

## Human Rights of Older Persons: Response of the New Zealand Human Rights Commission

New Zealand as a country protects the human rights of older persons in a number of key areas. A universal pension scheme, New Zealand Superannuation plus a high level of mortgage-free home ownership means that the vast majority of older New Zealanders do not live in poverty. There is an overarching policy, the Positive Ageing Strategy, which provides a vision and co-ordination function to national and local government initiatives. There is a Senior Citizens Minister and an Office for Senior Citizens located with the Ministry of Social Development.

### **1. Information on the main challenges related to promotion and protection of the human rights of older persons at the country level.**

#### 1.1 Attitudes

1.2 The rhetoric that the ageing population is a “problem”, or “burden” or “drain” or even a “crisis” is pervasive and contributes to negative attitudes to ageing and older people.

#### 1.3 Employment

1.4 Older workers report discrimination in employment in particular older job seekers, and access to training.

#### 1.5 Education

1.6 Older people (55 years and over) wanting to take up tertiary education are unable to access to government-funded living costs or course related costs.

#### 1.7 Finance

1.8 Older people report that they are denied access to mortgage loans on the basis of age.

1.9 The Human Rights Commission (Te Kāhui Tika Tangata) has also noted discriminatory practices related to insurance for older people.

1.10 Older women are denied access to superannuation in their own right if their partner is not a New Zealander.

- 1.11 Older women are less likely to have retirement savings, as over a lifetime they will have earned considerably less than men. Any change to superannuation and retirement provision is likely to have a gendered impact. Changes to these provisions are anticipated in response to the changing demographic profile of New Zealand and concern about affordability.
- 1.12 Older migrants and refugees brought in under family reunification provisions do not have access to settlement support.
- 1.13 Health
- 1.14 Māori have the poorest health of any New Zealand group with higher mortality rates than non-Māori and higher rates of illness. Avoidable death rates for Māori are two and a half times the rate of other New Zealanders and Māori die on average 7- 8 years earlier. Pacific peoples also have disproportionately poor health outcomes.
- 1.15 A growing body of New Zealand research has found links between racism and health, which show, among other things, that negative health outcomes are not solely related to socio-economic status. Racism is also a key determinant of people's experience of health services. Taken together, these studies provide compelling evidence of racism as a major determinant of negative health outcomes and ethnic inequalities.<sup>1</sup>
- 1.16 In an inquiry undertaken by the Human Rights Commission on the aged care workforce, it was observed that culturally appropriate aged care services are not readily available.<sup>2</sup>
- 1.17 Older people who are dependent on others to meet their basic needs are vulnerable to abuse and neglect, including financial abuse. Complaints mechanisms and access to protective services are not as robust as they could be and fear of retaliation can stop victims speaking up.

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<sup>1</sup> Human Rights Commission (2012) *A Fair Go for All? Rite tahi tātou katoa? Addressing Structural Discrimination in Public Services* Auckland, New Zealand: Human Rights Commission

<sup>2</sup> Human Rights Commission (2012) *Caring Counts Report of the Inquiry into the Aged Care Workforce* Wellington, New Zealand: Human Rights Commission

- 1.18 Concerns have been expressed by the Ombudsmen’s Office about best practice safe and secure care of older people with dementia and/or mental health issues. The Ombudsmens Office has started to monitor secure facilities under the Optional Protocol on the Convention Against Torture (OPCAT) but is not funded to do this work.
- 1.19 In prisons, there are no specific policies that mention how to care for prisoners with age-related conditions such as Alzheimer’s disease or dementia, or the health management of prisoners who require palliative care. “With neither standard policy nor targeted funding, individual staff in prisons are doing what they can with available resources.”<sup>3</sup>
- 1.20 For example the Department of Corrections has recently opened a National High Dependency Unit at Rimutaka Prison to accommodate prisoners who have ongoing and significant health needs, including age related conditions. The monitoring bodies commented “While this is a positive step, there appears to be a need for such units in other parts of the country, to allow prisoners to remain in their home region and maintain contact with family and continuity of care from external services.”<sup>4</sup>
- 1.21 Free screening for breast cancer is not available for women over the age of 69 years. Older women report that this is unfair and gives the impression that their wellbeing is no longer important.
- 1.22 Aged care services whether home based, or in rest-homes and private hospitals are underfunded and carers are inadequately remunerated for the job they do.
- 1.23 Public emergencies
- 1.24 In 2010 and 2011 a series of earthquakes devastated the second largest city in New Zealand, Christchurch and the surrounding area.
- 1.25 The Human Rights Commission has been contacted by a number of affected elderly residents whose difficulties are centred around the government’s decision to “red zone” land as not fit for continued residential use. A number of elderly people living in these homes are very reluctant to leave their homes.

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<sup>3</sup> P44 Human Rights Commission, The New Zealand Convention Coalition and Ombudsman (2012) *Making Disability Rights Real Whakatūtu ngā Tika Hauātanga*

<sup>4</sup> P44 *ibid*

- 1.26 Affected residents feel they do not have all of the information they need to make a decision on the government offer to purchase their home.
  - 1.27 A number of elderly residents whose properties have been red zoned by the government were uninsured at the time of the earthquakes. They are therefore not eligible for the government offer made to insured red zoned residents. The payment they are eligible for is insufficient to buy a new home with the money they receive from the government.
  - 1.28 This uncertainty is further compounded by the difficulties many elderly residents continue to encounter as they try to navigate between government agencies involved in the repair process and insurers.
  - 1.29 The Canterbury District Health Board estimate that today 8 to 15 per cent of the total population of Christchurch are showing signs of psychosocial health problems, and that this group are concentrated in red zone and other areas where the financial and housing future of residents remain uncertain.
  - 1.30 Many aged care residential beds were destroyed in the earthquakes (e.g. rest homes public and private hospitals) and residents evacuated. A fifth of rest-home residents evacuated from Christchurch after the February earthquake died in the months after being evacuated, health board figures have shown.<sup>5</sup>
  - 1.31 Some older people who live in retirement villages, who lost their houses, faced loss of equity and capital in those houses because of the license to occupy arrangements with retirement village companies.
  - 1.32 For those with limited mobility broken streets and houses has reduced participation and independence.
  - 1.33 Provision of support when carers also have needs themselves has been a source of stress for both paid and unpaid carers as well as older people needing support.
- 2. Information on constitutions or legislation explicitly forbidding discrimination on the basis of old age, and on the existence of specific bodies which protect against age discrimination or are mandated to protect and promote the rights of older persons.**
- 2.1 Age, with no upper limit, is a ground of discrimination under the New Zealand Human Rights Act.

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<sup>5</sup> Reported at <http://www.stuff.co.nz/the-press/news/christchurch-earthquake-2011/5619376/One-in-five-quake-evacuated-elderly-die>

- 2.2 The Human Rights Commission has a statutory mandate to: advocate and promote respect for human rights in New Zealand; encourage harmonious relations between individuals and among the diverse groups in New Zealand; lead, evaluate, monitor and advise on equal employment opportunities; and provide a human-rights enquiries and complaints service.
- 2.3 The Human Rights Commission offers a free and confidential service for people with human rights enquiries or complaints of unlawful discrimination.
- 2.4 The Commission also addresses broader human rights issues, for example relating to disability, housing, education, detention, employment and race relations.
- 2.5 The Human Rights Commission used its inquiry power to investigate the equal employment opportunities issues of workers in the aged care sector, and published the findings in *Caring Counts*.
- 2.6 Other activities protecting and promoting the rights of older persons include the publication of a guide for New Zealand employers wanting to recruit and retain mature employees, entitled “Valuing Experience: a practical guide to recruiting and retaining older workers”<sup>6</sup>. This publication provides information both on worker’s rights and responsibilities and tips for employers. The resource was developed in conjunction with the Retirement Commission, the EEO Trust, Business New Zealand, the Council of Trade Unions and the Canterbury Employers’ Chamber of Commerce.
- 2.7 The Director of Human Rights Proceedings heads up an independent office within the Commission, the Office of Human Rights Proceedings (Te Tari Whakatau Take Tika Tangata). The Director decides whether to provide legal representation for people who have complained of breaches of the Human Rights Act. Proceedings are heard in the Human Rights Review Tribunal.
- 3. Information on specific national legislation, national policies, strategies and plans of action adopted to ensure the equal enjoyment of rights of older persons particularly in the areas of prevention and protection against violence and abuse, social protection, food and housing, employment, legal capacity, access to justice, health support, long term and palliative care.**

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<sup>6</sup> Human Rights Commission (2008) *Valuing Experience: a practical guide to recruiting and retaining older workers* Wellington, New Zealand: Human Rights Commission

### 3.1 Positive Ageing

3.2 The overarching policy on older people is the Positive Ageing Strategy which was initiated in 1999 in response to the International Year of Older Persons. The vision for New Zealand articulated in the strategy is that of “a society where people can age positively, where older people are highly valued and where they are recognised as an integral part of families and communities.”<sup>7</sup>

3.3 The New Zealand Positive Ageing Strategy provides a framework for developing and understanding policy with implications for older people. The Strategy's 10 goals guide policies and programmes across central and local government, to improve opportunities for older people to participate in their communities in ways they choose.

3.4 The ten goals are:

- **Income** - secure and adequate income for older people
- **Health** - equitable, timely, affordable and accessible health services for older people
- **Housing** - affordable and appropriate housing options for older people
- **Transport** - affordable and accessible transport options for older people
- **Ageing in the Community** - older people feel safe and secure and can age in the community
- **Cultural Diversity** - a range of culturally appropriate services allows choices for older people
- **Rural Services** - older people living in rural communities are not disadvantaged when accessing services
- **Positive Attitudes** - people of all ages have positive attitudes to ageing and older people
- **Employment Opportunities** - elimination of ageism and the promotion of flexible work options
- **Opportunities for Personal Growth and Participation** - increasing opportunities for personal growth and community participation.

3.5 The Office for Senior Citizens has developed a suite of social indicators to monitor progress on each of the ten goals.

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<sup>7</sup> The Positive Ageing Strategy can be downloaded at <http://www.msd.govt.nz/what-we-can-do/seniorcitizens/positive-ageing/index.html>

### 3.6 Social Protection

3.7 Current initiatives supporting the goals of the strategy range from a booklet produced by a local government body which provides information for older people to stay active, keep learning and have fun, to a day activity programme for Pacific elders and carers run by an NGO, TOA Pacifica Incorporated to a nation-wide roll out of InterRAI<sup>8</sup> by the Ministry of Health and the twenty district health boards. These are only three of the numerous initiatives detailed on the Positive Ageing website.<sup>9</sup>

3.8 The provision of universal superannuation and the accumulation of assets such as mortgage-free home ownership mean that only three per cent of older people in New Zealand live in poverty.<sup>10</sup> This is largely due to the fact that successive governments have implemented policies to minimise deprivation among the elderly.

3.9 Older people are also entitled to a SuperGold Card which is a discounts and concessions card for seniors and veterans. Concessions are provided by businesses both nationally and locally and by government. Free off-peak public transport is one of the concessions provided by government.

3.10 The Retirement Commissioner heads an autonomous Crown entity, the Commission for Financial Literacy and Retirement Income which has a focus on improving New Zealanders financial literacy, reviewing retirement income policy, and monitoring retirement villages' legislation.

### 3.11 Employment

3.12 One of consequences of age discrimination being a prohibited ground under the Human Rights Act is that there is no compulsory retirement age. New Zealand has one of the highest rates of labour-force participation of older people in the OECD.

### 3.13 Legal Capacity

3.14 Provisions in the Protection of Personal and Property Rights Act (1988) and the Health and Disability Commissioner's Code of Health and Disability Services Consumers' Rights require that a person who is mentally impaired or

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<sup>8</sup> InterRAI is a system of comprehensive geriatric assessment (CGA)

<sup>9</sup> <http://www.msd.govt.nz/what-we-can-do/seniorcitizens/positive-ageing/index.html>

<sup>10</sup> New Zealand Human Rights Commission (in press) Tūi Tūi Tuitiā: Race Relations in 2012 citing OECD 2008 data on material deprivation

incapable be involved in decisions that concern them to the extent that they are able.

3.15 These provisions include the exercise of enduring power of attorney in relation to personal care and welfare, (the Act) and the right to make an informed choice and give informed consent (the Code).

3.16 Age Concern<sup>11</sup> advises that the “right of an individual with diminished capacity to be involved in decision-making is not always respected (by the attorney or by medical professionals).”

### 3.17 Health Support and Palliative Care

3.18 District health boards fund home support services that enable older people to be supported to live in their own homes and also fund residential care. Every person who wishes to receive support services funded by a district health board must be needs assessed by a Needs Assessment Service Co-ordination (NASC) agency.

3.19 Once a person’s need for residential care is established, a financial means assessment is undertaken to determine eligibility for a government-funded residential care subsidy.

3.20 The Cancer Control Programme, which includes both cancer and non-cancer palliative care covers Ministry of Health, District Health Boards and regional cancer network activity to implement the New Zealand Palliative Care Strategy, New Zealand Cancer Control Strategy and New Zealand Cancer Control Strategy Action Plan.

### 3.21 Prevention and Protection from Abuse

3.22 Elder Abuse and Neglect Prevention Services are provided by Age Concern (which also has a national co-ordination function) and other not-for-profit organisations across New Zealand. The services provide free and confidential support, advocacy and information for people facing elder abuse. Services also offer education for people working with and caring for older people, and

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<sup>11</sup>Age Concern is an NGO working to promote the rights, wellbeing and quality of life of older people, koroua and kuia. In recent years Age Concern’s purpose has expanded to include the promotion of healthy, active ageing to people of all ages.

public awareness-raising activities aimed at early identification and prevention of elder abuse or neglect.

- 3.23 Older people experiencing abuse or neglect when receiving care can also complain to the relevant District Health Board, the service provider or the Office of Health and Disability Commissioner. However as noted earlier, fear of retaliation may dissuade people from complaining and the Ombudsmen's Office has raised concerns about practices in some secure care facilities.
- 3.24 Grey Power<sup>12</sup> offer a web-based complaints line which assists people locate the appropriate agency to complain to.

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<sup>12</sup>Grey Power is a national lobby organisation working to promote the welfare and well being of people aged 50 and above.