



**NZ
Human
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Te Kāhui Tika Tangata
Human Rights Commission

Housing Inquiry First Report

Strengthening Accountability and Participation in the Housing System

December 2021



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Human Rights Commission

Housing Inquiry First Report

Strengthening Accountability and Participation in the Housing System

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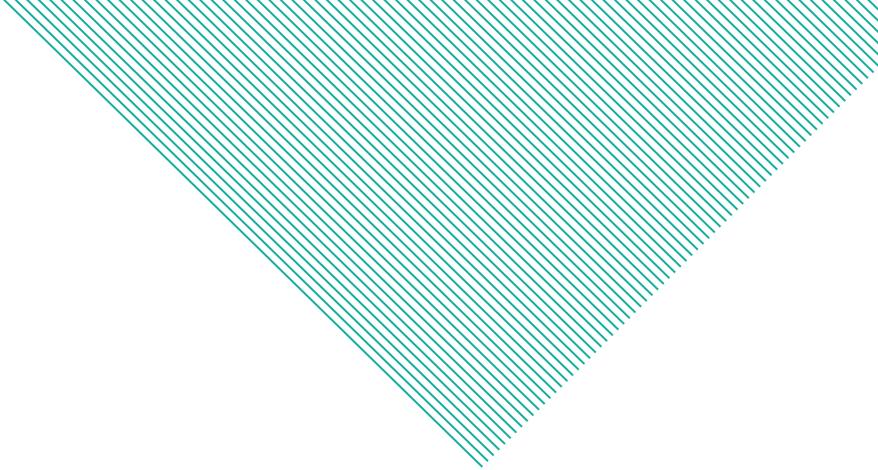
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Housing Inquiry First Report: Strengthening Accountability and
Participation in the Housing System



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Human Rights Commission



Inquiry into the right to a decent home in Aotearoa

The Human Rights Act 1993, which establishes the Human Rights Commission, is designed:

“to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights.”ⁱ

The Act sets out the Commission’s primary functions, the first of which is:

“to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society.”

Additionally, the Act gives the Commission numerous specific functions, including:

“to inquire generally into any matter, including any enactment or law, or any practice, or any procedure, whether governmental or non-governmental, if it appears to the Commission that the matter involves, or may involve, the infringement of human rights.”ⁱⁱ

In accordance with its statutory functions, the Commission has launched an Inquiry into the right to a decent home in Aotearoa. This Housing Inquiry will issue a series of short reports that provide constructive recommendations on ways that the right to a decent home, grounded on Te Tiriti o Waitangi, can contribute to a fair and dynamic housing system.

The Inquiry will apply *Aratohu tika tangata ki te whai whare rawaka i Aotearoa: Framework Guidelines on the right to a decent home in Aotearoa* which were published by the Human Rights Commission in August 2021.

The Housing Inquiry is designed to advance the
Human Rights Commission guiding purpose,
Te Whakamana Tāngata: A Life of Dignity for All.

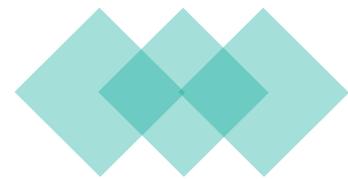
(Strategic Direction, 2020-2024)

ⁱ Human Rights Act 1993, section 5(1)(a).

ⁱⁱ Section 5(2)(h).

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Executive Summary

For many years, successive governments in Aotearoa New Zealand have committed to implement the human right to a decent home, as set out in the International Bill of Human Rights, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, and United Nations Declaration on the Rights of Indigenous Peoples.

Despite these promises, the country faces a housing and human rights crisis caused by decades of neglect. The crisis exposes a failure of public policy and democracy. Democratic institutions with the responsibility to anticipate and swiftly tackle crises have failed to do their job.

In August 2021, the Human Rights Commission published *Aratohu tika tangata ki te whai whare rawaka i Aotearoa: Framework Guidelines on the right to a decent home in Aotearoa*. The *Guidelines* introduce the right to a decent home grounded on Te Tiriti o Waitangi and signal the different ways this human right can contribute to a fair and dynamic housing system.

The Commission has a mandate to hold inquiries into human rights issues.¹ We have launched a Housing Inquiry which will use the *Guidelines* as a lens through which to consider the country's housing system. The Inquiry will generate several short reports on a number of issues and provide constructive recommendations for a range of stakeholders.

This first report of the Inquiry warmly welcomes the new Government Policy Statement on Housing and Urban Development and MAIHI Ka Ora: The National Māori Housing Strategy 2021-2051.

In this report we consider two key features of the right to a decent home, with particular attention to the kāwanatanga sphere:

- constructive accountability
- public participation and engagement.

Accountability is a crucial feature of good governance, democracy, and human rights. Without accountability, these can easily become window-dressing. Weak accountability undermines housing laws, policies, strategies, plans, and initiatives.

This report frames constructive accountability as consisting of three elements:

- monitoring
- independent review in relation to agreed standards and promises
- remedial action.

After reviewing the housing system, the report finds that effective and accessible accountability arrangements in relation to the right to a decent home grounded on Te Tiriti o Waitangi do not yet exist in the kāwanatanga sphere.

The right to a decent home, and other human rights, requires as much public participation and democratic engagement as possible. Communities are calling for more public participation and democratic engagement in the housing system.

Active, informed, inclusive, and meaningful public participation is not easy. However, strengthening public participation and democratic engagement is a way to enhance social cohesion and inclusion. The report finds that, although community

EXECUTIVE SUMMARY

participation and democratic engagement already have a place in the country's housing system, they need strengthening, and the report explores how this can be achieved in the kāwanatanga space.

Both accountability and public participation need a way to measure whether the housing situation is improving for everyone in Aotearoa. This report introduces a methodology to measure the progressive realisation of the right to a decent home grounded on Te Tiriti o Waitangi. The methodology, which uses indicators and benchmarks (or data points), will be developed and applied in future initiatives of the Inquiry.

Finally, the report provides illustrative case studies from Aotearoa, Canada, Ireland, England, and Scotland on accountability and public participation. Not all the case studies relate to housing and we are not suggesting they are models to be followed. The country needs organisations and institutions that suit the unique context of Aotearoa, align with Te Ao Māori, are co-designed according to Te Tiriti o Waitangi partnership, and deliver the needs of tangata whenua and other disadvantaged groups. The case studies helpfully address human rights themes that recur throughout our report.

This first report invites consultation and discussion on the following **key recommendations**:

1. An Act of Parliament which sets out key principles and Tiriti obligations to guide all housing initiatives.
2. An independent constructive accountability mechanism for the housing system.
3. An independent advisory and advocacy group grounded in te Tiriti with responsibilities to:
 - o advise
 - o commission research
 - o draft housing charters/codes
 - o enable the voices of those with lived experience of the housing system.

The recommendations will reinforce the direction of travel set out in GPS-HUD and MAIHI Ka Ora, and assist the effective implementation of these important documents. Moreover, they are mandated by the right to a decent home grounded on Te Tiriti o Waitangi.



1. Introduction

1. Introduction

For many years, successive governments in Aotearoa New Zealand have committed to implement the right to a decent home, as set out in the International Bill of Rights, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, and United Nations Declaration on the Rights of Indigenous Peoples.

Despite these promises, the country faces a housing and human rights crisis caused by decades of neglect. The crisis exposes a failure of public policy and democracy. Democratic institutions with the responsibility to anticipate and swiftly tackle crises have failed to do their job.

The Human Rights Commission has launched a Housing Inquiry as a constructive way to address this crisis that affects everyone in Aotearoa.

In August 2021, we published *Aratohu tika tangata ki te whai whare rawaka i Aotearoa: Framework Guidelines on the right to a decent home in Aotearoa*.²

The *Guidelines* introduce the right to a decent home grounded on Te Tiriti o Waitangi and signal the different ways this human right can contribute to a fair and dynamic housing system in this country.

They outline what the right to a decent home means in the unique context of Aotearoa, including the systematic dispossession of Māori land, ongoing impacts of colonisation, and Te Tiriti o Waitangi.

The *Guidelines* also identify the key features of the right to a decent home grounded on Te Tiriti o Waitangi and provide a helpful lens for examining housing strategies and other initiatives.

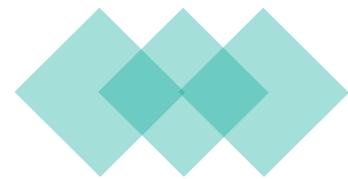
In September 2021, the government published two important housing documents: the Government Policy Statement on Housing and Urban Development and MAIHI Ka Ora. We have considered both through the lens provided by the *Guidelines*.

This report offers our preliminary reflections on both documents. It gives particular attention to two key features of the right to a decent home grounded on Te Tiriti o Waitangi:

- constructive accountability
- public participation and engagement.

Strategies, policies and other housing interventions need nimble institutions and reliable processes to keep them on track and help deliver their objectives. The absence of such institutions and processes in recent decades has contributed to the current housing and human rights crisis. The report recommends how to strengthen accountability and public participation in the housing system.

Meaningful accountability and public participation rely on the ability to measure whether the housing situation is improving for everyone in Aotearoa. Accordingly, the report sets out how indicators and benchmarks (or data points) can measure the progressive realisation of the right to a decent home grounded on Te Tiriti o Waitangi.



The report focuses on accountability and public participation in the kāwanatanga sphere (Article 1, Te Tiriti o Waitangi). We do not assume that what works in this sphere aligns with Te Ao Māori and can extend to Māori spaces, strategies, mechanisms, and institutions. There is a close relationship between Articles 1 and 3 (ōritetanga), so our consideration of accountability and participation in the kāwanatanga sphere also bears upon ōritetanga in Article 3.

In 2022 the Housing Inquiry, in partnership with the National Iwi Chairs Forum, will consider the meaning and application of accountability and participation in relation to tino rangatiratanga (Article 2).

While preparing this report, we looked at different examples of accountability and participation in Aotearoa, Canada, Ireland, England, and Scotland. Summaries of these case studies are in the Appendix. They are especially relevant to the kāwanatanga sphere. Not all the case studies relate to housing and we are not suggesting they

are models to be followed; they are specific to their time, place, and system. We need nimble and reliable arrangements that suit the unique context of Aotearoa, align with Te Ao Māori, are co-designed according to Te Tiriti o Waitangi partnership, and deliver the needs of tangata whenua and other disadvantaged groups.

The human rights themes that emerge from these instructive case studies include:

- Sustained attention is being devoted to ensuring there is effective accountability and meaningful participation in housing and other sectors.
- Formal institutional arrangements are needed to support and reinforce policies and other initiatives.
- Standards are needed, such as codes, charters, and guiding principles.
- Policies must be evidence-based, so reliable expert advice is vital.

These themes recur throughout this report.



2. An Overarching Housing Strategy



2. An Overarching Housing Strategy

As the *Guidelines* confirm, central and local government must have a human rights-based housing strategy grounded on Te Tiriti o Waitangi.³ This strategy is a key feature of the right to a decent home:

A housing strategy operates at a higher level than a housing policy or programme. It has a vision of change over time and engages numerous bodies, including central and local government. It coordinates a wide range of government departments, laws, policies, programmes, and initiatives that, when taken together, create a housing system.⁴

The Government Policy Statement on Housing and Urban Development (GPS-HUD) and MAIHI Ka Ora: The National Māori Housing Strategy 2021-2051 (MAIHI Ka Ora) provide a welcome shift towards the type of housing strategy required by human rights.

GPS-HUD sets out the direction of travel for housing and urban development for the next 30 years, and MAIHI Ka Ora draws on the earlier Māori and Iwi Innovation Framework for Action (MAIHI). The visions for GPS-HUD and MAIHI Ka Ora are, respectively:

Everyone in Aotearoa New Zealand lives in a home, and within a community, that meets their needs and aspirations.

All whānau have safe, healthy, affordable homes with secure tenure, across the Māori housing continuum.

This report does not set out what a comprehensive human rights-based housing strategy grounded on Te Tiriti o Waitangi would look like, nor does it critique GPS-HUD and MAIHI Ka Ora in detail.

Rather, it makes constructive suggestions for improvement, with a focus on accountability and public participation as GPS-HUD and MAIHI Ka Ora are rolled out.

Both documents are game changers which, read in concert with the other government documents outlined in the GPS-HUD, move closer to an overarching housing strategy than any recent document in Aotearoa.⁶ GPS-HUD re-establishes, in principle, housing's primary role as a home rather than a financial asset, and MAIHI Ka Ora is an expression of the articles (not principles) of Te Tiriti o Waitangi. Both documents affirm a "by Māori, with Māori, for Māori" approach.

We accept GPS-HUD for what it is: "a shared, aspirational vision and direction for housing and urban development in Aotearoa New Zealand over the next 30 years."⁷ The enormous challenge is effective implementation. The first implementation plan is expected in the first quarter of 2022.

MAIHI Ka Ora is a significant step forward in the approach to housing for Māori whānau, hapū and iwi.⁸ As Jade Kake puts it:

The strategy takes a systems thinking approach, acknowledging the complexity of our housing system, our system failures, and therefore the range of responses required. It's long range, with a life span of 30 years

intended to live well beyond any political changes. Critically, there are specific provisions for ongoing monitoring and evaluation, and formal review every three years.⁹

MAIHI Ka Ora is more action-oriented than GPS-HUD. It adopts an approach with three key elements: respond, review, and reset. We strongly recommend that consideration is given to extending this approach to GPS-HUD.

MAIHI Ka Ora indicates that the percentage of Pacific peoples living in a warm dry home has dropped from 45% in 2017/18 to 41% in 2018/19. In these circumstances, we would expect GPS-HUD to devote more attention to improving the housing conditions for Pacific Peoples, and we recommend this is remedied in future implementation plans.

In a section headed “Implementing the GPS”, the Government Policy Statement says the Ministry of Housing and Urban Development:

- is responsible for monitoring, regulation, and oversight of the housing system¹⁰ and “tracking progress” is key,¹¹
- will report on the GPS vision every three years,¹²
- will report on the GPS implementation and impact every year.¹³

In its section headed “Implementation and accountability” (note the inclusion of the word “accountability”), MAIHI Ka Ora says it will be reviewed every three years.¹⁴ Crucially, it adds:

A detailed implementation programme and monitoring framework will be developed with reports on progress provided to MAIHI Whare Wānanga who are required to provide an annual update to Cabinet.¹⁵

Essentially, MAIHI Whare Wānanga is a co-governance hui between Māori and government, bringing together representatives from the Māori

housing sector and Crown Officials to oversee the delivery of the MAIHI Framework for Action, including MAIHI Ka Ora.¹⁶

Like MAIHI Ka Ora, we link implementation and accountability because effective implementation requires constructive accountability.

Conclusion

We welcome the Government’s commitment in GPS-HUD “to understand what would be required to strengthen alignment with the right to a decent home in our Aotearoa New Zealand context.”¹⁷

As we look at the GPS-HUD and MAIHI Ka Ora through the lens provided by the *Guidelines*, several issues stand out. We focus on two of them in this report.

Both GPS-HUD and MAIHI Ka Ora will benefit from being reinforced and supported by:

- effective and accessible mechanisms of constructive accountability,
- informed, inclusive, meaningful, public participation and engagement.

These twin features are required by, and will help give full effect to, the right to a decent home. They are not the only features required to support a housing strategy; other features include adequate resourcing and delivery. However, these two features are particularly relevant given the underdevelopment of both accountability and democratic participation in the Aotearoa housing system.

This report gives particular attention to these human rights issues in the kāwanatanga sphere. We look forward to reviewing the implementation of GPS-HUD and MAIHI Ka Ora and the progressive realisation of the right to a decent home grounded on Te Tiriti o Waitangi.



3. Constructive Accountability

3. Constructive Accountability

Guideline 16: All housing initiatives must be subject to constructive accountability i.e. initiatives must be assessed against the human right to a decent home grounded on Te Tiriti. Constructive accountability must be both effective and accessible to those in need.

Accountability is a crucial feature of good governance, democracy, and human rights. Without accountability, these can easily become window-dressing.

There are different ways of understanding accountability. In this chapter, we set out how accountability is commonly understood in the human rights field. We consider some of the mechanisms of accountability in Aotearoa's housing system. We ask if these mechanisms are doing their job in the kāwanatanga sphere.

The three elements of constructive accountability

Accountability is about ensuring laws, policies, strategies, plans, and promises are respected. It does not need to be about blame and punishment. Accountability can be about identifying what works so it can be repeated, and what doesn't work so it can be adjusted and remedial action taken. In the human rights field, this is called 'constructive accountability'.

Monitoring and accountability are often conflated. Monitoring is not accountability, it is one step towards accountability. Accountability can be understood as having three elements:

- monitoring i.e. the collection of information and data
- review, including *independent* review, in relation to agreed standards and promises made

- remedial action i.e. putting things right, so far as possible.

The review element can be carried out by a political body, such as Parliament or a local council, *and* by one or more independent bodies. For example, an independent body's review can be submitted to a political body for consideration. In this way, the independent review adds rigour to the review undertaken by the political body.

This commonly happens in Aotearoa. For example, the independent reports of the Human Rights Commission, Ombudsman, and Auditor-General are forwarded to Parliament for consideration.ⁱⁱⁱ

Accountability comes in many forms, such as national and local elections, Parliament and local councils, courts and tribunals, civil society organisations, and the media. Besides courts and tribunals, other statutory bodies provide forms of *independent* accountability, such as:

- Waitangi Tribunal
- Human Rights Commission
- Office of the Children's Commissioner
- Office of the Auditor-General
- Ombudsman.

Aotearoa's housing system should have effective and accessible accountability, that is monitoring, review (independent and political), and remedial action in relation to the right to a decent home grounded on Te Tiriti o Waitangi.

ⁱⁱⁱ The Human Rights Commission is an independent Crown Entity, while the Ombudsman and Auditor-General are Officers of Parliament.



In 2022, the Human Rights Commission Housing Inquiry will consider, with the National Iwi Chairs Forum and other partners, whether this understanding of accountability as monitoring, review, and remedial action is consistent with Te Ao Māori. If this is not consistent with Te Ao Māori, what is a more appropriate way to understand accountability for Aotearoa?

Until those discussions have taken place, it is premature to apply accountability, understood as monitoring, review, and remedial action, to tino rangatiratanga (Article 2, Te Tiriti o Waitangi). Therefore for present purposes, we confine our consideration of accountability and the right to a decent home to the kāwanatanga sphere (Article 1, Te Tiriti o Waitangi).

Constructive accountability and housing in Aotearoa

The housing system is highly complex and populated by many actors with a variety of mandates, purposes, and agendas. Similarly, there are a range of institutions with responsibility for aspects of the housing system.

Here we focus on some existing *formal* (or statutory) accountability arrangements in the context of the right to a decent home. Of course, there are also some extremely important *informal* forms of accountability, such as the media and civil society organisations. However, in this report our focus is on formal accountability.

Waitangi Tribunal

The Waitangi Tribunal issues non-binding recommendations to the Crown based on claims brought by Māori. The claims may relate to legislation, policies, and acts or omissions of the Crown that allegedly breach the promises

affirmed in Te Tiriti o Waitangi. For example, a kaupapa inquiry is currently underway that will hear claims and grievances brought on behalf of many whānau, marae, iwi and hapū across Aotearoa concerning housing policy and services.¹⁸ The Tribunal has not yet given sustained attention to the right to a decent home, and this kaupapa inquiry is a promising opportunity for the Tribunal to consider the relationship between Te Tiriti o Waitangi and the right to a decent home.

The Tribunal provides a vehicle for Māori to voice concerns about Crown actions relating to Māori issues. However, the Crown does not have a statutory obligation to adopt the recommendations made by the Waitangi Tribunal. In short, the third element of accountability (remedial action) is weak.

Judicial

New Zealand courts have rarely discussed the right to a decent home or other housing-related rights, mainly because the right to a decent home has not been placed in national law, such as the Bill of Rights Act 1990.

The right to a decent home attracted discussion in the 1990s case *Lawson v Housing New Zealand*, but without shedding significant light on what the court interprets the right to mean.¹⁹ The plaintiff referred to international law: the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Convention of the Rights of the Child. These all refer to the right to adequate housing and create international obligations for New Zealand, but have not been specifically incorporated into New Zealand domestic law. The Court held that the Ministers of Housing and Finance were required to ensure international covenants “inform the decision-making process”.

The plaintiff in *Lawson* also referred to the right to life, contained in s 8 of the New Zealand Bill of Rights Act 1990, arguing that charging market rents without regard to affordability or the impact on tenants' living standards was in breach of this right.

Although the plaintiff was unsuccessful in that case, the right to life could be interpreted to encompass issues of dignity and homelessness. Some countries have taken this broad approach to the right to life, and the Tenancy Tribunal has very recently referred to it in a case about the new Healthy Homes standards.^{iv}

In the event of ambiguity, courts are bound to interpret national law in conformity with New Zealand's binding international obligations.

However, without a significant change in New Zealand law and practice, it is unlikely the courts will be able to provide effective, accessible accountability in relation to the right to a decent home grounded on Te Tiriti o Waitangi, which underscores how important it is to put in place other forms of accountability for this critically important human right.

In this report, our focus is not judicial accountability. Rather, we favour an administrative justice approach to the right to a decent home, informed by the letter and spirit of the Universal Declaration of Human Rights and Te Tiriti o Waitangi.²⁰

Human Rights Commission

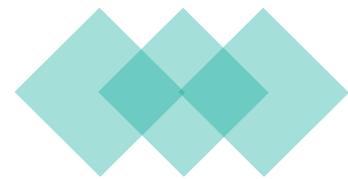
The Human Rights Commission provides free mediation and dispute resolution for complaints of discrimination. Individuals can complain to the Commission if they consider they have experienced unlawful discrimination, including in housing. Some cases may be referred to the Office of Human Rights Proceedings (OHRP), which is an independent part of the Human Rights Commission. OHRP can provide free legal representation for complaints of unlawful discrimination and take cases to the Human Rights Review Tribunal. In 2019, for example, the Tribunal heard a case about discrimination against a potential tenant because she was blind and reliant on a guide dog. The Tribunal agreed she had suffered unlawful discrimination.²¹

These free mediation and legal services uphold one element of the right to a decent home: the right not to be discriminated against in the provision of housing. The Commission is not legally empowered to provide the same services for the numerous other features of the right to a decent home, such as insecurity of tenure and sub-standard housing conditions.

Tenancy Services and Tenancy Tribunal

Tenancy Services has powers to monitor and enforce compliance under the Residential Tenancies Act 1986. Its Compliance and Investigation Team investigates alleged breaches and carries out proactive visits. The Team's compliance tools include formal warnings, enforceable undertakings, and improvement and infringement notices. It may also bring proceedings in the Tenancy Tribunal.

^{iv} See the subsection below *Tenancy Services and Tenancy Tribunal*.



The Tenancy Tribunal is established by the same Act and may determine disputes between landlords and tenants that fall within the scope of the legislation. Recent law reforms have extended the Tribunal's jurisdiction to include new Healthy Homes standards in rental properties, including heating, insulation, and ventilation. The Tribunal has a range of powers, including imposing fines and awarding damages.

However, the Tenancy Services and Tribunal rarely refer to human rights or apply a human rights lens, which is a missed opportunity for advancing housing rights. A notable exception is a recent Tribunal decision:

Homes which do not comply with the Healthy Homes standards arguably abrogate their occupants' constitutional right to life, enshrined in s 8 [New Zealand Bill of Rights Act] 1990 and ... Art 6 United Nations International Covenant on Civil and Political Rights.²²

There are other concerns. Data shows that about 80% of the cases taken to the Tribunal are brought by landlords, most often in relation to rent arrears and termination of tenancy. In her recent report on New Zealand, the UN Special Rapporteur on the right to adequate housing expressed misgivings: "access to justice through the Tenancy Tribunal remains unbalanced and continues to disadvantage tenants."²³ She wrote that her "principal concern is the limited capacity for public inspections to ensure that the healthy homes standards are adhered to."²⁴

In summary, Tenancy Services and Tribunal are unusual because together they provide all three elements of accountability: monitoring, review, and remedial action. Unquestionably, Tenancy Services and Tribunal have significant shortcomings.

Nonetheless, they have the *potential* to become a significant formal accountability mechanism for the right to a decent home grounded on Te Tiriti o Waitangi.

Parliament

Parliament, and its committees, is Aotearoa's apex accountability body. Does it provide effective and accessible accountability in relation to the right to a decent home grounded on Te Tiriti o Waitangi?

Some Ministers and MPs across the House have referred to the right to housing (or equivalent phrases) in Parliament, with a few consistently asserting that housing is a basic human right.

There is no Parliamentary mechanism that requires the right to housing to be considered systematically in the same way as, for example, the Attorney-General's New Zealand Bill of Rights Act reports. The Bill of Rights Act requires the Attorney-General to consider if proposed legislation is consistent with the Bill of Rights Act and provide a report back to Parliament to highlight any inconsistencies.

In rare cases these reports have identified inconsistencies in housing legislation relating to discrimination, which is one key feature of the right to a decent home. This alone is not effective accountability in relation to the other features of this human right.

The Parliamentary Social Services and Community Committee

This committee has annual oversight of the social housing sector. In relation to 2019/20, the committee directed over 300 written questions to the Ministry of Housing and Urban Development (HUD) and Kāinga Ora, and held two in-person hearings with officials on 17th and 23rd February 2021.

Minister Woods referred to the “right to a warm, safe, dry home” when she appeared before the committee on 23rd February 2021. In its response to a written question on disability, Kāinga Ora referred to the Convention on the Rights of Persons with Disabilities. However, to the best of our knowledge, no committee member referred to human rights in any question to HUD or Kāinga Ora. Nor does the committee’s annual review report make any reference to human rights, including the right to a decent home.

The same committee also has annual oversight of the social sector, including the Ministry of Social Development’s management of emergency housing and the Accommodation Supplement. In relation to 2019/20, the committee asked more than 350 questions and held an in-person hearing on 23rd February 2021. To the best of our knowledge, there were no written or in-person questions about human rights or the right to a decent home, except for one which asked about the Convention on the Rights of Persons with Disabilities. Again, the annual review report is silent on human rights.

Committee members asked questions implicitly related to the right to a decent home but, apart from one question out of more than 650, we found no evidence that any committee members:

- were aware of the government’s legally binding obligations arising from the right to a decent home, or
- had any knowledge of the right to a decent home, or
- used human rights as a lens through which to scrutinise the government’s work on housing, including emergency housing.

In short, the committee did not provide effective and accessible accountability in relation to the right to a decent home grounded on Te Tiriti o Waitangi.

International accountability

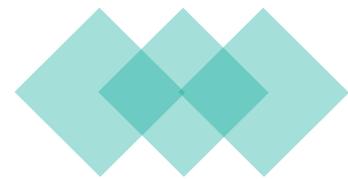
As explained in the *Guidelines*, the right to a decent home and other social rights are included in various international human rights instruments. This includes the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, and the United Nations Declaration on the Rights of Indigenous Peoples.

Each human rights treaty has an independent United Nations (UN) committee that reviews the performance of countries that have ratified the relevant treaty. For example, the UN Committee on Economic, Social, and Cultural Rights reviews the performance of countries that have ratified ICESCR. This independent committee of experts assesses how well governments are protecting and promoting their people’s economic (i.e. workers’ rights), social, and cultural rights. It then makes recommendations to governments about areas that need improving.

New Zealand has ratified these important human rights treaties and is routinely held accountable in the UN for its performance in relation to the right to a decent home. There are other UN human rights procedures that hold the government to account in relation to the right to a decent home, such as the scrutiny provided by the UN Special Rapporteur on the right to adequate housing.²⁵

These international procedures provide a valuable way to publicly hold the New Zealand government accountable on the global stage for its performance regarding the right to a decent home.

The procedures are strong on independent review and weak on remedial action. Nonetheless, they rival any national accountability mechanism in Aotearoa on the right to a decent home grounded on Te Tiriti o Waitangi.



Conclusion

Aotearoa's housing system should have effective and accessible accountability arrangements:

- monitoring
- review (both independent and political)
- remedial action

in relation to the right to a decent home grounded on Te Tiriti o Waitangi.

Our brief review confirms that effective and accessible accountability arrangements in relation to the right to a decent home grounded on Te Tiriti o Waitangi do not yet exist in the kāwanatanga sphere.²⁶

This accountability deficit places New Zealand in breach of its legally binding international human rights obligations.

Crucially, weak accountability undermines housing laws, policies, strategies, plans, and initiatives.

In her recent report on New Zealand, the UN Special Rapporteur on the right to adequate housing recommended:

[the Government should] Further improve the monitoring and implementation of housing policies by establishing independent accountability ... mechanisms.²⁷

In its submission on GPS-HUD, the Citizens Advice Bureau said:

We think that a system of universal monitoring and enforcement is needed, carried out by a neutral agency.²⁸

From the perspective of human rights and Te Tiriti o Waitangi, it is very important that the government urgently finds ways of strengthening accountability in relation to the right to a decent home grounded on Te Tiriti o Waitangi.

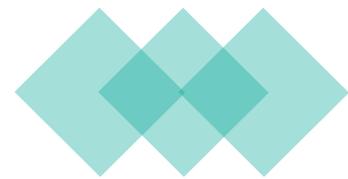
Recommendation

An **independent constructive accountability mechanism** for the housing system.

The final chapter outlines the way forward. It provides suggestions for how this mechanism could be designed and established.



4. Community Participation and Democratic Engagement



4. Community Participation and Democratic Engagement

Guideline 14: In accordance with international human rights treaties and declarations, ensure all individuals and communities have the opportunity for active and informed participation on housing issues that affect them. Additionally, Te Tiriti requires government to work in partnership, and share decision-making, with its Tiriti partners.

Community participation and democratic engagement are already a feature of the housing system in Aotearoa, and we signal some of this engagement in this chapter.

We recognise that HUD and other agencies are striving to deepen public participation in the housing landscape, consistent with the Public Service Act 2020 and other important developments, some of which are also outlined in this chapter.

As we noted in Chapter 1, the co-governance hui Te MAIHI Whare Wānanga has been developed in partnership between HUD and Te Matapihi as a forum bringing together Māori and Crown officials to oversee the delivery of the MAIHI Framework for Action and MAIHI Ka Ora. The development of MAIHI Ka Ora is a game changer in terms of commitment to genuine partnership with Māori for Māori housing.

HUD's place-based approach seeks to improve outcomes for people through a focus on the places they live, including through local collaboration and partnership. HUD's work to implement the Homelessness Action Plan also includes an initiative to establish a credible, long-term platform for engagement with people with lived experience of homelessness.²⁹

The government's commitment to participation, and these initiatives, is very welcome.

In this report we explore how this commitment can be reinforced and implemented across the housing system in the kāwanatanga sphere.

In a constructive spirit, we suggest how the government could advance active, informed, inclusive, and meaningful public participation and democratic engagement in this space.

We strongly affirm the government's obligation to co-design, make joint decisions and have shared partnership with its Tiriti partner. How to discharge this obligation is one of the most important constitutional challenges facing contemporary Aotearoa. The report of Matike Mai Aotearoa, the independent Working Group on Constitutional Transformation, provides options to consider.

The Housing Inquiry looks forward to considering these crucial issues and making recommendations in the specific context of GPS-HUD and MAIHI Ka Ora.

However, our focus in this report is not on these important constitutional matters. We focus here on public participation and democratic engagement across *all* communities involved in housing, including tangata whenua. These two enterprises – co-design and shared partnership on the one hand, and public participation and democratic engagement on the other – are mutually reinforcing, especially when tino rangatiratanga is acknowledged and enables manaakitanga.

The human right to public participation

As the *Guidelines* confirm, individuals and communities are entitled to active and informed participation on issues relating to housing, including policy making and accountability.³⁰

In addition to entitlements arising from Te Tiriti o Waitangi, the United Nations Declaration on the Rights of Indigenous Peoples highlights the right to free, prior, and informed consent in relation to initiatives that affect indigenous peoples, including housing-related initiatives.³¹ The Convention on the Rights of Persons with Disabilities includes an obligation to actively involve disabled people in all issues that affect them, including housing issues. Under the Convention on the Rights of the Child, all children may participate in decisions that affect them, in accordance with their age and maturity.

These and other national and international human rights commitments affirm the democratic principle of 'nothing about us, without us'.³²

Current social, community and tangata whenua engagement in the housing system

Aotearoa has a dynamic range of social, community, and iwi organisations working across the whole housing system, including:

- emergency housing support
- tenancy support and advocacy
- rent to buy programmes
- home ownership options
- advice, assessment, upgrades and other healthy and energy-efficient homes support
- community financing models and community schemes to develop accessible and affordable homes.

Whānau, hapū, marae, iwi, community organisations, faith groups, and community organisations large and small are working with the

state and private providers to improve access to decent homes. Some are as small and informal as families opening their homes, others are nationwide or Australasian housing providers. Funding levels vary and funding sources include government, iwi and philanthropic organisations.

Communities and government engage with each other. However, this engagement could be strengthened. Much of the engagement in the housing space has focused on contract models to meet government housing targets. Little engagement has grappled with housing as a system or addressed the historic issues and intersectional barriers. Relationships are often transactional and competitive. Importantly, we lack consistent and accessible mechanisms to hear from tenants or people experiencing barriers to housing. Those experiencing homelessness are often spoken for by funded providers, rather than sharing their own lived experiences. This lack of participation is particularly problematic considering the over-representation of Māori amongst renters, those experiencing homelessness, and those in housing-sensitive health statistics.

Why public participation and democratic engagement?

The housing crisis has alienated a generation. They are unable to realise the so-called Kiwi dream of home ownership or achieve housing security. They are forced to rent sub-standard accommodation. They cannot save enough for a rainy day or retirement. There is deepening intergenerational resentment. The present government's suite of housing initiatives is more promising than anything we have seen for many years, but despite this there is a generation of young people with a gnawing sense of unfairness and powerlessness. In these circumstances, it is imperative there are institutional arrangements that allow them to be



heard. Not only because it is their human right to be heard. Not only because they have good insights and ideas. Not only because we want to live in a fair and egalitarian society. But because if this generation feels silenced, there are real risks to the country's social fabric.³³

For Māori, the experience of alienation from housing and housing security is intergenerational and systemic, stemming from colonisation. Mainstream systems continue to fail Māori, particularly taitamariki Māori, who have even less chance of achieving meaningful housing security or home ownership. The Māori dream of housing security may not involve standard European economic models, but requires agency and control of land and resources, whānau and hapū-led initiatives to develop papakāinga and whenua, and assertion of rangatiratanga over mana whenua.³⁴ If Māori are to be heard, and Māori experiences and perspectives given space and weight, then Te Ao Māori concepts of housing must be equally understood and valued, both at the constitutional partnership level and in local public participation and democratic engagement.

Communities are calling for more public participation and democratic engagement in the housing system. Te Matapihi He Tirohanga Mō Te Iwi Trust, the peak body for Māori housing organisations, submitted its recent claim to the Waitangi Tribunal:³⁵

The view of Te Matapihi having engaged in the evidence from claimants and the Crown is that there does need to be improvements to how the Crown engage with Māori, seek their views and take on board their input. Te Matapihi are already a part of that, but their involvement and input is not sufficient to be Treaty compliant, the tino rangatiratanga whānau, hapū and iwi entitles them to engage in a partnership with the Crown and that requires the Crown to seek and take on board all those views provided.

Many disadvantaged communities are not heard despite being most affected by, and concerned about, the housing crisis. As the UN Special Rapporteur on the right to adequate housing noted in her recent report on New Zealand, particular groups are experiencing the crisis most acutely, including Māori, Pacific Peoples and other ethnic communities, disabled people, youth and children, single parents, and those living in poverty.³⁶ Citizens Advice Bureau (CAB) has 2,600 trained volunteers in more than 80 locations around Aotearoa: they have their finger on the public pulse. In their recent submission to HUD, CAB explicitly recognises quality housing as a basic human right and emphasises:

We need to ensure that those who are most impacted by the housing crisis (being those who are at most risk of not having access to a home that is affordable, healthy, accessible, secure) have a strong voice in shaping our housing and urban development system into the future. We would like to see this reflected in the formal structures that guide housing and urban development policies, planning, and implementation.³⁷

There is considerable published evidence that community participation in the health system results in beneficial health and social outcomes.³⁸ It is logical to infer that community participation in the housing system results in beneficial housing and social outcomes.

The Office of the Auditor-General's recent report on public accountability systems discusses the role of the public sector in building trust and confidence.³⁹ Increasing gaps between the public and the public sector can create an environment where people feel disempowered and unheard.⁴⁰

We were told that understanding what is important to people involves engaging with, listening, and responding to their needs. For example, one person said, “I want to be heard at least ... It is about doing the right things, but also giving people a voice.”⁴¹

The Public Service Act 2020 establishes organisational forms and ways of working. It affirms that “the fundamental characteristic of the public service is acting with a spirit of service to the community.”⁴² The implementation of the Public Service Act creates opportunities to develop

Ko tō tātou kāinga tēnei - Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019

Improved community engagement across the Public sector

27. Building social cohesion and social inclusion requires ongoing collaboration. Public sector agencies developing social cohesion and social inclusion policies and programmes should collaborate with communities in developing these policies and programmes. Communities play a pivotal role in building and maintaining social cohesion. This is especially true of community leaders, as they build a sense of identity and validate people’s collective understanding of shared social norms and experiences. We recommend greater focus on empowering communities to participate in central and local government decision-making processes.

28. Public sector agencies need to increase their engagement capability and ensure that all communities have opportunities to contribute to the development of services, policies and practices that affect them. There needs to be a shift from simply communicating with communities to genuinely engaging in an open, inclusive and transparent way. The default Public sector agencies’ practice for community engagement needs to shift away from the inform and consult end of the International Association for Public

Participation IAP2 Public Participation Spectrum, to more of a focus on involved, collaborative and empowering engagement. This is consistent with the commitments New Zealand has made to have “a government that is open, inclusive and responsive and citizens who willingly get involved in issues that are important to them”.⁸

29. This will require greater upfront time and resources from Public sector agencies but will lead to sustainable solutions that better meet the needs of and serve communities. These approaches to engagement will also help to build communities’ trust and confidence in Public sector agencies, as their success relies on relationships being built and maintained, rather than one-off, transactional engagement.

30. It is important that Public sector agencies are able to communicate why the level of engagement they are undertaking is appropriate in the circumstances. This will improve the quality of community engagement and policy decisions to be taken, help communities to understand the degree of influence they have in a decision-making process and provide the transparency needed to build trust and confidence.

⁸ Open Government Partnership New Zealand National Action Plan 2018-2020 (2018).



new ways in which the public service, and public sector agencies, can engage meaningfully with community.

In 2020, the *Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019* published its multi-volume report,⁴³ which looks far beyond the events of 15 March. One full volume is devoted to social cohesion writ large, including the role of community engagement across the public sector as a means of building social cohesion and social inclusion. The report makes numerous recommendations including “greater focus on empowering communities to participate in central and local government decision-making processes.”⁴⁴

In her recent report on New Zealand, the UN Special Rapporteur on the right to adequate housing recommended that local and central government:

In conformity with the right to adequate housing, ensure meaningful participation of all residents, including minorities and marginalized groups, in the development and implementation of all government programmes, policies and legislation related to housing, including with respect to urban development and regeneration.⁴⁵

Conclusion

As GPS-HUD is implemented across Aotearoa, the right to a decent home, and other human rights, requires as much public participation and democratic engagement as possible. Not only for those who are well-off, well-informed, well-organised, and frequently navigate official systems, but also for those who are seldom heard. This includes young people, Māori, Pacific Peoples and other ethnic communities, disabled people, single parents, those living in poverty, and other

disadvantaged communities.

Active, informed, inclusive, meaningful, public participation is not easy. It requires creativity, patience, persistence, and a willingness to find new ways of engaging. It also requires resources for individuals and communities living under pressure. The following recommendation is designed to reinforce, and help to implement, the Government’s commitment to deepen participation across the housing system in the kāwanatanga sphere.

Recommendation

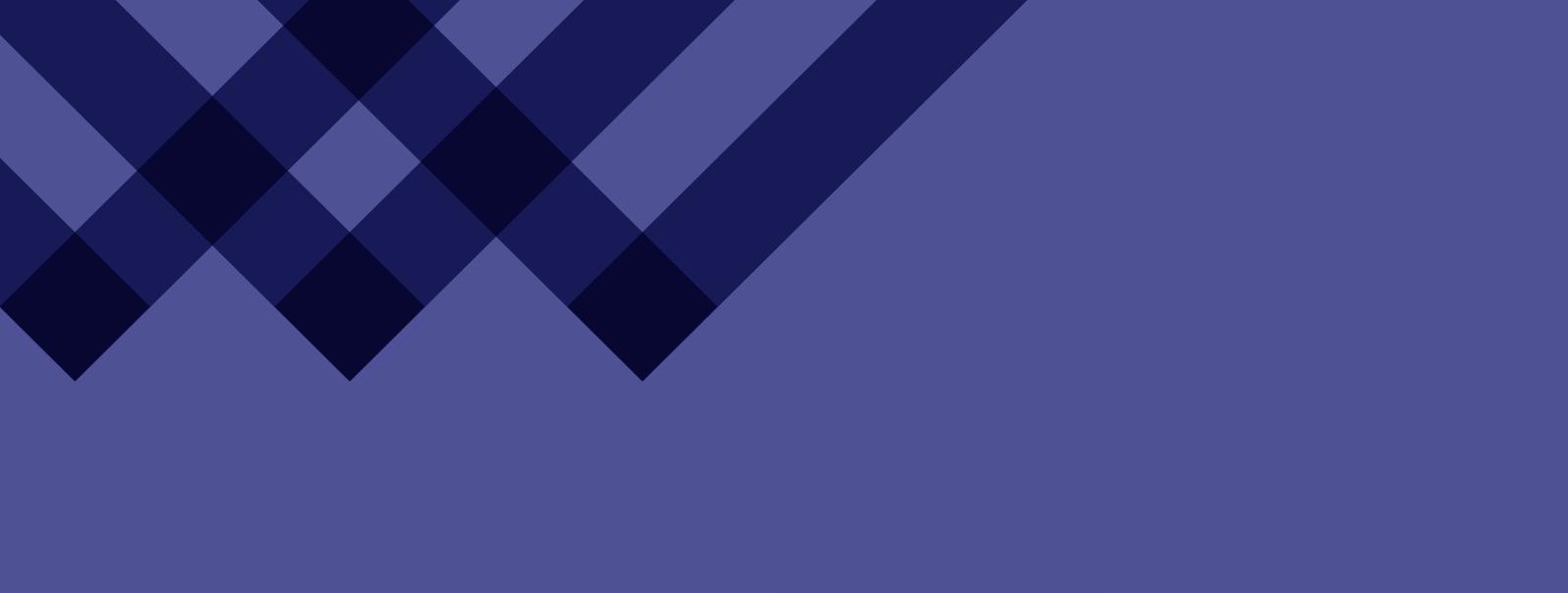
An independent advisory and advocacy group founded on Te Tiriti o Waitangi.

The right to a decent home, as well as good practice, requires that housing initiatives are **evidence-based**. Accordingly, we recommend an advisory and advocacy group with responsibility for providing expert advice and commissioning research.

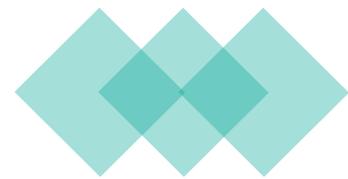
The right to a decent home also entitles individuals and communities to **active and informed participation** on issues relating to housing, including policy making and accountability. The advisory and advocacy group would also be responsible for ensuring that voices from all segments of society are heard, especially those who are most impacted by the housing crisis.

In our view this Recommendation will significantly strengthen public participation and democratic engagement across the housing system in the kāwanatanga sphere, which will partner with the tino rangatiratanga sphere.

The last chapter provides further detail on how we envisage the independent advisory and advocacy group might work.



5. The Right to a Decent Home: How to Measure Progress



5. The Right to a Decent Home: How to Measure Progress

The public, accountability bodies, and policy makers need a way to measure whether the housing situation is improving for everyone in Aotearoa.

More specifically, we need a way to assess whether the right to a decent home grounded on Te Tiriti o Waitangi is being respected or not.

The *Guidelines* address this issue, and this section builds on those foundations.⁴⁶

Social rights, like the right to a decent home, have some features that are not well known in Aotearoa. For example, it is not well understood that the right to a decent home is subject to progressive realisation. This feature gives rise to an important question: how do we measure progressive realisation?

In this section we first provide some general remarks about social rights, and then explain how to measure progressive realisation of the right to a decent home.

At the end of the section, we introduce the Commission's new *Measuring Progress* indicators. *Measuring Progress* provides an easily accessible way of tracking progress (or lack of progress) in the housing system across Aotearoa.

Throughout 2022, we will release data indicators which measure the progressive realisation of a range of key dimensions for the right to a decent home grounded on Te Tiriti o Waitangi. These will help to measure whether the housing situation is improving for everyone in Aotearoa. As the months pass, we will refine and extend our *Measuring Progress* indicators, while making sure they are easy to understand.

Data alone cannot measure values or human rights. For this, mixed methods - quantitative, qualitative, ethnographic - are needed. We acknowledge the indispensable role of data, as well as its limitations.

Social rights are human rights

As the *Guidelines* emphasise, human rights embody shared values like fairness, decency, freedom, equality, wellbeing, belonging, manaakitanga, and kaitiakitanga.⁴⁷ Human rights matter because they relate to people and issues we all care about: people in care, decent work, healthy homes, vibrant communities, and survivors of abuse. They are not just abstract principles. Human rights have content and are protected by international and national law.

There are different types of human rights, including civil, political, workers', social, cultural, and indigenous peoples' rights.

Social rights include the rights to a decent home, health care and protection, and education. They are empowering, emancipatory, and position people as rights holders, not service users. Although social rights are important to everyone, they are especially vital to disadvantaged individuals and communities. There is evidence that social rights improve the lives of individuals and communities. Social rights are not aspirational goals; they are binding human rights commitments.

Progressive realisation

It would be unrealistic to expect governments to realise social rights overnight. Governments are required to work towards the realisation of social rights. In other words, social rights are subject to *progressive realisation*. This raises the question we have already asked: how to hold a government accountable for its obligation to progressively realise the right to a decent home grounded on Te Tiriti o Waitangi?

In addition to progressive realisation, social rights are subject to resource availability. That means more is expected of high-income countries than low-income (or 'developing') countries. Aotearoa is a high-income country.

In this chapter, we focus on progressive realisation, rather than resource availability, because the main housing problems in Aotearoa are primarily associated with a failure of policy and democracy, not a shortage of resources.

An escape hatch?

New Zealand has ratified important human rights treaties that include the right to a decent home. Ratification means that the New Zealand government has an obligation to respect, protect, and fulfil these rights. If it fails to do so, then the rights have been violated, unless the government provides a compelling explanation or justification for its shortcoming, such as a financial crisis or natural disaster.

The government's obligation to *progressively realise* social rights means that it is not enough for people's enjoyment of social rights to remain static – they must be continually improving unless there is a compelling explanation or justification for the lack of progress.

Progressive realisation allows governments time to improve social rights. In some countries governments acknowledge their social rights records do not meet expectations, but add that there is nothing to worry about because social rights will improve sometime in the future. In this way, some governments try to use progressive realisation as an escape hatch to avoid their obligation to steadily improve the enjoyment of social rights.

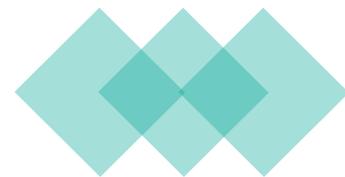
How do we stop progressive realisation being misused as an escape hatch?

We can track progressive realisation by using indicators combined with benchmarks or data points. For example, when assessing the right to a decent home, we can look at the percentage of people who report that their home is warm and dry in winter. This indicator reflects one dimension of the right: *habitability*. As required by progressive realisation, this percentage should increase over time. If it decreases or stays the same, this indicates a likely breach of the right to a decent home.

In short, we can measure if things are getting better, worse, or staying the same by using indicators combined with benchmarks/data points. By tracking indicators in this way, we can assess whether there is progressive realisation (or not) in relation to one or more dimension of the right to a decent home.

Using indicators to assess the right to a decent home in Aotearoa

Earlier this year, the Human Rights Commission asked Motu Economic and Public Policy Research to develop a set of indicators to measure the realisation of the right to a decent home in Aotearoa.⁴⁸ By collecting a range of indicators on the different dimensions of the right, they painted a picture of how well the right is being realised in Aotearoa. They prioritised the most relevant and



pressing dimensions of the right in the Aotearoa context, for example, housing habitability and affordability. They also prioritised data sources that were most technically reliable and that would continue to be produced in the future. That's important because we want to be able to track progress in future years.

This exercise used existing, publicly available data; it did not collect new data. In recent years there has been progress made in measuring different aspects of the right to a decent home: such as estimates of homelessness, additional data on affordability and housing habitability, and the development of government dashboards on housing. MAIHI Ka Ora also establishes an action to develop a Māori-led Housing Data framework which will identify key data gaps around the adequacy of Māori housing.⁴⁹ Despite this progress, the existing data is insufficient to capture all dimensions of the right to a decent home, particularly around cultural adequacy.

The Commission is also planning a project on an indigenous rights monitoring framework to reflect tangata whenua priorities in the selection of indicators, analyses, and reporting. For example, this could include developing indicators that measure Aotearoa's progress in relation to the right to a decent home, Te Tiriti o Waitangi, and the United Nations Declaration on the Rights of Indigenous Peoples.

The Motu study identified seven dimensions of the right to a decent home. It then identified indicators to track progressive realisation for each of these dimensions.

Those indicators suggest there has not been progressive realisation in relation to the affordability dimension of the right to a decent home. On the contrary, things have got worse since the 1980s, suggesting there is a violation of the right to a decent home.

We have used the Motu study to inform a selection of indicators to measure the progressive realisation of the right to a decent home in Aotearoa. Like the *Guidelines* and the Motu report, we explore seven dimensions of the right to a decent home:

- Affordability
- Habitability
- Accessibility
- Security of tenure
- Location
- Access to core services
- Cultural adequacy.

The *Measuring Progress* indicators for each dimension help us to measure the progressive realisation of the right to a decent home grounded on Te Tiriti o Waitangi. *Measuring Progress* will show at a glance whether key dimensions of the right to a decent home are being achieved or not. Our website will also provide a deeper breakdown of the indicators and what they show about housing in Aotearoa.

Alongside this report we are releasing the results for one dimension of the right to a decent home: affordability.

Affordability

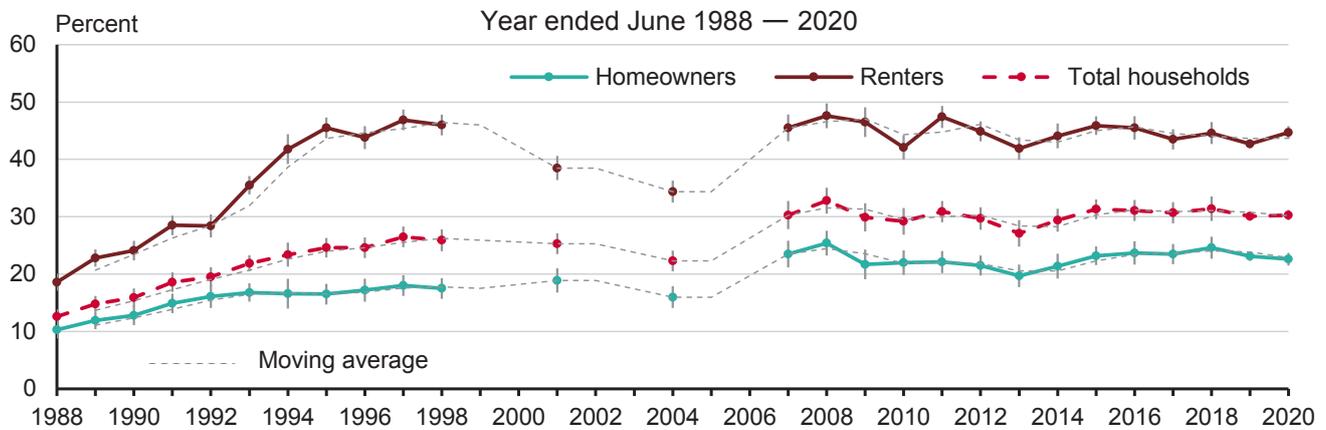
Affordability is one dimension of the right to a decent home based on Te Tiriti o Waitangi.

Housing costs, including for energy, should not compromise the ability of people to afford other reasonable needs. Tenants should be protected by appropriate means against unreasonable rent levels and increases.⁵⁰

Housing affordability is about people's capacity to pay housing costs. These can include entry costs (e.g. building costs, home deposits, or bond to enter a tenancy) and ongoing expenses (e.g. mortgage or rental payments, insurance, rates, repairs and

High housing costs

Households paying 30% or more of their disposable household income on housing costs



Data from the Household Economic Survey, Stats NZ
Error bars represent variability in estimates
Survey run 3 yearly between 1998 and 2007

maintenance). Homeowners are more likely than tenants to find their housing affordable but it's becoming less affordable to buy a first home.

We have identified three indicators that help us to measure affordability in Aotearoa:

- Home ownership (the proportion of households that own their own dwelling)
- High housing costs (the percentage of households that spend 30% or more of their disposable household income on housing costs)
- Self-rated affordability (the proportion of people rating their housing affordability as 3 out of 10 or worse).

Using these indicators, we have assessed that affordability has not improved. For example, the overall trend of households with high housing costs has been upward since the 1980s; the percentage of total households with housing costs more than 30% of their household income has more than doubled, increasing from 12% in 1988 to almost a third in 2018. Housing affordability is more challenging for renters than existing homeowners. For Māori, and other ethnicities, including Pacific peoples, the data indicates that they face even higher rates of unaffordable housing.

This increase in housing costs indicates a violation of the right to decent home, unless there is a compelling explanation or justification.

This is just one of the indicators for assessing affordability. More information about the results of the other indicators is available on our website, along with an explanation of what that means for housing in Aotearoa.

Overall, the indicators show that there has not been progressive realisation in this dimension of the right to a decent home, and instead things have got worse. Housing is less affordable than it used to be. *Measuring Progress* therefore shows a failure in the affordability dimension of the right to a decent home.

Throughout 2022, we will release data indicators that relate to different dimensions of the right to a decent home, and explanations of what that data means for this human right. We will also update *Measuring Progress* with ratings for these other dimensions of the right to a decent home. This will help to measure whether the right to a decent home is progressively improving for everyone in Aotearoa.



6. The Way Forward

6. The Way Forward

In this report, we examine two features of the *Framework Guidelines on the Right to a Decent Home in Aotearoa*: constructive accountability and public participation. Our focus is the kāwanatanga sphere.

We look at instructive examples, past and present, from Aotearoa. We also look at some overseas practices, without holding them up as models to follow.

We listened to community representatives, policy makers, and national and international experts.

In our view, the current arrangements for constructive accountability and public participation in the housing system fall short of New Zealand's legally binding international commitments.

In these circumstances, we outline three main recommendations. They are not set out in detail. Each recommendation requires consultation and discussion, including on the range of options for realisation and implementation.

The recommendations reinforce the direction of travel set out in GPS-HUD and MAIHI Ka Ora, and will assist the effective implementation of these important documents.

Moreover, they are mandated by the right to a decent home grounded on Te Tiriti o Waitangi.

Recommendations

1. An **Act of Parliament which sets out key principles and Tiriti obligations to guide all housing initiatives.**

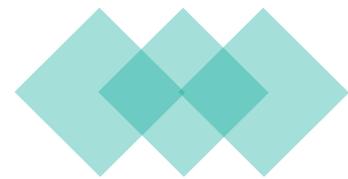
The Kāinga Ora – Homes and Communities Act 2019 mandates the Government Policy Statement and requires it to set the Government's overall direction and priorities for housing and urban development in ways that honour Tiriti o Waitangi and address injustice and inequities for iwi, hapū and whānau.

Embedding in law some key principles and Tiriti obligations to guide all housing initiatives, including GPS-HUD, would help to ensure the country's essential values are front and centre. The principles would also encourage continuity and sustainability in the housing system as it develops in the future.

2. An **independent constructive accountability mechanism** for the housing system.

It is very important that an independent, constructive te Tiriti-based accountability mechanism is urgently established. This is critical for the legitimacy of those holding power in Aotearoa's housing system. The mechanism should address systemic housing issues, not personal complaints.

There are different ways of realising this recommendation, for example, a Housing Ombudsman (Officer of Parliament) or a Housing Rights Commissioner within the Human Rights Commission (independent Crown Entity).



3. An **independent advisory and advocacy group grounded on Te Tiriti o Waitangi.**

The right to a decent home requires housing initiatives to be **evidence-based with attention to both the kāwanatanga sphere and tino rangatiratanga sphere of authority.** We recommend an advisory and advocacy group with responsibility for providing expert advice and commissioning research, including Te Ao Māori perspectives and concepts of housing.

The right to a decent home entitles individuals and communities to **active and informed participation** on issues relating to housing, including policy making and accountability. The advisory and advocacy group would also be responsible for ensuring that voices from all segments of society are heard, especially those who are most impacted by the housing crisis. It is crucial that all those with lived experience of inadequate housing and homelessness, are heard and listened to.

There are different ways this recommendation could be implemented and become an indispensable part of the housing landscape.

Here we focus on what is needed rather than the institutional form it should take. However, we favour an advisory and advocacy group that is small, nimble, working online and face-to-face.

We envisage the group would need regional and national components. There might be different arrangements in different regions: what works well in one region might not be suitable in another. The regional component might align with the 14 focus areas identified in GPS-HUD, while also giving attention to regions that fall outside the GPS-HUD focus areas.⁵¹

The group should also be alert to the regional long-term spatial strategies in the proposed Strategic Planning Act, which is one of the three proposed pieces of legislation to replace the Resource Management Act 1991.⁵²

The group's regional and national components would not be a substitute for the many dynamic civil society, and other, organisations in the housing space. They would be an additional, established, reliable 'pathway' for the views of civil society, and others, to be channelled to those in positions of power.

We have an open mind about where the advisory and advocacy group might be located. One option is that it is located within, but at arm's length from, HUD. This would be along the lines of the recently established Consumer Advocacy Council, located within the Ministry of Business, Innovation and Employment, and outlined in the Appendix to this report.

Finally, we note the current health reforms include a Health Charter.⁵³ The Royal Society Te Apārangi recently called for a "housing equity charter ...underpinned by partnership obligations under Te Tiriti o Waitangi, and by the human right of every person, no matter their circumstances, to live in affordable healthy housing."⁵⁴

We recommend the advisory and advocacy group has responsibility for preparing, by way of a consultative process, te Tiriti-based Housing Charters for different segments of the housing system e.g. a Tenants Charter. These short, non-technical, accessible charters would build on the statutory guiding principles in Recommendation 1.

What next?

This report offers suggestions for how to reinforce the GPS-HUD and MAIHI Ka Ora, drawing particular attention to constructive accountability and democratic participation. It is not the last word; it is just the beginning of our Housing Inquiry.

Throughout 2022, we will continue to update our *Measuring Progress* indicators. These will help us measure whether the right to a decent home grounded on Te Tiriti o Waitangi is progressively improving for everyone in Aotearoa.

Our Inquiry will go into communities to hear their experiences of the housing system. It will look at other key aspects of the right to a decent home: habitability, accessibility, security of tenure, cultural adequacy, and others.

We invite and welcome suggestions and comments as the Inquiry progresses.

REPORTS TO GOVERNMENT AND PARLIAMENT

Independent advisory and advocacy group

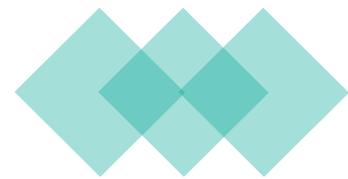
(nimble, online and face-to-face)

- Provides expert advice
- Commissions research
- Drafts housing charters/codes
- Enables the voices of those with lived experience

Independent Housing Commissioner/ Ombudsman

- Provides constructive accountability
- Addresses systemic (not personal) issues

**Act of Parliament with key principles and Te Tiriti obligations
to guide all housing initiatives**



Appendix: Case Studies

This Appendix provides illustrative case studies on the interrelated themes of this report: participation and accountability.

The case studies come from Aotearoa New Zealand, Canada, Ireland, England, and Scotland. Not all of them relate to housing. We are not suggesting they are models to be followed because they are specific to their time, place, and system. Notably, the majority do not account for indigenous partnership or co-design.

We need nimble institutional arrangements which suit the unique context of Aotearoa, align with Te Ao Māori, are co-designed according to Te Tiriti o Waitangi partnership, and deliver the needs of tangata whenua, as well as other disadvantaged groups.

As explained in the Introduction, this report focuses on the kāwanatanga sphere and these case studies are especially relevant to Article 1 of Te Tiriti o Waitangi.

New Zealand's National Housing Commission (1972-1988)

This was set up as an independent statutory body in 1972 on the recommendation of the Royal Commission of Inquiry into New Zealand housing, which reported in 1971.

Among the reasons for setting up the Commission was the need to provide independent and expert advice to the Minister of Housing by people with a wide range of community experience.⁵⁵

Essentially the main functions of the National Housing Commission were to:

- advise the Minister of Housing on matters relating to housing in New Zealand
- encourage and sponsor research into matters affecting housing policy
- monitor and review the housing needs of the people of New Zealand
- carry out regular evaluation of housing affordability.

The Commission had 4-6 members appointed by the Minister of Housing, as well as 2-3 senior public officials who were members ex-officio. Membership was part-time. The NHC was serviced by 2-3 permanent staff and characterised itself as independent.

After 14 years, the Labour Government disestablished the NHC, which ended its final report with these words:

It is the Commission's view that a form of independent advice to the Government should be retained. The important aspects that should be fulfilled are an independent, apolitical stance separated somewhat from the Public Service, a multi-disciplinary staff, a strong commitment to a research function with the funds to commission and carry out a variety of work, and a continuation of input from the community to ensure that the concerns of sectional interests are coordinated and the needs of all regions and groups in New Zealand are met.⁵⁶

This advice was not followed. It is our strong contention that the failure to follow this advice contributed to the housing and human rights crisis that we face today. However, we are not suggesting that the National Housing Commission model, adopted some 40 years ago, is suitable for contemporary Aotearoa.⁵⁷

Canada

Canada's National Housing Strategy Act (2019):

- includes a Housing Policy Declaration which recognises the right to adequate housing and its progressive realisation
- requires a national housing strategy which takes "into account key principles of a human rights-based approach to housing"
- confirms the national housing strategy is to "provide for participatory processes to ensure the ongoing inclusion and engagement of civil society, stakeholders, vulnerable groups and persons with lived experience of housing need, as well as those with lived experience of homelessness"
- establishes a National Housing Council to advance the national housing strategy
- establishes a Federal Housing Advocate to monitor implementation, conduct research and reviews on systemic housing issues, and advise the Minister.⁵⁸

The Canadian housing strategy has given rise to a new community-based tenant initiative. This initiative will provide funding to organisations that help people in housing need, so they are better represented and able to participate in housing policy and housing project decision-making.⁵⁹

The strategy has also committed to fund and co-develop distinctions-based housing strategies for First Nations, Inuit, and Métis Nation partners.⁶⁰

Ireland

In September 2021, the Irish government published *Housing for All – A New Housing Plan for Ireland to 2030*, which includes a commitment to establish a Commission on Housing.⁶¹ The Commission remains work in progress, but *Housing for All* envisages it will bring together experts from across the housing sector and provide long-term strategic advice on:

- how to build on Housing for All
- the merits of an independent social housing regulator
- the wording of a referendum on a housing amendment to the Constitution.

Since 2007, Ireland has a record of inclusive consultative forums, sometimes with ministerial participation, to examine homelessness "in a constructive and collaborative manner."⁶²

England

Proposals are well advanced to enact a short Charter for social housing residents. As Prime Minister Boris Johnson put it:

The proposal ... will make clear the standards that every social tenant in England is entitled to expect from their landlords. They will ensure that people feel safe and secure in their homes, can get problems fixed before they spiral out of control, and see exactly how good their landlord is at dealing with complaints. Above all, it will give social housing tenants a voice and ensure that it is listened to.⁶³

There will be measures to ensure landlords live up to the new Charter. For example, the existing powers of the Regulator of Social Housing will be strengthened, and an independent Advisory Committee established to provide the Regulator with unbiased advice. The Housing Ombudsman's complaints service will also be improved.



Aotearoa – Māori Health Authority

The Waitangi Tribunal has highlighted systemic racism in the health system and the consistent failure to address inequitable health and wellbeing outcomes for Māori.⁶⁴ In 2021, the Ministry of Health announced the introduction of a new Māori Health Authority, which will be responsible for ensuring the health system is performing for Māori. Associate Minister Peeni Henare said the Authority “will give Māori a voice and influence in how our system needs to perform better for Māori.”⁶⁵

The Authority will sit within the Ministry of Health. It will work with Iwi-Māori Partnership Boards, Māori health providers, iwi, hapū and Māori communities to understand Māori health needs across Aotearoa, and will commission services in partnership with Health NZ. In each locality, partnerships between Iwi-Māori Partnership Boards, Health NZ and the wider community will ensure Māori voices are heard.⁶⁶

The Bill, which is expected to be enacted in 2022, includes specific reference to engaging with and reporting to Māori:

Section 20 Engaging with and reporting to Māori

- (1) The Māori Health Authority must—
- (a) have systems in place for the purpose of—
 - (i) engaging with Māori in relation to their aspirations and needs for the health system; and
 - (ii) enabling the responses from that engagement to inform the performance of its functions; and
 - (b) engage with relevant Māori organisations when—
 - (i) jointly developing the New Zealand Health Plan with Health New Zealand; and

- (ii) advising on the GPS and any health strategy; and
 - (iii) preparing its statement of intent and statement of performance expectations; and
- (c) report back to Māori from time to time on how engagement under this section has informed the performance of its functions.⁶⁷

The Bill’s participatory element is positive. This kind of participatory approach could serve as an example for the housing system.

The proposed new Authority provides a positive example of Te Tiriti o Waitangi accountabilities, demonstrating how a Crown-Māori partnership could operate in the kāwanatanga sphere.

Scotland – social security and housing

Social security

The Scottish Government is creating a new social security system for Scotland. It has set up a new agency, Social Security Scotland, to deliver benefits in a more positive and supportive way. The relevant legislation is the Social Security (Scotland) Act 2018.⁶⁸ As the Bill progressed through Parliament, its rights-based approach attracted strong cross-party support.

Section 1 of the Act sets out eight principles which are the foundational values of the new system. The Scottish social security principles are:

- (a) social security is an investment in the people of Scotland,
- (b) social security is itself a human right and essential to the realisation of other human rights,
- (c) the delivery of social security is a public service,
- (d) respect for the dignity of individuals is to be at the heart of the Scottish social security system,

- (e) the Scottish social security system is to contribute to reducing poverty in Scotland,
- (f) the Scottish social security system is to be designed with the people of Scotland on the basis of evidence,
- (g) opportunities are to be sought to continuously improve the Scottish social security system in ways which –
 - (i) put the needs of those who require assistance first, and
 - (ii) advance equality and non-discrimination,
- (h) the Scottish social security system is to be efficient and deliver value for money.

The Act requires the Scottish Government to adopt a Scottish Social Security Charter which reflects the eight principles. The Charter explains what the principles mean in practice. It was written by people with lived experience of social security, their organisations, and Social Security Scotland staff.⁶⁹

The Act establishes an independent Scottish Commission on Social Security, which reports regularly to the Scottish Parliament about how the Scottish Government is complying with the Charter.

We include this case study because it explicitly uses the right to social security, and other values, to refresh Scotland’s social security system. The statutory principles, which include the right to social security, establish the foundational values of the new system. The principles are elaborated in a Charter, and an independent non-judicial body holds the Government accountable to the Charter through the Scottish Parliament. An analogous arrangement could be used in relation to Aotearoa’s housing system, the right to a decent home, and Te Tiriti o Waitangi.

Housing

In March this year, the Scottish Government published *Housing to 2040*.⁷⁰ Scotland’s social security reforms are a few years ahead of *Housing to 2040*, nonetheless some of its elements are already instructive. For example:

- The right to an adequate home is an integral part of the housing reforms, for example, a significant part of the strategy is headed “The right to an adequate home and delivering equality”.⁷¹
- “Starting this year we will carry out a comprehensive audit of our current housing and homelessness legislation to understand what more is necessary to ensure people can realise their right to an adequate home.”⁷²
- Develop with the UK government a “New Homes Ombudsman scheme to raise the standard of conduct of developers and the quality of new build homes.”⁷³
- Establish a Tenant Participation Panel for the private rented sector, and a national network of social rented tenants for the social rented sector.⁷⁴

New Zealand – the Government’s response to energy hardship (2021)

In 2018, the Government established an independent panel to advise how the electricity market can deliver efficient, fair, and equitable prices. Important features of the panel’s final report include attention to poverty, energy hardship and energy equity.⁷⁵ This year, the government is implementing the panel’s recommendations, which include establishing:

- *Consumer Advocacy Council* to be an independent advocate for residential and business electricity consumers and provide evidence-based contributions in decision-making processes,



- *Energy Hardship Expert Panel* to recommend how to alleviate energy hardship,
- *Energy Hardship Reference Group* to provide a forum for sharing information and encouraging coordination across non-governmental organisations, government agencies and industry,
- *Mandatory minimum standards* to protect vulnerable and medically dependent consumers - the Electricity Authority (EA) has already developed new *Consumer Care Guidelines* and it is anticipated the EA will be responsible for monitoring and enforcing these new standards.

Notably, the new Council, Expert Panel, and Reference Group will be located within the Ministry of Business, Innovation and Employment.

At first sight, the electricity market may seem far removed from the housing system. However, the independent panel found that more than 100,000 households cannot afford to adequately heat their homes. The panel addressed issues of poverty, hardship, equity, affordability, and fairness. It recommended arrangements for independent advocacy, expert advice, a discussion forum, and minimum standards, all of which are very relevant to the housing system. While it is not realistic to insert identical arrangements in the housing system, there are lessons to be learned.

Conclusion

The strong themes that emerge from these case studies include:

- sustained attention is being devoted to ensuring there is meaningful public participation and effective accountability in the housing system
- formal institutional arrangements are needed to support and reinforce policies and other initiatives
- standards are needed, such as codes, charters, and guiding principles
- policies must be evidence-based, therefore reliable expert advice is vital.

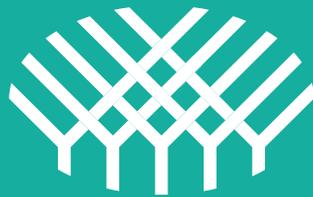
Endnotes

- ¹ Human Rights Act 1993, section 5(2)(h).
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- ³ *Framework Guidelines*, paragraphs 67-70.
- ⁴ Paragraph 68.
- ⁵ *Te Tauākī Kaupapa Here a te Kāwanatanga mō te Whakawhanake Whare, Tāone anō hoki: Government Policy Statement on Housing and Urban Development* (September 2021) <https://www.hud.govt.nz/assets/Urban-Development/Government-policy-statement-GPS/FINAL-GPS-HUD.pdf> and *MAIHI Ka Ora: The National Māori Housing Strategy 2021-2051* (September 2021) <https://www.hud.govt.nz/assets/Maori-housing/MAIHI-Ka-Ora.pdf>.
- ⁶ See page 10 of the *Government Policy Statement on Housing and Urban Development*.
- ⁷ *Government Policy Statement on Housing and Urban Development*, at page 3.
- ⁸ It was written in partnership with Te Puni Kōkiri, with the support of the National Iwi Chairs Forum, some hapū and iwi, and Te Matapihi he tirohanga mō te Iwi Trust, and developed through Maihi Whare Wānanga.
- ⁹ Jade Kake, 'New Māori housing strategy is a game changer' (5 October 2021) <https://www.stuff.co.nz/business/opinion-analysis/126587382/new-mori-housing-strategy-is-a-game-changer>.
- ¹⁰ *Government Policy Statement on Housing and Urban Development*, at page 43.
- ¹¹ Page 45.
- ¹² Page 45.
- ¹³ Page 45.
- ¹⁴ Page 39.
- ¹⁵ Page 39.
- ¹⁶ *MAIHI Ka Ora*, at page 9.
- ¹⁷ *Government Policy Statement on Housing and Urban Development*, at page 9.
- ¹⁸ Waitangi Tribunal, WAI 2750 – Housing Policy and Services Inquiry, <https://waitangitribunal.govt.nz/inquiries/kaupapa-inquiries/housing-policy-and-services-inquiry/>.
- ¹⁹ *Lawson v Housing New Zealand* [1997] 2 NZLR 474 (HC).
- ²⁰ *Reimagining Administrative Justice: Human Rights in Small Places* (Margaret Doyle and Nick O'Brien, Palgrave Macmillan, 2019).
- ²¹ *Godfrey v Harvey* [2019] NZHRRT 6.
- ²² Tenancy Tribunal at Tokoroa [2021] NZTT Tokoroa 4308489.
- ²³ Human Rights Council 47th session, *Visit to New Zealand: Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context*, Leilani Farha (April 2021) <https://undocs.org/en/A/HRC/47/43/Add.1>, paragraph 80.
- ²⁴ *Report of the Special Rapporteur*, paragraph 50.
- ²⁵ The full title of this office-holder is *Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context*. The current Special Rapporteur is Mr Balakrishnan Rajagopal; the previous Special Rapporteur Leilani Farha conducted a country visit to New Zealand in February 2020 and her report is referenced above.



- ²⁶ The review is not comprehensive, for example, it omits legally binding determinations in relation to some types of disputes under the Building Act 2004, and breaches of the *OECD Guidelines for Multinational Enterprises*. Both are located within the Ministry of Business, Innovation and Employment.
- ²⁷ *Report of the Special Rapporteur*, at paragraph 85(aa).
- ²⁸ Citizens Advice Bureau submission on Government Policy Statement on Housing and Urban Development (<https://www.cab.org.nz/assets/Documents/About-us/Social-Policy/Other-social-policy/CABNZ-Sub-on-HUD-GPS-Consultation-FINAL-v3.pdf>), at page 11.
- ²⁹ Te Tūāpapa Kura Kāinga Ministry of Housing and Urban Development Annual Report 2020/21, at page 33 <https://www.hud.govt.nz/assets/Annual-report/TE-TUAPAPA-KURA-KAINGA-HUD-Annual-Report-2020-21-web.pdf>.
- ³⁰ *Framework Guidelines*, paragraph 66.
- ³¹ United Nations Declaration on the Rights of Indigenous Peoples Article 32, and *Framework Guidelines* Appendix 4.
- ³² *Framework Guidelines*, paragraph 66 and Appendix 2.
- ³³ *Generation Rent: Rethinking New Zealand's Priorities* (Shamubeel Eaqub and Selena Eaqub, BWB Texts, June 2015) at page 45.
- ³⁴ Jade Kake: *The Future of Papakāinga* <https://thespinoff.co.nz/atea/11-10-2019/the-future-of-papakāinga-theres-no-place-like-home/>.
- ³⁵ Te Matapihi submission to WAI 2750: Third Cause of Action, Consultation 133, paragraph 192.
- ³⁶ End of Mission Statement, Visit of the Special Rapporteur on the right to adequate housing to New Zealand Leilani Farha, Wellington, 19 February 2020, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25574&LangID=E>, at paragraph 11.
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- ⁴⁰ *Building a stronger public accountability system*, paragraphs 1.5-1.7.
- ⁴¹ *Building a stronger public accountability system*, paragraph 2.10.
- ⁴² Public Service Act 2020, sections 3 and 13.
- ⁴³ *Ko tō tātou kāinga tēnei - Report of the Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019*, Published 26 November 2020, Volume 4, Part 9-10, pages 60-61 at paragraphs [27-30].
- ⁴⁴ *Report of the Royal Commission of Inquiry*, at page 760.
- ⁴⁵ *Report of the Special Rapporteur*, at paragraph 85(t).
- ⁴⁶ *Framework Guidelines*, see paragraphs 83-87.
- ⁴⁷ Paragraphs 48-53.
- ⁴⁸ Motu Economic and Public Policy Research, *Motu Working Paper 21-12: Monitoring the enjoyment of the rights to adequate housing and health care and protection in Aotearoa New Zealand* (August 2021) <https://www.motu.nz/our-research/human-rights/monitoring-enjoyment-rights-housing-health-care-protection-nz/>.
- ⁴⁹ *MAIHI Ka Ora*, at page 35.
- ⁵⁰ Paragraph 56.
- ⁵¹ *Government Policy Statement on Housing and Urban Development*, at page 40.
- ⁵² Overview of the resource management reforms, <https://environment.govt.nz/what-government-is-doing/key-initiatives/resource-management-system-reform/overview/>.

- ⁵³ See Building a New Zealand Health Service that works for all New Zealanders, 21 April 2021, <https://www.beehive.govt.nz/speech/building-new-zealand-health-service-works-all-new-zealand> and Update from the Transition Unit, Department of the Prime Minister and Cabinet, Thursday 17 June 2021, <https://dpmc.govt.nz/publications/update-transition-unit-thursday-17-june-2021>.
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- ⁵⁷ The Speech from the Throne in November 2017 included: "A Housing Commission will work with the private sector, councils and iwi to cut through red tape, undertake major projects and ensure new, affordable homes are built rapidly." This proposal led to the urban development functions of Kāinga Ora as set out in the Urban Development Act (2020).
- ⁵⁸ Canada National Housing Strategy Act (2019) <https://laws-lois.justice.gc.ca/eng/acts/n-11.2/FullText.html>.
- ⁵⁹ *National Housing Strategy: Community-Based Tenant Initiative (contained within Canada's National Housing Strategy: A Place to Call Home)* <https://www.cmhc-schl.gc.ca/en/professionals/project-funding-and-mortgage-financing/funding-programs/community-housing/cbti>, at page 8.
- ⁶⁰ *Canada's National Housing Strategy*, at page 4.
- ⁶¹ *Housing for All - a New Housing Plan for Ireland*, Department of Housing, Local Government and Heritage, (published on 2 September 2021) <https://www.gov.ie/en/publication/ef5ec-housing-for-all-a-new-housing-plan-for-ireland/>.
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- ⁷⁰ *Housing to 2040*, Scottish Government, <https://www.gov.scot/publications/housing-2040-2/documents/>.
- ⁷¹ Page 3.
- ⁷² Page 10.
- ⁷³ Page 54.
- ⁷⁴ Page 38.
- ⁷⁵ Ministry of Business, Innovation and Employment, *Final Report, Electricity Price Review: Hikohiko Te Uira* (21 May 2019) <https://www.mbie.govt.nz/assets/electricity-price-review-final-report.pdf>.



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