



Human Rights Commission  
Te Kāhui Tika Tangata

# Human Rights Commission Submission on Budget Policy Statement 2019

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## **Submission of the Human Rights Commission to the Finance and Expenditure Committee on the Budget Policy Statement 2019**

1. Thank you for the opportunity to make a submission on the Budget Policy Statement 2019 (BPS 2019) which confirms the policy framework for New Zealand's first Wellbeing Budget.
2. The Commission warmly welcomes BPS 2019 and its inclusion of a Wellbeing Outlook alongside the traditional Economic and Fiscal Outlooks. This new approach has the potential to significantly improve the human rights of everyone in New Zealand.
3. Under the Human Rights Act 1993, one of the primary functions of the Human Rights Commission is "to advocate and promote respect for, and an understanding and appreciation of human rights in New Zealand society". For many years, it has sought to advance all human rights, including social rights and this submission builds upon this important work.
4. In summary, this submission:
  - introduces the holistic vision of human rights which New Zealand supports within the United Nations;
  - signals some of the synergies between this holistic understanding of human rights and the BPS 2019;
  - confirms that the Human Rights Commission is willing to explore with Government, and all stakeholders, how New Zealand's existing human rights commitments may be able to strengthen the Wellbeing Budget; and
  - further to the above, **recommends** consideration is given to enhancing the BPS 2019 by the inclusion of a human rights impact assessment process.

### **A holistic approach to human rights**

5. New Zealand was one of the architects of the Universal Declaration of Human Rights adopted by the United Nations in 1948. An iconic document, the Declaration establishes the foundations for the international human rights system, as well as many national Bills of Rights.
6. One of the most striking features of the Declaration is its holistic vision of human rights, encompassing civil, political, economic, social and cultural rights:
  - *civil rights*, such as the right to a fair trial;
  - *political rights*, such as freedom of assembly;
  - *economic rights*, such as equal pay for work of equal value;

- *social rights*, such as everyone has “the right to a standard of living adequate for the health and *well-being* of himself and of his family” (article 25(1), italics added);
  - *cultural rights*, such as the right to participate in the cultural life of the community.
7. Equality and non-discrimination apply to each of these categories of human rights.
  8. According to the Declaration, all these rights derive from the “dignity and worth of the human person”; together they constitute “a common standard of achievement for all peoples and all nations”; and one set of human rights is not more important than another.
  9. Since 1948, the international community has re-affirmed the Declaration’s holistic vision on many occasions, such as at the World Conference on Human Rights in 1993. As the 171 States, including New Zealand, attending the Conference, put it: “The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis.”
  10. The international community has constructed a number of human rights treaties on the foundations established by the Declaration. New Zealand has a proud record of ratifying these treaties, both in relation to civil and political rights, and economic, social and cultural rights.
  11. In summary, New Zealand has frequently supported a holistic approach to human rights in the halls and corridors of the United Nations. It has entered into legally binding international commitments in relation to civil, political, economic, social and cultural rights, for which it is publicly and routinely held accountable by the United Nations. The challenge is to bring this holistic approach home.

### *Social rights*

12. In New Zealand, civil, political, economic and cultural rights are better known and understood than social rights. New Zealand ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR) in 1978 which includes the following social rights:
  - the rights to an adequate standard of living, adequate housing and food;
  - the right to the highest attainable standard of physical and mental health;
  - the rights to education and social security.
13. These rights are also set out in other treaties more recently ratified by New Zealand, such as the Convention on the Rights of the Child (1993), and the Convention on the Rights of Persons with Disabilities (2008).
14. Under ICESCR, New Zealand has a binding international obligation to *progressively* realise social rights. However, some elements of each social right are considered so

important they give rise to ‘core’ obligations which are not subject to progressive realisation e.g. non-discrimination.

15. In combination with other human rights, social rights and their ‘core’ obligations require a government to create an environment in which everyone can enjoy a dignified life, within a society which is free from divisive disparities of wealth.
16. Today, the social rights literature addresses many issues, including economics, budgets, housing, health, education and social work. Some governments are including social rights in their policy making. Several UN agencies are exploring ways to advance social rights. An increasing number of civil society groups, including in New Zealand, are organising around these human rights.

### *Shaping law, policy and practice*

17. Human rights are versatile and can play a variety of complementary roles. This submission highlights the operational approach, whereby human rights can help to shape laws, regulations, policies, practices, community initiatives – and budgets. This approach is about making human rights ‘real’ in clinics, hospitals, care homes, schools, universities, housing initiatives, prisons, homes, and neighbourhoods, without having recourse to judicial or quasi-judicial processes.
18. Of course, human rights are underpinned by international and national law, but the route to their realisation does not have to be through the courts. On the contrary, the effective integration of human rights into policy-making processes makes it less likely that anyone has to go to any tribunal. Moreover, there is evidence that human rights-shaped policies improve the lives of individuals and communities.<sup>1</sup>

### **Synergies between the Wellbeing Budget and a holistic human rights approach**

19. These remarks will not outline BPS 2019 but very briefly signal three of the synergies between it and a holistic approach to human rights.
20. Firstly, while all five budget priorities bear upon human rights, three are especially congruent:
  - lifting Māori and Pacific incomes, skills and opportunities;
  - reducing child poverty and improving child wellbeing, including addressing family violence;
  - supporting mental wellbeing for all New Zealanders, with a special focus on under 24-year-olds.

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<sup>1</sup> Bustreo et al, *Women’s and children’s health: evidence of impact of human rights*, World Health Organisation (2013).

21. Last week a New Zealand Government delegation, led by the Minister of Justice, participated in the Universal Periodic Review of New Zealand's human rights record at the United Nations Human Rights Council in Geneva. The Council gave sustained attention to the above three priorities because they bear closely upon New Zealand's binding international human rights obligations<sup>2</sup>.
22. In short, these priorities are not only budget priorities, they are human rights priorities.
23. Secondly, the Wellbeing Outlook presents evidence about wellbeing and opportunities for improvement framed by the four capitals in the Living Standards Framework. According to the Treasury, these four capitals are the foundations of wellbeing and include: human, social, natural and financial/physical capital. This submission does not aim to provide a critique of the four capitals, instead it signals a few of their human rights dimensions.
24. By way of brief illustration, *human capital* relates to the right to education and training (article 13, ICESCR); *social capital* relates to the rights to security of the person (article 9, International Covenant on Civil and Political Rights) and to take part in the life of the community (article 15, ICESCR); *natural capital* relates to the right to a healthy environment (as outlined by the UN Special Rapporteur on Human Rights and the Environment); and *financial/physical capital* relates to the rights to housing and healthcare (articles 11-12, ICESCR).
25. Thirdly, the wellbeing and human rights approaches have much common theoretical ground. As Paul Dalziel, Caroline Saunders and Joe Saunders demonstrate in *Wellbeing economics: the capabilities approach to prosperity*, the work of Amartya Sen and Martha Nussbaum provide some of the conceptual foundations for the notion of wellbeing.<sup>3</sup> Also, the capabilities approach of Sen and Nussbaum provides one of the conceptual foundations for human rights, as set out in *Human rights and human development*.<sup>4</sup>
26. In summary, there is much common ground, both operational and theoretical, between the BPS 2019 and the holistic approach to human rights.

### **How might human rights contribute to the Wellbeing Budget?**

27. The answer to this question requires interdisciplinary consideration and collaboration. In an open and constructive spirit, the Commission is willing to contribute to this discussion if the Government, and other stakeholders, might find this helpful. In the meantime, the Commission offers these brief reflections:

- a. Among the key features of a human rights approach are to:

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<sup>2</sup> See Human Rights Council, *Draft Report of the Working Group on the Universal Periodic Review: New Zealand*, UNEDITED VERSION, 23 January 2019, A/HRC/WG.6/32/L.1

<sup>3</sup> Palgrave, 2018.

<sup>4</sup> United Nations Development Programme (UNDP), 2000.

- give special attention to the most disadvantaged individuals and communities;
  - ensure as much bottom-up participation and engagement as possible;
  - introduce constructive independent accountability arrangements so that successful initiatives can continue and less successful ones can be revised.
- b. These features can deepen and reinforce budgetary and other policy-making processes. For example, the BPS 2019 sets out data on wellbeing, but data on disability are notably absent even though there is evidence that disabled New Zealanders are falling behind across a range of socio-economic outcomes. A human rights approach helps to ensure that especially disadvantaged individuals and communities are neither overlooked nor left behind.
- c. Human rights not only embody values such as wellbeing, dignity, fairness, equality and freedom, they also provide detailed guidance for policy and practice on a wide range of issues, including housing, health and the environment. Consider, for example, *Realising human rights through government budgets*<sup>5</sup> and *Rethinking economic policy for social justice*.<sup>6</sup> In this way, a human rights approach can help to identify gaps, suggest remedies and fortify the wellbeing budget initiative.
- d. The international human rights community has given much attention to the challenge of identifying appropriate indicators to measure progressive realisation e.g. *Human rights indicators: a guide to measurement and implementation*.<sup>7</sup> This experience may be useful in relation to the Living Standards Framework and the associated work of Indicators Aotearoa.

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<sup>5</sup> Office of the High Commissioner for Human Rights & International Budget Partnership, *Realising human rights through government budgets*, HR/PUB/17/3, United Nations, 2017

<sup>6</sup> Balakrishnan, Heintz & Elsen, *Rethinking economic policy for social justice*, Routledge, London, 2016 (e-book ed.)

<sup>7</sup> Office of the High Commissioner for Human Rights, *Human rights indicators: a guide to measurement and implementation*, HR/PUB/12/5, United Nations, 2012

## Human Rights Impact Assessments

28. Additionally, we would encourage the Committee to consider ways in which a human rights impact assessment process could be integrated into the BPS 2019, future BPSs and related policy documents<sup>8</sup>.
29. There are good policy reasons for considering this approach. Firstly, as traversed above, New Zealand has obligations under international human rights treaties that apply to budget making<sup>9</sup>. In its most recent review of New Zealand, the UN Committee on Economic, Social and Cultural Rights recommended the introduction of human rights impact assessments into the budgetary process through amendments to the Public Finance Act<sup>10</sup>. The UN Committee on the Rights of the Child<sup>11</sup> and the UN Committee on the Elimination of Discrimination Against Women<sup>12</sup> have also recommended that similar budgetary mechanisms be established regarding children’s and women’s rights respectively.
30. Secondly, inclusion of a human rights impact assessment in the formation of the BPS will help to reinforce its wellbeing agenda. Aspects of the budget strategy are linked to Government policy instruments and legislation that contain explicit human rights objectives. For example, under the Children’s Act 2014, the Child and Youth Wellbeing Strategy is:
- “intended to help New Zealand meet its international obligations relating to children...including the UN Convention on the Rights of the Child and the UN Convention on Persons with Disabilities”<sup>13</sup>.
31. Thirdly, integrating a human rights assessment process into the budgetary process could also help with the ongoing monitoring of New Zealand’s implementation of its international human rights commitments. The Commission notes the Government’s development of a multi-agency International Human Rights Governance Group (IHRGG), led by the Ministry of Justice, to improve its human rights monitoring capability.
32. Moreover, the Indicators Aotearoa framework developed by Stats NZ and referred to in the BPS, is designed to track and measure the progress New Zealand is making towards the

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<sup>8</sup> The Commission notes that there is no explicit reference to human rights in BPS 2019. Nor is there any direct mention of New Zealand’s relevant obligations under related human rights treaties, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR). Further there is no reference to the 2030 UN Sustainable Development Goals (SDG).

<sup>9</sup> For example, Article 2 of the ICESCR and Article 4 of the UN Convention on the Rights of the Child.

<sup>10</sup> UN Committee on Economic, Social and Cultural Rights, *Concluding observations on the fourth periodic report of New Zealand*, 3 April 2018, E/C.12/NZL/CO/4, paragraph 15. NB: We note the Government’s proposal to amend the Public Finance Act 1989 to embed wellbeing principles:

<https://treasury.govt.nz/sites/default/files/2018-09/discussion-document-embedding-wellbeing-in-PFA-1989.pdf>

<sup>11</sup> UN Committee on the Rights of the Child, *Concluding observations on the fifth periodic report of New Zealand*, 21 October 2016, CRC/C/NZL/CO/5, paragraphs 36(a) and (b).

<sup>12</sup> UN Committee on the Elimination of Discrimination Against Women, *Concluding observations on the eighth periodic report of New Zealand*, 25 July 2018, CEDAW/C/NZL/CO/8, paragraphs 17 and 18.

<sup>13</sup> Section 6A, Children’s Act 2014, introduced by the Child Poverty Reduction Bill 2018.

2030 SDG targets<sup>14</sup>. These targets include areas of direct relevance to the priorities set out in the Wellbeing Outlook, such as:

- Reduction of poverty by 50% (SDG 1);
- Empower and promote the social, economic and political inclusion of all through, *inter alia*, the adoption of fiscal, wage and social protection policies that progressively achieve greater equality (SDG 10);
- Ensure access for all to adequate, safe and affordable housing (SDG Target 11).

33. Given the clear links between the Wellbeing Outlook priorities and the SDG targets - and the role of Indicators Aotearoa as a tool for measuring progress under both areas - it follows that the BPS is an ideal platform upon which the Government's fiscal and economic planning can be linked explicitly to its SDG commitments.

34. A similar methodology has been included in the Child Poverty Reduction Act which amends the Public Finance Act 1989 to link child poverty reduction targets with the annual budgetary process by requiring a report on child poverty to be included with the supporting information for the main Appropriations Bill. Indeed, the Prime Minister, in her capacity as Minister for Child Poverty Reduction, has noted that long-term targets set out in that Act are, in part, a means for meeting New Zealand's SDG commitments<sup>15</sup>.

35. It should also be noted that 2019 stands as a particularly important year for SDG implementation. It will be the first time that New Zealand submits a national report to the UN High Level Political Forum, the international process through which the SDGs agenda is reviewed.

## Conclusion

36. A wellbeing budget which is explicitly and credibly aligned with human rights is well-placed to improve the lives of individuals and communities. Also, it will help the Government deliver its binding international human rights obligations and position Aotearoa New Zealand as a leader in the field of human rights.

37. If Committee members wish, the Commission would very much welcome the opportunity to elaborate on this submission before the Committee.

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<sup>14</sup> <https://www.stats.govt.nz/assets/Consultations/indicators-aotearoa-new-zealand-nga-tutohu-aotearoa-consultation/indicators-aotearoa-new-zealand-nga-tutohu-aotearoa-and-the-un-sustainable-development-goals.pdf>.

<sup>15</sup> Office of the Minister for Child Poverty Reduction, *Legislating to Drive Action to Reduce Child Poverty* (for Cabinet Business Committee), 6 December 2017, paragraph 49, <https://www.dpnc.govt.nz/sites/default/files/2018-03/doc-06-cbc-paper-legislating-to-drive-action-to-reduce-child-poverty.pdf>.