



Human Rights Commission
Te Kāhui Tika Tangata

Economic, Social and Cultural Rights in New Zealand:

Submission of the Human Rights Commission for the
Fourth Periodic Review of New Zealand under the
International Covenant on Economic, Social and
Cultural Rights

15 February 2018

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Introduction

1. The New Zealand Human Rights Commission is New Zealand's National Human Rights Institution (NHRI). It is accredited as an "A" status NHRI. One of the Commission's functions pursuant to section 5(2)(kc) of the Human Rights Act 1993 is *"to promote and monitor compliance by New Zealand with, and the reporting by New Zealand on, the implementation of international instruments on human rights ratified by New Zealand."*
2. The Commission welcomes the opportunity to provide this submission to the Committee on Economic, Social and Cultural Rights for the purposes of New Zealand's fourth periodic review under the International Covenant on Economic, Social and Cultural Rights ("ICESCR").
3. Many New Zealanders have high standards of living by international standards. However, the extent to which social, economic and cultural rights are realised is heavily influenced by factors such as family status and economic advantage. Single parent families and people in low paid jobs or who are unable to obtain work are less likely to have adequate housing or enjoy a reasonable standard of living. Discrimination is also evident, with Māori, Pasifika, women and girls, migrants, refugees and disabled people experiencing markedly worse outcomes across a range of key socio-economic indicators.
4. In order to advance social, economic and cultural rights, and reduce disparities in a sustainable manner, the New Zealand Government will need to demonstrate a more tangible legislative and policy commitment to meeting its obligations under ICESCR.
5. This submission sets out the key issues that must be addressed in order to improve ICESCR compliance. It is cross referenced against relevant Covenant articles, matters raised in the Committee's List of Issues Prior to reporting ("LOIPR") and Sustainable Development Agenda 2030 goals. A full summary of recommendations that the Committee may wish to make to the New Zealand government is provided separately as an appendix.

Human Rights in Policy and Legislation

ICESCR Arts: 1 | 2

LOIPR Paras: 1 | 6

SDGs: 10 | 16

6. New Zealand legislators and policy makers often ignore or fail to explicitly recognise or incorporate economic, social and cultural rights in legislation and policy. This is despite a requirement in the Cabinet Manual and the Legislative Design and Advisory Guidelines for proper consideration to be given to New Zealand's obligations under international law. Neither is there any overt recognition or endorsement of the ICESCR within New Zealand's legislative framework, unlike the partial recognition of ICCPR rights reflected in the New Zealand Bill of Rights Act 1990 (BORA).
7. This reflects the State's uneven approach to human rights due diligence and compliance. While the BORA compliance requirements ensure a degree of systemic awareness of ICCPR rights, there is an apparent lack of awareness among officials of the need to reflect ICESCR rights within relevant policy and legislation. For example, despite the Commission recommending it do so, the Ministry of Health made no specific reference to the right to health in its most recent Health Strategy. On the other hand, there has been more willingness to acknowledge the specific rights of some vulnerable population groups, as recently evidenced by the reference to UN Conventions on the Rights of the Child and the Rights of Persons with Disabilities in recent reforms to child protection legislation.
8. Of further concern has been the response of the State to decisions by Courts and Tribunals which find policy or legislation inconsistent with human rights law. For example, previous Government responses to Declarations of Inconsistency made by the Human Rights Review Tribunal and the Courts under the Human Rights Act¹ has, on occasion, been dismissive (*Adoption Action Inc v Attorney-General*) or kneejerk (*Ministry of Health v Atkinson*).² This has either perpetuated, or led to, policies and laws that are inconsistent with human rights standards.
9. In 2013 the Independent Constitutional Advisory Panel recommended that a process be set up to explore options for amending the BORA by:
 - (a) Adding economic, social and cultural rights, property rights and environmental rights, and
 - (b) Improving compliance by the Executive and Parliament with standards in the Act.

10. In its Fourth Periodic report to the Committee the State indicated that it has no plans to review the BORA at this stage.³ In the absence of a comprehensive constitutional document or entrenched legal provisions, economic, social and cultural rights are mainly provided for through legislative and policy instruments that establish corresponding services, protections and entitlements.⁴ In addition, cabinet guidelines provide that new legislation must comply with New Zealand's international human rights treaty obligations.⁵ This provides an *ad hoc* procedural framework for assessing the compliance of new legislation with ICESCR.
11. Furthermore, it is notable that while the State has expressed its commitment to meeting the UN Sustainable Development Agenda 2030, it does not seem to have implemented any visible policy strategy for that purpose. The Commission is concerned about the apparent absence of such a strategy, particularly given that the SDG 2030 Agenda goals are concerned with the realisation of economic, social and cultural rights. There is currently little legislative alignment with this objective. For example, the Public Finance Act 1989, which regulates the State's use of public financial resources, does not include any provision that would require decisions regarding the use of public finances to take into account the maintenance or advancement of economic, cultural and social rights.
12. A strategy needs to be developed and implemented urgently, alongside comprehensive and transparent reporting against SDGs at a domestic and international level. This includes reporting on SDG progress through treaty body review processes and participation in the UNESOC High Level Political Forum, including provision of Voluntary National Reviews to the UN Department of Economic and Social Affairs.

Recommendation 1

That the New Zealand Government demonstrate its commitment to realisation of socio-economic and cultural rights and achievement of SDG goals by:

- a. **Amending the New Zealand Bill of Rights Act 1990 to include specific protection for economic, social and cultural rights.**
- b. **Amending the Public Finance Act to ensure that Economic, Social and Cultural rights are appropriately considered and taken into account when fiscal and resource decisions are made.**

- c. **Urgently implementing legislative and policy development processes and practices that require ICESCR rights and the SDGs to be transparently considered and given appropriate weight in all relevant resource allocation and policy decisions. This should be accompanied by comprehensive human rights training for all relevant government officials.**
- d. **Before December 2018, developing and implementing a strategy to meet the targets. This strategy should be developed in accordance with the principles of participation, accountability and non-discrimination to ensure that disadvantaged and marginalized groups are better able to realise their socio-economic and cultural rights. This includes disabled people, women and girls, Māori, Pacific people and refugees.**

Treaty of Waitangi

ICESCR Arts: 1 | 2 LOIPR Paras: 1 | 5 SDGs: 10 | 16

13. The Treaty of Waitangi (1840) is New Zealand’s founding document. It has major significance for human rights and harmonious relations between indigenous and non-indigenous New Zealanders. The Treaty is strongly aligned with New Zealand’s international human rights obligations and the UN Declaration on the Rights of Indigenous Peoples (UNDRIP). The four articles of the Treaty reflect fundamental human rights principles. The Treaty provides a key mechanism for ensuring the realisation of economic, social and cultural rights for indigenous New Zealanders.
14. The place of the Treaty of Waitangi in New Zealand’s constitutional arrangements was also considered through the Constitutional Review process. The Panel made a number of recommendations regarding the Treaty, and its role, aimed at strengthening its position within New Zealand’s constitutional arrangements.⁶
15. Alongside the work of the Constitutional Advisory Panel, the independent Iwi Leaders Forum carried out wide-ranging consultation and issued its own report. The report, *Matike Mai Aotearoa*⁷, recommended further public discussion about a range of potential constitutional models to reflect and uphold the Treaty of Waitangi and indigenous rights.

16. The recommendations of the Constitutional Advisory Panel and *Matike Mai Aotearoa* are yet to be reflected in Government policy or legislation. There has been a general lack of urgency on the part of the State in this area, despite problems arising during recent legislative initiatives. These include the attempted 2016 reforms to the Te Ture Whenua Māori Act, the statute that governs Māori land and the creation of a Marine Sanctuary in the Kermadec Islands. As noted in the Government's report, the Māori land reforms were found by the Waitangi Tribunal to have an insufficient mandate from Māori and in breach of the principles of the Treaty of Waitangi.⁸
17. Furthermore, the Commission notes that while the State may have incorporated some aspects of the Waitangi Tribunal's landmark report *Ko Aotearoa Tenei* (WAI 262) in policy, legislation and trade agreements,⁹ it is yet to issue a full, formal response to the report's recommendations. The Commission considers that the WAI 262 framework recommended by the Tribunal should be implemented as a matter of priority, particularly given the inevitable impact that State actions will have upon the Treaty rights of Māori as regards indigenous flora, fauna and cultural *taonga*.¹⁰

Recommendation 2

- a. **By December 2018, develop, in partnership with Māori, a national strategy or plan to bring public policy and legislation into alignment with the UNDRIP, including provision of resourcing, cooperation and support to the UNDRIP Independent Monitoring Mechanism established by the Iwi Chairs Forum, and working with the forum to develop and implement a National Plan of Action for implementing UNRIP, in accordance with the commitments made in the Outcome Document of the World Conference on Indigenous Peoples A/RES/69/2 2014.**
- b. **Urgently develop, in partnership with Māori, mechanisms to ensure legislation, policy and practice initiatives comply with the participation obligations in Article 2 of the Treaty of Waitangi.**
- c. **Urgently develop, in partnership with Māori, a policy framework designed to implement the WAI 262 recommendations across the government sector, including all relevant laws and regulations, international trade policies and commercial activities.**

Trade Agreements and Business Activities

ICESCR Arts: 1 | 2 LOIPR Paras: 2 SDGs: 10 | 17

18. The Commission has highlighted to the previous Government the importance of transparency and public participation in the negotiation and implementation of trade agreements.¹¹ The concerns include the requirement for the State to maintain its ability to meet human rights obligations such as economic, social and cultural rights when pursuing business related policy objectives with other states or business enterprises via treaty agreements.
19. It is notable that the State is yet to take steps to ensure that the UN Guiding Principles on Business and Human Rights are reflected in relevant public policy instruments and guidelines. This includes Government procurement practices. While the All of Government Procurement Guidelines refer to the need to have regard to international obligations, there is no corresponding guidance or training for government officials on what this requires in practice. The Commission is working on improving understand among officials and would welcome the Committee emphasising the importance of the State leading by example in ethical procurement.
20. The Commission further considers that the Government should develop a transparent, publicly accessible trade strategy that is explicitly aligned with the advancement of New Zealand's human rights and Treaty of Waitangi obligations. The Commission considers the EUs *Trade for All* trade and investment strategy predicated upon the principles of Effectiveness, Transparency and Values (including human rights) provides a useful template in this regard. The Commission also considers that a procedural mechanism, such as a human rights impact analysis or similar process, should be implemented to ensure that those obligations are specifically considered during the negotiation of the agreement and appropriately included under its terms.

Recommendation 3

- a. **Develop a Trade Strategy, along the lines of the EU Trade for All trade and investment strategy, that compels a high level of transparency and public participation in future trade negotiations and which implements the Waitangi Tribunal recommendations regarding processes for engaging with Māori.**

- b. Ensure that there has been, or will be, a full, thorough and transparent analysis of the provisions in Trade agreements (present and future) in relation to all domestic and international human rights obligations, including human rights obligations arising from the partnership with tangata whenua in the Treaty of Waitangi.**

- c. Ensure that the UN Guiding Principles on Business and Human Rights are reflected in all relevant policy instruments, in particular as regards government procurement, delegation and commissioning policies. This should be accompanied with guidance and training for officials responsible for implementing these policies.**

Right to Health

ICESCR Arts: 2 | 12 LOIPR Paras: 3 | 8 SDGs: 3 | 10 | 13

Disparity in health outcomes

- 21. The State has introduced a range of targeted health initiatives to improve health outcomes for Māori and Pasifika people, as set out in its report.¹² These initiatives resulted in some progress. The Commission considers that a more co-ordinated effort aligned with the SDG targets,¹³ will be required to address the wide disparities that continue to exist, not only for Māori and Pasifika but for other socio-economically disadvantaged or vulnerable population groups including people living in the most socially deprived deciles, people parenting children alone, and disabled people.

- 22. Māori have a significantly lower life expectancy,¹⁴ higher rates of health conditions and chronic diseases, including cancer, diabetes, cardiovascular disease and asthma,¹⁵ high rates of disability¹⁶ and are more likely to have unmet health needs as a result of socio-economic barriers arising through cost and access to transport and childcare.¹⁷

- 23. Furthermore, Māori children and young people are over-represented in negative health outcomes.¹⁸ This correlates with a higher rate of unmet health needs, which are also indicative of the socio-economic barriers many Māori whanau face. Māori children are 1.4 times more likely not to have accessed primary health when they needed it than non-Māori children.¹⁹ Māori children are also more likely to be exposed to the risk factors linked to poor health, social, educational and developmental outcomes.²⁰

24. Pasifika communities experience similarly inequitable health outcomes. Life expectancy is over four years less than for the total population²¹ and Pasifika peoples also experience higher rates of infectious diseases than other New Zealanders.²² Furthermore, like Māori, Pasifika experience higher levels of unmet primary health care need and associated negative health outcomes. This is particularly the case for Pasifika families with children.²³ Pasifika children are more likely to face an unmet primary healthcare need than other non-Pacific children.²⁴
25. As noted in the Government report, in 2015 the age of entitlement to free primary health care was raised from 6 to 13 leading to a corresponding rise in attendances by children.²⁵ This responded to the recommendation of the Expert Advisory Group on Solutions to Child Poverty that free primary health care is made available, over time, to all children aged under 18.²⁶ The Commission considers that expanding free primary health care to all New Zealand children and young people is required to meet, in part, SDG target 3.8.

Recommendation 4

- a. Align and co-ordinate the implementation of current health sector strategies for the specific purpose of meeting the health-related SDG Agenda 2030 goals and targets. This should include:**
 - i. Alignment of applicable legislative provisions with the SDG 2030 Agenda goals and targets; and**
 - ii. Promotion of effective, full and meaningful civic participation in the design and implementation of health sector policies, in particular for socio-economically disadvantaged or vulnerable population groups.**
- b. Develop a human rights compliant data infrastructure that generates high quality disaggregated data, including data disaggregated by income, gender, race, ethnicity, disability and migratory status.**
- c. Work in partnership with Māori and other affected communities to expand the current set of child health targets to include targets aimed at:**
 - i. Reducing overall hospitalisations for medical conditions with a social gradient; and**
 - ii. Reducing ethnic disparities in both hospitalisation and mortality rates, particularly amongst Māori and Pacific children.**

- d. Increase the provision of free primary health care service to all children aged under 18.
- e. Increase the provision and accessibility of primary health care services to socio-economically deprived communities, including primary health care delivered by Whanau Ora providers.
- f. Ensure that Māori and Pasifika peoples are represented and empowered in decision-making processes in health and disability policy, planning and delivery.

Health – disabled people

- 26. In 2011 the Ministry of Health’s report on *Health Indicators for New Zealanders with Intellectual Disability* noted that people with intellectual disability were more disadvantaged, in terms of their health and life expectancy, compared to people without intellectual disability. Males with intellectual disability have an average life expectancy of more than 18 years below the average for New Zealand males and females with intellectual disability have an average life expectancy almost 23 years below the average.²⁷ Concerns about serious health outcomes for intellectually disabled people have been noted as far back as 2004.²⁸
- 27. The need to improve access to health services and health outcomes for disabled people, particularly those with intellectual disability, is reflected in the Government’s Disability Strategy and the Disability Action Plan. However, actual progress towards achieving this goal has been minimal and no substantive changes appear to have been made to address this urgent issue.

Recommendation 5

Urgently, before December 2018, take substantive and demonstrable steps to improve access to health services and health outcomes for disabled people, particularly those with intellectual disability, in accordance with the New Zealand Disability Strategy and Disability Action Plan.

- 28. The Commission notes the reference at paragraph 25 of the Government’s report to the case of *Atkinson v Ministry of Health*. This litigation culminated in 2012 with the New Zealand Court of Appeal’s judgment that the Ministry of Health’s policy of not paying family carers for care provided to dependent adult disabled family members

constituted unlawful discrimination on the grounds of family status.²⁹ The response of the then Government to this decision was for the Parliament to pass laws from introduction to passage into law in just 24 hours under budget related urgency.

29. The legislation that passed was enacted as Part 4A of the New Zealand Public Health and Disability Act 2000. Part 4A introduced Funded Family Care (“FFC”) which provides for payment for family caregivers subject to certain criteria. However, Part 4A also sought to prevent further retrospective discrimination claims being made by family caregivers and prohibited any person from bringing any discrimination claim against the FFC policy on the grounds of disability, family status and age. The Court of Appeal has observed that the passage and content of Part 4A can be regarded as being contrary to constitutional law and convention. All the then opposition parties that now make up the State’s Government advised at the time that they would repeal the legislation if they had the opportunity.
30. The Commission further refers to the related case of *Spencer v Attorney General* that resulted in the High Court awarding a family caregiver damages for pecuniary loss incurred as a result of the discriminatory policy and ordering the Ministry of Health to undertake human rights training.³⁰
31. In its report to the Committee, the Government states that the litigation resulted in a new policy that permits family members to be employed to support highly disabled relatives. It does not, however, mention that the FFC policy in question was introduced by legislation that was passed by Parliament under urgency and which breached human rights and constitutional principles concerning access to justice and freedom from discrimination.
32. In a recent 2018 judgement, the Court of Appeal noted its unease at the complexity of the statutory instruments governing funding eligibility for disability support services, describing them as “impenetrable”. The Court further commented that they hoped that, in the future, the Ministry streamline its funding processes to make them accessible for disabled people and their families, and to enable disputes over funding eligibility to be settled without litigation.³¹
33. A petition seeking repeal of Part 4A was submitted to Parliament’s Health Committee in 2014.³² The Health Committee released its report on the Petition in 2016.³³ The conclusion of the Health Committee Government majority did not address the repeal issue directly and instead recommended a simpler, more accessible policy. However, the minority views of other Health Committee members supported repeal³⁴ and

identified “serious deficiencies.”³⁵ The new Government is yet to issue any formal statement regarding its position on Part 4A.

Recommendation 6

Take urgent steps to repeal the discriminatory provisions of Part 4A of the New Zealand Public Health and Disability Act 2000 no later than July 2019.

Mental Health

34. Approximately 20% of New Zealanders meet the criteria for a diagnosable mental disorder each year.³⁶ Individuals report difficulties accessing appropriate support and treatment.³⁷ Suicide rates are very high, particularly for groups such as men and Māori. In the 2016-17 year 606 New Zealanders took their own lives. Overall, the suicide rate per 100,000 people is 12.64. For Māori the rate is 21.73 per 100,000 people. The suicide rate of Māori young people is even more alarming, at 2.8 times higher than that of non-Māori youth.³⁸
35. On 23 January 2018 the Government announced a wide ranging independent inquiry into Mental Health and Addiction Services. The panel that has been appointed to consider the matter is tasked with recommending specific changes to improve New Zealand’s approach to mental health, with a particular focus on equity of access, community confidence in the mental health system and better outcomes, particularly for Māori and other groups with disproportionately poorer outcomes. The Inquiry Panel is due to report back by 31 October 2018.

Recommendation 7

- a. **Take urgent steps to ensure the availability and appropriate provision of mental health and wellbeing services for all sectors of the community, including prison inmates, children and young people, ethnic minorities, SOGISC, refugees and other vulnerable groups.**
- b. **Ensure that any recommendations made by the independent Inquiry into Mental Health and Addiction Services are fully implemented in a timely manner.**

SOGISC

36. The SOGISC community reports significant difficulties and delays accessing health services and an absence of targeted funding or initiatives to address outcome disparities in key areas such as mental health and addiction services. For example, media reports indicate that waiting lists for gender reassignment surgery are many decades long.³⁹
37. There has been some good progress made towards implementing the Committee on the Rights of the Child's concluding observations following New Zealand's 5th Periodic Review in relation to intersex children. This has included a collaborative approach between government representatives, healthcare professionals and members of the intersex community to implement a rights-based approach to health care for intersex children.

Recommendation 8

That the Government work in partnership with the SOGISC community to identify and address barriers to access and delivery of health services, including delays in accessing health care.

Addressing the health impacts of climate change

38. Climate change has been identified as one of the biggest threats to improving health disparities, in particular with regard to children's health.⁴⁰ A coalition of New Zealand public health professionals has addressed this issue in the New Zealand context, reporting that those at highest health risk from climate change in New Zealand include Māori, Pasifika, children, elderly and low-income people.⁴¹
39. The coalition concluded that measures to address climate change have the potential to widen or reduce existing health inequities, depending on design and implementation.⁴² They accordingly have called for improved health sector planning to prepare for the health impacts of climate change, implementation of measures that prioritise and protect groups likely to be worst affected, and the routine undertaking of Health Impact Assessments (HIA) in the development of key climate-relevant policies.⁴³

40. The UN Committee on the Rights of the Child has drawn the New Zealand Government's attention to its obligations under SDG target 13.5 in this regard⁴⁴. The Committee has recommended that the Government routinely undertake HIAs and develop climate change policies or programmes that give special attention to groups of children most likely to be affected, including Māori and Pasifika children and children living in low-income settings.⁴⁵

Recommendation 9

In accordance with SDG target 13.5, ensure that health sector planning addresses the health impacts of climate change and adequately prioritises vulnerable groups.

Right to Education

ICESCR Arts: 2 | 13 LOIPR Paras: 2 | 8 SDGs: 4 | 10

41. The Government's 2017 report to the Committee acknowledged that the New Zealand education system is characterised by relatively high levels of disparity and that at every stage the system is less successful for Māori and Pasifika students and students from low income families.⁴⁶
42. Both the Māori Education Strategy *Ka Hikitia – Accelerating Success 2013 -2017* and the *Pasifika Education Plan: 2013-2017* have led to improvements in outcomes. However, despite these improvements, current data shows continuing disparities between the proportion of Māori and Pasifika attaining the benchmark Level 2 NCEA secondary education qualification as compared with other ethnicities.⁴⁷ Furthermore, schools continue to stand-down, suspend, and exclude more Māori students than any other ethnic group.⁴⁸ Students who attend schools in poor communities are also more likely to be suspended or stood down from school.⁴⁹
43. Furthermore, a recent report by the Office of the Children's Commissioner and the New Zealand School Trustees Association, which surveyed nearly 1,700 New Zealand children on their experiences at school, reported that many Māori students had experienced racism and discrimination.⁵⁰ Those findings came largely from face-to-face engagements targeted at students not well served by the current education system. In response to the report's findings, the Ministry of Education acknowledged

unconscious bias is an issue within the education system, and noted that the disparate outcomes for Māori were, among other things, chronic and systemic.⁵¹

Recommendation 10

- a. In consultation and partnership with iwi and Pacific communities, strengthen current efforts to reduce the gap in educational outcomes between Māori and Pacific students, and other ethnicities.**
- b. Increase its investment in indigenous language retention and culturally responsive learning environments.**
- c. Take urgent measures, including legislative reform, to reduce the rates of Māori students, and students from poor communities, who are subject to stand-down, suspensions and exclusion from school.**

Bullying in schools

44. Given the detailed comments and recommendations made by the Committee in its 2012 Concluding Observations on New Zealand and the acceptance by the Governments, past and present, that no initiatives tried to date by the State have reduced bullying rates in schools, the Commission is surprised that the State omitted to refer to bullying in their report to the Committee.
45. Despite initiatives developed to address bullying in New Zealand schools, such as the establishment of the cross-sector Bullying Prevention Advisory Group (BPAG), the Government is yet to require that schools implement comprehensive bullying prevention programs as part of a strategy to address and reduce instances of bullying in schools, and monitor the impact of bullying on student well-being and mental health, as recommended by the Committee in 2012.
46. In addition, it is not apparent that progress has been made in addressing the additional recommendations of the Committee that the Government systematically collect data on violence and bullying in schools and monitor the impact of the student mental health and wellbeing initiatives recently introduced in schools to reduce the incidence of violence and bullying. The Commission welcomes the Government's decision in September 2017 to fund the Wellbeing@School Student Survey until

December 2018. However, it is concerned that school participation in the Survey remains voluntary, and that monitoring of student wellbeing is not mandatory and ongoing.

47. The current legislative and regulatory framework fails to provide enough protection for children and young people. There is a notable lack of any explicit statutory requirement upon schools to implement bullying prevention programmes, collect data on bullying, or monitor its effects. The 2017 update of the Education Act 1989, described as a “fundamental” update by the Government of the time, failed to include any reference to bullying and in the Commission’s view constituted a significant missed opportunity in this respect.
48. The recommendation of the Ombudsman that the National Administrative Guidelines should be amended to include a guideline that requires school boards of trustees to implement an effective anti-bullying programme has not been implemented.⁵² The Ministry opposed this recommendation stating it had come to be expected that all schools will have systems and processes in place to manage bullying.⁵³ To date this expectation has not been realised.

Recommendation 11

Take urgent measures, underpinned by legislation that require:

- a. **The Ministry of Education to immediately invest in evidence-based, targeted bullying prevention programs in all schools.**
- b. **School boards of trustees to implement evidence-based, targeted bullying prevention programs to address and reduce bullying and violence in schools – including cyberbullying. These should be implemented as a standard component of their work safety and child protection policy obligations.**
- c. **Schools to systematically collect and report annually to the Education Review Office on the number of incidents of school bullying and violence, including disaggregated data on bullying directed at girls, SOGSC and disabled students, and complaint outcomes.**

Inclusive education

49. The 2017 update of the Education Act 1989 also failed to incorporate inclusive education principles within its framework, despite recommendations to do so by both the UN Committee on the Rights of Persons with Disabilities in 2014⁵⁴ and New Zealand's Independent Monitoring Mechanism on the Convention on the Rights of Persons with Disabilities (IMM).⁵⁵ The Commission considers that this constituted another significant missed opportunity.
50. The IMM has issued a number of other recommendations aimed at furthering the right to inclusive education in New Zealand. These include establishment of an Inclusive Education Advisory Group to improve collaboration, improved data collection and analysis and incorporation of inclusive education targets within the New Zealand Disability Strategy and Disability Action Plan.
51. In 2017, Parliament's Education and Science Committee issued its report on its *Inquiry into the identification and support for students with significant challenges of dyslexia, dyspraxia and autism spectrum disorder in primary and secondary schools*. This cohort of students is estimated to make up least 10% of New Zealand's school population.
52. In its report, the Education and Science Committee referred to evidence it received of the wide range of detrimental factors experienced by students with dyslexia, dyspraxia and autism spectrum disorder. These include anxiety, low self-esteem, isolation, impaired achievement, bullying and disruptive behaviour. The Committee noted that "these experiences may form patterns of behaviour that continue into adulthood and shape success in later life".⁵⁶
53. This correlation between neuro-disability and poor future outcomes is perhaps most acutely observed in the justice system. The previous Principal Youth Court Judge has drawn attention to the link between youth offending (and subsequent custodial incarceration) and the existence of unmet needs due to recognised or unrecognised learning and behavioural disabilities.⁵⁷ International evidence suggests that the rates of prevalence of undiagnosed neuro-disabilities in New Zealand are likely to be high.⁵⁸ It follows that poor outcomes in the justice system may be indicative of problems within the primary and secondary school sector concerning screening, assessment and provision of ongoing support for these children and young people.

54. The Education and Science Committee issued 46 recommendations focused at improving screening and early identification processes, supports during school transitions and best practices and teacher training.⁵⁹ The minority view of the Committee report, comprising the views of the parties that comprise the current Labour-led government, provided 26 additional recommendations. These included expanding individualised funding, investigating open ended funding based on learning need, enhanced specialist training and career pathways for teachers, and legislative change to ensure “an enforceable right to meaningful education.”⁶⁰

Recommendation 12

- a. Amend the Education Act 1989 to establish a legally enforceable right to an inclusive education for students with disabilities and corresponding duties upon school boards of trustees and principals to provide an inclusive education for all students with disabilities.**
- b. Review and implement the recommendations of the Education and Science Committee’s *Inquiry into the identification and support for students with significant challenges of dyslexia, dyspraxia and autism spectrum disorder in primary and secondary schools.***
- c. Include inclusive education targets and goals within the Government’s New Zealand Disability Strategy and Disability Action Plan, administered by the Office of Disability Issues. This should include the implementation of a data strategy to accurately capture, assess and monitor the implementation of inclusive education policies and practice and disaggregated information on outcomes for disabled students**

Protection from Violence and Abuse

ICESCR Arts: 2 | 3 LOIPR Para: 4 SDGs: 5 | 10 | 16

55. Addressing violence and abuse remains one of New Zealand’s most significant human rights challenges. The Commission considers that a long-term, high priority, coherent policy commitment – that is carried over by successive Governments – is required to sustainably reduce New Zealand’s appalling levels of family violence, which are among the highest in the developed world.

56. This policy commitment should be equally targeted at developing transformational policy strategies and strengthening primary prevention initiatives that address the underlying factors of family violence and abuse. It also requires addressing the historical context that has led to Māori women and girls, and disabled women and girls, disproportionately suffering from family violence and abuse.⁶¹ These disparities were most recently evidenced in the data arising from the Fifth Report of the Family Violence Death Review Committee which reviewed deaths between 2009-2015 caused by family violence, intimate partner violence, child abuse and neglect and intrafamilial violence.⁶²
57. As noted in its report, from 2014 the Government embarked on a substantial work programme that has resulted in legislative reform, through the introduction of the Family and Whanau Violence Legislation Bill,⁶³ the establishment of a Ministerial Group to improve cross-sector collaboration⁶⁴ and the development of a cross-sector Ministerial Group workplan.⁶⁵
58. Perhaps because of the increased Government focus, since 2014 there has been an increase in reported “dwelling based” violent crime, which is strongly correlated with family violence.⁶⁶
59. The Commission notes that, at the time of writing, the new Labour-led Government is yet to announce its position as regards the family violence reform agenda introduced by the previous Government.

Child protection

60. In 2016 and 2017, the previous Government introduced significant legislative reforms to the child protection system.⁶⁷ This included the establishment of a new ministry, the Oranga Tamariki/ Ministry of Vulnerable Children (recently renamed Oranga Tamariki/The Ministry of Children by the new government).⁶⁸ Oranga Tamariki has overall responsibility for the child protection system in New Zealand.
61. The legislative reforms are largely progressive in terms of human rights impact, and have a much deeper purposive scope when compared with the recent legislative reforms in the family violence sector. They include provisions that explicitly reference the rights of children under the UN Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.⁶⁹ The legislation has also introduced new obligations upon the Chief Executive of the Ministry to improve

outcomes for Māori children.⁷⁰ Māori children are disproportionately subject to statutory care and protection interventions and constitute over 55 percent of children in state care.⁷¹

“Hate crimes”

62. The absence of centralised data about “hate crimes” other than violence against women and children, including violence directed at individuals and groups because of their personal characteristic, has been a matter of serious and ongoing concern to the Commission.⁷² Data on both hate-motivated incidents and “hate crimes” provide important indicators of the state of public security and actual levels of violence affecting communities. Such data can also provide a platform for developing and implementing effective strategies for preventing future violence. The absence of this information hinders the ability to take steps improve the safety of vulnerable groups within our community.

Recommendation 13

- a. Report back within 12 months on progress made to address violence and abuse against women and girls with data disaggregated by race, gender, disability, sexual orientation and age.
- b. Urgently introduce a system for the collection of data on hate motivated crimes disaggregated by race, disability, sexual orientation and gender identity.

Protection from Discrimination

ICESCR Arts: 2 | 3 | 7

LOIPR Paras: 10 | 12

SDGs: 5 | 19

Gender Equality in Pay

63. In September 2017, the gender pay gap was 9.4%.⁷³ While the gender pay gap has reduced since the 1990s, being 16.3% in 1998, it has stagnated in the last decade - fluctuating between 12.5% and 9.1% between 2008-2017.⁷⁴
64. New Zealand has one of the narrowest gender pay gaps in the OECD. However, a recent report found that on average, New Zealand women still earn \$608,000 less than men over their entire lifetime. This has implications for the amount of money

women can save for their retirement and it is forecast that on average they will retire with \$600,000 less than men. The gender pay gap is further exacerbated when ethnicity is also taken into account. Median earnings of Māori and Pasifika women are substantially less than those of New Zealand European men and women.⁷⁵

65. In 2017 Statistics New Zealand released a report summarising its investigation into the effect of motherhood on women's pay in New Zealand.⁷⁶ It found that the gender pay gap between female parents (17%) was significantly larger than for non-parents (5%) - a "motherhood penalty" of around 12 %. The penalty was greater for mothers working part time than for those working full time.
66. On 18 April 2017, the Government announced a \$2 billion pay equity settlement for 55,000 care and support workers in New Zealand's aged and disability residential care, and home and community support services around the country. The settlement follows a successful legal claim brought by a union where it was argued that the pay that caregivers (who are predominantly female) received was less than what would have been paid to a male with the same skill set in a different occupation.⁷⁷
67. The settlement is an historic achievement and an important step forward in the journey towards pay equity. However, more work needs to be done to ensure pay equity in other sectors, such as education, where female workers continue to be underpaid.

Women in Leadership

68. Overall, the representation of women in leadership roles in New Zealand is mixed. Three of New Zealand's most senior constitutional roles – the Prime Minister, the Governor-General and the Chief Justice – are held by women. Furthermore, following the 2017 general election, women comprise 46 of the 120 MPs that constitute the New Zealand Parliament, the highest number and proportion (38.4%) that it has ever been.
69. However, while women comprise 60.7% of all public servants, only 24.1% are chief executives of public service departments and only 45.2% of senior management are female.⁷⁸ If current trends continue, the Public Service will reach 50% female representation in senior leadership by around 2021. There has also been a sharp decline in women in senior management roles in the private sector. Only 19% of businesses in New Zealand have women in senior management roles. New Zealand ranks low in this area when compared to other countries.⁷⁹

70. The New Zealand Census of Women on Boards 2017 showed that females made up 22.17% of Board positions, an increase of 1.16 percentage points figure since 2016. There were 102 women serving in Board positions for the top 100 companies. However, a quarter of the top 100 companies have no female Board members.

Recommendation 14

- a. Increase targets for women on public sector boards to 50%.**
- b. Implement an initial target for private sector boards – 30% of board members to be women.**
- c. Prioritise affordable, high quality childcare to ensure women with children can remain in the workforce and progress to senior roles.**
- d. Enact fair and robust pay equity legislation that will allow women in low paid female dominated occupations to make claims against their employers.**

Right to Work

ICESCR Arts: 3 | 6 | 7 LOIPR Paras: 8 | 11 | 12 | 13 | 14 | 16

SDGs: 8 | 10

71. As the Government report shows, overall labour market outcomes for Māori and Pasifika have shown improvement but remain some distance from achieving parity with other ethnic groups.⁸⁰ A similar trend can be observed in respect of young people deemed Not in Employment, Education or Training (NEET). While NEET rates of Māori and Pasifika have declined since 2012, they remain around double the rate of other ethnicities.⁸¹
72. The Commission acknowledges the initiatives set out in the Government report.⁸² However, the Commission remains concerned at the disproportionate representation in unemployment figures of Māori and Pasifika young people, young people living in socio-economically deprived urban and rural communities and disabled people.⁸³

73. The Commission further notes that the Government report does not provide annualised data on employment outcomes for people with disabilities, indicative of a significant gap in its data collection in this sector. Data gathered by Statistics New Zealand from the 2013 Disability Survey portrayed extensive disparities in respect of income, labour market participation (which is affected by the older age profile of the disabled population), representation amongst professionals and managers⁸⁴ and unemployment rates.⁸⁵ The lack of subsequent annualised data means that it is not possible to ascertain whether outcomes have improved since 2013.

Protection from harm/exploitation at work

74. The Commission notes the legislative reforms introduced by the Health and Safety in Work Act 2015 and the Employment Standards Legislation Bill that have increased both health and safety standards and minimum contractual standards. The Commission further notes the intention of the new Government to amend the Employment Relations Act to restrict the use of 90-day trial periods in employment agreements to businesses with less than 20 employees. Currently, these trial periods prevent an employee from bringing a claim against their employer for unjustified dismissal.
75. However, New Zealand employment legislation remains out of step with international standards in respect of young employees. Regulations passed in 2016 continue to authorise the employment of young people with machinery, hazardous materials and in other high-risk work environments from the age of 15.⁸⁶
76. The Commission also notes that in 2014 New Zealand's Independent Monitoring Mechanism (IMM) on the Convention on the Rights of Persons with Disabilities recommended that the Government undertake a full review of the minimum wage exemption permits system that may be applied to disabled employees by the end of 2014. The Minimum Wage Act 1983 currently provides that minimum wage exemption permits can be granted to employers in respect of workers who are significantly and demonstrably limited by a disability. In 2016 the Government embarked on a work programme to review the current system and consider reform options.⁸⁷ However, it appears that this work programme may have stalled.

77. A 2016 report by the Human Trafficking Research Coalition, published by the University of Auckland Business School also painted a troubling picture of migrant worker exploitation in New Zealand.⁸⁸ The report outlined several forms of exploitative practices directed at migrant workers, including non-payment or underpayment of wages (at rates far below the minimum wage); excessive working hours and non-payment of holiday pay; employers threatening to report workers to government authorities if they complain; degrading, abusive treatment and excessive employment recruitment fees (on many instances upwards of \$10,000).⁸⁹
78. The report made several recommendations, aligned with the three-tier Prevention, Prosecution and Protection strategy set out under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*.⁹⁰ The recommendations included the establishment of a specialist government human trafficking office, a refreshed Government Plan of Action to Prevent People Trafficking, and measures aimed to enhance international co-operation.⁹¹
79. In addition, the Commission notes developments in similar overseas jurisdictions, notably the enactment in the UK of the Modern Slavery Act 2015, which introduced supply chain reporting requirements. A similar legislative model is currently being considered in Australia.⁹² The Commission recommends that the Government consider a similar legislative initiative in New Zealand.

Recommendation 15

- a. Work in partnership with Māori and Pacific Peoples to set targets to increase the representation of Māori and Pacific People in corporate governance and senior management in the public sector over the next reporting period.**
- b. Strengthen efforts to increase the participation of Māori, Pacific, women, ethnic minorities and disabled people in the labour market.**
- c. Strengthen efforts to address NEET rates for Māori, Pacific and disabled youth particularly in the 20-24-year age group.**
- d. Implement measurable, reportable diversity targets for public and private sector organisations larger than 250 people at all levels of the organisation.**

- e. **Collect and publish annual data regarding the employment of disabled people.**
- f. **Reinitiate/refresh the review of the Minimum Wages Exemption permit system and implement any recommended reforms that are designed to ensure that the rights of disabled employees are upheld and protected at all times.**
- g. **Align all employment legislation with international standards as regards the employment of young people aged under 18.**
- h. **Develop specific legislation and policy to prevent and combat modern slavery practices, including the introduction of mandatory supply chain reporting.**
- i. **Align all domestic laws, policies and practices with international best practices under the *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.***

Right to Social Security

ICESCR Arts: 9 | 11

LOIPR Paras: 7 | 18

SDGs: 1 | 10

80. The Government's Support for Children in Hardship Bill introduced a \$25 per week increase to the parent payment and youth parent payment social security benefit, the first increase to core benefit rates in 43 years. However, the increase is relatively incremental and does not restore base incomes to pre-1991 levels (adjusted for inflation).⁹³ The Bill also introduced more onerous work testing requirements for parents which further toughen the strict sanctions regime introduced by the 2012 reforms to social security legislation.⁹⁴ The new Government has announced that it will review the welfare system, including impact of the sanctions regime on children of beneficiaries.
81. Despite the Committee's 2012 recommendation for an independent evaluation of the gendered impact of welfare reforms, there is little publicly available information on the use and impact of sanctions or on the overall impact of welfare changes on women. Under s70A of the Social Security Act 1964 benefit sanctions may also be applied to sole parents who refuse to name the other parent. Recent figures obtained by the media indicate that one in five of those in receipt of the single parent benefit have been sanctioned in this way.⁹⁵ Further media enquiries have raised issues around a lack of evidence of the effectiveness of such sanctions.⁹⁶

Recommendation 16

- a. Review and amend the Social Security Act 1964, including the sanctions regime and ensure that human rights principles, such as the best interest of the child are taken into account in all benefit decision-making processes.**
- b. Review core benefit levels for adequacy in meeting cost of living and consider implementing a universal child benefit.**
- c. Take steps to ensure appropriate uptake levels of targeted benefits is sufficient amongst vulnerable populations groups (ie. disability allowance, child payments etc).**

Right to an Adequate Standard of Living

ICESCR Arts: 11 LOIPR Paras: 19 | 21 | 29 SDGs: 1 | 10

82. The 2015 OECD Economic Survey on New Zealand⁹⁷ reported that while New Zealand has generally done well in enabling economic and social participation of its people, income inequality and poverty have increased, rising housing costs have hit the poor hardest, and the rate of improvement in many health outcomes has been slower for disadvantaged groups than for others.
83. The number of children in New Zealand who experience poverty and material deprivation remains stubbornly high. In 2017, the annual Child Poverty Monitor published by the Office of the Children’s Commissioner reported that 290,000 New Zealand children, 27% of New Zealand’s child population, live in households whose income falls below the income poverty line.⁹⁸ The Child Poverty Technical Report,⁹⁹ an extensive epidemiological report which accompanies the Child Poverty Monitor, reports strong correlations between income poverty, inadequate housing (including overcrowding) and high rates of hospitalisation and child mortality rates.
84. These figures are further compounded by ethnic and socio-economic disparities, including family status and disability. Disproportionate numbers of Māori and Pacific children live in households with incomes below the relative income poverty line. Children living in sole parent households also experience much higher levels of hardship.¹⁰⁰ In 2015, 46% of children aged 6+ from sole parent families were in

hardship compared to 17% from two parent families.¹⁰¹ Similarly, a greater percentage of children in families with more than 4 children were identified as being in hardship – 35% of children aged 6+ in households with more than 4 children were identified as being in hardship compared to 22% in one child households.¹⁰² Furthermore, disabled children are more likely to live in low-income households and in socio-economically deprived areas than non-disabled children¹⁰³.

85. The Child Poverty Technical report noted that, in order for New Zealand to meet its SDG commitments, child income poverty and material deprivation rates will need to be halved by 2030. Irrespective of the income measure used to define income poverty, this will require a policy and resource commitment sufficient to tens of thousands of children to be lifted out of poverty over the next decade. Over 200,000 children live in homes with households with income 50% or less of the median household income, and 140,000 live in households with income 40% or less of the median.
86. The Commission therefore welcomes the new Government’s designation of child poverty as a policy priority of paramount importance, with the Prime Minister assuming Ministerial oversight of child poverty reduction. In January 2018, the Government introduced the Child Poverty Reduction Bill.¹⁰⁴ The Bill is designed along the lines of the model recommended by the Expert Advisory on Solutions to Child Poverty (EAG) issued in 2012.¹⁰⁵
87. The Bill seeks, among other things, to legislate an ongoing obligation upon the Government to set periodic income poverty and material deprivation reduction targets, strategies to achieve the targets and annual reporting on progress to Parliament. It also requires, as part of the annual budgetary process, that the Government annually report to Parliament on progress made in reducing child poverty and provide an indication of proposed appropriations directed at child poverty.

Recommendation 17

- a. Prioritise the enactment of legislation to reduce child poverty and material deprivation, aligned with New Zealand’s 2030 targets under the SDGs.**
- b. Ensure that the legislation includes a definition of poverty, contains appropriate accountability mechanisms and is supported by the development of necessary policy and fiscal infrastructure and targeted budgetary appropriations.**

Right to Housing

ICESCR Art: 11

LOIPR Para: 21

SDG: 11

Availability and affordability - Homelessness/severe housing deprivation

88. The size of New Zealand’s homeless or severely deprived housing population grew both numerically and proportionately during the twelve-year period between the 2001 and 2013 Census reports.¹⁰⁶ The February 2018 *Stocktake of New Zealand’s Housing* (“the 2018 Stocktake report”), commissioned by the Government, reported an increase in proportionality from one in 120 people in 2006 to one in 100 in 2013.¹⁰⁷ 2013 Census data reported that over 41,000 New Zealanders suffered severe housing deprivation, a rise of 15% from 2006 Census data.¹⁰⁸ Māori and Pasifika are disproportionately represented amongst this population group.¹⁰⁹ In New Zealand, the official definition of “homelessness” is “living situations where people with no other options to acquire safe and secure housing, are without shelter, in temporary accommodation, sharing accommodation with a household or living in uninhabitable housing”.¹¹⁰ The term “severe housing deprivation” used in New Zealand census data is based on this definition.¹¹¹
89. The 2018 Stocktake report also reported that there is likely to be a significant amount of “hidden” homelessness in New Zealand, although the exact scale of the problem is unknown. This is because data is not systematically collected on persons who don’t or can’t access government housing assistance, or are turned away from community agencies already at full capacity. However, what data there is paints an alarming picture. 2017 data from community emergency housing providers indicated for every 10 homeless people who approached them, eight or nine were turned away.¹¹²
90. To date, measures by Government to address severe housing deprivation have largely been ad hoc or reactive. Between March and June 2017 the Government increased its funding of emergency housing to meet high demand. This included funding temporary accommodation in motel units due to a lack of available emergency housing.¹¹³ In December 2017 the new Minister for Housing announced a commitment to develop a New Zealand Strategy to End Homelessness.¹¹⁴ The 2018 Stocktake report has also reported that the Government is stepping up efforts to secure new transitional housing places and is investigating a new system for recording and monitoring the numbers of homeless.

Availability and affordability - Overcrowding

91. Insecure housing exacerbates ill health, and is associated with poorer educational outcomes for children, as they may have to shift schools frequently, have more days off school, and lack an appropriate space in which to do homework. Overcrowding is disproportionately spread across age, ethnic and socio-economic lines. Data from the 2013 Census indicated that over half of New Zealand's 72,124 crowded households (representing about 10 percent of the population) have two or more children (at least one child aged between 5 and 14 years) living in them.¹¹⁵ Specific housing challenges also remain in the Canterbury region following the earthquakes that occurred in 2010 and 2011.¹¹⁶

92. The 2013 Census data also indicated that 38% of Pasifika people, 20% of Māori and 18% of Asian people live in crowded households, compared to 4% of Europeans.¹¹⁷ Furthermore, of those New Zealanders who live in crowded households, approximately 35,000 (9%) live in households that do not use any form of heating in their houses.¹¹⁸ The highest percentage (16%) is in the Counties Manukau DHB region, where 14,103 people living in crowded households use no heating. This region, home to many of New Zealand's most economically deprived urban communities, also experienced a 9% increase in overcrowding in the period between the 2006 and 2013 Census surveys.¹¹⁹

Habitability - Housing quality

93. The Government has taken some action to improve housing quality, which has led to improvements in health outcomes. The Warm Up New Zealand home insulation funding programmes has been found to correlate with reduced hospitalisation rates for children in low income households.¹²⁰ Furthermore, amendments to the Residential Tenancies Act will require mandatory insulation standards for all social housing and rental accommodation by 2019. However, despite these developments, significant numbers of New Zealand homes are inadequately insulated. The Energy Efficiency and Conservation Authority (EECA) estimates that at least 600,000 houses still have no or inadequate ceiling or underfloor insulation, of which 300,000 are low income households.

Security of tenure

94. The statute governing the private rental sector, the Residential Tenancies Act 1986 (RTA), offers little protection for tenants as regards security of tenure and enables termination of tenancy without reason, subject to due notice, of up to 90 days, being provided. While it contains protective provisions for tenants, the RTA does not contain any stand-alone provision that affirms any minimum right to security of tenure for tenants (as distinct from minimum notice requirements regarding termination) and does not impose any particular responsibilities on landlords towards tenants with children, or vulnerable adults.
95. Furthermore, New Zealand has one of the highest rates of residential mobility among developed countries, nearly twice that of the United Kingdom.¹²¹ Most of this mobility occurs in the private rental market, particularly among households with children.¹²² New Zealand also has very low levels of social housing tenancies (of which the terms of tenure are inherently more stable) and decreasing levels of home ownership.¹²³
96. Moreover, families with children, particularly one-parent and Māori and Pacific families, experience much higher levels of discrimination in the private rental market, including disparately high rental rates,¹²⁴ a factor that impacts upon the choice of housing available.¹²⁵ The 2018 Stocktake report reported that the proportion of Māori and Pasifika families renting privately approximately doubled from 1991 to 2013, driven in part by policies designed to move people out of social housing.¹²⁶ The Minister for Housing has announced that the new Government will review the RTA in 2018 to deliver more security of tenure to renters.¹²⁷

Accessibility – Provision of social housing

97. Against the above context, it is notable that demand for social housing support increased around 40% between June 2016 and June 2017. The Ministry of Social Development reported that its Housing Register, a waiting list which consists of social housing applicants who have been assessed as being eligible for social housing and prioritised by need, increased from 3877 to 5383.¹²⁸ This corresponds with a decline in Government-owned housing stock, brought about by the Government's sale of Housing New Zealand housing units to community housing providers and developers¹²⁹. Of New Zealand's overall social housing stock of 82,000, around 62,000 are owned or managed by Housing New Zealand, 12,000 by local government authorities and 8000 by other providers.

98. Overall, there is urgent need for considerable Government investment in additional social housing stock and income subsidies in order to meet current and future demand. Analysis of current trends suggests that between 2000 and 2500 new social housing units per year, over the next decade, will be required to ensure *current* levels of social housing provision is at least maintained.¹³⁰ Demand for the Accommodation Supplement is also projected to increase significantly over the next decade due to a large increase in the population of super-annuitants aged 65 years and over who are renting.¹³¹
99. The new Government has announced a number of initiatives designed to address housing deprivation and demand for social housing, including a commitment to increase social housing stock¹³². In December 2017, the Minister for Housing announced the Government's *Urban Growth Agenda*, which includes using Housing New Zealand surpluses to build new social housing. The Government has also announced that it will establish a Housing Commission to lead large scale public housing developments¹³³

Recommendation 18

- a. **Develop and implement a national housing strategy linked to UNSDG 2030 target 11.1 which addresses the shortcomings identified in the Government's 2018 Housing Stocktake report. This should include implementing the New Zealand Strategy to End Homelessness no later than July 2019.**
- b. **Urgently introduce legislation requiring minimum quality standards for heating and insulation in rental homes.**
- c. **Urgently review/amend the Residential Tenancies Act to provide greater security of tenure rights to tenants; in particular households with dependent children/vulnerable adults.**
- d. **Take urgent measures to reduce the waiting list for social housing through increasing social housing provision, collaboratively with local government, iwi, non-profit providers, including at the supply side.**
- e. **Ensure that income supplements targeted at accommodation costs are sufficient to meet CPI increases for rent and are weighted according to region.**

Right to Safe Drinking Water

ICESCR Art: 12

LOIPR Para: 2

SDG: 12

100. The Committee on Economic, Social and Cultural Rights recommended at New Zealand's last review that the government "ensure that the right to affordable and safe water remains guaranteed, including in the context of privatization of water distribution".
101. However, recent events indicate that considerable challenges still exist when it comes to ensuring the right to safe drinking water in New Zealand. In August 2016, a widespread outbreak of gastroenteritis caused by the presence of E. coli in the water led to more than 5000 people becoming ill and contributed to the deaths of three people in Havelock North, a town of 15,000 people.¹³⁴ This major incident led to a government inquiry into the causes of the outbreak and a wider review of drinking water safety across New Zealand.¹³⁵
102. The Havelock North drinking water inquiry found widespread and systematic failings in the supply of safe drinking water across New Zealand. Among the findings were that nearly 800,000 people (20 percent of the serviced population) are supplied water that is not demonstrably safe to drink¹³⁶ and that between 18,000 and 100,000 cases of sporadic waterborne illness occur each year.¹³⁷ Those from smaller communities of less than 5000 people are the worst affected and likely getting water that doesn't meet international drinking water standards.¹³⁸ The Report made 51 recommendations to the government, including universal treatment of drinking supplies and the possibility of a national regulator. The new government has indicated that they are considering the recommendations and will be responding quickly to the issues raised.¹³⁹ However, the government is yet to announce any concrete steps it has taken.
103. Also concerning is that Christchurch's secure bore status was removed in December 2017, after an engineers' assessment of the below-ground wells raised concern that they may not be sufficiently sealed to prevent surface groundwater contamination.¹⁴⁰ In January 2018, the Christchurch City Council decided to chlorinate water in the city for up to a year in an effort to stave off potential contamination and has ordered an external review of the matter.¹⁴¹

Recommendation 19

- a. Urgently take steps to implement the recommendations of the Havelock North Stage-two Inquiry Report, including making the required legislative and regulatory changes and allocating sufficient resources to improving access to safe drinking water in New Zealand.**
- b. Ensure that reforms to support the access to safe drinking water are consistent with the government’s commitment to Sustainable Development Goal 6 and international human rights standards, including the Committee’s General Comment No. 15 (2002) on the right to water and the Special Rapporteur on the human right to drinking water’s criteria against which to assess good practice relating to access to safe drinking water.**
- c. Develop systematic data collection and reporting procedures on water quality in order to effectively inform relevant policies and the application of the right to access safe drinking water.**

Canterbury Earthquake Recovery

ICESCR Art: 12 **SDGs: 1 | 11**

104. The Committee recommended at New Zealand’s last review that the government “adopt a human rights approach to reconstruction efforts, ensuring thereby appropriate consideration to availability, affordability and adequacy of housing, including for temporary housing”.
105. The 2010-11 earthquakes in Canterbury and the 2016 earthquakes in Kaikoura and corresponding recovery efforts have exposed a number of shortcomings in protecting the right to housing in New Zealand.¹⁴² Secondary stressors relating to unresolved insurance claims, faulty repairs and land compensation continue to have an ongoing impact on the mental health and wellbeing of people, in particular young people and children. Vulnerable people have been identified and there has been some good work in this area but problems remain around access to remedy and effective dispute resolution mechanisms.
106. The State has acknowledged that more than 3000 claims to the Earthquake Commission (“EQC”) remain outstanding. Concurrently, EQC has received over 8000 callbacks relating largely to missed damage or incorrect scope, or failure of repair strategy, for homes in its managed repair program. Approximately 520 claims are in litigation.

107. Complaints from homeowners in dispute with their insurers resulted in an influx of complaints to New Zealand’s National Contact Point under the OECD Guidelines. The complaints revealed the extent to which New Zealand’s NCP is under resourced.
108. The Commission’s monitoring report on the human rights impacts of the Government “red zoning” of earthquake damaged land revealed that a need for certainty in relation to security of tenure was critical to the wellbeing of people who remain living in the red zones.¹⁴³

Recommendation 20

- a. **Strengthen the capacity of New Zealand’s National Contact Point.**
- b. **Codify the right to property in the New Zealand Bill of Rights Act.**
- c. **Accept the recommendations Made by the Human Rights Commission in its *Staying in the Red Zones* Human Rights Monitoring Report and ensure that all future disaster recovery frameworks are grounded in a human rights approach.**
- d. **Recognise the increased costs arising from the Canterbury earthquakes for the ongoing provision of mental health support services for children and their families in the Canterbury region.**
- e. **Provide revenue certainty to the Canterbury District Health Board sufficient to meet ongoing costs and demands in respect of these services due to the exceptional circumstances.**
- f. **Monitor and track mental health outcomes for children who have been affected by the Canterbury earthquakes to enable an accurate assessment of current and future funding and service delivery needs.**

Endnotes

¹ Referred to in NZ Government Report, paras 21-31.

² See paras 27-32.

³ NZ Government Report, para 8.

⁴ McGregor, Bell and Wilson, *Fault Lines: Human Rights in New Zealand*, http://www.waikato.ac.nz/_data/assets/pdf_file/0004/248782/NO-watermark-Fault-lines-Human-rights-inNew-Zealand.pdf.

⁵ Legislative Design and Advisory Committee, *LAC Guidelines: 2014 Edition*, Chapter 8, <http://www.ldac.org.nz/guidelines/lac-revised-guidelines/chapter-8/>

⁶ <http://www.ourconstitution.org.nz/Recommendations>.

⁷ 14 Matike Mai Aotearoa, (2016), *He Whakaaro Here Whakaumu mo Aotearoa: Final report of Matike Mai Aotearoa – the Independent Working Group on Constitutional Transformation*, <http://www.converge.org.nz/pma/MatikeMaiAotearoaReport.pdf>.

⁸ Waitangi Tribunal, *He Karo Whenua Ka Rokohanga: Report on Claims about the reform of the Te Ture Whenua Māori Act 1993*, WAI 2478, p 366, www.waitangitribunal.govt.nz.

⁹ See Government report, paras 96-101.

¹⁰ *Taonga* includes traditional knowledge and intellectual property over cultural ideas, design and language.

¹¹ See Human Rights Commission submission to Foreign Affairs, Defence and Trade Select Committee regarding the international treaty examination of the Trans-Pacific Partnership Agreement (11 March 2016).

¹² NZ Government report, paras 204-212, pp 38-40.

¹³ The Commission endorses the framework set out in Human Rights Council Resolution 35/23 (adopted on 23 June 2017) *The right of everyone to the enjoyment of the highest attainable standard of physical and mental health in the implementation of the 2030 Agenda for sustainable development*, in particular recommendations 4-8, pp 5-6.

¹⁴ The most recent Statistics from Stats NZ cover the period 2012-2014, http://www.stats.govt.nz/browse_for_stats/health/life_expectancy/period-life-tables.aspx.

¹⁵ Ministry of Health, (2015). *Tatau Kahukura: Māori Health Chart Book 2015 (3rd edition)* Wellington: Ministry of Health, <http://www.health.govt.nz/publication/tatau-kahukura-Māori-health-chart-book-2015-3rd-edition>.

¹⁶ Ibid.

¹⁷ Supra note 23.

¹⁸ For example, around one in five Māori children has asthma – a rate 1.4 times that of non-Māori children. Māori children are almost twice as likely to be either obese or morbidly obese compared with non-Māori children. See Ministry of Health, (2015), *Annual Update of Key Results 2014/15: New Zealand Health Survey*, at pp 17, 51. Accessible at: <http://www.health.govt.nz/publication/annual-update-key-results-2014-15-new-zealand-health-survey>

¹⁹ Ibid. p viii.

²⁰ Ministry of Health, (2015), *Health and Independence Report 2015*, at pp 32-33. Accessible at: <http://www.health.govt.nz/system/files/documents/publications/health-and-independence-report-2015-oct15.pdf>.

²¹ Ibid.

²² http://www.bpac.org.nz/BPJ/2010/November/docs/BPJ_32_infectious_pages_10-14.pdf.

²³ Social Policy Evaluation and Research Unit, 2016 *Family and Whanau Status Report*, p39, 41, 46, http://www.superu.govt.nz/sites/default/files/F%26W%20Status%20Report%202016_0.pdf

²⁴ Sorensen, Jensen et al, *Pacific People in New Zealand: How are we doing?*, Pacific Futures Ltd, 2015, accessed <http://pasifikafutures.co.nz/wp-content/uploads/2015/06/PAF0018-Pasifika-People-in-NZ.pdf>.

²⁵ NZ Government Report, paras 205 and 206.

²⁶ Expert Advisory Group on Solutions to Child Poverty, Children’s Commissioner, *Solutions to Child Poverty in New Zealand evidence for action*, p. 57, <http://www.occ.org.nz/assets/Uploads/EAG/Final-report/Final-report-Solutions-to-child-poverty-evidence-for-action.pdf>.

²⁷ Ministry of Health 2011, *Health Indicators for People with Intellectual Disability*, <https://www.health.govt.nz/system/files/documents/publications/health-indicators-nzders-intellectual-disability.pdf>.

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- ²⁸ *To Have an Ordinary Life* – Background Papers to Inform the National Advisory Committee on Health and Disability, 2004.
- ²⁹ *Ministry of Health v Atkinson* [2012] NZCA 184; [2012] 3 NZLR 456.
- ³⁰ *Spencer v Attorney General* constituted the first time such orders had been issued under the Human Rights Act in respect of a Government policy. In light of the *Spencer* decision, further claims have been filed in the Human Rights Review Tribunal by family carers seeking compensation for loss incurred as a result of the pre-FFC non-payment policy.
- ³¹ *Chamberlain v Minister of Health* [2018] NZCA 8, para 90.
- ³² Petition 2011/122 of Rachel Noble for Disabled Person’s Assembly and 1,491 Others.
- ³³ Report of Health Committee on Petition 2011/122 of Rachel Noble for Disabled Person’s Assembly and 1,491 Others, 7 July 2016, https://www.parliament.nz/resource/en-NZ/51DBSCH_SCR69572_1/d4582dd2a68811a9c6a049d170fa7ed63ab4531f.
- ³⁴ *Ibid.* p 8.
- ³⁵ *Ibid.* p 9.
- ³⁶ Inquiry into Mental Health and Addiction – Draft Terms of Reference, [https://www.dia.govt.nz/diawebsite.nsf/Files/Government-Inquiry-into-Mental-Health-and-Addiction/\\$file/inquiry-into-Mental-Health-and-Addiction-Terms-of-Reference.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Government-Inquiry-into-Mental-Health-and-Addiction/$file/inquiry-into-Mental-Health-and-Addiction-Terms-of-Reference.pdf).
- ³⁷ People’s Mental Health Report (2017).
- ³⁸ *Ibid.* p 19
- ³⁹ <https://www.stuff.co.nz/national/health/88374973/Gender-reassignment-decades-long-wait-list-horrendous>.
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- ⁴³ *Ibid.*
- ⁴⁴ UN Committee on the Rights of the Child, *Concluding Observations: New Zealand*, CRC/C/NZL/CO/5, 21 October 2016, para 34.
- ⁴⁵ *Ibid.* para 34(a)-(b).
- ⁴⁶ NZ Government Report para 55.
- ⁴⁷ http://www.stats.govt.nz/browse_for_stats/snapshots-of-nz/nz-social-indicators/Home/Education/18-year-olds-with-higher-qualif.aspx.
- ⁴⁸ <http://www.educationcounts.govt.nz/statistics/indicators/main/student-engagement-participation/Stand-downs-suspensions-exclusions-expulsions>.
- ⁴⁹ *ibid*
- ⁵⁰ <http://www.occ.org.nz/assets/Uploads/OCC-STA-Education-Matters-to-Me-Key-Insights-24Jan2018.pdf>
- ⁵¹ <http://103.14.3.1/national/programmes/morningreport/audio/2018632155/Māori-student-under-achievement-chronic>
- ⁵² Report of David McGee Ombudsman on complaints arising out of bullying at Hutt Valley High School in December 2007 (2011) http://www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/505/original/bullying_report.pdf?1355787360.
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- ⁵⁵ Making Rights Real Whakatuturu nga tika hauatanga: Report of the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities, June 2014, p 79.
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⁶⁰ *Ibid.* pp 59-61.

⁶¹ Carolyn Frohmader and Therese Sands, "Fact Sheet: Violence Against People with Disabilities in Institutions and Residential Settings, November 2014.

⁶² Family Violence Death Review Committee, *Fifth Report Data: January 2009 to December 2015* https://www.hqsc.govt.nz/assets/FVDRC/Publications/FVDRC_2017_10_final_web.pdf.

⁶³ A summary of the Bill's intent is set out in the New Zealand Government Report at para 73.

⁶⁴ NZ Government Report, p 14, paras 70-75.

⁶⁵ <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/reducing-family-and-sexual-violence/work-programme/>.

⁶⁶ *Ibid.* para 74.

⁶⁷ The Children, Young Persons and their Families (Advocacy, Workforce and Age-setting) Amendment Bill 2016 and the Children, Young Persons and their Families (Oranga Tamariki) Amendment Bill 2017.

⁶⁸ Note this change is in line with the recommendation of the UN Committee on the Rights of the Child, Concluding Observations: New Zealand, C/CRC/NZL/CO/5, 21 October 2016, para 7(b).

⁶⁹ Clause 5, Children, Young Persons and their Families (Oranga Tamariki) Amendment Bill 2017

⁷⁰ *Ibid.* clause 12, new s 7A.

⁷¹ Office of the Children's Commissioner, *State of Care Report 2015*, p 10, <http://www.occ.org.nz/assets/Publications/OCC-State-of-Care-2015.pdf>

⁷² Human Rights Commission, Submission in relation to the twenty-first and twenty-second periodic review of New Zealand under the Convention on the Elimination of All Forms of Racial Discrimination, July 2017 p -10, paras 35-39.

⁷³ <http://women.govt.nz/work-skills/income/gender-pay-gap>.

⁷⁴ *Ibid.*

⁷⁵ <http://www.ssc.govt.nz/public-service-workforce-data/hrc-diversity> SSC data indicates a 25% gap between the median earnings of Māori women and European men, a 28% gap between Pacific women and European men, a 14% gap between Māori women and European women and a 17% gap between Pacific women and European women.

⁷⁶ http://m.stats.govt.nz/browse_for_stats/income-and-work/Income/motherhood-penalty-summary.aspx

⁷⁷ *Terranova homes and care limited v Service and FoodWorkers Union Nga Ringa Tota Incorporated & Kristine Bartlett* [2014] NZCA 516.

⁷⁸ <http://www.ssc.govt.nz/public-service-workforce-data/hrc-diversity>.

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⁸⁰ See NZ Government Report, Figure 7, p 23.

⁸¹ *Ibid.* Figure 18, p 26.

⁸² NZ Government Report paras 138-147

⁸³ Tracking Equality at Work 2016, https://www.hrc.co.nz/files/5514/6725/5165/TEW_Key_findings_for_2016.pdf.

⁸⁴ http://archive.stats.govt.nz/browse_for_stats/health/disabilities/disability-and-labour-market/employment.aspx.

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⁸⁶ Health and Safety at Work (General Workplace and Workplace Management) Regulations 2016, Part 4, ss 43-48.

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⁸⁸ C Stringer, *Worker Exploitation in New Zealand: A Troubling Landscape*, Human Trafficking Research Coalition December 2016 accessed:

[http://img.scoop.co.nz/media/pdfs/1612/Worker Exploitation in New Zealand Stringer.pdf](http://img.scoop.co.nz/media/pdfs/1612/Worker_Exploitation_in_New_Zealand_Stringer.pdf).

⁸⁹ Ibid. pp vii-ix.

⁹⁰ Adopted by resolution A/RES/55/25 of 15 November 2000 at the fifty-fifth session of the General Assembly of the United Nations, Ratified by New Zealand on 19 July 2002,

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=en#5.

⁹¹ Supra note 88.

⁹² Joint Standing Committee on Foreign Affairs, Defence and Trade, Parliament of Australia, *Inquiry into a Modern Slavery Act in Australia*;

[https://www.aph.gov.au/Parliamentary Business/Committees/Joint/Foreign Affairs Defence and Trade/Modern Slavery/Interim Report/section?id=committees%2Freportjnt%2F024092%2F24952](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Foreign_Affairs_Defence_and_Trade/Modern_Slavery/Interim_Report/section?id=committees%2Freportjnt%2F024092%2F24952).

⁹³ See B Easton, Does Income Inequality reduce Equality of Opportunity, 29 June 2015:

<http://pundit.co.nz/content/does-income-inequality-reduce-equality-of-opportunity> - this notes that the level of base income recommended by the 1972 Royal Commission on Social Security would be \$442 per week in today's prices. The 1991 budget cut this to the equivalent of \$301 per week.

⁹⁴ Section 117, Social Security Act 1964 – the sanctions impose, among other things, a 50% reduction in the benefit payment until re-compliance for the first instance of non-compliance with an obligation, suspension of the benefit for a second instance of non-compliance, and cancellation of the benefit for the third instance.

⁹⁵ <https://www.stuff.co.nz/national/94921227/benefit-sanctions-see-17700-children-of-solo-parents-lose-up-to-28-a-child-a-week>.

⁹⁶ <http://www.newshub.co.nz/home/new-zealand/2017/09/benefit-sanctions-actually-linked-to-long-term-welfare-dependency.html>.

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<http://www.childpoverty.co.nz/flow-infographics/income-poverty-2016>.

⁹⁹ <http://www.nzchildren.co.nz/>.

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¹⁰⁴ <http://www.legislation.govt.nz/bill/government/2018/0014/latest/d56e2.html>.

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¹⁰⁷ *A Stocktake of New Zealand's Housing – February 2018: Key Findings and Solutions*,

¹⁰⁸ K Amore, *Severe Housing Deprivation 2001-2013*, He Kainga Oranga/Housing and Health Research Programme, Wellington p 3.

¹⁰⁹ Māori make up 15% of the New Zealand population, yet 34.5% of Māori live with severe housing deprivation' - see Ministry of Business, Innovation and Employment, (July, 2014), *He Whare Āhuru, he Oranga Tāngata: Māori Housing Strategy 2014 - 2025*, at p 4. Pasifika make up 7 % of the population but comprise 25% of those who live with severe housing deprivation – see University of Otago, *Severe Housing Deprivation: The problem and its measurement* (2013).

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- ¹³⁴ Between August 2016 and November 2017, the media reported over 50 instances of drinking water quality issues in New Zealand. See Appendix 4 of the Report of the Havelock North Drinking Water Inquiry: Stage 2 (December 2017) [https://www.dia.govt.nz/diawebsite.nsf/Files/Report-Havelock-North-Water-Inquiry-Stage-2/\\$file/Report-Havelock-North-Water-Inquiry-Stage-2.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Report-Havelock-North-Water-Inquiry-Stage-2/$file/Report-Havelock-North-Water-Inquiry-Stage-2.pdf).
- ¹³⁵ The first stage report, published in May 2017, focused on identifying what happened, the cause of the outbreak, and assessed the conduct of those responsible for providing safe drinking water to Havelock North. See Report of the Havelock North Drinking Water Inquiry: Stage 1 (May 2017) [https://www.dia.govt.nz/vwluResources/Report-Havelock-North-Water-Inquiry-Stage-1/\\$file/Report-Havelock-North-Water-Inquiry-Stage-1.pdf](https://www.dia.govt.nz/vwluResources/Report-Havelock-North-Water-Inquiry-Stage-1/$file/Report-Havelock-North-Water-Inquiry-Stage-1.pdf). Based on these findings, Stage two of the inquiry focused on how drinking water in New Zealand can be improved, drawing on lessons to be learned from the Havelock North outbreak. See Report of the Havelock North Drinking Water Inquiry: Stage 2 (December 2017) [https://www.dia.govt.nz/diawebsite.nsf/Files/Report-Havelock-North-Water-Inquiry-Stage-2/\\$file/Report-Havelock-North-Water-Inquiry-Stage-2.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Report-Havelock-North-Water-Inquiry-Stage-2/$file/Report-Havelock-North-Water-Inquiry-Stage-2.pdf).
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