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# Human Rights and Te Tiriti o Waitangi: COVID-19 and Alert Level 4 in Aotearoa New Zealand

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## Mōtika Tangata mē Te Tiriti o Waitangi: Mate Korona mē te Noho Rāhui i Aotearoa Taumata 4



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Human rights are key in shaping the pandemic response, both for the public health emergency and the broader impact on people's lives and livelihoods. Human rights put people centre-stage. Responses that are shaped by and respect human rights result in better outcomes in beating the pandemic, ensuring healthcare for everyone and preserving human dignity. But they also focus our attention on who is suffering most, why, and what can be done about it. They prepare the ground now for emerging from this crisis with more equitable and sustainable societies, development and peace.

COVID-19 and Human Rights, United Nations, April 2020

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# Foreword - Kōrero Whakataki

*He kura tangihia, he maimai aroha.*

*Ko te tangihanga tētahi mātāpuna o te ao Māori, e toitū ana ki tēnei rā.*

*He kaupapa nui te poroporoaki ki te hunga mate. I tēnei wā mate korona, ka whai pānga mai ngā whakaritenga rāhui ki runga i te whānau pani.*

*Ka taumaha rawa atu. I tēnei wā pouri, ka tukuna mātou o mātou aroha ki ngā whānau e noho mokemoke ana. Kia pūmau te matihere o te wāhi ngaro ki a tātou.*

*Haere, haere, haere atu rā.*

Our ngākau aroha goes out to all of those who are grieving the loss of loved ones in Aotearoa New Zealand and overseas. So far, the country has avoided wholesale catastrophic loss of life, but it is not unscathed. The weight of the lives lost to COVID-19 is immeasurable. The grief of all whānau who have lost loved ones in the lockdown is intensified by the inability to provide them with close support and care.

As we adjust to COVID-19 Alert Level 3, the Human Rights Commission provides some 'snapshots' of how the Level 4 lockdown impacted upon human rights and Te Tiriti o Waitangi.

We can learn from the Level 4 experience as we take steps in Level 3 towards recovery.

Aotearoa New Zealand is living through a health, economic and human rights emergency. The human rights issues are numerous, complex and profound. They engage Te Tiriti o Waitangi and our national and international human rights commitments.

In due course, the Commission will investigate these complexities in detail. For now, our goal is modest: to provide some human rights 'snapshots' from Level 4 which can help to navigate what lies ahead. We are not suggesting the issues covered are the most pressing and important. Prepared as Level 4 drew to a close, these 'snapshots' are short and illustrative.

The government must be strongly commended for protecting the health and lives of so many tangata whenua and New Zealanders. Overall, the country's systems of health protection and health care have

performed very well, especially when compared to many other high-income countries. Nonetheless, the government's approach to COVID-19 has some significant shortcomings, some of which will emerge in the 'snapshots' and others we signal in the Conclusion.

Human rights and Te Tiriti o Waitangi are not only about rights, they are also about responsibilities. They place responsibilities on government and others holding public power, and they also place responsibilities on individuals to their communities. As the Universal Declaration of Human Rights puts it, everyone has duties to the community in which the free and full development of their personality is possible.

This human rights responsibility of individuals to their communities – staying in our bubbles, social distancing, getting tested, protecting iwi, hapū and whānau, looking out for each other – was one of the strongest features of Level 4.

Human rights and responsibilities, and respect for Te Tiriti o Waitangi, should be hallmarks of the country's recovery from the pandemic.

As we look forward to recovery, our children's future must be centre stage. The impact on tamariki of COVID-19 – the virus and the measures to control it – should not be understated. Like many adults, children are experiencing increased anxiety, loneliness, feelings of lack of control, and worries about how their families will make it through.

The immediate stress and long-term impacts are not evenly shared: they disproportionately fall on those

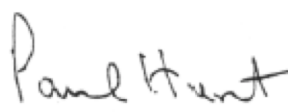
who were already finding it tough beforehand. There are distinctive impacts on children and young people separated from loved ones, for example in secure care and protection.

Children need good information about the pandemic, and ongoing attention to their human rights to education, play, safe access to the online world, involvement in decision-making, and their right for them and their families to be safe, warm and well-nourished.

The Human Rights Commission will continue to support work by the Office of the Children's Commissioner, and other partners, to promote children's rights in the pandemic and recovery.

This publication begins with a section on Te Tiriti o Waitangi, followed by ten human rights 'snapshots', and a Conclusion with additional pointers for the future.

I want to thank my colleagues who worked extremely hard to produce this short report in only a few days. Events are fast-moving and time is of the essence. We hope the report contributes to helpful discussion and constructive action. We welcome further engagement on these serious issues. If there are any slips, I take full responsibility for them.



**Paul Hunt**  
Chief Human Rights Commissioner  
Te Amokapua

# Executive Summary

Our ngākau aroha goes out to all those who are grieving the loss of loved ones in Aotearoa New Zealand and beyond. We are living through a health, economic and human rights emergency. The COVID-19 emergency has major implications for the country's national and international human rights commitments, which have been affirmed by successive governments over several decades, as well as its constitutional foundation, Te Tiriti o Waitangi.

The rights to life, health protection and health care place obligations on the government to do all it can to respond effectively and equitably to COVID-19. Consistent with these human rights obligations, the government has responded to the pandemic with vigour and determination. The Human Rights Commission strongly commends the government for protecting the health and lives of so many tangata whenua and New Zealanders. Overall, the country's systems of health protection and health care have performed very well.

Nonetheless, the government's approach to COVID-19 has some significant shortcomings. This short report provides ten 'snapshots' of how the Level 4 lockdown impacted upon human rights and Te Tiriti. We can learn from this experience as we take steps in Level 3 towards recovery. While there is much to commend in New Zealand's response to COVID-19, Te Tiriti and human rights have not been integrated across the response to the pandemic.

Human rights and Te Tiriti are not only about rights, they are also about responsibilities i.e. the responsibilities on the government to the people, as well as the responsibilities on individuals to their communities. As we look forward to recovery, our children's future, and their human rights, must be centre stage.

## Te Tiriti o Waitangi

Te Tiriti requires proactive support from the government for rangatiratanga, alongside ensuring equity of outcomes for tangata whenua. During the COVID-19 crisis it has been encouraging to see examples of Tiriti partnership working in practice and strong leadership being exercised by both partners. Where responsibilities overlap, there has been cooperation reinforced by a strong sense of shared purpose to contain COVID-19 and to protect Māori and all New Zealanders. A positive example is the iwi and hapū-led rāhui checkpoints, carried out in a spirit of collaboration with police, councils and civil defence. Positive references to Te Tiriti in key documents are welcome, but it is sometimes unclear how these obligations are being implemented in practice. Honouring Tiriti and human rights commitments is vital to ensure an effective response to COVID-19 and to prevent the erosion of trust and confidence within Crown-Māori relationships.

## Ten 'snapshots'

Each 'snapshot' briefly considers a specific issue or population group in Alert Level 4 as it enters Level 3 towards recovery. The short, illustrative subjects are interconnected:

- Personal protective equipment
- Access to justice
- Contact tracing, surveillance and data use
- Deprivations of liberty
- Racism
- Disability: Accessible information and absence of disaggregated data
- Family violence
- Older people
- Women
- Employment: Poverty and housing

## Conclusion

Human rights do not provide magic solutions to grave crises, but they have a constructive contribution to make. They embody values - the importance of partnership, participation, protection, safety, dignity, decency, fairness, freedom, equality, respect, wellbeing, community and responsibility - which provide a compass for the way forward. Increasingly operational, human rights can help to both chart and implement an effective, equitable, balanced, sustainable medium and long-term response to COVID-19. They can help to strike fair balances and identify proportionate responses.

In times of emergency, those in authority are granted sweeping new discretionary powers and, in these circumstances, robust accountability becomes vitally important. In Aotearoa New Zealand, the media deserve

credit for holding government accountable during Level 4. The Epidemic Response Committee has also done a good job. Those exercising discretionary powers cannot hold themselves accountable. In these circumstances, nimble, effective, independent accountability mechanisms have a crucial role to play in Level 3 and beyond.

In the context of COVID-19, we urge the government to renew and reinvigorate its commitment to Te Tiriti and to work in partnership with Māori and jointly devise and implement strategies in Level 3 and the recovery phase.

Human rights and responsibilities, and respect for Te Tiriti o Waitangi, should be hallmarks of the country's recovery from the pandemic.

# Key recommendations

## Human Rights and Te Tiriti o Waitangi

- Ensure human rights and Te Tiriti based partnership across the Government's COVID-19 response. A coordinated whole-of-government strategy building on the work begun last year towards a national action plan for the UN Declaration on the Rights of Indigenous Peoples.
- Government and Māori strengthen mechanisms to support partnership decision-making that affirms the kāwanatanga of government and rangatiratanga of hapū, iwi, and Māori.
- Tiriti partners work together on all COVID-19 issues, including changes to alert levels.

## Personal Protective Equipment

- Improve guidance on, and access to, PPE (masks, gloves and gowns) for home and community support workers.

## Access to justice

- Provide the Human Rights Review Tribunal (HRRT) with adequate resources to hear and decide claims remotely.
- Support HRRT staff to work from home.
- Encourage the HRRT to progress all existing claims and conduct hearings by alternative means, such as video link.

## Contact tracing, surveillance and data use

- Appropriately balance the right to privacy with the right to health when considering digital contact tracing to ensure that any impacts on people's privacy are strictly necessary, lawful and proportionate.
- Ensure digital contact information is only provided to public health workers, be of a minimal nature and be accessible only while COVID-19 remains a threat.
- Ensure decisions on contact tracing, surveillance and data use are undertaken in partnership with iwi and Māori and uphold rangatiratanga.

## Deprivations of liberty

- With appropriate COVID 19 safety measures, provide unrestricted access to prisons, police cells, secure mental health and dementia units, youth justice facilities and care and protection residences for monitoring agencies (National Preventive Mechanisms).
- Ensure the crucial role of National Preventive Mechanisms' unrestricted visits is understood by detaining agencies and their access is incorporated into plans for dealing with emergencies.

## Racism

- Make an express commitment to address racism as part of the COVID-19 response including explicit public messaging and awareness raising.
- Prioritise the development of a National Action Plan Against Racism, anchored in Te Tiriti o Waitangi, as well as the views and experience of tangata whenua, and those communities who are currently feeling the impact of racism most acutely.

## Disability

- Proactively involve disabled people in the drafting and production of materials and information and ensure accessible information is available and easy to locate.
- Link tāngata whaikaha (Māori disabled people) to Māori and disability COVID-19 response teams to benefit from, and contribute to, self-determined culturally effective and disability sensitive initiatives.
- Ensure that disaggregated data on disability are collected to better understand how disabled people are affected by the pandemic.



## Family Violence

- Increase funding and support for those at risk of violence. Direct funding to inclusive and accessible services, both prevention and response. These initiatives should reflect Tiriti partnership, support Māori-led approaches and advance equitable outcomes.
- Ensure that the lessons from this pandemic are documented for future preparedness planning and implementation.

## Older people

- Improve pandemic preparedness and planning for aged care facilities and ensure older people are provided with the opportunity to influence those decisions.
- Provide continued support, including funding, to service providers which rely heavily on volunteers and provide support for older people
- Ensure simple communications are available in as many languages as possible, and in a range of formats, to support older people who are migrants or in minority ethnic groups. Recognise that many kaumātua and kuia are not part of, or represented by, older people's organisations and groups.

## Women

- Collect data disaggregated by gender, and other grounds, in relation to those people receiving the COVID-19 wage subsidy.

## Family violence

- Collect disaggregated data on family violence during the pandemic and report on how different groups have been affected.

## Employment

- Ensure transparent Tiriti based equity across the government approach including continuation of targeted employment measures to support Māori, whanau, business, employment and stimulus packages.
- Ensure any fast-tracked development projects uphold indigenous rights to lands and resources, and enhance Māori participation, in line with Te Tiriti and the human rights obligation of free, prior and informed consent.
- Increase investment in tertiary education to lift the prosperity of Māori, women, Pacific, disabled, migrant workers, ethnic minorities, marginalised youth, and older workers.

## Poverty

- Consider the recommendations of the Child Poverty Action Group to build on the government's COVID-19 welfare package.
- Accept and implement the outstanding Welfare Expert Advisory Group recommendations for the improvement of the social welfare system.
- Urgently implement recommendations 19 to 23 of that report, to ensure that those already receiving benefits, or facing a shift to welfare, receive adequate income support to maintain an adequate standard of living.

## Housing

- Ensure those living in homelessness and insecure housing who were housed by the government during Alert Level 4 are not made homeless again.
- Use recovery investment to build healthy housing stock.
- Develop a human rights-based housing strategy for Aotearoa New Zealand as recommended by the UN Special Rapporteur on the right to adequate housing in 2020.

# Te Tiriti o Waitangi

When Spanish influenza reached New Zealand in 1918, the pre-European Māori population had more than halved due to introduced disease and land wars. Māori deaths from this influenza were seven times higher than non-Māori, in part due to many Māori communities being left to fend for themselves. The severe and uneven impacts of introduced disease will always be in the hearts and minds of tangata whenua.

Today, health modelling shows that tangata whenua are at a much higher risk of illness and death from COVID-19 compared to non-Māori. Iwi have taken a strong leadership role and decisive action against COVID-19, seeking to protect their most vulnerable and avoid a repeat of the devastation from previous pandemics.

## Positive practice on which to build

Te Tiriti o Waitangi requires proactive support from the government for rangatiratanga, alongside ensuring equity of outcomes for tangata whenua. Te Tiriti and human rights provide for co-existing systems of governance: Crown kāwanatanga authority and iwi and hapū rangatiratanga.

During the COVID-19 crisis it has been encouraging to see examples of Tiriti partnership working in practice and strong leadership being exercised by both partners. Where responsibilities overlap, there has been cooperation reinforced by a strong sense of shared purpose to contain the coronavirus and to protect Māori and all New Zealanders.

A positive example is the iwi and hapū-led rāhui checkpoints, carried out in a spirit of collaboration with police, councils and civil defence. The Commission welcomes the Police approach of recognising iwi concerns and seeking to model Tiriti partnership. The Commission encourages constructive partnership between Police, iwi and hapū as the response to COVID-19 develops over time.

While there is much to commend in New Zealand's response to COVID-19, Te Tiriti and human rights have not been integrated across the response to the pandemic. These fundamental values and safeguards should be at the heart of the response.

Positive references to Te Tiriti in key documents are welcome, but it is sometimes unclear how these obligations are being implemented in practice. At this critical time, Crown-Māori relationships must be elevated from sporadic engagement to substantive partnership and equitably shared decision-making.

The Commission welcomes government efforts such as funding support for Māori, the ramping up of targeted testing and the Ministry of Health's Māori Response Action Plan, which includes a significant focus on equity. There has been a welcome commitment from the Ministry to work together with its Tiriti partners.

## International human rights

Efforts to address health and other disparities affecting Māori are unlikely to be effective if they are not real partnerships upholding Māori self-determination. Effective measures for Māori are those by Māori and with Māori, and which affirm Te Tiriti as a whole.

Domestic Tiriti obligations are supported by international human rights, including the UN Declaration on the Rights of Indigenous Peoples. The Declaration highlights the fundamental importance of the rights to self-determination, to participate in decision-making, and to free, prior and informed consent in relation to initiatives that affect indigenous peoples.

The UN Expert Mechanism on the Rights of Indigenous Peoples notes that COVID-19 is likely to exacerbate a critical situation where inequalities and discrimination already abound. The Chair of the UN Permanent Forum on Indigenous Issues highlights the need to take steps to protect and prioritise Indigenous Peoples, as well as to recognise their contributions and leadership.

## Looking forward towards recovery

Honouring Tiriti and human rights commitments is vital to ensure an effective response to COVID-19 and to prevent the erosion of trust and confidence within Crown-Māori relationships.

Building on positive examples, the government and Māori should strengthen mechanisms to support partnership decision-making that affirms the kāwanatanga of government and rangatiratanga of hapū, iwi and Māori.

Partnership should go beyond engagement and encompass meaningful, equitable, shared decision-making. Where Māori rights are significantly affected, for example by restrictions on tikanga Māori, the obligation of free, prior and informed consent should be applied and rangatiratanga upheld.

Government must work with Tiriti partners on all COVID-19 issues, including changes to alert levels. Some iwi and hapū have expressed concerns about lowering alert levels and may wish to maintain higher levels of regional protection. Where kāwanatanga and rangatiratanga views diverge, there should be negotiations with a view to reaching agreement in line with the human rights obligation of free, prior

and informed consent. A deliberate and structured approach may help to ensure coordination between the two co-existing systems and also provide a forum for negotiating agreement on more difficult questions.

There needs to be a greater focus on advancing Tiriti-based equity for Māori including strengthening the Ministry of Health's Māori Response Action Plan. Alongside the risk of COVID-19, Māori communities will be burdened with untreated and undiagnosed conditions and unmet needs that are likely to have worsened during the Level 4 lockdown. It is crucial that the vulnerabilities of Māori are given a high priority across the health system. Robust data collection and analysis will be critical.

Overall, a well-coordinated COVID-19 strategy, grounded in Te Tiriti and human rights, is required across all government agencies and sectors.

Finally, it appears that there were significant gaps in the long-term pandemic planning of successive New Zealand governments. As we move into Alert Level 3 and towards recovery, we urge the government to ensure that the lessons from this pandemic are documented for future planning and implementation based on Te Tiriti.

# Snapshots - He whāiroiro

## Personal Protective Equipment - Taputapu Tautiaki Tangata

Access to PPE (masks, gloves and gowns) is pivotal to ensuring appropriate protection for the people most vulnerable to the effects of COVID-19, such as disabled people, older people and those with underlying health conditions.

Home and community support workers provide critical care for at-risk communities. The intimate and mobile nature of support work creates significant risks. These can be mitigated by adequate and equitable access to PPE.

The response to concerns within the home and community workforce, and those it cares for, has been slow. In the absence of adequate PPE, some disabled people and support workers halted support work arrangements to reduce their risk of exposure.

Following persistent advocacy by the Disability Rights Commissioner and others, PPE was made available to the community workforce. But significant problems persist, including the absence of sector specific guidance on PPE use. District Health Boards' unfamiliarity with the disability sector is also a problem.

Iwi response teams, Māori providers and Māori community organisations have struggled to access PPE in order to keep themselves and whānau protected.

The Auditor-General has recently launched an independent review into PPE management during the COVID-19 crisis.

Everyone is entitled to health protection from epidemic diseases. Human rights, including the rights to life, health protection and equality, and Te Tiriti, require the government to take all effective and reasonable measures to provide adequate and equitable access to PPE.

The government has fallen short of these obligations.

Explicit consideration of the government's human rights and Te Tiriti obligations in relation to PPE will help to ensure that it does better in Alert Level 3 than it did in Level 4.

Te Tiriti requires Māori leadership and partnership in relation to all health issues, including PPE. Likewise, the Convention on the Rights of Persons with Disabilities requires that disabled people should be involved in decisions that impact on them, such as those relating to PPE.

## Access to justice - Āheinga ki te ture manatika

The Human Rights Review Tribunal closed for the duration of alert Level 4.

Justice delayed is justice denied. Many claimants in the Human Rights Review Tribunal are vulnerable: they may have suffered discrimination, racist attacks, sexual harassment or privacy breaches.

All hearings for March, April and May 2020 are cancelled and timetables are suspended for other matters, putting later hearings at risk. There has been no attempt to hear claims or procedural issues remotely, no new claims are being processed and there has been no uptake of the use of technology to progress claims.

By contrast, some courts have embraced the challenge of working differently under Level 4. For example, the Employment Court processed new claims. The Court contacted parties to arrange hearings on the papers, by telephone or audio-visual link. It continued to release decisions and an active Twitter account gave updates. We commend that approach.

On the other hand, the Tribunal's approach is a serious human rights issue: it is inconsistent with the claimants' right to an effective remedy for the significant harm they have suffered.

In Alert Level 3, we urge the government to provide the Tribunal with adequate resources to hear and decide

claims remotely. A human rights approach would see all Tribunal staff, including decision makers, working from home. They should be encouraged to progress all existing claims and conduct hearings by alternative means.

### Contact tracing, surveillance and data use - Whakapāpā mate rere, tūtei mē te whakamahi raraunga

Contact tracing involves the gathering of data from individuals who have come into contact with people who have the coronavirus. It is a key public health measure for containing and eliminating COVID-19.

The government has confirmed that digital contact tracing technology will be used, on a voluntary basis, to assist with contact tracing. A recent independent audit of COVID-19 contact tracing (the Verrall report), notes that the Ministry of Health and local developers are working on a smartphone app for this purpose and recommends that its development is rapidly completed.

By enhancing the speed and scope of contact tracing, digital technology has the potential to positively impact on the public health measures taken by the government towards eliminating COVID-19.

There is a concern that this technology has the potential to be used repressively for purposes other than public health, such as general intelligence-gathering and surveillance.

The use of digital contact tracing involves the balancing of the right to privacy with the right to health, which includes prevention, treatment and control of epidemic disease. A human rights approach will help the government to appropriately balance its privacy and public health obligations when considering digital contact tracing. This approach requires the government to ensure that any impacts on people's privacy are strictly necessary, lawful and proportionate.

The use of digital tools for tracing COVID-19 should be voluntary. High levels of public trust and uptake are essential if they are to be effective. The Privacy Commissioner has noted that the way information is collected and distributed is essential to balancing health and privacy. Information should only be provided to public health workers, be of a minimal nature and be accessible only while COVID-19 remains a threat.<sup>1</sup>

Decisions on contact tracing, surveillance and data use must be undertaken in partnership with iwi and Māori, uphold rangatiratanga and address Māori equity issues. Iwi and Māori organisations should have access to data and information to enable their effective participation in decision-making, inform their self-determined responses, and monitor equity of outcomes.

### Deprivations of liberty - Aukati te noho herekore

Under Alert Level 4, people held in prisons, police cells, secure mental health and dementia units, youth justice facilities and care and protection residences were effectively locked down from the outside world.

Research shows that such people are vulnerable to cruel, inhuman and degrading treatment. This risk is heightened when they are cut off from full interactions with independent monitoring agencies, statutory visitors and their whānau.

During a respiratory pandemic, people who are deprived of their liberty have a greater risk of infection due to living in close proximity to one another and their limited ability to take their own precautionary measures. They are also more likely to have compromised health and therefore be more vulnerable to coronavirus.

The Human Rights Commission is the Central National Preventive Mechanism under the Optional Protocol to the United Nations Convention against Torture.

<sup>1</sup>Reported TVNZ, 9 April 2020, available [here](#) and at the Office of Privacy Commissioner website [here](#)

The Commission's role is to support and coordinate New Zealand's four independent bodies designated to inspect places of detention. The Chief Ombudsman, Office of the Children's Commissioner, Independent Police Conduct Authority and the Inspectors of Penal Service Establishments, undertake independent inspections of places of detention to prevent ill-treatment of those detained. These four agencies are known as National Preventive Mechanisms (NPMs).

During Level 4, the Commission and NPMs have been meeting regularly to develop and improve inspection practice and criteria in response to the COVID-19 crisis. NPMs are undertaking information gathering, virtual inspections, video calls with people in detention, engagement with whānau, developing new inspection criteria, and have been carrying out safe physical inspections.

NPMs are looking at what lessons have been learnt at Level 4 and how these can inform their monitoring at Level 3. One lesson is the limitations of virtual inspections for independent monitoring, including engaging appropriately with people in detention. However, the Office of the Children's Commissioner has found that the use of audio/visual monitoring tools has proved unexpectedly effective when engaging with detained young people. This has enhanced the ability of the monitoring team to obtain real time insight into the experiences of detained young people.

NPMs will continue to improve their practice to ensure the rights of people deprived of their liberty are respected.

Recent events illustrate the importance of ensuring that the crucial role of NPMs' unrestricted visits is understood by detaining agencies and their access is incorporated into plans for dealing with emergencies.

Given disproportionate rates of detention of Māori, acknowledged structural discrimination and documented systemic failures over decades, a Tiriti-based approach in this area is vital.<sup>2</sup>

## Racism - Whakatakētanga

Since January, there has been a rise in racist and xenophobic language, as well as stigmatisation of Chinese and Asian communities.

Chinese community leaders are fearful that a rhetoric of blame will encourage further xenophobia and violence. Individuals from other communities including Māori, have noted concerns about racism during the period of lockdown. Workers from multicultural communities have highlighted the risk that racial bias may influence business decisions.

Netsafe confirms that from 1 January to 12 April this year, there has been a significant increase in reports of hate speech. The Human Rights Commission is in close touch with the Chinese community and has emphasised to government leaders the current growing challenge of racism.

The government's COVID-19 response funding for Māori and ethnic groups, to prevent disproportionate harm caused by existing inequities, is commendable. There must also be an express commitment to address racism as part of the response. We acknowledge the government's continuing support for the Commission's Give Nothing to Racism Campaign, which was being re-designed shortly before the pandemic reached these islands.

Everyone in Aotearoa New Zealand is entitled to feel safe in their home, at work and in public. These human rights are among our domestic and international commitments. They are also part of our culture as a nation.

The government must take firm steps to actively discourage racist behaviour. This means explicit public messaging and awareness raising. Post-COVID-19, the development of a National Action Plan Against Racism becomes even more important. Such a Plan would ensure a human rights lens is built into emergency preparation, planning and responses. The government must anchor its approach in Te Tiriti o Waitangi, as

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<sup>2</sup> Uepū Hāpai i te Oranga, (2019), *Tūruki! Tūruki! Move Together! The second report of the Safe and Effective Justice Advisory Group*. Accessible at: <https://www.safeandeffectivejustice.govt.nz/about-this-work/te-uepu-report/>



well as the views and experience of tangata whenua, while also highlighting the impact of racism on those communities who are currently feeling it most acutely.

Lack of understanding can sometimes lead to a backlash against steps to uphold Te Tiriti and this highlights the continued need for education and to remain firmly committed to Te Tiriti and Māori human rights throughout the COVID-19 recovery phase. Any attempt to address racism in Aotearoa New Zealand must include honest discussions about anti-Māori racism in all its forms.

## Disability - Whaikahatanga

### Accessible information

Accessibility is a precondition for disabled people to live independently and participate fully and equally in society. The Convention on the Rights of Persons with Disabilities requires the government to provide accessible information on an equal basis with others; for example, New Zealand Sign Language for deaf people and 'easy read' for people with a learning disability. This is especially important in a health emergency.

The Ministry of Health worked quickly with Disabled People's Organisations, and the Human Rights Commission, to set up a 'hub' within government that helps to streamline the provision of COVID-19 information in accessible formats.

However, there have been delays in approval processes and uploading accessible formats so that some information has been unavailable when required. Sometimes accessible formats are hard to locate. Accessible information about COVID-19 testing has been a problem. The COVID-19 government website, the public's main information source, does not always provide accessible information.

As we move into Level 3, decision makers need to continue to proactively seek the feedback of disabled people and their families about access to information. Decision makers should involve disabled people early in the drafting and production of materials and information.

Tāngata whaikaha (Māori disabled people) must be linked to Māori and disability COVID-19 response teams to benefit from, and contribute to, self-determined culturally effective and disability sensitive initiatives.

### Absence of disaggregated data

COVID-19, and the response to it, have distinctive impacts on disabled people.

Without data on these impacts, government cannot ensure individualised and holistic support to disabled people affected by COVID-19. Also, without this data, government cannot monitor any disproportionate burden that may fall on disabled people.

The Commission understands that out of several government COVID-19 surveys only one appeared to ask about disability. Also, there is limited disability data on COVID-19 testing.

As New Zealand moves into Level 3 and beyond, it is critical that better data are collected to understand how disabled people are affected. Agencies should liaise with Statistics NZ, Office for Disability Issues and the Human Rights Commission on how to collect robust disaggregated data.

New Zealand has ratified the UN Convention on the Rights of Persons with Disabilities which requires the government to provide data disaggregated for disability. The government's current failure to provide such data is inconsistent with its obligations under the Convention.

Te Tiriti requires a focus on quality data collection and assessment of impacts on Māori, undertaken in partnership with iwi and Māori organisations. Data collection and the monitoring of the health and disability system remains critical, in order to ensure the equitable provision of services to Māori at all levels and that the services are reaching those whānau who need them.

## Family violence - Whakarekereke ā-whare

Everyone has the human right to be free from violence and abuse. Violence against people diminishes their enjoyment of other fundamental rights and freedoms.

The COVID-19 pandemic has created an environment heightening the risk and occurrence of violence against women, children, and other vulnerable people. Economic insecurity, job losses, overcrowding, loss of routine, lack of access to usual supports, and poverty-related stress all contribute to volatile situations. The current situation risks further exacerbating harms experienced by Māori whanau who are over-represented in violence statistics.

Police and social services have reported increased family violence since the beginning of Level 4. The lockdown significantly impacts victims' ability to escape abusive partners or call for help. For abusers, it restricted their physical contact with others who may have been able to help calm situations and mitigate harmful behaviour.

Disabled people face twice the risk of experiencing violence compared with non-disabled people. With reduced access to supports such as respite, creating conditions of stress, the risks of violence and neglect increase. Wrap-around services that respond to the needs of disabled people are critically needed in the COVID-19 response.

Rainbow people in households where their identities are not affirmed or tolerated face the risk of violence. Emergency housing providers and refuges may lack gender-diversity policies or options for transgender people and men.

The allocation of an extra \$12 million in funding for additional refuge accommodation and other support services is commendable. In Level 3, funding and support for those at risk of violence will need to increase. Funding must be directed to inclusive and accessible services, both prevention and response. These initiatives should reflect Tiriti partnership, support Māori-led approaches and advance equitable outcomes.

Police must be given clear direction to respond appropriately to family violence incidents in Level 3. Low numbers of family violence arrests suggest Police may not be arresting people when necessary. This may be due to COVID-19 social distancing guidance which prevents candid disclosure of violence. It may be because police capacity is directed to other COVID-19 priorities.

## Older people

The impact of COVID-19, and the emergency response to contain it, has been especially acute for older people. Not only do older people face a disproportionate risk of death as a result of the pandemic, many also live in high-risk environments such as aged care facilities. Of the 19 deaths to date, all have occurred in the 60-70+ age group with five of the 16 significant clusters occurring in residential aged care facilities.

Alert Level 4 lockdown measures to protect the right to health protection and health care created additional challenges for many older people. These included: a shortage of caregivers and a reduction in home care services; a lack of access to respite care; the suspension of social and community support programmes; and an inability to access critical COVID-related information when it was provided only in digital form. Older people are at risk when their daily lives and support systems are disrupted. Numerous human rights are implicated, including the rights to health care, food, an adequate standard of living, and accessible information.

Access to secure payment methods to purchase food during Level 4 lockdown has been a considerable barrier. Many people are not set up for internet banking and do not have debit or visa cards. The banking industry and other businesses have a responsibility to have preparedness plans in place to ensure their customers are equipped to meet their basic needs during a national emergency.

A successful response to the COVID-19 pandemic requires the government to take all effective and reasonable measures to ensure the rights of older people are protected and that, as far as possible, older people are empowered to take care of their own affairs and wellbeing.



## Women - Te ira wahine

In the era of COVID-19, women have been disproportionately impacted by job losses in retail, hospitality and tourism. This will lead to a rise in poverty for women, particularly Māori, Pacific and women from ethnic minority groups, who worked in large numbers in those industries.

Some of these issues are also considered in the next 'snapshot'.

Most single parent households are female led. Single parents have been disproportionately impacted during the Level 4 lockdown, shouldering a burden of responsibility to care for children, home schooling and carrying out domestic tasks while working from home.

Under Level 4, children were initially unable to accompany adults to the supermarket, making it more difficult for single parents to obtain food and essential supplies.

The impact is increased poverty for women, ongoing hardship and stress for single parent families, an increase in child poverty and an increased burden of unpaid care work for women. For wāhine Māori and their whānau, the impacts of COVID-19 exacerbate systemic failures to uphold Te Tiriti.

Wage-subsidies that were put in place quickly by the government have cushioned the economic impact of large-scale job losses and have kept workers tied to jobs.

The government pressed ahead with raising the minimum wage on 1 April despite opposition. This will positively impact women who make up the majority of people on the minimum wage.

Impacts on women during the COVID-19 crisis are human rights issues. There is an obligation to ensure no discrimination based on sex, and a positive duty on the government to eliminate discrimination against women. In addition, there are obligations on business to ensure workers' rights are respected. Applying Te Tiriti and human rights to economic and social policies will reinforce existing initiatives that strive to revalue low paid "essential" occupations, eliminate

pay inequity by gender and ethnicity, alleviate poverty for single parent families, value unpaid work and enable flexible work. Human rights will help to lift the economic, social and cultural value of women's lives and work, and advance gender equality.

Collecting demographic data about people receiving the wage subsidy will provide better information for planning and help to advance gender equality in Aotearoa New Zealand. These exercises must include quality data collection on ethnicity.

## Employment - Whakamahingia

The government's decision to move to Alert Level 4 inevitably led to a crisis of employment. As at mid-April, the government had paid in excess of \$10 billion to support 1.6 million workers. It had also launched a \$6.25 billion business finance guarantee scheme for small and medium-sized businesses to protect jobs and support the economy. This is a huge investment and an act of human rights guardianship. Also, the government has introduced a 6-month rent freeze and 3-month protection against terminations.

### Poverty

During Alert Level 4 many people worked on reduced wages or were made redundant. There have been allegations of poor redundancy procedures, including discrimination. There have also been significant increases in poverty and hardship for many people, including working households.

The crisis has had a disproportionate effect on those who were already living on or below the poverty line, with insecure housing and work. Certain industries, such as tourism and hospitality, are likely to take longer to recover than others. There is a real risk of prolonged unemployment within regions, and for Māori, Pacific peoples, women, sole parents, disabled people, the rainbow community and migrant communities.

Many people are moving onto government benefits for the first time. As unemployment rises, foodbanks have reported a "tsunami of need" with some people queuing for four hours. In the first week of Level-4 lockdown, the number of Ministry of Social

Development (MSD) food grants increased from around 25,000 a week to 70,000.

MSD is encouraging those who are struggling financially to contact them, but there continue to be major difficulties reaching MSD staff to discuss needs. The food grants are only in the form of a one-off emergency grant, rather than ongoing support.

The allocation by the government of an additional \$30 million support package to bolster the delivery of food and welfare assistance is very welcome. Further steps need to be taken to ensure this assistance is accessible in a timely manner to all of those who need it.

### **Housing**

Before the pandemic, the level of homelessness already far outstripped the level of available assistance. Housing is one of the most significant living costs, particularly for those living in poverty. In January this year, the number people on the social housing waiting list was over 14,000. One in four households already spend 40% or more of their household income on rent and housing costs. Since the pandemic, the government's rent freeze and other tenancy changes stop a landlord from increasing rent and limit the options for termination. However, landlords can still terminate a tenancy if a tenant falls 60 days behind in rent. For those who have lost all income as a result of redundancy, business closure or downturn in hours, paying rent is likely to be a struggle. Long term rent caps and further assistance measures will need to be considered.

### **Reflecting on employment, poverty, housing**

These employment, poverty and housing issues arising from the COVID-19 response implicate numerous human rights. For example, the right to work, the right to adequate food, the right to adequate housing, the

right to fair and just working conditions, including safe and healthy working conditions, and fair wages which provide a decent standard of living for families.

Successive governments have adopted and affirmed these human rights. In addition, there are obligations on business to ensure the human rights of workers are respected.

Existing employment and income inequities for Māori are likely to be exacerbated by the crisis, making it even more critical that responses are firmly grounded in Te Tiriti. There is high Māori participation in significantly affected industries (e.g. primary industries), and in insecure and low-paid work. Māori have been proactive in providing support to whānau, businesses and communities, and in developing tikanga- and mātauranga-based responses to the economic impacts of the pandemic.

In Level 3 and beyond, a Tiriti and human rights approach can help the government devise and deliver robust, equitable, effective economic policies. This can help to ensure a commitment to good faith in employment relations, equal employment opportunities, collective bargaining and fair pay agreements, flexible work, and enhanced diversity in the workplace.

Economic recovery efforts provide opportunities to embed Te Tiriti and human rights into government responses and to work in partnership with iwi and Māori. Any fast-tracked development projects must uphold indigenous rights to lands and resources, in line with Te Tiriti and the human rights obligation of free, prior and informed consent.

# Conclusion - Kōrero whakamutunga

The Foreword acknowledges the government's commendable response to COVID-19 and the human rights 'snapshots' confirm there are some significant shortcomings.

## Put human rights on the table

Human rights do not provide magic solutions to grave crises, but they have a constructive contribution to make as the country navigates these dangerous times. They embody values – the importance of safety, dignity, decency, fairness, freedom, equality, respect, wellbeing, community and responsibility – which provide a compass for the way forward.

In today's world, human rights are also increasingly practical and operational. They can help to both chart and implement an effective, equitable, balanced, sustainable medium and long-term response to COVID-19.

But this can only happen if human rights are on the table. One of the striking features of the government's response to COVID-19 is the almost total silence about human rights. Yet explicit consideration of human rights could have prevented some of the shortcomings identified in this brief report. They help to strike fair balances and identify proportionate responses. At a time of crisis there is a heightened risk that mistakes will be made. Explicit attention to human rights can help to prevent mistakes, but not if they are absent from crisis management, decision-making and policy processes.

During Alert Level 4, government sometimes talked about "a principles-based approach", but human rights, agreed by successive governments and steeped in universally accepted principles, did not appear to be an explicit part of the discussion.

## Independent accountability

At a time of crisis, there is often an accountability deficit. Parliament adjourns and some courts close their doors precisely when those in authority are granted sweeping new discretionary powers.

In Aotearoa New Zealand, the media deserve enormous credit for holding government to account during Level 4. The Epidemic Response Committee, chaired by Simon Bridges, Leader of the Opposition, has also done a good job in a very difficult situation.

Within government, interagency groups recognised the need to ensure discretionary powers were not abused and fair balances were reasonably struck. But care is needed. Those exercising the discretionary powers cannot hold themselves accountable. The Auditor-General recently emphasised that public accountability is a cornerstone of our system of government. Nimble constructive effective independent accountability mechanisms have a major role to play in Level 3 and beyond.

## Te Tiriti o Waitangi

The government's National Plan of Action for COVID-19 begins by confirming that the government's commitment to working in partnership with Māori is a key component of its national response to the pandemic. In Level 3 and the recovery phase, we urge the government to renew and reinvigorate this commitment and jointly devise and implement strategies to address COVID-19, in keeping with the country's constitutional foundation.



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Te Kāhui Tika Tangata