**ORAL STATEMENT OF HUMAN RIGHTS COMMISSION**

**XX Commissioner and XX Commissioner**

**To: Environment Committee**

**Re: COVID-19 Recovery (Fast-track Consenting) Bill**

**23 June 2020**

[Opening Mihi]

**Introduction**

Thank you for the opportunity to appear before this Committee regarding the COVID-19 Recovery (Fast-track Consenting) Bill.

We wish to begin by acknowledging the many positive aspects of this Bill. It seeks to address a human rights emergency, by promoting the right to decent work while respecting the right to a healthy environment.[[1]](#footnote-1)

In doing so, however, it curtails usual rights of participation in the interests of economic recovery.[[2]](#footnote-2) This involves a balancing of rights.

In order to balance rights, explicit consideration of New Zealand’s binding national and international human rights commitments and Te Tiriti obligations needs to take place.

In our view, embedding human rights and Te Tiriti in the recovery phase of New Zealand’s COVID-19 response will lead to better decision making and better outcomes.[[3]](#footnote-3)

This Bill provided a significant opportunity in this respect.

We note the Cabinet Paper associated with this Bill states that “There are no human rights, gender and disability implications associated with this paper”.[[4]](#footnote-4) We respectfully disagree.

The Commission considers the Bill to have significant human rights implications – particularly in relation to the right to work. The Commission also considers that gender and disability analysis of COVID-19 recovery spending is vital.

**The first point we wish to make regards the Bill’s purpose clause**

COVID-19 has exposed and exacerbated pre-existing and deeply entrenched discrimination and inequities in society.[[5]](#footnote-5)

This Bill has an opportunity to counteract these effects, and support a recovery underpinned by dignity and respect for human rights. To do this, the Act must promote human rights and Te Tiriti.

While the focus on employment growth, certainty of investment, and sustainable management is essential, we also recommend that the Bill be explicit about promoting inclusive employment in decent work.

We encourage the Committee to amend the purpose of this Act to “urgently promote inclusive, equitable employment growth to support a human-rights and Tiriti-based recovery”.

**Our second point regards the need to enhance****participation in decision making**

The right to participate in decision making is a cornerstone of democratic government, is recognised in international human rights law, and underpins the government’s Te Tiriti o Waitangi obligations.[[6]](#footnote-6)

We submit to the Committee that the Bill should encourage hearing diverse perspectives in the consenting process. Meaningful participation leads to good decisions, fosters trust in government, mitigates against problems arising at later stages, and gives legitimacy to decisions.[[7]](#footnote-7) We urge the Committee to keep participation rights and their benefits in front of mind in this Bill.

In addition, the Bill must ensure that the complementary, yet distinct, participatory principles in the Te Tiriti o Waitangi are applied in decision-making processes that affect Māori.

The Bill provides an opportunity to take into account previous findings from the Waitangi Tribunal concerning resource management processes, strengthen the Crown-Māori relationship to rebuild the economy in genuine partnership and fulfil obligations under the United Nations Declaration on the Rights of Indigenous Peoples.[[8]](#footnote-8)

However, due to its fast track nature in our view the Bill does not adequately uphold rangatiratanga or the human rights obligation of free, prior and informed consent.[[9]](#footnote-9) Our written submission makes a number of recommendations to mitigate this aspect.

Furthermore, we recommend that the Select Committee give particular attention to submissions from Iwi and what they say about the extent that Iwi views have been reflected in the final bill.

**Thirdly, we need to reduce the timeframe and introduce a regular review**

While the situation in New Zealand remains fast-moving, we submit to this Committee that this legislation should, similarly to the COVID-19 Public Health Response Act, be of short duration and should be subject to regular review while in operation. We recommend reducing the duration of the Bill to one year.[[10]](#footnote-10)

In order to ensure the Bill is operating in a way which promotes a Tiriti o Waitangi and human rights-based recovery we suggest it should be subject to regular review while in operation. We recommend the first review should take place within 90 days to six months of the Act’s commencement.[[11]](#footnote-11)

**Fourthly, ensure the Bill upholds the principles of equal employment opportunities**

An economic and social recovery underpinned by human rights should recognise and address structural inequalities and issues of discrimination in employment.[[12]](#footnote-12)

Given that the current purpose of the Bill is to promote employment growth, it’s essential that equal employment opportunities are central to decision making and that that inclusive employment practices for all are a focus.[[13]](#footnote-13)

We encourage the Committee to strengthen the duty on the Minister to ensure these aspects are ‘mandatory’ rather than simply ‘taken into account’ under Clause 19.[[14]](#footnote-14)

**Fifthly, the Bill should foster accessible environments for all**

The accessibility of the built environment is a key factor which determines whether disabled people and others can enjoy community life and public amenities.

It makes sense for major rebuilds and projects to ensure that everyone can benefit from them. Public works should be designed using ‘universal design’ principles, that is, that they cater for the differences and preferences of all - older New Zealanders, families with young children and disabled people.

The Covid-19 projects are a significant opportunity to ‘do it once, do it right’.

We need therefore need decision makers who understand universal design acting in the steps in the proposed process in this Bill.

We want the Minister to consider whether a finished project will be inclusive of all when deciding whether it should be referred to an Expert Advisory Panel. And we submit that the Panel needs to include people who have skills, experience and knowledge in accessibility and universal design.

Our written submission provides more detail on these points and are happy to provide more information on universal design if needed.

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| Additional points to comment on:   * The urgency of legislation * S17 Persons who must or may be invited to comment on referred project |

1. Pt 1 (pg. 4) [↑](#footnote-ref-1)
2. Pt 6 (pg. 4) [↑](#footnote-ref-2)
3. Pt 3 (pg. 4) [↑](#footnote-ref-3)
4. COVID-19 Recovery (Fast-track Consenting) Bill May 2020 [Cabinet Paper](https://www.mfe.govt.nz/more/briefings-cabinet-papers-and-related-material-search/cabinet-papers/covid-19-recovery-fast), at paragraph 121. [↑](#footnote-ref-4)
5. See for example UN High Commissioner for Human Rights, [*Disproportionate impact of COVID-19 on racial and ethnic minorities needs to be urgently addressed*](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25916&LangID=E), 2 June 2020. Working Group on discrimination against women and girls*,* [*Responses to the Covid-19 could exacerbate pre-existing and deeply entrenched discrimination against women and girls*](https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25809&LangID=E), 20 April 2020. [↑](#footnote-ref-5)
6. Pt 14 (pg. 5) [↑](#footnote-ref-6)
7. Ibid [↑](#footnote-ref-7)
8. Pt 34 (pg. 8) & Pt 18 (pg. 6) & Pt 40 (pg. 9) [↑](#footnote-ref-8)
9. Pt 44 (pg. 11) & Pt 58 (Pg. 13) [↑](#footnote-ref-9)
10. Pt 32 (pg. 8) [↑](#footnote-ref-10)
11. Pt 33 (pg. 8) [↑](#footnote-ref-11)
12. Pt 66 (pg. 66) [↑](#footnote-ref-12)
13. Pt 62 (pg. 13) & Pt 67 (Pg. 14) [↑](#footnote-ref-13)
14. Pt 63 (pg. 13) [↑](#footnote-ref-14)