (14.2 per cent). Twenty per cent of respondents were born overseas.¹⁴²⁹ Of those born overseas, half were born in the United Kingdom and the majority had lived in New Zealand for 10 years or more. Only one had migrated to New Zealand in the past two years.
- b. *Ethnicity of staff members:* Just over 44 per cent of participants who provided an answer employed staff members who were all European New Zealanders or Caucasian.¹⁴³⁰ Of the respondents who employed non-European staff, ethnicities included Māori, Canadian, Pacific, Indian, Arabian and Italian.
- c. *Proportion of staff who speak foreign languages:* Almost 60 per cent of participants who answered this question employed staff members who spoke languages other than English.¹⁴³¹ The most common foreign languages spoken by employees were French, German and Māori. Other foreign languages spoken by employees included Thai, Mandarin, Arabic, Polish and Italian.
- d. *Diverse recruitment policies:* Only one of the participants who answered this question had recruitment policies in place to interpret foreign CVs and/or hire the best candidates regardless of ethnicity.¹⁴³² One respondent noted that they were open to hiring persons of any race, religion or ethnicity, although they did not have a formal policy.
- e. *Challenges of a superdiverse workforce:* Around 70 per cent of participants who answered this question reported that they had experienced no challenges as a result of an increasingly superdiverse workforce.¹⁴³³ The remaining participants identified the following key challenges:
 - i. Lack of English language proficiency;
 - ii. Different communication styles;
 - iii. Difficulties obtaining visas for foreign-born employees;
 - iv. The need to be more culturally aware; and
 - v. Matching up foreign qualifications with the New Zealand equivalent.

Almost 60 per cent of participants who answered this question reported that they had not adopted measures to address the challenges created by a superdiverse workforce.¹⁴³⁴ Those participants who had adopted measures to adapt to the challenges of a superdiverse workforce implemented the following measures:

- i. Cultural awareness and language training;

- ii. Implementing and facilitating a culture of tolerance; and
 - iii. Accommodating religious and cultural needs in the workplace.
- f. *Challenges from a superdiverse customer base:* Almost 50 per cent of those participants who answered this question had noticed changes to their customer base in terms of ethnic diversity in the last five years.¹⁴³⁵ These participants reported increased interaction with foreign-born customers, particularly from Asian countries such as China and India, as well as from the Middle East. Two respondents reported increased interaction with Asian suppliers, in part due to the strong Asian influence on the export market.

Eighty per cent of participants who answered this question had made no changes to the way that they communicated with their customer base.¹⁴³⁶ However, several participants had noticed that more customers were arranging their own interpreters. Further, although several participants still communicated in English with such customers, they had started to make greater use of emails and social media. The remaining respondents reported making the following changes to how they interacted with customers:

- i. Using interpreters for customers who did not speak English;
- ii. Creating the expectation that staff members who speak foreign languages will speak in that language with foreign-language customers;
- iii. Training staff members in different social and cultural norms;
- iv. Taking more time to explain how business works in New Zealand; and
- v. Creating a separate language line within the business's call centre.

Almost 73 per cent of respondents did not perceive any challenges as a result of an increasingly diverse customer base.¹⁴³⁷ Businesses that had noticed a change and made changes to address the challenges adopted the following measures:

- i. Adopting a clear communication style in marketing messages;
- ii. Employing multiple means of communication; and
- iii. Ensuring respect for all cultures and languages.

Queenstown Chamber of Commerce Survey

The following are the key findings from 30 respondents.

- a. *Owner/operator's ethnicity/birthplace:* 86.7 per cent of respondents identified as New Zealanders, New Zealand European or Caucasian. Two respondents (6.67 per cent) identified as Chinese, and one (3.33 per cent) identified as Scottish and Lebanese. Seventy per cent were born in New Zealand. Of those who were born overseas, only two respondents (6.67 per cent of total respondents) had migrated to New Zealand in the past five years. None had migrated in the past two years.
- b. *Ethnicity of staff:* 43.3 per cent of respondents had staff members from overseas who spoke languages other than English. Other languages spoken by staff included: Czech, Spanish, Portuguese, Nepalese, Filipino, Japanese, French, Mandarin, Cantonese, Hindi, Dutch, German, Thai, Indonesian, Malay, Korean, Bulgarian, Finnish, Swedish, Italian, Danish, and Gaelic.
- c. *Training to interpret foreign CVs:* Three businesses (or 10 per cent) underwent some kind of training to interpret foreign CVs or had an EEO policy in place to ensure the best candidates were hired regardless of ethnicity. One business (3.33 per cent) reported that its staff needed to meet New Zealand professional registration requirements, which filtered out many overseas applicants.
- d. *Challenges as a result of a superdiverse workforce:* One-third of businesses surveyed said they had experienced some or all of the following challenges from an increasingly diverse workforce:

- i. Communication problems, including needing additional training for workers with English as a second language and/or understanding Kiwi English;
 - ii. The need for a different management style and cultural differences;
 - iii. Different organisational culture; and
 - iv. Immigration issues when recruiting migrant employees.
- e. *Measures adopted to address challenges:* 23.3 per cent of respondents had adopted measures to address the challenges of an ethnically diverse workforce, including some or all of the following:
- i. Zero-tolerance policy for cultural discrimination;
 - ii. In-house translators;
 - iii. Only hiring candidates with sufficient English proficiency;
 - iv. Training in different languages; and
 - v. Providing meals for staff that complied with religious and/or cultural requirements.
- f. *Changes to customer base:* One-third of businesses surveyed had noticed an increase in the past five years of clients or customers with English as a second language, particularly more Indians, Chinese, Indonesians, and South Americans. The main challenge reported from the changing customer base was the need for different styles of communication, and hiring “language appropriate” staff. In order to adapt to the new customer and client base, businesses adopted the following measures:
- i. Providing written documents and signage in languages other than English;
 - ii. Cultural training for dealing with diverse customers;
 - iii. Staff were encouraged to use languages other than English with diverse customers;
 - iv. Employment of specific language contractors depending on nationality;
 - v. Using friends and/or family members of clients and customers as interpreters;
 - vi. Changing product focus through different supplier channels to satisfy customer demand (for example, to meet demand from Chinese customers for more baby formula and milk powder);
 - vii. Using Chinese web-based marketing; and
 - viii. Using Auckland-based leasing agents.

Wellington Chamber of Commerce Survey

The following are the key findings from 196 respondents.

Table: Breakdown of the size of the organisations surveyed according to number of employees

Number of employees	Percentage of those surveyed
1–3	6.6
3–5	4.1
5–10	11.2
10–20	9.7
20–50	24.5
>50	43.9

- a. *Owner/operator's ethnicity/birthplace:* The majority of the owner/operators of the business identified as New Zealanders, New Zealand European, Caucasian or Pākehā (88 per cent); 12.6 per cent identified as Māori, 2.9 per cent as Asian and 2.3 per cent as Pacific peoples.¹⁴³⁸ 11.4 per cent identified with more than one ethnicity.¹⁴³⁹ 80.7 per cent were born overseas. Of those born overseas, the majority of respondents had lived in New Zealand for over 10 years (78.9 per cent), and only 7.9 per cent (three respondents) had arrived in New Zealand in the past two years.
- b. *Ethnicity of staff:* 84.7 per cent of businesses employed migrant staff or staff from ethnically diverse backgrounds.¹⁴⁴⁰ Other languages spoken by staff apart from English included: Te Reo Māori, Dutch, German, Hindi, Japanese, Spanish, Vietnamese, Fijian, Czech, Cantonese, Mandarin, Portuguese, French, Samoan, Dzongkha, Hebrew, Korean, Afrikaans, Russian, Burmese, Filipino, Cambodian, Cook Islands Māori, Pakistani, Sri Lankan, Serbian, Romanian, Thai, Italian, Tagalog, Malaysian, Tongan, Sign Language, Punjabi, Tamil, Arabic, Bislama, Hungarian, Shona, Greek, Gujarati, Marathi and Sinhalese.
- c. *Training to interpret foreign CVs:* 54.7 per cent of respondent businesses had a specific policy in place regarding diversity recruitment, such as an EEO policy. 13.7 per cent of participants reported that, while there was no specific diversity recruitment policy in place, equal opportunity principles were observed (that is, hiring the best candidate regardless of ethnicity), though this was sometimes subject to English language proficiency requirements.
- d. *Challenges as a result of a superdiverse workforce:* The majority of businesses indicated that they had experienced no challenges from an increasingly diverse workforce (52.5 per cent).¹⁴⁴¹ Of the respondents who had experienced challenges, 14.9 per cent reported experiencing communication and/or language challenges.¹⁴⁴² Other challenges included cultural challenges, for example around holiday and bereavement leave (13.5 per cent), immigration and/or regulatory difficulties (6.4 per cent) and conflict and/or discrimination (4.96 per cent).
- e. *Measures adopted to address challenges:* 34.7 per cent of respondent businesses had in place workplace practices or policies to accommodate their staff's cultural, religious and/or linguistic needs, and 9.03 per cent indicated that informal policies or practices existed.¹⁴⁴³ Examples of specific measures adopted included:
 - i. Training on the Treaty of Waitangi and Māori models of practice (such as iwitanga);
 - ii. Accessible translation or interpretive services;
 - iii. Orientation, settlement and mentoring programmes to ensure accommodation of diverse staff's cultural, religious and linguistic needs;
 - iv. Publication of materials in languages other than English or in basic English;
 - v. A "no email Friday" policy to encourage verbal as opposed to written communication and thereby assist staff who have English as a second language; and
 - vi. Time off for religious/cultural holidays, having a prayer room available and/or catering to religious/cultural dietary restrictions.
- f. *Changes to customer base:* 37.4 per cent of businesses surveyed had noticed an increase of ethnically diverse clients or customers in the past five years, but 53.2 per cent reported no change in this time.¹⁴⁴⁴ Businesses who had observed a change mentioned in particular the growing number of Indians, Japanese, Chinese, Vietnamese, Latin Americans, Pacific, South Africans, Māori and Middle Eastern people in the region. They also mentioned more dealings with the Islamic community, iwi-based organisations and refugee communities. The majority of respondents (68.6 per cent) indicated that they had not had to change the way they communicated with their changing customer base.¹⁴⁴⁵ For those that had had to alter their communication style, changes included:
 - i. Advertising in ethnic media channels and/or translating promotional material into languages other than English, in basic English and/or with diagrams;

- ii. Translating their website into languages other than English;
- iii. Following up in writing to ensure no misunderstandings;
- iv. Employing diverse staff members who could speak languages other than English (some businesses had set up a register of languages employees could speak), learning basic phrases in other languages and/or engaging an interpreter (including the Office of Ethnic Communities' Language Line); and
- v. Changing their communications strategy to reflect a bicultural approach.

61.2 per cent of businesses reported experiencing no challenges from an increasingly diverse customer base, not considering the question applicable or being unsure.¹⁴⁴⁶ The remainder indicated experiencing the following types of challenges:¹⁴⁴⁷

- i. Communication and/or language challenges (44.7 per cent);
- ii. Cultural challenges (36.2 per cent); and
- iii. Commercial challenges relating to human resources, international commerce and business practices (including legal and regulatory compliance (19.1 per cent)).

Measures adopted to address communication and/or language difficulties are discussed above. Other measures adopted included:

- i. Developing CQ, for example, knowledge in respect of halal markets and practices and other cultural practices and requirements;
- ii. Recruiting diverse staff and/or those with international experience;
- iii. Providing staff training and/or holding forums; and
- iv. Entering international markets/more overseas travel.

Southland Chamber of Commerce Survey

The following are the key findings from 17 respondents:

- a. *Owner/operator's ethnicity/birthplace*: 88.2 per cent of respondents identified as New Zealanders, New Zealand European or Caucasian. Two respondents (13.3 per cent) identified as Māori or New Zealand Māori. All but one of the respondents was born in New Zealand. That participant came to New Zealand in 2011.
- b. *Ethnicity of staff*: 41.2 per cent of respondents reported employing ethnically diverse or foreign-born staff members. Other languages spoken by staff apart from English included: Te Reo Māori, Korean, Filipino, French, Afrikaans, Malaysian, Romanian, Slovakian, Croatian and Hindi.
- c. *Training to interpret foreign CVs*: None of the respondent businesses underwent training to interpret foreign CVs. Two businesses (11.8 per cent) indicated that they hired the best candidate regardless of ethnicity.
- d. *Challenges as a result of a superdiverse workforce*: 23.5 per cent of respondents surveyed reported experiencing communication or language challenges due to an increasingly diverse workforce.
- e. *Measures adopted to address challenges*: Only one business had adopted any specific measures to address the challenges from an ethnically diverse workforce, namely inter-cultural training.
- f. *Changes to customer base*: 23.5 per cent of businesses surveyed had noticed an increase in the past five years of ethnically diverse clients or customers, many studying at the Southern Institute of Technology or from farming communities. The sole challenge identified from the changing customer base was communication and/or language barriers. Several businesses adopted measures such as the following to address this challenge:
 - i. Providing written documents and signage in languages other than English;

- ii. Website translation; and
- iii. Engagement of contracted staff with the ability to speak more than one language (though cost was cited as a barrier to this).

Gisborne Chamber of Commerce Survey

The following are the key findings from 12 respondents:

- a. *Owner/operator's ethnicity/birthplace*: 11 of the 12 respondents identified as New Zealand-born European or Pākehā (91.67 per cent), and one identified as African (though this respondent had lived in New Zealand for 15 years).
- b. *Ethnicity of staff*: 83.3 per cent of businesses surveyed employed staff members from ethnic minorities.¹⁴⁴⁸ Sixty per cent of respondent businesses reported that more than 20 per cent of their employees were Māori. Other languages spoken by staff apart from English included: Te Reo Māori, Spanish, Afrikaans, Fanagolo, Indonesian and German.
- c. *Challenges as a result of a superdiverse workforce*: None of the respondent businesses reported experiencing any challenges from an increasingly diverse workforce.¹⁴⁴⁹
- d. *Changes to customer base*: One-third of respondent businesses reported noticing changes in their customer base over the past five years, in particular more Māori, South Africans, British and European migrants. None of the respondent businesses indicated that they had changed the way they communicated with their customers. Several indicated that diversity was not an issue for their business. Two businesses had, however, taken steps to adapt their products and services in order to attract, or respond to, the increasingly diverse customer base.

Eastern Bay of Plenty Chamber of Commerce Survey

The following are the key findings from three respondents:

- a. *Owner/operator's ethnicity/birthplace*: One respondent identified as New Zealand European, and two identified as Māori. All respondents were born in New Zealand.
- b. *Ethnicity of staff*: One respondent's staff was entirely New Zealand European, one reported employing 30 per cent Māori staff, and the other employed an American/Canadian. Other languages spoken by staff apart from English included: Te Reo Māori, Japanese, Hindi, German, French and Spanish.
- c. *Training to interpret foreign CVs*: None of the respondent businesses underwent training to interpret foreign CVs, though one respondent indicated that they hired the best candidate regardless of ethnicity.
- d. *Challenges as a result of a superdiverse workforce*: None of the respondents had encountered challenges from an increasingly diverse workforce.
- e. *Changes to customer base*: All three businesses reported seeing changes in the customer base over the past five years, two indicating a higher number of Māori and the third mentioning a lot more migrants in the area. Only one business had changed their communication style, namely by switching to completely online orders. Two respondents had made other changes to cater to the increasingly diverse customer base by developing Māori and women's business groups and informal training on tikanga. One business commented that there were different culturally acceptable practices within different iwi, which could be challenging.

Nelson Tasman Chamber of Commerce Survey

The following are the key findings from four respondents:

- a. *Owner/operator's ethnicity/birthplace*: All the respondents identified as New Zealand European, and all were New Zealand-born.
- b. *Ethnicity of staff*: All businesses that responded to this question employed only

New Zealand European staff.¹⁴⁵⁰ Other languages spoken by staff apart from English included: French and New Zealand Sign Language.

- c. *Training to interpret foreign CVs:* None of the respondent businesses underwent training to interpret foreign CVs.
- d. *Challenges as a result of a superdiverse workforce and measures adopted:* Two respondents reported having to become more aware of, and accepting of, cultural and/or religious diversity. One business had provided staff training on respecting other cultures, and had also endeavoured to incorporate Māori greetings and language into the workplace.
- e. *Changes to customer base:* One business reported seeing higher numbers of English and Dutch customers, while the other two businesses noticed no change in terms of ethnic diversity (though one commented on the ageing customer demographic). None of the respondent businesses had changed their communication style, though two were using more online technology and social media.

Survey to SIDE/Federated Farmers Databases

- 1. Do you currently, or have you previously, employed migrant labour in your farming business?
 - a. Yes, I currently employ migrant labour
 - b. Not currently, but I have in the past
 - c. I have never employed migrants
- 2. What ethnicity are your migrant employees? Please select all that apply.
 - a. Filipino
 - b. Indian
 - c. British
 - d. South American
 - e. Middle Eastern
 - f. Eastern European
 - g. Other
- 3. Please set out the number and percentage of migrant employees (compared to total employees) by ethnicity below (for instance, Filipino: 8 employees or 10 per cent of total employees).
- 4. What percentage of your employees was born overseas?
- 5. Do your employees speak any languages other than English?
 - a. Yes
 - b. No
 - c. Unsure
- 6. If you selected 'Yes' to Question 5, please list the languages your employees speak other than English.
- 7. How long, on average, do your migrant employees intend to stay in New Zealand?
 - a. Less than 12 months
 - b. 1 to 2 years
 - c. 2 years or more
 - d. 3 years or more

- e. 4 years or more
 - f. 5 years or more
 - g. Unknown
8. Have any of your migrant employees applied for (or intend to apply for) permanent residence?
 - a. Yes
 - b. No
 - c. Unsure
 9. Have you had difficulty employing, or keeping, migrant workers because of immigration issues?
 - a. Yes
 - b. No
 10. If you answered "Yes" to Question 9, what are the main issues you have faced?
 11. What other challenges has your farm faced as a result of an increasingly diverse workforce? For example has there been a difficulty in communication or in adapting to the New Zealand culture?
 12. What measures has your farm adopted to address these challenges and ensure your business runs smoothly? For example, have you had to adopt different workplace practices or policies to accommodate your staff's cultural, religious, verbal communications or other needs?
 13. Have these measures been successful in helping migrants adapt to living in New Zealand?
 - a. Yes
 - b. No
 - c. Other (please provide details)
 14. Do your migrant employees bring their families with them to New Zealand, or send wages home, or both? If both, please select both options.
 - a. Bring family with them to New Zealand
 - i. Number of family members on average:
 - b. Send wages home on a regular basis
 - i. Estimated amount/percentage of wages sent home per month
 - 1. \$
 - 2. %
 15. What sort of challenges do you and your migrant employees face as a result of either or both of these of these scenarios, and how are these challenges addressed? For example, do you assist employees to send home payments and/or help migrant employees families with finding employment or with their visas?
 16. What have you done to help your employees (and, if applicable, their family) settle into the local community?
 17. Do you have any further comments on how your farm is dealing with and maximising the opportunities from an increasingly diverse workforce?

Appendix Two – Literature

Search on Challenges faced by Businesses Overseas

Australia

As at 2013, 27.7 per cent of Australia's population was born overseas. A significant proportion of Australians identified as English (36.1 per cent) or Australian (35.4 per cent) in the latest Census.¹⁴⁵¹ People of Irish, Scottish, Italian and German descent comprised 10.4 per cent, 8.9 per cent, 4.6 per cent and 4.5 per cent of the total population respectively. The Chinese and Indian communities were the largest Asian subgroups in Australia at 4.3 per cent and 2 per cent of the population. The Aborigine population in Australia is estimated to be 3 per cent. Western Australia, in particular, is seeing increased migration and superdiversity. It was reported in 2014 that Western Australia's population now comes from every country in the world, speaks about 270 languages and identifies with more than 100 religious faiths.¹⁴⁵² Sydney has the largest Asian community in Australia (18.97 per cent), followed by Melbourne (18.2 per cent).

Many of the diversity policies for Australian businesses place considerable emphasis on the recruitment of Aboriginal and Torres Strait Islander employees. Much of this is done in compliance with the Reconciliation Action Plan in order to provide opportunities to Aboriginal and Torres Strait Islander people.¹⁴⁵³

In a study of medium-sized Australian hotels, researchers from the University of South Australia found that diverse workforces brought three main challenges, namely:¹⁴⁵⁴

- a. *Lack of English fluency* – Ethnically diverse employees were lacking in English language skills which had an impact at different stages of the communication process;
- b. *Operational issues* – Operational standards and procedures in an Australian workforce were different to those in the employee's home country; and
- c. *Intercultural issues* – Difficulties in understanding ethnically diverse employee cultures and vice versa.

Indrawati Nataatmadi and Laurel Evelyn Dyson from the Sydney University of Technology have identified two main challenges in managing a culturally diverse workforce:¹⁴⁵⁵

- a. *People Management* – Ethnocentrism and the "glass ceiling" can hinder the process of capitalising upon cultural diversity;
- b. *Knowledge Management* – Cross-cultural differences may prevent the transfer of knowledge and information within an organisation.

Other challenges cited by Australian businesses include reflecting the cultural diversity of contemporary Australia in recruiting newer ethnic groups who are unaccustomed to the Australian way of life and who may exist on the fringes of the community.¹⁴⁵⁶

Workplace attitudes and perceptions of the benefit of diversity also represent a challenge to Australian businesses. A Leadership Management Australasia survey in 2012, which gathered 2,000 responses from 246 business leaders, 455 middle managers and 1,438 non-managerial employees in Australia and New Zealand, found that only 50 per cent of workers believed that diversity offers benefits to their company.¹⁴⁵⁷ Company leaders and managers were more likely to support ethnic diversity in the workplace, with only one-quarter of non-managerial employees supporting more cultural variety compared to 37 per cent of senior managers and 30 per cent of middle managers.

Australian businesses have also reported difficulties attracting and retaining diverse talent. Although 9.6 per cent of Australians reported having Asian cultural origins as at 2013, just 1.9 per cent of those in ASX200 senior executive positions reported having Asian descent, despite

being well represented in entry and mid-level positions.¹⁴⁵⁸

Attitudes towards the importance of diversity in the workplace are mixed. In a survey of Australian workplaces conducted by Hays Recruitment:¹⁴⁵⁹

- a. 58 per cent of respondents said they would like to see more diversity in their workplace, 33 per cent were happy with efforts made to date, and 9 per cent felt that there were more important issues to deal with;
- b. 68 per cent of employers said they were taking steps to create a diverse workforce; and
- c. 66 per cent said they were committed to recruiting a multicultural workforce.

Key findings from the 2012 *Leadership, Employment and Direction Survey* of Australasian businesses found that while 66 per cent of leaders, 61 per cent of managers and 58 per cent of employees thought ethnic diversity is, and could be, beneficial for their organisation to a great or moderate extent, just 50 per cent of leaders, 50 per cent of managers and 48 per cent of employees thought that ethnic diversity was benefitting their organisation to a great or moderate extent. The authors of the study concluded that these results suggested that ethnic diversity in the workplace was tolerated rather than truly embraced.

Canada

The latest Census results for Canada found that 20.6 per cent of the total population was foreign-born, with more than 200 ethnicities represented.¹⁴⁶⁰ Canada's ethnic diversity is mainly centred in its largest urban centres. Vancouver and Toronto are especially diverse. Forty-six per cent of Toronto's population is foreign-born, followed by Vancouver at 40 per cent. Forty-three per cent of Vancouver residents identify as having Asian heritage (predominantly Chinese, Indians and Filipinos), and 35 per cent of Toronto residents are of Asian descent. Seventy per cent of all recent immigrants to Vancouver originated from Asia as at 2011. Aboriginal people make up just 4.3 per cent of the population. Eight out of 10 Aboriginal people live in Ontario and the western provinces, and 56 per cent of Aboriginal people live in urban areas.

An article from Globoforce looks at the challenges Canada will face from changing workforce demographics:¹⁴⁶¹

The second way Canada is making up for a shortfall in workers is in the influx of skilled immigrants into the workforce. In fact, Statistics Canada predicts that immigrants will account for 80% of population growth by 2031. In 1991, fewer than one out of every five workers were born outside Canada. By 2031, that number is expected to be closer to one in three. All of this means intense cultural change in the workplace, as Canadian organisations must account for new diversity in languages, customs, and tastes in order to maintain growth and build a single, functional, company culture.

A report by the Royal Bank of Canada from 2005 identifies several superdiversity challenges from a Canadian perspective:¹⁴⁶²

... Canada's track record on successfully integrating immigrants is slipping. On average, immigrants arrive in this country better educated, in better health, and at similar stages of their careers as those born in the country, but the evidence suggests that during the past two decades, they have been much less successful in achieving success than earlier waves of immigration. Immigrants are having a harder time reaching Canadian income levels than was true in the past, in part because we have cut back on programs that help immigrants adjust, and in part because many immigrants have difficulty gaining recognition for the education, skills and work experience they bring with them.

Other challenges identified as being faced by visible minorities in the Canadian labour market include:¹⁴⁶³

- a. Recognition of credentials and experience;
- b. Lack of money and computer skills;
- c. Loss of self-confidence;

- d. Language (for example, a lack of French and/or English skills);
- e. Lack of workplace integration and diversity programmes in the workforce;
- f. Systemic obstacles; and
- g. Discrimination and racism, including unconscious bias.

Managing linguistic diversity has been identified as a concern for the Canadian workforce (particularly given its official bilingual status), and whether English-only policies should be adopted in the workplace.¹⁴⁶⁴

In addition, despite the increase in diversity and cultural competence initiatives in Canadian businesses and organisations, these strategies have done little to address institutional racism in the workplace, and their impact has been limited in terms of retaining visible minority employees.¹⁴⁶⁵ While Canada's regulatory laws (for example, reporting requirements around diversity initiatives and policies) often serve as the impetus for organisations' initial diversity and inclusion efforts, a 2014 Deloitte study on the current state of diversity and inclusion in Canadian workplaces found that this did not necessarily translate to a collaborative and inclusive workplace that embraced diversity.¹⁴⁶⁶ Further:¹⁴⁶⁷

- Four per cent of respondents reported that their workplace was largely homogenous with limited diversity, and still only valued the majority culture; and
- Around 24 per cent of respondents had only achieved minimal compliance, and viewed diversity as a problem to be resolved, with a focus on affirmative action goals.

Nearly half of the respondents indicated that their organisation had only started focussing on non-compliance, diversity and inclusion efforts within the previous five years, and 66 per cent of Canadian organisations either did not have a diversity or inclusion function at all, or had such a function staffed solely with volunteers.

United Kingdom

Unlike other countries analysed in this study, the United Kingdom has no native indigenous population. It does, however, have a very high level of ethnic diversity – in part attributable to its once expansive colonial empire.

One in eight of the workforce in the United Kingdom belongs to an ethnic minority group, and one in four primary and secondary school students are from an Asian, black or other ethnic minority background or heritage. London, in particular, has an extremely ethnically diverse population. At the 2011 Census, London had a population of 8,173,941, of which only 44.9 per cent were "White British".¹⁴⁶⁸ Around 37 per cent of the population were born outside of the United Kingdom, including 24.5 per cent born outside of Europe.

Ethnic minority groups in England and Wales have a history of lower rates of employment and higher rates of unemployment than the majority white population.¹⁴⁶⁹ Based on 2011 Census data, white ethnic groups (with the marked exception of the gypsy and Irish traveller groups) were in a more advantaged position in the labour market compared with other ethnic groups.

The differing experiences of different ethnic subgroups make it difficult to isolate the employment challenges faced by ethnic minorities in the United Kingdom. For example, the employment and pay rates of Indians and Chinese are broadly similar to white Britons, whereas those identifying as Caribbean, African, Pakistani and Bangladeshi have much lower employment and pay rates. Unemployment rates among Pakistani and black Caribbean men were one-and-a-half times and three times the rate for white British men respectively.¹⁴⁷⁰

Low human capital (lack of qualifications, skills and work experience) is regularly cited as a barrier to entry into employment for ethnic minorities in the United Kingdom, particularly for Pakistani, Bangladeshi and black Caribbean communities.¹⁴⁷¹ However, this is not the case for all minority ethnic groups. In fact, the 2011 Census data showed that people from ethnic minority groups were generally more likely than white British people to have degree level qualifications or equivalent.¹⁴⁷² The groups with the highest proportion of people with degree

level qualifications were the Chinese (43 per cent), Indian (42 per cent) and black African (40 per cent). Pakistani, Bangladeshi, and black and white Caribbean groups were less likely than white British people to have degree level qualifications or equivalent.¹⁴⁷³

As with Canada and Australia, lack of English proficiency is also a key employment challenge for some ethnic groups in the United Kingdom, despite English proficiency generally being very high throughout the United Kingdom. The 2011 Census data revealed that, in England, 91.9 per cent of people spoke English as their main language, 6.4 per cent were proficient in English, and only 1.7 per cent were non-proficient. For those that were less proficient in English, however, a report by the Office of National Statistics notes that:¹⁴⁷⁴

People who were non-proficient in English had a lower employment rate (48.3%), and were more than three times as likely to report no qualifications (46.2%) as those with English as their main language. People non-proficient in English were also most likely to work in elementary, machine operative and skilled trades occupations.

Unconscious bias or perceived discrimination in the workplace is widely considered to be a key reason for persistent disparity in employment progression and success between ethnic and white British workers.

In 2011, the organisation Business in the Community commissioned research on this issue and published the report *Race to Progress: Breaking Down Barriers*.¹⁴⁷⁵ The report was based on responses to a questionnaire completed by 1,557 full-time employees from eight ethnic groups within the United Kingdom, including white Britons. The research found that ethnic minorities saw the following as key barriers to career advancement:

- a. *Unfair recruitment* – Of those surveyed, about 35 per cent said that they felt they had been treated fairly in the recruitment process.¹⁴⁷⁶ Research conducted by the Department for Work and Pensions found that racial discrimination was evident in recruitment practices in relation to all minority ethnic groups in the United Kingdom.¹⁴⁷⁷ That research found that, while 68 per cent of “British” applications received a positive response, only 39 per cent of “non-white” applications did. Those with Pakistani and Bangladeshi names received a response rate of just 21 per cent.¹⁴⁷⁸
- b. *A lack of support or poor relationship with their manager* – Of those surveyed, 29 per cent of African workers, 32 per cent of Caribbean workers and 21 per cent of Pakistani workers felt that they did not have the support of their managers. This compared with just one in 10 white British employees.¹⁴⁷⁹
- c. *Racial discrimination in the workplace* – A quarter of African workers and one in seven Caribbean workers said they had been unfairly treated in the workplace because of their ethnicity. This contrasted with one in 100 white British employees (1 per cent). Nearly a quarter of African employees (23 per cent) cited discrimination over their accent.¹⁴⁸⁰
- d. *Lack of promotions* – The research found that, while white British workers were the least motivated by promotion, they received the highest number of promotions, with an average of almost four promotions during their careers. However, African, Indian and Pakistani employees have been promoted an average of just 2.5 times.¹⁴⁸¹

The existence of such barriers has been confirmed in recent research commissioned by the United Kingdom’s Civil Service into the progression in the Civil Service of staff from “BAME” (Black, African and Minority Ethnic) backgrounds.¹⁴⁸² The report found that:¹⁴⁸³

Current cultural and leadership climates are the main barriers to the progression of talented BAME staff within the civil service.

BAME staff across all levels of responsibility do not feel they work for an organisation that is open, fair and inclusive. Lack of BAME role models at senior civil service (SCS) level is demoralising for those who are committed to a career in the Civil Service and want to progress. They see a leadership that is not diverse and perceptions of an “old boys club” persist. Many feel it is still the case that progression is based on whether “your face fits” and this does not equate to an organisation that is committed to and values diversity. The lack of an explicit, clearly and

consistently communicated diversity and inclusion strategy compounds the view that the Civil Service is not committed to ethnic diversity. Unconscious bias and discrimination persists which can block the progress of talented BAME staff and means there is not always equal access to promotions, projects, senior leaders and secondments. All of this limits the aspirations and success of BAME staff. The Performance Management Review is particularly criticised and is seen to disadvantage BAME staff, who are more likely to be scored “not met” in their reviews with often little objective feedback as to why.

Finally, concerns have been reported over the lack of opportunities and lower levels of managerial support in businesses that are BAME-managed. Given the low rates of ethnic diversity among senior employees in United Kingdom's top companies, this presents a challenge. The Green Park Leadership 10,000 report,¹⁴⁸⁴ which looked at the ethno-cultural diversity across the 10,000 most senior employees operating within the Financial Times Stock Exchange 100 Index (“FTSE”),¹⁴⁸⁵ found that most important firms in the United Kingdom have a deep “diversity deficit”. The report found that:

- a. Overall, the top leadership of the FTSE100 remains white and male, with just 10 of the top three posts (Chair, CEO or CFO) held by ethnic minority leaders.
- b. Fifty-three companies show no minority presence at all amongst their top 20 leaders. Excluding non-executive directors, 65 companies have no ethnic or cultural minority presence. In effect, two out of every three FTSE100 companies have an all-white executive leadership.
- c. Ethno-cultural diversity varies substantially by industrial sector and by level of seniority.¹⁴⁸⁶

Appendix Three – Key Settlement and Integration Programmes

Settlement Programmes Funded by Immigration New Zealand for 2014–15

Settlement Information Services – Face to Face

The Citizens' Advice Bureau ("CAB") provides face to face settlement information in 30 locations. These services operate in all major centres, including seven in Auckland and three in Christchurch. The CAB website notes their "volunteers are specially trained to provide an independent, confidential and free service".¹⁴⁸⁷

Language Link Multilingual Information Service

CAB also administers Language Link, which operates nationally to provide a multilingual information and advice service for clients to access appropriate information and advice in their language. According to the CAB website, Language Link has:¹⁴⁸⁸

... a team of CAB trained workers offering the CAB service in over 20 different languages, including English. They provide the core CAB service of information, advice and support, including an interpreting service.

Language Link is free to access and costs \$519,000 to fund. Language Link is available in over 20 languages.¹⁴⁸⁹

Canterbury Skilled Migrant Business Services

The Canterbury Employers' Chamber of Commerce ("CECC") delivers Canterbury Skilled Migrant Business Services. The CECC website describes it as "a free service available to Canterbury employers of new migrants who need advice or assistance with settlement issues and challenges".¹⁴⁹⁰

The service costs \$194,846 to fund. The services are intended to help employers retain their skilled migrants by helping employers:¹⁴⁹¹

- provide settlement information and support to new migrant staff;
- provide effective supervision and management to assist with integrating new migrants into the workplace; and
- improve workplace communication by providing resources and tips on New Zealand's unique communication style.

The service delivers 25 specialist seminars and workshops for employers of newcomers across the region, and 80 hours of one-on-one employer support provided to SMEs employing newcomers. This also includes facilitation of a network of employers of Filipinos, and hosting sponsored newcomer events to assist in identifying and addressing newcomer needs.

Auckland Regional Migration Services

Auckland Regional Migration Services ("ARMS") run a number of programmes to support new migrants.

The ARMS website describes its Job Seeker Support programmes, which include:¹⁴⁹²

- Job search workshops targeted at "skilled migrants on residency visas". Job search workshops are free for participants who hold job search visas, work to residence visas and work visas;
- Employment workshops targeted at "non-residency visa holders". The fee is \$40 per participant;

- Specialist job search workshops;
- A mentoring programme; and
- A Job Search Support Club.

ARMS English Language Support programmes include:¹⁴⁹³

- An English Language Advisor who “provides 30 minute one-to-one consultations to assess your current English skills, provide advice, and refer you to suitable providers and courses”. Access to an ARMS English Language Advisor is \$30 for those holding visitor visas, working holiday visas, and international student visas;
- ARMS Pronunciation Course; and
- A Professional Speaking For Migrants Course.

Settlement Services for Asian Newcomers

The Chinese New Settlers Services Trust (“CNSST”) administers a programme targeted at Asian newcomers (who have been in New Zealand for less than two years) in the Auckland region on student, work, and residence visas. The CNSST website describes the programme as aiming:¹⁴⁹⁴

... to enable Asian newcomers to participate in and contribute to NZ’s multicultural society, and to facilitate the successful integration of Asian new settlers into the wider community.

The CNSST has provided settlement support since 1997. The Settlement Services for Asian Newcomers programme involves the provision of general information, settlement workshops, and referral and follow-up services. The CNSST offers support in Chinese and Korean. The CNSST website listed its pages in Japanese and Vietnamese as “under construction” at the time of writing.¹⁴⁹⁵

New Kiwis Online Migrant Recruitment Programme

According to the New Kiwis website “The purpose of New Kiwis is to connect overseas and local migrant job seekers with New Zealand Employers”.¹⁴⁹⁶

This programme supports New Zealand employers to identify, recruit and retain newcomer migrant employees with the skills appropriate to fill employment vacancies, using New Kiwis Local, New Kiwis Global and employment services run by the Auckland Chamber of Commerce.

The programme is administered by the Auckland Chamber of Commerce, primarily in the Auckland region. It is a “national employment initiative by the Auckland Chamber of Commerce and Immigration New Zealand”.¹⁴⁹⁷ Registration is free for both job seekers and employers.

Wellington Regional Skilled Newcomers Programme

The Wellington Employers’ Chamber of Commerce administers the Skilled Newcomers Programme. Its website notes the programme:¹⁴⁹⁸

... is focussed on recent migrants to New Zealand who have specialised experience or qualifications that will fill specific job roles within New Zealand Organisations. We provide training on the New Zealand business environment and skills that will help them integrate into your workplace.

Eligibility is restricted to skilled migrants (and their partners), refugees, those on work to residence visas and those transitioning from student visas to work visas, who have been in New Zealand under two years.

This programme is designed to ensure employers in the Wellington region have improved access to the skills they need to grow their business, including the benefits of employing newcomers. The Skilled Newcomers Programme provides suitable candidates to employers at no cost. Businesses also receive information and support to enhance retention of newcomer employees.

Connecting Canterbury Employers and Newcomers Skills Programme

This programme aims to ensure Canterbury employers access and retain skills they need to grow their business and retain the skills needed for their business. It is administered by the CECC in the Canterbury region.

According to the CECC's website, the programme aims to assist:¹⁴⁹⁹

- **Employers** – By connecting them with newcomer skills and providing support and advice to employers on the retention of newcomers they employ; and
- **Newcomers** – By assisting them with job options (referrals and placement into employment), connecting their skills with potential employers and through job search and CV development, career development and referral to career development programmes.

Settlement Programmes Funded by the Ministry of Education for 2014

ESOL Funding and Support to Schools

The Ministry funds ESOL support for migrant and refugee background students who are English language learners ("ELLs").

Funding support targets highest needs ELLs enabling schools to employ additional staff (teachers and language assistants) to provide English language support programmes. This funding pool may also provide additional targeted funding to support high needs students through Bilingual Tutor funding and the Bilingual Assessment Service.

The MoE, through its National Migrant, Refugee and International Education team, coordinates the provision of ESOL funding to schools. There are approximately 33,000 students eligible for ESOL funding in over 1,300 schools.

Funds are distributed nationally twice a year on a per student basis. Schools are provided with funding and resources to provide appropriate English language support to migrant and refugee background English language learners.

ESOL Verifiers work with schools to monitor the eligibility of students, ESOL policies and procedures, appropriate programme provision, the accuracy of assessments, teacher qualifications and ESOL professional development. Verifications may be undertaken by school visits, by post or by telephone.

Other ESOL Specific Targeted Initiatives

Enhancing Expertise: Professional Development

A range of professional development and training programmes are available to up-skill teachers and paraprofessionals (teacher aides, language assistants and bilingual tutors) to deliver effective English language support programmes.

These include:

- a. ESOL/Literacy advisors;
- b. TESSOL tuition fees scholarships;
- c. ESOL professional learning communities;
- d. English Language Assistant training;
- e. Pasifika Bilingual Teacher Aide training;
- f. Support for use of self-access online training modules for the English Language Learning Progressions ("ELLPs") and the Working with ELLs ("WELLS");
- g. TESSOL Scholarships – Approximately 140 scholarships are awarded nationally each year for two years part-time study towards a TESSOL qualification.

Enhancing Expertise: Provision of ESOL Teaching and Learning Resources

The MoE has produced a wide range of teaching and learning resources to support schools in developing and delivering effective English language support programmes for migrant and refugee background English language learners. These include:¹⁵⁰⁰

- a. ELLPs;
- b. Making Language and Learning Work – DVDs 1–3;
- c. English Language Intensive Programme;
- d. Supporting English Language Learning in Primary Schools;
- e. Focus on English curriculum units;
- f. Selections (reading material and ESOL teaching notes); and
- g. ESOL units, exemplars and course approval material.

Valuing Diversity and Supporting Families and Communities

There are a number of initiatives and resources that assist schools to work collaboratively with their migrant and refugee background communities so that migrant and refugee background parents are engaged and support their children's education. These include:

- a. Regional Migrant and Refugee Education Co-ordinators;
- b. New to New Zealand resource distributed to schools with Defining Diversity facilitation guide;
- c. Translations of parent information booklets Helping Your Children Learn at Home and at School, Families Learning Together and Supporting your Child's Learning into 14 different community languages; and
- d. Computers in Homes programme for refugees.

Refugee and Migrant Education Co-ordinators

Refugee and Migrant Education Co-ordinators ("R&MECs") are located in the Ministry's regional offices. A Lead Advisor for Refugee and Migrant Education operates from the National Refugee, Migrant and International Education team in the Auckland office. Being located in the regional offices, the R&MECs are well placed to work collaboratively with the Senior Advisors to provide ongoing and targeted support for students, schools and communities through:

- Promoting partnerships between school, families and communities;
- Providing assistance to schools for working with migrant and refugee background students;
- Helping families and communities to respond to education-related issues;
- Providing information about schooling in New Zealand; and
- Ensuring schooling-related settlement support to migrant and refugee background students.

The R&MECs are involved in an extensive range of specialised activities to support students, families and communities and schools, including:

- Supporting appropriate school placements for excluded students;
- Working with schools to develop and monitor targeted support through the Refugee Flexible Funding Pool initiative and the Refugee Pathways and Careers programme;
- Contributing to professional development through the ESOL professional learning communities;
- Monitoring the Bilingual Assessment Service referral process;
- Working with ESOL Advisors, schools and other agencies to provide parent information sessions around topics such as NCEA;

- Assisting schools to identify bilingual assistants;
- The development of bilingual information-gathering forms for schools to access from the website;
- Supporting the establishment and maintenance of the Computers in Homes programme for refugee background families; and
- Collaborating with staff in other government and non-government agencies, in particular MSD, OEC and Refugee Services.

Settlement Programmes Funded by Tertiary Education Commission as at 2014

Intensive Literacy and Numeracy – Targeted ESOL

Institutes of Technology and Polytechnics (“ITPs”), PTEs, universities and wānanga (approved providers are listed (per region) on the TEC website) are funded by the TEC to provide targeted ESOL to adult refugees and migrants who are pre-literate learners or learners who have very low levels of English language and literacy.¹⁵⁰¹

Funding support targets highest needs learners, with a focus on programmes designed to suit the learner's need, with an ultimate aim of raising their skills to a recognised literacy level.

There are nine Auckland providers, two in Waikato, two in Wellington, three in Christchurch and one in Nelson. There are also three multi-site providers.

Workplace Literacy

The Workplace Literacy fund provides support for employees to increase their literacy, language and numeracy skills linked to workplace requirements.¹⁵⁰² Initiatives funded through Workplace Literacy should:

- Support high-quality literacy, language and numeracy learning that is tailored to the needs of the workplace and other industry training;
- Have mechanisms to report on learners' progress in improving literacy, language and numeracy skills;
- Demonstrate a partnership approach with employers, providers and industry training organisations; and
- Be innovative in addressing the literacy, language and numeracy issues faced by businesses.

Funding is available to employers, industry training organisations, ITPs, PTEs, Rural Education Activities Programme providers (“REAPs”), schools, universities and wānanga nationwide. There are around 5,660 learner places (40 hours of literacy and numeracy delivery per place for between 10 and 40 weeks). This fund is not specific to ESOL.

Adult Community Education

The purpose of the Adult Community Education (“ACE”) fund is to provide adults with community-based education, foundation skills and pathways into other learning opportunities that meet identified community learning needs and ACE priorities.¹⁵⁰³

The ACE objectives are to provide informal, non-assessed learning opportunities that are characterised by programme diversity, flexibility and responsiveness to identified community learning needs and individual learners, and to contribute to the tertiary education system in line with the directions outlined in the Tertiary Education Strategy 2010–2015.

ACE funding is available to community organisations, REAPs, schools, and ITPs nationwide.

English for Migrants

The English for Migrants programme lets migrants attend English language courses, helping

them settle into communities and work.¹⁵⁰⁴ Some migrants must pay English language tuition fees to MBIE before arriving in New Zealand as part of their residence requirement. This is known as “pre-purchased tuition”. The TEC administers these pre-purchased tuition payments.

Migrants who have pre-purchased tuition as part of their residency can only use their pre-purchased tuition for English language courses at approved organisations. The pre-purchased tuition is intended to cover compulsory student fees, and the total amount paid depends on the migrant’s level of English.

The TEC pays student fees to approved providers once it receives confirmation of each individual migrant’s enrolment in approved English for Migrants courses.

The programme is provided by ITOs, ITPs, PTEs, REAPs, schools, universities and wānanga (approved providers are listed per region on the TEC website) nationwide, but particularly in Auckland, where there are 26 providers.

Migrant Levy Funding – ESOL Programme

The Migrant Levy funds one PTE, English Language Partners (formerly ESOL Home Tutors), to offer one-to-one English language tuition, social English classes, English for migrants programmes and ESOL literacy classes for approximately 668 learners nationwide.¹⁵⁰⁵

Settlement Programmes Funded by the Office of Ethnic Communities for 2013–14

Settling In Programme Transferred from MSD to OEC on 1 April 2014

The Settling In Applicant Guidelines for September 2015 describe Settling In Funding, which is “available for projects or initiatives that support successful settlement for refugee and migrant communities in New Zealand through promoting participation across ethnic communities”.¹⁵⁰⁶

In 2007 the OEC set up the Intercultural Advisory Team to maximise the benefits of ethnic diversity in New Zealand’s workplaces and businesses. Key lessons learnt include:¹⁵⁰⁷

- The transnational contacts of ethnic business people in New Zealand are not being fully utilised by mainstream businesses;
- Most New Zealand organisations have no ethnic diversity management initiatives in place;
- There is little connection between ethnic small and medium-sized enterprises and mainstream business support organisations;
- Many ethnic business people are unsure of where to access information about starting and running a business.

The OEC actively collaborates with other government departments and non-government organisations, such as NZAL, and works on smaller projects on a case-by-case basis, rather than at a macro level. It focuses on the economic wellbeing of New Zealand’s ethnic population, as well as working to enhance its social integration into the mainstream New Zealand population, for example, through young leadership programmes, conferences and workshops, and the promotion of high calibre ethnic nominations for community and statutory boards.¹⁵⁰⁸

One initiative developed by the OEC, *Riding the Wave*, is an ethnic diversity management programme which provides advice and support to employers on ways to maximise the benefits of ethnic diversity in the workplace. Employers are provided with practical guidance and resources and participate in interactive workshops based on themes such as opening the door to diversity at the recruitment and selection stage, for example, through job marketing in ethnic media outlets.¹⁵⁰⁹ The OEC has collaborated with the New Zealand Institute of Management since 2012 on this project, which also involves analysing ethnic diversity strategies in various types of businesses, as well as coaching and mentoring programmes to ensure migrants are gaining leadership and senior roles.¹⁵¹⁰ The *Riding the Wave* manual is available online.¹⁵¹¹

Other key OEC initiatives include the following:

- a. *Intercultural Awareness and Communication Training for Trainers programme* – The objective of this staff training programme is to “enhance relationships in the workplace both between colleagues, and with customers and stakeholders”, by facilitating communication between people from diverse cultural backgrounds.¹⁵¹² The programme has been delivered to private, government and NGO sectors, and is adaptable to the needs of the individual organisation in question. Its focus is “intercultural” rather than culture-specific, which avoids “one-size fits all solutions”. For example, the initiative has helped South Island tutors deal with an increasingly diverse client base due to the influx of migrants on dairy farms.¹⁵¹³
- b. Providing expert advice to central government policy staff on how to use ethnic perspectives in their policy frameworks.¹⁵¹⁴
- c. *Language Line* telephone interpreting service to agencies that provide government services.¹⁵¹⁵ Around 50,000 calls are made per year.¹⁵¹⁶ The service is available in 44 different languages.¹⁵¹⁷
- d. *Conscious Parenting (Ethnic Specific)* – These programmes provide orientation and small group meetings for new migrants to provide information and awareness of New Zealand laws regarding parenting and other family laws as well as parenting in a multicultural environment.
- e. The *EPIC NZ* project, which seeks to improve connections between ethnic and mainstream businesses, with a particular focus on the Asia-Pacific region.¹⁵¹⁸ This is comprised of a number of smaller initiatives, including:
 - i. Annual *EPIC NZ* conferences as forums for discussion about the potential within the ethnic SME sector to expand New Zealand’s economic ties to high-growth markets in the Asia-Pacific region;
 - ii. Knowledge workshops, whereby ethnic businesses are provided with information on how to operate businesses effectively in New Zealand, with topics such as tax, exporting, entrepreneurship and interaction with government agencies;
 - iii. The *Connecting the Regions* programme, which seeks to promote investment opportunities available in regional New Zealand to local ethnic businesses and their international investment partners. Visits are arranged between New Zealand businesses and ethnic investors to explore business opportunities in specific sectors; and
 - iv. The OEC has also developed a website to help connect ethnic and mainstream businesses through business matching.¹⁵¹⁹ The website helps New Zealand businesses to understand Asian business culture and systems. Over 200 businesses have registered on the online database.

These key OEC initiatives are administered by Migrant Action Trust in Auckland.

Settlement Programmes Funded by Work and Income for 2014–15

Migrant Employment Assistance

WINZ describes Migrant Employment Assistance as “funding for projects that help migrants get the skills they need to find work”. Similarly, “[t]he migrants taking part in these projects must have been in New Zealand less than two years and be having problems finding work”.¹⁵²⁰

Recipients of this service are not WINZ clients (services are contracted at an average cost of \$589 per person).

The program is provided by the ARMS Charitable Trust, CNSST, Migrant Action Trust, the Auckland Regional Chamber of Commerce, Christchurch Small Business Enterprise Centre Limited, Whangarei Migrant Centre Incorporated, Hamilton Multicultural Services Trust, English Language Partners Wellington Incorporated and the Multicultural Centre for Learning and Support Services Incorporated in the main centres.

Work and Income Regional Programmes

WINZ funds regional programmes that help new migrants to prepare for the New Zealand workforce.¹⁵²¹ The programme also helps skilled migrants to gain work at an appropriate skill level, supports new migrants to establish themselves in business, and coaches and mentors new migrants to help them gain sustainable employment, and therefore prevent them coming onto a benefit.

The program is provided by the ARMS Charitable Trust, CNSST, Migrant Action Trust, the Auckland Regional Chamber of Commerce, Christchurch Small Business Enterprise Centre Limited, Whangarei Migrant Centre Incorporated, Hamilton Multicultural Services Trust, English Language Partners Wellington Incorporated and the Multicultural Centre for Learning and Support Services Incorporated in the main centres.

Recipients of this service are generally WINZ clients (services are contracted at an average cost of \$3,086 per person).

Settlement Programmes Funded by the MSD (Family and Community Services) for 2014–15

Services for Children and Family Violence Intervention

These services are operated by Shakti Asian Women's Safehouses in Auckland.¹⁵²² These services are targeted towards refugee and migrant women of Asian, African and Middle Eastern descent. Shakti provides case work services for women and children, works with Child Youth and Family, and assists families in understanding and working against child abuse. Its services include counselling and legal advocacy, family settlement, casework, and services for youth by youth.

Emergency Accommodation

Auckland Refugee Council provides emergency and short-term (hostel) housing to asylum seekers at the arrival stage in the Auckland region.¹⁵²³

Endnotes

- 1 H Clark "Commonwealth Lecture" (speech to 17th Commonwealth Lecture, London, 10 April 2015).
- 2 K Annan "Africa: Maintaining the Momentum" (speech to Commonwealth Lecture, 14 March 2000).
- 3 EEO Trust "Migration and the workplace – is your organisation ready for super diversity?" (press release, 27 February 2015).
- 4 M Chen *Public Law Toolbox* (LexisNexis, Wellington, 2012); M Chen *Public Law Toolbox* (2nd ed, LexisNexis, Wellington, 2014).
- 5 For discussion of this research, see [2.100], [2.107] and [3.49].
- 6 P Spoonley "New diversity, old anxieties in New Zealand: the complex identity politics and engagement of a settler society" (2015) 38(4) *Ethnic and Racial Studies* 650.
- 7 A Butcher, P Spoonley and P Gendall "New Zealanders' attitudes to Asia and Asian peoples: An exceptional case?" (2015) 67 *Political Science* 38; C Ward, A-M Masgoret and M Vauclair *Attitudes Toward Immigrants and Immigrant Experiences: Predictive Models Based on Regional Characteristics* (Department of Labour, 2011); C Ward and A-M Masgoret "Attitudes toward immigrants, immigration and multiculturalism in New Zealand: A social psychological analysis" (2008) 42 *International Migration Review* 227.
- 8 R Johnston, P Gendall, A Trlin and P Spoonley "Immigration, multiculturalism and geography: inter-group contact and attitudes to immigrants and cultural diversity in New Zealand" (2010) 19 *Asian and Pacific Migration Journal* 421.
- 9 C Leong and C Ward "Intergroup perceptions and attitudes toward immigrants in a culturally plural society" (2011) 60 *Applied Psychology* 46; A Butcher, P Spoonley and P Gendall "New Zealanders' attitudes to Asia and Asian peoples: An exceptional case?" (2015) 67 *Political Science* 38.
- 10 S Hansen "Messy Multiculturalism – An ethnographic study of cultural diversities in New Zealand" (PhD thesis, Victoria University) (forthcoming).
- 11 P Spoonley and C Meares "Laissez-faire multiculturalism and relational embeddedness: Ethnic precincts in Auckland" (2011) 3 *Cosmopolitan Civil Societies* 42.
- 12 P Spoonley, C Meares, R Peace and T Cain *The Changing Immigrant Cartography of Auckland New Zealand: An Asian Ethnic Precinct* (Max Planck Institute for the Study of Religious and Ethnic Diversity, 2014); T Cain, C Meares, P Spoonley and R Peace *Half Way House: The Dominion Road Ethnic Precinct* (Massey University/Waikato University, 2011).
- 13 D Mare, R Pinkerton, J Poot and A Coleman "Residential sorting across Auckland neighbourhoods" (2012) 38 *New Zealand Population Review* 1; C Meares and others *Ethnic Precincts in Auckland: Understanding the Role and Function of the Balmoral Shops* (Auckland Council, Technical Report 2015/015, June 2015). See also D Manley, R Johnston, K Jones and D Owen "Macro-, Meso- and Microscale Segregation: Modeling Changing Ethnic Residential Patterns in Auckland, New Zealand, 2001–2013" (2015) 105(5) *Annals of the Association of American Geographers* 951.
- 14 P Spoonley, R Peace, A Butcher and D O'Neill "Social cohesion: A policy and indicator framework for assessing immigrant and host outcomes" (2005) 24 *Social Policy Journal of New Zealand* 85.
- 15 The Royal Society of New Zealand *Languages in Aotearoa New Zealand* (2013).
- 16 Massey University "Super-diverse Auckland in global study" (press release, 2 December 2014).
- 17 For an overview of CaDDANZ's research, see "CaDDANZ" Capturing the Diversity Dividend Aotearoa/New Zealand <www.massey.ac.nz>; J Poot "An outline of CaDDANZ research" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 18 The term "burning platform" describes a situation where people are forced to act because the alternative, failing to act, is much worse.
- 19 Statistics New Zealand counts Māori in two ways: through ethnicity and through Māori descent. Māori ethnicity and Māori descent are different concepts – ethnicity refers to cultural affiliation, while descent is about ancestry. The Māori ethnic group population is made up of people who stated Māori as being their sole ethnic group, or one of several ethnic groups. Māori descent refers to those people who are a descendent of a person of the Māori race of New Zealand. See Statistics New Zealand "2013 Census QuickStats about Māori" (3 December 2013) <www.stats.govt.nz>.
- 20 The Treasury *Working Towards Higher Living Standards for New Zealanders* (Treasury Paper 11/02, May 2011) at 24, quoting *The Treasury Towards an Inclusive Economy* (Treasury Working Paper 01/16, 2001).
- 21 The Treasury *Living Standards: A Short Guide to Social Infrastructure* (2013) at 1.
- 22 Statistics New Zealand *The Measurement of Social Capital in New Zealand* (2002) at 3.
- 23 Ministry of Business, Innovation and Employment *The Small Business Sector Report 2014* (2014) at 3.

- 24 Pingali Sailaja *Indian English* (Edinburgh University Press, Edinburgh, 2009) at [1.3].
- 25 N Jayapalan *History of India (from National Movement to Present Day)* (Atlantic Publishers, India, 2001).
- 26 Office of Ethnic Affairs *Language and Integration in New Zealand* (2014) at 1.
- 27 See S Karnow *In Our Image: America's Empire in the Philippines* (Random House Publishing Group, New York, 2010).
- 28 TP London "The language holding Malays, Tamils and Chinese together" *The Economist* (online ed, 28 January 2011).
- 29 For the case study on Foodstuffs, see [2.10].
- 30 Employment Relations Act 2000, s 103(1)(c).
- 31 Employment Relations Act 2000, s 103(1)(e).
- 32 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].
- 33 This has been the case in the private sector. See [2.86].
- 34 This limited view of diversity has also been an issue for business. See [2.165].
- 35 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].
- 36 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.
- 37 Canada Elections Act 2000 (CA), s 155.
- 38 See [1.66] for discussion of commonly spoken languages in New Zealand.
- 39 City of Toronto Bylaw 1176-2009.
- 40 Parliamentary Elections Act 1954 (SG), s 37; Presidential Elections Act 1991 (SG), s 20.
- 41 The role of the Electoral Commission is covered in more detail in Mai Chen *Public Law Toolbox* (2nd ed, LexisNexis, 2014), ch 5, from which this section is adapted.
- 42 Electoral Commission *Report of the Electoral Commission on the 2014 General Election* (2015) at ii and [51].
- 43 Electoral Commission *Report of the Electoral Commission on the 2014 General Election* (2015) at [96].
- 44 Communications with the Chief Electoral Officer, Electoral Commission, September 2015.
- 45 Electoral Commission *Report of the Electoral Commission on the 2014 General Election* (2015) at [182].
- 46 Electoral Commission *Report of the Electoral Commission on the 2014 General Election* (2015) at [122].
- 47 Example templates of diversity strategies can be found on the EEO Trust website. See EEO Trust "EEO Trust Diversity Policy Series" <www.eeotrust.org.nz>.
- 48 The Treasury *Working Towards Higher Living Standards for New Zealanders* (Treasury Paper 11/02, May 2011) at 18, citing Statistics New Zealand *Statistics New Zealand's Framework for Measuring Sustainable Development* (2008).
- 49 Electoral Commission *Report of the Electoral Commission on the 2014 General Election* (2015) at [56]–[57].
- 50 Electoral Commission *Report of the Electoral Commission on the 2014 General Election* (2015) at [118].
- 51 Communications with the Chief Electoral Officer, Electoral Commission, September 2015.
- 52 P Spoonley *Superdiversity, Social Cohesion, and Economic Benefits* (IZA World of Labour, May 2014) at 1.
- 53 S Vertovec *Super-Diversity* (Routledge, 2016) (forthcoming).
- 54 S Vertovec "Super-diversity and its implications" (2007) 30(6) *Ethnic and Racial Studies* 1024 at 1025.
- 55 P Spoonley "Auckland's Future: Super-Diverse City" (Conversations in Integration, 28 November 2013); G Pires and J Stanton *Ethnic Marketing: Culturally Sensitive Theory and Practice* (Routledge, New York, 2015) at 338.
- 56 P Spoonley "Auckland's Future: Super-Diverse City" (Conversations in Integration, 28 November 2013).
- 57 The Royal Society of New Zealand *Languages in Aotearoa New Zealand* (2013) at 1.
- 58 Statistics New Zealand "New Zealand has more ethnicities than the world has countries" (press release, 10 December 2013).
- 59 Statistics New Zealand defines "ethnicity" as the ethnic group(s) that people identify with or feel they belong to. Ethnicity is self-perceived and people can identify with more than one ethnicity. Ethnicity is different from ancestry, birthplace and nationality. For example, people can identify with Māori ethnicity even though they may not be descended from a Māori ancestor. Conversely, people may choose to not identify with Māori ethnicity even though they are descended from a Māori ancestor. See Statistics New Zealand *National Ethnic Population Projections: 2013 (base) – 2038* (21 May 2015) at 12.
- 60 OECD "Migration – Foreign-born population chart" (2011) <data.oecd.org>.

- 61 The Royal Society of New Zealand *Our Futures Te Pai Tāwhiti: The 2013 Census and New Zealand's Changing Population* (2013) at 6.
- 62 M Singham "Multiculturalism in New Zealand – the need for a new paradigm" (2006) 1(1) *Aotearoa Ethnic Network Journal* 33 at 33. For a discussion of New Zealand's most recent migration statistics, see [1.8].
- 63 The Royal Society of New Zealand *Languages in Aotearoa New Zealand* (2013) at 2.
- 64 OECD Data "International migration statistics" (2011) <data.oecd.org>; Australian Bureau of Statistics "Australia's population by country of birth" (18 December 2013) <www.abs.gov.au>; Eurostat "Foreign-born population by country of birth" (1 January 2014) <ec.europa.eu>.
- 65 Statistics New Zealand "2013 Census QuickStats about Māori" (3 December 2013) <www.stats.govt.nz>.
- 66 Australian Bureau of Statistics "Estimates of Aboriginal and Torres Strait Islander Australians" (14 November 2013) <www.abs.gov.au>.
- 67 United States Census Bureau "Profile America Facts for Features – American Indian and Alaska Native Heritage Month: November 2011" <www.census.gov>. Twenty-two per cent of Native Americans live on tribal lands.
- 68 See Housing Assistance Council *Housing on Native American Lands* (September 2013) at 3–4. Strong kinship ties within Native American communities are universally acknowledged. On Native American lands, approximately 71 per cent of individuals live with family members, compared to 67 per cent nationwide.
- 69 Aboriginal Affairs and Northern Development Canada "Urban Aboriginal Peoples" (12 January 2014) <www.aadnc-aandc.gc.ca>.
- 70 P Spoonley "New diversity, old anxieties in New Zealand: the complex identity politics and engagement of a settler society" (2015) 38(4) *Ethnic and Racial Studies* 650 at 656.
- 71 P Spoonley and A Butcher "Reporting superdiversity: The mass media and immigration in New Zealand" (2009) 30(4) *Journal of Intercultural Studies* 355 at 362.
- 72 For a discussion of the history of Pacific migration to New Zealand, see S Mallon, K Mahina-Tuai and D Salesa (eds) *Tangata o le Moana: New Zealand and the People of the Pacific* (Te Papa Press, Wellington, 2012). See also P Spoonley and C Meares "Laissez-faire multiculturalism and relational embeddedness: Ethnic precincts in Auckland" (2011) 3 *Cosmopolitan Civil Societies* 42.
- 73 W Friesen, L Murphy and R Kearns "Spiced-Up Sandringham: Indian transnationalism and new suburban spaces in Auckland, New Zealand" (2005) 31(2) *Journal of Ethnic and Migration Studies* 385 at 388. See [3.3] for discussion of immigration law and policy in New Zealand.
- 74 W Friesen, L Murphy and R Kearns "Spiced-Up Sandringham: Indian transnationalism and new suburban spaces in Auckland, New Zealand" (2005) 31(2) *Journal of Ethnic and Migration Studies* 385 at 389. Of the Indian population in New Zealand between 1986 and 2001, 71 per cent was based in Auckland, demonstrating Auckland's role as New Zealand's gateway to migration. For further discussion of the Indian diaspora to New Zealand, see W Friesen "The evolution of 'Indian' identity and transnationalism in New Zealand" (2008) 39(1) *Australian Geographer* 45.
- 75 See generally D Law, M Genç and J Bryant *Trade, Diaspora and Migration to New Zealand* (NZIER Working Paper 2009/4, 2009) at 28; J Badkar and others "Gender, mobility and migration into New Zealand: A case study of Asian migration" (2007) 32 *Social Policy Journal of New Zealand* 126.
- 76 Statistics New Zealand "International Travel and Migration: August 2015" (press release, 21 September 2015); "Record levels of immigration" *Radio New Zealand* (22 September 2015); Interview with Paul Spoonley, Pro Vice-Chancellor, College of Humanities and Social Sciences, Massey University (Radio New Zealand, 5 May 2015).
- 77 Statistics New Zealand "Population mythbusters: New Zealand's population is only growing because of migration" (22 June 2012) <www.stats.govt.nz>.
- 78 Data sourced from Statistics New Zealand *International Travel and Migration: June 2015* (2015). See also S Dunstan "Immigration in the context of MBIE's wider policy goals and objectives" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 79 Statistics New Zealand "Population mythbusters: New Zealand's population is only growing because of migration" (22 June 2012) <www.stats.govt.nz>. Statistics New Zealand is also looking into alternative methods for measuring permanent and long-term migration to New Zealand, in recognition of the fact that current migration statistics are based on passenger intentions. Although people may change their intentions about length of stay, the published migration statistics are not revised to take account of these changes. See Statistics New Zealand "Alternative methods for measuring permanent and long-term migration" (2 December 2014) <www.stats.govt.nz>.
- 80 Statistics New Zealand "Subnational Population Projections: 2013 (base) – 2043" (19 February 2015) <www.stats.govt.nz>.
- 93 A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army, Social Policy and Parliamentary Unit, May 2015) at 17.

- 94 A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army, Social Policy and Parliamentary Unit, May 2015) at 17.
- 95 A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army, Social Policy and Parliamentary Unit, May 2015) at 17.
- 96 Thirty-nine per cent of the Irish population reside in the Dublin area: PWC *Building New Zealand's Future: New Zealand Annual Review 2014* (2015) at 7.
- 97 PWC *Building New Zealand's Future: New Zealand Annual Review 2014* (2015) at 7.
- 98 PWC *Building New Zealand's Future: New Zealand Annual Review 2014* (2015) at 7.
- 99 A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army, Social Policy and Parliamentary Unit, May 2015) at 17.
- 100 A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army, Social Policy and Parliamentary Unit, May 2015) at 38.
- 101 N Jackson "Auckland and 'The Rest' – a Tale of Two Futures" (presentation to Auckland Two Years On – A Metropolitan Center Emerges, 10 December 2012).
- 102 D McKay *Review of Central Government Policy, Implementation, Strategy and Leadership Effectiveness in Auckland: Report for Chief Executives Governance Group* (August 2014) at 24.
- 103 State Services Commission "SSC Appoints Deputy Commissioner to be based in Auckland" (press release, 13 March 2015). This is discussed further in the review of the State Services Commission at [5.272].
- 104 A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army, Social Policy and Parliamentary Unit, May 2015) at 11.
- 120 Statistics New Zealand "National Ethnic Population Projections: 2013 (base) – 2038" (press release, 21 May 2015).
- 121 S Ryan "Growing but not that fast" *Weekend Herald* (29 November 2010).
- 122 Statistics New Zealand "National Ethnic Population Projections: 2013 (base) – 2038" (press release, 21 May 2015).
- 123 The next national ethnic population projections will be released in 2017.
- 124 Statistics New Zealand "National Ethnic Population Projections: 2013 (base) – 2038" (press release, 21 May 2015).
- 125 Statistics New Zealand "National Ethnic Population Projections: 2013 (base) – 2038" (press release, 21 May 2015).
- 126 As noted by Jacques Poot, because cultural diversity is an "imprecise and complex concept", there is "huge diversity in theoretical measures of diversity and associated terminology/jargon, originating from many disciplines". See J Poot "An Outline of CaDDANZ Research" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015). For a detailed discussion on how to measure diversity, see P Nijkamp, J Poot and J Bakens *The Economics of Cultural Diversity* (Edward Elgar Publishing, New Zealand, 2015) (forthcoming).
- 127 Statistics New Zealand *Subnational Population Projections: 2013 (base) – 2043* (2015) at 2.
- 128 Statistics New Zealand *Subnational Population Projections: 2013 (base) – 2043* (2015) at 6.
- 129 Statistics New Zealand *Subnational Population Projections: 2013 (base) – 2043* (2015) at 3.
- 130 Statistics New Zealand "2013 Census: Cultural Diversity" (3 December 2013) <www.stats.govt.nz>.
- 131 Statistics New Zealand "Subnational Ethnic Population Projections: 2013(base)–2038" (press release, 30 September 2015).
- 132 Between 2011 and 2013, all growth in 56 of New Zealand's 67 territorial authorities is projected to be in the 65 years and over category, while all other age groups are projected to decline. See Statistics New Zealand "National Population Projections: 2014 (base) – 2068" (28 November 2014) <www.stats.govt.nz>.
- 133 N Jackson *Auckland Region – Socio-Demographic Profile 1986–2031* (May 2012) at [1].
- 134 The Royal Society of New Zealand *Our Futures Te Pai Tāwhiti: The 2013 Census and New Zealand's Changing Population* (2013) at 29.
- 135 The Royal Society of New Zealand *Our Futures Te Pai Tāwhiti: The 2013 Census and New Zealand's Changing Population* (2013) at 13.
- 136 N Jackson *Auckland – Key Demographic Trends* (Briefing to National Institute of Demographic and Economic Analysis, June 2014); N Jackson *Auckland Region – Socio-Demographic Profile 1986–2031* (May 2012) at [10].
- 137 N Jackson *The Demographic Forces Shaping New Zealand's Future: What Population Ageing [Really Means]* (National Institute of Demographic and Economic Analysis, Working Paper No 1, May 2011) at 4–5.
- 138 N Jackson "The Subnational Mechanisms of the Ending of Population Growth – Towards a Theory of Depopulation" (presentation to IPANZ Conference, Auckland, 17 June 2015); N Jackson *The Demographic Forces Shaping New Zealand's Future: What Population Ageing [Really Means]* (National Institute of Demographic and Economic Analysis, Working Paper No 1, May 2011) at 17.

- 139 N Jackson *Auckland Region – Socio-Demographic Profile 1986–2031* (May 2012) at [13].
- 140 N Jackson *Māori and the [Potential] Demographic Dividend* (National Institute of Demographic and Economic Analysis, Working Paper No 2, June 2011) at 20.
- 141 N Jackson *The Demographic Forces Shaping New Zealand's Future: What Population Ageing [Really Means]* (National Institute of Demographic and Economic Analysis, Working Paper No 1, May 2011) at 18; N Jackson *Māori and the [Potential] Demographic Dividend* (National Institute of Demographic and Economic Analysis, Working Paper No 2, June 2011) at 20.
- 142 N Jackson *The Demographic Forces Shaping New Zealand's Future: What Population Ageing [Really Means]* (National Institute of Demographic and Economic Analysis, Working Paper No 1, May 2011) at 18.
- 143 N Jackson *The Demographic Forces Shaping New Zealand's Future: What Population Ageing [Really Means]* (National Institute of Demographic and Economic Analysis, Working Paper No 1, May 2011) at 24.
- 144 See P Callister, R Didham and D Potter *Ethnic Inter-marriage in New Zealand* (Statistics New Zealand Working Paper, September 2005) at 4.
- 145 The Royal Society of New Zealand *Our Futures Te Pai Tāwhiri: The 2013 Census and New Zealand's Changing Population* (2013) at 6. The acceptability of ethnic definitions and identities has also changed over time. For example, it is becoming more acceptable to report on minority ethnic identities. The changing concept of ethnicity is also influencing how people report on their ethnicity. See A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army, Social Policy and Parliamentary Unit, May 2015) at 34.
- 146 P Callister, R Didham and D Potter *Ethnic Inter-marriage in New Zealand* (Statistics New Zealand, Working Paper, September 2005) at 4.
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- 149 A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army, Social Policy and Parliamentary Unit, May 2015) at 34.
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- 160 C Ward and others *Youth Voices, Youth Choices: Identity, Integration and Social Cohesion in Culturally Diverse Aotearoa/New Zealand* (Centre for Applied Cross-Cultural Research/Va'aomanu Pacific, June 2010) at 4.
- 161 C Ward *The Experiences of Migrant Youth: A Generational Analysis* (Centre for Applied Cross-cultural Research/Victoria University of Wellington, 2008) at 4.
- 162 C Ward *The Experiences of Migrant Youth: A Generational Analysis* (Centre for Applied Cross-cultural Research/Victoria University of Wellington, 2008) at 5.
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- 168 See A Bartley and P Spoonley "Intergenerational transnationalism: 1.5 generation Asian migrants in New Zealand" (2008) 46 *International Migration Review* 63 at 68, citing PG Min and R Kim (eds) *Struggle for Ethnic Identity: Narratives by Asian American Professionals* (AltaMira Press, California, 1999) and K Park "'I really do feel I'm 1.5!': The construction of self and community by young Korean Americans" (1999) 25(1) *Amerasia Journal* 139.
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- 177 A Bartley and P Spoonley "Intergenerational transnationalism: 1.5 generation Asian migrants in New Zealand" (2008) 46 *International Migration Review* 63 at 75.
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- 186 J Lee, W Friesen and RA Kearns "Return migration of 1.5 generation Korean New Zealanders: Short-term and long-term motives" (2015) 71 *New Zealand Geographer* 34 at 38.
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- 197 M Ip "Beyond the 'settler' and 'astronaut' paradigms: A new approach to the study of new Chinese immigrants to New Zealand" in M Ip, S Kang and S Page (eds) *Migration and Travel between Asia and New Zealand* (Asia Pacific Migration Research Network, Auckland, 2000) 3 at 8.
- 198 A Bartley "1.5 generation Asian migrants and intergenerational transnationalism: Thoughts and challenges from New Zealand" (2010) 12(4) *National Identities* 381 at 388.
- 199 See M Ip "Beyond the 'settler' and 'astronaut' paradigms: A new approach to the study of new Chinese immigrants to New Zealand" in M Ip, S Kang and S Page (eds) *Migration and Travel between Asia and New Zealand* (Asia Pacific Migration Research Network, Auckland, 2000) 3; E Ho "Multi-local residence, transnational networks: Chinese 'astronaut' families in New Zealand" (2002) 11(1) *Asian and Pacific Migration Journal* 145; T Beal and F Sos *Astronauts from Taiwan: Taiwanese Immigration to Australia and New Zealand and the Search for a New Life* (Asia Pacific Research Institute & Steele, Wellington, 1999). But also see LH Nora Chiang "'Astronaut families': Transnational lives of middle-class Taiwanese married women in Canada" (2008) 9(5) *Social & Cultural Geography* 505, which found that Taiwanese transmigrants were motivated by lifestyle aspirations as much as by economic factors: it was preferable to adopt the "astronaut" strategy so that the rest of the family could benefit from the social, environmental and educational opportunities in Canada, while the breadwinner returned to Taiwan to continue earning the family income.
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- 204 Statistics New Zealand "QuickStats about culture and identity: Languages spoken" (2013) <www.stats.govt.nz>.
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- 213 Department of Labour *The Asian Workforce: A Critical Part of New Zealand's Current and Future Labour Market* (June 2010) at 16.
- 214 Department of Labour *The Asian Workforce: A Critical Part of New Zealand's Current and Future Labour Market* (June 2010) at 16.
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- 219 W Friesen "The evolution of 'Indian' identity and transnationalism in New Zealand" (2008) 39(1) *Australian Geographer* 45 at 50.
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- 221 W Friesen *Asian Auckland: The Multiple Meanings of Diversity* (Asia New Zealand Foundation, February 2015) at 21 and 29.
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- 229 P Spoonley and others *The Changing Immigrant Cartography of Auckland New Zealand: An Asian Ethnic Precinct* (Max Planck Institute for the Study of Religious and Ethnic Diversity, 2014) at 23.
- 230 C Meares and others *Ethnic Precincts in Auckland: Understanding the Role and Function of the Balmoral Shops* (Auckland Council, Technical Report 2015/015, June 2015) at 3, 4 and 6 (emphasis added). See also C Meares and T Cain "The Balmoral shops: Bridging the gap between knowing and doing" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 24 July 2015). Ethnic precincts are distinct from ethnoburbs: while some ethnic precincts are located in ethnoburbs, some are not.
- 231 R Waldinger, H Aldrich and R Ward *Ethnic Entrepreneurs: Immigrant Business in Industrial Societies* (Sage Publications, United States, 1990) at 34. See also P Spoonley and C Meares "Laissez-faire multiculturalism and relational embeddedness: Ethnic precincts in Auckland" (2011) 3 *Cosmopolitan Civil Societies* 42 at 47.
- 232 P Spoonley and others *The Changing Immigrant Cartography of Auckland New Zealand: An Asian Ethnic Precinct* (Max Planck Institute for the Study of Religious and Ethnic Diversity, 2014) at 9.

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- 234 Results taken from the *New Zealand Herald's* 2014 general election results data. See H Singh and others "Election Results News Application" *New Zealand Herald* (online ed, 2014), available at <<http://data.nzherald.co.nz/electorates>>. Figures regarding Asian/Pacific representation were only included where Asians/Pacific people were over-represented compared to their proportion of the general population. We have not included analysis of Māori electorates and Māori seats.
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- 236 Statistics New Zealand "Employed migrants in New Zealand report high-quality working life" (13 November 2013) <www.stats.govt.nz>.
- 237 N Kloeten "Half of working-age Aucklanders born outside NZ" *National Business Review* (online ed, 7 September 2011).
- 238 Department of Labour *The Asian Workforce: A Critical Part of New Zealand's Current and Future Labour Market* (June 2010) at 3.
- 239 Department of Labour *Life After Study: International Students' Settlement Experiences in New Zealand* (2010) at ix and 27.
- 240 Statistics New Zealand "Mapping Trends in the Auckland Region" (8 May 2015) <www.stats.govt.nz>. Those with higher levels of education are more likely to report discrimination.
- 241 L Bolton "Factors explaining the low income return for education among Asian New Zealanders" (presentation to COMPASS Colloquium, 28 July 2015).
- 242 See the NZAL website to learn more: <www.asianleaders.com>.
- 243 See Appendix One for a set of the research questions.
- 244 See [2.363] for further discussion on this point.
- 245 Thirty-four respondents skipped this question. The percentage relates to the total number of actual responses for this question.
- 246 See Statistics New Zealand "2013 Census ethnic group profiles" <www.stats.govt.nz>.
- 247 See Appendix One for a set of the research questions.
- 248 There was a drop-off in responses for this question. Six participants did not answer this question.
- 249 There was a drop-off in responses for this question. Six participants did not answer this question.
- 250 There was a drop-off in responses for this question. Six participants did not answer this question.
- 251 Ministry of Pacific Island Affairs *Career Futures for Pacific Peoples* (October 2010) at 5.
- 252 NZEIR *Pacific Economic Trends and Snapshot* (Ministry of Business, Innovation and Employment, 2013).
- 253 Equal Employment Opportunities Trust *Specifically Pacific: Engaging Young Pacific Workers* (November 2011).
- 254 Equal Employment Opportunities Trust *Specifically Pacific: Engaging Young Pacific Workers* (November 2011) at 18.
- 255 Dr J Blue "Does the public service reflect our demographics?" (2014) 4 Public Sector 4.
- 256 Equal Employment Opportunities Trust *Specifically Pacific: Engaging Young Pacific Workers* (November 2011).
- 257 New Zealand Institute for Economic Research *Pacific Peoples' Economic Participation Report: Implications for the New Zealand Economy* (2005) at v.
- 258 Equal Employment Opportunities Trust *Specifically Pacific: Engaging Young Pacific Workers* (November 2011) at 17.
- 259 Equal Employment Opportunities Trust *Specifically Pacific: Engaging Young Pacific Workers* (November 2011) at 17.
- 260 P Tuatagaloa "The Auckland Pacific Labour Force" (Research and Evaluation Unit, Auckland Council, 1 July 2015).
- 261 Ministry of Business, Innovation and Employment *The Small Business Sector Report 2014* (2014) at 3.
- 262 P Sailaja *Indian English* (Edinburgh University Press, Edinburgh, 2009) at [1.3].
- 263 N Jayapalan *History of India (from National Movement to Present Day)* (Atlantic Publishers, India, 2001).
- 264 Office of Ethnic Affairs *Language and Integration in New Zealand* (2014) at 1.
- 265 See S Karnow *In Our Image: America's Empire in the Philippines* (Random House Publishing Group, New York, 2010).
- 266 TP London "The language holding Malays, Tamils and Chinese together" *The Economist* (online ed, 28 January 2011).
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- 270 "Comvita lifts FY profit 28pc to record as Asian tourists help drive sales growth" *New Zealand Herald* (online ed, 22 May 2015).
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- 281 P Spoonley "Superdiversity, social cohesion, and economic benefits" (IZA World of Labour, May 2014) at 4. (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 282 P Spoonley "Superdiversity, social cohesion, and economic benefits" (IZA World of Labour, May 2014) at 4. 296 DC Maré, R Fabling and S Stillmann "Innovation and local workforce" (2014) 93 *Papers in Regional Science* 183.
- 283 P Spoonley "Superdiversity, social cohesion, and economic benefits" (IZA World of Labour, May 2014) at 4. 297 Office of Ethnic Affairs *Working with Ethnic Diversity: Maximising New Zealand's Economic Potential* (2014) at 8; United Kingdom Civil Service *Best Practice Guidance on Monitoring Equality and Diversity in Employment* (March 2012) at [2.4].
- 284 McKinsey and Company "Why diversity matters" (press release, January 2015).
- 285 Diversity Link "UK youngsters turned off by low diversity in workplace" (2 September 2014) <www.diversitylink.co.uk>. 298 Statistics New Zealand "Mapping Trends in the Auckland Region" (8 May 2015) <www.stats.govt.nz>.
- 286 See Credit Suisse Research Institute *The CS Gender 3000: Women in Senior Management* (September 2014).
- 287 P Spoonley "Superdiversity, social cohesion, and economic benefits" (IZA World of Labour, May 2014) at 4. See also J Poot and others "Does cultural diversity of migrant employees affect innovation?" (2014) *International Migration Review* 377. 299 See generally R Florida *The Rise of the Creative Class* (Basic Books, New York, 2002); R Florida "Cities and the Creative Class" (2003) 2(1) *City and Community* 3 at 10.
- 288 Ministry of Business, Innovation and Employment Vote *Immigration: Briefing to the Incoming Minister* (2015) (proactively released) at [5]. 300 R Florida "Cities and the Creative Class" (2003) 2(1) *City and Community* 3 at 10.
- 289 "Record levels of immigration" *Radio New Zealand* (22 September 2015).
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- 293 New Zealand Government *Leadership Statement for International Education: Progress Update* (2014).
- 294 N Siu "The local Asian treasure chest: How & why businesses should unlock the domestic 'diversity dividend'" (forthcoming).
- 295 I Sin and others *Exporting, Innovation and the Role of Immigrants* (Motu Working Paper 14-15, Motu Economic and Public Policy Research, Wellington, 2014). This research uses Statistics New Zealand's Integrated Data Infrastructure and data from the Business Operations Survey to investigate the correlations at the firm level between: (a) employee characteristics and firm international engagement, and (b) firm international engagement and innovation. For an overview of the New Zealand literature on the diversity dividend, see also M Nathan "The economics of cultural diversity" 302 CP Ozgen, P Nijkamp and J Poot *Immigration and Innovation in European Regions* (Tinbergen Institute Discussion Paper No 11-112/3) at 3.
- 303 E Bellini, G Ottaviano, D Pinelli and G Prarolo *Cultural Diversity and Economic Performance: Evidence From European Regions* (Hamburg Institute of International Economics Working Paper No 3-14, 2004) at 2.
- 304 E Bellini, G Ottaviano, D Pinelli and G Prarolo *Cultural Diversity and Economic Performance: Evidence From European Regions* (Hamburg Institute of International Economics Working Paper No 3-14, 2004) at 34.
- 305 AsiaLink and Australian Industry Group *Engaging Asia: Getting it Right for Australian Business* (March 2011).
- 306 See for example A Girling, J Liu and C Ward *Confident, Equal and Proud? A Discussion Paper on the Barriers Asians Face to Equality in New Zealand* (Human Rights Commission, August 2010) at 10-13.
- 307 Ministry of Business, Innovation and Employment *Immigration New Zealand's Vision 2015: What it means for you* (2015) at 1.
- 308 Email from Judi Altinkaya (National Manager, Immigration New Zealand) to Mai Chen (23 September 2015).
- 309 Ministry of Business, Innovation and Employment Vote *Immigration: Briefing to the Incoming Minister* (2015) (proactively released) at [37].
- 310 Ministry of Business, Innovation and Employment Vote *Immigration: Briefing to the Incoming Minister* (2015) (proactively released) at [3].
- 311 M Adams and N Ellen-Eliza "New Zealand's investor migrants: Decision making and experiences"

- (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 312 Ministry of Business Innovation and Employment *Investor Migrant Research 2013/2014* (2014); M Adams and N Ellen-Eliza "New Zealand's investor migrants: Decision making and experiences" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 313 KPMG *Investment Immigration Policies: Prosperity Needs Diversity* (2015) at 1.
- 314 See NZ Inc "About Us" <www.newzealandinc.com>.
- 315 C Adams "Minister cautious about rule changes for wealthy migrants" *New Zealand Herald* (16 September 2015) at B3. Angel investors are investors who provide financial backing for small start-ups or entrepreneurs.
- 316 C Adams "Minister cautious about rule changes for wealthy migrants" *New Zealand Herald* (16 September 2015) at B3.
- 317 C Adams "Minister cautious about rule changes for wealthy migrants" *New Zealand Herald* (16 September 2015) at B3.
- 318 Cabinet Paper *New Zealand Investment Attraction Strategy* (Cabinet Economic Growth and Infrastructure Committee, 2015) at [38].
- 319 C Adams "Minister cautious about rule changes for wealthy migrants" *New Zealand Herald* (16 September 2015) at B3.
- 320 Hon Michaelia Cash MP (Assistant Minister for Immigration and Border Protection, Australia) and Hon Andrew Robb AO MP (Minister for Trade and Investment, Australia) "Final complying investment design for the Significant and Premium Investor Visas: Measures will promote investment and innovation" (press release, 15 May 2015).
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- 324 Ministry of Business, Innovation and Employment *The Small Business Sector Report 2014* (2014) at 1.
- 325 Ministry of Business, Innovation and Employment *The Small Business Sector Report 2014* (2014) at 1.
- 326 M Eglinton "Migrant entrepreneurs – what makes a successful migrant business" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 327 See Statistics New Zealand "Longitudinal Immigration Survey: New Zealand" (2009) <www.stats.govt.nz>.
- 328 See M Nathan "The economics of cultural diversity" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015). High rates of migrant entrepreneurship have also been observed overseas, though there has been little quantitative analysis on this subject to date. For studies on Chinese businesses, see C Meares, E Ho, R Peace and P Spoonley *Bamboo Networks: Chinese Employers and Employees in Auckland* (Integration of Immigrants Programme, Massey University, 2010); P Spoonley and C Meares *Chinese Businesses and the Transformation of Auckland* (Asia New Zealand Foundation, 2009); W Liu *An Exploratory Case Study of Chinese Immigrant Entrepreneurship in New Zealand* (Massey University Research Report (MBS), 2000); H Peter de Vries "The influence of migration, settlement, cultural and business factors on immigrant entrepreneurship in New Zealand" (PhD thesis (Management), University of Canterbury, 2007); Z Zhang "The home-country's role in shaping Chinese immigrant entrepreneurship" (PhD thesis, Auckland University of Technology, 2010). Similar challenges have been reported by Korean and Indian businesses. For studies on Korean businesses, see H Yoon and S Yim "An analysis of occupations of Korean immigrants in Auckland, New Zealand" (1997) 32(4) *Journal of the Korean Geographical Society* 129; J Lidgard and HK Yoon "The employment experiences of recent Korean immigrants in New Zealand" in PS Morrison (ed) *Labour, Employment and Work in New Zealand: Proceedings of the English Conference* (8th Conference, 1998) 263; DC Kim and HK Yoon "Reality in paradise: A pilot study of Korean immigrants in New Zealand using the 1996 census" in Y Ishikawa and A Montanari (eds) *The New Geography of Human Mobility – Inequality Trends* (IGU Home of Geography, Rome, 2003) 85; C Meares, E Ho, R Peace and P Spoonley *Kimchi Networks: Korean Employers and Employees in Auckland* (Integration of Immigrants Programme, Massey University, 2010). For studies on Indian businesses, see E Pio and C Essers "Professional migrant women decentring otherness: A transnational perspective" (2014) 25 *British Journal of Management* 252; J Lewin and others *Namaste New Zealand: Indian Employers and Employees in Auckland* (Research Report No 5, Massey University/Waikato University, 2011); A Paulose "Motivation to become entrepreneurs: The case of Indian immigrants to New Zealand" (Master's thesis in Business, Unitec, 2011); H Peter de Vries "The influence of migration, settlement, cultural and business factors on immigrant entrepreneurship in New Zealand" (PhD thesis (Management), University of Canterbury, 2007); E Pio "Indian women entrepreneurs in New Zealand" (2007) 1(3) *International Journal of Business and Globalisation* 345; H Peter de Vries "Do Indian immigrant entrepreneurs residing in different host countries display the same

- behavioural patterns?" (2012) 6(2) *Journal of Enterprising Communities* 138.
- 329 S Yuan, T Cain and P Spoonley *Immigrant Entrepreneurship and Tax Compliance* (Inland Revenue Department, June 2013) at 20. Similar challenges were reported by ethnic migrant female entrepreneurs in a 2014 study. See V Wei Verheijen, H Nguyen and B Chin "The making of ethnic migrant women entrepreneurs in New Zealand" (2014) 23(3) *Int J Entrepreneurship and Small Business* 296.
- 330 S Yuan, T Cain and P Spoonley *Immigrant Entrepreneurship and Tax Compliance* (Inland Revenue Department, June 2013) at 21.
- 331 S Yuan, T Cain and P Spoonley *Immigrant Entrepreneurship and Tax Compliance* (Inland Revenue Department, June 2013) at 21.
- 332 See Statistics New Zealand "2013 Census ethnic group profiles" <www.stats.govt.nz>.
- 333 T Cain and others *Half Way House: The Dominion Road Ethnic Precinct* (Massey University/Waikato University, 2011) at 45.
- 334 T Cain and P Spoonley *Making it Work: The Mixed Embeddedness of Immigrant Entrepreneurs in New Zealand* (IZA Discussion Paper No 7332, Institute for the Study of Labor, 2013) at 22–23.
- 335 T Cain and P Spoonley *Making it Work: The Mixed Embeddedness of Immigrant Entrepreneurs in New Zealand* (IZA Discussion Paper No 7332, Institute for the Study of Labor, 2013) at 23.
- 336 Inland Revenue Department *Understanding Migrant Businesses* (2015) at 1.
- 337 C Meares, E Ho, R Peace and P Spoonley *Bamboo Networks: Chinese Employers and Employees in Auckland* (Integration of Immigrants Programme, Massey University, 2010).
- 338 T Cain and P Spoonley *Making it Work: The Mixed Embeddedness of Immigrant Entrepreneurs in New Zealand* (IZA Discussion Paper No 7332, Institute for the Study of Labor, 2013) at 23.
- 339 B Watson and others *Bangers 'n' Mash: British Employers and Employees in Auckland and Hamilton* (Integration of Immigrants Programme Research Report No 7, 2011) at 11.
- 340 Immigration New Zealand "Points scale for an Entrepreneur Work Visa" (27 November 2014) <www.immigration.govt.nz>.
- 341 C Taylor "Immigration Outcomes of International Tertiary Students in New Zealand" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 24 July 2015).
- 342 The number of Indian students transitioning overtook the number of Chinese students transitioning in 2009.
- 343 A full list of the prohibited grounds of discrimination in New Zealand is located under s 21 of the Human Rights Act 1993. See also s 19 of the New Zealand Bill of Rights Act 1990. The legal framework for the protection of minority rights is discussed in Chapter Four.
- 344 *McAlister v Air New Zealand Ltd* [2009] NZSC 78, [2012] 1 NZLR 153.
- 345 Statistics New Zealand "New Zealand General Social Survey: 2014" (26 May 2015) <www.stats.govt.nz>.
- 346 Interview with Pele Walker, Chief Mediator, Human Rights Commission, regarding cross-cultural disputes in New Zealand (27 July 2015).
- 347 Interview with Pele Walker, Chief Mediator, Human Rights Commission, regarding cross-cultural disputes in New Zealand (27 July 2015).
- 348 Email from Dame Susan Devoy (Race Relations Commissioner) to Mai Chen regarding discrimination statistics (10 August 2015). For a discussion of the controversy surrounding the Auckland housing market and overseas buyers, see [2.363].
- 349 For example, 42 per cent of complainants to the HRC did not report their ethnic identity in 2014: Email from Pele Walker, Chief Mediator, Human Rights Commission to Mai Chen (7 August 2015).
- 350 This has been documented in a number of contexts. See for example Parliamentary and Health Service Ombudsman (UK) "Ombudsman encourages South Asian and Muslim women to complain for change" (press release, 24 September 2014); E Ngai and others "Consumer complaint behaviour of Asians and non-Asians about hotel services: An empirical analysis" (2007) 41 *European Journal of Marketing* 1375; E Ekiz and N Au "Comparing Chinese and American attitudes towards complaining" (2011) 23(3) *International Journal of Contemporary Hospitality Management* 327; M Bismark and others "Relationship between complaints and quality of care in New Zealand: A descriptive analysis of complainants and non-complainants following adverse events" (2006) 15(1) *Qual Saf Health Care* 17; A Tae-Hyun Kim "Culture matters: Cultural differences in the reporting of employment discrimination claims" (2012) 20 *Wm & Mary Bill Rts J* 405.
- 351 Statistics New Zealand "Working together: Racial discrimination in New Zealand" (10 September 2012) <www.stats.govt.nz>.
- 352 Human Rights Commission *UMR Omnibus Results Late November 2011* (November 2011) at 8.
- 353 Race Relations Commissioner Susan Devoy "Racism – does it impact on Auckland as a diverse city?" (speech to Ethnic Peoples Advisory Panel Conference on Racism, Auckland University of Technology, 27 April 2013).

- 354 Mediaworks "Kiwis Say NZ is a Racist Country on TV3's the Vote" (press release, 26 April 2013).
- 355 AN Girling, JH Liu and C Ward *Confident, Equal and Proud? A Discussion Paper on the Barriers Asians Face to Equality in New Zealand* (Human Rights Commission, August 2010) at 9.
- 356 See generally AN Girling, JH Liu and C Ward *Confident, Equal and Proud? A Discussion Paper on the Barriers Asians Face to Equality in New Zealand* (Human Rights Commission, August 2010). For example, 81 per cent of Asians in the Nelson Tasman area had experienced racism personally, and 86 per cent had witnessed racist incidents.
- 357 Ethnic Peoples Advisory Panel *Open Agenda* (18 April 2013) at 4.
- 358 See M Jasperse and C Ward "Identity, perceived religious discrimination, and psychological well-being in Muslim immigrant women" (2011) 61 *Applied Psychology* 250 at 253.
- 359 See for instance N Papatsoumas "Attack on tourist as crash fury escalates" *New Zealand Herald* (online ed, 28 February 2015).
- 360 See A Graycar *Racism and the Tertiary Student Experience in Australia* (Academy of the Social Sciences in Australia, Occasional Paper 5/2010, Canberra, 2010) at 3–4.
- 361 Ministry of Education *New Zealand PTE Sector: International Student Private Providers Barometer Academic Year 2012* (2012) at [11]; Ministry of Education *New Zealand Universities: The International Student Barometer 2011* (2011) at 5; Ministry of Education *New Zealand ITP Sector: The International Student Barometer 2011* (2011) at 6; Ministry of Education *New Zealand School Sector: Student Survey for Schools Academic Year 2012* (2012) at [14]; Ministry of Education *New Zealand ILP Sector: English Language Barometer Academic Year 2012* (2012) at [9]. See also A Gererosa and others *The Satisfaction of International Students in New Zealand Universities and ITPs* (Ministry of Education, January 2013); Department of Labour *Life After Study: International Students' Settlement Experiences in New Zealand* (2010) at 27.
- 362 W Friesen *Asian Auckland: The Multiple Meanings of Diversity* (Asia New Zealand Foundation, February 2015) at 9. For a complete index of laws and policies affecting the Chinese population between 1871 and 1997, see N Murphy *Guide to Laws and Policies Relating to the Chinese in New Zealand 1871–1997* (New Zealand Chinese Association, Wellington, 2008). See R Bedford "Review of Sean Mallon, Kolokesa Mahina-Tuai and Damon Salesa (eds) *Tangata o le Moana: New Zealand and the People of the Pacific* (Te Papa Press, Wellington, 2012)" (2015) 30(1) *New Zealand Sociology* 215 for a discussion of discriminatory laws against Pacific people in New Zealand.
- 363 Interview with Dr Anwar Ghani, President of the Federation of Islamic Associations of New Zealand (27 March 2015).
- 364 United Nations Committee on the Elimination of Racial Discrimination *Concluding Observations of the Committee on the Elimination of Racial Discrimination CER/C/NZL/CO/18-20* (2013) at [16]. See also Ethnic Peoples Advisory Panel *Open Addendum Agenda* (23 May 2013) at 1, where the Auckland Council Ethnic Peoples Advisory Panel remarked that "discrimination in employment is one of the biggest issues facing migrant communities and those from refugee backgrounds".
- 365 Human Rights Commission *Annual Report 2014* (2014) at 29; Email from Pele Walker, Chief Mediator, Human Rights Commission to Mai Chen regarding unlawful discrimination statistics (7 August 2015).
- 366 Tracking Equality at Work "Complaints pre-employment by grounds of discrimination" (2014) <tracking-equality.hrc.co.nz>.
- 367 Tracking Equality at Work "Complaints in employment by grounds of discrimination" (2014) <tracking-equality.hrc.co.nz>.
- 368 Email from Pele Walker, Chief Mediator, Human Rights Commission to Mai Chen (7 August 2015).
- 369 B Daldy, J Poot and M Roskrug "Perception of workplace discrimination among immigrants and native born New Zealanders (2013) 16(1) *Australian Journal of Labour Economics* 137.
- 370 B Daldy, J Poot and M Roskrug "Perception of workplace discrimination among immigrants and native born New Zealanders (2013) 16(1) *Australian Journal of Labour Economics* 137 at 146. Although there were no major differences between the regions, discrimination levels were lower in the Wellington region, which the authors of the survey attributed to the fact that the public service (which makes up around 30 per cent of employment) is more likely to "adhere more strongly to equal employment opportunities and human rights legislation": at 148.
- 371 B Daldy, J Poot and M Roskrug "Perception of workplace discrimination among immigrants and native born New Zealanders (2013) 16(1) *Australian Journal of Labour Economics* 137 at 151. There is considerable academic literature documenting the "double disadvantage" migrant women face in a variety of contexts, although experience varies depending on country. For example, see Ascend Pan-Asian Leaders *Hidden in Plain Sight: Asian American Leaders in Silicon Valley* (May 2015); Vanderbilt University "The new 'double disadvantage': Where you're born doesn't matter as much as whether you're married and a woman" *ScienceDaily* (online ed, 9 October 2014); R Rajiman "Gender, ethnicity and immigration: Double-disadvantage and triple-disadvantage among recent immigrant women in the Israeli labor market" (1997) 11(1) *Gender & Society* 108.

- 372 See also M Roskrug and others "Social capital formation and immigrant integration in New Zealand" (paper presented at Pathways to Metropolis in the 21st Century, 2012); J Poot and S Stillman *The Importance of Heterogeneity when Examining Immigrant Education Occupation Mismatch: Evidence from New Zealand* (Centre for Research and Analysis of Migration, Discussion Paper No 23/10, 2010) at 18.
- 373 A Girling, J Liu and C Ward *Confident, Equal and Proud? A Discussion Paper on the Barriers Asians Face to Equality in New Zealand* (Human Rights Commission, August 2010) at 10–13.
- 374 See M Gee Wilson, P Gahlout, L Liu and S Mouly "A rose by any other name: The effect of ethnicity and name on access to employment" (2005) 7(2) University of Auckland Business Review 65.
- 375 Ethnic Peoples Advisory Panel *Open Addendum Agenda* (23 May 2013) at 4. See also C Ward and A-M Masgoret "Immigrant entry into the workforce: A research note from New Zealand" (2007) 31 International Journal of Intercultural Relations 525.
- 376 Victoria University of Wellington "Research finds strategies to overcome ethnic discrimination in accounting industry" (press release, 14 May 2015).
- 377 T Ranjit Singh "If you're not feeling too well just consult your taxi driver" *New Zealand Herald* (online ed, 12 September 2006); D Kemeys "Taxi drivers face worst prejudice" *North Shore Times* (online ed, 29 December 2009); T Clayton "Highly skilled migrants turned away from Kiwi jobs" *3News* (online ed, 15 May 2014).
- 378 Department of Labour *The Asian Workforce: A Critical Part of New Zealand's Current and Future Labour Market* (June 2010) at 4.
- 379 Department of Labour *Labour Market Outcomes for Immigrants and the New Zealand-born 1997–2009* (2011) at 18.
- 380 See Statistics New Zealand "Earnings for people in paid employment by total response according to ethnic group and gender" data set, available at <www.stats.govt.nz>. In 2014, the average weekly income for New Zealand European men was \$1,250 and \$842 for New Zealand European women. In contrast, the average weekly income was \$900 for Pacific men, \$710 for Pacific women, \$919 for Asian men and \$782 for Asian women.
- 381 L Bolton "Factors explaining the low income return for education among Asian New Zealanders" (presentation to COMPASS Colloquium, 28 July 2015).
- 382 Office of Ethnic Affairs *Language and Integration in New Zealand* (2014) at 1.
- 383 L Bolton "Factors explaining the low income return for education among Asian New Zealanders" (presentation to COMPASS Colloquium, 28 July 2015).
- 384 See Department of Labour *The Asian Workforce: A Critical Part of New Zealand's Current and Future Labour Market* (June 2010). See also Dr A Podsiadlowski *Facilitating Migrant Entry and Integration into the New Zealand Workforce* (Centre for Applied Cross-cultural Research, May 2007).
- 385 See Statistics New Zealand "New Zealand social indicators – unemployment" (February 2015) <www.stats.govt.nz> at Figure 3.
- 386 See New Zealand Asian Leaders "Welcome to NZ Asian Leaders" <www.nzasianleaders.com>.
- 387 The Treasury "Director breakdown by gender and ethnic origin as at 1 May 2015" <www.treasury.govt.nz>.
- 388 See State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 5; Multicultural New Zealand "Ethnic minorities under-represented and under-paid" (press release, 8 December 2014).
- 389 Email from Richard Selave, Ministry of Pacific Island Affairs, regarding Pacific peoples on boards to Mai Chen (4 August 2015). Data on the proportion of ethnic board members is not required to be collected by firms in the private sector only gender data. See the discussion at [2.142].
- 390 This information only needs to be released to shareholders and NZX Limited. See Companies Act 1993, ss 208 and 209; NZX Limited Main Board/Debt Market Listing Rules 2015, rr 10.4.1, 10.4.5(g) and 10.4.5(k). The notes to r 10.4.5 state that companies may choose to disclose in their annual report any diversity policy or any other matter relating to its diversity practices or position (including, in particular, in relation to diversity other than gender). Companies should also endeavour to comply with the NZX's *Guidance Note on Diversity Policies and Disclosure* (February 2015), which recommends that companies should implement a diversity policy. In contrast, all public service departments in New Zealand must provide annual data to the State Services Commission's Human Resource Capability survey. The mandate for the survey has been established through Cabinet Minutes from 1994 to 1998. The survey is also consistent with the State Services Commission's role under the State Sector Act 1988. See State Services Commission "Human Resource Capability – Survey Instructions, Checklist and FAQs" (June 2015) <www.ssc.govt.nz>.
- 391 See r 4.10.3 of the ASX Listing Rules 2014. Principle 6 of the ASX Corporate Governance Council's *Corporate Governance Principles and Recommendations* (3rd ed, 2014) states that listed companies should include links on their website to copies of their annual reports, corporate governance policies and financial statements. Recommendation 1.5(a) states that listed entities should have a diversity policy which includes requirements for

- the board to set measurable objectives for achieving gender diversity and to annually assess the entity's progress in achieving those objectives. It also sets out suggestions for the content of a listed entity's diversity policy (see Box 1.5).
- 392 J Ruth "Are there enough board-ready women in New Zealand" *National Business Review* (online ed, 13 July 2015).
- 393 All private employers with 100 or more employees are subject to Title VII of the Civil Rights Act 1964 (US), and are required to file a confidential EEO-1 report with the US Equal Employment Opportunity Commission on an annual basis. See Ascend Pan-Asian Leaders *Hidden in Plain Sight: Asian American Leaders in Silicon Valley* (May 2015) at 7.
- 394 See Apple "Inclusion inspires innovation: A Message from Tim Cook" (2014) <www.apple.com>.
- 395 Deloitte *Diversity and Inclusion in Canada: The Current State* (August 2014); A Klarsfeld, E Ng and A Tatli "Social regulation and diversity management: A comparative study of France, Canada and the UK" (2012) 18(4) *European Journal of Industrial Relations* 309 at 310.
- 396 Credit Suisse Research Institute *The CS Gender 3000: Women in Senior Management* (September 2014) at 27; M Bertrand and others *Breaking the Glass Ceiling? The Effect of Board Quotas on Female Labor Market Outcomes in Norway* (IZA DP No 8266, June 2014).
- 397 For discussion on resources published by the Office of Ethnic Communities, see [5.310].
- 398 The weekly gender pay gap is greater because women are more likely to be in casual and part-time work than men. See New Zealand Council of Trade Unions "The pay equity challenge" (2010) <union.org.nz>.
- 399 M Towle "Gender pay gap balloons to almost 12%" *Radio New Zealand News* (online ed, 2 October 2015).
- 400 The double disadvantage has also been reported on overseas. For example, see Ascend Pan-Asian Leaders *Hidden in Plain Sight: Asian American Leaders in Silicon Valley* (May 2015); Vanderbilt University "The new 'double disadvantage': Where you're born doesn't matter as much as whether you're married and a woman" *ScienceDaily* (online ed, 9 October 2014); R Rajiman "Gender, ethnicity and immigration: Double-disadvantage and triple-disadvantage among recent immigrant women in the Israeli labor market" (1997) 11(1) *Gender & Society* 108.
- 401 Statistics New Zealand *New Zealand Income Survey: June 2014 quarter* (October 2014).
- 403 Statistics New Zealand *New Zealand Income Survey: June 2014 quarter* (October 2014).
- 404 J McGregor "Keys to diversity and women's leadership" (speech to the FY2014 NWEC International Symposium, Tokyo, 21 November 2014).
- 405 B Daldy, J Poot and M Roskrug "Perception of workplace discrimination among immigrants and native born New Zealanders" (2013) 16(1) *Australian Journal of Labour Economics* 137 at 144.
- 406 B Daldy, J Poot and M Roskrug "Perception of workplace discrimination among immigrants and native born New Zealanders" (2013) 16(1) *Australian Journal of Labour Economics* 137 at 152.
- 407 C Meares, A Bell and R Peace "Migration, gender and economic integration: International scholarship (2006–09) and an Aotearoa New Zealand research agenda" (2010) 5(2) *Kōtuitui: New Zealand Journal of Social Sciences Online* 61 at 72.
- 408 C Meares, A Bell and R Peace "Migration, gender and economic integration: International scholarship (2006–09) and an Aotearoa New Zealand research agenda" (2010) 5(2) *Kōtuitui: New Zealand Journal of Social Sciences Online* 61 at 73.
- 409 *Concluding Observations of the Committee on the Elimination of Discrimination Against Women* (9–27 July 2012) CEDAW/C/ NZL/CO/7 at [43].
- 410 M Chen "The double disadvantage" (presentation to the YWCA Equal Pay Award Workshop, Auckland, 28 July 2015).
- 411 *Terranova Homes & Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc* [2014] NZCA 516, [2015] 2 NZLR 437. The Supreme Court refused Terranova Homes & Care Ltd's application for leave to appeal against the Court of Appeal's decision in *Terranova Homes & Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc* [2014] NZSC 196, [2015] 2 NZLR 437.
- 412 Section 9 of the Equal Pay Act 1972 permits the Employment Court to state the general principles to be observed for the implementation of equal pay in accordance with ss 3–8 of the Act.
- 413 Equal Pay Act 1972, s 2A(1).
- 414 B Brown *New Zealand in World Affairs III 1972–1990* (Victoria University Press, Wellington, 1999) at 21–22.
- 415 B Brown *New Zealand in World Affairs III 1972–1990* (Victoria University Press, Wellington, 1999) at 22.
- 416 New Zealand Trade and Enterprise See "Exports – Top 20 countries" (31 December 2014) <www.nzte.govt.nz>. As at December 2014, China was New Zealand's top export destination for goods, but Australia remained the top destination for services.
- 417 See the discussion at [1.45].

- 418 Hays Recruitment *The Balancing Act: Creating a Diverse Workforce – Research and Insights that Impact Your World at Work* (2014).
- 419 Diversity Council Australia *Leading in the Asian Century: A National Scorecard of Australia's Workforce Asia Capability* (2015).
- 420 Diversity Council Australia *Leading in the Asian Century: A National Scorecard of Australia's Workforce Asia Capability* (2015) at 8.
- 421 Diversity Council Australia *Leading in the Asian Century: A National Scorecard of Australia's Workforce Asia Capability* (2015) at 7.
- 422 This aligns with the results of a survey by the EEO Trust and Auckland Chamber of Commerce, which found that a significant proportion of businesses had no formal policy, programme or initiative in place to address bias or ethnicity (58 per cent and 48 per cent respectively). See New Zealand Work Institute *The New Zealand Diversity Survey: April 2015* (24 April 2015). The survey is run bi-annually, but does not specifically focus on issues relating to ethnic diversity. For discussion on "diversity management" in New Zealand, see C Houkama and P Boxall "The incidence and impacts of diversity management: A survey of New Zealand employees" (2011) 49 *Asia Pacific Journal of Human Resources* 440; B Watson, P Spoonley and E Fitzgerald "Managing diversity: A twenty-first century agenda" (2009) 34 *New Zealand Journal of Employment Relations* 61.
- 423 Thirty-five respondents said that they did not collect ethnicity data, but only 31 participants gave a reason for why they did not collect this data.
- 424 Only 44 organisations responded to this question.
- 425 Seventy-four survey participants responded to this question.
- 426 Ninety-four of the 98 organisations surveyed responded to the question regarding recruiting for CQ, and 92 responded to the question regarding training on CQ.
- 427 Fifty-three survey participants responded to this question.
- 428 For this question, respondents could select multiple answers.
- 429 Forty-four survey participants responded to this question.
- 431 Deloitte *Diversity and Inclusion in Canada: The Current State* (August 2014) at 37.
- 432 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 5.
- 433 International Labour Organisation *Promoting Equity – Ethnic Diversity in the Workplace: A Step-by-Step Guide* (Geneva, 2014) at 12–14.
- 434 Human Rights Commission "Tracking Equality at Work – Indicators (Discrimination)" (2014) <tracking-equality.hrc.co.nz>.
- 435 Statistics New Zealand *Ethnicity New Zealand Standard Classification* (ETHNIC05, V1.0m, 1 June 2005).
- 436 United Kingdom Civil Service *Best Practice Guidance on Monitoring Equality and Diversity in Employment* (March 2012) at [5.9]–[5.10].
- 437 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 6 and 18.
- 438 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 20.
- 439 So too can "reward and recognition" activities, which reinforce that the organisation or business values diversity. This can be as simple as internal promotions of ethnic celebrations, for example Matariki, Diwali or Chinese New Year.
- 440 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 6.
- 441 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 5.
- 442 Royal College of Nursing *Working Well Initiative: Diversity Appraisal Resource Guide* (October 2002) at 5.
- 443 United Kingdom Civil Service *Best Practice Guidance on Monitoring Equality and Diversity in Employment* (March 2012) at [2.2].
- 444 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 5.
- 445 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 20.
- 446 International Labour Organisation *Promoting Equity – Ethnic Diversity in the Workplace: A Step-by-Step Guide* (Geneva, 2014) at 49. Businesses should look to other companies more generally to learn new and better techniques for dealing with and promoting ethnic diversity.
- 448 See for example Helen Twose "Knowing your market is path to growth" *New Zealand Herald* (18 September 2015) at 11. When Morag McCay, Beachheads adviser to NZTE, needs a tasting panel for her Asian food products, she heads down the road to sample Auckland University students.
- 449 ASX Corporate Governance Council *Corporate Governance Principles and Recommendations* (3rd ed, 2014).
- 450 ASX Corporate Governance Council *Progress Report 2014 – Male Champions of Change* (March 2015) at 8.
- 451 Hays Recruitment *The Balancing Act: Creating a Diverse Workforce – Research and Insights that Impact Your World at Work* (2014) at 14.

- 452 J Ruth "Are there enough board-ready women in New Zealand" *National Business Review* (online ed, 13 July 2015).
- 453 These are the diversity goals of the United Kingdom's Home Office as part of its 2013–2016 diversity strategy. See United Kingdom Home Office *Diversity Strategy 2013–2016: Making the Most of Our Diversity* (2013) at 4.
- 456 United Kingdom Civil Service *Best Practice Guidance on Monitoring Equality and Diversity in Employment* (March 2012) at [5.5]. This may include staff and customer representatives, as well as human resources managers within an organisation.
- 457 Canadian organisations are increasingly being statutorily compelled to publicly report diversity and inclusion practices and policies. For example, Canadian publicly listed companies must report on their diversity and inclusion practices through Corporate Responsibility Statements. With information obtained from these reporting requirements, consumers and investors are increasingly better positioned to scrutinise organisations' diversity and inclusion practices and outcomes. See Deloitte *Diversity and Inclusion in Canada: The Current State* (August 2014) at 9.
- 458 International Labour Organisation *Promoting Equity – Ethnic Diversity in the Workplace: A Step-by-Step Guide* (Geneva, 2014) at 65.
- 459 See Human Rights Act 1993, s 73; New Zealand Bill of Rights Act 1990, s 19(2). For a general discussion on the legality of positive action measures in the United Kingdom, see Race for Opportunity *How to Conduct Diverse Recruitment* (2012) at 5.
- 460 Hays Recruitment *The Balancing Act: Creating a Diverse Workforce – Research and Insights that Impact Your World at Work* (2014) at 20.
- 461 Gender Equality Act 1979 (NO); Public Limited Liabilities Companies Act 1997 (NO). As at 1 January 2008, firms were penalised first with fines, then with deregistration from the Oslo Stock Exchange, and finally dissolution.
- 462 N Clark "Getting Women Into Boardrooms, by Law" *New York Times* (online ed, 27 January 2010). Firms must have at least 33 to 50 per cent representation of each gender. The total number of men and women on each board depends on the board size, and the 40 per cent quota relates specifically to boards with over 10 directors. See L Kilday and others "Women on boards of directors: the case study of Norway" (MBA paper, University of St Gallen, 2009). Similar policies have subsequently been enacted in Hong Kong and across other European Union countries. See Initiative for Responsible Investment "Current corporate social responsibility disclosure efforts by national governments and stock exchanges (26 June 2014) <hausercentre.org>.
- 463 See P Drexler "The trouble with gender quotas" *The Daily Beast* (online ed, 7 July 2013) for a discussion of this phenomena with respect to gender quotas.
- 464 Race for Opportunity *Best Practice Tips for Recruitment Agencies: Ensuring Equal Access to Opportunities for Diverse Job Applicants* (2011) at 1.
- 465 Hays Recruitment *The Balancing Act: Creating a Diverse Workforce – Research and Insights that Impact Your World at Work* (2014) at 15.
- 467 H Grant Halvorson and D Rock "Beyond Bias" *Strategy + Business* (online ed, 13 July 2015). Organisations such as Common Purpose and the Systems Centred Training and Research Institute have developed training programmes designed to mitigate unconscious bias, help employers manage conflicts and assist employees to work with those who are different.
- 468 G Cartman "To Recruit Better Candidates, Stop Talking About Company Values" (11 June 2013) Brazen Careerist <www.brazencareerist.com>; National Health Service "Recruiting for values – is your organisation ready?" available at <nhsemployers.org>.
- 469 H Grant Halvorson and D Rock "Beyond Bias" *Strategy + Business* (online ed, 13 July 2015).
- 470 H Grant Halvorson and D Rock "Beyond Bias" *Strategy + Business* (online ed, 13 July 2015).
- 472 Hays Recruitment *The Balancing Act: Creating a Diverse Workforce – Research and Insights that Impact Your World at Work* (2014) at 22.
- 475 Hays Recruitment *The Balancing Act: Creating a Diverse Workforce – Research and Insights that Impact Your World at Work* (2014) at 23.
- 476 Confederation of British Industry *Building on Progress: Boosting Diversity in our Workplaces* (2014) at 5–6.
- 477 Race for Opportunity "Mentoring and Mentoring Circles" (2012) <www.raceforopportunity.bitc.org.uk>.
- 478 Deloitte *Diversity and Inclusion in Canada: The Current State* (August 2014) at 19.
- 479 Royal College of Nursing *Working Well Initiative: Diversity Appraisal Resource Guide* (October 2002) at 14; Confederation of British Industry *Building on Progress: Boosting Diversity in our Workplaces* (2014); Deloitte *Diversity and Inclusion in Canada: The Current State* (August 2014).
- 480 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 4.
- 481 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 19.
- 482 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 4.

- 483 United Kingdom Civil Service *Good Practice Guide: Diversity in Recruitment to the SCS* (2011) at 18.
- 485 "Getting the MIAWs purring" *Sunday Star Times* (9 August 2015) at D5.
- 489 G Pires and J Stanton *Ethnic Marketing: Culturally Sensitive Theory and Practice* (Routledge, New York, 2015) at 337; S Nwankwo and A Lindridge "Marketing to ethnic minorities in Britain" (1998) 4(7) *Journal of Marketing Practice* 200 at 200. Some American companies, such as Pepsi, however, were targeting advertising campaigns to African-Americans as early as the 1940s. See L Krishna Jayasanker *Sameness in Diversity: Food Culture and Globalization in the San Francisco Bay Area and America, 1965–2005* (ProQuest, United States, 2008) at 71.
- 490 G Pires and J Stanton *Ethnic Marketing: Culturally Sensitive Theory and Practice* (Routledge, New York, 2015) at 337.
- 491 G Pires and J Stanton *Ethnic Marketing: Culturally Sensitive Theory and Practice* (Routledge, New York, 2015) at 271.
- 492 G Pires and J Stanton *Ethnic Marketing: Culturally Sensitive Theory and Practice* (Routledge, New York, 2015) at 272.
- 493 G Pires and J Stanton *Ethnic Marketing: Culturally Sensitive Theory and Practice* (Routledge, New York, 2015) at 274.
- 494 G Pires and J Stanton *Ethnic Marketing: Culturally Sensitive Theory and Practice* (Routledge, New York, 2015) at 273.
- 495 G Pires and J Stanton *Ethnic Marketing: Culturally Sensitive Theory and Practice* (Routledge, New York, 2015) at 274.
- 497 For discussion of the 1.5 generation, see [1.45].
- 498 N Siu "The Local Asian Treasure Chest: How & Why Businesses should Unlock the Domestic 'Diversity Dividend'" (forthcoming).
- 499 W Friesen *Asian Auckland: The Multiple Meanings of Diversity* (Asia New Zealand Foundation, February 2015) at 42.
- 500 See S Karnow *In our Image: America's Empire in the Philippines* (Random House, New York, 2010).
- 501 See N Jayapalan *History of India (from National Movement to Present Day)* (Atlantic Publishers, India, 2001).
- 502 TP London "The language holding Malays, Tamils and Chinese together" *The Economist* (online ed, 28 January 2011).
- 503 Office of Ethnic Affairs *Language and Integration in New Zealand* (2014) at 1.
- 504 M Chen "NZ melting pot needs special cooks" *New Zealand Herald* (online ed, 4 June 2015).
- 505 Chartered Accountants *Australia and New Zealand Fast Forward: Leading in a Brave New World of Diversity* (2 June 2015) at 31.
- 506 N Siu "The Local Asian Treasure Chest: How & Why Businesses should Unlock the Domestic 'Diversity Dividend'" (forthcoming).
- 507 For further examples of glocalisation, see <www.casestudyinc.com/glocalization>.
- 508 L Walters "Muslim woman turns to financial institutions for Islam-friendly mortgages" *Stuff.co.nz* (online ed, 30 April 2015).
- 509 For an overview of Sharia principles relating to finance, see A Saeed "Sharia and Finance" in P Bearman and R Peters (eds) *Ashgate Research Companion to Islamic Law* (Ashgate Publishing, London, 2014) 249.
- 510 G Pires and J Stanton *Ethnic Marketing: Culturally Sensitive Theory and Practice* (Routledge, New York, 2015) at 272. See also Yujun Qiu "Understanding Chinese Consumers" *China Business Review* (online ed, 1 July 2011).
- 511 G Pires and J Stanton *Ethnic Marketing: Culturally Sensitive Theory and Practice* (Routledge, New York, 2015) at 334.
- 512 A Bartley and P Spoonley "Intergenerational Transnationalism: 1.5 Generation Asian Migrants in New Zealand" (2008) 46 *International Migration Review* 63 at 75. For further discussion on the 1.5 generation, see [1.45].
- 513 Helen Twose "Knowing your market is path to growth" *New Zealand Herald* (18 September 2015) at 11.
- 514 W Friesen and A Reid "International and Internal Migration Dynamics in a Pacific Gateway City: Asian Migrants into and out of Auckland" (2012) 38 *New Zealand Population Review* 1.
- 515 W Friesen *Beyond the Metropolises: The Asian Presence in Small City New Zealand* (Asia New Zealand Foundation, 2015). The report also considers the role of local governments, tertiary education institutions, and migrant-refugee settlement agencies.
- 516 Rt Hon John Key, Prime Minister "Address to the National Party Conference" (National Party Conference 2015, Auckland Sky Centre Convention Centre, 26 July 2015); J Stanford "Immigration changes expected to boost regions" *New Zealand Herald* (online ed, 27 July 2015). Migrants will need to stay in the regions for at least 12 months, up from three months.
- 517 See R Tipples, S Trafford and P Callister "The factors which have resulted in migrant workers being 'essential' workers on New Zealand dairy farms" (presentation to Labour, Employment and Work Conference, 2010). The agricultural industry, particularly the dairy sector, makes a significant contribution to the New Zealand economy

- (around 8 per cent of real GDP), particularly in terms of export and employment, accounting for over half of New Zealand's total export earnings: The Treasury *New Zealand Economic and Financial Overview 2015* (15 April 2015) at 7, 11 and 17. Similar concerns have been reported regarding continuity of trained labour supply and spread of benefits of work in Pacific communities in the context of seasonal fruit and vegetable harvesting and processing. See R Bedford and C Bedford "RSE: Just the beginning? Some reflections on a decade of managed seasonal work programmes" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 518 In general, industries concerned with health, community care, teaching, grain/sheep/beef farming, horticulture and transport have entry:exit ratios around 3 to 5 per 10. In contrast, industries like retail, hospitality and computer services have relatively young age structures. See N Jackson "The subnational mechanisms of the ending of population growth – towards a theory of depopulation" (presentation to IPANZ Conference, Auckland, 17 June 2015).
- 519 Federated Farmers *New Season Farm Confidence Survey* (July 2015) at 19.
- 520 N Jackson "The subnational mechanisms of the ending of population growth – towards a theory of depopulation" (presentation to IPANZ Conference, Auckland, 17 June 2015); R Tipples, S Trafford and P Callister "The factors which have resulted in migrant workers being 'essential' workers on New Zealand dairy farms" (presentation to Labour, Employment and Work Conference, 2010) at 4. See also the discussion at [1.31].
- 521 R Tipples, S Trafford and P Callister "The factors which have resulted in migrant workers being 'essential' workers on New Zealand dairy farms" (presentation to Labour, Employment and Work Conference, 2010) at 5 and 6.
- 522 Ministry of Business, Innovation and Employment *Temporary Migrants as Vulnerable Workers: A Literature Review* (March 2014) at 59.
- 523 Enterprise North Canterbury *Culverden: Enterprise North Canterbury report 2014* (2014) at 5.
- 524 Ministry of Business, Innovation and Employment *Occupation and Region of Employment for Approved Work Visa Principal Applicants* (4 April 2015) at 23.
- 525 Ministry of Business, Innovation and Employment *Occupation and Region of Employment for Approved Work Visa Principal Applicants* (4 April 2015) at 23.
- 526 R Tipples, S Trafford and P Callister "The factors which have resulted in migrant workers being 'essential' workers on New Zealand dairy farms" (presentation to Labour, Employment and Work Conference, 2010) at 2.
- 527 Agricultural workers are on the Government's immediate skill shortage list. See Ministry of Business, Innovation and Employment *Immediate Skill Shortage List* (24 March 2014, MBIE-MAKO-15171208).
- 528 Ministry of Business, Innovation and Employment *Are You Recruiting Migrant Workers? What Do You Need To Know?* (June 2015) at 4.
- 529 On a work visa that is less than two years in length, health care is charged on a pay as you go basis, although most accident costs are covered by ACC. On a work visa that is two years or more in length, individuals are eligible for publicly funded health, maternity and disability services. Immigration New Zealand "New Zealand Now – Compare Visas" (16 December 2014) <www.newzealandnow.govt.nz>.
- 530 They also are ineligible to vote. See Immigration New Zealand "New Zealand Now – Compare Visas" (16 December 2014) <www.newzealandnow.govt.nz>.
- 531 See for example T McClure "Criteria 'too tough' on migrant workers – Federated Farmers" *New Zealand Farmer* (online ed, 13 April 2015).
- 532 See generally Ashburton District Council *Mid Canterbury Migrants and Newcomers Research* (December 2013); R Tipples, S Trafford and P Callister "The factors which have resulted in migrant workers being 'essential' workers on New Zealand dairy farms" (presentation to Labour, Employment and Work Conference, 2010) at 8 and 9; S McAvinue "Immigrants top pick for farm work" *Southland Times* (online ed, 27 April 2012).
- 533 Immigration New Zealand "New Zealand Now – Working in Dairy Farming" <www.newzealandnow.govt.nz>.
- 534 E Cropper "More certainty for long-term migrants after immigration changes" *3News* (27 July 2015).
- 535 *Canterbury Regional Economic Development Strategy* (August 2015).
- 536 In order to achieve this, the following initiatives will be implemented, taking into account population statistics and needs assessments of migrant and newcomer communities through consultation:
- (a) advocate to central government the settlement needs of newcomers and migrants, including the introduction of open work visas and increased access to primary health care;
 - (b) share resources and strategies to improve efficiency and reach, and make this information publicly accessible; and
 - (c) establish a newcomers and migrant advisory group, facilitate workshops and working parties to focus on migrant matters and develop memoranda of understanding between agencies involved in migrant settlement.

- 537 C Poulter "Retention of Skilled Migrants in the New Zealand Dairy Industry" (Masters of Business Administration Dissertation, Massey University, 2014) at 56.
- 538 C Poulter "Retention of Skilled Migrants in the New Zealand Dairy Industry" (Masters of Business Administration Dissertation, Massey University, 2014) at 55.
- 539 R Tipples, S Trafford and P Callister "The factors which have resulted in migrant workers being 'essential' workers on New Zealand dairy farms" (presentation to Labour, Employment and Work Conference, 2010) at 10.
- 540 R Tipples, S Trafford and P Callister "The factors which have resulted in migrant workers being 'essential' workers on New Zealand dairy farms" (presentation to Labour, Employment and Work Conference, 2010) at 10.
- 541 T McClure "Hundreds of Filipinos could be forced home after working with faked documents" *NZFarmer.co.nz* (online ed, 29 September 2015).
- 542 Ministry of Business, Innovation and Employment *Are You Recruiting Migrant Workers? What Do You Need To Know?* (June 2015) at 4 and 26.
- 543 Ministry of Business, Innovation and Employment *Are You Recruiting Migrant Workers? What Do You Need To Know?* (June 2015) at 5.
- 544 See Letter from Hon Steven Joyce (Minister of Economic Development) to John Spencer (Chair, Tertiary Education Commission) regarding determination of design of funding mechanism: specialised English for Speakers of Other Languages (ESOL) (15 December 2013); P Rawlinson and others *Migrant workers and the growth of dairy farming in Southland, New Zealand* (OneFarm, 2013) at 16–17.
- 545 See Immigration New Zealand "English language requirements" (16 July 2014) <www.immigration.govt.nz>.
- 546 P Rawlinson and others *Migrant workers and the growth of dairy farming in Southland, New Zealand* (OneFarm, 2013) at 18.
- 547 Immigration Placement Services "Philippines Now Major Source of Skilled Migrates to NZ" (press release, 3 May 2013).
- 548 Immigration New Zealand "Special visitor categories" (15 June 2015) <www.immigration.govt.nz>; Immigration New Zealand "Can I apply under the Skilled Migrant Category?" (29 November 2010) <www.immigration.govt.nz>.
- 549 See J Alayon (Masters of Philosophy (MPhil) dissertation, Auckland University of Technology, 2009). Alayon concludes that most Filipino migrants in New Zealand have their immediate family living with them and they send individual remittances to the Philippines either as gifts for parents to maintain their livelihood, for investment, and support for the education of nephews and nieces. Filipino family obligations are extensive, and older siblings are expected to provide financial support for younger siblings and their dependants, such as their nieces and nephews, as well as their parents: Immigration Research Programme *Family Structures* (July 2000).
- 550 Immigration New Zealand also issues a specific multilingual resource for migrant workers on dairy farms on how to adapt to living in New Zealand. See Immigration New Zealand *Living and Working on a New Zealand Dairy Farm* (June 2015).
- 551 See Federated Farmers of New Zealand "National Policy – Immigration and Labour" (2015) <www.fedfarm.org.nz>. The pack costs \$200 plus GST for members and \$700 plus GST for non-members.
- 552 See G Piddock "New player in dairy goat industry makes its mark" *NZFarmer.co.nz* (online ed, 11 July 2015).
- 553 G Wheeler "The significance of dairy to the New Zealand Economy" (presentation to DairyNZ, Hamilton, 7 May 2014). There has also been greater demand from China for products such as mozzarella. Two new mozzarella lines have been added to South Canterbury's Clandeboye dairy farmer co-operative. See T Cronshaw "Chinese pizza lovers boost Clandeboye" *NZFarmer* (online ed, 17 July 2015).
- 556 See Transparency International *Corruption Perceptions Index 2014 (December 2014)* at 1.
- 557 Ministry of Business, Innovation and Employment *Migration Trends and Outlook – 2013/2014* (2014) at 24.
- 558 Transparency International *Corruption Perceptions Index 2014 (December 2014)* at 1–2.
- 559 Transparency International *Corruption Perceptions Index 2014 (December 2014)* at 1–2.
- 560 Ministry of Business, Innovation and Employment *Investor Migrant Research 2013/2014* (2014).
- 561 See E Dimant, T Krieger and M Redlin *A Crook is a Crook ... But is He Still a Crook Abroad? On the Effect of Immigration on Destination – Country Corruption* (CESIFO Working Paper No 5032, October 2014), which compared data from OECD countries for the period 1984–2008.
- 562 Deloitte *Bribery and Corruption Survey 2015 Australia & New Zealand* (2015) at 9.
- 563 Deloitte *Bribery and Corruption Survey 2015 Australia & New Zealand* (2015) at 9.
- 564 R Meadows "Rising bribery and corruption tarnishing NZ image: Deloitte" *Stuff.co.nz* (26 March 2015).
- 565 Transparency International *Corruption Perceptions Index 2014 (December 2014)* at 1–2.

- 566 L Walters "Man in court over alleged bribery attempt" *Stuff.co.nz* (24 March 2015).
- 567 H McNicol "Alleged bribery of public official a 'serious issue'" *National Business Review* (online ed, 19 May 2015). See also Ministry for Primary Industries "Shellfish poacher forfeits car" (press release, 8 May 2015). A Chinese woman was convicted this year of poaching a huge haul of shellfish. The Government's approach has been to deal with this type of conduct through criminal prosecution rather than education.
- 568 Interview with Julie Read, Chief Executive and Director, SFO, and Nick Paterson, General Manager, Investigations, SFO (31 March 2015).
- 569 H McNicol "Alleged bribery of public official a 'serious issue'" *National Business Review* (online ed, 19 May 2015).
- 570 Inland Revenue Department *Understanding Migrant Businesses* (2015) at 1. Businesses operating in a hidden economy are more likely to deal in cash so they have a greater opportunity to understate their income, overstate their expenses or operate entirely outside the tax system: Inland Revenue Department "The Hidden Economy" <www.ird.govt.nz>.
- 571 Inland Revenue Department *Understanding Migrant Businesses* (2015) at 2.
- 572 Chartered Accountants Australia New Zealand *Are Australia and New Zealand corrupt?* (2015) at 32–33.
- 573 Norton Rose Fulbright *Business Ethics and Anti-corruption* (October 2014) at 43; Thomas Fox "International Anti-Corruption Enforcement Efforts" (10 April 2015) FPCA Compliance and Ethics Blog <www.tfoxlaw.wordpress.com>.
- 574 Clause 6 of the Organised Crime and Anti-corruption Legislation Bill 2014 (219-2) does not amend s 105C(3) of the Crimes Act 1961, which states that bribery of a public official does not constitute an offence if:
- (a) the act that is alleged to constitute the offence was committed for the sole or primary purpose of ensuring or expediting the performance by a foreign public official of a routine government action; and
- (b) the value of the benefit is small.
- 575 Email from Rob Everitt, Chief Executive, Financial Markets Authority, to Mai Chen regarding whether the Financial Markets Authority is experiencing issues from adjustment of new migrants to a different business environment in New Zealand (21 July 2015).
- 576 Interview with Rob Everitt, Chief Executive, Financial Markets Authority (29 July 2015).
- 577 K Lau "Mediation in a cross-cultural setting: What a mediator should know" (2014) 25 ADRJ 221 at 222. For discussion on legal pluralism and the operation of different cultural norms in relationship property and family law arbitration and in criminal litigation, see from [4.129].
- 578 K Lau "Mediation in a cross-cultural setting: What a mediator should know" (2014) 25 ADRJ 221 at 222.
- 579 See generally K Lau "Mediation in a cross-cultural setting: What a mediator should know" (2014) 25 ADRJ 221; G Apollon "Cross-Cultural Deal Mediation as a New ADR Method for International Business Transactions" (2014) 20 Law & Bus Rev Am 255; Siew Fang Law "Culturally sensitive mediation: The importance of culture in mediation accreditation" (2009) 20 ADRJ 162; J Barkai "What's a Cross-Cultural Mediator to Do – A Low-Context Solution for a High-Context Problem" (2009) 10 Cardozo Journal of Conflict Resolution 43; J A Gold "ADR through a Cultural Lens: How Cultural Values Shape Our Disputing Processes" [2005] Journal of Dispute Resolution 289; M LeBaron and Z Zumeta "Windows on Diversity: Lawyers, Culture, and Mediation Practice" (2003) 20(4) Conflict Resolution Quarterly 463; M Brigg "Mediation, Power, and Cultural Difference" (2003) 20(3) Conflict Resolution Quarterly 287.
- 580 J Barkai "What's a Cross-Cultural Mediator to Do – A Low-Context Solution for a High-Context Problem" (2009) 10 Cardozo Journal of Conflict Resolution 43 at 43.
- 581 Siew Fang Law "Culturally sensitive mediation: The importance of culture in mediation accreditation" (2009) 20 ADRJ 162 at 163.
- 582 K Lau "Mediation in a cross-cultural setting: What a mediator should know" (2014) 25 ADRJ 221 at 226.
- 583 G Apollon "Cross-Cultural Deal Mediation as a New ADR Method for International Business Transactions" (2014) 20 Law & Bus Rev Am 255 at 259.
- 584 K Lau "Mediation in a cross-cultural setting: What a mediator should know" (2014) 25 ADRJ 221 at 222.
- 585 K Lau "Mediation in a cross-cultural setting: What a mediator should know" (2014) 25 ADRJ 221 at 225.
- 586 The other typical ADR processes apart from mediation are negotiation and arbitration, although ADR is usually defined as any process that allows the parties to resolve the dispute without going to court. See G Apollon "Cross-Cultural Deal Mediation as a New ADR Method for International Business Transactions" (2014) 20 Law & Bus Rev Am 255 at 263.
- 587 K Lau "Mediation in a cross-cultural setting: What a mediator should know" (2014) 25 ADRJ 221 at 227.
- 588 G Apollon "Cross-Cultural Deal Mediation as a New ADR Method for International Business Transactions" (2014) 20 Law & Bus Rev Am 255 at 256–257.
- 589 See J Barkai "What's a Cross-Cultural Mediator to Do – A Low-Context Solution for a High-Context Problem" (2009) 10 Cardozo Journal of Conflict Resolution 43 at 85.

- 590 J Barkai "What's a Cross-Cultural Mediator to Do – A Low-Context Solution for a High-Context Problem" (2009) 10 *Cardozo Journal of Conflict Resolution* 43 at 88–89.
- 591 J Barkai "What's a Cross-Cultural Mediator to Do – A Low-Context Solution for a High-Context Problem" (2009) 10 *Cardozo Journal of Conflict Resolution* 43 at 60. Saving face is particularly important in Asian cultures, and is usually achieved by the mediator holding private meetings with only one of the parties in the dispute, known as "mediation caucuses". See also G Apollon "Cross-Cultural Deal Mediation as a New ADR Method for International Business Transactions" (2014) 20 *Law & Bus Rev Am* 255 at 297.
- 592 International Mediation Institute *Criteria for Approving Programs to Qualify Mediators for IMI Inter-Cultural Certification* (2011).
- 593 The cultural focus areas identified by the International Mediation Institute include relatedness and communication styles, mind-set toward conflict, the mediation process (for example, expectations around role of mediator and participants, predictability of the process and social protocols), orientation towards exchanging information, time orientation (for example, expected timelines for reaching outcomes) and decision-making approaches.
- 594 One respondent identified as one-fifth Māori.
- 595 Interview with Deborah Hart, Executive Director, AMINZ (28 July 2015).
- 596 C Ward and A-M Masgoret "Attitudes toward Immigrants, Immigration and Multiculturalism in New Zealand: A Social Psychological Analysis" (2008) 42 *International Migration Review* 227 at 243.
- 597 Ngāti Whātua, one of the collective group of iwi forming part of Ngā Mana Whenua o Tāmaki Makaurau under s 9 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 filed judicial review proceedings against recent decisions and announcements around the Auckland Crown Land Programme to address Auckland's housing crisis, to clarify the extent of their 172-year first right of refusal. As explained by a spokesperson for the iwi, "unlike hapū and iwi in many other parts of the country, land in our rohe is extremely scarce and so the integrity of the RFR [right of first refusal] is vitally important": "Ngati Whatua Files Statement of Claim in Auckland High Court" (press release, 26 June 2015). Eventually, an agreement was reached between the Government and Ngā Mana Whenua o Tāmaki Makaurau, and the legal proceedings were withdrawn: National Party "Crown-Iwi Agreement on Auckland Housing Programme" (press release, 3 September 2015). However, the matter shows the growing political power of iwi. According to Building and Housing Minister Dr Nick Smith, the agreement enables the Government to "get on and use vacant public land for housing while at the same time ensuring Treaty settlements covering the Auckland region are respected and upheld". The agreement includes a joint objective to provide "Māori with the opportunity to meaningfully participate as developers" in the Government's Auckland Vacant and Underutilised Crown Land Development Programme.
- 598 BERL Economics *The Asset Base, Income, Expenditure and GDP of the 2010 Māori Economy* (Te Puni Kōkiri, 2010) at 4.
- 599 Hon Dr Pita Sharples, Minister of Māori Affairs "Talking Trade: The Hong Kong Dragon and The New Zealand Taniwha" (speech to the New Zealand China Trade Association, 3 May 2012).
- 600 BERL Economics *The Asset Base, Income, Expenditure and GDP of the 2010 Māori Economy* (Te Puni Kōkiri, 2010) at 6.
- 601 A "Māori authority" is an entity that aligns to a subgrouping of "entities for the collective management of assets" in the Māori economy.
- 602 Statistics New Zealand *Tatauranga Umanga Māori 2015: Updated Statistics on Māori Authorities* (June 2015).
- 603 Statistics New Zealand *Tatauranga Umanga Māori 2015: Updated Statistics on Māori Authorities* (June 2015) at 16.
- 604 See New Zealand Trade and Enterprise and Ministry of Foreign Affairs *Opening the Doors to China: New Zealand's 2015 Vision* (February 2012) at 29.
- 605 ANZ *Te Tirohanga Whānui: The ANZ Privately-Owned Business Barometer* (2015) at 13.
- 606 Statistics New Zealand "Māori authorities export to the world 2014" (19 June 2015) <www.stats.govt.nz>.
- 607 Hon Dr Pita Sharples, Minister of Māori Affairs "Talking Trade: The Hong Kong Dragon and The New Zealand Taniwha" (speech to the New Zealand China Trade Association, 3 May 2012); M Chen "Enter the Taniwha and the Dragon" *New Zealand Herald* (online ed, 3 May 2013).
- 608 Māori Economic Development Panel *The Crown–Māori Economic Growth Partnership* (November 2012) at 15.
- 609 New Zealand Government "NZ to Join Asian Infrastructure Investment Bank" (press release, 15 June 2015).
- 610 National Party "Strategy targets international investors" (press release, 7 July 2015).
- 611 Cabinet Paper *New Zealand Investment Attraction Strategy* (Cabinet Economic Growth and Infrastructure Committee, 2015) at [17]–[18].
- 612 Cabinet Paper *New Zealand Investment Attraction Strategy* (Cabinet Economic Growth and Infrastructure Committee, 2015) at [50].
- 613 "China tourism tipped to soon outstrip Australia" *New Zealand Herald* (online ed, 18 May 2015).
- 614 New Zealand Māori Tourism *Annual Report 2014* (2014).

- 615 See Independent Māori Statutory Board *The Auckland Māori Economy* (July 2015).
- 616 Statistics New Zealand *The Measurement of Social Capital in New Zealand* (2002) at 3.
- 617 The Treasury *Working Towards Higher Living Standards for New Zealanders* (Treasury Paper 11/02, May 2011) at 24, quoting The Treasury *Towards an Inclusive Economy* (Treasury Working Paper 01/16, 2001).
- 618 The Treasury *Living Standards: A Short Guide to Social Infrastructure* (2013) at 1.
- 619 OECD *The Well-Being of Nations: The Role of Human and Social Capital* (2001).
- 620 P Spoonley and others "Social cohesion: A policy and indicator framework for assessing immigrant and host outcomes" (2005) 24 *Social Policy Journal of New Zealand* 85 at 93.
- 621 The Treasury *Living Standards: A Short Guide to Social Infrastructure* (2013) at 1.
- 622 D McKay *Review of Central Government Policy, Implementation, Strategy and Leadership Effectiveness in Auckland: Report for Chief Executives Governance Group* (August 2014) at 6.
- 623 The Treasury *Living Standards: A Short Guide to Social Infrastructure* (2013) at 3.
- 624 N McMillan and A Gray *Long-term Settlement of Refugees: An Annotated Bibliography of New Zealand and International Literature* (Department of Labour, Wellington, 2009) at 27. For discussion of migrant voting habits in New Zealand, see Superdiversity Centre *Superdiversity, Democracy and Electoral Laws* (New Zealand Law Foundation, forthcoming).
- 625 Historian David Fisher identifies in *Fairness and Freedom: A History of Two Open Societies: New Zealand and the United States* (Oxford University Press, London, 2012) that New Zealand's core value was fairness, as opposed to the United States' core value of freedom, even though both New Zealand and the United States are open societies. Many new migrants come to New Zealand from countries which are not open societies and in which neither freedom nor fairness are core values. Social cohesion is vital to ensure that new migrants reap the benefits of the positive aspects of New Zealand culture.
- 626 Ethnic Peoples Advisory Panel *Open Agenda* (23 May 2013) at 3.
- 627 The Royal Society of New Zealand *Our Futures Te Pai Tāwhiti: The 2013 Census and New Zealand's Changing Population* (2013) at 8.
- 628 A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army, Social Policy and Parliamentary Unit, May 2015) at 11.
- 629 A Praat and R Peace "Commonplace Diversity – So What?" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 24 July 2015).
- 630 S Wessendorf *Commonplace Diversity: Social Relations in a Super-Diverse Context* (Palgrave Macmillan, London, 2014) at 2. See also S Wessendorf "Commonplace diversity and the 'ethos of mixing': Perceptions of difference in a London neighbourhood" (2013) 20(4) *Identities: Global Studies in Culture and Power* 407.
- 631 N McMillan and A Gray *Long-term Settlement of Refugees: An Annotated Bibliography of New Zealand and International Literature* (Department of Labour, Wellington, 2009) at 26. The idea of "cultural sameness" nested within a larger diverse mix has also been discussed in the literature. See M Nathan "The economics of cultural diversity" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 632 M Chen "Cultural diversity in cities a challenge to decision-making" *New Zealand Herald* (online ed, 17 April 2015). Members of the Indian community in New Zealand have used websites such as NZ Ek NaZar to report their experience of New Zealand to prospective visitors and migrants back in India and Fiji, though these experiences have not always been positive. For example, some have warned about the difficulty of finding suitable housing and employment. See W Friesen, L Murphy and R Kearns "Spiced-Up Sandringham: Indian Transnationalism and New Suburban Spaces in Auckland, New Zealand" (2005) 31(2) *Journal of Ethnic and Migration Studies* 385 at 390; W Friesen "The Evolution of 'Indian' Identity and Transnationalism in New Zealand" (2008) 39(1) *Australian Geographer* 45.
- 633 For further information on New Zealand Asian Leaders, see <www.nzasianleaders.com>.
- 634 C Meares and others *Ethnic Precincts in Auckland: Understanding the Role and Function of the Balmoral Shops* (Auckland Council, Technical Report 2015/015, June 2015). See also C Meares and T Cain "The Balmoral shops: Bridging the gap between knowing and doing" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 24 July 2015); C Meares and A Gilbertson "*We all get along*" – *Social Cohesion in Three Auckland Suburbs* (Auckland Council, Technical Report 2013/052, 2013).
- 635 See T Cain and others *Half Way House: The Dominion Road Ethnic Precinct* (Massey University/Waikato University, 2011) at 39–40; P Spoonley and C Meares "Laissez-faire multiculturalism and relational embeddedness: Ethnic precincts in Auckland" (2011) 3 *Cosmopolitan Civil Societies* 42 at 62; P Spoonley and others *The Changing Immigrant Cartography of Auckland New Zealand: An Asian Ethnic Precinct* (Max Planck Institute for the Study of Religious and Ethnic Diversity, 2014) at 26.

- 636 P Spoonley and C Meares "Laissez-faire multiculturalism and relational embeddedness: Ethnic precincts in Auckland" (2011) 3 *Cosmopolitan Civil Societies* 42 at 45.
- 637 C Meares and others *Ethnic Precincts in Auckland: Understanding the Role and Function of the Balmoral Shops* (Auckland Council, Technical Report 2015/015, June 2015) at [7.3.2] and [7.5.1]–[7.5.2].
- 638 P Spoonley "Super-diversity in Aotearoa: Institutional Responsiveness to Diversification" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 24 July 2015). Creative New Zealand has established an Auckland Diversity Project Fund to offer arts organisations and artists the opportunity to apply for funding support for projects that engage with Māori, Pacific and Asian communities and artists in the region. See Creative New Zealand "New arts fund and research to support Auckland diversity – call for proposals" (press release, 3 August 2015).
- 639 C Ward and A-M Masgoret "Attitudes toward Immigrants, Immigration and Multiculturalism in New Zealand: A Social Psychological Analysis" (2008) 42 *International Migration Review* 227 at 243.
- 640 CAFCA "Who Owns NZ? Foreign Control Key Facts Updated" (press release, 7 January 2014).
- 641 B Gaynor "New Zealanders buy back their sharemarket" *New Zealand Herald* (online ed, 19 October 2013).
- 642 KPMG *Foreign Direct Investment in New Zealand: Trends and Insights* (August 2015) at 5; L Dann "Canada tops list of big foreign investors" *New Zealand Herald* (online ed, 17 August 2015).
- 643 KPMG *Foreign Direct Investment in New Zealand: Trends and Insights* (August 2015) at 4.
- 644 KPMG *Foreign Direct Investment in New Zealand: Trends and Insights* (August 2015) at 7.
- 645 KPMG *Foreign Direct Investment in New Zealand: Trends and Insights* (August 2015) at 12.
- 646 J Gray "Farming body backs decision on Lochinver" *New Zealand Herald* (18 September 2015) at 3; "Chinese investor interest running hot, despite Lochinver" *Tasman Political Report* (25 September 2015) at 2.
- 647 Colmar Brunton *New Zealanders' Perceptions of Asia and Asian Peoples – 2014 Annual Survey* (Asia New Zealand Foundation, April 2015) at 12.
- 648 Colmar Brunton *New Zealanders' Perceptions of Asia and Asian Peoples – 2014 Annual Survey* (Asia New Zealand Foundation, April 2015) at 12.
- 649 D Clement "Property Report: Migration helps fuel price boom" *New Zealand Herald* (online ed, 8 June 2015).
- 650 OECD *Economic Surveys – New Zealand* (June 2015) at 20–21.
- 651 Interview with Paul Spoonley, Pro Vice-Chancellor, College of Humanities and Social Sciences, Massey University (Radio New Zealand, 5 May 2015); OECD *Economic Surveys – New Zealand* (June 2015) at 19.
- 652 See for example A Gibson "We've got Chinese buyers" *New Zealand Herald* (online ed, 11 July 2015); C Trevett "Little backs home-buyer stats" *New Zealand Herald* (online ed, 13 July 2015); "Editorial: Chinese role in house boom needs checking" *New Zealand Herald* (online ed, 13 July 2015); I Davison "Chinese buyers deserve better than being blamed for Auckland's high house prices: Devoy" *New Zealand Herald* (online ed, 13 July 2015); D McKinnon "Don McKinnon: China will be listening to our housing debate" *New Zealand Herald* (online ed, 14 July 2015).
- 653 New Zealand Government "Budget 2015: Extra property tax measures" (press release, 17 May 2015).
- 654 See A Gibson "Special investigation: Auckland housing prices" *New Zealand Herald* (online ed, 11 July 2015).
- 655 L Walters "Labour's 'half-baked' property data turns Chinese buyers into 'scapegoats'" *Stuff.co.nz* (online ed, 11 July 2015).
- 656 Productivity Commission *Using Land for Housing* (Issues Paper, November 2014) at 5.
- 657 See OECD *Economic Surveys – New Zealand* (June 2015). Auckland Council estimates that Auckland will need 13,000 new dwellings each year to house its growing population. See Auckland Council *The Auckland Plan* (2012). Auckland Council has begun discussions aimed at removing density controls in Auckland suburbs in order to address housing shortages. See B Orsman "Auckland faces suburban squeeze" *New Zealand Herald* (online ed, 27 July 2015).
- 658 Productivity Commission *Using Land for Housing* (Issues Paper, November 2014) at 6.
- 659 Productivity Commission *Using Land for Housing* (Issues Paper, November 2014) at 5.
- 660 "Govt hopes influx of migrant builders will fix Auckland housing crisis" *One News* (online ed, 22 May 2015).
- 661 Interview with Annelies McClure, Manager of the Overseas Investment Office (16 March 2015).
- 662 C Keall "Australian foreign home buyers come forward under amnesty" *National Business Review* (online ed, 10 August 2015). The Australian Government is proposing to introduce tighter restrictions this year, including moving from forced sales within 90 days to a system of fines and fees. A home-buying application fee for non-residents is also being introduced.
- 663 See for example email from Annelies McClure to Murray Horton on 13 August 2012 regarding whether the OIO was planning to review Sky Television Network Limited's compliance with its conditions of consent in the light of

- the British Parliament Select Committee's finding that Rupert Murdoch was not fit to lead a major international company. Murdoch's News Limited owned 43.65 per cent of the shares of Sky Television Network Ltd.
- 664 New Zealand Government "Budget 2015: Extra property tax measures" (press release, 17 May 2015); Taxation (Land Information and Offshore Persons Information) Bill 2015 (34-1).
- 665 H Rutherford "Banks warn of loophole in Government plan to track foreign buyers" *Stuff.co.nz* (online ed, 15 July 2015).
- 666 C Trevett "PM open to foreign-buyer ban" *New Zealand Herald* (online ed, 21 July 2015).
- 669 R Bedford, E Ho and J Lidgard *International Migration in New Zealand: Context, Components and Policy Issues* (Discussion Paper No 37, Population Studies Centre, October 2000).
- 670 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [3].
- 671 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [5].
- 672 Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2012/2013* (2013) at 16; Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2013/2014* (2014) at 1 and 69; Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [37].
- 673 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [50].
- 674 Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2012/2013* (2013) at 14; Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2013/2014* (2014) at 1 and 2.
- 675 Ministry of Business, Innovation and Employment *Immigration New Zealand's Vision 2015: What It Means For You* (2015) at 1.
- 676 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [3].
- 677 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [3]. See also S Dunstan "Immigration in the context of MBIE's wider policy goals and objectives" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015). For an overview of Pacific and Asian source countries for seasonal work visas, see R Bedford and C Bedford "RSE: Just the beginning? Some reflections on a decade of managed seasonal work programmes" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015). The main Pacific source countries between 2005 and 2015 were Samoa, Tonga and Vanuatu, and the main Asian source countries were Thailand, Malaysia and Indonesia. 80 per cent of seasonal work visas over this period were granted to Pacific workers, and the remaining 20 per cent were granted to Asian workers.
- 678 R Simon-Kumar "Difference and Diversity in Aotearoa/ New Zealand: Post-neoliberal constructions of the ideal ethnic citizen" (2014) 14(1) *Ethnicities* 136 at 144.
- 679 Ministry of Business, Innovation and Employment *Immigration New Zealand's Vision 2015: What It Means For You* (2015) at 1.
- 680 See S Dunstan "Immigration in the context of MBIE's wider policy goals and objectives" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).
- 681 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [37].
- 682 Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2014) (proactively released) at [3].
- 683 Rt Hon John Key, Prime Minister "Address to the National Party Conference" (speech to National Party Conference 2015, Auckland Sky Centre Convention Centre, 26 July 2015); J Stanford "Immigration changes expected to boost regions" *New Zealand Herald* (online ed, 27 July 2015).
- 684 A Johnson *Mixed Fortunes: The Geography of Advantage and Disadvantage in New Zealand* (Salvation Army Social Policy and Parliamentary Unit, May 2015) at 11.
- 685 "Select Committees" *Trans Tasman Political Alert* (15/2001, 30 July 2015).
- 686 The book is currently untitled, and is scheduled for release in February 2016 by Bridget Williams Books.
- 687 Ministry of Business, Innovation and Employment *Business Growth Agenda Future Direction 2014* (2014).
- 688 P Spoonley and others "Social cohesion: A policy and indicator framework for assessing immigrant and host outcomes" (2005) 24 *Social Policy Journal of New Zealand* 85 at 86. There needs to be sufficient investment in settlement initiatives in order to obtain the diversity dividend, as positive adaptation outcomes rely on there being sufficient institutional support for migrants pre-arrival, upon arrival and post-arrival, for example in the form of information services: C Ward *Nau mai haere mai ki Aotearoa: Information seeking behaviour of New Zealand immigrants* (Centre for Applied Cross-cultural Research, 2007) at vi.

689	Auckland Council <i>Ethnicity and Migration in Auckland</i> (Technical Report 2013/012, February 2013) at [12.1].	boom needs checking" <i>New Zealand Herald</i> (online ed, 13 July 2015).
690	Ministry of Business, Innovation and Employment <i>Stock-take of Government-funded Settlement Services for Migrants</i> (November 2014) at 3.	708 Ministry of Business, Innovation and Employment <i>Briefing to the Minister of Immigration 2014</i> (2014) at [2].
691	Controller and Auditor-General <i>Immigration New Zealand: Supporting New Migrants to Settle and Work</i> (2013).	709 Ministry of Business, Innovation and Employment <i>Briefing to the Minister of Immigration 2014</i> (2014) at [2].
692	Ministry of Business, Innovation and Employment <i>Stock-take of Government-funded Settlement Services for Migrants</i> (November 2014).	710 OECD <i>Economic Surveys – New Zealand</i> (June 2015) at 19.
693	Ministry of Business, Innovation and Employment <i>Stock-take of Government-funded Settlement Services for Migrants</i> (November 2014) at 18–19.	711 OECD <i>Economic Surveys – New Zealand</i> (June 2015) at 19.
694	See J Altinkaya "Here for good?" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).	712 Any partner or child (aged 16 or over) must have an IELTS score of at least 5, or must pay for English language tuition in New Zealand.
695	Auckland Council <i>Ethnicity and Migration in Auckland</i> (Technical Report 2013/012, February 2013) at 41.	713 Ministry of Business, Innovation and Employment <i>Regulatory Impact Statement: Protecting Migrant Workers from Exploitation</i> (2013) at [3] and [6].
696	J Altinkaya "Here for good?" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).	714 (26 November 2014) 702 NZPD 916 per Sue Moroney MP; (10 February 2015) 703 NZPD 1434 per Jan Logie MP; N Jones "Opposition puts curbs on immigration officer powers" <i>New Zealand Herald</i> (1 April 2015) at A23.
697	J Altinkaya "Here for good?" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 23 July 2015).	715 Ministry of Business, Innovation and Employment <i>Regulatory Impact Statement: Protecting Migrant Workers from Exploitation</i> (2013) at [1].
698	Immigration New Zealand has developed a number of online tools to allow easier access, and is investigating use of social media.	716 Ministry of Business, Innovation and Employment <i>Regulatory Impact Statement: Protecting Migrant Workers from Exploitation</i> (2013) at [3].
701	S Vertovec "Super-diversity and its implications" (2007) 30(6) <i>Ethnic and Racial Studies</i> 1024 at 1040.	717 Ministry of Business, Innovation and Employment <i>Regulatory Impact Statement: Protecting Migrant Workers from Exploitation</i> (2013) at [7].
702	S Vertovec "Super-diversity and its implications" (2007) 30(6) <i>Ethnic and Racial Studies</i> 1024 at 1040.	718 Section 351 of the Immigration Act 2009 provides that employers who seriously breach the Holidays Act 2003, the Minimum Wage Act 1983 or the Wages Protection Act 1983 while employing an unlawful migrant worker may be liable for up to 7 years' imprisonment and/or a fine of up to \$100,000.
703	A Grimes "Working in Wall Street or Relaxing in the Mines" (presentation to Pathways, Circuits and Crossroads Conference, Westpac Stadium, Wellington, 24 July 2015).	719 Ministry of Business, Innovation and Employment <i>Regulatory Impact Statement: Protecting Migrant Workers from Exploitation</i> (2013) at [10].
704	Ministry of Business, Innovation and Employment <i>Growing New Zealand for All: MBIE's Narrative</i> (January 2015) at 48.	720 Immigration Amendment Bill (No 2) 2015 (156–3). Ministry of Business, Innovation and Employment Vote <i>Immigration: Briefing to the Incoming Minister</i> (2015) at [53].
705	Ministry of Business, Innovation and Employment <i>Growing New Zealand for All: MBIE's Narrative</i> (January 2015) at 17.	721 See Supplementary Order Paper 2015 (65) Immigration Amendment Bill (No 2) 2015 (156–3), which inserted new ss 277A to 227C in the Bill. See also N Jones "Opposition puts curbs on immigration officer powers" <i>New Zealand Herald</i> (1 April 2015) at A23.
706	Department of Labour <i>New Zealand Research on The Economic Impacts of Immigration 2005–2010: Synthesis and Research Agenda</i> (Economic Impacts of Immigration Working Paper Series, 2010, Wellington).	722 See Ministry of Business Innovation and Employment "Strengthening Enforcement of Employment Standards" (26 March 2015); Cabinet Paper "Strengthening enforcement of employment standards", available online
707	See for example A Gibson "We've got Chinese buyers" <i>New Zealand Herald</i> (online ed, 11 July 2015); C Trevett "Little backs home-buyer stats" <i>New Zealand Herald</i> (online ed, 13 July 2015); "Editorial: Chinese role in house	

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

- 751 Education and Science Committee *Inquiry into Pacific Languages in Early Childhood Education* (November 2013) at 5.
- 752 Ministry of Education *Pacific Education Plan 2013–2017* (February 2013) at 6. This information was provided by Pauline Barnes, Group Manager, Curriculum Teaching and Learning, Ministry of Education by email dated 15 April 2015.
- 754 D Nusche and others *OECD Reviews of Evaluation and Assessment in Education: New Zealand 2011* (OECD Publishing, 2012) at 48.
- 755 Human Rights Commission *Religion in New Zealand Schools: Questions and Concerns* (August 2009) at 1.
- 756 S Knights *Freedom of Religion, Minorities and the Law* (Oxford University Press, Great Britain, 2007) at 90.
- 757 See also A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.10] for discussion of the issues that have arisen overseas.
- 758 See A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.10.25]–[14.10.35] for discussion of overseas case law on religious instruction in state schools.
- 759 Human Rights Commission *Religious Diversity in Aotearoa New Zealand: Statement on Religious Diversity* (27 August 2009) at 3.
- 760 Human Rights Commission *Religion in New Zealand Schools: Questions and Concerns* (August 2009) at 11.
- 761 There has recently been controversy at one Christchurch school where students were given safe sex materials produced by an American-based Baptist group which included anti-gay rhetoric. The literature drew criticism from the Ministry of Education, which said it did not fit with the sexuality education curriculum. See M Hume “Women in de facto relationships ‘cheap prostitutes’, children told at school” *Stuff.co.nz* (17 May 2015). See A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.10.39]–[14.10.45] for discussion of sex education and religious belief in New Zealand and overseas.
- 762 Education Act 1989, s 25A(3).
- 763 A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.10.12].
- 764 Education Act 1989, s 25(2).
- 765 Education Act 1989, s 25B.
- 766 Rodney Hide MP to the Prime Minister (8 March 2004) and Hon Winston Peters MP to the Minister of Education (24 November 2004). The school, which was seeking to cater to the needs of its 130-strong Muslim migrant community, constructed a two-room classroom space for worship. Education Minister and Minister for Race Relations at the time, Hon Trevor Mallard, said the use of public funding for the prayer room was “inappropriate”, but was forced to apologise to the school after being informed that the Ministry of Education had “approved and assisted” the school in its endeavour.
- 767 On its face, the decision was not contrary to any provision of the Education Act 1964, as decisions on religious instruction were at the board’s discretion. However, that discretion had to be exercised in accordance with the NZBORA. A legal opinion sought by the bible study group found that the decision limited the children’s rights to freedom of thought, conscience and religion (s 13) and to manifest their religion and belief (s 15), so the board would have to show the limitation to be reasonable and demonstrably justified in a free and democratic society under s 5 of the NZBORA. As the teaching offered by the group was non-compulsory, unobtrusive and amounted to a fraction of the limits prescribed under s 78 of the Education Act 1964, it could be argued that the board was not justified in prohibiting the group’s activities by declining their application.
- 768 J O’Callaghan “‘Kitchen work’ for no-bible student” *Stuff.co.nz* (23 June 2014).
- 769 D Satherley “Father faces dilemma over school’s Bible classes” *3 News* (online ed, 14 January 2014).
- 770 L Walters “Bible lessons lead to court” *Stuff.co.nz* (22 February 2015). Another case, *David Hines and Tanya Jacob v Ministry of Education*, is currently in mediation. See Secular Education Network (NZ) “Legal Challenges” <religioninschools.co.nz>.
- 771 Private Schools (Conditional Integration) Act 1975, s 32.
- 772 Private Schools (Conditional Integration) Act 1975, s 29(2).
- 773 Private Schools (Conditional Integration) Act 1975, s 29(2).
- 774 Private Schools (Conditional Integration) Act 1975, s 32(2).
- 775 New Zealand Government *Leadership Statement for International Education* (2011).
- 776 New Zealand Government *Leadership Statement for International Education* (2011) at 5; Auckland Council *Ethnicity and Migration in Auckland* (Technical Report 2013/012, February 2013).
- 777 Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2013/2014* (December 2014) at i and 13.
- 778 Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2013/2014* (December 2014) at 12.

- 779 See Education Counts "School Rolls – One-on-One Dimensional Tables for Student Numbers" <www.educationcounts.govt.nz>. Charts were adjusted by Student Type and Sector.
- 780 SA Ambrose *The Benefits of Diversity for Education at Carnegie Mellon* (President's Diversity Advisory Council, Carnegie Mellon, 2005) at 1.
- 781 J Gerritsen "Insight for 22 March 2015 – Overseas Students – Boom or Bubble?" *Radio New Zealand* (22 March 2015).
- 782 The Code was established pursuant to s 238F of the Education Act 1989.
- 783 See Code of Practice for the Pastoral Care of International Students, Part 7.
- 784 Immigration New Zealand *2014 Student Visa Application, Approval and Decline List by Nationality* (26 March 2015).
- 785 NZQA *Consultation on Proposed Changes to the NZQF Programme Approval and Accreditation Rules 2013* (2015).
- 786 J Gerritsen "Insight for 22 March 2015 – Overseas Students – Boom or Bubble?" *Radio New Zealand* (22 March 2015).
- 787 The Royal Society of New Zealand *Languages in Aotearoa New Zealand* (March 2013) at 3.
- 788 Tāmaki Makaurau Auckland Languages Strategy Working Group *Ngā Reo o Tāmaki Makaurau – Auckland Languages Strategy* (May 2015) at 11–12.
- 789 Tāmaki Makaurau Auckland Languages Strategy Working Group *Ngā Reo o Tāmaki Makaurau – Auckland Languages Strategy* (May 2015) at 11.
- 790 As noted by Harmut Esser in *Migration, Language and Integration* (AKI Research Review 4, Programme on Intercultural Conflicts and Societal Integration, 2006) at 27, a tolerant, cohesive and welcoming society has a positive effect on migrant motivation to acquire English language proficiency.
- 791 Office of Ethnic Affairs *Language and Integration in New Zealand* (2014) at 1.
- 792 The Royal Society of New Zealand *Languages in Aotearoa New Zealand* (March 2013) at 2.
- 793 The Royal Society of New Zealand *Languages in Aotearoa New Zealand* (March 2013) at 2.
- 794 But see [2.270] for discussion on how superdiversity is diffusing throughout New Zealand.
- 795 See J de Bres "The hierarchy of minority languages in New Zealand" (2015) *Journal of Multilingual and Multicultural Development* 1 at 12. See also Multicultural New Zealand *Our Multicultural New Zealand: New Zealanders Talk About Multiculturalism* (August 2015) at 16.
- 796 See J de Bres "The hierarchy of minority languages in New Zealand" (2015) *Journal of Multilingual and Multicultural Development* 1 at 13.
- 797 See generally New Zealand Medical Council *Beliefs and Medical Practice* (March 2009); New Zealand Medical Council *Good Medical Practice* (April 2013) at 12–13. See [1.73] for discussion of New Zealand's increasing religious diversity.
- 798 *B v Director-General of Social Welfare* [1996] 2 NZLR 134, [1996] NZFLR 337 (CA). This case is also reported as *Re J – An Infant*.
- 799 *B v Director-General of Social Welfare* [1996] 2 NZLR 134 (CA) at 143. This decision was recently followed in *Auckland District Health Board v W* [2012] NZHC 1563, [2014] NZFLR 381 and *Auckland District Health Board v E* [2013] NZHC 2154, [2014] NZFLR 451, both Jehovah's Witness cases. See also *Re Norma* [1992] NZFLR 445, where the parents of a young child suffering from cancer refused to allow her to undergo further hospital testing, preferring to treat her at home according to traditional Samoan medicine; *Director General of Social Welfare v J* HC Auckland M708/97, November 1997, where the parents of a two-year-old boy with cancer believed that he could be cured through Cambodian herbal treatments; and *Auckland Healthcare Services Ltd v Liu* HC Auckland M812/96, 11 July 1996, where the Christian parents of a 12-year-old boy with a detached retina rejected surgery, believing that God would heal his sight.
- 800 *Hallagan v Medical Council of NZ* HC Wellington CIV-2010-485-222, 2 December 2010.
- 801 *Hallagan v Medical Council of NZ* HC Wellington CIV-2010-485-222, 2 December 2010 at [23].
- 802 Health and Disability Commissioner *Canterbury Health Limited* (April 1998) at 82.
- 803 Health and Disability Commissioner *Canterbury Health Limited* (April 1998) at 82.
- 804 See New Zealand Medical Council *Best Health Outcomes for Māori: Practice Implications* (October 2006); New Zealand Medical Council *Best Health Outcomes for Pacific Peoples: Practice Implications* (May 2010).
- 805 The NZMC has, however, published excerpts from Ian St George (ed) *Cole's Medical Practice in New Zealand* (12th ed, NZMC, 2013) on the specific health needs of Asian patients, including ways of engaging with Asian migrant patients.
- 806 "Maternity Services Notice Pursuant to Section 88 of the New Zealand Public Health and Disability Act 2000" (12 April 2007) 41 *New Zealand Gazette* 1026 at cls 3, 4 and CB3.
- 807 See Perinatal and Maternal Mortality Review Committee *Ninth Annual Report of the Perinatal and Maternal Mortality Review Committee* (2015) at 1. See also Ministry of Health

- New Zealand Maternity Clinical Indicators 2012 (2014); Ministry of Health *Annual Update of Key Results: New Zealand Health Survey 2013/14* (2014).
- 808 Health and Disability Commissioner Act 1994, s 10(1)(f) and (g).
- 809 See Ministry of Health “Registering a new profession” (17 June 2014) <www.health.govt.nz>. See “New Zealand Medical Council Statement on complementary and alternative medicine” (March 2011). Also see the comments of the Director General of Health at [5.465] in the Government section.
- 810 See Ministry of Health *Proposal that Traditional Chinese Medicine Become a Regulated Profession under the Health Practitioners Competence Assurance Act 2003: Invitation to submit comments on the proposal to regulate traditional Chinese medicine* (July 2011) at 3.
- 811 Auckland Council *Ethnicity and Migration in Auckland* (2013) at 44.
- 812 Human Rights Commission “A fair go for all” <www.hrc.co.nz>.
- 813 For example, the need for greater recognition of Asian health needs has been identified by the three DHBs operating in Auckland. See Northern DHB Support Agency *Health Needs Assessment of Asian People Living in the Auckland Region* (August 2012).
- 814 See New Zealand Medical Council *Best Health Outcomes for Māori: Practice Implications* (October 2006); New Zealand Medical Council *Best Health Outcomes for Pacific Peoples: Practice Implications* (May 2010).
- 815 The NZMC has, however, published excerpts from Ian St George (ed) *Cole’s Medical Practice in New Zealand* (12th ed, NZMC, 2013) on the specific health needs of Asian patients, including ways of engaging with Asian migrant patients.
- 816 Ministry of Health “Cultural Competency Training Tool available” (press release, 3 July 2012).
- 817 There have been increased reports of unethical and extortionate conduct by witch doctors and black magic practitioners, especially in Auckland’s Indian community. See “Witch doctors ‘liable for deportation’ – Immigration New Zealand” *New Zealand Herald* (online ed, 29 July 2015); J Williamson “Indian community leaders form ‘Sadhu busters’ to out witch doctors” *Auckland Now* (online ed, 1 August 2015).
- 818 See [3.145] for further discussion of FGM and polygamy in New Zealand.
- 819 *Police v Razamjoo* [2005] DCR 408 (DC).
- 820 *Police v Razamjoo* [2005] DCR 408 (DC). For further discussion on the case, see D Griffiths “Pluralism and the Law: New Zealand Accommodates the Burqa” (2006) 11 Otago Law Review 281.
- 821 *Police v Razamjoo* [2005] DCR 408 (DC) at [54].
- 822 *Police v Razamjoo* [2005] DCR 408 (DC) at [110].
- 823 *Police v Razamjoo* [2005] DCR 408 (DC) at [103].
- 824 *Police v Razamjoo* [2005] DCR 408 (DC) at [66]–[67].
- 825 Law Commission *Juries in Criminal Trials: Part One* (NZLC PP32, 1998) at [7] and [24].
- 826 Law Commission *Juries in Criminal Trials: Part One* (NZLC PP32, 1998) at [10].
- 827 There have been concerns around the representativeness of New Zealand juries since the 1990s, particularly in relation to Māori. See S Dunstan, J Paulin and K Atkinson *Trial By Peers? The Composition of New Zealand Juries* (Department of Justice, Wellington, 1995). Several Māori defendants have unsuccessfully challenged the court’s jurisdiction on this basis. See for example *R v Pairama* (1995) 13 CRNZ 496, (1996) 2 HRNZ 464 (CA); *R v Cornelius* CA405/93, 12 November 1993. Section 24(e) of the NZBORA affirms the right of persons charged to trial by jury, and s 25(a) affirms the right to a fair and public hearing by an independent and impartial court. The Law Commission noted in *Juries in Criminal Trials* that, while the NZBORA contains no explicit reference to a defendant’s right to trial by his or her peers, in other jurisdictions where the constitutional right to trial by an impartial jury exists, that right has been interpreted to mean the right to a jury drawn at random from sources representing a fair cross-section of the community. Overseas case law has established that, if a significant amount of the population is excluded from eligibility for jury service on a discriminatory basis with no objective justification (for example, women, particular races, and non-property owners), then the representativeness of the jury list may be diminished, potentially undermining the aims of the jury system. See *Taylor v Louisiana* 419 US 522 (1975); *Lockhart v McCree* 476 US 162 (1986); *Rojas v Berllaque* [2004] 1 WLR 201 (PC). But see *R v Pairama* (1995) 13 CRNZ 496, (1996) 2 HRNZ 464 (CA), where the Court of Appeal held that the courts did not have jurisdiction to order a jury with any particular ethnic composition because the jury ballot system was predicated on random selection. See also *Ellis v R* [2011] NZCA 90, where the appellant unsuccessfully argued that his trial was unfair and in breach of s 25(a) of the NZBORA because he had been tried by a jury unrepresentative of the population. The Court rejected the argument that a significant section of the population, specifically the rural community, was ineligible for jury selection by virtue of the geographical constraint placed on jury districts in s 5(3) of the Juries Act 1981. The Court concluded at [28] that Parliament had enacted s 5(3) because residents should not be inconvenienced by having to travel significant distances in order to be available for jury service. Further, it was consistent with the principle that the jury should be drawn from the community in which the alleged offence

- occurred, not the place where the accused resides. Finally, the principle that the jury should be drawn from the community in which the alleged offence occurred was only to be applied “so far as practicable”.
- 828 Section 24(g) of the NZBORA affirms the right of persons charged to have the free assistance of an interpreter if the person cannot understand or speak the language used in court.
- 829 H Smith “English language issues for jury service by New Zealanders from migrant and refugee backgrounds” (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 58.
- 830 H Smith “English language issues for jury service by New Zealanders from migrant and refugee backgrounds” (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 65–66.
- 831 Juries Act 1981, s 16AA.
- 832 H Smith “English language issues for jury service by New Zealanders from migrant and refugee backgrounds” (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 59.
- 833 H Smith “English language issues for jury service by New Zealanders from migrant and refugee backgrounds” (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 63.
- 834 H Smith “English language issues for jury service by New Zealanders from migrant and refugee backgrounds” (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 65.
- 835 H Smith “English language issues for jury service by New Zealanders from migrant and refugee backgrounds” (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 62.
- 836 H Smith “English language issues for jury service by New Zealanders from migrant and refugee backgrounds” (2015) 10(1) *Kōtuitui: New Zealand Journal of Social Sciences Online* 58 at 62.
- 837 Ministry of Justice *The District Courts New Zealand* (2008) at 10.
- 838 See Ministry of Justice “Expressions of interest: Judges of the High Court” <www.justice.govt.nz>.
- 839 Law Commission *Review of the Judicature Act 1908: Towards a Consolidated Courts Act* (NZLC IP29, 2012) at [3.31].
- 840 E Stanley *Human Rights and Prisons: A Review to the Human Rights Commission* (July 2011) at 36.
- 841 Prison Operations Manual at [F.05].
- 842 See Statistics New Zealand “New Zealand’s prison population” at Table 2 <www.stats.govt.nz>.
- 843 The courts are able to recognise the potential hardship to offenders in prison due to their personal circumstances, such as language and cultural difficulties, under s 8(h) of the Sentencing Act 2002. See for example *R v Lin* [2013] NZHC 2837 at [28].
- 844 United Nations Committee against Torture in its *Concluding Observations on the Sixth Periodic Report of New Zealand* (May 2015) at [14].
- 845 FGM in New Zealand “Female Genital Mutilation: Information for Health and Child Protection Professionals” (2011) <fgm.co.nz>.
- 846 From 1979 to 2010, New Zealand accepted the following number of refugees per country of origin: 1764 Somalians, 1161 Ethiopians, 419 Sudanese and 361 Eritreans. See Office of Ethnic Communities “Ethnicity Data Online Resource” <www.ethniccommunities.govt.nz>.
- 847 Crimes Act 1961, s 204A(4).
- 848 Department of the Attorney-General *Female Genital Mutilation Legal Framework: Final Report* (Australia, March 2013) at 4.
- 849 Department of the Attorney-General *Female Genital Mutilation Legal Framework: Final Report* (Australia, March 2013) at 15.
- 850 “Doctor found not guilty of performing FGM” *BBC News* (online ed, 4 February 2015).
- 851 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [35].
- 852 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [24].
- 853 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [25].
- 854 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [24].
- 855 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [28].
- 856 Home Affairs Committee *Female Genital Mutilation: The Case for a National Action Plan – Second Report* (25 June 2014) at [28].
- 857 Around 20,000 girls are estimated to be at risk of FGM in the United Kingdom. See Home Office *Female Genital Mutilation: The Facts* (2 April 2014) at 2. For discussion of legal developments concerning circumcision overseas and the rights to religious freedom and to manifest religious belief, see A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.14.4]–[14.14.8].

- 858 S Knights *Freedom of Religion, Minorities and the Law* (Oxford University Press, Great Britain, 2007) at 179.
- 859 Immigration New Zealand *Form for Partners Supporting Partnership-Based Temporary Entry Applications* (Form 1146).
- 860 T Shadwell "Police get guidelines on investigating forced marriages" *Stuff.co.nz* (23 May 2015).
- 861 Care of Children Act 2004, s 4(2)(a)(ii). See A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.15] for discussion of religion and family law, including the role of religion in custody disputes.
- 862 Care of Children Act 2004, s 133, definition of "cultural report".
- 863 *Sharif v Attorney-General* [2011] NZFLR 145 (HC). But see also *Re X* [2004] NZFLR 865 (FC), where the Family Court declined an application for X to adopt his three sisters from Pakistan and bring them to New Zealand. X argued that Islamic law and custom imposed a responsibility on X to care for his sisters after his father's death. The Court held that allowing the application would circumvent immigration policy.
- 864 *Sharif v Attorney-General* [2011] NZFLR 145 (HC) at [56]. Interestingly, Māori whāngai adoptions have no legal status according to s 19 of the Adoption Act 1955. The courts have noted that the idea of whāngai adoption is inconsistent with the concept in the Adoption Act that adoption severs the child's links to their biological family (despite increased efforts towards "open adoption"). See *Keelan v Peach* [2003] 1 NZLR 589 (CA). Usually whāngai arrangements are recognised through guardianship status only.
- 865 *U v Attorney-General* [2012] NZCA 616 at [31].
- 866 J Mountfort and C Achmad "Intercountry adoptions under the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption" (2010) 6 NZFLJ 316.
- 867 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption 1993, art 17.
- 868 V Gangan "New laws for dispersing ashes in NZ concerning" (*The Global Indian*, 6 June 2014) <www.theglobalindian.co.nz>.
- 869 Funeral Directors Association of New Zealand "City Council must not charge for scattering of ashes, say funeral directors" (press release, 7 August 2014); W Thompson "Bid to limit scatter of ashes" *New Zealand Herald* (online ed, 5 June 2014).
- 870 The proposed bylaw was the Auckland Council's Cemeteries and Crematoria Bylaw 2014 and the associated *Cemeteries and Crematoria Code of Practice 2014* (31 July 2014).
- 871 Coroners Act 2006, s 3(2)(b)(i). Immediate family is broadly defined in s 9 to include members of the deceased's family, whānau, or other culturally recognised family group, who were either in a close relationship with the deceased or "had, in accordance with customs or traditions of the community of which the person was part, responsibility for, or an interest in, the person's welfare and best interests".
- 872 Coroners Act 2006, s 83(1).
- 873 *Takamore v Clarke* [2012] NZSC 116; *Takamore v Clarke* [2011] NZCA 587, [2012] 1 NZLR 573; *Clarke v Takamore* [2010] 2 NZLR 525 (HC).
- 874 Animal Welfare Act 1999, s 73(4). Advice from Chen Palmer to Rabbi Jeremy Lawrence, Auckland Hebrew Congregation (29 April 2002).
- 875 Animal Welfare (Commercial Slaughter) Code of Welfare 2010, Minimum Standard Numbers 6 and 12.
- 876 D Fisher "MP Carter makes quick u-turn" *New Zealand Herald* (online ed, 28 November 2010). As at last year, the settlement arrangement regarding poultry continued and no negotiations had been entered into with regards to the kosher killing of sheep. See "SAFE condemns kosher sheep kill" *Radio New Zealand* (17 May 2014). For discussion of whether the law reform would have constituted a limitation on the rights affirmed by ss 13 and 15 of the New Zealand Bill of Rights Act 1990, and a discussion of the position to animal slaughter overseas, see A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.9.21]–[14.9.33]. New rules relating to export requirements for halal products were introduced in June 2015 under the Animal Products (Overseas Market Access Requirements for Halal Assurances) Notice (No 2) 2015.
- 877 Meat Industry Association "Frequently Asked Questions: Halal" <www.mia.co.nz>.
- 878 "Select Committees" *Trans Tasman Political Alert* (15/2001, 30 July 2015).
- 879 Employment Relations Act 2000, s 103(1)(c).
- 880 Employment Relations Act 2000, s 103(1)(e).
- 881 Human Rights Act 1993, s 21(1)(c).
- 882 Human Rights Act 1993, s 21(1)(d).
- 883 Human Rights Act 1993, s 21(1)(e).
- 884 Human Rights Act 1993, s 21(1)(f).
- 885 Human Rights Act 1993, s 21(1)(g).
- 886 Human Rights Act 1993, s 20J(1).
- 887 Human Rights Act 1993, s 92I.
- 888 Human Rights Act 1993, s 92J.
- 889 Human Rights Act 1993, s 22.

- 890 Human Rights Act 1993, s 65.
- 891 *Nakarawa v AFFCO New Zealand Ltd* [2014] NZHRRT 9 at [74.8].
- 892 *Nakarawa v AFFCO New Zealand Ltd* [2014] NZHRRT 9. See also *Meulenbroek v Vision Antenna Systems Ltd* [2014] NZHRRT 51.
- 893 *Nakarawa v AFFCO New Zealand Ltd* [2014] NZHRRT 9 at [74.7].
- 894 *Nakarawa v AFFCO New Zealand Ltd* [2014] NZHRRT 9 at [74.7].
- 895 *Nakarawa v AFFCO New Zealand Ltd* [2014] NZHRRT 9 at [74.7], citing *McGill University Health Centre (Montreal General Hospital) v Syndicat des employés de l'Hôpital général de Montréal* 2007 SCC 4, [2007] 1 SCR 161 at [22].
- 896 *Nakarawa v AFFCO New Zealand Ltd* [2014] NZHRRT 9 at [74.5].
- 897 Human Rights Commission *Religious Diversity in the New Zealand Workplace: Questions & Concerns* (December 2011) at 6.
- 898 Human Rights Act 1993, s 28(1).
- 899 Human Rights Act 1993, s 28(2). Pursuant to s 58(1), the Act permits educational establishments to be maintained wholly or principally for students of one religious belief.
- 900 Human Rights Act 1993, s 35.
- 901 *Haupini v SRCC Holdings Ltd* [2011] NZHRRT 20 (28 September 2011).
- 902 *Haupini v SRCC Holdings Ltd* [2011] NZHRRT 20 (28 September 2011) at [53].
- 903 *Haupini v SRCC Holdings Ltd* [2011] NZHRRT 20 (28 September 2011) at [53].
- 904 *Haupini v SRCC Holdings Ltd* [2011] NZHRRT 20 (28 September 2011) at [62.b].
- 905 Although s 3 of the NZBORA states that the NZBORA only applies to government acts, or exercises of public function, as is discussed below, the United Nations Human Rights Committee, in its General Comment on the interpretation of art 27 of the ICCPR, the equivalent of our s 20, noted that art 27 required the state to take positive steps to prevent the denial of the right by third parties: UNHRC *General Comment 18 – Non-discrimination* UN Doc HRI/GEN/1/Rev 1(1994). A similar conclusion has been reached, for example, in respect of the right to life and the right to freedom from torture, both of which oblige the state to also take action to prevent threats to these rights by private persons or entities.
- 906 *Haupini v SRCC Holdings Ltd* [2011] NZHRRT 20 (28 September 2011) at [68].
- 907 This process is addressed in more detail in M Chen *Public Law Toolbox* (2nd ed, LexisNexis, Wellington, 2014) at [16.125]–[16.129].
- 908 M Chen *Public Law Toolbox* (2nd ed, LexisNexis, Wellington, 2014) at [16.131]–[16.134].
- 909 Human Rights Act 1993, s 98. The Chair is appointed by the Governor-General on the recommendation of the Minister of Justice for a five-year term: ss 99, 99A and 100 of the Human Rights Act 1993. The panel is made up of 20 members appointed by the Minister of Justice on the recommendation of the Governor-General: s 101. At least three of the panel members must be barristers or solicitors of the High Court with at least five years' practising experience: s 101(2A).
- 910 For example, non-attendance after being summoned to attend to give evidence or to produce papers is an offence under s 113 of the Human Rights Act 1993, and s 114 concerns the power to commit a person into custody for contempt. The Tribunal can dismiss any proceedings that it is satisfied are trivial, frivolous or vexatious and are not brought in good faith (s 115), and it must give reasons for its decisions (s 116). A decision of the majority of the members shall be the decision of the Tribunal (s 104(3)). The Tribunal regulates its procedure in such manner as it thinks fit, subject to the provisions of the HRA, and under the Human Rights Review Tribunal Regulations 2002 (s 104(5)).
- 911 Human Rights Act 1993, s 105.
- 912 Human Rights Act 1993, s 92J(1). A declaration that an Act is inconsistent with the NZBORA does not affect the validity, application or enforcement of the Act, and nor does it prevent the continuation of the act, omission, policy or activity that was the subject of the complaint. The declaration must, however, be brought to the attention of the House of Representatives. See Human Rights Act 1993, s 92K.
- 913 This provision was inserted in response to the High Court's decision in *New Zealand Van Lines Ltd v Proceedings Commissioner* [1995] 1 NZLR 100, [1994] 2 ERNZ 140 (HC).
- 914 The High Court held in *BHP New Zealand Steel Ltd v O'Dea* (1997) 4 HRNZ 456 (HC) at 477 and 478 that this provision was not to be interpreted as an "open cheque" to provide any relief. The "operative moving force" for any remedy was the remedy sought by the plaintiff.
- 915 See M Chen *Public Law Toolbox* (2nd ed, LexisNexis, Wellington, 2014) at [16.94] and Human Rights Act 1993, s 132.
- 916 See also M Chen "Free Speech Safety Valve allows Political Debate without Violence" *New Zealand Herald* (online ed, 28 July 2011). Section 132 is not the only provision in the Human Rights Act 1993 which requires the consent of the Attorney-General before proceedings

	can be brought; it is also found in s 135, which attaches to the offence of refusing to allow entrance by the public to vehicles, facilities or places. This section replaced s 3 of the now repealed Race Relations Act 1971. Section 3 prohibited anyone from refusing the public access to places, vehicles or facilities due to discrimination on the basis of colour, race, ethnic or national origin. That section, and the new s 135, are both intended to criminalise segregation. For example, it would prohibit bus owners from refusing to allow any member of the public to sit on their bus, or to sit only in certain places. These provisions are rarely used, but remain a threat to deter behaviour that may incite racial disharmony. Other statutes also confer a similar discretionary power. See for example s 124 of the Crimes Act 1961 (indecent exhibition) or s 144 of the Films, Videos, and Publications Classification Act 1993 (objectionable publication).	not exceeding \$1,000 (or \$500 where the person uses indecent or obscene words).
917	Race Relations Commissioner <i>Commission Statement on Right Wing Resistance Leaflets</i> (12 May 2011).	924 See <i>Morse v Police</i> [2011] NZSC 45, [2012] 2 NZLR 1, (2011) 25 CRNZ 174.
918	A survey of cases brought under these provisions at the time of writing found only one successful case establishing a breach of s 61 (<i>Proceedings Commissioner v Archer</i> (1996) 3 HRNZ 123 (CRT)) and only two cases involving a breach of s 63 (<i>B Osborne & H Jakobsen & Wanganui Polytechnic Complaint No A3</i> , 2 September 1998 (Office of the Race Relations Conciliator) and <i>Satnam Singh v Shane Singh and Scorpion Liquor</i> (2006) [2015] NZHRRT 8). To date, there have been no successful cases brought under s 131. A successful claim was brought, however, under s 25(1) of the Race Relations Act 1971 (the precursor of s 131 of the HRA) in <i>King-Ansell v Police</i> [1979] 2 NZLR 531 (CA).	925 See Adams on Criminal Law <i>Offences and Defences</i> (online ed) at [SO4.01] for a full discussion of relevant factors in this assessment.
919	Human Rights Commission <i>Annual Report 2014</i> (October 2014) at 28.	926 Crown Law <i>Solicitor-General's Prosecution Guidelines</i> (July 2013) at [5.8.17].
920	Email from Pele Walker, Chief Mediator, Human Rights Commission to Mai Chen regarding unlawful discrimination statistics (7 August 2015).	927 Emphasis added.
921	Film, Videos, and Publications Classification Act 1993, s 3(3)(e).	928 Although one current member is a first generation New Zealander (Samoan, with Chinese and Tokelauan blood).
922	Films, Videos, and Publications Classification Act 1993, s 123(1). Where no mens rea is established on the part of the defendant, the penalty is a fine (s 123(2)), but individuals may be liable for a maximum penalty of 14 years' imprisonment on conviction where they knew or had reasonable cause to suspect the publication was objectionable (s 124(2)(a)). Companies may be liable for a fine of up to \$200,000 (s 124(2)(b)). Different penalties apply in respect of possession of an objectionable publication: see ss 131 and 131A. There is a presumption of imprisonment in the case of repeat offenders: s 132B.	929 <i>AA Smartfuel Television and YouTube Advertisement ASA</i> 15/223, 23 June 2015. The Authority relied on its 2007 decision not to uphold a complaint about the way an Asian actor in the "30 Second Spray and Walk Away" advertisement spoke and acted when portraying the character. See <i>30 Second Spray and Walk Away Television Advertisement ASA</i> 07/417, 13 November 2007.
923	The penalty for disorderly behaviour is a fine not exceeding \$2,000 or three months' imprisonment. The penalty for offensive behaviour or language is a fine	930 Employment Relations Act 2000, s 4.
		931 Holidays Amendment Act 2010, s 12, which inserted ss 44A–44C into the Holidays Act 2003. Requests for such transfer must be made and dealt with in good faith and cannot reduce the total number of public holidays that an employee is entitled to, avoid the payment of public holiday penal rates, or an employee's entitlement to alternative holidays for working on public holidays.
		932 Holidays Act 2003, s 69(3)(c).
		933 Human Rights Act 1993, s 21(1)(d).
		934 <i>Proceedings Commissioner v Boakes</i> CRT Decision 1/94, 13 April 1994 (NZCRT).
		935 <i>Proceedings Commissioner v Boakes</i> CRT Decision 1/94, 13 April 1994 (NZCRT) at 7.
		936 Land Transport (Road User) Rule 2004, r 11.8(7).
		937 Employment Relations Act 2000, s 103(1)(c).
		938 Employment Relations Act 2000, s 103(1)(e).
		939 Employment Relations Act 2000, s 104(1).
		940 Employment Relations Act 2000, s 104(2).
		941 Employment Relations Act 2000, s 117(1)(c).
		942 Employment Relations Act 2000, s 117(2).
		943 Employment Relations Act 2000, s 117(3).
		944 Employment Relations Act 2000, s 117(4).
		945 Employment Relations Act 2000, s 118(2).
		946 Employment Relations Act 2000, ss 123(1)(a) and 125(2).
		947 Employment Relations Act 2000, s 123(1)(b).

948 Employment Relations Act 2000, s 123(1)(c).

949 Employment Relations Act 2000, s 123(1)(ca).

950 Employment Relations Act 2000, s 123(1)(d)(ii).

951 Employment Relations Act 2000, s 123(1)(d)(i) and (ii).

952 New Zealand Bill of Rights Act 1990, s 3.

953 New Zealand Bill of Rights Act 1990, s 3(b).

954 For a full discussion of the application of the NZBORA, see A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, Wellington, 2005) at ch 5. See also A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015).

955 New Zealand Bill of Rights Act 1990, s 13.

956 New Zealand Bill of Rights Act 1990, s 14.

957 New Zealand Bill of Rights Act 1990, s 15.

958 New Zealand Bill of Rights Act 1990, s 16.

959 New Zealand Bill of Rights Act 1990, s 17.

960 New Zealand Bill of Rights Act 1990, s 18.

961 New Zealand Bill of Rights Act 1990, s 19.

962 New Zealand Bill of Rights Act 1990, s 20.

963 M Chen *Public Law Toolbox* (2nd ed, LexisNexis, Wellington, 2014) at [16.18]–[16.19].

964 Judges do not have an obligation to raise NZBORA issues if the parties to a dispute do not do so. Supreme Court Justice Peter Blanchard suggests in his paper “New Zealand Bill of Rights Act 1990: Where have we got to after 16 years?” (2008) 2 NZLR 263, that maybe judges should have such an obligation.

965 A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, Wellington, 2005) at [7.11.2]. See also A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015).

966 See *Ministry of Transport v Noort* [1992] 3 NZLR 260, (1992) 8 CRNZ 114 (CA); *Police v Curran* [1992] 3 NZLR 260 (CA) at 272; *Quilter v Attorney-General* [1998] 1 NZLR 523 (CA) at 581; *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 (CA).

967 *R v Hansen* [2007] NZSC 7, [2007] 3 NZLR 1.

968 *R v Hansen* [2007] NZSC 7, [2007] 3 NZLR 1 at [92]. For critical discussion, see C Geiringer “The Principle of Legality and the Bill of Rights Act: A Critical Examination of *R v Hansen*” (2008) 6 NZJPIL 59. See also C Geiringer “It’s Interpretation, Jim, but not as we know it: *Ghaidan v Godin-Mendoza*, the House of Lords and Rights-Consistent Interpretation” in P Morris and H Greatrex (eds) *Human Rights Research, Victoria University of Wellington: Papers presented at the Symposium on*

Interdisciplinary Approaches to Human Rights held at Victoria University of Wellington on 25 August 2004 (Victoria Human Rights Programme, 2005); J McLean “Legislative Invalidity, Human Rights Protection and s 4 of the New Zealand Bill of Rights Act” [2001] NZ L Rev 421. For discussion of the operation of the NZBORA in a specialised administrative context, see C Geiringer “Moving from Self-Justification to Demonstrable Justification – the Bill of Rights and the Broadcasting Standards Authority” in J Finn and S Todd (eds) *Law, Liberty, Legislation* (LexisNexis, Wellington, 2008).

969 UNHRC *General Comment No 22 – Article 18* UN Doc HRI/GEN/1/Rev 1 (1994) at [1].

970 UNHRC *General Comment No 22 – Article 18* UN Doc HRI/GEN/1/Rev 1 (1994) at [2].

971 UNHRC *General Comment No 22 – Article 18* UN Doc HRI/GEN/1/Rev 1 (1994) at [1].

972 *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 (CA) at [36].

973 *Police v Razamjoo* [2005] DCR 408 (DC) at [97]. See also *Regina v Secretary of State for Education and Employment and others, ex parte Williamson* [2005] UKHL 15 (HL); UNHRC *General Comment No 22 – Article 18* UN Doc HRI/GEN/1/Rev 1 (1994).

974 A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, Wellington, 2005) at [14.6.13]; A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.6.16].

975 *Larissis v Greece* (1998) 27 EHRR 329 (ECtHR) at [51].

976 See A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, Wellington, 2005) at [14.8.5]–[14.8.6]; A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [14.6.18]–[14.6.20].

977 See also UNHRC *General Comment No 22 – Article 18* UN Doc HRI/GEN/1/Rev 1 (1994).

978 *Mendelssohn v Attorney-General* (1999) 5 HRNZ 1 (CA).

979 *Mendelssohn v Attorney-General* (1999) 5 HRNZ 1 (CA) at [20].

980 UNHRC *General Comment No 22 – Article 18* UN Doc HRI/GEN/1/Rev 1 (1994) at [9] and [10].

981 *Religionsgemeinschaft der Zeugen Jehovas v Austria* (40825/98) Section I, ECtHR 31 July 2008.

982 *Gay and Lesbian Clergy Anti-Discrimination Society Inc v Bishop of Auckland* [2013] NZHRRT 36, (2013) 9 HRNZ 612.

983 *Gay and Lesbian Clergy Anti-Discrimination Society Inc v Bishop of Auckland* [2013] NZHRRT 36, (2013) 9 HRNZ 612 at [92].

984 *R v Lee* HC Auckland T10974, 3 December 2001.

- 985 *R v Lee* HC Auckland T10974, 3 December 2001 at [13].
The defendant later successfully appealed against his conviction in *R v Lee* [2006] 3 NZLR 42, (2006) 22 CRNZ 568 (CA) on the basis that the trial Judge should have let the defence of consent be put to the jury.
- 986 *B v Director-General of Social Welfare* [1996] 2 NZLR 134 (CA) at 145.
- 987 *B v Director-General of Social Welfare* [1996] 2 NZLR 134 (CA) at 146.
- 988 *B v Director-General of Social Welfare* [1996] 2 NZLR 134 (CA) at 146.
- 989 *Feau v Department of Social Welfare* (1995) 2 HRNZ 528 (HC).
- 990 *Feau v Department of Social Welfare* (1995) 2 HRNZ 528 (HC) at 530.
- 991 *Feau v Department of Social Welfare* (1995) 2 HRNZ 528 (HC) at 530.
- 992 *Browne v CanWest TV Works Ltd* [2008] 1 NZLR 654, (2007) 8 HRNZ 499 (HC).
- 993 *Browne v CanWest TV Works Ltd* [2008] 1 NZLR 654, (2007) 8 HRNZ 499 (HC) at [48].
- 994 *Browne v CanWest TV Works Ltd* [2008] 1 NZLR 654, (2007) 8 HRNZ 499 (HC) at [50].
- 995 *Browne v CanWest TV Works Ltd* [2008] 1 NZLR 654, (2007) 8 HRNZ 499 (HC) at [50].
- 996 *Browne v CanWest TV Works Ltd* [2008] 1 NZLR 654, (2007) 8 HRNZ 499 (HC) at [50].
- 997 *Otto-Preminger-Institut v Austria* [1994] ECHR 26 (ECHR) at 6, cited in *Browne v CanWest TV Works Ltd* [2008] 1 NZLR 654, (2007) 8 HRNZ 499 (HC) at [50].
- 998 New Zealand Bill of Rights Act 1990, s 19(2).
- 999 *A Bill of Rights for New Zealand: A White Paper* (1985) AJHR A.6 at [10.83].
- 1000 UNHRC *General Comment 23 – Article 27* UN Doc HRI/GEN/1/Rev 1 (1994) at [9].
- 1001 The Royal Society of New Zealand *Languages in Aotearoa New Zealand* (March 2013) at 2.
- 1002 UNHRC *General Comment 23 – Article 27* UN Doc HRI/GEN/1/Rev 1 (1994) at [5.1]–[5.2].
- 1003 UNHRC *General Comment 23 – Article 27* UN Doc HRI/GEN/1/Rev 1 (1994) at [5.1]–[5.2].
- 1004 See S Ryan “Growing but not that fast” *Weekend Herald* (29 November 2010); Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2013/2014* (December 2014) at i; Ministry of Education *Exchange Rates and International Student Enrolments in New Zealand 2003–2013* (25 June 2014) at 5; Ministry of Education *Export Education Levy Key Statistics from 1 January to 30 April (2003–2014)* at Table 4.
- 1005 D McKay *Review of Central Government Policy, Implementation, Strategy and Leadership Effectiveness in Auckland: Report for Chief Executives Governance Group* (August 2014) at 5.
- 1006 *King-Ansell v Police* [1979] 2 NZLR 531 (CA) at 538.
- 1007 *Mandla v Dowell Lee* [1983] 2 AC 548 (HL).
- 1008 See Ministry of Justice *Guidelines on the New Zealand Bill of Rights Act 1990* (November 2004).
- 1009 See the comments of Judge Moore in *Police v Taurua* [2002] DCR 306 (DC) at [50].
- 1010 See *Lansmann v Finland* Comm No 511/1992, 26 October 1994 (UNHRC) at [9.4]; *Mahuika v New Zealand* (2000) 7 HRNZ 629 (UNHRC) at [9.4].
- 1011 See for example *Lansmann v Finland* Comm No 511/1992, 26 October 1994 (UNHRC) at [9.5]; *Mahuika v New Zealand* (2000) 7 HRNZ 629 (UNHRC) at [9.5].
- 1012 *Mendelssohn v Attorney-General* [1999] 2 NZLR 268 (CA).
- 1013 *Mendelssohn v Attorney-General* [1999] 2 NZLR 268 (CA) at [14].
- 1014 See A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, Wellington, 2005) at [17.27.1]; A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [17.22.9].
- 1015 UNHRC *General Comment 23 – Article 27* UN Doc HRI/GEN/1/Rev 1 (1994) at [6.2].
- 1016 UNHRC *General Comment 23 – Article 27* UN Doc HRI/GEN/1/Rev 1 (1994) at [6.1].
- 1017 S Joseph and M Castan *The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary* (3rd ed, Oxford University Press, Oxford, 2013) at [24.53].
- 1018 UNHRC *Concluding Observations on the United States* UN Doc CCPR/C/79/Add 50 (1995) at [37].
- 1019 *Seales v Attorney-General* [2015] NZHC 1239.
- 1020 See for example P Rishworth “Minority Rights” in P Rishworth and others *The New Zealand Bill of Rights* (Oxford University Press, Oxford, 2003) at 408.
- 1021 *Kitok v Sweden* Comm No 197/1985, 27 July 1998 (UNHRC) at [9.3].
- 1022 UNHRC *General Comment 23 – Article 27* UN Doc HRI/GEN/1/Rev 1 (1994) at [7].
- 1023 *Mahuika v New Zealand* (2000) 7 HRNZ 629 (UNHRC) at [9.3].
- 1024 *Mahuika v New Zealand* (2000) 7 HRNZ 629 (UNHRC).

- 1025 *Mahuika v New Zealand* (2000) 7 HRNZ 629 (UNHRC) at [7.8]–[7.9].
- 1026 *Mahuika v New Zealand* (2000) 7 HRNZ 629 (UNHRC) at [9.6] and [9.8].
- 1027 *New Zealand Underwater Association Incorporated v Auckland Regional Council* PT A131/91, 16 December 1991.
- 1028 *New Zealand Underwater Association Incorporated v Auckland Regional Council* PT A131/91, 16 December 1991 at 49.
- 1029 *New Zealand Underwater Association Incorporated v Auckland Regional Council* PT A131/91, 16 December 1991 at 49.
- 1030 UNHRC *General Comment 23 – Article 27* UN Doc HRI/GEN/1/Rev 1 (1994) at [5.3].
- 1031 UNHRC *General Comment 23 – Article 27* UN Doc HRI/GEN/1/Rev 1 (1994) at [5.3]. See New Zealand Bill of Rights Act 1990, s 24(g); ICCPR, art 14.3(f). See also *Diergaardt v Namibia* CCPR/C/69/D/760/1997, 6 September 2000 (UNHRC).
- 1032 See for example UNHRC *CLD v France*, *Comm No 228/1987* UN Doc Supp No 40 (A/43/40) (1988), where the applicant contended that the French Postal Administration's refusal to issue him postal cheques printed in the Breton language constituted a violation of art 27. The UNHRC concluded that it had no jurisdiction to hear the claim, as France had entered a reservation to art 27. *Mavlonov v Uzbekistan* UN Doc CCPR/C/95/D/1334/2004 (2009) is the only case on the rights of linguistic minorities where art 27 has successfully been relied on. In that case, the Press Department of the Samarkand region refused to re-register a newspaper written in the Oina language. The newspaper contained educational and other materials for Tajik students and young persons on events and matters of cultural interest. The UNHRC held at [8.7] that:
- In the circumstances of the present case, the Committee is of the opinion that the use of a minority language press as means of airing issues of significance and importance to the Tajik minority community in Uzbekistan, by both editors and readers, is an essential element of the Tajik minority's culture. Taking into account the denial of the right to enjoy minority Tajik culture, the Committee finds a violation of article 27, read together with article 2.
- 1033 For further discussion on the UNHRC's approach to the rights of linguistic minorities under the ICCPR, see M Paz "The Failed Promise of Language Rights" (2013) 54(1) Harvard International Law Journal 157.
- 1034 Special Rapporteur *Report of the Special Rapporteur on Minority Issues* UN Doc A/HRC/22/49. See also Special Rapporteur *Report of the Special Rapporteur on Minority Issues* UN Doc A/HRC/28/64/Add 1 (2015).
- 1035 Office of the High Commissioner for Human Rights *Language Rights of Linguistic Minorities: A Practical Guide for Implementation* (2015) at 14.
- 1036 UNHRC *Mavlonov v Uzbekistan* UN Doc CCPR/C/95/D/1334/2004 (2009) at [8.7].
- 1037 Although language and culture are not prohibited grounds of discrimination, a person's language and culture are likely to be regarded as an intrinsic part or manifestation of his or her ethnicity and/or nationality.
- 1038 A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, Wellington, 2005) at [17.29.2]; A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [17.22.14].
- 1039 A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, Wellington, 2005) at [17.29.2]; A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [17.22.8]; Ministry of Justice *Guidelines on the New Zealand Bill of Rights Act 1990* (November 2004) at [20.07].
- 1040 UNHRC *Diergaardt v Namibia* *Comm No 760/1997* UN Doc CCPR/C/69/D/760/1997 (2000).
- 1041 UNHRC *Diergaardt v Namibia* *Comm No 760/1997* UN Doc CCPR/C/69/D/760/1997 (2000) at [10.10].
- 1042 UNHRC *Diergaardt v Namibia* *Comm No 760/1997* UN Doc CCPR/C/69/D/760/1997 (2000) at [10.10].
- 1043 UNHRC *Diergaardt v Namibia* *Comm No 760/1997* UN Doc CCPR/C/69/D/760/1997 (2000) at [10.10].
- 1044 UNHRC *Diergaardt v Namibia* *Comm No 760/1997* UN Doc CCPR/C/69/D/760/1997 (2000) at [12].
- 1045 M Paz "The Failed Promise of Language Rights" (2013) 54(1) Harvard International Law Journal 157 at 195.
- 1046 Petition Number 2008/139, presented by Su'a William Sio, 1 September 2011.
- 1047 Bilingual Leo Pacific Coalition "Call for Recognition of Pacific Languages" (press release, 24 March 2011).
- 1048 Education and Science Committee *Inquiry into Pacific Languages in Early Childhood Education* (November 2013).
- 1049 Education and Science Committee *Inquiry into Pacific languages in early childhood education* (November 2013) at 5.
- 1050 UNHRC *Diergaardt v Namibia* *Comm No 760/1997* UN Doc CCPR/C/69/D/760/1997 (2000).
- 1051 See individual opinion of Nisuke Ando (dissenting). See also individual opinion of Abdalfattah Amor (dissenting) and individual opinion of PN Bhagwati, Lord Colville, and Maxwell Yalden (dissenting).

- 1052 This has been the experience in Europe. See A Rudiger and S Spencer "Social Integration of Migrants and Ethnic Minorities: Policies to Combat Discrimination" (paper presented to OECD's Economic and Social Aspects of Migration Conference, Brussels, 21–22 January 2003) at 4. Rudiger and Spencer recommend that the European Commission develop a coherent integration policy framework at EU level, which builds on the experiences of Member States but overcomes national constraints, based on a twin track approach of promoting equality and managing diversity.
- 1053 Human Rights Act 1993, s 5(1).
- 1054 Human Rights Act 1993, s 5(2).
- 1055 See Human Rights Act 1993, s 16.
- 1056 Interview with Pele Walker, Chief Mediator, Human Rights Commission regarding cross-cultural disputes in New Zealand (27 July 2015).
- 1057 BZ Tamanaha "Understanding Legal Pluralism: Past to Present, Local to Global" (2008) 30 Sydney Law Review 375 at 390.
- 1058 J Griffiths "What is Legal Pluralism" (1986) 24 Journal of Legal Pluralism & Unofficial Law 1 at 38.
- 1059 J Griffiths "What is Legal Pluralism" (1986) 24 Journal of Legal Pluralism & Unofficial Law 1 at 3.
- 1060 BZ Tamanaha "Understanding Legal Pluralism: Past to Present, Local to Global" (2008) 30 Sydney Law Review 375 at 390.
- 1061 BZ Tamanaha "Understanding Legal Pluralism: Past to Present, Local to Global" (2008) 30 Sydney Law Review 375 at 386.
- 1062 *Takamore v Clarke* [2012] NZSC 116. See *M Chen Public Law Toolbox* (2nd ed, LexisNexis, Wellington, 2014) at [16.41]–[16.42]. See also F Adcock "Māori and the Bill of Rights Act: A Case of Missed Opportunities?" (2013) 11 NZJPI 183 at 194.
- 1063 *Clarke v Takamore* [2010] 2 NZLR 525 (HC).
- 1064 *Takamore v Clarke* [2011] NZCA 587, [2012] 1 NZLR 573.
- 1065 *Takamore v Clarke* [2012] NZSC 116 at [164].
- 1066 *Takamore v Clarke* [2012] NZSC 116 at [175].
- 1067 See discussion in *M Chen Public Law Toolbox* (2nd ed, LexisNexis, Wellington, 2014) ch 21 at [21.51].
- 1068 *Takamore v Clarke* [2012] NZSC 116 at [101].
- 1069 *Takamore v Clarke* [2012] NZSC 116 at [105].
- 1070 *Mason v R* [2013] NZCA 310, (2013) 26 CRNZ 464.
- 1071 *Mason v R* [2013] NZCA 310, (2013) 26 CRNZ 464 at [35].
- 1072 *Mason v R* [2013] NZCA 310, (2013) 26 CRNZ 464 at [3] and [35].
- 1073 *Young v Young* HC Auckland M1732/88, 16 May 1995.
- 1074 *Young v Young* HC Auckland M1732/88, 16 May 1995 at 7.
- 1075 *Young v Young* HC Auckland M1732/88, 16 May 1995 at 8.
- 1076 *Cartlidge and Khandu v Khandu* HC Wellington CP551/86, 26 November 1987.
- 1077 *Cartlidge and Khandu v Khandu* HC Wellington CP551/86, 26 November 1987 at 5.
- 1078 *Cartlidge and Khandu v Khandu* HC Wellington CP551/86, 26 November 1987 at 10.
- 1079 *Cartlidge and Khandu v Khandu* HC Wellington CP551/86, 26 November 1987 at 11.
- 1080 D MacEoin *Sharia Law or 'One Law For All'?* (Institute for the Study of Civil Society, London, June 2009) at 69.
- 1081 D MacEoin *Sharia Law or 'One Law For All'?* (Institute for the Study of Civil Society, London, June 2009) at 4–5.
- 1082 M Boyd *Dispute Resolution in Family Law: Protecting Choice, Promoting Inclusion* (December 2004) at 113.
- 1083 Family Statute Law Amendment Act 2006 (ON), s 1.
- 1084 Arbitration Act 1996, sch 1, art 28. For further discussion on the possibility of Islamic arbitration of family law disputes in New Zealand see L Ashworth "Islamic Arbitration of Family Law Disputes in New Zealand" (2010, dissertation submitted for LLB (Hons) Programme, University of Otago, October 2010).
- 1085 Interview with Dr Anwar Ghani, President of the Federation of Islamic Associations of New Zealand (27 March 2015).
- 1086 Marriage Act 1955, s 2(1), definition of "minor", and s 18. Minors who are 16 years old or over may be married with parental consent.
- 1087 See discussion at [2.123].
- 1088 See [4.157] for further discussion of extremism and the recently enacted terrorism laws.
- 1089 W Kymlicka, C Lernerstedt and M Matravers "Introduction" in W Kymlicka, C Lernerstedt and M Matravers (eds) *Criminal Law and Cultural Diversity* (Oxford University Press, Oxford, 2014) at 4. For a further discussion on the use of cultural defence in overseas jurisdictions, see M-C Foblets and A Dundes Renteln *Multicultural Jurisprudence: Comparative Perspectives on the Cultural Defense* (Hart Publishing, Oxford and Portland Oregon, 2009).
- 1090 *R v Talatana* (1991) 7 CRNZ 33 (CA).
- 1091 *R v Talatana* (1991) 7 CRNZ 33 (CA) at 35.
- 1092 *R v Talatana* (1991) 7 CRNZ 33 (CA) at 36.
- 1093 *R v Talatana* (1991) 7 CRNZ 33 (CA) at 36.

1094 *R v Talataina* (1991) 7 CRNZ 33 (CA) at 36. Ifoga has been taken into account as a mitigating factor in *R v Semisi* (1990) 6 CRNZ 360 (HC) and *R v Aiono* [2012] NZHC 1752. See also *Tugaga v Police* HC Christchurch AP225/89, 14 December 1989 at 3, where Holland J noted that:

There is a great danger in this Court being asked to invoke only part of a person's culture without being fully informed of the totality of the culture of all that occurs. Having said all that, however, this offence occurred in New Zealand, and it is appropriate that the appellant be punished according to New Zealand law unless there is some special reason by way of his background or makeup deserving special treatment for him.

1095 *Police v O* (1993) 11 FRNZ 322, [1993] DCR 1080 (DC).

1096 *Police v O* (1993) 11 FRNZ 322 (DC) at 327.

1097 *Police v O* (1993) 11 FRNZ 322 (DC) at 327.

1098 *R v Fuimoana* CA276/95, 27 July 1995.

1099 *R v Matefeo* (1996) 14 CRNZ 276 (CA). See also *Tiwari v New Zealand Police* [2014] NZHC 2509, where the defendant, a Hindu priest, assaulted his wife during an argument after she cut her son's hair, which was against the parties' religion. The defendant appealed against his conviction, arguing he should be granted a discharge without conviction. The trial judge obliquely referred to the relationship between the defendant's faith and his actions, noting at [9] that "the faithful members of the Hindu community would consider the nature of the offence and all surrounding circumstances".

1100 *R v Matefeo* (1996) 14 CRNZ 276 (CA) at 279, quoting *R v Fuimoana* CA276/95, 27 July 1995.

1101 *Tahaafe v Commissioner of Inland Revenue* HC Auckland CRI-2009-404-102, 10 July 2009.

1102 At [66].

1103 At [69].

1104 P Dougan "Abuse trial: Muslim man beat daughter he thought was gay" *New Zealand Herald* (online ed, 19 May 2015).

1105 ICCPR, art 21

1106 ECHR, art 11.

1107 G Huscroft "Freedom of Peaceful Assembly, Association, and Movement" in P Rishworth and others *The New Zealand Bill of Rights* (Oxford University Press, Oxford, 2003) 348 at 348; A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (LexisNexis, Wellington, 2005) at [15.62]; A Butler and P Butler *The New Zealand Bill of Rights Act: A Commentary* (2nd ed, LexisNexis, Wellington, 2015) at [15.8].

1108 See *Rassemblement Jurassien Unite Jurassienne v Switzerland* [1979] ECHR 7 at 2, where the European Commission on Human Rights (now abolished) held that:

... the right of peaceful assembly ... is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society ... As such this right covers both private meetings and meetings in public thoroughfares.

1109 *Appleby v United Kingdom* (2003) 37 EHRR 783 (ECtHR) at [39].

1110 *Police v Beggs* [1999] 3 NZLR 615 (HC) at 628.

1111 *Police v Beggs* [1999] 3 NZLR 615 (HC) at 628–630.

1112 Ministry of Justice *Guidelines on the New Zealand Bill of Rights Act 1990* (November 2004) at Part 3 – Section 16 Freedom of peaceful assembly; *Bradford v Police* [1995] 2 HRNZ 405 (HC); *Cisse v France* (51346/99) Section II, ECtHR 9 June 2002.

1113 *Bradford v Police* [1995] 2 HRNZ 405 (HC) at 407.

1114 *Police v Beggs* [1999] 3 NZLR 615 (HC) at 627.

1115 *Chahal v United Kingdom* (1996) 23 EHRR 443 (ECHR) at [73]; UNHRC *General Comment 15 – The position of aliens under the Covenant* UN Doc HRI/GEN/1/Rev1 (1994) at [5].

1116 *Abdulaziz, Cabales, Balkandali v United Kingdom* (1985) 7 EHRR 471 (ECHR) [59] and [60]; UNHRC *General Comment 15 – The position of aliens under the Covenant* UN Doc HRI/GEN/1/Rev1 (1994) at [5]–[6].

1117 Immigration Act 2009, s 9.

1118 Attorney-General *Section 7 report on Countering Terrorist Fighters Legislation Bill* at [20].

1119 UNHRC *General Comment 27 – Freedom of movement (Art 12)* UN Doc CCPR/C/21/Rev1/Add9 (1999) at [8].

1120 Countering Terrorist Fighters Legislation Bill 2014 (1–1), sch, cl 1(1)(a).

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.	<i>Understanding the Performance Improvement Framework Agency Model</i> (January 2014) at 26.
1128	City of Toronto Bylaw 1176-2009.	1146 Email from Keith Marshall, Careers New Zealand, to Mai Chen regarding the Performance Improvement Framework review for Careers New Zealand (15 May 2015).
1129	Parliamentary Elections Act 1954 (SG), s 37; Presidential Elections Act 1991 (SG), s 20.	1147 Email from Keith Marshall, Careers New Zealand, to Mai Chen regarding the Performance Improvement Framework review for Careers New Zealand (15 May 2015).
1130	The role of the Electoral Commission is covered in more detail in M Chen <i>Public Law Toolbox</i> (2nd ed, LexisNexis, 2014), ch 5, from which this section is adapted.	1148 Email from Keith Marshall, Careers New Zealand, to Mai Chen regarding the Performance Improvement Framework review for Careers New Zealand (15 May 2015).
1131	Electoral Commission <i>Report of the Electoral Commission on the 2014 General Election</i> (2015) at ii and 51.	1149 Email from Keith Marshall, Careers New Zealand, to Mai Chen regarding the Performance Improvement Framework review for Careers New Zealand (15 May 2015).
1132	Electoral Commission <i>Report of the Electoral Commission on the 2014 General Election</i> (2015) at [96].	1150 See the diversity dividend section on the implications of superdiversity for business at [2.84].
1133	Communications with the Chief Electoral Officer, Electoral Commission, September 2015.	1151 Superdiversity Centre <i>Superdiversity, Democracy and Electoral Laws</i> (New Zealand Law Foundation, forthcoming).
1134	Electoral Commission <i>Report of the Electoral Commission on the 2014 General Election</i> (2015) at [182].	1152 Interview with Glyn Walters, Manager Election Planning (13 March 2015).
1135	Electoral Commission <i>Report of the Electoral Commission on the 2014 General Election</i> (2015) at [122].	1153 See M Slade "Auckland may get more politicians under council bid for law change" <i>Auckland Now</i> (online ed, 30 July 2015).
1139	Diversity Council Australia <i>Leading in the Asian Century: A National Scorecard of Australia's Workforce Asia Capability</i> (2015).	1154 For a discussion of the implications of superdiversity for the education system, see [3.53].
1140	See State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet <i>Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model</i> (January 2014) at 1.	1155 Justice and Electoral Committee <i>Inquiry into the 2013 Local Authority Elections</i> (25 July 2014) at 5.
1141	See State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet <i>Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model</i> (January 2014).	1156 Local Government (Auckland Council) Act 2009, s 81.
1142	See State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet <i>Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model</i> (January 2014) at 25.	1157 Local Government (Auckland Council) Act 2009, s 81(a).
1143	State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet <i>Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model</i> (January 2014) at 25.	1158 Local Government (Auckland Transitional Provisions) Act 2010, s 86(1).
1144	State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet <i>Performance Improvement Framework: Core Guide 1 – Understanding the Performance Improvement Framework Agency Model</i> (January 2014) at 25.	1159 Local Government (Auckland Transitional Provisions) Act 2010, s 86(5).
1145	State Services Commission, The Treasury and the Department of the Prime Minister and Cabinet <i>Performance Improvement Framework: Core Guide 1 –</i>	1160 "Auckland Council Ethnic People's Advisory Panel boss quits" <i>New Zealand Herald</i> (online ed, 20 March 2015).
		1161 L Tan "Second Ethnic People's Advisory Panel Member quits" <i>New Zealand Herald</i> (online ed, 24 March 2015).
		1162 See Local Government Commission <i>Draft Proposal for Local Government in the Wellington Region</i> (December 2014); Local Government Commission <i>Draft Proposal for Reorganisation of Local Government in Wellington – Volume 2 Technical Report: Evaluation of the Options and the Draft Proposal</i> (February 2015). The plans for a Wellington Supercity were scrapped by the Local

- Government Commission in June 2015 due to lack of community support. See T Nichol "Wellington and Northland reject 'super city' plans" *New Zealand Herald* (online ed, 9 June 2015).
- 1163 Local Government Commission *Draft Proposal for Reorganisation of Local Government in Wellington – Volume 2 Technical Report: Evaluation of the Options and the Draft Proposal* (February 2015) at 259.
- 1164 Wellington Region Local Government Review Panel *Future Wellington – An Issues Paper on Local Government Reform in the Wellington Region* (19 July 2012) at [45]. For discussion on Wellington's diversity, see [1.18].
- 1165 B Orsman "Auckland's Super City club: Who's running our city? White men from wealthy suburbs" *New Zealand Herald* (online ed, 22 July 2015); N Ross Smith and Z Dumienksi "Citizens' juries could reduce Auckland's democratic deficit" *New Zealand Herald* (online ed, 29 July 2015).
- 1166 B Orsman "Auckland's Super City club: Who's running our city? White men from wealthy suburbs" *New Zealand Herald* (online ed, 22 July 2015).
- 1167 Auckland Council "Auckland Council announces new Community Empowerment Unit" (press release, 29 July 2015).
- 1168 N Ross Smith and Z Dumienksi "Citizens' juries could reduce Auckland's democratic deficit" *New Zealand Herald* (online ed, 29 July 2015).
- 1169 J Hartz-Karp and others "The Australian Citizens' Parliament: Forging shared identity through public deliberation" (2010) 10(4) *Journal of Public Affairs* 353.
- 1170 N Ross Smith and Z Dumienksi "Citizens' juries could reduce Auckland's democratic deficit" *New Zealand Herald* (online ed, 29 July 2015).
- 1171 *Report of the Citizens' Policy Jury on a Vibrant and Safe Sydney Nightlife* (2014); City of Sydney "Citizens' Jury – How can we ensure we have a vibrant and safe Sydney nightlife?" <sydneyyoursay.com.au>.
- 1172 N Reece "Melbourne People's Panel" *The Age* (online ed, 1 April 2015).
- 1173 R Ryan "Melbourne citizens' jury success offers fresh hope for democratic renewal" *Sunday Extra* (online ed, 3 July 2015).
- 1174 N Reece "Melbourne People's Panel" *The Age* (online ed, 1 April 2015).
- 1175 Statistics New Zealand *Te Ao Mārama 2014* (June 2014) at 1; Statistics New Zealand *2013 Census QuickStats about Māori* (December 2013) at 8 and 10.
- 1176 Australian Bureau of Statistics "Estimates of Aboriginal and Torres Strait Islander Australians" (14 November 2013) <www.abs.gov.au>.
- 1177 United States Census Bureau "Profile America Facts for Features – American Indian and Alaska Native Heritage Month: November 2011" <www.census.gov>. Twenty-two per cent of Native Americans live on tribal lands.
- 1178 Aboriginal Affairs and Northern Development Canada "Urban Aboriginal Peoples" (12 January 2014) <www.aadnc-aandc.gc.ca>.
- 1179 P Callister and D Bromell *A Changing Population, Changing Identities: The Crown-Māori Relationship in 50 Years' Time* (Institute of Policy Studies Working Paper 11/09, June 2011).
- 1180 See also F Barker "We, the Peoples: Debating constitutional change in New Zealand's diverse population" Post Treaty Settlements <www.posttreatysettlements.org.nz>.
- 1181 See T Kukutai "The Structure of Māori-Asian relations: An ambivalent future?" (2008) 33/34 *New Zealand Population Review* 129.
- 1182 For a historical account of Chinese immigration to New Zealand, and historical relations with Māori, see M Ip "Māori-Chinese encounters: Indigene-immigrant interaction in New Zealand" (2003) 27(2) *Asian Studies Review* 227.
- 1183 S Young "The post-Treaty settlement relationship between Māori and Chinese New Zealanders" Post Treaty Settlements <www.posttreatysettlements.org.nz>.
- 1184 See Statistics New Zealand "Representation of ethnic groups in Parliament" (December 2014).
- 1185 See J Kim "Cross-Examination: Where Are New Zealand's Asian Representatives?" (22 July 2014) *The Equal Justice Project* <www.equaljusticeproject.co.nz>.
- 1186 See P Callister and D Bromell *A Changing Population, Changing Identities: The Crown-Māori Relationship in 50 Years' Time?* (Institute of Policy Studies, Working Paper 11/09, June 2011) at 10.
- 1187 Confidence and Supply Agreement between the Māori Party and the National Party (15 November 2008). The Government announced a new constitutional review led by Ministers English and Sharples in consultation with a cross-party reference group of MPs.
- 1188 S Day "Māori more important" *Sunday Star Times* (online ed, 25 May 2014).
- 1189 S Day "Māori more important" *Sunday Star Times* (online ed, 25 May 2014).
- 1190 S Day "Māori more important" *Sunday Star Times* (online ed, 25 May 2014).
- 1191 J Anaya *Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People* (2010); J Anaya *Preliminary Note on the Mission to New Zealand* (Human Rights Council, Fifteenth Session, 2010).

- 1192 A Vance "Ratana church delivers blunt message to Labour" *Dominion Post* (24 January 2015) at A18.
- 1193 Constitutional Advisory Panel *New Zealand's Constitution: A Report on a Conversation* (November 2013) at 33.
- 1194 For discussion of s 20 of the NZBORA, see [4.81].
- 1195 For discussion of discrimination against the diverse in the labour market, see [2.123]. See also Chapter Four for analysis of the legal protections against discrimination.
- 1196 Human Rights Commission *UMR Omnibus Results Late November 2011* (November 2011) at 8.
- 1197 P Gendall, P Spoonley and A Trlin *The Attitudes of New Zealanders to Immigrants and Immigration: 2003 and 2006 Compared* (Occasional Publication, New Settlers Programme, No 17, 2007) at 31.
- 1198 J Morton "NZ Attitudes to Asian People improving" *New Zealand Herald* (online ed, 17 July 2015). See also Department of Labour *Attitudes Towards Immigrants and Immigrant Experiences: Predictive Models Based on Regional Characteristics* (2011); R Johnston and others "Immigration, Multiculturalism and Geography: Intergroup Contact and Attitudes to Immigrants and Cultural Diversity in New Zealand" (2010) 19 *Asian and Pacific Migration Journal* 421; C Leong and C Ward "Intergroup Perceptions and Attitudes toward Immigrants in a Culturally Plural Society" (2011) 60 *Applied Psychology* 46.
- 1199 University of Auckland "The New Zealand Attitudes and Values Study" <www.psych.auckland.ac.nz>. See also C Ward and A-M Masgoret "Attitudes toward Immigrants, Immigration and Multiculturalism in New Zealand: A Social Psychological Analysis" (2008) 42 *International Migration Review* 227. This study found that New Zealanders were more likely to favour integration over assimilation or separation as an acculturation strategy for migrants than German or Dutch respondents.
- 1200 J Morton "NZ Attitudes to Asian People improving" *New Zealand Herald* (online ed, 17 July 2015).
- 1201 J Morton "NZ Attitudes to Asian People improving" *New Zealand Herald* (online ed, 17 July 2015).
- 1202 P Gendall, P Spoonley and A Butcher *New Zealanders' Perceptions of Asia and Asian Peoples: 1997–2011* (Asia New Zealand Foundation, October 2013) at ch 5.
- 1203 P Gendall, P Spoonley and A Butcher *New Zealanders' Perceptions of Asia and Asian Peoples: 1997–2011* (Asia New Zealand Foundation, October 2013). See also P Gendall, P Spoonley and A Trlin *The Attitudes of New Zealanders to Immigrants and Immigration: 2003 and 2006 Compared* (Occasional Publication, New Settlers Programme, No 17, 2007) at 30.
- 1204 A Butcher, P Spoonley and P Gendall "New Zealanders' attitudes to Asia and Asian peoples: An exceptional case?" (2015) 67(1) *Political Science* 38 at 50–51.
- 1205 A Butcher, P Spoonley and P Gendall "New Zealanders' attitudes to Asia and Asian peoples: An exceptional case?" (2015) 67(1) *Political Science* 38 at 50–51.
- 1206 P Spoonley "New diversity, old anxieties in New Zealand: the complex identity politics and engagement of a settler society" (2014) *Ethnic and Racial Studies* 1 at 3.
- 1207 A Bartley and P Spoonley "Intergenerational Transnationalism: 1.5 Generation Asian Migrants in New Zealand" (2008) 46 *International Migration Review* 63 at 78.
- 1208 C Leong and C Ward "Intergroup Perceptions and Attitudes toward Immigrants in a Culturally Plural Society" (2011) 60 *Applied Psychology* 46 at 60.
- 1209 C Leong and C Ward "Intergroup Perceptions and Attitudes toward Immigrants in a Culturally Plural Society" (2011) 60 *Applied Psychology* 46 at 50.
- 1210 For discussion on foreign investment, see [2.357].
- 1211 Māori Economic Development Panel *The Crown–Māori Economic Growth Partnership* (November 2012) at 13.
- 1212 See C Leong and C Ward "Intergroup Perceptions and Attitudes toward Immigrants in a Culturally Plural Society" (2011) 60 *Applied Psychology* 46 at 50.
- 1213 Statistics New Zealand *Labour Market Statistics: March 2015 Quarter* (March 2015).
- 1214 Department of Labour *Identifying the Resilience of the New Zealand Workforce in a Recession* (2009).
- 1215 Colmar Brunton *Financial Knowledge Survey* (Retirement Commission, 2009).
- 1216 By comparison, the Asian prison population in New Zealand is 3 per cent of the total prison population: Department of Corrections *Prison Facts and Statistics: December 2014* (26 March 2015).
- 1217 Statistics New Zealand "2013 Census QuickStats about education and training" (12 May 2015) <www.stats.govt.nz>.
- 1218 Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2012/2013* (2013) at 16; Ministry of Business, Innovation and Employment *Migration Trends and Outlook 2013/2014* (2014) at 1 and 69; Ministry of Business, Innovation and Employment *Vote Immigration: Briefing to the Incoming Minister* (2015) (proactively released) at [37].
- 1219 P Gendall, P Spoonley and A Butcher "New Zealanders' Perceptions of Asia and Asian Peoples: 1997–2011" (Asia New Zealand Foundation, October 2013) at ch 5.
- 1220 See the Māori Language Act 1987.
- 1221 Department of Internal Affairs "Grant of Citizenship: Policy – Responsibilities and Privileges" <www.dia.govt.nz>.

- 1222 Electoral Act 1993, s 74. See F Barker and K McMillan "Constituting the democratic public: New Zealand's extension of national voting rights to non-citizens" (2014) 12 NZJPL 61. This article explains that New Zealand is among the few democracies in the world to grant national voting rights to non-citizens, although this right is not explicitly affirmed in the NZBORA.
- 1223 P Satherley "What do our students think about New Zealand, democracy and freedom? New Zealand results from the International Civic and Citizenship Education Study" (Ministry of Education, 2011) at 10.
- 1224 K Land *What do New Zealand students understand about civic knowledge and citizenship?* (Ministry of Education, November 2010) at 12.
- 1225 K Land *What do New Zealand students understand about civic knowledge and citizenship?* (Ministry of Education, November 2010) at 12.
- 1226 Constitutional Advisory Panel *New Zealand's Constitution: A Report on a Conversation* (November 2013) at 12.
- 1227 See <www.ourconstitution.org.nz>.
- 1228 M Chen "Cultural diversity in cities a challenge to decision-making" *New Zealand Herald* (17 April 2015).
- 1229 For discussion on New Zealand's cultural evolution and intermarriage, see [1.38]. For discussion of the business interface between Māori and ethnic minorities and migrants, see [2.329].
- 1230 For discussion of Pacific outcomes in the labour market, education and in health care, see [2.123], [1.127], [3.59], and [3.128] respectively.
- 1231 See F Barker "We, the Peoples: Debating constitutional change in New Zealand's diverse population" Post Treaty Settlements <www.posttreatysettlements.org.nz>.
- 1232 P Gendall, P Spoonley and A Trlin *The Attitudes of New Zealanders to Immigrants and Immigration: 2003 and 2006 Compared* (Occasional Publication, New Settlers Programme, No 17, 2007) at 34.
- 1233 Multicultural New Zealand *Our Multicultural New Zealand: New Zealanders Talk about Multiculturalism* (August 2015) at 10.
- 1234 Interview with the Hon Te Ururoa Flavell (31 July 2015).
- 1235 For discussion on social cohesion and measures adopted by government, see [2.344] and the Stocktake of public agencies.
- 1236 Constitutional Advisory Panel *New Zealand's Constitution: A Report on a Conversation* (2013) at 11.
- 1237 Constitutional Advisory Panel *New Zealand's Constitution: A Report on a Conversation* (2013) at 11.
- 1238 "Kiwis in 4th safest nation" *New Zealand Herald* (online ed, 27 June 2015).
- 1239 For an overview of the legal protections against discrimination, see Chapter Four.
- 1240 The Victoria University of Wellington Migrant programme is aimed at unemployed or underemployed skilled migrants or refugees who are actively seeking full-time employment in their professional fields and have overseas experience, but have not been able to break into their professional field in New Zealand. The internship programme helps skilled migrants understand New Zealand business culture, discussed above at [3.24].
- 1241 New Zealand Government *Department Briefing Report: People and Policy – An Analysis of the Inner Workings of the New Zealand Bureaucracy* (2015) at 5.
- 1242 New Zealand Government *Department Briefing Report: People and Policy – An Analysis of the Inner Workings of the New Zealand Bureaucracy* (2015) at 4.
- 1243 D McKay *Review of Central Government Policy, Implementation, Strategy and Leadership Effectiveness in Auckland* (2014) at 24.
- 1244 D McKay *Review of Central Government Policy, Implementation, Strategy and Leadership Effectiveness in Auckland* (2014) at 25.
- 1245 State Services Commission "SSC Appoints Deputy Commissioner to be based in Auckland" (press release, 13 March 2015).
- 1246 State Services Commission "SSC Appoints Deputy Commissioner to be based in Auckland" (press release, 13 March 2015).
- 1247 See State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 5; Multicultural New Zealand "Ethnic minorities under-represented and under-paid" (press release, 8 December 2014); New Zealand Asian Leaders "Welcome to NZ Asian Leaders".
- 1248 State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 31. All public service departments must provide annual data to the Human Resource Capability survey, including data on the ethnic and gender diversity of their staff. The mandate for the survey has been established through Cabinet Minutes from 1994 to 1998. The survey is also consistent with the State Services Commission's role under the State Sector Act 1988. All agencies within the cap on core government administration are required to report their FTE numbers and vacancies every six months. See State Services Commission "Human Resource Capability – Survey Instructions, Checklist and FAQs" (June 2015) <www.ssc.govt.nz>.
- 1249 This has been the case in the private sector. See [2.86].
- 1250 For example, Chai Chuah, the Director-General of Health, Tim Ng, Director Economic Systems at the Treasury,

- Mervin Singham, Deputy Chief Executive, Strategy and Governance at Department of Internal Affairs, Berlinda Chin, Director, Office of Ethnic Communities, Debbie Chin, CEO, Capital and Coast District Health Board, and Pam Dunn, Unit Manager, North Asia Division, Ministry of Foreign Affairs and Trade.
- 1251 For a summary of employers' obligations under the ERA, see [4.37].
- 1252 State Sector Act 1988, s 56(1)(a).
- 1253 State Sector Act 1988, s 56(2)(f).
- 1254 State Sector Act 1988, s 58. Similar provisions also exist in the Local Government Act 1974, the State Owned Enterprises Act 1986 and the Crown Entities Act 2004.
- 1255 Trans Tasman *2015 New Zealand Government Department Briefing Report* (2015) at 5.
- 1256 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].
- 1257 For discussion on these subjects, see [3.3], [2.357], and [3.96].
- 1258 See *The Trans Tasman Political Alert* (6 August 2015) at 4.
- 1259 "Departmental Consultation: Consultation with Government Agencies" (CAB Guide).
- 1260 M Singham "Multiculturalism in New Zealand – the need for a new paradigm" (2006) 1(1) Aotearoa Ethnic Network Journal 33 at 35.
- 1261 The Treasury *Regulatory Impact Analysis Handbook* (July 2013) at [6.2].
- 1262 Ministry of Justice "Section 7 of the New Zealand Bill of Rights Act 1990" <www.justice.govt.nz>.
- 1263 Office of Ethnic Affairs *Ethnicity Matters* (2012) at 2.
- 1264 Ministry of Pacific Island Affairs *Pacific Analysis Framework* (2006). See also Office for Disability Issues *Including a Disability Perspective: A Toolkit for Policy Makers* (December 2005). Although the Ministry for Women developed a set of strategic gender tools to assist policy makers, these appear to have had only limited uptake within the public policy sector, though its policy advice rated as "Adequate" as at 2013. See R Simon-Kumar "Between Survival and Relevance: Remaking 30 years of the Ministry of Women's Affairs" (2015) 11(1) *Policy Quarterly* 32 at 35; New Zealand Institute of Economic Research *Policy Advice Quality Review 2013: NZEIR Report to Ministry of Women's Affairs* (August 2013) at 2.
- 1265 By way of example, the experience of recent migrants and refugees will be different from that of settled migrants and New Zealand-born. See also the discussion of data collection at [2.197] in the Business Implications section.
- 1266 Office of Ethnic Affairs *Ethnicity Matters* (2012) at 7–8.
- 1267 Office of Ethnic Affairs *Ethnicity Matters* (2012) at 10. For discussion of the legal requirements of consultation, see *Wellington International Airport v Air New Zealand* [1993] 1 NZLR 671 (CA); *West Coast United Council v Prebble* (1988) 12 NZTPA 399 (HC) at 405.
- 1268 Four Year Plans are produced annually as part of a department's strategic and medium-term planning. They set out the vision for the department in four years' time. The main question that a department's medium-term planning should answer is "how will the department create increasing value for its customers and New Zealanders over the medium-term with the funding and balance sheet it has available?"
- 1269 State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at Appendix Two. The following departments provided more up to date statistics than those in the State Services Commission's report: Police, Customs, Corrections, the Education Review Office, the Financial Markets Authority, the Ministry of Business, Innovation and Employment, and the Department of Internal Affairs.
- 1270 See [1.25] for further discussion of Statistics New Zealand's long-term demographic projections for New Zealand.
- 1271 State Services Commission *Performance Improvement Framework: Formal Review of the New Zealand Police (Police)* (September 2012) at 68.
- 1272 State Services Commission *Performance Improvement Framework: Follow-up Review of New Zealand Police (Police)* (February 2014) at 6.
- 1273 See <www.police.govt.nz>
- 1274 See "Calls for more interpreters at 111 centres" *New Zealand Herald* (online ed, 20 July 2015).
- 1275 New Zealand Customs Service *Four-Year Plan* (December 2013) at 2.
- 1276 New Zealand Customs Service *Four-Year Plan* (December 2013) at 29.
- 1277 New Zealand Customs Service *Four-Year Plan* (December 2013) at 29.
- 1278 See <www.education.govt.nz>.
- 1279 See <www.youtube.com/user/MinEducationNZ>.
- 1280 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 14.
- 1281 Ministry of Business, Innovation and Employment *Four-Year Plan* (July 2014) at 9.

- 1282 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 41.
- 1283 Ministry of Business, Innovation and Employment *Four-Year Plan* (July 2014) at 46.
- 1284 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 35.
- 1285 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 10.
- 1286 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 10.
- 1287 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 37.
- 1288 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 35 and 38.
- 1289 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 38.
- 1290 State Services Commission *Performance Improvement Framework: Review of Ministry of Business, Innovation and Employment (MBIE)* (December 2014) at 25.
- 1291 See <www.massey.ac.nz>.
- 1292 Immigration New Zealand *Refugee Resettlement Strategy* at 3.
- 1293 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 32.
- 1294 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 20.
- 1295 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 32.
- 1296 Ministry of Business, Innovation and Employment *Annual Report 2013/14* (2014) at 14.
- 1297 Defence Act 1990, s 24.
- 1298 Ministry of Defence *Four-Year Plan 2014–2018* (2014) at 29.
- 1299 Ministry of Defence *Annual Report 2013/14* (2014) at 84.
- 1300 Ministry of Defence *Defence White Paper: Public Consultation Document* (2015).
- 1301 State Services Commission *Performance Improvement Framework: Follow-up Review of the Ministry of Defence (MoD)* (August 2014) at 5.
- 1302 Ministry of Defence *Four-Year Plan 2014–2018* (2014) at 17.
- 1303 Ministry of Defence *Annual Report 2013/14* (2014) at 4.
- 1304 Ministry of Defence *Annual Report 2013/14* (2014) at 18 and 19.
- 1305 State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 36.
- 1306 See Appendix Two.
- 1307 State Services Commission *Public Service Chief Executive Performance Expectations 1 July 2015 – 30 June 2016* (2015). In October 2015, the SSC will be releasing a revised version of the Guidance document that supports these expectations. The guidance will provide more detail of how the SSC will be assessing Chief Executive performance on these expectations.
- 1308 State Services Commission *Leadership Strategy for the State Services* (November 2013) at 3.
- 1309 Department of Internal Affairs *Four Year Plan* (July 2014) at 5.
- 1310 Department of Internal Affairs *Four Year Plan* (July 2014) at 3.
- 1311 Department of Internal Affairs *Workforce Strategy* at 10, 16, 17, 18 and 22.
- 1312 Department of Internal Affairs *Annual Report for 2013–14* (2014) at 21.
- 1313 Department of Internal Affairs *Annual Report for 2013–14* (2014) at 21.
- 1314 Department of Internal Affairs *Annual Report for 2013–14* (2014) at 21.
- 1315 State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 31.
- 1316 Ministry of Culture and Heritage *Cultural Sector Strategic Framework 2014–2018* (August 2014) at 1.
- 1317 Ministry of Culture and Heritage *Cultural Sector Strategic Framework 2014–2018* (August 2014) at 2.
- 1318 Ministry of Culture and Heritage *Cultural Sector Strategic Framework 2014–2018* (August 2014) at 3.
- 1319 State Services Commission *Performance Improvement Framework: Review of Manatū Taonga Ministry for Culture and Heritage (MCH)* (May 2014) at 2.
- 1320 State Services Commission *Performance Improvement Framework: Review of Manatū Taonga Ministry for Culture and Heritage (MCH)* (May 2014) at 29.
- 1321 State Services Commission *Performance Improvement Framework: Review of Manatū Taonga Ministry for Culture and Heritage (MCH)* (May 2014) at 30.
- 1322 State Services Commission *Performance Improvement Framework: Review of Manatū Taonga Ministry for Culture and Heritage (MCH)* (May 2014) at 33.
- 1323 Available at <www.teara.govt.nz>.
- 1324 The Civics and Media Project is an initiative of Victoria University of Wellington, the University of Auckland, New Zealand On Air, the Royal Society of New Zealand, the McGuinness Institute and the MCH. The purpose of the project is to inform and encourage public discourse and engagement regarding civics and media, with the ultimate aim of informing decisions by individuals,

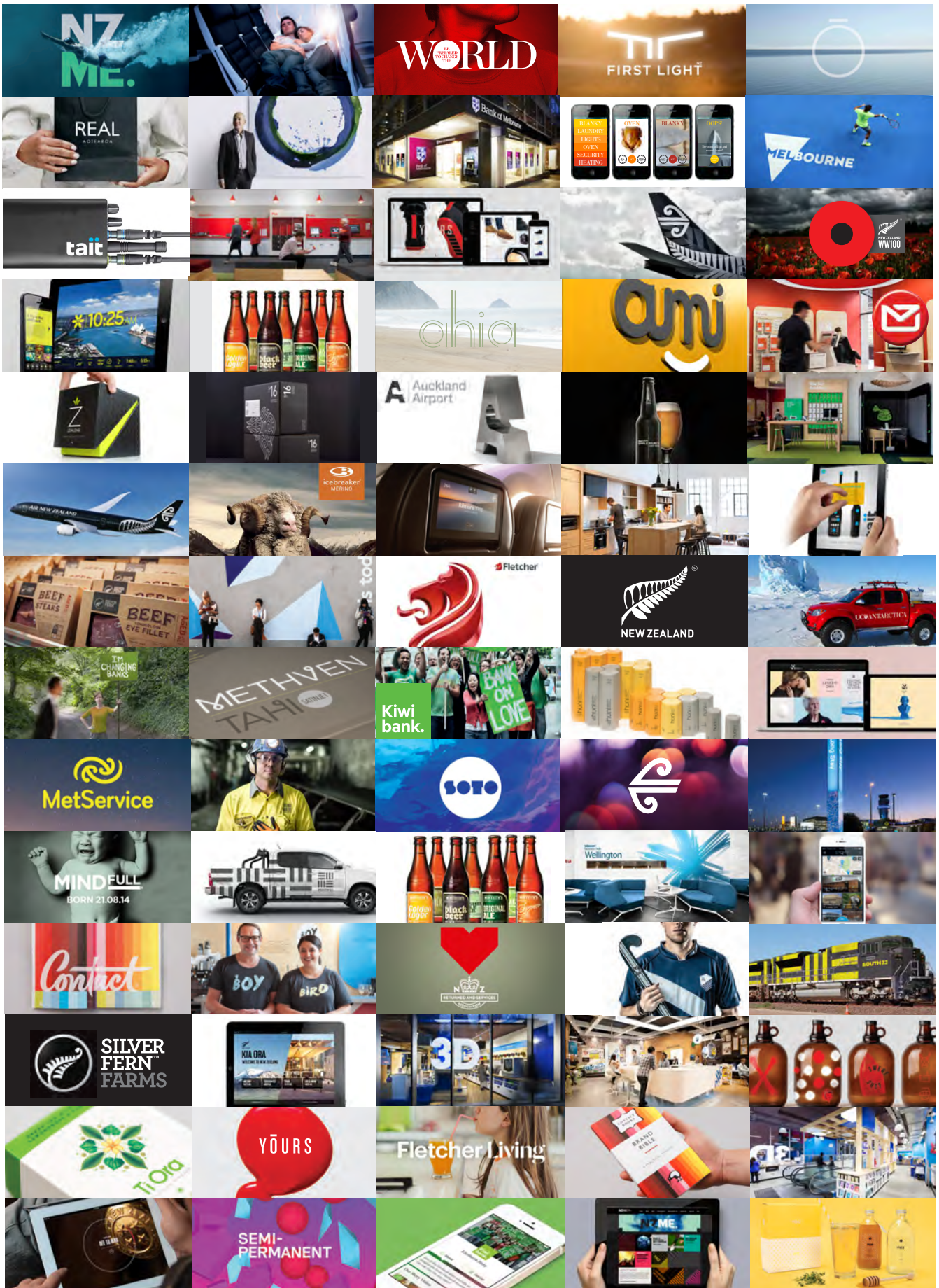
- industry and institutions across society. Six agencies have joined together to examine whether citizens and communities have the news and information they need and want in a digital age and determine what a well-informed, civically engaged New Zealand will look like in 2030.
- 1325 State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 31.
- 1326 Department of Conservation *Annual Report 2014* (2014) at 76.
- 1327 State Services Commission *Performance Improvement Framework: Review of the Department of Conservation (DOC)* (2014) at 27.
- 1328 State Sector Act 1988, s 56.
- 1329 State Sector Act 1988, s 33(1).
- 1330 Corrections Act 2004, s 5(1)(a) and (c).
- 1331 Department of Corrections *Prison Operations Manual*. Available at <www.corrections.govt.nz>.
- 1332 State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 31.
- 1333 State Services Commission *Performance Improvement Framework: Department of the Prime Minister and Cabinet (DPMC)* (2013) at 9.
- 1334 State Services Commission *Performance Improvement Framework: Department of the Prime Minister and Cabinet (DPMC)* (2013) at 46.
- 1335 State Services Commission *Performance Improvement Framework: Follow-up Review of the Department of the Prime Minister and Cabinet (DPMC)* (2015) at 18.
- 1336 State Services Commission *Performance Improvement Framework: Follow-up Review of the Department of the Prime Minister and Cabinet (DPMC)* (2015) at 18.
- 1337 Department of the Prime Minister and Cabinet *Annual Report 2014* (2014) at 16.
- 1338 Department of the Prime Minister and Cabinet "Departmental Health and Capability" <www.dPMC.govt.nz>.
- 1339 See Ministry of Education *New Zealand Curriculum* (2007).
- 1340 State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 31.
- 1341 Education Review Office *Annual Report 2014* (2014) at 19.
- 1342 See Education Review Office *Pacific Strategy 2013–2017* (2013).
- 1343 Human Rights Commission *What's Working?* (June 2014) at 12, 13 and 15.
- 1344 State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 31.
- 1345 Inland Revenue Department *Four Year Plan* (July 2014) at 47.
- 1346 Inland Revenue Department *Four Year Plan* (July 2014) at 48.
- 1347 Inland Revenue Department *Four Year Plan* (July 2014) at 49.
- 1348 Inland Revenue Department *IR for the Future* (2011).
- 1349 S Yuan, T Cain and P Spoonley *Immigrant Entrepreneurship and Tax Compliance* (Inland Revenue Department, June 2013).
- 1350 Inland Revenue Department *Understanding Migrant Businesses* (September 2015).
- 1351 See State Services Commission *Performance Improvement Framework: Report on Land Information New Zealand (LINZ)* (2013); State Services Commission *Performance Improvement Framework: Follow-up Review of Land Information New Zealand (LINZ)* (2014); Land Information New Zealand *Annual Report 2014* (2014).
- 1352 State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 31.
- 1353 Land Information New Zealand *Four-Year Plan* (July 2014) at 26.
- 1354 Land Information New Zealand *Four-Year Plan* (July 2014) at 29.
- 1355 Land Information New Zealand *Business with Māori Strategy 2013–2017: He Whāriki Maurua* (September 2014).
- 1356 Land Information New Zealand *Annual Report 2014* at 17.
- 1357 State Services Commission *Performance Improvement Framework: Report on Land Information New Zealand (LINZ)* (2013) at 19.
- 1358 Land Information New Zealand *Four-Year Plan* (July 2014) at 7.
- 1359 Land Information New Zealand *Four-Year Plan* (July 2014) at 26.
- 1360 State Services Commission *Performance Improvement Framework: Formal Review of Manatū Mō te Taiao Ministry for the Environment (MfE)* (2012) at 51–52.
- 1361 State Services Commission *Performance Improvement Framework: Formal Review of Manatū Mō te Taiao Ministry for the Environment (MfE)* (2012) at 13.
- 1362 State Services Commission *Performance Improvement Framework: Formal Review of Manatū Mō te Taiao Ministry for the Environment (MfE)* (2012) at 53.
- 1363 State Services Commission *Human Resource Capability in the New Zealand State Services* (December 2014) at 31.
- 1364 Ministry of Foreign Affairs and Trade *Annual Report 2013/14* (2014) at 38.

- 1365 Ministry of Foreign Affairs and Trade *Four-Year Plan* (July 2014) at 14.
- 1366 Ministry of Foreign Affairs and Trade *Annual Report 2013/14* (2014) at 38.
- 1367 Ministry of Foreign Affairs and Trade *Annual Report 2013/14* (2014) at 38.
- 1368 Ministry of Foreign Affairs and Trade *Four-Year Plan* (July 2014) at 13.
- 1369 Ministry of Foreign Affairs and Trade *Four-Year Plan* (July 2014) at 14.
- 1370 Ministry of Foreign Affairs and Trade *Annual Report 2013/14* (2014) at 9.
- 1371 Ministry of Foreign Affairs and Trade *Annual Report 2013/14* (2014) at 9.
- 1372 Ministry of Health *Annual Report for the year ended 30 June 2014* (2014) at 91.
- 1373 District Health Boards' Shared Services *District Health Board Employed Workforce Quarterly Report* (2015). The authors of the report amalgamated ethnicities not associated with Asian, Māori or Pacific into the group "Other" to allow direct comparisons with reported ethnicity data from Statistics New Zealand.
- 1374 Ministry of Health *Annual Report for the year ended 30 June 2014* (2014) at 173.
- 1375 Ministry of Health *Annual Report for the year ended 30 June 2014* (2014) at 200.
- 1376 Ministry of Health *Four-Year Plan* (July 2014) at 8.
- 1377 Ministry of Health *Four-Year Plan* (July 2014) at 32.
- 1378 Ministry of Health *Four-Year Plan* (July 2014) at 84.
- 1379 Ministry of Justice *Annual Report 2013–2014* (2014) at 24.
- 1380 See <www.victiminfo.govt.nz>.
- 1381 Ministry of Education *Pasifika Education Plan 2013–2017* (2013).
- 1382 Ministry for Primary Industries *Annual Report 2013/14* (2014) at 6.
- 1383 Ministry for Primary Industries *Annual Report 2013/14* (2014) at 5.
- 1384 Ministry for Primary Industries *Annual Report 2013/14* (2014) at 11.
- 1385 State Services Commission *Performance Improvement Framework Formal Review: Ministry for Primary Industries* (March 2013) at 4.
- 1386 Ministry for Primary Industries *Annual Report 2013/14* (2014) at 28.
- 1387 Ministry for Primary Industries *Annual Report 2013/14* (2014) at 2.
- 1388 Ministry for Primary Industries *Annual Report 2013/14* (2014) at 11.
- 1389 State Services Commission *Performance Improvement Framework Formal Review: Ministry for Primary Industries* (March 2013) at 62.
- 1390 See Ministry of Transport *Annual Report 2013/14* (2014).
- 1391 Ministry of Transport *Annual Report 2013/14* (2014) at 12.
- 1392 Ministry of Transport *Annual Report 2013/14* (2014) at 10.
- 1393 Ministry of Transport *Annual Report 2013/14* (2014) at 10.
- 1394 Ministry of Transport *Statement of Intent 2015–2019* (July 2014) at 8.
- 1395 Ministry of Transport *Annual Report 2013/14* (2014) at 11.
- 1396 Ministry of Transport *Annual Report 2013/14* (2014) at 9.
- 1397 Ministry of Transport *Annual Report 2013/14* (2014) at 9.
- 1398 Ministry of Transport *Four Year Plan 2015* (May 2015) at 14.
- 1399 Ministry of Women's Affairs *Four Year Plan* (December 2013) at 8.
- 1400 Ministry of Women's Affairs *Four Year Plan* (December 2013) at 8.
- 1401 State Services Commission *Performance Improvement Framework: Follow-up Review of Ministry of Women's Affairs* (August 2013) at 4.
- 1402 Ministry of Women's Affairs *Annual Report 2014* (2014) at 12.
- 1403 Ministry for Women's Affairs *Wāhine Māori, Wāhine Ora, Wāhine Kaha: Preventing violence against Māori women* (February 2015).
- 1404 Ministry of Women's Affairs *Annual Report 2014* (2014) at 25.
- 1405 Ministry of Women's Affairs *Annual Report 2014* (2014) at 26.
- 1406 Ministry of Women's Affairs *Annual Report 2014* (2014) at 15.
- 1407 New Zealand Trade and Enterprise *Annual Report 2013/14* (2014).
- 1408 New Zealand Trade and Enterprise *Annual Report 2013/14* (2014) at 21.
- 1409 State Services Commission *Performance Improvement Framework: Review of New Zealand Trade and Enterprise* (May 2015) at 15.
- 1410 New Zealand Transport Agency *Annual Report for the Year Ended 2013–14* (2014) at 79.
- 1411 New Zealand Transport Agency *Annual Report for the Year Ended 2013–14* (2014) at 76.
- 1412 New Zealand Transport Agency "Visiting Driver Safety project" <www.nzta.govt.nz>.

1413	Ministry of Transport <i>Overseas Driver Crashes 2015</i> (2015) at 4 and 15.	1438	Twenty-four respondents skipped this question.
1414	State Services Commission <i>Human Resource Capability in the New Zealand State Services</i> (December 2014) at 31.	1439	Where respondents identified with more than one ethnicity, this was recorded once under each applicable ethnic group.
1415	State Services Commission <i>Human Resource Capability in the New Zealand State Services</i> (December 2014) at 31.	1440	Fifty-five respondents did not answer this question.
1416	Te Puni Kōkiri <i>Four Year Plan</i> (July 2014) at 7.	1441	10.6 per cent said that this question was not applicable, as they did not employ diverse staff.
1417	Te Puni Kōkiri <i>Four Year Plan</i> (July 2014) at 7.	1442	Fifty-eight respondents skipped this question.
1418	Te Puni Kōkiri <i>Four Year Plan</i> (July 2014) at 10.	1443	Fifty-five respondents skipped this question.
1419	Te Puni Kōkiri <i>Four Year Plan</i> (July 2014) at 19.	1444	Sixty respondents did not answer this question.
1420	Te Puni Kōkiri <i>Vote Māori Affairs: Report in relation to selected Non-Departmental Appropriations for the year ended 30 June 2014</i> at 6–7.	1445	Fifty-nine respondents did not answer this question.
1421	P Gendall, P Spoonley and A Butcher <i>New Zealanders' Perceptions of Asia and Asian Peoples: 1997–2011</i> (Asia New Zealand Foundation, October 2013) at 38.	1446	Seventy respondents skipped this question.
1422	Te Puni Kōkiri <i>Four Year Plan</i> (July 2014) at 14.	1447	Percentages were calculated from the total number of businesses that had experienced challenges.
1423	State Services Commission <i>Human Resource Capability in the New Zealand State Services</i> (December 2014) at 31.	1448	Two respondents skipped this question.
1424	The Treasury <i>Four Year Plan</i> (July 2013) at 1.	1449	Five respondents skipped this question.
1425	The Treasury <i>Annual Report for the Year Ended 30 June 2014</i> (2014) at 26.	1450	One respondent did not answer this question or the following questions.
1426	The Treasury <i>Annual Report for the Year Ended 30 June 2014</i> (2014) at 27.	1451	Australian Bureau of Statistics "Reflecting a Nation: Stories from the 2011 Census, 2012–2013" (21 June 2012) < www.abs.govt.au >.
1427	State Services Commission and others <i>Performance Review of the Treasury</i> (July 2014) at 45.	1452	K Robertson "Western Australia now experiencing 'super diversity'" <i>PerthNow</i> (online ed, 7 June 2014).
1428	Four of the respondents chose not to answer this question.	1453	See Reconciliation Australia "What is the RAP Programme?" < www.reconciliation.org.au >.
1429	71.6 per cent of respondents were born in New Zealand and 8.33 per cent gave an unclear answer.	1454	A Manoharan <i>Two Sides of the Same Coin: Benefits and Challenges of Employing an Ethnically Diverse Workforce in Australian Hotels</i> (ANZAM, 2013).
1430	Seventeen respondents did not provide an answer to this question.	1455	I Nataatmadi and LE Dyson "Managing the Modern Workforce: Cultural Diversity and its Implications" (IRMA International Conference, Idea Group Inc, 2005) at 580.
1431	Eighteen respondents did not provide an answer to this question.	1456	Australia Post <i>Equal Employment Opportunity Report 2012</i> (2012) at 12.
1432	There was a large drop-off response rate for this question, as 52 of the participants did not answer this question.	1457	Leadership Management Australasia <i>Leadership, Employment and Direction (LEAD) Survey</i> (June 2012) at 11–14.
1433	Twenty-three respondents did not answer this question.	1458	Diversity Council Australia <i>Cracking the Cultural Ceiling: Future Proofing Your Business in the Asian Century</i> (2013) at 1.
1434	Twenty-eight respondents did not answer this question or, otherwise, deemed it inapplicable to their circumstances.	1459	Hays Recruitment <i>The Balancing Act: Creating a Diverse Workforce – Research and Insights that Impact Your World at Work</i> (2014) at 4.
1435	Twenty participants did not answer this question.	1460	Statistics Canada "Immigration and Ethnocultural Diversity in Canada" (14 January 2014) < www12.statcan.gc.ca >.
1436	Twenty participants did not answer this question.		
1437	Twenty-three participants did not respond to this question.		

- 1461 D Jacobsen *What the World Will Learn from Canada About Workplace Diversity and Sustainability* (Globoforce, 22 January 2014).
- 1462 RBC Financial Group "The Diversity Advantage: A Case for Canada's 21st Century Economy" (paper presented to the 10th International Metropolis Conference, Toronto, 20 October 2005) at 1.
- 1463 See D Nider "Racism in the Workplace: Challenges facing Visible Minorities in the Workplace" (presentation to Human Metropolis British Columbia E-Symposium, British Columbia, 14 April 2010). See also RBC *Economics Immigrant Labour Market Outcomes in Canada: The Benefits of Addressing Wage and Employment Gaps* (December 2011); The Diversity Institute in Management and Technology *Peel Immigration Labour Market Survey Findings* (December 2009); The Conference Board of Canada *Immigrants as Innovators: Boosting Canada's Global Competitiveness* (October 2010).
- 1464 B Kreissl "Language in the workplace" *Canadian HR Reporter* (online ed, 7 June 2011).
- 1465 V Hiranandani "Diversity Management in the Canadian Workplace: Towards an Antiracism Approach" [2012] *Urban Studies Research* 1.
- 1466 See Deloitte *Diversity and Inclusion in Canada: The Current State* (August 2014).
- 1467 Deloitte *Diversity and Inclusion in Canada: The Current State* (August 2014) at 14.
- 1468 "White British" is an ethnicity classification used in the United Kingdom's 2011 Census.
- 1469 ESRC Centre on Dynamics of Ethnicity (CoDE) *Ethnic Inequalities in Labour Market Participation?* (September 2013, University of Manchester).
- 1470 ESRC Centre on Dynamics of Ethnicity (CoDE) *Have Ethnic Inequalities in Employment Persisted Between 1991 and 2011?* (September 2013, University of Manchester).
- 1471 National Audit Office *Increasing Employment for Ethnic Minorities: A Summary of Research Findings* (2008); and Leitch *Prosperity for All in the Global Economy - World Class Skills* (Treasury, December 2006).
- 1472 ESRC Centre on Dynamics of Ethnicity (CoDE) *How are Ethnic Inequalities in Education Changing?* (March 2014, University of Manchester).
- 1473 SRC Centre on Dynamics of Ethnicity (CoDE) *How are Ethnic Inequalities in Education Changing?* (March 2014, University of Manchester). See also S Burgess *Understanding the Success of London's Schools* (Working Paper No 14/333, October 2014, Centre for Market and Public Organisation, University of Bristol).
- 1474 Office for National Statistics *People who could not speak English well or at all had a lower rate of employment* (2014).
- 1475 Business in the Community *Race to Progress: Breaking Down Barriers* (Based on data collected by Relish Research, June 2011).
- 1476 Business in the Community *Race to Progress: Breaking Down Barriers* (Based on data collected by Relish Research, June 2011) at 22.
- 1477 M Wood and others *A Test for Racial Discrimination in Recruitment Practice in British Cities* (National Centre for Social Research, Department for Work and Pensions Research, Report No 607, 2009).
- 1478 M Wood and others *A Test for Racial Discrimination in Recruitment Practice in British Cities* (National Centre for Social Research, Department for Work and Pensions Research, Report No 607, 2009) at 3.
- 1479 Business in the Community *Race to Progress: Breaking Down Barriers* (Based on data collected by Relish Research, June 2011) at 18.
- 1480 Business in the Community *Race to Progress: Breaking Down Barriers* (Based on data collected by Relish Research, June 2011) at 16.
- 1481 Business in the Community *Race to Progress: Breaking Down Barriers* (Based on data collected by Relish Research, June 2011) at ch 2.
- 1482 Civil Service *Identifying and Removing Barriers to Talented BAME Staff Progression in the Civil Service* (Ethnic Dimension, Research and Consultancy, 2014).
- 1483 Civil Service *Identifying and Removing Barriers to Talented BAME Staff Progression in the Civil Service* (Ethnic Dimension, Research and Consultancy, 2014) at 4 (emphasis added).
- 1484 Green Park *The Green Park Leadership 10,000: A Review of Diversity Amongst The UK's Most Influential Business Leaders* (2014).
- 1485 The FTSE100 is a share index of the 100 companies listed on the London Stock Exchange with the highest market capitalisation.
- 1486 The most ethno-culturally diverse sectors at top 20 level are natural resources and industrials. At the top 100 level, the best performers are telecoms and banking/finance. For ethno-cultural diversity, the least diverse sectors at top 20 level are utilities and engineering, with engineering and transport the least diverse sectors at top 100 level. Professional and support services appear to be relatively non-diverse on every measure.
- 1487 Citizens Advice Bureau "New to New Zealand?" (20 May 2015) <www.cab.org.nz>.
- 1488 Citizens Advice Bureau "Advice in your language" (27 March 2015) <www.cab.org.nz>.
- 1489 These are (as at 7 September 2015): Amharic, Arabic, Burmese, Cantonese, Dari, Farsi, Filipino, French, Hindi, Japanese, Kirundi, Kiswahili, Korean, Kurdish, Mandarin,

- Russian, Samoan, Sinhala, Spanish, Taiwanese, Tamil, Urdu and Vietnamese.
- 1490 Canterbury Employers' Chamber of Commerce "Skilled Migrant Business Services" <www.cecc.org.nz>.
- 1491 Canterbury Employers' Chamber of Commerce "Skilled Migrant Business Services" <www.cecc.org.nz>.
- 1492 Auckland Regional Migrant Services "Employment Support" <www.settlement.org.nz>.
- 1493 Auckland Regional Migrant Services "English Language Advisory Service" <www.settlement.org.nz>.
- 1494 Chinese New Settlers Services Trust "Settlement Services for Asian Newcomers" <www.cnsst.org.nz>.
- 1495 Chinese New Settlers Services Trust <www.cnsst.org.nz>.
- 1496 New Kiwis <www.newkiwis.co.nz>.
- 1497 New Kiwis <www.newkiwis.co.nz>.
- 1498 Wellington Employers' Chamber of Commerce "Skilled Newcomers Programme" <www.wecc.org.nz>.
- 1499 Canterbury Employers' Chamber of Commerce "Connecting Canterbury Employers & Newcomers" <www.cecc.org.nz>.
- 1500 See ESOL <www.esolonline.tki.org.nz>.
- 1501 See Tertiary Education Commission "Intensive Literacy and Numeracy – Targeted ESOL" <www.tec.govt.nz>.
- 1502 See Tertiary Education Commission "Workplace Literacy and Numeracy Fund" <www.tec.govt.nz>.
- 1503 See Tertiary Education Commission "Adult and Community Education" <www.tec.govt.nz>.
- 1504 See Tertiary Education Commission "English for Migrants" <www.tec.govt.nz>.
- 1505 Tertiary Education Commission "Migrant Levy" <www.tec.govt.nz>.
- 1506 Office of Ethnic Communities "Settling In Applicant Guidelines – Sept 2015 (2 September 2015)" <www.ethniccommunities.govt.nz>.
- 1507 Office of Ethnic Affairs *Working with Ethnic Diversity: Maximising New Zealand's Economic Potential* (2014) at 5.
- 1508 Office of Ethnic Affairs *Weaving New Zealand's Future* (October 2012) at 19.
- 1509 Office of Ethnic Affairs *A Foot in the Door* (2011) at 11–15.
- 1510 Office of Ethnic Affairs *A Foot in the Door* (2011) at 12.
- 1511 Office of Ethnic Affairs *Riding the Wave* (September 2012).
- 1512 Office of Ethnic Affairs *Working with Ethnic Diversity: Maximising New Zealand's Economic Potential* (2014) at 14.
- 1513 Office of Ethnic Affairs *Working with Ethnic Diversity: Maximising New Zealand's Economic Potential* (2014) at 16.
- 1514 Office of Ethnic Affairs *Weaving New Zealand's Future* (October 2012) at 17.
- 1515 Office of Ethnic Communities See "Language Line" <www.ethniccommunities.govt.nz>.
- 1516 Office of Ethnic Affairs *Weaving New Zealand's Future* (October 2012) at 17.
- 1517 These languages were as follows at the time of writing: Dari, Pashto, Arabic, French, Samoan, Spanish, German, Bengali, Nepali, Bosnian, Croatian, Serbian, Portuguese, Bulgarian, Khmer, Mandarin, Cantonese, Cook Islands Māori, Amharic, Hindi, Russian, Gujarati, Punjabi, Tamil, Urdu, Indonesian, Farsi, Assyrian, Kurdish, Japanese, Korean, Lao, Myanmar (Burmese), Niuean, Filipino, Somali, Sinhalese, Thai, Tokelauan, Tongan, Tuvaluan, Ukrainian and Vietnamese.
- 1518 See Office of Ethnic Communities "EPIC NZ Conference" <www.ethniccommunities.govt.nz>.
- 1519 See EPIC NZ <www.epicnz.co.nz>.
- 1520 Work and Income New Zealand "Migrant employment assistance (MEA)" <www.workandincome.govt.nz>.
- 1521 Work and Income New Zealand "Assisting migrants and refugees" <www.workandincome.govt.nz>.
- 1522 See Shakti New Zealand <www.shakti-international.org>.
- 1523 See Auckland Refugee Council <www.aucklandrefugeecouncil.org>.



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