



# **International Convention on the Elimination of All Forms of Racial Discrimination**

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## **Committee on the Elimination of Racial Discrimination**

### **Concluding observations on the eighteenth to twentieth periodic reports of New Zealand**

#### **Addendum**

#### **Information received from New Zealand on follow-up to the concluding observations\***

[Date received: 24 April 2014]

1. On 17 April 2013, the Committee on the Elimination of Racial Discrimination adopted concluding observations on New Zealand's eighteenth to twentieth periodic reports (CERD/C/NZL/18-20). The Committee requested relevant information, within a year, on four of its recommendations related to the national action plan on human rights (paragraph 8 of the concluding observations), incitement of racial hatred on the internet (paragraph 9), the Waitangi Tribunal's 2011 Wai 262 decision (paragraph 14), and the preservation of Māori and Pasifika languages (paragraph 17). This paper provides further information and outlines developments on these issues over the past 12 months. A glossary of Māori terms used is annexed at the back of this paper.

#### **National action plan on human rights**

2. The Human Rights Act 1993 was amended in 2001, to make it one of the core functions of the Human Rights Commission to develop a national plan of action for the promotion and protection of human rights in New Zealand. The first action plan covered the period from 2005 to 2010.

3. The Act requires the Commission to develop the action plan in consultation with interested parties. The Commission plans to undertake extensive consultations with relevant stakeholders including business and civil society. The Commission is also working closely with the Government. The Ministry of Justice will coordinate the involvement of government agencies.

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\* The present document is being issued without formal editing.



4. As the Committee noted in its concluding observations, the new action plan will build on the recommendations made during the second universal periodic review of New Zealand held in January 2014. It is likely that the action plan will address steps to combat racial discrimination.

5. The Commission expects to complete the action plan in March 2015.

## **Incitement of racial hatred on the internet**

### **Harmful Digital Communications Bill**

6. The Government introduced the Harmful Digital Communications Bill into the New Zealand House of Representatives on 5 November 2013. The Bill addresses harmful digital communications, which include bullying, stalking, harassment, malicious impersonation and serious threats carried out via digital communications. Inciting racial hatred through digital communications is covered by the Bill.

7. The Bill:

(a) Creates ten communication principles to provide public guidance and education on unacceptable digital behaviour;

(b) Sets up a civil enforcement regime to reduce harm from harmful digital communications;

(c) Creates new criminal offences to deal with the most serious instances of harmful digital communications;

(d) Amends existing laws to cover their application to electronic communications and provide more avenues for redress.

### **Communication principles**

8. The communication principles are derived from existing law and are simplified for ease of public reference. For example, principle 10 states that a communication should not denigrate a person by reason of his or her colour, race, ethnic origins, religion, gender, sexual orientation, or disability. This principle is derived from the Human Rights Act 1993.

### **Civil enforcement**

9. Under the Bill, initial complaints about harmful digital communications are made to an “approved agency”. The approved agency will, where a complainant has suffered serious emotional distress, attempt to resolve the matter through negotiation, persuasion and other non-coercive measures.

10. Where the approved agency is unable to resolve the matter, a person may apply to the court for a civil remedy. A person may apply for an order where a digital communication constitutes a serious breach of one of the communication principles and has caused serious emotional distress.

11. The court may make a number of civil orders as remedies, for example an order to take down material or to identify an anonymous author of a communication, or to prevent a person from acting in a certain way.

### **Criminal offences**

12. The Bill also creates two new offences:

(a) Posting a harmful digital communication with intent to cause harm to another person, punishable by up to three months' imprisonment or a fine of up to \$2,000;

(b) Inciting or counselling a person to commit suicide, where no attempt at suicide actually occurs, punishable by up to three years' imprisonment.

13. The most serious instances of inciting racial hatred may be prosecuted under these offences.

#### **Amendments to existing legislation**

14. As well as addressing harmful digital communications more generally, the Bill makes amendments to the Human Rights Act 1993 which relate specifically to racial and sexual discrimination. The Human Rights Act contains prohibitions on:

(a) Broadcasting or publishing material which causes racial disharmony (section 61). This section is amended to clarify that the prohibitions also apply to electronic communications;

(b) Sexual harassment and racial harassment in various areas of life (sections 62 and 63). These sections are amended so that the prohibitions on harassment also apply to participation in websites, social media platforms and other electronic forums.

15. Now that the Bill has been introduced into the House, it must follow the legislative process before it becomes an Act of Parliament and therefore part of New Zealand law. This process includes a first reading, the select committee stage (normally where the public has an opportunity to submit on a bill), a second reading, an open parliamentary debate called the Committee of the whole House, a third reading, and finally, royal assent. At the end of each of the reading stages, a vote is held in the House to decide if a bill is to progress to the next stage.

#### **The Waitangi Tribunal's 2011 Wai 262 decision**

16. On 2 July 2011, the Waitangi Tribunal released its findings on the Wai 262 claim which was lodged by six iwi (tribes) in 1991. The Wai 262 report, *Ko Aotearoa Tēnei*, is the Waitangi Tribunal's first whole-of-government inquiry and addresses the work of more than 20 government departments and agencies. The Tribunal's report focuses on the protection of Māori culture and identity, with a particular focus on *mātauranga Māori* (traditional knowledge) and associated *taonga* (treasure). The New Zealand Government is currently considering the report.

17. The New Zealand Government's response to Wai 262 is complex and involves a range of agencies. Specific domestic policy decisions in response to Wai 262 have not been made, however, as New Zealand undertakes policy development in related fields; we are aware of international instruments and emerging models of best practice.

#### **The preservation of Māori and Pacific languages**

##### **Te reo Māori**

18. The current census figures from Statistics New Zealand<sup>1</sup> indicate that there is a decline in te reo Māori except for the age group 65 years and over. More detailed data on

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<sup>1</sup> <http://www.stats.govt.nz/Census/2013-census/profile-and-summary-reports/quickstats-about-maori-english/maori-language.aspx>.

the health of the Māori language will be available later this year when the results of the Māori Social Survey, conducted by Statistics New Zealand in 2013, are published.

19. A review of the Māori Language Strategy was undertaken in 2010/11. The Minister of Māori Affairs is now developing a new Māori Language Strategy that includes a strengthened focus on whānau (family), hapū (sub-tribe) and iwi, and consolidating Māori leadership. In addition, the Māori Language Strategy includes proposals for significant changes to governance arrangements for three Crown entities with responsibility for Māori language revitalisation, preservation and protection. These entities are Te Taura Whiri i te Reo Māori (the Māori Language Commission), Te Māngai Paho (the Māori Broadcasting Funding Authority) and the Māori Television Service. Key Māori language stakeholders were consulted on the proposed Strategy in February and March 2014. Following consultation, the final version of the Strategy will be submitted to the New Zealand Cabinet for approval.

### **Māori language in education**

20. Māori language in education is vital for supporting both the number of people using the language and the development of the language. Without it, there are very few opportunities for the language to thrive, for its status and quality to be expanded and for Māori to both enjoy and achieve education success.

21. The Ministry of Education is responsible for implementing the Government's policies on Māori language in education, across the whole system. This includes early childhood education, learning in primary and secondary education, and beyond into tertiary education. It is primarily delivered in programmes:

(a) Where the principal language and medium of instruction is Māori<sup>2</sup> (in *kōhanga reo* and *puna reo*, *kura kaupapa Māori* and *wharekura*, *kura ā iwi* and *wānanga*)<sup>3</sup> and the outcome is mostly a bilingual one;

(b) Where Māori is learnt as a subject.

22. The Government spends approximately \$125m a year on Māori language in education and a further \$730m a year meeting operational costs such as staffing, classrooms and IT, and general operating costs.

23. In 2013, the Ministry of Education released the Government's *Tau Mai Te Reo* – the Māori Language in Education Strategy 2013–2017. *Tau Mai Te Reo* sets out the strategic direction for the Ministry of Education and the education sector agencies. It provides a way for increasing the value of the Government's investment in Māori language in education over the next five years.

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<sup>2</sup> Māori medium - settings where teaching occurs in and through the Māori language for 51–100 per cent of the time.

<sup>3</sup> *Kōhanga reo* – early-learning Māori language provider. Affiliated to Te Kōhanga Reo National Trust. *Puna reo* – Bilingual/Māori immersion early-learning provider. *Kura kaupapa Māori* – Māori medium schools (Years 1–8). Established under section 155 of the Education Act and adhere to Te Aho Matua.

*Wharekura* – Māori medium secondary schools (years 9–13). Established under section 155 of the Education Act and adhere to Te Aho Matua.

*Kura ā-iwi* – Special designated-character schools established under section 156 of the Education Act. These schools often affiliate to an iwi (tribe) or hapū (sub-tribe). These kura cater to the educational needs of individual iwi or hapū and teach in a way that reflects their own dialect and tikanga (protocol).

*Wānanga* – Māori medium tertiary education institute.

24. Tau Mai Te Reo reflects some of the key parts of the Government's overall Māori Language Strategy. It includes:

- The central importance of the child and young person being immersed in and learning the language.
- The important role of iwi, hapū and whānau in the learning and revival of the language, particularly their support for their children.
- The value of good research and information about the state of the Māori language in education and how this is critical for both planning and reporting purposes.
- The need to have good investment advice and information to make better decisions about how to expand both the numbers and value of Māori language in education.
- The importance of a strong and capable professional workforce supported and backed by all the education agencies, and the community.

### **Pacific languages**

#### *Pacific languages in communities*

25. Pacific people have settled in significant numbers in New Zealand for over 60 years. Many Pacific people are now long term residents, with 40 per cent having arrived in New Zealand 20 or more years ago. Many are also second or third generation.

26. In the 2013 census, the Pacific population was 295,941, 7.4 per cent of the total population (an increase from 6.9 per cent in 2006). The Pacific group consists of at least 13 languages and cultural groups (Samoan, Cook Islands, Tongan, Niuean, Fijian, and Tokelau, Tuvalu, Kiribati, Papua New Guinea, Vanuatu, the Solomon Islands and the small island States of Micronesia). Each has its own language, with considerable variation across the groups in terms of language capability.

27. The Ministry of Pacific Island Affairs continues to support Pacific communities to preserve their heritage language. In 2013, the Ministry of Pacific Island Affairs supported community groups to deliver seven language-week programmes:

- (a) Samoan (May-June)
- (b) Cook Islands Maori (4-10 August)
- (c) Tongan (1-7 September)
- (d) Tuvaluan (30 September-6 October)
- (e) Fijian (7-13 October)
- (f) Niuean (13-19 October)
- (g) Tokelauan (28 October-3 November)

28. Language weeks provide a visible mechanism for raising awareness of the value of language and culture amongst Pacific communities in New Zealand and across different learning environments: home, community, churches, schools, early childhood education centres, tertiary providers, museums, libraries and workplaces. To reinforce the Government's strong commitment to the preservation of heritage languages, some of the Pacific language weeks were launched at Parliament by the Minister of Pacific Island Affairs, with support from parliamentary colleagues. The response to Pacific language weeks has ignited considerable interest in Pacific languages and their role in New Zealand.

29. The Ministry of Pacific Island Affairs has also supported a range of Pacific community language activities, such as the development of bilingual books for very young

children in four different Pacific languages, an intergenerational language learning class that enabled elders, adults, parents and young children to learn together, and the celebration of traditions illustrated through activities such as storytelling (including myths and legends) and proverbs.

30. The Pacific language activities are aligned to the Pacific Languages Framework (October 2012),<sup>4</sup> which has been a major focus of the Ministry of Pacific Island Affairs' work to strengthen Pacific language use in New Zealand, and is designed to support Pacific communities to achieve their aspirations for language revitalisation.

31. Implementation of the Pacific Languages Framework is led by Pasifika communities, with support from the Ministry of Pacific Island Affairs. The stakeholder group has been expanded from an initial seven ethnic Pacific community groups and collectives to approximately 24 organisations and collectives to date.

32. In addition, the Ministry of Pacific Island Affairs developed and published the Pacific Languages Compendium (June 2013)<sup>5</sup> – a web-based directory of New Zealand government resources that are written or delivered in a Pacific language. The Pacific Languages Compendium is divided into 14 sections, each of which lists the government resources that are written in a particular Pacific language. An additional two sections cover educational resources for Pacific language learning and government initiatives such as action plans or programmes that support Pacific people who are living in New Zealand. The Pacific Languages Compendium sits alongside the Pacific Languages Framework.

#### **Pacific languages in education – early childhood education**

33. The Education and Science Select Committee's inquiry into Pacific languages in early childhood education began in May 2012. The inquiry investigated the current frameworks that support Pacific languages in early childhood education in New Zealand. The Ministry of Pacific Island Affairs, along with the Ministry of Education, were official advisors to the Select Committee, which released its recommendations in November 2013.

34. The latest figures for participation in early childhood education before starting school for the year ended December 2013 show that participation amongst Pasifika children has increased by 1.9 percentage points to 89.3 per cent. This is a much faster rate of increase than the overall increase of 0.5 percentage points, although the overall participation rate is 95.7 per cent.

35. The number of early childhood education services providing Pasifika bilingual or immersion education has increased from 87 in 2008 to 96 in 2013 (51 per cent to 100 per cent Pacific language use). Equity funding is targeted to help early childhood education services with particular characteristics, including services that teach in a language other than English for more than 51 per cent of the time. This means that services which provide early childhood education predominantly in Pasifika languages receive extra funding. The average amount of equity funding per service for Pacific language services increased from \$1,406 per annum in 2008 to \$2,876 in 2013 (more than twice as much on average). The number of enrolments in these services increased from 2,504 in 2008 to 2,997 in 2013.

36. In 2013, 57 services provided a Samoan early childhood education programme, 22 Tongan, and the remaining 17 provided Cook Islands Māori, Niuean, Tokelauan and Pukapukan.<sup>6</sup>

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<sup>4</sup> <http://www.mpia.govt.nz/pacific-languages-framework/>

<sup>5</sup> <http://www.mpia.govt.nz/pacific-languages-compendium>

<sup>6</sup> Pukapukan is a Polynesian language that developed in isolation on the island of Pukapuka in the

**Achieving Through Pasifika Languages**

37. Achieving Through Pasifika Languages (ATPL) is a schooling-based initiative developed under the Pasifika Education Plan which has expanded to include the provision of early childhood education. Under this initiative, the Ministry of Education funds programmes which support Pasifika bilingual learners in Years 1 to 9 to learn their Pasifika language and be taught in a homework/study centre environment. The objective is to raise achievement through a Pasifika language. The task force has supported the establishment of early childhood education playgroups in ATPL centres to meet Pasifika communities' needs.

**Pasifika early childhood education teacher education**

38. TeachNZ scholarships are available to support the training of Pasifika early childhood education teachers. The scholarships cover core study fees and an allowance of \$10,000 over the period of study. People awarded scholarships are expected to complete a bond period after finishing their scholarship.

39. The Pasifika language scholarships are for people who are proficient in a Pasifika language, have knowledge, understanding and experience working with Pasifika communities, and want to teach in the early childhood sector. Applicants must be enrolled in an approved Pasifika qualification.

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northern group of the Cook Islands. Pukapukan is not closely related to any other languages of the Cook Islands.

## **Glossary of Māori terms**

Hapū – sub-tribe

Iwi – tribe

Kōhanga Reo – early learning Māori language provider. Affiliated to Te Kōhanga Reo National Trust.

Kura ā-iwi – Special designated character schools established under section 156 of the Education Act. These schools often affiliate to an iwi (tribe) or hapū (sub-tribe). These kura cater to the educational needs of individual iwi or hapū and teach in a way that reflects their own dialect and tikanga (protocol).

Kura Kaupapa Māori – Māori medium school (Years 1-8). Established under section 155 of the Education Act and adhere to Te Aho Matua.

Māori medium – settings where teaching occurs in and through Māori language for 51–100 per cent of the time

Mātauranga Māori – traditional knowledge

Puna Reo – Bilingual/Māori immersion early learning provider

Taonga – treasure

Te Māngai Paho – Māori Broadcasting Funding Authority

Te Taura Whiri i te Reo Māori – The Māori Language Commission

Wānanga – Māori medium tertiary education institute

Whānau – family

Wharekura – Māori medium secondary school (years 9–13). Established under section 155 of the Education Act and adhere to Te Aho Matua.

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