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### **Committee on Economic, Social and Cultural Rights**

**Forty-eighth session**

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## **Implementation of the International Covenant on Economic, Social and Cultural Rights**

### **Consideration of reports submitted by States parties in accordance with articles 16 and 17 of the Covenant: New Zealand**

#### **Addendum**

#### **Replies by the Government of New Zealand to the list of issues (E/C.12/NZL/Q/3) to be taken up in connection with the consideration of the third periodic report of New Zealand (E/C.12/NZL/3)\***

[11 November 2011]

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\* In accordance with the information transmitted to States parties regarding the processing of their reports, the present document was not formally edited before being sent to the United Nations translation services.

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## I. General information

### Reply to the issues raised in paragraph 1 of the list of issues (E/C.12/NZL/Q/3)

#### Consideration of Constitutional Issues

1. In December 2010, the Government announced a wide-ranging Consideration of Constitutional Issues (often referred to as the constitutional review). One of the issues the review will look at is whether the New Zealand Bill of Rights Act 1990 should be entrenched. Other topics include whether New Zealand should have a written constitution, the size of Parliament and length of Parliamentary terms, Māori representation in Parliament and local government, and the role of the Treaty of Waitangi within New Zealand's constitutional arrangements.

2. The review will be a considered process over the next two years. The Deputy Prime Minister and the Minister of Māori Affairs have appointed an independent advisory panel that will establish a forum to develop and share a range of views on the constitutional topics. The panel will report to the Government in 2013 on the range of perspectives, including any points of broad consensus where further work is recommended. The Government will then consider whether further work on particular issues is desirable. Any changes to New Zealand's constitutional arrangements will need to be carefully examined and have broad public support.

#### Justiciability of Economic, Social and Cultural Rights

3. Targeted legislation specifically implements numerous rights in the Covenant, such as rights relating to education, conditions of employment, equal pay, parental leave, environment, family law, health, housing, copyright protection and social security. The scope and range of the rights covered by such legislation is extensive, as are the types of action available to enforce these rights, which includes:

- Criminal sanctions and regulatory enforcement measures
- Complaint and investigative processes and specialist tribunal proceedings
- Direct individual action for the delivery of a specific benefit or other statutory obligation or protection, and
- Actions for damages or other remedial orders.

4. The right to housing is provided for and given effect through:

- Legislation providing for secure tenancy and for resolution of disputes
- Rights of non-discrimination both under general antidiscrimination legislation and as part of tenancy legislation
- Legislation that establishes and supports the Housing New Zealand Corporation, a state body that directly provides state-owned housing to low income tenants, and
- Specific social security legislation providing for assistance with accommodation costs.

5. The Covenant can also be invoked directly through the established domestic law principle that, wherever possible, national legislation is interpreted and applied consistently with international obligations.

6. The courts also have broad powers to judicially review the exercise of statutory powers. A person may apply for judicial review of any exercise, refusal to exercise, or

proposed or purported exercise by any person of a statutory power. “Statutory power” is widely defined and includes (but is not limited to) the power or right to make regulations and rules, and to exercise a statutory power of decision.

7. By way of recent examples of judicial review in the context of the Covenant, the right to housing was addressed in two Court of Appeal decisions:

- In relation to tenancy rights and non-discrimination law: see *Winther v. Housing New Zealand Corporation* [2011] 1 NZLR 825, as discussed below in response to the issues raised in paragraph 13 of the list of issues,
- In relation to public liability for inadequate enforcement of building standards: see *Te Mata Properties Ltd v. Hastings District Council* [2009] 1 NZLR 460.

8. The courts also consider other Covenant rights on a regular basis: see, for example, *Smith v. Air New Zealand Limited* [2011] NZCA 20 (Covenant considered as part of reasonable accommodation duty by airline. Air New Zealand’s charge for the provision of supplementary oxygen for international travel was found to be reasonable); *Ye v. Minister of Immigration* [2009] 2 NZLR 596 (immigration decision-making) and *Naysmith v. Accident Compensation Corporation* [2006] 1 NZLR 40 (injury rehabilitation).

### **Reply to the issues raised in paragraph 2 of the list of issues**

#### **International development cooperation policy**

9. The New Zealand Aid Programme supports sustainable development in developing countries by reducing poverty and contributing to a more secure, equitable and prosperous world. Four priority themes guide the Programme and promote the realisation of economic, social and cultural rights in stimulating sustainable development. These are: investing in economic development, promoting human development, improving resilience and responding to disaster, and building safe and secure communities.

#### **Official Development Assistance**

10. New Zealand considers the quality and impact of such assistance to be as important as the volume. New Zealand recognizes and supports the United Nations target of 0.7 per cent of GNI as Official Development Assistance (ODA) but has not set a timetable for reaching this. Despite a challenging global and domestic economic situation, New Zealand is continuing to increase the volume of ODA it provides. The aid programme is currently planned to reach \$620 million in 2014/15, up from \$474 million in 2009/10.

## **II. Issues relating to the general provisions of the Covenant (arts. 1-5)**

### **Article 2- Non-discrimination**

#### **Reply to the issues raised in paragraph 3 of the list of issues**

#### **Equal rights of persons with disabilities to work**

11. New Zealand has a framework to guarantee equal rights of persons with disabilities to employment:

- The Human Rights Act 1993 protects people from discrimination on the basis of disability (s21(1)(h)). Section 19(1) of the Bill of Rights Act 1990 affirms that

everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act.

- It is unlawful for employers to discriminate against persons with disabilities in the course of hiring, employing or dismissing people.
- Health and safety obligations require employers to take all practical steps to eliminate hazards, which could include harm arising from bullying or harassment.
- The State Sector Act 1988 ensures that every employer in the public service is a “good employer” of all people and promotes equal opportunities. People with disabilities are seen as one of the groups requiring support so that they can enjoy equal employment opportunities.
- The Ministry of Social Development has a role in supporting employment of people with disabilities. Other agencies have complementary support roles. For example, the Ministry of Health, in certain circumstances, centrally funds disability supports for individuals under 65 years old who work and have intellectual, sensory and physical disabilities.

### **New Zealand Disability Strategy**

12. Although a high percentage of people with disabilities are unemployed, a range of policies to increase employment opportunities for people with disabilities is being developed as part of the New Zealand Disability Strategy. The Strategy presents a long-term plan for changing New Zealand from a disabling to an inclusive society. The New Zealand Disability Strategy was developed in consultation with disabled people and the wider disability sector, and reflects many individuals’ experiences of disability.

### **Reasonable accommodation**

13. Under the Human Rights Act and the Employment Relations Act 2000, less favourable treatment of a person with a disability is unlawful unless the person requires special services or facilities and it is not reasonable for those special services or facilities to be provided.

14. The Human Rights Act does not use the term "reasonable accommodation". Instead the Act refers to whether the person or body providing services can “reasonably be expected to provide them” in the manner required. In *Smith v Air New Zealand* [2011] NZCA 20, the Court of Appeal clarified that this wording invokes a duty of reasonable accommodation, including by reference to the United Nations Convention on the Rights of Persons with Disabilities, which New Zealand ratified in September 2008.

### **Reply to the issues raised in paragraph 4 of the list of issues**

#### **Economic, social and cultural rights for refugees and asylum-seekers**

##### *Income support, health and employment services*

15. New Zealand accepts around 750 quota refugees each year. Quota refugees are determined as being refugees by the Office of the United Nations High Commissioner for Refugees (UNHCR) before they arrive in New Zealand. Quota refugees are granted permanent residence on arrival in New Zealand and have the same access to employment, and income support and health services as other New Zealand residents or citizens. Refugees or people with protected person status (under the Immigration Act 2009, sections 129, 130 or 131) have the same access to employment and income support and public health services, and are eligible to apply for permanent residence and New Zealand citizenship after five years residence.

16. Asylum seekers who have made a claim for refugee or protection status and are lawfully in New Zealand can apply for the Emergency Benefit and Temporary Additional Support but not for other social security assistance. If they have a work visa, they are able to apply for assistance from Work and Income to gain employment. An Emergency Benefit is paid when a person does not meet the eligibility for a main social security benefit (typically, people fail to meet either the residency or the age criteria). Temporary Additional Support is a non-taxable supplementary payment that can be paid for up to a maximum of 13 weeks at a time to help people with their regular essential living costs. Asylum seekers who have made a claim for refugee or protection status are eligible to access public health services.

*Financial assistance for study*

17. Refugees and people with protected person status are eligible to apply for the Student Allowance and Student Loans on the same basis as New Zealand citizens, and the two-year residential stand-down period (where the applicant has to have lived in New Zealand for at least two years and be ordinarily resident in New Zealand) may be waived.

*Other assistance*

18. In their first year in New Zealand, refugees are able to access specialist social work and counselling services in order to help their process of resettlement in New Zealand. These services are funded by the Ministry of Social Development and delivered through non-government organizations.

19. The *Settling In* programme helps refugees and migrants to establish themselves in New Zealand, build relationships with their host communities, and develop the social services that they require to gain the skills, knowledge and confidence needed to become fully functioning participants in their new country. This programme operates in 14 locations around New Zealand where there are relatively large populations of refugees and migrants. The programme also promotes and supports the development of departments' policies and programmes in close collaboration with refugee and migrant communities.

**Access to compulsory education for children unlawfully in New Zealand**

20. The Immigration Act 2009 provides that:

- Children unlawfully in New Zealand may access primary and secondary schools, and
- Primary and secondary schools, which were previously prohibited from enrolling people unlawfully in New Zealand, may now enrol such children as students.

21. Prior to 2010, children who were unlawfully in New Zealand were only able to access education on the same terms as New Zealand citizens and other lawful residents if they and their families were seeking to regularise their immigration status. Since the Immigration Act came into force in November 2010, children unlawfully in New Zealand who are ordinarily resident, and have been for at least six months are now entitled to 'domestic student status'.

22. This legislative change, however, does not mean that foreign children unlawfully in New Zealand are automatically eligible to enrol in New Zealand schools for free. Generally, foreign nationals must have an entitlement to study in New Zealand under immigration law. The Minister of Education determines whether a foreign national child unlawfully in New Zealand is eligible to enrol in a New Zealand school for free, following the process in the Education Act 1989.

23. It remains an offence for education providers, other than those who provide compulsory education, to enrol foreign nationals who are unlawfully in New Zealand.

However, as the definition of “compulsory education” is very broad, this provision exceeds the obligation under the United Nations Convention on the Rights of the Child.

24. To ensure that persons unlawfully in New Zealand are not deterred from enrolling their children in compulsory education, immigration officials’ powers of entry and inspection of education providers’ records cannot be exercised in relation to a foreign national child undertaking compulsory education. The powers also cannot be exercised to locate any member of that foreign national’s family. This means that foreign nationals do not have to be concerned that the information they supply to an education provider in the compulsory education sector will be used for immigration compliance purposes.

#### **Reply to the issues raised in paragraph 5 of the list of issues**

25. In addition to Whānau Ora and other health schemes (see the reply to the issues raised in paragraph 16 of the list of issues), the following measures are in place to accelerate the achievement of equality for Māori.

#### **Strategic approach to education**

26. The Ministry of Education has a strategic approach to achieving educational success for and with Māori through to 2012. This is set out in *Ka Hikitia - Managing for Success*,<sup>1</sup> the Ministry of Education’s Māori Education Strategy 2008 – 2012. This strategy takes an evidence-based, outcomes-focused approach to Māori potential and is designed to concentrate on what the evidence shows will achieve a transformational shift in the performance of the education system for and with Māori.

27. The *Ka Hikitia* Māori Education Strategy has four focus areas: the Foundation Years, Young People Engaged in Learning, Māori Language in Education and Organisational Success. These focus areas describe the points in the system where coordinated activity will have the greatest impact, and each focus area has a range of priorities, goals, actions, targets and outcomes.

28. A mid-term review of the strategy was carried out in 2011. Evidence shows that implementation of the strategy is progressing at a much slower rate than is needed for it to be successful. However, there has been an incremental improvement in Māori learner results against the strategy’s targets.

29. In 2010, the Ministry of Education introduced National Standards setting clear expectations that students should meet in years 1 to 8 (students aged 5 to 13 years old) for reading, writing and mathematics, in both English and Māori. These standards give schools the ability to set and track school-wide targets to lift achievement for Māori students.

30. Another programme aimed at lifting achievement for Māori students at school is *Te Kotahitanga*.<sup>2</sup> This is a professional development programme for teachers of Māori students in years 9 and 10 (students aged 13 to 15 years old) and is designed to increase teachers’ capability in culturally responsive teaching pedagogy.

#### **Employment: Youth Guarantee programme**

31. The Youth Guarantee programme supports 16 and 17 year old students to continue their education. It is part of the Youth Opportunities package to create new work, education and training opportunities for young people. In 2012, 7,500 places are to be made available

<sup>1</sup> Ka hikitia means to ‘step up’, to ‘lift up’, or to ‘lengthen one’s stride’. Here, it means stepping up the performance of the education system to ensure Māori are enjoying educational success as Māori.

<sup>2</sup> Te Kotahitanga means ‘unity’.

to provide targeted opportunities for 16 and 17 year olds to take part in a range of free vocational courses.

### **Te Puni Kōkiri**

32. Te Puni Kōkiri (Ministry of Māori Development) promotes increases in Māori achievement in education and training. One way this is achieved is through partnered initiatives to enhance education and training opportunities for Māori.

33. Te Puni Kōkiri has developed policy parameters for, and invested in, a range of education and training initiatives including:

- Restructuring training and qualifications in the primary sector for Māori asset holders
- Research into the opportunities and barriers that exist for parents and whānau (family) with children under the age of 5 years
- Research on integrated approaches to secondary and tertiary education for Māori
- Resource development to enable informed decision making by parents and whānau about their child’s education
- Establishing cadetships for Māori in a range of industries
- Partnering with several Industry Training Organisations to lift the skills of Māori across the infrastructure, seafood and tourism industries, and
- Creating employment opportunities in accounting, architecture, information technology, teaching, and science.

34. On 21 June 2011, the Minister of Māori Affairs launched *Te Ara Puāwai*,<sup>3</sup> a new initiative intended to place 200 Māori into building and construction sector job training and ultimately, into jobs. Successful trainees will assist in the rebuilding of Christchurch after the earthquakes of 4 September 2010 and 22 February 2011.

## **Article 3- Equal rights of men and women**

### **Reply to the issues raised in paragraph 6 of the list of issues**

35. The institutional and legislative framework of New Zealand guarantees the right to equal pay for the same or substantially similar work. As noted above in the reply to the issues raised in paragraph 3 of the list of issues, section 19(1) of the Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act.

36. The right to equal pay and to be free from gender discrimination was considered in the High Court case *Talleys Fisheries Limited v. Lewis & Edwards* (2007) 8 HRNZ 413; (2007) 4 NZELR 447. The High Court established that employers should not segregate women into work that is substantially similar to work undertaken by men but with less money. The Court said that what is “substantially similar”, needs to be assessed by looking at the core aspect of jobs rather than the “difference in detail”. The judgement concluded that the complainant was allocated to a lesser paying role due to her gender.

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<sup>3</sup> Te Ara Puāwai means ‘flourishing pathway’.

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**Reply to the issues raised in paragraph 7 of the list of issues****Women's participation in employment**

37. Some improvements have been made in women's participation in traditionally male-dominated occupations such as accountancy, veterinarian medicine, medicine, law, and some forms of mathematics and engineering. In veterinary medicine, for example, women made up 44 per cent of professionals in 2006 compared to 30 per cent in 1996. Women made up 45 per cent of mathematicians/statisticians in 2006 compared to 33 per cent in 1996.

38. Progress to increase women's participation in trades, senior positions in certain occupations, and jobs in science, technology, engineering and mathematics has been slower. The number of female electricians, builders and motor mechanics remained at one per cent between 1996 and 2006. In 2010, 57 of 219 judges were women (26.02 per cent) compared to 51 of 198 in 2007 (25.75 per cent). This is similar to the change in the number of female partners in law firms, and Fellows of the Royal Society of New Zealand (which promotes and invests in science, technology and the humanities in New Zealand). As at the 2006 census, 20 per cent of those in the physical, mathematical and engineering science professions were women, although there have been increases in some areas. As at March 2008, women represented 13 per cent of architects, engineers and related professionals, and 16 per cent of physical science and engineering technicians.

**Girl's pursuance of education**

39. Education in the state sector is available to all children as is access to tertiary education and training. In education, female students continue to outnumber male students in biology and chemistry in Year 13 (students aged 17 to 18) of secondary education. At tertiary level, gains have been made in law where 61 per cent of those graduating with a law degree in 2009 were women.

40. While women account for 64 per cent of university graduates, women continue to participate in lower numbers in male-dominated fields such as physics, mathematics, and engineering. This in part explains the low participation of women in engineering and information technology. In 2009, 23 per cent of people studying engineering and 28 per cent of people studying information technology were female. The number of women undertaking a Modern Apprenticeship (apprenticeships administered by the Tertiary Education Commission) increased slightly from 9.38 per cent in December 2008 to 12.56 per cent in December 2010.

41. The New Zealand Government is committed to improving the number of women in male-dominated occupations and education. The Government is continuing to undertake measures to ensure women make informed choices about careers, including working in non-traditional roles. For example, the Careers New Zealand's website<sup>4</sup> profiles women in a range of non-traditional occupations to reflect women's participation across the labour market. The Ministry of Women's Affairs has also established regional networks for women in trades run by tradeswomen. Studying a range of subjects which allows women to make these choices is critical to ensuring there continues to be increases in the number of women working in these roles.

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<sup>4</sup> A government website about careers in New Zealand which can be found at [www.careers.govt.nz](http://www.careers.govt.nz).

**Reply to the issues raised in paragraph 8 of the list of issues**

42. Section 69Y of the Employment Relations Act 2000 supplements general employment law requirements for meal and other breaks at work by providing that, so far as reasonable and practicable in the circumstances, employers must provide appropriate time and facilities for employees that are breastfeeding. The section promotes and protects breastfeeding, which has important health benefits for both mothers and infants. It also better supports parents' work and care choices, enabling mothers to return to work at a time of their choosing while continuing to breastfeed.

43. Employers' compliance with section 69Y can be raised with the Employment Relations Authority, an independent tribunal, which may fine non-compliant employers.

**III. Issues relating to the specific provisions of the Covenant (articles. 6-15)**

**Article 6- Right to work**

**Reply to the issues raised in paragraph 9 of the list of issues**

**Progress towards Goal 1: Secure and adequate income for older people**

44. The policies and programmes New Zealand has undertaken to progress the goal of a secure and adequate income for older people have focused on:

- Understanding and preparing for the fiscal challenge of an ageing population
- Maintaining the income and living standards of older people
- Improving awareness and access to entitlements and services, and
- Encouraging and supporting people to plan for retirement.

*Understanding and preparing for the fiscal challenge of an ageing population*

45. Eligibility for New Zealand Superannuation is based on 10 years residence in New Zealand (with five years after age 50). New Zealand Superannuation is funded through general taxation rather than individual contributions.

46. On 1 July 2002, the New Zealand Superannuation Fund (the Fund) was established in recognition of the fact that population ageing is a significant multigenerational, social and financial challenge. The Fund seeks to mitigate the challenge of population ageing by "smoothing" the tax burden between generations of the future costs of New Zealand Superannuation.

47. It is expected that the Fund will provide eight per cent of the net cost of New Zealand Superannuation in 2050. The Fund does this by investing government contributions received during the early period of the Fund and through returns generated over decades of investing (growing the size of the Fund).

48. In May 2009, the Government announced that regular annual payments to the Fund will be suspended until there is a budget surplus. Contributions to the Fund are likely to resume in 2016. The intention is not to draw down from the Fund until 2028.

49. Partially "pre-funding" the future costs of New Zealand Superannuation means that future Governments do not have to seek as much from taxpayers (or other sources such as raising credit) to meet the costs of New Zealand Superannuation when it is increasing most sharply.

*Maintaining the income and living standards of older people*

50. Only nine per cent of older people live below the low-income threshold.<sup>5</sup> This low figure is due to the mix of current public provision, mainly New Zealand Superannuation, and the private provision built up by most of the current cohort over their lifetime. A key component of private provision is mortgage-free home ownership, which is relatively high among the current cohort. In 2006, 65 per cent of people aged 65 years and over lived in homes owned without a mortgage, compared with only 23 per cent of the total population.<sup>6</sup>

51. Around 95 per cent of those aged 65 years and over receive New Zealand Superannuation. Financial assistance is available for older people who do not meet the residency criteria (usually recent migrants). For low-income older people there is additional assistance available, such as assistance with housing and medical costs.

52. New Zealand Superannuation is set at 66 per cent of the after tax average weekly wage and is increased every year in step with the after-tax average weekly wage and the Consumers Price Index. This ensures that superannuation keeps pace with the cost of living.

53. Recent legislative amendments to general portability rules allow older people to retire in the country of their choice and retain New Zealand Superannuation. The Ministry of Social Development continues to negotiate and implement new social security agreements with other countries to benefit older New Zealanders.

54. The Government also funds free off-peak travel on public transport for all residents aged 65 years old and over.

*Improving awareness and access to entitlements and services*

55. Lack of awareness about available assistance contributes to older people experiencing financial hardship. Information is available to older people, their families and advocacy groups from a number of sources, such as brochures and websites. The Ministry of Social Development is moving towards services being accessible online, such as applications for New Zealand Superannuation.

56. Legislation has also been prepared to remove the need for superannuitants to make an application for their correct entitlement when their circumstances change, such as the death of a spouse.

57. Research suggests that some older people experience financial abuse. The Ministry of Social Development has produced guidelines for staff to help them recognize, respond and refer suspected and actual cases of elder abuse, including financial abuse. Part 9 of the Protection of Personal and Property Rights Act 1988 was amended in 2007 and 2010. The changes provide better protections for people setting up enduring powers of attorney to ensure that decisions made on their behalf, should they become mentally incapable, reflect their expressed wishes.

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<sup>5</sup> The Ministry of Social Development (2010) Household Incomes Report. The income measure used is the household income after deducting housing costs (mortgage, rent and rates), and is adjusted for household size (equivalized). Using an after-housing-costs measure means that a more realistic comparison can be made, for example, between those in mortgage-free homes and those who pay rent or still have a mortgage. The low-income threshold is set at 60 per cent of the 2007 household disposable income median, with 25 per cent deducted to allow for average housing costs. The threshold is kept fixed in real terms by adjusting it for inflation at each survey using the Consumers Price Index.

<sup>6</sup> Statistics New Zealand (2006) *Census of Population and Dwellings*, customised data.

*Encouraging and supporting people to plan for retirement*

58. To ensure that future cohorts of older people have a secure and adequate income, the Government has focused on the longer-term implications of population ageing. On 1 July 2007, KiwiSaver, a voluntary work-based retirement saving scheme, was introduced. The Retirement Commission's 'Sorted' website<sup>7</sup> also provides information and online tools to improve financial literacy.

**Policies supporting older workers' participation**

59. New Zealand has a high level of labour force participation by older people. In March 2011, 81.5 per cent of those aged 55-59 years, 70.0 per cent of those aged 60-64 years, and 18.3 per cent of those aged 65 years and over were in the labour force.<sup>8</sup>

60. The following policies support and contribute to the continued high level of labour force participation of older workers:

- No compulsory retirement age
- New Zealand Superannuation is available from the age of 65 and is not means-tested, allowing older people to engage in paid work if they choose
- The Human Rights Act prohibits age discrimination, and
- The Employment Relations (Flexible Working Arrangements) Amendment Act 2001 provides all employees who have caring responsibilities with a statutory right to request flexible working arrangements.

**Article 7- Right to just and favourable conditions of work**

**Reply to the issues raised in paragraph 10 of the list of issues**

61. Labour inspectors are responsible for enforcing the minimum wage. Amendments to the Employment Relations Act 2000, which came into force in 2011, enable more effective enforcement of minimum statutory entitlements for all workers, including Pacific workers. Assessments of the impact of these measures are yet to be undertaken by the Department of Labour. The amendments:

- Broaden the role of labour inspectors to include helping employers put systems and practices in place to ensure sustainable compliance.
- Allow employers to enter into an undertaking with labour inspectors to address a breach of any of the relevant Acts, including the Minimum Wage Act 1983. This undertaking is enforceable through a compliance order that may incur a penalty if breached.
- Allow labour inspectors to impose an improvement notice where there is non-compliance. An improvement notice may also be enforced through a compliance order and may be subject to a penalty action.
- Double penalties for both individuals and bodies corporate. Non-compliance with a demand notice may also now result in interest being awarded on money owed in relation to long-standing, or repeated, non-compliance.

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<sup>7</sup> <http://www.sorted.org.nz>.

<sup>8</sup> Statistics New Zealand (2011) *Household Labour Force Survey: March 2011 quarter*.

62. The Department of Labour also produce a number of fact sheets, which are translated into a variety of Pacific languages.

#### **Reply to the issues raised in paragraph 11 of the list of issues**

63. The Employment Relations Act 2000 requires that all employees have a written employment agreement. Under the Minimum Wage Act 1983, employment agreements must fix a maximum number of hours to be worked in a week and this number must not exceed 40 unless both parties agree. Where the number of hours is less than 40, the parties must endeavour to fix the hours so that they are not worked on more than five days of the week. This ensures that employees are guaranteed a weekly 24-hour rest period unless explicitly agreed otherwise.

### **Article 9- Right to social security**

#### **Reply to the issues raised in paragraph 12 of the list of issues**

64. The Social Security Amendment Act 2007 was passed to ensure that the right services and support is in place to assist people, where appropriate, to find or move towards finding employment. The Amendment Act provided a legislative framework for the support and services that were being progressively implemented for all beneficiaries, and made the social security system fairer and more equitable.

65. Enhancements were also made to employment and training assistance to improve flexibility, responsiveness and outcomes and better meet people's individual needs.

#### **Support for a work-focused system**

66. The main changes from the Amendment Act were:

- A new pre-benefit activity requirement for applicants for the Unemployment Benefit, in conjunction with enhancement of activity requirements (requirements to make plans for study, job search activity, attend seminars and so forth)
- Removal of the work test exemption (an exemption from actively looking for work) for Unemployment Benefit clients aged 60 years or over and partners aged 55 years and over
- A part-time work test for partners of beneficiaries who have a youngest child aged six years or over
- Planning and activity requirements (same as above) for Sickness Benefit and Invalid's Benefit clients (unless exempt)
- Extension of the planning requirement for people on Domestic Purposes Benefit (an income support benefit payment for sole parents and women alone) to include a particular activity (such as study) in their plan (but not work), and
- A new activity requirement (such as study) for young people on Independent Youth Benefit, replacing the current work test (active job searching).

#### **Impacts of aligning and updating benefit provisions**

67. These amendments were designed to make access to social security more equitable and form part of the progressive realisation of Article 9. The amendments made the benefit system fairer and more equitable by:

- **Aligning the residence eligibility requirements across all benefits:** The residence eligibility is now two years. Previously, some benefits required much longer residence periods than others (such as the Invalid’s Benefit). This requirement is waived for refugees with permanent residence. Emergency assistance is also available, under certain circumstances, for New Zealand citizens and permanent residents who are ordinarily resident but who have not yet met the two-year residence requirement.
- **Changing the eligibility criteria for the Domestic Purposes and Widow’s Benefits:** This makes it easier to access these benefits, including people who would not previously have been eligible by:
  - Removing the requirement that a child had to be born in New Zealand for a sole parent to qualify for the Domestic Purposes Benefit or Widow’s Benefit
  - Enabling a person caring for someone else’s child to qualify for the Domestic Purposes Benefit in some instances,
  - Extending the eligibility for the Domestic Purposes Benefit – Caring for Sick and Infirm.
- **Reducing the maximum income stand-down period for all benefits:** No one (unless they are voluntarily unemployed) has to wait more than two weeks before being able to receive a benefit payment (previously some people could wait for up to 10 weeks, and
- **Allowing a benefit to commence at an earlier date:** if a person did not apply because of an error on the part of the Ministry of Social Development.

## **Article 11- Right to an adequate standard of living**

### **Reply to the issues raised in paragraph 13 of the list of issues**

68. The Residential Tenancies Act 1986 (RTA) is the principal legislation governing residential tenancies in New Zealand. Periodic tenancy agreements, which are not for a specific term, and which, in addition to mutual consent or an order by the Tenancy Tribunal, can also be ended by either party issuing written notice to terminate the tenancy in accordance with the requirements of the RTA. Landlords are only able to terminate a periodic tenancy without stating a reason if they provide at least 90 days’ written notice. The 90 day period allows tenants a suitable period to find new accommodation, including with state assistance if necessary.

69. The RTA contains a number of provisions that guard against abuse of 90 day notices and protect the right to housing:

- Protection against retaliatory notice and prohibition against entering into possession of residential premises without an order of the Tenancy Tribunal,
- Tenancy support services.

70. Protection against retaliatory notice and prohibition against entering into possession of residential premises without an order of the Tenancy Tribunal

71. Section 54 of the RTA enables the Tenancy Tribunal to declare that a notice terminating a tenancy is of no effect, if the Tribunal is satisfied that the landlord issued the notice in retaliation for the tenant exercising their rights under the tenancy agreement, the RTA or any other Act.

72. Section 63 of the RTA prohibits any person from entering into possession of premises occupied by a tenant except with the tenant's consent or pursuant to an order of the Tenancy Tribunal. This prohibition applies regardless of whether the tenancy has already been terminated by notice. An order granting a landlord possession of the premises can only be enforced by a constable or court bailiff between the hours of 9 a.m. and 4 p.m. Entering into possession of premises in contravention of section 63 is an offence attracting a fine of up to \$2000.

### **Tenancy support services**

73. Sections 123 and 124 of the RTA provide for the Chief Executive of the Department of Building and Housing to perform a range of functions. To this end, the Department of Building and Housing provides a comprehensive range of publications outlining the rights and obligations of landlords and tenants, a detailed website<sup>9</sup> and a freephone tenancy advice line.

74. The application of non-discrimination law to tenancy law and, particularly, to state-provided housing was recently canvassed in the *Winther* proceedings. This case confirmed the application of non-discrimination law to tenancy decisions, including the cessation of tenancies within the longer 90 day notice period without a requirement to give reasons. The Court of Appeal also concluded that claims of non-discrimination law concerning state-provided housing fell exclusively within the specialised jurisdiction of the Human Rights Review Tribunal, and not within the general jurisdiction of the Tenancy Tribunal.<sup>10</sup>

### **Reply to the issues raised in paragraph 14 of the list of issues**

75. In working to reduce the child poverty rate, the Government believes that paid work is the best way for low-income families to improve their situation and move children out of poverty. To provide additional support for families, the Government has recently introduced a number of personal tax cuts, increasing the disposable income of New Zealand families. The Government continues to provide support to low-income households with dependent children through the Working for Families package (see below).

76. Hardship rates for children fell between 2004 and 2008. Hardship rates for low to middle-income households with children, the group most affected by the Working for Families package, fell from 36 per cent in 2004 to 25 per cent in 2008. There was no significant change in hardship rates for beneficiaries with children, indicating that it was the improved circumstances for families in employment that drove the improvement in hardship rates for children.

### **Working for Families package**

77. The Working for Families package was rolled out in stages between October 2004 and April 2007. Since then, the rates of the Working for Families tax credits have been increased to provide additional support for families. There is a legislative requirement for the rate of family tax credit to be inflation-adjusted from 1 April in any year in which the cumulative inflation since the last adjustment has been five per cent or more. The income

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<sup>9</sup> www.dbh.govt.nz.

<sup>10</sup> See *Winther v Housing Corporation of New Zealand* [2010] NZCA 601 (upholding *Winther v Housing Corporation of New Zealand* [2009] NZHC 1404 and decisions of the Tenancy Tribunal and District Court) and *Winther v Housing New Zealand Corporation* [2011] NZHRRT 18 (confirming the applicability of the non-discrimination protections of the Human Rights Act 1993, though holding that the facts of the case did not establish discrimination).

level at which the tax credits begin to abate has also been adjusted for inflation since the package was introduced.

78. Measures have been taken to improve the targeting of the spending on these tax credits to families on lower incomes. The definition of “family scheme income” has been broadened to reduce opportunities for families to rearrange their financial affairs in order to receive the tax credits. In addition, over a four-year period the income level at which they begin to abate will be gradually reduced by five per cent and the abatement rate incrementally increased by five per cent. These adjustments will coincide with the inflation adjustment of the family tax credit rates to minimise the impact on recipients.

79. A collaborative cross-departmental team has evaluated the impact of Working for Families. It found that this initiative had created a strong financial incentive for work-ready single parents to move into work, but some two-earner couples with children have reduced to a single income. Over the implementation period of the package, numbers of sole parents receiving social security income support payments fell by over 13,000. Sixty per cent of this decrease was attributable to the Working for Families package.

#### **Future Focus package**

80. The Future Focus package was launched in October 2010 to encourage and support sole parents receiving social security income support into paid work. This package:

- Improved incomes and incentives for sole parents to work part-time by increasing the amount they could earn without reducing their benefit from \$80 per week to \$100 per week, and increasing the \$180 threshold for more rapid abatement to \$200 for the Domestic Purposes Benefit, Widow’s Benefit and Invalid’s Benefit
- Introduced additional support to help sole parents into work (for example, extending the \$500 loan for people taking senior secondary school level courses),
- Introduced obligations for sole parents with a youngest child aged six years or over to look for part-time work.

81. The evaluation of the Future Focus package is showing significant impacts for sole parents. With the introduction of the new work obligations for the Domestic Purposes Benefit - Sole Parent, exit rates increased sharply for recipients with children aged six years or older. Interim findings show that 15 per cent of these recipients who were the first to go through active case management were off benefit six months later.

82. In February 2011, the Welfare Working Group, an independent advisory group appointed by the Government, reported on new ways to address long-term welfare dependency. One of the goals was to improve social outcomes, including reducing poverty. The Government is currently considering the group’s recommendations.

#### **Response to the recent recession**

83. In the recent recession, the Government introduced a time-limited package of measures to help people who had lost their jobs or were at risk of losing their jobs. The ReStart assistance for people made redundant included specific payments for children (an additional \$60 per week for people made redundant) and accommodation costs.

#### **Reply to the issues raised in paragraph 15 of the list of issues**

84. The exploration permit granted to Petrobras in the Raukūmara Basin is not a drilling project. Petrobras has been awarded a five-year petroleum exploration permit (covering an area of approximately 12,330 square kilometres) under the Crown Minerals Act 1991 (CMA). The company is currently in the early stages of the process of carrying

out seismic mapping and testing in the permit area and is gathering initial information. This information will help the company to decide whether it wishes to undertake further work (i.e. drill one exploratory well) or surrender the permit.

85. No decisions have been made yet to undertake exploration drilling, and any decisions are still some time away. It is understood that Petrobras has completed seismic testing in the region and their seismic testing vessel has now left the area.

86. If Petrobras, or anyone, wishes to undertake further drilling beyond the exploration permit work programme, they will require a mining permit from the New Zealand Government. Prior to any award of such a permit, consultation with relevant iwi (tribe) and *hapū* (subtribe) is required under the Minerals Programme for Petroleum 2005 (MPP).<sup>11</sup> Permits granted under the CMA do not address environmental effects. Before a permit holder is able to proceed with any prospecting, exploration or mining activity, they must obtain any necessary resource consents from the relevant local authority under the Resource Management Act 1991 (RMA). Under this process the environmental effects of a permit holder's proposed activities are considered. Decision makers are required to take into account the principles of the Treaty of Waitangi. This includes recognizing and providing for the protection of recognized customary activities, and the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, *wāhi tapu* (sacred places), and other *taonga* (treasure), and having particular regard to *kaitiakitanga* (guardianship).

87. The Crown's process for consulting with iwi and hapū on petroleum blocks offers, prospecting, exploration and mining permits is set out in the MPP. The MPP (in particular, section 3 "Regard to the principles of the Treaty of Waitangi") sets out a commitment to a process of consultation with iwi and hapū on the management of the petroleum resource so that decision-makers are informed of Māori perspectives, including *tikanga Māori* (customary uses and practices). The MPP was issued by the Governor-General following a statutory 40-day consultation period with Māori and other stakeholders.

88. In line with the iwi consultation provisions in the MPP, details of the proposed Raukūmara blocks offer were sent to all relevant (69) iwi and hapū that are geographically associated with the proposed block offer area for comment. In June 2010, as a result of the blocks offer, the Minister of Energy and Resources awarded a petroleum exploration permit (permit) under the CMA to Petrobras over the Raukūmara basin.

89. The Crown is committed to engaging effectively with iwi on the management of minerals and petroleum and their economic development context, and is actively working to improve relationships with iwi in these important areas. For example, New Zealand Petroleum & Minerals (the business unit that manages the Crown Minerals estate) has been restructured to better deliver on the Government's objectives for energy and economic growth and is recruiting an iwi liaison manager to better manage its engagement with iwi and hapū.

## **Article 12- Right to physical and mental health**

### **Reply to the issues raised in paragraph 16 of the list of issues**

90. The main health issues affecting Māori and Pacific peoples are cancer, diabetes/cardiovascular disease, comparatively high rates of preventable hospitalisation and high prevalence of smoking and obesity. While the health status of Māori and Pacific

<sup>11</sup><http://www.crownminerals.govt.nz/cms/pdf-library/petroleum-legislation-1/mins-prog-for-petroleum-2005.pdf>.

peoples, continues to improve, it is still unsatisfactory compared to the rest of the population.

#### **Measures to improve health services for Māori**

91. There have been a number of initiatives to improve Māori health. These have been mainly aimed at both mainstream and Māori health and disability providers because the majority of Māori access mainstream services.

92. Cultural and communication issues underlie a significant number of health disparities, medical errors and patient dissatisfaction. Cultural competence training can improve the quality of services, increase the acceptability of care, and improve adherence to care. The New Zealand Government is committed to ensuring cultural competence in the health sector in order to improve the appropriateness of health services for Māori. A cultural competency training tool with a health literacy component has been developed to establish a base level of cultural competence and health literacy awareness.

93. Māori health providers are a key feature of New Zealand's health sector. They provide access to affordable and acceptable health services for Māori, while also contributing to the economic well-being of Māori communities and the Māori workforce. Māori health providers' services are distinctive because they are kaupapa Māori (conceptualisation of Māori knowledge) inspired and Māori led, culturally authentic and responsive. They also take a holistic approach to the assessment, monitoring and treatment of patients and their whānau. Over the past 10 years these providers have continued to develop their capacity and capability to respond to the needs of their patients and communities.

94. To assist this development, the Māori Provider Development Scheme (MPDS) was established in 1997, and provides grants to support the development of Māori health providers. The strategic objectives of this scheme are to enable Māori health providers develop more effective health services; accelerate and improve workforce development by focusing on improving health management, administration and clinical expertise; improve quality, accessibility and appropriateness of services to Māori; and improve integration and coordination of services to Māori. MPDS funding is distributed per annum to Māori health providers contracted by District Health Boards and/or the Ministry of Health as well as a number of National Māori organizations. The majority of Māori health providers see MPDS funding as a key factor in supporting sustainable services.

95. There are also more tailored responses to building certain service areas offered by Māori health providers. For example, to support Māori oral health service provision the Māori Oral Health Provider Quality Improvement Group was established in 2009. Another example is the Te Ao Auahatanga Hauora Māori: Māori Health Innovation Fund which supports Māori health service providers who have the capacity and capability to design, develop, promote and deliver innovative models of health service or programme delivery. The four year funding cycle includes the sharing and spreading of successful innovative models of service delivery. The overall goal of the Fund is to advance Whānau Ora by affirming Māori approaches that improve Māori health outcomes.

#### *Whānau Ora*

96. Whānau Ora is an inclusive approach to providing services and opportunities to families across New Zealand. It requires multiple government agencies to work together with families rather than separately with individual family members. Whānau Ora aims to provide whānau with seamless services across a range of sectors (health, employment and so on) that are responsive to whānau and driven by whānau aspirations.

97. The Government initially allocated \$134.3 million over four years for the implementation of Whānau Ora. In the government's 2011/12 budget, a further \$30 million was invested over the next four years. Some of this funding is available for whānau integration, innovation and engagement activities (such as whānau planning). Twenty-five provider collectives, representing over 150 health and social service providers, are working to transform the way they do business so that they are delivering high quality, seamless, services.

*Addressing health disparities through targeted initiatives*

98. The Ministry of Health monitors the effectiveness of mainstream services for the New Zealand population through the use of health targets. These provide a clear and specific focus for action to ensure that mainstream services are of the highest quality and provided within the best possible time. The Government's *Better, Sooner, More Convenient* primary health care initiative also aims to deliver more personalised primary health care for all New Zealanders, and proactively supporting high needs populations, including Māori.

99. Nine collectives were selected for this initiative in 2009. One of these collectives, the National Hauora Coalition, is made up of a substantial number of Māori owned and Māori governed primary care services. To deliver on the aims of *Better, Sooner, More Convenient*, the Coalition has already undertaken over 3,200 family health assessments and case management for over 1,200 high needs individuals.

100. Through targeted initiatives, New Zealand has managed to greatly reduce the equity gap in the uptake of immunization programmes between ethnic population groups. Against a benchmark of national total coverage rates of 90 per cent for all ethnicities for children two years of age at June 2011, Māori coverage was 88 per cent (up from 68 percent in June 2008) and Pacific coverage was 94 per cent (up from 75 per cent in June 2008). Coverage has increased across all District Health Boards, and all deprivation groups and differences in immunization rates between ethnicities have narrowed significantly.

101. The human papillomavirus immunization programme for year 11 school age girls has achieved higher coverage for Māori and Pacific girls. These groups have in the past suffered from higher rates of cervical cancer. The cohort of 2010 (born in 1997) achieved 65 per cent coverage for dose one for Māori girls and 77 per cent coverage for dose one for Pacific girls. These results were higher than the 52 per cent dose one coverage for all eligible girls.

102. Rheumatic fever, a serious illness largely affecting school-aged children and young adults living in the North Island of New Zealand, occurs most often in people of either Māori or Pacific ethnicity. Māori and Pacific people are 20 times and 40 times respectively more likely than European or other ethnicities to be hospitalised with acute rheumatic fever. The Government has allocated an additional \$12 million over the next four years to increase prevention initiatives (antibiotic treatment of a streptococcal sore throat clears up the infection before it can develop into rheumatic fever) and treatment services, through strengthening frontline primary health care services, additional community-based sore throat services to very high-risk populations (such as school-based services) and raising community awareness and improving health care worker training.

**Measures to improve health services for Pacific people**

103. The *'Ala Mo'ui*:<sup>12</sup> *Pathways to Pacific Health and Wellbeing 2010-2014* strategy sets out the priority outcomes and actions that will contribute towards achieving better

<sup>12</sup> 'Ala Mo'ui means pathways to the essence of life force.

health outcomes for Pacific people, families and communities. In addition to improving the broader determinants of health (particularly income, education, employment and housing) the report identifies five areas for improvement:

- Increasing the Pacific health and disability workforce
- Having health services that meet Pacific needs and expectations
- Increasing protective factors and reducing risk factors
- Increasing access to high quality and culturally competent primary health care services, and
- Enabling Pacific people and communities to take action to improve health

104. The Ministry of Health's *Serau*.<sup>13</sup> *Pacific Provider and Workforce Development Fund Programme of Action 2009/10 to 2011/12* supports initiatives across the workforce supply chain. Good progress has been made in encouraging Pacific secondary students to study science and to go into health careers. In 2010, approximately 10,000 Pacific secondary students were engaged in a campaign to 'make science more attractive' to them. The fund has also provided financial support to Pacific students undertaking health-related tertiary education. In 2010, \$1.7 million was allocated to 207 successful recipients for the 2011 academic year including 93 students enrolled in medical studies, 55 in nursing, 6 in midwifery and 4 in physiotherapy.

105. Pacific providers are leading the way in developing innovative and adaptive services to meet the needs of Pacific people including integrated family health centres that offer co-located, multidisciplinary service provision. District Health Boards are performing well against Pacific targets for increasing immunization, cardiovascular disease risk assessment and diabetes free annual checks. Work is underway to improve District Health Board performance in diabetes management.

106. Good progress is also being made in increasing the proportion of 'never smokers' among Pacific students and increasing the proportion of Pacific women who have a breast cancer screen every two years.

*Services are culturally competent*

107. The 'Ala Mo'ui strategy recognizes that an individual's experience of health care can be influenced by cultural beliefs and values. Guiding principles of the strategy ensure that Pacific culture is respected, family is valued, and equity and cultural competence is a key dimension of quality health care.

108. For instance, the *Seitapu- Engaging Pasifika*<sup>14</sup> training programme is run by Le Va (the Pacific National workforce development programme within Te Pou, New Zealand's National Centre of Mental Health Research). Le Va has delivered 29 cultural competency workshops to over 750 participants nationally, including 12 District Health Boards and their affiliated provider arms and non-governmental organizations.

109. The Ministry of Health has also appointed two highly experienced and culturally competent clinicians to facilitate cultural competency training sessions for all staff. Two sessions are run each year. In addition, several District Health Boards have conducted cultural competency training for the service delivery arms of their business.

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<sup>13</sup> Serau means a bright light source.

<sup>14</sup> Seitapu derives from the Pacific words sei – a flower, feathers or similar adornment worn behind the ear or in the hair to bring out and enhance the beauty of a person – and tapu, meaning sacred.

110. Launched in 2010, the Medical Council has developed in consultation with Pacific clinicians *Best health outcomes for Pacific peoples: Practice Implications* which responds to the cultural needs of Pacific people. This resource has been widely disseminated across the health sector.

### **Other ethnic communities**

111. Generally ethnic New Zealanders experience better or similar health to that of the total population. However, there are some concerns about how this population group enjoys the right to the availability, accessibility, acceptability, adequacy and quality of health facilities, goods, and services. For ethnic New Zealanders, specific causes include communication difficulties and cultural values and beliefs about health care.

#### *Communication difficulties*

112. Communication with health providers can be difficult for those who have low-levels of English language skills. The ability to communicate in English counters isolation and allows people to access information about the New Zealand health system. The Office of Ethnic Affairs manages Language Line, a free and confidential telephone interpreting service that provides assistance to non-English speakers in 42 languages. Language Line is available through Primary Health Organisations, hospitals, and health providers in the community such as Family Planning, Plunket,<sup>15</sup> and BreastScreen Aotearoa. The Ministry of Health's Healthline (a free telephone health information service for all New Zealand families) also uses Language Line.

113. Health practitioners and health service users also cite cultural misunderstandings about health as the main barrier to effective health services. For some users the cultural norms about health services are different from those practised in New Zealand (for instance, having a usual carer such as a doctor). Health practitioners can undertake intercultural communication training through District Health Boards and community-based health organizations. The Waitemata District Health Board, for example, provides resources for training health practitioners so that they may provide sensitive and effective health care to those who are from culturally and linguistically diverse backgrounds. These resources are available online, and include an online course for practitioners.

114. Community-based health organizations also work with public health care providers, the Ministry of Health, health academics and local communities to promote health messages, provide community-specific services, and undertake research on health needs of ethnic communities. For example, the Asian Network Inc and the Wellington Regional Asian Health Alliance are community-based organizations that work to improve the health and well-being of Asian people in the Auckland and Wellington region.

#### *Cultural values and beliefs about health care*

115. Cultural values and beliefs about health care have an effect on the rate at which certain groups of people access health services. A Ministry of Health study indicates that Asian New Zealanders are less likely than European New Zealanders to have a usual carer, and primary care utilisation is lower than that for European New Zealanders.<sup>16</sup> For the Middle Eastern, Latin American and African group, enrolment in primary health care is

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<sup>15</sup> Plunket is a national not-for-profit organization, which is community-owned and governed. It is New Zealand's largest provider of support services for the development, health and wellbeing of children under 5 years old.

<sup>16</sup> Ministry of Health, Asian Health Chart Book, 2006.

high, but utilisation of these services is low.<sup>17</sup> This may be due to low health literacy as well as differing views about the health system's approach to care.

116. There is work underway to develop more culturally appropriate approaches to health care provision. In the mental health sector, the Mental Health Foundation's Kai Xin Xing Dong programme aims to reduce the stigma associated with, and raise awareness of, mental illness within the Chinese community. A number of resources have been produced as part of this work, including a bi-lingual website and information and assistance for mental health professionals working with Chinese people experiencing mental illness. The Mental Health Foundation has also established a programme called *Saewoomtor*, to build understanding of mental health-related issues within the Korean community.

#### **Reply to the issues raised in paragraph 17 of the list of issues**

117. The Ministry of Health does not directly fund sexuality education curriculum in schools but does support sexuality education through the funding of non-government organizations such as New Zealand Family Planning and health promoters employed by District Health Board-owned Public Health Units who support schools with resources and training.

118. The New Zealand Curriculum, which applies to all state and state-integrated schools, has several key learning areas, including health and physical education. Four underlying and interdependent concepts are at the heart of this learning area:

- Hauora, which is a philosophy of well-being<sup>18</sup>
- Positive, responsible attitudes and values on the part of students to their own well-being, respect, care, and concern for other people and the environment, and a sense of social justice
- The socio-ecological perspective, which is a way of viewing and understanding the interrelationships that exist between the individual, others, and society, and
- Health promotion, which is a process that helps to develop and maintain supportive physical and emotional environments and involves students in personal and collective action.

119. This learning area makes a significant contribution to the well-being of students beyond the classroom, particularly when it is supported by school policies and procedures and by the actions of all people in the school community. Through learning and by accepting challenges in health-related and movement contexts, students can develop resilience and a sense of personal and social responsibility.

### **Articles 13 and 14- Right to education**

#### **Reply to the issues raised in paragraph 18 of the list of issues**

120. The Government has implemented various initiatives to reduce high school dropout rates, including: trialling new approaches to social sector change; re-designing truancy services; improving educational achievements through the Youth Guarantee programme;

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<sup>17</sup> Auckland District Health Board, Health Needs Assessment of Middle Eastern, Latin American and African people in Auckland, 2010.

<sup>18</sup> Hauora is a philosophy of well-being that includes the dimensions taha wairua (spiritual health), taha hinengaro (psychological health), taha tinana (physical health), and taha whānau (family health), each one influencing and supporting the others.

building the self esteem and cultural identity of Māori through He Ara Tika and Te Kotahitanga programmes; early-leaving exemptions, running alternative education and activity centres, trade and service academies; implementation of the Youth Pipeline programme and working with whānau in target communities.

### **Social sector change**

121. From March 2011 to February 2013, a new approach to improving outcomes for 12 to 18 year olds is being trialled in six New Zealand communities. The aim is to reduce truancy, offending and use of alcohol and other drugs; and improve participation in education, training and employment. The trials encourage community ownership of local initiatives by engaging local stakeholders (such as young people, iwi, social service providers, and central and local government) in the process to consider issues and propose initiatives to address the underlying causes of negative outcomes.

122. Initiatives to address education, training and employment outcomes are specific to each location but include:

- New youth coordinator and mentor roles (in schools and communities) to provide an individualised development plan for at-risk young people
- Enhanced systems to monitor truancy levels and re-engage young people
- The use of career roadshows and promotion of cadetship and apprenticeship programmes, and
- Enhanced support services for young people engaged in alternative education.

123. Some initiatives are specifically focused on engaging Māori and male students.

### **Re-design of truancy services**

124. From 2012 the District Truancy Service and the Non-Enrolled Truancy Service will be combined into one integrated attendance service. Key elements of the design of the new service include: being more responsive to the needs of Māori and Pasifika students and identifying, and developing strategies to address the root causes of truancy and non-enrolment.

#### *District truancy services*

125. Schools can refer students, who are unjustifiably absent from school, to the District Truancy Service once the school has taken all reasonable steps to return the student to education. Attendance officers work with the students, family, school and/or other agencies to address any underlying causes of the unjustified absence.

#### *Non-enrolled truancy service*

126. Students aged between 6 and 16 years old who do not attend school for more than 20 consecutive school days are referred to the national Non-Enrolled Truancy Service who locate and work to return these students back to a legal learning environment.

### **Improving educational achievements: Youth Guarantee Programme**

127. The purpose of the Youth Guarantee programme is to improve the educational achievements of targeted 16 and 17 year olds by providing them with an opportunity to take part in a range of vocational courses free of charge. Youth Guarantee is aimed at improving pathways into post-school education and training or career, and the provision of high-quality education and training programmes leading to meaningful qualifications. The integration of the Government's Tertiary Education Strategy with Youth Guarantee means

New Zealand can deliver a system that provides the right incentives to transition to tertiary study, to complete that study quickly and to move to the labour force.

#### **Building self esteem and cultural identity of Māori**

128. *He Ara Tika*<sup>19</sup> is a mentoring initiative that focuses on building the self esteem and cultural identity of Māori secondary school students. This aims to increase the participation and achievement of Māori students in education by encouraging and supporting them to stay at school and to develop tertiary educational pathways and/or career options.

129. *Te Kotahitanga* is a professional development programme, for teachers of Māori students in years 9 and 10, to increase teachers' capability in culturally responsive teaching pedagogy.

#### **Early-leaving exemptions**

130. In 2007, the Ministry of Education strengthened its early-leaving application and approval process to reduce the number of early leaving exemptions. Evidence suggests that these approaches have been highly successful so far. The rate of demand for early leaving exemptions declined by 28 per cent from 2006 to 2007, while the percentage of applications that were declined by the Ministry of Education increased from 6.6 per cent in 2006 to 36 per cent in 2007.

#### **Alternative Education and Activity Centres**

131. The Ministry of Education recognizes that some students do fall out of the system. Alternative Education and Activity Centres are designed as an option in a range of responses to ensure that all students aged 13 to 15 years old engage and succeed in education.

#### **Trade and service academies**

132. Trade academies aim to get young New Zealanders engaged in education and equip tomorrow's workforce with relevant skills by linking with the wider industry training system. Service academies aim to encourage students to stay engaged in education by providing a programme which focuses on motivation and discipline integral to learning.

#### **Youth Pipeline**

133. In August 2011, the Government announced a new way of working with disengaged young people who are not in education, employment or training (NEET). The new approach:

- Puts the focus on the 13,000 high risk 16 and 17 year olds who historically have been put in the 'too hard basket'
- Incentivises providers to get young people into sustained, training, education or work
- Will help departments to support 16 and 17 year olds and formally link the Ministry of Social Development with the education system to share information about the young person, and
- Links NEET young people back into education or training using Youth Guarantee places.

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<sup>19</sup> He Ara Tika means 'on the right track'.

134. The way in which 16 and 17 year olds, as well as 18 year old parents, get financial assistance will change. The system of payments will be managed more closely and young people receiving financial assistance will receive intensive case management and support from service providers in the community. They will also have clear obligations, including being in education, training or work-based learning. Childcare assistance will be available for teen parents so they can return to education or training.

#### **Working with whānau in target communities**

135. Working with whānau will involve three key activities:

- Providing information to whānau in targeted communities that assists them to better support their children’s learning
- Providing targeted support to whānau to enable them to engage more effectively with their children’s learning and with their children’s school, and
- Brokering whānau, and young people through whānau, into key Ministry programmes, such as *The Incredible Years* and Youth Guarantee in our target communities.

136. A further activity is collecting information about whānau experiences to inform how effective the Ministry of Education has been in reducing the dropout rate in line with *Ka Hikitia* goals and priorities.

### **Article 15- Cultural rights**

#### **Reply to the issues raised in paragraph 19 of the list of issues**

137. There are a range of legislative measures that protect and respect the rights of Māori to their traditional lands and resources.

#### **Protection of traditional Māori land**

##### *Māori Reserved Land*

138. Māori reserved land was created in the 19th century when portions of land were set aside for Māori ownership and use, following land purchases by the Crown and the New Zealand Company for settlement. Māori reserved land is held in 2,087 leases. Just under half of the lessees are urban homeowners; the remainder of lessees operate commercial, industrial and horticultural enterprises. The Māori Reserved Land Amendment Act 1997 amended the Māori Reserved Land Act 1955 to provide for fair market rents and more frequent rent reviews. This was an attempt to move lessors and lessees to a more commercial footing. The 1997 Act also provided for compensation to be paid to both lessors and lessees as a result of the changes and for past rental losses under the Māori reserved land regime.

##### *Te Ture Whenua Māori Act 1993*

139. Māori freehold land comprises around 1.4 million hectares (5.5 per cent) of New Zealand’s total land area. A very small area is Māori customary land.<sup>20</sup> The passing of Te Ture Whenua Māori Act (TTWM Act) in 1993 marked a significant milestone in the administration of Māori land. The TTWM Act recognizes Māori land as a taonga tuku iho (treasures of the past) of special significance to Māori people. Until the TTWM Act was

<sup>20</sup> Land that is held in accordance with tikanga Māori that has not been converted into freehold title.

passed, Māori land was not officially recognized as a class of land tenure in its own right, but had been treated as a transitional tenure. As a result, minimal investment had been made in the infrastructure required to administer and support Māori land.

140. The TTWM Act also provides for the powers of the Māori Land Court (MLC) to hear and determine any claim or interest over Māori freehold and customary land. The primary objectives of the MLC are to promote and assist in the retention of the land in the hand of its owners, their whānau and their hapū; and the effective use, management and development of the land. Any form of alienation is subject to the approval of the MLC. The MLC is required to act in favour of retention. The restrictions relating to the sale of the land are very specific, to approve a sale, the MLC needs to be satisfied that 75 per cent of owners are supportive.

*Marine and Coastal Area (Takutai Moana) Act 2011*

141. Following extensive dialogue with Māori and the general New Zealand public, Parliament repealed the Foreshore and Seabed Act 2004 and enacted the Marine and Coastal Area (Takutai Moana) Act 2011 (MCA(TM) Act).

142. The MCA(TM) Act governs the traditional lands in the foreshore and seabed (or Marine and Coastal Area) which are not in private title. The MCA(TM) Act ensures the protection of the legitimate interests of all New Zealanders in the marine and coastal area. The MCA(TM) Act removes Crown ownership that was provided for under the Foreshore and Seabed Act 2004 (the effect of which extinguished Māori customary interests) and replaces this with a non-ownership model. No one (including the Crown) owns, or is capable of owning, the common marine and coastal area. The MCA(TM) Act restores customary interests (including aspects of property interests) extinguished by the 2004 Act, and gives these interests legal expression in accordance with the Act.

143. The MCA(TM) Act recognizes and protects the exercise of existing lawful rights of New Zealanders, including providing for public access, navigation and fishing. It takes account of the Treaty of Waitangi and provides for the exercise of customary interests in the common marine and coastal area.

144. The test specified in the Act for customary marine title is a high one, being built around a requirement of exclusive use and occupation from 1840 to the present day without substantial interruption. The MCA(TM) Act provides for two pathways for recognition of Māori customary interests: a right for Māori to access the High Court to have applications heard and determined, and ability for Māori to seek recognition of their customary interests through agreement with the Crown.

145. The MCA(TM) Act provides for the recognition and exercise of customary marine title through a range of rights. Customary marine title gives rights to permit activities requiring a resource consent, some conservation activities, provides for protection of wāhi tapū, prima facie ownership of newly found taonga tūturu (objects that relate to Māori culture, history or society and which are more than 50 years old), and ownership of non-nationalised minerals. The MCA(TM) Act also gives customary title holders the right to create a planning document that provides a high level influence over how the relevant area is regulated by local government.

146. Iwi, hapū and whānau will also be able to gain recognition and protection for longstanding customary activities, uses or practices that continue to be exercised. The MCA(TM) Act recognizes the universality of Māori interests generally through providing for a right to participate in conservation procedures, which formalises existing best practice in coastal management.

### Treaty settlement legislation

147. The Crown has established a Treaty Settlement Process to negotiate the settlement of both historical and contemporary grievances of indigenous tribes regarding the actions of the Crown.

148. Treaty of Waitangi settlement legislation differs, and is distinctive, from most other legislation. It is based on an agreement already concluded between the Crown and a third party. Iwi and hapū may seek an independent inquiry into their claims through the Waitangi Tribunal or enter into direct negotiations with the Crown. Treaty settlements provide both cultural and financial or commercial redress. The mandate and terms of the settlement have already been negotiated, subjected to dispute, possibly litigation and delays, before the legislative stage commences. Settlement legislation is the final step in the settlement process.

149. The agreement or 'deed of settlement' sets out, in detail, the redress the Crown will provide to the claimant group. It is the end outcome of the Treaty settlement negotiations process.

150. Since 1995, the options for redress for historical breaches of the Treaty of Waitangi by the Crown have evolved under three broad areas: Crown apology, cultural redress, and financial and commercial redress. Specific statutory instruments have been developed to deliver this redress and many of the redress instruments, as expressed in settlement legislation, have developed a common form of expression.

151. Once the Crown and claimant groups agree on the details of the deed of settlement, the mandated representatives and Cabinet approve, in principle, the draft deed of settlement. The mandated representatives then seek ratification (approval) of the deed of settlement from the claimant group through postal ballot and hui (meetings). If the deed of settlement is ratified, the Crown and the claimants sign the final deed of settlement.

152. While deeds of settlement are binding, they generally require legislation to be passed in order to give effect to the settlement. Legislation is needed to provide statutory instruments, such as statutory acknowledgements, to remove statutory memorials from land titles in the claim area, to override certain processes required under legislation in relation to Crown-owned land and to vest land in the governance entity on behalf of the claimant group.

153. By convention, Parliament will not use its sovereignty to change a legal agreement between the Crown and a third party.<sup>21</sup> Accordingly, Parliament may accept or reject a bill, but it should not re-negotiate the terms of the settlement by making amendments that would alter the substance of the deed of settlement. Treaty bills do not often require amendment during the Parliamentary process, because the content has already been agreed. Settlement legislation transfers the legal title to land being returned and vests title in the claimant group. Settlement legislation can also give legal effect to other settlement tools such as:

- Statutory acknowledgements, which are a formal recognition by the Crown of the claimant's traditional association with an area or resource
- Overlay classifications, which provide for claimant groups to have input into the management of certain Crown owned areas, or
- Other settlement tools which provide for the vesting and gift-back of areas of high significance to both iwi and the Crown. Under this mechanism the Crown will vest an area of land in the claimants on the condition that it is then gifted back to

<sup>21</sup> [Speakers Rulings 114/3].

the people of New Zealand. The intention of this mechanism is to recognize the mana (pride) of the claimants by being able to gift the land back to the Crown.

### **Protection of Māori resources**

#### *Commercial and customary fishing rights*

154. In 1992, the Government and Māori entered into a Deed of Settlement addressing Māori rights to commercial and customary fishing resources. The Treaty of Waitangi (Fisheries Claims) Settlement Act 1992, Fisheries Act 1996, Fisheries (Kaimoana<sup>22</sup> Customary Fishing) Regulations 1998 (Kaimoana Regulations), and the Māori Fisheries Act 2004 were enacted to give full effect to the Settlement. Instruments created as a result of the Settlement included the ability to apply for Tāiapure (a local management tool established in an area that has customarily been of special significance to an iwi or hapū as a source of food or for spiritual or cultural reasons) and customary recreational fishing regulations. The Settlement also provided Māori with \$150m as compensation for lost commercial fishing right. This money was used to purchase fishing quota via a 50 per cent shareholding in Sealords Ltd. Iwi also receive 20 per cent of available quota in any new commercial quota species introduced after 21 September 1992. As a result of the Settlement, Māori are the largest quota holders in the New Zealand fishing industry.

155. The Kaimoana Regulations establish the process for Māori to create Mātaitai Reserves<sup>23</sup> over discrete areas within which the administration of fisheries is controlled by local iwi through the establishment of bylaws, approved by the Minister of Fisheries. The Kaimoana Regulations prohibit commercial fishing within a Mātaitai Reserve, unless it is specifically provided for at the request of the iwi.

#### *Māori Commercial Aquaculture Claims Settlement Act 2004*

156. The Māori Commercial Aquaculture Claims Settlement Act 2004 provides a "full and final settlement" of all Māori claims (current and future) over commercial marine farming in the coastal marine area from 21 September 1992 onwards. Iwi are entitled to the equivalent of 20 per cent of coastal marine space allocated for aquaculture between 21 September 1992 and 31 December 2004. The Crown paid \$97m to iwi in the South Island and Coromandel in settlement of their claims to 20 per cent of this space. Iwi are also entitled to 20 per cent of any new space allocated after 1 January 2005.

157. Any claims relating to marine farming space created before September 1992 are addressed through the Treaty of Waitangi historical claims settlement process.

158. Investigating options for settlement space according to the Maori Commercial Aquaculture Claims Settlement Act 2004 is a key priority for iwi. To ensure iwi participation, the Government supports the building of Māori capacity and knowledge, particularly around strategic planning for aquaculture development, and to resolve potential conflicts between customary and commercial objectives. The Government also encourages commercial ventures between Māori and industry.

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<sup>22</sup> Seafood, shellfish.

<sup>23</sup> An identified traditional fishing ground established under regulation 23 of the Fisheries (Kaimoana Customary Fishing) Regulations 1998.

## Other legislation

### *Resource Management Act 1991*

159. The Resource Management Act 1991 (RMA) is New Zealand's primary environmental management legislation. The purpose of the RMA is to promote the sustainable management of natural and physical resources.

160. Section 6 identifies matters of national importance, and requires all persons exercising functions and powers under the Act to recognize and provide for (among other things) “the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapū and other taonga”. Sections 7 and 8 requires those exercising functions and powers under the Act to have particular regard to kaitiakitanga, and to take the Treaty of Waitangi into account. There are also a range of other provisions within the RMA intended to support the recognition of Māori interests.

### *Hazardous Substances and New Organisms Act 1996*

161. The Hazardous Substances and New Organisms Act 1996 controls the use of hazardous substances and the introduction of new plants and animals into New Zealand. The Act includes similar provisions to the Resource Management Act outlined above to ensure the interests of Māori are recognized in decision making under the Act. The Act also establishes Nga Kaihau Tikanga Taiao as a Māori advisory committee to the Environmental Risk Management Authority to ensure the implications for Māori are appropriately considered in decisions made under the Act.

### *Ngāi Tahu (Pounamu Vesting) Act 1997*

162. As part of the Treaty Settlement with Ngāi Tahu, the Crown agreed to return the ownership of Pounamu to Ngāi Tahu. Pounamu is defined as bowenite, nephrite (including semi nephrite) and serpentine occurring within the Ngāi Tahu tribal region. It is a particularly treasured and valuable resource for Ngāi Tahu and the vesting of ownership in Ngāi Tahu recognizes their traditional ownership of this resource and the continuing importance of pounamu to Ngāi Tahu.

## Reply to the issues raised in paragraph 20 of the list of issues

163. The Waitangi Tribunal released the Wai 262 Report *Ko Aotearoa Tēnei* on 2 July 2011. The Government is committed to considering the Tribunal's Report and recommendations in their entirety before responding officially. To that end, the Government has established a structure and process for developing and implementing a measured whole-of-Government response to the Wai 262 report, including a Ministerial Group, a Senior Officials Group and a Secretariat in which Te Puni Kōkiri has a lead role.

164. In terms of te reo Māori revitalisation, Te Puni Kōkiri is responsible for overseeing the implementation of the Government's Māori Language Strategy. This Strategy, implemented in 2003, sets out a vision for the future of the Māori language, that, by 2028, the Māori language will be widely spoken by Māori within their whānau, homes and communities.

165. The Māori Language Strategy has five main goals:

- To increase the number of people who speak Māori, and to improve their language skills
- To increase the use of the Māori language at *marae* (meeting house) and in Māori households
- To provide more educational opportunities for people to learn the Māori language

- To encourage iwi, hapū and local communities to become more involved in revitalising the Māori language, and
- To help the Māori language become more valued by all New Zealanders.

166. The Māori Language Sector and Strategy were reviewed by an independent panel, Te Paepae Motuhake, in 2010/11. The Panel's report, Te Reo Mauriora, includes recommendations along four main themes:

- Greater emphasis on whānau and community language development
- Strengthening Crown-iwi relationships
- Greater coordination of Māori language services, and
- Greater effectiveness and efficiency in Māori language services.

167. The Government is currently considering the Panel's recommendations, with a view to preparing a new strategy for the Māori language.

## Glossary

'ala mo'ui	-	pathways to the essence of life force
hapū	-	subtribe
hauora-		philosophy of well-being that includes spiritual, psychological, physical and family health
he ara tika	-	on the right track
hui	-	meetings
iwi	-	tribe
ka hikitia	-	to step up, to lift up, lengthen one's stride
kaitiakitanga	-	guardianship
kaimoana	-	seafood, shellfish
kaupapa Māori	-	conceptualisation of Māori knowledge
mahinga kai	-	food gathering
mana	-	pride
marae	-	meeting house
seitapu		sei – a flower, feathers or similar adornment worn behind the ear or in the hair to bring out and enhance the beauty of a person – and tapu, meaning sacred
serau	-	a bright light source
taha hinengaro	-	psychological health
taha tinana	-	physical health
taha wairua	-	spiritual health
taha whānau - tāiapure		family health a local management tool established in an area that has customarily been of special significance to an iwi or hapū as a source of food or for spiritual or cultural reasons
taonga	-	treasure
taonga tuku iho	-	treasures of the past
taonga tūturu -		objects that relate to Māori culture, history or society and which are more than 50 years old
te ao Māori	-	Māori world view
te ara puāwai -		flourishing pathway
te kotahitanga	-	unity
tikanga Māori	-	customary uses and practices
waka tauranga	-	the landing place of ancestral canoes
wāhi tapū	-	sacred places

- whānau - family
  - whānau ora - family well-being
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