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Te Kāhui Tika Tangata
Human Rights Commission

Aratohu tika tangata ki te
whai whare rawaka i Aotearoa

Framework Guidelines on the right to a decent home in Aotearoa

August 2021



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Human Rights Commission

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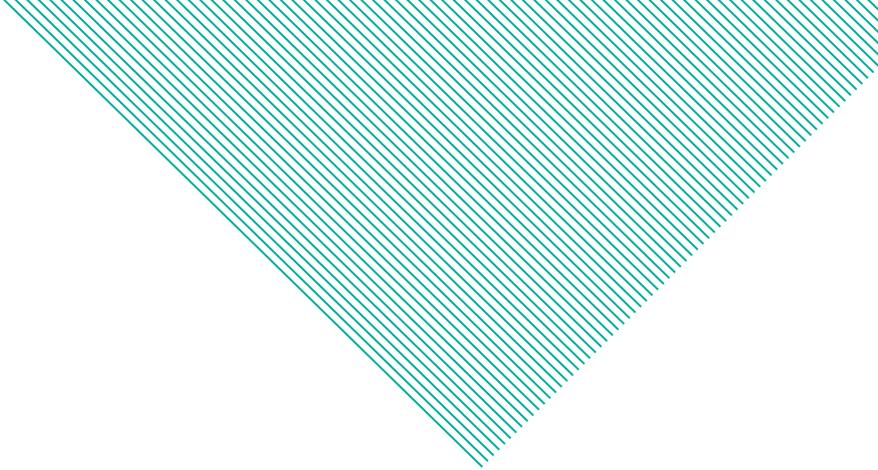
Framework Guidelines on the right to a decent home in Aotearoa

The New Zealand Human Rights Commission (the Commission) is established and operates under the Crown Entities Act 2004 and the Human Rights Act 1993. Independent of government, 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: www.hrc.co.nz



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Te Kāhui Tika Tangata
Human Rights Commission



Status of the Framework Guidelines

The Human Rights Act (1993), which establishes the Human Rights Commission, is designed:

“to provide better protection of human rights in New Zealand in general accordance with United Nations Covenants or Conventions on Human Rights”.¹

The Act sets out the Commission’s primary functions, the first of which is:

“to advocate and promote respect for, and an understanding and appreciation of, human rights in New Zealand society”. (section 5(1)(a))

Additionally, the Act gives the Commission numerous specific functions, including:

“to prepare and publish, as the Commission considers appropriate, guidelines and voluntary codes of practice for the avoidance of acts or practices that may be inconsistent with, or contrary to, this Act”. (section 5(2)(e))

In accordance with its statutory functions, the Board of the Human Rights Commission adopted these *Framework Guidelines on the Human Right to a Decent Home in Aotearoa* in April 2021.

The Commission’s management will review the *Guidelines* every 12 months and, if necessary, recommend revisions to the Board. The Board will review and, if necessary, revise, the *Guidelines* every three years.

These *Guidelines* are designed to advance the Human Rights
Commission guiding purpose,
Te Whakamana Tāngata: A Life of Dignity for All.

(Strategic Direction, 2020-2024)

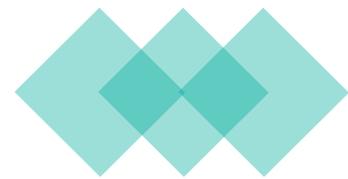
Methods

The Commission worked closely with Pou Tangata and Pou Tikanga from the National Iwi Chairs Forum (NICF), Community Housing Aotearoa and many others in the preparation of the *Guidelines*. Prior to the drafting of the *Guidelines*, preliminary consultations were held with a wide range of stakeholders from June 2020 to the end of August 2020. During this period, the Commission and Community Housing Aotearoa convened a number of hui to seek feedback on a discussion paper. Meetings were conducted predominately via Zoom as a result of the COVID-19 pandemic with participation by people from around Aotearoa New Zealand.

The *Guidelines* were released as a draft consultation document on 12 November 2020 and a consultation period ran until 21 December 2020. The Commission welcomed submissions by email and in person. The Commission received numerous responses with feedback, including from local and central government, advocacy organisations, and individuals. During January 2021 the Commission met with a range of stakeholders who wished to discuss the *Guidelines* and their feedback in more detail.

The feedback the Commission received throughout this process was invaluable in re-drafting and refining the *Guidelines*. Following the consultation period, the Commission produced a second draft of the *Guidelines* which were again provided to NICF for their review and comment.

For more detail on methodology, please refer to Appendix 1.



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Executive Summary

The *Framework Guidelines on the Right to a Decent Home in Aotearoa (Guidelines)* aim to:

- introduce the international right to adequate housing
- signal the different ways this human right can contribute to a fair and dynamic housing system in Aotearoa New Zealand.

They are designed to raise the profile of the right to adequate housing.

The *Guidelines* are relevant to central and local government, communities, iwi, hapū, the private sector, civil society organisations and individuals. They provide an introductory framework and suggest how they can be developed and applied.

The *Guidelines* raise some technical issues, but they aim to be as accessible as possible. They are not primarily written for lawyers and experts.

A decent home

International law usually refers to the right to 'adequate housing'. The extensive literature on this human right is clear: the right to adequate housing is more than a physical structure, it is about having a decent home.

Te Ao Māori, and the worldview of many Pacific, Asian and other communities in Aotearoa, also understand that housing is much more than a physical structure.

For these reasons, the *Guidelines* do not use the right to 'adequate housing' as a shorthand. Instead, they refer to the right to a 'decent home', defined as the right to a warm, dry, safe, secure, affordable, accessible, healthy, decent home.

International human rights law

For many years, successive governments in Aotearoa New Zealand have committed to implement the right to a decent home, as set out in the International Bill of Rights, Convention on the Rights of the Child, Convention on the Rights of Persons with Disabilities, and United Nations Declaration on the Rights of Indigenous Peoples.

Most of these commitments are binding on central and local government in international law, yet the right to a decent home is almost unknown and invisible in Aotearoa.

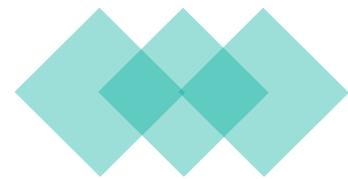
International law is silent on the socio-economic system (e.g. private, public or mixed) required to implement the right to a decent home, except for three conditions. The socio-economic system – or road – chosen:

- must be consistent with human rights and democratic principles
- must reach the destination i.e. it must enhance enjoyment of the right to a decent home, including for the most disadvantaged
- in Aotearoa, the road chosen – and destination – must be consistent with Te Tiriti o Waitangi.

The unique context of Aotearoa

If human rights are to be made 'real' in Aotearoa, they must be considered and implemented within the country's unique historical and current context which includes:

- the systematic dispossession of Māori from their land and the ongoing impact of colonisation
- Te Tiriti o Waitangi (Te Tiriti) and the crucial importance of ensuring the culture of tangata whenua flourishes



- enduring discrimination on ethnicity, religion, disability, gender, and other prohibited grounds
- the need for a dynamic inclusive multiculturalism grounded on Te Tiriti and underpinned by respect (manaakitanga) and human rights for all.

Rights and responsibilities

Human rights and Te Tiriti not only place obligations on central and local government, they also place responsibilities on others, including individuals. In the context of the right to a decent home, the *Guidelines* outline the rights of individuals, communities, hapū and iwi (rights-holders) and the responsibilities of government, private sector, landlords, property managers, service-providers and tenants (duty-bearers).

Central and local government: a shared responsibility

In relation to housing, the roles of central and

local government are deeply complementary. They share common values, such as wellbeing, and they must support and enable each other. Central and local government have a shared responsibility to do everything in their power to deliver the right to a decent home for everyone in Aotearoa.

How can the Guidelines help?

The right to a decent home grounded on human rights and Te Tiriti has several constructive roles including:

- empowering individuals, hapū, iwi and communities
- helping to improve and strengthen housing policies and initiatives
- holding those with responsibilities accountable.

In this way, the *Guidelines* can assist both rights-holders and duty-bearers to understand their rights and responsibilities.

Colonisation and Te Tiriti o Waitangi

The *Guidelines* are informed by the systematic dispossession of Māori from their land, the ongoing impact of colonisation, Te Tiriti, the United Nations Declaration on the Rights of Indigenous Peoples, and values that are integral to Te Ao Māori e.g. whanaungatanga (kinship), kaitiakitanga (stewardship) and manaakitanga (respect).

It is impossible to implement the right to a decent home in Aotearoa without recognising its colonial history and the lasting impact of colonisation on Māori rights and wellbeing. Colonial and discriminatory policies were designed to be inequitable and their impact on the housing of Māori persists to this day.

Te Tiriti, the country's foundational document, establishes the relationship between Māori and the Crown. It affirms the status of whānau, hapū and iwi as tangata whenua and recognises their pre-existing rangatiratanga. It envisages a sharing of power and authority and a partnership of equals. Te Tiriti requires government to work in partnership, and share decision-making, with its Tiriti partners, and to respect and support the rangatiratanga authority of tangata whenua. The right to a secure, peaceful, decent home – both for tangata whenua and tangata Tiriti – is at the core of the Tiriti agreement.

These issues are outlined in **Section 2: Colonisation and Te Tiriti o Waitangi**.

Key features of the right to a decent home grounded on Te Tiriti

The *Guidelines* outline eight key features of the right to a decent home grounded on Te Tiriti. It is important these interconnected features are read together, and with Te Tiriti and the United Nations Declaration on the Rights of Indigenous Peoples.

1. Values

Values, such as whanaungatanga (kinship), kaitiakitanga (stewardship), manaakitanga (respect), dignity, decency, fairness, equality, freedom, wellbeing, safety, participation, autonomy, partnership, community, and responsibility, are embodied in the right to a decent home.

2. The United Nations 'decency' housing principles

The following overlapping United Nations principles must be considered when determining whether housing is 'adequate' or, to use the language of the *Guidelines*, 'decent':

- habitable
- affordable
- accessible to everyone, including disadvantaged groups, such as those living in poverty, including people who are homeless; tangata whenua; Pacific people and other ethnic minorities; faith-based communities; disabled people; children and young people; women; rainbow communities; older people; beneficiaries and migrants
- services, facilities and infrastructure
- location
- respect for cultural diversity
- security of tenure.

3. Freedoms and entitlements

The right to a decent home includes both freedoms (e.g. freedom from discrimination) and entitlements (e.g. the provision of temporary emergency housing when needed).

4. Equity, equality and non-discrimination

Housing must be equally accessible to all.

5. Participation

All individuals and communities are entitled to active and informed participation on issues relating to their housing, including policy making and accountability.

6. A human rights-based housing strategy grounded on Te Tiriti

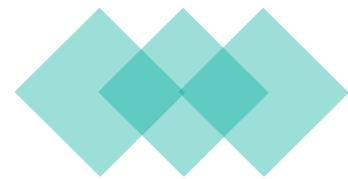
Realisation of the right to a decent home grounded on Te Tiriti will not happen spontaneously. It will require an overarching housing strategy.

7. Constructive accountability

Effective and accessible accountability is a crucial feature of human rights, including the right to a decent home. Without accountability, the right to a decent home can become an empty promise. Accountability need not be about blame and punishment, it can be about identifying what works, so it can be repeated, and what does not work, so it can be adjusted. This is sometimes called 'constructive accountability'. All housing initiatives must be subject to effective, accessible and constructive accountability in relation to the right to a decent home grounded on Te Tiriti.

8. International assistance and cooperation

The government's aid and development programme, and its delivery, must be consistent with Aotearoa's human rights obligations. If the programme includes housing initiatives, the government has a responsibility to ensure the initiatives are consistent with human rights principles and standards, including the international right to a decent home.



Obligations and violations

Progressively realised over time

International human rights law allows for the full implementation of the right to a decent home to be realised over time. Progressive realisation, however, is not an excuse for government to avoid or delay implementation of binding international legal obligations. The United Nations has confirmed that the government is required to take “steps which are deliberate, concrete and targeted as clearly as possible towards” realisation of the right to a decent home.

How to measure progressive realisation: indicators and benchmarks

The United Nations has also confirmed that progressive realisation of the right to a decent home should be tracked by using indicators and benchmarks. The indicators are broken down into areas of prohibited discrimination, such as ethnicity, disability, gender and age.

By way of Tiriti partnership and a consultative process, attention should be given to identifying suitable national indicators for the right to a decent home in Aotearoa. The indicators will have to reflect Te Ao Māori, tikanga and Te Tiriti.

Core obligations of immediate effect

The United Nations recognises that some features of the right to a decent home are so important they are deemed core obligations of immediate effect i.e. these features are not subject to progressive realisation over time. By way of Tiriti partnership and a consultative process,

attention should be given to elaborating these core obligations for the right to a decent home in Aotearoa.

A human rights approach to policy making

The human right to a decent home is subject to resource availability. Even high-income countries, such as Aotearoa, cannot avoid difficult decisions about resource allocation. Prioritisation and trade-offs are common features of every approach to policy making. The human rights approach grounded on Te Tiriti is distinctive because of the conditions it imposes on the policy making process. The *Guidelines* outline the conditions that apply to policy making in relation to the right to a decent home grounded on Te Tiriti.

Obligations to respect, protect and fulfil human rights

Human rights give rise to different types of obligations, widely known as obligations to *respect, protect* and *fulfil*. Understanding that human rights give rise to these obligations makes it easier to hold central and local government (and other duty-bearers) accountable and to identify human rights violations. The *Guidelines* outline some obligations and corresponding violations in relation to the right to a decent home grounded on Te Tiriti.

Role of the private sector

The private sector has a significant role in Aotearoa's housing system. Investors, businesses and individuals develop, build, sell and rent housing. Financial institutions provide access to credit. Private households purchase, build or improve their own housing and may rent it to others. The private sector has the power to affect, both positively and negatively, enjoyment of the right to a decent home grounded on Te Tiriti.

The government has a responsibility to prevent the private sector from interfering with the enjoyment of the right to a decent home. But, additionally, the private sector itself has human rights and Tiriti responsibilities. The *Guidelines* outline these responsibilities of the private sector e.g. to provide an appropriate supply of (i) affordable (rather than luxury) housing, and (ii) accessible homes for disabled people.

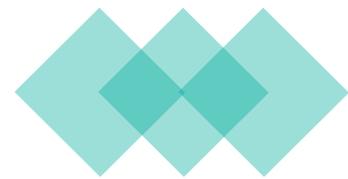
Conclusion

Located within the unique context of Aotearoa, the *Guidelines* are a step towards a better understanding of the right to a decent home grounded on Te Tiriti. They provide a framework on which we can all build while taking into account evidence of what works. More mahi is needed, by one organisation or another, such as:

- clarifying what a decent home means for tangata whenua
- clarifying the shared responsibility of central and local government to deliver the right to a decent home grounded on Te Tiriti

- developing and applying the eight key features of the right to a decent home grounded on Te Tiriti
- preparing detailed guidance about disability and the right to a decent home grounded on Te Tiriti.

The *Guidelines* will be reviewed and, as necessary, revised every 12 months.



The Framework Guidelines

- 1. In Aotearoa, the housing system must be explicitly based on values (as outlined in Guideline 10), the international right to a decent home, Te Tiriti o Waitangi and evidence of what works.*
- 2. Grounded on Te Tiriti, the international right to a decent home is more than a right to shelter, bricks, mortar or a house. It is the human right to a warm, dry, safe, secure, affordable, accessible, healthy, decent home, as understood by Te Ao Māori. By way of shorthand, these Guidelines refer to the 'right to a decent home'.*
- 3. Agreed by successive New Zealand governments, the right to a decent home is ethically compelling and binding on New Zealand in international law. This human right does not favour one particular socio-economic system, but it requires that the selected system is consistent with human rights and democratic principles, enhances enjoyment of the right to a decent home, and honours Te Tiriti.*
- 4. The international right to a decent home must be located and applied within the unique historical, demographic, economic, social, cultural, environmental and legal context of Aotearoa.*
- 5. Te Tiriti and the right to a decent home not only place obligations on central and local government, they also place responsibilities on others, including the private sector, landlords, property managers, service-providers and tenants.*
- 6. Central and local government have a shared responsibility to do everything in their power to deliver the right to a decent home, grounded on Te Tiriti, for everyone in Aotearoa.*
- 7. The right to a decent home grounded on Te Tiriti empowers individuals, hapū, iwi and communities in their engagement with central and local government; helps policy makers strengthen their housing initiatives; and helps ensure that housing commitments are honoured.*
- 8. The right to a decent home grounded on Te Tiriti is a framework on which everyone who is committed to tackling the housing crisis can build respectful relationships, multiple partnerships and effective collaboration.*
- 9. The right to a decent home grounded on Te Tiriti requires acknowledging and addressing the impacts of colonisation, systematic dispossession of Māori from their land, and destruction of their traditional ways of living, including communal land ownership. Te Tiriti o Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples have a critically important role to play in advancing the right to a decent home in Aotearoa.*
- 10. Values, such as whanaungatanga (kinship), kaitiakitanga (stewardship), manaakitanga (respect), dignity, decency, fairness, equality, freedom, wellbeing, safety, autonomy, participation, partnership, community and responsibility, are embodied in the right to a decent home. These values, and the right to a decent home grounded on Te Tiriti, must lie at the centre of all housing-related initiatives in Aotearoa.*
- 11. All housing initiatives must comply with the seven UN 'decency' housing principles read with Te Tiriti o Waitangi: habitable; affordable; accessible for everyone; services, facilities and infrastructure; location; respect for cultural diversity; and security of tenure. If homes and housing initiatives do not comply with a 'decency' principle they are not complying with the right to a decent home, unless it can be shown that all reasonable steps have been taken to comply with the principle (see section 4).*
- 12. Because the right to a decent home includes freedoms, all restrictive housing laws, regulations, rules and practices must be fair, reasonable, proportionate and culturally appropriate.*

13. A decent home must be accessible to everyone without discrimination on prohibited grounds, such as disability, ethnicity, religion, age, gender or sexual orientation. Effective measures, designed to address the unfair disadvantage experienced by some individuals and communities, are required.

14. In accordance with international human rights treaties and declarations, ensure all individuals and communities have the opportunity for active and informed participation on housing issues that affect them. Additionally, Te Tiriti requires government to work in partnership, and share decision-making, with its Tiriti partners.

15. Central and local government must have an overarching housing strategy. The housing strategy must be based on human rights and Te Tiriti. Te Tiriti and human rights-based housing strategy must have the right to a decent home at its centre.

16. All housing initiatives must be subject to constructive accountability i.e. initiatives must be assessed against the human right to a decent home grounded on Te Tiriti. Constructive accountability must be both effective and accessible to those in need.

17. If the government's development and aid programme includes housing initiatives, it has a responsibility to ensure the initiatives are consistent with the right to a decent home and, where the recipient country has indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples.

18. The right to a decent home grounded on Te Tiriti places measurable obligations on central and local government. Full implementation of the right to a decent home may be progressively realised over time. But central and local government must take deliberate, concrete and targeted steps towards realisation of the right to a decent home. Government has a specific and continuing obligation to move as expeditiously and effectively as possible towards the human right's full implementation. Progress (or otherwise) must be tracked by suitable indicators and benchmarks.

When prioritising in relation to the right to a decent home, certain conditions apply, such as consideration of colonisation and its continuing impacts, Te Tiriti and the most disadvantaged individuals and communities, including those living in poverty.

19. Central and local government have obligations arising from the right to a decent home grounded on Te Tiriti. The obligation to respect places a responsibility on government to refrain from interfering directly or indirectly with the enjoyment of the right to a decent home grounded on Te Tiriti. The obligation to protect means that government must prevent third parties, such as private landlords, from interfering with the enjoyment of the right to a decent home grounded on Te Tiriti. The obligation to fulfil requires government to adopt all appropriate measures, including legislative, administrative and budgetary, to ensure the full realisation of the right to a decent home grounded on Te Tiriti. Breaches of these obligations may give rise to violations of the right to a decent home grounded on Te Tiriti.

20. The private sector has obligations arising from the right to a decent home. Further attention should be given to (a) clarifying the responsibilities of the private sector in relation to the right to a decent home grounded on Te Tiriti and (b) identifying suitable constructive accountability arrangements in relation to these private sector responsibilities.

21. These Guidelines provide a framework on which we can all build. All stakeholders are encouraged to develop and apply the framework with a view to enhancing the right to a decent home grounded on Te Tiriti for everyone in Aotearoa.



Section 1: Introduction

Section 1: Introduction

1. Reinforced by the international right to a decent home, a fair and effective housing system plays a vital role in society. In Aotearoa, this fundamental human right is grounded on Te Tiriti. These *Guidelines* aim to advance a housing system that is based on a set of explicit values, the human right to a decent home, Te Tiriti and evidence of what works.²
2. The *Guidelines* have six sections: This **Introduction** provides background, explains terms and outlines how the *Guidelines* can help all of us improve housing in Aotearoa.

Section 2 highlights the unique context within which the *Guidelines* are located, with a focus on colonisation and Te Tiriti.

Section 3 is the heart of the *Guidelines*: it outlines eight key features of the right to a decent home grounded on Te Tiriti.

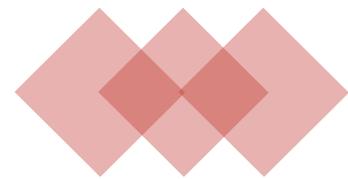
Section 4 explains the obligations or responsibilities which arise from the key features outlined in section 3 e.g. it briefly outlines a human rights approach to policy making in relation to the right to a decent home grounded on Te Tiriti.

Section 5 signals the role of the private sector in relation to the right to a decent home grounded on Te Tiriti.

The *Guidelines* provide a framework and the Conclusion points out some of the work that is needed to develop and apply this framework in the months and years ahead.

3. Four Appendices provide supplementary information and resources.
4. Each of the sections includes one or more *Guidelines*. In total, there are twenty-one *Guidelines*. Each is clearly highlighted for ease of reference.

Guideline 1: In Aotearoa, the housing system must be explicitly based on values (as outlined in Guideline 10), the international right to a decent home, Te Tiriti o Waitangi and evidence of what works.



More than a house: a decent home

5. International law usually refers to the 'right to adequate housing'. Sometimes the term the 'right to shelter' is used. However, the human rights literature is clear: the right to adequate housing is much more than shelter, bricks, mortar or a house. It is about having a *decent home*.³
6. The understanding that a home is more than a house resonates strongly with Te Ao Māori. Within this worldview, the idea of a home includes reciprocal relationships and responsibilities, as well as an abiding sense of love for Papatūānuku (the earth) to which tangata whenua belong. Kāinga is more than a home, it also means a village, relationships and responsibilities to place, people and the natural environment.⁴
7. The understanding that a home is more than a physical structure (i.e. more than bricks and mortar) also chimes with the worldview of many Pacific, Asian and other communities in Aotearoa. This understanding was a recurring theme during the consultations that preceded the drafting of these *Guidelines*. Another recurring theme was the importance of housing to the enjoyment of other human rights, including health protection, work and active participation in the community.
8. Recently published by the World Health Organization, *Housing and Health Guidelines* also take this view: "Healthy housing provides a feeling of *home*, including a sense of belonging".⁵
9. In these circumstances, the *Guidelines* do not use the term the 'right to adequate housing' or the 'right to shelter'. Instead they prefer the 'right to a warm, dry, safe, secure, affordable, accessible, healthy, decent home' - for short, the 'right to a decent home'.
10. The *Guidelines* outline what the right to a decent home, grounded on Te Tiriti, means in the unique context of Aotearoa.

Guideline 2: Grounded on Te Tiriti, the international right to a decent home is more than a right to shelter, bricks, mortar or a house. It is the human right to a warm, dry, safe, secure, affordable, accessible, healthy, decent home, as understood by Te Ao Māori. By way of shorthand, these Guidelines refer to the 'right to a decent home'.

International human rights law

11. The International Bill of Rights, which New Zealand helped to draft, provides the foundation for all international human rights. Successive governments in Aotearoa have committed to implement the International Bill of Rights, which includes the right to a decent home.⁶
12. Building on the International Bill of Rights, additional human rights agreements have been adopted and several of them, such as the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities, include the right to a decent home (see Appendix 2). The United Nations Declaration on the Rights of Indigenous Peoples includes numerous provisions that highlight the critical importance of home (kāinga) and land (whenua) to tangata whenua. Successive New Zealand governments have helped to write these additional human rights agreements and have also promised to implement them.

13. Many of the international human rights promises made by New Zealand governments are ethically compelling and they are binding in international law. The right to a decent home is one of the human rights that New Zealand has agreed to implement under binding international law. This human right is well-established in international law. It is not a one-liner – it’s not a bumper-sticker – it has substantive content. Although it is binding on New Zealand in international law, the right to a decent home is almost unknown and invisible in Aotearoa.

14. International law is silent on the socio-economic system (e.g. private, public or mixed) required for implementation of the right to a decent home.⁷ This deliberately neutral position is subject to three important conditions. The socio-economic system - or road - chosen:

- must be consistent with human rights and democratic principles
- must reach the destination i.e. it must enhance enjoyment of the right to a

decent home, including for the most disadvantaged, such as those living in poverty

c) in Aotearoa, the road chosen - and destination - must be consistent with Te Tiriti.

15. In addition to its binding international legal obligations in relation to the right to a decent home, New Zealand has committed to reaching Sustainable Development Goals, including: “By 2020, ensure access for all to adequate, safe and affordable housing and basic services”.⁸

Guideline 3: Agreed by successive New Zealand governments, the right to a decent home is ethically compelling and binding on New Zealand in international law. This human right does not favour one particular socio-economic system, but it requires that the selected system is consistent with human rights and democratic principles, enhances enjoyment of the right to a decent home, and honours Te Tiriti.

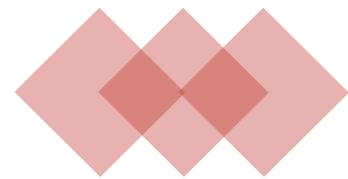
The unique context of Aotearoa

16. Internationally there are thousands of books, articles, reports and guidance on what the right to a decent home means and how to apply it in practice.⁹ But the literature on the right to a decent home in the distinctive context of Aotearoa is extremely limited.

17. Many countries have placed the right to a decent home in their national law and this has led to law cases which clarify what the human right means.¹⁰ But New Zealand has not placed the right to a decent home in its national law and so there are no law cases in Aotearoa to throw light on the meaning of this human right.¹¹

18. Although the existing international literature, as well as law cases decided in other countries, provide useful guidance on what the right to a decent home means, we must consider and apply this human right within the unique historical, demographic, economic, social, cultural, environmental and legal context of Aotearoa.

19. These *Guidelines* outline what the right to a decent home means in the unique context of Aotearoa. This context includes: the systematic dispossession of Māori land and the ongoing impacts of colonisation; Te Tiriti and the crucial importance of ensuring the culture of tangata



whenua, the uniquely indigenous people of Aotearoa, is recognised and flourishes; enduring discrimination on race, ethnicity, religion, disability, gender, sexual orientation and other prohibited grounds; the need for a dynamic inclusive multiculturalism grounded on Te Tiriti and underpinned by respect (manaakitanga) and human rights for all. This unique context is outlined in the following paragraphs.

Guideline 4: The international right to a decent home must be located and applied within the unique historical, demographic, economic, social, cultural, environmental and legal context of Aotearoa.

Rights and responsibilities

20. When discussing human rights, the focus is usually on the rights (or 'entitlements') of individuals and the obligations (or 'responsibilities' or 'duties') of government. Although this understanding of human rights is very important, it is not the complete picture.

21. Human rights and Te Tiriti not only place obligations on central and local government, they also place responsibilities or duties on others. For example, the Universal Declaration of Human Rights sets out a catalogue of rights and it adds, "everyone has duties to the community in which alone the free and full development of their personality is possible" (article 29(1)). For its part, Te Tiriti bestows "rights and duties of citizenship" (article 3). So, both the Universal Declaration of Human Rights and Te Tiriti place responsibilities on *individuals*.¹²

22. This understanding has important implications for the right to a decent home. It means this human right, grounded on Te Tiriti, places responsibilities on government, the private

sector and individuals. For example, the private sector has a responsibility to support Māori housing aspirations and needs, such as intergenerational living and care for Papatūānuku (the earth). Also, private landlords and tenants have a responsibility not to discriminate on prohibited grounds, such as disability, ethnicity, religion, age, gender or sexual orientation.

23. The following sections of the *Guidelines* outline (a) the rights of individuals, communities, hapū and iwi (rights-holders) and (b) the responsibilities of government, private sector, landlords, property managers, service-providers and tenants (duty-bearers).

Guideline 5: Te Tiriti and the right to a decent home not only place obligations on central and local government, they also place responsibilities on others, including the private sector, landlords, property managers, service-providers and tenants.

Central and local government: a shared responsibility

24. As emphasised in the preceding paragraphs, human rights, including the right to a decent home grounded on Te Tiriti, place obligations on central and local government. In relation to housing, the roles of central and local government are deeply complementary. They share common values, such as wellbeing, which is enshrined in the Local Government Act 2002 and Treasury's Living Standards Framework. They must assist and enable each other.

Central and local government have a shared responsibility to do everything in their power to deliver the right to a decent home for everyone in Aotearoa.

Guideline 6: Central and local government have a shared responsibility to do everything in their power to deliver the right to a decent home, grounded on Te Tiriti, for everyone in Aotearoa.

How can the Guidelines help?

25. Grounded on Te Tiriti, the right to a decent home has several constructive roles. For example, it can:

- empower individuals, hapū, iwi and communities
- help to improve, deepen and strengthen housing policies and initiatives
- hold accountable those with responsibilities arising from the right to a decent home grounded on Te Tiriti.

26. But these roles depend upon a degree of clarity about what the right to a decent home, grounded on Te Tiriti, means:

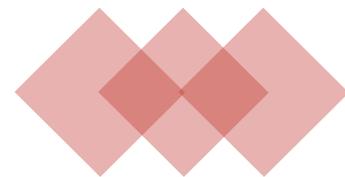
- individuals, hapū, iwi and communities cannot be meaningful rights-holders (as opposed to 'service-users'), if the right to a decent home is unclear
- central and local government, the private sector and others cannot be responsible duty-bearers, if the right to a decent home is unclear
- policy makers cannot use the right to a decent home to improve their initiatives if they do not know what it means
- it is impossible to hold anyone accountable for the right to a decent home if nobody knows who is accountable for what.

27. For these reasons, the *Guidelines* clarify what the right to a decent home, grounded on Te Tiriti, means. Once the meaning is clearer, the human right can:

- empower individuals, hapū, iwi and communities in their engagement with central and local government and others
- help policy makers strengthen their housing initiatives
- help ensure that the right to a decent home and Te Tiriti are honoured.

28. More specifically, the *Guidelines* can help to:

- advance the partnership between kāwanatanga (Crown) and rangatiratanga (hapū and iwi) in the context of housing
- ensure that critically important values, such as kaitiakitanga (stewardship), whanaungatanga (kinship), manaakitanga (respect), fairness, decency, equality, wellbeing and community are at the centre of all housing initiatives
- advance Māori housing aspirations and needs
- improve the Government Policy Statement on Housing and Urban Development, Housing Acceleration Fund, New Zealand



- Building Code, Residential Tenancies Act, and governmental regulatory frameworks
- e) ensure that key features of housing (e.g. habitability, affordability, accessibility, security of tenure) are given sustained and systematic attention
 - f) accelerate universal design so there is increased supply of housing suitable for people of all abilities and stages of life, including disabled people¹³
 - g) ensure an increase in accessible housing
 - h) improve access to home ownership, and other forms of secure housing, for everyone
 - i) eliminate homelessness¹⁴

- j) hold central and local government, and other duty-bearers, accountable for their responsibilities arising from the right to a decent home grounded on Te Tiriti.

Guideline 7: The right to a decent home grounded on Te Tiriti empowers individuals, hapū, iwi and communities in their engagement with central and local government; helps policy makers strengthen their housing initiatives; and helps ensure that housing commitments are honoured.

Limitations and annual reviews

29. By outlining what the right to a decent home, grounded on Te Tiriti, means in the unique context of Aotearoa, the *Guidelines* provide a framework for respectful relationships, multiple partnerships and effective collaboration across the country.

30. The *Guidelines* do not aim to provide an assessment of the right to a decent home grounded on Te Tiriti i.e. they do not collate evidence and make evaluations. But the *Guidelines* will help stakeholders make such assessments in the future. Neither are they comprehensive, nor a detailed tool kit on how to operationalise the right to a decent home grounded on Te Tiriti. The *Guidelines* are a framework for this and other mahi in the future.

31. The *Guidelines* did not begin with a blank page, they are located within the parameters provided by New Zealand's international human rights agreements and Te Tiriti o Waitangi. Where appropriate they refer to existing housing codes in Aotearoa, such as Healthy Homes Standards. They draw from a wide range of national and international experience and literature. The *Guidelines* will be reviewed and, as necessary, revised every 12 months.

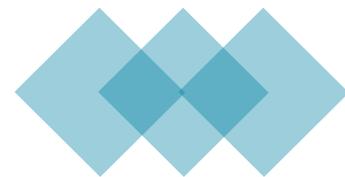
Guideline 8: The right to a decent home grounded on Te Tiriti is a framework on which everyone who is committed to tackling the housing crisis can build respectful relationships, multiple partnerships and effective collaboration.



Section 2: Colonisation and Te Tiriti o Waitangi

Section 2: Colonisation and Te Tiriti o Waitangi

32. The *Guidelines* outline what the right to a decent home means in the unique context of Aotearoa. This context includes colonisation, the systematic dispossession of Māori from their land, ongoing impacts of colonisation and Te Tiriti. This section briefly highlights this context, as well as the United Nations Declaration on the Rights of Indigenous Peoples. Key additional resources on these issues are provided in Appendix 4.
33. It is impossible to implement the human right to a decent home in Aotearoa today without recognising its colonial history and the lasting impacts of colonisation on Māori rights and wellbeing. The arrival of Pākehā settlers resulted in colonisation and the systematic dispossession of Māori from their land. Generations of policies disenfranchised tangata whenua and destroyed their traditional ways of living, including communal land ownership.
34. Taken by violence, confiscation and purchase, tangata whenua lost control of 95% of their land. Purchases often breached Te Tiriti o Waitangi. The Native Land Court converted customary collective ownership into individual title, an alien concept to tangata whenua and at odds with tikanga Māori. This process accelerated Māori alienation from their land. Today, land collectively owned by Māori accounts for less than 5% of Aotearoa's total land area.
35. After most of the land was taken from tangata whenua, colonial housing policies made it difficult or impossible for Māori to access home ownership. They were hampered in their efforts to maintain or build traditional forms of housing on communally owned land (papakāinga). As individuals, they struggled to access adequate urban housing. They faced racism in both access to mortgage home ownership and the private rental market.
36. Today, some local and national government rules and practices, as well as Pākehā legal assumptions about individual ownership and denial of rangatiratanga (authority), continue to impede Māori communal and other housing initiatives. Māori have lower rates of home ownership (28%) compared to New Zealand Europeans (57%). Colonial and discriminatory policies were designed to be inequitable and their impact on the housing of Māori persists to this day. At the end of her visit to Aotearoa in 2020, the UN Special Rapporteur on the right to adequate housing likened this to “a dark shadow that hangs over the country”.¹⁵



Te Tiriti o Waitangi

37. There is a deep synergy between Te Ao Māori, Te Tiriti and the United Nations Declaration on the Rights of Indigenous Peoples ('Declaration'). Each one bears upon the right to a decent home in Aotearoa. Te Tiriti is interpreted in light of the Declaration. Both instruments are briefly outlined in these paragraphs.
38. Te Tiriti, the country's foundational document, establishes the relationship between Māori and the Crown. It affirms the status of whānau, hapū and iwi as tangata whenua and recognises their pre-existing rangatiratanga. It envisages a sharing of power and authority and a partnership of equals. Te Tiriti requires government to work in partnership, and share decision-making, with its Tiriti partners, and to respect and support the rangatiratanga authority of tangata whenua.
39. Articles 1 and 2 of Te Tiriti provide for co-existing systems of governance: iwi and hapū rangatiratanga and Crown kāwanatanga authority. Article 3 promises Māori equal enjoyment of citizenship rights, placing obligations on the Crown to ensure equity for Māori alongside other New Zealanders. But the Crown's commitment to Māori under Te Tiriti goes much further than a promise of equitable treatment. It requires putting right the wrongs committed and damage inflicted, honouring the pre-existing Te Tiriti and indigenous human rights of tangata whenua, and reconciliation.
40. In the context of the right to a decent home, article 2 requires closer consideration. It affirms tangata whenua rights to "te tino rangatiratanga o ratou wenua, o ratou kāinga me o ratou taonga katoa" (the absolute authority over their lands, homes/villages and all their treasures). Rangatiratanga entails the authority to manage traditional territories, manaaki (care for) and tiaki (protect) the people, lands and resources within them. In the English version of article 2, this is referred to as the "full, exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess".
41. In short, the right to a secure, peaceful, decent home – both for tangata whenua and tangata Tiriti – is at the core of the Tiriti agreement.¹⁶ Claims of breaches of these rights are currently being examined by the Waitangi Tribunal in its Housing Policy and Services Kaupapa Inquiry (Wai 2750).

United Nations Declaration on the Rights of Indigenous Peoples

42. Affirmed by New Zealand in 2010, the Declaration complements New Zealand's constitutional obligations under Te Tiriti. It reinforces the Crown's obligations to work in partnership, actively protect rangatiratanga, and advance Māori equity.
43. The Declaration reflects existing international human rights standards, including the right to a decent home, and outlines how they apply in the specific circumstances of indigenous peoples. It reaffirms indigenous peoples' rights to their lands, territories and resources, and to their culture, identity and way of life.
44. At the core of the Declaration is the rights of indigenous peoples to self-determination, to make their own decisions and control their own destiny, as well as to participate in government decision-making that affects them. The right of self-determination is also found in international human rights treaties ratified by New Zealand, such as the International Covenant on Civil and Political Rights (article 1(1)).
45. Appendix 2 provides links to some of the provisions of the Declaration which are especially significant in the context of the human right to a decent home.

Conclusion

46. The systematic dispossession of Māori land, ongoing impacts of colonisation, Te Tiriti and the Declaration inform these *Guidelines*. The *Guidelines* are also informed by the values that are integral to Te Ao Māori. One of the key features of a right to a decent home grounded on Te Tiriti, these values are outlined at the beginning of the next section.

Guideline 9: The right to a decent home grounded on Te Tiriti requires acknowledging and addressing the impacts of colonisation, systematic dispossession of Māori from their land, and destruction of their traditional ways of living, including communal land ownership. Te Tiriti o Waitangi and the United Nations Declaration on the Rights of Indigenous Peoples have a critically important role to play in advancing the right to a decent home in Aotearoa.



Section 3: Key features of the right to a decent home grounded on Te Tiriti o Waitangi

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47. This section outlines eight key features of the right to a decent home grounded on Te Tiriti. Most of the key features are interconnected. For example, it is not possible to compartmentalise equity, equality and non-discrimination; participation; and constructive

accountability which includes redress. So, it is important that the interconnected key features are read together, and with Te Tiriti and the United Nations Declaration on the Rights of Indigenous Peoples.

A. Values

48. All societies, institutions and processes are driven by one set of values or another. Whether explicit or implicit, values are exceedingly important. They shape lives, communities and the future. They also shape human rights. The following values should be woven into all the features of the right to a decent home grounded on Te Tiriti.

49. Te Ao Māori is underpinned by whakapapa (genealogy) and whanaungatanga (kinship). In this worldview, relationships between people - past, present and future - are of central importance. Also, the relationship between people and the natural world is crucial.

50. Kaitiakitanga (stewardship), a system of reciprocal rights and responsibilities, arises from these relationships. Kaitiakitanga includes intergenerational responsibilities and it also has spiritual dimensions. Mana (authority, power, leadership) requires the maintenance of these relationships and responsibilities.

51. Te Ao Māori reflects an indivisible relationship between Māori and whenua which is reinforced by Te Tiriti and the United Nations Declaration

on the Rights of Indigenous Peoples. As discussed in the Introduction, the idea of a home includes a web of relationships and responsibilities, as well as an abiding sense of love for Papatūānuku (the earth) to which tangata whenua belong.

52. In Aotearoa, our values encompass Te Ao Māori and the worldviews of other communities. These values not only include whakapapa, whanaungatanga, kaitiakitanga and mana (as outlined above), they also include manaakitanga (respect), dignity, decency, fairness, equality, freedom, wellbeing, safety, autonomy, participation, partnership, community and responsibility.

53. These values are embodied in the human right to a decent home and Te Tiriti. Crucially, the *Guidelines* are driven by these values and the right to a decent home grounded on Te Tiriti. This combination of values, the right to a decent home and Te Tiriti should also lie at the centre of legislation, strategies, policies, programmes and other housing-related initiatives in Aotearoa.



Guideline 10: Values, such as whanaungatanga (kinship), kaitiakitanga (stewardship), manaakitanga (respect), dignity, decency, fairness, equality, freedom, wellbeing, safety, autonomy, participation, partnership, community and responsibility, are embodied in the right to a decent home. These values, and the right to a decent home grounded on Te Tiriti, must lie at the centre of all housing-related initiatives in Aotearoa.

B. The UN 'decency' housing principles

54. Since 1991, the United Nations has repeatedly highlighted seven principles which must be considered when determining whether housing is 'adequate' or, to use the language of these *Guidelines*, 'decent'.¹⁷ The UN 'decency' housing principles overlap. The following paragraphs briefly introduce each of the seven 'decency' principles which must be read with Te Tiriti and the United Nations Declaration on the Rights of Indigenous Peoples.

55. Habitable

Housing must provide for adequate space and protection from cold, damp, heat, rain, wind, structural hazards, disease and other threats to health. It should provide protection from, and mitigate, climate change.

The *Healthy Homes Standards*, established in the Residential Tenancies Act, and *HomeFit* and *Homestar*, developed by the New Zealand Green Building Council, elaborate what the habitable 'decency' principle means, subject to two qualifications. First, these codes should be revisited by Te Tiriti partners to ensure they conform to Te Tiriti. Second, the codes are a non-exhaustive elaboration of the right to a decent home in Aotearoa.¹⁸

56. Affordable

Housing costs, including for energy, should not compromise the ability of people to afford other reasonable needs. Tenants should be protected by appropriate means against unreasonable rent levels and increases.

57. Accessible

Access has several dimensions, for example, physical, systemic (i.e. without discrimination) and financial (i.e. affordable, see preceding paragraph).

A decent home must be accessible to *everyone*. This is not happening in Aotearoa today. The housing crisis is not confined to disadvantaged groups. A very large number of people who are not historically disadvantaged do not have access to a decent home. However, disadvantaged groups are disproportionately affected by today's crisis. For example, the rates of home ownership in relation to Pacific peoples, Māori and New Zealand Europeans are 19%, 28% and 57%, respectively.¹⁹ Only 2% of the housing stock is physically accessible for disabled people but 1 in 6 people require some form of adaptation.

Some of the disadvantaged groups that are finding it especially hard to have access to a decent home are:

- a) those living in poverty, including people who are homeless e.g. people living in carports, garages, cars, lean-tos, sleepouts, makeshift housing, temporary accommodation, 'couch-surfing', and on the street;²⁰
- b) tangata whenua;
- c) Pacific people²¹ and other ethnic minorities;
- d) faith-based communities;
- e) disabled people;

- f) children and young people;
- g) women;
- h) rainbow communities;²²
- i) older people;
- j) beneficiaries;
- k) migrants.

Some of these groups suffer from overlapping forms of disadvantage e.g. disabled Māori and Pacific women.

Effective measures to ensure everyone has access to a decent home must give particular attention to disadvantaged individuals, communities and populations.

58. Services, facilities and infrastructure

Housing must ensure facilities essential for health, security, and comfort, including for Aotearoa's rural and remote communities. For example, residents should have access to safe drinking water, sanitation and washing facilities, refuse disposal and emergency services, and energy for heating, lighting, and cooking.

59. Location

Housing must allow access to employment options, healthcare services, accessible transport routes, schools including te reo education, childcare and other social facilities, including for rural and remote communities. Housing should not be so close to pollution sources that inhabitants' health is jeopardised.

60. Respect for cultural diversity

Housing has a very important cultural dimension. In Aotearoa, which aspires to a dynamic inclusive multiculturalism grounded on Te Tiriti, this dimension is crucial. For example, Māori, Pacific people and numerous culturally diverse communities have models

of living that include the extended family (whānau or aiga). The national housing system is required to reflect our cultural diversity and Te Tiriti foundations: one model does not suit all. Also, regeneration and other projects must not sacrifice places of special cultural significance.²³

61. Security of tenure

Everyone should have security of tenure which guarantees legal protection, including due process in relation to eviction, discrimination, harassment and other unfair treatment. Tenure, which has a cultural dimension, takes a variety of forms, including Māori systems of land tenure, owner-occupation, rental (public and private), individual and collective, cooperative housing, social housing and emergency housing. It should take account of the interests of children, disabled people, at-risk adults, all family types, and people of different stages of life and cultures. Tenure places obligations on all parties, including tenants who have a responsibility to treat with respect other occupiers, landlords, neighbours and their community.

62. Conclusion on 'decency' principles.

One way for individuals, communities, government and the private sector to implement some of the UN 'decency' housing principles is to promote universal design. Universal design advances inclusive, accessible, healthy buildings and environments, and respect for cultural diversity.²⁴ It considers people throughout the life cycle from childhood to old age, and is alert to different scenarios, including disability. The importance of security of tenure should not be overlooked. Tenure insecurity contributes to a major housing problem in Aotearoa: high transience among renters.



Guideline 11: All housing initiatives must comply with the seven UN ‘decency’ housing principles read with Te Tiriti o Waitangi: habitable; affordable; accessible for everyone; services, facilities and infrastructure; location; respect for cultural diversity; and security of tenure. If homes and housing initiatives do not comply with a ‘decency’ principle they are not complying with the right to a decent home, unless it can be shown that all reasonable steps have been taken to comply with the principle (see section 4).

C. Freedoms and entitlements

63. The right to a decent home includes both freedoms (e.g. freedom from discrimination and unlawful eviction) and entitlements (e.g. the provision of temporary emergency housing when needed). Freedoms tend to be

less costly than entitlements.

Guideline 12: Because the right to a decent home includes freedoms, all restrictive housing laws, regulations, rules and practices must be fair, reasonable, proportionate and culturally appropriate.

D. Equity, equality and non-discrimination

64. Housing must be equally accessible to all, including those living in poverty, Māori, Pacific people, ethnic minorities, disabled people, women, children, people living in rural and remote areas, rainbow communities, beneficiaries and other disadvantaged individuals and communities. Te Tiriti and the right to a decent home require effective measures, specifically designed to address unfair disadvantage, including the continuing impacts of colonisation on tangata whenua (see section 2).

65. In Aotearoa, policymakers often call for ‘equitable’ measures. The human rights principles of *equality* and *non-discrimination* are similar to *equity*. All three concepts are important and have a social justice

component. In some respects, equality and non-discrimination, being reinforced by law, are more powerful than equity. For example, if the government does not take effective steps to tackle discrimination and inequality in housing, it can be held to account and required to take remedial measures. Equity, on the other hand, is not usually reinforced by law.

Guideline 13: A decent home must be accessible to everyone without discrimination on prohibited grounds, such as disability, ethnicity, religion, age, gender or sexual orientation. Effective measures, designed to address the unfair disadvantage experienced by some individuals and communities, are required.

E. Participation

66. All individuals and communities are entitled to active and informed participation on issues relating to their housing, including policy making and accountability. Te Tiriti requires government to work in partnership, and share decision-making, with its Tiriti partners. The United Nations Declaration on the Rights of Indigenous Peoples highlights the right to free, prior and informed consent in relation to initiatives, including housing-related initiatives, that affect indigenous peoples. The Convention on the Rights of Persons with Disabilities includes an obligation to actively involve disabled people in all issues, including housing, that affect them. Under the Convention on the Rights of the Child,

all children may participate in decisions that affect them, in accordance with their age and maturity. These and other national and international human rights commitments affirm the democratic principle of ‘nothing about us, without us’.

Guideline 14: In accordance with international human rights treaties and declarations, ensure all individuals and communities have the opportunity for active and informed participation on housing issues that affect them. Additionally, Te Tiriti requires government to work in partnership, and share decision-making, with its Tiriti partners.

F. A human rights-based housing strategy grounded on Te Tiriti

67. Realisation of the right to a decent home grounded on Te Tiriti does not happen spontaneously, it requires an overarching housing strategy.

68. A housing strategy operates at a higher level than a housing policy or programme. It has a vision of change over time and engages numerous bodies, including central and local government. It coordinates a wide range of government departments, laws, policies, programmes and initiatives that, when taken together, create a housing system.

69. Numerous human rights contribute constructively to a housing strategy, including the rights to privacy, health protection, water and sanitation, participation, and cultural life. However, a human rights-based housing strategy grounded on Te Tiriti must have the right to a decent home at its centre.

70. At the end of her visit to Aotearoa in 2019, the United Nations Special Rapporteur on the right to adequate housing affirmed the following recommendation which was made by a United Nations committee of independent human rights experts in 2018: “The Committee recommends that [New Zealand] adopt a human rights-based national housing strategy”.²⁵ In 2018, the Special Rapporteur published a report which sets out *Key Principles of a Rights-based Housing Strategy* (see Appendix 3).

Guideline 15: Central and local government must have an overarching housing strategy. The housing strategy must be based on human rights and Te Tiriti. The Te Tiriti and human rights-based housing strategy must have the right to a decent home at its centre.



G. Constructive accountability

71. Effective and accessible accountability is a crucial feature of human rights, including the right to a decent home. Without accountability, the right to a decent home can become an empty promise. Accountability need not be about blame and punishment, it can be about identifying what works, so it can be repeated, and what does not work, so it can be adjusted. This is sometimes called ‘constructive accountability’.
72. Accountability is often conflated with monitoring, but monitoring (e.g. the collection of information and data) is only one step towards accountability. Accountability can be understood as having three elements: *monitoring*, *review* (including independent review) in relation to human rights and other standards, and *redress* (or ‘remedial action’).
73. The review element can be carried out by a political body, such as parliament or a local council, *and* by one or more independent bodies, such as an integrity agency (see next paragraph). A political body’s review is fortified by an independent body’s review.
74. Accountability comes in many forms e.g. national and local elections, parliament and local councils, courts and tribunals, civil society organisations and the media. Besides courts and tribunals, the following bodies provide forms of *independent* accountability: Waitangi Tribunal, Human Rights Commission, Ombudsman, Office of the Children’s Commissioner, Privacy Commissioner, Office of the Auditor General, Health and Disability Commissioner, the Independent Police Conduct Authority, and similar independent bodies established by Acts of Parliament. These bodies are sometimes known as ‘integrity agencies’.
75. All housing initiatives must be subject to effective, accessible and constructive accountability in relation to the right to a decent home grounded on Te Tiriti. This does not require an amendment to the New Zealand Bill of Rights Act. The right to a decent home could be inserted into existing housing legislation, such as the Kāinga Ora—Homes and Communities Act 2019.²⁶ Existing bodies could be given the capability and capacity to hold accountable those with responsibilities to implement the right to a decent home grounded on Te Tiriti. Whether or not the Tenancy Tribunal could become an effective accountability mechanism in relation to the right to a decent home grounded on Te Tiriti is a matter for inquiry.
76. If they wish, relevant integrity agencies could revisit and refresh their role in relation to Te Tiriti and one or more aspects of the right to a decent home e.g. non-discrimination, children, privacy or fairness.
77. Because constructive accountability has to be accessible to all parties in relation to the right to a decent home grounded on Te Tiriti, advice and support in relation to accountability should be available to rights-holders who are in need. This is an access to justice issue.

Guideline 16: All housing initiatives must be subject to constructive accountability i.e. initiatives must be assessed against the human right to a decent home grounded on Te Tiriti. Constructive accountability must be both effective and accessible to those in need.

H. International assistance and cooperation

78. In line with the Sustainable Development Goals and human rights treaties, high-income countries, like New Zealand, have an obligation to provide international assistance and cooperation to low-income and other countries in need.²⁷ Global inequality cannot be reduced without such support which includes development, humanitarian aid and assistance, disaster relief, technical advice and the transfer of skills (for short, 'development and aid').

79. The government's development and aid programme, and its delivery, must be consistent with New Zealand's human rights obligations, such as the Convention on the Rights of Persons with Disabilities. If the development and aid include housing initiatives, the government has a responsibility to ensure the initiatives are consistent with human rights principles and standards, including the international right to a decent

home. Although these *Guidelines* are designed to reflect the unique context of Aotearoa, much of their content has a close bearing upon the government's provision of international assistance and cooperation in relation to housing.

80. If the recipient country has indigenous peoples, the government's development and aid programme is required to comply with the United Nations Declaration on the Rights of Indigenous Peoples.

Guideline 17: If the government's development and aid programme includes housing initiatives, it has a responsibility to ensure the initiatives are consistent with the right to a decent home and, where the recipient country has indigenous peoples, the United Nations Declaration on the Rights of Indigenous Peoples.



Section 4: Obligations and Violations

Section 4: Obligations and Violations

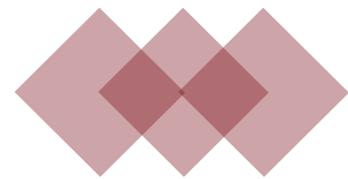
81. While the preceding section outlines the eight key features of the right to a decent home grounded on Te Tiriti, the present section looks at some of the obligations that arise in relation to these key features. Having identified the key features, and some of the obligations arising from them, it becomes possible to identify possible violations. This section signals some of the obligations, and possible violations, arising from the right to a decent home grounded on Te Tiriti.

82. The international right to a decent home is subject to progressive realisation and resource availability, both of which bear upon obligations and violations.²⁸ So, a few comments are required about progressive realisation and resource availability before turning to obligations and violations.

Progressive realisation

83. The right to a decent home gives rise to reasonable entitlements and obligations. It would be unreasonable to expect the right to a decent home to be implemented overnight. According to international human rights law, full implementation of the right to a decent home may be progressively realised over time. But progressive realisation must not be used as an escape hatch by the government to avoid or delay implementation of its binding international legal obligations.

84. For this reason, the United Nations has confirmed that the government is required to take “steps which are deliberate, concrete and targeted as clearly as possible towards” realisation of the right to a decent home. Also, the government has a specific and continuing obligation “to move as expeditiously and effectively as possible towards” full implementation of the right to a decent home.²⁹



Indicators and benchmarks

85. The United Nations has also confirmed that progressive realisation of the right to a decent home, or the lack of it, can and should be tracked by using suitable indicators and benchmarks.³⁰ The indicators require disaggregation on prohibited grounds of discrimination, such as ethnicity, disability, gender and age.

86. By way of Tiriti partnership and a consultative process, attention should be given to

identifying suitable national indicators for the right to a decent home in Aotearoa. The indicators will have to reflect Te Ao Māori, tikanga and Te Tiriti.

87. Additionally, communities should be encouraged to identify indicators that are meaningful in their neighbourhoods. In this way, communities can hold accountable those who are responsible for the right to a decent home in their localities.

Core obligations of immediate effect

88. The United Nations recognises some features of the right to a decent home are so important that they give rise to core obligations of immediate effect i.e. these features are not subject to progressive realisation over time. For example, the obligation of the government to refrain from direct discrimination against disabled people is not subject to progressive realisation, it is a core obligation of immediate effect. Another core obligation of immediate effect is the obligation to provide temporary emergency housing for people who are homeless as they transition to a decent home which enjoys the key features highlighted in these *Guidelines* (section 3).³¹

89. The following sub-section 'Obligations to respect, protect and fulfil human rights' explains that some types of human rights obligations are more costly than others. For example, obligations to respect (which are largely negative obligations), are less costly than obligations to fulfil (which are positive

obligations subject to progressive realisation). This distinction is important in the context of core obligations. Core obligations usually include respect obligations (e.g. the obligation to refrain from direct discrimination against disabled people) and less often include fulfil obligations (e.g. obligations with significant budgetary implications). Nonetheless, core obligations occasionally extend to positive obligations with budgetary implications, such as the provision of temporary emergency (i.e. transitional) housing for people who are homeless. As the United Nations puts it, without such core obligations human rights law "would be largely deprived of its *raison d'être*."³²

90. By way of Tiriti partnership and a consultative process, attention should be given to elaborating the core obligations of immediate effect of the right to a decent home in Aotearoa.

Resources, priorities and trade-offs

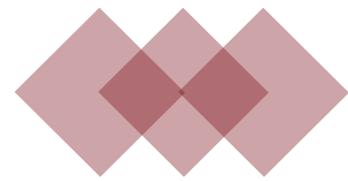
91. The human right to a decent home is subject to resource availability. Even high-income countries, such as Aotearoa, cannot avoid difficult decisions about resource allocation. Priorities have to be set and trade-offs have to be made.

92. Prioritisation and trade-offs are common features of every approach to policy making. The *human rights approach*, grounded on Te Tiriti, is distinctive because of the conditions it imposes on the policy making process, such as:³³

- a) explicit acknowledgment of colonisation and serious attention to its continuing impacts;
- b) honouring of Te Tiriti and the partnership between kāwanatanga (Crown) and rangatiratanga (hapū and iwi) e.g. government to work in partnership and share decision-making with its Tiriti partners, and advance equitable outcomes for Māori;
- c) priority-setting inevitably requires value judgements, so it is crucial to be explicit and clear about which values are being relied upon;
- d) there must be a time-bound strategy or plan of action, and housing is no exception;
- e) equity, equality and non-discrimination rule out any trade-offs which would result in, or deepen, unequal and discriminatory outcomes;
- f) priority should be given to the poorest, most vulnerable, and most disadvantaged individuals and communities;
- g) priority-setting must involve the active and informed participation of those affected (in relation to tangata whenua, see (b) above);
- h) no trade-offs are permitted in relation to core obligations of immediate effect;
- i) constructive accountability mechanisms are needed to ensure trade-offs are fair and equitable.

These conditions apply to policy making in relation to the right to a decent home grounded on Te Tiriti.

Guideline 18: The right to a decent home grounded on Te Tiriti places measurable obligations on central and local government. Full implementation of the right to a decent home may be progressively realised over time. But central and local government must take deliberate, concrete and targeted steps towards realisation of the right to a decent home. Government has a specific and continuing obligation to move as expeditiously and effectively as possible towards the human right's full implementation. Progress (or otherwise) must be tracked by suitable indicators and benchmarks. When prioritising in relation to the right to a decent home, certain conditions apply, such as consideration of colonisation and its continuing impacts, Te Tiriti and the most disadvantaged individuals and communities, including those living in poverty.



Obligations to respect, protect and fulfil human rights

93. It has been clear since the 1980s that human rights give rise to different types of obligations, widely known as obligations to *respect*, *protect* and *fulfil* human rights.³⁴ Understanding that human rights give rise to these obligations makes it easier to hold central and local government accountable and to identify human rights violations. The obligations to respect and protect often tend to be less costly than the obligation to fulfil.³⁵
94. The human rights obligations to respect, protect and fulfil apply to the right to a decent home. These obligations are inextricably connected with the Crown's obligations arising from Te Tiriti, for example, to actively protect Māori rangatiratanga over taonga, including land. By way of illustration, some of these obligations, and corresponding violations, are outlined in the following paragraphs.
95. The obligation to respect places a responsibility on government to refrain from interfering directly or indirectly with the enjoyment of the right to a decent home grounded on Te Tiriti. For example, government must neither discriminate in the provision of state housing, nor put in place restrictive housing regulations that are unfair, culturally inappropriate, or lack a clear rationale.
96. Violations of the obligation to *respect* include:
- forcible eviction from state housing without procedural fairness;
 - direct discrimination in relation to state housing;
 - barriers to housing that are unfair, culturally inappropriate, inconsistent with Te Tiriti and community needs, or lack a clear rationale e.g. unjustified restrictive housing regulations;
 - a housing initiative that fails to respect Te Tiriti;
- indirect discrimination in relation to state housing e.g. an inadequate supply of accessible state houses for disabled people;
 - damp state housing causing ill-health of tenants;
 - state housing with unreasonable rent levels and increases;
 - state-owned enterprises that pollute and cause ill-health of inhabitants (whether in state or private housing).
97. The obligation to protect means that government must prevent third parties, such as private landlords, from interfering with the enjoyment of the right to a decent home grounded on Te Tiriti. For example, government must take all reasonable steps to ensure that private landlords and their managers (a) do not discriminate in the provision of housing and (b) provide decent homes that are consistent with the key features outlined in these *Guidelines* e.g. warm, dry, safe, healthy, accessible and affordable. Government has a responsibility to put in place a legislative framework that provides tenants with security of tenure in the private sector.
98. Violations of the obligation to *protect* include ineffective regulation to stop:
- private enterprises from developing Māori land without free, prior and informed consent of mana whenua;
 - private landlords and property managers discriminating against individuals applying for a tenancy, for example, on the grounds of ethnicity, disability, age, religion or sexual orientation;
 - private landlords harassing their tenants;
 - private landlords renting accommodation which is likely to cause the ill-health of tenants e.g. mouldy, vermin-infested housing;

- e) private enterprises polluting and causing ill-health of inhabitants (whether the inhabitants are in state or private housing);
- f) faith-based philanthropic landlords granting tenancies on condition that tenants undertake religious instruction.

99. The *obligation to fulfil* requires government to adopt all appropriate measures, including legislative, administrative and budgetary, to ensure the full realisation of the right to a decent home grounded on Te Tiriti. For example, government must provide temporary emergency housing for people who are homeless and also put in place an effective Te Tiriti and human rights-based housing strategy for all.

100. Violations of the obligation to *fulfil* include:
- a) failure to implement provisions of Te Tiriti which relate to kāinga;
 - b) failure to prepare a Te Tiriti and human rights-based housing strategy;
 - c) homelessness;
 - d) failure to provide temporary emergency housing for people who are homeless;
 - e) failure to take all reasonable steps towards a housing system, whether private, public or mixed, which ensures a decent affordable home for everyone;
 - f) failure to put in place transparent, effective and accessible accountability arrangements for the right to a decent home grounded on Te Tiriti.

101. *Conclusion.* Obligations and violations highlight the crucial role of constructive accountability in relation to the right to a decent home grounded on Te Tiriti. Constructive accountability - monitoring, review (including independent review) and redress - assesses whether obligations are being kept, violations are occurring and, if appropriate, remedial action is taken (see section 3 and 'Constructive accountability').

Guideline 19: Central and local government have obligations arising from the right to a decent home grounded on Te Tiriti. The obligation to respect places a responsibility on government to refrain from interfering directly or indirectly with the enjoyment of the right to a decent home grounded on Te Tiriti. The obligation to protect means that government must prevent third parties, such as private landlords, from interfering with the enjoyment of the right to a decent home grounded on Te Tiriti. The obligation to fulfil requires government to adopt all appropriate measures, including legislative, administrative and budgetary, to ensure the full realisation of the right to a decent home grounded on Te Tiriti. Breaches of these obligations may give rise to violations of the right to a decent home grounded on Te Tiriti.



Section 5: Private sector

Section 5: Private sector

102. This section very briefly outlines the role of the private sector in relation to the right to a decent home grounded on Te Tiriti.

103. The private sector plays a very significant role in Aotearoa's housing system. Investors, businesses and individuals develop, build, sell and rent housing. Financial institutions provide access to credit. Private households - often supported by property managers - purchase, build or improve their own housing and may rent it to others. The private sector has the power to affect, both positively and negatively, enjoyment of the right to a decent home grounded on Te Tiriti.

104. The government has a primary responsibility to implement the right to a decent home. It also has a responsibility to prevent the private sector from interfering with the enjoyment of the right to a decent home (see section 4). But, additionally, *the private sector itself* has human rights and Tiriti responsibilities.

105. According to the *United Nations Guiding Principles on Business and Human Rights*, which the government has affirmed:

“Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and should address adverse human rights impacts with which they are involved ... The responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights.”³⁶

106. So, Te Tiriti and human rights-based housing strategy requires the private sector to:

- a) ensure it is supporting Māori housing aspirations and needs e.g.

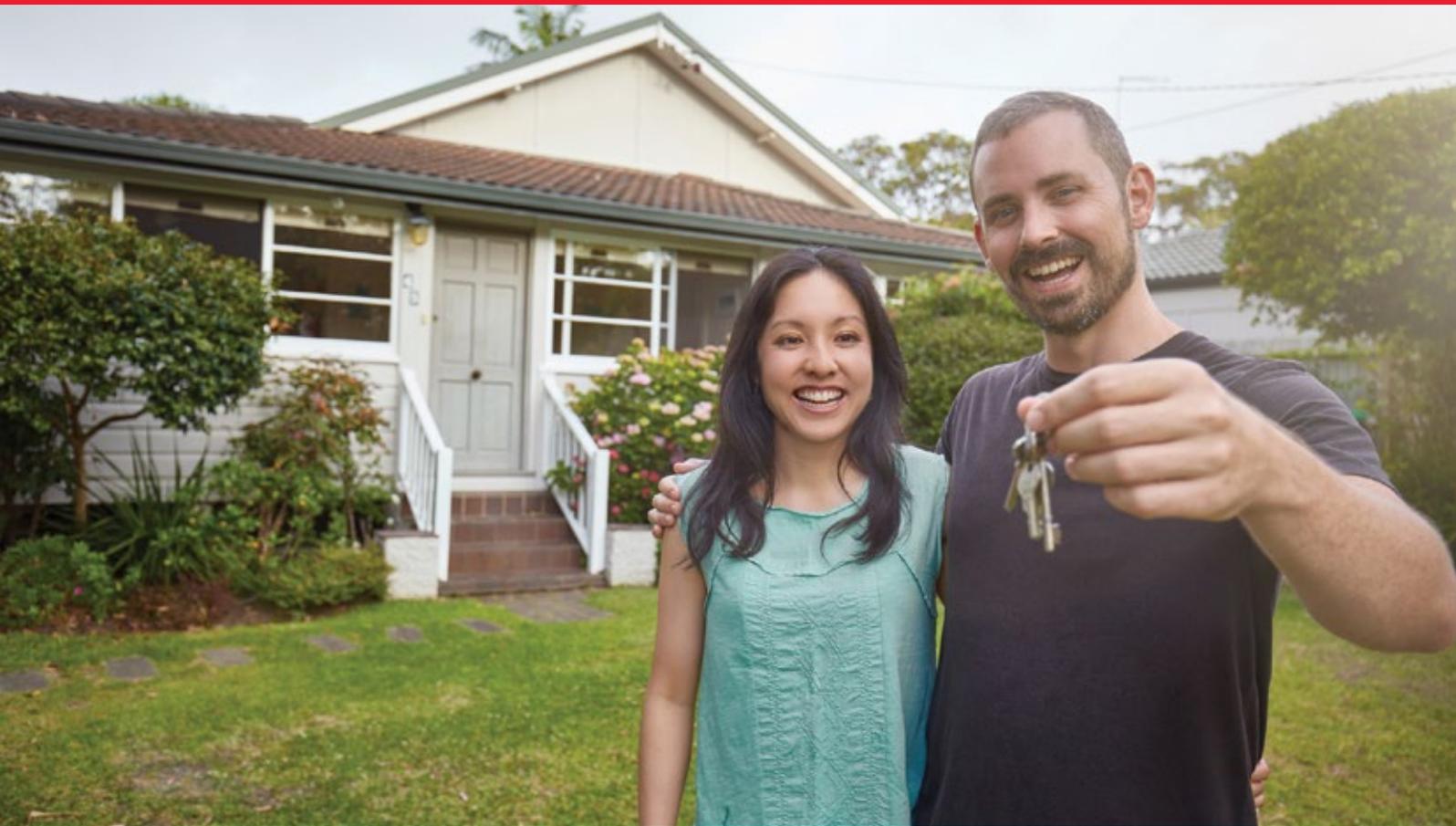
intergenerational living and care for Papatūānuku;

- b) provide an appropriate supply of affordable (rather than luxury) housing;
- c) include an appropriate supply of accessible homes for disabled people;
- d) ensure that, in appropriate cases, neighbourhood housing is upgraded (rather than demolished) in accordance with the choices made by residents;
- e) provide warm, dry, healthy, secure, decent homes, in accordance with the UN 'decency' housing principles, including *Healthy Homes Standards*, *HomeFit* and *Homestar* (see section 3 and 'Habitable').

107. *The United Nations Guiding Principles on Business and Human Rights* also require the government to ensure that, if the private sector is responsible for a violation of the right to a decent home, those affected have access to accountability, including independent review and redress (see section 3 and 'Constructive accountability').

108. By way of Tiriti partnership and a consultative process, further attention should be given to (a) clarifying the responsibilities of the private sector in relation to the right to a decent home grounded on Te Tiriti and (b) identifying suitable constructive accountability arrangements for the private sector's responsibilities in relation to the right to a decent home grounded on Te Tiriti.

Guideline 20: The private sector has obligations arising from the right to a decent home. Further attention should be given to (a) clarifying the responsibilities of the private sector in relation to the right to a decent home grounded on Te Tiriti and (b) identifying suitable constructive accountability arrangements in relation to these private sector responsibilities.



Section 6: Conclusion

Section 6: Conclusion

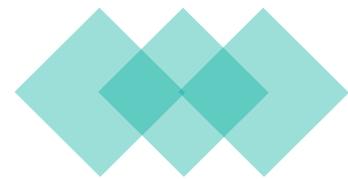
109. These *Guidelines* are a step towards a better understanding of the right to a decent home grounded on Te Tiriti. They provide an overall framework on which we can all build while taking into account evidence of what works. The Human Rights Commission developed the *Guidelines* as a framework, and other organisations may wish to do further work to elaborate issues such as:

- a) clarifying what a decent home means for tangata whenua;
- b) clarifying the shared responsibility of central and local government to deliver the right to a decent home grounded on Te Tiriti;
- c) developing and applying the eight key features of the right to a decent home grounded on Te Tiriti (section 3);
- d) designing a human rights-based housing strategy, grounded on Te Tiriti, with the right to a decent home at its centre;
- e) preparing detailed guidance about disability and the right to a decent home grounded on Te Tiriti;
- f) preparing detailed guidance on the rights and responsibilities of renters;
- g) inquiring how to enhance the constructive accountability of central and local government in relation to the right to a decent home grounded on Te Tiriti;

- h) elaborating the core obligations of immediate effect relating to the right to a decent home grounded on Te Tiriti (section 4);
- i) clarifying the responsibilities of the private sector in relation to the right to a decent home grounded on Te Tiriti (section 5);
- j) advancing the practical implementation of the right to a decent home grounded on Te Tiriti. In 2019, the UN Special Rapporteur on the right to adequate housing published a report which sets out *Guidelines for the Implementation of the Right to Adequate Housing* (Appendix 3).

110. All stakeholders are encouraged to develop and apply the framework provided by these *Guidelines*, with a view to enhancing the right to a decent home grounded on Te Tiriti for everyone in Aotearoa.

Guideline 21: These Guidelines provide a framework on which we can all build. All stakeholders are encouraged to develop and apply the framework with a view to enhancing the right to a decent home grounded on Te Tiriti for everyone in Aotearoa.



Appendix 1: Consultations and methods

Consultations and methods

Partnership approach to the Framework Guidelines

The Commission worked in partnership with Pou Tangata and Pou Tikanga from the National Iwi Chairs Forum (NICF) to lead the development and drafting of these *Guidelines*. The development/drafting partnership involved the Commission acting as the lead partner, making the decisions and taking up the majority of drafting and consultation work, with Pou Tangata providing extremely valuable contributions in the form of advice, review and feedback on the *Guidelines* as they were drafted.

The Commission has endeavoured to act in accordance with honourable Kāwanatanga ensuring responsiveness to Tino Rangatiratanga. The Commission is in the early stages of partnership with the NICF and learning how to partner, and share power and decision making. We also acknowledge that even as a small independent Crown entity there is an imbalance of resources with more resources available to the Crown versus those available to the National Iwi Chairs Forum as a collective body representing the Tino Rangatiratanga partner at the national level.

The Commission also relied upon its close working relationship with Community Housing Aotearoa (CHA) and many others in the preparation of the draft *Guidelines*. CHA took the primary partner role and worked closely with Te Matapihi as the tangata whenua representative body in its own partnership structures, and took primary responsibility for engagement with its own stakeholders.

Pre-drafting consultation

Prior to the drafting of the *Guidelines*, preliminary consultations were held with a wide range of stakeholders from June 2020 to the end of August 2020. During this period, the Commission and CHA convened a number of hui to seek feedback on a discussion paper.

CHA led a series of 19 engagement meetings between July and August to gather feedback on the development of the *Guidelines*. These meetings used Zoom due to uncertainty around COVID-19. Some of these meetings were framed as introductory sessions. 'The link between the right to a decent home and community', and 'Moving toward the right to a decent home'.

These meetings featured consistent engagement with the community housing sector including developers, with additional representation from the Māori housing sector, disability support sector, tenancy advocates, human rights experts, and civil society leadership. Key community housing networks were engaged, and the sector more broadly was notified consistently through CHA's newsletter. Information and invitations were also shared consistently via Twitter [@shiftootearoa] and via LinkedIn through a predominantly housing-related network.

Meeting participants received report-back on the meetings they engaged in. Thematic reports

were produced capturing the feedback and conversations. These were reviewed before being provided to the Commission and published on <https://theshiftaotearoa.wordpress.com/>. This thematic feedback informed the drafting of the *Guidelines*.

The Commission also conducted hui, originally intended to be run as kanohi ki te kanohi (face to face) engagements. However, this engagement had to be adjusted as a result of the COVID-19 pandemic. Meetings were instead conducted predominately via Zoom with participation by people from around Aotearoa including the disabled community.

Consultation on the draft Guidelines

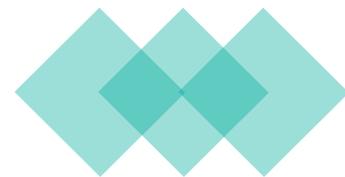
The *Guidelines* were released as a draft consultation document on 12 November 2020 and a consultation period ran until Monday 21 December 2020. The Commission welcomed submissions by email and in person. The Commission received 32 responses with feedback, including from local and central government, advocacy organisations, and individuals. We

received feedback both in the form of comments and track changes to the *Guidelines* document, and as broader thematic comments and submissions.

The Commission also offered the opportunity to meet via Zoom/Skype to discuss responders' feedback and answer questions they might have, and this opportunity was taken up by several organisations including local and central government and advocacy groups. The feedback the Commission received throughout this process was invaluable in re-drafting and refining the *Guidelines*.

Following the consultation period, the Commission produced a second draft of the *Guidelines* which were again provided to Pou Tangata for their review and comment.

After adoption by the Commission's Board, the *Guidelines* will be reviewed on a regular basis (every 12 months) to ensure they continue to remain fit for purpose.



Appendix 2: Key international standards on the right to a decent home

[Universal Declaration of Human Rights \(1948\)](#)

- Article 25.1

[International Covenant on Economic, Social and Cultural Rights \(1966\)](#)

- Article 11.1

[Convention on the Elimination of All Forms of Racial Discrimination \(1965\)](#)

- Article 5 (e) (iii)

[Convention on the Elimination of All Forms of Discrimination Against Women \(1979\)](#)

- Article 14.2 (h)

[Convention on the Rights of the Child \(1989\)](#)

- Article 16.1
- Article 27.3

[Convention on the Rights of Persons with Disabilities \(2008\)](#)

- Article 2
- Article 5.3
- Article 9.1 (a)
- Article 19 (a)
- Article 22.1
- Article 28.1, 28.2 (d)

[UN Declaration on the Rights of Indigenous Peoples \(2007\)](#)

- Articles 10
- Article 21.1
- Article 23
- Article 26
- Article 27
- Article 28
- Article 32

Appendix 3: Resources on housing in Aotearoa and the right to a decent home

There is a wealth of material on the right to a decent home. Here is a small selection of some resources.

Reports of the United Nations Special Rapporteur on the right to adequate housing

Since 2000, the UN Commission on Human Rights (now the UN Human Rights Council) has appointed a Special Rapporteur with a mandate focusing on adequate housing as a component of the right to an adequate standard of living. There have now been four Special Rapporteurs appointed to this role.

Ms Farha, Special Rapporteur between 2014-2020, made a country visit to Aotearoa in March 2020. Her End of Mission Statement on the state of housing in New Zealand can be found [here](#). (At the time of writing, we await the full report). The *Guidelines* refer to the following reports of Ms Farha:

- [Key principles of a human rights-based housing strategy](#) (2018 UN General Assembly 37th session)
- [Guidelines for the Implementation of the Right to Adequate Housing](#) (2020 UN Human Rights Council 43rd session)

The complete list of reports of the UN Special Rapporteurs on the right to adequate housing can be found [here](#), including a [report on the right to housing of indigenous peoples](#) and a [report on the right to housing of persons with disabilities](#).

UN Committee on Economic, Social and Cultural Rights

The independent UN Committee on Economic, Social and Cultural Rights has expressed its

interpretation of the right to adequate housing:

- [General Comment 4](#): The right to adequate housing (art.11 (1)), UN Committee on Economic, Social and Cultural Rights
- [General Comment 7](#): The right to adequate housing: forced evictions (art.11 (1)), UN Committee on Economic, Social and Cultural Rights.

Office of the United Nations High Commissioner for Human Rights

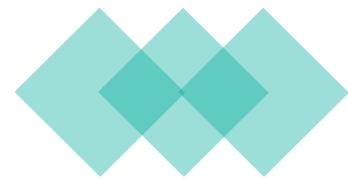
The Office of the United Nations High Commissioner for Human Rights and UN-Habitat have issued a joint publication on the right to adequate housing:

[The Right to Adequate Housing](#) (Fact Sheet No. 21 (Rev. 1)).

Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights

In 2011, a group of experts in international law and human rights law adopted the [Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights](#). The Principles do not establish new elements of human rights law, but clarify extraterritorial obligations of States on the basis of existing international law.

For further information see [Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and](#)



[Cultural Rights](#) (Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon, & Ian Seiderman, Human Rights Quarterly 34 (2012)).

Literature and Research

[The Right to Housing: Law, Concepts, Possibilities](#) (Jessie Hohmann: Hart, 2013)

[Disability and housing conditions: 2013](#) (StatsNZ New Zealand Disability Survey, 2017)

[Effective Human Rights-Based Housing Strategies: Submission to the UN Special Rapporteur on Adequate Housing](#) (Amnesty International, 2017)

[Housing Rights in Practice: Lessons learned from Leith](#) (Scottish Human Rights Commission, May 2020)

[The Right to Adequate Housing](#) (Office of the United Nations High Commissioner for Human Rights, Fact Sheet No. 21)

[Severe housing deprivation in Aotearoa/New Zealand: 2001-2013](#) (Kate Amore: He Kainga Oranga/Housing & Health Research Programme, University of Otago, Wellington)

[Generation Rent: Rethinking New Zealand's Priorities](#) (Shamubeel Eaqub and Selena Eaqub; BWB Texts, Bridget Williams Books, 2015)

[Home Truths: Confronting New Zealand's Housing Crisis](#) (Philippa Howden-Chapman; BWB Texts, Bridget Williams Books, 2015)

[Our Place – Setting a direction for improving housing affordability in Aotearoa/New Zealand](#) (Community Housing Aotearoa, October 2016)

[Progressive thinking: Ten Perspectives on housing](#) (Public Service Association, 2017)

[A Stocktake of New Zealand's Housing](#) (Alan Johnson, Philippa Howden-Chapman, Shamubeel Eaqub; February 2018)

The People's Review of Renting (Renters United & ActionStation, 2018)

[Disability Action Plan 2019-2023](#) (Office for Disability Issues)

[Rebuilding the Kāinga: Lessons from Te Ao Hurihuri](#) (Jade Kake; BWB Texts, Bridget Williams Books, 2019)

A principles framework for taking action on Māori/ Indigenous Homelessness in Aotearoa/New Zealand (Keri Lawson-Te Aho, Paikea Fariu-Ariki, Jenny Ombler, Clare Asipinall, Philippa Howden-Chapman, Nevil Pierse; SSM – Population Health 8, 2019)

[He Mana Kāinga, He Kāinga Ora – Thriving Māori whānau](#) (Wayne Knox, Te Matapihi, in Housing Works Magazine, 2019)

[Measuring inequality for disabled New Zealanders: 2018](#) (StatsNZ, 2020)

[Special issue on the question of housing in Aotearoa New Zealand](#) (Counterfutures Issue 9; 2020)

New Zealand's Transformation from Housing Finance to Housing Financialization (Kay Saville-Smith, 2020)

[Transformative Housing Policy for Aotearoa New Zealand: A Briefing Note on Addressing the Housing Crisis](#) (Jacqueline Paul, Jenny McArthur, Jordan King, Max Harris, and Scott Fignshow; October 2020)

Placing the right to adequate housing into national law e.g. Canada and South Africa
[Canada's National Housing Strategy Act 2019](#)

In 2019, the Canadian Parliament passed the [National Housing Strategy Act](#) which adopts and applies a human rights-based approach within the Government's national housing policy. Section 4 of the National Housing Strategy Act recognises the right to adequate housing as a fundamental human right central to human dignity, well-being and community. The Government commits to prioritising the most vulnerable in need of housing.

[South African Constitutional Court: *Government of the Republic of South Africa v Grootboom*](#)

[This case](#) was heard in the South African Constitutional Court in 2000. The Constitutional Court found that:

- 1) Social rights (rights to housing, adequate standard of living, health, etc) are enforceable in South Africa
- 2) The right to adequate housing must be interpreted in light of its close relationship with other human rights
- 3) The State is obliged to take positive action to meet the needs of those living in extreme conditions of poverty, homelessness or intolerable housing
- 4) The actions needed to meet this minimum obligation will differ case-by-case, but the question is whether the measures taken by the State are reasonable
- 5) For adequate housing, there must be provision of land, services (water, sewage, etc) and a dwelling. The state must create the conditions for access to adequate housing for people at all economic levels of society.

New Zealand local and central government initiatives for housing

[Te Maihi o te Whare Māori – the Māori and Iwi Housing Innovation Framework for Action \(MAIHI\)](#)

Government Policy Statement on Housing and Urban Development (Ministry of Housing and Urban Development)

[Tāmaki Regeneration](#) (Tāmaki Regeneration Company, in partnership with Kāinga Ora, Auckland Council and Auckland Transport)

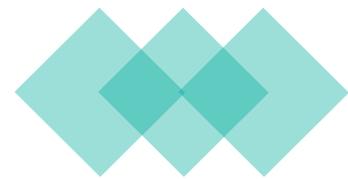
The need for a universal design approach and accessible housing regulation in New Zealand (Auckland Council, draft, December 2020)

[Hutt City Council Homelessness Strategy](#)

[He Papakāinga, He Hāpori Taurikura – Rotorua's Homes and Thriving Communities Strategic Framework](#) (Rotorua Lakes Council)

[Universal Design He Tauira ā-Whānui](#) (Auckland Design Manual, Auckland Council)

[Universal design: resource collection](#) (ACC, MBIE, Kāinga Ora Homes and Communities, Ministry of Health, Office for Disability Issues and BRANZ)



Appendix 4: Resources on colonisation, Te Tiriti o Waitangi and UN Declaration on the Rights of Indigenous Peoples

[The Treaty of Waitangi | Te Tiriti o Waitangi: An Illustrated History](#) (Claudia Orange, Bridget Williams Books 2020)

[Report of the UN Special Rapporteur on adequate housing: the issue of the right to housing of indigenous peoples](#) (UN General Assembly 74th Session, 2019)

[Indigenous peoples' right to adequate housing: A global overview](#) (United Nations Housing Rights Programme, Report No. 7, 2005)

[International human rights perspectives on Ihumātao: A New Zealand Human Rights Commission Report](#) (2019)

[Imagining Decolonisation](#) (Bianca Elkington, Moana Jackson, Rebecca Kiddle, Ocean Ripeka Mercier, Mike Ross, Jennie Smeaton, Amanda Thomas; BWB Texts, Bridget Williams Books 2020)

['Where to next? Decolonisation and the stories in the land'](#) (excerpt from Dr Moana Jackson's essay in *Imagining Decolonisation*)

['To honour the treaty, we must first settle colonisation'](#) (Moana Jackson 2015): [the long road from colonial devastation to balance, peace and harmony](#) (Margaret Mutu [Ngāti Kahu, Te Rarawa and Ngāti Whātua nations] *Journal of the Royal Society of New Zealand* Volume 49, 2019 – HE ĀPITI:

[Ngā Ahua o Te Ao Hurihuri – Rethinking our shared futures](#))

[Housing Policy and Services Inquiry](#) (Wai 2750, Waitangi Tribunal Kaupapa Inquiries, ongoing – to be heard by Panel Members Judge Craig Coxhead, Prue Kapua, and Basil Morrison)

[Rebuilding the Kāinga: Lessons from Te Ao Hurihuri](#) (Jade Kake, BWB Texts, Bridget Williams Books, 2019)

[KĀINGA Strategic Action Plan: A Plan to Improve Housing Outcomes for Māori in Tāmaki Makaurau](#) (Independent Māori Statutory Board 2019) and Appendix A: Housing – a rights and obligations approach

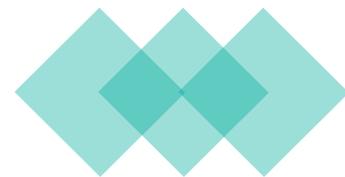
[Kāinga Tahī, Kāinga Rua: Homeless and landless in two generations – Averting the Māori housing disaster](#) (Matthew Rout, John Reid, Di Menzies, Angus MacFarlane; The Building Better Homes, Towns & Cities National Science Challenge 2019) and [Māori and Indigenous Housing Annotated Bibliography: Kāinga Tahī Rua Strategic Research Direction](#) (Dr Diane Menzies, 2018)

[Te Tiriti Futures Conference](#)

[Network Waitangi Otautahi](#)

Endnotes

- ¹ Long title, Human Rights Act, 1993.
- ² Section 3 of the *Guidelines* outlines the key values.
- ³ See Appendices 2 and 3.
- ⁴ See section 2; the sub-section 'Values' in section 3; and Appendix 4.
- ⁵ Italics in original. *WHO Housing and Health Guidelines*, World Health Organization, Geneva, 2018, page 2.
- ⁶ The 'International Bill of Rights' is the well-established shorthand for three documents which together provide the foundation for the entire global system of human rights painstakingly drafted and agreed since 1945: the Universal Declaration of Human Rights, International Covenant on Economic, Social and Cultural Rights, and International Covenant on Civil and Political Rights.
- ⁷ [General Comment 3](#), UN Committee on Economic, Social and Cultural Rights, in E/1991/23.
- ⁸ Sustainable Development Goal 17, Target 1.
- ⁹ See Appendix 3.
- ¹⁰ See Appendix 3.
- ¹¹ Even though the right to a decent home has not been placed in national law, it attracted discussion in *Lawson v Housing New Zealand* [1997] 2 NZLR 474, but without shedding significant light on what the court interprets the human right to mean.
- ¹² The Human Rights Commission frames human rights and Te Tiriti o Waitangi as consisting of "the 3Rs": relationships, responsibilities and rights, see the opinion piece by Paul Hunt, [How to resist those who roll their eyes at mention of human rights](#), 16 October 2020.
- ¹³ Disability is a broad term including people with physical and psycho-social impairment. Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others (see the United Nations Convention on the Rights of Persons with Disabilities, article 1).
- ¹⁴ Statistics New Zealand defines homelessness in New Zealand as "a living situation where people with no other options to acquire safe and secure housing are: without shelter, in temporary accommodation, sharing accommodation with a household, or living in uninhabitable housing." *New Zealand definition of homelessness: 2015 update*. Retrieved from www.stats.govt.nz.
- ¹⁵ [End of Mission Statement](#), Visit of the Special Rapporteur on the right to adequate housing to New Zealand Leilani Farha, Wellington, 19 February 2020, paragraph 4.
- ¹⁶ Tangata Tiriti: people of the treaty; all people in Aotearoa who are not Tangata Whenua and who belong to this land by right of Te Tiriti o Waitangi. Ko ngā tāngata katoa ka noho mai ki Aotearoa i raro i te mana o te Tiriti o Waitangi.
- ¹⁷ UN Committee on Economic, Social and Cultural Rights, [General Comment No. 4](#), paragraph 8.
- ¹⁸ Like the rest of the *Guidelines*, the suitability of codes will be reviewed regularly (section 1).
- ¹⁹ This is not to imply that homeownership is the only or preferred form of ownership, see section 2 and 'Security of tenure' in section 3.
- ²⁰ For the poverty experienced by many working households in Aotearoa, see *In-Work Poverty in New Zealand* (Plum, A., Pacheco, G., & Hick, R., 2019, New Zealand Work Research Institute AUT, commissioned by the New Zealand Human Rights Commission).
- ²¹ In 2021 the Human Rights Commission published [Talanoa: Human rights issues for Pacific People in Aotearoa New Zealand](#). This report discusses the housing issues faced by many Pacific people, including affordability, overcrowding, insecure tenancies, and substandard housing conditions e.g. damp and mould.



- ²² The rainbow community includes people with a diverse sexual orientation, gender identity and expression, and sex characteristics. In 2020 the Human Rights Commission published [PRISM: Human Rights issues relating to Sexual Orientation, Gender Identity and Expression, and Sex Characteristics \(SOGIESC\) in Aotearoa New Zealand](#). This report referenced the disadvantage of rainbow communities, including homelessness.
- ²³ See [International human rights perspectives on Ihumātao](#), a report published by the New Zealand Human Rights Commission, 2019.
- ²⁴ Lifemark [website](#).
- ²⁵ [End of Mission Statement](#), Visit of the Special Rapporteur on the right to adequate housing to New Zealand Leilani Farha, Wellington, 19 February 2020, paragraphs 62-64, and UN Committee on Economic, Social and Cultural Rights [Concluding observations on the fourth periodic report of New Zealand](#), 1 May 2018, E/C.12/NZL/CO/4 paragraph 40.
- ²⁶ The legislation already references Te Tiriti o Waitangi at section 11(1)(b).
- ²⁷ [Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights](#).
- ²⁸ For example, article 2(1), [International Covenant on Economic, Social and Cultural Rights](#). Article 21, United Nations Declaration on the Rights of Indigenous Peoples adopts similar language.
- ²⁹ For example, [General Comment 3](#), UN Committee on Economic, Social and Cultural Rights, in E/1991/23.
- ³⁰ [Human rights indicators: A guide to measurement and implementation, OHCHR, UN, 2012](#).
- ³¹ Although the United Nations recognises the importance of these core obligations, it does not set out these obligations in detail, so it is open to Aotearoa to elaborate what core obligations mean in its national context.
- ³² “Thus, for example, a State party in which any significant number of individuals is deprived of ... basic shelter and housing, ... is, prima facie, failing to discharge its obligations under [international human rights law]. If [international human rights law] ... were to be read in such a way as not to establish such a minimum core obligation, it would be largely deprived of its raison d’être.” [General Comment 3](#), UN Committee on Economic, Social and Cultural Rights, in E/1991/23.
- ³³ [Principles and guidelines for a human rights approach to poverty reduction strategies](#), OHCHR, HR/PUB/06/12.
- ³⁴ For example, in relation to the prohibition against torture, inhuman and degrading treatment, the obligation to respect means guards must not torture detainees in state prisons; the obligation to protect means the government must regulate private security guards so they do not abuse their powers; the obligation to *fulfil* means the government must take steps (e.g. build prisons) so that prisoners live in decent, humane conditions of detention. The respect, protect and fulfil obligations apply to most human rights, including the right to a decent home.
- ³⁵ The human rights obligations to respect, protect and fulfil are concurrent, not consecutive.
- ³⁶ Paragraphs 11-12, [Guiding principles on business and human rights: Implementing the United Nations ‘Protect, Respect and Remedy’ framework](#), Paras 11-12 (Ruggie Principles), A/HRC/17/31.



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