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Te Kāhui Tika Tangata
Human Rights Commission

New Zealand's Third Universal
Periodic Review:

Mid-Term Report of the New Zealand Human Rights Commission

February 2022

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The New Zealand Human Rights Commission (the Commission) is established and operates under the Crown Entities Act 2004 and the Human Rights Act 1993. The Commission is accredited as an 'A status' national human rights institution under the Paris Principles. Information about the Commission's activities can be found on our website:

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February 2022



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1 Introduction

1. In the three years since Aotearoa New Zealand's examination in the third cycle of the Universal Periodic Review (UPR), the New Zealand Government has undertaken a variety of actions corresponding to the UPR recommendations it accepted. As noted in the New Zealand Human Rights Commission's (the Commission) submission on Aotearoa's Third Periodic Review in July 2018, the Labour-led Government elected in October 2017 had committed to undertaking comprehensive reviews and inquiries in several areas, including mental health, education, housing, welfare, tax, and historical abuse in State and faith-based care.

Structure of Report




2. This submission intends to provide an overview of the key human rights issues in Aotearoa since 2019, focusing on four key areas:¹
 - a. The aftermath of the Christchurch Terror Attacks on 15 March 2019;
 - b. The impacts of COVID-19 on human rights;
 - c. The Right to Housing; and
 - d. Te Tiriti o Waitangi.
3. The Commission thanks UPR Info for hosting two webinars for civil society in Aotearoa New Zealand on the purpose of, and how to submit, a mid-term report. The Commission provided an opportunity for civil society to give feedback on the Commission's proposed UPR mid-term report framework. These submissions have been informed by feedback received by civil society.

Methodology

4. Each of the four key areas discussed in this report are preceded by a '**recommendations box**' containing:

- i. The relevant recommendations; and
- ii. Corresponding replies presented by the Government in its report to the 2019 Universal Periodic Review.

5. The recommendation box is then followed by the Commission's mid-term update. Each update has been allocated a colour indicating:

-  i. Green = fully implemented;
-  ii. Orange = partially implemented (some progress made); or
-  iii. Red = not implemented (no progress).

¹ A note on limitations of this report: the Commission has decided to focus only on those groups of recommendations falling within the outlined four key thematic areas for its first mid-term UPR report.



2 Background

6. As a partner to Te Tiriti o Waitangi (Te Tiriti), Kāwanatanga (the Crown) must ensure it upholds its obligations to Māori under Te Tiriti as the founding constitutional document of Aotearoa. These obligations are reinforced by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). This mid-term report focuses on the extent to which the New Zealand Government has progressed its implementation of the UNDRIP through the development of a national plan of action for its realisation. This report also assesses the human rights impacts on tangata whenua where relevant under the other thematic headings.
7. Since our 2018 submission, Aotearoa has been rocked by two events with significant human rights implications. First: the terrorist attack on Christchurch masjidain on 15 March 2019 led to the death of 51 innocent New Zealanders, fuelled by Islamophobia and far-right ideology. Second: the COVID-19 pandemic sent New Zealand into a nationwide seven-week lockdown in March 2020, followed by various regional and national lockdowns throughout 2020 and through to 2021.
8. The Christchurch terror attack highlighted several challenges for human rights in Aotearoa, including the extent to which our security and intelligence and enforcement agencies can keep communities safe in the face of the evolving nature of terrorism, and how to address racial discrimination and hate crimes more broadly. The attack led the Government to establish a Royal Commission of Inquiry (RCOI), to investigate the actions of the terrorist, the actions of relevant public sector agencies and any changes that could prevent such terror attacks in the future.
9. With respect to the COVID-19 pandemic, until the emergence of the Delta variant, Aotearoa's initial alert level system, which used lockdowns as the one of the primary measures, was successful in eliminating the transmission of the virus. In doing so, enabling New Zealanders to enjoy greater freedoms than many other countries. However, the plight of low paid "essential workers" working in high-risk areas of health and retail services during the pandemic has highlighted pervasive income and employment inequality in Aotearoa New Zealand, particularly for ethnic minorities and women. COVID-19 has had a disproportionately negative effect on marginalised groups within Aotearoa.² It has exacerbated existing inequities for Māori and other marginalised groups including women and girls, disabled people, Pacific Peoples and LGBTIQ+ communities. The impact of lockdowns in 2020 and 2021 has also exacerbated domestic violence, leading to increased incidents of sexual and gender-based violence.

² The Human Rights Commission (the Commission) published *Human Rights and Te Tiriti o Waitangi: COVID-19 and Alert Level 4 in Aotearoa New Zealand* (2020) which provides some snapshots of how Level 4 lockdown impacted upon human rights and Te Tiriti o Waitangi, available at https://www.hrc.co.nz/files/6615/8819/4763/Human_Rights_and_Te_Tiriti_o_Waitangi_COVID-19_and_Alert_Level_4_FINAL.pdf.



10. More generally, the public health measures implemented throughout the pandemic to combat COVID-19 have placed limitations on human rights. The Commission has expressed concern over the use of urgency to pass legislation authorising these measures and thus bypassing the usual public scrutiny that a Parliamentary select committee process enables.³ The most recent example is the implementation of the laws establishing the Covid Protection Framework, which came into force in December 2021. These laws provide for vaccine mandates for certain industry sectors and groups of workers, vaccine certificates for all members of the public to access services and venues, and introduced a ‘traffic light system’ which imposes greater restrictions on unvaccinated people as regards access to certain events, services and facilities.⁴ The Commission notes, however, that select committee inquiries have taken place to retrospectively assess the impact of COVID-19 public health legislation and regulations.
11. Moreover, the effects of COVID-19 have further exacerbated existing socio-economic inequalities, particularly in the area of housing. Successive governments have failed to uphold the right to housing in Aotearoa New Zealand, which has led to a national housing crisis. This report thus focuses on the right to housing as a third key area of concern, with recommendations for improvement ahead of the next UPR.

³ See New Zealand Human Rights Commission, [Submission on the Inquiry into the Covid-19 Public Health Response Act](#), June 2020 at para 6 and New Zealand Human Rights Commission ‘Scrutiny and public input needed urgently on new COVID-19 legislation says Human Rights Commission’ (23 November 2021) available at <https://www.hrc.co.nz/news/scrutiny-and-public-input-needed-urgently-new-covid-19-legislation-says-human-rights-commission/> and Thomas Manch ‘Covid-19: Critics condemn urgent passing of ‘traffic light’ law without usual scrutiny’ (23 November 2021) available at <https://www.stuff.co.nz/national/health/coronavirus/127078227/covid19-critics-condemn-urgent-passing-of-traffic-light-law-without-usual-scrutiny>.

⁴ The COVID-19 Response (Vaccinations) Legislation Act and the COVID-19 Public Health Response (Protection Framework) Order 2021.



3 The aftermath of the Christchurch Terror Attacks on 15 March 2019

New Zealand accepted the following recommendations at the last UPR that are relevant to the Christchurch Terror attacks:

i. Equality and non-discrimination

- 122.41-45, 47 Strengthen measures to combat racially motivated crimes, racial discrimination and hate speech against marginalised groups;
- 122.46, 48 Adopt a comprehensive national plan of action to combat racism, racial discrimination, xenophobia and other forms of intolerance, including racial and religious hatred.

Government response:

The Christchurch attacks highlighted the importance of inclusivity. The Government is reviewing the current protections against hate speech and will develop a national strategy to address racial discrimination and racism.⁵

Commission's mid-term update:

3.1. Hate Speech Legislation

3.1.1. The Government announced a review of the laws governing hate speech following the attacks on two Christchurch masjidain on 15 March 2019.⁶ Following public consultation, the Government proposed the following legislative reforms:⁷

- Increasing the groups that are protected by the incitement provisions;
- Making clearer what behaviour the law prohibits and increasing the consequent penalties;
- Improving the protections against wider discrimination.

⁵ UNGA Report of the Working Group on the Universal Periodic Review (A/HRC/41/4/Add.1) (17 June 2019) at [14].

⁶ In addition, The Royal Commission of Inquiry into the terrorist attack on Christchurch masjidain on 15 March 2019 (RCOI) *Ko tō tatou kāinga tēnei* (December 2020) available at <https://christchurchattack.royalcommission.nz/the-report/> made a number of recommendations to improve New Zealand's existing laws relating to hate crime and hate speech.

⁷ The Ministry of Justice launched public consultation on the laws governing hate speech in June 2021. See Ministry of Justice 'Proposals against incitement of hatred and discrimination' available at <https://www.justice.govt.nz/assets/Documents/Publications/Incitement-Discussion-Document.pdf>.



- 3.1.2. The Commission published its Submission on the Ministry of Justice's proposals in August 2021.⁸ The Commission agreed with the Government's recommendation to include all the groups covered by the prohibited grounds of discrimination⁹ under section 21 of the Human Rights Act 1993 within new incitement provisions, with the exception of "political opinion".¹⁰
- 3.1.3. To date, much of the public debate has centred on the hate speech proposals limiting freedom of speech. Media coverage on the proposals has reported a sense of confusion among the public over what might amount to hate speech as well as mixed messages from the Government in relation to interpretation of the Proposals.¹¹ The public consultation closed in August 2021. The Ministry will release a summary of submissions on their website after Cabinet has considered them. At the time of writing, an amendment Bill is yet to be introduced to Parliament.

3.2. National Plan Against Racism

- 3.2.1. Following the Government's response to recommendations 122.46 and 122.48, that they would develop a national strategy to address racial discrimination and racism, the Government expanded on this response further in their 2020 manifesto.¹² In the manifesto, the Government confirmed their commitment to this strategy, stating they would create and implement a "national plan of action to ensure tangible steps for government and all New Zealanders to take to help eliminate everyday racism and discrimination".¹³

⁸ Available at https://www.hrc.co.nz/files/2016/3035/7339/HRC_Submission_on_MOJ_HRA_amendment_proposals_2021.pdf. The Commission has also published extensive reports on these issues in recent times: [Kōrero Whakamauāhara: Hate Speech](#) (December 2019), which assessed the law on hate speech in Aotearoa New Zealand and in other countries, and the international human rights framework; and [Prism](#) (June 2020), which reports and issues recommendations on human rights relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC) in Aotearoa New Zealand.

⁹ As set out in the proposal of the Minister: 'Proposed changes to the incitement provisions in the Human Rights Act 1993' (13 April 2021) at [8.4], available at <https://www.justice.govt.nz/assets/Documents/Publications/Proactive-release-incitement-provisions.pdf>.

¹⁰ The Commission recommended that political opinion not be included as a protected ground within new incitement provisions as there is a lack of clarity as to what the terms means and applies to in terms of the law. Its inclusion may therefore have a tangible "chilling" effect on political debate and public discourse than the other prohibited grounds of discrimination.

(1) Every person commits an offence and is liable on conviction to imprisonment for a term not exceeding 3 months or to a fine not exceeding \$7,000 who, with intent to excite hostility or ill-will against, or bring into contempt or ridicule, any group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons,—

(a) publishes or distributes written matter which is threatening, abusive, or insulting, or broadcasts by means of radio or television words which are threatening, abusive, or insulting; or

(b) uses in any public place (as defined in section 2(1) of the Summary Offences Act 1981), or within the hearing of persons in any such public place, or at any meeting to which the public are invited or have access, words which are threatening, abusive, or insulting,—

being matter or words likely to excite hostility or ill-will against, or bring into contempt or ridicule, any such group of persons in New Zealand on the ground of the colour, race, or ethnic or national origins of that group of persons.

(2) For the purposes of this section, publishes or distributes and written matter have the meaning given to them in section 61.

¹¹ See Russell Palmer 'Proposed hate speech laws: What you need to know' (19 July 2021) available at <https://www.nzherald.co.nz/nz/proposed-hate-speech-laws-what-you-need-to-know/MVWR2D7MNZXC7FEUUUDQCH4A/> and Thomas Manch 'Government struggles to explain proposed 'hate speech' laws amid mounting opposition' (28 June 2021) available at <https://www.stuff.co.nz/national/politics/125579536/government-struggles-to-explain-proposed-hate-speech-laws-amid-mounting-opposition>.

¹² Labour Party New Zealand 'Our Manifesto to Keep New Zealand Moving' (2020) at p. 24 available at [Labour Manifesto](#).

¹³ At p. 24.



- 3.2.2. To that end, the Ministry of Justice is responsible for the development of this action plan, which is being called a “national action plan against racism”. The Ministry’s work on this action plan remains in early stages.
- 3.2.3. While there are no clear timelines yet, the Commission has commenced its own workstream on this national action plan. The Race Relations Commissioner is leading a number of consultations with stakeholders across the country, focusing on what actions the Government must take to eliminate racism. This has included carrying out a Te Tiriti o Waitangi based approach by working in partnership with Māori and other ethnic minority communities throughout the country to ensure that the work reflects the vision, values and lived experiences of affected communities and that any action plan will protect, respect, and fulfil the rights of indigenous peoples.
- 3.2.4. The Commission is compiling a report incorporating all of the community engagements, which outlines recommendations from the community about what should be included in the national action plan against racism. It is the Commission’s expectation that the Government will adopt these recommendations in their development of a national action plan.
- 3.2.5. It is worth noting that nearly three years on from the attack, certain members of the community are still feeling unsafe. The Commission understands from formal conversations with members of the Muslim community that they still feel an undercurrent of hate, particularly online. Concerns were expressed “about YouTube videos and Facebook pages that were premised on Islamophobic, racist or other hateful sentiments and were extremely concerning to those reporting them.”¹⁴
- 3.2.6. The recommendations in the RCOI report have gone some way to improve a sense of safety for affected whānau, survivors and witnesses. However, there is still some way to go. Although some people said New Zealand still feels safe, others said they feel less safe than they used to.¹⁵
- 3.2.7. Many aspects of the RCOI’s recommendations and the Government’s response to the terrorist attacks reflect the United Nations’ (UN) recognition that States have a duty to ensure victims of crimes of terrorism are able to enjoy the right to a remedy and contain aspects of a human rights-based response.¹⁶
- 3.2.8. Since the terrorist attacks against Christchurch masjidain on 15 March 2019, the Commission has heard from members of the affected whānau and wider Muslim community. The Commission has also reported on the rights of affected whānau, survivors and witnesses to access remedies that effectively address the human rights violation they suffered as a result of the terrorist attacks.¹⁷ The Commission has a work programme underway to co-ordinate projects relating to the RCOI report and recommendations. This includes a project to support affected whānau in relation to recommendations 25 to 27.¹⁸ As part of the Commission’s

¹⁴ RCOI *What we heard from affected whānau, survivors and witnesses* (2020) at p. 25, available at <https://christchurchattack.royalcommission.nz/assets/Publications/Affected-Whanau.pdf>.

¹⁵ Ibid.

¹⁶ UNGA *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law* (A/RES/60/147) (December 2005), Chapter VI, at [11].

¹⁷ The Commission ‘[Reflections on the Report of the Royal Commission of Inquiry into the terrorist attacks on Christchurch Masjidain on 15th March 2019](#)’ (March 2021).

¹⁸ Above n 5 at [4.1].



mandate to improve harmonious relations between individuals, there is a strong focus on recommendations relating to social cohesion. A monitoring and accountability framework for the Government's response to the recommendations is currently being developed.

3.2.9. During the interviews with affected whānau, survivors and witnesses, the RCOI were told that a coronial inquiry should be held to provide an independent assessment of the response to the terrorist attack including the response of New Zealand Police and hospitals and to ensure that all outstanding questions are answered.¹⁹ A coronial inquiry was formally opened in October 2021.

3.2.10. It is notable that only three of the 44 recommendations are specifically directed at supporting the affected families. This is due to the RCOI's relatively narrow terms of reference, which did not include a specific item on remedy or redress.

ii. Counter-Terrorism

- Pursuant to Recommendation 122.59 to "clarify the definition of "terrorist" and review the Terrorism Suppression Act."

Government response:

The Government responded that it was "assessing whether current counter-terrorism regulatory frameworks are adequate. It will do so considering all persons' human rights".²⁰

Commission's mid-term update:

3.3. Royal Commission of Inquiry and Counter-Terrorism Legislation Bill

3.3.1. Following the terror attacks, the Government commissioned the RCOI, which was also tasked with assessing, among other matters, any changes that could prevent such terrorist attacks in the future.²¹ The RCOI examined the relevant counter-terrorism legislation, including the Terrorism Suppression Act 2002 (TSA) and the Intelligence and Security Act 2017 (ISA), and recommended a review of the relevant legislation to enable public sector agencies to operate effectively.²²

¹⁹ Above n 14 at p. 31.

²⁰ Above n 5 at [22].

²¹ Under its Terms of Reference, the RCOI was tasked with investigating three broad areas – the actions of the individual, the actions of relevant Public sector agencies, and any changes that could prevent such terrorist attacks in the future. See RCOI Order 2019 available at <https://www.legislation.govt.nz/regulation/public/2019/0072/latest/LMS183988.html>.

²² It also suggested consideration of the creation of precursor offences as a matter of priority – but also as part of a wider review.



- 3.3.2. While the ISA will be subject to an independent review, the Commission has noted with concern that the first set of amendments contained in the Counter-Terrorism Legislation Bill (the Bill)²³ were developed and passed through Parliament²⁴ without adequate consultation with affected communities and a lack of engagement with tangata whenua, contrary to Te Tiriti o Waitangi.²⁵
- 3.3.3. Several human rights concerns arising from the Bill were raised by the Commission and other submitters through the Select Committee process. These concerns included the Bill's over-broad definition of terrorism²⁶ and the lack of oversight mechanisms.²⁷ However, in its report on the Bill, Parliament's Justice Committee recommended by majority that the Bill should be passed with only minor amendments.²⁸ Notably, the Bill's passage through the Committee was expedited following a terror attack at an Auckland mall.²⁹ The Commission notes that the Select Committee amended the Bill's definition of terrorism – from “induce fear” to “intimidate” a population. This definition aligns with terminology set out in UN Security Council resolution UNSCR 1566 (2004). However, the terminology in the new definition remains different from the model definition proposed by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, which provides that terrorism is an act that “induces terror” among other matters.³⁰

²³ The Terrorism Suppression Act 2002, the Terrorism Suppression (Control Order) Act 2019 and the Search and Surveillance Act 2012.

²⁴ The Bill was introduced on 13 April 2021, its first reading was held on 5 May 2021, and submissions were due to the Select Committee on 25 June 2021. The Select Committee released its report of recommendations on 15 September 2021. The Bill passed its second reading on 21 September 2021, and third reading on 29 September 2021, and was given royal assent on 4 October 2021.

²⁵ Note The Islamic Women's Council New Zealand 'Submission on the Counter-Terrorism Legislation Bill' complained that they were only consulted once the Bill had already been drafted, and not beforehand. Available at https://www.parliament.nz/resource/en-NZ/53SCJU_EVI_109913_JU1793/8cd44a2c7418f1e95b8043cbf795d662ea78a819.

The Regulatory Impact Assessment also notes that “targeted consultation with the public, including non-government organizations, interest groups and iwi/Maori” have not been undertaken “given the time constraints and sensitive and restricted nature of the subject matter”. See The Commission ‘Counter-Terrorism Legislation Bill: Submission of the Human Rights Commission’ (25 June 2021) at [9], FN 12 available at https://www.parliament.nz/resource/en-NZ/53SCJU_EVI_109913_JU1794/5c22c515c2ed41747a9e562ee2de75e2e6ab7436.

²⁶ At pp. 10-12. The key issues with the new definition are: (a) lowering the mens rea requirement from requiring an intention to induce “terror in a civilian population” to inducing “fear in a population”, and from “unduly compel” to “coerce” a government or international organisation to act (or not act) in s 5(2)(a)-(b), and (b) expanding the types of property that may be affected and lowering the level of damage that may result from the terrorist action, by replacing “infrastructure facility” with “critical infrastructure” and “devastate” with “cause major damage to” in s 5(3)(d) – (e).

²⁷ At pp. 20-23.

²⁸ Justice Committee ‘Counter-Terrorism Legislation Bill: Commentary’ available at https://www.parliament.nz/resource/en-NZ/SCR_115859/0d4d3a1581e75ccf1c20eea0aa8b4fe293f5b3ff.

²⁹ Jane Patterson ‘Anti-terror law back before Parliament today. But faces opposition’ (21 September 2021) available at <https://www.rnz.co.nz/news/political/451933/anti-terror-law-back-before-parliament-today-but-faces-opposition>.

³⁰ See the Commission's submission, above n 10, at p. 10 which refers to Special Rapporteur Martin Scheinin *Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin: Ten areas of best practice in countering terrorism* (UN Doc A/HRC/16/51) (22 December 2010) at [28].



4 The impacts of COVID-19 on human rights

New Zealand accepted the following recommendations at the last UPR that are relevant to the impacts of COVID-19 on human rights:

iii. Equal employment opportunities

- 122.80 Increase employment opportunities for marginalised groups, and notably Māori, Pasifika, women and persons with disabilities;
- 122.81 Address discrimination in employment against indigenous persons, individuals belonging to ethnic minority groups, and individuals with disabilities, including those with intellectual disabilities, and remove barriers to their participation in the labour market in addition to funding further community support services, to include post-learning opportunities;
- 122.82-122.87: Continue its efforts to reduce the gender pay gap, promote women to leadership positions, and remove structural or policy barriers that undermine women's empowerment in employment.

Government response:

New Zealand has committed to closing the public service gender pay gap, with substantial progress by 2020, and to ensuring the wider public and private sectors are on similar pathways. The Government set a 50 percent target for women on state sector boards by 2021. The Ministry for Women works with private sector organisations to progress change in this sector. The Government is also implementing the Equal Pay Amendment Bill which establishes a process aligned with the existing bargaining framework, to address systemic sex-based pay discrimination in female-dominated occupations.³¹

³¹ Above n 5 at [31].



Commission's mid-term update:

3.4. Employment opportunities for vulnerable groups since the pandemic

- 3.4.1. For the population groups below, inequities have worsened during the pandemic. The intersectional human rights barriers and opportunities facing these groups must be integrated into:³²
- Government economic wellbeing policies including: COVID-19 recovery plans; annual Budgets; action on the Sustainable Development Goals, and all other economic wellbeing work (including on just transitions and sustainable development).
 - Employment action plans for: Māori (mahi Māori); Pacific; youth; women; ethnic minorities; and other national and local employment initiatives by central and local government.
 - The employment work of social service providers, private sector, and community organisations, that are contracted by Government, for economic recovery from COVID-19.
- 3.4.2. **Māori** workers were overrepresented in essential or 'key' sectors during the pandemic. Nearly 60% of Māori authorities were classified as essential during COVID-19, and 40% were operating fully during 'full lockdown'/alert level 4 (the strictest COVID-19 alert level in New Zealand and in the OECD). These figures are compared to one-fifth each for Māori small and medium enterprises (SMEs), and all New Zealand businesses. More than half of Māori SMEs reduced work hours for their staff (53%) at alert level 4.³³
- 3.4.3. Māori are at particular risk of unemployment due to COVID-19. Data from previous recessions have shown that Māori have taken longer to recover than non-Māori due to belonging to lower skilled groups within the labour market.³⁴ It has also been shown that Māori women are most at risk of facing unemployment amongst the Māori population.³⁵
- 3.4.4. Findings from the *Ka whati te tai: a generation disrupted* report show that COVID-19 will have severe impacts on the future of rangatahi (Māori youth) in the work force.³⁶ More than half of rangatahi aged between 15 and 34 years already work in industries where responses to COVID-19 are likely to and/or have already impacted their working capacity.³⁷ Historically entry level jobs such as "retail, hospitality, and some manufacturing jobs" have been key areas of employment for rangatahi. However, given the impact that COVID-19 has played on these industries, they will no longer be viable for rangatahi to pursue.³⁸

³² While data is less accessible for: LGBTQIA; ethnic and religious minority migrant and refugee populations (Asian, African, Latin American and Caribbean, and others); and other minoritized groups e.g rural workers, it is likely that they also faced a lack of equal employment opportunities.

³³ Statistics New Zealand (Stats NZ) 'Three in five Māori authorities essential during COVID-19' (26 August 2021) available at <https://www.stats.govt.nz/news/three-in-five-maori-authorities-essential-during-covid-19>.

³⁴ Te Puni Kōkiri 'Māori Employment – Impact of COVID-19' (July 2020 at p. 3 available at <https://www.tpk.govt.nz/en/a-matou-mohiotanga/employment-and-income/maori-employment-impact-of-covid19-july-2020>.

³⁵ At p.5.

³⁶ Tokona Te Raki 'Ka whati te tai: a generation disrupted' (2020) at [3.2] available at <https://knowledgeauckland.org.nz/media/1954/challenges-opportunities-maori-post-covid-19-ka-what-te-tai-berl-april-2020.pdf>.

³⁷ At [14].

³⁸ At [3.2].



- 3.4.5. The Government has Te Tiriti obligations towards Māori, including to advance equity, this is upheld by international human rights standards and guidance, most notably article 1 of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. UN human rights bodies have also stressed the importance of the right to self-determination, the need for special protection of Indigenous communities, and for states to work in partnership with indigenous peoples in COVID-related interventions.³⁹
- 3.4.6. **Pacific** people, especially Pacific women, who face the worst ethnic and gender pay gaps in the economy, have had declining economic wellbeing in the COVID-19 era. The Commission is conducting an inquiry to better understand why the Pacific pay gap exists and how it can be closed.⁴⁰ Pacific people were among those most likely to get financial help from organisations, with 14% reporting getting help in the June 2020 quarter. This rose to 20% in the September 2020 quarter and remained at a similar level in the two quarters to March 2021.⁴¹ Pacific peoples' employment and workforce participation recovered slightly in the year to June 2021, especially in the education, agriculture, forestry, fishing and mining, and public administration and safety industries. Despite Pacific people being ready and willing to work, especially in essential sectors, and being a growing part of our labour force, unemployment for Pacific people also rose by 1.5 percentage points to 7.8% in June 2021 – much higher than the national average.⁴²
- 3.4.7. **Women:** As in other countries, women had the most job losses and were 90% of people who lost their jobs at the start of the pandemic (August 2020).⁴³ Despite more women reporting they are willing, ready, and able to work, they lost out on both full- and part-time work. In March 2021, there were 10,000 fewer women employed compared to March 2020 at the start of the pandemic – despite employment increasing overall for men (+1000). Women tend to work in lower-paid jobs than men in general, with average hourly earnings around 10% lower than men (not adjusted for job type etc). Before COVID-19 hit, women had 56% of retail, accommodation and food services jobs, and 83% of healthcare and social assistance jobs. The number of women contractors ('self employed without employees') rose by 14% in the year to March 2021, reflecting the rise and increasing feminisation of the 'gig economy'.⁴⁴

³⁹ United Nations Permanent Forum on Indigenous Issues 'Message from the Chair of the Permanent Forum on Indigenous Issues (April 2020) available at https://www.un.org/development/desa/indigenous-peoples-es/wp-content/uploads/sites/34/2020/04/UNPFII-Chair-statement_COVID19.pdf.

⁴⁰ See [Pacific Pay Gap Inquiry](#).

⁴¹ Stats NZ 'Wellbeing statistics: A year in review' (29 June 2021) available at <https://www.stats.govt.nz/reports/wellbeing-statistics-a-year-in-review-june-2020-to-march-2021-quarter>.

⁴² Ibid.

⁴³ Stats NZ 'COVID-19 lockdown has widespread effects on labour market' (5 August 2020) available at <https://www.stats.govt.nz/news/covid-19-lockdown-has-widespread-effects-on-labour-market>.

⁴⁴ Stats NZ 'More women taking up self-employment' (15 July 2021) available at <https://www.stats.govt.nz/news/more-women-taking-up-self-employment>.



- 3.4.8. **Young** workers have faced barriers to entering and remaining in the labour market, and like women, have disproportionately faced job loss and rising informalisation and insecurity of work. From February to April 2020, the number of youth receiving the unemployment benefit rose by around 50% during the first wave of the pandemic. The number of 18- and 19- year olds receiving the Job Seeker Work Ready Benefit rose by 46%, versus those aged 20-24 rising by 62%.⁴⁵ In the year to June 2020, youth not in education, employment or training (NEET), rose by two percentage points to 12.5% of the population (which was worse for young women at 13.8%, versus 11.3% young men).⁴⁶ A year later in June 2021, the changes were not statistically significant – with a few thousand fewer NEETs, and young women outnumbering young men.⁴⁷
- 3.4.9. **Disabled** people face an employment gap before gaining meaningful work and access to the formal economy, economic independence, and financial security and wellbeing, as discussed below at [3.6].
- 3.4.10. There have been noteworthy Government initiatives aimed at increasing employment opportunities. For businesses, in late 2019, the Government updated the Government Procurement Rules, with a high-level outcome statement that it would be guided by one of the broader outcomes of benefits to groups such as Māori, Pacific Peoples, regional and social enterprises. Under the Rules, the minimum expectations of suppliers and subcontractors has been formalised so that they must “consider including local, Māori, and Pasifika businesses to deliver the contract.” Accordingly, government agencies need to ensure they proactively seek to identify opportunities for Māori and Pacific businesses, regional businesses and social enterprises through seeking to involve them in supply chains.
- 3.1.11. In December 2020, the Government further set a target of 5% of Government procurement contracts being awarded to Māori businesses.⁴⁸ The policy aims to stimulate the Māori economy and increase diversity in suppliers used by the Government through social procurement. While Māori businesses were the only target group, the Government stated that this would be reviewed later with a view to possibly expanding the target to other traditionally marginalised groups such as Pacific peoples, women, people with disabilities and youth. However, this expansion has not taken place and it is not clear when it will.
- 3.1.12. In terms of increasing employment opportunities for marginalised groups in the workforce, the Government can be commended for some new funding schemes for workplaces to upskill marginalised workforces.⁴⁹ However, these initiatives remain in early stages and any evidence of its success in improving employment disparities remains unseen.

⁴⁵ Brittany Keogh ‘Coronavirus: 50pc more youth on unemployment benefit, more job losses predicted’ (9 May 2020) available at <https://www.stuff.co.nz/business/industries/121442995/coronavirus-50pc-more-youth-on-unemployment-benefit-more-job-losses-predicted>.

⁴⁶ Stats NZ ‘Labour market statistics: June 2020 quarter’ (5 August 2020) available at <https://www.stats.govt.nz/information-releases/labour-market-statistics-june-2020-quarter>.

⁴⁷ Stats NZ ‘Labour market statistics: June 2021 quarter’ (4 August 2021) available at <https://www.stats.govt.nz/information-releases/labour-market-statistics-june-2021-quarter>.

⁴⁸ New Zealand Government Procurement ‘Supplier diversity to increase through new procurement targets for Māori businesses’ (17 December 2020) available at <https://www.procurement.govt.nz/about-us/news/supplier-diversity-to-increase-through-new-procurement-targets-for-maori-businesses/>.

⁴⁹ For example, in 2020 the Ministry of Business, Innovation & Employment invested \$22 million in creating a programme to promote long-term employment outcomes for the Pacific workforce, and the Ministry of Social Development invested \$50 million in creating a Māori Trades and Training Fund to reduce Māori unemployment rates.



3.1.13. While the Government can be commended for its actions to reduce the gender pay gap, notably with the passing of the Equal Pay Amendment Bill 2020 which legislates for pay equity and allows workers to make pay equity claims, the amendment failed to address the intersectionality of ethnic pay gaps within the gender pay gap. The pay gap between the highest and lowest paid gender and ethnic groups remain between a New Zealand European man against a Pacific woman, with a pay gap of 28.5%.⁵⁰ Accordingly, the Commission is conducting a national Inquiry into this ethnic pay gap and how to address it, with the initial research suggesting that the Equal Pay Act should be amended further to include race and ethnicity in equal pay, not just gender.⁵¹

iv. Living standards

New Zealand accepted the following recommendations at the last UPR that are relevant to the impacts of COVID-19 on living standards:

- 122.89 Continue efforts to further protect of economic and social rights of vulnerable persons, including persons with disabilities;
- 122.90 Formulate and implement effective policies geared towards the elimination of poverty.

Government response:

One of the Government's priorities is to improve all New Zealanders' wellbeing, including through the Living Standards Framework, a tool to measure, and report on, inter-generational wellbeing. A substantial work programme is in place to reduce child poverty. This includes the \$5.5 billion Families Package announced in Budget 2018. Welfare settings are also being reviewed.⁵²

Commission's mid-term update:

3.2. Disproportionate effect on vulnerable groups

- 3.2.1. COVID-19 has disproportionately affected work for vulnerable groups in Aotearoa New Zealand, particularly Māori and rangatahi (Māori youth). There are risks that COVID-19 will exacerbate existing inequalities in socio-economically disadvantaged groups.
- 3.2.2. In March 2021, up from June 2020, the number of people who said they did not have enough money to meet daily needs rose from 6.4% to 7.3% - a rise of almost 40,000 people aged 18 years and older.⁵³

⁵⁰ Calculated from Stats NZ table 'Earnings for people in paid employment by region, sex, age groups and ethnic groups', available at <http://nzdotstat.stats.govt.nz/wbos/Index.aspx>.

⁵¹ Above n 40. Further, it is acknowledged that the Government launched Pay Gaps Action Plan 2021-24, *Kia Toipoto* in November 2021, aimed at addressing ethnic and gender pay disparity.

⁵² Above n 5 at [33].

⁵³ Above n 41.



- 3.2.3. Findings from the *New Zealand Attitudes and Values Study (2020/2021)* show that disabled participants felt more frustrated by their relative earnings compared to others during the pandemic in 2020.⁵⁴ These findings reinforce the fact that disabled people's right to a standard of living adequate for their wellbeing⁵⁵ remains significantly compromised. For example:
- Disabled people are more likely to be concentrated in low-income groups. The *Household Labour Force Survey* (June quarter 2021),⁵⁶ carried out during the pandemic, showed that the median weekly income from wages and salaries was \$962 for disabled people (aged 15-64), compared to \$1,106 for their non-disabled peers.
 - The *Wellbeing Supplement to the Household Labour Force Survey* (December 2020)⁵⁷ showed that disabled people (aged 18-64) who reported having enough or more than enough money to meet daily needs, had reduced from 45% (June 2020) to 39%.
 - The *Household Economic Survey* (June 2020)⁵⁸ demonstrated that disabled children were more likely to live in a household with low-income and material hardship than children without disabilities. For example, 9% of children with disabilities were living in households in severe material hardship during the pandemic in 2020, compared to 4% of children without disabilities.
- 3.2.4. In July 2020, Te Tai Ōhanga | The Treasury released the report, *He Kāhui Waiora: Living Standards Framework and He Ara Waiora COVID-19: Impacts on Wellbeing*.⁵⁹ This paper presents the results of a 'rapid evidence review' of the potential impacts of COVID-19, and the associated economic recession, on the wellbeing of New Zealanders. The analysis identifies potential wellbeing impacts based on experiences of previous pandemics and recessions, as well as emerging data on and insights into the COVID-19 impacts. The analysis in this paper includes the impacts of COVID-19 itself, as well as the economic, social and environmental impacts of the containment measures and the economic recession.
- 3.2.5. The Treasury's Living Standards Framework 2021⁶⁰ introduces the concept of collective wellbeing to reflect the importance of families, whānau and community to the wellbeing of Māori, Pacific Peoples, and many other New Zealanders. Further, the Public Finance Act 1989 was amended in 2020 requiring the Treasury to periodically report on the state of wellbeing in Aotearoa New Zealand.⁶¹

⁵⁴ University of Auckland, School of Psychology New Zealand Attitudes and Values Study available at <https://www.psych.auckland.ac.nz/en/about/new-zealand-attitudes-and-values-study.html>.

⁵⁵ United Nations Convention on the Rights of Persons with Disabilities (UNCPRD), art 28.

⁵⁶ Above n 46.

⁵⁷ Stats NZ 'Wellbeing statistics: December 2020 quarter' (17 February 2021 available at <https://www.stats.govt.nz/information-releases/wellbeing-statistics-december-2020-quarter>.

⁵⁸ Stats NZ 'Corrections made to household economic survey data for year ended June 2020' (29 April 2021) available at <https://www.stats.govt.nz/methods/corrections-made-to-household-economic-survey-data-for-year-ended-june-2020>.

⁵⁹ Available at <https://www.treasury.govt.nz/sites/default/files/2020-08/dp20-02-covid-19-impacts-on-wellbeing-v2.pdf>.

⁶⁰ Te Tai Ōhanga | The Treasury (the Treasury) 'Our Living Standards Framework' (October 2021) available at <https://www.treasury.govt.nz/information-and-services/nz-economy/higher-living-standards/our-living-standards-framework>.

⁶¹ The Treasury 'Using the LSF and He Ara Waiora' (October 2021) available at <https://www.treasury.govt.nz/information-and-services/nz-economy/higher-living-standards/using-lsf-and-he-ara-waiora>.



3.2.6. To support the COVID-19 response and economic recovery, the Government made \$62.1 billion available which consisted of:

- A \$12.1 billion Economic Response Package announced in March 2020 which included the Wage Subsidy Scheme, an income-support package for the most vulnerable and an initial boost for health services. The Package also included two schemes to provide financial support to businesses.
- \$50 billion COVID-19 Response and Recovery Fund as part of Budget 2020.

3.2.7. The Government has also implemented a range of policies to support low-income families and children including a Families Package, free lunches in schools, scrapping school donations and free doctors' visits for under 14s.⁶²

v. Mental Health

New Zealand accepted the following recommendations at the last UPR that are relevant to the impacts of COVID-19 on mental health:

- 122.94 Enhance mental health policies with a view to guaranteeing that persons with mental health conditions and psychosocial disabilities have access to appropriate mental health services, including community-based care, which respect their dignity and human rights;
- 122.100 Progress with efforts in addressing disparities in mental health and improve services for vulnerable groups.

Government response:

*The Inquiry into Mental Health and Addiction report 'He Ara Oranga' calls for change, with an emphasis on wellbeing, prevention, early intervention, expanded access to services, more treatment options, community-based responses and cross-government action. In 2019, the Government will respond to the report's recommendations and decide on actions.*⁶³

*A new model of care is being piloted in prisons. It allows more flexibility in supporting prisoners vulnerable to self-harm and increases therapeutic options.*⁶⁴

*Guidelines to better administer mental health legislation in line with human rights obligations are being developed.*⁶⁵

⁶² New Zealand Government 'Government action reduces child poverty' (23 February 2021) available at <https://www.beehive.govt.nz/release/government-action-reduces-child-poverty>.

⁶³ Above n 5 at [37].

⁶⁴ Above n 5 at [39].

⁶⁵ Above n 5 at [40].



Commission's mid-term update:

3.3. Mental Health during the pandemic

- 3.3.1. The *He Ara Oranga* Inquiry made a number of urgent recommendations while recognising that many would require detailed reviews, establishing new bodies, consultation, or legislative change. *He Ara Oranga* contained 40 recommendations, which apply to health, the wider social sector and society as a whole. The Government accepted, accepted in principle, or agreed to further consideration of 38 of the recommendations.
- 3.3.2. The Government has shown commitment to mental health and wellbeing since the inquiry, including through large investments in mental health in its 2019 wellbeing budget, and setting a five-year programme of work to roll out new primary and community-based mental health and addiction services.⁶⁶ The impact of COVID-19 has also influenced the ability for the Government to progress its response to *He Ara Oranga* in 2020 and 2021. In addition, the current Health and Disability System Review is an interrelated process that is currently ongoing.⁶⁷
- 3.3.3. The Government initially outlined its area of focus for implementation:
- increasing access and choice of mental health and addiction services.
 - focusing on suicide prevention.
 - repealing and replacing the Mental Health Act 1992.
 - establishing a Mental Health and Wellbeing Commission.
- 3.3.4. Progress has been made on suicide prevention in relation to establishing a prevention strategy and a suicide prevention office. The Government has now established a permanent Mental Health and Wellbeing Commission in line with the recommendation.⁶⁸ The Government accepted the recommendation to repeal and replace the Mental Health Act. It is currently implementing its three-step plan to action this; public consultation closed in January 2022.⁶⁹
- 3.3.5. While the Government is making a significant fiscal investment to expand access to mental health services in the community, the public are not yet seeing the range of services they want, like peer support and kaupapa Māori services.⁷⁰

⁶⁶ The Treasury 'The Wellbeing Budget' (30 May 2019) available at <https://www.treasury.govt.nz/sites/default/files/2019-06/b19-wellbeing-budget.pdf>.

⁶⁷ Health and Disability System Review 'Final Report' (March 2020) available at <https://systemreview.health.govt.nz/>.

⁶⁸ The Mental Health and Wellbeing Commission is an independent Crown entity and provides system-level oversight of mental health and wellbeing in New Zealand and hold the Government of the day and other decision makers to account for the mental health and wellbeing of people in New Zealand.

⁶⁹ Ministry of Health 'Repealing and replacing the Mental Health Act' (November 2021) available at <https://www.health.govt.nz/our-work/mental-health-and-addiction/mental-health-legislation/repealing-and-replacing-mental-health-act>.

⁷⁰ Mental Health and Wellbeing Commission 'Mā Te Rongo Ake / Through Listening and Hearing' available at <https://www.mhwc.govt.nz/the-initial-commission/progress-reporting/>; New Zealand Government 'Initial Mental Health and Wellbeing Commission report shows progress' (5 March 2021) available at <https://www.beehive.govt.nz/release/initial-mental-health-and-wellbeing-commission-report-shows-progress>.



3.3.6. The majority of those recommendations implemented involved setting up new initiatives and strategies. However, there is a need to create a well-resourced plan in addition to the Government's high-level plan, *Kia Manawanui Aotearoa* (referred to at para 3.3.10, below), to implement the remaining recommendations. This plan should focus on addressing systemic mental health issues, better data collection and more support for marginalised groups.⁷¹ In addition, recommendations requiring codesign participation are yet to be realised.⁷²

Disabled people

3.3.7. Contrary to disabled people's right to the enjoyment of the highest attainable standard of health without discrimination,⁷³ disabled New Zealanders consistently report poorer health status than their non-disabled peers.

3.3.8. Findings from the *New Zealand Attitudes and Values Study (2020/2021)* demonstrated that disabled participants reported poorer health and wellbeing across a range of measures (e.g., greater psychological distress, greater rumination in general, lower personal wellbeing in general) across all Alert Levels during the pandemic in 2020.⁷⁴

3.3.9. Similarly, the findings indicated that disabled participants reported poorer personal relationships and social connectedness across a range of measures across all Alert Levels during the pandemic in 2020.⁷⁵

3.3.10. Various Government plans have been launched during the pandemic, including:

- The revised edition of *Kia Kaha, Kia Māia Ora Aotearoa: Covid-19 Psychosocial and Mental Wellbeing Plan*, was published by the Ministry of Health in December 2020. It provides a framework for recovery from the COVID-19 pandemic during 2021 and was relevant during Alert Levels 2 to 4.
- The *Covid-19 Health & Disability System Response Plan*, aimed primarily at the health and disability sector, was published by the Ministry of Health in April 2020. It establishes a framework to prepare for and manage the national response to the outbreak of COVID-19 in New Zealand.
- *Kia Manawanui Aotearoa: Long-term pathway to mental wellbeing*, was published by the Ministry of Health in August 2021. It sets out the sequenced actions Government will be taking over the next decade, including the continued expansion of access to mental wellbeing support.

⁷¹ Mental Health and Wellbeing Commission 'Te Rau Tira Wellbeing Outcomes Report 2021' available at <https://www.mhwc.govt.nz/assets/Te-Rau-Tira-Wellbeing-Outcomes-Report-2021/Te-Rau-Tira-Wellbeing-Outcomes-Report-2021-FINAL-WEB.pdf>.

⁷² See, for example, above n 69, recommendation 21 strengthen consumer voice and recommendation 35 national discussion about mental health and risk.

⁷³ UNCRPD, art 5.

⁷⁴ Ministry of Social Development '[Social, psychosocial and employment impacts of COVID-19 in New Zealand: Insights from the New Zealand Attitudes and Values Study 2020/2021](#)' (January 2021) at p. 34.

⁷⁵ At p. 60.



3.3.11. In February 2021, the permanent Mental Health and Wellbeing Commission was established. Its primary objective is to contribute to better and equitable mental health and wellbeing outcomes for New Zealanders. Given that mental health issues have been accentuated for many disabled people during the pandemic,⁷⁶ the monitoring and advocacy functions of the Commission will be critical during COVID-19 and post COVID-19.

3.3.12. It will take time to assess the efficacy of the various mental health plans and initiatives launched by the Ministry of Health during the COVID-19 pandemic.⁷⁷ Furthermore, the best available evidence indicates the growth in service needs is continuing to exceed the growth in service capacity. For example, the number of mental health and addiction “clients seen” in District Health Board and contracted NGO services grew by approximately 40% in the years 2010/11 to 2019/20.⁷⁸

Māori

3.3.13. Prior to COVID-19, Māori adults were 1.5 times more likely than non-Māori to have a mental health condition, of these, Māori men were twice as likely to have a mental health condition than non-Māori men.⁷⁹

3.3.14. Rangatahi and mental health also remain an ongoing issue. Suicide rates have continuously risen, with Māori aged between 15-24, 2.1 times more likely to commit suicide than non-Māori in the same age group.⁸⁰

3.3.15. In a recent survey, *The wellbeing of Māori pre and post Covid-19 lockdown in Aotearoa / New Zealand*⁸¹ Māori responded to a set of questions in relation to COVID-19. Of these responses, 19.65% said they had experienced some form of psychological stress and, in rare cases, depression because of the impact of COVID-19.⁸²

3.3.16. The thematic report on *The Right to health and indigenous peoples with a focus on children and youth* highlighted that partnership between States and indigenous peoples is paramount to ensuring adequate and equitable health outcomes for indigenous peoples.⁸³ It found health was a fundamental element of indigenous peoples’ right to self-determination⁸⁴ and that decision

⁷⁶ Social Wellbeing Agency *Short Report: Social Isolation, Loneliness and COVID-19* (May 2020) at p. 7 available at <https://swa.govt.nz/assets/Publications/reports/Short-Report-V3.pdf>.

⁷⁷ The pre-COVID-19 Budget 2019 allocated \$1.9 billion in cross-government funding on mental health initiatives over four years. However, the funding rollout over the past 18 months of the COVID-19 pandemic has been very slow. For example, by June 2021, just \$9 million of a \$235 million fund for mental health facilities had been spent.

⁷⁸ Association of Salaried Medical Specialists ‘What price mental health? The crisis and the cure’ (2021) at p. 1 available at <https://www.asms.org.nz/wp-content/uploads/2021/06/What-price-mental-health-Research-Brief.pdf>.

⁷⁹ Ministry of Health ‘Mental Health’ (August 2018) available at <https://www.health.govt.nz/our-work/populations/maori-health/tatau-kahukura-maori-health-statistics/nga-mana-hauora-tutohu-health-status-indicators/mental-health>.

⁸⁰ Ministry of Health ‘Suicide web tool’ (October 2021) available at <https://www.health.govt.nz/publication/suicide-web-tool#summary>.

⁸¹ C.A. Houkamau, K. Dell, J. Newth, J.P. Mika, C.G. Sibley, T. Keelan & T. Dunn ‘The wellbeing of Māori pre and post Covid-19 lockdown in Aotearoa / New Zealand’ (2021) available at <https://cdn.auckland.ac.nz/assets/psych/about/our-research/MIFAS/Tech-Docs/MIFAS-Covid-19-2021-Report.pdf>.

⁸² At [10].

⁸³ UNGA ‘Right to health and indigenous peoples with a focus on children and youth’ (A/HRC/33/57) (10 August 2016).

⁸⁴ At [29].



making processes around health needed to include indigenous peoples.⁸⁵ It also noted that:⁸⁶

In New Zealand, the right to health of the Māori people is effectively affirmed in the **Treaty of Waitangi**, which provides for the protection of self-determination and cultural possessions (tangible and intangible), shared decision-making and equal participation in society without discrimination.

3.3.17. While the Government has made positive steps to transforming the health system with the recent announcement of the new Māori Health Authority,⁸⁷ it is integral that the Government continues to carry this out in equal partnership with Māori as a Tiriti partner by elevating relationships to substantive partnership and equitable shared decision-making. This is essential in order to address the current disparities pertaining to Māori and mental health outcomes.

vi. Sexual and Gender-Based Violence

New Zealand accepted the following recommendations at the last UPR that are relevant to the impacts of COVID-19 on sexual and gender-based violence:

- **122.109-43: Strengthen measures to combat domestic, sexual and gender-based violence through adequate resourcing to provide support and protection for victims, and a comprehensive national strategy.**

Government response:

We are committed to eradicating family and sexual violence, and creating a system delivering an integrated, consistent and effective response to victims, perpetrators and their families.⁸⁸

A Joint Venture of government agencies was established in 2018 to provide support through an effective, whole-of-government response. A national strategy and action plan are being developed enabling a strategic overview of prevention, early intervention, crisis response and support for long-term recovery.⁸⁹

The new Family Violence Act 2018 provides a modern framework to better prevent, identify and respond to family violence. Legislation will support sector-wide collaboration, for example through information sharing and codes of practice.⁹⁰

Legislation will make important improvements to victims' experience of court processes, helping to bring more perpetrators to justice. Programmes and services will focus on vulnerable groups more likely be victimised.⁹¹

⁸⁵ At [19].

⁸⁶ At [19].

⁸⁷ Department of Prime Minister and Cabinet 'Our health and disability system: Stewardship' available at <https://dpmc.govt.nz/sites/default/files/2021-04/htu-factsheet-stewardship-en-apr21.pdf>

⁸⁸ Above n 5 at [44].

⁸⁹ Above n 5 at [45].

⁹⁰ Above n 5 at [46].

⁹¹ Above n 5 at [47].



Commission's mid-term update:

3.4. The effect of COVID-19 on Sexual and Gender-Based Violence

- 3.4.1. Prior to COVID-19, violence and abuse against women was one of Aotearoa New Zealand's most significant human rights issues. Māori were, and continue to be, disproportionately impacted by Sexual and Gender Based Violence (SGBV). COVID-19 has exacerbated these pre-existing trends in New Zealand.
- 3.4.2. International research has found that across the world, violence against women and girls has intensified under COVID-19 conditions, as security, health and financial stress coupled with confinement required to contain the spread of the virus have exacerbated underlying risk factors.⁹²
- 3.4.3. Police data reported in the media reveals that during Level 4 to Level 2 of the first lockdown, the number of family harm incidents reported ranged from 345 to 645 a day, compared to between 271 and 478 in the same period for 2019.⁹³ Police report expecting similar trends for the most recent round of lockdowns, which ended for all regions including Auckland in December 2021, with the implementation of the 'traffic light system'.
- 3.4.4. A demographically representative survey conducted in April 2020 found that 9% of New Zealanders reported that they had directly experienced some form of family harm over the lockdown period, including sexual assault, physical assault, or harassment and threatening behaviour.⁹⁴
- 3.4.5. Consultation undertaken by the Commission after the first lockdown with refuges, family violence and sexual violence services, and helplines highlighted, in some cases, a surge of demand for services. For example, one national organisation, TOAH-NNEST (Te Ohaakii a Hine – National Network Ending Sexual Violence Together), which represents about 40 specialist non-government organisations (NGOs) providing services for sexual violence prevention and intervention, reported to the Commission an escalation in cases involving strangulation and sexual violence and a general increased demand of their services at every level (i.e. Levels 4 through 1).
- 3.4.6. Other service providers reported a significant drop in demand, due to under-reporting of experiences of violence and abuse that took place. Service providers suggest that the numbers in official Police reports are likely well below the numbers of people facing harm, as many of their clients indicated that they were not sure if they were allowed to leave their homes to seek help due to restrictions.

⁹² UN Women 'COVID-19 and ending violence against women and girls' (2020) available at <https://www.unwomen.org/en/digital-library/publications/2020/04/issue-brief-covid-19-and-ending-violence-against-women-and-girls>.

⁹³ Jody O'Callagan 'Don't think it'll be OK': Agencies fear another spike in family violence during lockdown' (19 August 2021) available at <https://www.stuff.co.nz/national/126108889/dont-think-itll-be-ok-agencies-fear-another-spike-in-family-violence-during-lockdown>.

⁹⁴ S. Every-Palmer, M. Jenkins, P. Gendall, J. Hoek, B. Beaglehole, C. Bell et al. 'Psychological distress, anxiety, family violence, suicidality, and wellbeing in New Zealand during the COVID-19 lockdown: A cross-sectional study' (2020) PLoS ONE 15(11): e0241658.



- 3.4.7. To alleviate the impacts of SGBV during the pandemic, the Government hosts a website 'safebubble.org' which offers ways to contact a range of services for those facing any kind of family violence or abuse.⁹⁵
- 3.4.8. Service providers and advocates report that in the second series of major lockdowns, it appears that the lessons have not been learned from the first round of lockdowns, of the need for clear messaging to the public on 'safe bubbles'. That is, that COVID-19 restrictions should not prevent victims of family violence or abuse from seeking help. Service providers and community advocates were forced to advocate for this messaging, rather than having it incorporated into the 'business as usual' approach to communicating about COVID-19 measures. This led to a delay in such messages being shared with the public.
- 3.4.9. International research suggests that more needs to be done to support service providers responding to SGBV in Aotearoa New Zealand to ensure that their workloads are not overwhelming and that they do not suffer burnout. New Zealand service providers are most certainly facing similar problems, as captured by the following quote from Shine: "We've got incredibly dedicated staff, but we are dealing with really huge numbers of referrals and it's concerning. We are certainly working beyond our capacity which is a concern - and long-term that is not sustainable."⁹⁶
- 3.4.10. In December 2021, the Government launched the country's first national strategy and action plan to eliminate family violence and sexual violence, *Te Aorerekura*.⁹⁷ This is a 25-year strategy aimed at creating transformative change; driving government action in a unified way. According to the Government, Te Tiriti o Waitangi, mātauranga Māori and whānau-centred approaches are central to *Te Aorerekura*.⁹⁸ Among priorities for the first two years are a system-wide investment plan, integrating community-led responses, continuing to engage with communities to support implementation, establishing the Tangata Whenua Advisory Group and supporting the workforces.⁹⁹

⁹⁵ New Zealand Government 'Safe Bubble' available at https://safebubble.org.nz/?gclid=CjwKCAjw7--KBhAMEiwAx_fpkWFujcZBiRVzjPtF_6dHq3LDHHQQ-oumAOxTWI0wYeWkfGLHtWQ_AchoCx5kQAvD_BwE&gclidsrc=aw.ds.

⁹⁶ Shine (September 2020) cited at New Zealand Family Violence Clearinghouse 'FAQ part 2: Addressing the impacts of COVID-19' (8 April 2021) available at <https://nzfvc.org.nz/covid-19/FAQ-part-2>.

⁹⁷ New Zealand Government 'Te Aorerekura: The Enduring Spirit of Affection' available at <https://www.acc.co.nz/assets/Newsroom-documents/Te-Aorerekura-Strategy-document-30-Nov.pdf>.

⁹⁸ New Zealand Government 'Launch of Te Aorerekura - the national strategy for the elimination of family violence and sexual violence' (7 December 2021) available at <https://www.beehive.govt.nz/speech/launch-te-aorerekura-national-strategy-elimination-family-violence-and-sexual-violence>.

⁹⁹ Ibid.



vii. Children

New Zealand accepted the following recommendations at the last UPR that are relevant to the impacts of COVID-19 on children:

- 122.103, 104, 146: Improve accessibility and inclusivity of education to all children and increase financial aid for children in difficulty to guarantee their right to further education;
- 122.144-46: Strengthen efforts to prevent and address child abuse;
- 122.147 Develop a national strategy for the promotion and protection of the rights of all children in implementation of the Convention on the Rights of the Child (Bulgaria);
- 122.149-153: Prioritise efforts and legislation to reduce child poverty and advance child wellbeing in accordance with the Convention on the Rights of the Child and the Treaty of Waitangi (Slovenia);
- 122.154-55 Continue efforts to combat discrimination and reduce all forms of inequalities and discrimination among children, for Māori and Pasifika children in particular, as well as children belonging to ethnic minorities, refugee and migrant children and children with disabilities (Syrian Arab Republic)

Government response:

The wellbeing of children is a priority for New Zealand. The first Child and Youth Wellbeing Strategy will be published in 2019. It will help protect children's rights, including those under the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities (CRPD).¹⁰⁰

Violence against children is addressed through work to combat family and sexual violence. A five-year transformation programme will build a more child-centred state care system. The Royal Commission of Inquiry into Historical Abuse in State Care and Care in Faith-based Institutions is investigating abuse of children and vulnerable adults.¹⁰¹

Reducing child poverty is a priority. Under new legislation, ambitious child poverty reduction targets have been announced and annual reporting is required.¹⁰²

Education must be accessible and inclusive. Education strategies for Māori and Pacific people are being updated to enable all learners to succeed.¹⁰³

¹⁰⁰ Above n 5 at [48].

¹⁰¹ Above n 4 at [49].

¹⁰² Above n 4 at [50].

¹⁰³ Above n 4 at [51].



Commission's mid-term update:

3.5. COVID-19 Impact on Child Poverty and Education

- 3.5.1. Aotearoa New Zealand's first Child and Youth Wellbeing Strategy was launched in August 2019. It sets out a shared understanding of what is important for child and youth wellbeing, what government is doing, and how others can help. Official child poverty statistics that include post COVID-19 pandemic data will not be available until February 2022. Prior to the COVID-19 pandemic,¹⁰⁴ there had been progress at a national level toward the child poverty reduction targets set by Government.¹⁰⁵ However, it appears progress towards targets may not have been equitable between groups of children.¹⁰⁶ Structural barriers like racism and ableism meant that Māori, Pacific and disabled children are bearing the much greater burden from poverty and hardship.¹⁰⁷ Based upon available data, just over 11% of all children are experiencing material hardship, but for Pacific children this is just over 25% and about 20% for both Māori and disabled children.¹⁰⁸
- 3.5.2. A report from civil society states that poverty is likely to have significantly increased since the COVID-19 pandemic began, particularly for Māori and Pacific children.¹⁰⁹ While the Government has implemented measures aimed at alleviating child poverty, concern has been raised about the lack of implementation of the Welfare Expert Advisory Group recommendations from February 2019.¹¹⁰
- 3.5.3. The COVID-19 pandemic affected all students' education across New Zealand, but the impacts on students have been uneven and could have increased inequities in the education system.¹¹¹ Lockdowns led to learning from home for extended periods, particularly in Auckland, which impacted on student wellbeing, engagement and learning.¹¹² The Ministry of Education provided sensory and hard copy materials for disabled learners and arranged IT devices and internet connections for some families. However, families still reported that undertaking education responsibilities without support was difficult and home based learning did not suit the communication needs of all.¹¹³ There were increases in chronic absence of students from

¹⁰⁴ Data collection stopped in March 2020 due to the COVID-19 pandemic.

¹⁰⁵ M. Duncanson, H. van Asten, J. Adams, H. McAnally, X. Zhang, A. Wicken, and G. Oben *Child Poverty Monitor 2021 Technical Report* (2021) Dunedin, University of Otago at p. 23.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid at pp. 2 and 23.

¹⁰⁸ Ibid at p. 23. This compares with just under 9% for Pākehā children.

¹⁰⁹ Child Poverty Action Group (CPAG) 'The first year of Covid-19: Initial outcomes of our collective care for low-income children in Aotearoa New Zealand' (July 2021) at p. 25 available at https://www.cpag.org.nz/assets/CPAG_2021_1st_year_of_Covid_initial_outcomes_of_our_collective_care_for_low_income_children_in_Aotearoa_NZ.pdf. Between March 2020 and March 2021 the report indicated an increase in child poverty by around 10% on at least one of the primary target income measures.

¹¹⁰ CPAG 'Children can't live on promises: A 2021 stocktake of the implementation of the Welfare Expert Advisory Group's 2019 recommendations' (December 2021) at p.4 available at <https://www.cpag.org.nz/assets/Children-cant-live-on-promises-CPAG-report-Dec21.pdf>.

¹¹¹ Education Review Office 'Learning in a Covid-19 world the impact of covid-19 on schools' (2021) available at <https://ero.govt.nz/our-research/learning-in-a-covid-19-world-the-impact-of-covid-19-on-schools>.

¹¹² Ibid.

¹¹³ Independent Monitoring Mechanism 'Report on the New Zealand Government's response to the COVID-19 emergency' (January 2021) at p. 45-49 available at <https://www.ombudsman.parliament.nz/sites/default/files/2021-11/Making%20Disability%20Rights%20Real%20in%20a%20Pandemic%202020.pdf>.



school, which were disproportionately experienced by Māori and Pacific students.¹¹⁴ There were reports of students leaving school in order to enter fulltime paid employment to assist financially-struggling families and whānau.¹¹⁵ The COVID-19 pandemic community outbreaks disproportionately disrupted education for children and young people in low-income communities.¹¹⁶ However, in spite of the disruption caused by the COVID-19 pandemic, NCEA attainment results were good in 2020.¹¹⁷

3.5.4. The Royal Commission of Inquiry into Abuse in Care, which commenced in 2018, continued to inquire into what happened to children, young people and vulnerable adults while in the care of the State or faith-based institutions, mainly between the years 1950-1999.¹¹⁸ An interim report, *He Purapura Ora, he Māra Tipu – From Redress to Puretumu* was delivered to the Governor-General in December 2021.¹¹⁹

viii. Persons with disabilities

New Zealand accepted the following recommendations at the last UPR that are relevant to the impacts of COVID-19 on persons with disabilities:

- 122.156 Continue its efforts to extend welfare services and assistance to all persons with disabilities;
- 122.157 Continue its efforts in implementing legislation and strategies to promote and protect the rights of children and young people and persons with disabilities;
- 122.158 Harmonize its national legislation on the rights of persons with disabilities, especially in relation to inclusive education, with international standards;
- 122.159 Strengthen efforts to combat marginalization and discrimination of children with disabilities, especially in their access to health, education, care and protection services;
- 122.160 Grant children with disabilities the right to quality inclusive education and increase the provision of reasonable accommodation in primary and secondary education in line with international standards;
- 122.161 Continue the development of inclusive education programmes for children with disabilities;
- 122.162 Respect the rights of persons with mental health conditions and

¹¹⁴ Above n 109 at pp. 40-41.

¹¹⁵ Ibid.

¹¹⁶ Ibid at p. 42.

¹¹⁷ Ibid at pp.40-41.

¹¹⁸ Royal Commission of Inquiry into Abuse in Care available at <https://www.abuseincare.org.nz/>.

¹¹⁹ Royal Commission of Inquiry into Abuse in Care available at 'Royal Commission delivers its report on recommendations for puretumu, holistic redress, for survivors of abuse in care' (1 December 2021) available at <https://www.abuseincare.org.nz/our-progress/news/royal-commission-delivers-its-report-on-recommendations-for-puretumu-holistic-redress-for-survivors-of-abuse-in-care/>.



psychosocial disabilities, in line with the Convention on the Rights of Persons with Disabilities, including by combating institutionalization, stigma, violence and overmedicalization, and by developing community-based and people-centred mental health services which promote inclusion in the community and respect their free and informed consent.

Government response:

New Zealand is working towards a society where persons with disabilities have equal opportunities to achieve their goals.¹²⁰

The Disability Strategy 2016-2026 guides the Government's work and the implementation of CRPD. New legislation aims to strengthen rights of children, particularly in state care.¹²¹

The Government is transforming the disability support system and is committed to an inclusive and accessible education system, including through the Disability and Learning Support Action Plan.¹²²

The Government is committed to improving the welfare system and also funds programmes to reduce stigma and discrimination associated with mental health issues.¹²³

Commission's mid-term update:

3.6. COVID-19 and the Rights of Disabled People

- 3.6.1. The COVID-19 pandemic can be aptly described as a humanitarian emergency for many disabled people in Aotearoa New Zealand. Approximately 1.1 million (24%) New Zealanders have a disability, making disabled people the largest minority group. Government surveys and research evidence have consistently shown that disabled New Zealanders experience poorer social and economic outcomes than their non-disabled peers.¹²⁴
- 3.6.2. Disabled people have continued to experience poorer social and economic outcomes throughout the COVID-19 pandemic. For many disabled people, the pandemic has exacerbated existing inequities, placing them in situations of risk,¹²⁵ and impeding their full enjoyment of human rights.

¹²⁰ Above n 5 at [52].

¹²¹ Above n 5 at [53].

¹²² Above n 5 at [54].

¹²³ Above n 5 at [55].

¹²⁴ Above n 74 at p. 34.

¹²⁵ Contrary to UNCRPD, art 11.



3.6.3. Specific measures taken by the Government to alleviate the human rights impacts of the COVID-19 pandemic include:

- *Welfare payments:* Over 630,000 New Zealanders were receiving some form of welfare payment over one year (excluding superannuation for those aged 65 and over) in 2018. Recipients with a health condition or disability, or caring for a person with a health condition or disability, made up 53% of all main beneficiaries.¹²⁶ Many people receiving a health and disability benefit experience mental health issues.¹²⁷
 - o The \$3.3 billion boost to benefits was the centrepiece of Budget 2021. Beneficiaries (including those with a health condition or disability) will get up to \$55 more each week, once the increases are fully implemented in April 2022.
- *COVID-19 Leave Support:* During Alert Level 4 in 2021, disabled people were able to apply to the Ministry of Social Development for funding for their support workers who were unavailable for various reasons.
- *Paying resident family members as carers:* While contracts with support workers had to be honoured, during Alert Level 4 in 2021, a disabled person was able to employ family and whānau members living with them, if their usual support worker was unavailable.
- *Total Mobility Scheme:* As part of the national response to COVID-19, the NZ Transport Agency implemented a fare-reduction for Total Mobility (taxi transport) customers with permanent disabilities from 14 April 2020 to 30 June 2020.
- *Working Matters: Disability Employment Action Plan:* This all-of-government Action Plan aims to help ensure an inclusive economic recovery from COVID-19, where people with a health condition or disability can participate in employment on an equal basis with others.

3.6.4. The NZ Independent Monitoring Mechanism, of which the Commission is a part, published *Making Disability Rights Real in a Pandemic* in January 2021.¹²⁸ The Report is based on desktop-based research of policy information meetings with disabled people about the impact of COVID-19 and Government responses. It showed that:

- Although disabled peoples' organisations became recognised as essential services and were involved in some advisory or accessible information groups, disabled people were not fully or systematically involved in decision making about the pandemic.
- Information in accessible formats often lagged behind the rapid changes occurring.
- Disabled people and the people who supported them were not initially prioritised, for example, for access to Personal Protective Equipment.
- Socioeconomic inequalities prior to COVID-19 were exacerbated with additional expenses.
- A digital divide meant information and access to goods was affected.
- Access to health, education and social services were limited.
- Access to accessible public transport was also restricted.

¹²⁶ Kia Piki Ake Welfare Expert Advisory Group '[Whakamana Tāngata: Restoring Dignity to Social Security in New Zealand' \(February 2019\)](#) at p. 14.

¹²⁷ It is reasonable to assume that people with a health condition or disability (or caring for a person with a health condition or disability) still comprise over half of all main beneficiaries during the COVID-19 pandemic in 2020-21.

¹²⁸ Above n 113.



- 3.6.5. For some people, there were positive impacts such as greater flexibility in employment arrangements and the introduction of free Taxi travel for Total Mobility (TM) card holders from 14 April to 30 June 2020, giving some more personal mobility and freedom.
- 3.6.6. In addition to the universally experienced impact, tāngata whaikaha Māori were significantly impacted by restrictions on cultural practice such as access to marae (communal spaces) and tangihanga (ritual to acknowledge and farewell deceased).
- 3.6.7. Given that well-paid employment can play an important role in peoples' wellbeing in New Zealand society, disabled people's consistent under-representation in the workforce and consistent over-representation in the welfare system, before and during the COVID-19 pandemic, is a matter of serious concern. Many disabled people face enduring poverty on a daily basis, to the detriment of their mental wellbeing and dignity. In addition, the greater needs and higher costs associated with living with a disability add to the economic stress experienced by many disabled people. Contrary to Articles 27 and 28 of the CRPD, the increases in benefits in Budget 2021 are not sufficient to overcome the poorer socio-economic outcomes experienced by disabled people before- and post-COVID-19 given rising living costs.
- 3.6.8. In addition, it will take some years to assess whether the Disability Employment Action Plan progressively makes a positive difference in the everyday lives of disabled people in the post-COVID-19 era.
- 3.6.9. In November 2021, the Commission released two reports documenting disproportionate violence against disabled people.¹²⁹ These reports provide an evidence base and illustration of the violence and abuse suffered by tāngata whaikaha Māori¹³⁰ and disabled people. The report makes a number of recommendations, including to address tāngata whaikaha Māori and disabled peoples' lack of access to the determinants of health and wellbeing, and enshrining protections in legislation, including those that improve social participation and equality.
- 3.6.10. The Commission acknowledges the positive progress by the Joint Venture for Family Violence and Sexual Violence to engage with disabled people and recognise the disproportionate burden of violence they bear, as identified in the recently released national strategy. The Government has also engaged with the Commission regarding our reports on violence against disabled people.

¹²⁹ The Commission '[Whakamanahia Te Tiriti, Whakahaumarutia te Tangata \(Honour the Treaty, Protect the Person\)](#)' (December 2021) and '[Whakamahia te Tūkino kore Ināianeī, ā Muri Ake Nei \(Acting Now for a Violence and Abuse Free Future\)](#)' (December 2021).

¹³⁰ Tāngata whaikaha is a strength-based definition to describe disability and can be translated as 'disabled people who are strongly in pursuit of enablement'.



4. Housing

New Zealand accepted the following recommendations at the last UPR that are relevant to the right to housing:

- 122.91-92 Continue efforts to increase the availability of adequate and affordable housing for all segments of society
 - o paying particular attention to low-income families;
 - o ensuring equitable housing for the elderly, persons with disabilities, and all ethnic groups.

Government response:

Ensuring that everybody has somewhere warm, dry and safe to live is a priority. A comprehensive programme to address housing issues is underway.¹³¹

A dedicated Māori Housing Unit works with Māori to improve housing opportunities.¹³²

Commission's mid-term update:

4.1. Housing Crisis

4.1.1. New Zealand's housing crisis has worsened since its last UPR review and remains a key concern for the Commission. Between December 2019 and December 2020, despite the ongoing COVID-19 pandemic, median house price nationwide rose 19.3%, while wages only grew 1.6% over the same period.¹³³ Available housing stock across the country is at the lowest in 14 years.¹³⁴ New Zealand now ranks as one of the most expensive housing markets relative to income in the OECD both for rental and ownership.¹³⁵ This is coupled with low quality housing stock. For example, about 28,000 homes in New Zealand were reported to be always damp and always have visible mould.¹³⁶

¹³¹ Above n 5 at [34].

¹³² Above n 5 at [60].

¹³³ Marc Daalder 'Housing Crisis requires response' (18 March 2021) available at <https://www.newsroom.co.nz/housing-crisis-requires-crisis-response>.

¹³⁴ Radio New Zealand 'Available housing stock lowest in 14 years' (2 August 2021) available at <https://www.rnz.co.nz/news/business/448242/available-housing-stock-lowest-in-14-years>.

¹³⁵ OECD 'Employment, Labour and Social Affairs Policy Briefs: Building for a better tomorrow: Policies to make housing more affordable' (2021) available at https://read.oecd-ilibrary.org/view/?ref=1060_1060075-0ejk3l4uil&title=ENG_OECD-affordable-housing-policies-brief.

¹³⁶ Stats NZ and the Building Research Association of New Zealand (Branz) 'Housing in Aotearoa: 2020' (2021) available at <https://www.stats.govt.nz/assets/Uploads/Reports/Housing-in-Aotearoa-2020/Download-data/housing-in-aotearoa-2020.pdf>.



- 4.1.2. Disabled people continue to face inequitable access to housing due to both affordability and accessibility. As reported by Stats NZ in October 2020, based on 2018 Census data: disabled people are less likely to live in owner-occupied homes, and are more likely to live in rental homes that are poorly maintained and subject to damp or mould.¹³⁷ Disabled people are more likely to rate affordability poorly and less likely to be in a home that is suitable for their needs.¹³⁸
- 4.1.3. Former Special Rapporteur on the right to adequate housing, Leilani Farha, noted during her country visit to New Zealand in 2020, that the housing crisis was a human rights crisis characterised by inaccessible housing stock, unaffordable rents, substandard conditions including overcrowding, a lack of security of tenure for tenants, and a lack of social, affordable, and community housing for those in need, alongside an abundance of unaffordable family dwellings available for homeownership.¹³⁹
- 4.1.4. In March 2021, the New Zealand Government announced a large housing package¹⁴⁰ as part of the 2021 Budget. Initiatives in this package include \$3.8 billion for accelerating housing supply through a mix of contestable funding for infrastructure projects across the country and support to large scale housing projects which are already providing a mix of public, affordable, and mixed housing. This package also included a range of amendments to existing schemes to support home ownership including lifting First Home Grant caps, and implementing higher house price caps. Homes and Communities (Kāinga Ora), New Zealand's Crown agency that provides rental housing for New Zealanders in need, was also provided with a \$2 billion loan to scale up land acquisition.
- 4.1.5. This package is in addition to the KiwiBuild scheme, which began in 2018. KiwiBuild is a real estate development scheme with the original aim of building 100,000 affordable homes by 2028 to increase housing affordability in New Zealand. The aim of building 100,000 homes was dropped in 2019. Homes prices are capped for those who meet the eligibility criteria. By 31 May 2021, only 1058 homes had been built under the KiwiBuild scheme, therefore not meeting demand.¹⁴¹
- 4.1.6. Despite these targeted measures, the housing crisis is being experienced most acutely by particular groups including: Māori, Pacific people and other ethnic communities, disabled people, single-parents (particularly single mothers), youth and children, the elderly and those living in poverty. It is encouraging to see the launch of the National Māori Housing Strategy, the Māori and Iwi Housing Innovation Framework (MAIHI Ka Ora) and *Whai Kāinga Whai Oranga* in 2021 in response to the Māori housing crisis.

¹³⁷ Stats NZ 'Measuring inequality for disabled New Zealanders: 2018' (28 October 2020) available at <https://www.stats.govt.nz/reports/measuring-inequality-for-disabled-new-zealanders-2018>.

¹³⁸ Ibid.

¹³⁹ Leilani Farha 'End of Mission Statement: Visit of the Special Rapporteur on the right to adequate housing to New Zealand' (19 February 2020) available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25574&LangID=E>.

¹⁴⁰ New Zealand Government 'Housing package detail' (2021) available at <https://www.beehive.govt.nz/sites/default/files/2021-03/Housing%20Package%20Detail.pdf>.

¹⁴¹ Thomas Coughlan 'Kiwibuild reaches first target – two years late 15,000 homes behind schedule' 1 July 2021) available at <https://www.stuff.co.nz/national/politics/300347258/kiwibuild-reaches-first-target--two-years-late-15000-homes-behind-schedule>.



- 4.1.7. In addition to a housing shortage in Aotearoa New Zealand, the Commission has been concerned by successive governments' breaches of the right to a decent home. In response, the Commission released guidelines to clarify for individuals and communities, local and national government, what the right to a decent home means, and launched a national inquiry into housing, releasing its first report: *Strengthening Accountability and Participation in the Housing System* in December 2021.¹⁴²
- 4.1.8. The COVID-19 pandemic has exacerbated the already existing housing inequalities including for low-income families who are already housing insecure. As of June 2021, there were 24,474 applicants on the Housing Register waiting for public housing. This represents an increase of 32.1% compared with the same time in 2020.¹⁴³ In the latest September 2021 COVID-19 outbreak, several positive cases were individuals living in transitional and emergency housing.¹⁴⁴

¹⁴² Housing Inquiry First Report 'Strengthening Accountability and Participation in the Housing System' (December 2021) available at https://www.hrc.co.nz/files/2716/3944/7313/Housing_Inquiry_Strengthening_Accountability_and_Participation_FINAL-compressed.pdf The Commission also published 'Framework Guidelines on the right to a decent home in Aotearoa' in August 2021 available at https://www.hrc.co.nz/files/7416/2784/4778/Framework_Guidelines_on_the_Right_to_a_Decent_Home_in_Aotearoa_FINAL.pdf.

¹⁴³ Ministry of Social Development 'Housing Register' (September 2021) available at <https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/statistics/housing/index.html>.

¹⁴⁴ Jamie Ensor 'As it happened: Latest on COVID-19 community outbreak' (29 September 2021) available at <https://www.newshub.co.nz/home/new-zealand/2021/09/coronavirus-latest-on-covid-19-community-outbreak-wednesday-september-29.html>.



5. Te Tiriti o Waitangi

New Zealand accepted the following recommendations at the last UPR that are relevant to Te Tiriti:

- 122.165 Take all appropriate measures to enhance Māori and Pasifika representation in government positions at all levels, in particular at the local council level, including through the establishment of special electoral arrangements;
- 122.166 Provide Māori and Pasifika with adequate access to education and the labour market;
- 122.167-169 Continue efforts to protect human rights of Māori in accordance with international law obligations;
- 122.170 - 174 Develop, in partnership with Māori, a national strategy or plan of action to align public policy and legislation with the United Nations Declaration on the Rights of Indigenous Peoples;
- 122.175 Continue to have a more active and closer partnership with Māori for effective implementation of the commitment and sustainable settlement process;
- 122.176-180 Continue to improve steps in addressing a number of human rights challenges affecting Māori people, including family and sexual violence, living standards, health, employment and education affecting indigenous people with specific programmes and actions aimed at improving health and education outcomes for Māori and Pacific communities.

Government response:

We continue to focus on reducing disparities for Māori and other ethnicities. Three specific government agencies promote the interests of Māori, Pacific peoples and other ethnic communities through programmes and frameworks for inclusion, wellbeing and engagement.¹⁴⁵

The Government established a new agency – the Office for Māori Crown Relations - Te Arawhiti, operational since January 2019. It is tasked with completing historical settlements and ensuring their durability. It will also enable stronger partnerships with Māori across Government to improve outcomes for Māori.¹⁴⁶

Work is underway towards a comprehensive national plan setting out how New Zealand regulations align with the Declaration on the Rights of Indigenous Peoples. It will take into account Te Tiriti principles and highlight areas for improvement.¹⁴⁷

¹⁴⁵ Above n 5 at [56].

¹⁴⁶ Above n 5 at [58].

¹⁴⁷ Above n 5 at [59].



Amended legislation sets specific duties for Oranga Tamariki-Ministry for Children in relation to Te Tiriti. These duties include reducing disparities for Māori children in care, developing strategic partnerships with iwi (tribal) and Māori organisations, and reporting annually on the impact of measures to improve outcomes for Māori.¹⁴⁸

Further work to address disparities of ethnic minorities includes a Pacific health plan being developed with a broad focus (e.g. including housing), and the Tertiary Education Strategy which will emphasise equity and better support the aspirations of Māori and Pacific peoples.¹⁴⁹

Commission's mid-term update:

5.1. National Action Plan

- 5.1.1. The UNDRIP provides a framework for upholding Te Tiriti, enhancing Māori wellbeing and improving Crown-Māori relationships. However, as yet there has been no strategic approach to its implementation, and there are gaps between the rights and obligations affirmed in the UNDRIP and Te Tiriti and their implementation. This is particularly the case in relation to rangatiratanga (right to exercise authority), and evidenced in the inequalities experienced by Māori, across a range of sectors, as referred to throughout this report. Since the 2019 Universal Periodic Review, the Waitangi Tribunal has continued to report on breaches of the Treaty in several significant inquiry reports, including in relation to health, freshwater and resource management, state care, and the COVID-19 response.¹⁵⁰
- 5.1.2. The New Zealand Government has committed to develop, in partnership with Māori, a national strategy or plan of action to implement the UNDRIP, and recent progress has been made in advancing this commitment.
- 5.1.3. In March 2019, Cabinet agreed to the proposal from te Minita Whanaketanga Māori (Minister for Māori Development) to develop a national plan to implement UNDRIP and to report back on a preferred option for engagement with iwi, hāpu, whānau and Māori. In April of 2019, the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) carried out a country engagement to Aotearoa and later released an advisory note to the Government on how to implement and carry out a national plan of action to implement the Declaration.¹⁵¹

¹⁴⁸ Above n 5 at [61].

¹⁴⁹ Above n 5 at [62].

¹⁵⁰ Waitangi Tribunal 'Waitangi Tribunal reports' available at <https://waitangitribunal.govt.nz/publications-and-resources/waitangi-tribunal-reports/>.

¹⁵¹ UN OHCHR EMRIP 'Country Engagement Mission – New Zealand' (14 July 2019) available at <https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/Session12/EMRIPAdvisoryNoteNZ2019.docx>.



- 5.1.4. The Aotearoa Independent Monitoring Mechanism recommended in its 2019 monitoring report that “the government prioritise taking concrete steps to progress constitutional conversations and implement the recommendations of the Matike Mai report” and that “the government implement the recommendations made by the EMRIP in its Advice Note”.¹⁵²
- 5.1.5. Following the 2019 EMRIP visit, a declaration working group (DWG) comprised of Māori experts and Government experts, was appointed by Government.¹⁵³ The DWG produced a substantial report, *He Puapua* setting out advice and recommendations for the development of the national action plan.¹⁵⁴ The report was completed and submitted to the Minister in November 2019.
- 5.1.6. In June 2021, Minister Jackson announced that plans to progress the national plan of action were to begin again. A two-step engagement process to develop the plan will be undertaken through:
- a. targeted engagement with whānau, hapū, iwi and Māori organisations to inform the process for the development of a Declaration plan; and
 - b. wider public consultation on a draft Declaration plan.
- Targeted engagement began in late 2021 and wider engagement on a draft plan is due to begin in mid-2022, with a final action plan due to be released in February 2023.
- 5.1.7. The Government has adopted a partnership approach to working on the national plan of action. The National Iwi Chairs Forum (NICF) under Pou Tikanga represents the tino rangatiratanga (self-determination) dimension of Te Tiriti, while Te Puni Kōkiri (the Ministry of Māori Development) and the New Zealand Human Rights Commission represent the kāwanatanga (government) entities working in partnership with NICF.
- 5.1.8. The *He Puapua* report sets out an organised and thematic approach to the implementation of the national plan of action.¹⁵⁵ It provides a structure on how tino rangatiratanga and kāwanatanga can work within their own spheres to express and support tino rangatiratanga, as well as working together in joint partnership in the relational sphere to progress the national plan of action and ensure that it is compliant with Te Tiriti and the Declaration. For example, the report recommends that the national plan of action be flexible and adaptable, so that it is able to evolve over time to meet the needs of Māori now and in the future.
- 5.1.9. The *He Puapua* recommendations include a recommendation to create an Indigenous Rights/ and or Te Tiriti Commissioner(s) within the Human Rights Commission to carry out and lead this workspace.¹⁵⁶

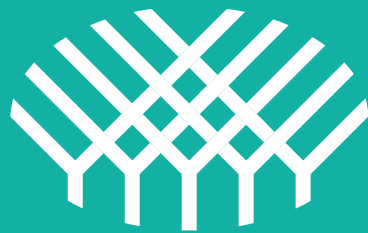
¹⁵² Report of the Independent Monitoring Mechanism on implementation of the UN Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand (July 2018) available at https://www.ohchr.org/Documents/Issues/IPeoples/EMRIP/StudyRRR/Independent_Monitoring_Mechanism.docx.

¹⁵³ Te Puni Kōkiri ‘United Nations Declaration on the Rights of Indigenous Peoples: Next Steps for a Declaration Plan’ (2021) available at <https://www.tpk.govt.nz/en/a-matou-mohiotanga/cabinet-papers/next-steps-for-declaration-plan>.

¹⁵⁴ Te Puni Kōkiri ‘He Puapua – Report of the Working Group on a Plan to Realise the UN Declaration on the Rights of Indigenous Peoples in Aotearoa New Zealand’ (1 November 2019) available at <https://www.tpk.govt.nz/documents/download/documents-1732-A/Proactive%20release%20He%20Puapua.pdf>.

¹⁵⁵ At [36].

¹⁵⁶ At [38].



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