



Human Rights Commission
Te Kāhui Tika Tangata

Submission to the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Request for contributions: Designing and implementing effective human rights-based housing strategies

Contact Person:

Dr Margaret MacDonald
Senior Advisor

New Zealand Human Rights Commission

margaretma@hrc.co.nz

1. The New Zealand Human Rights Commission (the Commission) welcomes the opportunity to contribute to the next thematic report of the Special Rapporteur, Leilani Farha, pursuant to the Human Rights Council, 37th session. The thematic report intends to focus on how States can design and implement effective human rights-based housing strategies to realise the right to housing and to fulfil commitments made in the 2030 Agenda for Sustainable Development and the New Urban Agenda.
2. The Commission is New Zealand's National Human Rights Institution and is accredited "A" status by GANHRI and the UHCHR. The Commission was established in 1977 and is an independent statutory body with mandated responsibilities under New Zealand's Human Rights Act 1993. The Commission's purpose is to promote and protect the human rights of all people in Aotearoa New Zealand. It works for a free, fair, safe and just New Zealand, where diversity is valued and human dignity and rights are respected. The Commission is a founding member of the Asia Pacific Forum of national human rights institutions (APF).
3. This contribution reports on the Commission's experiences with human rights-based housing strategies and suggestions for effective and innovative approaches.

Background

4. The prevalence of substandard housing conditions in New Zealand has developed into a major public health and children's rights issue, with multiple effects on the health and wellbeing of people.¹ Many people live in cold, damp homes. This contributes to a greater burden of disease and poorer outcomes, particularly amongst those who live in lower-income households, amongst one parent families of all ethnicities, and Māori and Pacific children.²
5. The causes for the current situation are multi-faceted. Housing supply, rising property prices and rents in urban centres, an outdated regulatory framework governing housing quality and security of tenure for private tenants, and income poverty are all contributory factors. Successive governments have implemented a range of policy measures in an attempt to address the issue. However, to date, a comprehensive plan that co-ordinates the various policy measures has not been developed. If New Zealand is to meet its human rights commitment under the UN SDG Agenda to ensure that all New Zealanders live in adequate housing by 2030, the Commission considers that there must be cross-party agreement between all major political parties on an agreed strategy. The Commission has focussed its promotion, advocacy and legal intervention work in relation to the right to adequate housing on the need for a comprehensive national housing plan and a related accord of the political parties; the need for improved housing quality; increased security of tenure for renters; and property rights.

Key focus areas

Housing quality

6. Many New Zealand dwellings are colder than the minimum indoor temperature recommended by the World Health Organization (WHO), and are damp, and mouldy.³ This is largely due to insufficient insulation (about two-thirds of NZ dwellings are un-insulated) and inadequate heating and ventilation.⁴ In response, the Government announced minimum standards for rental housing, including a new requirement for smoke alarms in all residential properties, and new requirements for ceiling and underfloor insulation (where possible) to be phased in between 2016 and 2019.⁵
7. The Commission submitted its concerns around the human rights implications of the substandard quality of New Zealand's housing stock in a thematic snapshot report to the UN Committee on the Rights of the Child: [Inadequate Housing in New Zealand and its Impact on Children](#) (2016). The thematic report recommends the Government to develop a comprehensive implementation plan that identifies actions, builds ownership and measures results to meet the Sustainable Development Goal (SDG) that all people in New Zealand live in adequate, affordable and safe housing by 2030. The implementation plan should have a particular focus on addressing housing affordability, habitability and security of tenure.

Security of Tenure

8. New Zealand has one of the highest rates of residential mobility among developed countries, nearly twice that of the United Kingdom. Most of this mobility occurs in the private rental market. New Zealand also has very low levels of social housing tenancies (of which the terms of tenure are inherently more stable) and decreasing levels of home ownership. Families with children, particularly one-parent and Maori and Pacific families, experience much higher levels of discrimination in the private rental market, a factor that impacts upon the choice of housing available. The legislation governing private residential tenancies, the Residential Tenancies Act 1986 (RTA), enables the termination of a tenancy without reason, subject to due notice being provided.
9. While it contains protective provisions for tenants, the RTA does not contain any stand-alone provision that affirms any minimum right to security of tenure for tenants (as distinct from minimum notice requirements regarding termination) and does not impose any particular responsibilities on landlords towards tenants with children, or vulnerable adults.
10. The Healthy Homes Guarantee Bill (No 2) amends the Residential Tenancies Act 1986 with the purpose of ensuring that every rental home in New Zealand meets minimum standards of heating and insulation. Although the Commission supports the Government's Healthy Homes Guarantee (No. 2) Bill as an important step towards bringing New Zealand's housing stock up to standard, it has recommended that it not be passed in its current form.
11. The Commission's [submission](#) to the Local Government and Environment Committee on the Bill focuses on two important aspects of the Bill – amendments that would make

tenants liable for all or part of any damage caused to rental property by carelessness of negligence, and additional powers and rights to landlords when a rental property is contaminated by the drug methamphetamine. Methamphetamine, also known as crystal meth, is an illegal central nervous system (CNS) stimulant used as a recreational drug in New Zealand.

12. The Commission is concerned that the proposed Bill, as it currently stands, has the potential to put a higher duty of care burden on tenants, as compared to landlords, and that the lack of adequate safeguards in relation to the termination provisions could see the processes invoked inappropriately. It also has the potential to drive up rental costs and subject some tenants, who are not at fault, to tenancy termination without their consent or compensation. The Commission has made several recommendations to the Committee including:

- Consider the impact of tenant liability for careless damage on affordability in the private rental market.
- Amend the Bill to incorporate the amendments to the Residential Tenancies Act that are set out in the Healthy Homes Guarantee Bill (No 2) and take other steps to enact a more reciprocal private rental legislative framework.
- Review the grounds of termination with a view to ensuring that:
 - Tenants without fault or contribution are not subject to a termination of tenancy without their consent and provision of appropriate compensation.
 - The personal circumstances of tenants must be taken into account prior to any decision being made
 - Review the notice period for termination and ensure that affected tenants are provided with an adequate opportunity to appeal the decision and arrange advice and advocacy in doing so.

Property rights and civil society engagement

13. The Commission draws on both formal and informal partnerships with civil society groups to strengthen the effectiveness of its projects. Partners are usually those who are most directly affected by (or who have a vested interest in) the outcomes of the project, and/or have a mandate and ability to ensure the project meets its outcomes successfully.

14. In response to the Canterbury earthquakes in 2010-2011 the Commission undertook two in-depth research projects monitoring human rights in the recovery process. Complaints received from civil society provided the impetus for this research and directly informed its thematic focus. The 2013 report [Monitoring Human Rights in the Canterbury Earthquake Recovery](#) focussed on the fundamental elements of adequate housing through examining the impact of the earthquakes on housing supply and demand, habitability, accessibility and security of tenure.

15. In 2016, the Commission published [Staying in the Red Zones: Monitoring Human Rights in the Canterbury Earthquake Recovery](#); research report focussed on the three areas of most concern to people who were affected by the earthquakes related to housing and property rights. These were:

- the decision to 'red zone' damaged land as not fit for ongoing residential occupation and perceived government pressure to accept an offer to purchase their property
- the use of hazard notices requiring people to leave their homes at short notice because of potential rock fall risks
- the use by the Government of insurance status to treat homeowners differently in regard to settlement offers.

16. Key recommendations include improved protection of property rights in the New Zealand Bill of Rights Act and the adoption of a human rights approach to future disaster recovery frameworks to ensure they comply with international standards and emphasise non-discrimination, participation and accountability. The report also includes a Human Rights Checklist for disaster preparedness, prevention and recovery responses.

Homes Accord

17. The right to adequate housing continues to be key promotion, advocacy and education focus area for the Commission in its engagement with local government, NGOs and civil society.^{6 7} Evidence of progress can be seen in the increasing recognition by local government of the human right to housing and its determinants.⁸

18. The Commission is working closely with a Community Housing Provider, Community Housing Aotearoa, to develop a New Zealand Homes Accord which will seek commitment from political parties to all New Zealanders being well housed by 2030.⁹ Sitting behind this work is a discussion document, [Our Place: All New Zealanders well-housed](#) which uses a human rights approach to advocate for adequate housing across the continuum of homeless, emergency housing, social housing, assisted rental, private rental, assisted ownership and home ownership.

End Notes

¹ Howden-Chapman P, Carroll P. eds. *Housing and Health: Research, Policy and Innovation*. Wellington (NZ): Roger Steele, 2004.

² Ministry of Health. 2014. *Analysis of Household Crowding based on Census 2013 data*. Wellington: Ministry of Health

³ Howden-Chapman P, Crane J, Matheson A, Viggers H, Cunningham M, Blakely T, et al. Retrofitting houses with insulation to reduce health inequalities: Aims and methods of a clustered, randomised community-based trial. *Social Science and Medicine*, 61(2005): 2600-2610.

⁴ Ibid.

⁵ Beehive.govt.nz. *Tenancy Law Changes to Include Insulation and Smoke Alarm Requirements*. [Internet]. Wellington (NZ): Government of New Zealand, 2015.

⁶ Rivers J, *Housing as a Human Rights Issue*, 2017. [Internet]. See:

<http://www.scoop.co.nz/stories/HL1706/S00035/housing-as-a-human-rights-issue.htm>.

⁷ *Progressive Thinking: Ten Perspectives on Housing*, Public Service Association, 2017. Chapter by Chief Commissioner, David Rutherford: <https://www.psa.org.nz/assets/Uploads/Housing-book-2017-lowres.pdf>

⁸ Christchurch City Council Housing Policy. [Internet]. See: <https://www.ccc.govt.nz/the-council/plans-strategies-policies-and-bylaws/policies/community-policies/housing-policy>

⁹ Well-housed is defined as having housing choice and access to adequate housing as defined in CESCR General Comment 4.