



Human Rights
Commission
Te Kāhui Tika Tangata

A fair go for all? Rite tahi tātou katoa?

Addressing Structural Discrimination in Public Services



A discussion paper by the Human Rights Commission
July 2012



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Contents

| | |
|---|-----------|
| Introduction | 2 |
| Methodology | 7 |
| Background | 9 |
| Context | 14 |
| Systemic Analysis | 17 |
| Structural discrimination in the health system | 18 |
| Responses to structural discrimination in the health system | 24 |
| Structural discrimination in the education system | 28 |
| Responses to structural discrimination in the education system | 32 |
| Structural discrimination in the justice system | 34 |
| Responses to structural discrimination in the justice system | 39 |
| Structural discrimination in the public service | 44 |
| Responses to structural discrimination in the public service | 46 |
| Conclusion | 48 |
| Endnotes | 51 |

Introduction

A fair go for all?

The notion of everyone getting a fair go is a deep-rooted principle of New Zealand society. This perhaps arose from New Zealand's migrant origins in seeking a better life, and certainly finding early expression in the Treaty of Waitangi's promise of an equal entitlement to the rights and privileges of British subjects. But do all New Zealanders, regardless of the colour of their skin, ethnicity or national origin, get the same opportunity for good health, a good education, decent work and an adequate standard of living? The figures clearly say no, and the question to ask is what are the barriers to people of different ethnicities and cultures getting the same start in life, having the same opportunities, and collectively having broadly similar outcomes.

There can only be two reasons for the kinds of inequalities experienced in New Zealand: either people of different ethnicities have different capabilities (which is not supported by the evidence), or people of some ethnicities face greater barriers than others to the achievement of good health, good education, decent work and an adequate standard of living. The first reflects a "deficit theory", i.e. that inequality is somehow the fault or in the nature of those who experience disadvantage. The second presents a "social model", which leads us to consider what kinds of barriers lead to the persistence of inequalities between ethnic groups.

Given that there have been a myriad of programmes to address ethnic inequalities without significant success, this paper asks whether the systems, processes and practices of public agencies are themselves responsible. There is local, as well as "international" evidence that this is indeed the case, whether it is called structural discrimination, systemic discrimination or institutional racism.

This paper looks at some of the evidence, as well as some of the initiatives for systemic change that appear to be working.

Ethnic inequalities

In 2012, the United Nations Committee on Economic, Social and Cultural Rights identified structural discrimination causing inequalities in New Zealand and urged the Government to address it. The Committee recommended that the Government:

strengthen its efforts aimed at eliminating the disadvantages faced by Māori and Pasifika in the enjoyment of economic, social and cultural rights by addressing structural factors and ensuring that relevant measures effectively benefit the most disadvantaged. The Committee also recommends that the State party set specific equality targets by year and closely monitor their achievement.¹

Key social indicators point to significant inequalities between ethnic groups in New Zealand. These inequalities are not new; they are persistent and entrenched. Additionally, inequalities disproportionately affect Māori and Pacific populations. Some well-cited examples include:

- the life expectancy rate for Māori men it is 70.4 years and for non-Māori men it is 79.0 years. Life expectancy for Māori women is 75.1 years and for non-Māori women it is 83.0 years. Although life expectancy rates for both European and Māori have improved, the difference has not narrowed. Pacific peoples have experienced the least improvement in life expectancy over the past 20 years²
- the unemployment rate for those classified as European was 5.6 per cent in the March 2012 quarter. That compares with 13.9 per cent for Māori; 16.0 per cent for Pacific peoples; 14.1 per cent for MELAA (Middle Eastern/Latin American/African); and 9.4 per cent for Asian³
- European people comprise 33 per cent of the prison population, although they make up 68 per cent of the overall population. By contrast, Māori account for 49 per cent of prisoners, despite being only 15 per cent of the national population.⁴ Pacific peoples comprise 11.31 per cent of all prisoners yet only make up seven per cent of New Zealand's population.⁵

Although the frequent citation of negative statistics about inequality can have the unintentional impact of further perpetuating negative messages about Māori and Pacific communities, statistics do provide an evidence base for analysing structural discrimination and encouraging government action. Te Puni Kōkiri is one government agency, however, that has taken a different approach. It has created a macro-modelling tool, the *Loss of Māori Potential Model*, which draws on these statistics to model alternative futures



based on different scenarios. Altering some variables – such as educational achievement, youth employment, and recidivism – makes a discernible improvement in the numbers of Māori in custody or community sentences over the next 15 years, as well as making improvements in Māori employment, Māori incomes and tax contribution.⁶ This model demonstrates that there are wider social benefits to improving inequalities.

Embedded social disparities do persist despite numerous interventions over several decades. The Commission's annual review of race relations, *Tūi Tūi Tuitiā Race Relations in 2010*, noted:

Despite the many efforts of communities and successive governments, social and economic inequalities, accentuated by the economic recession, remain unacceptably high. An unrelenting focus on the elimination of racial inequalities is needed, so that future generations of New Zealanders are free from this blight. It is also time to examine whether there are still systemic or institutional barriers to racial equality that need to be addressed to make other interventions more effective.⁷

The review lists “identifying and working to remove any structural or institutional barriers to racial equality in the enjoyment of civil, political, social and economic rights” as one of the top ten race relations priorities. This discussion paper is one way the Commission is showing its commitment to addressing structural barriers to ethnic equality.

Given that in many of these areas disproportionate disadvantage is experienced by Māori, Pacific peoples and ethnic communities, it is imperative that the Government address structural discrimination as part of a successful strategy for meeting these targets.

The paper begins by clarifying and defining structural discrimination and offers historical background on government responses to ethnic inequalities and structural discrimination. It then focuses on manifestations of structural discrimination within four key systems – health, education, justice and the public service – drawing lessons and further means of identifying structural discrimination across systems. Each systemic analysis is followed by a case-study or studies that highlight promising initiatives in

addressing this issue. The paper concludes by offering key insights and identifying common elements for success.

Defining structural discrimination

The State Services Commission describes structural discrimination as occurring “when an entire network of rules and practices disadvantages less empowered groups while serving at the same time to advantage the dominant group”.⁸ Structural discrimination affects everyone, because it is a system of allocating and maintaining social privilege.⁹ Those who are marginalised by this system face socio-economic disadvantage and political isolation.¹⁰

Structural discrimination on the basis of race, ethnicity, skin colour or national origin is also called institutional racism. In 1988, the groundbreaking *Pūao-te-ata-tū* (Daybreak) report, commissioned by the then Department of Social Welfare, described institutional racism as “the most insidious and destructive form of racism”. It continued:

National structures are evolved which are rooted in the values, systems and viewpoints of one culture only. Participation by minorities is conditional on their subjugating their own values and systems to those of “the system” of the power culture.¹¹

If some groups suffer the ill-effects of structural discrimination on the basis of race, colour, ethnicity, or national origin, then it follows that someone benefits. In New Zealand, that group is Pākehā New Zealanders, who currently make up the majority of the population.¹² Not only do they have better outcomes on nearly every socio-economic indicator, but they have also accumulated inter-generational benefits over time that concentrate and sustain ethnic differences in wealth, power and other indicators of wellbeing. This does not mean that some Pākehā New Zealanders do not suffer the effects of poverty or discrimination. Nor does it mean that all individuals from other ethnic groups experience socio-economic disadvantage and discrimination. Rather, it means that as a group, Pākehā New Zealanders exercise more power and privilege relative to other ethnic groups.

Structural discrimination can occur unintentionally, and includes informal practices that have become embedded in everyday organisational life and effectively become



part of the system, i.e. “how we do things around here.” Put simply, it can be discrimination by habit, rather than intent.¹³

Because it is located in habits and built into structures and systems in often covert ways, structural discrimination can be more difficult for those in power to identify than individual discrimination or personal bias. Researchers have identified a specialised form of structural discrimination in New Zealand, referring to “inclusion in principle, through use of encompassing and inclusive speech, together with a resource-based exclusion supporting disparity in fact.”¹⁴ Organisations or systems may not be conscious that their rules and practices discriminate against specific ethnic groups. Yet these unconscious practices serve to perpetuate disadvantage. Consciously examining organisational rules, systems and practices through the “lens” of structural discrimination allows possible bias to come into view. Only when any bias becomes visible, can structural discrimination be appropriately addressed.

Examples of structural discrimination on the basis of race, colour, ethnicity or national origin can include:

- racial profiling by security and law enforcement agencies i.e. the inclusion of racial or ethnic characteristics in determining whether a person is considered likely to commit a particular type of crime or an illegal act. An example is when people of a particular ethnic group are more frequently stopped by police while driving for no obvious reason
- support for measures that have a disproportionately negative effect on minority ethnic groups e.g. cutting funding to specific targeted programmes that are shown to improve outcomes for minority groups or implementing one-size-fits-all standards that do not account for different needs and values
- under- or mis-representation of particular ethnic groups in the media
- insufficient, patchy or poor-quality data collection on ethnicity
- medical care and rehabilitation services that fail to account for the different health needs and cultural values of different communities

- barriers to employment or professional advancement experienced by ethnic minorities, including difficulty obtaining interviews because of overseas qualifications and “foreign-sounding” names.¹⁵

In order to combat the effects of structural discrimination, the *Pūao-te-ata-tū* report called for:

conscious effort to make our institutions more culturally inclusive in their character, more accommodating of cultural difference. This does not begin and end at “the counter”. The change must penetrate to the recruitment and qualifications which shape the authority structures themselves.

This report seeks to re-start the conversation about how best to do this.

Structural discrimination and the Human Rights Act 1993

In New Zealand, the Human Rights Act 1993 (HRA) does not specifically include a definition of *structural* discrimination. Discrimination on the grounds of race, colour, ethnicity or national origin, however, is unlawful under the HRA, and includes both direct and indirect discrimination. Structural discrimination can be considered a form of indirect discrimination. Indirect discrimination occurs when an action or policy – including omission of an action or policy – that appears to treat everyone in the same way, actually has a disproportionate, negative effect on a person or group that cannot be objectively justified on one of the grounds in the HRA (in this case, race, colour, ethnicity or national origin).¹⁶

The Human Rights Commission is mandated by the HRA to receive and act upon complaints of unlawful discrimination. Part 1A of the HRA applies the New Zealand Bill of Rights Act 1990 (BORA) non-discrimination standard to public sector activities. This includes indirect discrimination (see *Northern Regional Health Authority v Human Rights Commission* [1998] 2 NZLR 218; (1997) 4 HRNZ 37 (HC)).¹⁷

Part 2 applies primarily to the private sector and makes it unlawful to discriminate in certain areas on any of the prohibited grounds. The areas are employment,



accommodation, access to public places, the provision of goods and services and educational facilities.

The court found that indirect discrimination on the basis of national origin had occurred in the *Northern Regional Health Authority* case, where a health provider had decided to only subsidise doctors with New Zealand qualifications.¹⁸ Aside from this case, there have been few significant cases on indirect discrimination on the basis of race, colour and ethnicity. Most have been on behalf of an individual rather than a group.¹⁹

Cases taken in other comparable jurisdictions give an indication of what kinds of systemic cases could be taken in the future. One landmark example is *Griggs v Duke Power Co.* (1971) that went to the United States' Supreme Court.

This case can be summarised as follows. In the 1950s Duke Power's Dan River plant had a policy that African-Americans were allowed to work only in its Labor department, which constituted the lowest-paying positions in the company. In 1955 the company added the requirement of a high school diploma for its higher paid jobs. After the passage of the Civil Rights Act in 1964, the company removed its racial restriction, but retained the high school diploma requirement, and added the requirement of an IQ test as well as the diploma. African-American applicants, less likely to hold a high school diploma and averaging lower scores on the IQ tests, were selected at a much lower rate for these positions compared to white candidates. It was found that white people who had been working at the firm for some time, but met neither of the requirements, performed their jobs as well as those that did meet the requirements. The court ruled that the company's employment requirements did not pertain to applicants' ability to perform the job, and so was discriminating against African-American employees, even though the company had not intended it to do so.²⁰

The use of "special measures"

One means of addressing structural discrimination is the use of special measures (also known as affirmative action). Special measures are positive actions to assist or protect disadvantaged groups.²¹ Both the HRA and the New Zealand Bill of Rights Act 1990 recognise that to overcome discrimination positive actions may be needed to enable

particular groups to achieve equal outcomes with other groups in our society. They are not discriminatory if they assist people in certain groups to achieve equality. Special measures must be necessary to the group they are aimed at, tailored to the specific disadvantage, carried out in good faith, proportional and temporary.²²

Recognising the difficulties states have had with special measures, the United Nations Committee for the Elimination of Racial Discrimination put out a new General Recommendation on Special Measures in 2009. It stated, among other things, that:

16. Special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary. The measures should be designed and implemented on the basis of need, grounded in a realistic appraisal of the current situation of the individuals and communities concerned.
17. Appraisals of the need for special measures should be carried out on the basis of accurate data, disaggregated by race, colour, descent and ethnic or national origin and incorporating a gender perspective, on the socio-economic and cultural status and conditions of the various groups in the population and their participation in the social and economic development of the country.
18. States parties should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities.

In New Zealand, special measures have met with resistance. New Zealand society prides itself on its egalitarianism and giving everyone a "fair go", so special measures can sometimes seem like they are unfairly giving certain groups special treatment. Researchers James H. Liu and Caren August note, however, that structural discrimination:

conceal[s] negative affect and maintain[s] disparity by invoking egalitarian principles that deny structural disadvantages and position minorities as demanding special treatment or violating group norms.²³



Resistance to special measures is related to a partial understanding of equality. Many New Zealanders recognise *formal* equality or “equality before the law”. This means, for example, that everyone has the same legal right to attend school or receive medical care, or be treated fairly in the justice system. In practice, however, not everyone is able to access education, health or justice services in the same way due to a various socio-economic obstacles, including discrimination.

Substantive equality is concerned with ensuring that everyone can in fact compete on an equal basis; it highlights socio-economic obstacles (including discrimination) that may impede equality of opportunity.²⁴ The Western Australian Equal Opportunity Commission summarises the distinction between formal and substantive equality:

If you want to treat me equally, you may have to be prepared to treat me differently.²⁵

It is important to note a distinction between special measures – which are temporary, until such time as the inequality is removed – and permanent rights. Special measures to ensure equality contribute to, but are not a substitute for, programmes for all New Zealanders designed to ensure access to decent work, healthy affordable housing, and effective delivery of health, education and other services. Special measures are just one way of ensuring equality of outcomes for the diverse groups that make up New Zealand society.²⁶

Methodology

Project purpose

This project seeks to identify structural barriers to ethnic equality through a process of research and engagement with public service agencies, researchers, and affected groups and individuals. A key purpose is to encourage discussion about successful or promising initiatives that are intended to address inequalities by creating systemic change. A secondary aim is to facilitate discussion between government agencies to further develop ideas, share best practices and promote continued awareness and conversation about their respective efforts to address this issue. Ultimately, the project aims to recognise promising initiatives and prompt further sustainable systemic change.

Through both primary and secondary source research, the paper examines what makes interventions to address structural discrimination effective and what the ongoing challenges are to increasing effectiveness.

The Commission recognises that the issue of structural discrimination is complex. It is not proposing a solution to structural discrimination, nor does it expect to find a single-point solution through this project. The Commission simply aims to prompt discussion, provide analysis and encourage action.

Project parameters

This paper serves as the starting point in a larger project that includes discussion with government agencies, community groups, academics and practitioners. The paper examines ethnic inequalities through a structural lens by focusing on four key sectors: the justice system (specifically, the criminal justice system); the education system; the health system; and the public service system. It identifies levers within the government's influence – for example, how medical staff and educators operate within these systems, where changes in practice can serve to reduce ethnic inequalities – while also examining the value systems operating within these sectors and whether the Government is doing enough to address inequalities.

Each of these systems is made up of components. The criminal justice system, for example, broadly consists of police, courts and correctional services. This paper

aims to prompt discussion about the interplay between components within a system as well as the interplay between systems. The starting assumption is that for interventions to be effective there needs to be a consistent approach within and across systems.

Ultimately, the project aims to encourage discussion about best practices for systemic change to reduce ethnic disadvantage that can be applied across different systems.

The structural discrimination project consists of five phases:

1. Secondary source research and literature review
2. Primary source research via interviews and in-person meetings
3. Presentation of discussion paper at the 2011 Diversity Forum
4. Further feedback and discussion
5. Final report.

The project began by reviewing current literature about structural discrimination within the health, education, justice, economic and public service systems. The literature review primarily focused on New Zealand-based research, but also drew from international sources where appropriate.

The second phase of the project involved in-person interviews with representatives from government agencies, non-governmental organisations and other relevant individuals. The Commission met with the following agencies and organisations:

- Ministry of Education
- Ministry of Justice
- Department of Corrections
- New Zealand Police
- Te Puni Kōkiri
- Ministry of Pacific Island Affairs
- Office of Ethnic Affairs
- Ministry of Health



- Treasury
- Department of Labour
- State Services Commission
- Tertiary Education Commission
- New Zealand Qualifications Authority
- Auckland University of Technology
- University of Waikato
- Pharmac.

The discussions centred on the following key questions:

- What are the structural barriers that may contribute to ethnic inequalities in your area of work?
- What interventions has your agency developed to address these structural barriers?
- How effective have these interventions been so far?

Thirty-five individuals were interviewed between May and July 2011. These semi-structured interviews and the information shared by the above agencies and organisations informed the structure and content of this discussion paper. All participants in this project were sent a draft of this paper for review prior to it being finalised. They are not however responsible for the content.

The Commission hosted inter-agency workshops in July and September 2011 to share its findings and generate conversation between agencies. They provided an opportunity for agencies to learn from each others' experiences in developing, implementing and evaluating initiatives that address structural barriers. The Commission aims to encourage increased and ongoing collaboration between agencies on this issue.

This paper served as the focal point for a forum on structural discrimination at the annual New Zealand Diversity Forum in August 2011. The Commission facilitated further discussion on the topic and gathered additional input from non-governmental organisations and community members. Invited speakers were Professor Linda Te Aho of Waikato University, Ruth de Souza from

AUT University, and Kim Workman from Rethinking Crime and Punishment. Discussion and input from the Diversity Forum participants and additional research and recommendations via consultations have informed the content of the final report.

Researchers

This paper was researched and prepared by the Commission's Race Relations Policy Analyst, Catriona Scannell, and Elli Nagai-Rothe, who undertook an internship with the Commission as a Research Fellow on a Fulbright Scholarship in 2011. Following a period of consultation, it was revised and completed by the Commission's Senior Race Relations Policy Analyst, Dr Judith Pryor.



Background

United Nations calls to reduce ethnic inequalities in New Zealand

Over the past decade, several key United Nations (UN) monitoring bodies have expressed concern about ethnic inequalities in New Zealand, called for greater understanding of the causes of inequalities, and for a continued focus, increased efforts and action to overcome these.

The UN Committee for the Elimination of Racial Discrimination last examined New Zealand's compliance with the Convention for the Elimination of All Forms of Racial Discrimination in 2007. The Committee recommended increased efforts to prevent racial discrimination in the criminal justice system. New Zealand has just submitted its most recent report and is currently scheduled to appear before the committee in early 2013.²⁷

In 2007, the Committee on the Elimination of Discrimination against Women urged the Government to implement measures to increase the participation of Māori, Pacific peoples, minority groups and women in political decision-making positions at all levels.

The UN Human Rights Council conducted its Universal Periodic Review of New Zealand's human rights performance in 2009. Recommendations included government action to understand the causes of inequality and to address the socio-economic disparities suffered by vulnerable groups in New Zealand. The Council also recommended continued efforts to prevent discrimination in the criminal justice system and a commitment to combating the overrepresentation of Māori.²⁸

The UN Human Rights Committee examined New Zealand's compliance with the International Covenant on Civil and Political Rights in 2010. The Committee called on the Government to strengthen efforts to reduce the overrepresentation of Māori, in particular Māori women, in prisons and to increase efforts to prevent discrimination against Māori in the administration of justice.²⁹

The UN Special Rapporteur on the Rights of Indigenous Peoples released his report on the situation of Māori in New Zealand in February 2011. He recommended the Government continue work with whānau, iwi and Māori leaders to assess the causes of discrepancies in health conditions and identify culturally-appropriate

solutions. He also recommended redoubled efforts, in consultation with Māori leaders, to address the high rates of Māori imprisonment, and a focus on urban Māori when addressing Māori social and economic disadvantage.³⁰

In February 2011, the Committee on the Rights of the Child recommended the Government ensure full protection against any grounds of discrimination, including urgent measures to address disparities in access to services for Māori children and their families; and strengthen prevention of discrimination, including affirmative action if necessary, for vulnerable children.³¹

In May 2012, the UN Committee on Economic, Social and Cultural Rights received the Government's report on New Zealand and released its recommendations. Among its findings, the Committee expressed its concern "that Māori and Pasifika continue to be disadvantaged in the enjoyment of economic, social and cultural rights, in spite of measures taken by the State party and improvements in the area of health and education." (art. 2(2)) The Committee recommended that the Government:

strengthen its efforts aimed at eliminating the disadvantages faced by Māori and Pasifika in the enjoyment of economic, social and cultural rights by addressing structural factors and ensuring that relevant measures effectively benefit the most disadvantaged. The Committee also recommends that the State party set specific equality targets by year and closely monitor their achievement.³²

Past government attempts to address ethnic inequalities

Previous governments have tasked expert panels with reporting on inequalities in New Zealand, both in terms of the Māori experience of inequality and in terms of broader ethnic, gender and age inequalities in social policy. These reports, as described below, included evidence and analysis of structural discrimination in New Zealand and recommendations to reduce structural discrimination.

In 1985, the then Minister of Social Welfare, Ann Hercus, asked the Māori Perspective Advisory Committee to advise her on the most appropriate way to meet the needs of Māori in policy, planning and service delivery in the Department of Social Welfare.



Since its establishment 15 years earlier, the department had been concerned with high numbers of Māori in the welfare system. The department was concerned that poor educational and economic outcomes for Māori led to increased crime rates, poor life expectancy and high unemployment.

The advisory committee travelled to marae around the country and public service offices, meeting thousands of people. It concluded that the service Māori required from the Department of Social Welfare was relevant to all government departments. Its report, *Pūao-te-ata-tū*

(*Daybreak*) was one of the first in New Zealand to define what it called “institutional racism” as distinct from personal racism. One of the Committee’s overarching comments was that “institutional racism exists within the department as it does generally through our national institutional structures.”

The committee described the effects of institutional racism within the department as mono-cultural laws and administration of social services, whether or not intended, that give rise to practices that discriminate against Māori. The committee recommended that the Government adopt the following objective:

To attack all forms of cultural racism in New Zealand that result in the values and lifestyle of the dominant group being regarded as superior to those of other groups, especially Māori, by:

- a) Providing leadership and programmes which help develop a society in which the values of all groups are of central importance to its enhancement; and
- b) Incorporating the values, cultures and beliefs of the Māori people in all policies developed for the future of New Zealand.³³

In 1986, the Government established a Royal Commission on Social Policy. The Royal Commission published an “interim” report in 1988 known as *The April Report*, following extensive consultation with a wide range of communities. The scope of the report was broad, but included consideration of “institutional racism”, incorporating definitions from *Pūao-te-ata-tū*. *The April Report* found

that institutional racism was far more pervasive and subtle than personal racism. To address it, national, system-wide programmes were needed. The report also recommended affirmative action to make structures multi-cultural in their policies and practices.

Reviewing the Royal Commission’s impact twenty years later, researchers Jo Barnes and Paul Harris found it difficult to identify direct affects on policy and practice of government departments, because the scope of the reports was so broad and the recommendations were insufficiently emphasised. They concluded, however, that there had been changes in

legislation, policy and practice since the release of the reports that aligned with the report’s ideals.³⁴

In 1998, the Waitangi Tribunal reviewed the response to *Pūao-te-ata-tū* in the *Whānau o Waipareira Report*. The tribunal found that although *Pūao-te-ata-tū* recommendations were accepted by the minister of the day,

the department’s commitment to their implementation had waned by the time of its restructuring in 1992. The tribunal also commented that the restructured department lacked informed commitment to *Pūao-te-ata-tū* during its establishment phase and in its operations. Staff appreciation of the report’s meaning for their work was neither required nor encouraged.³⁵

Persistent ethnic inequalities were again the focus of government research in 1999. The *Closing the Gaps* report gave an analysis of social and economic outcomes for Māori as compared with other New Zealanders. *Closing the Gaps* was adopted by the incoming Labour Government in 1999 as a policy to provide special measure social programmes for Māori and Pacific peoples. Labour’s adoption of the policy, however, faced a backlash against targeted measures to address ethnic disparities. Political backlash against *Closing the Gaps* was epitomised by New Zealand First leader, Winston Peters’, comments about the 2000 Budget. He claimed that the *Closing the Gaps* programme “will create serious racial divisions – it is social apartheid”.³⁶ The Chief Executive of Te Puni Kōkiri described the impact of the backlash, saying “this constant negativity around things Māori became a barrier in itself, but also fundamentally failed to acknowledge Māori as an important part of New Zealand’s success.”³⁷

this constant negativity around things Māori became a barrier in itself, but also fundamentally failed to acknowledge Māori as an important part of New Zealand’s success.³⁵



From 2000, the focus of policy discourse on ethnic inequalities shifted. In 2003, the Government re-branded its approach to addressing social and economic disparity, with less emphasis on ethnicity. *Reducing Inequalities* was a whole-of-government policy of social and economic initiatives. It aimed to “ensure a more equal distribution of the determinants of wellbeing across society, i.e. greater equalities of real opportunities, where family background, ethnicity or disability are not major determinants of individuals’ life chances”.³⁸

Political backlash to special measures to reduce ethnic inequality flared up with National Party leader Don Brash’s Orewa speech of 2004. In his speech, he said “there can be no basis for special privileges for any race, no basis for government funding based on race.”³⁹ In response to the Orewa speech, the Government in 2005 established a ministerial review into ethnically-based programmes and targeting in the core public sector.⁴⁰ The review provided advice on what it considered an appropriate rationale for ethnicity-based policies. It identified 25 specific policies and programmes, some of which were phased out, some modified and others considered justified. Economist Paul Callister notes that “this reduction of programmes seems to have been undertaken on a somewhat ad hoc basis rather than as part of a systematic, rigorous and publicly debated change in social policy direction.”⁴¹

Drawing on lessons learned during the review, the State Services Commission published *Guidance for designing needs based policies and programmes* in 2005.⁴²

This change in policy direction received international attention. In 2007, the UN Committee for the Elimination of Racial Discrimination welcomed the Government’s re-assessment of special measures programmes, but noted concern that the review was adopted in a political climate unfavourable to the rights of Māori. The Committee recommended that the Government take steps to ensure the public at large was informed about the nature and relevance of special measures and New Zealand’s obligations under the Convention for the Elimination of All Forms of Racial Discrimination.⁴³

Current approaches to address ethnic inequalities: Whānau Ora

Whānau Ora is the most recent cross-agency initiative to try and address structural discrimination, particularly in respect of Māori whānau (although the Prime Minister emphasised in 2010 that the service was open to all New Zealanders).⁴⁴ Initiated after the 2008 election, as part of the National-led government’s confidence and supply agreement with the Māori party, Whānau Ora is still a relatively new programme, so assessment of its success or otherwise is premature. Nonetheless it represents a systematic attempt to tackle inequalities, particularly for Māori.⁴⁵

The Whānau Ora programme, informed by the 2010 report of the Taskforce on Whānau-Centred Initiatives,⁴⁶ asks government agencies to “commit to a new way of working with whānau that includes an outcomes focus and working with other agencies.”⁴⁷ The premise of Whānau Ora is to overcome structural barriers by tying social services together so that they can be accessed more easily for whānau in need, while at the same time empowering whānau to provide for their own development.⁴⁸

The following factors can be identified as key to the programme’s potential:

1. Whānau Ora is intended to be community-led, with support from government agencies.
2. There is a clear expectation that the voice of whānau is not lost as Whānau Ora develops. Whānau Ora asks government agencies to adopt the “default setting” of asking “what difference will this make for whānau?”
3. Government agency leadership is engaged with community leadership. The Governance Board consists of government agency chief executives and community leaders, allowing for an efficient flow of ideas.
4. Although Whānau Ora is a national programme, it also allows for strong regional direction. Whānau circumstances vary across the country. Regional leadership groups reflect Māori leadership in each region and will help ensure Whānau Ora services are developed to reflect the circumstances in each region.

In the interviews with people involved with Whānau Ora, the Commission have heard that it has “the potential to be responsible for the revitalisation of whānau, just as Kōhanga Reo did for te reo”.



A Treaty of Waitangi-based approach to structural discrimination

One message that emerged from the workshops is that the Treaty of Waitangi has a place in any discussion of structural discrimination. Although there are areas of disagreement between the English and Māori texts of the Treaty of Waitangi, there are important areas where the texts do agree. All three articles concern the recognition of rights and identification of responsibilities. These rights and responsibilities are central to addressing structural discrimination. They include:

- the rights and responsibilities of the Crown to govern (Article 1 - *kāwanatanga*/governance)
- the collective rights and responsibilities of Māori, as Indigenous people, to live as Māori and to protect and develop their *taonga* (Article 2 – *rangatiratanga*/self-determination)⁴⁹
- the rights and responsibilities of equality and common citizenship for all New Zealanders (Article 3 – *rite tahi*/equality).

The Commission found in its 2010 report on *Human Rights and the Treaty of Waitangi* that the guarantee of equal rights promised in the Treaty remains unfulfilled today, as systemic disadvantage remains to be fully addressed.⁵⁰

Modern interpretations of the Treaty emphasise partnership or power-sharing between the Crown and Māori arising from the common principles of *kāwanatanga* (governance) and *rangatiratanga* (self determination) in articles one and two. These concepts can provide a foundation on which to identify and address structural discrimination, particularly in respect of improving outcomes for Māori.

The Commission's Treaty framework offers one tool to address structural discrimination. Based on an extensive programme of community engagement beginning in 2003, the Commission launched its Treaty framework in 2010; at its heart is the "promise of two peoples to take the best care of each other."⁵¹ This framework sets out the rights and responsibilities that the Treaty conferred on both the Crown and Māori, not least in ensuring equality for Māori and other New Zealanders. It also recognises that ensuring equality for Māori involves the protection of *rangatiratanga*.⁵²

As part of this work, the Commission has collected case-studies of existing Crown-Māori relationships and analysed them for elements of success, particularly in providing more positive outcomes for Māori. Examples include: Manawhenua ki Waitaha and the Canterbury District Health Board, and Ngāti Kahungungu and the Ministry of Education.⁵³

The Commission's analysis found the following common elements, among others, in successful relationships and positive outcomes:

- entering into relationships with a genuine desire to improve outcomes for Māori and to provide redress for past actions
- regular dialogue to strengthen relationships and understand each other's issues and aspirations
- foundational agreements: usually formal e.g. Memorandums of Understanding based on acknowledgement of status, role, authority and obligations of each. All effective relationships were based on the recognition of *rangatiratanga*
- shared decision-making as the norm at both high level and service level engagement
- recognition of the Treaty of Waitangi
- valuing *Mātauranga Māori* (Māori knowledge): this was particularly valuable where education was the focus of a relationship.

More recently, the Waitangi Tribunal's 2011 report *Ko Aotearoa Tēnei* poses solutions to inequalities based on a fundamental shift in philosophy, attitude and approach by the Government. The tribunal stated:

Unless it is accepted that New Zealand has two founding cultures, not one; unless Māori culture and identity are valued in everything government says and does; and unless they are welcomed into the very centre of the way we do things in this country, nothing will change. Māori will continue to be perceived, and know they are perceived, as an alien and resented minority, a problem to be managed with a seemingly endless stream of taxpayer-funding programmes, but never solved.⁵⁴



In order to address this imbalance, the tribunal recommends the development of genuine partnership bodies at the governance level and the reform of law, policies or practices relating to (among others) health, education, resource management, conservation, the Māori language, arts and culture, heritage, and Māori involvement in the development of New Zealand's positions on indigenous rights. This includes recognition of and support for traditional Māori approaches in each of these areas.

Specific tribunal recommendations related to health and education include:

- establishing a Crown–Māori partnership entity in the education sector. The tribunal suggests that Māori representatives be chosen via an electoral college to sit on it
- developing some specific indicators around mātauranga Māori (Māori knowledge) in order to properly gauge its Māori-focused activities
- recognising that rongoā Māori has significant potential as a weapon in the fight to improve Māori health. This will require the Crown to see the philosophical importance of holism in Māori health, and to be willing to draw on both of this country's two founding systems of knowledge
- incentivising the health system to expand rongoā services, for example, by requiring every primary health care organisation servicing a significant Māori population to include a rongoā clinic.⁵⁵

In the tribunal's view, not to give serious consideration to its recommendations and work towards "perfecting the partnership" could lead to:

the growth of an ever-larger cohort of poor and unproductive working-age Māori, who are perceived, and know they are perceived, as a problem to be managed with a seemingly endless stream of taxpayer-funded programmes. This is the path of ongoing Māori anger and non-Māori resentment.

The tribunal's alternative pathway – one which addresses structural discrimination and inequalities for Māori – leads to a different future:

It provides Māori with a positive platform from which they can address social issues and contribute to national prosperity; it moves the Crown/Māori relationship from one based on grievance and negativity to one based on mutual advantage; and it provides the basis for a future which all New Zealanders can look forward with optimism.⁵⁶

Taking the tribunal's detailed Treaty analysis more widely, drawing on diverse cultural values and practices to inform more responsive social services that cater to the needs of different communities is a central part of addressing structural discrimination.

Context

A consistent theme the Commission encountered in its research and meetings is the intrinsic connection between ethnic inequality and structural discrimination on the one hand and the broader context of New Zealand society on the other. In particular, societal and public attitudes, deficit theorising, intergenerational factors and socio-economic factors must form part of this discussion because these elements contribute to and exacerbate the impacts of structural discrimination. Giving better effect to the Treaty of Waitangi – discussed more fully in the previous section – was also cited as a means to overcome systemic barriers to equality.

Public attitudes

In meetings with government agencies, many people expressed the view that racist and discriminatory attitudes held by individuals feed into systemic discrimination. Systems are run, after all, by people. In 2012, the Commission identified racial prejudice as a barrier to progress in racial equality:

Racial prejudice is judging before we know. In that sense, it includes: negative attitudes to the Treaty, to indigenous rights, to Māori, Pacific peoples, Asians, migrants and refugees. These prejudices are still far too prevalent, and compromise efforts to address race relations issues. They lead to discrimination, marginalisation, and the perpetuation of injustice and inequalities, and prevent the social and economic benefits of diversity being fully realised. Racial prejudice in its many forms continues to frustrate the achievement of positive race relations in New Zealand.⁵⁷

The existence of racist attitudes in New Zealand is explored in research by Bernard Guerin, and in research by Antonia C. Lyons, Helen Madden, Kerry Chamberlain and Stuart Carr (Lyons et al). Both projects analyse casual conversations, some of which were about non-ethnicity related subjects (in which ethnicity arose), others were prompted by news articles related to ethnicity. Guerin found that people “do not openly slander members of other racial groups but they still subtly talk in prejudicial ways when safe to do so.”⁵⁸ Lyons et al highlighted the subtlety of modern racism including the denial of prejudice and criticising minority

groups for resisting mainstream values. Lyons et al conclude that:

In New Zealand, the talk of these young adults works in subtle (and not-so-subtle) ways to reinforce current patterns of social power and inequities, normalising and justifying the status quo (the dominant Pākehā culture). Such constructions draw on talk about the nation and nation-space to create further versions of new and modern racism which reify and legitimate patterns of social power and dominance.⁵⁹

The 2006/07 New Zealand Health Survey shows the number of patients who felt “treated with respect and dignity” by their primary health care provider varied by ethnicity. The survey reports Asian, Pacific and Māori adults “were significantly less likely than adults in the total population ... to report that their health care professional treated them with respect and dignity ‘all of the time’.”⁶⁰

This research supports the views expressed in meetings with government agencies. There were cases where Māori public servants had experienced discrimination based on ethnicity. For example, a Māori woman received poor service from a bank teller when applying for a mortgage using her Māori name. The woman said that service improved when her husband provided the teller with his Pākehā name.

The existence of individual and collective racist attitudes should not be forgotten in discussion about structural discrimination: as heard in the workshops, “attitudes inform and shape how systems are made.” Some people spoken to underlined the importance of focusing on behaviours as opposed to attitudes – that the behaviour of service providers is more important than attitudes in contributing to inequalities and it is in the realm of behaviour where systemic change will take place.

The difference between individual (or personal) racism and institutional racism is important here. While both forms of racism have negative implications for marginalised groups, individual acts of racism often receive more public attention as they are often overt and easier to identify than entrenched less visible forms of racism within institutional policies and practices. Additionally, as sociologist Professor Wornie Reed explains:



While individual level racism affects a modest number of individuals, a racist institutional policy can systematically disadvantage many members of a racial group, and the consequences can endure for many years, even for generations.⁶¹

It was recognised that racist and discriminatory attitudes held by individuals are interconnected with structural discrimination. As a starting point, focus was on structural discrimination but it is done in the hope that systemic change will improve individual attitudes.

Deficit theories

The cause of ethnic inequalities is still sometimes attributed in popular discourse to deficit theories, a flawed model that according to educational psychologist Richard Valencia has roots in racist discourse spanning well over a century. Deficit theorising can be traced back to nineteenth-century ‘scientific racism’, which was itself a development of – and justification for – imperialism and colonialism.

Today, deficit theories, also known as “victim blaming,” are popular explanations for ethnic disparities, placing blame on ethnic minorities for failures believed to be based on internal deficits or deficiencies. Such thinking claims that deficits manifest in limited intellectual abilities, linguistic shortcomings and lack of motivation or hard work.⁶² Deficit thinking ignores the structural factors within dominant culture systems that give rise to ethnic disparities:

“Blaming the victim” [is] a way of thinking about social problems that locates their origins in the purported deficits and failings of their victims rather than in the social institutions and practices that had brought about and sustained their victimisation.⁶³

Recent research by social scientists has contested and discredited such theories, yet the foundations for deficit thinking often re-emerge in new forms and are frequently reproduced in the media and public discourse. Such theories can contribute to misinformed social policy which fails to acknowledge structural discrimination and embedded systemic barriers to equality.

Socio-economic factors

The effect of inequitable social and economic circumstances in perpetuating negative outcomes is another key issue discussed in our workshops. Even if structural discriminatory policies and practices were to be eliminated from schooling, for example, students who live in poverty, with malnutrition, overcrowded households, or surrounded by crime, would still be less likely to achieve in school at the same levels as students with social and economic advantages.

The Child Poverty Action Group’s 2011 report, *Hunger for Learning: Nutritional barriers to children’s education* looks at the situation of social and economic circumstances for children in decile 1 and 2 schools and effects on education. Principals spoke of parents working long hours, often with multiple jobs and insecure and/or overcrowded housing. Overcrowding often means children had nowhere to read or do homework. The report says:

Children from lower socioeconomic families, Māori and Pasifika children, are more likely to come to school hungry, and, as a result, are more likely to be lacking important nutrients in their diets, be unable to concentrate at school, and suffer from obesity and being overweight. This disparity increases as children get older ... Lack of breakfast therefore emerges as both a symptom and a cause of the well-documented health, educational and social inequities found among New Zealand’s children and young people.⁶⁴

Hunger for Learning urges government support for a programme to provide breakfast in decile 1 and 2 schools. It recognises that this is not a long-term solution, but a potentially effective measure in addressing the negative impacts of child poverty.

Access to safe, affordable and good quality housing is another key determinant of well-being. *Race Relations in 2010* highlights the existence of ethnic inequalities in housing.⁶⁵ Researchers Robson, Cormack and Cram also note that “household crowding, poor dwelling conditions and insecure tenure impacts on education, health and access to local services”.⁶⁶ Lack of access to affordable housing as well as poor quality housing can be an outcome



of structural discrimination. Māori face barriers to home ownership, for example, in not being able to provide papakāinga (multiple-owned) land as collateral to banks when seeking loans. The kāinga whenua loan scheme, introduced in February 2010, seeks to remedy this barrier.⁶⁷

Failure to address the root causes of these socio-economic inequities, including poverty, is itself a form of structural discrimination. The continuing gap in socio-economic indicators between ethnic groups underscores the need to tackle structural sources of inequality. As such, a comprehensive policy approach should take into account and seek to address both structural barriers to equality and embedded social and economic factors.



Systemic analysis

This section examines four key systems – health, education, justice and the public service – and analyses the ways in which structural discrimination manifests in each of them.⁶⁸ Each systemic overview is followed by a case-study or case-studies of government initiatives that either explicitly or implicitly address issues of structural discrimination within each of the systems. Each case study offers key factors for success and factors for sustainability.

The Commission cautions, however, that these initiatives are not discussed as the model for success, nor a “silver bullet” solution to the complex manifestations of structural discrimination. They are simply promising approaches. In some instances where the initiatives are recent, there has not been sufficient evaluation to offer conclusive evidence of their impact. Nonetheless, they offer a place to start.

There are many other promising initiatives that are not mentioned here. The Commission will continue to gather examples of good practice and useful resources and publicise them through a dedicated web resource.

Structural discrimination in the health system

Everyone has the right to enjoy the highest attainable standard of physical and mental health.

International Covenant on Economic, Social and Cultural Rights, Article 12

Significant and deep-seated ethnic disparities in health and well-being continue to afflict New Zealand and there is a good amount of research examining these disparities in relation to structural discrimination. In this section, health is examined broadly, looking at access to health care, quality of care received and the diversity of the health workforce.

Māori have the poorest health of any New Zealand group, with higher mortality rates than non-Māori and higher rates of illness. Avoidable death rates for Māori are two and a half times the rate of other New Zealanders⁶⁹ and Māori die on average 7 – 8 years earlier.⁷⁰ Māori babies are more than five times more likely to die of Sudden Infant Death Syndrome than non-Māori babies.⁷¹ Māori adult all-cancer mortality rates are almost twice that of non-Māori.⁷² There are wide disparities too between Māori and non-Māori in complications from diabetes: renal failure is more than eight and a half times higher for Māori than non-Māori and lower limb amputation is more than four and a half times higher.⁷³ These gaps in health disparities between Māori and non-Māori persist even after controlling for socio-economic deprivation.

Pacific peoples also have disproportionately poor health outcomes with nearly twice the rate of avoidable mortality as other New Zealanders and have experienced the least improvement in life expectancy over the past 20 years.⁷⁴ Pacific peoples are three times more likely to die of a stroke than the general New Zealand population and have higher rates of lung, liver and breast cancers.⁷⁵ Pacific peoples turn up for GP appointments at higher rates than the general New Zealander population, but experience worse outcomes and receive fewer referrals, despite having a higher burden of disease.⁷⁶

Rheumatic fever – a preventable disease that is close to non-existent in other OECD countries – is a specific area that disproportionately impacts Māori and Pacific children. Māori are 20 times more likely and Pacific peoples 37 times more likely to be hospitalised with acute rheumatic fever, compared to non-Māori.⁷⁷ Left untreated, or if treatment

is delayed, it can cause damage to the heart and have a long-term serious impact on a person's health. According to the Medical Director of the National Heart Foundation of New Zealand, Professor Norman Sharpe, the persistence of rheumatic fever in New Zealand “represents one aspect of our failure to achieve a fair society and health equity for Māori and Pacific peoples.”⁷⁸ In March 2012, the Government specifically singled out reducing rheumatic fever rates as a priority target.⁷⁹

There is a notable absence of comprehensive data available on the health status of Asian communities when compared to Māori and Pacific communities. According to Ruth DeSouza of the Centre for Asian and Migrant Health Research, Asian ethnic groups “have been largely neglected by New Zealand health policies and research, despite their long history in New Zealand and recent population growth.”⁸⁰ However, growing evidence concerning health disparities amongst Asian ethnic groups has led to an increasing recognition and focus on Asian-specific research. Recent research shows notable disparities for Asian peoples in access to health services. Asian people are less likely to have a primary health care provider and exhibit high levels of chronic disease, including diabetes and cardiovascular disease, particularly in some Asian ethnic groups such as Indians.⁸¹ According to an Auckland District Health Board report on the status of Asian health in New Zealand “the percentage of adult Chinese and other Asians who have a regular health care provider (82 per cent and 81 per cent, respectively) is so much lower than for Europeans (95 per cent) that it warrants further research to rectify this inequity in access to basic health care services.”⁸²

The links between racism and health

A growing body of New Zealand research has found links between racism and health, which show, among other things, that negative health outcomes are not solely related to socio-economic status. Racism is also a key determinant of people's experience of health services. Taken together, these studies provide compelling evidence of racism as a major determinant of negative health outcomes and ethnic inequalities.

A 2006 study (Harris et al) found that racism, both interpersonal and institutional, contributes to Māori health losses and leads to inequalities in health between Māori and Europeans in New Zealand.⁸³ Their findings suggest



that the experience of racial discrimination may potentially be a major health risk that contributes significantly to ethnic inequalities.⁸⁴ Harris et al argue that interventions and policies to address health inequalities must take into account the health effects of racism.

The wider social and economic context does have a role to play in perpetuating disadvantage between ethnic groups. Researchers in the *Decades of Disparity* (2006) series analysed the ways in which structural reforms combined with global economic downturn significantly disadvantaged Māori and Pacific peoples and worsened health outcomes during the 1980s and 1990s. Māori life expectancy, for example, stagnated in the 1980s and early 1990s, while non-Māori life expectancy showed strong increases. The structural reforms of the 1980s and early 1990s, and in particular the high unemployment rates that peaked in 1991–92 at 25% for Māori compared to 8% for European, almost certainly contributed to the divergence of Māori and non-Māori life expectancy trends in the 1980s and 1990s.⁸⁵

In December 2009, one of the *Decades of Disparity* researchers, Professor Tony Blakely, warned that the most current economic downturn would disproportionately affect Māori and Pacific peoples and could lead to increased suicides. The recession was also likely to slow improvements in Māori and Pacific health.⁸⁶

Using data from the 2002/03 and 2006/07 New Zealand Health Surveys, a University of Otago and Ministry of Health study published in 2011 found that, controlling for other socio-economic variables, experience of racial discrimination was linked to a range of negative health outcomes and risk factors. Their findings were consistent with international findings on the links between racism and negative health outcomes. Reported experience of racial discrimination was measured in both surveys and covered five items: experience of an ethnically-motivated physical or verbal attack; and unfair treatment because of ethnicity by a health professional, in work, or when gaining housing. Reported experience of racial discrimination increased between 2002/03 (28.1% ever) and 2006/07 (35.0% ever) among Asian peoples but remained largely unchanged for other ethnic groupings (Māori 29.5%, Pacific 23.0%, European 13.5%). Experience of racial discrimination was associated with all negative health measures except excess body fat. The authors concluded that “racial discrimination

experienced across a range of settings has the potential to impact on a wide range of health outcomes and risk factors”.⁸⁷

A further 2012 study using data from the 2006/7 New Zealand Health Survey found that racial discrimination in health care and other domains was associated with lower odds of breast and cervical cancer screening among Māori women. Racial discrimination – both in general and specifically by a health professional – was associated with negative patient experiences for all participants.⁸⁸

A 2012 University of Auckland study, using data from the *Youth 2000* survey, researched the relationship between ethnic discrimination and health outcomes among secondary school students in three areas: unfair treatment by the police, unfair treatment by health professionals, and bullying. Pacific, Asian, Māori and other ethnic participants were significantly more likely to report ethnic discrimination by health professionals than New Zealand European participants. The study found that students who reported ethnic discrimination were more likely to report fair/poor self-rated health, have experienced significant depressive symptoms and be cigarette smokers. Again, these findings are consistent with international studies.⁸⁹

Culturally-specific health provision.

Despite a growing body of research that shows socio-economic deprivation and monocultural approaches are key factors in persistent ethnic disparities in health, public debate on the issue is still sometimes explained using a “deficit theory” approach i.e. placing the blame on the victim by claiming that individual choices or cultural differences results in poor health outcomes. Health researchers Papaarangi Reid and Bridget Robson suggest that New Zealand’s policy focus on universal health provision, i.e. providing the same service to all irrespective of socio-economic status or ethnicity is at fault. Universal health provision:

assumes that everyone has equal access to services and ignores the obstacles faced by ethnic groups (such as Māori and Pacific peoples) in accessing services. The adoption of a universal approach to service provision both legitimates the non-recognition of ethnic disparities and privileges Pākehā. In so doing, it provides evidence of institutional racism.⁹⁰



Several examples of culturally-specific health initiatives provide evidence that shifting away from a universal health provision focus has benefits for Māori, Pacific and Asian communities. Researchers Tony Blakely, Don Simmons and Norman Sharpe describe the benefits of health promotion and screening programmes that include tailored components for Māori and Pacific populations:

Pacific health provider development has also progressed in leaps and bounds. Many – if not just about all – major health promotion programmes and screening programmes include tailored components for Māori and Pacific audiences, for example Māori language components of Quit campaigns. The *One Heart Many Lives* programme has been a particular success in heart health promotion focused primarily on Māori men.⁹¹

Recent health literature outlines the importance of developing and applying culturally appropriate health research and practice frameworks.⁹² Specifically, this literature highlights the limited ability of Western frameworks and philosophies to understand and effectively address non-Pākehā health concerns, a concern echoed in the Waitangi Tribunal's *Ko Aotearoa Tēnei* report. Professor Mason Durie's holistic health model of wellness – Te Whare Tapa Whā – employs a Māori philosophy of health – one that moves beyond physical health as the sole determinant for wellbeing. Te Whare Tapa Whā describes four cornerstones of Māori health: whānau (family health) tinana (physical health), hinengaro (mental health), and wairua (spiritual health). Professor Durie applies Māori conceptual tools to understand and explain Māori experiences. This research illustrates the potential of adopting culturally-specific frameworks and worldviews within existing health systems as a promising approach to addressing health inequities.

Promising initiatives to address structural discrimination including the Whānau Hauora Village initiative are discussed in the case-studies following this discussion.

Manifestations of structural discrimination

There are many examples that point to manifestations of structural discrimination within the health system, some of which are highlighted in the text that follows.

Literature on health outcomes provides consistent evidence that some doctors treat patients differently based on ethnicity. One study found that only two per cent of Māori diagnosed with clinical depression were offered pharmaceutical intervention, compared with 45 per cent of non-Māori patients with the same diagnosis.⁹³ Additionally, doctors spend 17 per cent less time (2 minutes out of a 12 minute consultation) interviewing Māori than non-Māori patients.⁹⁴ Pacific peoples are referred to specialists at lower rates (20 per cent versus the national average of 30 per cent) particularly involving access to surgical care.⁹⁵ Once age is taken into account, Māori attend GP appointments at the same rate as non-Māori, but obtain fewer diagnostic tests, less effective treatment plans and are referred for secondary or tertiary procedures at lower rates than non-Māori patients.⁹⁶ Research following the *National Primary Medical Care Survey* has shown that general practitioners are less likely to have a high level of rapport with their Pacific patients, ordered fewer tests and investigations (17.8 per cent compared to 24.9 per cent) and referred Pacific patients to specialists at lower rates (20 per cent versus the national average of 30 per cent) than their Pākehā patients.⁹⁷

These studies illustrate the manifestation of structural discrimination through the often unconscious and unspoken bias of health practitioners. Many health professionals may be unaware of biased attitudes and unaware that these attitudes can be translated into practice. Cultural misunderstandings, unconscious bias and uninformed beliefs about Māori, Pacific and ethnic minority patients by health practitioners have contributed to health disparities. Health outcomes for Māori, Pacific and ethnic minority communities can be improved when health professionals are supported to develop greater cultural competence and awareness of their own attitudes towards people who are culturally different from themselves.⁹⁸ The benefits of culturally-appropriate healthcare programmes are discussed in the first case-study following this systemic analysis.

Although it is important to attend to the unconscious bias of health care practitioners, addressing individual attitudes (of doctors, nurses and so on) alone will not shift structurally discriminatory practices. A 2007 article about institutional racism and healthcare disparities, stressed the



importance of focusing on policies, and practices within systems, not just on individual attitudinal changes:

The history of racism in medicine and healthcare ... illustrates that the problem of healthcare disparities is not simply one of individual behaviour. It is a problem that is rooted in organisational and institutional structures and practices. Given how embedded racism is in institutions such as healthcare, a significant shift in the system's policies, practices and procedures is required to address institutional racism and create organisational and institutional change to reduce healthcare disparities.⁹⁹

Health workforce diversity

Another manifestation of structural discrimination is the under-representation of Māori and Pacific peoples in the health workforce. A study of New Zealand's District Health Boards (DHBs) shows that only three per cent of the nearly 60,000 people employed by DHBs are Pacific peoples. In the Auckland region, Pacific peoples are under-represented in this sector, seven per cent of the workforce, despite making up around 12 per cent of the regional population.¹⁰⁰ Additionally, most Māori and Pacific DHB employees are concentrated in administrative and nursing roles.¹⁰¹

Ministry of Health monitoring also offers data on the Māori health workforce. According to their research:

- In 2009, active Māori medical practitioners represented 3 per cent of the medical practitioner workforce (330 out of 11,164).¹⁰² Between 2006 and 2009, the number of active Māori medical practitioners increased from 240 to 330, an increase of 90 or 38 per cent (all active medical practitioners increased from 9547 to 11,164, an increase of 1617 or 17 per cent)
- between 2006 and 2010, the proportion of active Māori midwives was between 6 and 8 per cent of the total active midwife workforce. During this time, the number of active Māori midwives increased by 45 or 29 per cent (2006, 153; 2010, 198), while the number of all active midwives increased from 2303 to 2639, an increase of 336 or 15 per cent
- in 2008, there were 156 active Māori dentists representing 5 per cent of all active dentists (3419). Of the active Māori dentists, 113 (or 72 per cent) were female

- in 2010, there were 60 active Māori psychologists representing 4 per cent of all active psychologists (1346). Forty two (or 70 per cent of) active Māori psychologists were female. The main employers of active Māori psychologists were DHBs (15) and self employed practices (15).¹⁰³

In 2010, the Ministry of Health published research on *Shifting Māori Health Needs* to enable the health workforce to more appropriately meet the health needs of the growing Māori population. The report found that, given the projected increase in the Māori population over the next 10-20 years, it would be necessary to recruit over 150 Māori students into medical education each year for the next 10 years. In addition, Māori secondary school students needed to be encouraged to study science and then be supported to successfully do so (at personal and curriculum levels). Māori students in tertiary medical education also needed personal, pedagogical and curriculum support. Curriculum changes in medical education are also being endorsed by health workforce and system planners here and internationally. Workplaces need to support Māori doctors to be Māori and to practice within Māori models of health care delivery. Achieving these targets requires a cross-government approach.¹⁰⁴

A 2011 study on *Future Directions for a Māori Dental Health Workforce*, for example, highlighted the need to expand the dental health workforce to optimise the oral health needs of Māori 0-17 year-olds. The study recommended structural changes to the workforce including: raising the proportions of Māori dental health practitioners via incentives in the education system (e.g. changes to the secondary curriculum and recruitment into university); introducing cultural competency training for non-Māori oral health professionals; the purchasing of more Māori oral health services; and the provision of oral health services at times and in places that are most accessible for Māori whānau.¹⁰⁵

Better representation of Māori and Pacific peoples in the health workforce would have significant benefits. Māori patients have higher rates of visits and increased engagement with Māori healthcare providers and likewise for Pacific patients and Pacific providers.¹⁰⁶ A report commissioned by the Ministry of Health shows that where patients and healthcare professionals are of the same ethnicity, there are better health outcomes for patients.¹⁰⁷



It is important to note that increasing numbers of both Pacific and Māori healthcare providers alone will not necessarily shift structurally discriminatory practices. As one interviewee said, “adding more brown faces in an organisation doesn’t necessarily change policies or structures.” However, this striking under-representation reflects one of many institutional barriers facing Pacific and Māori communities within the health system and is a policy area in which to focus further attention.

Pay equity

In addition to lack of workforce diversity, pay disparity is another manifestation of structural discrimination and a barrier to health equality. Of particular note is the issue of pay disparity between Māori and iwi health workers in primary health care services and health care workers in DHBs. According to evidence provided by the New Zealand Nurses Organisation (NZNO), Māori and iwi health workers earn up to 25 per cent less than their colleagues in hospital settings. This funding inequity stands as an additional barrier to recruitment and retention of Māori health workers at the community level. Anecdotal evidence from Māori and Iwi employers highlights these barriers:

“It is difficult to recruit and retain staff due to limitations of contract prices.”

“As a Māori provider, we have had great difficulty in attracting nurses as we have not been able to match mainstream rates.”¹⁰⁸

NZNO and representatives of the Māori and iwi employers jointly presented to the Health Select Committee on 29 April 2009. The uniqueness of the joint presentation was commented on by members of the Committee.

On 23 July 2009 the Health Select Committee issued its report and unanimously made the following recommendations to the Government:

We agree with the petitioners that there is an equity issue regarding pay rates for Māori and iwi health service workers. We recommend that the Government establish a working group to address the issues raised

in the petition and report publicly on its findings within six months. In addition, we recommend that the Government instruct the working group to provide us with a report on its progress within three months of its implementation.¹⁰⁹

In August 2009, the Government indicated in the “Government Response to The Report of the Health Committee on Petition 2005/177 Ngaitia Nagel and 11,370 others” that it did not support the Health Committee’s unanimous recommendation to establish a working group.

No further progress on this issue was therefore made, although the need to address pay inequity remains.

Additional government funding is needed to recruit and retain a skilled and culturally competent workforce. Māori nurses and primary health workers play a vital role in the Māori community health sector and in improving health outcomes for Māori. They have the essential skills, qualifications and experience but are being paid significantly less than their

colleagues in other sectors. This is an issue of equity and needs to be addressed.

Kerri Nuku, Kaiwhakahaere of Te Rūnanga o Aotearoa NZNO further described the importance of addressing this inequity in a 2010 presentation to the Māori Affairs Select Committee:

Māori health improvements require Māori health workers, so whether talking about smoking cessation programmes or a whānau-based approach to Māori well-being, Māori health professionals are the key to success.

Unless we achieve pay equity, our highly prized and overworked “Māori for Māori” workforce will continue to be a limited resource, and any new initiatives will continue to struggle and fail. We urge you to look beyond the symptoms of ill health in our communities to the cause. Inequalities in the health sector are a barrier to reducing inequalities in our people.



In addition to pay, NZNO also identify other inequities in working conditions, including terms for annual leave, sick and domestic leave and merit payments.

Health equity position statement

The New Zealand Medical Association (NZMA) is the largest medical organisation in New Zealand, representing all disciplines within the medical profession. In conjunction with a symposium, *Health equity and the social determinants of health*, held in July 2011, NZMA published a Health Equity Position Statement. The position statement explores factors that contribute to inequity and recommends action to reduce health inequities. In addition to the obvious benefits to society through better health, the position statement notes the economic need to reduce productivity costs associated with illness and the high cost of healthcare. It calls for a whole-of-government approach:

Most of the social determinants of health lie beyond the mandate of the health sector. Actions are required in many non-health sectors, including local government, social development, transport, finance, education and justice. The health sector has a role in advocating for and actively encouraging inter-sectoral approaches to addressing the social determinants of health and the whole of society needs to be involved along with the whole of government.¹¹⁰

NZMA's position statement emphasises the importance of inter-agency collaboration in addressing not only health disparities, but also the value of working across sectors to address the socio-economic factors that contribute to structural discrimination.



Responses to structural discrimination in the health system

Case study 1: Cultural Competency and Cultural Safety Initiatives

Many in the health sector have identified the importance of cultural competence and cultural safety in the delivery of health and disability services to Māori, Pacific and Asian communities. Cultural competency programmes provide one avenue to address structural discrimination and ethnic inequalities in health.

While there are multiple and evolving definitions of cultural competence, one comparatively simple definition that the Ministry of Health uses is: “the capacity of a health system to improve health and wellbeing by integrating cultural practices and concepts into health service delivery.”¹¹¹ Cultural competency also requires acknowledgement of one’s own culture in order to understand the culture of patients and clients, thereby providing more effective and culturally-appropriate health services. The significance of cultural competence has grown since the introduction of the Health Practitioners Competence Assurance Act (HPCAA) of 2003, which outlines cultural competence requirements for doctors and health practitioners.

The Medical Council of New Zealand has adopted the following definition of cultural competence:

Cultural competence requires an awareness of cultural diversity and the ability to function effectively, and respectfully, when working with and treating people of different cultural backgrounds. Cultural competence means a doctor has the attitudes, skills and knowledge needed to achieve this. A culturally competent doctor will acknowledge:

- that New Zealand has a culturally diverse population
- that a doctor’s culture and belief systems influence his or her interactions with patients and accepts this may impact on the doctor-patient relationship
- that a positive patient outcome is achieved when a doctor and patient have mutual respect and understanding.¹¹²

The concept of cultural safety is closely related to cultural competence, but was developed from within New Zealand as a uniquely New Zealand concept. Cultural safety was first developed in the nursing field in the 1990s and has since been adopted by other health professions. Cultural safety, according to University of Otago researcher Marion Gray, is about positive attitudinal change toward those who are culturally different from us and becoming aware of power relationships between health professionals and clients. A key concept in cultural safety is that “a nurse or midwife who can understand his or her own culture and the theory of power relations can be culturally safe in any context.”¹¹³

Cultural safety is intended to contribute to ameliorating the disparities with existing health care delivery for Māori by beginning to address and change health practitioner attitudes, including racism. Although developed as an indigenous approach to health inequalities for Māori, culturally safe frameworks have also developed for Pacific and Asian communities.¹¹⁴ Cultural safety also places emphasis on the bicultural relationship between Māori and Pākehā in New Zealand and the obligations that come under the Treaty of Waitangi.

As described in the previous section, recent studies on health outcomes provide consistent evidence that some doctors treat patients differently based on ethnicity. Many health professionals may be unaware of biased attitudes and unaware that these attitudes can be translated into practice. These studies illustrate the manifestation of structural discrimination through the often unconscious and unspoken bias of health practitioners. Research has indicated that health disparities for Māori, Pacific and Asian peoples are strongly linked to the behaviour of their health care providers.¹¹⁵ Cultural competency initiatives and cultural safety frameworks can be used to address these embedded health disparities. Health outcomes for Māori, Pacific and Asian people can be improved when health professionals are supported to develop greater cultural competence and awareness of their own attitudes towards people who are culturally different from themselves.



The Medical Council of New Zealand acknowledges that “a culturally competent approach should also recognise that addressing inequalities in health care means addressing barriers between different communities and health-care systems.”¹¹⁶ Thus cultural competence initiatives can also be used to address systemic barriers to health equality. The Medical Council further outlined a commitment to addressing structural discrimination and systemic barriers in its 2006 Statement on Cultural Competence by stating that health practitioners must have “a willingness to appropriately challenge the cultural bias of individual colleagues or systemic bias within health care services where this will have a negative impact on patients.”

The Ministry of Health recognises that “cultural competence of the workforce is vital to ensure equity in access to appropriate and high quality care.” It has implemented a variety of initiatives to embed cultural competence practices, including a recent report that develops support for Pacific Cultural Competencies in health, local District Health Board community health programmes and a soon-to-be released online cultural competency tool for health providers. The Health Practitioners Competence Assurance Act 2003 supports ongoing visibility and government regulation of cultural competence measures.

Despite these government measures, it is important for health care organisations to provide leadership in evaluating, properly resourcing and providing incentives for continued adherence to cultural competency initiatives. A 2011 study of health equity in New Zealand outlined the importance of organisational leadership in challenging “habitual and inequitable” practices, both of health practitioners and health systems. The study stated: “it is an organisational responsibility to set frameworks that can guide development, implementation and monitoring of cultural competency in the workforce.”

Many in the health sector stress that all government agencies need to work together collaboratively at the structural level to make an impact on health inequalities: “Increasing cultural competency is a shared responsibility, requiring partnerships across a wide range of sectors – including health, social services, education, justice and research – using systematic and sustainable approaches.”¹¹⁷

Factors for success

1. Cultural competency initiatives were set up to address unequal outcomes between ethnic groups in the health system.
2. Cultural competency depends on a relational model that places both the health professional and patient in a wider socio-political context, and makes explicit the power relations between them.
3. Cultural safety is a New Zealand-developed model that is sensitive to New Zealand’s particular population and values.
4. Cultural competence measures are backed by legislation which supports ongoing visibility and government regulation.
5. The introduction of cultural competence measures encourages organisational leadership and ownership in evaluating results and providing incentives.

Sustainability

One challenge outlined by the Ministry is that cultural competencies within health systems often lack rigorous evaluation. Thus it is still unclear which approaches are most effective in improving health outcomes. Increased research and evaluation are therefore recommended for achieving meaningful and sustainable outcomes in cultural competence. Improved integration and evaluation of cultural competence practices can lead to better outcomes through improved communication between doctors and patients, in terms of treatment acceptability and adherence to treatment plans.¹¹⁸ Measurements of doctor performance in delivery of services to Māori, Pacific and ethnic patients are critical to addressing the effectiveness of cultural competence initiatives and thus in addressing unconscious manifestations of structural discrimination.



Case study 2:

Whānau Hauora Village, Te Matatini

The Whānau Hauora Village is a unique approach to addressing inequitable health outcomes, with a focus specifically on Māori health.¹¹⁹ Designed to provide whānau with greater access to primary healthcare access, the Whānau Hauora Village acknowledges the existence of structural discrimination by differential access and treatment for Māori patients. The Whānau Hauora Village aims to take health out of a European health framework and into a Māori health framework, thus “bringing the door of health” to whānau and communities. The Village model is based on Professor Mason Durie’s holistic model of wellbeing – Te Whare Tapa Whā – and the four pillars of health: whānau (family health), tinana (physical health), hinengaro (mental health) and wairua (spiritual health).¹²⁰

Set up for the first time in 2011, the Whānau Hauora Village brought health services into a Māori cultural setting. Te Matatini o te Rā, the national kapa haka festival in Gisborne, was selected as an ideal first venue. Te Matatini attracts thousands of people, mainly Māori, from throughout New Zealand for a five-day cultural festival. In 2011, 50,000 people attended.

At the Whānau Hauora Village, 50 staff from national and regional organisations worked together within a large tent to provide health information, advice and direct services. The initiative was co-ordinated by PHARMAC, the government agency responsible for purchasing pharmaceuticals for District Health Boards (DHBs). Partner organisations included: the Tairāwhiti DHB; Plunket; the National Heart Foundation; Te Hotu Manawa Māori; Te Ora staff; Māori Pharmacists Association staff; Quit Group; Health Sponsorship Council; Turanganui-a-Kiwa Health and Midlands Health Network.

Due to space and staff constraints at the festival, the Whānau Hauora Village focussed on the key health issues that most affect Māori: diabetes and cervical smears for women, heart checks for men, and tamariki ora services for young children and babies. Whānau Hauora also offered smoking cessation support, medication and pharmacy services, and nutrition and physical activity advice. Specialist services were provided by senior Māori clinicians in sexual health, oncology, and medication advice and counselling.

An evaluation of the Whānau Hauora Village was published in April 2011. It presents feedback from whānau who visited the tent, information about how the project was organised and carried out, conclusions and recommendations. It reports that 2,500 of the 50,000 whānau at Te Matatini visited the Whānau Hauora Village. Of those:

- 303 men had heart checks. 145 of the 303 had moderate to very high risk of a heart attack within the next five years. Followups with those men were completed after Te Matatini.
- 500 women had diabetes checks and reported they were pleased with the service.
- 20 women had cervical smears, including some in their middle to late years who had not had one before. All referrals that were necessary have since been completed.
- 200 contacts were made with whānau with young children and babies.
- One family were diagnosed with an acute skin infection, and treated on-site by a multi-disciplinary team including a Plunket nurse, pharmacist and doctor.¹²¹

Part of the foundational philosophy of the Whānau Hauora Village was Kotahitanga (unity), and providing care to address key Māori health issues. The focus was therefore on whānau and not the individual service providers: “it’s about whānau services and not our brand”. For that reason, all providers were asked to work without their usual uniform. Instead, there was one uniform for all staff and all advertising within the tent carried the same logo. A simple uniform (t-shirt) worn by all staff helped to address the unspoken power imbalance between health providers and patients by allowing patients to feel more at ease in connecting with the health providers. The evaluation found that “one brand, one team is less confusing for whānau, when offering health services, than a mix of stalls with little space and services to offer”.¹²²



Factors for success

1. The Whānau Hauora Village was based on a Māori health framework – Te Whare Tapa Whā – thus providing a culturally appropriate basis for its work.
2. The Whānau Hauora Village was explicitly set up to address barriers to primary healthcare accessibility and treatment for Māori.
3. All organisations came together under the same kaupapa, bearing the same uniforms and branding.
4. A welcoming, comfortable atmosphere was created. Staff within the tent were recognised as critical to creating this atmosphere, and critical to the success of the Whānau Hauora Village. Care was taken to look after the staff.
5. The evaluation report provides comprehensive information about Whānau Hauora Village, how it was set up, what worked well, and recommendations for next time. The implementation of an evaluation process contributes to recognising the success of the project and providing for continued improvement and efficacy.

Sustainability

At the time of writing, there have been three invitations to take the Whānau Hauora Village to other large-scale community celebrations across New Zealand. These invitations demonstrate the success of the project and interest from communities throughout the country. Future Whānau Hauora Villages have, however, been put on hold while further decisions are yet to be made about planning and resources. The evaluation concludes with the whakatauki:

**Kua tawhiti ki to tātou haerenga,
ki te kore e haere tonu**

**He tino nui rawa a tātou mahi,
kia kore e mahi nui tonu.**

We have come too far not to go further

We have done too much not to do more.

(Ta Hemi Henare, Ngāti Hine, 1989)¹²³

Structural discrimination in the education system

Everyone has the right to an education ... Education shall be directed to the full development of the human personality.

Universal Declaration of Human Rights, Article 26

Despite numerous government initiatives, Māori and Pacific peoples continue to experience significant disadvantage in terms of educational outcomes. This section will draw connections between some of the persistent ethnic inequalities in the education sector and structural discrimination, and considers early childhood, primary, secondary and tertiary education.

Participation in Early Childhood Education for Pacific children is improving. However, Pacific new entrants at school still have the lowest prior participation rates in Early Childhood Education at 85.3 per cent compared with 98.1 per cent for Pākeha children, 96.7 per cent for Asian children and 89.4 per cent for Māori children.¹²⁴

In the area of compulsory education, Pacific expulsion rates are four times higher than for Pākehā students. The suspension rate for Māori students is three times higher than for Pākehā students.¹²⁵ Approximately 50 per cent of Māori students leave school without any educational qualifications, compared to 21 per cent of the overall population.¹²⁶

In the tertiary sector, while the number of Māori students gaining university entrance has increased between 2004 to 2008, the gap between the number of Māori and non-Māori gaining university entrance has actually widened.¹²⁷ Māori enrol in tertiary education in lower numbers than other groups. Of all ethnic groups, Pacific peoples have the smallest proportion of degrees or higher qualifications. In 2006, the overall English literacy and numeracy of the adult Pacific population was lower than that of other ethnic groups. Pacific peoples are about half as likely as the total population to achieve a higher-level qualification by the age of 25. They are only a third as likely to achieve a bachelor's degree by this age.¹²⁸

As in other areas, the gaps in educational achievement between Māori, Pacific and Pākeha students is still sometimes explained using a deficit theory approach – that is, that the students themselves lack innate ability or

have poor concentration and so on – despite research that discredits this. Many of those interviewed in the education sector believe it is time to address some of the structural elements that may be connected to these disparities. The Commission heard that “deficit theorising shuts down any other conversation about structural factors that impact Māori students” and that structural discrimination is the “elephant in the room” when talking about ethnic inequalities.

Moving away from deficit theory approaches means not looking at Māori and Pacific students as the problem, but rather examining the structures and systems as key contributors to educational inequity. A recent University of Auckland study described the faulty definition of “the problem” in a recent paper: “our Pasifika children’s history of low achievement in the New Zealand educational system ... is not the children’s failure but the failure of the educational system.” The researchers go on to point out that educational policies targeting Pacific “low levels of literacy,” actually refer to low levels of English literacy. These policies therefore do not acknowledge the importance of bilingual/multilingual education and the multilingual homes of many Pacific students.¹²⁹

The Ministry of Education has developed *Ka Hikitia- Managing for Success* as a core strategy to raise the performance of the education system for Māori learners. This strategy provides a framework for system wide change and a basis for conversations about the nature of structural discrimination in the educational system and how these can be addressed. An interviewee clarified that one of the key premises of *Ka Hikitia* is that the system is failing Māori students, not that Māori students are failing the system.

Educationalist Paul D. Goren made observations and commentary on the initial implementation of *Ka Hikitia* in a 2009 report. He noted the positive work underway to serve the needs of Māori learners, respecting culture, identity and language. He also commented on the challenge faced:

The challenge with a policy framework like *Ka Hikitia* is to change attitudes, thinking, and behaviours in order to improve outcomes for all Māori learners. This means changing hearts and minds rather than solely instituting new compliance requirements.



There have been attempts to change Ministry organisational processes to reflect key *Ka Hikitia* components in areas such as business planning and report writing. Yet, there is concern that *Ka Hikitia* will evolve into a compliance tick list rather than a broad commitment to improve education for and with Māori learners.

The challenge in an organisation like the Ministry is to engage in processes that change attitudes, thinking, and behaviours rather than forcing compliance, while adhering to timelines that meet urgent priorities.¹³⁰

In many cases, intervention programmes aimed at addressing educational achievement are implemented for all students. Such programmes are founded in notions of egalitarianism and are expected to work equally well for all students regardless of ethnic or cultural background. When such race-neutral policies and programmes are implemented, it is difficult to assess the impact on Māori or Pacific student achievement, as separate data is often not collected.¹³¹ Such approaches overlook the reality that some ethnic groups are starting from a marginalised position created through structural discrimination. In our interviews we have heard this described as a “one size fits all” approach, where the one size to fit all is based on the cultural values of the dominant group.

Significant shifts away from this model are being pursued through the redesign of the professional development provision currently being implemented by the Ministry of Education. All procured professional development now has an explicit focus on meeting the needs of Māori, Pasifika and learners with special education needs. This will be enacted through a strong and explicit focus on “identity, language and culture.”

A “one size fits all” approach in education, particularly within mainstream schools, may unintentionally disadvantage Māori and Pacific students by not acknowledging the Pākehā point of reference at the foundation of the educational system. In a recent paper,

in a colouring book, where the “blank” spaces on the page are considered empty to be coloured in, “we don’t often consider the fact that it is already coloured in – with white. White is the “invisible” colour, because it’s just there as the whole background.¹³²

South Auckland school principal, Anne Milne, uses the analogy of a colouring book to describe the normalised nature of dominant culture world views and practices in education systems. She explains that in a colouring book, where the “blank” spaces on the page are considered empty to be coloured in, “we don’t often consider the fact that it is already coloured in – with white. White is the ‘invisible’ colour, because it’s just there as the whole background.”¹³² Milne describes mainstream schools as “white spaces” that reflect the white spaces present in society where a set of rules and practices dictate “whose knowledge is important, what success looks like, what achievement matters, how the space is organised and who has the power.”

To address structurally-biased systems, some researchers have suggested that school environments should develop culturally-responsive practices and policies. Such practices include the use of cultural frameworks that acknowledge and legitimise Māori and Pacific students, how they engage and make sense of the world as different from Pākehā students.¹³³ In the interviews, people have advocated for practices and policies that are both culturally appropriate and culturally responsive. That is, validating Māori cultural values, settings, tikanga, but also building relationships with Māori whānau and community, changing the curriculum to incorporate students’ heritage and cultural frameworks, asking students for their perspective (rather than assuming) and being informed by whānau.

Research has found that schools which have been effective in increasing student and whānau engagement had an environment where te ao Māori (a Māori perspective) was recognised, respected and valued.¹³⁴ The Te Kotahitanga programme is one initiative that develops culturally-responsive practices and policies in schools. This programme is discussed in the case-study following this systemic analysis.

The Education Review Office has found that schools that have developed initiatives specific to Māori and Pacific needs and cultural ways of being are actually more



effective in building relationships and enhancing student achievement.¹³⁵ Acknowledging and identifying Māori and Pacific student needs and developing programmes specific to those needs, rather than looking at the student population as a homogenous group, yields more effective results in enhancing student achievement.

It is also important to note the critical interplay between poverty and children's ability to fully engage in education. Socio-economic factors including poverty play a key role in determining inequitable educational outcomes. The *Household Economic Survey* of 2008 showed that 20 per cent of New Zealand children lived in relative poverty. The Commission's *Human Rights in New Zealand 2010* report notes that students from low socio-economic communities are less likely than others to attain higher school qualifications. The NCEA level 1 pass rate at the poorest 30 per cent of secondary schools is only two-thirds that of the wealthiest 30 per cent of schools.¹³⁶ The fact that Māori and Pacific peoples are disproportionately represented in lower socio-economic communities makes them particularly susceptible to the impacts of structural discrimination.

A 2011 report by the Child Poverty Action Group, *Hunger for Learning*, draws a connection between poverty, nutrition and children's educational performance. There is a growing body of research that points to the links between access to good quality food and improved school attendance, engagement and performance. These linkages illustrate the connected nature of socio-economic factors and systemic barriers to equality across several sectors, including health, education and the economy.

Some research suggests that in order to truly change inequitable outcomes, we must challenge Eurocentric solutions to educational achievement and acknowledge the role of Pākehā/white privilege in maintaining unjust systems.¹³⁷ Milne comments:

Whiteness and white privilege are central to the conversations we must have to effect real change for non-white children in our school system.¹³⁸

Milne explains that the primary focus of current educational reform policy is on raising literacy and numeracy levels and improving national qualifications

results: "these initiatives largely persist in seeing the white space as neutral and the goal is to raise Māori and Pasifika students' achievement to 'national norms'." She challenges the Pākehā/white norm as neutral and objective and stresses the need to shift the problematic and Eurocentric assumptions underlying educational paradigms and present day school improvement initiatives.

Tertiary institutions have a significant part to play in increasing the participation and achievement of Māori and Pacific students. The Ministry of Pacific Island Affairs and Statistics New Zealand have reported:

in 2006, only half of tertiary education organisations report that they were developing relationships with Pacific communities. Most of these organisations were focused on attracting more Pacific students and few on understanding and addressing the needs and aspirations of the community. There is significant room for improvement.¹³⁹

Where tertiary institutions have a presence in underrepresented communities – for example, at career expos for secondary students and by developing relationships with community groups – there is much greater potential to create a sense of accessibility. Creating a supportive environment is also important for tertiary institutions to ensure existing students feel supported and engaged in tertiary life.¹⁴⁰

Most research and education policy points to the importance of looking to early education and primary school, as opposed to later years, in order to address systemic inequalities between ethnic groups. Russell Bishop, Professor of Māori Education at the University of Waikato, points out that "while these negative outcomes are most clearly exhibited in high schools, the foundations for these problems commence in the elementary or primary school years."¹⁴¹ In other words, it is important to start early. Many of those the Commission interviewed emphasised that waiting until the senior secondary or university levels to address educational inequalities for Māori and Pacific students in particular, is often too late and interventions at these levels are less likely to be effective or sustainable. Nonetheless, effective programmes have been introduced, including Te Kotahitanga discussed in the following case-study.



Researcher Stuart Middleton provides a compelling argument for why educational success for Māori and Pacific students is critically connected to the educational success for all New Zealand students:

The proportion of students coming from backgrounds that lead to high achievement is shrinking while the number of students coming from backgrounds classed as low-decile continues to grow. If New Zealand does not address the achievement of those at the bottom of the pile, its international standing will not survive at a high level ... New Zealand won't have a successful education system until it is successful for Māori and Pasifika learners.¹⁴²

Responses to structural discrimination in the education system

Case study:

Te Kotahitanga

A programme that shows promise in addressing structural barriers to ethnic equality in the education sector is Te Kotahitanga, a professional development programme designed for secondary school teachers. Launched in 2001 by the Ministry of Education, it was developed in response to persistent levels of underachievement among Māori students in English-medium schools.

The aim of the programme is to improve Māori student achievement by focusing on culturally-responsive teaching pedagogy within classrooms, putting emphasis on the teacher's role in power-sharing, creating classrooms where students' cultural identities are affirmed and student-teacher relations are interactive and inter-dependent.

While not explicitly developed to address structural discrimination, Te Kotahitanga inherently seeks to transform teacher pedagogy and school structures in an effort to improve Māori student achievement, thereby addressing embedded ethnic inequalities in secondary education.

According to an interview respondent, Te Kotahitanga “encourages teachers to step away from structural discrimination practices and examine their own positioning through a professional learning and development model.”

Russell Bishop and Mere Berryman, co-creators of the programme, found that the dominance of deficit theorising by teachers, both consciously and unconsciously, perpetuate teachers' already low expectations of Māori students' ability. Students who feel their teachers have low or negative expectations of them will respond negatively, resulting in frustrating consequences for both students and teachers:

The main consequence of such deficit theorising for the quality of teachers' relationships with Māori students and for classroom interactions is that teachers tend to have fatalistic attitudes ... This in turn creates a downward spiralling, self-fulfilling prophecy of Māori student under achievement and failure.¹⁴³

Bishop, Berryman, T Cavanagh and L Teddy (Bishop et al) explain how society-wide power imbalances are played out in classrooms and their impacts on marginalized students:

Power imbalances need to be examined by educators at all levels in terms of their own cultural assumptions and a consideration of how they might be participants in the systematic marginalization of students in their classrooms, their schools and the wider system.¹⁴⁴

Through opportunities for critical teacher self-reflection and repositioning, classroom observations and feedback, co-construction meetings and shadow coaching, the programme seeks to address power imbalances and resultant levels of educational underachievement.

Bishop et al further describe the focus of the programme:

The project was based on the notion that when teachers are able to engage in critical reflection about the images they have of marginalized students and the resultant relationships they have with these students, they are more likely to be able to engage in power-sharing practices. This means that teachers who espouse and enact power-sharing theories of practice will better enable previously marginalized students to more successfully participate and engage in educational systems on their own culturally constituted terms.¹⁴⁵

Bishop et al found that the quality of teacher-student relationships and interactions was a central factor in improving Māori student achievement. Shifting teaching pedagogy and developing meaningful relationships between teachers and students dramatically improves Māori academic achievement. Subsequent evaluation of the programme has found promising results, including improved numeracy levels and increasing proportions of Māori students attaining NCEA 1.¹⁴⁶

Recent research on the Te Kotahitanga programme has shown that shifting teaching pedagogy and developing meaningful relationships with Māori students and with whānau improves educational achievement not only for Māori students, but also for Pacific, Asian and new migrant students as well. The research suggests that teachers who are able to implement culturally responsive teaching practices in their classroom also benefit these other students, through a greater awareness of both the teacher and student as culturally-located individuals.¹⁴⁷



Factors for success

Through the interview process, several key factors were identified that made Te Kotahitanga effective at addressing student achievement and educational inequalities:

1. Tailoring programmes and initiatives to the specific needs of Māori students, and making these initiatives visible at all levels of the school
2. Ongoing evaluation measures
3. Developing communities of practice through “co-construction” and regular meetings with other teachers across subject areas to discuss Māori student achievement
4. Effective communication and engagement with parents and whānau, with ongoing parent and whānau involvement and participation in school life
5. Consultation with Māori staff and whānau
6. Support from school leadership teams and boards of trustees.

Sustainability

While the Ministry of Education firmly supports the Te Kotahitanga programme, its sustainability depends on inter-agency support and a cultural shift in how such intervention programmes are designed and implemented. While the programme is bottom-up in its approach and process, it needs to be met by a top-down commitment. Thus the sustainability of both the programme and its underlying principles depend on support from school leadership (principals, boards of trustees). In order for the programme to achieve sustainability, experience in implementing Te Kotahitanga indicates that it is critical to reach a “tipping point” where the majority of teachers understand the Te Kotahitanga principles:

it’s not about reaching a set number of schools, because turnover in schools can be high. Rather, it’s about re-culturing teachers and principals and shifting notions of ‘this is the way we do things around here’.

Structural discrimination in the justice system

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

International Covenant on Civil and Political Rights, Article 26

In this section, manifestations of structural discrimination in the justice system are discussed. The specific focus is the criminal justice system, although it's acknowledged that the justice system is not solely reducible to criminal justice.¹⁴⁸ In developing this section three aspects of the criminal justice system were considered: policing; courts; and correctional facilities and rehabilitation.

Often cited is the “fact” that Māori – and, to a lesser extent, Pacific peoples – are over-represented in the criminal justice system. It is important, however, to place this in context. It is younger people who are more likely to come into contact with the criminal justice system, and both the Māori and Pacific Island populations in New Zealand have a younger age distribution than the population as a whole.¹⁴⁹

Nonetheless, information gathered suggests that there are two forms of structural discrimination that exist within the justice system in New Zealand. The first relates to the nature of the system. That is, the values the system is based upon, a lack of engagement with Māori and Pacific peoples in project design and implementation and a lack of cultural sensitivity. The second relates to practice within the system. There is evidence of bias at different points throughout the system from apprehensions to sentencing, which notably contributes to the higher rates of Māori and Pacific imprisonment. Manifestations of these forms of structural discrimination are discussed further below.

Values underpinning the criminal justice system

Initially founded on the British model, New Zealand's justice system is based on perpetrators taking individual responsibility for their crime. Until recently the system has not incorporated Māori and Pacific frameworks of justice that take into account a greater sense of whānau and community responsibility and involvement in the justice process.

In tikanga Māori, a collective group is identified as the victim and a collective group is responsible as the offender. This comes in part from the collective nature of traditional Māori society. The whānau, hapū and iwi of the victim and offender are also affected by offending as it diminishes the victim and offenders' ability to contribute to the collective. Because offending has such a community-wide impact, the community as a whole is involved in the justice process.¹⁵⁰

Pacific conceptions of justice are similarly relationship-based. Pacific definitions take as their starting point the state of wellbeing. Pacific researchers tell us that for a Pacific person, wellbeing exists when their relationships with their environment, their God and other people are in a state of mental, physical, psychological, emotional and spiritual balance. Violation against other people, and in particular family members, is viewed as a significant breach of these sacred relationships and thus of wellbeing. Where violence breaches relationships, most Pacific communities will try to re-establish the disrupted relationships and restore balance. Punitive measures are considered only within the context of the holistic healing of the network of relationships affected by the breaches.¹⁵¹ The aiga/fanau or traditional Pacific family unit is responsible for the welfare and wellbeing of its members.¹⁵² Practices such as the Samoan ifoga – the traditional practice of seeking forgiveness and rendering a formal apology – could be one way in which the family or community seeks to restore damaged relationships.¹⁵³

In a paper on Māori-based justice, Marie Dyhrberg reflects on her experience as a barrister in South Auckland, where about 90 per cent of her clients were Māori or Pacific peoples. Dyhrberg comments:

The New Zealand criminal justice system, as an example of the adversarial system is, by nature, antithetical to the traditional approach as practised in the Marae. It is my opinion that the maintenance of law and order generally may be better achieved by adopting a system based on Māori and Pacific Islander principles of conflict resolution which welcomes and provides for a greater sense of community involvement and responsibility in the justice process.¹⁵⁴



The lack of Māori and Pacific principles of conflict resolution perhaps stem from a failure by the justice system to value these principles. In one of the case-studies that follows, initiatives discussed seek to incorporate Māori and Pacific principles of conflict resolution into the justice system, such as Rangatahi Courts and Pasifika Youth Courts. The importance of incorporating ethnically-diverse values in a genuine and comprehensive way is also discussed further in the public service section of this paper.

Some researchers have, however, criticised a “pick and choose” approach that incorporates some indigenous justice processes so long as they fit within the dominant justice ordering. They have instead called for a justice system-wide recognition of Māori values. In a 1995 paper, the family group conferencing process was praised as an example of blending indigenous justice processes and the Western justice system.¹⁵⁵ Others, however, view it as an inadequate solution to systemic issues of structural discrimination. Moana Jackson, lawyer, argues that:

Justice for Māori does not mean the attempted grafting of Māori processes upon a system that retains the authority to determine the extent, applicability, and validity of the processes. No matter how well intentioned and sincere such efforts, it is respectfully suggested that they will merely maintain the co-option and redefinition of Māori values and authorities which underpins so much of the colonial will to control.¹⁵⁶

In order to address some of the core issues of structural discrimination in the justice system, changes in dominant culture systems and practices need to be made. While an important start, adding on cultural elements to a dominant system does not change the fundamental inequalities that give rise to disparities within the justice system. There also needs to be a shift in values to recognise the need for and the potential of locally-designed, developed and delivered programmes, such as programmes by Māori for Māori.¹⁵⁷

Māori in the criminal justice system

One of the most dramatic indicators of ethnic inequalities in the criminal justice system is the high proportion of Māori in prison. Researchers both within New Zealand and internationally have discussed structural discrimination as a causal factor in the world-wide over-representation of indigenous peoples within justice systems.

The age-adjusted rate of imprisonment for Māori men is approximately seven times the rate for New Zealand European men and for Māori women the rate is approximately nine times that of European women. In December 2010, Māori made up 51 per cent of the prison population,¹⁵⁸ despite accounting for only 15 per cent of the national population.¹⁵⁹ The Commission’s annual review of race relations for 2010 reports that Māori were disproportionately represented in all areas of the criminal justice system, from victims of crime to those apprehended, in prison and serving community-based sentences.¹⁶⁰

colonisation generated broad social inequalities leading to deprivation, the deprivation causes the crime, causes the inequality, causes the deprivation.¹⁶¹

Criminologist Simone Bull, however, urges a more nuanced analysis of “Māori over-representation in the criminal justice system”. Known risk factors – such as youth, gender, unemployment, lack of education, and substandard housing – are infrequently used to gain a more accurate picture of “Māori offending.” Bull argues

that “we have never undertaken research to test whether Māori are still over-represented in the criminal justice system once you control for known criminogenic variables.” Generalisations about Māori criminality which do not assess socio-economic factors, play a role in stereotyping Māori and perpetuating misinformation. Bull summarises the cyclical relationship: “colonisation generated broad social inequalities leading to deprivation, the deprivation causes the crime, causes the inequality, causes the deprivation.”¹⁶¹

Young Māori males, as Bull notes, are particularly disproportionately represented in the criminal justice system. On the high proportion of Māori youth in the justice system, Principal Youth Court Judge Andrew Becroft has recently said:

This is utterly unacceptable. Is it systemic bias? Is it the result of long term cultural disadvantage? It’s probably both.¹⁶²

Te Puni Kōkiri recent report *Addressing the Drivers of Crime* for Māori notes that “In the New Zealand context, preferential investment in evidence-based programmes has inhibited the development of good empirical evidence about what works best for Māori.”

The report goes on to say:



While there has been intermittent support for locally designed, developed and delivered programmes in New Zealand, these are often regarded as experimental and somehow of lesser quality than large scale imported programmes, and therefore not funded to the point that evaluation can be rigorously undertaken. For Māori, this history has been expensive and mainly unsuccessful in addressing complex issues such as offending.¹⁶³

Genuine, comprehensive incorporation of Māori and Pacific values is dependent on the justice system engaging with Māori and Pacific peoples in programme design and implementation. In 2005 Judge Becroft described how tikanga, whanaungatanga and whānau can be appropriately incorporated into the justice process. Perhaps more importantly, he also explained that the question of whether and how these approaches should be incorporated is a question for Māori to answer. Judge Becroft wrote that:

There are few youth offending programmes and services designed specifically by Māori for Māori. Effective programmes should be staffed by Māori people with similar life experiences to their young charges.¹⁶⁴

In addition to concerns about the lack of Māori and Pacific principles and presence in the justice system, there is evidence of biased practice. A 2007 report by the Department of Corrections, *Over-representation of Māori in the Criminal Justice System*, shows a higher likelihood for Māori offenders to have police contact; be charged; lack legal representation; not be granted bail; plead guilty; be convicted; be sentenced to non-monetary penalties; and be denied release to Home Detention. The evidence from this and other reports is summarised briefly below.

When considering the higher likelihood of Māori contact with police, *Over-representation of Māori in the Criminal Justice System* highlights Christchurch-based research. The research shows that Māori cannabis users were arrested at a substantially higher rate than other cannabis users questioned by the Police. On the basis of equivalent usage, Māori experienced arrest at three times the rate of non-Māori users.¹⁶⁵ The Police Māori responsiveness strategy identifies the need for Police to build on relationships with Māori communities, iwi and whānau. University of Auckland criminologist Robert Webb has reported on research into

international policing practices. The research found that ethnic groups viewed by society as more criminally prone tend to be over-policed.¹⁶⁶

Societal attitudes contribute to an increase in both formal and informal profiling by Police, thereby increasing Māori arrest rates and entry into the justice system as offenders. For example, Māori are four to five times more likely to be apprehended, prosecuted and convicted than their non-Māori counterparts.¹⁶⁷ These rates are higher when taking into account the age of offenders: Māori aged 10-13 are almost six times more likely to be apprehended than their New Zealand European counterparts.¹⁶⁸

The Operation 8 raids in Ruātoki in 2007 are a more recent example of police practice that was damaging to relationships with a community and with Māori. Residents in the small Māori township of Ruātoki were searched by armed police, who also boarded a bus carrying young children. Valerie Morse, one of the Pākehā people arrested in the Operation 8 case, outside of Ruātoki, notes that for “the non-indigenous arrestees ... the situation was starkly different”.¹⁶⁹

The differences in convictions and sentencing for Māori and non-Māori illustrate evidence of structural discrimination and unconscious bias within the justice system sentencing process. The extent to which ethnic bias influences outcomes in the justice system can be difficult to pinpoint. Some of the ethnic bias illustrated in *Over-representation of Māori in the Criminal Justice System* can also be explained by other factors. The seriousness of offence or offenders' previous history, for example, must also be taken into account in sentencing processes, and Māori are over-represented as violent offenders. Based on the research, however, we suggest that offending history may also be affected by bias within the justice system. Nonetheless, there remains evidence of residual bias: when comparing offenders with similar histories, 3.6 per cent fewer Māori were given leave to apply for Home Detention and 2 per cent fewer Māori offenders were granted Home Detention.

In the area of convictions, *Over-representation of Māori in the Criminal Justice System* found that 79 per cent of Māori were convicted compared with 70 per cent of non-Māori. The report also considers sentencing and the frequency with which Māori receive more severe sentences. Māori were more likely to receive a prison sentence when compared



to non-Māori. Between 11 per cent and 13 per cent of convicted Māori receive sentences of imprisonment, as opposed to 7-9 per cent of Europeans, a significant difference. The Corrections report concludes that although the effects of bias may be small when other factors are discounted, the high rate of Māori imprisonment indicates this bias may have a cumulative effect.

Over-representation of Māori in the Criminal Justice System also discusses the effect of detainees not co-operating with Police. A 1998 study suggests Māori and Police hold negative attitudes towards each other and Māori perceive Police as biased against them. These attitudes may decrease detainees' willingness to co-operate with Police and in turn increases the likelihood that the Police officer will proceed with charges.

Another important factor to consider in examining structural discrimination in the justice system is the social and economic conditions for Māori that tend to increase the risk of involvement with crime. Social and economic inequality and adverse early-life environmental factors for Māori are well-documented. The extent to which these inequalities increase risk of involvement with crime is not fully known. Yet there is strong evidence of correlation between the two factors: bias within the justice system and increased risk due to inequitable social and economic conditions. Within this interplay, the existence of one factor makes the other more likely. *Over-representation of Māori in the Criminal Justice System* concludes that early intervention in health, social support and education is the most effective way to combat the high rate of Māori imprisonment. However, the report makes no specific recommendations about addressing bias.

Pacific peoples in the criminal justice system

Pacific peoples are also disproportionately represented in the criminal justice system, though not to the same extent as Māori. Pacific peoples were estimated to make up seven per cent of New Zealand's population in 2010,¹⁷⁰ but made up 9.21 per cent of all people arrested and 11.31 per cent of all prisoners.¹⁷¹ In 2005, 48 per cent of Pacific offenders were sentenced for violent offences – this compared with 38 per cent and 25 per cent respectively for Māori and European offenders.¹⁷² Pacific men are seven times more likely to be convicted of violence than other men, four and a half times more likely to be convicted of offences

against justice and three times more likely to be convicted of property offences.¹⁷³

If there is a dearth of good-quality research to interpret the statistics and offer a more nuanced picture of the causes of Māori offending,¹⁷⁴ this is even more the case for Pacific peoples.¹⁷⁵ In his research into Māori conviction rates for domestic violence, researcher G. Raumati Hook also compared the conviction rates across a series of offences between Pākehā and Pacific peoples. His comparison shows that the rates for male assaults on females were more than five times that of Pākehā; the rate for traffic violations and non-violent sex offences was approximately twice as high, while drug-related offences were broadly similar.¹⁷⁶ Hook argues that, as for Māori, the role of possible systemic bias in the lead-up to arrest and conviction needs to be much better understood.

This has implications for the policing of areas with large Pacific communities. Targeted police action has left a legacy of mistrust in Pacific communities. Webb traces, for example, the history of "Dawn Raids" against Pacific peoples carried out by the Police and immigration officials in the 1970s, a practice out of proportion with the actual incidence of offending. The raids were humiliating and insulting to Pacific communities and may be a factor in Pacific peoples' mistrust of Police.¹⁷⁷ In the present, barriers to responsiveness to Pacific peoples may include limited language ability on the part of Police and/or prior experience or perception by Pacific communities that they might suffer unfair treatment or racism.¹⁷⁸

There have been some initiatives in the criminal justice system to incorporate Pacific values into the existing system and address both the high incidence of violent offending:

- in 2002 the New Zealand Police published a strategy to increase Police responsiveness to the Pacific community. The report noted that the main concern for Pacific peoples is violent offending; that Pacific peoples are over-represented as violent offenders and as victims of violence¹⁷⁹
- following the model of the Rangatahi Courts, a Pasifika Youth Court that sits at a Pacific Cultural Centre in Mangere has been established (this is outlined in the following case-study)



- one Pacific Focus Unit, with a similar approach to the Māori Focus Units, discussed in the case-study following this section, has been established at Spring Hill Correctional Facility. Named Vaka Fa'aola, the unit is supported by the local Pacific communities and prisoners must agree to a set of obligations before they are accepted¹⁸⁰
- the Pacific Focus Unit includes the Saili Matagi Violence Prevention Programme. The Saili Matagi therapeutic approach incorporates Pasifika Matua within the delivery of group work sessions to transfer the cultural values, beliefs and concepts that are familiar to men of Pasifika cultures.¹⁸¹

While these are welcome developments, a much more thorough evidence base needs to be developed to better understand the relationship between different Pacific communities and the criminal justice system. Statistics already suggest that there need to be different priorities for Māori and Pacific services and programmes, and further community-led research could better determine how those services and programmes could be developed. Recent research commissioned by the Ministry of Pacific Island Affairs on Pacific pathways to the prevention of sexual violence (2011),¹⁸² and community-led initiatives, such as the Nga Vaka o Kāiga Tapu (2012) Pacific framework developed to address family violence, are steps in the right direction.¹⁸³

Developing successful responses to structural discrimination

In 2009 the Ministry of Justice published a literature review on bias in the justice system. The report found that although more research and evaluation is needed, features of successful responses include:

- including ethnic minority and/or indigenous peoples as a central role in programme design, implementation and governance
- adopting a holistic approach, looking beyond the remit of the criminal justice system to address structural inequalities more broadly
- incorporating appropriate cultural components.¹⁸⁴

The Pacific Advisory Group (PAG) that developed *Nga Vaka o Kāiga Tapu*, a Pacific framework for addressing family violence, reached similar conclusions. In particular, they recommended increasing ethnic workforce capability and capacity amongst practitioners and service providers (including both linguistic and cultural capability), and using a strengths-based, rather than deficit-based, approach. While emphasising conceptual similarities, the PAG were careful to distinguish concepts between Pacific communities and developed seven overlapping, but different, frameworks for Pacific communities.¹⁸⁵

The Ministry of Justice concluded that a policy framework to address ethnic inequalities in the justice system should include:

- responses directed towards reducing ethnic minority and/or indigenous offending and re-offending, including a broader focus on addressing the structural inequalities that contribute to differential offending rates
- process-orientated responses aimed at enhancing cultural understanding and responsiveness within the justice sector, increasing the positive participation of indigenous and ethnic-minority people within the system, and increasing government accountability through the monitoring and publication of information related to rates of ethnic over-representation
- policy-level responses that identify and seek to correct the disproportionate impact of neutral laws, structures, processes, and decision making criteria on particular ethnic-minority groups.¹⁸⁶

The Commission believes that a comprehensive approach to addressing ethnic disparities in the justice system must address systemic bias and structurally discriminatory practices.

There is, however, no 'quick fix' for improving the effectiveness of the criminal justice system and addressing the underlying causes of the disproportionate representation of Māori and Pacific peoples in prisons. In addition to central government intervention and leadership in addressing systemic bias, local government and community groups have crucial roles in preventing crime through encouraging strong parenting models, positive peer group interactions, providing support to at risk families and building communities' ability to raise neighbourhood consciousness and address local conditions.

Responses to structural discrimination in the justice system

The criminal justice system broadly consists of police, courts and correctional services. As such, three examples of initiatives under the umbrella of the justice system have been included: Neighbourhood Policing in Counties Manukau (Police), Rangatahi and Pasifika Youth Courts (Courts) and Māori Focus Units (Correctional Services).

Case study 1: Neighbourhood Policing in Counties Manukau

Neighbourhood Policing is a newly-established programme in New Zealand and the full impacts are not yet known. Those involved, however, report that it has the potential to shift Police relationships with communities and reduce levels of crime. It also has the potential to address issues of structural discrimination within the police force. Neighbourhood Policing changes the values and structure that police work is based upon, in order to make policing more effective in reducing crime by placing an emphasis on prevention and greater engagement between communities and Police.

The programme reflects a shift in national police strategic planning to an overarching philosophy called Community Policing.¹⁸⁷ Community Policing incorporates an emphasis on prevention and proactive work that is reliant on engagement with communities and other government agencies. Counties Manukau reflects this prevention philosophy with their new motto, “be safe, feel safe.” Preventative and proactive police-work builds relationships with neighbourhoods and communities over time, working collaboratively to solve problems, while units simultaneously respond to crime, then follow up with measures to prevent the same problems happening again. One sergeant says of the neighbourhood policing team:

We’re not expert investigators and we’re not solely community cops – we’re a bit of a mongrel group that can be flexible. The advantage with it is its still relationship-based, so while we’re doing our apprehensions and our hard-nosed stuff, we still have a good relationship with both our criminals and our members of the public.¹⁸⁸

This approach is based on constructive engagement with the community. As such, the New Zealand Police recognise that community relationships are strengthened when police units reflect the cultural, ethnic and linguistic diversity of the communities they serve. Counties Manukau, for example, aims to have a workforce comprised of six per cent Asian police, to reflect the Asian population in the community. In a criminal investigation involving a Sikh family, Indian police staff were able to interact with the community using shared language and cultural connections to assist the investigation. Police interactions with the community are more effective when police can connect around shared cultural values.

The Neighbourhood Policing team in Counties Manukau was launched in September 2010, initially with six units of one sergeant and up to six constables. By the end of 2011 there were 12 units in Counties Manukau. There are now 33 Neighbourhood Policing teams nationwide. Units within the neighbourhood police teams focus on small, primarily residential neighbourhoods of approximately 4000 people.

In the first phase of the programme the unit visits homes to conduct a household survey. The purpose of the survey is to gather information about community concerns and needs and to visibly begin engagement between police and the neighbourhood. Common issues raised by community members during the survey collection in Counties Manukau are family violence, drugs, burglary and truancy. The second phase of the programme sets up local community boards formed with key representatives of the neighbourhood. Together with the community boards, Police participate in community-initiated responses to crime.

The interviewees revealed there was an initial sense of cynicism within the police force about the Neighbourhood Policing programme. Some Police felt that “neighbourhood policing isn’t real policing.” When, however, some of the older, more established and respected sergeants volunteered for the programme, staff soon realised the impact building collaborative, engaged relationships with members of the community could have on preventing



crime. Additionally, police can become burnt out when dealing with negative aspects of society and appreciate the focus on positive, proactive and community-oriented initiatives.

If the programme meets its potential, it will have many related benefits for communities beyond crime reduction. One police staffer interviewed suggested a study on the correlation between the Neighbourhood Policing programme and an increase in property values, as a measure of the success of the programme.

Factors for success

Based on interviews with police staff involved in Neighbourhood Policing and other reports on the programme, the following factors can be highlighted as key to its potential for success:

1. Commitment from Government Ministers, police senior management and police staff involved.
2. Ensuring diversity in the police force as a tool to build relationships with local communities through shared language and culture.
3. Neighbourhood Policing teams are deployed based on which communities have greatest need. Community needs are then understood better through face-to-face surveys.
4. Partnership with other government agencies, community and community leaders.

Sustainability

Neighbourhood Policing teams are intended to be a long-term, sustainable way to prevent and reduce crime. The sustainability of the initiative is based on the meaningful relationships developed through the programme's preventative focus to crime. As well as an ongoing commitment from the Police, the sustainability of Neighbourhood Policing is in part reliant on leadership from communities and partnership with other government agencies.

Case study 2:

Rangatahi and Pasifika Youth Courts

Rangatahi Courts are an initiative that locates part of the youth court process in a Māori cultural setting. The aim is to address the over-representation of young Māori in the justice system by providing the best possible rehabilitative response. The Courts encourage strong cultural links and meaningfully involving local Māori communities in the youth justice process, while monitoring a young person's progress using a Family Group Conferencing process. There are now ten Rangatahi Courts operating on marae around the country.

What we know is that young Māori who are connected to their identity and culture don't offend anymore that non Māori.¹⁸⁹

Pasifika Youth Courts are based on the Rangatahi Court concept and aim to improve outcomes for Pacific youth. An important aim of the initiative is to develop a partnership between the Court and the Pacific community.

One Pasifika Youth Court has been established at a Pacific cultural centre in Mangere.

Rangatahi and Pasifika Youth Courts encourage more involvement for whānau and community in the justice process. In his keynote speech at the opening of Manurewa Marae Rangatahi Court in 2009, Judge Becroft said "What we know is that young Māori who are connected to their identity and culture don't offend any more than non-Māori."¹⁸⁹ Community connections are key "to make justice what it should be – a partnership between the courts and the community, each dependent on the other."¹⁹⁰

The Courts are not a separate system of justice for Māori and Pacific peoples but a way of using the marae or cultural centre and tikanga Māori or Pacific culture within the Youth Court legal structure. The Courts monitor the young person's progress through a family group conference plan. This involves frequent judicial reviews (fortnightly in most cases) by the same judge, allowing a relationship to build between the judge and young person. So far, only those young people who admit the charge(s) they are facing are offered the opportunity to have their next hearing on the marae or at the Pasifika Youth Court.



At the Rangatahi Court, protocol and participation of the young person, their whānau and community re-enforces responsibility and the development of cultural identity. Each hearing begins with the young person receiving a direct mihi from a kaumatua, showing respect to that young person and acknowledging their whānau and hapū links. This inherently places a responsibility on the young person to reciprocate with dignity. Throughout proceedings people of the marae and community are present. In the marae setting, young people are under the gaze of their elders and ancestors. The Rangatahi Court encourages whānau to play an active role in the court monitoring of their young person. Whānau accompany the young person to the hearing and are given an opportunity to address the judge and marae. Affording whānau this voice also calls on the responsibility of whānau to provide positive guidance for their young people.

Relationships with the community are deepened through tikanga elements including pōwhiri, harirū, sharing kai and whanaungatanga. Each young person is given the opportunity to acknowledge their cultural identity when they respond to the court and in so doing, acknowledge responsibility not just to the victims or the law but also to their marae and community.

While the Rangatahi and Pasifika Youth Courts represent a positive approach to acknowledging the importance of Māori and Pacific cultural frameworks, they do not necessarily address the underlying causes of structural discrimination and bias in the criminal justice system. As mentioned previously, care must be taken so that inclusion of cultural frameworks is not tokenized and upheld as a “silver bullet” strategy without carefully examining the nature of embedded systemic bias and socio-economic inequalities.

As at April 2011, 282 young people have had, or are scheduled to have, their case monitored in a Rangatahi or Pasifika Court.¹⁹¹

Rangatahi and Pasifika Youth Courts are just two examples of court initiatives to encourage community involvement in the criminal justice system and give families and victims a greater voice. The initiative is part of the wider whole-of-government “Addressing the Drivers of Crime” approach to reducing offending and victimisation established in 2009. The approach focuses on early intervention programmes such as increased support for parents and children; reducing harm caused by alcohol and drugs; and reducing re-offending. “Lifting Māori outcomes” is one of the priorities of the initiative.¹⁹²

Factors for success

Based on observations and reporting on the process, the following factors can be identified as key to the early success and potential of Rangatahi and Pasifika Youth Courts:

1. Connection to cultural identity, whānau and community.
2. The Courts are a community-based response to youth offending, strongly dependent on the local community and local marae or cultural centre.
3. The Courts have strong leadership from judges and government ministers have voiced their support at Rangatahi or Pasifika Youth Court opening events.
4. The Courts are also supported by Ministry of Justice staff, both local and national.

Sustainability

The sustainability of the Rangatahi Courts relies on ongoing collaboration across government, marae, government agencies and service providers, community and whānau. Sustainability and future growth is also heavily reliant on Māori and Pacific judges. Low numbers of Māori and Pacific judges may not be able to meet ongoing demand to establish new Rangatahi and Pasifika Youth Courts.



Case study 3:

Māori Focus Units

The Department of Corrections established its first Māori Focus Unit (MFU) at Hawkes Bay prison in 1997. The purpose of the unit is to reduce re-offending rates amongst offenders. The fundamental expectation of the MFU approach is that through developing a personal commitment to tikanga Māori values, offenders become less criminally motivated.

A further four MFUs have been established since 1997. Most operate in stand-alone 60-bed units and all are within prison grounds. One element of the units is the Māori Therapeutic Programme. Significantly, the Māori Therapeutic Programme is largely designed, developed and delivered by Māori. Contracted providers have designed and developed the programme with minimal input by the Department, but delivery is totally contracted to Māori service providers. Other activities include tikanga-based courses and activities, regular involvement of local iwi groups and functioning prisoner-staff forums for decision-making. The Department commissioned an evaluation of the units and produced a report in 2009.¹⁹³ The reports' findings are summarised below.

In the interview process conducted for the evaluation, participants and staff at the units talked of a cohesive and co-operative environment that prisoners found engaging and rewarding. The units were typically described as being a "positive" environment, in contrast to the environment in mainstream units: 'the MFU has a whānau atmosphere ... there's respect for each other, it's structured, and there's lots of tautoko if someone slips up.' (p 25)

The Corrections Officers were described as helpful and caring: "They are more inclined to help you ... give you lots of support ... compared to staff in other units, they show they care about us" (p 25). Unit staff commented that they were often accused by staff in other units of being more permissive, although they applied the same rules and standards as in other units. The staff commented that a high level of rapport between prisoners and staff meant that incidents were relatively rare. There was a high level of satisfaction from unit staff and management with the extent to which unit staff embraced the kaupapa of the units.

The units were described as "a great place to learn" (p 24). Te reo courses were found to be popular and well-attended. Participants reported development in tikanga Māori and strengthened cultural identity and a desire to continue this development in future. Psychometric data gathered for the evaluation showed positive progressions in offenders' thinking patterns. Correctional research shows strong correlation between criminal thinking patterns and likelihood of relapse into re-offending behaviour.

Consequently, the data presented here are important: such findings may be the first published which demonstrate that participants in a culturally-enhanced cognitive-behavioural programme do indeed demonstrate change in terms of criminal thinking. (p 28)

A key message promoted through the MFUs is the importance of taking a positive and productive role within one's whānau. Participants reported improved whānau relationships and greater motivation to be part of whānau and committed to other whānau members. All MFUs evaluated had a Whānau Liaison Officer and all staff interviewed regarded this as an important and valuable service. A well established principle of correctional research is that offenders who establish themselves in a stable family situation are significantly less likely to re-offend.

Key challenges in strengthening the effectiveness and culture of the MFUs are in creating better stability. This was threatened by bringing prisoners serving short sentences in to the units which increased turnover. Another threat to the positive environment was placing prisoners in the units who did not choose to be there. The influence of gang allegiances, and how staff respond to gang membership, is another ongoing issue for MFUs.

Because of the small sample used in the evaluation, evidence of reduced re-offending amongst participants was not conclusive. However, the evaluation found measurable changes in criminal thinking patterns and the development of culturally-based motivations and affiliation. The report states that "taken as a whole, the evidence supports expectations that culturally-based interventions have potential to reduce re-offending".



Factors for success

Based on the evaluation report, several key factors can be identified in what makes the MFUs effective in addressing criminal motivation of offenders:

1. Participants reported that strengthened cultural identity would strengthen their resolve to avoid future offending.
2. Offenders' improved relationships with whānau and commitment to whānau.
3. Tikanga Māori concepts learnt by offenders had positive impact in reducing criminal thinking patterns.
4. The positive environment achieved in the MFUs was in part attributed to commitment from staff.
5. Evaluation is essential to justify expenditure and provide evidence on areas where improvements to the programme could add benefit.

Sustainability

Ongoing commitment from the Department is key to the sustainability of MFUs. Because of the success indicated in the evaluation report, the Department is investing more funding into MFUs and strengthening them where appropriate. In 2011 the Department has decided to increase the delivery hours and delivery volume of the Māori Therapeutic Programme, ensuring a therapeutic pathway is available for all offenders in MFUs. Māori Therapeutic Programme designers are now also providing training to future providers.

Structural discrimination in the public service

Each State party shall take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

Convention on the Elimination of All Forms of Racial Discrimination, Article 2 (1) (c)

This section considers the public service's commitment to diversity and how this is reflected in its workforce.¹⁹⁴ Key questions include why public service senior management is not as ethnically diverse as the population it serves and whether the public policy process accurately reflects the needs of a diverse population.

Ethnic groups are fairly well represented in the public service, given overall population percentages in New Zealand. As at 30 June 2010, European and New Zealand European made up 75.7 per cent; Māori made up 16.4 per cent; Pacific peoples 7.6 per cent; Asian peoples 7.4 per cent; Middle Eastern, Latin American and African peoples one per cent and others four per cent of the total public service. The most significant change since 2001 was a rise of four per cent in Asian peoples in the public service and a decrease of 6.8 per cent in European and New Zealand European.¹⁹⁵

Ethnic groups are not, however, so well represented at senior management levels. In 2010, the State Services Commission reported on diversity in senior management in the public service. The *Equality and Diversity Report: Senior Management of the Public Service* was informed by interviews with people in public service management roles. They found that the proportion of Māori in senior management declined from 9.7 per cent in 2001 to 8.3 per cent in 2010. The proportion of Pacific peoples in senior management also declined slightly in the same period from 1.9 per cent to 1.5 per cent. The percentage of Asian peoples remains unchanged at 1.7 per cent.¹⁹⁶

If Māori and Pasifika don't succeed in the next twenty years; New Zealand will fail as a nation. It's that simple.¹⁹⁷

Diversity is important to the effectiveness of public services. A 2009 OECD report, quoted in the *Equality and Diversity Report* notes that "diversity plays a part in maintaining core public values, increasing managerial efficiency, improving policy effectiveness, raising the quality of public services and enhancing social mobility." The interviews conducted by the State Services Commission for its 2010 report reflect a general trend in private and public management that few question the benefits of diversity. The importance of diversity initiatives is widely accepted, as is the need for ethnic equality. Business New Zealand Chief Executive Phil O'Reilly is on record as saying, "If Māori and Pasifika don't succeed in the next twenty years; New Zealand will fail as a nation. It's that simple."¹⁹⁷

What then, are the barriers to realising ethnic diversity within public service senior management? The State Services Commission's 2010 report refers to the high proportion of young people within the Māori, Pacific and Asian populations as a factor that may hinder representation in senior management. Another factor is the location of most public service headquarters in Wellington which requires most roles to be based there, while the largest populations of Māori, Pacific and Asian people are based in Auckland. However, these factors alone do not account for overall under-representation. The report says that "For Māori, Pacific and Asian peoples, cultural differences may also come into play, along with direct and indirect discrimination."

In 2006, the State Services Commission reported on failure to meet diversity objectives set in the 2001 Equal Employment Opportunities (EEO) Policy. The objectives were for the elimination of all forms of unfair discrimination in employment. This was to be achieved through:

- inclusive, respectful and responsive organisational cultures which enable access to work, equitable career opportunities, and maximum participation for members of designated groups and all employees
- procedural fairness as a feature of all human resource strategies, systems and practices
- employment of EEO groups at all levels in the workplace.¹⁹⁸



The 2006 report found that a lack of public service-wide leadership and a lack of genuine commitment contributed to the failure to meet the policy's objectives. While departments made good progress to achieve the objectives of the policy, for most of the public service EEO has tended to be regarded and implemented as a human resource practice. It went on to say that "EEO policy had failed because it "operated in such a way that 'target groups' have continued to be defined in relation to the existing dominant groups. In other words, these 'target groups' are simply added to the existing dominant power structure but the essential qualities of the structure remain the same."¹⁹⁹

Another element that may contribute to the failure to meet EEO objectives is the tendency for recruiters to appoint people like themselves. A literature review by the State Services Commission on the appropriateness of EEO targets found:

the social psychology literature emphasises the innate tendency for a dominant group to tend to appoint people like themselves and listen more to people like themselves – often being unaware of the bias involved.²⁰⁰

Good practice to promote diversity includes a combination of approaches, including mentoring, training for management, organisational diversity review and ongoing monitoring, leadership and resourcing. The State Services report on senior management notes, "many commentators warn that without an over-arching framework, specific initiatives will inevitably fail."²⁰¹

Policy should be designed with diverse groups in mind. In April 2005 the Treasury and the Ministry of Women's Affairs hosted an inter-agency workshop: "Ensuring delivery of effective policy outcomes to diverse groups." The workshop identified a number of issues requiring further attention, including the need for a whole-of-government approach if the needs of diverse population groups are to be addressed effectively.²⁰²

According to interviews undertaken by the Commission, policy advice is often not developed with implications for Māori and Pacific peoples in mind. Checklists for drafting Cabinet papers illustrate this point. Most agencies' Cabinet

paper checklists include a box to be ticked off to indicate that Treaty of Waitangi principles were followed in the development of the advice. The checklist box does not ask whether the Cabinet paper contains advice on the

implications of the proposed policy for Māori. Even if those implications are negative, such an analysis would provide Ministers more complete information about the full range of implications associated with a given proposed policy. Including analysis of implications for Māori earlier on in the policy process is important to ensuring solutions for Māori sit comfortably within the final policy package, rather than as an addition at the end of the process.

There have been some recent attempts by agencies to shift organisational attitudes. In 2007 the Office of Ethnic Affairs published its report *Improving the quantity and quality of ethnic affairs policy related research about and with ethnic communities*. The Department of Corrections has refined its policy development process to include and "Effectiveness for Māori Guide." The guide asks policy makers to consider such questions as "How does this work impact on Māori?"²⁰³ Although there have been developments to incorporate thinking about implications for diverse groups and guidance provided, change is yet to be fully implemented at a whole-of-government level.

many commentators warn that without an over-arching framework, specific initiatives will inevitably fail.²⁰¹

Responses to structural discrimination in the public service

Case study:

New Zealand Police Ethnic Strategy Towards 2010

The Working Together with Ethnic Communities: the Police Ethnic Strategy Towards 2010 was published in December 2004. The strategy was one of the first dedicated ethnic strategies developed by a New Zealand government agency. To implement the strategy, the Police have increased recruitment of ethnic staff and initiatives that involved almost every area of Police business. The success of the strategy paid off in an emergency: after the devastating Canterbury earthquakes in February 2011, the Police were the only front-line public service organisation that had structures in place to deal with ethnically, culturally and linguistically diverse communities.

After the earthquake, the Police used interpreters and liaison officers to assist engagement with grieving families and affected communities. Multilingual resources were developed to assist with the identification of foreign nationals who had died and to aid communication between coronial teams and the families of victims. The worst affected areas were individually visited through a door-knocking campaign to reach out to Māori, Pacific, and other ethnic communities. The Police team in Canterbury included specialist Māori, Pacific, and other ethnic liaison and advisory staff.

Initiatives to implement the ethnic strategy included:

1. Ethnic recruitment programmes and new recruitment, training and support policies, such as the Pre-College Employment programme, uniform policy and ethnic leadership programme.
2. Resources to assist with understanding and communicating with ethnic communities, such as the multi-lingual phrasebook *A Practical Reference to Religious Diversity* and multi-lingual website.
3. Enhanced service delivery through structured ethnic training packages for Police staff, the establishment of Asian Safety Patrols, multilingual front counter staff and the Asian Council Against Reducing Crime.

we have chosen to engage with ethnic communities in a very personal manner, developing relationships based on trust and confidence and providing our ethnic communities a tangible voice around our decision-making table.

4. Engagement with ethnic communities by appointing specialist Ethnic Liaison Officers, Ethnic Advisory Boards, Memorandum of Understanding signings and sponsoring national programmes such as the Race Unity Speech Award and NZ Communities Football Cup.

As a result of the strategy and its initiatives, the number of ethnic staff employed by Police has doubled. There has been a decrease in crime associated with ethnic groups: handbag theft, for example, was down 80 per cent in Counties Manukau in 2010. There was also a slight shift in citizens' satisfaction, increasing from 72 per cent in 2008/2009 to 75 per cent in 2009/2010 in the NZ Police Citizens' Satisfaction survey.

The Institute of Public Administration New Zealand (IPANZ) acknowledged the New Zealand Police with an award for excellence in recognising ethnic diversity for their ethnic strategy. In their submission to IPANZ, Police referred to a quote from Earl Warren, former Chief Justice of the

United States: "It is the spirit not the form of the law that keeps justice alive." The submission said:

Although, the primary role of Police is governed by rules of law, we have a choice in how we choose to engage with communities and apply this law. The New Zealand Police have demonstrated that we have chosen to engage with ethnic communities in a very personal manner, developing relationships based on trust and confidence and providing our ethnic communities a tangible voice around our decision-making table.

As a frontline service we had to ensure that we are able to deal not only with our diverse communities at the present time but with a very diverse nation in the future. If the proper foundations and systems were not established we ran the risk of being out of touch with ethnic communities and emerging issues. We would be reacting to what was happening in society rather than having a successful framework in place for engagement, prevention and resolution.²⁰⁴



Factors for success

Based on the evaluation report, several key factors can be identified in what makes the Police Ethnic Strategy effective in being more aware and responsive to ethnic communities:

1. The strategy had clear objectives which were discussed with staff and communities prior to implementation.
2. Recruitment of Police staff reflected the communities being served, with a focus on identifying specialist cultural skills.
3. Ethnic advisory boards represented ethnic communities in decision-making.
4. The Police worked collaboratively with ethnic communities and with other government agencies including the Office of Ethnic Affairs, Ministry of Social Development and Department of Labour.

Sustainability

The strategy to 2010 established a platform for Police to engage with ethnic communities. Police are now developing a new ethnic strategy from 2011 to 2015 to build on the previous one.

Conclusion

Drawing on the preceding systemic analysis, common elements were drawn out between systems that contribute to the maintenance of structural discrimination on the basis of race, ethnicity, colour or national origin. Turning to the case studies, some common success factors are offered, and final comments made on the way forward in tackling structural discrimination.

Common elements: Structural discrimination across systems

In examining some manifestations of structural discrimination within government systems, the Commission encountered common elements that exist across the four systems. These are:

- entrenched ethnic inequalities exist across systems. Although social and economic factors contribute to and exacerbate these inequalities, they alone do not cause inequalities between ethnic groups
- structural discrimination has a cumulative effect within systems. The effects of structural discrimination at one stage in a system flow through to subsequent stages in the system. This can be seen in the criminal justice system, where bias in policing in turn affects the courts, or in education, where barriers in early childhood education contribute to lower levels of educational achievement at the compulsory or tertiary levels
- even where culturally-aware and responsive policies are in place, practitioners may exhibit biased practice. Medical practitioners, teachers, police, judges or public sector management and officials may be unaware of bias in their practices, yet treat some people differently based on ethnicity
- a policy focus on universal provision of public services, i.e. providing the same service to all irrespective of socio-economic status or ethnicity, assumes everyone has equal access to services and ignores barriers to accessing services
- insufficient, patchy or poor-quality data collection on ethnicity shows a lack of commitment to addressing ethnic inequalities for particular population groups. Proper planning for reducing inequalities in each system depends on good-quality, standardised data that is comparable with the census, and births and deaths information
- inaction is a form of structural discrimination. Where government services do not respond to the specific needs of ethnic groups, the absence of initiatives perpetuates barriers.

Common elements: Promising responses to structural discrimination

In examining promising initiatives to addressing structural discrimination there are several common elements that emerge as successful strategies and approaches:

- collaboration between and amongst government agencies in the design and implementation of policies and programmes. Where an issue impacts on outcomes throughout a system or across systems, initiatives are more effective where there is a consistent approach and partnership by government agencies
- cultivating an understanding of what structural discrimination is, an organisational and individual awareness of how it can manifest, and a commitment to developing initiatives to address it. Initiatives are most effective where these exist at all levels, from leadership to front-line staff. It is particularly effective to have both a “top down” and “bottom up” commitment from within agency/organisational leadership
- willingness to have honest conversations within an organisational structure (e.g. office, department or agency) about the underlying causes of structural discrimination and what policies exist that may unintentionally sustain systemic barriers to equality
- meaningful partnership and consultation with Māori, Pacific and ethnic communities to develop and sustain effective interventions to address disparities and ethnic inequalities in all sectors
- targeted programmes with clear objectives that specifically address the needs of Māori, Pacific and ethnic communities – as opposed to programmes developed for “all New Zealanders” – are most effective
- developing and sustaining evaluation processes to measure the impact of initiatives. Developing an evidence base is critical to justify ongoing expenditure. Evaluation should identify areas for improvement and effective practice



- adequate resources – both financial and in terms of staff with relevant expertise (e.g. language skills or cultural knowledge) – training, and support materials are vital.

Common elements have been drawn together and the following summary table produced (see table below).

The Commission also supports the recommendation made by the UN Committee Economic, Social and Cultural Rights to address structural discrimination that the Government set specific equality targets by year and closely monitor their achievement.

Addressing structural discrimination

| Components | Actions |
|---------------------------------|--|
| Build organisational commitment | <ul style="list-style-type: none"> • Show committed leadership at all organisational levels • Analyse institutional practices for possible bias • Know your communities • Reflect diverse client base in workforce • Encourage staff to develop cultural competencies • Encourage staff to engage in reflective practice • Locate power relationships • Foster power-sharing with communities • Collect good-quality, standardised ethnicity data |
| Be proactive | <ul style="list-style-type: none"> • Intervene early • Base on human rights • Tap individual, family/whānau and community potential • Build relationships with communities • Think holistically • Work with other agencies |
| Involve communities | <ul style="list-style-type: none"> • Support community-led initiatives • Work collaboratively • Engage in meaningful consultation • Empower communities to take ownership of programmes • Incorporate diverse cultural values, norms, philosophies and models • Facilitate participation in decision-making |
| Develop targeted programmes | <ul style="list-style-type: none"> • Tailor to specific inequalities and specific groups (or parts of groups) • Include appropriate cultural competencies • Provide staff and communities with resources and training • Allocate adequate funding • Provide a reasonable time-frame for success • Evaluate programmes to identify progress and further action required • Provide avenues for accountability, such as complaints mechanisms |



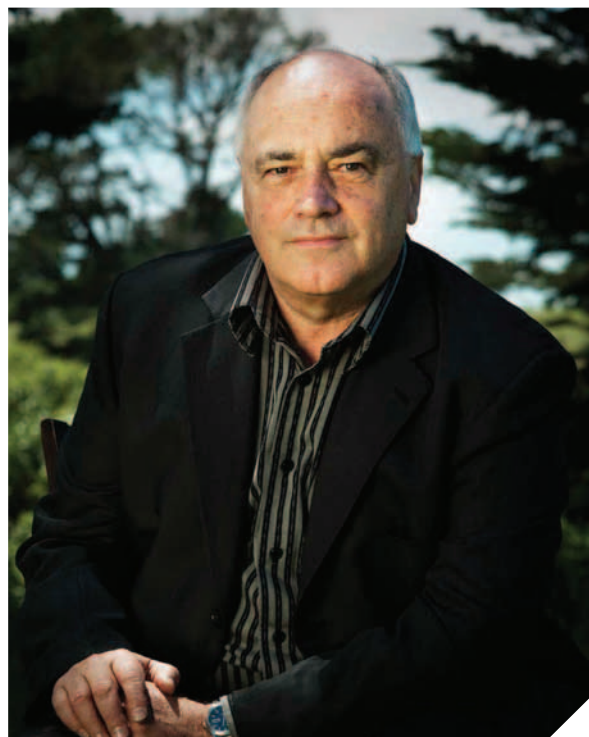
Final comments

In the Commission's research and interviews, there is strong, consistent evidence that structural discrimination is a real and ongoing issue in New Zealand. During workshops, the Commission heard people movingly describe the negative impact of receiving inadequate services. In health, education, criminal justice, and in public services, Māori, Pacific peoples and ethnic communities are disproportionately disadvantaged by a "one size fits all" model of provision. The formal equality of universal provision does not result in the substantive equality of significantly improved outcomes for everyone. Put simply, Māori, Pacific peoples and ethnic communities are not getting a fair go.

Addressing structural discrimination within a system or particular organisation will mean interrogating the ways things have always been done. This could involve returning to first principles and broadening the conceptual basis of what is understood by justice, health, and education, as the Waitangi Tribunal has recommended in *Ko Aotearoa Tēnei*. The statistics show that a monocultural approach in these areas is continuing to fail Māori, Pacific, and ethnic communities, so what do we have to lose by thinking differently?

Focusing more specifically within systems, studies continue to show that specific targeted programmes have the greatest impact on improving unequal outcomes. Yet negative political opinion can quickly be used to erode fragile gains: programmes are shut down after only a few years' implementation; targeted funding is cut; and a refusal to see inequality in terms of ethnicity, despite evidence to the contrary, drives policy development. This is how structural discrimination persists. It is imperative that political backlash does not become the driver for policy formation at the expense of the rights and needs of all of New Zealand's communities. The future success of New Zealand society – for everyone – depends on it.

A fair go for all is possible.





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This policy appeared neutral but had a disproportionate, adverse effect on doctors who had trained in other countries, and had come to New Zealand specifically to seek a career in medicine.



- A doctor trained in the UK, for example, complained that she was unable to obtain permanent full-time work “solely on the fact that my medical degree is not from a New Zealand university”. Another doctor complained that he was prevented from working as a GP but went on to train medical students as a senior lecturer in a New Zealand medical school.
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- 46 The Taskforce conducted a literature review and submissions process including 22 hui around New Zealand. A governance group was established in 2010 comprised of community representatives and senior government officials.
- Whānau Ora consists of two funding streams. The Whānau Ora fund is for providers or provider collective to develop a programme of action and business case to transform their current service provision to a whānau-centred model of practice. The Whānau Integration, Innovation and Engagement Fund provides funding to whānau via Whānau Ora providers (who have been engaged by whānau) to develop a whānau plan. Whānau plans include short, medium and long term aspirations. An example of such aspirations are to learn about whānau land and create leadership development for teenagers in the whānau. The first 25 Whānau Ora service providers and provider collectives were selected, consisting of 158 individual providers. Those providers include Māori and Pacific social service groups and refugee/migrant focussed providers
- Regional Leadership Groups have also been established, comprising community leaders, officials from the Ministry of Social Development, District Health Boards and Te Puni Kōkiri. The Regional Leadership Groups meet frequently with the community, on the marae and at providers' offices. We have heard through interviews that the regional meetings are inclusive and for the large part constructive. Decisions are most often reached through consensus.



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- 175 This gap is noted by Bronwyn Morrison in *Identifying and Responding to Possible Bias in the Criminal Justice System*. She observes: While it was originally intended that the review



- would focus on Māori and Pacific offenders, the paucity of information published about Pacific offenders meant that the majority of the New Zealand research included is based solely on Māori offenders. See Bronwyn Morrison (2009), Identifying and Responding to Possible Bias, p.11.
- 176 G. Raumati Hook (2009), 'The Potential influence of legislation on the criminality of Māori and Pacific Islanders in New Zealand', MAI Review, No 3, Target Article 1, p7. Accessed online at <http://www.review.mai.ac.nz/index.php/MR/article/viewFile/227/311> on 30 May 2012
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- 178 NZ Police (2002) New Zealand Police Pacific Peoples Responsiveness Strategy 2002/06, p.2
- 179 NZ Police (2002) New Zealand Police Pacific Peoples Responsiveness Strategy 2002/06, p.2
- 180 Vaka Fa'aola consists of two words - 'vaka' meaning a canoe in the languages of Tonga, Niue, the Cook Islands, Fiji and Tokelau, and 'fa'aola' meaning growth, life, saviour and hope in Samoan. The Unit was named by the Spring Hill Correctional Facility Pacific Advisory Group
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- Nga Vaka a Kāiga Tapu was born out of a collaborative process of regional fono run by the Pacific Advisory Group on family violence. The culmination of these events led to a national gathering called the Champions of Change fono, the participants of which collectively identified that culture must be the basis for constructing any solution to family violence (Foreward, p iii)
- 183 See also Teuila Percival et al (2010) Pacific Pathways to the Prevention of Sexual Violence.
- 184 Bronwyn Morrison (2009) Identifying and Responding to Bias in the Criminal Justice System, p.14.
- 185 Pacific Advisory Group (PAG) to the Taskforce for Action on Violence within Families (2012) Nga Vaka a Kāiga Tapu, pp.6-10
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