

**International Legal Aid Group Conference:  
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**Cultural Diversity in Aotearoa New Zealand**

**Introduction**

1. The Treaty of Waitangi is the founding document of New Zealand. The Treaty is an agreement entered into by representatives of the Crown and Māori iwi (tribes) and hapu (clans or subtribes) as tangata whenua (indigenous people) of New Zealand. First signed on 6 February 1840, the Treaty is a broad statement of principles upon which the British officials and Māori chiefs made a political compact or covenant to found a nation state and build a government in New Zealand.
2. New Zealand is officially bicultural in recognition of the two signatories of the Treaty of Waitangi. As a state sector organisation the Legal Services Agency (the Agency) has a responsibility to apply the principles of the Treaty in good faith. The Agency does this through a policy framework to integrate the Treaty principles into the strategic and daily work of the Agency.
3. Whilst officially bicultural, statistics show that New Zealand's ethnic make-up is increasingly diverse. The Bill of Rights Act 1990<sup>1</sup> enshrines the principle of freedom from discrimination in New Zealand, and one of the Agency's guiding principles is "recognising choice in responding to diverse communities." This means that the Legal Services Agency, in common with other service delivery organisations, faces a growing need to consult with and provide culturally appropriate services for not just tangata whenua (Maori) but also for people of a wide range of cultural backgrounds and needs.
4. This paper outlines some of the ways that legal aid and related services in New Zealand have responded to the needs of a diverse population, with a particular focus on Māori and Pacific people, across the whole spectrum from representation to legal information. It concludes with a brief examination of the future challenges that an increasingly diverse population presents to service delivery.

**Background**

***The landscape***<sup>2</sup>

- New Zealand's population is over 4.2m and growing. 12.3% of the population are aged over 65, forecasts are that this proportion will rise significantly.
- 14.6% of people identify as Māori and 6.9% identify with a Pacific peoples ethnic group.
- The Asian ethnic group is growing rapidly with an increase of almost 50% between Census 2001 and Census 2006. The second largest increase was Pacific peoples, which increased by almost 15%.

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<sup>1</sup> Section 19.

<sup>2</sup> Source: Statistics New Zealand. Note: in New Zealand people can belong to more than one ethnic group.

- Close to one quarter (22.9%) of New Zealand's population were born overseas, and this proportion continues to increase.
- Almost one third (32.4%) of New Zealand's population lives in Auckland and its population is predicted to increase by 20-30% over the next 10 years. Auckland is also the most ethnically diverse region, and is home to the largest Polynesian population of any city in the world.
- By 2026 Māori, Asian and Pacific populations will make up 16.6%, 16% and 9.8% of the population respectively. This growth is driven by continuing Asian immigration and higher fertility of Māori and Pacific people.
- By 2026 the median age for Māori will be 25.3 years and Pacific people 23.3 years, compared with a national median age of 40. However the trend is for all ethnic groups having increasing proportions of older people.

### ***The justice landscape***<sup>3</sup>

- In 2006, Māori offenders accounted for 53% of cases that resulted in imprisonment. 37% of cases resulting in custodial sentences involved New Zealand European offenders, 7% involved Pacific offenders, and 3% involved offenders from other ethnic groups.
- In 2006, 13% of convicted cases involving Māori offenders resulted in imprisonment, while 8% of cases involving New Zealand Europeans or Pacific peoples had custodial outcomes.
- 61% of women sent to prison were Māori and 44% of the female prison population under the age of 25 were Pacific.
- High proportions of Asian, Maori and Pacific peoples have low income and assets and are thus potentially eligible for legal aid: 35.7% of Pacific peoples and 24.1% of Māori live in areas that fall within the 10% most deprived in the country.<sup>4</sup> The median annual personal income for Asians is NZ\$14,500, for Māori is NZ\$20,900 and for Pacific people is NZ\$20,500, compared to the national median annual personal income of NZ\$24,400.
- Unsurprisingly, considering the criminal justice statistics above, approximately 42% of applicants for criminal legal aid are Māori, while 36% are New Zealand European and 11% are Pacific people. 80% of applicants for criminal legal aid are men.
- 27% of applicants for family legal aid are Māori, while 54% are European. 73% of applicants for family legal aid are women.

### **Barriers to services**

5. There are obvious barriers for some groups in accessing services. These include language, with 2.2% of the population not able to have a conversation about everyday things in English<sup>5</sup> and geographical isolation, with 13% of the population residing in a rural area. However less obvious barriers also need to be considered, for example it is well

<sup>3</sup> Sources: Ministry of Justice. 2007. Conviction and Sentencing of Offenders in New Zealand: 1997 to 2006 and Legal Services Agency Annual Report 2007-2008.

<sup>4</sup> Atlas of Socioeconomic Deprivation in New Zealand NZDep2006. p.23

<sup>5</sup> Census 2006, Statistics New Zealand.

recognised that Māori prefer to access services kanohi ki te kanohi (face to face).<sup>6</sup> Face to face services are also frequently more appropriate for Pacific people. Interestingly, however, the Agency's 2006 National Survey of Unmet Legal Needs and Access to Services found that Pacific women over 45 years old prefer to use the telephone.

### **Overview of legal aid and related services in New Zealand**

6. In New Zealand, legal aid is available for advice and representation in criminal, family and civil matters, on application to the Agency. Funding for legal aid currently operates on a demand forecast budget.
7. Applicants are means tested and a merits (civil and family) or interests of justice (criminal) test is applied. Legal aid is also available for claims before the Waitangi Tribunal (see below) and for matters dealt with in the Youth Court, a closed part of the District Court that deals only with 14 to 16 year olds. There is no financial means test for legal aid in the Youth Court, and the defendant is represented by a Youth Advocate, a lawyer appointed by the Court.
8. With some limited exceptions e.g. domestic violence cases and Waitangi Tribunal legal aid, if they can afford to, legally aided people must repay the Agency some or all of their legal aid.
9. Free duty lawyer services are available at the court for anyone facing criminal charges, and a free (mostly telephone) advice service at the Police Station is provided 24 hours a day 7 days a week.
10. 27 Community Law Centres funded through the Agency provide community legal services (legal information, advice, assistance and some representation services) around the country.
11. The Agency also provides legal education and information resources directly to the general public and community organisations.

### **The Waitangi Tribunal - Support to settle historical indigenous claims**

12. The Waitangi Tribunal is a permanent commission of inquiry charged with making recommendations on claims brought by Māori relating to actions or omissions of the Crown that breach the promises made in the Treaty of Waitangi. The proceedings in the Waitangi Tribunal are primarily against the Crown in relation to past wrongs towards Māori and have largely been focused on redressing wrongs in relation to ownership and control of land and natural resources.
13. The Tribunal's reports lead to the negotiation of settlements between Māori and the Crown, which generally include financial redress, a formal Crown apology for historical breaches of the Treaty and recognition of the group's cultural associations with the land (including rivers and lakes) and/or specific sites.
14. Legal aid has been available for Waitangi Tribunal proceedings since 1988 and is enshrined in legislation in order to provide Māori with the means of pursuing their claims. New Zealand is the only country in the world to provide legal aid (as opposed to other mechanisms to provide financial assistance) to settle historical indigenous claims.

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<sup>6</sup> See for example Report on the 2006 National Survey of Unmet Legal Needs and Access to Services: Results for Maori. p32.

15. Waitangi Tribunal grants form a small number of legal aid grants but take many years to resolve and are generally high cost: in 2007/08 there were 145 new legal aid grants made and NZ\$12 million<sup>7</sup> was spent on legal aid for Waitangi Tribunal cases, forming 11.5% of total legal aid expenditure.
16. 1 September 2008 was set as a deadline for the lodging of historical Treaty of Waitangi claims with the Waitangi Tribunal. This resulted in a huge volume of claims being lodged with the Tribunal: since the creation of the Tribunal in 1975 1,489 claims had been registered, but in the year prior to the deadline 2,000 claims were lodged (98% of them in August 2008). A proportion (unknown of this stage) of this bulge of cases will come through the system in the future and will notably drive up the demand for legal aid.

### **Legal Aid Scheme (representation) responses**

17. The legal aid system in New Zealand relies heavily on private lawyers. Currently the Agency only has a small in-house Public Defence Service (PDS) providing criminal defence and duty solicitor services in two large District Courts in Auckland. Proportionally the PDS undertakes 5% of all criminal legal cases in New Zealand.
18. Many legal aid lawyers are highly skilled in understanding and advising clients from different cultural groups, and members of the profession come from a range of cultures. However, neither the professional practice course required in order to be admitted to the Bar in New Zealand or continuing legal education thereafter include any formal training in providing culturally appropriate services or dealing with diverse clients.
19. In-house services provide the Agency with a greater opportunity to gain an understanding of the legal needs of clients from diverse backgrounds, test different approaches to meeting cultural and other needs, and to develop a cultural perspective to legal aid provision.
20. The PDS employs lawyers from a wide range of cultural backgrounds: five of the 22 lawyers currently employed are of Pacific ethnicity and others are of Māori and Asian ethnicity<sup>8</sup>. Through this and by providing targeted training to in-house lawyers where needed, the Agency has the opportunity to ensure that clients' needs are met in a culturally appropriate manner by a core group of legal aid lawyers. The management of services in-house also allows the Agency to participate in wider court initiatives to improve cultural responsiveness.
21. The PDS was established as a pilot and underwent a four year independent evaluation during which interviews with key stakeholders were undertaken at intervals. In the second round of questions they were asked to rate the PDS in terms of its responsiveness to the needs and expectations of Māori and Pacific clients. Most of the stakeholders who answered the questions rated the service as good on its responsiveness.<sup>9</sup> The Agency was particularly pleased to note the positive feedback of Māori groups.
22. The Agency is also beginning to accommodate the diverse needs of clients in the administration of legal aid. A recent example is the revision of proceedings steps (part of the Agency's guidelines for grants officers) for family legal aid. The revision makes clearer that the time which a lawyer may work on a case is to be increased by up to 30% when an

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<sup>7</sup> The expenditure does not relate to the 145 new grants but to both existing grants and any legal aid monies paid out on the new grants.

<sup>8</sup> It is not compulsory for staff to provide equal opportunity data and some staff chose not to. Staff may also select multiple ethnicities.

<sup>9</sup> Crime and Justice Research Centre, Victoria University of Wellington. 2008. The Public Defence Service Pilot Evaluation Third Interim Report.

interpreter is required. This helps to ensure that legally aided clients who need an interpreter are not disadvantaged in terms of being able to receive information and give instructions.

### **Police Detention Legal Assistance Scheme (legal advice) responses**

23. The Agency rosters lawyers to be on call to provide advice to persons detained or held for questioning by the Police.
24. Recent changes to the administration of the roster in some areas allow lawyers to be assigned to specific cases, including, for example, those with expertise in cases involving youth. In all areas information is provided about the languages that rostered lawyers are able to speak, which helps to ensure the service is accessible to those for whom language is a barrier.

### **Community Legal Services (legal help) responses**

25. The range of community legal services provided by each community law centre (CLC) is tailored to the needs of the community that it services.
26. Predominantly communities are defined by geography, with CLCs providing services to the local community in which they are located. The exception is YouthLaw, a CLC which provides a national service dedicated to young people.
27. Establishing a CLC to provide regional and nationwide services to meet the needs of a specific group of people has in the past proved challenging. CLCs are created to fill a clearly identified gap in community legal service provision after taking into account the activities of existing service providers, including any other CLC located nearby, to ensure that there is no duplication of existing services. Precisely identifying that gap at a regional or national level can be difficult.
28. Three CLCs currently provide community legal services specifically for Māori in their localities, and others are heavily focussed on providing services to Māori, reflecting the demographics of their local population.
29. Equally CLCs in South Auckland are heavily focussed on providing services to their dominant Pacific communities. They actively seek to recruit staff fluent in Pacific languages in order to make their services accessible even to the most vulnerable members of their community who are unable to access other service providers due to language barriers.
30. The vast majority of CLCs run specific initiatives aimed at providing community legal services to meet the needs of particular groups. Examples include:
  - Specialised refugee and migrant services.
  - Wellington CLC's regular closed clinic for women only.
  - Dunedin CLC's use of law students to provide services to other students.
  - Dedicated prison outreach initiatives.
31. Wanganui and Tairāwhiti (Gisborne) CLCs both provide outreach services in which they employ local people to provide services tailored to the needs of the local community. This helps to ensure that services are delivered in a way that makes them accessible to Māori and can offer the community a sense of ownership of the service. For some of their

isolated and poor rural communities this outreach is a necessity for services to be accessible.

32. Good relationships with local iwi (Maori tribes) are critical to the effectiveness of community legal services for Māori. Many CLCs also have an Advisory or Trust Board drawn from people in their community, and that generally includes a representative of local iwi. In addition most CLCs employ a specific staff member to undertake community development. Both of these mechanisms help CLCs to understand and respond to the needs of the diverse communities they serve.

### **Information responses**

33. The Agency currently produces six information pamphlets on legal aid and related services targeted at the general public.
34. Previously the pamphlets were only available in English, however this year the Agency has translated them into four other languages: Māori, Samoan, Tongan and simplified Chinese.
35. These four languages were chosen following a comprehensive exercise that included:
  - An examination of the results from the 2006 Census (official language indicator, and responses to a question about languages spoken).
  - The findings of the Agency's 2006 National Survey of Unmet Legal Needs and Access to Services in relation to those respondents who experienced a problem and said that they wanted either information only or information and basic support and the languages they said they could have a conversation about a lot of everyday things in.
  - The Agency's own data about the ethnicities of legal aid clients who required the use of an interpreter (the cost of which is recorded as a disbursement).
  - Discussion with a wide range of other organisations, including community organisations, community law centres, government organisations and private translation and interpreting companies about what languages they produce information in and where they perceive the greatest need to lie.

### **Future challenges**

36. In New Zealand Māori and Pacific people are disproportionately represented at all stages in the criminal justice system and are thus proportionally high users of criminal legal aid. The challenge for the Agency, in the face of escalating legal aid costs and a worsening economic environment, is to find cost effective ways to deliver services that meet the needs of Maori and Pacific people. These need to include culturally responsive police detention legal assistance scheme services (currently usually provided by telephone), as well as appropriately delivered legal representation.
37. The cost of family legal aid is also forecast to increase markedly. Māori are, again, over-represented in users of family legal aid: 27% of applicants are Māori (compared to the 14.6% of the population that Māori form). Women are also much higher users of family legal aid; around 73% of applicants. In this area, more than in the criminal area, the challenge is for the Agency to identify and meet the legal needs of this group early enough and in such a way that they may not progress to a need for face to face advice or representation. The challenge, and opportunity, is to identify informational needs that can be met early and channel resources appropriately to this group.

38. The growing diversity of our population is of increasing importance for providers of legal aid and related services. As in the rest of the world, New Zealand society is becoming more multicultural and diverse and the challenges of ensuring that justice is accessible to all continue to grow.
39. Many of our minority cultural groups are and will continue to be eligible for legal aid. In New Zealand we will continue to need to address our responsibilities to tangata whenua (Maori) while also meeting the needs of the growing Pacific population and the rapidly growing Asian population.
40. We have outlined some of our approaches to meeting the needs of a diverse population, but we must continue to take opportunities to make the (sometimes radical) changes that improve justice outcomes and address legal needs. Given that a large proportion of legal aid representation is provided by the legal profession we need to consider the extent to which they can, or should, be incentivised to assist.