

The potential influence of Legislation on the criminality of Māori and Pacific Islanders in New Zealand

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Abstract: Māori domestic violence is at an all-time high. The conviction rates of Māori per unit of ethnic population for male assaults on females runs around 8 to 10 times higher than that of Pākehā and is steadily increasing. Conviction rates for other crimes such as drug-related offences runs four times higher for Māori than for Pākehā and four times higher for traffic offences. Conviction rates for non-violent sex crimes for Māori is twice that of Pākehā. For Pacific Islanders (PI) as a group, the conviction rates as compared with Pākehā for male assaults on females runs close to that of Māori, but unlike Māori appears to be diminishing with time. Convictions for drug-related offences are the same as Pākehā in terms of rates per unit PI population and traffic and non-violent sex offences are roughly twice that of Pākehā. Major changes in the conviction rates for domestic violence as measured by male assaults on females for all three ethnicities coincided with the advent of important legislation including the Domestic Protection Act 1982, the Domestic Violence Act 1995, and the Sentencing Act 2002 clearly suggesting, as might be expected, that legislation can influence crime statistics in New Zealand.

Keywords: Conviction rates; criminality; Domestic Protection Act 1995; domestic violence; Domestic Violence Act 1995; Sentencing Act 2002

Introduction

The social forces that underlie conviction rates for crimes and other antisocial activities are poorly understood. In the main, conviction rates for crimes are governed by two major factors. One is the law that results from legislation enacted by Parliament, the other are the offenders whose behaviour the law is trying to control; both of these factors contribute to the observed conviction rates. Clearly, to understand the social forces that underlie convictions for crimes it is important to understand both sides of the matter; the law and the social machinery that drives it, and the nature and circumstances of those who break the law. Through such understanding lies the hope that criminality of ethnic minorities might be understood and that domestic violence especially can be minimized and the well-being of its victims ensured.

Analysis of complex social forces is permeated with difficulties. The factors that influence the conviction rates for violent crimes are probably a complex mixture of legislation, attitudes, assumptions, biases, perceptions, understanding of the law and its intended meaning, fatigue, stress and boredom. Few of these can be measured reliably. Then there is the tendency of the perpetrators towards violent crimes which in turn may be driven by circumstance, history and disposition. Thus understanding crime is very difficult because of its innate complexity.

Using data from the New Zealand Statistics database (Statistics New Zealand, 2008) Hook (2009) has shown that the number of convictions for male assaults on females has varied considerably over the last 28 years. Reasons for these variations are not known precisely, but curiously, changes in the rate seemed to coincide with the advent of important domestic violence legislation. In other words the convictions for domestic violence violations may be influenced by legislation, an observation that must be encouraging to those who work within

the legislature. If the relationship between the passing of legislation and the rate of convictions for domestic violence is correct, then perhaps other crimes might also be influenced by specific legislation.

This essay is about the social forces that underlie conviction rates for various crimes including traffic violations, drug trafficking, sex crimes and especially domestic violence. The essay focuses on the apparent influence of Parliamentary legislation on domestic violence and attempts to explain the foundations for differential conviction rates between Māori, Pacific Islanders and Pākehā.

Domestic Violence

All current definitions for domestic violence used within the justice system of New Zealand stem from the Domestic Violence Act (1995). Quoting subsections of the Act, the meaning of domestic violence is as follows:

- (1) In this Act, **domestic violence**, in relation to any person, means violence against that person by any other person with whom that person is, or has been, in a domestic relationship.
- (2) In this section, **violence** means—
 - (a) Physical abuse:
 - (b) Sexual abuse:
 - (c) Psychological abuse, including, but not limited to,—
 - (i) Intimidation:
 - (ii) Harassment:
 - (iii) Damage to property:
 - (iv) Threats of physical abuse, sexual abuse, or psychological abuse:
 - (v) In relation to a child, abuse of the kind set out in subsection (3) of this section. (Domestic Violence Act, 1995, Subsection [1] & [2])

The working definition for Domestic Violence for the purpose of this investigation is confined to male assaults on females. This definition has been used previously and its limitations acknowledged (Hook, 2009). This narrow definition was used simply because it represents a major part of the domestic violence scene, but more importantly it is amenable to quantitative analysis. Other aspects of domestic violence are important, but much more difficult to measure especially those aspects that relate to the psychology of domestic violence. Convictions for male assaults on females, allows reasonable agreement from within the judicial system itself that an assault took place and that the emotional issues surrounding that assault do not cloud the issue. Thus acknowledging the limitations of the definition for domestic violence allows comparisons with other criminal activities to take place, but only within the confines of that definition.

Crime in New Zealand

The total convictions for male assaults on females over the 28 year period from 1980 to 2007 (inclusive) for Pākehā, Māori and Pacific Islanders is shown in Figure 1. The Pākehā and Māori data was published previously (Hook, 2009), but is here extended to include Pacific Islanders. The Pacific Islander data was included to eliminate the possibility that the observed changes in the number of convictions with time was a phenomenon confined to Pākehā and Māori. Clearly the social forces shaping the conviction curves shown in Figure 1 were not confined to only Māori and Pākehā and that the conviction rates for Pacific islanders were also sensitive to those forces. All three of the curves shown in Figure 1 are similar in overall shape supporting the idea that all three ethnicities are subject to the same social forces that

lead to conviction for crimes of domestic violence. The main difference between each group is the number of convictions which is probably related in some way to the actual numbers of each ethnicity in the total population of New Zealand.

All three curves show an almost exponential increase in convictions between 1980 and 1995 with a blip occurring around 1989 and a dramatic falling off around 1995. After 1995 the downward trend continued until 2002, whereafter the number of convictions increased until 2007. The major changes occurred around 1982, 1995, and 2002 with a minor rate change occurring in 1987. These dates roughly coincided with the advent of domestic violence legislation excepting perhaps the minor upsurge that began in 1987. Precise coincidence may not be possible to achieve because of the possibility of anticipating the advent of legislation by discussion and debate. For example the peak occurring in 1989 coincides with the advent of The Children's, Young person's and Their Families Act of 1989, but a change in conviction rate is detectable in 1987. Could some of the requirements of this Bill have been anticipated in 1987?

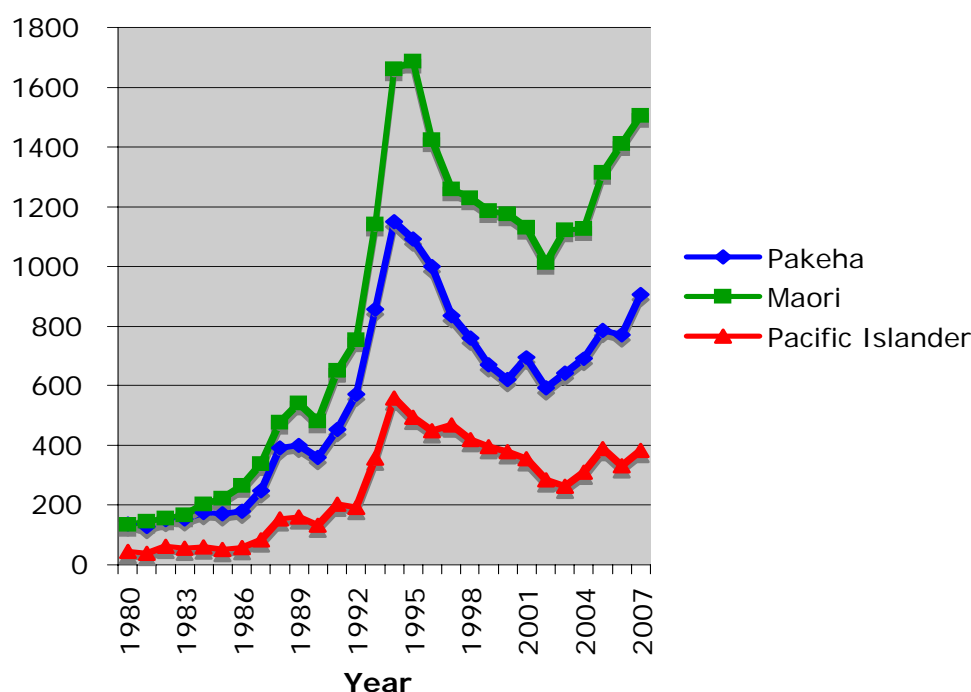


Figure 1. Total convictions for male assaults on females for Pākehā, Māori and Pacific Islanders (Data from Statistics New Zealand, 2008)

It is possible that the exponential increase in convictions for male assaults on females observed between 1980 and 1995 could have been triggered by the advent of the Domestic Protection Act of 1982. This Bill called for radical changes in attitudes towards domestic violence not only by the police, but by the whole judiciary, an event that that did not occur overnight. Prior to 1982 domestic violence was considered a private matter in which the police rarely got involved. In fact the disciplining of wives by their husbands and even the raping of wives was viewed by the police and the courts as family matters. It took many years to re-educate the male dominated judiciary and the Police, and even today there remain vestiges of the chauvinistic traditions of the past. That relearning process may have manifested itself in the exponential increase of convictions up to 1995.

Between 1980 and 1995 the convictions for assaults on females by Māori males increased over 9-fold and then around 1995 the conviction rates for domestic violence began to fall

away rapidly. Curiously, the fall off was first detected in 1995 but the Domestic Violence Act itself did not come into law until July 1 1996 and if the two are related then one would have to explain the slight anticipation through the judiciary preparing itself for the advent of the Domestic Violence Act (1995).

The downward trend in convictions for domestic violence observed after 1995 continued until 2002 whereupon it began to climb again. This upsurge in convictions coincided with the advent of the Sentencing Act (2002). The coincidence of changes in conviction rates with the advent of new legislation is remarkable, but possibly illusory and the allocation of cause and effect premature. One might expect that if domestic violence legislation is indeed influencing conviction rates for acts of domestic violence that the specificity of the legislation might mean that those effects would not be seen in the conviction rates for other unrelated crimes, such as, drug-related crimes, traffic violations, and non-violent sex crimes.

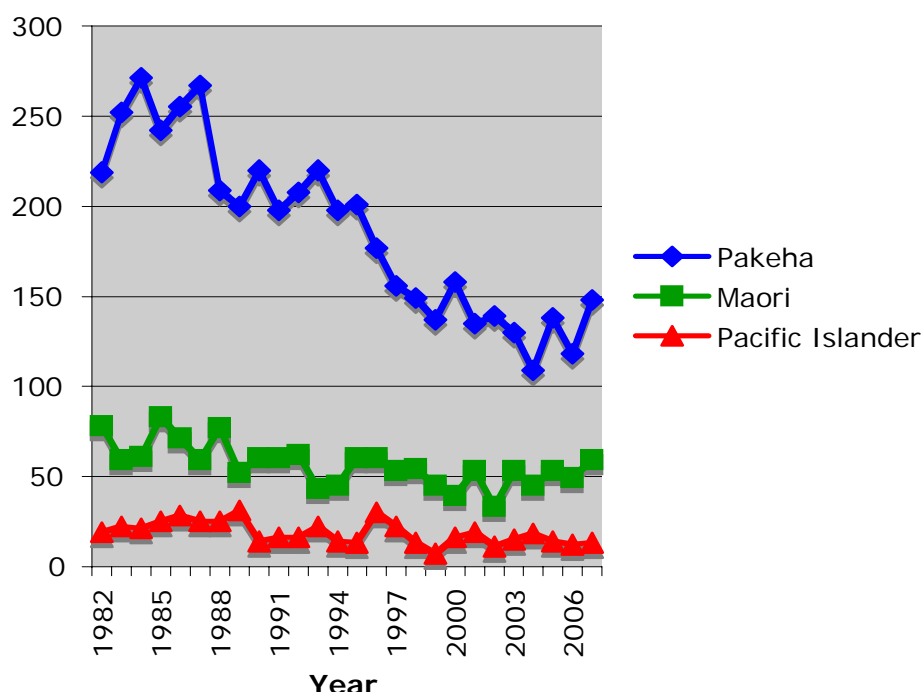


Figure 2. Conviction numbers for non-violent Pākehā, Māori, and Pacific Islander sex offenders over the period 1982 to 2007 (Data from Statistics New Zealand, 2008)

The number of convictions for drug-related crimes, traffic violations, and non-violent sex crimes are shown in Figures 2, 3, and 4. The conviction rates for each of these three crimes were quite different from each other. Convictions for non-violent sex offenders and drug-related crimes tended to diminish with time as shown in Figures 2 and 3 and neither curves resemble those seen in Figure 1.

Convictions for drug-related crimes increased in the early 1980s and then fell away between 1997 and 2007 (Figure 3). Curiously there is a weak resemblance between the drug-related crimes and the curves previously published for unemployment (Hook, 2009). Convictions for traffic violations increased over the period of interest. None of the curves displayed resembled the curves for male assaults on females for either Pākehā, Māori or Pacific Islanders.

The peaked feature in the curves of Figure 4 between 1986 and 1992 possibly arose from the passage of the Transport (Vehicle and Driver Registration and Licensing) Act of 1986 and its subsequent amendment Acts that were passed in 1987, 1988, 1989, 1990 and was probably not due to the passage of any Bill to do with domestic violence. This suggests that the social

forces responsible for the shaping of the conviction rates for domestic violence are probably unique and further indicates the likelihood of being, to a large degree, driven by legislation and its associated translation into the then current law.

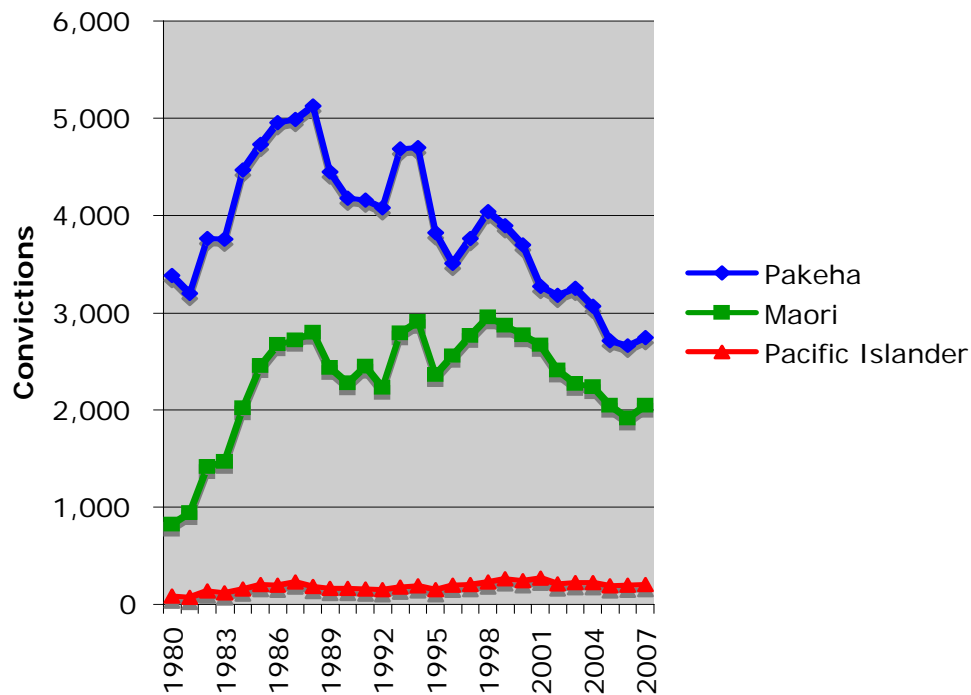


Figure 3. Conviction for Drug-Related Offences amongst Pākehā, Māori, and Pacific Islanders (Data from Statistics New Zealand, 2008)

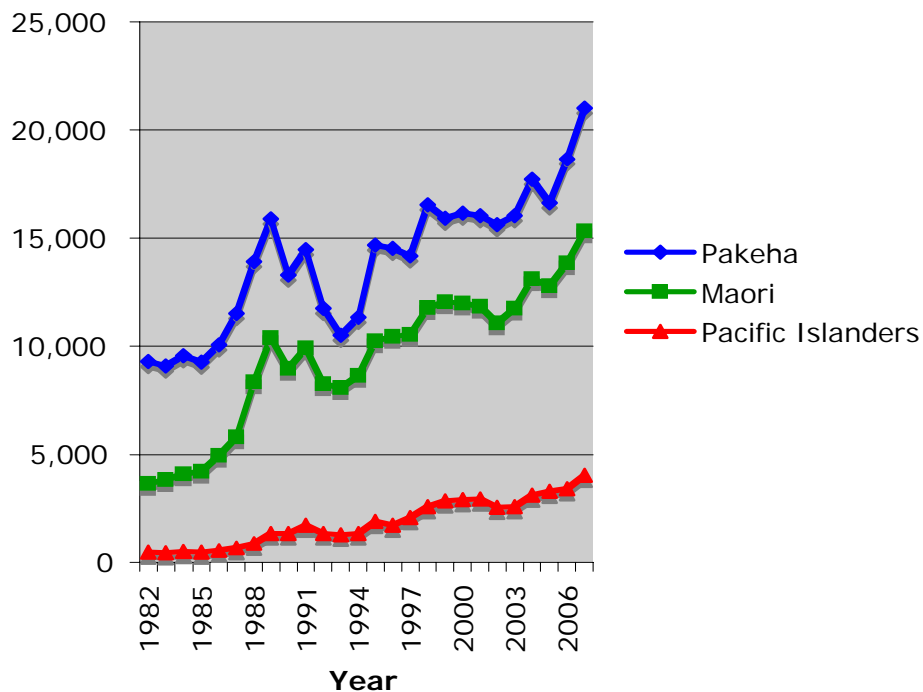


Figure 4. Convictions of Pākehā, Māori, and Pacific Islanders for traffic offences over the period 1982 to 2007 (Data from Statistics New Zealand, 2008)

The rates of Māori convictions relative to those of Pākehā

The relative rates of convictions for male assaults on females is 8 to 10 times higher for Māori than for Pākehā (Figure 5). This is appalling and what is worse is that it appears to be increasing with time. The reasons for this huge excess of convictions are not known although as indicated previously it is either due to the court system dealing with Māori offenders differently from Pākehā or Māori are offending more. The general feeling is that Māori are major offenders, although much of that impression comes from the Police and court system that is responsible for their convictions. Why is the conviction rate so much higher for Māori?

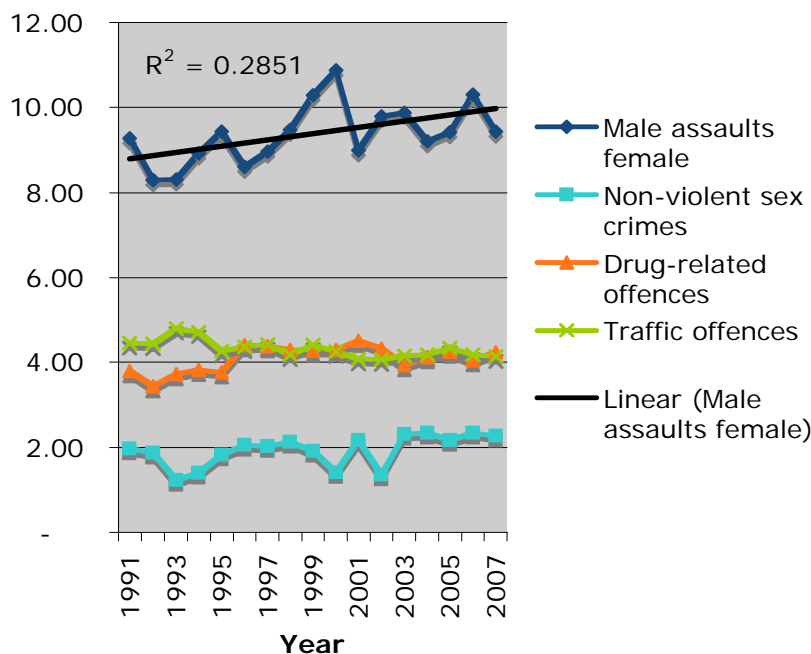


Figure 5. Ratio of conviction rates for Māori relative to Pākehā

Acts of domestic violence are not the only area where Māori convictions far exceed that of Pākehā. Both drug-related and traffic offences run around four times higher for Māori than for Pākehā (Figure 5), an excess that has been very stable over the period from 1991 to 2007. Exactly why this should remain so constant is remarkable especially in view of the variability in rates of convictions for both Pākehā and Māori. The conviction rates for non-violent sex crimes is around twice as high for Māori than it is for Pākehā and, as with the other crimes considered, has remained remarkably constant over the period of interest.

Thus the conviction rates for Māori far exceeds that of Pākehā in all areas studied. These temporal constancies of seemingly unrelated crimes are extraordinary in themselves. The underpinnings that constrain such ratios between Māori and Pākehā are not known, but suggest an inevitability that is quite concerning

Do the police have a 10 to 1 preference for arresting Māori for domestic violence violations? Do they have a 4 to 1 preference for arresting Māori for drug and traffic violations and do they have a 2 to 1 preference for arresting Māori for non-violent sex crimes? Of course one can also ask the same questions of Māori do they have a 10 to 1 preference for domestic violence acts as compared with Pākehā? Do they have a 4 to 1 preference for committing drug-related crimes and breaking traffic laws and do they have a 2 to 1 preference for committing non-violent sex crimes? These questions are fundamental to the problem and currently without explanation; however, the questions must be asked in order to understand the reasons that underlie domestic violence and other forms of criminality.

Comparisons of Pacific Islander conviction rates relative to Pākehā are shown in Table 1. Male assaults on females are similar to that of Māori although the gradual increase in conviction rates relative to Pākehā is not seen with the Pacific Islanders. If anything the relative conviction rates may be declining for Pacific Islanders; drug-related conviction rates relative to Pākehā are indistinguishable whereas for Māori the conviction rates was four times higher than that of Pākehā. For Pacific Islanders conviction rates for traffic violations was around twice that of Pākehā whereas Māori conviction rates were four times higher and the conviction rates for non-violent sex crimes was similar to that of Māori although tending to be somewhat lower.

**Table 1. Conviction rates of Pacific Islander relative to Pākehā
(Data derived from Statistics New Zealand, 2008)**

Criminal Act	1986	1991	2001	2006
Male assaults on females	8.7	9.2	6.7	5.4
Drug-related convictions	1.1	0.8	1.1	0.9
Traffic violations	1.5	2.5	2.4	2.3
Non-violent sex crimes	3.0	1.7	1.9	1.3

The conviction rates per unit of ethnic population is calculated from the formulae:

$(C_m/C_p).(P/M)$ for Māori, and
 $(C_{pi}/C_p).(P/PI)$ for Pacific Islanders

Where: C_m = Total convictions in a given year for Māori for a specific crime
 C_p = Total convictions in the same year for Pākehā for the same crime
 C_{pi} = Total convictions in the same year for Pacific Islanders for the same crime
 P = Total population of Pākehā for that same year
 M = Total population of Māori for that same year
 PI = Total population of Pacific Islanders for that same year

Why are Māori and Pacific Islanders convicted for a wide variety of crimes at a rate often substantially higher than that of Pākehā to which the justice system might reply, “Because they commit more of the crime” which is fair enough, but is it true? The two sides of this issue are the criminality of Māori and Pacific Islanders, and the ability of the justice system to deal with ethnic minorities. In order to understand and reduce conviction rates both sides must be examined carefully.

Summary

In this paper I have presented evidence that variations in conviction rates for male assaults on females may be due to the passage of domestic violence legislation for all three ethnicities studied. This does not mean that domestic violence itself could be shaped or even controlled through legislation; however, that legislation can substantially influence the manner in which those crimes are perceived and handled by the criminal justice system which is, in turn, manifested by changes in the conviction rates. That is not to say that legislation has no influence on the perpetrators and their decisions to commit crimes. The complexities evident in the relationships between offenders, victims, police and the justice system are clearly available to investigation and in many cases amenable to quantitative analysis.

Particularly bothersome are the unexplained constancies of conviction rates between Māori and Pākehā and Pacific Islander and Pākehā. Why such constancies should be maintained over extended periods of time for any given crime is indeed a mystery. Why that constancy should vary with crime needs to be investigated because it might provide the key to

understanding the drivers that shape crime statistics and might also help us understand the crime itself.

Many politicians take it as 'given' that legislation can influence change within the criminal justice system, but without evidence and some means to measure the effectiveness of that legislation the investment may be wasted. The pathway to new legislation and its application is long, difficult and expensive and nobody wants to waste limited resources of time and money. In addition, too often the personal views of politicians have led to disparagement, denigration and disadvantage of ethnic minorities. This paper provides evidence indicating that parliamentary legislation can and probably does make a difference to the manner in which Māori and Pacific Islander minorities are dealt with within the criminal justice system of New Zealand.

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Author Notes

The author acknowledges the assistance of L. Parehaereone Raumati in researching and debating the content of this manuscript. Thanks are also due to Lynne Mackie (info@stats.govt.nz) of Statistics New Zealand for her help in gathering the data.

This research was funded by the Institute for Māori Research and Development, Whangaparaoa. G. Raumati Hook (Ngāti Mutunga, Ngāti Toa, Te Atiawa) is an Adjunct Professor at Victoria University of Wellington, New Zealand and Director of the Institute for Māori Research and Development.

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