

14. Right to Housing

Tika ki te Whai Whare Rawaka

“Everyone has the right to live in security, peace and dignity.”



Everyone has the right to live in security, peace and dignity.

United Nations Committee on Economic Social and Cultural Rights, general comment 4 (edited)

Introduction Tīmatatanga

In New Zealand, the inability to obtain decent, affordable housing is one of the major barriers to an adequate standard of living. At a family level, housing represents the most significant single budget item for many New Zealanders. Additionally, the quality of housing directly affects people's health, particularly in the case of children and old people. For children, security and adequacy of housing have far-reaching effects on their health, achievements in education and general development. Improved data and research are required in order to identify and address significant barriers that disabled people face trying to access affordable and appropriate housing.¹

International context Kaupapa ā taiao

There remains a disturbingly large gap between the standards set in Article 11 (1) of the covenant and the situation prevailing in many parts of the world ... the committee observes that significant problems of homelessness and inadequate housing also exist in some of the most economically developed societies.

United Nations Committee on Economic Social and Cultural Rights, general comment 4

Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides the most significant legal source on the right to adequate housing. The most authoritative legal interpretation of this right was set out in a 1991 general comment by the United

Nations Committee on Economic, Cultural and Social Rights (CESCR) which considers countries' compliance with ICESCR.² This general comment spells out that the right to housing includes:

- security of tenure, for example legal protection from arbitrary eviction
- availability of services, for example sustainable access to potable water, sanitation and emergency services
- affordability, for example housing costs as a ratio of income
- habitability, for example the soundness of physical structure and the absence of dampness and crowding
- accessibility, for example by all ethnic, racial, national minority and other social groups
- location, for example in relation to employment and schools
- cultural adequacy, for example taking into account traditional housing patterns.

The right to housing for women, children and disabled people, respectively, is specifically mentioned in the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (UNCROC) and the Convention on the Rights of Persons with Disabilities (CRPD). The latter convention also sets out disabled people's right to live independently and have the opportunity to choose their place of residence.

The right to housing should not be interpreted in a narrow or restrictive sense which equates it with, for example, the shelter provided by merely having a roof over one's head ... Rather it should be seen as the right to live somewhere in security, peace and dignity.³

The indispensable and indivisible significance of adequate housing to the enjoyment of other human rights is reflected in other international statements of law and policy, including the:

1 McKinlay Douglas Limited and Etain Associates (2006), Housing Needs for People with Disabilities in the Bay of Plenty and Lakes Region. Final report prepared for HNZC, the Bay of Plenty and Lakes District Health Boards and the Tauranga Community Housing Trust/McKinlay Douglas Limited

2 United Nations Committee on Economic, Social and Cultural Rights (1991), The right to adequate housing: Article 11(1) CESCR general comment No. 4. Geneva: United Nations

3 ibid

- International covenant on Civil and Political Rights (Article 17)
- International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(iii))
- International Convention relating to the Status of Refugees (Article 21)
- International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (Article 43(1)(d)).

New Zealand has ratified all but the last of these conventions. The right to housing is also reflected in Article 21 of the United Nations Declaration on the Rights of Indigenous Peoples.

NEW ZEALAND'S OBLIGATIONS

As New Zealand has ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), it has a duty to respect, protect and fulfil the right to housing. Specifically, full realisation of these rights should be progressively implemented, to the maximum of a country's available resources. The United Nations recommends action plans, targets, monitoring and other strategies to ensure that the most vulnerable and disadvantaged receive assistance as a priority.

New Zealand context Kaupapa o Aotearoa

THE NEW ZEALAND LEGISLATIVE AND REGULATORY FRAMEWORK

The right to housing is not specifically provided for in any New Zealand legislation.⁴ However, a range of central government policies, laws and regulations provide certain rights and protections related to housing. These include the:

- Building Act 2004 (which repealed the Building Act 1991)⁵
- Building Amendment Act 2009⁶
- Housing Improvements Regulations 1947 (under the Health Act 1956)⁷
- Housing Restructuring and Tenancy Matters Act 1992
- Residential Tenancies Act 1986⁸
- Residential Tenancies Amendment Act 2010
- Local Government Act 1974 (where still in force)
- Local Government Act 2002
- Resource Management Act 1991⁹
- Resource Management (Simplifying and Streamlining) Amendment Act 2009
- Fire Service Act 1975
- Watertight Homes Resolution Services Act 2006.

The New Zealand Bill of Rights Act 1990 (BoRA), the Human Rights Act 1993 (HRA) and the Residential Tenancies Act 1986 also provide protection from discrimination in housing. The Residential Tenancies Amendment Act 2010 extended that protection to boarding house residents, although the protection is weaker than that afforded to other tenancies. Long-term camping ground residents remain unprotected by this legislation.

New Zealand today Aotearoa i tēnei rā

While there is no express right to housing in New Zealand law, by ratifying ICESCR and other covenants and conventions, the Government has accepted an undertaking to comply with these international human rights standards. Complaints and enquiries to the

4 Community Housing Aotearoa conducted an online survey of its members to provide comments on the draft version of this chapter. Almost all (91%) of the more than 50 respondents were concerned that there is no express right to housing in New Zealand legislation.

5 A broad review of the Building Act and Code was prompted by the 'leaky building' issue

6 In August 2010 the Building and Construction Minister announced further planned amendments to the Building Act 2004. Accessed 30 September 2010 from <http://www.beehive.govt.nz/release/next+generation+building+laws+way>

7 The Health Act contains a range of provisions relating to housing standards

8 The rights of both state-sector and private-sector tenants are protected within this legislation. Provisions include a Ministry of Housing service that assists the resolution of disputes between landlords and tenants

9 The Resource Management Act 1991 and the Local Government Act 2002 cover the zoning of residential areas and the environmental impacts of housing

Commission, and consultation on this chapter, have identified three main issues of concern about the right to housing:

- accessibility (state and social housing provision, and homelessness)
- affordability (as renters and as homeowners)
- habitability (cold, dampness and crowding).

In addition, this chapter touches briefly on two other components of the right to housing: location and security of tenure.

The other two factors identified by the CESCR are cultural adequacy and availability of services. In New Zealand, cultural adequacy issues have arisen around the size and design of state-housing stock, including the need for low-cost communal housing. Typically, sustainable access to potable water, sanitation and emergency services has not been as significant an issue.

The Commission receives, on average, one hundred complaints or enquiries a year about housing discrimination, and about twice as many approaches from people with other housing difficulties. Accessibility is compromised when there is a shortage of social housing, making some people vulnerable to homelessness. This may result in people being forced to sleep rough or in transient, insecure or substandard accommodation.

Levels of home ownership have fallen faster in New Zealand in the last 20 years than in any other OECD country. The reinstatement of income-related rents for those in state housing has improved rental affordability.¹⁰ However, housing shortages in some regions, particularly Auckland, have placed pressure on rental affordability. Crowding remains a significant issue in main cities and in some rural and provincial areas, particularly those with large Māori, Pacific or refugee communities.

Since publication of the *New Zealand Action Plan for Human Rights* in 2005, the Housing New Zealand

Corporation (HNZC) has included some analysis of the right to healthy and affordable shelter in three key documents. The 2005 New Zealand Housing Strategy acknowledged that housing inequality is a significant contributor to social and economic inequality. The strategy set out the Government's 10-year 'Programme of Action for Housing' to:

- work with industry and local government to bring about sustainable housing supply
- improve housing assistance and affordability
- improve access to home ownership
- develop the private rental sector
- improve housing quality
- strengthen housing-sector capability
- meet diverse needs.

However, it did not comprehensively analyse all key international housing indicators or the extent to which they are incorporated in housing-related legislation, policies and practices. A 'Māori Strategic Plan'¹¹ was published in 2007, followed by a 'Housing Strategy for Pacific Peoples' in 2009.¹² Both recognised specific barriers faced by these population groups when trying to access housing.

Objective 8 of the disability strategy prioritises the provision of opportunities for disabled people to have their own homes and live in the community. For older people, both the New Zealand Positive Ageing Strategy and the Health of Older People Strategy emphasise ageing in place.

Elderly people, including those in need of care and support should, wherever possible, be enabled to continue living in their own homes, and where this is not possible, they should be enabled to live in a sheltered and supportive environment which is as close to their community as possible, in both the social and geographical sense.¹³

10 Income-related rent paid by a state-house tenant is set at a maximum of 25 per cent of a tenant's net income up to the NZ National Superannuation threshold. Thereafter, 50 cents of every dollar is paid until the market rent of the tenant's dwelling is reached.

11 Housing New Zealand Corporation (2007), *The Healthy Housing Programme Outcomes Evaluation* (Wellington: HNZC)

12 Housing New Zealand Corporation (2009), *Orama Nui: Housing Strategy for Pacific Peoples* (Wellington: HNZC)

13 OECD (1994), *Caring for Frail Elderly People: New Directions in Care* (Paris: OECD), p 3

COMPLAINTS AND ENQUIRIES TO THE COMMISSION

Between 2005 and 2009, the Human Rights Commission received 526 complaints and enquiries about housing discrimination, with 249 (47 per cent) accepted for further action.¹⁴ The most common grounds of complaint were race-related discrimination (30 per cent), followed by discrimination based on a person's disability (23 per cent), age (13 per cent) and family status (12 per cent).

Disability complaints have included instances where restrictive covenants have been placed on property in some residential areas to prevent the provision of supported accommodation for disabled people. Individuals with experience of mental health issues have complained about conditions in boarding houses.

Between 2005 and 2009, the Commission received a further 904 complaints and enquiries about the broader right to housing. These came from landlords and others seeking advice about human rights obligations, as well as from tenants. Key overall themes were the lack of affordable housing (including difficulties accumulating a rental bond payment); the poor standard of housing (particularly in rural areas); evictions; declined tenancies; and concerns about accommodation conditions. In addition, people complained about general treatment by their landlord.

Restrictive covenants

Restrictive covenants can work against the interests of vulnerable and disadvantaged groups. These have been placed on properties in residential areas and can have the effect of excluding supported accommodation for disabled people. Housing New Zealand views them as a small but growing obstacle to the integration of social housing within communities.

The growing use of restrictive covenants has a negative impact on the ability of Housing New Zealand and other

social housing providers, such as IHC New Zealand Incorporated and Women's Refuge, to buy or lease properties. Under the Affordable Housing Enabling Territorial Authorities Act 2008 (AHETA), a covenant over land was void if one of its purposes was to stop the provision of affordable or social housing.

The Commission noted its concerns when the AHETA was repealed in 2010. Modified provisions relating to restrictive covenants have been retained by inserting s277A into the Property Law Act 2007. This amendment renders covenants void if a principal purpose is to stop the land being used for housing for people on low incomes or with special housing needs, or to provide supported accommodation for disabled people.¹⁵

The Commission's submission noted that the threshold in the new provisions is higher and may allow covenants which do not explicitly exclude the provision of such housing, but still have that effect.¹⁶ For example, stipulating that only family homes or domestic dwellings can be built in a particular area could impact adversely on group homes for people with intellectual disabilities. As it is unclear whether this would be rendered void under the s277A provisions, the Commission recommended retaining the AHETA threshold. Furthermore the Commission recommended clarifying that restrictive covenants which undercut the provision of either rental housing or home-ownership options for people on low to moderate incomes are covered by the new provisions.

ACCESSIBILITY

State and social housing¹⁷

New Zealand was one of the first countries to provide state housing for low-income workers unable to purchase through the open market, and with less bargaining power in the private rental market. Over time, the remit of social housing has changed to prioritise people with special housing needs who cannot otherwise access adequate

14 The Commission is unlikely to be the first organisation approached about housing complaints. This is because specific bodies exist to deal with housing complaints, and the Commission's main focus is more tightly drawn around complaints of unlawful discrimination

15 Some submitters to this chapter remain concerned that restrictions in district plans can still exclude disabled people from access to housing.

16 Human Rights Commission (September 2009) Submission to the Transport and Industrial Relations Committee on the Infrastructure Bill. Accessed 20 October 2010 from http://www.hrc.co.nz/home/hrc/resources/resources.php#Human_Rights_Submissions_

17 'Social housing' is the overarching term for rental housing which may be owned and managed by central or local government and/or non-profit organisations, with the aim of providing affordable housing. Where that housing is fully funded, owned and administered by the government, it is referred to as 'state housing' or 'public housing'. The term 'community housing' spans non-profit and co-operative housing, including supportive housing

housing. The most recent Census data shows that the proportion of rental housing which is publicly owned fell by more than half between 1986 and 2006, from 37.8 per cent to 18.2 per cent. While the right to housing is not limited to the most disadvantaged, government funding for state- or social-housing services is primarily targeted to these groups. Being subjected to discrimination is one of the key factors taken into account by HNZC when assessing an applicant's need for state housing. Limited availability of state houses and tight eligibility based on need mean that many low-income working families are very unlikely to gain a state tenancy.

As at 30 June 2010, there were 10,434 people on HNZC's waiting list, with 386 (3.7 per cent) deemed to be in severe housing need, 4289 (41.1 per cent) in significant housing need and 3182 (30.5 per cent) in moderate housing need. Less than a quarter (2577 or 24.7 per cent) had lower-level housing need.¹⁸ In June 2010, 27 per cent of applicants on HNZC's waiting list were current state tenants awaiting a transfer.¹⁹ People whose applications for state housing are declined may apply to the State Housing Appeals Authority.

In its April 2009 Universal Periodic Review report, the New Zealand Government noted that more than \$100 million was planned to be spent on upgrading existing state homes, and \$20 million on building new homes. "This will help ease pressure on HNZC's waiting list for state rental accommodation and will improve the habitability of more than 18,000 homes."²⁰

In February 2009, the Government provided the HNZC with a one-off \$124.5 million economic-stimulus package to build and upgrade state homes. Combined with its regular appropriations, this enabled the corporation to spend a total of approximately \$331 million on upgrades and acquisitions in 2009–10. When the package ended in June 2010, the corporation returned to its normal upgrade

and acquisition programme. In 2010–11, the corporation anticipates spending more than \$207 million on upgrades and acquisitions.²¹

Most third-sector social-housing providers are small-scale, with the exception of local bodies such as the Christchurch and Wellington City Councils and community housing providers such as IHC, which owns 643 homes and assists with the rental of a further 248 homes.

The Christchurch City Council provides safe, accessible and affordable social housing to people on low incomes, including the elderly and people with disabilities. Operating under the name City Housing, the council has a rental accommodation portfolio of more than 2640 units spread throughout most Christchurch suburbs. This is second in size only to the social housing provided by HNZC.²²

Wellington City Council provides 2300 social housing units for people who meet the council-set criteria relating to income, age, housing need, disability and refugee status. In 2007 the Crown entered into an agreement to invest \$220 million over 20 years to upgrade the council's social housing stock. The council will also make a significant investment into the portfolio and is committed to providing social housing in the long term.

In February 2010, the Housing Shareholders Advisory Group (HSAG) was established by the Ministers of Finance and Housing to provide advice on state and social housing. In its first report, released in August 2010, the HSAG commented that it was "struck by the severity of the affordable housing shortage and the negative future trends".²³ The HSAG's recommendations focus on four areas:

- empowering HNZC to focus on the 'high needs' sector
- developing third-party participation (including through greater support for community housing initiatives)

18 Accessed 7 July 2010 from <http://www.hnzc.co.nz/hnzc/web/rent-buy-or-own/rent-from-housing-new-zealand/waiting-list.htm>

19 Information supplied by Housing New Zealand Corporation

20 Human Rights Council (2009), National report submitted in accordance with paragraph 15(a) of the annex to Human Rights Council Resolution 5/: New Zealand, para 87, p 16, fifth session, A/HRC/WG.6/5/NZL/1. Accessed 19 October 2010 from <http://www.mfat.govt.nz/downloads/humanrights/final-upr-report-apr09.pdf>

21 Information supplied by Housing New Zealand Corporation

22 Accessed 6 October 2010 from: <http://www.ccc.govt.nz/homeliving/socialhousing/index.aspx>

23 Housing Shareholders Advisory Group (2010), *Home and Housed: A Vision for Social Housing in New Zealand* (Wellington: HSAG)

- instigating initiatives across the broader housing spectrum (for example, reviewing accommodation subsidies)
- clarifying sector responsibilities.

Homelessness

Homelessness is a symptom of unaffordable housing and inadequate supports for people in need, including those requiring mental health support or assistance on exiting prison. In July 2009, Statistics New Zealand published the New Zealand Definition of Homelessness. It moves beyond a focus on those 'living rough' to include all people living in situations unacceptable for permanent habitation, by New Zealand norms, who have no other options to acquire safe and secure housing.

There are four types of living situations considered unacceptable for permanent habitation in this definition:

- without shelter (living rough or in an improvised dwelling such as a car)
- temporary accommodation (provided by non-profit organisations, boarding houses, camping grounds, or marae)
- sharing accommodation with friends or family
- uninhabitable housing (owned or rented housing without basic amenities).

University of Otago Wellington, Statistics New Zealand and HNZC are currently applying this definition to administrative and Census data to determine the size and characteristics of the homeless population. Improved measurement of homelessness in New Zealand is likely to require developments in specialised surveys, administrative data collection, and Census classifications.²⁴ Until this research is published, few reliable measures of the homeless population exist. As in other developed nations, only a small proportion are likely to be living on the street, with homelessness largely manifesting as sharing accommodation with friends or family, which, in many situations, leads to or exacerbates crowding.

An annual one-night count of people living rough or in improvised dwellings within a 3km radius of Auckland's Sky Tower has occurred since 2004. In 2010, 53 people were counted. Counts of this part of the homeless population are not conducted elsewhere in New Zealand.

Non-profit temporary accommodation targeted to homeless people falls into three categories: night shelters (where residents cannot access the accommodation during the day); accommodation for the homeless (where residents have 24-hour access to the accommodation); and women's refuges (targeted specifically to women and children who are victims of domestic violence). Preliminary results from the University of Otago project suggest that this sector comprises approximately 120 providers nationally, with the collective capacity to accommodate at least 850 households per night.²⁵ The availability of these types of accommodation varies significantly by region and household type. There is little government funding to comprehensively address the support needs of residents in many of these accommodation services.

Research published in 2008 estimated that approximately 12,000 (30.4 per cent) of 'at-risk' and 'vulnerable' young people aged 17–24 years were in unsafe or insecure housing. Within this group, 2.5 per cent were living rough; 12.6 per cent lived in unaffordable, crowded or dilapidated housing; and 13.8 per cent lived in dwellings where they were exposed to criminality, sexual or physical abuse, gangs or drug-making.²⁶ Some of these young people would be considered homeless, others at high risk of homelessness.

International research shows that the long-term personal and economic costs of homelessness are significant. Although no formal cost-benefit analyses of homeless populations have been conducted in New Zealand, the Committee for Auckland estimated that providing income support, health and detention services to Auckland's chronically homeless population cost in excess of \$75 million in the last decade. The report suggested that

24 Dr Kate Amore, Housing and Health Research Programme, University of Otago, Wellington, personal communication, August 2009

25 *ibid*

26 Saville-Smith K, James B, Warren J and Fraser R (2008), *Access to Safe and Secure Housing for At Risk and Vulnerable Young People* (Wellington: Centre for Housing Research Aotearoa New Zealand)

these root causes of homelessness could be tackled for a significantly smaller amount.²⁷

There is no homelessness policy at the central government level. This contrasts with the Australian Federal Government's December 2008 White Paper, *The Road Home*, which sets two goals: halving homelessness by 2020 and offering accommodation to all rough sleepers who seek it. This has been supported by considerable investment to fund the required social support and build new specialist housing.²⁸

At the local government level, Wellington City Council and the former Auckland City Council are the only councils known to have homelessness policies.²⁹ Wellington is implementing a monitoring and evaluation system among its funded providers of services for homeless people, with the aim of improving the council's response to homelessness. In 2007, the Committee for Auckland started to facilitate a taskforce of government and NGOs.

In terms of advocacy, the New Zealand Coalition to End Homelessness promotes the Homelessness Strategy Toolkit, identifying seven key areas for addressing homelessness. Its 2008 discussion paper spells out 38 recommendations for addressing homelessness across New Zealand, including the need to move towards a 'housing first' approach, where permanent rather than emergency housing is the immediate priority, coupled with appropriate, often intensive support to sustain tenancies.

Statistics New Zealand's 2009 Review of Housing Statistics³⁰ has recommended further joint work by government agencies to:

- investigate and develop housing affordability measures
- improve existing data sources on the physical quality of the national housing stock
- continue research into measures and statistics on crowding and homelessness.

In early 2009, ministers agreed to a work programme to address issues around crisis, transitional and long-term housing for those in most need, including disabled people and those fleeing violence at home. This work aims to ensure that people are not forced into unsuitable private accommodation and are able to avoid homelessness. Phase two is currently under way. It is looking at ways to improve housing and support services for released offenders, and for youth leaving care and protection and youth justice services.

Community housing providers who submitted on this chapter raised concerns that this work programme seems to be progressing very slowly. They stressed that the results of this work need to be published and action plans created to address gaps and failures. Pressing issues highlighted by submitters include:

- lack of accommodation options to address chronic homelessness
- very limited specialist accommodation for people who find it hard to sustain an independent tenancy, due to issues associated with their alcohol and/or drug dependence
- homelessness among those released from prison, including trans women
- short-term emergency housing facilities becoming long-term providers for people who fall through the cracks
- homelessness among queer and trans youth
- a significant and rapidly growing group of single people living alone who are experiencing a crisis in accessing affordable housing.

AFFORDABILITY

Affordability is one of the primary indicators of the right to housing. In New Zealand the inability to obtain decent,

27 Committee for Auckland (November 2008), *Auckland's Million Dollar Murray: Quantifying the Cost of Homelessness* (Auckland: Committee for Auckland); Lang S (2007), 'Enough Already: quantifying the cost of homelessness in Auckland', *Parity*, October, pp 27–28. Accessed 19 October 2010 from <http://nzceh.wikispaces.com/file/view/Parity+Vol20-09+8-11-07.pdf>

28 Department of Families, Housing, Community Services and Indigenous Affairs (2008), *The Road Home: the Australian Government White Paper on Homelessness* (Canberra: Commonwealth of Australia). Accessed 30 September 2010 from <http://www.fahcsia.gov.au/sa/housing/progserv/homelessness/whitepaper/Pages/default.aspx>

29 Wellington City Council has had a Homelessness Strategy since 2004 and the former Auckland City Council has had a Homeless Action Plan since 2005

30 Statistics New Zealand (2009), *Review of Housing Statistics Report 2009* (Wellington: StatsNZ). Accessed 7 July 2010 from http://www.stats.govt.nz/browse_for_stats/work_income_and_spending/income/review-of-housing-statistics-2009.aspx

affordable housing is one of the most significant barriers to an adequate standard of living. Having to spend more on housing costs relative to income has significantly reduced living standards and increased poverty levels over the last two decades.

Living standards tend to be compromised when people on low incomes spend more than 30 per cent of their income on housing costs. Using this measure, between 1988 and 1997 there was a substantial decline in housing affordability.³¹ The proportion of households spending more than 30 per cent of their income on housing costs more than doubled, from 11 per cent to 25 per cent. This proportion levelled off between 1998 and 2001, then fell to 21 per cent by 2004. This improvement can be attributed mainly to the reinstatement of income-related rents for state housing tenants in 2001. Rising accommodation costs increased this proportion to 27 per cent by 2009.³²

Unaffordable housing is even more pronounced for low-income households, those with children or those where there is a Pacific adult. In 2009, 33 per cent of households on low incomes or that included a Pacific adult were spending more than 30 per cent of their income on housing costs.³³ More than one-third, 37 per cent, of all children aged under 18 years lived in households with such high housing costs relative to household income.

High rates of unemployment and under-employment among disabled people have significant impacts on disabled people's ability to afford to buy or rent decent housing.³⁴

Low affordability, whether of owned or rented housing, leaves households with less money for other items essential to good health, including a nutritious diet,

primary health services and winter heating.³⁵ It can lead to living in crowded, substandard or unhealthy temporary accommodation.

Rental affordability

Almost a third of households do not own the dwellings they occupy, with the private sector dominating the rental market. Māori, Pacific, low-income, sole-parent, single-person and extended-family households are over-represented in rental housing tenure. The 2009 General Social Survey reiterates the link between low incomes and reliance on rented accommodation. People who lived in rented dwellings were more than twice as likely as people who lived in owner-occupied dwellings to report that they did not have enough money to meet everyday needs.³⁶

One measure of rental affordability is the number of hours a low-paid worker in the service sector would have to work in order to rent a typical two-bedroom house. Using this measure, the affordability of rental accommodation for those in low-paid employment has not changed significantly over the last five years.³⁷ Rental affordability is particularly acute for households on benefits, as housing rents tend to rise in line with movements in wages, while benefits are not adjusted to maintain relativity with wages. By improving rental affordability, the reinstatement of income-related rents in 2001 resulted in fewer HNZC applications to the Tenancy Tribunal for rent arrears.

The Accommodation Supplement (AS) is a benefit paid to lower-income private-sector and social-housing tenants to help them pay their rent. Changes to the supplement settings in 2004 and 2005 helped to reduce net housing expenditure for some low-income households.

However, submitters to this chapter echoed concerns raised by the HSAG about discrepancies in eligibility between the supplement and the income-related rent

31 Data in this section on housing costs relative to income is derived from Statistics New Zealand's Household Economic Survey (1988–2008) by the Ministry of Social Development, and published in Ministry of Social Development (2009), 'The Social Report' (Wellington: MSD)

32 Perry B (2010), *Household incomes in New Zealand: trends in indicators of inequality and hardship 1982–2009* (Wellington: MSD)

33 Perry B (2010)

34 Statistics New Zealand (2008), *Disability and the Labour Market in New Zealand in 2006* (Wellington: StatsNZ)

35 Auckland Regional Public Health Services (2005), *Housing and Health – A summary of selected research for Auckland Regional Public Health Services* (Auckland: Auckland Regional Public Health Services)

36 Ministry of Social Development (2009)

37 Johnson A (2010), *A Road To Recovery: A State of the Nation report from The Salvation Army* (Manukau City: The Salvation Army Social Policy and Parliamentary Unit)

subsidy, and the differing levels of subsidy. Only those in state housing are eligible for the subsidy. People in community or private-sector housing are ineligible for the subsidy and can receive only the much lower supplement. The HSAG has recommended reviewing and aligning both payments to provide fair and equitable support for people's actual housing needs.

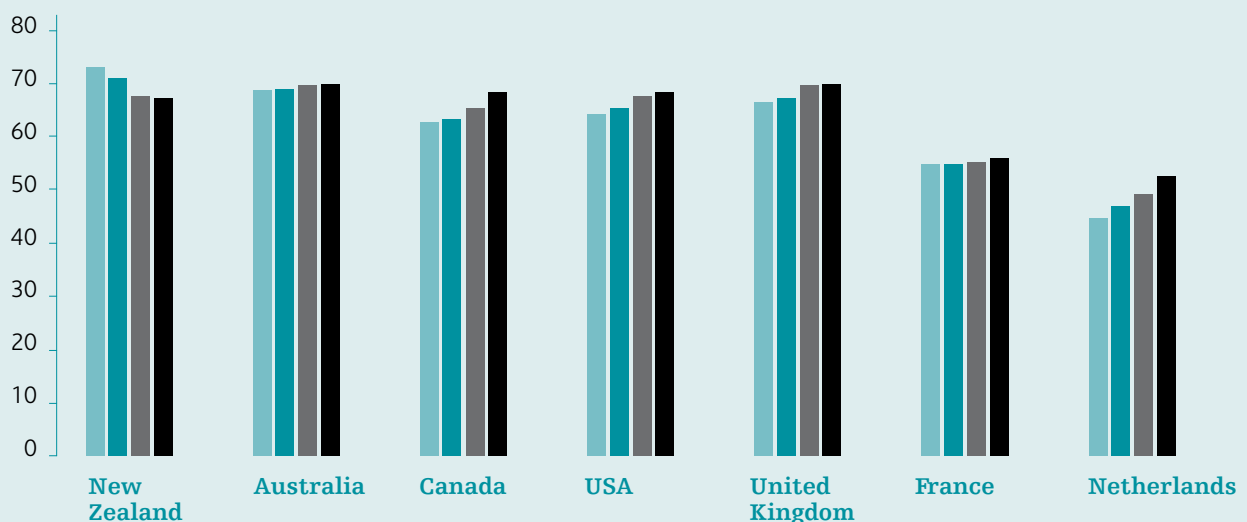
While the AS payment rate is higher in parts of the country where rents are more expensive, social housing providers described it as insufficient to meet high city rents. In the former Auckland, Manukau and North Shore cities, many tenants are paying more than 50 per cent of their income for private rental accommodation. Submitters suggested that the \$1.2 billion expenditure on the AS in 2009 could be better spent in directly providing state or social housing than in subsidising private rents.³⁸ Others suggested that the supplement should be available only if the rental property had been granted a 'warrant of fitness' showing, for example, that the premises were

healthy, safe and insulated and the rental agreement was fair. Other measures submitters suggested to improve rental affordability included making it illegal to charge letting fees for new tenants.

Recent New Zealand research has shown that refugee and some new migrant communities are particularly dependent on state housing or rental accommodation and are vulnerable to discrimination in the private rental market.³⁹ Some from non-English speaking backgrounds face significant barriers accessing material about housing support, including state housing and the Accommodation Supplement. The 2009 National Refugee Resettlement Forum identified the lack of suitable housing for refugee families as an ongoing issue.⁴⁰

While refugees accepted under New Zealand's annual quota are automatically eligible for HNZC's social housing, this is not the case for those who arrive in New Zealand and apply for asylum under the Refugee Convention.

NEW ZEALAND'S HOME-OWNERSHIP DECLINE IS UNUSUAL AMONG WESTERN NATIONS



Source: National statistics based on 1991, 1996, 2001 and 2005 Censuses in each country

38 HNZC data, cited in Housing Shareholders Advisory Group (2010)

39 Butcher A, Spoonley P and Trlin A (2006), *Being Accepted: The Experience of Discrimination and Social Exclusion by Immigrants and Refugees in New Zealand*, New Settlers Programme Occasional Publication No. 13 (Palmerston North: New Settlers Programme, Massey University); Ravenscroft, V (2008), A survey on the living conditions including housing, neighbourhood and social support of the Christchurch Refugee Community. unpublished Master of Health Sciences thesis, University of Canterbury; Halango, A M (2007), 'The Housing Experiences of the Auckland Somali Population and their Impact on the Resettlement Process'. unpublished MA thesis, Auckland University of Technology

40 Human Rights Commission (2010), *Tūi Tūi Tuituia – Race Relations in 2009* (Auckland: HRC), p 62

Refugee communities have advocated for settlement support to apply equally to convention refugees, quota refugees and family reunification members.

Home ownership affordability

Home ownership affordability has emerged as a significant issue in New Zealand. As the graph on the previous page shows, no other OECD country has experienced a fall in home ownership as big as New Zealand's since 1991. This in part reflects that New Zealand previously had higher levels of home ownership than other comparable Western countries.⁴¹

House prices and mortgage rates still have a long way to fall relative to earnings before the affordability of a newly built home returns to 1990s levels. In particular, an 'intermediate' group of low- and middle-income working households has emerged, which is earning too much to qualify for state housing but not enough to buy their own home without some assistance.⁴² A comprehensive analysis of house price inflation and affordability issues was prepared by an expert group assembled by the Department of the Prime Minister and Cabinet in the last quarter of 2007. It concluded that "no one factor can account for the increases in house prices since 2001", and therefore "mitigating the future effects of declining affordability will require a mix of new policy settings".⁴³

One home ownership affordability measure is the number of years of work earning the average weekly wage required to purchase a median-priced house. On this measure, home ownership affordability worsened in the housing boom from the early 2000s until its peak in mid-2007, before the recession. The subsequent fall in interest rates has improved housing affordability for

those with a mortgage. Reserve Bank estimates show that mortgage-related payments on an 80 per cent mortgage for a median-priced house were 33 per cent of an average household's disposal income in late 2009, compared with 45 per cent in September 2008 and 48 per cent a year earlier. However, house price inflation over the last five years has been most pronounced for lower-priced houses.⁴⁴

Home ownership is not always secure.⁴⁵ Rising unemployment has placed significant financial pressure on home owners with a mortgage. Total mortgagee sales for 2009 reached a record of 3024, over three times the number in 2008 and more than double the highest earlier number in 2002. The February 2010 figures showed the first sign of easing mortgagee sales since November 2007. However, the absolute level of mortgagee sales continues to remain high. In April 2010, there were 246 registered mortgagee sales, a 25 per cent increase since March, after adjusting for seasonal factors.⁴⁶

Despite low and declining home ownership rates, research shows that both Māori⁴⁷ and Pacific peoples⁴⁸ have a strong desire to own their own homes, but face significant financial barriers. The inability to raise housing finance against multiple-titled owned land has restricted Māori aspirations to home ownership. However, papakainga housing and the Low Deposit Rural Lending programmes have been positive for Māori. In February 2010, the Government announced a new home-loan scheme for Māori who want to build on ancestral lands. This guarantees a no-deposit loan of \$200,000 and up to \$350,000 in some high-value areas.

Two recent Community Housing Aotearoa forums have focussed on affordable home ownership models in urban

41 Housing Shareholders Advisory Group (2010), p 28. This graph shows home ownership as a percentage of all occupied dwellings

42 Badcock B (2009), Government policies for increasing the supply of affordable housing. Paper by the Chief Advisor, Housing Sector Policy, Housing New Zealand Corporation

43 Department of the Prime Minister and Cabinet (2008), Final Report of the House Prices Unit: House Price Increases and Housing in New Zealand, pp. 23–24

44 Johnson A (2010)

45 Home ownership is also not always a sustainably affordable or appropriate option for those with particularly low or insecure incomes

46 Terralink Mortgagee Sales report. Accessed 7 July 2010 from <http://www.zoodle.co.nz/cms/terralink-mortgagee-sales-report>

47 Waldegrave C, King P, Walker T and Fitzgerald E (2006), *Māori Housing Experiences: Developing Trends and Issues* (Wellington: Centre for Housing Research Aotearoa New Zealand)

48 Koloto A, Duncan I, de Raad J, Wang A and Gray A (2007), *Pacific Housing Experiences: Developing Trends and Issues* (Wellington: Centre for Housing Research Aotearoa New Zealand)

environments and increasing housing affordability for Māori.⁴⁹ A number of submitters proposed developing inclusionary zoning policies in areas with relatively high accommodation costs. This would mean that all developments over a certain size would be required to include a quota of affordable housing, or pay a levy towards an affordable housing fund.

HABITABILITY

Key factors that can affect the habitability of both state and private-sector housing are coldness, dampness and crowding, which can have debilitating health implications. A major British cohort study has shown that the effects of poor housing conditions are cumulative.⁵⁰ The longer people live in poor housing, the more it affects their mental and physical health, with children being particularly vulnerable.

Often disabled people face additional barriers when trying to obtain appropriate housing. A 2007 report confirmed that disabled people of all ages with moderate to severe disability affecting their mobility have significant unmet needs for accessible, safe, warm, comfortable housing. Particularly vulnerable were disabled young people in transition to adult life, and those dependent on health sector funding, renting, on low incomes and/or without family support.

Disabled people and the Government spend considerable amounts on basic housing modifications. The report concluded: "If basic house designs were more accessible, specialised home alterations tailored to an individual would be more affordable and better targeted".⁵¹ This reflects the principles of universal design – creating products and environments that anyone can use, to the greatest extent possible, without the need for adaptation

or specialised design. Universal design would enhance the habitability, accessibility and safety of housing for disabled people. Budget 2009 allocated \$1.5 million towards promoting accessible housing for disabled people, through the Lifetime Design Standard.

Submitters emphasised the wider benefits of universal or lifetime design, for instance enabling older people to remain in their current home as they age. A number said consideration would need to be given as to where any universal design standards would sit within the Building Act and Code, and whether they would be compulsory or mandatory.

While legislation provides minimum standards that houses must reach for people to be able to live in them, there is no clear definition of what constitutes an acceptable quality house. In contrast, Scotland has set a Housing Quality Standard and targets for bringing houses in the social rented sector up to this level.⁵² Similar standards exist in England.⁵³ A quality standard or rating scheme for rental properties would allow prospective tenants to better assess a property before they committed to a tenancy.

Cold and damp houses

Almost a third of New Zealand homes fall below the World Health Organisation (WHO) recommended indoor temperature of 18°C. The recommended temperature for young, elderly or disabled people is 21°C. Indoor temperatures below 16 °C significantly increase the risk of respiratory infections.⁵⁴

More than a quarter of New Zealand homes have unflued gas heaters, which result in high levels of condensation inside houses. Pacific households are more likely to report cold and damp in their homes and to have higher rates of

49 Community Housing Aotearoa (2010), *A Call to Action from the 2010 National Māori Housing Conference* (Wellington: Community Housing Aotearoa); Community Housing Aotearoa (2010), *Forum Report: Affordable home ownership models in urban environments* (Wellington: Community Housing Aotearoa)

50 Marsh G et al (1999), *Home Sweet Home? The impact of poor housing on health* (London: Policy Press). Cited in Howden-Chapman P et al (2004), *Retrofitting houses with insulation to reduce health inequalities: a community-based randomised trial*. Paper presented at Second WHO Conference on Housing and Health, Vilnius, Lithuania

51 Saville-Smith K and Fraser R (2007), *Housing and Disability: Future Proofing New Zealand's Housing Stock for an Inclusive Society* (Wellington: Centre for Housing Research Aotearoa New Zealand)

52 Accessed 6 October 2010 from: <http://www.scotland.gov.uk/Topics/Built-Environment/Housing/16342/shqs>

53 Accessed 6 October 2010 from: http://www.statistics.gov.uk/ssd/surveys/english_house_condition_survey.asp

54 Auckland Regional Public Health Services (2005)

respiratory illnesses than Pākehā households.⁵⁵ A 2008 survey identified cold houses and lack of insulation as an issue of concern for Christchurch refugee communities.⁵⁶

Between 1996 and 2009, 57,000 people have received state funding for insulation. Initially this was targeted to low- and middle-income households. The \$323 million of Warm Up New Zealand: Heat Smart funding introduced on 1 July 2009 extended insulation to all homeowners regardless of their income level. Over four years, the initiative aims to insulate more than 188,500 New Zealand homes built before 2000. This equates to around a fifth of the 900,000 homes estimated to have substandard insulation.⁵⁷ However, a backlog of houses with substandard insulation remains. Low-income households may not be able to afford to top up the partial subsidy, and traditionally there has been slow uptake of similar schemes by landlords. In November 2009, an additional \$24 million was announced to insulate the homes of low-income households and provide some iwi-specific initiatives.

HNZC's energy-efficiency retrofit programme has upgraded 17,300 of its less well-insulated houses. In the 2008 Budget, funding was allocated to retrofit the remaining 21,000 state houses requiring insulation, by 2013.

The recently released NZ Energy Efficiency and Conservation Strategy includes an objective to have "warm, dry and energy efficient homes with improved air quality to avoid ill-health and lost productivity". The cross-government Housing Energy Affordability Project led by the Ministry of Social Development seeks to find out more about the nature of energy affordability issues in New Zealand in order to inform future policies and programmes.

Homeowners in some areas have been faced with significant repair bills to remedy the negative effects of inferior building materials and poor construction quality-assurance measures. Those in residential rental accommodation can seek redress for dampness by making a complaint about the adequacy and quality of their accommodation under the Residential Tenancies Act. However, if the landlord does not wish to make such improvements, there is anecdotal evidence that tenants are unlikely to complain to the Tenancy Tribunal.

The prevalence of 'leaky buildings' prompted a review of the Building Act. In March 2010, the Court of Appeal found the former North Shore City Council liable for leaky buildings, because they have a duty of care to owners (including investors as well as owner-occupiers). In the decision, Justice Arnold stated: "The leaky-home problem is the result of what can fairly be described as systemic failure, occurring at all levels within the building industry, in both the public and private sectors."⁵⁸ This decision is being appealed to the Supreme Court. Nationally, an estimated \$11.5 billion is required to repair approximately 42,000 affected homes.⁵⁹

Crowding

The Ministry of Social Development's Social Report uses the Canadian Crowding Index as a proxy measure to monitor the incidence of crowding in the population. This defines crowding as those households requiring one or more additional bedrooms, based on specific criteria in the index.⁶⁰ In 2006, 389,600 people (10 per cent of the New Zealand resident population) lived in households requiring one or more additional bedrooms. Of these, 131,000 (3.5 per cent) needed two or more rooms.⁶¹ Particular concerns are likely to arise when households exceed these criteria by significant amounts and/or for substantial periods of time.

55 Howden-Chapman P and Carroll P (eds) (2004), *Housing and health: Research, policy and innovations* (Wellington: Steele Roberts)

56 Ravenscroft V (2008)

57 Accessed 7 July 2010 from <http://www.eeca.govt.nz/node/3107>

58 North Shore City Council v Body Corporate 188529 [2010] NZCA 64 at [208], [2010] ANZ ConvR 10-020

59 Accessed 7 July 2010 from <http://www.stuff.co.nz/national/3490763/Council-fails-in-fight-over-liability-for-leaky-homes>

60 The Canadian Crowding Index defines a house as overcrowded if it has insufficient bedrooms according to the Canadian National Occupancy Standard, which states that no more than two people should share a room. Those who may share a room are couples, children under the age of 18 of the same gender, and children under the age of five. A child aged between six and 17 should not share with a child under the age of five. This can be perceived as Eurocentric, assuming a nuclear family rather than an extended family who may, culturally, want to utilise space in a different way.

61 Ministry of Social Development (2009), p 66

While total crowding levels have fallen slightly since 1986, Pacific, Māori, low income and young people remain more likely to live in crowded households. A projected rise in numbers of kaumatua by 2021 may place pressure on substandard housing in rural tribal areas, thus increasing the number of Māori who are marginally housed.⁶²

Crowding remains a significant issue for Pacific people, with 43 per cent living in households requiring extra rooms in 2006, compared with 23 per cent of both Māori and Other ethnic groups and 20 per cent of Asian people. Crowding has emerged as an issue for refugee communities, due to relatively large family sizes and low incomes.⁶⁴

Children are more likely to experience crowding than older people. Crowded houses correlate closely with poor health, poor educational achievement by children and young people, and psychological stress.⁶⁵

The former Manukau City has the highest level of household crowding, at 25 per cent of people, followed by Opatiki (19 per cent), Kawerau District (18 per cent) and Porirua and the former Auckland cities (17 per cent). At the 2006 Census, an estimated 15.7 per cent of the Auckland regional population was living in housing that required one or more additional bedrooms – a total of 190,017 people, of which a third were children aged under 14 years.⁶⁷

There is also a clear correlation between levels of income and home ownership and levels of crowding. Households

in rental accommodation were more likely to be crowded (10 per cent) than those in dwellings owned with a mortgage (4 per cent) or mortgage-free (2 per cent).

Combining geographical and ethnicity data, more than 60 per cent of Pacific children and young people, and more than 40 per cent of those who are Māori, in the most deprived areas lived in overcrowded housing in 2006.⁶⁸

Since 2001, HNZC and some district health boards have collaborated to implement the Healthy Housing Programme for HNZC tenants. It focusses on reducing diseases associated with crowding or poor insulation, ventilation or heating. A December 2007 evaluation found that healthier home environments resulted in increased household well-being and reduced hospitalisations.⁶⁹

LOCATION

Housing location can play a significant role in building and maintaining a sense of community.

For some Māori, this includes the importance of being close to whānau and whānau land. Māori returning home to rural areas often have limited rental options and accept properties in poor condition. Those with traditional roots in coastal areas face high rental costs unless they move inland away from whānau land.⁷⁰

Pacific communities have largely developed in industrialised urban areas, such as Auckland and Wellington, which have become higher-cost housing areas. Pacific peoples face challenges finding large enough houses in these areas within their income levels.⁷¹

62 Housing New Zealand Corporation (2007)

63 Ministry of Social Development (2009)

64 Ravenscroft V (2008); Halango A M (2007)

65 Baker M, Das D, Venugopal K, Howden-Chapman, P (2008), Tuberculosis associated with household crowding in a developed country, *Journal of Epidemiol Community Health* 62, pp.715–721; Action for Children and Youth Aotearoa (2003); Manukau City Council (2003).

66 Ministry of Social Development (2009)

67 Customised Statistics New Zealand data. Accessed 7 July 2010 from <http://monitorauckland.arc.govt.nz/our-community/households-and-families/household-crowding.cfm>

68 Craig E, Jackson C and Han D Y (2007), *Monitoring the health of New Zealand children and young people* (Auckland: Paediatric Society of New Zealand, New Zealand Child and Youth Epidemiology Service)

69 Housing New Zealand Corporation (2007)

70 Waldegrave C, King P, Walker T and Fitzgerald E (2006)

71 Koloto A et al (2007)

Refugee groups have prioritised the need for housing close to employment and social services, particularly those provided by a refugee's cultural community.⁷²

Access to public transport, shopping, healthcare, recreation and work are all important considerations for housing location that impact on disabled people's ability to participate in their communities.

SECURITY OF TENURE

Figures from the Residential Tenancies Act Review show that the average duration of a tenancy is 15 months or less. However, a half of all tenancies end within 10 months and a third within six months.⁷³

For families in rental accommodation, the social dislocation caused by multiple changes of address has particularly wide consequences. These include negative impacts on children's access to education; continuity of immunisation and other health checks; access to employment; and social cohesion.

New Zealand has legal protection from arbitrary eviction. Rent arrears are the most common reason for landlords' complaints to the Tenancy Tribunal. It is not possible to identify the number of tenants evicted for rent arrears, as the Department of Building and Housing does not collate the outcomes of Tenancy Tribunal applications. Submitters have raised concerns about whether, as the proportion of tenants increases, there is a need to review tenancy laws to improve security of tenure. While some improvements were introduced through the recent Residential Tenancy Amendment Act, its provisions set a lower level of security for people in boarding houses.

RECENT DEVELOPMENTS

In its April 2009 Universal Periodic Review report, the New Zealand Government acknowledged:

The provision of adequate housing remains a challenge for New Zealand, especially in terms of affordability and habitability. Vulnerable

groups, such as Māori and Pacific peoples, are over-represented in rental and crowded housing. This over-representation correlates closely with low income, poor health and lower educational achievement by children and young people.⁷⁴

Other vulnerable groups include people with mental illness; young people with disabilities who are living in aged-care institutions; sole parents; families of refugees; new migrants; prisoners when released; and people coming out of hospital into inadequate housing, including those who have just given birth. To date, poverty levels among elderly people have been very low; however, this is partially attributable to high levels of home ownership. In the future it is likely that fewer older people will enter retirement owning their homes.

In February 2010, the Salvation Army published its third annual report tracking social progress across five key areas. It concluded that recent improvements to home ownership affordability had stalled, there is no likely improvement in rental affordability, and there is a growing housing shortage, particularly in Auckland. On a more positive note, housing debt had increased only slightly compared with previous years.

The balance between directing public taxpayer money towards improving home ownership, but possibly away from the needs of the most disadvantaged, goes to the heart of the right to housing. At the same time there is the need, and the potential, for evolving other models of social housing.

The Housing Shareholders Advisory Group's first report recommended: "HNZC, Department of Building and Treasury must share the task (and potentially key performance indicators too) of creating more homes and helping more families".⁷⁵ If investing in social housing is recognised as an investment in health, education and social development, then a wider range of government agencies, including population ministries, have critical roles to play.

72 Ravenscroft V (2008); Halango A M (2007)

73 Accessed 10 September 2010 from: <http://www.dbh.govt.nz/rta-long-form-rental-housing-market>. Average duration figures also cited in the Hansard record of the first reading of the Residential Tenancies Amendment Bill, Volume 654, p 3827. Accessed 6 October 2010 from: http://www.parliament.nz/en-NZ/PB/Debates/Debates/0/e/4/49HansD_20090526_00001208-Residential-Tenancies-Amendment-Bill-First.htm

74 Accessed 7 July 2010 from <http://www.mfat.govt.nz/Foreign-Relations/1-Global-Issues/Human-rights/Universal-Periodic-Review/Final-Report/index.php>

Conclusion

Whakamutunga

Prioritising the right to healthy, affordable housing has a demonstrably positive impact on health, educational development, and social and psychological wellbeing. This is particularly important for vulnerable groups, including children and young people, disabled people and the elderly. One of the challenges in making progress and furthering full realisation of this right is the siloed nature of New Zealand's system of government and public accounting. This makes it impossible to offset investment in one area against direct, measurable benefits in another. Yet a whole of government approach is required to address the housing issues outlined in this chapter.

With respect to the right to housing, New Zealand is taking progressive steps towards meeting or surpassing human rights standards in a number of key areas:

- There has been continued effort to improve the habitability of New Zealand homes, though there continues to be a backlog of houses with substandard insulation.
- There is growing awareness of the different forms of homelessness in New Zealand, and collaboration between local government and community housing providers to address these issues, but progress is slow.
- There are relatively strong legislative provisions to address housing-related forms of discrimination.
- Income-related rents have improved rental affordability for those in state housing and demonstrated how a co-ordinated approach to housing and welfare policies can improve living standards.

In other areas, however, New Zealand is falling well short of international human rights standards around the right to housing:

- The universal right to adequate housing set out in the ICESCR is not explicitly manifest in any New Zealand legislation.
- The extent to which housing-related legislation, policies and practices incorporate key housing indicators is not systematically monitored.
- Current levels of commitment to social housing provision by the New Zealand state, local-government

and community-housing providers do not adequately meet the range of identified needs.

- Living standards are compromised for households paying more than 30 per cent of their income on housing – and many pay well in excess of those levels.
- There are high levels of household crowding, particularly in South Auckland, and among Pacific communities.
- The measures of affordability, accessibility and habitability that underpin the right to housing show that Māori, Pacific peoples and disabled people continue to be disadvantaged.

The Commission consulted with interested stakeholders and members of the public on a draft of this chapter. The Commission has identified the following priority areas to advance the right to housing:

Homelessness

Develop and implement regional and national strategies to reduce homelessness, including the collection and monitoring of official data on homelessness.

Social housing provision

Increase the supply and diversity of social housing provision, through enhanced direct provision by central and local government and support for community-housing providers.

Housing affordability

Enhance housing affordability by extending measures to support first-home ownership and improve rental affordability.

Housing design

Develop and implement universal design standards to improve housing habitability, accessibility, cultural adequacy and safety.