

**New Zealand's twenty-first to twenty-second periodic
reports under the International Convention on the
Elimination of All Forms of Racial Discrimination**

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I. INTRODUCTION

1. The Government of New Zealand (**the Government**) welcomes the opportunity to report to the Committee on the Elimination of Racial Discrimination (**the Committee**) on measures giving effect to the undertakings of New Zealand under the International Convention on the Elimination of All Forms of Racial Discrimination (**the Convention**). Article 9 of the Convention states that parties undertake to submit periodic reports on legislative, judicial, administrative and/or other measures they adopt to give effect to the provisions of the Convention. The Government actively engages in the review of its human rights record to ensure that it continues to advance the promotion and protection of human rights in New Zealand.

2. The year 2015 marks the 50th anniversary of the adoption of the Convention. The Government registered no reservations to the Convention, which was the first of the core international human rights treaties ratified by New Zealand in 1972. New Zealand remains strongly committed to combating any form of discrimination and to striving for a country free of racism, racial discrimination, xenophobia and related intolerance. The Government therefore continues to aim to promote tolerance and respect in our society at all levels, from local communities through to national political parties, and has created targeted initiatives and dedicated programmes to support cultural awareness. The Government of New Zealand continues to serve as a catalyst for discussion about racism and remains supportive of and actively engaged in global efforts to combat racism and other forms of intolerance.

3. As a multi-ethnic, multi-cultural nation with a large indigenous population, commitment to an inclusive and tolerant society is core to New Zealand’s sense of identity. The Treaty of Waitangi and the relationship between Māori and the Crown are central components of New Zealand’s cultural identity.¹ It is also critical for our nationhood and the cohesiveness of our society that we reconcile our past while embracing the growing diversity in our country.

About this report

4. The present report (**the Report**) covers the period from December 2011 to December 2015. It follows on from the eighteenth, nineteenth and twentieth reports that the New Zealand delegation presented to the Committee on 21 and 22 February 2013.² The Report should be read alongside New Zealand’s recent report under the universal periodic review.³ It has been written in accordance with the Committee’s guidelines. The Report should be read with reference to the core document of New Zealand.⁴

¹ See also speech of the Governor-General of New Zealand delivered on 21 March 2015 to celebrate Race Relations Day; <https://gg.govt.nz/content/nationhood-neighbourhood>.

² See the summary records of the Committee’s 2221st and 2222nd meetings (CERD/C/SR.2221 and CERD/C/SR.2222), held on 21 and 22 February 2013.

³A/HRC/WG.6/18/NZL/1;A/HRC/WG.6/18/NZL/2;A/HRC/WG.6/18/NZL/3;A/HRC/26/3; A/HRC/26/3/Add.1.

⁴ Information about Parliament, the courts, and Government activity is readily available at www.govt.nz. Legislation referred to in this report can be found at www.legislation.govt.nz.

5. In its concluding observations, the Committee requested New Zealand submit its twenty-first and twenty-second periodic report in a single document.⁵ The Report responds under the relevant sections to the concluding observations on New Zealand's last report. Further, the Government of New Zealand has included detailed information on concrete measures taken to implement the recommendations contained in paragraphs 10, 15, 18 and 19 of the concluding observations.

6. In accordance with paragraph 1 of article 9 of the Convention and rule 65 of its amended rules of procedure, the Committee requested that New Zealand provide relevant follow-up information and outline developments on the recommendations contained in paragraphs 8, 9, 14 and 17 of the concluding recommendations within one year. The information on follow-up to these recommendations was received by the Committee on 24 April 2014.⁶ The Report will not repeat the information contained therein, but will update it where relevant.

7. In the production of the Report the Government consulted widely with national stakeholders, including members of civil society. A draft Report was circulated for public comment on [X], resulting in the receipt of [X] submissions that were considered in the preparation of the Report. Consultative meetings with representatives of civil society were held in Auckland and Wellington to discuss the content of the draft report. The Report is available on the website of the Ministry of Justice.⁷

II. GENERAL INFORMATION RELATING TO THE CONVENTION

A. Government policy and general legal framework

8. The Government is strongly committed to the protection and promotion of international human rights, as embodied in the Universal Declaration on Human Rights and the other international human rights treaties to which New Zealand is a party.⁸

9. The reporting period saw significant developments giving further effect to the Convention rights and the recommendations by the Committee. These are addressed throughout the Report.

10. It is the ongoing policy of the Government to eliminate discrimination, intolerance and violence based on colour, religion, race or ethnic or national origin. New Zealand law protects freedom from discrimination on the grounds of colour, race, ethnic or national origins (which includes nationality or citizenship) or being the relative of a particular person.⁹

⁵ CERD/C/NZL/CO/18-20, para. 29.

⁶ Information received from New Zealand on follow-up to the concluding observations (CERD/C/NZL/CO/18-20/Add.1).

⁷ XXX.

⁸ See also http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx for ratification status of New Zealand.

⁹ New Zealand Bill of Rights Act 1990, section 19(1); and Human Rights Act 1993, section 21(1).

B. Ethnic characteristics of the New Zealand population

11. The ethnic characteristics of the population of New Zealand appear in detail in the core document.¹⁰ In the 2013 New Zealand Census of Population and Dwellings, 74 per cent of the people identified as belonging to the European ethnic group; 15 per cent as Māori; 12 per cent as Asian; six per cent as Pacific Peoples; and one per cent as Middle Eastern/Latin American/African.¹¹

C. Data available on racial discrimination in New Zealand

12. A 2012 report by Statistics New Zealand,¹² based on a sample of 17,271 respondents concluded that racial discrimination was the most common form of discrimination experienced in New Zealand. Six per cent of respondents believed racial discrimination was the reason for them being treated unfairly or unfavourably. People who identified as Asian reported the highest levels of racial discrimination, followed by Māori and Pacific peoples, who reported similar levels of racial discrimination.

13. 2.3 per cent of respondents reported experiencing racial discrimination in employment situations. This rate was similar to those who have experienced racial discrimination in public, with 2.5 per cent of participants reporting this. Migrants were more likely to experience racial discrimination in the workplace than non-migrants. The findings on racial discrimination in the workplace are of particular interest because New Zealand employers are obliged to provide a safe working environment for their employees under the Human Rights Act 1993 and the Employment Relations Act 2000. The report concluded that racial discrimination was not only associated with a person's ethnic group, but also whether or not they were born in New Zealand.

D. The Waitangi Tribunal's report *Ko Aotearoa Tēnei* (Wai 262, 2011)

14. The Waitangi Tribunal's 2011 report *Ko Aotearoa Tēnei* is about New Zealand law and policy affecting Māori culture and identity. It is a very wide ranging report and was issued after a lengthy inquiry process and deliberations by the Tribunal. Because of its breadth there is no single response to the suggestions made in the report for changes to legal and policy settings. Instead, the New Zealand Government is acting as circumstances arise to factor the approaches recommended in the report into decisions and new developments, including law reform. For instance, in ongoing work to negotiate settlements of claims made under the Treaty of Waitangi, protection has been given to a famous haka *Ka Mate* by the Haka Ka Mate Attribution Act 2014. A broad range of co-governance and co-management arrangements for natural resource management continue to be negotiated between the Crown and Māori in light of the Tribunal's analysis in *Ko Aotearoa Tēnei*, including the deed of settlement reached with Whanganui iwi in 2014 to uphold the mana of Te Awa Tupua, the

¹⁰ HRI/CORE/1/Add.33.

¹¹ <http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/infographic-culture-identity.aspx>.

¹² Statistics New Zealand (2012). Working together: Racial discrimination in New Zealand.

Whanganui River system. Developments such as these demonstrate how Māori systems of knowledge and worldviews are increasingly reflected in New Zealand law and policy.

15. As New Zealand undertakes policy development in related fields, the Government is cognisant of international instruments and emerging models of best practice.

E. Efforts by the United Nations system to promote and protect the Rights of Indigenous Peoples

United Nations Declaration on the Rights of Indigenous Peoples

16. New Zealand supports the Declaration on the Rights of Indigenous Peoples as an important recognition of the rights and aspirations of indigenous peoples and a reaffirmation of its commitment to the duties and principles inherent in the Treaty of Waitangi. Indigenous rights and culture are of profound importance to New Zealand and fundamental to the country's identity as a nation. The Government acknowledges that the ongoing national dialogue is grounded in the Treaty of Waitangi and recognises that Māori have an interest in all policy and legislative matters. The Government also acknowledged that Māori custom, worldviews and cultural heritage should be reflected in the laws and policies of New Zealand.

17. In its 2014 report *Whaia Te Mana Motuhake/In Pursuit of Mana Motuhake: Report on the Māori Community Development Act Claim (Wai 2417, 2014)* the Waitangi Tribunal made observations on the use of the Declaration as a further tool to help to assess and interpret actions of the Crown in New Zealand under the Treaty of Waitangi and the principles of the Treaty of Waitangi.

World Conference on Indigenous Peoples

18. The September 2014 World Conference on Indigenous Peoples was an opportunity for New Zealand to reflect on the progress made since the adoption of the Declaration on the Rights of Indigenous Peoples, and to acknowledge the remaining challenges in meeting the aspirations set out therein. The Government supported the outcome document aimed at advancing the rights of indigenous peoples, and it is working towards the effective application of the outcome document, implementing a range of actions to promote and advance the rights of indigenous peoples.^{13 14}

¹³ A/RES/69/2.

¹⁴ E.g. Education: *Ka Hikitia – Accelerating Success 2013-2017*; whānau ora; support for Te Reo Māori; the Government's flagship Business Growth Agenda programme; and the collection of appropriate official statistical data relevant to the needs of Māori.

Annual United Nations Permanent Forum on Indigenous Issues

19. The Fourteenth Session of the Permanent Forum on Indigenous Issues was held at the United Nations in New York from 20 April – 1 May 2015.

20. At the Fourteenth Session, the Government of New Zealand confirmed it will continue to strengthen the relationship between it and Māori to ensure that long-term domestic priorities for advancing indigenous well-being, including efforts to address domestic violence, youth unemployment and access to resources and land, are addressed.

21. It also reaffirmed its support for the United Nations Declaration on the Rights of Indigenous Peoples. It noted the importance of continued understanding and commitment to the common objectives of the Declaration alongside the Treaty of Waitangi and New Zealand's existing legal and constitutional frameworks. The New Zealand delegation took the opportunity to engage with the Māori representatives attending the Permanent Forum, representing both iwi and other non-Government groups.

United Nations Special Rapporteur on the rights of indigenous peoples

22. In 2011, the then Special Rapporteur on the rights of indigenous peoples made reference to the significant strides made by New Zealand to advance the rights of Māori people. He described the Treaty settlement process, despite shortcomings, as one of the most important examples in the world of an effort to address historical and ongoing grievances of indigenous peoples.¹⁵

23. In a 2012 letter, the Special Rapporteur brought to the attention of the Government the allegations received by a third party regarding the Government's policy of negotiating historical Treaty settlements with large natural groups of iwi or a cluster of hapū rather than whānau. He raised concerns that through this policy, smaller groups were not able to have their rights and interests adequately represented within the Treaty of Waitangi settlement proceedings.

24. Following the Government response, the Special Rapporteur noted he was encouraged that remedies would be available should whānau be dissatisfied with the Treaty settlement framework.

¹⁵ A/HRC/18/35/Add.4, para. 35-42/ para. 66-67/para. 73.

III. INFORMATION RELATING TO SPECIFIC ARTICLES OF THE CONVENTION

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

- (a) *Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;*
- (b) *Each State Party undertakes not to sponsor, defend or support racial discrimination by any persons or organizations;*
- (c) *Each State Party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists;*
- (d) *Each State Party shall prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization;*
- (e) *Each State Party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements and other means of eliminating barriers between races, and to discourage anything which tends to strengthen racial division.*

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms.

These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

25. The Government is committed to meeting its obligations under article 2 of the Convention.

26. New Zealand does not have a fully written constitution. The New Zealand constitution is found in formal legal documents, in decisions of the courts, and in practices (some of which have hardened into conventions that must be followed).¹⁶ The constitutional framework increasingly reflects the fact that the Treaty of Waitangi is regarded as a founding document of Government in New Zealand.

Constitutional Advisory Panel – Te Ranga Kaupapa Ture

27. An independent Constitutional Advisory Panel was appointed in 2010 to consider a range of constitutional issues and to facilitate public engagement, awareness and discussion

¹⁶ <https://gg.govt.nz/role/constofnz/intro>.

of our constitutional arrangements. In December 2013, following extensive public consultation, the Panel delivered its report on New Zealander's views of constitutional issues and with advice to the Government on those issues.¹⁷

28. One of the key recommendations was that the Government develop a national strategy for civics and citizenship education in schools and in the community, including the unique role of the Treaty of Waitangi.

29. Regarding the role of the Treaty of Waitangi, the Panel recommended the Government:

- continue to affirm the importance of the Treaty as a foundational document;
- ensure a Treaty education strategy that includes the current role and status of the Treaty and Treaty settlement process;
- support the continued development of the role and status of the Treaty under the current arrangements as has occurred over the past decades; and
- set up a process to develop a range of options for the future role of the Treaty, including options within the existing constitutional arrangements and arrangements in which the Treaty is the foundation.

30. The Government welcomed the Panel's report, which reflects the views of over 5,000 New Zealanders and organisations. It will prove a valuable resource in future as the Government considers the various constitutional matters noted by the Panel, and will help further the discussion about our constitutional arrangements and national identity.

New Zealand Bill of Rights Act 1990

31. The New Zealand Bill of Rights Act 1990 affirms the human rights and fundamental freedoms in New Zealand. The Bill of Rights Act also affirms New Zealand's commitment to the Convention through section 19, which sets out the prohibited grounds of discrimination as exhaustively enumerated in section 22 of the New Zealand Human Rights Act 1993, including discrimination based on race.

32. Section 7 of the Bill of Rights Act requires the Attorney-General to inform the House of Representatives of any provision in a domestic bill that appears to be inconsistent with any of the rights and freedoms affirmed in the Act. Parliament may form a different view about whether a particular right or freedom is limited or whether the limitation is justified. However, the decision is informed by the opinion of the Attorney-General. A review of Standing Orders in 2014 led to an amendment requiring that all section 7 reports be referred to a select committee for consideration. All section 7 reports are available on the Parliament and Ministry of Justice websites.

¹⁷ <http://www.ourconstitution.org.nz/The-Report>.

33. In the reporting period, no section 7 report was issued by the Attorney-General on racial discrimination, but in 2010, the Local Electoral (Māori Representation) Amendment Bill triggered such a report. It sought to amend the Local Electoral Act to replace voluntary Māori representation in local government with a requirement for territorial and regional authorities to establish one or more Māori wards and constituencies, proportionate to the total Māori population of the relevant territory or region regardless of which roll they were on. This meant the number of Māori seats would have been disproportionately higher than non Māori seats compared to the population of each ward. The broad purpose of the Bill appeared to be to make better provision for Māori representation in local government. The Attorney-General considered that the Bill had a discriminatory impact on non-Māori by diluting their democratic participation in local government and that the limitation could not be justified under section 5 of the Bill of Rights Act. The Bill was defeated in Parliament at its first reading.¹⁸

34. Section 5 of the Bill of Rights Act provides that the rights and freedoms contained in the Act may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

35. Section 6 of the Bill of Rights Act requires the courts to prefer possible interpretations of enactments that are consistent with the Act over interpretations that are not consistent. However, no provision in any enactment is invalidated or inapplicable by reason of its being inconsistent with a Bill of Rights Act provision (Section 4).

36. The Ministry of Justice assists other government agencies in mainstreaming human rights into the public service and ensuring the Bill of Rights Act is considered at the early policy development stage.

National human rights institution¹⁹

37. The New Zealand Human Rights Commission (the Commission) is an independent Crown entity established by the Human Rights Act 1993 to:

- advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society; and
- encourage the maintenance and development of harmonious relations between individuals and among the diverse groups in New Zealand society.²⁰

38. In accordance with the Paris Principles and the Statute of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights, the Commission is accredited with an A-status.²¹

¹⁸ See the full text of the report at: http://www.parliament.nz/en-nz/pb/presented/papers/49DBHOH_PAP20024_1/attorney-general-report-of-the-under-the-new-zealand.

¹⁹ For more detailed information on the work of the Human Rights Commission: <http://www.hrc.co.nz/>.

²⁰ <http://www.hrc.co.nz/about/vision-mission-values-and-statutory-responsibilities>.

²¹ <http://nhri.ohchr.org/EN/Documents>Status%20Accreditation%20Chart.pdf>.

39. As one of the Human Rights Commissioners, the Race Relations Commissioner encourages New Zealanders to take personal responsibility for race relations and to defend victims of racial abuse.

40. The Commission provides information and, if needed, free mediation for discrimination cases that are covered by the Human Rights Act 1993. Mediation settles most complaints to the satisfaction of the parties. Dissatisfied parties can make a claim to the Human Rights Review Tribunal once the Commission's process is complete. The Commission's Office of Human Rights Proceedings can provide free legal representation for discrimination claims heard by the Human Rights Review Tribunal.

National action plan for human rights

41. Under the Human Rights Act 1993 the Commission - in consultation with interested parties - is responsible for preparing a national plan of action for the promotion and protection of human rights in New Zealand.²² On 30 June 2015 the Commission launched New Zealand's second Human Rights National Plan of Action 2015 – 2019 as an online tool to monitor the Government's human rights record.²³

42. The Action Plan sets out the actions the Government will take as a result of the commitments it made through its second Universal Periodic Review (UPR) in 2014. Using the UPR as a basis for the Action Plan provides a framework for dialogue between the Government and affected people.

43. The Action Plan tracks the Government's progress in implementing UPR recommendations and addresses, among others, issues such as harmonious relations, equality and non-discrimination in the criminal justice system and indigenous rights.

Human Rights Amendment Bill

44. The Human Rights Amendment Bill is currently before Parliament. It passed its second reading on 5 May 2015. It makes changes to strengthen the role and structure of the Commission, including provision that dedicated commissioners be appointed to lead work in the priority areas of race relations, equal employment opportunities and disability rights. As the Bill requires a commissioner to be appointed to lead the work of the Human Rights Commission in race relations, the statutory focus and formalised leadership role in race relations is retained. The Human Rights Amendment Bill also revises the Commission's functions to reflect and preserve activities it already undertakes, such as promoting New Zealand's compliance with international human rights obligations, expressing opinions on any situation where human rights may be infringed, and promoting racial equality and cultural diversity.

²² Section 5(2)(m).

²³<https://www.hrc.co.nz/your-rights/human-rights/npa/>.

Case law on racial discrimination and/ or harassment

45. Racial discrimination and/or harassment can be considered by the Employment Relations Authority under the Employment Relations Act 2000.²⁴

46. Under the Human Rights Act 1993, any individual can raise a personal grievance against a government agency or a private person in respect of race, colour or ethnic or national origins. As noted above, complaints that have already been referred to the Commission, but are unresolved, can go to the Human Rights Review Tribunal.²⁵ The Tribunal is independent from the Commission and deals with all claims relating to breaches of the Human Rights Act 1993 referred to it by the Commission. It can award compensatory damages for injury to feelings, humiliation and loss of dignity.

47. In 2014, the Commission received 456 enquires and complaints related to race and its associated grounds (colour, ethnic and national origin).²⁶ During the reporting period the Tribunal has dealt with one racial discrimination case involving a government agency.²⁷ However, it has decided several cases that have race implications between individuals and private employers, many of which relied on the ground of racial harassment. Apart from financial compensation, and in cases of work-place harassment, including racial harassment, the Tribunal frequently recommends measures to improve a workplace’s culture. While these recommendations are not legally enforceable they reflect the need to make change to prevent such harassment, rather than compensate in the aftermath.

48. There must be a link between the act of harassment itself and race as a prohibited ground under the Human Rights Act 1993.²⁸ In *Singh v Singh*,²⁹ the Human Rights Tribunal found that all of the elements of “racial harassment” as prescribed by section 63 of the Human Rights Act 1993 were established and that language or physical behaviour used brought the plaintiff into contempt or ridicule on the grounds of his colour, race, or ethnic or national origins. The Tribunal stated that such conduct was both hurtful and offensive to the plaintiff and it had a detrimental effect on the plaintiff.

49. In the cases concerning racial discrimination before it, the Tribunal has made it clear that addressing racial discrimination and racial harassment is the responsibility of all New Zealanders that it is unacceptable, particularly in the workplace, and that regulatory and fiscal consequences will result from race-related behaviour.

Treaty of Waitangi

50. 6 February 2015 marked 175 years since the signing of the Treaty of Waitangi by the British Crown and Māori Chiefs. As Tier 1 anniversary (events whose impact was felt throughout the nation or that changed New Zealand society in significant ways), it warranted

²⁴ Employment Relations Act 200, ss 104(1) and 105(1).

²⁵ Human Rights Act 1993, s 21(1)-(e) – (g)

²⁶ <https://www.hrc.co.nz/files/5214/2352/3805/AnnualReport2014-webpdf.pdf>.

²⁷ <http://www.justice.govt.nz/tribunals/human-rights-review-tribunal/decisions-of-the-human-rights-review-tribunal/decisions-under-the-human-rights-act-1993/2013/2013-nzhrtt-28>.

²⁸ Fehling v Appleby CIV 2014 – 418-000021 [2015] NZHC75.

²⁹ [2015] NZHRRT 8.

a significant level of central government involvement. In his Waitangi Day Speech, the Prime Minister noted that the “*Treaty is a formal agreement but it must be interpreted over time, and adapt to new situations, through negotiation between the Treaty partners*”.³⁰

51. The Waitangi 175 Working Group, chaired by the Ministry for Culture and Heritage comprises representatives from a number of central government Ministries. It has a coordination role within Government with the following objectives: Commemorate the partnership created by signing the Treaty of Waitangi; raise awareness about the Treaty of Waitangi and what it means today and for tomorrow; and stimulate a conversation around nationhood, citizenship and civics.³¹

52. In 2015 all government departments have bilingual names, Māori protocols are often observed at official functions and Māori words, symbols and concepts are commonplace inside and outside the government and public sector. Inclusion of references to the Treaty of Waitangi in new legislation is considered on a case-by-case basis. About 30 Acts require decision-makers to have regard to the principles of the Treaty. Other legislation recognises particular rights or interests of Māori in decision-making about education, broadcasting and language. Where relevant, courts consider the principles of the Treaty in deciding specific cases.

The Waitangi Tribunal

53. The Waitangi Tribunal was established in 1975 because of the need to address deeply held concerns of Māori regarding the Crown’s obligations under the Treaty of Waitangi, and to restore good relationships between the Crown and Māori. The Tribunal performs a unique role, examining claims by Māori who may have been prejudiced by laws and regulations or by acts, omissions, policies, or practices of the Crown since 1840 that are inconsistent with the principles of the Treaty of Waitangi. The Tribunal was established as an independent statutory inquiry body with the powers of a commission of inquiry. The Tribunal makes findings on whether a claim is well founded because the principles of the Treaty have been breached in a manner that has caused prejudice to a claimant. The Tribunal's findings are binding on the Crown in some limited circumstances involving the return of certain categories of property. The Tribunal aims to improve the settlement of claims by conducting a robust inquiry, identifying all parties and their representatives in a public and transparent process that clarifies key issues, resolves points of contention where possible, and delivers parties ready to negotiate a settlement.

54. The Tribunal is approaching the completion of its long-running district inquiry programme of historical claims. In July 2014, the Tribunal issued a new strategic direction for the next decade. By 2020 the Tribunal's strategic goal is to complete its six current historical inquiries, any remaining historical claims, and to progress high priority kaupapa claims. Kaupapa claims are claims that raise significant issues affecting Māori as a whole or a section of Māori in similar ways. When the current historical inquiries conclude the Tribunal will have reported on claims concerning more than 90 per cent of New Zealand’s land area

³⁰ The text of the full speech is available at: <https://www.beehive.govt.nz/speech/waitangi-day-breakfast-speech>.

³¹ More information available at www.mch.govt.nz/waitangi175.

(the remaining ten percent relates to claimants who chose to settle their claims with the Government without a Waitangi Tribunal report).

55. A district report can cover many hundreds of diverse and complex historical claims dating back to 1840 and can take several years to complete. This time is necessary so the Tribunal can make sure its reports are of the highest standard. The Ministry of Justice is, however, continuously looking at ways of doing things faster and more effectively.

56. The Tribunal currently has approximately 1800 registered claims before it. In 2008 the Government set a statutory closing of all historical claims. A significant number of claims were submitted prior to the closing date. The Tribunal first needs to consider whether these claims met the criteria for registration. By April 2013 the number of outstanding unregistered claims was 876. At present, the number of unregistered claims is 108, a 87.7 per cent reduction in unregistered claims.

Negotiation of Historic Treaty of Waitangi Claims

57. The Government's goal in settling historical Treaty of Waitangi claims is to achieve fair and durable settlements that contribute to the cultural, social and economic development of Māori and enhance the Crown-iwi relationship. The settlement of historical claims is directly negotiated between Māori claimant groups and the Government. This reflects the principle that claimant groups and the Crown are the only two parties who can, by agreement, achieve durable, fair, and final settlements.

58. Each settlement includes an acknowledgement and apology from the Crown for historic breaches of the Treaty of Waitangi, and the ongoing harm caused by these breaches. The Crown's apology is vital to rebuilding the relationship between the Crown and claimant groups in order to move forward as a nation. Settlements also include cultural and commercial/financial redress.³²

59. The Government and iwi have reached a stage where over half the anticipated total number of deeds of settlement have been achieved and the majority of iwi, 84 per cent, are settled or at various stages of Treaty settlement negotiations. As at 11 August, seventy-four deeds of settlement have been signed and counting claimant groups in their current configurations i.e. assuming claimant groups currently negotiating together do not split apart, sixty-one deeds of settlement remain to be completed.

60. The last five years have seen an increase in the number of deeds of settlement reached. This has been a result of operational changes to the way the Office of Treaty Settlements approaches and resources negotiations, and the consolidation of knowledge about how to conduct successful negotiations. Treaty settlements have benefited from strong political commitment as evidenced by the cross-party support that Treaty settlement legislation, required to give effect to each deed of settlement, has generally received in Parliament.

³² Cultural redress can include things like: place name changes, the transfer of Crown land to the claimant group, and co-governance of rivers and lakes.

61. While remaining focused on achieving Treaty settlements, the Government is increasingly turning its attention to ensuring the durability of Treaty settlements and the growing number and complexity of resulting commitments. While individual government departments have responsibility for implementing settlement commitments, the Crown as a whole is responsible for ensuring these commitments are met. The Government has recently established the Post Settlement Commitments Unit within the Ministry of Justice. This Unit's role is to work alongside the rest of the Crown, local government and iwi to safeguard the durability of historical Treaty settlements and to ensure the gains made to Crown-Māori relationships through Treaty settlements are maintained and built upon.

Consultation with Māori

62. Although there is no single standard procedure for consulting with Māori, a number of principles have been established for consultation procedures between the Government and Māori, including through the courts and the Waitangi Tribunal. The principle of partnership and commitment to an enduring Crown-Māori relationship is central to consultation, as is the role of *kanohi ki te kanohi* engagement and to act in good faith. In line with established principles, the Government has a number of initiatives in place for consultation with Māori that aim to develop technical capacity and ensure effective participation of Māori in decision-making processes. The Crown continues to seek opportunities to strengthen the Crown-Māori relationship and improve consultation processes.

63. There are also many mechanisms in place for effective Māori participation in decision-making processes on issues that affect Māori and their right to free, prior and informed consent. These include Crown-Iwi Accords, Relationship Agreements, Protocols and Memoranda of Understanding between the Crown (through various agencies) and iwi. The biggest challenges for Government occur when Māori articulate rights and interests that are perceived to conflict with other public interests (e.g. Māori asserting interests in fresh water).

Māori customary law

64. Māori customary law, or tikanga Māori, is a unique part of the New Zealand legal system. In its narrow and legal sense Māori customary law refers to Māori customs that have met specific legal tests so are enforceable in the courts. However, Māori customary law can be used in a broader sense to describe the body of rules developed by Māori to govern their societies. The rules embodied in tikanga include, for example: leadership and governance on all matters including Māori land; relationships amongst hapū and whānau; determining rights of land; and the exercise of kaitiakitanga practices including the imposition of rahui and other similar customs.

65. As a prerequisite to any legal recognition of custom, the court must establish the existence of the custom alleged.³³ This requires proof of that custom by evidence. Despite

³³ Richard Boast “Māori Customary Law and Land Tenure” in Richard Boast and others (eds) *Māori Land Law* (2nd ed, LexisNexis, Wellington 2004) at ch 2.2.5.

some uncertainty over the means and standard of proof necessary, it appears that the New Zealand courts require expert evidence in support of a custom's existence.³⁴

66. Where there is a dispute between existing Māori custom and the English common law, the courts have to decide on the applicability of that custom in New Zealand law.³⁵ Tikanga and the phrase “in accordance with tikanga” appear in more recent legislation, such as the Marine and Costal Area (Takutai Moana) Act 2011, giving legislative effect to Māori customary law.

67. The current status of Māori customary law can be best understood through a high profile decision of the Supreme Court, *Takamore v Clarke*, addressing traditional Māori burial customs.³⁶ Māori burial customs were seen as being a relevant consideration to be weighed by the executor amongst others in considering how executors were to exercise their rights, although, adopted the issue of how tikanga could itself be recognised by law was not addressed.³⁷ It therefore remains to be seen when tikanga Māori will be enforceable as part of the common law of New Zealand.

Review of the Te Ture Whenua Māori Act

68. The primary law relating to Māori Land is the Te Ture Whenua Māori Act 1993. It has been estimated that up to 80 per cent of Māori land is under-performing for its owners, in many cases because of structural issues stemming from the existing legislation. In June 2012 the Government appointed an independent panel to review the Act.³⁸

69. Legislation resulting from the review of the Act enables Māori land owners to make decisions themselves without needing approval of the Māori Land Court. Under the proposed Bill the Māori Land Court will continue to have a critical role in safeguarding the cultural and economic interests of Māori land owners but its role will focus more on issues not resolved by other means and requiring adjudication.

³⁴ At 2.2.5. See *Te Weehi v Regional Fisheries Officer* [1986] 1 NZLR 680 (HC) where evidence was supplied by a senior lecturer in Māori studies at Canterbury University and a local kaumatua. In *Arani v Public Trustee of New Zealand* [1920] AC 198 (PC) published decisions of the Māori Appellate Court were relied upon, as well as information given by a distinguished New Zealand chief.

³⁵ See *Nireaha Tamaki v Baker* [1901] AC 561 (PC) at 577–578; *Attorney-General v Ngati Apa* [2003] 3 NZLR 643 (CA) at [34]; *Te Weehi v Regional Fisheries Officer* above n 23, 687; *Hukina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188 (HC) at 215.

³⁶ *Takamore v Clarke* [2012] NZSC 116. The Supreme Court considered the question of competing rights between the common law and tikanga in the context of determining who was entitled to custody of Mr Takamore's body and had a duty to bury it. The Supreme Court considered the powers and duties of executors in determining burial and the rights of other interested persons. Executors were required to consider tikanga Māori and other important cultural, spiritual and religious values where these formed part of the heritage of the deceased.

³⁷ Cf. Dissenting opinion of Elias CJ at [95].

³⁸ Private land is either general land (derived from a Crown grant) or Māori land (derived from customary tenure). Most Māori land is freehold land, being land that was originally Māori customary land that has had its beneficial ownership confirmed by the Māori Land Court and is retained by Māori without having been converted into general land. Approximately 1.466 million hectares of Māori Freehold Land remain in New Zealand.

70. A new Māori Land Service will support Māori land owners to operate within the new legal framework. The Māori Land Service will provide land and title information, decision-making support, dispute resolution assistance and a single point of access to government services that strengthen the productivity and utilisation of Māori land.

71. A new \$12.8 million Te Ture Whenua Māori Network was announced in the Budget in May 2015. This network will support targeted initiatives to improve the productivity of Māori land over the next four years.

Consultation process with Māori

72. The independent panel appointed to review the Act published a discussion document containing a number of propositions for reform. It held 20 consultation hui with Māori throughout the country and it received 189 written submissions.

73. In September 2013, the Government accepted the panel's recommendations for reform and a technical team was formed to develop new legislation. In 2014, the technical team worked closely with a wider group of Māori advisers appointed by Te Ture Whenua Māori Iwi Leaders Group. Senior Ministers met with the Iwi Leaders Group and between September 2013 and April 2014 the Associate Minister of Māori Affairs held 14 meetings with Māori groups around the country to discuss the reforms.

74. In August 2014, the Crown combined with the Iwi Leaders Group and the Federation of Māori Authorities to hold 20 hui with Māori throughout the country to provide an update on progress with developing the Bill and to obtain responses and feedback.

75. In February 2015, the Minister for Māori Development appointed a Ministerial Advisory Group comprising Māori with extensive experience in Māori land ownership and management. The Ministerial Advisory Group has since consulted with the New Zealand Māori Council, the Federation of Māori Authorities, Te Tumu Paeroa (the Māori Trustee), the Iwi Leaders Group, the New Zealand Māori Women's Welfare League, and the judges of the Māori Land Court.

76. In May 2015, the Government released an exposure draft of the new Te Ture Whenua Māori Bill for consultation prior to its introduction to Parliament. The Government and the Ministerial Advisory Group have recently held 23 consultation hui with Māori throughout the country and has called for written submissions on the draft bill. This will inform the finalisation of the bill for introduction, following which Māori will have a further opportunity for input via the select committee process.

Holistic approach to development

77. Whānau Ora is a culturally anchored approach to achieving better outcomes for whānau and families in need by empowering whānau as a whole rather than focusing separately on individuals and their problems. Whānau Ora is built around whānau aspirations for healthy lifestyles, full participation in society, and confident participation in te ao Māori -

the Māori world. The original focus of Whānau Ora was on integrating health and social services and placing the family at the centre of service planning and delivery. The focus has now broadened to direct support for whānau capability building through a NGO commissioning model. Commissioning Agencies act as brokers in matching the needs and aspirations of families with initiatives that assist them to increase their capability. This includes developing clear pathways to engaging Pacific families and communities. The approach is also based on strengthening the relationship between the Crown and Māori, to ensure that long term domestic priorities for advancing indigenous well-being are addressed.³⁹

Te Puni Kōkiri – Ministry of Māori Development

78. In November 2013 Cabinet decided to refocus the role of **Te Puni Kōkiri**, the principal adviser to the Government on Crown-iwi relationships, to give effect to its three substantive roles - strategic leadership and guidance; advice to Ministers and agencies; and innovative investments. Te Puni Kōkiri's principal approach is to provide a mix of advice and investment focused on supporting positive Crown-iwi, hapū and whānau Māori partnerships and relationships, and state sector effectiveness for Māori.

The Marine and Coastal Area (Takutai Moana) Act 2011

79. The Marine and Coastal Area Act 2011 gives legal expression to the customary interests of Maori and protects the legitimate interests of all New Zealanders in the marine and coastal area of New Zealand. Neither the Crown nor any other person owns, or is capable of owning, the common marine and coastal area.

80. There are two pathways for Māori to apply for recognition of their extant customary rights in the common marine and coastal area. Iwi, hapū and whānau can seek recognition agreements directly with the Crown or apply for determinations in the High Court.

81. As of August 2015 the Crown has received twenty-four applications for recognition agreements and five applications have been transferred from the previous Foreshore and Seabed Act 2004. The Minister of Treaty of Waitangi Negotiations, who is responsible for determining applications is currently engaging with four new and three transferred applications, has declined to engage with ten (for reasons such as overlapping interests) and is considering whether to engage with a further five. Five groups have withdrawn their applications. At this time, the High Court is addressing ten applications for recognition orders that have been transferred to it from the previous Foreshore and Seabed Act 2004. No applications have been made to the High Court to date under the 2011 legislation.

³⁹ See also: *Whānau Ora: The first four years, report by the Controller and Auditor-General of New Zealand presented to the House of Representatives under section 20 of the Public Audit Act 2001*, May 2015.

Māori freshwater and geothermal resources

82. In its concluding observations on the eighteenth to the twentieth period reports, the Committee requested New Zealand to provide detailed information in this report on concrete measures taken to implement the recommendation related to Māori freshwater and geothermal resources.⁴⁰

1. The National Freshwater and Geothermal Resources Inquiry (Wai 2358)

83. The Waitangi Tribunal’s National Freshwater and Geothermal Resources Claim began in 2012. This inquiry includes exploring the nature and scope of rights and interests in freshwater and geothermal resources.

84. The Tribunal’s stage one inquiry was heard urgently in light of the Crown’s proposal to partially privatise certain power-generating State Owned Enterprises (SOE’s). The Waitangi Tribunal published its report on stage one in August 2012 (Wai 2358, 2012) and found that Māori have residual proprietary rights in fresh water.

85. In February 2013, the New Zealand Supreme Court considered whether the proposal to partially privatise power-generating SOE’s would impair the Crown’s ability to recognise Māori rights in freshwater.⁴¹ The Committee has previously noted the decision of the Court that the Finance (Mixed Ownership Model) Amendment Act of 2012 does not materially impair the Crown’s ability or obligation to ensure the rights of Māori communities to freshwater and geothermal resources.

2. The Crown and the Freshwater Iwi Leaders Group

86. In 2013, the Crown released a discussion document titled ‘*Freshwater reform 2013 and beyond*’ outlining areas of freshwater management it considered required policy reform. This included the recognition of iwi and `rights and interests. The Crown has committed to a broad good-faith consultation process with iwi, hapū and Māori to inform all major decisions in respect of freshwater reform.

87. The Freshwater Iwi Leaders Group (ILG) comprises members of a number of iwi. Its members speak for their particular iwi or hapū and report to the Iwi Chairs Forum which comprises a significant body of iwi and hapū representatives. The ILG and the Crown have worked together on freshwater issues since 2009.

88. In January 2015, the Crown and the ILG agreed on a work plan to work together across 2015 to develop options for the recognition of iwi and hapū rights and interests in freshwater.

89. The Crown’s work with the ILG is one part of a broader policy development process reflecting the range of community and economic interests in freshwater. The Crown-ILG

⁴⁰ CERD/C/NZL/CO/18-20, para 19 and 28.

⁴¹ *New Zealand Maori Council v Attorney-General* [2013] 3 NZLR 31.

workplan includes identifying options for further policy development, producing a public discussion document in late 2015 to early 2016 to allow for further public consultation, including with iwi, hapū and other Māori groups. The Crown acknowledges that the policy development process with the ILG cannot be a substitute for the Crown's obligation to consult with Māori on freshwater issues.

90. The Crown will regularly update the Waitangi Tribunal on the policy development process. The Crown is committed to continuing to consider the Tribunal's Stage One Report on the National Freshwater and Geothermal Resources Claim as part of that process.

91. At the time of writing, the Waitangi Tribunal has further adjourned its hearing of stage two of the National Freshwater and Geothermal Resources Claim until February 2016 to allow the policy development process involving the Crown and the ILG to progress further.

3. Consultation with Māori

92. As an integral part of the current freshwater reform policy development work, the Crown has processes in place both for direct Treaty-based engagement between leaders to consider and address collaboratively iwi/hapū rights and interests, as well as for wider consultation with Māori.

93. The Fresh Start for Fresh Water Programme engagement with Māori has three aspects:

- Direct engagement at the leadership level between iwi and the Crown – occurring through ongoing discussion between the ILG and senior Ministers throughout the fresh water reform process;
- The Land and Water Forum, which is a non-governmental forum comprising stakeholders from all relevant sectors, including iwi; and
- Policy development by Crown officials in concert with the Iwi Advisers Group (IAG), a group that advises the ILG.

94. The ILG comprises the leaders of Ngati Tuwharetoa, Waikato-Tainui, Whanganui, Ngai Tahu and Te Arawa. The ILG is clear it does not have a mandate to make binding agreements on behalf of other iwi and has informed the Government that wider engagement with iwi is necessary in the ongoing development of freshwater policy. The Crown is clear that engagement with the ILG does not preclude the Crown from consulting with other iwi or iwi representatives groups. The Crown is aware of the necessity for engagement with iwi on a wider scale and will carry out such engagement at the appropriate times.

Geothermal resources

1. Māori Geothermal Advisory Group

95. In 2014, the Crown facilitated the creation of a Māori Geothermal Advisory Group to work with and provide advice to Māori organisations on how to maximise opportunities to utilise and develop direct use of geothermal assets.

96. Expectations of the group include discussing the aspirations of land owners and engaging agency support in their development pathways; identifying gaps in information and work with agencies to address them; sharing information and experiences that support direct use of geothermal; providing a Māori perspective on commercial projects and opportunities; and advocating a co-ordinated multi-agency approach which is efficient, effective and targeted to need.

2. He Kai Kei Aku Ringa

97. The Māori Economic Development Strategy and Action plan, *He Kai Kei Aku Ringa* is designed to boost Māori economic performance. Geothermal resources have been identified under Goal 5 (Active discussions about development of natural resources) in the Action Plan. The strategic formation of the Advisory group aligns with Goal 4 (Government in partnership with Māori enables growth) and Goal 6 (Māori Inc. as a driver of economic growth) of the Action plan.

Preventing violence against Māori women

98. A 2015 research paper by the **Ministry for Women – Te Minitatanga mō ngā Wāhine** introduced an indigenous perspective to the international knowledge base for primary prevention of violence against women.⁴² The research paper explores what Māori women believe are protective factors to ensure safety from violence. Māori women are twice as likely to have experienced sexual abuse or assault as non-Māori women and report higher rates of historical childhood sexual abuse than both European women and those of other ethnic groups.⁴³

99. The paper noted that ensuring the safety of Māori women and girls is key to the advancement of New Zealand women and girls. It identified whānau as a protective factor for some women, yet for others it can potentially be a risk factor. Education, employment and positive association with an identity as Māori are supporting factors for well being but do not prevent violence from occurring. The research provided a practical basis for service providers and policy makers helping in developing approaches that are aimed at accommodating the specific perspectives and needs of Māori women and their whānau.

⁴² *Wahine Māori, Wahine Ora, Wahine Kaha. Preventing violence against Māori women.* Ministry for Women (2015).

⁴³ Mossman, E., Jordan, J., MacGibbon, L., Kingi, V., & Moore, L. (2009). Responding to sexual violence: A review of literature on good practice. Wellington: Ministry of Womens Affairs. p. 7

100. Following publication of this research, a hui was held with Māori service providers around New Zealand to discuss the findings and to share learning on how to accommodate better the specific perspectives and needs of Māori women and their whānau.

101. The Ministry for Women is building an evidence base about the safety of Samoan women and girls in New Zealand, in a similar way to the work currently underway with the Māori community.

102. New Zealand's universal no-fault accident compensation scheme funds support for victims of sexual abuse or assault. Around 32 per cent of new sexual abuse/assault claims (known as sensitive claims) to **Accident Compensation Corporation (ACC) - Te Kaporeihana Āwhina Hunga Whara** are made by Māori. In March 2015, ACC introduced the new Integrated Service for Sensitive Claims which provides fully-funded flexible access to a range of support including one-to-one therapy, up to 20 family/whānau sessions, and up to 10 hours of cultural support. These service improvements are an important in ensuring that all aspects of these services recognise the needs of Māori and Pacific peoples.⁴⁴ ACC is working through existing partnerships with Māori iwi/organisations to further enhance the cultural responsiveness of services to prevent and support recovery from sexual violence (e.g. ensuring the school-based healthy relationships programme is meeting the needs of young Māori).

The Ministry of Pacific Island Affairs

103. The **Ministry of Pacific Island Affairs** is the Crown's principal adviser on policies and interventions for achieving better outcomes for Pacific peoples in New Zealand. Almost half of New Zealand's Pacific community are of Samoan descent. The other main groups are from the Cook Islands, Tonga, Fiji, Tokelau, Niue and Tuvalu. Their median age is just over 21 years, compared with a median age of 35.9 years for New Zealand's population overall. Around 60 per cent of those identifying as Pacific ethnicity were born in New Zealand.

104. The Ministry's main objective is to lift the incomes, education outcomes and living standards of Pacific peoples. Driven by a vision of 'Successful Pacific Peoples', the Ministry integrates Pacific communities' perspectives, values and beliefs into government policy development and works closely with these communities to gather information related to the barriers to success. It is also charged with the promotion and preservation of Pacific languages and cultures.

105. In May 2012, a Follow Up Review of the Ministry was undertaken by the State Services Commission indicating that solid progress was made in improving the Ministry's performance since the 2011 Performance Improvement Framework Review.

⁴⁴ Clinical Review of the ACC Sensitive Claims Clinical Pathway. Wellington: Sensitive Claims Pathway Review Panel, September 2010.

Immigration

106. In 2013/14, 44,008 people were approved for residence in New Zealand. 52 per cent of approvals were through the Skilled/Business Stream, 40 per cent through the two family sponsored streams and 8 per cent through the International/Humanitarian Stream. China, People's Republic of, was the largest source country of permanent residence approvals (17 per cent) followed by India (14 per cent) and the United Kingdom (12 per cent). New Zealand accepts up to 750 refugees annually under the UNHCR resettlement process quota. New Zealand also recognises refugees where claims are made spontaneously within New Zealand.

107. The Immigration Act 2009 largely came into force on 29 November 2010. It modernises New Zealand's immigration laws and introduces a universal visa system. Other key changes include the introduction of the Immigration and Protection Tribunal, which streamlined the appeals process, and the recognition of New Zealand's obligations under the Convention against Torture and the International Covenant on Civil and Political Rights.

1. Detention of asylum seekers

108. The Committee recommended earlier that New Zealand put an end to the practice of detaining asylum seekers in correctional facilities, and ensure that health and character grounds upon which asylum may be refused remain in compliance with international standards, especially the 1951 Convention relating to the Status of Refugees.⁴⁵

109. The detention provisions in the 2009 Act are not specific to classes of people. People can be detained under the 2009 Act if there is doubt about the identity of the person, where there is a threat or risk to security, to facilitate legitimate removal action or it is otherwise in the public interest. The detention system is flexible because the court can refuse to issue a warrant for a person, or order the detention of a person for up to 28 days in a prison or in an approved premises or release them into the community on conditions. People detained under a warrant of commitment may apply to a District Court judge for a variation of the warrant or a release on conditions.

110. The small number of people who claim asylum in New Zealand (276 individuals made a first claim in 2013/14) and the fact that the majority of asylum seekers are not detained at any stage mean it would be impractical to construct dedicated asylum detention facilities. Immigration New Zealand works closely with the Department of Corrections regarding the care of the small number of asylum seekers detained in correctional facilities. Asylum seekers are segregated in detention when possible and are not held with convicted criminals.

111. The Immigration Amendment Act 2013 introduced legislative change to manage a mass arrival of asylum seekers, should one occur in New Zealand. Measures in the 2013 Amendment Act include the ability to detain people under a group warrant for up to six months. This gives time for agencies to establish and confirm peoples' identity and status while they are housed in a safe and secure environment. In most cases people will be housed

⁴⁵ CERD/C/NZL/CO/17, para.24.

at the Mangere Refugee Resettlement Centre, a dedicated facility for refugees and asylum seekers. Unaccompanied minors are exempt from the provisions in the Act.

2. Settlement policies

112. The Migrant Settlement and Integration Strategy, approved by the Government in 2014, outlines the Government’s approach to effectively settle and integrate migrants in New Zealand, so that they “make New Zealand their home, participate fully and contribute to all aspects of New Zealand life”.⁴⁶ It reflects the changing focus of immigration policy towards meeting labour and skill shortages, the New Zealand Government’s Business Growth Agenda (which seeks better economic and social outcomes, including through immigration), and the priority accorded to export education.

113. The Migrant Settlement and Integration Strategy places value on the long-term integration of migrants in conjunction with successful initial settlement, and identifies five measurable settlement and integration outcome areas - employment, education and training, English language, inclusion, and health and wellbeing. Outcomes will be measured against a number of success indicators using existing data-sets and surveys. The **Ministry of Business, Innovation and Employment – Hikina Whakatutuki** leads the implementation of the Strategy. Phase one Strategy implementation activities will be completed in 2015 and will determine whether available services and information provided to migrants are properly targeted. Information and service gaps, particularly those that will help to overcome employment barriers, are currently being addressed. New Regional Partnership Agreements (RPAs) with local councils and economic development parties are being established as part of a new regional approach that focuses on attracting and retaining migrants. The first RPA was developed for the Auckland region and was launched in January 2015.

114. In July 2014, the Ministry implemented a new delivery model for settlement information for migrants that has resulted in information being more accessible to a greater number and range of migrants, and ensures that the information they receive is consistent and relevant.⁴⁷

115. In 2012 the Government approved the New Zealand Refugee Resettlement Strategy to specifically address the needs of refugees. This whole-of-government approach aims to help refugees more quickly achieve self-sufficiency, social integration and independence. The Strategy is underpinned by five integration outcomes in the following areas: Self-sufficiency, participation, health and wellbeing, education and housing.

3. Refugee and migrant police relations

116. Police plays a significant role in the whole-of-government Resettlement Strategy for Refugees and the Migrant Settlement Strategy. This includes providing an orientation process to refugees before they come to New Zealand so that they understand who the Police are and

⁴⁶www.immigration.govt.nz/employers/retain/settlementactionz/mar2015/settlementintegrationstrategy.htm

⁴⁷ See also: www.newzealandnow.govt.nz.

its role and functions, and a three hour orientation programme after arriving in New Zealand, which is further followed up in the regions once settled.

Office of Ethnic Communities

117. The **Office of Ethnic Communities (OEC)** is based in the **Department of Internal Affairs - Te Tari Taiwhenua**. OEC works to ensure that New Zealanders from ethnic minorities are treated fairly and equally, so they may enjoy life in New Zealand without fear of discrimination or harassment. Ethnic New Zealanders are those whose ethnic, linguistic, cultural and religious heritage distinguishes them from the majority. It also works to foster connections between New Zealand's diverse ethnic and religious communities and the wider New Zealand population.

118. In general, OEC accomplishes its vision and purpose by promoting the economic and social benefits of ethnic diversity, and working with government agencies and organisations to ensure that ethnic New Zealanders can participate in and contribute to all aspects of New Zealand life.

119. OEC provides information and advice to government, non-government organisations, businesses, and the wider public about issues relating to ethnic, linguistic and religious diversity.

120. OEC also administers the *Settling In* grants scheme which funds non-government organisations to address barriers to settlement for migrant communities, and to promote self-reliance and community sustainability within ethnic communities.

121. OEC is New Zealand's 'focal point' for the United Nations' Alliance of Civilisations, which means it is responsible for drafting and coordinating New Zealand's Plan of Action. This plan lays out various activities aimed at bridging the divide between cultures and faiths and by promoting intercultural cooperation and understanding. OEC issued an update to New Zealand's Plan of Action in 2013, and is currently working across government to coordinate the next plan of action for 2016/2017.

Article 3

States Parties particularly condemn racial segregation and apartheid and undertake to prevent, prohibit and eradicate all practices of this nature in territories under their jurisdiction.

122. The Government is committed to its obligations under article 3 of the Convention and condemns racial segregation and apartheid and undertakes to prevent, prohibit and eradicate all practices of this nature in territories under its jurisdiction. The Government is firmly opposed to racial segregation and apartheid. These practices are prohibited by the Human Rights Act 1993 and the Bill of Rights Act. Part 1A of the Human Rights Act makes the Government, government agencies and anyone who performs a public function accountable for unlawful discrimination under the Act. Section 19(1) of the Bill of Rights Act affirms the right to freedom from discrimination. Policies or practices of racial segregation and apartheid would fall into the category of unlawful discrimination under both Acts.

DRAFT

Article 4

States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia:

- (a) *Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;*
- (b) *Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;*
- (c) *Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.*

123. The Government is committed to meeting its obligations under article 4 of the Convention.

Unlawfulness of racial disharmony and offence of inciting racial disharmony

124. It continues to be unlawful to excite hostility against or bring into contempt any group of persons on the grounds of colour, race, or ethnic or national origins through published or distributed written matter or spoken words in public. Throughout the reporting period, the Human Rights Commission has received [X] complaints under section 61 of the Human Rights Act.

125. In the absence of a specific offence of “hate speech”, section 131 of the Human Rights Act makes inciting racial disharmony an offence. There has been [X] prosecution under this section (which occurred in X) during the reporting period.

Responding to racially motivated offences

126. It remains an aggravating factor under the Sentencing Act 2002 if an offence is partly or wholly committed because of a hostility towards a group of persons who have an enduring common characteristic such as race, colour or nationality; and the hostility is because of that characteristic; and the offender believed that the victim has that characteristics.⁴⁸

⁴⁸ Section 9(1)(h).

Immigration distinctions based on nationality

127. Section 153 of the Human Rights Act allows the Government to distinguish between New Zealand citizens and other persons, or between Commonwealth and non-Commonwealth citizens. This exemption permits distinctions only to be made between these groups; it does not permit discrimination per se.

128. Section 392 of the Immigration Act 2009 provides a procedural exemption to the Human Rights Act where the publicly funded complaints process is not available in actions that allege discrimination in relation to the Immigration Act and regulations and any policy made validly under the Immigration Act. The Human Rights Commission is also prevented from receiving complaints, bringing proceedings or intervening in civil proceedings, in relation to immigration decisions. Although the Immigration Act provides for a partial exemption from human rights scrutiny, immigration legislation, policies and practices are still subject to the non-discrimination standard provided for under the Bill of Rights Act. This means that policy and legislative proposals must be assessed for consistency with the right to be free from discrimination under section 19(1) of that Act, and decisions thereon must be consistent with the Bill of Rights Act.

Harmful Digital Communications Act 2015

129. The Harmful Digital Communications Act was enacted by Parliament on 2 July 2015.⁴⁹ The Act addresses harmful digital communications, which include bullying, stalking, harassment, malicious impersonation and serious threats carried out via digital communications. Inciting racial hatred through digital communications is prohibited. As well as addressing harmful digital communications more generally, the Act makes amendments to the Human Rights Act 1993 which relate specifically to racial and sexual discrimination.

130. The Act responds to the 2012 findings of the New Zealand Law Commission that existing remedies for harmful communication, for example defamation and offences relating to threats, intimidation and vilification, do not effectively address new forms of harm made possible by increasingly accessible and powerful forms of digital communication.

Objectionable Publications and Indecency Legislation Act 2013

131. The Objectionable Publications and Indecency Legislation Act was passed by Parliament in April 2013.⁵⁰ The purpose of the Bill is to achieve a reduction in the incidence of offences involving child pornography.

132. The Act is of relevance to the elimination of racial discrimination in New Zealand as it amends the Films, Videos, and Publications Classification Act 1993 stating in section 3(3)(e) that an objectionable publication includes a publication which “*represents (whether directly or by implication) that members of any particular class of the public are inherently*

⁴⁹ http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH_BILL12843_1/harmful-digital-communications-bill.

⁵⁰ http://www.parliament.nz/en-nz/pb/legislation/bills/00DBHOH_BILL12234_1/objectionable-publications-and-indecency-legislation-bill.

inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993". The Act increases the maximum penalties for possession, import or export, distribution and making of objectionable publications which are racially discriminatory.

The New Zealand Police respecting ethnic diversity

133. The **New Zealand Police - Ngā Pirihimana o Aotearoa** is committed to working with the different ethnic communities in New Zealand to help prevent crime, clashes and victimisation in our communities. Police actively support racial equality and non-discrimination in New Zealand.

134. Police facilitate a network/structure communication framework so ethnic issues can be raised and discussed. It has several initiatives targeting different community groups, such as the Auckland Safety Patrols that consists of over 140 volunteer patrol members from 30 different ethnic groups, who provide over 500 hours of patrolling a month, the National Network of Ethnic Liaison Officers and District Ethnic Advisory Boards.

135. The Police Māori Pacific and Ethnic Services assists to enhance Police commitment and leadership on responsive policy development and service delivery to Māori, Pacific and Ethnic peoples.

136. In 2012, Police became a principal sponsor of the New Zealand Diversity Forum. The Forum, which is facilitated by the Human Rights Commission, brings together individuals and organisations to share ideas and good practice on fostering cultural diversity and positive race relations for the elimination of race discrimination.

137. In addition to the District Ethnic Advisory Boards, in 2015, the Commissioner's Ethnic Communities Focus Forum was established. This Forum brings together 12 key ethnic representatives from around the country to provide strategic advice to the Commissioner and the Police Executive for engaging with ethnic communities.

138. Police have also signed two important Memorandums of Understanding with the New Zealand Federation of Multicultural Councils and the Federation of Islamic Associations of New Zealand. These MoUs are a commitment by the Police to work in partnership to address mutual priorities.

139. The New Zealand Police website is available in twelve languages. Police also publish resources to educate staff about working with different faith groups and has produced several of its crime prevention publications in other languages.⁵¹

1. *Ethnic diversity in Police recruitment*

140. Police have major recruitment campaigns underway to recruit police officers from different ethnic backgrounds, reflecting the belief that its staff should reflect the ethnic

⁵¹ <http://www.police.govt.nz/about-us/publication/>

diversity of the population. Regarding recruitment of Māori, Police have, for example, signed a Memorandum of Understanding with Te Wananga o Aotearoa to deliver a pre-recruitment course that helps prepare Māori students to proceed successfully through the various stages of recruitment.

141. In 2013 Māori made up 10 per cent of the Police population. With the new Māori Responsiveness Managers appointed in each District in 2014 the proportion of Commissioned Officers who are Māori increased to 12 per cent.⁵²

142. In 2014, the Ministry for Pacific Island Affairs signed a Memorandum of Understanding with Police to focus on recruitment and retention of Police officers drawn from Pacific communities.

2. Training in Māori culture and protocol

143. Frontline police staff are trained in Māori language, culture and protocol.

144. The Commissioner of Police has a group of senior kaumātua and kuia, known as the Commissioner's Māori focus forum which provides advice, helps guide and implement policing strategy in regard to Māori and plays a governance role.

145. Each police district has its own District Māori Advisory Board made up of representatives of local iwi. Each board helps police commanders with strategy and issues at a local level.

146. Additionally, Police have a group of iwi liaison officers who help navigate cultural issues and work on improving police relationships with Māori. The group is made up of police officers and police employees, based in every police district in the country. Iwi liaison officers are involved in:

- giving advice on cultural issues;
- crime and victimisation prevention;
- addressing cultural aspects of major incidents like the Canterbury earthquakes; and
- helping with major criminal investigations involving Māori.

147. The Māori Wardens Project is a joint venture with Te Puni Kōkiri and Police. The project provides training and support to an increasing number of Māori wardens throughout New Zealand. Māori wardens are involved in a range of activities such as:

- security at events and in public places, street patrols;
- curbing unruly behaviour and diffusing tensions;
- caring for ‘rangatahi’ – the younger generation;
- hospital visits; and
- court attendance and support.

⁵² Based on population data gathered in 2013.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

- (a) *The right to equal treatment before the tribunals and all other organs administering justice;*
- (b) *The right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution;*
- (c) *Political rights, in particular the right to participate in elections-to vote and to stand for election-on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public service;*
- (d) *Other civil rights, in particular:*
 - (i) *The right to freedom of movement and residence within the border of the State;*
 - (ii) *The right to leave any country, including one's own, and to return to one's country;*
 - (iii) *The right to nationality;*
 - (iv) *The right to marriage and choice of spouse;*
 - (v) *The right to own property alone as well as in association with others;*
 - (vi) *The right to inherit;*
 - (vii) *The right to freedom of thought, conscience and religion;*
 - (viii) *The right to freedom of opinion and expression;*
 - (ix) *The right to freedom of peaceful assembly and association;*
- (e) *Economic, social and cultural rights, in particular:*
 - (i) *The rights to work, to free choice of employment, to just and favourable conditions of work, to protection against unemployment, to equal pay for equal work, to just and favourable remuneration;*
 - (ii) *The right to form and join trade unions;*
 - (iii) *The right to housing;*
 - (iv) *The right to public health, medical care, social security and social services;*
 - (v) *The right to education and training;*
 - (vi) *The right to equal participation in cultural activities;*
- (f) *The right of access to any place or service intended for use by the general public, such as transport hotels, restaurants, cafes, theatres and parks.*

148. The New Zealand Government is committed to its obligations under article 5 of the Convention.

149. The Government recognises the persistence of the inequalities that particularly face Māori and Pacific peoples in employment, education, health, social services and housing and that it is essential for the future of New Zealand that these inequalities are addressed. In addition, the overrepresentation of Māori in the justice and prison system is of particular concern, and reducing Māori offending and recidivism is a priority for the Government. The steps New Zealand has taken to realise the obligations under article 5 are set out below.

150. In its concluding observations on the eighteenth to the twentieth period reports, the Committee drew New Zealand's attention to the particular importance of intensifying its efforts to improve the outcomes of the Māori and Pacific peoples in the field of employment, health and in the administration of criminal justice by, inter alia, addressing the existing structural discrimination in New Zealand. The Committee also recommended that New Zealand consider strengthening its special measures to increase the level of educational attainment of Māori and Pacific children, in particular by focussing its measures at addressing the root causes of absenteeism and high dropout rates in schools.⁵³

Criminal justice system

Responses by the Government to Māori and Pacific peoples offending

151. The **Ministry of Justice - Tāhū o te Ture** is the lead agency in the justice sector, which includes the Police, the Department of Corrections, the Crown Law Office, the Serious Fraud Office and Child Youth and Family (part of the Ministry of Social Development). The sector collaborates to reduce crime and enhance public safety; and to provide access to justice by delivering modern, effective and affordable services.

152. The government has set ambitious Better Public Services targets for the justice sector: to reduce overall crime by 20 per cent by June 2018 and to reduce violent crime by 20 per cent, youth crime by 25 per cent, and re-offending by 25 per cent by June 2017. The recorded crime rate in 2014 was the lowest in 36 years, and numbers in courts and prisons are decreasing. As of December 2014, overall, the re-offending rate has fallen 10 per cent since June 2011.

Over representation of Māori and Pacific peoples in the criminal justice system

153. Over-representation of Māori and Pacific peoples in the criminal justice system is an ongoing concern for the Government. Significant progress has been made to improve the responsiveness of the criminal justice system to Māori and Pacific peoples. Addressing the underlying social causes of Māori over-representation in both victimisation and the justice system constitutes a long-term challenge the Government is determined to tackle efficiently.

⁵³ CERD/C/NZL/CO/18-20, para. 15.

154. To reduce re-offending by 25 per cent for all offenders by 2017, the **Department of Corrections - Ara Poutama Aotearoa** must reduce re-offending by Māori, who make up a disproportionate amount of offenders serving sentences. The Department of Corrections is committed to building a working prison network, that is, prisons are a structured environment where all prisoners take part in some form of work, education or rehabilitation programme. This will be enabled by better scheduling of interventions, a new prisoner placement system and optimised opportunities for prison industries.

155. Māori offenders can access and benefit from all rehabilitative programmes, including alcohol and drug treatment, mental health programmes, education and training, and work and living skills programmes.

156. As part of efforts to reduce re-offending by 25 per cent by 2017, Māori offenders also receive support to successfully reintegrate back into the community, including the Out of Gate programme which helps offenders and their whānau to receive access to social services, Release to Work, and supported accommodation.

157. The Department of Corrections also provides programmes and interventions aimed at reducing reoffending through the integration of tikanga behavioural guidelines for daily life and interaction in Māori culture. Examples are:

- *Te Tirohanga* is a Māori tikanga based therapeutic community environment (Mauri Tu Pae) running out of whare in five prisons. Māori kaupapa values underpin and inform an 18 month graduated programme, in preparation for an offender's eventual release back to their community and whānau.
- *Tiaki Tangata* offers reintegrative support within a whānau-centric Māori environment and assists prisoners to prepare for release and supports and mentors them throughout their transition and settlement into the community.
- *Whare Oranga Ake* focuses on successfully reintegrating prisoners with medium to high reintegrative needs within a kaupapa Māori environment, particularly in the area of employment, accommodation and relationships. Prisoners can participate and reintegrate back into the community through a safe and controlled setting.
- The *bicultural therapy model* is a national psychological treatment programme aimed at male child sex offenders or violent offenders. The model utilises both Tikanga Māori and Western Psychology for self-development and whānau healing.
- *Tikanga Māori* prison programmes are group-based programmes delivered by Māori service providers that use Māori philosophy, values, knowledge and practices to emphasise the relationship of the individual with their social and cultural environment.

158. There are a number of initiatives aimed at offenders on community based sentences, such as *Tai Aroha*, a violence prevention programme, which aims to provide a culturally responsive rehabilitation experience, in particular for Māori participants; *Tikanga Māori* in

the community, and the use of *Specialist Māori Cultural Assessments* carried out by a Māori assessor to address an offender’s responsivity and motivational behaviour.

159. The Department of Corrections also has a number of initiatives aimed at Pacific prisoners:

- The *Pacific Focus Unit* offers a prison environment aimed at motivating Pacific prisoners to address their offending behaviour, provides a venue for rehabilitation programmes and an environment where pro-social behaviours can model Pacific values and beliefs. The unit has capacity for up to 80 offenders at any one time.
- *Saili Matagi* (in search of winds) is designed for Pacific male prisoners currently serving a sentence for violent offences and assists prisoners identify and change the beliefs, attitudes and behaviours that have resulted in their violent offending by using Pacific cultural principles as the basis for its approach.

Consultation with the Māori community

160. Māori orientated interventions by the Department of Corrections are designed and carried out in collaboration with Māori service providers and communities. The Department for Corrections engages with iwi groups and whānau for strategic guidance and advice, and support, and is increasingly taking Māori perspectives into account in its decision making process.

161. The Department of Corrections has developed a range of initiatives and approaches in collaboration with Māori on the following initiatives such as *Tiaki Tanagata*, the *Tikanga* programmes and its underpinning framework, *Te Ihu Waka Tikanga* which was developed collaboratively with Māori service providers and communities, and *Mauri Tu Pae*, which was designed by community treatment providers and a Māori psychologist. Furthermore, at *Te Tirohanga* whare, the Māori Governance Board advises and endorses the majority of decisions regarding how the units operate. The Board was established in 2014 and consists of five iwi representatives from the areas in which *Te Tirohanga* is situated.

162. Māori participation is also increased through *Kaitiaki*. *Kaitiaki* are an on-site presence who provide support for management to ensure tikanga practices are authentic and offer cultural advice to both offenders and staff.

163. The Department aims to strengthen Māori community structures through the following initiatives:

- The *Kaiwhakamana* Visitor Policy - *Kaiwhakamana* are non-departmental employees who are specified visitors, and include kaumātua, kuia, tohunga, spiritual leaders and others. They give cultural and spiritual support to Māori offenders, and help offenders engage with their iwi, hapū or whānau.
- *Pou arataki* are whānau liaison officers who help offenders build whānau support throughout the *Te Tirohanga* programme.

164. The Department of Corrections is committed to including Māori perspectives in the decision making process. This commitment has been crystallised through the creation of the

‘Service Development Champions’ team. The aim of this group is to promote better outcomes for Māori offenders, mainly by promoting the inclusion of Māori perspectives in designing of initiatives and sharing lessons about incorporating Māori inclusion and effectiveness.

Partnering to Reduce Offending and Victimisation

165. Police has committed to working with other agencies and service providers in the community, particularly Māori, Pacific and ethnic groups, to address the underlying causes of offending and victimisation. It is focusing on families, youth, alcohol, road policing organised crime and drugs. In particular, the project Partnering to Reduce Offending and Victimization tests a partnership approach between sector agencies and iwi/Māori organisations to improve justice outcomes in communities that deal with high levels of offending and victimisation.

166. It focuses on three community-delivered services: pre-charge iwi justice panels; pre-sentence restorative justice conferences; and post-release intensive case management. A key focus of the project is to also cooperate with local communities to identify and support community-led initiatives over the course of the project.

Operation Eight

167. Operation Eight was a Police operation which began in late 2005 as an investigation into alleged paramilitary training camps. It ended on 15 October 2007 with the coordinated arrest of several suspects, the execution of 41 search warrants throughout the country, and the establishment of road blocks at Ruatoki and Taneatua, in an area of particular cultural significance to the Tūhoe iwi.

168. The Independent Police Conduct Authority (IPCA) investigated a number of complaints about Police actions during Operation Eight. In May 2013 the IPCA issued a report concluding that a number of aspects of Operation Eight were unreasonable and contrary to law. In contrast, the IPCA found “that Police were entitled, on the information they had, to view the threat posed by this group as real and potentially serious. The investigation into such activities by Police was reasonable and necessary.”⁵⁴

169. The IPCA made several operational recommendations to minimise the impact of armed police operations on members of the community. One recommendation was for Police to re-engage with Tūhoe and take appropriate steps to build relationships with the Ruatoki community to increase trust and confidence in Police.

170. On 27 July 2014 Police Commissioner visited several Tūhoe whānau to deliver a personal apology for the Police actions during Operation Eight. In August 2014 the Police Commissioner was welcomed onto Te Rewarewa Marae, Ruatoki. He was accompanied by Māori Leaders, representatives of tribal groups from throughout the country, 90 police officers from the Bay of Plenty District, Iwi liaison officers and the Police Executive. The Commissioner officially apologised to the Tūhoe for the Police’s actions during the raids on

⁵⁴ The full report by the IPCA can be found at <http://www.ipca.govt.nz/Site/publications/Default.aspx>.

the Taneatua and Ruatoki communities. He acknowledged that the way in which police acted caused a loss of credibility and mana for the iwi.

Youth Justice

171. The Youth Crime Action Plan 2013-2013 (YCAP) is a 10 year plan to reduce crime by children and young people, and help those who offend to turn their lives around. It identifies ‘reducing escalation’ and ‘early and sustainable exits’ as two key strategies for addressing underlying causes of youth offending, which should in turn improve outcomes for Māori young people in the youth justice system, and reduce Māori over-representation.

172. The third key strategy of YCAP is ‘partnering with communities’, recognising that communities, schools, Māori, providers and frontline practitioners have a critical role to play in reducing youth crime. As part of this strategy, communities are assisted to develop action plans to reduce youth crime, with a focus on local issues and local solutions. Planning is underway in a number of communities. Work is also underway in several communities to encourage and develop stronger iwi involvement in addressing lower level offending by young Māori.

Rangatahi and Pacific peoples Youth Courts

173. The Rangatahi and Pacific peoples Courts are a judicial initiative established in 2008. The courts aim to encourage strong cultural links by meaningfully involving communities in the youth justice process, thereby impacting on reoffending rates for those groups. These courts are part of the Youth Court. After first appearing in the mainstream Youth Court, young offenders may be offered the opportunity to have subsequent hearings at the Rangatahi or Pacific peoples Courts.

174. Hearings of the Rangatahi Court are held on a marae. Kaumātua take part in the hearing. The judge is proficient in the Māori language and understands the Māori worldview. Emphasis is placed on the young person learning who they are and where they are from. For example, they are expected to learn and deliver a pepeha and mihi, and will usually be required to further their cultural knowledge by attending tikanga programmes. The active involvement of whānau, hapū, and iwi is fundamental to the process. There is a greater emphasis on the provision of holistic wrap-around services to support each young person. These include life skills and anger management programmes, alcohol and drug counselling and psychological needs assessments. The Ministry of Justice will work with the Judiciary to monitor both qualitative and quantitative outcomes for the Rangatahi Courts, including reoffending rates, to ensure the best possible engagement of young offenders and their whānau in the Youth Court process.

Māori and Pacific peoples’ participation in government

175. New Zealand’s turnout of enrolled voters was 77.9 per cent in 2014. Election surveys indicate that non-voters are more likely to be Māori or Pacific Island ethnic groups. The

Electoral Commission considers increasing participation amongst Māori and Pacific Islanders through education and research-based projects a priority.

176. New Zealand's mixed member proportional voting system, which includes the provision for separate Māori representation in the legislature through the Māori electorates, has resulted in a noticeable increase in Māori parliamentary representation, with members of Parliament identifying as Māori now making up 25 per cent of Parliament. This figure was 22 per cent following the 2011 election.⁵⁵ In addition to Māori MPs, Parliament had six MPs of Pacific Island descent and five of Asian descent in 2011, and eight and five respectively in 2014. One of the co-leaders of the Green Party and the leader of New Zealand First, the third and fourth largest parties in Parliament respectively, are of Māori descent.

177. Within the Government, three current Cabinet Ministers are of Māori descent, holding portfolios in Education, Energy, Local Government and Transport, amongst others. One Cabinet Minister is of Pacific Island descent, and holds the Corrections and Pacific Peoples portfolio. The leader of the Māori Party is a Minister outside of Cabinet holding the Māori Affairs portfolio.

178. Māori may choose to enrol to vote on the Māori or general electoral roll. The size of the Māori electoral roll, calculated through the five-yearly Māori Electoral Option, determines the number of Māori electorates. 55 per cent of declared Māori voters are currently enrolled on the Māori roll. The Māori roll and the continuing Māori Electoral Option exist to ensure fair representation for Māori. Aside from standing for a Māori electorate, Māori may also be elected to Parliament by standing for a general electorate or a list seat.

Māori participation in local government

179. The Local Government Act 2002 contains a number of provisions that relate specifically to Māori to contribute to local government decision making. The Act recognises and respects the Crown's obligations under the Treaty of Waitangi by placing some specific obligations on councils. The Act requires all councils to:

- establish, maintain and improve opportunities for Māori to contribute to local government decision-making processes;
- ensure processes are in place for consulting with Māori;
- consider ways to foster Māori contribution to local government decision-making processes; and
- provide relevant information to Māori.

180. Councils use various mechanisms to increase Māori participation in local governance, for example:

- appointments of iwi representatives to council standing committees;
- establishment of joint council and Māori planning or advisory committees;
- establishment of specific Māori standing committees or ad hoc committees;

⁵⁵ There are seven political parties presently represented in the 51st Parliament by 121 members of Parliament.

- Māori strategy and liaison departments within Councils and Council Kaumatua;
- providing updates on council projects directly to Māori organisations;
- maintaining schedules of Māori stakeholders to enable targeted consultation;
- service and funding agreements with Māori groups and organisations; and
- performance targets for Māori participation opportunities in decision-making.

181. The Local Electoral Act 2001 was amended in 2002 to provide councils and electors with the option of establishing Māori wards (territorial authorities) or constituencies (regional councils) without the need for a specific local Act to be passed by Parliament. Māori wards or constituencies can be established by council resolution (if no subsequent petition demanding a poll is received) or as a result of a binding poll.

182. The Local Government (Auckland Council) Act 2009 established an Independent Māori Statutory Board to promote issues of significance for the mana whenua and Māori of Auckland to assist the Council in its decision making, and in carrying out existing legislative requirements.

Education

183. A key task for the **Ministry of Education - Te Tāhuhu o te Mātauranga**, in cooperation with other education agencies, is to make sure our education system meets the learning needs of all New Zealanders. The Ministry acts as a system steward, working in partnership with teachers, leaders, learners and their whānau, and wider communities. Most learners are in English-language settings, but the system enables learning in Māori-medium, Pacific peoples-language or bilingual settings that recognise and build on children's language, culture and identity.

184. The system is not delivering well enough for children from low socio-economic backgrounds, and Māori and Pacific peoples students, despite improvements in overall achievement of National Standards and National Certificate in Educational Achievement (NCEA).

185. The current⁵⁶ general education outcomes for European, Māori and Pacific peoples children are:

- participates in early childhood education: European 98.0 per cent, Māori 93.6 per cent and Pacific peoples 90.7 per cent, Asian 97.3 per cent, total 96.1 per cent.
- leaves school with National Certificate in Educational Achievement (NCEA) at Level 2 or above in 2013: European 83.4 per cent, Māori 63.3 per cent, Pacific peoples 71.4 per cent, and Asian 86.9 per cent.

⁵⁶ Data for year end December 2014

- attains a University bachelor level degree by age 25: European 33 per cent, Māori 12 per cent, Pacific peoples 12 per cent and Asian 38 per cent.⁵⁷
- studying Te Reo Māori across Levels 9 to13: Year 9 – 9957, Year 10 – 5463, Year 11 – 4012, Year 12 – 1760, Year 13 – 1537.

186. While the education system is not delivering well enough for children from low socio-economic backgrounds, and Māori and Pacific students, it has made valuable gains as a result of concerted efforts by educators and leaders throughout the system. An example of this is the faster improvement in National Standards and NCEA level 2 by Māori and Pacific students relative to the rest of the population.

187. In May 2014, as requested by the Committee, the Government provided detailed information on specific measures aimed at preserving the Māori and Pacific languages and the development of a Māori language strategy.^{58 59}

Māori education

188. Māori students make up about 23.3 per cent of the total student population. Māori participation in early childhood education is increasing. In 2013, 8,745 Māori children were enrolled in kōhanga reo, 22,698 in education and care services, 7,567 in kindergartens, 1,899 in play centres, and 3,518 in home based care services. This compares to 2005 enrolment figures of 10,062 Māori children enrolled in kōhanga reo, 11,924 in education and care services, 7,933 in kindergartens, 1,922 in play centres and 1,352 in home based care services. The proportion of Māori school leavers who had not obtained some level of formal qualification has been reduced by more than half between 2002 and 2013 (from 56.1 per cent to 14.8 per cent). For Māori learners, participation and achievement in education has improved in recent years and, often, at a faster rate than for the rest of the population. But the education system has been consistently unsuccessful for too many Māori learners, and it still delivers Māori participation and achievement rates below those seen for non-Māori.

Ka Hikitia - a focus on action to realise Māori potential⁶⁰

189. The factors contributing to lower participation, engagement and achievement amongst Māori learners are complex and multi-faceted. *Ka Hikitia – Accelerating Success 2013-2017* is the second phase of the Government’s strategy to realise Māori potential. The first phase established the principles, priorities and foundations for change. The second phase focuses on action across the education system. It involves everyone who plays a role in educating and supporting Māori learners in English- and Māori-medium settings: government agencies; education providers, leaders and professionals; whānau, iwi and local communities.

190. *Ka Hikitia* outlines five focus areas to raise Māori achievement and success in education, namely improving Māori language in education, increasing early-childhood

⁵⁷ <http://www.educationcounts.govt.nz/indicators/main/education-and-learning-outcomes/114325>.

⁵⁸ CERD/C/NZL/CO/18-20, para. 17 and 27.

⁵⁹ CERD/C/NZL/CO/18-20/Add.1, para. 18-39.

⁶⁰ See also: Parliamentary paper by the Controller and Auditor-General of New Zealand.

education for all Māori children, improving achievement in primary and secondary education for all Māori students, increasing Māori success in tertiary education, and for education sector agencies to create conditions for Māori students to achieve educational results. Strategies to improve the economic circumstances, health and social outcomes for Māori children and whānau are also likely to have flow on benefits for educational outcomes.

Attaining higher levels of tertiary education

191. Māori have made huge gains in participation and achievement in tertiary education in recent years. Participation in higher level study has increased: 28 per cent of Māori students were studying at Bachelors level and above in 2012, up from 21 per cent in 2007. The rate at which Māori complete qualifications has also increased: of Māori who started full-time study at level 4 or above in 2007, 62 per cent had completed a qualification within five years, compared with a rate of 53 per cent for those who started in 2004. Despite these gains, more progress is needed.⁶¹

192. The Tertiary Education Strategy 2014-2017 is the statutory framework for tertiary education, and boosting the achievement of Māori and Pacific peoples is one of the priorities. *He Kai Kei Aku Ringa – the Māori Economic Development Strategy and Action Plan* – also calls for better connections from education to the workforce. The Government is also working to align pre-trades training with employers and community needs to increase the employment opportunities for Māori and Pacific peoples, through, for example, the Māori Pacific peoples Trades Training Initiative.

193. The Ministry for Women is working actively to build the capability of training providers and Maori and Pacific communities to attract Māori and Pacific girls into trades training.

Supporting and strengthening Māori language

194. Figures from the 2013 Census show that there are 125,352 Māori who are able to converse about everyday things in te reo Māori. However, the percentage of Māori language speakers in the Māori population has decreased from 25.2 per cent in 2001 to 21.3 per cent in 2013.

195. Māori language in education is a defining feature of our education system. Learners access Māori language through Māori medium education⁶² - kōhanga reo, puna kōhungahunga, kura, wharekura and wānanga – as well as in English medium education.⁶³

196. It is critical to protect and revitalise Māori language by making Māori available to all students in our education system. Tau Mai Te Reo – the Māori Language in Education Strategy 2013-2017 guides the Ministry's and education sector agencies' work on Māori

⁶¹ 17.7 per cent of Māori aged 15 and over participated in tertiary education in 2013, compared to 10.3 per cent of the general population. See also: <http://www.educationcounts.govt.nz/statistics/tertiary/participation>. Profile and trends 201, p.73.

⁶² Where teaching occurs in and through Māori language for 51-100 per cent of the time.

⁶³ This is where learning occurs in and through Māori language for 50 per cent or less of the time.

language revitalisation, and is well aligned with the Government's newly-revised Māori Language Strategy. Tau Mai Te Reo recognises the importance of iwi and Māori participation, contribution and partnership to strengthen Māori language in education.

Pacific peoples education

197. Pacific students now constitute 9.8 per cent of the New Zealand school population, an increase from 8.9 per cent in 2006.

198. At primary and secondary school levels, the average performance of Pacific students is still significantly lower than that of other students. However, there are upward shifts in achievement at these levels. The 2013 National Standards data shows that more Pacific students are achieving at or above recommended levels across all three standards. Achievement in reading has increased from 59 per cent in 2011 to 64.1 per cent in 2013. Achievement in mathematics has increased from 56.7 per cent in 2011 to 60.8 per cent in 2013 and achievement in writing has increased from 53.8 per cent in 2011 to 57.6 per cent in 2013.

199. NCEA results show that 81.7 per cent of Pacific peoples school leavers gained NCEA Level 1 or above in 2013, compared with 73.6 per cent in 2009; 67.6 per cent of Pacific peoples school leavers left with NCEA Level 2 or above compared with 56.4 per cent in 2009; and 36.3 per cent of Pacific peoples students left school with NCEA Level 3 and/or a University Entrance Award in 2013 compared with 23.1 per cent in 2009.

200. In 2013, 27.1 per cent of Pacific peoples aged 18-24 years participated in formal tertiary education at level 4 and above. This is a significant improvement from 2001, when only 15.4 per cent of Pacific peoples aged 18-24 years participated in tertiary education at level 4 and above.⁶⁴

The Pacific peoples Education Plan 2013-2017

201. The Pacific peoples Education Plan (PEP) sets out the education sector's vision⁶⁵ and approach to accelerate and raise the educational achievement for Pacific peoples. It represents a new way of working in the education system. It puts Pacific learners, their parents, families and communities at the centre of the education system in order to demand better outcomes, and it ensures education partner agencies work more collaboratively to accelerate implementation and focus investment.

202. Reports on the Plan's implementation show mainly positive results. Prior participation rates have grown strongly for Pacific children, rising from 85.3 per cent in 2009 to 90.7 per

⁶⁴ Information about Pacific peoples students in education can be found on www.educationcounts.govt.nz.

⁶⁵ PEP vision: 'Five out of five Pacific peoples learners participating, engaging and achieving in education, secure in their identities, languages and culture and contributing fully to Aotearoa New Zealand's social, cultural and economic wellbeing'.

cent in 2014.⁶⁶ The first year of PEP implementation has shown improvements in participation and achievement rates, in particular:

- More Pacific children have participated in early childhood education;
- Pacific peoples achievement against the three National Standards has increased;
- Forecasts indicate Pacific peoples NCEA Level 2 achievement will overtake non-Pacific peoples in 2017;
- Pacific peoples enrolments in tertiary education continue to grow and most of this growth has come at Level 4 or above. Participation rates for Pacific students in tertiary qualifications at Level 4 or above have improved relative to non-Pacific peoples; and
- Pacific peoples tertiary completion rates have also improved strongly and retention rates for first year students are almost on par with non-Pacific peoples.

Establishing strong foundations for life-long education

203. Early learning opportunities and strong foundations for life-long education are being built in, and with, Pacific communities to intensify support for our youngest learners and their families including: supported playgroups, home-based projects and projects supporting Pacific peoples identity, language and culture.

204. Building partnerships with Pacific church communities is another strategy being implemented to raise participation. Four church communities, with a total membership of over 50,000 Pacific peoples people have joined together for a national approach to early learning that meets their children’s needs (primarily play groups).

Schooling - Accelerating literacy and numeracy

205. Between 2012 and 2013, Pacific peoples 18-year-olds showed a larger increase in the proportion with NCEA Level 2 or above than non-Pacific peoples. If both groups are to continue increasing at the same rate, in 2017 the proportion of Pacific 18-year-olds with NCEA Level 2 will be higher than that for non-Pacific peoples 18-year-olds.

206. The Achieving Through Pacific Languages (ATPL) Programme is continuing to support schools and/or community groups to establish and operate centres that promote achievement for Pacific peoples bilingual learners.

207. Youth Guarantee includes the Achievement Retention Transitions 2013-2017 programme, which targets specific schools to develop and implement individual student education plans to support students to achieve NCEA Level 2. Pacific peoples participation in Achievement Retention Transitions 2013-17 increased, as did the number of Secondary-Tertiary Programme (Trades Academies) places.

208. The Ministry of Education’s PowerUP programme is a core component of the PEP’s implementation. The programme was piloted in 2013 to build the capability and knowledge of Pacific parents, families and communities to better support their children to achieve

⁶⁶ Prior participation rates refer to those who start school having also participated in early childhood education.

NCEA. Benefits are already surfacing from the nationwide rollout of the PowerUP programme in September 2014. Over 1,221 families are registered in the programme, high numbers of students (particularly NCEA) are eager for extra support, and teachers and schools are keen to support the programme. Many parents are asking how they can go back to school.

Attaining higher levels of tertiary education

209. Pacific peoples are significantly under-represented at tertiary levels of study and over-represented in non-completion and non-continuation rates.⁶⁷ In 2014, the Tertiary Education Commission developed and implemented performance commitment targets for Tertiary Education Organisations (TEO) through the Investment Plan process. A Pacific peoples evaluation tool was developed and applied to all Investment Plans with each TEO having an agreed expectation to lift Pacific peoples achievement and participation. This is a significant shift towards ensuring the whole sector is more responsive to Pacific learners. Furthermore, the Tertiary Education Strategy 2014-2017 sets the expectation that TEOs need to better support Pacific students to move into tertiary education progress to higher levels of study, and complete the qualifications they start. The Tertiary Education Commission's Pacific peoples Framework 2013-2017 Implementation Plan focuses on improving Pacific peoples tertiary achievement and employment prospects.

210. For the key age group of 18-24 year olds, the participation rate of Pacific students in tertiary qualifications at Level 4 or above has increased from 22 per cent in 2008 to 27 per cent in 2013. This compares with a participation rate by non-Pacific peoples students of 31 per cent for both 2008 and 2013.

Pacific peoples Languages

211. At the time of the 2013 Census the proportion of Pacific peoples who could speak more than one language was 45 per cent. This was higher than for the overall New Zealand population (18.6 per cent). The 2013 Census showed an increasing decline in the use of Cook Islands Māori, Niuean and Tokelauan in New Zealand communities. Without intervention, this pattern is likely to increase over time. The Government supports a strong emphasis on the need for schools to promote and respect all Pacific peoples languages, cultures and identities.

212. Pacific peoples languages are used as the medium of instruction in a small number of schools across the country. The Ministry of Education provides a range of materials to support the teaching of Pacific peoples languages including teaching guidelines for Cook Islands Māori, Vagahau Niue, Tongan, gagana Tokelau, and revised language guidelines for gagana Sāmoa, multimedia resources in the Learning Language Series to support the guidelines and storybooks.

213. A smooth transition into English Medium schooling is the goal of the Ministry of Education's Pacific peoples Dual Language Pilot for New Entrants. A pilot programme for Samoan was completed in December 2014 and it is intended that new dual language books in the four other Pacific peoples languages will be developed.

⁶⁷ In 2013, 35,200 Pacific students enrolled in tertiary level courses, compared with 29,800 in 2008.

English as a second language and refugee services

214. The Ministry of Education continues to work to ensure equitable access to education through the provision of funding for English as a Second Language (ESOL) support for migrant and refugee background students in schools. The individual funding levels were increased in 2014 and in that year over 33,000 students in 1350 schools were provided with ESOL funded tuition from an annual budget of \$27.835 million. These students represent 157 different ethnic groups from 163 different countries of birth and 122 different languages.

215. A comprehensive array of teaching and learning resources and specialised online training modules has been developed to assist schools to meet the language learning needs of these diverse student groups.

216. Schools can make application to specialist funding pools to implement a further range of support initiatives to address the additional challenges faced by students from a refugee background. These include the employment of refugee education coordinators in schools, the employment of bilingual tutors and liaison workers, and currently provide support for over 700 students.

217. The Ministry of Education Refugee and Migrant Education Co-ordinators promote and assist with practices that support inclusive education and reduce barriers for refugee and migrant students, families and communities. They provide information and liaise with other agencies to support the appropriate access to education of migrant and refugee background children with special needs as well as those children unlawfully in New Zealand.⁶⁸

Education for children unlawfully in New Zealand

218. New Zealand children aged between five and 19 years have a right to free education in state and state integrated schools. Education is compulsory for domestic students aged between six and 16 years. Most migrant children, whether they are citizens, residents, on temporary visas or in New Zealand unlawfully, are entitled to free compulsory education (at a primary, intermediate, composite, secondary or special school).

219. The number of school-age children unlawfully in New Zealand is unknown. Over 80 per cent of these children who apply for access to free education are eventually approved as domestic students.

International students

220. New Zealand remains an attractive destination for foreign students, reflected in a sizeable international education sector. In the period January to August 2014 there were 93,137 international students enrolled with New Zealand public and private education providers.

⁶⁸ See also <http://2020.org.nz/programmes/computers-in-homes> for a Ministry of Education funded Refugee Computers in Homes programme.

221. Following the passage of the Education Amendment Act in 2015, the Code of Practice for the Pastoral Care of International Students and its regulatory framework in the process of being updated. There will also be a new disputes resolution scheme which will replace the International Education Appeal Authority (IEAA) in adjudicating disputes. The IEAA 2012 Annual Report indicates it received 50 complaints of which 43 were from international students.

222. The Ministry of Education does not collect any specific information on racial discrimination experienced by international students. However, the recent report “The Satisfaction of International Students in New Zealand Universities and ITPs” (2013), shows that only one in ten international students report being dissatisfied or very dissatisfied with their experience living in New Zealand. The primary cause of dissatisfaction given is the cost of living, while most students ranked safety and security as the most positive aspect of living in New Zealand.

Health

223. Equality has improved but significant gaps remain in health outcomes for New Zealanders. In New Zealand, Māori, Pacific peoples and socio-economically disadvantaged groups generally experience worse health outcomes than other New Zealanders. The causes of these differential outcomes are complex, but include differences in access, use and experience of health services, as well as differences in exposure to risk factors.

Māori health

224. Life expectancy for Māori has improved over the past 15 years. However, it is currently about seven years lower than it is for non-Māori.

225. As a group, Māori have poorer health outcomes than non-Māori for many other indicators, including higher mortality rates for ischaemic heart disease, stroke and cancers and a higher prevalence of diabetes and chronic respiratory diseases. Some of these differences are due to higher exposure to a range of risk factors, including smoking. Variation in access to – and subsequent use and experience of – health services is also likely to play a role. Māori are more likely than non-Māori to experience unmet need for primary health care, which is likely to contribute to higher rates of potentially avoidable hospitalisations and deaths.

He Korowai Oranga- Māori Health Strategy

226. *He Korowai Oranga* – the refreshed Māori Health Strategy, 2014 – is the overarching framework to guide the Government and the health and disability sector to achieve the best

health outcomes for Māori. It complements the overall health⁶⁹ and disability⁷⁰ strategies, and the Public Health and Disability Act 2000.⁷¹

227. The New Zealand Public Health and Disability Act 2000, requires district health boards (DHBs) to enable Māori to participate in and contribute to strategies for Māori health improvement. These, and related requirements, are imposed in order to recognise and respect the Treaty of Waitangi principles and to improve the health status of Māori.

228. The Act includes the objective for DHBs to reduce health disparities by improving health outcomes for Māori and other population groups, and to reduce, with a view to eliminating, health outcome disparities between the various population groups.⁷²

229. To achieve this objective, DHBs are required to provide an annual Māori health plan (MHP). MHPs are part of the formal accountability documents required by DHB's by the Ministry of Health. MHPs underpin DHBs efforts to improve Māori health and reduce the disparities between Māori and non-Māori. The MHP involve national indicators that include Health Targets, DHB and PHO performance measures that link to the leading causes of mortality and morbidity for Māori. MHPs are closely aligned with the DHB Annual Plans but do not include any financial information. DHBs have been required to produce a stand-alone MHP and have ensured that they monitor Māori and the total population to reach the same targets.

Pacific peoples' health

230. In 2006, the estimated life expectancy for Pacific men was 73.9 years and 78.9 years for Pacific women. Although, these figures have been improving, they are more than four years less than for the total population. Pacific peoples fare less well for some health indicators. For example, between 2002 and 2006, Pacific children were 1.5 times as likely to be admitted to hospital for gastroenteritis and 4.5 times as likely as European children to be admitted to hospital for serious skin infections. Pacific children and young people (aged 0–24 years) are nearly 50 times more likely than European children (and twice as likely as Māori) to be admitted to hospital with acute rheumatic fever. Pacific peoples have very high rates of obesity and diabetes. Pacific peoples experience higher levels of un-met need for primary care, with the cost of general practitioner visits and prescriptions identified as being key barriers. Pacific children have poorer dental health than other children, and gaps are widening as dental health improves in non-Pacific children.

‘Ala Mo’ui: Pathways to Pacific Health and Well-being

231. ‘Ala Mo’ui: Pathways to Pacific Health and Well-being 2014-2018 is the Government’s national plan for improving health outcomes for Pacific people. It is driven by the vision of achieving health equity for all Pacific peoples of New Zealand.

⁶⁹ <http://www.health.govt.nz/system/files/documents/publications/newzealandhealthstrategy.pdf>.

⁷⁰ <http://www.odi.govt.nz/resources/publications/nzds/index.html>.

⁷¹ <http://www.legislation.govt.nz/act/public/2000/0091/latest/DLM80051.html>.

⁷² Section 22 (1)(e)(f).

Government interventions addressing health inequalities

232. Interventions by the Government to address inequalities include:

- **Immunisation:** Immunisation rates have significantly improved in New Zealand over the last few years and gains have been made towards health equity. For example, immunisation rates for Māori children have improved so much they are now equal to or better than non-Māori rates in much of the country. The latest data for young children shows that at 31 March 2015 95 per cent Pacific children were fully immunised at age 8 months and 96 per cent at age 2 years, compared with 93 per cent for both age groups for the total population.
- **The Rheumatic Fever Prevention Programme:** Māori and Pacific children and young adults (aged 4-19 years) have the highest rates of rheumatic fever. Māori children are about 20 times more likely to be hospitalised for rheumatic fever and Pacific children about 40 times more likely than non-Māori/non-Pacific children. The Ministry of Health is working with other government agencies, health organisations, community and philanthropic groups, researchers and professional bodies to reduce New Zealand's rheumatic fever rate.

Māori and Pacific children and young adults benefit from the Ministry's Rheumatic Fever Prevention Programme (RFPP) that was established in 2011 and significantly expanded in 2012 to prevent and treat strep throat infections, which can lead to rheumatic fever. The Government has invested over \$65 million to identify and trial new initiatives to reduce the rheumatic fever rates throughout New Zealand. The Programme is working in the 11 District Health Board areas with the highest incidence of rheumatic fever hospital admissions.

- **Zero fees for general practice visits:** From 1 July 2015, all children under 13 are eligible for zero fees general practice visits, both during the day and after hours. Under 13s are also exempt from the standard \$5 pharmacy charge for each prescription item from 1 July 2015. Zero fees previously applied to under 6s.
- **Very Low Cost Access (VLCA) scheme:** VLCA supports general practices with an enrolled population of 50 per cent or more high needs patients (defined as Māori, Pacific or New Zealand Deprivation Index quintile 5) where the practice agrees to maintain patient fees at a low level. VLCA payments provide recognition of the extra effort involved in providing services to high need populations and keeping fees low for the people who can least afford primary health care and improving health outcomes for those most likely to have the worst health.

233. Racial discrimination is recognised as a contributor to disparities and driver of ethnic health inequalities. It is important to understand how racism operates as a health risk in order to develop interventions that reduce ethnic inequalities in health.⁷³

⁷³ Harris, R. Cormack, D. Tobias, M. Li-Chia, Y. Talamaivao, N. Minster, J. Timutimu, R. (2011) Self-reported experience of racial discrimination and healthcare use in New Zealand: Results from the 2006/7 New Zealand Health Survey. The Science of research on Racial/Ethnic discrimination and health.

234. The New Zealand Health Survey (NZHS) measures self-reported physical and mental health status, health risk and protective factors, and use of health care, among individuals usually resident in New Zealand and living in private dwellings.⁷⁴ In the 2006/07 NZHS, Māori and Asian peoples had similar reporting of multiple forms of discrimination and were 10 times more likely to report ‘ever’ experiencing multiple (three or more) types of discrimination than European.

235. Experience of racial discrimination was significantly linked to poorer health outcomes (mental and physical health, cardiovascular disease, and smoking) and health service utilisation across all ethnic groups. It is likely that the potential health burden is much greater for those ethnic groups that report a higher prevalence of racial discrimination (namely, Māori, Asian and Pacific groups).⁷⁵

Youth Suicide and Self-Harm

236. Māori youth have a higher suicide rate and hospitalisation for intentional self-harm than other ethnic groups in New Zealand. In 2012, there were 107 male and 43 female Māori youth suicides (32.3 and 13.8 per 100,000 males and females respectively). The Māori youth suicide rate was 2.8 times the non-Māori youth rate (48.0 per 100,000 Māori youths compared with 17.3 per 100,000 non-Māori youths). The factors contributing to suicide are complex and multi-factorial and range from individual to broad social factors. For Māori, the additional impact of cultural influence of historical, political and social processes compounds their risk. The focus for suicide prevention continues to ensure that mainstream services and initiatives are responsive to Māori.

237. There are specific initiatives in the Government's Suicide Prevention Action Plan 2013-2016 to support Māori and Pacific communities to increase resilience and to respond to suicide. A recent initiative is the investment in a national programme *Waka Hourua* aimed at building the capacity of Māori whānau, hapū, iwi, and Pacific families and communities to prevent suicide. The programme is managed by a Māori health workforce provider. The Office of the Director of Mental Health (Ministry of Health - Manatū Hauora) publishes an annual report which includes a specific focus on ethnicity in mental health services, including the use of compulsory treatment under the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Employment

238. The employment rights (such as the right to a written contract, grievance procedures and freedom from discrimination or harassment) of all New Zealand residents are protected

⁷⁴ Ministry of Health (2008) Methodology report for the 2006/7 New Zealand health survey. Wellington.

⁷⁵ Harris, R. Cormack, D. Tobias, M. Li-Chia, Y. Talamaivao, N. Minster, J. Timutimu, R (2012) The pervasive effects of racism: Experiences of racial discrimination in New Zealand over time and associations with multiple health domains. Social Science & Medicine, 74 (2012) 406-415.

by the Employment Relations Act 2000 and the Human Rights Act. If a person encounters racial discrimination in employment, they may choose to take an action for racial discrimination under one of these Acts. From January 2005 to September 2011 the Human Rights Commission received 653 complaints alleging discrimination on a race-related ground in the area of employment. Between December 2011 and December 2014, the Employment Relations Authority has determined six personal grievance cases featuring claims of racial discrimination or harassment. One was upheld.

239. The unemployment rate for all persons has decreased to 5.8 per cent of the labour force in the year to December 2014. The Household Labour Force Survey showed that labour market outcomes for most ethnicities continued to improve over the reporting period:

- There was a decline in the unemployment rates for European, Māori and Pacific Peoples over the year to December 2014. The rate for Pacific peoples fell more sharply than the rates for other ethnic groups.
- Māori employment was higher compared with the previous year, with employment of 269,800. The Māori unemployment rate decreased to 12.3 per cent in the year to December 2014.
- Pacific peoples employment increased by 11.7 per cent in the year to December 2014 to 111,400, while the Pacific peoples unemployment rate dropped from 15.3 to 12.0 per cent in the same year. Most of this drop is attributable to lower unemployment for Pacific women.
- Asian employment rate increased compared with the previous year, with employment at 279,000 and the unemployment rate increased slightly to 6.8 per cent in December 2014 compared to the previous year.
- Middle East, Latin America and Africa (MELAA) peoples employment increased compared with the previous year by 7.0 per cent to 18,700. The unemployment rate for all ethnic groups is lower than it was in 2011 when last reported to the Committee.
- The Māori, Pacific and MELAA peoples' unemployment rates are considerably higher than the 4.4 per cent unemployment rate for Europeans recorded in December 2014.
- The manufacturing, wholesale and retail trades, and health care and social assistance are the major employing industries for Māori and Pacific peoples. The proportion of Māori and Pacific peoples employed in the utilities and construction industries is also high. While many of the jobs in these industries are characterised as low skilled, employment in skilled occupations for Māori and Pacific peoples has increased between December 2011 and December 2014.

Initiatives to improve employment opportunities

240. Cultural linkages are important in achieving improved labour market outcomes. Māori and Pacific peoples will form an increasingly large part of New Zealand's workforce in future years and are playing an increased role in New Zealand's business community. The Ministry of Business, Innovation and Employment website has a section specifically about Māori Labour Market Information to assist anyone with an interest in Māori social and economic

issues to gain a better understanding about labour market trends among Māori and key information about their people, their skills and past and current employment trends and opportunities.⁷⁶

241. The Pacific Economic Strategy 2015, led by the Ministry of Business, Innovation and Employment will be released by December 2015. The Strategy will support Pacific people to contribute to and share in NZ's economic success by stimulating Pacific peoples' economic participation. It will help advance New Zealand's strategic and economic interests for Pacific people, both in New Zealand and the Pacific region. This includes fostering and strengthening the interface with the Pacific region and Pacific communities.

242. The Pacific population is growing three times faster and is younger than the national population. One in three babies born in Auckland is Pacific –and the median age for Pacific people is 22 years compared with 38 years for all New Zealanders. By 2026 Pacific people will make up a significant proportion of the New Zealand labour force and potentially 30 per cent of the Auckland working population. The Pacific youth population also means increased contribution to the labour force past 2026.

243. The Strategy will look to improve Pacific people's involvement and contribution to the New Zealand economy through increased participation in higher skilled work in high growth industries, more Pacific people owning sustainable businesses and more Pacific people in stable financial positions.

244. The Ministry of Business, Innovation and Employment coordinates the meeting of the bi-annual Pacific Strategic Think Tank forum to inform the strategic direction through identifying future trends, challenges and opportunities as it relates to its work with respect to Pacific Economic Development. It recognises that the future of New Zealand is reliant on the performance of its Māori and Pacific communities and opportunities to improve and foster economic development is a key plank to its future focused work programme. Representatives on the Think Tank are from the Ministry of Pacific Island Affairs, Ministry of Education, Ministry of Foreign Affairs and Trade, Business leaders, Pacific academia, NGO representatives and other relevant stakeholders.

Pacific Analysis Framework

245. The Pacific Analysis Framework (PAF) is a policy tool that the Ministry of Business, Innovation and Employment has developed that provides agencies with an approach to identifying and incorporating the perspectives of Pacific peoples into their policy process. It will be launched in mid-2015.

246. The PAF encourages a strengths-based approach to policy development recognising that Pacific people and communities have valuable skills and strengths - such as Pacific language capabilities and strong community networks – that should be reflected in the policy planning and policy development process. Alongside the PAF, the *Pacific Consultation Guidelines* clarifies the role of, and opportunities for, Pacific peoples to have input into departmental policy making.

⁷⁶ www.dol.govt.nz/services/LMI/Māori/index.asp.

Māori housing

247. In July 2014, the Government launched *He Whare Āhuru He Oranga Tāngata (He Whare Āhuru)* – the Māori Housing Strategy. The strategy sets out six directions to improve Māori housing over the period of 2014 to 2025. It aims to support two major outcomes, namely improving housing for Māori and their whānau; and increasing housing choices for Māori by growing the Māori housing sector.

248. The first three directions set out the opportunities open to Māori and their whānau to improve their housing situation. The remaining three directions set out the opportunities for Māori organisations to create more housing choices for Māori.

249. The strategy was developed at a time when new opportunities were emerging for Māori organisations to play a greater role in housing. The government's social housing reforms, rights of first refusal over surplus land (where such rights apply as a result of Treaty of Waitangi settlements) and the transfer of Housing New Zealand homes to community housing providers all create opportunities for Māori to develop housing that will better meet their needs.

250. To support the implementation of *He Whare Āhuru*, Government has agreed to establish a National Māori Housing Unit within *Te Puni Kōkiri* and in Budget 2014, the Government allocated \$16 million over four years to the Māori Housing Fund. This fund is to support the repair and rebuild of rural housing, the improvement of housing on the Chatham Islands and the development of Māori social housing providers.

251. Other government funding programmes that support growing the Māori housing sector includes:

- Kāinga Whenua loan – a mortgage insurance scheme for building on Māori land
- Kāinga Whenua infrastructure grant – to cover costs of infrastructure that may be needed to connect developments on Māori land to existing infrastructure
- Special Housing Action Zone (administered by Te Puni Kōkiri) – provides funding to support project scoping work for housing development.

Pacific peoples' housing

252. Although Pacific people make up 7.4 per cent of New Zealand's population, the proportion of Housing New Zealand tenants who are Pacific people (including those who have identified with more than one ethnicity) has increased from 25 percent in 2006 to 38 per cent in 2013. This number is greater in Auckland where Pacific peoples make up 45 per cent of all Housing New Zealand tenants, an increase from 40 per cent in 2006.

253. Census 2013 showed that 63.9 per cent of Pacific people were living in rental accommodation compared with 32.9 per cent of the total New Zealand population. As with other populations in New Zealand, the home ownership rate for Pacific peoples is declining. For Pacific people aged 15 years and over living in New Zealand on 5 March 2013, 18.5 per cent owned or partly owned their usual residence; in 2006, this was 21.8 per cent. For comparison, 49.8 per cent of the population aged 15 years and over owned or partly owned

their usual residence. At the end of June 2014, Pacific people made up 6 per cent of all recipients of the Accommodation Supplement.

254. The Ministry of Business, Innovation and Employment’s Pacific Economic Strategy looks to support Pacific people and their communities towards economic prosperity with Pacific people in quality, suitable and affordable housing one of the three goals. The action plans underpinning the strategy are important in ensuring housing outcomes for Pacific people are realised.

Social services

255. New Zealand’s social assistance programmes aim to ensure an adequate standard of living and provide opportunities for all to participate fully in society, regardless of ethnicity. Māori and Pacific peoples are over-represented in a number of poor social outcomes. Every effort is made by the Government to ensure that all services reach vulnerable Māori and Pacific families and are delivered in culturally acceptable ways.

256. **The Ministry of Social Development – Te Manatū Whakahiato Ora** implemented Welfare Reform changes from July 2013. Some of the main changes were the restructuring of benefit categories, the introduction of a new service delivery model and the adoption of an investment approach to welfare.

257. One of the key pillars of Welfare Reform is the adoption of the investment approach, which uses actuarial modelling tools to recognise and make transparent the full long-term costs to the welfare system of groups or segments of people within that system. An annual valuation is done to assess the impact of Work and Income activity on future liability and hold Work and Income accountable for its performance.

258. Actuarial valuations of the welfare system identify likely future trends in benefit receipt based on historical behaviour. The investment approach takes that information, breaks it down and uses it to shape future performance management, services and case management. This information is also used to develop trials aimed at trying new approaches to working with clients, allowing the Ministry of Social Development to stop, continue or expand trials in accordance with the results.⁷⁷

259. The investment approach does not specifically target any particular ethnic group. However, it is likely that a number of ethnicities will be represented in the profile of the clients the investment approach aims to help into work.

⁷⁷ The Ministry of Social Development implemented five trials on flexible childcare assistance; in-work support; intensive client support; young supported living payments clients; and people affected by the recession. A first evaluation to measure the impact on Māori and/or Pacific peoples is due in August 2015.

Young Persons and Their Families

260. Child Youth and Family's responsiveness is embedded in the Ma Matou Ma Tatou strategy, underpinned by Puao te Atatu and also the Children, Young Persons and their Families Act.

261. From 2013 to present time, Child, Youth and Family has, with the help of its Māori leadership infrastructure and organisational leadership, co-constructed with internal staff and key external stake holders (e.g. iwi, NGOs), a Child, Youth and Family Indigenous and Bicultural Principled Framework that places a premium on Tangata Whenua bodies of knowledge, and wisdom, focuses on the potentiality and uniqueness of our young, and validates Tangata Whenua ways of doing and engaging with each other.

262. It is envisaged that the framework will underpin and influence all Child, Youth and Family activities. Its influence has been displayed in the strengthening of our assessment protocol with the introduction of Tuituia, the influence of Kaiwhakatara to strengthen the Family Group Conference processes by uplifting all involved in its delivery, to value the power of whānau decision making in whānau hui and hui a whānau, and finally to building meaningful hapū and iwi connections.

263. Since August 2012, Child, Youth and Family has engaged with iwi across New Zealand to discuss options for a partnered approach to improving outcomes for mokopuna and whānau Māori who are known to, or likely to come into the custody of Child, Youth and Family. Child, Youth and Family has currently established formal partnership agreements with five Iwi. These partnerships are currently exploring and co-designing services that will support the cultural needs of mokopuna Māori and their whānau consistent with the aspirations of iwi for their people.

264. Child, Youth and Family is also developing a Pacific practice framework to complement its existing practice frameworks which will enable practitioners to engage more effectively with Pacific children, young people and families. Dignity, responsibility, relationships, spirituality, guardianship, child's best interest, and humility are core elements of the Pacific framework. These elements are especially important because of the socio-economic disadvantages faced by many Pacific children and families, and the position of Pacific communities as minorities in New Zealand. Looking ahead, the aim is to see more sustainable outcomes that reduce the number of Pacific children that return to the notice of the state, a reduction in their number in long-term state care, and a decrease in youth offending.

People with disabilities

265. In 2013, the disability rates for the four main ethnic groups were: Māori – 26 per cent, European – 25 per cent, Pacific peoples – 19 per cent and Asian – 13 per cent. Māori children have a disability rate of 15 per cent, compared with 9 per cent for non-Māori children.

266. In 2013, the employment rates for disabled people in the four main ethnic groups were: European – 46 per cent, Asian – 46 per cent, Māori – 44 per cent and Pacific peoples – 41 per cent.

267. The Disability Strategy presents a long-term plan for changing New Zealand from a disabling to an inclusive society. It contains specific objectives for promoting the participation of disabled Māori and disabled Pacific peoples. In addition, the Ministry of Health's Disability Support Services emphasises culturally responsive service provision in both Whaia Te Ao Marama: The Māori Disability Action Plan for Disability Support Services, 2012 -2017 and Faiva Ora: National Pacific peoples Disability Plan, January 2014 - June 2016.

268. One of the priorities for the promotion and maintenance of New Zealand Sign Language (NZSL) is improving access for deaf Māori and tikanga Māori because of the need to access three different languages (English, Māori and NZSL). The recently established New Zealand Sign Language Fund will make available funding for initiatives such as the training of trilingual interpreters.

269. In 2013, a three-year demonstration of Enabling Good Lives was introduced in Christchurch. This was in recognition of the need and broad direction for change to the disability support system through the New Zealand Disability Strategy and the UN Convention on the Rights of Persons with Disabilities. An Enabling Good Lives demonstration will begin in Waikato in July 2015 and will include disabled Māori and their whānau as a priority group. The relationship between Māori and the Crown under the Treaty of Waitangi will be core to the future vision for the disability support system, based on key principles of participation at all levels; partnership in delivery of support, and the protection and improvement of Māori Wellbeing.

Article 6

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

270. The Government is committed to its obligations under article 6 of the Convention.

271. Information provided in the previous report, about measures taken to ensure everyone has the right to seek from such tribunals just and adequate reparation or satisfaction for damage suffered as a result of discrimination is still applicable.⁷⁸ Additional information about effective protections and remedies has been provided where relevant in earlier sections of this report.

⁷⁸ CERD/C/NZL/17, para 221 and 222.

Article 7

States Parties undertake to adopt immediate and effective measures, particularly in the fields of teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and this Convention.

272. The Government is committed to meeting its obligations under article 7 of the Convention.

Ministry for Culture and Heritage - Manatū Taonga

273. The **Ministry for Culture and Heritage** provides policy advice on arts, culture and heritage matters, including commenting on cultural property rights and protection, particularly Māori heritage; produces history, heritage and reference products and services; provides research, development and advocacy for the cultural sector and administers government funding and monitoring for arts and heritage agencies in the sector.

274. The Ministry funds a number of agencies which work to promote understanding and tolerance of the many cultures which make up the New Zealand identity. These agencies fund, develop and support Māori and other ethnic arts and heritage and hold events and exhibitions to celebrate and educate about cultural diversity and tolerance. The following are some examples of their activities.

Te Papa

275. *Te Papa* continues to be a world leader as a bicultural museum, with the Kaihautū leading bicultural strategy within the museum, and inclusion of indigenous knowledge, world views and value systems across the organisation. Regular exhibitions developed in partnership with iwi Māori tribes, as well as the location of the marae in the centre of *Te Papa*, demonstrate this perspective and its unique brand of museum practice. *Te Papa* actively works with communities including iwi, hapū and whānau on a range of programmes aimed at not only caring for and preserving our cultural heritage but actively assisting ongoing development.

Heritage New Zealand

276. Formerly the Historic Places Trust, *Heritage New Zealand* is responsible for the establishment and maintenance of a Heritage List/ Rārangi Kōrero of New Zealand's historical and cultural heritage, including historic and *wāhi tapu* places and areas. Under the Heritage New Zealand Pouhere Taonga Act 2014, this was extended to also include *wahi tupuna*, recognising the ancestral significance of places. Any person may apply to Heritage

New Zealand's Māori Heritage Council to have any *wāhi tapu*, *wāhi tapu* area, or *wahi tupuna* entered on the List.

New Zealand Film Commission

277. The *New Zealand Film Commission* has recognised the need to expand and develop the base of Māori filmmaking in the film industry. In 2013-14 the Commission established a new initiative, He Ara, to empower groups of Māori and Pacific peoples film makers to develop films in a collaborative fashion.

NZ On Air

278. In 2014, *NZ On Air* invested \$4.5 million in television programmes with appeal for all New Zealanders but with content that makes a conscious effort to reveal something of the past, present or future Māori world. A further \$265,000 was invested in Māori radio programming as well as \$300,000 in a Māori web series as part of *NZ On Air*'s digital strategy. In total, *NZ On Air* invested \$5.1 million on Māori as one of its special focus audiences.

IV. Tokelau

279. Reference should be made to previous New Zealand reports for the situation in Tokelau. For further information, reference should be made to the report to Parliament by the Administrator of Tokelau and to the working papers issued each year by the United Nations Special Committee on Decolonisation.

280. Tokelau is a non-self-governing territory and has been administered by New Zealand since 1926. There are an estimated 7176 (2013 NZ census) Tokelauans living in New Zealand. The 1411 (2011 census) people of Tokelau live in villages on three small atolls separated from each other by 60-100kms of ocean. Its nearest neighbour is Samoa, located approximately 500 kilometres to the south. Each atoll is a circular set of low lying islets around a central lagoon. The total land area is 12 square kilometres of sand and coral, there is virtually no soil, and edible vegetation is mainly restricted to coconut and breadfruit trees.

281. In each village, the focus is on caring for individual members of the community in a communal manner. One of the main tenets of Tokelauan society is “inati” or sharing and cooperation between the whole community. There is a cohesive social structure based on family and the principle of sharing, reinforced by a consensual style of decision-making around a male hierarchical base.

282. Whilst the majority of the population on the three villages of Tokelau are made up of Tokelauans, presently there are also a small number of other ethnicities, including Tuvaluans,

Samoans, I-Kiribati and Fijians. Due to the homogeneity of its people and the inclusiveness of Tokelauan society, racial discrimination is rare.

283. With the support of New Zealand and the United Nations Special Committee on Decolonisation, Tokelau held referenda on self governance in 2006 and 2007. Both referenda failed by a small margin to reach the threshold for constitutional change. Following these referenda, there was agreement between New Zealand and Tokelau that deliberations on constitutional change would be set aside while priority effort was given to improvement of economic and social services on the atolls. In reality, Tokelau is governed on a daily basis by Taupulega (village elders) on each of the atolls.

284. Tokelau has adopted the Tokelau National Strategic Plan 2010-2015 to guide decision making for a five-year period. The Plan includes ensuring good governance, quality education and health care for all on Tokelau. It also includes a commitment to protect the unique local language and culture.

285. Tokelau continues to consider what further steps it might take in light of the obligations accepted by New Zealand on its behalf under the Convention.

286. Tokelau's newly updated Constitution now includes these provisions: that individual human rights for all people in Tokelau are those stated in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights; and that the rights of individuals shall be exercised having proper regard to the duties of other individuals, and to the community to which the individual belongs. Those provisions suggest that Tokelau should be well equipped to address how it would, following any act of self-determination, give local effect to its human rights commitments. The Council for the Ongoing Government is the designated forum to which individuals can address any complaints should they feel that their human rights have been denied. To date there has been no complaint in relation to breach of human rights.

287. Tokelau is assured of the continuing interest and support of the New Zealand Government in its development of self government practices in various settings. The statement also emphasises that the State seeks to treat all faith communities and those who profess no religion equally before the law, and that New Zealand has no official or established religion. It encourages education about our diverse religious and spiritual traditions, respectful dialogue, and positive relationships between Government and faith communities.
