



Human Rights
Commission
Te Kāhui Tika Tangata

Monitoring Human Rights in the Canterbury Earthquake Recovery

A report by the Human Rights Commission

Whakaora Rū Whenua Waitaha he Aroturuki Tika Tangata

He pūrongo nā te Kāhui Tika Tangata

December 2013



Human Rights
Commission

Te Kahui Tika Tangata

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Brooklands Community Farewell Sunday September 9

On 9 September 2012, Brooklands community, which has been zoned red, held a goodbye celebration for residents. It was a bittersweet occasion for residents and featured performances by local school children and a memory walk through the suburb that included the dairy, the play centre and the fire station. Residents were invited to 'individualise their memory boats' and to use these "as a symbol of your journey – from the Brooklands that was ... to your new hopes and dreams." The walk ended at the lagoon where people released their boats into the water.

A senior fire fighter at Brooklands Volunteer Fire Brigade is featured on the cover launching his boat at the lagoon. He says of the day: "It was not an overly happy day, no one wanted to move on ... I hope the report delves deep as there are certainly a lot of unanswered questions."

All photographs in this report are by Margaret MacDonald unless otherwise stated.

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Kupu Whakataki

Whakataka te hau ki te uru
Whakataka te hau ki te tonga

*Cease the winds from the south
Cease the winds from the west*

Kia mākinakina ki uta
Kia mātaratara ki tai

*Let light breezes blow over the land
and sea*

E hī ake ana te atākura he tio

*Let the red-tipped dawn come with a
sharpened air*

He huka, he hauhunga

*A touch of frost, a promise of a glorious
new day*

Haumi e! Hui e! Tāiki e!

Join together, gather, intertwine!



Foreword from the Chief Commissioner

Wāhinga kōrero nā te Amokapua

The Canterbury earthquakes represent one of New Zealand's greatest contemporary human rights challenges. Some of the challenges faced by affected people, such as access to adequate housing, are similar to those experienced by people in other parts of New Zealand. Others are unique to Canterbury, such as the stress and health issues related to housing, insurance, and community dislocation, stressors caused by the earthquakes, as well as the response to them. It is clear that the Government recognises the importance of human rights in the earthquake recovery. This is reflected in the steps it has recently taken to address the psychosocial health of the people who are most stressed.

The aim of this report is to encourage influencers and decision-makers to apply a human rights approach, by putting human rights principles at the centre of decision-making in civil emergencies, and more broadly, at the centre of the shaping of social, economic and development policy. This report looks back at some of the human rights challenges arising through the recovery over the past three years, and also highlights positive aspects of the recovery related to human rights.

The earthquakes caused loss of life, serious injury and disruption in homes, jobs, businesses, schools, sports and recreation. The ongoing dedication and efforts by the key agencies involved in the recovery have enabled many affected people to move on with their lives. However, many people affected by the earthquakes continue to experience deteriorating standards of living and impacts on their quality of life that go beyond the immediate effects of the disaster. The admirable efforts of those involved in the recovery will be better realised as agencies involved increasingly work together across the system to deliver the best outcomes, and when the people affected are involved in identifying and defining those outcomes. Already we are seeing positive examples of this.

Human rights standards are relevant to the way in which people are able to move on with their lives following a natural disaster, to how they can participate in decisions that affect them, and to how they can access information about themselves and their property. The Commission strongly believes that a people-centred earthquake recovery process will lead to better outcomes for everyone. There are outstanding examples of this approach in Canterbury, such as the redesign of the Canterbury health system, led by the Canterbury District Health Board. The Canterbury Earthquake Recovery Authority's work in the area of social and cultural recovery also shows a strong commitment to enabling people, whānau and communities to have greater involvement in decisions that affect them.

Although it is now more than three years since the September 2010 earthquake, the recovery is still unfolding and new human rights issues continue to emerge. Lessons from the Canterbury recovery should be drawn on to achieve better realisation of human rights in New Zealand. I hope that all of us – Government, local government, non-governmental organisations and the business sector – take active steps to ensure a human rights approach is further embedded in the recovery, and incorporated into future disaster responses.

The Commission will continue to offer its support and expertise to all those involved in the Canterbury recovery. It will also continue to work directly with people affected by the earthquakes to help them to realise their rights, and to connect them with key decision-makers who can ultimately help them through the recovery.



David Rutherford,
Chief Commissioner Te Amokapua

Acknowledgements

A large number of people and agencies have contributed to this report. The Commission would particularly like to acknowledge the input provided by affected people in Canterbury.

The Commission thanks the staff of non-government and government agencies that have contributed to this report. Many of those involved are based in Christchurch. It acknowledges the contribution of its own Christchurch-based staff who continue to engage with a wide range of Canterbury residents and organisations involved in the earthquake recovery.

The Commission thanks both the Centre for Economic and Social Rights and the Asia Pacific Forum of National Human Rights Institutions for their input. It looks forward to continuing to develop and apply what has been learned from this project to future human rights monitoring in Canterbury and elsewhere.

Executive summary: Monitoring human rights in the Canterbury earthquake recovery

Tāhūhū whakarāpopototanga

Human rights don't disappear the moment an earthquake, a hurricane or a tsunami strikes. We witnessed after the Indian Ocean tsunami, the earthquake in Haiti and many other disaster situations that during relief and recovery efforts the protection of human rights gains in importance as it can safeguard the dignity of those affected. – United Nations Inter-Agency Standing Committee (2011) Operational Guidelines on the Protection of Persons in Situations of Natural Disasters

Human rights in the earthquake recovery

The Canterbury earthquakes have created human rights challenges on a scale seldom seen in New Zealand, particularly in relation to the right to adequate housing. They have also created challenges to the realisation of other basic human rights such as the right to health, the right to property, the right to education, and civil and democratic rights. This report examines the human rights challenges that have emerged during the recovery, and calls for human rights standards to be the essential foundation for a fair and just recovery. There have been many positive responses, but continuing to respond to the on-going human rights challenges is a key part of the recovery process.

The Human Rights Commission's role

Since the February 2011 earthquake, the Human Rights Commission (the Commission) has focused on contributing to the recovery effort using a human rights framework. As New Zealand's national human rights institution, the Commission has a unique and necessary role in raising awareness and understanding of human rights for everyone in New Zealand. The Commission advocates for fairness and inclusion being embedded in the rebuild and recovery process. Long-term this will help the people of Canterbury sustain a strong future.

In its work relating to the recovery, the Commission

takes a pragmatic and proactive approach to ensure that systemic issues, which have the potential to impact negatively on human rights, can be addressed. The Commission has been working with the people and communities of Canterbury, local and central government, Tangata Whenua, business and non-government organisations to ensure that:

- the impacts of the earthquakes on vulnerable and affected people are heard and their dignity respected
- the recovery goal to make Christchurch the world's most accessible city is achieved
- that rights, such as the rights to health and housing, are realised and not compromised by uncertainty or unnecessary delay
- ensuring people have access to a safe and warm home and can maintain connections to their community.

The wider scope of the Commission's earthquake recovery-related work includes: receiving and responding to complaints about broader human rights matters around the recovery process; proactive community engagement and human rights education with civil society, non-government and government agencies; the preparation of submissions on government policy about the recovery; and intervening in human rights matters before the courts.

The Commission strongly believes that a people-centred earthquake recovery process, one that

involves people affected by the earthquakes in problem identification, solution design and decision-making, will lead to better outcomes, including human rights outcomes in Canterbury. The Commission is committed to working with government and civil society to help make this happen. It will continue to monitor human rights in Canterbury and work with agencies to help ensure that respect for human rights is a core factor underpinning recovery efforts.

The purpose of this report

Monitoring Human Rights in the Canterbury Earthquake Recovery reports on the human rights aspects of the Canterbury recovery. It focuses on the Canterbury earthquakes to raise awareness and understanding of the relevance of human rights in disaster contexts, and more generally in New Zealand. Through a primary focus on housing, it examines the impact of the earthquakes on interrelated human rights standards relating to health, accessibility, democratic rights and the role of the public and private sectors in giving full effect to these rights.

A core purpose of this report is to encourage influencers and decision-makers to apply a human rights approach to the recovery. This can be achieved by putting human rights principles at the centre of decision-making in civil emergencies, and more broadly, at the centre of the shaping of social, economic and development policy. The experience in Canterbury shows this is a way to reach better decisions for everyone, as well as better services both in the private and public sectors.

Overview: the Commission's analysis

When a natural disaster occurs, the primary focus of government and relief agencies is on addressing the immediate needs of those affected, such as finding survivors, providing food and water, shelter, sanitation and medical care. However, the chaos that almost inevitably follows such an event also increases the potential for human rights violations. Such violations can result from inadequate policies

or simple neglect, but they can often be mitigated or avoided if relevant human rights standards are taken into account in the early stages of planning.

Much has been done to ensure the rights of people affected by the Canterbury earthquakes are protected. However, the earthquakes resulted in challenges to the realisation of a range of economic and social rights, such as the right to housing, to an adequate standard of living, health, education and to property. Civil and political rights such as rights to participation or access to information have also been affected. These challenges have been especially acute for those who were already disadvantaged or facing discrimination in the pre-disaster context, such as people with disabilities, the elderly, cultural minorities, and children and young people. Security of home as a human right has assumed a new relevance through the earthquake recovery.

This report provides a human rights analysis of key issues that have emerged in the recovery relating to housing, health and property. It highlights particular human rights challenges in these areas, instances of good progress, and areas in which challenges remain.

Section One outlines the importance of human rights, particularly in disaster settings. It describes the fundamental human rights principles underpinning human rights advocacy, such as the prioritisation of vulnerable groups, non-discrimination, participation and empowerment, transparency and accountability.

Section Two sets out the legislative response to the Canterbury Earthquakes, the Crown-lwi recovery partnership and the Canterbury Earthquake Recovery Strategy.

Section Three considers key policy responses relating to housing and property in the Canterbury recovery. It discusses: policy responses such as the zoning of land and the subsequent review process; the technical categories created to classify the condition of land and to enable repairs; the Government's offer to purchase red-zoned properties; extensions to settlement dates in red-zoned areas; and the issuing of hazard notices on houses or land deemed to be unsafe.

Section Four covers service delivery responses in the recovery of housing and property. It introduces the role of key actors in the Canterbury home repair programme, including the Earthquake Commission, Fletcher Construction and private insurers. The provision of post-disaster temporary housing, the Earthquake Support Coordinator Service and the Residential Advisory Service are also considered.

Section Five provides a human rights analysis of the impacts of the Canterbury Earthquakes on housing. This section of the report is divided into four thematic sub-sections that examine the fundamental elements of adequate housing, including affordability, habitability, accessibility and security.

The first of these, Affordable housing, examines the Government's human rights obligations to provide housing that is affordable. It considers the impact of the earthquakes on housing supply and demand and the related implications.

The second sub-section, Habitability, considers international human rights standards and New Zealand law and policy relating to habitable housing. It highlights some challenges arising related to post-earthquake repairs and improvements to housing stock. It also provides community perspectives on issues around the habitability of housing.

Accessibility and housing, the third thematic sub-section, addresses the issue of accessibility in private dwellings in the context of the earthquake recovery. It highlights the principles of universal design and the opportunity presented by the earthquakes to make Christchurch the most accessible and liveable city in the world.

The fourth thematic sub-section, Belonging, stability and security of home, considers government responsibilities related to its obligations to use the maximum available resources at its disposal to prevent homelessness, address discrimination in housing provision, and to ensure security of tenure and adequate housing for everyone.

Section Six of the report focuses on the impacts of the Canterbury earthquakes on the right to health. It considers the effects of secondary stressors relating to democratic rights, meaningful participation, and the significance of the link between health and social connectedness.

Section Seven, Business and human rights, introduces the relevance of human rights to business and presents a business case for human rights. It highlights the positive contribution business can make to making human rights real, and how maintaining business operations in the immediate aftermath of the earthquakes helped protect human rights in Canterbury.

The report's conclusions are reflected in the recommendations set out below. These primarily focus on those responsible for the earthquake recovery response. However, they are also relevant for non-government organisations and private sector parties such as insurers, banks and property developers.

The *Human Rights Protection Toolbox* included at the end of this report is a practical response to the questions the Commission has been asked by Canterbury residents seeking to self-advocate for their human rights. It is also intended as a guide for business, government and non-government agencies seeking further information on how to integrate human rights in everyday practice. The Toolbox also includes links to recently published resources on the application of the human rights framework to post-conflict and development situations, and useful resources on business and human rights.

The accompanying resource *Making Sure People Count in a Disaster* provides a simple reference guide that can be used by everyone, everywhere, to ensure that human rights are placed at the centre of decision-making processes.

Summary of recommendations

Ngā tūtohutanga

Housing affordability

The Commission recommends that the Government:

- 1 ensure provision of adequate housing including social housing, for people in need and particularly for vulnerable groups¹
- 2 develop, if possible by cross-party accord, a national housing plan addressing the rights of people in New Zealand to adequate housing and prioritising the needs of vulnerable people in all tenure types, and which is reported on annually to Parliament²
- 3 embed a human rights approach in all major initiatives related to the Canterbury earthquake recovery ensuring appropriate consideration of the adequacy of housing,³ including for temporary housing
- 4 review and report on the way affordable housing is funded through the regulations and benefits system
- 5 co-ordinate, through a single lead agency focal point, the monitoring of housing supply and demand in the greater Christchurch region for urgent short-term needs
- 6 in conjunction with the Christchurch City Council and other relevant agencies, collect statistics on enquiries to social housing providers from people who do not meet the criteria for social housing in order to accurately assess unmet needs
- 7 ensure the Land Use Recovery Plan facilitates planning and regulation incentives to support adequate housing to the maximum extent possible⁴
- 8 consider whether guidelines for rent control measures in the immediate aftermath of large-scale natural disasters should be developed and introduced
- 9 provide more access to temporary housing in the greater Christchurch area to meet urgent short-term need, including progressing the urgent provision of supported housing for young people.

The Commission recommends:

- 10 that the Ministry of Social Development (MSD) consider and report on the appropriateness of increasing the Accommodation Supplement for Christchurch to be commensurate with Auckland and Wellington
- 11 that the MSD review and report on the eligibility criteria for Temporary Accommodation Allowance, including considering whether imposing an income threshold is necessary
- 12 that the Christchurch City Council review and update its Social Housing Strategy for vulnerable people to reflect the lessons learned from the Canterbury earthquakes.

Housing habitability

The Commission recommends that the Government:

- 1 consider extending the Housing Warrant of Fitness system to apply to all rental properties
- 2 that all other social housing providers take the necessary measures to ensure the available social housing is suitable for individual tenants' needs and includes a range of housing stock, one to five bedroom units.

Accessibility and housing

The Commission recommends that the Government ensure accessibility and universal design are integrated throughout government work through:

- 1 the Ministry of Business, Innovation, and Employment ensuring an updated regulatory framework, with incentives being put in place for the built environment, including housing
- 2 the Canterbury Earthquake Recovery Authority and Christchurch City Council reporting annually on progress towards fulfilling the vision of Christchurch as the world's most accessible city
- 3 government agencies ensuring that their own, and government funded initiatives for which they are responsible, comply with the Government Web Standards for accessibility and other accessible information and communication requirements
- 4 ensuring that accessibility and universal design are embedded in the building process from the design phase through to completion
- 5 undertaking a review of NZS 4121:2001 in 2014, which considers whether NZS 4121:2001 should be mandatory, covering all aspects of the built environment, including publicly funded housing
- 6 preparing a discussion paper on whether an amendment to the Building Act is necessary, to include access requirements for all new residential housing units
- 7 ensuring all new housing stock is designed and built using Lifetime Design Principles, and that all social housing built or subsidised by the Social Housing Fund meets the highest standard of Lifetime Design
- 8 requiring all applicants for funding from the Social Housing Fund meet access requirements for all new housing units
- 9 commissioning BRANZ to research and provide advice on solutions to providing accessible housing in multi-storey, medium density housing developments
- 10 requiring that the two proposed exemplar housing developments referred to in the draft Land Use Recovery Plan as notified in July 2013 have access as a key delivery requirement
- 11 establishing a Choice in Community Living in Christchurch in the next financial year, in recognition of the lack of suitable accommodation in Christchurch.

Housing – Security of tenure

The Commission recommends that the Government:

- 1 prepare a discussion paper on whether an amendment of the Residential Tenancies Act is necessary, to lengthen notices so that notices for tenants to vacate the property are lengthened to 12 weeks and must be given with a reason.

Health – Participation

The Commission recommends that:

- 1 the Canterbury Earthquake Recovery Authority, the Christchurch City Council and other central government departments involved in the earthquake recovery embed a human rights approach and recognition of the human rights dimensions of the Treaty of Waitangi in their major initiatives, with support from the Human Rights Commission as appropriate
- 2 government agencies ensure adequate allocation of funding to respond to ongoing mental health issues and psychosocial stressors in the greater Christchurch area, focusing primarily on addressing pre-existing inequities for hard to reach and vulnerable families and whānau



Accessible Christchurch flashmob.

- 3 the Canterbury Earthquake Recovery Authority develop plans to consult with the public and territorial authorities about the transfer of responsibilities and functions when its statutory functions cease in 2016, and ensures responsibilities to *mana whenua* are maintained in the transfer
- 4 that the MSD continues to support the Earthquake Disability Leadership Group to build capacity so that disabled people's voices are heard in the recovery
- 5 government agencies provide accurate information about matters related to the earthquake recovery that affect citizens when and as required and in appropriate and accessible formats, including but not limited to community languages, Te Reo Māori and New Zealand Sign Language
- 6 government agency officials involved in any emergency response are appropriately and adequately pre-prepared and trained to be familiar with a range of ways of communicating with vulnerable communities, including but not limited to Te Reo Māori, New Zealand Sign Language, the Video Relay service and interpreting services for community languages.

Business and human rights

The Commission recommends that:

- 1 large-scale businesses involved in the Canterbury earthquake recovery commence progressive implementation of the framework set out in the *UN Guiding Principles on Human Rights and Business*, seeking advice from the Human Rights Commission where necessary.

Introduction

Kōrero whakataki

The context

Three years ago in the early hours of Saturday morning on 4 September 2010, Canterbury residents were jolted from their sleep by a powerful magnitude 7.1 earthquake. The timing was fortuitous, as masonry fell on deserted streets and empty cars, after late night revelries had ended and before workers emerged on Saturday morning. Even though the earthquake was the most damaging in New Zealand since the deadly magnitude 7.8 Hawke's Bay earthquake in 1931, there was no loss of life.

The September earthquake was shallow at only 11km deep, causing extensive damage to the built and natural environment. It affected residential housing, buildings, basic infrastructure, recreation facilities and land.

Five months later at 12:51pm, on 22 February 2011, a second earthquake of 6.3 magnitude struck. One hundred and eighty five people from more than 30 nations were killed, and over 11,432 people were injured.

The second earthquake, considered to be an aftershock of the September event, was only 5km deep, located in Heathcote Valley, 10km from the city centre. While it was of a smaller magnitude than the September earthquake it was exceptionally destructive. The majority of fatalities occurred in two central city buildings.⁵ A national state of emergency was declared.

The force of the earthquake caused extensive liquefaction in the central city, eastern suburbs, and to homes built near rivers, estuaries and beaches. Approximately 37,000 homes were without power, 100,000 lost their sewerage system, water was cut off to 80 per cent of the city and over 100,000 homes suffered significant damage.

On 13 June 2011, two large aftershocks struck Canterbury at 1:00 pm and 2:20 pm injuring 40 people, cutting power to 50,000 homes and causing further liquefaction to low lying areas such as Bexley, New Brighton, Dallington, Brooklands and Woolston.

Two further significant aftershocks struck on 23 December. In all, over 13,733 aftershocks have shaken Canterbury between the September 2010 earthquake and 10 October 2013.

There is damage to more than 90 per cent of the housing stock in greater Christchurch.⁶ Of these, an estimated 24,000 homes are either rebuilds or require major repairs.⁷ As at 1 November 2013, the Earthquake Commission had received 744,248 exposures for land, buildings and contents in Canterbury.⁸ The total rebuilding costs are estimated by Treasury to be approximately NZ\$40 billion, close to 20 per cent of New Zealand's annual GDP.⁹

Moving forward

Over the past three years considerable progress has been made in the recovery, both in terms of the restoration of a vast network of basic infrastructure as well as in terms of emergency and home repairs. There have been many examples of everyday heroism as people who are personally affected by the earthquakes worked tirelessly to help others, often in less than ideal situations.

A number of significant milestones have been achieved. In June this year, the Earthquake Commission's home repair programme passed the half-way mark with 42,861 homes repaired and another 39,047 to be completed. By November, 46,660 full repairs had been completed, with 34,133 full repairs remaining. Emergency repairs

had been completed in 47,391 homes and 18,740 heating units had been installed.¹⁰ Of the 7860 properties in the residential red zone and eligible for the Crown offer, 6879 properties had been sold to the Crown by August, 1259 property owners accepted the offer and will settle, and 261 had not been accepted.¹¹

As at September 2013, private insurers have injected over \$9.27 billion into the Canterbury recovery, comprising \$6.21 billion in commercial claims and \$3.06 billion in residential claims. Eighty per cent of residential earthquake claims have been completed, resolved or are scheduled for completion.

To guide the transition from the rebuild phase of the recovery to longer term planning the Government has developed a Land Use Recovery Plan. This provides a framework to examine the impact of the earthquakes on residential and business land use and details the delivery mechanisms to rebuild existing communities, develop new communities and meet the land use need of businesses with regard to infrastructure and hazard identification.

Infrastructure has been a primary focus of the repair effort, with the Stronger Christchurch Infrastructure Rebuild Team (SCIRT) responsible for rebuilding horizontal infrastructure such as roading and pipelines.

In 2013 the Canterbury Earthquake Recovery Authority (CERA) developed a Greater Psychosocial Recovery Strategy and Programme of Action, a cross-sectoral psychosocial recovery response for the Canterbury region. In conjunction with the six-monthly CERA Wellbeing Survey and annual Community Wellbeing Index, this helps identify emerging groups at risk of psychosocial health problems. The strategy offers a solid basis for a shared understanding of the components of psychosocial recovery as well as a framework for a more coordinated response. The strategy is an example of a “human rights approach” that the Commission would like to be used more widely in public services.

Recent immigration data shows a monthly gain in permanent and long-term migration into greater Christchurch and Canterbury since June last

year. The unemployment rate for Canterbury has fallen to a low of 4.3 per cent in comparison to a national unemployment rate of 6.2 per cent.¹²

At the same time, a number of people in Canterbury remain unable to move on with their lives and continue to face challenges in their ability to fully realise their human rights. The following thematic chapters explore some of these issues. They highlight positive examples where progress has been made and areas where challenges still remain.

A note on sources and methods

This report provides an analysis of some of the human rights issues arising from the earthquake recovery. It draws on statistical information as well as reports produced by key organisations involved in the earthquake recovery. It is also informed by a literature review of relevant international human rights law (of binding hard law obligations and non-binding soft law standards, along with best practice guidelines) and domestic law.

The Commission has worked with several organisations both in New Zealand and abroad to help shape the focus of the report. In early 2012, the Commission was selected to participate in a pilot capacity-building project on monitoring economic, social and cultural rights in the Canterbury Earthquake Recovery.¹³ The pilot was led by a partnership between the Asia Pacific Forum of National Human Rights Institutions (APF) and the Centre for Economic and Social Rights (CESR). The project focused on the monitoring of economic, social and cultural rights and the application of a methodological framework* to determine how public policies comply with human rights standards. As part of this process the Commission, together with CESR, ran a series of workshops with affected people’s groups and non-government and government agencies in Christchurch and in Wellington.

* Information on the framework, known as the OPERA framework (because it triangulates Outcomes, Policy, Efforts and Resources to make an overall Assessment) of how public policies comply with the obligation to fulfil economic, social and cultural rights is provided in Appendix 4.



Red zoned dairy in Brooklands.

A total of 52 participants including 21 organisations and agencies engaged with the methodological framework at community and government forums held by the Commission in July 2012 to review progress against international human rights standards.

From these workshops, key issues for monitoring the earthquake recovery were identified, including housing, accessibility, democratic rights, health and business. These five themes reflect those identified through the Commission's advocacy work and through its enquiry and complaints service. They also reflect the issues that the Commission has been alerted to through its work with a range of government and non-government organisations in Canterbury.

In April 2012, the Commission joined with the Office of the Auditor-General, Office of the Ombudsman, the Insurance and Savings

Ombudsman and the Serious Fraud Office to meet quarterly to discuss the efforts of the Canterbury Earthquake Recovery and share information and observations. The meetings are managed in a manner that ensures the independence of each of the agencies is protected. The Human Rights Commission has prepared this report in its own capacity.

Since July 2013 the Chief Human Rights Commissioner, Auditor-General and Chief Ombudsman have met, together with the State Services Commission (SSC) and agencies invited by the SSC to share observations on the recovery and to keep up to date with the work undertaken by agencies involved in the recovery.

This report is also informed by the Commission's community development work. From July to September this year the Commission worked with young people from the Kimihia Parents College



The Pallet Pavilion.

in Christchurch in a Photovoice¹⁴ project. The aim of the project was to empower young people to record and reflect on post-earthquake issues in their communities through photography. The images created and the themes highlighted will be used by the young people to bring about social change and to legitimise their voices in decision-making processes. The project revealed that a lack of adequate housing was the foremost concern for young parents in Canterbury. The impact of insecure housing on young people is considered in the Belonging, stability and security of home section of this report.

This year, the Commission held two forums on mental health and housing – one for consumers in April 2013, and one for service providers and support people in August 2013. A lack of adequate, accessible and affordable housing and disrupted public transport were key issues identified by participants since the earthquakes. These themes are addressed in the housing and accessibility sections of this report.

This report includes a series of case studies and excerpts from interviews with a number of people affected by the earthquakes who approached the Commission seeking assistance. These are people whose lives have been disrupted by the earthquakes and whose concerns ranged from housing rights, relating to affordability, habitability and security, to democratic rights such as access to information, effective remedies, participation, consultation and transparency.

Material from everyday sources is included in this report. The decision to include personal interviews, social media discourse and documentary photography was based on a desire to balance official sources with “the view from below”.¹⁵ The Internet has enhanced people’s ability to make their voices heard, to collaborate and to participate in public discourse in order to influence the decisions that affect them. Blogs, Facebook pages and community network platforms have provided powerful tools for people to support each other, to share ideas and

to coordinate action on a local and international scale.

Recording history in a way that looks beyond “bare facts to discern popular reactions to events”¹⁶ has been described by the historian Roger Moorehouse as the “democratisation of history”. Viewed broadly, it is an approach that aligns with the growing move to place the citizen at the centre of policymakers’ considerations, not just as a recipient but as an active participant. This approach is increasingly reflected in the theory and practice of public administration. This shift is visible in the goals of co-production, co-design and participation that are central to the Better Public Service Initiative. It is also reflected in the Prime Minister’s call for a “step change” in the way technology is used and for a “public sector that embraces innovation”.¹⁷

Finally, the Commission has undertaken two rounds of consultation with the key agencies mentioned in this report. The response of these agencies to the issues highlighted in the draft report have provided valuable insight into the complexities of the situation both for affected people and for those charged with the recovery. These insights are reflected in this report.

Scope of the report

Through a focus on housing, this report examines the impact of the earthquakes on interrelated human rights standards relating to health, accessibility, democratic rights and the role of the public and private sector in achieving the full realisation of these rights. It does not provide an in-depth analysis of all of the earthquake-related issues raised with the Commission by affected residents, or of all of the service delivery and policy responses in each of these focus areas. Rather it examines some of the systemic human rights issues that have emerged in Canterbury in relation to housing, health and security of home over the past three years and highlights examples of good practice and areas where human rights challenges still remain.

The figures in this report are current as at 1 August 2013 or as otherwise stated.



Earthquake anniversary 2013.



Earthquake anniversary 2013, memory tree in Botanic Gardens.

Why human rights matter

He aha ai ngā tika tangata

Everyone is born free and equal in dignity and rights
Article 1, Universal Declaration of Human Rights

The importance of human rights

Human rights recognise and aim to protect the dignity of all people whatever their status or condition in life as the foundation of freedom, justice and peace. They are inherent, inalienable and universal.

Human rights are about how we live together as individuals and groups, and our responsibilities towards each other. In particular, they set a basis for the relationship between the individual and the State, establishing obligations between citizens and the State. Human rights are of vital importance to every person in New Zealand. They underlie our expectations about life, education, health, work, our personal security, equal opportunity and fair treatment, and our system of government. Respect for each other's dignity and human rights is a prerequisite for harmonious relations among the diverse groups that make up New Zealand.

The Universal Declaration of Human Rights sums up the fundamental values and principles that most New Zealanders endorse as essential to a decent life and a fair and just society. The human rights set out in the Universal Declaration represent common values drawn from the world's diverse spiritual, religious, humanist, political and cultural beliefs.

Responsibility to respect human and rights extends well beyond the State, to regional and local government, to the business and community sectors, to voluntary groups and organisations. Each and every one of us has a duty to exercise our rights responsibly and to acknowledge and respect the rights of others.

The importance of human rights in civil emergencies

“... People affected by natural disasters do not live in a legal vacuum. They belong to the population of countries that have ratified international and regional human rights instruments and enacted constitutions, laws, rules and institutions that should protect these rights. Therefore, States are directly responsible for respecting, protecting and fulfilling the human rights of their citizens and other persons under their jurisdiction.”¹⁸

Over the last two decades there has been a steady increase in the number of large-scale natural disasters and the scale of human and economic losses resulting from these.¹⁹ Traditionally, the primary focus of disaster recovery tends to be on the role of standard factors that increase the efficiency and effectiveness of the recovery such as the scale of the damage, governance and legislative responses and aid. In the immediate aftermath, human rights considerations are often perceived as “nice to have” – an optional add-on to be considered after the important work is done.

Recently however, through initiatives such as the UN Disaster Risk Reduction Programme, there has been a growing global awareness of the vital importance of human rights intervention not only in the early stages of civil emergencies, but also as an integral component of disaster prevention and recovery. As part of this, the importance of tailoring solutions to facilitate cooperation and dialogue between national and local government, urban designers, property developers and affected people is being increasingly recognised.

There is also a greater awareness in disaster planning and recovery efforts of the significance of interrelated factors such as the psychosocial dimension of disasters, the role of community and volunteer participation, and the importance of capacity building and using technology efficiently to help recovery.²⁰ A human rights approach provides a simple framework for action that strengthens capability and mechanisms for planning and responding to the kind of crises that may lead to human rights violations.

New Zealand's international human rights commitments are outlined in Appendix 2 which focuses on the international human rights treaties, guidelines and principles that are most relevant to the Canterbury recovery context. This is followed by a list of United Nations human rights instruments signed by New Zealand. The thematic chapters in the body of this report provide a more detailed analysis of the relevant human rights standards as they relate to housing, accessibility, democracy, health and business.

Human rights in action: what are human rights principles?

While recognising the tension between the need to act quickly and decisively and the need to be comprehensive and thorough in dealing with tremendously complex questions,²¹ disaster recovery processes should be guided by the following human rights principles:

Prioritisation of vulnerable groups and non-discrimination

The human rights approach has a particular focus on individuals and groups that are vulnerable, marginal, disadvantaged or socially excluded. Bringing a human rights approach to recovery efforts focuses attention on the situation of such groups, and identifies relevant solutions. Vulnerability does not belong to any one particular group but arises as a result of social, cultural and economic inequalities.

Although natural disasters are indiscriminate in the devastation they cause to whole populations, international experience has repeatedly

shown that the poor, the vulnerable and the marginalised suffer most.*

It has been suggested that the level of earthquake preparedness in particular is linked to socioeconomic indicators such as education, income and ethnicity.²² People living in poverty are less likely to pre-purchase supplies, to have insurance or to undertake earthquake strengthening of their homes.²³ In addition people with lower incomes are generally less able to leave a disaster scene as a result of a lack of viable alternatives.

It is accepted that relief should be provided on a non-discriminatory basis. However, discrimination may arise from inequalities in entitlements such as benefits and allowances, from policies that don't account for the needs of particular people, such as children, or from social values that shape relationships within communities. There is a need to be aware of direct as well as indirect discrimination that may have unintended, negative impacts on a particular group.²⁴

The United Nations Development Programme (UNDP) points out that vulnerability is different from risk. Risk is defined as being about "exposure to external hazards over which people have limited control" while vulnerability is seen as a measure of capacity to manage such hazards without suffering a long-term, potentially irreversible loss of wellbeing.²⁵ Hazard vulnerability therefore, can be seen to be "rooted in pre-existing patterns of community settlement and development" whereby those who were marginal remain marginal.²⁶

* The United Nations Development Programme (UNDP) has found that natural disaster risks are skewed towards developing countries with one in 19 people in developing countries affected by a climate disaster compared to one in 1500 for OECD countries – a risk differential of 79. Moreover, people from countries that are in the lowest 20 per cent in the Human Development Index are between 10 and 1000 times more likely to die in a natural disaster than people from countries in the top 20 per cent. See: "Climate shocks: risk and vulnerability in an unequal world," UNDP Human Development Report, 2007-8, Chapter 2, page 77.

Participation and empowerment

In essence, a human rights approach to the earthquake recovery is about respecting human dignity and empowering affected people. This is reflected in the Universal Declaration of Human Rights.

While in the post-disaster context the Government has the complex task of balancing rights and interests, it must be vigilant to ensure that its actions optimise individual autonomy and safeguard individual rights. As explained by the New Zealand Prime Minister's Chief Science Advisor, Sir Peter Gluckman, opportunities to participate in the recovery from a natural disaster assist people to cope. Participation encourages feelings of self-efficacy and community efficacy – “local governance, empowerment and ownership have been shown to facilitate recovery”.²⁷

In the interests of efficiency, decision-making is often centralised after a disaster. However, this can result in those most affected being unable to have input into decisions about how they will be treated, the way in which relief is provided or, at the most basic level, identifying what their needs are. Being excluded from decision-making can increase the sense of disempowerment that often follows a natural disaster and undermines the effectiveness of aid provision and psychosocial recovery.

A human rights approach requires the active and informed participation of affected people in the formulation, implementation and monitoring of post-disaster recovery efforts. The right to participate in public affairs, as affirmed in law, is closely linked to the way the public perceives the integrity of the democratic system of government.²⁸ In order to be effective, the right to participation is underpinned by other civil and political rights, such as transparency and accountability.

Transparency and accountability

The idea of accountability is an important aspect of protecting human rights. Accountability (including transparent decision-making) is closely linked to empowerment. For authorities to be genuinely accountable interventions should be monitored to ensure they fairly and equitably deliver what affected communities require. In disaster recovery, this will require such initiatives as a communication and public information campaign to inform people of the scale and scope of the recovery as it progresses.²⁹

Committing to human rights principles obligates the Government to explain what it is doing and why and how it is moving towards the realisation of the affected as quickly and as effectively as possible.³⁰

The UN Committee on Economic, Social and Cultural Rights (CESCR) has distilled some of the key features of accountability. It advises governments to ensure coordination between ministries and regional and local authorities, in order to reconcile related policies with the obligations under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).³¹ Broadly, these obligations relate to the right of everyone to an adequate standard of living, including housing, and to the continuous improvement of living conditions, and the obligation of States Parties to take appropriate steps to ensure the realisation of this right.³² Accountability also demands that there be effective legal or other appropriate remedies for violations of rights, such as the right to adequate housing.

While governments must determine for themselves which mechanisms of accountability are most appropriate in their particular context, all mechanisms must be accessible, transparent and effective. In broad terms, there are four categories of accountability: judicial (for example, judicial review of executive acts and omissions), quasi-judicial (for example, Waitangi Tribunal, ombudsmen, human rights agencies), administrative (for example, the preparation, publication and scrutiny of human rights impact assessments) and political (for example, through Parliamentary processes).³³



Container protecting the road from cliff collapse in Sumner.

The legislative response to the Canterbury earthquakes

Te rū whenua Waitaha me te urupare ā ture

The earthquake in September 2010 was initially considered a local rather than a national emergency. The Government acted promptly to address the needs of those living in the affected areas. It introduced the Canterbury Earthquake Response and Recovery Act, enabling legislation to be altered to facilitate the reconstruction of Christchurch and providing a link between central and local government.

Following the February 2011 quake, it was recognised that the recovery process would take more than five years. The Government passed the Canterbury Earthquake Recovery Act 2011 (CER Act). The CER Act sets out the functions and powers of the Minister and created a new authority – the Canterbury Earthquake Recovery Authority (CERA). The purpose of the Act was to: "... enable community participation in the planning of the recovery of affected communities without impeding a focused, timely, and expedited recovery".

The Act gives the Government wide powers to facilitate the response to the Canterbury earthquakes for the purposes set out in the Act.³⁴ It also provides for rights of appeal in certain limited situations where independent legal scrutiny is desirable – for example, compulsory acquisition of land or decisions on resource consents. To ensure transparency and accountability CERA is subject to the Official Information Act 1982.

CERA and the CER Act are subject to a sunset clause that means they will cease to exist in April 2016 when greater Christchurch will assume responsibility for its ongoing recovery.

The purpose of the CER Act is to:

- Enable a focused, timely and expedited recovery of greater Christchurch.

- Enable community participation in the planning of the recovery of greater Christchurch.
- Enable information to be gathered about any land, structure or infrastructure affected by the Canterbury earthquakes.
- Facilitate, coordinate and direct the planning, rebuilding and recovery of affected communities in greater Christchurch, including the repair and rebuilding of land, infrastructure and other property.
- Restore the social, economic, cultural and environmental wellbeing of greater Christchurch communities.

CERA's role is "to lead and partner with communities to return greater Christchurch³⁵ to a prosperous and thriving place to work, live and play, as quickly as possible".³⁶

While the Government has taken significant steps to deal with issues such as access to employment³⁷ and the replacement of destroyed infrastructure, the more intractable difficulties arising in relation to the application of the CER Act relate to housing and property rights. These issues are discussed in more depth later in this report.

The Crown–iwi recovery partnership

Ngāi Tahu's involvement in the recovery extends from governance through to economic development and social and cultural provision.³⁸ Ngāi Tahu is the largest iwi in the South Island. According to the 2006 Census, 49,185 people identify themselves with Ngāi Tahu. Of those, 13,683 lived in Canterbury in 2006.

Ngāi Tahu is responsible for facilitating the Iwi Māori Recovery Programme in partnership with

CERA, Te Puni Kōkiri and the Christchurch Māori Leaders Forum as part of the Recovery Strategy for Greater Christchurch. This programme spans initiatives across housing and redevelopment on Māori land and reserves, development of cultural services and facilities and the restoration and recovery of the rivers and other significant natural features. It relates directly to mana whenua interests but is also relevant to the wider population of Māori in Canterbury.

The programme imposes obligations on the Crown. These are to ensure that the recovery is guided and informed by central and local government obligations under the Treaty of Waitangi; provide meaningful opportunities for involvement in decision making by Māori and Ngāi Tahu, and protect and facilitate Māori and Ngāi Tahu rights to social, economic, cultural and environmental wellbeing.

Ngāi Tahu also has a key advisory role in the Recovery Strategy for Greater Christchurch. It is represented in the Recovery Strategy governance framework and on the Recovery Strategy Advisory Committee along with mayors, councillors, commissioners, Environment Canterbury Regional Council (ECAN) and New Zealand Transport Agency (NZTA). Under the Iwi Māori Recovery Programme, along with Te Puni Kōkiri, it has committed to assisting central and local government on their respective Treaty of Waitangi obligations. Ngāi Tahu is identified in the Canterbury Earthquake Recovery (CER) Act along with the Canterbury Earthquake Recovery Authority (CERA), and ECAN as a key partner in the development of the CBD³⁹ recovery plan.

In July 2011, Ngāi Tahu set out preliminary tribal positions and priorities for the Canterbury Earthquake Recovery Strategy.⁴⁰ Sir Mark Solomon, Kaiwhakahaere (Chair) of Te Rūnanga o Ngāi Tahu, has acknowledged the positive partnership and collaboration with CERA and the extensive input and consultation Ngāi Tahu has had in relation to the rebuild.⁴¹ More recently, Ngāi Tahu has been involved in the development of the Land Use Recovery Plan for Greater Christchurch (LURP) and the Natural Environment Recovery Plan.

The Canterbury Earthquake Recovery Strategy: Mahere Haumanutanga o Waitaha

The Recovery Strategy for Greater Christchurch was developed and released by CERA in 2012.⁴² It sets out the Government's overall recovery strategy. As depicted in the diagram below it takes an holistic view of the recovery that is supported by the Human Rights Commission. It is consistent with the principle that human rights are indivisible. It identifies priorities and strategies in the earthquake recovery around leadership, economic, social and cultural recovery, community and the built and natural environment.

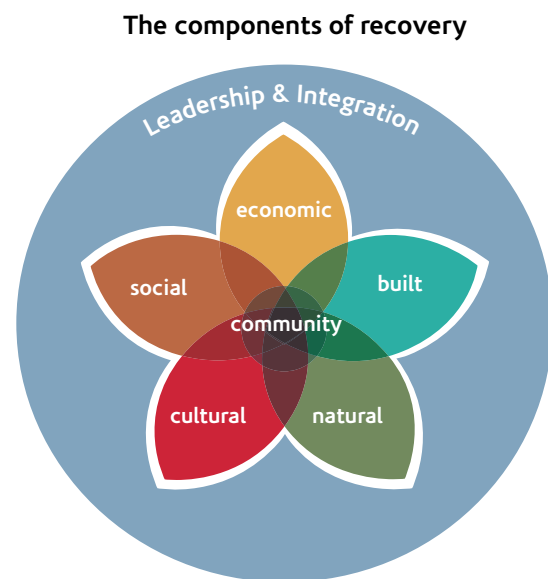


Figure 1: Canterbury Earthquake Recovery Strategy
(source: CERA)

In respect of the impact of the earthquakes on housing, the Recovery Strategy for Greater Christchurch states that there is an “opportunity to coordinate the range of central and local government housing activities”.⁴³ Housing is included in the priorities of the Recovery Strategy and linked to the priorities of:

- Addressing people’s safety and wellbeing by enabling access to support, addressing risks, providing options for the repair of homes and temporary housing measures, deciding on suitability of land and repairing and maintaining essential services.



Container protecting the road from cliff collapse in Sumner.

- Maintaining conditions to support investment in the rebuild and development of Christchurch.
 - Progressing permanent repair and rebuild of infrastructure.
 - Ensuring there is a sufficient supply of land for recovery needs via consenting processes and infrastructure provision.
 - Coordinating cross-agency work, work with iwi and the private sector through governance arrangements, sequencing of work, responding to housing needs, and encouraging the provision of sufficient accommodation.
 - Communicating and engaging with communities so that they can understand and participate in recovery activities.
 - Regulation, standards and other information to support resilience in the rebuilding.
- Supporting a functioning Central Business District, suburban areas and rural towns.

The Recovery Strategy sets out that the achievements and progress of the strategy will be monitored and reviewed by CERA and reported on publicly.



Welcome to Brooklands. Some residents moving from red zoned suburbs in Canterbury have taken street signs as mementos.

Policies and services

Ngā whakautu kaupapa me te whakaratonga mahi

Over the last three years the Government has taken a range of steps to address the right to safe and adequate housing since the earthquake. The Government responded swiftly in the emergency period to provide temporary and emergency housing for displaced residents. As well as providing considerable funding for temporary housing solutions, the Government also funded homeowners to organise emergency repairs so that they or their tenants could continue to occupy a home that might otherwise be uninhabitable. Substantial effort has also been put into mobilising the reconstruction and repair of buildings and houses.

Important policy initiatives relating to housing include: categorisation of areas of land into zones according to the damage that the Canterbury earthquakes have caused; the issuing of hazard notices requiring homes to be vacated because they are unsafe; and the Canterbury Home Repair Programme.

The most difficult issues brought to the Commission's attention by affected people arose in relation to the unintended human rights impacts of these three interrelated initiatives. This section of the report provides an overview of the related service responses and policy initiatives relating to zoning, safety notices and repairs.

Service delivery responses

Post-disaster temporary housing

In the immediate aftermath of the earthquake the majority of displaced people stayed with family, friends, or at motels and hotels, with most using private insurance to pay for rental accommodation. In the initial period there was limited interest in the temporary accommodation options set up by central government.⁴⁴

As part of the contingency plan for emergency housing, the Ministry of Business, Innovation and Employment (MBIE) undertook two initiatives to make temporary accommodation available in case the market was unable to provide. It arranged for 70 portable temporary dwellings to be built and taken to properties with damaged homes, giving residents the choice about where they wanted to stay. Units were proposed for displaced residents on private property as well as on temporary village sites so that residents who were unable to have a unit located on their own property, could be located on other private property or at the temporary accommodation villages. However, there was a limited uptake of the scheme.⁴⁵

MBIE reports that the provision of portable accommodation units on private properties was not progressed for two reasons. Firstly, logistical costs proved too expensive to transport units and connect them to necessary services for such short periods. Secondly, the timing was not right as many households had one to two years of insurance resolution to progress before they would be ready for temporary accommodation while their homes were being rebuilt or repaired. These units have since been used for worker accommodation to support the rebuild.

In February 2011, the Government announced the establishment of the Canterbury Earthquake Temporary Accommodation Service (CETAS). The service is a partnership between the Ministry of Social Development and MBIE and is available to both homeowners and people in rented accommodation. CETAS offers three service streams: Accommodation – Matching and Placement Service, Earthquake Support Coordination and Temporary Accommodation Assistance (financial assistance).

The aim of the service is to help householders find temporary accommodation while their home

is being repaired or rebuilt as a result of the earthquakes. The service also offers financial assistance for temporary accommodation to homeowners incurring additional housing costs because of the 2010 Canterbury earthquake (including resultant aftershocks), such as maintaining a mortgage on a damaged and uninhabitable home while having to pay rental costs for temporary accommodation. It also provides a case management earthquake recovery support service to vulnerable residents in need. This service has been made available to both homeowners and people in rented accommodation. For those who are eligible, it provides a matching and placement service into both private rental market accommodation and temporary accommodation villages established by the Government.

Four temporary housing villages of 124 dwellings were established in Rāwhiti domain, Linwood Park, Rangers Park and Kaiapoi Domain to help meet demand for short-term housing that was projected to rise as the rebuild commenced. Four villages were built.⁴⁶ The service was made available to people who required temporary accommodation while their homes were being repaired or rebuilt. Rents were less than market rents and options in the private rental market must have been tried before an application was considered.

Approximately 450 households have transitioned through the temporary villages with a general occupancy of around 85-95 per cent between September 2011 and October 2013. The Matching and Placement Team have resolved over 3300 requests for accommodation assistance and as of October approximately 600 cases were active/open. This represents only a small proportion of those who have had to move house temporarily or permanently, and who have chosen their own private housing arrangements such as short-term rentals or staying with whānau or friends.

The Canterbury Earthquake Recovery Authority (CERA) Wellbeing Survey identified that 26 per cent of Canterbury residents have moved house temporarily or permanently as a result of the earthquakes. The Ministry of Business, Innovation and Employment (MBIE) reports that the length

of stay at the villages has ranged from 11 nights through to 706 nights with a median duration of 42 nights for vacated tenants and a median forecast duration (based on current and future tenant data) of 122 nights. Many homeowners and renters who were not eligible for the scheme report that they have struggled to find suitable temporary accommodation as a result of the significant reduction in supply. This is particularly the case for young people, single people seeking one-bedroom units, people with disabilities requiring accessible housing and families with pets. The effects of the housing shortage on displaced residents are discussed in more detail in the Affordability section of this report.

Earthquake support coordinators

The Earthquake Support Coordination Service (ESCS) evolved out of the initial social service and community response to the September 2010 quake. In the immediate aftermath, the Canterbury Welfare Advisory Group (WAG) and Family and Community Services (FACS) mobilised a social service response that involved both government and non-government organisations. WAG coordinates the region's welfare response efforts in a civil defence emergency. The response drew on the specialist skills and existing capacity of these agencies. This initial collaborative social recovery response laid the foundation for the Earthquake Support Coordination Service.

The role of earthquake support coordinators (ESCs) is to provide information, help residents develop a plan, connect residents with services and help them undertake referral and application processes for services. The ESCs were drawn from a range of agencies in the social service field including the Ministry of Social Development (MSD), Te Puni Kōkiri (TPK), Inland Revenue (IRD), the Canterbury Earthquake Temporary Accommodation Service (CETAS) and the Earthquake Commission (EQC).

At its peak ESCS had a total of 55.9 full-time equivalent workers employed across 15 community organisations. The ESCs continue to be managed by their respective employers, but meet fortnightly for training and planning.

By September 2013, MSD reported that more than 8000 households had received support from ESCs, including provision of support for residents on a range of matters relating to EQC, insurance, access to social support and counselling, building and repairs, health, storage, transport, animals/pets and damage to a primary heating source.

CETAS operates a single customer management database for the service that is accessible to all participating agencies. The Human Rights Commission supports this coordinated approach. The State Services Commission has highlighted the ESCs as an exemplar of innovative thinking and practice and as a useful model for Better Public Services across New Zealand.⁴⁷

Residential Advisory Service

In recognition of the complexity of insurance and repair-related issues, EQC and private insurers have worked with government agencies and the community to establish the Residential Advisory Service (RAS) in order to provide free, independent advice to property owners. Insurers (including EQC) have contributed \$325,000 towards funding this service.*

The service was designed to provide independent assistance to residential property owners, help them understand and progress the rebuild and repair process and advise on what stage a claim may be with both EQC and private insurers. It is independent of insurers and offers a range of support to homeowners. This includes for example, support where a homeowner is in disagreement with another party over a repair or a rebuild, or where a multi-party facilitated meeting is needed to progress a claim. The Human Rights Commission advocated for this initiative and welcomed it as a practical way of supporting people to make decisions about their homes. Residents are also able to use the following dispute resolution services – the Insurance and Savings Ombudsman, Financial Services Complaints Limited and Disputes Resolution Services Limited, the Office of the Ombudsman and EQC's Independent Mediation Service and Disputes Resolution Services.

* The breakdown of this funding is 37 per cent insurers, 13 per cent EQC, 26.5 per cent CERA and 23.5 per cent CCC. However, CERA covers the CCC component and pays 50 per cent in total.

Policy responses

The zoning of land

In June 2011, the Government announced its decision to zone earthquake damaged land in Christchurch, identifying areas on the basis of expert advice, where it was not practical to repair or rebuild and which would not be remediated in the short to medium term. The stated aim of the zoning process was to create certainty of outcome and to enable people to move forward with their lives.

The associated offers of purchase to insured home owners were intended to relieve them of the complexities of the insurance process and to alleviate the issues faced by property owners in areas with significant area-wide damage resulting from the earthquakes.⁴⁸ Significantly reduced offers have subsequently been made available to homeowners who did not have current insurance for whatever reason. Similarly reduced offers have also been made to owners of vacant land and commercial premises. These are discussed in more detail below.

Residential red zones were declared in areas where there was area-wide damage (implying an area-wide solution, and where remediating the land damage would be uncertain, disruptive, could not be done in a timely way and would not be cost-effective. Owners were given the opportunity to sell to the Crown so that they had the option of moving out of the worst affected areas.

Green zones were declared on land where damage can be feasibly addressed on an individual basis and where land was generally considered suitable for rebuilding and repairs. At the time of the zoning announcement, those that were zoned white and orange were awaiting further assessment.

The Canterbury Earthquake Recovery Authority (CERA) has informed the Commission that alternatives to zoning, such as attempting to fix damage in the red zones via the normal Earthquake Commission (EQC)/individual insurance claims process, would have been particularly problematic.⁴⁹ For example,

large-scale area-wide works could have involved removing all houses in an area, raising the level of the land, and installing perimeter treatment along the edge of waterways. This would have required otherwise repairable houses to be removed or destroyed in order to fix the land, but would have been unlikely to have been covered by insurance.⁵⁰ Furthermore, the area-wide works were considered by CERA to be both costly and time consuming. In addition, there remained uncertainty about the effectiveness of such an approach. Accordingly this option was considered unsatisfactory.⁵¹

There are a total of 7860 properties in the residential red zone and over 181,000 residential properties zoned green. Properties in the green zone are further divided into three technical categories by MBIE, based on investigations into soil types, particularly the types of foundation needed in the different technical categories. These categories are known as TC1, TC2 and TC3.*

The Government decided not to use the CER Act or the other statutory frameworks applicable for its acquisition of land or zoning of land, such as the Local Government Act, the Public Works Act, and the Resource Management Act. Those Acts provide for community engagement and include a number of important procedural safeguards.

Technical categories

The creation of the three technical categories was to allow repairs or rebuilds to proceed without having to undertake detailed investigation and design work in the 80 per cent of the green zone which is TC1 or TC2. This freed up limited engineering resources where they were most needed, such as in the more vulnerable TC3 areas where the land was potentially more susceptible to liquefaction, and where further investigation was needed to determine the appropriate foundations for those properties that needed to be rebuilt or had significantly damaged foundations.

An estimated 27,000 homeowners representing about 14 per cent of all homeowners in the city have been designated TC3. To date, approximately 2500 houses in TC3 have been repaired. Because of the site-specific assessment

needed, many of these residents face significant and often indeterminate waiting times to have the appropriate geotechnical investigations completed before repairs or rebuilds can begin. In the meantime, these residents have either entered the rental market as tenants or remain living in their damaged homes.

The Government offers

Where a property is zoned red (and insured) the Government offered to purchase those properties. There were two options for owners who qualified and wished to accept the Government offer. Under Option One, the purchase price paid by the Government for the property was based on the 2007 rating valuation for the land, building and fixtures, and the Government took over all the insurance claims for the property. Under Option Two the purchase price paid by the Government for the property was the 2007 rating valuation for the land only, and the owner continued to retain the benefit of all insurance claims to buildings and fixtures. In order to make a decision on the Government offer, homeowners needed to have a good understanding of what was covered by their insurance policy. Many did not. This lack of understanding coupled with the time needed to work through the significant financial implications of the decision, has contributed to delays for all parties.

* The technical categories are defined as follows:

Technical category one (TC1) is land that is described in New Zealand standards as potentially being "good ground" but this is not categorical as there could be peat present and there may be a need to undertake a shallow soil test. Generally speaking standard foundation solutions that are used across New Zealand in rebuilding can be used.

Technical category two (TC2) applies to land where there is a risk of minor damage of liquefaction during an earthquake. In this case, shallow soil tests may be required. For rebuilding purposes the options are to use standard timber piled foundations with suspended timber floors or enhanced concrete foundations.

Technical category three (TC3) applies to land where there is moderate to significant risk of liquefaction. Deep geotechnical assessment by a geotechnical engineer is required for rebuilds to determine which foundations are right for rebuilding on a particular piece of TC3 land. Assessments may require site specific drilling or there may be sufficient geotechnical data available from area-wide investigations or neighbouring investigations already carried out. Geotechnical engineers can then advise on what is the best technical foundation solution for the site. See: CERA website: <http://cera.govt.nz/residential-green-zone-technical-categories/overview>.



Home with liquefaction damage.

In some cases Option One offered a higher value than the insurance payout. This enabled property owners to circumvent the potential complexity and stress of the insurance settlement process. Often, however, the 2007 rating value was less than the value of an insurance payment for the replacement of the property. In other cases the rating value was less than what the owner paid for the property, and Option Two provided a better alternative. Option Two also provided a better option where there was significant damage to the building and the total amount that the insurer or EQC agreed to pay was more than the rateable value for the building and fixtures. Figures provided by CERA to the end of July 2013 show that of the 7143 signed sale and purchase agreements, 5486 (77 per cent) were settled under Option Two and 1657 (23 per cent) under Option One.

Owners of properties in the residential red zone that were vacant, uninsured (whether the house was damaged or undamaged), or used

for commercial purposes were not eligible for the insured residential offer. Of the properties in the red zone not covered by the Government offer to insured property owners, there are 65 vacant sections, six leasehold properties, 22 insured commercial/industrial properties and 50 uninsured residential properties. Each group received a different offer from the Government.

Owners of insured leasehold properties were also offered 100 per cent of the 2007 rateable value, but the offer was conditional on the lessee entering into an agreement with the local body for the purchase of the freehold interest in the land.

Owners of the 22 commercial/industrial properties were made an offer based on the most recent rating valuation for the improvements and half the most recent rating valuation for the land.

Owners of vacant land and uninsured residential properties were offered half the value of the land (excepting improvements) based on the 2007 rateable value (and/or the rateable value of any

improvements on commercial and industrial properties). The offer was made on the condition that it would be accepted by 31 March 2013. Under the offer, the Crown purchased the land and all buildings and fixtures on the land. Subject to any third-party interests, property owners could remove any buildings or fixtures from the land before settlement.⁵²

The financial impacts of these reduced offers are significant. For example, the owner of a commercial property with a total property value of \$700,000 where the land is valued at \$300,000, would receive \$550,000.

The owner of an uninsured residential property with a total capital value of \$550,000, where the section is valued at \$180,000, would receive an offer of a total of \$90,000 for the house and the land.

A resident with a bare land section (bare land cannot be insured) with a rateable value of \$160,000 would receive an offer of \$80,000.

The Government's rationale for zoning is set out in a cabinet paper.⁵³ The explanation for reduced offers was that fully compensating uninsured landowners would set a dangerous precedent.⁵⁴ The Government's view was that fully compensating uninsured residents would give the impression that in the context of a natural disaster, the Government would step in and provide compensation – an impression that it said would potentially transfer a massive liability to the whole tax base.⁵⁵ Another explanation for the reduced offer for owners of uninsured land was that the Crown was buying something different from insured property owners, who transferred the benefits of their insurance claims under Option One or the EQC claim under Option Two to the Crown.

The reduced offers mean that residents who were uninsured for any reason will receive significantly less assistance than other property owners to relocate out of the red zones. Residents who remained in the red zones would be facing increasingly inadequate standards of housing.

The offer to all residents in the residential red zone is framed as a voluntary offer to purchase. However, at the time of making the zoning

announcement, the Government issued a notice on the CERA website that:

- The Council will not be installing new services (or maintaining existing services in the longer term) in the red zone.
- If only a few people remain in a street or area, the Council and other utility providers may reach the conclusion that it is no longer going to maintain services to the remaining properties.
- Insurers may cancel or refuse to renew insurance policies for properties in the red zones.
- While no decisions have been made on the ultimate future of the red zones, CERA does have powers under the Canterbury Earthquake Recovery Act to require the sale of the property to CERA for its market value at that time; if a decision is made in the future to use these powers to acquire a property, the market value could be substantially lower than the amount that received under the Crown's offer.⁵⁶

In March 2013, CERA's Chief Executive indicated that while compulsory acquisition may not occur, the position for homeowners remained uncertain.⁵⁷ In response to queries from residents, government officials have stated that if basic services broke down they would not be replaced.⁵⁸ CERA has referred the question of whether existing services continue to be provided as a decision to be made by the Christchurch City Council rather than CERA.⁵⁹ The Council's response to residents was that as the red zone land is vacated the Council will progressively cease to provide water, sewer, solid waste and roading services to properties in the area.⁶⁰

To date, no decision has been made about what will be done with red-zoned land purchased by the Government. There has not been any discussion with affected residents about what the implications of the red zone process are. However, red-zoned residents were informed that if they accepted the Government offer, they would not be able to rent their own home or premises back from the Crown and that once the Crown has become the owner of the property no one would be permitted to live there.⁶¹

Acceptance of the Government offer

In the period leading up to the offers the Government was placed under pressure to provide some sort of assistance to property owners in the worst affected suburbs. Some people were pleased to be given the offer to leave the red-zone. Others wanted to remain. Owners of red-zoned properties were given 12 months from the date on their offer letter, or until 31 March 2013 (whichever came first) to accept the offer by submitting a signed agreement for sale and purchase to the Crown by their lawyer.

Since August 2012, there has been a rolling deadline in place for red zone residents to accept the Government offer. Of those residents with a final acceptance deadline of 31 March 2013, 95 per cent of homeowners accepted the Crown offer to purchase. Among these residents there was a widespread belief that they would be significantly disadvantaged if they chose to reject the Government offer given the prospect of essential services being cut off, and the risk of significant loss of equity if, in response to people refusing to “voluntarily” leave, the Government elected to use its power to compulsorily acquire homes. Residents also expressed concern about the Government’s initially stringent approach to deadlines for accepting offers and for settlement.

The settlement figures below show that most residents (77 per cent) chose Option Two of the Government offer.

By 1 August 2013, 6756 property owners had settled with the Crown. This included over 300 settlements in the last week of July.

Extensions to settlement dates

Compliance with deadlines to accept the Government offer was mandatory regardless of individual circumstances up until December 2012. However, in some cases, people who had to make a decision before 31 July 2012 still lacked the information needed to make an informed decision.

The Commission received a number of complaints from residents who were refused short-term extensions to settlement dates (in one case, the request was for an extension of only one day⁶²). These extensions were requested so that people had time to make arrangements to vacate a home, for example, or to allow families to remain in a home for a short period of time while the build of a new home was completed, or while they found an adequate rental.⁶³

The CERA Chief Executive subsequently acknowledged that more flexibility was needed in regard to settlement dates. In December 2012, the Minister for Canterbury Earthquake Recovery approved an option to grant case-by-case extensions to settlement dates for homeowners who met strict criteria based on personal vulnerability, or exceptional circumstances beyond the owner’s control.



Figure 2: Red zone settlement data as at 31 July 2013

However, a recommendation that the power to grant such extensions be vested in the Chief Executive was not approved, nor was a recommendation that the settlement date be extended to 31 October 2013.⁶⁴

At the same time, a communication strategy was developed to ensure owners did not view extensions as an automatic entitlement.⁶⁵ For the bulk of residents affected by the red-zoning decision, this provision came too late; by 15 June 2012, 70 per cent (5000 residents) in the residential red zone had already been obliged to make a decision on whether to accept the Government offer.⁶⁶

On 28 May 2013, the Chief Executive was given authority to grant case-by-case extensions to settlement dates for residents who met specific criteria.⁶⁷ No extensions were granted to owners of red zone dwellings between 17 December 2012 and 28 May 2013.⁶⁸

In deciding whether or not to grant an extension on a case-by-case basis the Chief Executive had to consider:

- Whether the barriers or obstacles to settlement were beyond the property owner's control.
- Whether the property owner had exhausted all other reasonable options.
- Whether the property owner or members of the household had any vulnerabilities (which could include age, health, medical/disability).
- Individual circumstances.
- Timeframes and the impact an extension may have on other activities such as property clearances, safety and security, property maintenance and infrastructure services.
- Any other relevant matters.

While the majority of red-zoned residents had accepted the Government offer before the provision for extensions, by 31 July 2013, 345 of 369 requests for extensions had been approved and only 24 declined.

The figure below shows the total of 345 approvals broken down monthly by the new settlement date:

Month	Number	Per cent of total approvals
August 2013	48	14 per cent
September	58	17 per cent
October	38	11 per cent
November	19	5 per cent
December	20	6 per cent
January 2014	162	47 per cent

Figure 3: Number of approvals for extensions to settlement date 28 May-31 July 2013

Zoning review process

On 15 June 2012, the Government announced that it would conduct a final check of the red/green zoning boundaries for flat land, which enabled officials to respond to those property owners who requested a review. There was an expectation among those who requested a review that the review panel would consider the damage, or apparent lack thereof, to individual parcels of land. However, the review panel did not make decisions on individual zoning requests. Instead, it checked that the red/green criteria had been consistently applied on an area-wide basis and that boundary lines had been drawn sensibly, taking into consideration the provision of infrastructure.⁷⁰

Affected communities were not given the opportunity to have input into how area-wide risk would be addressed in the review. Following the review, the Government stated it was satisfied that the red and green zoning decisions provided a sound and practical criteria and basis for the repair and rebuilding of residential properties.

The issuing of prohibited access notices and the Port Hills zoning decisions

The zoning and review of earthquake-damaged land in the hillside suburbs (the Port Hills) was conducted separately from the flat land because of its complexity. The criteria used for zoning Port Hills properties were the same as those used on the flat land. The results of land zoning in the Port Hills were announced over 2011 and 2012.

Green zones were declared in areas where life risk (annual individual fatality risk) to residents due to natural hazards caused or accentuated by the earthquakes (such as rock roll, cliff collapse and landslip) was within an acceptable level, and damage could be addressed on an individual basis as part of the normal insurance process.

Red zones were declared in areas where the Government considered residents faced an unacceptable level of life risk and where an engineering solution to mitigate it would be uncertain, disruptive, could not be done in a timely way and was not cost-effective.

Red zones were also declared in areas where the Institute of Geological and Nuclear Sciences (GNS) assessed the properties as having potential for immediate cliff collapse or land slip, as a result of the earthquakes, with associated risk to life at either the top or bottom of the cliff or land slip.

In areas affected by rock roll, properties were zoned red where the annual individual fatality risk associated with residential dwellings was higher than one in 10,000 at 2016 risk levels. This was assessed by GNS modelling, subject to additional analysis by experts in a few particular instances.

At the end of the process, more than 19,400 properties were zoned green, while 511 properties were assessed as having an unacceptable risk associated with either cliff collapse or rock roll risk and were zoned red. Originally those in the Port Hills red zone had 12 months or until 31 August 2013, whichever came first, to decide whether to accept the Government's offer. This has now been extended to 31 March, 2014.

Section 124 notices

In the aftermath of the earthquakes the Christchurch City Council began to issue prohibited access notices under the Civil Defence Emergency Management Act. These became known as "red sticker notices". When these civil defence notices expired in July 2011 the Council issued notices under section 124(1)(b) of the Building Act 2004. To facilitate this, an Order-in-Council was made in September 2011 to modify the legal test for a dangerous building to take into account circumstances of risks from possible aftershocks creating more rock fall. The Council provided a letter to each property owner with the geotechnical explanation for why the section 124 notice was issued.

The notices were issued in instances where the dwelling was deemed by the Council to be structurally unsafe as a result of earthquake damage, or as described above, where the Council believed there was an increased life risk due to potential rock roll, land slippage or cliff collapse. The Canterbury Earthquake Recovery Authority (CERA) notes that section 124 notices were issued not only to keep the homeowner safe but also their family, visitors and the general public.⁷¹

The notices prevented people from living in the properties and warned others not to approach the buildings. It was an offence to not comply with the notice, although the Human Rights Commission understands that residents have remained in or returned to these homes without being penalised.

The notices were issued on a case-by-case basis so that one property might have been issued a notice while the neighbouring property was not. The risk threshold in the modified Building Act is set at a very low level – "there is a risk." "A risk that something could happen is simply a possibility of that occurring."⁷²

There is no requirement for the Council, acting in its regulatory role under the Building Act, to engage with a house owner about the level of risk that the house owner may wish to carry or mitigate.



Abandoned televisions in red-zoned Bexley.

The Council does not accept that it is up to a landowner to accept a higher level of risk. There are provisions in the Building Act for those issued with notices to dispute the notice and seek a review of decision through a determination from the Chief Executive of the Ministry of Business, Innovation and Employment (MBIE). However, the Building Act does not specify any time limit on the effect or duration of a notice.

Notices can legally apply on an indefinite basis until hazards are removed or made safe. Some householders have not lived in their homes for three years. They continue to live in a state of suspension, not knowing when a final assessment by their insurer will be undertaken that will allow them to proceed with insurance funded repairs to their damaged homes, or to receive insurance pay outs and allow them to purchase a new home. The Human Rights Commission is aware of at least one case in which a person has been told that there may be a wait of another two years until a final determination is made.

Port Hills: Green-zoned and having a section 124 notice

An anomaly has occurred where 47 properties have been zoned green by CERA (meaning the land is fit to be repaired or built upon), but a section 124 notice has been issued because of the risk of rock roll or cliff collapse. Residents in this situation who wish to progress with a repair or a rebuild are not able to because of a risk identified by the Council that in many cases are associated with Council or Crown owned land rather than that of the homeowners. As they are zoned green, homeowners are not eligible for the Government offer.

In June 2013 the Government called for the section 124 notices on green zoned properties to be removed, taking the position that CERA had already established a risk threshold and that the Council had erred in seeking to establish a bigger risk line.⁷³

In response, the Council reiterated that it was working on the basis of advice that the placards

should remain. In late September 2013, the Council informed the Commission that the Council and CERA are now in agreement in relation to the green zone section 124 notices.

Review process for Port Hills property zoning decisions

On 9 October 2012 the Government announced a review of zoning decisions for all Port Hills properties; 142 property owners had specifically asked for their zoning to be reviewed, as they believed they did not agree with the original decision. The review looked at the geotechnical data relating to the Port Hills and identified inconsistencies or anomalies in zoning. The review did not revisit the original zoning criteria but rather, as with the review of zoning flat land, checked that the red/green criteria had been applied consistently.

If officials identified a potential inconsistency or anomaly, the review looked at relevant properties even if the owner/s had not applied for a review. The review checked the zoning of all Port Hills properties. It also regarded all green zone properties with section 124 notices to be associated with geotechnical hazards.

Extension to the offer expiry date for Port Hills red zone property owners

Because of continued delays in the review process (deadlines were missed in December 2012, February 2013, April 2013 and May 2013), in June 2013 the Minister for Canterbury Earthquake Recovery made an extension to the offer expiry date for Port Hills red zone property owners to 31 January 2014.

At the time of writing, the announcement of the results of the review has been indefinitely postponed, consequent to the High Court ruling that the Government's zoning of the flat land in Christchurch was unlawful. The Crown appealed the decision and the Court of Appeal judgement is pending. The case is briefly discussed in Section five of this report. Minister Brownlee said the High Court decision raised issues which, until clarified, prevented the Government from providing the certainty intended by the zoning review.⁷⁴



Earthquake anniversary 2013, memory tree in Botanic Gardens.



Cliff face above Peacocks Gallop, Sumner.

The Canterbury home repair programme: key actors Te hōtaka whakapai whare Waitaha: ngā kaiwhakatau matua

The Earthquake Commission

The Earthquake Commission (EQC) is a Crown entity. It operates under the Earthquake Commission Act 1993. EQC provides natural disaster insurance for residential property, administers the Natural Disaster Fund, and funds research and education on natural disasters and ways of reducing their impact.

New Zealand operates a first loss insurance scheme for natural disaster recovery. The EQC and its legislative framework are unusual in that New Zealand is one of the very few countries in the world that insures residential land, and very few jurisdictions have disaster insurance at all. EQC levies are collected by insurance companies and forwarded to EQC, which does not receive or have direct access to the details of the people and properties it covers.

EQC provides natural disaster cover, within the terms of the EQC Act for residential buildings, generally up to a maximum of \$100,000 plus GST. It also insures personal property up to \$20,000 and residential land up to a cap, calculated in accordance with the EQC Act. Private insurance is responsible for residential building claims over and above \$100,000 plus GST.

Following the September 2010 and February 2011 earthquakes EQC transformed from a small Crown financial institution primarily geared towards financially settling claims arising from natural disasters to one that was:

- Project managing, through a contract with Fletcher Construction, a significant proportion of the physical residential repair and rebuild of Christchurch and affected areas of Canterbury
- Designing and supervising additional land

remediation activities for work separately funded by the Government.

- For a period of time, carrying out inspections of, and emergency repairs to uninsured properties.

In addition, there was a social assistance component to EQC's response through:

- Identification of vulnerable households and those seeking temporary accommodation as part of the rapid assessment project.
- For a limited time, the expansion of the emergency repair approach to include the uninsured (but where the costs of emergency repairs for uninsured premises was funded by the Government).
- The Chimney Replacement Programme and Winter Heat Programme initially managed by the Energy Efficiency and Conservation Authority (EECA) but subsequently conducted through the Fletcher Construction contract (but also carried out as "emergency repairs").

EQC has also carried out other activities that have benefitted the recovery more generally. For example, via the Canterbury Geotechnical database, it has made all geotechnical data collected as part of its TC3 and land settlement investigations available to authorised participants (including private insurers).

Prior to September 2010, EQC had a staff of 22. Its experience was limited to events typically resulting in around 5000 claims. Its previous biggest claim event was the Inangahua earthquake in 1968, which generated 10,500 claims.⁷⁵

The total number of claims arising from the Canterbury earthquakes (467,839 as at 9 September 2013) represent a 4500 per cent

increase in the largest number of earthquake claims previously dealt with by EQC. EQC had a 7500 per cent increase in peak staff numbers.⁷⁶

The total number of claims, however, does not give a full picture of the scope of a claim. For example, a claim can contain a number of individual components for damage relating to land contents and dwelling. These components are measured as exposures, with each component being settled in a different way in accordance with the EQC Act, resulting in an increased workload for EQC. As at 9 September 2013, EQC had received 742,998 exposures arising from 467,839 claims; of these 401,878 had been closed and 341,120 remained open.

It should be noted that when settling claims, EQC is required to act within the law and in particular its Act, which sets out the extent of cover it can provide to customers. Because EQC's cover is funded not only through the Natural Disaster Fund but also via international reinsurers (of which there are more than 50), EQC must settle claims in accordance with its Act or it may risk affecting its reinsurance cover.

In the context of the Canterbury earthquakes, it is estimated that reinsurers will bear approximately \$4.5 billion of the cost of the residential rebuild. EQC has, in the last three years, also secured full replacement of its \$3.25 billion reinsurance cover and expanded its reinsurance programme.⁷⁷

In response to its expanded role, EQC engaged Fletcher Construction to project manage the repair of earthquake damage to homes in Canterbury with damage between \$15,000 and \$100,000 (plus GST) per claim.

The rationale for EQC establishing the Canterbury Home Repair Programme (CHRP) was that it avoided the risks of reconstruction capital being put to other uses, houses not being repaired properly, of inflation in building material costs and of Canterbury ending up with a substandard housing stock. It was also seen as the best way of ensuring there was a sufficient supply of labour to meet the demand for building services and reducing the risk of unmanageable cost inflation.

Fletcher Construction Earthquake Recovery

Fletcher Construction EQR (Fletcher EQR) was established in response to the September 2010 earthquakes in Canterbury. It is a business unit of Fletcher Construction, which is part of Fletcher Building Limited, one of New Zealand's largest companies. Fletcher EQR was set up to repair homes damaged by the earthquakes that were the responsibility of EQC. Fletcher EQR does not undertake the repairs itself but is contracted by EQC to manage the work of accredited contractors under the Canterbury Home Repair Programme (CHRP). It has a central office in Christchurch and 21 hubs in affected communities that manage repair work within the surrounding suburbs. EQC has advised that it is currently reviewing its Hub structure to ensure efficiency and effectiveness over the next 12 months.

EQC, through Fletcher EQR, assesses and determines what, how and who should be involved in the reconstruction and repair work. Fletcher EQR (through the CHRP) generally manages the repair of properties where the damage falls between \$15,000 and \$100,000 (plus GST) per claim.

Claims below this range where there is structural damage are also managed through the CHRP. Homeowners with non-structural damage below \$15,000 are generally paid out in cash by EQC so they can manage the repair process themselves, although they can also opt into the programme if they would like the repair to be managed by Fletcher EQR. Accountability for the work reflects this three-tiered contractual arrangement of EQC, Fletcher EQR and accredited contractors.

It is possible for residents to choose their own builder and to opt out of the managed repair programme. Residents who opt out must manage payment of contractors and must meet any costs over and above the EQC assessed value of repairs. Currently, homeowners have the option to defer EQR managed repairs until a more suitable time (although how EQC deals with this is currently under review). Homeowners may choose their own accredited builder/repairer and still have the project managed by EQR.

Private sector insurers

In 2011, the Canterbury earthquakes represented the second largest insurance event in the world, behind the Japanese tsunami for which public and private insurance losses were estimated at over \$30 billion.⁷⁸ Insurance is pivotal to Canterbury residents' ability to progress their right to adequate housing in the earthquake recovery. The scale of the September and February earthquakes and the fact that there were significant aftershocks on 13 June and 23 December 2012 magnified the complexity of the insurance response to the earthquake. It meant that many homes were damaged by multiple events, which, although linked for EQC insurance purposes needed to be treated as separate events.

Treating the different events separately is necessary for the purposes of quantification of liability as between EQC and private insurers and their respective reinsurers. In addition, the system of having EQC as a first loss insurer working with other insurers to determine these multiple losses has added a further layer of complexity. For example, it has meant that for approximately 25,000 of the 172,000 properties covered by EQC in the Canterbury earthquakes, home owners have had to negotiate with two insurers instead of one, and EQC has had to negotiate with both a private insurer as well as a client

Apportionment – how it works

In 2011, EQC, the Insurance Council of New Zealand, Vero and IAG applied to the High Court for declarations on when the \$100,000 plus GST EQC residential building cover cap would be reinstated after a natural disaster. In September 2011, the High Court ruled that EQC cover would be restored after each natural disaster classed as an event as long as the property remains insured: "neither the occurrence of, nor the making of a claim for, an event of natural disaster damage reduces the amount of cover available for a subsequent event of natural disaster damage ..."

This meant that for any natural disaster big enough for EQC to class as an event, EQC is liable for the first \$100,000 plus GST worth of damage.

EQC needed to revise its process to determine how much and when damage occurred on properties that EQC was unable to assess between each event. This process is called apportionment.

Apportionment involves determining how much damage each event caused. If possible, EQC uses information from house damage assessments after the event. When a current assessment from an event is unavailable, EQC uses other sources of information to estimate the damage from each event.

EQC refers all claims to the homeowner's private insurance company if the apportionment process shows that the cost of repairing damage to the house will be more than the cap for any one event. If the apportionment process shows that the cost of repairing damage to the house will be less than the cap for each relevant event, the house is repaired as part of the home-repair programme – unless homeowners opt out of the programme.

The processing of some claims has been slowed as a result of the need to apportion the damage to each event and because many properties did not get a claims survey between the events, so there was missing data.

Summary of insurance claims progress

As at 1 October 2013 there were 172,000 properties in greater Christchurch with a residential dwelling claim. Of these 147,000 have residential building claims that are managed by EQC in the category of repairs (per event) being under the cap of \$100,000 plus GST.

There were 24,660 properties over the \$100,000 repair cap being managed by insurers rather than EQC. A further 73,160, properties have claims that are out of the scope of the EQC resolution process.⁷⁹ These included items such as paths, driveways, swimming pools, retaining walls, fences and patios.⁸⁰

Figures provided by insurers to CERA as at 1 October 2013 show that of the 24,660 over cap properties 10,000 have a resolved claim.

Of the 10,000 homes with a resolved claim, repairs have been completed on 590 and rebuilds on 650. A total of 8760 properties are deemed

external resolutions – where the loss incurred by the insured is resolved outside of the project management office that is controlled by the insurance company, meaning the reinstatement of the property is outside the insurance company's control. These are cash settlements.

A further 3420 properties have an unsettled claim. Of these, 2880 have been offered settlement options but homeowners remain undecided on whether to proceed with an insurer/managed repair or an external resolution. No insurance offer has been made to 540 properties.⁸¹

Vulnerability criteria

EQC and private insurers operate a vulnerability index that enables the prioritisation of claims for the most vulnerable in the community. The criteria and the way this is applied varies between organisations. CERA has led the development of vulnerability criteria for private insurers, which many have agreed to use. These are generally broader than EQC's criteria, which focus on health and age.⁸²

The existence of vulnerability criteria is not always made known to the insured (the insured may not be the vulnerable – but the tenant of the insured could be). Generally insurers have exercised flexibility to assist homeowners with repairs to properties where there are risks of health issues. In such cases the repairs are being made to properties with the cost being deducted from the final settlement figure. In some instances temporary repairs are funded by the temporary accommodation allowance provided in insurance policies, which is typically for \$20,000.⁸³

Land damage issues and the removal of liquefied soil from beneath houses is the responsibility of EQC. If the liquefaction is deemed to be causing unhealthy living conditions – typically moisture, mould, or mildew inside the dwelling, especially in instances in which the inhabitants are vulnerable due to poor health – then EQC will prioritise its removal. The Human Rights Commission has received a number of complaints about EQC's response to the mould and mildew issues. Although there is no legal obligation to do

so, some insurers have offered to arrange for the removal of the soil in over-cap properties and to recoup the costs from EQC.

In some instances claims handlers and case managers have been able to re-prioritise claims if vulnerability information was provided. If insurers became aware that a customer required special support or consideration that is outside the scope of the insurer to address, such as the need for heating assistance but which is not covered as part of the claims policy, then they have referred the customer to the relevant support service.

Insurers' vulnerability criteria give the highest priority to individuals in households with elderly people (generally those over 75 years of age, depending on their degree of dependence), those with terminal illnesses and those with serious medical conditions requiring regular medical treatment (for example, dialysis). Other criteria for prioritising individuals include:

- Households living in inadequate conditions e.g. dwelling not being weather tight, overcrowded, unable to be heated.
- Household has moved three times or more since the February 2011 earthquake.
- Households with children under six years old.
- People with disabilities living in a household e.g. mobility issues, legally blind, mental health issues.
- People dependent on a carer.
- Children in the house with disabilities.
- Solo parents with young children.
- Those suffering financial hardship as a result of the earthquakes.

In addition to these criteria, insurers are aware that there will be cases that fall outside these areas and these are assessed on an individual basis.⁸⁴

As at 1 October 2013, of the 24,660 properties that are over-cap and managed by insurers, 4212 have been identified by insurers as vulnerable.⁸⁵

Of these, 3444 have had their claim resolved and an estimated 768 have not.⁸⁶

A winter resilience campaign was launched by Healthy Christchurch in June 2013 which involved companies and agencies involved in the recovery. As part of this campaign EQC undertook to prioritise the repairs of the most vulnerable. EQC claimants were encouraged to contact EQC if: “someone in the household was dependent on a carer; or over 80 years of age with serious health condition/s and the earthquake is aggravating their health”.⁸⁷

EQC has also worked with other government agencies, and used claimant interactions (through their contact centres and field assessments, for example) to identify the vulnerable and prioritise the repairs to their homes and/or cash settlements.

Community perspectives on the progress of repairs

The right to habitable and affordable housing has been compromised as a result of delays that have slowed progress for residents seeking to move on with their repairs and their lives. To some extent, the delays and changes to timeframes that have occurred reflect the uncertain and unpredictable state that Canterbury was in from February 2011 through to early January 2012 as it dealt with ongoing seismic activity. However, some of the delays are a result of complex claims processing, lack of access to information and delays in decision-making by territorial authorities.

Canterbury residents have told the Commission they have felt frustrated and powerless with a number of aspects of the reconstruction. Common complaints have been about the rate at which repairs were being undertaken; the seeming lack of a systematic and “joined up” way of prioritising and progressing the repair of the most damaged houses; residents’ inability to influence how repairs were undertaken and paid for; shifting timeframes and disagreements with insurers. A Canterbury Communities’ Earthquake Recovery Network (CanCERN) spokesperson summed up the frustrations for homeowners:

“There is no set standard for repair or replacement. Every assessor and every insurer has different ideas about costings and methodologies, and as people discuss and compare costings this ultimately generates confusion, mistrust, anxiety and sleepless nights. The traditional way of dealing with insurance claims has been complicated by EQC and government decisions that have drastically altered simple claims process. The process needs to be streamlined and it needs to be rationalised. Homeowners shouldn’t have to become experts in a process which should be as simple as fix it, replace it, or pay me out.”⁸⁸

Costings

Concerns have also been raised with the Commission that some insurers are reductive in their approach to costings, relying on the reasonable equivalency provisions of insurance policies to minimise costs. However, equivalence does not necessarily mean that home owners will have their homes repaired with the same materials originally used, traditional materials such as lathe and plaster for instance. In addition, where more suitable materials are available such as timber rather than brick, these may also be substituted.

From an EQC perspective, it is constrained by the terms of its Act. That is, to repair or pay for the repair of earthquake damage, to restore a property to a condition substantially the same as, but not better or more extensive than, its condition when new (modified as necessary to comply with any applicable laws, but only as circumstances permit and in a reasonably sufficient manner.) Duncan Webb, a partner at Lane Neave Lawyers, who has been involved in advising clients with issues arising from the earthquakes, has said that, “in a reasonably sufficient manner,” is not a lower level of repair than that offered in a typical insurance policy. He does not believe that the Act allows for a lower standard of repair, stating, “I think that it is, in substance, the same as the insurers’ obligations.”⁸⁹

Where settlements have been contested, there has in some cases been significant differences between the sum arrived at by the homeowner and by the insurer. For instance:

Example 1: A 300 square metre two-storey executive home of triple brick and double brick construction with leadlight wooden framed windows costed for rebuild/cash settlement based on a timber frame with imitation brick cladding and aluminium windows – there is over \$500,000 difference between the parties.

Example 2: An art deco home effectively broken into two – costed on conventional construction for cash out purposes – after negotiation for escalation and construction methodology an additional \$80,000 was secured.

Following the September 2010 quake, insurers and EQC assured customers that they would be fairly compensated – the inference was that customers could rely on insurers' to do so. As time has progressed, insurers have increasingly encouraged customers to seek independent expert advice, but this comes at a cost. Although insurers pay for and retain professionals to advise them, customers may not perceive them as independent of the insurance company.

EQC states that its Act requires the claimant to prove loss to EQC. Where a customer disagrees with an assessment, they are able to have their own advisors prepare evidence, and EQC will consider that information.

One resident in his dealings with EQC expressed the need to seek expert independent reports in this way:

"We feel that we are at war with our insurer and EQC. Originally we were patient and had some faith in the system. We knew it was an unprecedented event/s and were not demanding at all. Now we feel we are being completely dicked around. We have had huge upheaval in our lives and that of our school age children, and we still have not had any hint of resolution. We are

paying thousands in independent reports which our insurer ignores. We have not had our over cap payment from EQC – despite our house's obvious structural and land slip problems (we were red stickered and then reissued a s. 124) we struggled to get over the EQC cap – with intervention of our MP we got another assessment – the damage assessment went from approx \$60k to \$484k. The incompetence of the first assessment was truly eye watering. It was then that our faith in the system started to change."⁹⁰

As a result of delays in decision-making by insurers some of the most vulnerable customers (those who have been out of their homes for more than three years) have cash settled for amounts that have left them unable to replace the home that they had.

If homeowners wished to opt out of an insured managed rebuild they could do so. If homeowners could show they were rebuilding themselves or buying a home, then the insurer would cash settle on the basis of the incurred cost to rebuild. This would not include a payment for land because this is EQC's responsibility. If however, a claimant did not demonstrate that they would rebuild or buy another house and would prefer the cash, this would be paid on an indemnity basis. The indemnity sum would be less than the home's replacement value.

Some homeowners perceived the delays by insurers as a deliberate strategy to compel them to agree to less favourable terms. This claim has been rejected by the Insurance Council. However, in March 2013, the Insurance Council acknowledged the confusion, frustration and anger in the community and noted that while there was room for improvement, insurers were not intentionally seeking to delay, deny or defend claims. The Insurance Council noted that New Zealand and Australian owned insurers would be financially better off getting the claims off their books as soon as possible to avoid price increases. As it currently stands, insurers taking on the rebuild carry this inflation liability.⁹¹

EQC: Delays in claims processing

The scale of the Canterbury earthquakes and the complexity caused by 14 claims-generating events was far greater than any event for which EQC had foreseen. As previously outlined, the claims settling process for EQC has been complicated by the need to deal with private insurers as well as claimants, and by the complex process of apportionment. The size of EQC as an organisation at the time of the 2010 earthquake was a key factor in EQC's capacity to respond to the events. It may also be a factor in some of the pressure points in EQC's operations that were identified in an external review of EQC's Operational Capability in 2009.

The review panel identified as a "key challenge" for EQC "the need to be able to gear up quickly following a natural disaster to meet an unknown level of demand for its services".⁹² While it was clearly not possible for EQC to foresee the size and scale of the multiple events, the 2009 review forewarned that: "interviews with stakeholders identified the possibility that EQC might be expected to take a 'hands on' role in support of reconstruction activities following a large scale event, such as a Wellington Earthquake."⁹³

EQC's ability to "gear up" for a major event was to some extent contingent on its capacity at the time (both internally and in terms of being able to draw on resources in a rapid-response manner). The impact this resourcing may have had on its subsequent operational capabilities is addressed in a draft 2012 report by Martin Jenkins and Associates (Commissioned by EQC but not finalised).⁹⁴

In October 2013, the Controller and Auditor-General reported on EQC's management of the Canterbury Home Repair Programme. The Auditor-General commented that public entities naturally concentrate their planning around likely events but the uncertainty and complexity of the contemporary world meant that this alone is not enough to serve the future needs of New Zealanders well. Public entities needed to sensibly prepare for potentially catastrophic but unlikely events, events that can require public entities to administer large and complex

initiatives and quickly. Being prepared for these types of situations is difficult, but possible. Although detailed action planning cannot be done before an event, entities can prepare a coherent strategic approach or framework, ahead of them occurring.⁹⁵

The 2009 review of EQC's operational capability presciently noted that a number of processing issues that could cause delays and inefficiencies in processing claims both by EQC and private sector insurers. Some of these issues have come into play in the Canterbury context. A challenge noted by the review was that: "EQC does not have direct access to information on the details of the people and residences it covers. Instead, EQC must iteratively and manually verify with private sector insurers, claim by claim, that a claimant has a valid insurance policy. This adds cost and time to EQC's claims processing. In a large-scale event it would cause a bottleneck. Direct access to this information may also enable EQC to better target information to uninsured home owners on the benefits of EQC cover."⁹⁶

An additional issue has been the requirement to share data with other agencies such as CERA (to deal with red zone and orange zone properties). To enable aggregate data to be transferred between agencies, it was necessary for all agencies to settle on a common identifier that could be used to match addresses. All agencies decided to use QPID's (Quotable Value identities) as the common reference point for data sharing.

However, as there are up to nine different authoritative address databases in use in New Zealand it was difficult to identify which has the best version of the address for any one property. Some of the problems occurred around body corporates or multi-unit properties where the owner/tenant used an address, which may or may not have been that which was used by any of the databases. A project to change EQC's address database was completed at the end of May 2012.

For planning purposes a "large scale" Wellington event was projected to result in 150,000 claims to EQC. The September 2010 earthquake resulted in this many claims alone. The combined exposures from the Canterbury earthquakes were over five

times larger than the 2009 Review recommended that EQC plan for.

EQC reports that it has been able to either pay out or repair approximately 54 per cent of all properties in the space of less than 24 months since the last significant quake. This is a positive contribution to the people of Canterbury.

The Insurance and Savings Ombudsman Scheme (ISO) works closely with insurers and their customers to ensure that customers are treated fairly and in accordance with the terms of their insurance policy. It considers that the level of uncertainty and delays caused by the different approaches taken between private insurers and EQC should not have occurred. It recommended that in future, in response to a natural disaster in New Zealand, private insurers should take the lead role with EQC having a very limited role under the Earthquake Commission Act 1993.

The ISO considers that it was not a practicable solution for EQC to attempt to “gear up quickly” for such a major event, and also that this experience established that the dual model causes unnecessary delay and stress to those affected and, in particular the most vulnerable in the community.

The volume of requests received by EQC for information under the Official Information Act (up to 400 per month) by homeowners has placed a further strain on its processing capabilities.

Other factors highlighted by EQC that have caused delays include:

- Multiple claims for a single property had to be manually associated and validated adding an extra level of complexity that was exacerbated by the lack of a single, authoritative address database that could be accessed. This issue was largely solved by May 2012.
- Lodgement and validation of claims was complicated by a high proportion of duplicate or invalid claims.
- The process of apportionment had to be created to attribute damage to causative events, so that correct amounts could be

assigned to each event (as reinsurance contracts cover different events in different ways).

- Determining which repairs are the responsibility of private insurers is not straightforward, particularly following the High Court ruling on apportionment.
- There are greater audit and review requirements given the additional complexity.
- There is more complex and potentially frustrating interaction for customers.⁹⁷

Further delays in the recovery of housing have been caused by:

- Disagreement, differing expectations, and/or miscommunication between insurers and EQC and homeowners.
- The need for the homeowners to seek expert technical advice in order to negotiate successfully with EQC and insurers. In the case of EQC, this is only required where the customer disagrees with EQC’s assessment.
- Delays in releasing available information relating to land damage to property owners due to the complex geotechnical and legal work required to determine what constituted land damage, which was not specified by EQC’s Act.
- The time taken on geotechnical assessments of TC3 areas, due to equipment and engineering resource constraints.
- Delays in decisions by the Christchurch City Council relating to rock fall protection mechanisms so that red-zoned residents who wished to challenge the hazard notices issued on their properties had the information they needed to do this effectively.
- The complexity of settling claims for multi-unit buildings (MUB) including the need to consider damage to the building as well as the dwellings, coordination and engagement with multiple owners and insurers, the difficulties presented by uninsured owners

and the need to develop further MUB guidance by MBIE and ownership issues (cross lease and unit titles). In some cases, issues were caused because some homeowners had not set up the appropriate legal structures, making it difficult for EQC to determine who they should settle with.

The Insurance Council reports that it is acutely conscious of the need to address those issues that are blocking a safe and sustainable rebuild for Canterbury. Attempt to address this includes fortnightly meetings of Insurance Chief Executives with its counterparts from CERA and EQC to address critical issues.⁹⁸ The general managers responsible for the earthquake recovery, including EQC, also meet fortnightly for the same reason.⁹⁹

Customer responsiveness

An issue that has sometimes been problematic for insurers is the time customers have taken to reach decisions. Figures show that of the 24,660 properties that are over cap and managed by insurers, 2880 (12 per cent of 24,660) with

settlement options were undecided as at 30 September 2013.¹⁰⁰ One explanation may be that home owners who have waited more than three years for a decision are often too weary to feel comfortable making momentous decisions in a short space of time.

Owner-driven versus agency-driven reconstruction

On the World Bank's typology of approaches to post-disaster reconstruction, the Canterbury Home Repair Programme (CHRP) represents an "agency-driven" approach to reconstruction.¹⁰¹ It affords the least autonomy to homeowners. A more human rights approach and one which the World Bank endorses as: "... proven to be the most empowering, dignified, sustainable and cost-effective reconstruction approach ..." is the "owner-driven" approach.¹⁰² A key characteristic of the latter is the State provision of funding via a combination of cash, voucher, in-kind and technical assistance to people who need to repair and rebuild their homes. Also, householders are in charge of their own rebuilding and repairs and



Damaged home in Heathcote Valley, where the February earthquake was centred.

may undertake to do the work themselves or employ family or contractors to do it.

The benefits of an owner-driven approach include the following:

- Homeowners have control over the reconstruction of their homes. This has the associated benefits of owners being able to supervise the process often to a greater extent than when the process is controlled by an external agency. As one reconstruction expert said: "It is better to have 100,000 people each concerned about one house than to have 100 people concerned about 100,000 houses."¹⁰³
- There are clear lines of accountability for the work to the homeowners.
- It encourages recycling and use of sustainable solutions with householders being more likely to use salvaged and local building materials.
- It encourages people to be resourceful and recognises the rights of people to privacy and sanctity in their own homes.
- It helps preserve continuity in local building and architectural style.
- It allows people the flexibility to top-up State funding to re-build or repair homes to reflect their specific needs, such as wall insulation, universal design and retrofitting for accessibility.

Concerns about housing quality, labour supply and costs that led to the establishment of the Canterbury Home Repair Programme (CHRP) could be addressed through a more owner-driven approach. For example, to prevent homeowners taking the cash without repairing their homes, disbursements (insurance pay outs) could be made conditional on the progress of repairs (as with the EQC opt out process). To ensure housing standards are maintained, government could strengthen its systems for enforcing compliance with the Building Code, and as has occurred, review and improve performance standards.¹⁰⁴

While different options could be explored to

keep the prices of building materials down, there is essentially a duopoly in New Zealand for building materials with most building materials manufactured by national or multi-national suppliers. In addition, the use of salvage material is difficult because the onus is on the householder to demonstrate that the product complies with the Building Code and that the salvaged material is still fit for purpose.

The Auditor-General's report on EQC's management of the Canterbury Home Repair Programme noted one of the positive aspects was that homeowners have not had to compete directly with each other for materials or trades people.

Clearly, a wholly owner-driven approach to reconstruction would not suit everyone. The advantage of having an insurer manage the repairs is that Project Management Offices have service standard and performance agreements, and insurers have an interest in ensuring a quality rebuild. In addition, as the World Bank has noted, some households may struggle to project manage their own repairs, and others may not want to supervise the repairs themselves. Experience in Canterbury to date shows many, including the vulnerable, have experienced difficulty accessing the resources and negotiating the complexities insurers have been negotiating on their behalf.

A human rights-based solution may be to enable and provide Canterbury residents with more choice about how and when they wish to proceed with their repairs. The Human Rights Commission suggests that this could be achieved by expanding and improving the existing provisions for opting out.

As it currently stands, the opt-out process has worked well for some homeowners but has been unwieldy and onerous for others. The majority of fully settled claims are those who have opted out. A primary concern expressed by homeowners who make the decision to opt out is that they must do so without the benefit of a costed scope of works from EQC.¹⁰⁵ Some of those who opted out have reported that they had to wait months for EQC to reimburse the payments that owners make to contractors, with a wait of five to six months



United Voices protest march, August 2012.

not being uncommon. In some instances EQC has offered reimbursement in instalments. The development and introduction of a transparent opt-out decision process with payments made by EQC within 30 days and with late payment penalties would improve the system as it stands.

EQC's Act does not allow it to make late penalty payments. The Commission regards this as an issue that should be considered when the Act is next considered by Parliament. Greater provision for technical assistance and support for owners choosing to manage their own repairs is also recommended as part of this process.

EQC reports that improvements have been made to the opt-out invoice payments process recently. It states that typically these are now paid on the 20th of the following month. EQC is also currently streamlining its approach to customer managed repairs (the new name for the opt-out process).

The intention is that following a joint site visit with the customer and confirmation of the

damage and repair scope, customers will get an updated statement of works and a cash settlement statement detailing the value of earthquake damage for each claim. This cash settlement will put customers in control of their repairs and give them the ability to include larger renovations in their plan.

Community Voices: Repairs

Case study 1: Ryan's story

Kia ora my name is Ryan and I'm a caregiver. On 22 February I was working at the rest home. When the earthquake hit I was looking after a house full of clients and my teammate got scared and ran out of the house. Lucky it was in Avonside and not the CBD.

It took a long time to get back to my whānau. And I couldn't ring them and texts weren't being answered. I finally got home about 11 o'clock and had to leave the van by the river and walk about two kilometres to get home to Aranui. Walking through liquefaction wasn't fun and seeing the mess on the way home, and being in the dark was freaky.

Our neighbourhood is pretty empty now. Lots of people have left, gone to places like Hornby, and even Rolleston. Heaps have just left Christchurch and probably won't come back. It was hard back then as we had lots to clean up but the student army and all the other people that came to help were great. The snow didn't help either.

We own our house and insurance has been hard. Getting reinsured was a nightmare. It was weird because our second claim for the February earthquake had the first quake costs/sum deducted from it. We eventually got our claim completed in three months. But it felt like ages. We think it'd be better to almost knock the house down and start again. It'd be nice to have a newer house – our kitchen wall is out 17 degrees, the garage tried to pull the house down. And eventually we will move when it's ready to be fixed.

It seemed to take a long time to get our house assessed and we weren't happy with the assessment and how we were treated. It was as if we were being dishonest, we didn't feel listened to. One of the assessors was rude and the other one seemed to be apologising for

the things he was saying. Things that we knew that were new damage we were told it was old damage and couldn't be included in the claim. I don't know how we got by the last few years living with walls that weren't connected to anything, and uneven floors.

Living in the east side is good, it's changed, and people did come together and help. But we think more should be done for our community. Aranui seems left out of everything that is happening. We have the marae, and He Waka Tapu, our schools, and even though our supermarket is big, things take longer to get fixed out here. It's almost like living in the middle of nowhere. It does feel like we've been ignored.

We have asked for help even though both of us work. We're lucky we can get by, and know how to navigate insurance/EQC, but we know that others around our hood aren't in the same boat. Bexley was bad but at least that's a new housing area and people seem to care. But if you're here or in New Brighton, you know, places that no one wants to go, then things are slow.

What's so great about a CBD with nothing in it? There should be more effort to get our area fixed; no one's listening if you're poor, or if you've got health issues. Some people don't have insurance and how can they be helped? The roads are still bad, the pipes are being done in Linwood and thankfully the other pipes on Woodham Road have been done, and work's started on Aldwins/Pages Rd. Our MP has been great at making sure we are heard but the Government doesn't seem to be doing that much and it seems the same for the Council as well.

We know that things will take years but the focus has to be on people and not places. Where are we going to live in the future and

what's life going to be like when we have kids? Aranui will always be our home, well maybe not always if things keep going the way they are. But who wants to buy in this neighbourhood? Look at it; it's almost a ghost town. When school's back it'll get busier. Oh yeah and we'll probably have a new mega school. Another decision made for us!

We're lucky we are young and have some energy to follow things up if we don't like what's happening. Other people that have nothing, or are kaumātua, will find it hard.

People look down on this place already, why make it worse?

I hope that those in power are listening.

Case study 2: Rebecca's story

After 18 months, Rebecca and her young son Sammy are still enjoying their recently repaired Christchurch home.

In the wake of the February 2011 earthquake, the future of Rebecca's Cashmere home was uncertain. With a broken roof, buckled window frames, bricks falling down and major internal damage, staying in the 1970s house in the short term simply wasn't an option. So Rebecca and Sammy – who was just two at the time – moved in with her father, Ron, while the fate of their home was decided.

"We were really lucky that Dad was living nearby and had enough space to take us in," Rebecca says. "He was a fantastic support throughout the whole process and played a key role in driving things along as 'project manager'."

Ron worked closely with Rebecca's insurance claims manager each step of the way.

To begin with, insurance assessors visited the home to evaluate the damage and they were confident that the house could be saved, despite the fact that it needed around \$400,000 worth of repairs.

For peace of mind, Ron also enlisted the support of a Christchurch building company he had worked with before.

The home had been constructed in the 1970s and, given the extent of the damage, the building team recommended that the repair be used as an opportunity to strengthen the foundation and frame of the home.

That opportunity was seized and the family also decided to replace the home's badly damaged exterior cladding with lighter, more resilient materials. "We got rid of the heavy concrete roof tiles and brought in Colorsteel roofing, which is a lot lighter. We also replaced the old-fashioned red bricks with more modern looking linear board."

The repair process ran smoothly and by October 2011 – just eight months after the damage occurred – Rebecca and Sammy were able to move back home.

Ron attributes the success to the incredible efforts of everyone involved.

"The repair team were fantastic. The best thing about all of them was that they understood the human side of things and brought a real empathy to everything they did."



Home in red-zoned suburb.

The impacts of the Canterbury earthquakes on Housing Te pānga mai o te rū whenua Waitaha ki ngā whare noho

Everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or lack of livelihood in circumstances beyond his control. – Article 25(1) Universal Declaration of Human Rights

Housing affordability, habitability and the right to security of home are core human rights concerns arising in the Canterbury earthquake recovery. Home is the centre around which people's lives orbit. Home is where birthdays are celebrated, commemorative trees are planted, where whānau can stay when they come back to visit and how ahi kā is maintained.¹⁰⁶ For many people home remains one of the few places where they feel safe, empowered and free.

Along with loss of employment, the destruction of property presented the greatest potential for violation of human rights in Canterbury. Issues concerning sanctity and security of the home have been the most frequent subject of enquiries and complaints to the Human Rights Commission from Canterbury residents. Tūrangawaewae – people's sense of belonging, identity and place – has been profoundly affected.

The right to housing is recognised internationally as fundamental to the principle of human dignity and development. It is regarded as more than just the right to a roof over one's head and encompasses the right to live somewhere in security, peace and dignity regardless of income or access to resources.¹⁰⁷ In New Zealand a sense of stable home links to whakapapa, whānau and access to schools and work. Housing has been described in terms of connection to land, tradition, tūpuna, and whānaunga. The challenges presented by the Canterbury earthquakes relate not only to the restoration of housing but also to the rebuilding of communities and connectedness.

The following section of this report provides a brief overview of the right to housing and New Zealand law and policy that is relevant to the issue of stable and secure housing. It outlines the effects of the earthquakes on the supply and demand of housing and considers the effects of the legal, policy and service delivery responses outlined in the previous section. The subsequent thematic sections examine the effects of these decisions on the community as they relate to the right to affordable, habitable, accessible and secure housing, and more broadly to health and democratic rights.

What does housing as a human right mean?

Everyone shares the right to a decent standard of living. Essential to the realisation of this right is access to adequate housing. Housing fulfils physical needs by providing security and shelter from weather and climate. It fulfils psychological needs by providing a sense of personal space and privacy. It fulfils social needs by providing a gathering area and communal space for family, the basic unit of society.

The right to housing is inextricably linked to other fundamental human rights.¹⁰⁸ Adequate housing is essential for human survival with dignity. Without a right to housing many other basic rights are compromised, including the right to family life and privacy, the right to freedom of movement, the right to assembly and association, the right to health and the right to development.

The right to adequate housing applies to everyone. It is both an individual and a collective right.¹⁰⁹ Individuals, as well as groups and communities, have a right to adequate housing regardless of age, economic status, group or other affiliation or status. Enjoyment of this right must not be subject to any form of discrimination.¹¹⁰

General Comment 4 by the United Nations Committee on Economic, Social, and Cultural Rights sets out a number of factors that make up the right to adequate housing:

- **Security of tenure:** housing is not adequate if its occupants do not have a degree of legal protection from arbitrary evictions.
- **Habitability:** housing is not adequate if it does not provide adequate space, as well as protection against cold, damp, heat, rain, wind, or other threats to health and structural hazards.
- **Services, facilities and infrastructure:** housing is not adequate if its occupants do not have safe drinking water, adequate sanitation and energy for cooking, heating and lighting, food storage or refuse disposal.
- **Location:** housing is not adequate if it is far from employment opportunities, health-care services, schools, and other social facilities, or if it is located in dangerous areas.
- **Cultural adequacy:** housing is not adequate if it does not respect and take into account the expression of cultural identity.
- **Affordability:** housing is not adequate if its costs are not commensurate with the income levels of its occupants.
- **Accessibility:** housing is not adequate if the specific needs of disadvantaged and marginalised groups are not taken into account.*



Street in red zoned suburb of Bexley.

The United Nations Special Rapporteur on Adequate Housing has stated housing is not just a physical commodity, it has “inherent social value”. As Māori have emphasised, housing is about connection to land, *tūrangawaewae*, *tūpuna*, community and *whānau*. Recognising the interconnectedness of housing with other rights such as property, health, participation, employment, and the right to an adequate standard of living means that rebuilding following a natural disaster requires long-term and multi-dimensional approaches.¹¹¹

* Article 11(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) provides the most significant legal source on the right to adequate housing. The Committee on Economic Social and Cultural Rights endorsed the statements of the Commission on Human Settlements and the Global Strategy for Shelter to the Year 2000 that “adequate shelter means ... adequate privacy, adequate space, adequate security, adequate lighting and ventilation, adequate basic infrastructure and adequate location with regard to work and basic facilities – all at a reasonable cost.” See: ICESCR: General Comment No 12, para.7.



Figure 5: CDHB One Health System (source: Canterbury health system)

This approach has been visible in the Canterbury District Health Board's (CDHB) transformation of the Canterbury health system that places the home at the centre of patient wellbeing. A key goal of the strategy is that as far as possible people should stay well in their own homes and communities. In order to achieve this outcome, the home has to be a healthy home that meets the seven criteria outlined previously. This is seen as critical to an integrated and seamless health system. The implications of this transformation in relation to the impact of the earthquake on adequate housing are discussed in more detail in the subsequent Habitability section of this report.

Community impacts

The intent of the legal, policy and service delivery responses relating to the recovery of housing and property has been to support affected people to recover from the destruction wrought by the earthquakes and to help them move on with their

lives as quickly as possible. In many instances the effect of these responses on Canterbury people has been positive, while in others these interventions have resulted in unforeseen human rights impacts that have challenged peoples' rights across a number of fundamental dimensions relating to housing, health and participation.

Drawing on community voices, the following four thematic sections – Affordability, Habitability, Accessibility; and Belonging, stability and security of home – examine some of the effects of the legal and policy responses on the people of Canterbury and the human rights issues that have arisen. The first of these considers the right to adequate housing as it relates to affordability.

Affordable housing Whai rawatanga

Government obligations

The State's obligation to provide adequate housing under Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) requires that it respect, promote and, where necessary, provide, access to housing that is affordable, culturally adequate, in a suitable location and appropriate to need. Affordable housing is central to thriving and sustainable communities, to the preservation of culture and to individual economic, social and physical wellbeing. As the Associate Minister of Housing has stated:

“Housing is of vital importance to the future development of our whānau, and our people. When we talk about programmes that deliver holistic outcomes, you cannot go past the value of a whare ...Where you live, how you live and who you live with – impacts heavily on who we become, what we do, and the quality of our lives.”

– Hon. Tariana Turia, Associate Minister, Housing.¹¹²

The issue of affordable housing has been receiving increasing attention in New Zealand. The Human Rights Commission has reported on a growing trend in unaffordable housing.¹¹³ More recently in March 2012, the Productivity Commission completed a report on housing affordability in which it noted: “There are few things more important to New Zealanders than the homes we live in. Housing is a fundamental determinant of wellbeing, central to health, family stability and social cohesion”.¹¹⁴ The report identified affordability as a key issue for New Zealand. It contained a number of recommendations concerning affordability and the role of taxation, urban planning, infrastructure development, building regulations, the private rental market, social housing and Māori housing. The government responded to the Productivity Commission's report.¹¹⁵ It has taken some measures to increase the supply of land available for affordable housing.¹¹⁶ A lack

of affordable housing is associated with poverty, overcrowding, welfare issues for children, poor health and homelessness. Since 2004, when housing affordability was similar for Māori, European and Pacific householders, housing has become disproportionately unaffordable for Māori and Pacific peoples.¹¹⁷ A general right to affordable housing is not provided for in New Zealand legislation.

New Zealand has a well-established, albeit changing, tradition of housing assistance for those who cannot otherwise access adequate housing.¹¹⁸ In recent decades and like other nations, New Zealand has been moving towards an enabling or facilitative approach that focuses more on assisting people to enter the housing market rather than on the supply of housing. Financial assistance has accordingly targeted low-income groups to assist with housing-related costs without any measures taken to control for or reduce rising rents and costs in the private housing market.

Housing New Zealand

The Housing Corporation Act established the Housing New Zealand Corporation (HNZ). It describes the objectives of the Corporation as giving effect to the Crown's social objectives by providing housing and services relating to housing and provision of rental housing to those in most need as one of its functions.¹¹⁹ The Social Security Act provides for financial assistance to alleviate hardship and for targeted assistance “to help certain people with high accommodation costs to meet those costs”.¹²⁰ The New Zealand Bill of Rights Act, the Human Rights Act and the Residential Tenancies Act also provide protection from discrimination in housing.¹²¹

The New Zealand Government owns 69,000 State houses, with 45 per cent of this stock held in Auckland. Government housing is provided to more than 200,000 people, with Māori and Pacific people constituting the highest occupant groups.¹²² The government-owned housing stock is managed by HNZ. The agency's current focus is on ensuring that “New Zealanders in high need have access to a Housing New Zealand property for as long as that need exists”. This approach has been criticised by

the Productivity Commission as being based on a “throughput” model that ignores people’s needs for continuity and stability in housing within a complexity of needs and also for its lack of focus on addressing housing priorities with a more holistic response to need.¹²³

The impacts of the earthquakes on housing supply and demand

Reduction in housing supply

Some of the supply and demand pressures on the housing system in Christchurch are common to the rest of New Zealand. However, the magnitude of the damage and the decision to clear the red zone quickly without the certainty that there was sufficient housing supply in place to meet the demand increased pressure on the market. This has been compounded by the impact of repairs and the influx of temporary workers, making the Canterbury context unique.¹²⁴ The Canterbury earthquakes had an immense impact on buildings and land. There is damage to more than 90 per cent of the housing stock in greater Christchurch.¹²⁵ Of these, an estimated 24,000 homes are either rebuilds or major repairs.¹²⁶

The reduction in housing stock is reflected in an increase in house price inflation since the September earthquakes. The annual price increase in houses in the year ending July 2013 was 11 per cent for Christchurch compared to a 3 per cent increase in the Wellington region, 13 per cent in the Auckland region and an 8 per cent national increase over the same period.¹²⁷ The average house sale prices for the three months ending in July 2013 were \$432,961 in Christchurch, \$524,477 for Wellington city and \$644,973 in the Auckland region.

A general measure used to calculate housing affordability is the ratio of housing cost to income after tax.¹²⁸ An affordable rating is considered 3.0 and under. Anything over this is regarded to be moderately to severely unaffordable with 5.1 being seriously unaffordable. The rating for median income to median housing in New Zealand has changed from around two in 1980 to 5.3 in 2012. The 2012 9th Annual Demographia

International Housing Affordability Survey rates Auckland as the least affordable city at 6.7 and Christchurch as the second at 6.6.¹²⁹ Both are extremely unaffordable.

Reduction in rental housing supply

The impact of the earthquakes have been especially acute on the rental market. Supply of two and three bedroom rental accommodation was hard hit with a decrease in the central city area of 45 per cent in the 2010-2012 period to December.¹³⁰ Pressure on the remaining stock has been exacerbated by a number of factors. These include landlords moving into their own premises while repairs are carried out to their own homes, owners deciding to sell properties, an influx of residents into Canterbury for the rebuild and tenants staying longer in their rentals.



Figure 6: Decrease in number of new bonds lodged between 2010 and 2012 December years

(source: Ministry of Business, Innovation and Employment)

The reduction in rental housing and increased demand has led to an increase in rental prices with average private weekly rents across wider Canterbury continuing to rise at a faster rate than the national average. Before the earthquakes Christchurch was widely regarded as one of the more affordable cities of New Zealand and the private rental market was the primary source of housing for low-income vulnerable people.

Key indicator reports show that over the year to July 2013, average private weekly rents increased by 12 per cent in Christchurch to \$387. This compares to a four per cent increase across both Wellington City and the Auckland region, to \$406 and \$444 respectively, and a four per cent national increase to \$356.¹³¹ The sharpest increase has been in the Selwyn region where rents have increased by 14 per cent to \$469 over the same period.

Loss of social housing

Over 1000 social housing units were lost through the earthquakes.¹³² Housing New Zealand (HNZ) the largest social housing provider in Canterbury, had damage to most of its 6,129 Canterbury properties.¹³³ HNZ completed 27,000 urgent repairs to these properties – an average of four per property – in the immediate aftermath of the largest earthquakes.¹³⁴

A total of 525 HNZ properties had to be vacated due to earthquake damage. Approximately 220 were repaired in 2012 and have since been re-tenanted. Of the remainder, 215 are within the red-zone. This year the Repair 5000 programme is underway in tandem with the building of 700 new homes. This work is due for completion by December 2015.¹³⁵

In addition, HNZ has undertaken a significant programme of work in partnership with the Ministry of Business, Innovation and Employment (MBIE) and the insurer Southern Response to trial different house foundation repair methods, particularly on TC2 and TC3 land. This work is due for completion at the end of 2013. A technical report on the findings will be published and made freely available to assist other TC2 and TC3 property owners.

The Christchurch City Council is the country's second largest social housing provider. Of a total social housing portfolio of 2649 units, 439 units were closed as a result of the earthquakes. Of the units that have been closed 113 were within the red-zone. The Council has committed to opening 70 units by the end of 2013 and expects the full repair job to take five years.

A number of social housing tenants left the city as a result of the earthquakes. Others in damaged homes have had to be re-housed and some continue to wait for more suitable housing. The Council has reported that where tenants wanted to be re-housed, they were transferred to new tenancies across the city if units were available. Tenants' rent may have changed if the size and location of their new premises was different from their previous unit. Most of the Council's units are one and two bedroom studios, and it has a limited supply of housing suitable for families needing three to four bedrooms.

Increased demand for low cost and emergency housing

Both the Christchurch City Council and HNZ maintain waiting lists that have increased following the earthquakes. Applications to HNZ in Categories A and B increased in Christchurch by 61 per cent in the year from March 2011 to February 2012, from 211 to 340.¹³⁶ As at 30 September 2013 there are 359 A and B applications on HNZ's Christchurch waiting list. Priority A includes applicants who are assessed as having "a severe and persistent housing need that must be addressed immediately". Priority B includes all assessed as having a "significant and persistent need".¹³⁷

Demand for Council social housing in the high needs categories¹³⁸ also rose markedly in the six months after the February earthquake compared to pre-quake levels with an average of 26 Category A applications per month.¹³⁹

The eligibility criteria for entry onto the waiting list for HNZ accommodation changed from July 2011, making it difficult to compare the demand for its housing pre- and post-earthquake. Some non-government agencies have indicated to the Commission that the "high needs" eligibility criteria for HNZ housing may have set the bar too high for Canterbury residents. An Earthquake Support Coordinator for example stated:

"Access to Housing New Zealand houses is tight. You have to be actually homeless to have any prospect of placement. In many

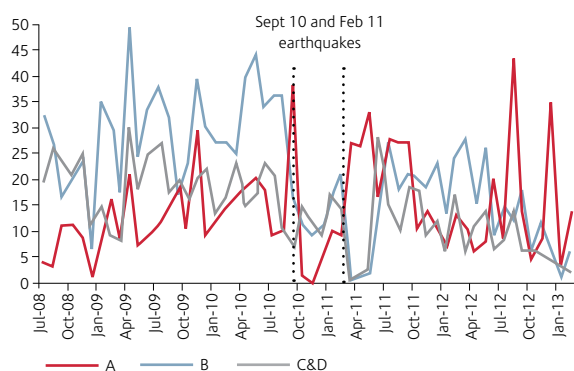


Figure 7: Christchurch City Council social housing applicants by waiting list categories (source: CCC)

instances an application for a Housing New Zealand tenancy will not be considered until a client has to actually shift (because of notice, house being demolished etc). There may be very short notice to shift.”¹⁴⁰

However, in recognition of the difficulties faced by many of HNZ’s Christchurch applicants, in October 2012 the Government amended the eligibility criteria so that Christchurch applicants do not have to provide evidence of any inability to access housing in the private sector. This has meant that a greater range of Christchurch applicants are now eligible for HNZ tenancies.¹⁴¹

A further issue is uncertainty, and a lack of understanding amongst some residents about who has priority for accessing social housing and on what basis. In addition, the move by HNZ to offer the 0800 freephone number as the first point of contact for customers, rather than a face-to-face interview, has been cited as a barrier by residents interviewed for this report. Some said they did not proceed with their application as a result.¹⁴² This has particularly been the case for refugees, migrants and people with disabilities.

HNZ reports that it moved to the phone-based approach in Christchurch as a direct result of the earthquakes, as the Linwood office suffered considerable damage. HNZ subsequently moved to a phone-based approach nationally as part of its new service delivery model.

However, HNZ’s doors have continued to be open at its Christchurch office for customers who need face-to-face assistance. In addition, HNZ considers

that the move to a phone-based approach has allowed it to provide a consistent service to all customers, including those who faced difficulties with transport following the earthquakes. Customers with limited English language ability or with impaired hearing may contact HNZ through the Language Line or the NZ Relay service if required.

Demand for temporary and emergency accommodation

The demand for temporary and emergency accommodation has also increased markedly since the earthquakes with many holiday parks at capacity and high use being made of the Canterbury Earthquake Temporary Accommodation Service. Non-government agencies providing social housing to people who are homeless or at risk of homelessness in Canterbury have reported that people are staying longer in emergency and temporary accommodation because of a shortage of affordable rental accommodation. Some agencies have also reported a rise in referrals for accommodation from people who are homeless.¹⁴³ Insurers have paid out in excess of \$150 million in temporary accommodation allowances.

Comcare Charitable Trust provides Housing Facilitation, Supported Landlord, Emergency Housing and Group Living Services for mental health service users. Comcare has reported a 10 per cent rise in the number seeking accommodation because they are “living with another household” or “moving around from place to place” or because they are living in uninhabitable housing.¹⁴⁴ The Canterbury District Health Board has increased funding to Comcare to raise capacity but has noted that the shortage of suitable housing available meant that this increase in provision would not occur fast enough. Overall Comcare has seen an increase in referrals, with about one third of all referrals being for people categorised as “homeless”.¹⁴⁵

A summary of housing pressures

A more coordinated and centralised data collection in relation to housing supply and demand by the key agencies involved in the recovery would assist government attempts to accurately understand the scope and scale of the impact of the Canterbury earthquakes on housing, particularly for those who are most vulnerable. Presently the most systematic data collection is provided by MBIE through monthly key indicator reports, including specific reports covering the Canterbury and Social Housing (including lower quartile private) markets.¹⁴⁶

The National Science Challenge Panel also made a case for a more coherent approach to research in housing than currently exists. It advised that the benefits from such an approach should be both social and economic.¹⁴⁷ More broadly, it has also identified the need to build better homes, towns and cities and to prioritise research to develop affordable and better housing and urban environments.¹⁴⁸

In 2012 CERA commissioned a report on future housing demand that projected a 12,010 shortfall in dwellings.¹⁴⁹ This excluded temporary requirements for people waiting for rebuilds and those coming into Canterbury to work on the rebuild. The report noted that predictions for temporary accommodation varied widely with a maximum potential shortfall of over 20,000 dwelling units during 2013.¹⁵⁰

Separate reports published by the Ministry of Business, Innovation and Employment (MBIE) and the Tenants' Protection Association in 2013 provide a valuable starting point for assessing and addressing the shortfall in housing supply. Using a range of qualitative and quantitative data, MBIE estimates:

- A housing shortfall of 7100.
- A displacement of 16,050 people and, of these, 7000 people (or 44 per cent of those displaced) living in crowded conditions – an increase of 29 per cent.¹⁵¹
- Severely over-crowded houses make up the same proportion of crowded households (23 per cent) that they did in 2006.

- The number of people living without shelter or in temporary accommodation only is estimated to be between 135 and 505.
- A 72 per cent increase in homelessness in Christchurch using pre-earthquake baseline estimates.¹⁵²

Key findings from a rental market survey conducted by the Tenants' Protection Association in Christchurch revealed an average total rent increase of \$42.90 per week across the Canterbury region.¹⁵³ In addition, the survey found:

- 88 per cent of tenants reported paying over 25 per cent of their annual income in rent
- 57.8 per cent (over half) of tenants reported paying over 40 per cent of their annual income in rent
- 34 per cent of tenants reported paying over 50 per cent of their annual income on rent.

A market-led approach

Beginning in the mid-1970s, a trend in housing policies emerged that increasingly led to the transfer of activities from the State to the private sector. Governments have progressively stepped back from the role of supplying affordable housing. As a consequence, the financial sector and the private housing market have tended to drive the framework for delivering housing solutions, an approach that is seen to exacerbate inequalities.¹⁵⁴

The UN's Special Rapporteur on the Right to Adequate Housing, Raquel Rolnik, has expressed concern that in many cases this type of approach leads to an increase in housing insecurity, social segregation and homelessness.¹⁵⁵ Instead, she highlighted the need for housing finance systems that finance the cost of housing for people by providing loans, grants or subsidies for the purchase, rental, construction or improvement of housing.¹⁵⁶ Such strategies are based on a premise that if the housing market is adequately designed and regulated and has the appropriate supporting legal and institutional framework, then it is

capable of ensuring equal access to adequate and affordable housing for everyone.¹⁵⁷

Article 11 of the International Covenant on Economic, Social and Cultural Rights recognises the significant effect housing finance policies have on the affordability of adequate housing. The UN Committee on Economic, Social and Cultural Rights interprets Article 11 to require that:

- States should establish laws, policies and programmes to ensure that the percentage of housing-related costs is commensurate with income levels.
- States effectively monitor the impact of their housing policies on the realisation of the right to adequate housing.
- Policies and legislation should be designed to bridge social inequality gaps and when a policy proves detrimental to the enjoyment of the right to adequate housing, states should adjust and rectify their policies and programmes accordingly.¹⁵⁸

In post-earthquake Canterbury the Government has expressed its preference for a market-led recovery of housing.¹⁵⁹ However, there has been some intervention such as the draft Land Use Recovery Plan, temporary accommodation villages, provision of the Temporary Accommodation Allowance and Housing New Zealand's Canterbury Investment Plan. Reliance on market mechanisms is also the stated preference of Ngāi Tahu as outlined in its Preliminary Tribal Positions and Priorities document, which was drafted as an input to the draft Canterbury Earthquake Recovery Strategy.¹⁶⁰

Ngāi Tahu's recovery priorities state a preference that market dynamics (supply and demand) be allowed to play out to dictate patterns and values of residential and commercial development – on the understanding that high levels of urban and environmental amenity are both established and/or maintained irrespective of social strata of the inhabitants/occupiers.¹⁶¹

Whether the market is responding to the housing shortage in the short to medium-term recovery period in Canterbury¹⁶² is the subject of the study

undertaken by MBIE on housing pressures. Social service agencies and organisations that work with the city's most vulnerable groups report an increase in homelessness, a marked increase in residents seeking food aid and increasing numbers of residents living in substandard, insecure accommodation such as garages and caravans while paying high rent.¹⁶³

Limited affordable social housing (partly due to the loss of around 200 single-bed units on the eastern fringe of the CBD due to the earthquakes) has also resulted in delayed discharges from mental health hospitals and residential services, with patients who do not require care remaining in hospital because they couldn't find suitable housing. Although HNZ prioritises those in inpatient care, the waiting time has increased from two weeks to four months or more. Inpatients seeking social housing have been informed of a waitlist of at least a year. As a result of an inadequate supply of affordable housing, people are not able to access the right care at the right time thereby compromising their recovery.¹⁶⁴

The Canterbury non-government family violence service Aviva (formerly Christchurch Women's refuge), has identified the undersupply of affordable accommodation in post-earthquake Christchurch as the most significant factor affecting families that were already living with family violence. Housing pressures were also highlighted as a significant risk factor in families where violence has the potential to escalate.

Aviva has recorded a rising demand for safe houses and other alternative accommodation, both in the number of clients, which increased by 15 per cent, and the length of stay required, which increased by around 50 percent to around 21 bed nights between 2012 and 2013.¹⁶⁵

The lack of appropriate, affordable accommodation also increases the risk of affected women and mothers with children remaining in, or returning to, violent homes. The Aviva CEO is aware that women (with children) in Canterbury have chosen to remain in violent homes because they know that, should they leave, they risk homelessness.¹⁶⁶

Similarly, Shakti, an ethnic women's support group, reported an increase in their emergency accommodation time frame, from a maximum of three months to up to one year, as a result of a lack of alternative accommodation for women and children.¹⁶⁷ Shakti noted that it was easier to find accommodation for a single person while the majority of their clientele, women and children, had difficulties finding alternative housing.

The Anglican Diocese notes a growing body of research which demonstrates that even in the absence of a natural disaster, the market cannot be solely relied on to ensure an adequate supply of low income housing.¹⁶⁸ Housing inequalities and barriers to accessing affordable housing were identified as key public policy issues well before the Canterbury earthquakes. The need to address the serious undersupply of affordable housing for families with children living in poverty, was also highlighted by the Child Poverty Action Group in its 2012 *Solutions to Child Poverty Report*. It recommended that the Government take immediate action to increase the number of social houses by a minimum of 2000 per year until 2020.¹⁶⁹

The findings of the TPA Rental Survey, MBIE *Housing Pressures Report* and the *Greater Christchurch Household Scenarios 2011–14 Summary* indicate a shortfall in housing as a direct consequence of the Canterbury earthquakes. The Human Rights Commission has consistently advocated for a comprehensive community and housing development plan. In the Commission's view, the findings of these reports provide clear evidence of the need for an increase in the supply of affordable housing, and a coordinated, system-level overview and approach to housing in Canterbury by central government agencies.

Extra costs

As time has progressed some homeowners who continue to wait for the outcome of decisions relating to zoning, land damage, insurance settlements, or the review of section 124 Building Act notices, remain unable to live in their damaged homes. In many cases they continue to pay a mortgage, rates and insurance on a house

they are unable to live in, while renting in a buoyant housing market. Although most insurance policies have some provision for temporary accommodation and storage and removal costs they are of limited duration.

The Temporary Accommodation Allowance

The Government introduced the Temporary Accommodation Allowance (TAA) after the September 2010 earthquake. The aim was to mitigate the burden on insured homeowners of displacement from red zones and damaged homes needing repairs.¹⁷⁰ The allowance provides financial assistance when earthquake affected property owners are paying two sets of housing costs after their insurance entitlement ends.

To be eligible, applicants had to be out of their home, or were required to leave their home while land remediation and/or house rebuilding or repairs occur. Applicants also had to have temporary accommodation costs, excluding their mortgage; had exhausted their insurance cover for temporary accommodation costs; had the intention to remain in Canterbury or to return to live in their own home.¹⁷¹

While the focus of the TAA is on assisting insured homeowners, Cabinet decided that there would be flexibility to consider eligibility for uninsured homeowners on a case-by-case basis in exceptional circumstances.¹⁷²

The uptake of the TAA has been higher by residents who have been out of their home for the longest such as those in the Port Hills, many of who were still awaiting zoning decisions in late September 2013, and covering two sets of accommodation costs.¹⁷³

Those who did not own a home but who have extra costs, such as rent, were not eligible. The rationale for this was that private market tenants had options to exit their tenancy if a rented home was uninhabitable.¹⁷⁴ The buoyant rental market has led some residents to be fearful of complaining to landlords about substandard housing as they may not be able to secure another rental.

The Accommodation Supplement

The Accommodation Supplement is a weekly payment provided by the Government which helps people with their rent, board or the cost of owning a home. The Commission believes the Accommodation Supplement is insufficient, particularly for people with disabilities, and that provision should be made so that the Disability Allowance can be used more flexibly, including for housing costs. The Ministry of Social Development considers that meeting housing needs through the existing Accommodation Supplement is a better way to address accommodation costs than through the Disability Allowance because the Accommodation Supplement is designed specifically to meet housing needs.

Migrant workers

The influx of migrant workers for the rebuild and the need for short-term accommodation by homeowners awaiting repairs has spurred a demand for fully furnished short-term rentals. Often rented out on a week-by-week or even nightly basis, these are substantially more expensive than unfurnished rentals. (For example, a two bedroom furnished townhouse was listed on Trade Me for \$1400 per week, or \$200 per night).¹⁷⁵ The Commission has been contacted by residents who have had their leases terminated on the pretext of the property needing repairs, or have had their rent increased beyond their ability to pay by landlords who are seeking tenants who can pay peak market prices for short-term furnished rentals. In addition, rising rents and dubious extra charges by private landlords such as letting fees and pet bonds have also increased costs.¹⁷⁶

Expert advice

Further expenses arise for residents who find themselves in dispute with EQC and/or insurers and who need to commission engineers' reports, building inspections or seek legal advice in order to be able to negotiate effectively. For example, EQC may determine through its own assessors that damage is historical or the result of



Save our schools protest rally against Canterbury school closures and mergers, September 2012.

deferred maintenance, while the homeowner may consider it to be earthquake related. The decision on the cause of the damage is reflected in the settlement amount the homeowner receives. EQC will reconsider its assessment or settlement if the homeowner supplies supporting evidence. The cost of this technical evidence and/or legal expertise is borne by the homeowner. In certain cases, EQC will reimburse the homeowners for this cost.

With regard to repairs, insurers and EQC have openly encouraged, and in some cases required, homeowners to seek independent expert advice. Again, not all homeowners can afford this. The financial and psychosocial toll of increased financial stress and the loss of equity for some residents are significant.

Other factors

Elderly residents living in rest homes and older people who were in some instances unintentionally uninsured and who are no longer able to raise a mortgage have been particularly affected. Most banks will not grant a mortgage to elderly people on fixed incomes.

Community Voices: Affordability

Case study 1: Jo's story

I love my garden ... I spent the first two years [after the quake] digging out liquefaction. I did around the sides where it affected plants where I didn't want them to dig. That's what I'm going to hate most about moving – is not being able to look at an expanse and looking at four fences. I can't stay. They're going to bowl it. I'm only allowed to stay here till April. What I can take I will. I've been here 68 years and my father before me. He bought it on spec. It was in the War and he couldn't rent a place.

It's rather strange today. We haven't got any buses and no shops. And this week my milkman's not going to deliver anymore. Ever since I came to Christchurch, I've always been used to milk delivery. He's giving up. Well it's not worth it. There's so few people round here now. I'll have to go and get it. I used to be able to catch the bus on the next street and that went right to Pak'nSave in one trip and even then you had too much weight. But they've changed the bus route now.

Why does life get more difficult as you get older? It certainly does here.

This is such a beautiful area. I hate going. In the autumn you look across the other side of the river and it's all golden and reds. It's like a park looking across there. I don't want to go into a retirement place.

I get half of what the land's worth. This house is not worth anything. When you're not insured they don't pay anything for the house. I suppose it's my own fault for not getting insured, but I was freehold and not only that, I'm a good procrastinator. Well I kept thinking – 'cause I'd had a couple of bad experiences with insurance, and I thought oh, I'll get round to it ... but didn't get round to it. Anything to do with paper work I never get round to. Give me a spade and I know what I'm doing.



Jo in her garden.

I've got things planted and the fruits ready and I eat out of the garden as much as possible – I'd stay longer if I could. I could cope before the earthquake with anything. I'm not blaming the earthquake but it seems like everyone else is taking over.

I just feel I've lived too long. I know that sounds awful but most of my friends have gone. What is there left? I've lived here all my life ... If I'd got full value for the section I would have been able to cope with what I've got, but with having halved it to \$62K I'm not going to be able to.

* 87 year old Jo is an uninsured, red-zoned resident.

Case study 2: Samantha's Story – We dream of being red-zoned!

My name is Samantha and my family (husband Jeff and 14 year old son, Harrison) is resident of Halswell, Christchurch. We have a story about our TC3 journey that begins back on 4 September 2010. After two years, 10 months and 19 days, we have reached the end of our energy and resilience.

The 7.1 magnitude quake rendered our Halswell home an over-cap, full rebuild on severely damaged TC3* land. We have applied for red zoning or equivalent compensation three times and have been refused).

We are still homeless today, paying \$750 a week rent, plus covering mortgage, rates and insurance on an unliveable home. We have been forced to move several times, the previous time because the landlady put the rent up from \$625 to \$785 pw.

The landlord of our current rental signalled putting the rent up to \$900 pw and because of this we have again been forced to move at the end of the month. We have since been notified that due to a lack of interest in the property that the landlord has dropped the cost to \$695, well below what we are paying at present. This makes our latest displacement completely unnecessary.

Due to the competitive market we had to secure another rental prior to our current 12 month contract expiring. As a result, we now have to pay five weeks of rent on two properties as well as our mortgage. We acknowledge that we have made a conscious decision to enter the rental market at a higher level of cost. This was mainly because of the sheer competitiveness of the market, and we have had such short time frames to find accommodation. This has come at a high personal financial cost. The alternative was having no home at all.

The stress of waiting for another rent increase has been unbearable and the ritual humiliation

of having house inspections by Property Managers at our age is just hideous. I do not want to have to beg again to be accepted as tenants in the ridiculously competitive rental market situation out there. It is so demeaning, but when your child is in tears because he does not want to be homeless (again), what can you do?

It is criminal what some landlords are charging vulnerable citizens in this city. Although people in the short-term are able to use insurance money to pay for temporary accommodation costs, landlords are clearly exploiting this, and once your insurance money runs out, you are left to foot the bill yourself. Thankfully, there is some support through the Temporary Accommodation Assistance but due to the high rental prices this only goes some way to covering the financial burden each week. It is the long-term displaced who, once they have used their insurance money, have to find this money themselves.

We have stayed with our parents and have had times staying with friends. We had to live in our severely broken home for several months prior to the insurance company saying it was too unsafe to live in. Every aftershock while we were there was a terrifying experience. We had no safe water for months as being semi-rural we had a bore-well. We would bring home bottles of water every day from work to drink and cook with. My son, then aged 12, had to sleep under the dining room table with my husband and I on mattresses beside him in the lounge room due to the bedrooms being upstairs in part of the house that was on a significant, stomach-turning lean.

My husband has a very responsible and stressful job and for so long had to drag himself, literally off the floor, and go to work each day as if everything was normal in our

* TC3 zoning applies to land where there is a moderate or significant risk of liquefaction.

household. The same for me too, putting on a brave face and carrying on, supporting others and being strong.

This constant state of adrenalin and anxiety since 4 September 2010 has taken a toll on my health. After exhibiting MS-like symptoms and being diagnosed with this condition by a GP, I underwent neurological testing. These tests then suggested that it was not MS and that I had been misdiagnosed. The neurologist I saw believes most likely these physical effects are a result of post-traumatic stress and burnout (symptoms she is seeing in a great deal of Canterbury residents). I attribute this to the experiences that I have undergone since 4 September 2010 and the ongoing stress of being TC3 and unable to move on with our lives. I am feeling better now, but the spectre of TC3 still affects my family and me.

We are in a category of what is being described as the worst 5 per cent TC3 land damage, presenting significant financial and engineering challenges to the rebuild process. From our discussions it has been portrayed that it is incredibly unlikely that our land can be rebuilt on given the current foundation and engineering solutions available. This leaves us in a really complex and difficult situation to resolve. We are struggling to be able to work transparently with our insurance company around house options, and we have no accessibility to EQC or CERA to discuss the viability of the land and/or financial compensation.

Part of the red zoning concept was to allow people to move forward with their lives due to the untenable issues surrounding their land. There are a certain number of TC3 properties that also fit that criteria due to the length of time it would take to remediate their land or the exorbitant cost of this and the foundation solutions required, but they will receive no compensation for the huge loss of equity they face as a result. People say the red-zoners got a rough deal. Well, for many TC3 victims it is

worse! We dream of our property being red-zoned!

We have a premium, full replacement insurance policy with [our insurer]. They have said that our rebuild will not occur before the end of 2016 due to the uneconomic nature of the rebuild and foundation design. That is six years since the earthquake event that destroyed our home and we have no guarantee that they will even build then. And they have refused insurance on the rebuilt dwelling.

This means that our now 14 year old son will most likely never have a family home before he leaves us to go to University. [Our insurer] will not present any evidence to substantiate its "high cost, lack of suitable foundation solution" claim. Our legal counsel, Duncan Webb, has stated that this is palpably unacceptable. Sourcing this legal support at our own expense is the only way we can see a resolution to our situation in a timeframe that may allow us to live as a family together in our own home.

There is a real difficulty getting all of the recovery organisations working together. The Insurance Company, EQC and CERA are working in isolation so difficult cases are only having partial solutions presented. We currently only have an unsatisfactory, unethical and immoral house settlement payment option as offered by the Insurance Company and have no solution for our land situation. We need both pieces of the puzzle to be able to make a decision on our future.

The current house market prices in Christchurch are now excessively high. Building on our own land is the best economic outcome for us; the others come at a significant financial cost. If we cannot build on our own land as is likely, we are the ones that will incur that cost without any monetary compensation whatsoever.

Who will compensate us for the costs incurred for paying rent and relocation for all this time as all the earthquake recovery agencies stall on our settlement? Really, no one cares. We

are on our own in this battle! We were told on national television that no one in Canterbury would be worse off. I am afraid that we are being financially and emotionally bled to death by this situation.

We are good, honest, hard-working people.

Our jobs involve working hard for the benefit of others. We have done everything that was expected of us as citizens and [we have been let] down badly... It has been a long and weary journey.

Areas where challenges still remain

There have been long standing problems with housing in New Zealand, particularly in relation to the right to habitable and affordable housing.¹⁷⁷ In addition to the problems highlighted by the Canterbury earthquakes, eligibility for social housing has been restricted to those in greatest need, which denies many vulnerable people of their right to adequate housing, particularly people on low and fixed incomes.

The current fragmented strategy to providing adequate housing for all New Zealanders stands up poorly in comparison to other nations. The Commission has advocated for a cross-party accord on a broad-based national strategy based on the right to adequate housing.¹⁷⁸ This should be informed by the advice and recommendations of the Productivity Commission. It would include and build on many of the positive steps that the Government has indicated it will take, including "warrants of fitness" for rental housing.¹⁷⁹ In the Human Rights Commission's view, this is essential because over 80 per cent of New Zealand's most vulnerable people are not in state or council provided housing. There is also an opportunity to embed healthy housing in both the Government's Science Goals relating to housing and the Building a Better New Zealand strategy work.

The rate of repair of the Christchurch City Council's social housing has been slower than anticipated with the new Mayor stating in November that that Council had "dropped the ball on social housing".

Positive steps: housing affordability, supply and demand

Housing New Zealand rebuild and repair programme

Further to the 2012 repair of around 220 damaged vacant properties, in 2013 HNZ began a major programme of repairs to 5000 houses that were damaged in the earthquakes, and is building up to 700 new homes by the end of 2015. This includes some red-zoned houses that can easily be repaired and relocated onto existing HNZ sites. The repair programme is being carried out predominantly while tenants remain in situ.

In another initiative, HNZ is partnering with the Department of Corrections to repair 150 houses over a five-year period at Rolleston Prison. The first tranche of 23 houses were shifted from the residential red zones in Christchurch and Kaiapoi in September 2013. The houses are being repaired as part of a trades training programme and will then be relocated to sites within the region. The houses are not only from HNZ's damaged stock, but have also been selected by the insurer, Southern Response.

Civil Defence emergency grants

The Government has taken a number of positive steps to address the shortage of affordable housing in Canterbury and more broadly. One of the earliest interventions was the provision of emergency grants for residents affected by the February earthquake. Between February and April 2011, the Government issued 77,000 Civil Defence payments through its Work and Income Service. These payments were available for up to four weeks and related to needs

for food, clothing, accommodation, bedding and rent arrears.¹⁸¹ In total nearly 92,000 payments were made totalling \$17,691,457.¹⁸² Since this period, central government assistance in the recovery phase has largely involved assistance to homeowners with temporary accommodation costs as outlined previously.

City Council rates relief

In response to requests from residents, the Council established a rates relief package for certain categories of property that are unable to be occupied as a result of the earthquakes.

In doing this, it has sought to provide some relief to those most affected by the earthquake without placing an undue additional burden on those less affected. It has acknowledged that while the earthquakes have caused hardship for many, the Council is unable to realistically compensate for all the hardship. The Council's explanation of why rates continue to be charged for homes that cannot be lived in is that rates are not charged in return for provision of particular services, but rather are akin to a tax.

The package provides for different levels of relief ranging from rates postponement¹⁸³ through to 100 per cent rates remission where a section 124 notice under the Building Act requires the resident to vacate the property because it is at risk from rock fall, cliff collapse or other geotechnical hazards. The Council reported in October 2012 that it had granted approximately 6,500 earthquake-related rates remissions.

More temporary housing

As an immediate step to address affordability the Government is building 40 additional temporary homes for displaced residents at the Rangers Park subdivision in Linwood. These are intended specifically for families who need somewhere to live while earthquake repairs are carried out on their homes. The new units will add to the 80 units already managed by the Canterbury Earthquake Temporary Accommodation Services at Linwood Park, Kaiapoi Domain and Rawhiti Domain.

More social housing

In recognition of the need to make faster progress on new community social housing the Government has allocated \$21 million (matched by \$10 million from the Canterbury Community Trust) in the 2012 budget to supporting non-government provision of social and affordable housing in Canterbury between 2012 and 2015.¹⁸⁴ This follows a \$3 million allocation to Canterbury in 2011/12.¹⁸⁵

The Government is partnering with the Canterbury Community Trust to help fund three new social housing developments in Christchurch totalling 51 homes. The developments will be delivered with community housing providers Accessible Properties, Comcare Trust and Habitat for Humanity.

Comcare Trust will build 14 units (20 bedrooms) for individuals who experience mental illness and/or addictions. Accessible Properties will build 16 units (32 bedrooms) in Linwood, Phillipstown and St Albans, for high-need tenants. Habitat for Humanity will build 21 units (84 bedrooms) in Avonside, Bromley, Linwood and Kaiapoi for families who have experienced transience, sub-standard housing and overcrowding as a result of the earthquakes.

HNZ has committed a total of \$1.2 billion to a housing investment plan for Canterbury as part of its immediate earthquake recovery and 10 year asset improvement strategy. Stage one of this plan was completed on 31 October 2012 and involved the repair of 212 houses. Stage two involves building 700 new state homes including some within mixed-tenure developments, and stage three, mentioned above, involves repairing and upgrading of up to 5000 damaged properties by the end of 2015.

HNZ has described Canterbury as "the benchmark for the improvement of Housing New Zealand's properties throughout the country".¹⁸⁶ All of HNZ's new homes will comply with modern standards and codes, and will be designed with appropriate structural and insulation properties.



United voices protest march, August 2012.

Christchurch City Council

Christchurch City Council's rental accommodation portfolio encompasses 2649 units across 115 housing complexes. Most units continue to be operational but 445 housing units were closed as a result of earthquake damage or had to be closed following engineering assessments. Of these, 113 are in the red-zone, while the remaining 332 will be repaired or rebuilt.

The Council's Housing and Development team is also assessing opportunities to build new units on vacant Council-owned land. In October 2013 the Council began construction of 12 new social housing units in the suburb of Spreydon, catering specifically for older people and those with disabilities. A tender, for the design and build of up to 25 new social housing units in Richmond, St Albans and Addington, began in September 2013. The Council is also developing eight new units on existing land in the Knightsbridge City Housing complex in Aranui.

In November 2013, the incoming Council indicated its desire to work more closely with charitable organisations in the development and provision of social housing facilities to address the shortfall in Christchurch, and announced the development of 50 new units in Hornby.

Other organisations developing social housing

To address youth housing needs the *Better Housing Better Health* programme, managed by St John of God, Waipuna, has been supporting transient young people, in particular young parents, with housing. Since October 2010, the service has been providing information, advice and advocacy to help young parents access adequate housing.¹⁸⁷ A majority of the young people targeted by the program reside in Christchurch's eastern suburbs, where it is working on building further support for youth-focused transitional and social housing.

The Housing Accords and Special Housing Areas Act

The Housing Accords and Special Housing Areas Act came into effect on 16 September 2013. Its purpose is to enhance housing affordability by facilitating an increase in land and housing supply in regions or districts with significant housing supply or affordability issues.¹⁸⁸ The Act demonstrates a commitment by the Government to take steps to address housing affordability.

The Recovery Strategy for Greater Christchurch.

The Recovery Strategy states that there is an "opportunity to coordinate the range of central and local government housing activities".¹⁸⁹ The Human Rights Commission believes it is essential that this opportunity is seized in order to identify repair and rebuild priorities, address resourcing, strategies, responsibilities and timeframes. It should involve genuine consultation with and participation by all affected persons, including the homeless, house owners, and those who are not adequately housed.

Recommendations

Housing affordability

The Commission recommends that the Government:

- 1 ensure provision of adequate housing including social housing, for people in need and particularly for vulnerable groups¹⁹¹
- 2 develop, if possible by cross-party accord, a national housing plan addressing the rights of people in New Zealand to adequate housing and prioritising the needs of vulnerable people in all tenure types, and which is reported on annually to Parliament¹⁹¹
- 3 embed a human rights approach in all major initiatives related to the Canterbury earthquake recovery ensuring appropriate consideration of the adequacy of housing,¹⁹² including for temporary housing
- 4 review and report on the way affordable housing is funded through the regulations and benefits system
- 5 co-ordinate, through a single lead agency focal point, the monitoring of housing supply and demand in the greater Christchurch region for urgent short-term needs
- 6 in conjunction with the Christchurch City Council and other relevant agencies, collect statistics on enquiries to social housing providers from people who do not meet the criteria for social housing in order to accurately assess unmet needs
- 7 ensure the draft Land Use Recovery Plan as notified in July 2013* facilitates planning and regulation incentives to support adequate housing to the maximum extent possible¹⁹³

- 8 consider whether guidelines for rent control measures in the immediate aftermath of large-scale natural disasters should be developed and introduced
- 9 provide more access to temporary housing in the greater Christchurch area to meet urgent short-term need, including progressing the urgent provision of supported housing for young people.

The Commission recommends:

- 10 that the Ministry of Social Development (MSD) consider and report on the appropriateness of increasing the Accommodation Supplement for Christchurch to be commensurate with Auckland and Wellington
- 11 that the MSD review and report on the eligibility criteria for Temporary Accommodation Allowance, including considering whether imposing an income threshold is necessary
- 12 that the Christchurch City Council review and update its Social Housing Strategy for vulnerable people to reflect the lessons learned from the Canterbury earthquakes.

* This Report refers to the Draft Land Use Recovery Plan (LURP). The final LURP will be available soon.

Habitability

Kāinga nohanga

The right to adequate housing is a basic human right. It implies the right to live somewhere in security, peace and dignity. Habitability in Canterbury was greatly affected by the damage wrought by the earthquakes. The September 2010 earthquake and the aftershocks in February, June and December 2012, resulted in severe liquefaction in many areas of the city. This, in combination with ongoing aftershocks (more than 13,700 since the first event), has caused some degree of damage to 90 per cent of the houses in the Christchurch region.¹⁹⁴

Although considerable progress has been made in the reconstruction of housing, delays have been caused by decision-making processes relating to zoning, ongoing land assessments and continuing or stalled negotiations with insurers and/or EQC. The effect of these processes has meant that more than three years on from the earthquakes many residents continue to live in damaged, and what was often already substandard, housing.

“The average New Zealand house is ‘scarily cold’, badly insulated, has huge expanses of single-glazed glass and is a nightmare to heat. In terms of energy efficient homes we are not very far along. It’s pretty much where the Scandinavians were in the 1960s.”

– Professor Robert Vale, Victoria University.¹⁹⁵

New Zealand’s housing stock is notorious for being cold and damp and difficult to heat. The condition of housing has a direct impact on people’s health and general wellbeing. Housing conditions influence the health and wellbeing of individuals and communities and the right of disabled people to live independently in the community. It is for this reason that the house sits at the centre of the Canterbury District Health Board’s plan for an integrated and seamless health system (see image on page 57.) Factors such as temperature, overcrowding, affordability, energy expenditure and moisture in homes are influential on health outcomes for all, but especially for children and the elderly.

A study commissioned by the New Zealand Business Council for Sustainable Development found that the majority of New Zealand homes perform poorly. Nearly two-thirds of homes were built before insulation became a legal requirement in 1979. A 2008 report noted that of the 1.6 million existing homes in New Zealand, one million have been assessed as poorly performing.¹⁹⁶ Sixty-four per cent of homes do not have floor insulation, 29 per cent do not have fully insulated ceilings and 71 per cent do not have all walls insulated.¹⁹⁷ Although most homes are insulated, this is often inadequate and nearly half of all homes (45 per cent) are mouldy.¹⁹⁸ More than one in four New Zealanders say the home they live in has contributed to their sickness.¹⁹⁹

The Energy Efficiency and Conservation Authority (EECA) Warm Up New Zealand insulation subsidy has been running since July 2009. Housing New Zealand has also undertaken an insulation-retrofitting programme with the majority of its houses now insulated.

New Zealand research, such as the Building and Research Association New Zealand (BRANZ) House Condition survey that compared the condition of housing by tenure type, has shown that the physical condition of rented housing (which makes up 33 per cent of New Zealand’s total housing stock) is worse overall than that of owner-occupied houses.²⁰⁰

A report by Statistics New Zealand on perceptions of housing quality, drawn from the New Zealand General Social Survey found that renters, sole parent families, Pacific peoples and Māori were more likely to report cold, damp or small houses.²⁰¹ They were also likely to be in the lowest quartile of income.

For example in 2010/11:

- One quarter of renters (25 per cent) reported living in a cold house, which was more than twice the proportion of owner-occupiers that did so (11 per cent).
- Renters were more likely than owner-occupiers to report a damp house (19 per cent), compared with 6 per cent.

- Renters were also more likely than owner-occupiers to report finding their house too small (17 per cent), compared with 9 per cent.²⁰²
- Of people surveyed in the lowest income band, twice as many (13 per cent) reported living in a damp house than did people with household incomes over \$100,000 (seven per cent).²⁰³

Inadequate living conditions in New Zealand have been linked to psychosocial stress, social isolation, poor health from diseases such as asthma and rheumatic fever and from injury.²⁰⁴ Recently children and young people contributing to the Expert Advisory Group Report *Solutions to Child Poverty* described the adverse affects associated with inadequate housing was a major concern.²⁰⁵ They raised concerns about damp and cold homes, insecure tenancies, overcrowding and lack of privacy, which can create more tension in the home and make it difficult to do homework. There is evidence that housing conditions, particularly overcrowding, are associated with increased risk of contracting rheumatic fever. Though evidence is not as strong, damp and cold housing may also be a factor.

The link between housing and health is addressed in the Government's Better Public Services programme. In August 2012, it released its *Supporting Vulnerable Children Result Action Plan*, which sets a target of reducing the incidence of rheumatic fever by two-thirds by June 2017.²⁰⁶ The central government agency responsible for housing – the Ministry of Business, Innovation and Employment (MBIE) – is one of the agencies involved in achieving the Better Public Services target.

International human rights standards

United Nations guidance on post-disaster housing

The United Nations has a number of mechanisms that assist countries to interpret international human rights treaty provisions and learn from the

experience of other nations, including recovery from natural disasters. Collectively these are known as the special procedures of the Human Rights Council. One of these mechanisms is the appointment of Special Rapporteurs. Special Rapporteurs are recognised international experts in a particular field who are able to advise the United Nations and signatories to international conventions on the best course of action in particular circumstances.

The UN Special Rapporteur on the Right to Adequate Housing has reviewed recovery strategies in post-disaster settings and provided advice on the best way forward. Internationally, housing recovery strategies often concentrate on restoring home owner units but have inadequate responses to the shortage of public and rental housing, rent increases and the slow pace of rental housing reconstruction. Reconstruction efforts are often seen as an opportunity to improve building methods, but can sometimes result in the most vulnerable populations having worse housing options post-recovery than before. The UN Special Rapporteur also emphasises that post-disaster land use planning must concentrate as much on rebuilding communities as rebuilding houses.²⁰⁷

In order for housing to be adequate under Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR), it must be habitable. The UN links the habitability of housing to health, safety, accessibility and the availability of essential services.²⁰⁸ The right to adequate housing falls within the broader obligation of the State to take all appropriate steps to ensure the continuous improvement of living conditions.

Article 12 of ICESCR provides for a right to health. The UN Committee on Economic, Social and Cultural Rights has clarified that the right to health is an inclusive right encompassing a right to the enjoyment of a variety of facilities, goods, services and conditions in order to achieve the highest attainable standard of health.²⁰⁹ As a corollary, the State has an obligation to address the underlying determinants of health, such as access to safe and potable water, to adequate sanitation and an adequate supply of safe food, nutrition and housing.

Article 9 of the Convention on the Rights of Persons with Disabilities explicitly deals with accessibility in housing. It requires New Zealand to take appropriate measures to identify and eliminate obstacles and barriers to accessibility including those relating to housing.

New Zealand law and policy

There is no single legislative enactment that prescribes or affirms the right to safe, habitable and quality housing in New Zealand, nor is there one agency with such overarching responsibility. Habitability and quality of housing are addressed mainly through four pieces of legislation, which are administered and enforced by a number of different agencies.

The Building Act 2004 provides for the Building Code, which sets out minimum performance standards for building work on all types of buildings. However, these standards only apply to new building work and do not affect existing buildings unless they are renovated, altered or undergo a change of use. The Building Act also requires territorial authorities to adopt policies regarding dangerous and insanitary buildings and enables them to take action against owners of dangerous and insanitary buildings, regardless of when they were built.

The Local Government Act 2002 provides territorial authorities with general bylaw-making powers to protect the public from nuisance and/or to protect, promote and maintain public health and safety. Bylaws may also provide for the licensing of persons or property.

The Health Act 1956 provides for local authorities to issue cleansing and closure orders for properties that have become a health threat, including through overcrowding. It also continues to enforce aspects of the Housing Improvement Regulations 1947. The regulations prescribe “standards of fitness” for a “habitable house” relating, for example, to dimensions of space, construction, electricity and drainage. The regulations have been characterised as out-dated and often not enforced.²¹⁰

The Residential Tenancies Act 1986 requires landlords to provide premises in a reasonable state of cleanliness, provide and maintain premises in a reasonable state of repair, and comply with all requirements in respect of buildings, health, and safety under any other enactment so far as they apply to the premises. The Act enables the Tenancy Tribunal to order repairs and award damages against landlords who breach these obligations.

The agencies involved in administering and enforcing this legislation are the Ministry of Business, Innovation, and Employment (previously Department of Building and Housing, Ministry of Science and Innovation, Ministry of Economic Development and Department of Labour), along with the Ministry of Health and local authorities.

This regulatory framework is consistent in many ways with New Zealand’s undertaking to protect the right to adequate housing. The framework sets out minimum requirements relating to matters such as sanitation, plumbing, drainage, accessibility to public buildings and electricity in accordance with international expectations. In addition, the Civil Defence Emergency Management Act applies to natural disasters and requires lifeline organisations and central and local government to prioritise the reinstatement of essential services.

The Canterbury earthquakes offer an unprecedented opportunity to address the issue of accessible housing and to “build back better”. At present accessibility in New Zealand’s housing stock is covered in the Building Act but not in a way that gives equal access to disabled people. The main law that regulates the construction of domestic dwellings is the Building Act and the associated building codes and standards. It does not have mandatory requirements to ensure disabled people have the same access to domestic dwellings as other citizens. Minimum requirements for rental properties do not cover access for disabled people. *The New Zealand Disability Strategy* (NZDS) mentions only the objective of access to “affordable, quality” housing as being essential to achieve equality.

However, the *Disability Action Plan* for 2012-2014 announced by the Minister for Disability Issues in late 2012 included the Rebuild of Christchurch as one of three priority issues, along with Employment and enabling good lives.²¹¹

Post-earthquake improvements to housing stock

Foundation and flooring standards

Following the earthquakes, improvements to standards for foundations and flooring systems have been introduced. With more knowledge about how buildings and houses performed in particular areas, the Department of Building and Housing (now MBIE), provided guidance on repairing and rebuilding houses damaged during the earthquakes with particular emphasis on flooring and foundations. The guidelines, first issued in December 2010, have been progressively updated as further information has become available.²¹²

The guidance relates to the TC1, TC2 and TC3 categories for green-zoned land. The purpose of the guidance is to assist designers, insurers, builders and councils to comply with Building Act and Building Code requirements and, where economically feasible, improve the future performance of residential dwellings in Canterbury, particularly in relation to risks from liquefaction and land damage caused by future natural disasters.

In cases where there has been significant foundation damage and substantial foundation repair or rebuild is necessary, new processes requiring geotechnical investigation and site-specific engineering design must be undertaken before repairs can be commenced. Some homeowners in this situation will have to wait for significant periods in order for the processes to be completed. In other cases where damage is more superficial, repairs on TC3 land can commence.

The new guidance included a higher tolerance for uneven floor levels of 50mm (5cm), which means that if the difference in the level of a floor from one end of the house to another is

50mm or less, this is considered acceptable. These minimum slopes were included to try and distinguish between normal out-of-tolerance floor levels, either from initial construction or gradual settlement, and settlement caused by earthquakes. The fact that there is a greater tolerance for uneven floor levels has been the subject of concerns raised with the Human Rights Commission.

Concerns have been raised that EQC's reliance on the guidance to determine its obligations is inappropriate as the standard that governs EQC is the Earthquake Commission Act, not Building Code guidance.²¹³

The EQC Act sets out its obligations to replace or reinstate natural disaster damage to "a condition substantially the same as but not better or more extensive than its condition when new, modified as necessary to comply with any applicable laws ...". Those applicable laws include the Building Act and Code (where relevant). Further, under the EQC Act, EQC is not bound to replace or reinstate exactly or completely, but only as circumstances permit and in a reasonably sufficient manner.

EQC must first establish if the change in floor level is due to earthquake damage, as there is often evidence that the floors were not level pre-earthquake. Claimant's expectations have sometimes exceeded EQC's obligations and led to disputes relating to the accuracy of floor level calculations, or the absence of floor level calculations undertaken in assessments. These disputes have slowed progress for both parties.²¹⁴

Insulation

The Government has largely relied on the existing regulatory framework as a guide for reconstruction efforts. With the insurance sector primarily funding the recovery cost of repairing or rebuilding housing, the overall drive has been on re-instituting rather than improving the pre-earthquake state of housing in Christchurch. This approach appears to be incompatible with international expectations that reconstruction policies continuously improve living conditions in post-disaster reconstruction.²¹⁵

This assumes that there are funds available to continuously improve living conditions. EQC notes that it is constrained by its Act to repair or reinstate to a condition substantially the same when new, modified as necessary to comply with any applicable laws. EQC cover meets the costs of upgrades required by law, but EQC does not have the statutory power to fund other upgrades.

A large number of repairs to houses required the removal of wall linings and claddings, creating a rare opportunity to install wall, flooring and ceiling insulation in Canterbury homes. Beacon Pathways has estimated that 63 per cent of the earthquake-damaged homes are likely to have been built before the minimum insulation standards were introduced into the Building Code. Installation of wall insulation significantly improves the temperature of homes, reduces heating costs, dampness and noise, and as a consequence improves physical health outcomes for residents.²¹⁶

EQC initially prevented homeowners from installing insulation in their homes while repairs were being carried out on the basis that installing insulation at its cost is outside the terms of EQC's cover, and not claimable from reinsurers.

In relation to customer-funded insulation, it also cited time and cost overruns, health and safety issues, liability issues to the repair programme as obstacles. In addition, EQC had doubts whether the likely uptake and benefits of the scheme warranted disruption to its repair programme. In March 2013, after entering into a Memorandum of Understanding with other government agencies to manage the risks associated with the initiative, EQC announced that it would permit (but could not fund) insulation installation in conjunction with repairs.²¹⁷ At that point the Canterbury Home Repair Programme had repaired about 31,000 properties, with about 55,000 remaining in the programme. Those who missed out were disappointed that they had been prevented from making their homes healthier and more habitable when they had the opportunity to do so.²¹⁸

Rewiring of homes

In August 2013, a news story claimed that EQC had introduced a policy change, that it would no longer cover household rewiring in homes with pre-1970s wiring. EQC reports that this story was, in fact, incorrect. Although it was accurate that EQC faced rewiring bills of over \$50,000 per claim, this related to only two specific properties, and EQC's decision to cash settle was not a "policy change". Rather, EQC has statutory power under its Act to replace, reinstate or cash settle any claim for earthquake damage. Accordingly, EQC may elect to cash settle in situations depending on the condition of the house (such as unsafe wiring).

EQC believes the confusion arose in relation to a separate policy on Electrical Safety, that advises (non-electrical) contractors to exercise caution in cases where a repair to pre-1970s wiring is required. In some instances, if the homeowner is prepared to pay for the home to be rewired EQC may undertake the repair.

Legal experts have raised the same concerns as with floor levels, stating that the new policy does not meet EQC's legal obligations.²¹⁹ Expressions of interest are being sought for a possible group action against EQC seeking a declaratory judgement that would clarify the matter for all parties.²²⁰

Flooding

A general risk of flooding²²¹

Christchurch is a flat, low-lying city with areas prone to flooding. This flooding has tended to be shallow and more of an inconvenience rather than a serious threat to life or property.

The risk of flooding in Christchurch with the greatest potential for widespread damage in the city remains the Waimakariri River bursting its banks and discharging what would be large volumes of water across the city. The stopbanks that protect the city from such an event were damaged by the earthquakes but were repaired by Environment Canterbury (ECan) to provide protection from a one-in-500-year event. A

secondary stopbank under construction by ECan will significantly lower this risk to somewhere in the order of one in 10,000 years.

Flood management plans²²²

Flood management areas are those that are prone to flooding, as a result of a major tidal or rainfall event, and that are vulnerable to the effects of climate change as a result of rising sea levels. These areas were identified to help reduce future damage to the city from flooding.

Christchurch's flood management areas are around the Styx River (lower areas), the Avon and Heathcote Rivers, in the Lansdowne Valley and in some low-lying coastal areas, including Redcliffs and Sumner.

The Council began work in the 1990s to identify flood management areas in the city. This was first notified in 2003 as Variation 48 to the City Plan. This variation was made operative, becoming part of the City Plan, on 31 January 2011. Minimum floor levels of 11.8 metres above the Christchurch City datum have been specified for the flood management areas in the Christchurch City District Plan since 31 January 2011.²²³

The earthquakes and flooding²²⁴

The Canterbury earthquakes caused significant damage to land throughout the city. The worst hit areas tended to be those closest to riverbanks and waterways, with ground levels across large areas of the city dropping on average 200mm to 300mm. Many low-lying areas near streams and rivers continue to experience impeded drainage and higher base-flow water levels than in the past as a result of the lower ground levels. This has been annoying for residents but is being addressed by repairs to the drainage system being undertaken by the Stronger Christchurch Infrastructure Rebuild Team (SCIRT).

The city's stopbanks along the Avon River were also damaged during the earthquakes. They were repaired and raised in the worst-hit areas close to the rivers.

Of Christchurch's 160,000 properties, 10,361 in the Avon, Styx and Heathcote river catchments have the potential to flood in a 50-year rainfall event. This is an increase of 769 properties since the Canterbury earthquakes.

In 2011/2012 the Christchurch City Council carried out work to better understand the extent of the damage and what work was needed to help recover the city's land drainage/flood protection network, and what measures needed to be put in place to protect properties from future flooding. Each time the city experienced a major seismic event, the land was surveyed to ensure the Council had a thorough understanding of what had been happening with the land. The new data shows property owners the cumulative effect of the earthquakes and aftershocks on ground levels, and what this means for the rebuild.

Rebuilding and flooding risk²²⁵

The Building Act requires a consented new building to be built high enough to avoid water entering the house in a one-in-50-year flood event. In the parts of Christchurch most prone to tidal surge flooding, the council instituted a one-in-200-year flood level in Variation 48 to the city plan.

Residents have expressed concerns that insurers are able to carry out repairs to houses so that they comply with existing flood level requirements, even though the land has sunk due to the earthquakes. The response from the Christchurch Earthquake Recovery Authority (CERA), EQC and insurers has been that each property in such a situation is assessed on its merits.

If it is clear that a rebuild is uneconomic the question is whether it is appropriate to pay the homeowner out to allow them to buy somewhere else. There remains a degree of scepticism about whether this is a problem that may not have been properly resolved. Homeowners in this situation are concerned that they are more vulnerable than they were to being flooded, as effectively the house is now lower than it was before the earthquakes.

Community Voices: Habitability

Case study 1: Community connector – Ali's Story

We all know an Ali. She is the type of woman who builds community. She has served as the chair of the board of her local primary school, runs an educational services company and in recent times has recast herself as a community advocate in post-quake Christchurch.

Ali's family love their community. They chose to move to Burwood in 2003 because it had good schools, was close to the outdoors and it felt like a neighbourhood and not just an address. There remains a strong community spirit. At a recent neighbourhood BBQ, 120 people gathered to share food and their experiences of the situation they find themselves in.

Ali's house is broken and has been so since February 2011. In simple terms the spine of its concrete foundation is broken. "You come in and walk downhill to the kitchen and then uphill to the bedrooms," she says. She and her husband have slept on a tilt for two and a half years. "When you sleep in a flat bed again, it feels quite strange." A large volume of expanding foam has plugged the gaps so the house is almost weathertight. Even so, Ali can feel the breeze in her bedroom, and the damp is now spreading.

Her main concern is the drainage. The drains are not broken, but have been left choked with silt. Periodically a truck comes to pump out the clogged drains. If the pumping is not done correctly there's blowback. On more than one occasion Ali has come back home to find walls coated in sewage. "You just have to get on and wash them down. But the problems with the drains mean areas like the bathrooms, kitchen and laundry do smell. It worries me when people come to see me that I live in a house that smells."

Her street has gone through zoning and rezoning, from orange, to green and then to

the limbo of blue-green or TC3 (see footnote page 32). This means that nothing is likely to be repaired or rebuilt until after geotechnical drilling.*

Ali is an intelligent, energetic, positive woman who runs a successful business. Yet she finds herself daunted by the complex and often conflicting information and processes. Her insurers initially told her she was eligible for a rebuild. But she has been waiting a long time, and says she has also spent a long time trying to find a path forward in a thicket of technical information and legalistic language.

There are flood plain analyses, geotechnic reports, land remediation, she says. And just lately she has received news that any replacement house should be "TC3 friendly" which means square or rectangular. Her section is a wedge. She has been told that if she chose to build a house that suits her section, one that did not meet the insurer's standards of TC3-friendly, she might find herself at the back of the queue again.

"One of our challenges is that you don't get all the info you need to make a critical path so you can plan for where you need to go. There's information that isn't there or not there at the time you need it. You receive one set of guidelines only to see them superseded," she says.

It's a struggle for anyone, so if she sometimes finds it hard to cope, she also feels for the vulnerable and elderly who may lack the experience, networks and resources she has. "One of the things I've said is how fragile our communities are. We are different after the quakes and need to be treated differently," she says.

* EQC's TC3 drilling was completed in December 2012, this involved completing 6136 penetrometer cones or bore holes.

The latest blow was learning that several local schools would either be closed or merged. The communities have already lost so much, she says, and schools have become focal points. In the immediate aftermath of the earthquake, the local primary Windsor became a refugee centre where people could find a roof over their heads, food and support.

She has a 12-year-old son, Thomas. "We have worked so hard to make the children feel safe and secure. So to hear about the schools, it's like a given that is suddenly gone." After the

first set of quakes, she promised her son they would have a new house soon. At the time the insurers said they'd be in a new house by Christmas 2011. The family remain in limbo. "I've stopped saying to my son that we're going to get a new house. I'm afraid that he will be at university before that happens."

Ali says she feels embattled, fighting for her home and fighting for her school. "It means that we are fighting on so many fronts, on too many fronts and nobody has the energy to stand up and say: 'what is happening with our city?'"

Case study 2: Man Singh's story

Man Singh, his wife Pabitra and their three children live together with Man Singh's grandmother, Tika, along with her two sons (and Man Singh's uncles) Bal and Bahadur. Bahadur, Bal and Tika came to Christchurch as refugees in February 2012.

The three generations of Man Singh's family of eight live in a privately owned rental home. When the Commission spoke to Man Singh, he was in the process of applying for a Housing New Zealand house that would be affordable, but had been told they do not qualify because the dependent adults are considered boarders, and the income from this puts the family over the income threshold. Man Singh explains their situation:

"We do not have enough room. We are eight people here – my grandmother, 81, my two uncles, my mother's brothers, 65 and 51, my three children, who are five, seven and 11, and my wife. The five of us live in one room, the uncles are in one room and my grandmother in another. Sometimes we do not have enough space to sleep. We have to sleep on the floor.

"We pay \$520 a week for the three-bedroom house. In winter we have to leave the heat pump on continuously which makes a huge bill ... my uncle and my grandmother have an



Man Singh, Pabitra and their family

arthritic problem, so they need a very warm environment inside.

"The social worker also gave us a machine that sucks water from the air. She [grandma] has asthma, and in winter [my uncle] is unable to walk, because [of] the dribbling of water from the windows, because of the old and cold house. He needs to be wrapped with the blanket in winter.

"We are happy in New Zealand with our family, but we have only one problem – we are not happy with the house.

"In my mind New Zealand is such a country that the elderly must get proper care, but I wonder when we can get a suitable house. I

have been trying to get a Housing New Zealand house so we can live more securely. In this private house, if the landlord says we have to leave, where should I [take] all these disabled people?

"I have a big responsibility looking after them all ... They should not be left alone – it's 24/7.

"What I hope for is if we can get a Housing New Zealand house that is near to a park so I can take [my family] out walking, or even if we got two small units near to each other so we can look after each other ... My own family is sleeping in one room ... the children are growing and growing, they need space, and they need room."

Areas where challenges still remain

The Commission remains concerned about the inadequacy of housing conditions for some residents who remain in the red-zone.

Positive steps

Housing Warrant of Fitness

The Government has also announced plans to develop a Housing Warrant of Fitness with the support of a Rental Housing Standards Forum, a move recommended by the Expert Advisory Committee on Solutions to Child Poverty. Initially the Housing Warrant of Fitness will apply to the 69,000 HNZ properties. It is intended that it will eventually be extended to other social housing providers and possibly rental properties where the Government is providing a housing subsidy.²²⁶

Recommendations

Housing habitability

The Commission recommends that the Government:

- 1 consider extending the Housing Warrant of Fitness system to apply to all rental properties
- 2 that all other social housing providers take the necessary measures to ensure the available social housing is suitable for individual tenants needs and includes a range of housing stock, one to five bedroom units.

Accessibility and housing He nōhanga taurima

“The goal we all share is for Christchurch to be the most sustainable and accessible city in the world. Inclusive access for all through universal design principles is closely aligned with this goal.”

– Disability Rights Commissioner Paul Gibson

Increasingly disability is understood as being about how society treats its citizens and how the environment is designed in ways that either enable or disable people. Failure to recognise that not everyone can read signs, hear announcements, reach buttons, speak, access a computer or open heavy doors diminishes the ability of many people to live independently and participate fully in society.²²⁷ Because disability relates to the connection between people of all ages and abilities and the environments in which they live, failure to accommodate people’s different abilities and lifestyles in housing results in discrimination.

The Convention on the Rights of Persons with Disabilities

New Zealand signed the Convention on the Rights of Persons with Disabilities (the Disability Convention) on 30 March 2007 and ratified it on 26 September 2008. The Disability Convention gives voice, visibility and legitimacy to disabled people and their issues in New Zealand and the rest of the world. It is aimed at protecting the dignity of persons with disabilities and ensuring their equal treatment under the law including the right to health services, education, housing and employment.

The Disability Convention requires the Government to take appropriate measures to ensure all facilities and services provided to the public should be accessible to disabled people on the same basis as others. This includes the Government taking action in relation to the built environment, transport, public services or facilities, housing, information and communication service and emergency services.

The Disability Convention has the potential to change the lives of some of the most forgotten, abused and poverty stricken people in our global village. When implemented it will help us realise our dreams and aspirations to belong in a family, to love and to be loved, to be included in communities, to learn, have friends, work and earn a good income. It empowers us to aim for not just an ordinary life, but a great life. Whether our life is long or short, the implementation of the Disability Convention will mean we can look back on life knowing we are leaving behind a world better for us having been part of it.

Making Disability Rights Real: the first Annual Report of the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities 1 July 2011–30 June 2012

Specifically, this convention emphasises the right of persons with disabilities to have the opportunity to choose their places of residence and where and with whom they live, and to not be obliged to live in particular living arrangements. The Convention further outlines the right to access a range of in-home, residential and other community support services to support living and inclusion in the community and to prevent isolation or segregation from the community.

Article 19 (c) of the Disability Convention has particular relevance in terms of accessible housing. It states that community services and facilities for the general population should be available on an equal basis to persons with disabilities and be responsive to their needs. If people with disabilities are not able to access suitable accommodation, or the services and supports they need, then they cannot live independently or participate equally in the community.

Article 26 of the Disability Convention “Habilitation and rehabilitation” is also pertinent to the earthquake recovery. It outlines State parties’ responsibility to ensure that persons with disabilities attain and maintain maximum independence and full inclusion and participation in all aspects of life, in accordance with the

entitlements under the Government's social insurance policy. The ACC scheme also covers necessary structural modifications to private and state-owned residences to accommodate injuries and disabilities sustained by the residents as a consequence of the earthquakes.

The Disability Convention's Independent Monitoring Mechanism

The partnership approach to developing the Disability Convention has continued in New Zealand with the establishment of the "Independent Monitoring Mechanism" (IMM). The IMM comprises the Human Rights Commission, the Ombudsman and the New Zealand Convention Coalition. Its mandate derives from Article 33, which requires the establishment of an independent mechanism to promote, protect and monitor the implementation of the Disability Convention.

The Commission and the Ombudsman are established by statute and have roles and responsibilities in relation to discrimination, human rights, and access to information and public accountability.

The Convention Coalition comprises seven Disabled People's Organisations (DPOs) and provides an important voice for disabled people. This reflects Article 4.3 of the Disability Convention, which provides that all decision-making processes relating to disabled people shall actively involve them through their representative organisations.

The Enabling Good Lives approach

Following the earthquakes in Canterbury, the reconfiguration of disability supports and services to give people in Canterbury greater flexibility, choice and control over their supports was identified as a key priority for the inclusion of disabled people in the recovery.

Improving access to the built environment was a second priority area. These priorities were agreed by Cabinet in 2012.

In September 2012, the Ministerial Committee on Disability Issues agreed to long-term directions for

change and a set of Enabling Good Lives principles to guide decisions on change to the disability support system.

The 2013 Budget secured funding of \$3 million over three years for a demonstration in Canterbury of the Enabling Good Lives approach.

The Enabling Good Lives approach transforms how disabled people are supported to live everyday lives. This includes integrating funding for individuals across government programmes, increasing flexibility on where and how funds are able to be spent, and strengthen the focus on people having the choice to do everyday things in everyday places, within their communities.

The process of designing and implementing the approach includes the active involvement of disabled people, families, and service providers at the local and national level, and a close collaboration among community/sector people and government employees.

During 2013, work has been taken by government agency staff and local leaders and members of the disability community on the design of a three-year demonstration to implement the Enabling Good Lives approach in Christchurch, starting in November 2013. In the first year the demonstration will have around 40 participants, school leavers with high/very high needs. It will scale up and broaden out over the three years to include a wider range of people.

Accessibility in private dwellings

The damage to homes in Canterbury has provided an opportunity for homes to be rebuilt to achieve accessibility for all. While retrofitting homes to make them more accessible can be expensive, there is an opportunity for homes to be rebuilt on the basis of universal design principles and for repairs to at least incorporate minimum accessibility features such as grounded entrances and an accessible toilet and bathroom. When accessible features are included at the design stage, the cost of the building is no more than that of an inaccessible building but it avoids the cost of retrofitting.

Universal design

Universal design is a design framework used to make buildings and urban environments accessible for everyone. It has its origins in both the disability and design communities. Disabled people look to universal design to increase the accessibility and usability of the built environment, reduce the stigma associated with disability and enhance opportunities for participation and social integration in everyday life.

Incorporating universal design principles into the design of housing ensures a national building stock that has life-long economic worth and sustainability. Housing developments that incorporate universal design features support positive ageing. Other financial benefits from the inclusion of universal design in the built environment include reduced costs associated with accident and injury and positive economic gain from more tourism and employment.

The key features of universal design are that it:

- Is usable and accessible to people of diverse ages and abilities.
- Accommodates and responds to diverse individual preferences and abilities.
- Is easily understandable and consistent with people's intuitive responses.
- Ensures access to essential information regardless of sensory abilities and ambient conditions.
- Minimises hazards and risks of accidental or unintended actions.
- Entails the least possible physical effort and is easy for the user.
- Incorporates sufficient size and space to accommodate a range of mobility, body postures and sizes.

Incorporating the principles of universal design in buildings and their surroundings is important for New Zealand's rapidly ageing population. Statistics New Zealand population projections show that the age structure of the population

will continue to undergo gradual but significant changes, resulting in more older people and further ageing of the population. The number of New Zealanders aged 65+ continues to grow and will surpass one million in the late 2020s. Between June 2002 and 2012 their number increased by 143,900 (31 per cent) to 611,400.

The proportion of the population aged 65+ (14 per cent in 2012) will increase to 23 per cent in 2036 and 26 per cent in 2061. The population aged 65+ will increase to 1.2 million in 2036 and 1.5 million in 2061. The 65+ age group is itself ageing and this partly reflects the continuing improvement in longevity. By 2061, about one in four people aged 65+ will be 85+, compared with one in eight in 2012.²²⁸

People with disabilities comprise 17-20 per cent of the population and this is likely to also increase with the growth of the aging population. The demand for affordable and accessible housing will increase exponentially over the next decade.

Change in population aged 65+ years Five years ended 1956–2061

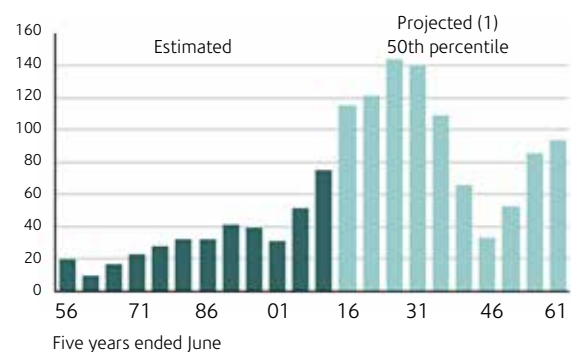


Figure 8: Statistics New Zealand estimates that there will be 1.44 million people aged over 65 in 2061, 2.8 times the 2006 total (Source – Statistics NZ)

A new Universal Design toolkit is now available online. This is a “how to” resource for designing houses that are safe, aesthetic and accessible to people of all abilities, at any stage of life. It includes examples of universal (or lifetime) design features, a tailored costing indicator, a gallery of drawings and useful web links. It has been developed, as part of the Government's 2012–2014

Disability Action Plan shared outcomes work programme, by BRANZ in partnership with ACC. It is available at: www.branz.co.nz/universal_design. This toolkit will complement Lifetime Design Ltd's Government-supported work on the promotion and certification of accessible housing design.

Enabling accessible design

The Office for Disability Issues and the Ministry of Business, Innovation and Employment (MBIE) has recently commissioned a report by the residential building sector on how to improve the performance of houses over time so that they are more suitable for owners as they age. The report, *Getting Accessible Housing: Practical Approaches to Encouraging Industry Take-up and Meeting Need*, cites research showing that New Zealand's housing stock does not function adequately for people with impairments, tends to be costly to adapt and is a significant contributor to the process by which a person's impairment is transformed into a disability.²²⁹

Lifetime Design was established by CCS Disability Action to promote accessible and universal design for residential properties. Now funded by the Government, through the Ministry of Social Development (MSD), Lifetime Design has developed Lifemark, an audit and promotion tool to assess the accessibility of residential properties.

Builders and developers, social housing providers, rest home providers and private homeowners can apply to have their properties assessed against the Lifemark standards. The Lifemark standards are designed so that residential properties can easily be adapted to suit changing lifestyle and access needs. More information is available from www.lifemark.co.nz.

The report concludes that both local and overseas experience indicates that providing for the needs of older and disabled residents by converting houses on as-needed basis and providing "special housing" has largely failed to meet the demand or respond to the issues on a strategic basis.²³⁰

It also recommends that a combination of regulation, policy and economic measures be

adopted in a similar way to the approach that has been taken to make housing stock more energy efficient.²³¹

The current regulatory framework relating to housing is weak on accessibility in residential dwellings. The provisions related to accessibility in the Building Act and Building Code including NZS 4121:2001 do not apply to private housing. As a result accessibility in private dwellings depends on those in the building industry and councils recognising the social and economic investment logic of accessible design and agreeing to its progress.

The Lifemark Design Standards assess whether a dwelling meets universal design principles. Assessments can result in three levels of accessibility ranging from a three star basic or minimum assessment to a five star assessment. The standards can assess private dwellings, social housing and elder care facilities.

In May 2012, the Government created a \$104.1 million Social Housing Fund (SHF) to support the growth of community housing providers over the period 2012-15.²³²

Applicants to the Social Housing Fund (SHF) score additional points in MBIE's assessment process if the proposed housing project incorporates Lifetime Design standards, or an equivalent. A number of building companies offer building plans to customers that meet these design standards. Some major developers and owners of rest homes have agreed to develop new facilities using the standards.

Research shows that building new accessible houses that meet the Lifetime design standards adds less than one per cent to the total cost of a new single storey house; advocates argue that it is therefore more efficient for the economy as a whole for all new houses to be built with universal design features than it is to convert houses only when necessary.

The related benefits of universally designed homes are increasingly acknowledged by urban designers, developers and businesses. For example, accessible homes are "visitable";

meaning that grandparents, whānau and people with disabilities can easily access the home. A visitable home also enables home care where specialised facilities would otherwise be needed and to avoid the cost of institutional care for disability.

An alternative view is that this assumes that all houses need to be retrofitted at some stage. For example, HNZ says it would be uneconomic to construct all its new houses to the full disability standard when this is not required for all its tenants. It considers that tenants can be transferred where necessary to more suitable properties as their needs change. HNZ states that its homes are built in a way that allows them to be modified later, when required.

HNZ supports the principles of Lifetime Design, and all new HNZ builds incorporate Lifetime Design principles. While HNZ's new build standards are estimated to meet a significant majority of Lifemark requirements, it regards it as uneconomic to construct all new builds to the full disability standard when this is not required for all HNZ tenants. Accordingly it is not adopting Lifemark certification for the portfolio at this time.

The Office for Disability Issues and MBIE have recently commissioned a report on what measures can be used to improve the lifetime housing supply by the residential building sector. The report cites research showing that New Zealand's housing stock does not function adequately for people with impairments, tends to be costly to adapt, and is a significant contributor to the process by which a person's impairment is transformed into a disability. It concludes that both local and overseas experience indicates that providing for the needs of older and disabled residents by converting houses on as-needed basis and providing "special housing" has largely failed to meet the demand and respond to the issues on a strategic basis.

The report recommends that a combination of regulation, policy and economic measures be adopted in a similar way to the approach that has been taken to make housing stock more energy efficient.²³³ Until this is achieved, accessibility in private dwellings depends on those in the building industry and councils.

The Earthquake Disability Leadership Group

The Earthquake Disability Leadership Group (EDLG) is a disability community collective that advocates for a 100 per cent accessible Christchurch rebuild. Led by disabled people, the group is a partnership between key disabled leaders, disabled people's organisations, family/whānau, service providers and regional officials in Canterbury. Comprised of around 60 members, the Group was contracted by the MSD to develop a Disability Recovery that would align with the CERA Recovery Strategy.

Barrier Free Trust has developed guidelines to assist building designers to interpret and apply current regulations and good practice in the universal design for buildings and public spaces. Released in May this year the guidelines are a best practice guide to implementing the access requirements of the Building Act. They encourage attention to be given to access at early stages of concept planning through to detailed design and construction. They highlight that the more access complies with the detailed requirements, the better the accessible journey for everyone, including persons with disabilities.²³⁴

In late 2012 the Human Rights Commission launched a guide *Better Design and Buildings for Everyone: Disabled People's Rights and the Built Environment* – the first of a series of publications by the Commission aimed at informing debate about disability issues. In his keynote address, the Disability Rights Commissioner, Paul Gibson, highlighted the recommendation by the UN's Committee on Economic, Social and Cultural Rights, that New Zealand adopt a human rights approach to reconstruction, to: "seize the opportunity ... to apply designs which enable persons with disabilities access on an equal basis with others to the physical environment, facilities and services provided to the public."²³⁵

Accessible Christchurch project group

Accessible Christchurch is a sub-group of the Earthquake Disability Leadership group and it has collaborated with the Canterbury District Health Board Policy and Planning Team to develop an

Outcomes Framework. This work was initiated by the Commission. It ensures that there is a clear message from disabled people and the community as a whole about their vision for the greater Christchurch area. The tag line for the Outcomes Framework is: "Christchurch – the most accessible and liveable city in the world."

The three themes for the Outcomes Framework are:

- developing a regulatory framework for access
- influencing decision makers
- engaging with the public and their demand for an accessible and liveable city.

For this work, accessibility is viewed in the broadest sense. Therefore accessibility includes access to housing, access to transport and digital access.

Part of the Outcomes Framework is the development of investment logic – a methodology encouraged by Treasury that presents the business case for accessible design. An accessible and liveable city results in decreased spending related to institutionalisation, less need for health and social services and decreased reliance on retrofitting buildings that Canterbury residents cannot access now or in the future. The benefits also include an increase in population and wellbeing as more people can interact, earn, invest and spend in the city in which they live.

The initial phase of the Framework is now being developed and includes a moving cartoon series that could be integrated successfully into social media. A suite of videos is also being developed alongside to tell the story in more detail. Both promotions should be complete by the end of 2013. These initiatives form part of the toolbox to ensure that Christchurch is a city that is accessible and liveable for everyone.

Areas where challenges remain

The Commission is aware that a number of two or three level buildings have been constructed without lifts or capacity to include these later.

Also, a number of new and repaired buildings do not comply with minimum accessibility standards.

Positive steps

A number of important steps towards the goal of making Christchurch a fully accessible city have been taken.

The Christchurch Central Earthquake Recovery Plan includes a commitment to accessible infrastructure, buildings and housing.

A review into building access for disabled people was announced by the Minister for Building and Construction and the Minister for Disability Issues on 20 October 2013. The review will look into how NZS 4121:2001, which outlines how people with disabilities can access buildings, aligns with the Building Code and how the Code more generally represents the needs of disabled people. This work has come out of recent announcements on earthquake-prone building policy, particularly around upgrading buildings with regard to access for disabled people.

MBIE is leading the review and will look at the current regulatory situation as well as consulting extensively with groups that represent the interests of disabled people, Building Consent Authorities and building designers.

The Minister for Earthquake Recovery has amended the draft transport chapter in the Christchurch Central Recovery Plan, *An Accessible City*, as a result of public consultation. The replacement chapter released in October 2013, makes a firm commitment to a city that is accessible to everyone.

In this, the Canterbury Earthquake Recovery Authority (CERA) and Christchurch City Council have undertaken to ensure that accessibility checks are incorporated into master planning and building consent processes at both the design and implementation phases of projects. For example, barrier-free audits are being trialled for anchor projects, and developers and service providers are encouraged to include barrier-free audits at the design stage of their delivery processes.



Democracy rally September 2012.

The Disability Action Plan for 2012–2014 announced by the Minister for Disability Issues in late 2012 included the Rebuild of Christchurch as one of three priority issues along with Employment and enabling good lives.²³⁶

Over the next three years the Government has undertaken to provide more advice and guidance on building accessible homes, and to produce and promote national guidelines on emergency preparedness and responsiveness that are more inclusive of disabled people. The advice is being provided by MSD Office of Disability Issues. The Accident Compensation Corporation (ACC) and the Building and Research Association New Zealand (BRANZ) are preparing material with support from MBIE, and the Ministry of Health.

The Barrier Free Trust has been contracted to work with the Central City Development Unit (CCDU)²³⁷ on the first cornerstone project, the Avon River Precinct/Te Papa Ōtākaro, to establish a process

that will apply to all cornerstone projects. The process will include input at the tendering, design and building phases.

The CCDU has taken a leadership role for ensuring accessibility in all CERA-led Anchor projects stating that it views accessibility as a fundamental driver of the Recovery Plan for the Central City and a vital component of best practice design. The CCDU has contracted Barrier Free Trust New Zealand to provide accessibility advice and audits of the Avon River concept project

The Land Use Recovery Plan (LURP) provides a mechanism for changes to planning documents and related funding instruments in order to provide for a diverse range of housing types, including social and affordable housing. Its purpose is to provide certainty about future land use patterns in greater Christchurch over the next 10-15 years, and in regard to residential and business land supply.

The LURP will be used to guide decisions about where, when, and how to rebuild, and the future treatment and use of land that is no longer suitable for urban, residential or commercial use. It does not address the future use of residential red-zoned land. The Draft Plan has been prepared under the CER Act 2011, and therefore must further the purposes of the Act. The LURP places emphasis on the need for a range of housing options and includes a range of initiatives that will support affordable housing and that offer an opportunity to build accessibility into the catalyst projects.²³⁹

The Office for Senior Citizens and the Ministry of Health funded a free advisory service on accessible homes in Christchurch, provided by Enable New Zealand, from January to June 2013. This service was to provide information and advice for people in Christchurch to support them to remain living in their rebuilt or refurbished homes for as long as possible. Further funding has been provided to continue this service to June 2014.

Recommendations

Accessibility and housing

The Commission recommends that the Government ensure accessibility and universal design are integrated throughout government work through:

- 1 the Ministry of Business, Innovation, and Employment ensuring an updated regulatory framework, with incentives being put in place for the built environment, including housing
- 2 the Canterbury Earthquake Recovery Authority and Christchurch City Council reporting annually on progress towards fulfilling the vision of Christchurch as the world's most accessible city
- 3 government agencies ensuring that their own, and government funded initiatives for which they are responsible, comply with the Government Web Standards for accessibility and other accessible information and communication requirements
- 4 ensuring that accessibility and universal design are embedded in the building process from the design phase through to completion
- 5 undertaking a review of NZS 4121:2001 in 2014, which considers whether NZS 4121:2001 should be mandatory, covering all aspects of the built environment, including publicly funded housing
- 6 preparing a discussion paper on whether an amendment to the Building Act is necessary, to include access requirements for all new residential housing units
- 7 ensuring all new housing stock is designed and built using Lifetime Design Principles, and that all social housing built or subsidised by the Social Housing Fund meets the highest standard of Lifetime Design
- 8 requiring all applicants for funding from the Social Housing Fund meet access requirements for all new housing units
- 9 commissioning BRANZ to research and provide advice on solutions to providing accessible housing in multi-storey and medium density housing developments
- 10 requiring that the two proposed exemplar housing developments referred to in the Land Use Recovery Plan as notified in July 2013 have access as a key delivery requirement
- 11 establishing a Choice in Community Living in Christchurch in the next financial year, in recognition of the lack of suitable accommodation in Christchurch.

Belonging, stability and security of home Tūrangawaewae, pūmautanga me te noho hū

Issues concerning sanctity and security of the home have been a frequent subject of enquiries and complaints to the Human Rights Commission from Canterbury residents. Tūrangawaewae – people’s sense of belonging, identity and place – has been profoundly affected. People have coped with the displacement from their homes by moving in with whānau, accessing insurance cover to pay for temporary accommodation or moving out of Christchurch temporarily or on a permanent basis.

Some remain living in substandard and damaged homes while they await further Government decisions about the status of their land, or remain living in the red zone or in a home subject to a section 124 Building Act notice while awaiting the Government’s response to their decision to decline its offer. Some of this group have commenced legal proceedings against private insurers or the Government in an effort to protect their right to their property. The options available to people both in relation to the effects of the earthquakes and to the legal, policy and service delivery response of the Government have been shaped by pre-existing variables such as socio-economic status, cultural status, social connectedness, age and mobility.

This section of the report considers some of these variables in relation to vulnerable groups. First, it briefly outlines the Government’s responsibilities in relation to adequate housing and the provision for security of tenure in New Zealand law and policy. Drawing on community voices the second part of this section outlines community responses to the issues raised by zoning and red stickering. It also features two case studies that highlight the importance of belonging, stability and security of home.

What responsibilities does the Government have?

The right to adequate housing does not require that the Government build houses for the entire population. Rather, it obligates the Government to use the maximum available resources at its disposal to take steps to prevent homelessness, address discrimination, focus on the most vulnerable and marginalised groups, ensure security of tenure for all, and guarantee that everyone’s housing is adequate.

When it ratified the International Covenant on Economic, Social and Cultural Rights (ICESCR), the New Zealand Government accepted that it bears primary responsibility for respecting, protecting and fulfilling the right to adequate housing under Article 11:

- The duty to respect means it must refrain from interfering with people’s existing enjoyment of the right to adequate housing (directly or indirectly).
- The duty to protect means it must prevent third parties from interfering with the right to adequate housing.
- The duty to fulfil means it must adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures to realize the right to adequate housing.

In respect of housing type, it is important to distinguish rental housing from owner-occupied units. Given that it is typically poorer individuals and families who live in rental housing²⁴⁰ the redevelopment of rental units is of great importance from a rights perspective. People with disabilities, Māori and Pacific peoples are disproportionately represented in this group. The World Bank has also noted the importance of assistance to renters, highlighting it as one of its “lessons for the future” to promote equitable redevelopment.²⁴¹

The UN Committee on Economic, Social and Cultural Rights has recognised that although countries will take different paths to realise the

right to adequate housing, governments are required to take a coordinating and leadership role. In broad terms, the objective of the recovery should be to advance all human rights, including the right to adequate housing.

Article 17 of the International Covenant on Civil and Political Rights (ICCPR) states that everyone is to be free from unlawful or arbitrary interference with their homes. Any steps taken by Government that interfere with people's right to enjoy their home in peace and dignity must be justified and proportionate.

Security of Tenure: New Zealand law and policy

The right to property, to an individual's home or land, can impact on the realisation of many economic and social rights such as the right to shelter, health and to an adequate standard of living. It is also fundamental to civil and political rights in that it is closely bound up with individual autonomy and a free society.²⁴²

If it is accepted that the right to property is necessary to realise human rights, then it imposes certain obligations on the State to respect, protect and fulfil the right.²⁴³ Respecting the right requires States to refrain from arbitrarily interfering with it, for example, by expropriation or not acting in the public interest.

The legislative protection of the right to property can be traced back to the Magna Carta.²⁴⁴ Magna Carta was confirmed in 1858 by the New Zealand Parliament as having been part of New Zealand law since 1840²⁴⁵ and remains part of New Zealand law. Chapter 29 of the Magna Carta provides that "No freeman shall be ... disseised of his freehold ... but ...by the law of the land". This aspect of the Magna Carta has been recognised by the Courts over the years.²⁴⁶ It is also implicit in Article 2 of the Treaty of Waitangi.

Tenure and possession of the home are secured in New Zealand through a mix of different statutory provisions. For example, the Residential Tenancies Act contains provisions assuring tenants exclusive possession of their homes and protection from arbitrary eviction.

The Land Transfer Act assures the paramountcy of a registered landowner's interest over their land. Provisions in the Public Works Act circumscribe the Crown's power to acquire property in the national interest. The Crimes Act criminalises the unlawful and dishonest taking of property. Importantly, for tangata whenua, Articles 26, 27 and 28 of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) emphasise the rights of indigenous people to lands territories and resources that they traditionally own and to participate in settlement and redress processes relating to the realisation of those rights. The Treaty of Waitangi guarantees exclusive possession of their lands and protection of tūrangawaewae in recognition of indigenous property rights and whakapapa connection to land.

The right to own and not be deprived of property was considered for inclusion in the New Zealand Bill of Rights Act. However, it was omitted with other economic, social and cultural rights because of a view (arguably now outdated) that economic and social rights are not justiciable. It was recognised at that time however, that it was not a question of creating a new right but rather the issue was whether and how an existing right to property should be protected.²⁴⁷ A more extensive analysis of the right to property can be found in the Human Rights Commission's submission to the Constitutional Advisory Panel on its review of New Zealand's constitutional arrangements, and in the Commission's submission to the High Court in the Quake Outcasts case.

The United Nation's Special Rapporteur on adequate housing has recommended a focus on protecting tenure types rather than individual property rights. She has highlighted how the right to adequate housing can conflict with individual property rights.²⁴⁸ Tenure types that should be protected include emergency and temporary housing as well as the informal accommodation solutions that communities come up with such as those people in Canterbury relied on after the earthquakes.

The impact of the earthquakes on housing security and vulnerable groups

With the exception of a report by the Ministry of Business, Innovation and Employment's (MBIE) 2013 Housing Pressures in Christchurch there has not been any systematic data generation in relation to homelessness in Christchurch that offers an accurate picture of pre and post-earthquake homelessness.²⁵⁰

As noted in MBIE's report, there has been a marked increase in demand for housing with an estimated shortfall of 7100 houses. Social housing providers seem to agree that there has been a related increase in the number of people living without shelter or living in emergency or temporary accommodation since the earthquakes.²⁵¹

Although there were people who were in insecure housing in Christchurch before the earthquakes, this has been exacerbated by the influx of workers for the rebuild and increased demand on rental housing as a result of the zoning of land and repairs. The most accurate assessment of homelessness will be able to be drawn from the results of the March Census data that will be available from the end of 2013.

Who is vulnerable?

The International Federation of the Red Cross defines vulnerability as "the degree to which a population, individual or organisation is unable to anticipate, cope with, resist and recover from the impacts of disasters".²⁵² It describes vulnerability as a "composite indicator" that is, as both as an indicator of outcomes or results as well as processes.²⁵³ In simple terms this means that affected people can become vulnerable as a result of recovery processes as well as through the trauma of the event itself.

Many Canterbury residents have told the Commission that limited access to information, the lack of transparency, participation and consultation, the time consuming nature of the recovery process, particularly around the

restitution of housing and property, have been more damaging than the earthquake events themselves.²⁵⁴ Accordingly, when seeking to understand vulnerability it is important to look at the effects of policies not only the intentions.

Often such impacts arise unintentionally as a result of acts of omission (such as a lack of preparedness) rather than conscious acts. An understanding of vulnerability and a demographic profile of the affected areas – including an assessment of vulnerability – is therefore vital to ensuring that any response is equitable and addresses the needs of all sectors of the community. This is particularly important since the poor, the elderly, the disabled and other marginalised groups inevitably fare worst in such situations.

The New Zealand Government's *Strategic Planning Framework* identified the following groups to be particularly vulnerable:

- young people who have relocated to other schools
- elderly people who have been relocated to retirement homes outside of Canterbury
- ethnic groups with limited English and resources
- those that have been injured and/or who have developed disabilities from the earthquake
- children in precarious situations
- people who have lost their jobs.²⁵⁵

The Framework acknowledges that while responses among these groups will not be uniform and some might cope better than others, there is a number of potentially exacerbating disaster-related conditions. These conditions, which correlate with those documented by the Commission, include:

People with housing-related needs, who have:

- had to move out of their homes
- are living in damaged homes
- in over-crowded households.

People under financial stress such as:

- those living in damaged homes without insurance
- low-income earners whose employment has been affected
- people living in worst hit areas.

The Framework provides two definitions of vulnerability:

“Individuals and families who, due to pre-existing conditions, are at a greater risk of developing stress related responses following the earthquakes.”

Or

“Individuals and families who, due to a pre-existing condition, or as a result of the earthquake, have more barriers to accessing support to help deal with stress.”²⁵⁶

The development of vulnerability criteria by a number of the key agencies involved in the rebuild and recovery – both in the Government and private sector – is a very positive step. However, there remains awareness by these agencies themselves that three years on from the September 2010 earthquake some of the most vulnerable in Canterbury are yet to be identified, that new areas of vulnerability could yet emerge, and that coordinated solutions for mitigating this need to be further developed. The following sections look at vulnerable groups in the context of housing security.

Children and young people

Children and young people are, given their particular age and stage of life, a vulnerable group in society. That vulnerability can increase as a result of a natural disaster. Particular attention is required to ensure that the rights of children are promoted and protected in the process of disaster recovery. The United Nations Convention on the Rights of the Child (UNCROC) provides an essential framework for ensuring this. An overview of the standards specified in UNCROC, along with some key issues arising in relation to children and young people in the Canterbury earthquake recovery are discussed in this section.

United Nations Convention on the Rights of the Child (UNCROC)

UNCROC sets out the basic human rights all children (persons below the age of 18) have. The rights in UNCROC fall into three broad groups of rights, namely:

- survive and development rights
- protection rights
- participation rights.

The rights set out in UNCROC are regarded as indivisible and interdependent. UNCROC has four guiding principles, which guide the application of all other children's rights. These are: non-discrimination; prioritising the best interests of the child; the right to life, survival and development; and respect for the views of the child.²⁵⁷

Children, young people and post-earthquake housing

Article 27 of UNCROC establishes the right “of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.” In relation to children with disabilities, Article 23 of UNCROC establishes that “a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community”. Housing that is cold, damp and mouldy significantly worsens the health of vulnerable groups, including young children. Inadequate housing has been shown to be a factor in limiting children's educational attainment.

In post-earthquake Canterbury, the increase in rental costs and limited availability of affordable housing is likely to have a disproportionately negative impact on families with children, particularly Māori and Pacific families and/or those headed by sole parents. A September 2013 news report stated that the Christchurch City Mission and YWCA have been

“inundated with women and children desperately seeking emergency housing – at levels never seen before. Both say they

have to turn away people, with the YWCA having a regular waiting list of on average 50 women plus their children. Before the earthquakes the YWCA did not have a waiting list – they were never full”.²⁶⁰

Prior to the earthquakes the YWCA occupancy rate floated at between 30 and 80 per cent.²⁶¹

A June 2013 submission by 26 organisations to the United Nations’ Universal Periodic Review (UPR) of New Zealand’s human rights focused on impacts of the Canterbury earthquakes.²⁶² It highlights how the reduction in housing stock has affected the availability of social housing for people with disabilities. As a result, it states that some young people with disabilities have been inappropriately placed in age-care and rest home facilities.²⁶³

The submission also notes that since the earthquakes the number of Child Youth and Family (CYF) homes providing supported housing for young people has halved, falling from six to three. Submitters said it was now very challenging to find supported housing for young people,

particularly teenage males.²⁶⁴ Another gap of concern is a lack of housing for 17-year-olds who are too old to receive CYF support but are ineligible for Housing New Zealand assistance.²⁶⁵

There has been long-standing demand for social and transitional housing for youth in Christchurch. A 2008 study estimated that at any time there was likely to be 1444 vulnerable and at risk young people aged 15-24 in Christchurch living in inappropriate and insecure housing.²⁶⁶ “Couch-surfing” was a well-known means of coping. It signalled a young person moving from place to place or at least having no permanent place of abode. It also signalled disconnection from family, school and employment.

There is a lack of information available about the effects of the February earthquake on youth homelessness. There appears to have been limited central government agency or policy engagement with the issue following the earthquakes. However, youth services have noted an increase in young people and in particular, young single mothers, in housing need.²⁶⁷



Holly, Shayna, Cara and Amy from Kimihia Parent's College. Photo: Kimihia College.

In the Human Rights Commission's community engagement work with young people, housing is unanimously identified as the most important issue facing those in Christchurch. Young people reported that a major effect of the rent increases is the inability to find or afford better housing. Teen parents have described numerous instances of discrimination from landlords when applying for housing. Teen parents have told the Commission of their experiences of not being given the opportunity to inspect available housing, being asked of their marital status, whether they have children, and if they are able to afford the rent. If proven, such acts breach the unlawful discrimination provisions of the Human Rights Act.

Young parents have also reported increased psychological, physical and financial stress from the process of applying and searching for appropriate accommodation. As a result of an inability to find adequate rental housing, young mothers have also described staying in unsafe relationships (with partners or family members) and living in unhealthy homes that resulted in health issues related to illness and overcrowding.

For young parents living independently with their child, the need for more affordable and safe housing remains a concern. Some young parents living with family also pay a significant amount of their income to supplement rent. One young parent told the Commission she provides \$220 per week to her mother to pay for rental accommodation, while another living as a sole parent said her rent was \$350 per week for a two bedroom flat. Responses to insecure housing described by young people included: couch-surfing; moving into alternative accommodation; living with other family; living in a garage; and living in overcrowded and/or unsafe/unhealthy homes.

The shortage of adequate affordable housing has also led to social isolation. Young people highlighted disconnection from their community of origin as having a significant impact on their social and peer relationships. One young person stated: "I just stay home and don't go out". Other young people have commented that they do not feel safe in their new community,

have not established relationships in their new neighbourhood and (when and if possible) travel outside of that community to socialise.

Some young people have moved more than 10 kilometres from their original community. The Commission noted one instance where the teen parent had moved from Phillipstown to Yaldhurst (16.5 kilometres), and another teen parent from New Brighton to Halswell (7.6 kilometres).

In commenting on the increasing pressure of the market on low income groups, the UN's Special Rapporteur on Housing noted that security of tenure as a basis both for women's economic empowerment and protection from violence: "Tenure ... means a lot to families and individuals. It gives people certainty about what they can do with their land or home and it offers ... protection from encroachments by others. It often protects, increases and enables access to public services and benefits."²⁶⁸

Older people

In natural disasters older people are frequently disproportionately affected. This is why most humanitarian groups regard older people as a vulnerable group in need of special protection. Mobility issues, greater physical frailty and medication needs can all compound the risks caused by natural disasters. One elderly Canterbury resident commented:

"... earthquakes are the least of my worries. I can deal with them, I'm desensitised to them...But the loss of my job, my home, all my contents, having used up all my savings just surviving, my rental, with no carpets, no double glazing ... I try to book my car in for a warrant and am embarrassed to find there's a hold on our account due to an unpaid account. Things are that tight ... My grandkids used to have their own room in my home, I treasured their visits, I still do, but now I have to put up a portacot in my bathroom, carry them and the bags up 58 stairs, I can't light the fire when they stay without a fire guard. I have an arthritic medical condition affected by the cold...

Wondering when I will have a place to call home again, when what's in that home will be mine."

Unlike Hurricane Katrina, particularly in New Orleans where older residents were not evacuated, the Canterbury earthquakes resulted in the unprecedented evacuation of elderly residents. Canterbury lost over 600 residential beds for older persons as a result of the earthquakes.

Damage to ten residential care facilities resulted in approximately 516 older people being urgently evacuated. Of these, approximately 300 people were moved out of the city to other centres, and 200 within Canterbury. This represents the relocation of approximately ten per cent of the total number of older persons in subsidised residential care.

It is difficult to determine the exact impact of the necessary evacuations on older persons, particularly those who were frail and in ill health. However, it appears that the stress of the

earthquakes coupled with moving, disconnection from family and friends and the local community has had an adverse effect on the health and wellbeing of older people.²⁶⁹

The importance of social supports to community recovery is recognised in rights based approaches to disaster recovery planning. Traditional approaches, conducted with the best of intentions can have unintended consequences that increase the vulnerability of those most in need of protection. For example, clearance strategies aimed at moving people quickly out of an affected area can undermine pre-existing community strengths.²⁷⁰ A study of older people in Japan who were moved into new semi-permanent housing after the 1995 Kobe Earthquake found that this act in itself was a disaster. Isolated from their social networks in their new apartments and cut off from the hub of their communities, a number subsequently suffered what was called the "lonely death outcome" as "without family and friends these survivors had little to live for".²⁷¹



United voices protest march, August 2012.

An indirect effect of land clearance programmes is increased pressure on the rental market, with the result that vulnerable people such as young parents and displaced older people increasingly struggle to rent in their preferred communities of origin.

Māori and Pacific communities

The eastern part of Christchurch bore the brunt of the earthquakes. This area covers high economic decile areas as well as a number of the lowest economic decile areas of Christchurch where there is a higher proportion of Māori and Pacific Island communities. Kaiapoi and Lyttleton for example, have large Māori communities. These areas were severely damaged by the earthquakes with many homes and streets affected by liquefaction, damage to infrastructure and community facilities, and red-zoning.

Māori and Pacific peoples featured relatively highly in migration figures following the February 2011 quake. Data from school rolls show that three times as many school-aged Māori children left their schools after the February earthquake compared to Pākehā children.

The migration rate for Samoan groups was even higher. This has been explained as a likely effect of the lower socio-economic status of these groups with families who were living “week-to-week or day-to-day” most likely to have left the Canterbury area to find other work.

For Māori and Pacific people who remained in the city, their connections with family, community, church and marae proved to be strong sources of support and strength. Of those who were forced to leave their homes, many moved in with whānau and many were able to access the support services of marae.²⁷²

A case study of how marae communities responded to the earthquakes provides a comprehensive overview of effects of the earthquakes on the wellbeing of these communities. The *Building Community Resilience* study²⁷³ found that key factors that influenced or hindered the ability of marae communities to

adapt following the earthquakes included:

- tribal infrastructure
- marae capacity and capability
- Māori cultural practices and values
- community connectedness
- external support
- people’s wellbeing
- survival skills
- extent of adversity.

Criticism of the over representation of Māori and Pacific households in rental housing tenure and the way housing policy has failed Māori has been long-standing and consistent. The earthquakes have served to exacerbate these pre-existing housing challenges further.

The notion of assisting community groups to venture into social housing as viable community entrepreneurship projects has been proposed as a way of addressing housing inequity. For example, some Pacific church groups have land assets and if they could be assisted into becoming housing providers with affordable rates for low socio-economic householders, this would also contribute towards bridging the housing shortage faced by Canterbury residents.

Refugee and migrant communities

Christchurch is the second-largest resettlement centre for refugees and migrants after Auckland.²⁷⁴ Christchurch has more than 160 ethnic groups. Many of these communities come from a non-English speaking background.

Challenges commonly faced by culturally and linguistically diverse (CALD) communities are participation in decision-making, access to services and information, housing, education, employment, and health as well as the social implications of a rapidly growing diversity. The 2010 and 2011 earthquakes exacerbated existing challenges for stretched service providers and community groups by adding the challenge of the integration of newcomers. With the focus on the



The Khanal family in Spreydon are awaiting a Housing NZ home that is accessible.

rebuild, there is concern that new migrants in the community and wider society will not receive the attention and resources necessary to make their resettlement successful.

The shortage of adequate housing has made it more difficult for all low-income families. However, this includes a disproportionate number of families with a refugee and migrant background. As with other groups, inadequate housing directly affects the health of these communities and aggravates pre-existing physical and mental health conditions. Elderly refugees and migrants are often more likely to be socially isolated and unaware of the services and information available to help with recovery and settlement issues.

The issue of overcrowding is particularly pertinent to Pacific and some CALD communities because of a larger average family size and lack of available and adequately sized housing. In CALD communities, the issue is heightened by family reunification. The sponsor must provide housing for the newcomers, but where none is available new arrivals often move into the same house

as the sponsor. The Human Rights Commission is also aware of overcrowding among some migrant worker communities, where it adds to an already constrained social environment of young male workers with no other social networks in the city. This appears to be a particular concern among British and Irish migrant workers.

Since July 2011, 1719 visas have been issued for workers on the Canterbury rebuild; 748 to Filipinos and most of the remainder to workers from Britain or Ireland. Many of the up to 30,000 people expected to arrive in Christchurch for the rebuild in the coming years will come from overseas. This raises a number of issues in relation to the ability of government and sector agencies to cater for the needs of migrants that are not met by their employers, particularly if they bring their families. Community groups trying to address already existing gaps say that they lack the resources to adequately respond.

Many work visas being issued are for 6-, 12- or 18-month periods so these people are not entitled to subsidised health care. The alternative, of after-hours practices, is significantly more expensive.

For example, the fee charged to enrolled patients at one Christchurch practice is \$89 compared to \$179 for non-enrolled migrant workers on a visa of less than two years. The Commission has been told that some employers are recommending their staff go directly to the emergency department rather than to their GP. District Health Board funding is based on Census population numbers and does not yet reflect the large influx of workers.

Security of tenure: Community responses

The Government's policy and legislative responses to the damage caused by the earthquakes has been set out in the preceding sections. The interventions that have caused the greatest number of complaints to the Human Rights Commission relate to the zoning of land, the Government offer to red-zoned uninsured homeowners and owners of vacant land, and the issuing of section 124 notices under the Building Act. This section provides a brief overview of some of the actions residents have taken to address their right to property and security of tenure.

Rights to adequate housing and home – Quake Outcasts case

In August 2013 the High Court upheld the claim made by the applicants that the creation of the red zone was an unlawful interference with the right to use and enjoy one's home. The case was taken by a group of uninsured land or house and building owners whose properties were affected by the Canterbury residential red zone decision. They argued that offers of a 50 per cent buyout were not made in accordance with the Canterbury Earthquake Recovery Act 2011, were oppressive and in breach of their human rights.

The Court concluded that the offers made to the applicants were not made according to law and were set aside. The Court directed the Minister for Canterbury Earthquake Recovery and the Chief Executive of the Canterbury Earthquake Recovery Authority to reconsider these decisions.

The Human Rights Commission intervened in the case to make human rights arguments to the Court.

The Human Rights Commission views the case as important in relation to the right to security of home and adequacy of housing, and in relation to the way in which decisions such as the declaration of the residential red zones in Canterbury affect fundamental human rights of New Zealanders. A copy of the judgment, along with a copy of the Commission's submission can be accessed on the Commission's website.²⁷⁵

The Minister for Canterbury Earthquake Recovery and the Chief Executive of the Canterbury Earthquake Recovery Authority appealed the decision of the High Court. The appeal was heard by the Court of Appeal on 23 and 24 October 2013.

The Human Rights Commission considers that the appeal raises issues concerning the application of a number of rights including under Article 11 of the ICESCR (right to housing), Articles 12 and 17 of the ICCPR (rights to freedom of movement including choice of residence, and freedom from arbitrary or unlawful interference with privacy or home), and the right to property recognised in Article 17 of the Universal Declaration of Human Rights. The Commission applied for and was granted leave to intervene in the appeal.

Challenging a section 124 notice under the Building Act

"The issue is not about risks but who makes the decision and who has control. Risk is what life is about – ask any adventurer, creative or business person or extreme sportsman. Risk taking is what makes heroes. Ask anyone who has been saved. Thanks go to firemen, soldiers, police who took their chances in spite of risks. We don't want our lives taken over. Disaster recovery is about making your own decisions, getting back control and autonomy. No one needs anything else but information, advice and resources for recovery."

– Colin Jamieson, The Press Jan 26, 2013



Farewell celebration for red zoned suburb of Brooklands.

The owner of a building that is subject to a notice issued under section 124 of the Building Act has the right to seek a determination from the Chief Executive of the Ministry of Business, Innovation & Employment (MBIE). The Chief Executive has the power to agree with, cancel or change the decision to issue the notice. The Act's definition of a dangerous building during the period from 17 September 2011 to 17 September 2013 was expanded for buildings in the jurisdiction of the Christchurch City Council, and the Selwyn and Waimakariri District Councils.

In a determination on whether the Christchurch City Council was correct in assessing a Sumner property as a dangerous building, the Chief Executive's delegate commented about the expanded definition of the threshold for risk set out in the Building Act. He noted that the expanded definition set a very low threshold for a building to be considered dangerous; the only requirement was that "there is a risk" that adjacent land could collapse as a result of rockfall and cause injury or death to any person in the

building. A risk that something could happen is simply a possibility of that event occurring. In contrast the unexpanded definition of a dangerous building requires that a building to be "likely" in the ordinary course of events to cause injury or death.

It is more difficult to challenge a section 124 notice that relies on the expanded definition than it is for those elsewhere in New Zealand wishing to dispute a council's assessment that a building is dangerous.

While it found that the Sumner property was dangerous, the Chief Executive's delegate commented that the Council's guidelines for rockfall protection systems were not framed in a way that was meaningful for those subject to a section 124 notice. He suggested that the Council should provide clear guidance about the criteria used in order to assess a building is no longer dangerous.

Community voices: security of tenure

Case study 1: Farewell to a suburb – John’s story

John is a resident of the close-knit community of Brooklands. The small suburb on the northern outskirts of Christchurch was hit particularly hard by the September 2011 earthquake, resulting in a decision by the Government in November 2011, to zone 417 properties red.

The settlement is framed by the Waimakariri River mouth to the north, the Brooklands Lagoon to the east and the Styx River to the west. The swamp land, river and varied seashore provided a rich and picturesque playground for local residents, but its low lying nature and high water table has made it a hazard prone location. First developed in the early 1950s the settlement has built its own community hall, operated a civil defence sector post, and had an active residents association, a volunteer fire brigade and play centre.

Brooklands’ geographical isolation and the extent of the red-zoning means an entire suburb will effectively disappear. The small township mirrors the painful process of dislocation and loss of community that is being played out across all of the worst affected neighbourhoods, many of which lie in the city’s eastern suburbs such as Bexley, Avonside and Dallington.

John reflects on growing up in Brooklands and the uncertainty that lies ahead, “We used to come out here when I was four years of age and we used to picnic by the lagoon. I was five years of age when my father bought our first property here and that was in 1940. I lived just up the corner here when I got married, on the corner of this street, and my wife had four babies while we were there, while I was building my house. I think I paid 700 pounds rent in four years. Doesn’t sound much now, but a pound in those days was real money. “People come out here and ask which ones are going, and I say all of it, it’s all going – the



whole community, 400 homes. People just can’t get their heads around that. Our homes are not badly damaged, you look around and you won’t see hardly any damage.

“At the same time, they’re making everybody shift and abandoning quite good homes. You would have noticed some empty spaces where they’ve started to mow them down. Every week there’s two or three more gone. I’m going to stick it out and see what happens, I’m too old to shift. I’ve been here 72 years. I don’t know what’s going to happen. They haven’t discussed anything with us or given us any information and expect us to make life-changing decisions without information. That’s what’s driving a lot of people a bit cranky now.

“The only thing that’d make me shift would be if my health packed up. There were 60 that were going to stay [in red-zoned homes] but I believe it’s diminishing quite a bit because we’ve been told by the authorities that if we don’t sell [our homes] now, after the Government closes its offer, they’ll be practically worthless.

“Our sections before the earthquake were valued roughly \$200,000 and the Government have decided to buy our sections for \$175,000. And the empty sections that haven’t got a house on, they’ve cut that in half for an empty section to \$75,000 – half of the Government valuation. You can’t keep a section. If you sell them the section, you’ve got no rights to come back and buy that section back again ... It’s mind boggling that they can do that in this day and age.

“I couldn’t buy another property for what they’ve offered me for my house and land. So

that’s why I’m staying. I can’t get a mortgage at my age. I wouldn’t want one. My house is not perfect but it’s very straight and level and my land’s not damaged. I’ve got my own wells. I’ve got two wells and I’ve got a septic tank. The power – if they cut the power off that would certainly hurt but I’ve got a generator.

“They’ve more or less threatened us if we don’t shift, services will be cut and what they intend to do – they haven’t really told us.”

* John is 78 – he declined the Government offer and decided to stay in his red-zoned home.

Case study 2: Barry and Susan’s story

“After September, everyone was thinking ‘this is a one-time thing’.”

In 2010, Barry and Susan were ready to move out of their Bexley home in the Eastern suburbs, and into a brand new house in the countryside. “We started to organise selling our old house so we could move into the one we were building,” says Barry. But the September earthquake changed everything. Their Bexley house was badly damaged, with liquefaction and subsidence issues, so Barry got in touch with the Earthquake Commission and his insurance company to find out what his situation was.

By the beginning of 2011, things were beginning to progress with the insurance company. “The thing was,” says Barry, “everyone thought this was a one-time thing, you know? Then [the February earthquake] happened and changed the dynamic of the situation.”

The decision that their house had been zoned red provided resolution for Barry and Susan. They received a payout for the earthquake

damaged house, and reinsurance for the new house they had built. They moved into their new home in 2011, and say that living in the country for the last two years has been “great”. While there was a good outcome for the family, they went through a tough time waiting for the Government and Council to determine the fate of the suburb. “You have very little power or control, and there’s just this feeling of helplessness,” says Barry.

“The day our house was demolished there were tears,” says Susan. “But our life could move on. Our children are here, the grandchildren are here. Barry was president of the Residents’ Association, so he was very involved in getting people help after the earthquakes.”

Barry and Susan are now able to look towards their future in Christchurch. “It’ll be interesting to see what the place is like in five years,” says Barry. “There’s so much to do, so many things to focus on, and lots of players.”



United voices protest march, August 2012.

Areas where challenges remain

Residents need clear and timely communication about the decisions that relate to the future of their property.

Residents seeking information on how to meet guidelines such as those set by the Christchurch City Council for rockfall protection mechanisms need to be better able to access the information that will enable them to do this.

Residents who have chosen to decline the Government offer still do not know whether the Government will exercise its powers to compulsorily acquire their properties.

Recommendations

Housing security of tenure

The Commission recommends that the Government:

- 1 prepare a discussion paper on whether an amendment of the Residential Tenancies Act is necessary, to lengthen notices so that notices for tenants to vacate the property are lengthened to 12 weeks and must be given with a reason.



Earthquake anniversary 2013, memory tree in Botanic Gardens.

Health Hauora

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

Article 12(1), International Covenant on Economic, Social and Cultural Rights

The Canterbury earthquakes and the legislative, policy and service delivery responses to it have touched the lives of most Canterbury residents in some way. The right to health and to an adequate standard of living has been affected in direct and indirect ways. In order to make assessments about the ways natural disasters influence people's wellbeing, these effects are commonly divided into two broad categories: primary and secondary stressors. Primary stressors occur directly as a result of the event itself; the earthquakes, the aftershocks and the immediate trauma associated with this.

Secondary stressors are the circumstances and events that are indirectly related to the disaster. These include the impacts of policies and service delivery responses to the event that can unintentionally limit people's recovery, such as those related to insurance, compensation or rebuilding. Secondary stressors can also include problems such as: the inability to access information, or participate in decision making processes; damaged infrastructure; damaged homes; temporary housing; financial stress; loss of services; loss of community connection and social isolation. Primary and secondary stressors are interrelated. Over time it can be difficult to distinguish between the impact of the primary stressors and the pressure of everyday life events.²⁷⁶

Research in this area shows that the longer the intensity and persistence of primary and secondary stressors, the more likelihood there is of people developing distress or a mental health disorder.²⁷⁷ To address this risk and to support the recovery of Canterbury residents, the Government has taken a number of positive steps. A key component of the Recovery Strategy for Greater Christchurch is

social recovery. This includes objectives relating to enabling and empowering local communities to shape and lead their own recovery, growing capacity, minimising hardship and delivering inclusive social services.²⁷⁸ The recently developed Psychosocial Recovery Strategy, *Community in Mind* and the accompanying Programme of Action offer a valuable framework for a coordinated approach to addressing psychosocial recovery in the medium term.²⁷⁹

The foremost secondary stressors for Canterbury residents identified by the Canterbury Earthquake Recovery Authority (CERA) in its 2012 Wellbeing survey included dealing with insurers and the Earthquake Commission (EQC), making decisions about house damage and repairs, and the loss of cultural and leisure facilities. The Canterbury District Health Board (CDHB) has also identified stress from parents dealing with housing issues as a significant factor in the increased level of distress among children reported to youth mental health services. The secondary stressors associated with affordability, habitability, security of tenure, repairs and insurance, have been considered in the previous sections of the report. This section considers secondary health stressors related to democratic rights and the loss of cultural heritage.

What is the right to health?

The right to health encompasses not just the absence of disease or infirmity but complete physical, mental and social wellbeing. It includes access to both timely and appropriate healthcare as well as the underlying social and economic

determinants of health, such as conditions of work and adequate food and shelter.²⁸⁰

The right to health is fundamental to human rights. It is expressly referred to in a number of core international treaties. The most significant is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which refers to the right to the enjoyment of the highest attainable standard of physical and mental health. Other international human rights treaties also refer to the right to health. In some it applies generally; in others it is addressed in terms of the rights of particular groups such as women, children or indigenous people. For example, Article 24 of the United Nations Declaration on the Rights of Indigenous People (UNDRIP) states the equal right of indigenous people to the highest attainable standard of physical and mental health, and the duty that states have to take the necessary steps to progressively achieve the full realisation of this right.

By ratifying the ICESCR, a state agrees to protect the health of its citizens and provide the services, policies and budgetary means to promote good health and ensure the elimination of health-based discrimination. This is qualified by recognition of finite resources and the concept of progressive realisation. Given the cost of health services, compliance is contemplated as happening incrementally, or progressively, depending on available resources and the competing claims and priorities on those resources.

As part of these responsibilities, states are required to establish some form of monitoring mechanism, including a system of benchmarks and indicators; undertake the collection of health data that is disaggregated on certain characteristics such as sex, age and rural/urban; and demonstrate the ability to progressively implement the rights in the ICESCR.

Respect, protect, realise

As with other rights, the right to health imposes three types of obligations on a state, including:

- to respect the right which requires states to refrain from interfering with it directly or

indirectly – for example, denying access to healthcare services or discriminating in how the services are provided

- to protect the right which requires states to prevent third parties from interfering with the right to health, which may require states to enact legislation to ensure that individuals comply with the appropriate standards or prohibit doing acts harmful to the health of others – for example, exposing them to toxins
- to fulfil the right which requires states to adopt progressive legislative, administrative, budgetary and other measures to fully realise the right to health – for example, adopting national immunisation policies.

It is important that a country takes inter-sectoral action – that is, working across all levels of government (not just the health sector) to address the social, political, economic and environmental factors that influence health and inequities in health. How the right to health is delivered is considered in relation to the availability, accessibility, acceptability and quality of health services.

The New Zealand context

Legislative framework

While there is no express right to health in New Zealand law, by ratifying the ICESCR New Zealand accepted the obligation to comply with its standards. This is achieved by a range of laws, policies and practices including legislation directly linked to the delivery of health services.

The right to health is also protected by the New Zealand Bill of Rights Act 1990 through the right to freedom from discrimination; the Human Rights Act 1993, which deals with discrimination and human rights generally; the Health and Disability Services Act 1994 (together with the accompanying Code of Consumer Rights); and the Privacy Act 1993 (which, together with the Health Information Privacy Code 1994, protects individual privacy).

Although health outcomes have generally improved in recent years, inequalities still persist – particularly for people with disabilities, those on low incomes, Māori and Pacific people, and other minority sections of the population. The entrenched inequalities play a significant role in poor health outcomes for these particular groups. This in turn affects children and young people, highlighting the importance of underlying determinants such as adequate housing and democratic rights.

The impacts of the Canterbury earthquakes: secondary stressors

The 2010 and 2012 Quality of Life surveys provide a basis to assess the impacts of the earthquakes on the wellbeing of Canterbury residents. One of the most marked indicators of an increase in psychosocial stress is evident in the response to the survey question relating to stress.

In 2010 only eight per cent of residents reported that they regularly experience stress that has a negative effect on them, with one per cent always stressed and seven per cent stressed most of the time. There were no significant differences by location.²⁸¹ The 2012 survey showed an increase in stress across all major centres. In Christchurch 21 per cent of residents regularly experience stress that has a negative effect on them, with two per cent always stressed and 19 per cent stressed most of the time. Those who reported feeling stress all of the time were much more likely to be from the Banks Peninsula region (11 per cent), with those more likely to say they never experienced stress living in the Shirley-Papanui area (17 per cent).²⁸²

Moderate to major stress related to dealing with EQC or insurance issues was also reported by 37 per cent of respondents to the CERA 2012 Wellbeing Survey. Making decisions about house damage, repairs and relocation was found to have resulted in a major or moderate negative impact for 29 per cent of residents.

Residents' confidence in the Christchurch City Council's decision-making processes decreased following the earthquakes with almost half of

Christchurch residents (46 per cent compared to 53 per cent in 2010) reporting they do not have confidence that the Council makes decisions in the best interests of the city.²⁸³ The reason given by seven per cent of these respondents was that the Council was not open/transparent and did not keep residents adequately informed.

In 2012, 52 per cent of respondents cited dislike of a specific decision or outcomes of the decisions the Council made as a reason for a lack of confidence in its decision-making. In 2010 this figure was 20 per cent.²⁸⁴

Residents' dissatisfaction with communications relating to insurance policies was reflected in CERA's Wellbeing Survey. The Survey found 42 per cent of respondents were dissatisfied with communications and information provided by EQC relating to residents' policy.²⁸⁵

Homeowners' need for information about their earthquake-damaged homes and repairs and their inability to access this through normal channels is also reflected in an exponential increase in the number of requests made under the Official Information Act (OIA). Before the Christchurch earthquakes, for example, EQC had dealt with fewer than 50 OIA requests in total. In June 2013 EQC reported it was receiving an average of 400 OIA requests per month, a situation that the Ombudsman has acknowledged as unprecedented.²⁸⁶ This increase is also reflected in the number of complaints about EQC received by the Ombudsman – these peaked between July 2012 and February 2013 with an average of 78 complaints per month.* Of these, 13.6 per cent were OIA complaints.

* This figure includes all contacts. This includes complaints made under the "Ombudsmen Act": that is, all written complaints which allege general maladministration (including poor service in any aspect of claim handling except responses to OIA requests); those made under the "Official Information Act": that is, all written complaints alleging a breach of the OIA (including unjustified refusal, delay in responding, and unreasonable charging), and "Other contacts": that is, all enquiries, oral complaints that are not confirmed in writing (including OIA complaints), and other complaints outside an Ombudsman's jurisdiction. This category effectively includes all matters that cannot be investigated (an Ombudsman has no authority to investigate a complaint unless it is put in writing).

Homeowners' frustration at being unable to access clear and timely information is evident in the number of security incidents at Fletcher Earthquake Recovery Hubs. The Fletcher EQR General Manager said considerable resources had gone into extra security at the hub to protect staff from abuse by angry homeowners. This includes higher fences, emergency exit doors and higher reception counters to prevent people jumping over them.²⁸⁷

The associated tension arising from people having to relocate as a result of the earthquakes also appears to be reflected in an increase in family custody disputes. Community Law has noted a three-fold increase in the number of court enforced parenting and relocation orders in the last three years.²⁸⁸

Ethnicity	Population	per cent
NZ European	264,343	72.0%
European	31,742	8.6%
Māori	26,226	7.1%
Pacific	9432	2.6%
Asian	24,636	6.7%
Middle Eastern	1489	0.4%
African	1289	0.4%
Other	5355	1.5%
Not Stated	2496	0.7%
(blank)	50	0.0%
Grand Total	367,058	

Population by Ethnicity – September Quarter 2013*
(Pegasus Health enrolled patients: wider Christchurch area). (Source: Pegasus Health)

Approximately 25,000 people have accessed free counselling offered through the Quake Support and Counselling Services. However, earthquake-related mental health consultation data for Pegasus Health (which manages 98 of the 105 practices in Christchurch) shows a marked lack of uptake from Pacific, refugee and migrant groups in comparison to the rest of the population. For example, Pegasus Health enrolled patient data for Quarter 3, 2013

(pictured below) shows the Asian population as comprising 6.6 per cent or 24,359 of the total population of Christchurch.

However, over the past year Asian consultations have hovered at around two to three per cent of the total despite making up 6.7 per cent of the population. The rate of uptake is also low for Pacific people who make up 2.6 per cent of enrolled patients, yet comprise 0.3-1.5 per cent of the total number of consultations. In both cases, language, cultural understandings of mental health and limited knowledge of health access are major barriers.

Specific earthquake related treatment Initiatives

After the September 2010 earthquake, planning began on the development and delivery of psychological treatment resources to deal with people presenting with earthquake related distress/symptoms. This process was accelerated after the February 2011 earthquake.

The Specialist Mental Health Service currently has two specific assessment and treatment services for people experiencing earthquake related psychological and behavioural difficulties. One team focuses on providing treatment for adults (18-65 years) and the other on children and adolescents up to the age of 18 years.

The CDHB Psychiatric Service for the Elderly has also set up a specific treatment service for the older adult population (over the age of 65). A number of CDHB psychology staff have played a central role in developing the treatment protocols for these services and are also involved in delivery of these treatments.

Democratic rights

The right to participation

At a community-wide level, two events in 2012 had a significant effect on Canterbury residents' sense of participation and inclusion in the democratic process. In September, the Government announced a proposal to close

Case Study 1: Addressing otherwise unmet mental health needs

The Canterbury Charity Hospital was set up in 2007 at the initiative of a small number of senior medical practitioners, with support from other health professionals, business, and community leaders, to provide for individuals who were not meeting criteria for treatment in the public sector, who were uninsured, or who were unable to pay for private treatment for a range of debilitating but non-acute medical conditions.

In April 2012, a Special Award for Exceptional Contribution to Psychological Wellbeing from the New Zealand Psychological Society recognised the public service initiative that the Charity Hospital took to establish counselling services in the aftermath of the 22 February 2011 earthquake. Through its immediate and sustained commitment to people whose needs were otherwise unlikely to be met, the Charity Hospital served the public of Canterbury through providing treatment for widespread mental health issues at a time of uncertainty, dislocation and distress for individuals and community.

Prior to the earthquake the Charity Hospital offered no mental health services at all. After 22 February 2011, the management of the hospital recognised that there was a growing, and substantively unmet, need for skilled treatment for individuals suffering from anxiety, distress, sleep disruption and other health problems in the aftermath of the earthquakes. The Charity Hospital moved with speed to recruit volunteers

who could assist with this need, including counsellors and psychologists.

The Charity Hospital intended the service to be temporary, but soon realised that there were ongoing needs that would require continuing service. It permanently added counselling services, adapting space for use by counsellors in the newly acquired building next door. In middle months of 2011 the service carried a client load of approximately 50 counselling sessions per week. As the first year of service drew to a close, the Hospital had 59 volunteer counsellors and had provided 1335 hours of treatment to about 1200 people.

Through to the end of 2012, most of the additional 449 hours provided was for the alleviation of acute stress directly related to earthquake effects. To October 2013, another 316 hours of provision covered more such referrals and individuals and groups of most ages with conditions spanning anxiety and depression, grief, ADHD, family therapy, child behavioural issues and anger management.

To October 2013, 77 per cent of patients were female. Ages range from four to 93 years, with an average of 48. Individual's needs have shifted over the years, but a disadvantaged group remain under-served by other providers. The service is offered four days a week at the Charity Hospital. There is good evidence of the need for an ongoing service, and the Hospital plans to offer this level of service through 2014 and beyond.

or merge 31 schools in the greater Christchurch region, and a decision to extend the term of Temporary Environment Canterbury Commissioners until 2016. Both of these decisions, made as a result of the earthquakes, resulted in public protests by residents who felt that their democratic rights were being eroded – and that they had not been consulted on important decisions that would have immediate and far reaching effects on their lives. These decisions and the importance of the right to participation for a healthy recovery are discussed in the following section.

Participation: International standards

“Inclusion and the right to participate in public life” was the slogan of International Human Rights Day 2012. The Danish Institute for Human Rights describes meaningful participation as much more than the right to vote in democratic elections:

“Real participation must ensure that the equal rights and dignity of fellow human beings are respected, and it therefore provides a mode of governance where those in the minority are considered an equal part of the political community.

It creates a public space and social conditions within which it is possible to engage in free debate and to express agreement or disagreement with decisions made by the state, where conflict can be addressed and compromise or consensus can be pursued, and where decisions, laws and policies of a state and government reflect the views, concerns and opinions of its people.”²⁸⁹

The ability to participate in the political process – including the development of legislation – is fundamental to liberal democracies such as New Zealand. It has long been considered integral to stable and responsive governance.

Political participation is also a central component of international human rights norms.²⁹⁰ Article 25 of the International Covenant on Civil and Political Rights (ICCPR)²⁹¹ states that every citizen shall have the right and the opportunity to take part in the conduct of public affairs without unreasonable restrictions, directly or through chosen representatives.

The right to participate is reinforced in other international human rights treaties applying to specific population groups such as UNDRIP,²⁹² the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW),²⁹³ the Convention on the Elimination of Forms of Racial Discrimination (CERD),²⁹⁴ the Convention on the Rights of People with Disabilities (CRPD)²⁹⁵ and the Convention on the Rights of the Child (UNCROC).²⁹⁶

Extension of term for temporary Environment Canterbury commissioners

Temporary Environment Canterbury (ECan) Commissioners were first appointed in 2010 after a review criticised the Regional Council for its management of the region’s fresh water demands. The justification for the decision in 2012 to extend this term for a further three years until 2016 – in preference to local and democratically elected membership – was that challenges relating to the earthquake recovery and governance continued to exist in Canterbury on a scale that sets it apart from other regions.

In its Regulatory Impact Statement, the Ministry for the Environment supported the reappointment of

the interim Commissioners.²⁹⁷ It acknowledged that there had been “no public consultation on the proposals contained in [the] Regulatory Impact Statement”, and that the short time available for the drafting of the legislation had “not allowed for a comprehensive assessment of risks and alternatives”.²⁹⁸ Despite these limitations the Bill was passed and became law in March 2013.

It is appropriate to recognise and acknowledge that ECan is engaged in a number of collaborative initiatives. These include:

- The development of the Tuia relationship agreement between ECan and ngā Papatipu Rūnanga, which sets expectations for how operational engagement will occur in relation to integrated environmental management. The agreement is based on mutual respect, good faith and confidence that working jointly will have the greatest benefit for current and future relationships.²⁹⁹
- Leading a significant piece of work in participatory governance in the Canterbury Water Management Strategy, in collaboration with Ngāi Tahu, other territorial authorities, landholders, industry groups, statutory bodies, NGOs and other agencies.³⁰⁰
- Chairing the recently established Canterbury Regional Strategy and Policy Forum, to strengthen collaboration between territorial authorities.

Canterbury school relocations, mergers and closures

Articles 28 and 29 of UNCROC establish the rights of the child to education. It is important to recognise that schools can be essential to children and young people retaining and re-establishing a “sense of place”³⁰¹ following a natural disaster. The International Federation of Red Cross and Red Crescent societies (IFRC) and Save the Children note that:

“the school represents a physical and emotional space which children are familiar with. If school buildings are destroyed or

not accessible, re-establishing teaching activities in another interim setting will carry the same meaning. The structure with meaningful activities eases pain, relieves tension and promotes a sense of place, not only for children but for the entire community. Whereas 'loss of a sense of place' leads to psychosocial distress and confusion, the 'reestablishment of a sense of place' leads to increased psychosocial wellbeing. School-based psychosocial support activities therefore help children re-establish a 'sense of place' and overcome losses following a crisis."³⁰²

This has been found to be the case in Canterbury in the aftermath of the earthquakes. The Education Review Office has observed that: "The school was seen as a vital hub in the local community for not only the families attending the school, but also the wider community."³⁰³ However, many schools and education services faced significant disruptions as a result of the earthquakes, and some continue to be disrupted, more than two years after the February 2011 earthquake.³⁰⁴

The Government's decision to commence an "education renewal programme" was described by the Pro-Vice-Chancellor of Education at University of Canterbury as another aftershock for families already coping with the consequences of the earthquake that would inevitably bring more emotional turmoil for students, staff and parents in the week of the first earthquake's second anniversary.³⁰⁵

The Government's rationale for such large-scale changes was that as well as providing an opportunity to address the changed environment and its effect on schools, the earthquakes had provided an opportunity to "look at what we can do better to make sure every child has access to a great education for years to come". It cited an uneconomic pre-earthquake surplus of around 5000 classroom places, decreased rolls following the earthquake, age and wear and tear of the buildings, weathertightness issues and earthquake damage as a rationale for the changes.³⁰⁶ The Ministry's characterisation of the closures and mergers as "responding positively



Liquefaction.

to the earthquakes"³⁰⁷ jarred with many families for whom schools had provided a safe-haven and much needed oasis of normalcy in the aftermath of the earthquakes.

As a result of the February 2011 earthquake and subsequent aftershocks, nine Canterbury schools relocated, and shared a school site and facilities with host schools. Students were relocated from two primary, one intermediate and six secondary schools. An evaluation undertaken for the Ministry of Education assessed the impacts of this co-location as at August 2011.³⁰⁸ The evaluation report notes that the effects of co-location were often inextricably linked to the effects of the earthquakes in general. They were most frequently raised in shift-sharing schools (where one school operated on the site in the mornings and the other in the afternoons). The report states that:

"Changed commuting patterns and commuting longer distances, along with

children's security while at home alone or travelling to/from school in the dark, have been of concern for families in both host/morning and guest/afternoon shift-sharing schools. . . . Students at guest/afternoon schools were much more likely to report negative effects (loss of part time jobs, increased transport costs etc.) on their personal finances than students at host/morning schools." ³⁰⁹

The report recommends further research into Canterbury schools' experience of co-location including:

- a comparative analysis of the 2011 NCEA results for the co-located schools
- an ethnographic study of the sites where co-location is known to be continuing into a second year or more, which would help determine the limits of viability of school co-location as a sustainable disaster response.



United voices protest march, August 2012.

- study of re-location, and the issues faced by guest schools returning to their home sites and host schools trying to return to their "old normal".

Parents at co-located schools were also worried about the potential impacts of co-location on children's NCEA results. Education related data published as part of the *Canterbury Wellbeing Index* is not disaggregated to the level where comparisons can be made between co-located and other schools, or to identify the impacts on children of subsequent school mergers and closures.³¹⁰

Many of the issues raised in the co-location study have been reiterated in subsequent community concerns received by the Human Rights Commission about school mergers and closures, discussed subsequently. Additional issues raised have been:

- the impact on children of leaving their community of origin to attend a school in a new, unfamiliar area;
- bullying and violence towards new students;
- a decreased sense of community ownership towards former school buildings, with residents concerned that closed schools will be vandalised or destroyed; and
- no common meeting space in a community where a school has been closed.

Universal Periodic Review submission

Every four-and-a-half years, through the Universal Periodic Review process, New Zealand's human rights performance is reviewed by the United Nations Human Rights Council in Geneva. Any group or individual can make a submission to inform this process. The outcome is a series of recommendations to which the Government must respond. When the Government accepts a recommendation, it commits to implementing this over the next review period.

A joint stakeholder submission prepared by the University of Canterbury: *The Human Rights Impacts of the Canterbury Earthquakes*³¹¹ emphasised the deep community concerns about the Ministry of Education's *Directions for Education Renewal in*

Greater Christchurch.³¹² The submission noted that this is because of strong reservations that “first and fundamentally, the ‘best interests of the child’ does not appear to be a guiding principle or goal in the ‘education renewal’ programme”.³¹³ The submission further notes that changes in a child’s environment can be particularly disruptive for disabled students and that the need for Alternative Education placements in greater Christchurch has increased since the earthquakes.

The submission critiques the timing of these changes, given communities were already coping with the aftermath of the earthquakes with schools providing a much-needed community focal point. It notes that, in an open letter to the Government, the Christchurch City Council described the schools’ shake-up as a “social disaster.”³¹⁴ The submission concluded that “the upheaval of school closures and mergers is likely to further jeopardise children’s wellbeing”.³¹⁵

Despite these strong concerns, it is important to recognise that there have been many instances of good practice within the education sector following the earthquakes that have prioritised children’s best interests. Some of these are highlighted by the Education Review Office in the recent publication *Stories of Resilience and Innovation in Schools and Early Childhood Services ñ Canterbury Earthquakes 2010-2012*.³¹⁶ Some good practices highlighted around managing on-going anxiety are:

“Many students remained anxious for the rest of the year. Some had to sit by the door, while others needed to have a cell phone on their desk. A counsellor was employed for three hours a week throughout 2011.”
(Large city intermediate school)³¹⁷

“Affected students in need have been offered free one-on-one therapy with the arts therapist, and respite trips.”
(Primary school in port town)³¹⁸

“The trauma team specialists talked to teacher and parent groups. The presentation included information about the ways people respond to trauma, how to acknowledge it, methods of coping and how to process what happened so that adults’ fear and

anxieties are not passed on to the children. The trauma team pointed out the range of normal reactions, such as sadness, fatigue, sleeplessness, headaches, social withdrawal and a sense of powerlessness. Children’s issues might include nightmares, bedwetting, clinging, immature behaviour and reduced concentration.”³¹⁹

“The owners have increased the staffing ratios, and provided professional development and team building to get staff from the two centres working more collaboratively and cohesively to support children emotionally. As part of the healing the staff and children have laid a time capsule in the car park.

– City education and care service”³²⁰

Ensuring that positive and innovative practices continue to be shared between schools and early childhood services is essential to the continued building of resilience and support for children and young people in the earthquake recovery.

Meaningful participation: why it matters

“The right to participate in decisions which affect one’s life is both an element of human dignity and the key to empowerment – the basis on which change can be achieved. As such, it is both a means to the enjoyment of human rights, and a human rights goal in itself.”³²¹

While the intention behind both the school closures and the reinstatement of the ECan Commissioners has been to enable a coordinated approach and promote community interests, the process adopted has undermined the ability for meaningful participation by Canterbury residents.

Transparency and empowerment are essential to genuine participation. In order for participation to be meaningful, there must be an opportunity for citizens to be able to influence decisions, particularly those that are likely to have an impact on their lives. This ability to be heard is a significant way of combating the notion that decisions are predetermined.

The enactment of legislation without the opportunity for public participation compromises the democratic process. In 2009 the United Nations issued a *Guidance Note on Democracy* which observed that the way in which a government operates and provides for people to have a say in the policy process has a direct impact on how its citizens perceive the degree of legitimacy of their country's democratic system.³²²

The fact that many people in Canterbury consider they have not been adequately informed of, or able to contribute to, decisions about the future of Canterbury has fuelled resentment against public authorities – something that is recognised within government. For example, following its financial review of CERA and EQC earlier this year, the Finance and Expenditure Select Committee commented that it would like to see them keep the public “better informed about the about the processes they are involved in by providing consistently accurate information, to minimise the inevitable uncertainty and distress for the people of Canterbury”.³²³

Both the extension of the ECan Commissioners and the school closures appear to have exacerbated the resentment that has arisen in Canterbury as result of a style of decision-making that leads to feelings of exclusion.³²⁴

The Prime Minister's Chief Science Advisor, Sir Peter Gluckman, has emphasised that Canterbury residents need to be involved in – not excluded from – decision-making in order to mitigate the sense of powerlessness that follows a natural disaster and mitigate psychosocial harm.³²⁵ He recommends that steps should be taken to diminish the sense of powerlessness that follows a natural disaster:

“...it is fair to state that the potential exists for the emotional effects of disaster to cause as great a degree of suffering as do the physical effects such as injury, destruction of infrastructure and loss of income.

“In fact, they are often interrelated. Indeed, it is clear that recovery is primarily judged in terms of people feeling that they are coping with their lives and livelihood, not just in physical terms.

“A feeling of self-efficacy and community efficacy assists the population in reactivating their coping mechanisms. Local governance, empowerment and ownership have been shown to facilitate recovery.

“The inevitable tensions and conflicts in achieving this are obvious (long-term versus short-term, public versus private, local versus national interests) and cannot be avoided - rather, they have to be openly handled with sensitivity.

“It follows that, from the psychosocial perspective, those involved in directing the recovery should create governance structures that understand and actively include community participation and enhance individual and community resilience. Such approaches will be most likely to be effective in re-establishing coping and functioning communities.”³²⁶

In noting the emotional reactions of parents to the news of school closures one parent explained:

“When viewed objectively from outside the city it is easy to paint this as an over-reaction ... But it's not just the school closures that are contributing to the reactions you see here. It's the living in a broken city for two years, it's the stress of not knowing when your house will be fixed and will it be as good as it was before the quakes? It's the driving past rows and rows of boarded up houses that are covered in graffiti, along roads that are littered with potholes and sudden dips and rises.

“It's the not having the same places you could go to on your time off, the local swimming pool, the central shopping and restaurants. It's having the landmarks you are so familiar with torn down, the bar where you were first introduced to your wife, the movie theatre you always went to as a kid and teenager, the shopping centre that had the giant Santa every Christmas, the cathedral that was an icon of the city. All of these things weigh upon the people of Christchurch, whether they realise it or

not. ...What I'm saying is look at the big picture and not just this one event before judging."³²⁷

A focused, timely and expedited recovery

The importance of community engagement in the Canterbury context is reinforced by the Canterbury Earthquake Recovery Act 2011, which has as one of its purposes: "To enable community participation in the planning of the recovery of affected communities without impeding a focused, timely, and expedited recovery."

Achieving the right balance between a fast recovery and a healthy, or sustainable recovery, is recognised as important by everyone who is affected by the earthquakes and involved in the recovery. An acknowledgment of this is evident in the Government's decision not to rush into choosing a site or concept for the Earthquake Memorial. The decision to allow time to consult widely as part of the memorial's development is recognition of the need "to ensure that the voices and ideas of the affected families and the community are captured in the design process".³²⁸

There is a risk in national disaster recovery contexts that efforts to consult and seek participation are limited to softer, more symbolic aspects of the recovery, and that affected people are less likely to be included in the design, implementation or evaluation aspects of recovery.

Striking a balance between an expedient and sustainable recovery is complex, but some guidance can be found in the analyses of previous disaster responses. For example, drawing on the construction industry's strategy for "getting things right in complex situations", writer and surgeon Atul Gawande, describes in his book *The Checklist Manifesto*, the strategy for achieving this balance as being straightforward in principle:

"The philosophy is that you push the power of decision-making out to the periphery and away from the centre. You give people the room to adapt, based on their experience and expertise. All you ask is that they talk to one another and take responsibility. That is what works."³²⁹

Using this guide to assess the disastrous emergency response to Hurricane Katrina, in New Orleans, Gawande has described the real lesson of New Orleans:

"Under conditions of true complexity – where the knowledge required exceeds that of any individual and unpredictability reigns – efforts to dictate every step from the centre will fail. People need room to act and adapt. Yet they cannot succeed as isolated individuals either – that is anarchy. Instead they require a seemingly contradictory mix of freedom and expectation – expectation to coordinate, for example, and also to measure progress toward common goals... This routine requires balancing of a number of virtues: freedom and discipline, craft and protocol, specialised ability and group collaboration."³³⁰

The need to "move power to the periphery" is particularly important in order to prioritise the participation of those who are most vulnerable in recovery efforts. As a principle it is inherent in a human rights approach, which requires a prioritisation of the most vulnerable and the balancing of rights so that everyone's rights are respected.

It is an approach that is also evident in the CDHB *Vision 2020* strategy to create an integrated Canterbury health system that keeps people healthy and well in their own homes. At an operational level, the strategy is characterised by an encouragement of experimentation and a tolerance for risk-taking. Senior managers working in the system noted that if employees are penalised when they try new things then it would perpetuate a risk-averse culture and reduce innovation capability.³³¹ "They argued that staff should understand what they are trying to achieve, know that their backs are covered, and if they fail it should be quick and early and used as a learning experience. The CEO referred to this as tolerating 'sensible risk'."³³²

Bringing a participatory approach to vulnerability assessment

“...Developing the resilience of a community depends on understanding the community through two-way contact and engagement, allowing the community to be involved in the planning and decisions that affect it, and assuring the community their initiatives and involvement will be supported by the authorities.”

– John Hamilton, Director Civil Defence Emergency Management

Genuine consultation

Genuine consultation starts from an ethical position that all people are of equal worth and dignity. Genuine consultation requires a calculated risk. At the front end, meaningful consultation is resource intensive. It requires more time and greater sensitivity and can create high expectations that problems will be resolved. In addition, consulting with community and non-government groups does not provide the type of data that is available from national information sources, such as the Ministry of Business, Innovation and the Environment (MBIE) and Statistics New Zealand. In general, community consultation and participatory processes are too complicated to yield a ready baseline from which to assess recovery progress.

The advantage of a people-centric or rights-based approach is its “value added” quality that sets it apart from other approaches based on economic recovery goals.³³³ It provides a basis for deeper and more detailed analyses, revealing for example, the interrelated nature of people’s concerns such as powerlessness, exclusion and isolation, as these relate to issues such as housing, health and democratic rights. It provides qualitative data that offers a more reliable understanding of individual and group vulnerabilities and capabilities. It also creates a sound basis for developing sustainable programmes with local communities.

The challenge of achieving a participatory community approach has been acknowledged by the CERA Community Resilience Team, which

noted that ‘community engagement’ has not necessarily been a strength of some of the central government agencies involved in the recovery effort – and even less commonly has been undertaken between joint central government agencies on an on-going basis.³³⁴ CERA has addressed this need by establishing practical tools to assist programme managers and staff in planning and engagement activities.³³⁵

Consultation and decision making

A decision by the Christchurch City Council to install low-pressure wastewater systems to replace the gravity systems previously used in parts of the city illustrates the benefits and vital importance of involving those affected by decisions.

The September 2010 and February 2011 earthquakes caused severe damage to infrastructure. As part of the repair programme the Christchurch City Council decided to install low-pressure wastewater systems to replace the gravity systems previously used in parts of the city including Parklands, Aranui, Shirley, Woolston, Hoon Hay, Halswell, Southshore and Richmond.

Some residents were unhappy at having the tanks on their land, worried that they could hurt property values, emit odours and be costly to operate. A resident applied to the High Court for a judicial review of the council’s decision to implement the new system in that area. The High Court ruled that the council’s decision not to consult property owners in that area before it made its decision was flawed.

Justice Whata in an addendum to his judgment said:³³⁶

“The present decision should sound a cautionary note to decision makers exercising extensive powers in relation to the rebuild... As this case demonstrates, there are inherent dangers in making decisions which might derogate from private property rights in a substantial way without first considering the views of those affected. In this regard, while I have not found that there was a duty to consult (being a matter



185 Empty Chairs is a temporary art installation by Pete Majendie reflecting on the loss of lives, livelihood and living in Christchurch following the earthquake on 22 February 2011.

that must be determined by the Council under s79) obtaining, in a direct way, the views of persons potentially affected by the Council's coercive powers would seem to be a minimum requirement of local democracy and indeed of the rule of law."

Subsequently the Concerned Christchurch Citizens Group filed an application for a judicial review of the council's decision in relation to several other areas of the city.

In October 2013 the council revoked its decisions to install the systems in 10 areas where either no consent had been given or no installation work had started, or where there were a high number of objections. Work on the new system, if started, will be stopped until the council consults residents in those areas where a new decision is to be made.³³⁷

Consultation with Tangata Whenua and other groups

Ngāi Tahu has noted that a large part of the rationale underlying the proposal to develop the Iwi Māori Recovery Programme was to ensure a greater voice for Maata Waka and Taura Here – the wider Māori community. This acknowledged Ngāi Tahu's obligations in providing manaaki for the wider Māori community within its takiwā. It also recognised that the wider Māori community were not currently recognised in the over arching recovery statutory framework.

To date, some Māori, Pacific and culturally and linguistically diverse (CALD) communities, young people and people with disabilities have highlighted to the Commission a lack of consultation and involvement in post-earthquake recovery and rebuild initiatives. These groups have

identified a need for greater participation in the creation and implementation of strategies and policies designed to aid their recovery.

Some have felt that official consultation was a well-intentioned information gathering exercise, for the purposes of informing service delivery approaches or monitoring programmes, rather than as a genuine invitation to collaborate. They have highlighted the high number of well-meaning government and non-government researchers that continue to canvas vulnerable groups for their own data collection purposes. They point out that in the absence of any pre-existing relationship, or of any attempt to build a relationship, such information gathering has been a drain on already stretched community resources. They also noted a general lack of any meaningful input or resource contribution to the “researched” community from the researcher.

In Māori culture, as in other indigenous cultures, what constitutes a resource and what is considered to be of value may differ vastly from western conceptions. The questions that indigenous communities often ask at the beginning of a research process before deciding whether to participate provide a window into the unexamined preconceptions that often shape the design and approach of such ‘official’ research projects. Common questions include: Whose research is it? Who owns it? Whose interests does it serve? Who will benefit from it? Who has designed its questions and framed its scope? Who will carry it out? Who will write it up? How will its results be disseminated?³³⁸

Professor Linda Tuhiwai Smith – who opens her book with the statement: “‘Research’ is probably one of the dirtiest words in the indigenous world’s vocabulary” – makes the following observation:

“...While there are many researchers who can handle such questions with integrity there are many more who cannot, or who approach these questions with some cynicism, as if they were a test merely of political correctness. What may surprise people is that what may appear as the ‘right’, most desirable answer can still be judged incorrect. These questions are simply part of

a larger set of judgements on criteria that a researcher cannot prepare for, such as: Is her spirit clear? Does he have a good heart? What other baggage are they carrying? Are they useful to us? Can they fix up our generator? Can they actually do anything?”³³⁹

Māori, Pacific, CALD communities, young people and people with disabilities have demonstrated both motivation and leadership in the recovery effort. Genuine public and official engagement that accepts these groups as partners with a vested interest in the outcome of the research data is needed so that they can participate meaningfully in the ongoing design, implementation and development of the recovery effort.³⁴⁰

The health and wellbeing of children and young people in the recovery

Article 24 of UNCROC establishes the right of the child to the enjoyment of the highest attainable standard of health, and to facilities for the treatment of illness and health rehabilitation. Countries that have signed up to UNCROC are obliged to strive to ensure that no child is deprived of their right to access such health care services. When faced with difficult situations, children and young people are particularly vulnerable. It is well recognised that natural disasters can have a disproportionately negative impact on the health and well-being of children and young people, given their stage of life and particular physical and psychological vulnerability.³⁴¹ The Psychosocial Centre of the IFRC and Save the Children note that:

“How children cope in difficult circumstances and how resilient they are depends on a wide range of factors. These include their family and life circumstances, their sense of belonging and acceptance within a community, as well as their age and gender. Sometimes children who have gone through extremely difficult times need particular care and support to help them cope and recover. Helping children at a certain point in their lives can help them resume everyday activities, and strengthen their ability to cope, which can help prevent negative long-term psychosocial consequences.”³⁴²

Therefore it is crucial that natural disaster recovery interventions and programmes take the special needs and particular situations of children into account, in order to ensure provision of appropriate responses and services, both in the immediate aftermath of a natural disaster, and in the years that follow.

Children need to be appropriately supported to make sense of the situation in relation to themselves, their community and their family. This includes the provision of psychosocial support, given the immediate and on-going emotional impact that natural disasters can have on children and young people.³⁴³

Recent research into flood-affected communities in Queensland, Australia, highlight this. Dr Vanessa Cobham, Deputy Chair of the Mater Statewide Child and Youth Recovery and Resilience team for Queensland Health (QH) observes that “Children and adolescents are a particularly vulnerable and overlooked group. Without access to evidence-based professional intervention,

about 10 per cent will experience persistent symptoms of post-traumatic stress and other related problems such as depression.”³⁴⁴

In May 2011, in a briefing paper on the psychosocial consequences of the Canterbury earthquakes, Chief Science Advisor to the Prime Minister’s Science Advisory Committee, Sir Peter Gluckman, also noted that children were a high-risk group.³⁴⁵

“Young children (ages 1-5) may exhibit fear of separation, strangers, “monsters” or animals, withdrawal, or sleep disturbances. Older children (ages 6-11 or so) may engage in repetitious storytelling or play that re-enacts parts of the disaster. Sleep disturbances, fear of the dark, irritability, aggressive behaviour, angry outbursts, separation anxiety, school avoidance, and general changes in behaviour, mood and personality may appear. Children of all ages are strongly affected by the responses of their parents and other caregivers.

“Protecting” children by sending them away



Save our schools protest rally against Canterbury school closures and mergers, September 2012.

from the scene of the disaster, thus separating them from their loved ones for extended periods, can add to the trauma of the disaster. Adolescent behaviour becomes increasingly similar to adult responses and may include greater levels of aggression, defiance, substance abuse and risk-taking behaviours. Support from teachers and peers and exposure to positive news stories are protective. Adolescents are particularly unlikely to seek out counselling.”³⁴⁶

In terms of anxiety, research by the Mental Health and Nutrition Group,³⁴⁷ University of Canterbury, highlights the persisting impact of this on children and young people two years after the earthquakes:

“The issue for a number of children experiencing anxiety is that the range of symptoms of anxiety can widely interfere with their development. This includes affecting friendships, school performance and a child’s happiness. [...] Many anxious children will have difficulties sleeping. Combining this with worries and the other difficulties anxiety can have a large strain on the family, sometimes negatively affecting family life ... Certainly Christchurch children have had to cope with much more than a lot of children do, so we would expect that some of these children will struggle.”³⁴⁸

The study is continuing, to investigate whether dietary interventions can help Canterbury children aged between 8-11 years who are struggling with anxiety, and to provide more evidence to assist with clinical decisions.³⁴⁹

However, more information is needed to gain a better picture of the health and wellbeing situation of children and young people following the Canterbury earthquakes. Currently, an important piece of work is being undertaken to gain a better picture of the status of child and youth wellbeing in Canterbury, following the earthquakes.

Between 23 September and the end of November 2013, CERA conducted a *What’s Up Youth Wellbeing Survey*, for young people aged between 12 and 24.³⁵⁰ The survey asked questions about where youth go for help, the positive and negative impacts they have experienced due to the earthquakes,



Maddison at Save our Schools protest rally against Canterbury school closures and mergers, September 2012.

and broader wellbeing based questions. It also asked about future plans and what youth think is important in the recovery. Results of the survey will provide a key source of information about the recovery needs of this group of children and young people, and inform recovery-related decisions.

Although the eventual findings of the survey will provide a fuller picture of the health and wellbeing status of Canterbury children and youth post-earthquake, some other evidence already exists which points to a highly concerning situation emerging in this area.

One evidence base that highlights this is youth admissions to specialist mental health services. Since the earthquakes there has been a significant increase in mental health issues amongst Canterbury’s child and youth population, including anxiety and depression. CDHB has noted a spike in numbers of youth seeking access to youth mental health services. Referrals to the CDHB Child,

Adolescent and Mental Health Service rose 27.7 per cent after the 2010 and 2011 earthquakes and have risen sharply in the last year. There were 62 acute admissions to its specialist in-patient services from January to April 2013, representing nearly 70 per cent of the admissions for the whole of 2012. Child and Family services are reporting higher levels of stress with the young people coming to inpatient services than pre-quake.³⁵¹

Reports from services across the mental health system identify secondary stressors of EQC, insurance, financial pressures, school closures and community dislocation as the main areas of distress for the people using Child and Family services and for its workforce.³⁵²

Further evidence can be drawn from the post-earthquakes usage of the *0800 What's Up* free, nationwide, telephone counselling service for children and young people aged between five and 18 years. The service is provided by Barnados and available from 1pm to 11pm, every day of the year. In 2011, there were 9912 landline calls made to *0800 What's Up* from the Canterbury region. This rose by 34 per cent in 2012, with 13,271 landline calls from this area. Given that 85.2 per cent of calls in 2011 (and 82 per cent in 2012) were made from mobile phones, Barnados estimates that there were over 67,000 calls from the Canterbury Region in 2011 and over 74,000 in 2012. This is a significant increase in the proportion of all calls originating from this region.³⁵³

Following the September 2010 earthquake, *0800 What's Up* added a new category to code calls from children and young people about the earthquake. From September to the end of December 2010, 40 per cent of such calls concerned severe anxiety or stress about the future. Directly after the February 2011 earthquake 8.4 per cent of all calls related to the Canterbury earthquakes. Subsequently, issues stemming from the earthquakes (such as family breakdowns, grief, or problems in a new school) have been typically coded under the specific issue raised rather than as related to the earthquakes.³⁵⁴

Anecdotal evidence provided from *What's Up* confirms that young people whose families moved

away from Christchurch after the earthquakes continue to be affected by their experiences. These on-going issues include depression and anxiety, sadness, psychological pain and fatigue, and a reluctance to "bother" parents with their concerns.

It is generally accepted that children are "more vulnerable to abuses of power than adults, due to their age, size, lack of maturity, lack of experience, limited knowledge and dependency". When a natural disaster occurs, "children are at an increased risk of being subjected to violence from family and community members, as well as from outsiders. It is important to understand that these special risks can compromise children's psychosocial wellbeing."³⁵⁶

After the February 2011 earthquake, Child Youth and Family (CYF) observed higher levels of stress and frustration among some families, including those who lost employment as a result of the earthquakes, parents whose existing mental health conditions deteriorated, due to stress or to increased alcohol and substance abuse. However, it is difficult at this stage to measure the impact of these pressures on children. Due to the low numbers of substantiated findings of child abuse and neglect in the region, the Canterbury Wellbeing Index says any trends in Canterbury should be interpreted with caution.³⁵⁷

Community responses – Participation

Case study 1: Mere's story

"It's not right when someone tells you can't have what belongs to you."

Kia ora my name is Mere* and 'no Rāpaki ahau [I am from Rāpaki], and my hapū [subtribe] is Ngāti Wheke. I have lived at Rāpaki for most of my life and only moved away when being a student and for work. When we had the first earthquake in September it was a real shock and we looked after lots of the whānau [family/families] who live at Rapaki. But February's big shake was really scary, terrifying. Many of the houses round here had boulders crash into them, and you can still see to this day the marks they left as they came down.

Getting home was hard, trying to get through traffic to get over the hill. Some of our whānau walked over which we thought afterwards was crazy but they must have had someone looking down on them.

We looked after about 100 people a night at the marae, our old whare stood up to the shakes quite well. Many people came, lots of Pākehā and our whānauka [family/relatives] too, whose houses had been smashed by boulders. Our whānau really came together; we got food ready, blankets and mattresses, and gas for cooking, and a generator. We all know each other here, we are all whānau, and people help each other when the need arises.

Manaakitanga [care/hospitality] is important you know, not just for us but because Pākehā people could see how we look after the whole community. Our moko [grandchildren] running around on the marae, helping and playing with other children. Other things that have happened in Whakaraupō (Lyttelton) was the rāhui [prohibition/temporary ban] which was for three months. As Kaitiaki [stewards/guardians] we have to look after the wairua [spiritual essence/spirituality] and hauora [wellbeing] of our people and all the people in Lyttelton. If people want to follow the rāhui that's good, but each to their own.

We put the rāhui on the harbour because we are

worried about the effects of pollution. No one wants to eat kaimoana [seafood] or swim or go for a walk with paruparu [pollution] and tūtae [faeces] in the water. We also have hot springs in Rāpaki, and after February they started to smell like sulphur, which also wasn't good for our people. And the springs in Cass Bay as well.

I think the hardest thing is that because we are small and a Māori community we feel as if we are forgotten. This has changed because now we're a civil defence post for the whole community. We have our new whare [house] and equipment in case of another emergency. What we did brought us closer to the people of the other bays.

Actually the hardest thing has been working with the insurance company to get our own whare fixed.

When we had our whare assessed, which we think took too long to do, we wanted to know how much it was going to cost to fix. We didn't know if we wanted it fixed by Fletchers or if we should opt out. We still wanted to know the cost and no one would tell us. We had a family korero [discussion] and decided in the end to go with what CERA was doing even though we didn't have all the numbers. We were told that some decisions were commercially sensitive. But really what that's done is given us less options about how we can fix things ourselves or even save money. It's not right when someone tells you can't have what belongs to you.

My daughter said we should see a lawyer, and then she read somewhere about other people who can help and other groups like CanCERN. In the end like I said we just decided to go with the CERA option and will wait for our whare to be fixed.

We're not in as bad a way as some of the whānau who had boulders go through their homes.

Case study 2: Benazir's story

My name is Benazir. I am 17 years old and I live in Christchurch. My school is Van Asch Deaf Education Centre and I am based at the Hagley Community College satellite class. I am profoundly deaf and I use New Zealand Sign Language (NZSL) to communicate.

In September, we were all given a huge shake up – literally. It was early in the morning, we were sleeping and an earthquake was very unexpected. For Deaf people it was very frightening because it was dark – there was no power so we could not see to communicate. Hearing aids and cochlear processors are taken off at night, and during the quake these were thrown from their usual places. Many Christchurch people were not prepared with torches, survival kits and water. Most people had not even considered that an earthquake would happen.

Deaf people use text messaging and other electronic equipment to communicate - without this it was very isolating. A lot of people did not know what to do or where to go for help. Christchurch was not very well educated. There are approximately 500 deaf and hearing-impaired people in Christchurch. It was really a difficult time for deaf people because there were no interpreters on TV, there was a lot of information on the radio which was useless to us. We relied on hearing friends to tell us things that we had missed out on. Subtitles were sometimes on TV but not often, especially when broadcasts were live. We felt like we were missing out and didn't have the full information, it was very frustrating. For our safety, it was very important that we had full access to information.*

It is great now, as a civil defence DVD, in NZSL, has been put out. Deaf people feel better prepared. We also have registered phones for the 111 emergency systems. Unfortunately, in a large disaster, like the Christchurch earthquakes, the phone networks go down, even some of the emergency systems. Deaf people need to know



Benazir.

about disasters like earthquakes and be prepared. They need to be prepared before it happens. We would really like to see an urgent text system or interpreters immediately on the news to give us a warning if possible or important key information. There were a lot of people mourning for those that had died, the houses they had lost and the businesses they could no longer run. We had no power or water at my place for two weeks, but that was better than some people who lost power, water and sewerage for many months. There were a lot of portaloos and chemical toilets. We went to my Grandma's place because she had power and water. Grandma was very lucky. The water is now back but has chemicals in it, it was not clear and fresh like before.

* Note: Following the Canterbury earthquakes the Ministry of Civil Defence & Emergency Management (MCDEM) has produced a guidance document on "Including people with disabilities: Information for the Civil Defence Emergency Management sector." It has also produced a similar guide about working with culturally and linguistically diverse (CALD) communities.

In a further recent relevant development, a Video Remote Interpreting (VRI) service is now being progressively rolled out around the country in key government services. Video Remote Interpreting (VRI) allows an off-site interpreter to interpret a face-to-face conversation between a Deaf and hearing person. The technology enables the interpreter to be "virtually" present in the room, so they can see the Deaf person signing and hear the hearing person. The introduction of VRI aims to increase Deaf access to a range of services, eventually catering to "walk in" situations at locations including medical practices, emergency services, government agencies and police.

I felt like we had lost Christchurch, like it was not my home anymore. When I visited town, it felt and looked awful. It was hard to think that so many people had died there. A state of national emergency was declared and stayed in place for several months. This has only happened once before. Public notices were going out to the people of Christchurch. A lot of deaf people were relying on hearing people for information.

I started to worry about how I would get all of the information that I needed. At times I felt lost and clueless. A few days later, I was surprised that there were two NZSL interpreters on the TV news! I was really happy about that! All the deaf people in Christchurch, around New Zealand and the world were glad to see them. We felt we had equal access to the information at last. It helped us a lot. We now knew what to do, where to go for help and had constant updates about what was happening.

There was so much new information that everyone needed to learn. It was fantastic to be able to understand the information fully. Hearing people started to become really interested in New Zealand Sign Language,

many people in New Zealand did not realise that it is an official language of our country and is unique to New Zealand. Jeremy Borland and Evelyn Pateman were amazing on TV; they are very professional interpreters for deaf people. Jeremy was labelled 'hot Jeremy' and 'Jeremy the sign language guy'. He even got his own fan page on Facebook. He is now one of the most popular New Zealanders with a Facebook page too.

Once the communication was clear, deaf people felt a lot more settled. Our next challenge was to understand which systems were in place to help us and how to work with EQC. Any system that is set up must recognise that we are deaf, we cannot hear anything and we need access to information through our own language. English is difficult for many deaf people to understand. We are always fighting to have access to NZSL interpreters so that we have equal access to information. Every day, but especially in emergencies, there is a need for authorities to be aware of deaf and hearing-impaired people. I know everything in life is not fair but access to important information is vital for all people, including deaf people.³⁵⁸

Case study 3: Help is available for those who need it

Liai and Vevesi of Bromley feared they might have been forgotten as they waited for emergency repairs to their home after the February earthquake. Now they've got nothing but praise for the Earthquake Support Coordinator who stepped in to help out.

Liai and Vevesi live with two of their five adult children. After coming into contact with Pacific Trust Canterbury through an outreach programme in September 2011, they accepted Fionna Chapman as their Earthquake Support Coordinator.

She has since made more than a dozen visits to their home to help resolve earthquake issues.



Vevesi (left) and Fionna. Photo: CERA.

Vevesi says she was worried about a leaking tile roof and a damaged back door with a broken glass panel. She says the family had been trying to deal with their claim themselves without a lot of success.

“Fionna arranged for the roof to be fixed and the back door. Then she got the whole house insulated for us and a new heat pump because of our health issues. We are so grateful to her for everything she’s done for us – if she hadn’t

come, I don’t think we would ever have all these things fixed,” says Mrs Togiasso.

Fionna says she was able to source grants from WINZ, Community Energy Action and charitable trust He Oranga Pounamu for the heatpump and insulation. “Red Cross grants help out with some of the other expenses. It is just really about knowing where to go and what is available for people,” says Fionna.

Health and social connectedness

Cultural rights are human rights

“...Cultural heritage is our memory. As such, it is irreplaceable, shaping our lives as it does through the landscapes, history and legends with which it is associated. As a message, a sign and a symbol, it is our soul.”

– Fredrico Mayor, the Director General of UNESCO
1987–1999

In recent years there has been a growing interest in the cultural dimension of human rights. Both the ICESCR and the UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage recognise the importance of heritage to the cultural identity of communities, groups and individuals and to social cohesion.³⁵⁹ While the focus on culture as a human right has largely been concerned with the loss of heritage as a result of war, the recognition of culture as a significant aspect of identity – one which is located not only in place, but also increasingly in people – is equally relevant to natural disaster contexts.

This acknowledgement is reflected in the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, which refers to the need to safeguard cultural property as “the common heritage of mankind.”³⁶⁰ It is also visible in the Universal Declaration of Human Rights (UDHR) in Articles 22 and 27, which affirm cultural heritage matters as human rights. Article 27 of the UDHR states: “Everyone has the right freely to participate in the cultural life of the

community, to enjoy the arts and to share in scientific advancement and its benefits”.

Speaking in the context of war, Fredrico Mayor, Director-General of UNESCO (1987-1999) could have been talking about the effects of natural disasters when he spoke of the “much greater difficulty of people’s rehabilitation when everything dear and known to them has been swept away. It is far, far harder to rebuild lives when people no longer recognise the community in which they live.”³⁶¹

The loss of heritage, of familiar icons, of a sense of place and community, is an inescapable consequence of the earthquakes. This loss is acknowledged in CERA’s *Draft Psychosocial Recovery Strategy for Greater Christchurch*, which recognises the way in which recovery is shaped by social ties and community connectedness.³⁶²

Tūrangawaewae: a sense of place

The Treaty of Waitangi affirmed the tūrangawaewae status Tangata Whenua had prior to 1840. The Treaty also facilitated and enabled all residents and citizens to make their home here. Literally, tūrangawaewae means “a place to stand” and indicates the rights and obligations associated with that place.³⁶³ There are different interpretations of the meaning of tūrangawaewae. Some are broader than others. For a Ngāi Tahu member tūrangawaewae is a term that is clearly associated with Mana Whenua, and connotes their inherent ancestral rights within their



Rapanui (shag rock) before and after the February earthquake.

respective rohe. Transcribing the term to embrace the connections of the wider community may not necessarily align with a Ngāi Tahu worldview or understanding of the term given its integral link to whakapapa to the land.

Hiwi and Pat Tauroa describe tūrangawaewae as “a situational identity that gives a person, through genealogy or association, the right to say humbly “I am monarch of all I survey” ... Tūrangawaewae enables a person to say with confidence, ‘I belong’”.³⁶⁴ This aligns with a broader human rights interpretation of tūrangawaewae which is that individuals and whānau, both Tangata Whenua and tauiwi,* select the place where they feel they belong.

“In remaining in Canterbury, the citizens are making clear statements that they belong, that they have a tūrangawaewae there. They are showing the courage of their ancestors who made a decision to leave their original places, aboard waka, boats and planes to be here; to establish their tūrangawaewae. Despite all the adversity, ‘we want to belong and we continue to belong,’ is their mantra.”

– Te Huia Bill Hamilton, Kaiwhakarite, NZ Human Rights Commission

As a result of the earthquakes many Canterbury residents feel as if they have lost their tūrangawaewae. Many groups and individuals in Canterbury identify the Cathedral as an important icon. This includes individuals who have never been inside the Cathedral. For some, the Anglican Christchurch Cathedral in the square is one of the icons that says to them, “I belong”. In addition to the Cathedral, the Arts Centre, the Port Hills, the Southern Alps landscape, the rivers, the Brighton Pier, Lyttelton harbour, various marae and parks are also identified as being of special significance. When icons are lost, a sense of identity and belonging and community connectedness is weakened.

Familiar historic landscapes have been dramatically transformed as a result of the earthquake, with Ti Tihi o Kahukura (Castle Rock) on the Port Hills losing the east side of its buttress and Rapanui (Shag Rock) in Sumner beach collapsing to less than a third of its former height. Seaside cliff faces

in the suburb of Sumner gave way above Peacocks Gallop, folding fences, barbecues, and landscaped gardens into thousands of cubic metres of debris below.

Many iconic buildings that remained intact following the September earthquake were damaged by the February earthquake, particularly heritage brick and mortar buildings that brought a historic charm to parts of the city. A number of well-loved Christchurch buildings were damaged, including the Anglican Christchurch Cathedral (to be demolished), the Catholic Cathedral of the Blessed Sacrament (future to be decided), Cramner Courts (which has been demolished), the Provincial Council Chambers (to be decided), and Lyttelton’s Timeball Station (to be rebuilt).

The New Zealand Historic Places Trust (NZHPT) estimates that as at August 2013, 53 per cent of the city’s listed heritage buildings survive (296 of 334 buildings) and 89 per cent of the listed heritage buildings in Banks Peninsula survive (150 of 158 buildings). A count of lost heritage (buildings, monuments and places of historical significance registered by the NZHPT) in the CBD estimates that around one third (56) have been demolished. Around 67 per cent or 120 buildings, bridges, monuments and places of historical significance remain.

Within the Central Business district (CBD) anchor project areas, there are 31 remaining heritage sites registered with the NZHPT. The Trust’s assessment of the plan is that 20 of these 31 sites will definitely or are likely to remain.³⁶⁵

Repairs and conservation of more than 40 heritage properties remain under discussion and their retention seems likely, the future 80 remains unknown or at risk.³⁶⁶

As at November 2013 the NZHPT has processed more than 1400 emergency authorities to destroy, damage or modify archaeological sites in greater Christchurch.³⁶⁷

* Tauiwi meaning “landed people” or anyone not from your own iwi. Today it is generally used to refer to anyone who is not Tangata Whenua.

Number of registered places demolished/destroyed

(by calendar year, actuals to 2012, estimated from 2013)

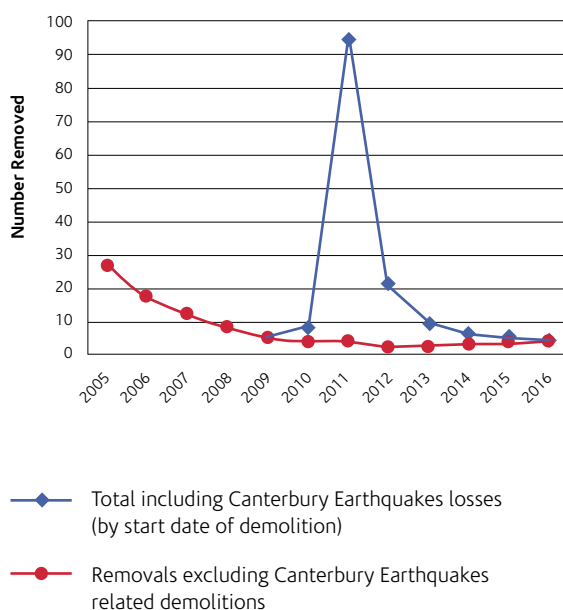


Figure 10: Long-term trend of destruction of registered heritage (as at July 2013 (estimates for 2013-16))

“Great public buildings don’t dwarf people; they enlarge them”³⁶⁸

Architects, engineers, politicians and individuals have raised questions about the haste with which the demolition of some heritage buildings occurred.³⁶⁹ Some architects have suggested that the Government’s response to at-risk historic buildings is skewed towards demolition.³⁷⁰ They contrast the approach in Christchurch with international cities such as San Francisco and L’Aquila where the Government allowed owners considerable time to raise funds for restoration.³⁷¹ In some instances however, it has been owners rather than the Crown that have requested the demolition of heritage buildings because they lack the funds to repair them to the required standard in the building code.

The Christchurch City Council has been and is still actively supporting the retention of heritage buildings through the recovery period. The Heritage Team has provided specialist advice

and support to building owners so that that they are aware of all of their options, particularly with respect to earthquake strengthening and temporary structural support.

The Council views demolition as a last resort and has worked closely, with other agencies to advocate for this approach. The earthquakes have highlighted the importance of a coordinated heritage protection plan being operative immediately following a natural disaster, and need for such a plan to include the Ministry of Civil Defence.

The Council’s long-standing Heritage Incentive Grants scheme has helped many owners of listed buildings with consequential repairs and conservation works. In addition, a new fund has been established to save “landmark” heritage buildings in the hard hit city centre that would otherwise be uneconomic to retain. This fund, totalling \$2.7 million in 2012/13, was awarded to two buildings – the Mountford wings of the Christchurch Club and the former Trinity Congregational Church. A further \$2 million is available in each of the next two years.

Where demolitions have occurred, the Heritage Team has encouraged and carried out the recovery, inventory and storage of building elements and objects on behalf of building owners. Much of this material is available to be incorporated in the rebuild to provide a tangible connection to the past.

The Ministry for Culture and Heritage is coordinating the development of a Heritage Recovery Programme for heritage buildings and cultural heritage places in greater Christchurch.

The NZHPT, CERA, the Central City Development Unit (CCDU) the Christchurch City Council, Waimakariri and Selwyn District Councils have also worked closely with many owners and provided advice in an effort to ensure appropriate decisions are made. Although the loss of 985 historic sites was more than double that anticipated, significant archaeological discoveries have been found beneath buildings that have added to the understanding of New Zealand history.³⁷²



Michael Parekowhai's sculpture *On first looking into Chapman's Homer* 2011. Courtesy of Michael Lett, Auckland (Photography by John Collie, Christchurch Art Gallery 2012)

In February 2013 a Canterbury Cultural Collections Recovery Centre was opened in the Wigram Air Force Museum. The centre will be used for the temporary storage and restoration of heritage and cultural collections affected by the earthquakes.³⁷³ To assist with storing and rehabilitating the collections, the Government contributed \$2 million. This was added to a Christchurch Appeal Trust grant of \$1.5 million from the donations contributed from New Zealand and international donors.³⁷⁴

The Canterbury Earthquake Heritage Buildings Trust was formed in late 2010 to provide financial assistance to owners of qualifying heritage buildings so that those that remain and are feasible to repair, might be saved. The Trust is a collaboration between the Ministry of Culture and Heritage, Christchurch, Selwyn and Waimakariri Councils and the New Zealand Historic Places Trust. The Government has pledged to match

dollar-for-dollar all donations made up to \$10 million. The National Heritage Preservation Incentive Fund administered by the NZHPT also provides financial incentives to encourage the conservation of significant heritage places in private ownership.

The loss of heritage has been noted in other less formal ways. Vibrant street art, imposing installations and murals have appeared in the city and been acknowledged as "informal statements of existence" that show residents have not given up on their city.³⁷⁵

New icons have emerged. The incongruous appearance of Michael Parekowhai's two life-size bulls atop grand pianos in the rubble of a vacant lot on Madras St last year captured people's hearts and imaginations.

The installation titled *On first looking into Chapman's Homer* and which featured in the 2011

Venice Biennale has become for many a symbol of strength and resilience in the post-quake city. A fundraising campaign to keep the bull in Christchurch reached its target of \$200,000 in September 2013.

This amount was matched by the Christchurch Art Gallery Trust and Westpac bank. A young couple who donated \$40,000 to the campaign summed up the sentiments of many when they said: “There’s no going back to how we were, but Chapman’s Homer is an inspiring piece that reflects the city’s resilient nature and fortitude as we look forward ... Christchurch needs small wins. We’re playing a part by contributing to a symbol of the community’s fortitude and to help secure a legacy piece.”³⁷⁶

Another symbolic initiative was the creation of a six-metre high Temple for Christchurch installation, to commemorate the city’s three-year quake anniversary. The temporary (nine-day) structure presented an invitation to people to write their memories of the earthquake “or anything else that they wanted to let go of”. Thousands of people left messages. The structure, made of reclaimed timber, was moved to Motukarara raceway, reassembled and set alight on 22 September 2013 to “release the memories”.³⁷⁷

These cultural expressions of artistic excellence and ceremony are an integral part of the community recovery process.

“Cities enable the collaboration that makes humanity shine most brightly. Because humans learn so much from other humans, we learn more when there are more people around us. Urban density creates a constant flow of new information that comes from observing others’ successes and failures... Cities make it easier to watch and listen and learn. Because the essential characteristic of humanity is our ability to learn from each other, cities make us more human.”³⁷⁸

Young people’s vision for the future

Although many landmarks have disappeared since the earthquakes young people have stated a strong and continued connection to their community. They have identified places of significance for themselves which include the Cathedral, parks, sports grounds, demolished sites, temporary structures and Gap Filler projects.³⁷⁹

Young people have expressed a desire for an active voice in the rebuild, and for spaces and places for young people that recognise their current and future contribution to the city. Teen parents have told the Commission they want to see youth friendly spaces in the rebuilt inner city. Many said the removal (pre-quake) of iconic places such as the hack-circle in Cashel St where young people used to play hacky-sack and the fountain on High St, limited their ability to meet each other at a central city location.

As noted by the Children’s Commissioner in recent submissions on the Christchurch City Three Year Plan and the Draft Land Use Recovery Plan for Greater Christchurch, children identified an issue missed by adult experts.³⁸⁰ This was the importance of having the opportunity to socialise with their friends.

Since the Canterbury earthquakes there have been some notable initiatives that have sought children’s views. For example, the BNZ Amazing Place Christchurch City Schools Project competition gave children the opportunity to contribute their ideas for a new playground in the inner city, and their ideas about what their future city should look and feel like.³⁸¹

The competition was developed by CERA, in conjunction with a range of central and local government authorities.³⁸² It was aimed at engaging a wide range of children and young people of Canterbury in the rebuild, and involved a number of different age groups. For example, the City Playground competition involved approximately 6000 children and young people designing their dream playground.³⁸³ From 300 entries, the winning designs will be the inspiration for the Margaret Mahy Amazing Place, a playground that will be built in the central city.

However, concerns exist about the absence of consultation with children and young people through the earthquake recovery. In September 2012 over 70 youth workers, services and organisations attended an Earthquake Strengthening Youth Sector Hui. The four themes that emerged from these discussions were the need to:

- develop a Youth Charter
- have youth participation and an active youth voice in the Rebuild
- build the capacity of the youth sector and
- increase youth employment.

A year later, on 19 September 2013, a draft Greater Christchurch Youth Charter was presented at a follow-up hui.³⁸⁴ Participants shared a vision of developing a youth-friendly region where young people's rights and responsibilities are reflected in policies, laws, programmes and budgets, enabling timely and flexible responses to emerging youth issues. The Christchurch Youth Council was a key participant in these discussions.

The Youth Charter sets out some principles that are designed to provide a common vision for the region's youth sector, promote collaboration and develop stronger relationships between grassroots groups and government agencies. The aspiration of those who have developed the draft Youth Charter is that it will build collective commitment to and accountability for those principles. A one-page statement from young people, developed through a postcard campaign, is planned to accompany the finalised Greater Christchurch Youth Charter.

Areas where challenges remain

Access to Information

For the right to participate to be meaningful, people must be provided with the information they need, in the form that they need it, (for example New Zealand Sign Language, or other languages) and decision-making processes should be transparent.³⁸⁵

Information also needs to be provided in understandable English. Much of the communication from key agencies involved in the recovery is at an 18-year-old reading level. Many people will not understand dense technical information unless it is written at a 12 year-old level.

Meaningful participation goes beyond engagement. It requires that citizens are empowered to influence decisions, particularly those that have an impact on their lives.³⁸⁶

Positive steps: psychosocial recovery

All Right? campaign

The All Right? campaign is a social marketing campaign designed to help Canterbury residents think about their health and wellbeing. Based on a research project that identified large numbers of the population who are struggling, the light-hearted and sometimes whimsical posters have struck a chord with Christchurch residents as they populate backs of buses, derelict buildings and billboards around the city.



All Right? Campaign – Phase 2

All Right? is a Healthy Christchurch project led by the Mental Health Foundation and the CDHB. The campaign is organised around three phases: “normalising experience” which provides people with reassurance that what they are feeling is normal; “checking in” which encourages people to stop and consider their wellbeing and that of others, and “tool development” which provides opportunities and resources to help people improve their wellbeing.³⁸⁷

The Think Tank: community questions and issues

The Think Tank is an online forum designed to provide residents with clear resident-centric information. Initiated and hosted by community group Canterbury Communities’ Earthquake Recovery Network (CanCERN), the forum provides an opportunity for residents to receive written responses to questions relating to the home repair process. Members include CanCERN members, community workers, Earthquake Support coordinators, community group representatives, Tenants’ Protection, and representatives from CERA, EQC and the Insurance Council New Zealand.

Community actors

Community advocacy groups such as CanCERN, Quake Outcasts, WeCan, Rebuild Canterbury and the Student Volunteer Army have played a vital role in the recovery, providing a coordinated basis for both local and international action. A list of some of the key community actors is included in Appendix 4. Quake Outcasts, WeCan and the University of Canterbury all made submissions related to property rights to the United Nations Human Rights Council as part of its Universal Periodic Review of New Zealand’s human rights performance. Information about the Universal Period Review (UPR) process and links to these submissions, including the Commission’s UPR submission, is included in the *Human Rights Protection Toolbox* of this report.

Share an Idea campaign

In May 2011 Christchurch residents were invited to share their ideas for the redevelopment of the central city. The Christchurch City Council’s Share an Idea initiative consisted of an online platform to post ideas, a Community Expo, workshops and road shows. Over 106,000 ideas were shared and 10,000 people visited the expo. The initiative was recognised by the Netherlands-based Co-creation Association by announcing it as one of four overall winners of its 2011 Awards. The Mayor described the purpose of the campaign as being not only to “collect and process the best ideas from our people” but also “to replace our sense of powerlessness in the face of the earthquakes that shattered our city”.³⁸⁸

Celebrating community resilience

In November 2012 the Ministry of Civil Defence and Emergency Management recognised the important role local-level community-based initiatives played (and continue to play) in the recovery. The publication, *Community Resilience: case studies from the Canterbury earthquakes*, illustrates how communities work in practice and “how those outside a community can easily misinterpret community needs and mechanisms and as a consequence find that their well-intentioned efforts in the response might be met with disdain and distrust”.³⁸⁹ It is a formal acknowledgment of the capacity of community-based organisations to coordinate action and build confidence between the Government and local communities.

Canterbury family violence prevention initiatives

New Zealand is often considered to have among the most progressive legislation addressing family violence, yet continues to have one of the highest levels of family violence among the members of the Organisation for Economic Development and Co-operation (OECD). In 2011, the OECD rated family violence against women in New Zealand as the highest of 14 OECD countries surveyed.³⁹⁰ Although close to 60 per cent of all reported

violence in New Zealand is family related, an estimated 80 per cent of cases go unreported.³⁹¹ According to the Christchurch Police Family Safety Team, “agencies from both government and community social services are acutely aware that the typical pattern, when a community has survived a major disaster is to experience a significant increase in family violence”.³⁹²

It’s not OK Campaign

In 2011, a number of sector agencies developed a collaborative and systemic response in anticipation of an increase in family violence post-earthquakes. The Canterbury Family Violence Strategy involves over 40 agencies from the health, education, social services and national and local government sectors. Supported by the nation-wide It’s not OK campaign, this initiative facilitated a cross-sectoral approach by government and non-government agencies to reduce family violence in post-earthquake Canterbury.³⁹³

Canterbury Can Campaign

In August 2013, as part of the Canterbury Violence Strategy, the Canterbury Family Violence Prevention Collaborative (CFVPC), initiative, launched Canterbury Can – Stand Up Against Family Violence, an awareness-raising campaign involving high profile local champions who promote the message that friends, family and neighbours should never ignore family violence but take action and seek help instead.

Recommendations

Health – Participation

The Commission recommends that:

- 1 the Canterbury Earthquake Recovery Authority, the Christchurch City Council and other central government departments involved in the earthquake recovery embed a human rights approach and recognition of the human rights dimensions of the Treaty of Waitangi in their major initiatives, with support from the Human Rights Commission as appropriate
 - 2 government agencies ensure adequate allocation of funding to respond to on-going mental health issues and psychosocial stressors in the greater Christchurch area, focussing primarily on addressing pre-existing inequities for hard to reach and vulnerable families and whānau
 - 3 the Canterbury Earthquake Recovery Authority develop plans to consult with the public and territorial authorities about the transfer of responsibilities and functions when its statutory functions cease in 2016, and ensures responsibilities to mana whenua are maintained in the transfer
 - 4 that the MSD continues to support the Earthquake Disability Leadership Group to build capacity so that disabled people’s voices are heard in the recovery
 - 5 government agencies provide accurate information about matters related to the earthquake recovery that affect citizens when and as required and in appropriate and accessible formats, including but not limited to community languages, Te Reo Māori and New Zealand Sign Language
 - 6 government agency officials involved in any emergency response are appropriately and adequately pre-prepared and trained to be familiar with a range of ways of communicating with vulnerable communities, including but not limited to Te Reo Māori, New Zealand Sign Language and the Video Relay service and interpreting services for community languages.
- 1 the Canterbury Earthquake Recovery Authority, the Christchurch City Council and other central government departments involved in the earthquake recovery embed a human rights approach and recognition of the human rights



Business and human rights Ngā tika tangata me te pakihi

The relevance of human rights to business

Internationally, there is growing recognition that business, as well as governments and non-governmental actors, have a critical role when it comes to human rights. In fact, respecting and protecting human rights is business-as-usual for businesses that pride themselves on being customer-centric and who are conscious about the context in which they operate.

Respecting and protecting human rights in business is about ensuring a human rights approach and human rights compliance throughout the business chain. In post-disaster contexts, a business's focus from a human rights perspective should therefore be firmly on the customer, and the service the customer receives. Businesses may need to calibrate their usual approach to more appropriately respond to the different needs and drivers which can be triggered by and evolve throughout a disaster recovery process. Additionally, it is crucial to recognise that business has a valuable role to play in building community resilience, promoting human rights and contributing to recovery efforts.

The business case for human rights

Businesses operating without robust and rigorous human rights policies run the triple risk of reputational damage, loss of business, and the creation of operational risk. Implementing a human rights policy and embedding a process of human rights accountability enables businesses to:

- build capacity and relationships in different operating environments
- assist in identifying current and future risk
- nurture innovation and long-term sustainability and profitability and

- open opportunities to make a contribution to the wider community and positive human rights outcomes.

Human rights are essentially good for business, and implementing human rights policies in practice makes good business sense.

Human rights and business framework

Guiding Principles on Business and Human Rights

The Guiding Principles on Business and Human Rights for Implementing the UN "Protect, Respect and Remedy" Framework was endorsed by the UN Human Rights Council on 16 June 2011.³⁹⁵ While not binding law, the Guiding Principles clarify international law obligations, and set a global standard for preventing and addressing negative human rights impacts caused by business. The Guiding Principles enjoy the strong support of many international businesses and civil society organisations.³⁹⁶ As a result, the international community has reached a new level of agreement on normative standards for the human rights conduct of business enterprises, and the focus is increasingly shifting towards implementation.

The core ideas underpinning the Guiding Principles are Protect, Respect and Remedy, and Do No Harm.³⁹⁷ The Guiding Principles do not create legal obligations, but they provide an internationally agreed road map for addressing human rights impacts and aspects of business. The Guiding Principles recognise:

- The existing obligations of States to respect, protect and fulfil human rights and fundamental freedoms.

- The role of business enterprises as specialised organs of society, performing specialised functions, required to comply with all applicable laws, with respect for human rights.
- The need for rights and obligations to be matched to appropriate and effective remedies when breached.³⁹⁸

The Guiding Principles define the responsibilities incumbent on business with regard to human rights. They provide clear guidance on how to uphold and protect human rights in business operations. This involves risk assessment, and the development of appropriate policies and procedures.

The Guiding Principles are divided into three sections (State duty; corporate responsibility; remedies) and are briefly outlined below:

The role of the State – duty to protect

The Guiding Principles make it clear that “States must protect against human rights abuse within their territory and jurisdiction by third parties, including business enterprises, and this includes taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication”.³⁹⁹ Although States are not directly responsible for human rights abuses caused by business, if States do not take appropriate measures to hold business accountable for such abuses, they might breach their international human rights law obligations.

Corporate social responsibility to protect

The key principle here is that “Business enterprises should respect human rights. This means they should avoid infringing on the human rights of others and should address adverse human rights impact with which they are involved.”⁴⁰⁰ Operationally, businesses should have policies and processes in place which support this, such as:

- a policy commitment to respecting human rights; a human rights due diligence process

to identify, prevent, mitigate and account for addressing the business’ impact on human rights and processes enabling the remediation of negative human rights impacts caused or contributed to by the business.⁴⁰¹

Through embedding a process of human rights due diligence, businesses can identify human rights risks on an initial and then ongoing basis, and establish procedures to prevent violations and mitigate negative impacts in instances where violations occur.⁴⁰² With respect to indigenous people, this connects with a central tenant of the United Nations Declaration on the Rights of Indigenous People (Article 19), which sets out a minimum standard process of “free, prior and informed consent” before implementing legislative or administrative measures affecting them.⁴⁰³ The Guiding Principles make clear how businesses can undertake human rights impact assessments, integrate assessment findings into their operations and track effectiveness over time.⁴⁰⁴ The principles emphasise that where human rights violations occur, businesses must undertake appropriate remedial action.⁴⁰⁵

Access to remedies

The Guiding Principles make it clear that in instances of business-related human rights abuse which happen within their territory, States have the primary responsibility to ensure that affected people have access to effective remedies.

Other business and human rights initiatives and standards

The UN Global Compact is a complementary initiative to the Guiding Principles. The Global Compact encourages businesses to commit to aligning their opportunities and strategies with 10 universally accepted principles in the areas of human rights, labour, environment and anti-corruption.⁴⁰⁶

The core provisions of the *Guiding Principles on Human Rights and Business* are now incorporated into a new human rights chapter in the *OECD Guidelines for Multinational Enterprises*



Red-zoned shopping centre.

(2011).⁴⁰⁷ The OECD Guidelines are non-binding recommendations by governments, covering all major areas of business ethics, including corporate steps to obey the law, observe internationally recognised standards and respond to other societal expectations. Following the 2011 update of the OECD Guidelines, the principles and standards they set out are consistent with the Guiding Principles, calling on multinational enterprises to respect human rights in every country in which they operate, right throughout their supply chains, and to take responsibility for human rights abuses.

Governments adhering to the guidelines establish National Contact Points to promote and implement them. New Zealand's National Contact Point is the Ministry of Business, Innovation and Employment (MBIE).⁴⁰⁸ MBIE notes that the guidelines are important because the "business community shares responsibility to restore growth and trust in markets. The guidelines will help the private sector grow its business responsibility by promoting human rights and boosting social development around the world."⁴⁰⁹

It further states that: "Although the guidelines are voluntary, they provide a format to raise issues about a company's activity and behaviour. Issues

can be raised with the national contact point of the country where a problem has occurred, or if none is available, at the country where the multinational is headquartered ... If further action is needed, we will provide resolution assistance, such as mediation. We do not adjudicate or duplicate other tribunals that assess compliance with New Zealand law."⁴¹⁰

The United Nations Environment Programme (UNEP) *Finance Initiative Principles for Responsible Investment*⁴¹¹ (PRI, launched April 2006) and the UNEP *Finance Initiative Principles for Sustainable Insurance*⁴¹² (PSI, adopted June 2012) also provide global standards, including human rights standards, for business. They are voluntary, and described as follows in the PSI:

"The Principles and PRI are global frameworks within the financial sector. They are aligned with and complement the aims of the UN Global Compact Principles, which promote the adoption of sustainable business practices across all industry sectors. The UN Global Compact Principles are derived from universally accepted principles in the areas of human rights, labour, environment and anti-corruption.

There is no obligation for signatories of the Principles to sign the PRI or the UN Global Compact Principles, and vice-versa.”⁴¹³

IAG provides an example of an insurance company which has signed the UN Global Compact and the PSI, and was a founding signatory of the PSI. However, not all insurers operating in New Zealand have signed these documents. Many funds investing in reinsurers of insurers operating in New Zealand have signed the Global Compact, the PRI and the PSI, signalling a preference of investing in companies that have signed up to these standards. Similarly, many reinsurers of insurers operating in New Zealand are signatories to the Global Compact, the PRI and PSI. There is a strong commitment at this high level to these standards, and this may filter down to a greater number of insurance companies and impact on their human rights practice.

Principle One of the PSI states that insurers will embed in their decision-making environmental, social and governance issues relevant to their insurance business including claims management that “respond to clients quickly, fairly, sensitively and transparently at all times and make sure claims processes are clearly explained and understood; and integrate Environmental Social and Governance issues into repairs, replacements and other claims services”.⁴¹⁴

Human rights and business in the Canterbury earthquake recovery context

The Canterbury earthquakes and subsequent ongoing recovery have brought the relationship between business and human rights into sharp relief. The recovery has magnified the potential impact of business on human rights, and highlighted the positive contribution that business can make towards building community resilience and helping people recover from a disaster situation in positive ways.

The high rate of home insurance has had a large impact on the Canterbury earthquake recovery. The Canterbury earthquakes ranked as the second biggest insurance loss event internationally

in 2011.⁴¹⁵ In practice this means that the reconstruction and repair of homes in Canterbury is largely being funded by insurance. The Treasury’s most recent total estimate of total rebuilding costs is around \$NZ40 billion, with an estimated \$NZ15.2 billion of this being incurred by the Crown.⁴¹⁶ In terms of commercial claims, insurers have settled over \$6.2 billion of commercial claims of which about \$1 billion was business interruption payouts. These payouts helped businesses to keep operating, people stay in work and families to remain in their communities.⁴¹⁷

The significance of the insurance model having such a large bearing on the recovery cannot be underestimated. It highlights the close relationship between business and human rights in the recovery.

The centrality of insurance to the rebuild and repair of homes in Canterbury emphasises the need for the State to be clear about, and take seriously its obligations to ensure its citizens’ human rights are adequately protected and realised.

The international human rights framework provides for a right to restitution or compensation for loss of property where there has been a human rights violation. However, there is no clearly defined right to compensation for loss of property resulting from a natural disaster. In New Zealand law, there is no statutory right to compensation for damage caused by a natural disaster.

By automatically applying to property covered by fire insurance and making no distinction in terms of relative risk, the EQC scheme provides security for most citizens at a low and universal cost. There is also provision for those who cannot or do not want private insurance cover to purchase natural disaster cover directly from EQC. The very high rate of insurance cover in New Zealand has therefore filled an important gap but there have been human rights impacts.

There has been difficulty in reconciling the different responsibilities of EQC as the State-based insurer with those of the private insurance sector, which has negatively affected people’s ability to progress the repair and rebuilding of their homes, and as a result, their lives.

In August 2012, a volunteer group known as “Insurance Watch” surveyed Canterbury residents about the progress of their insurance claims. The survey highlighted significant differences in progress between insurance companies and a consensus that generally, the rebuilding is happening too slowly.⁴¹⁸ Insurance Watch spokesperson, David Stringer, states that although insurance companies have promised to “ramp up” their progress, their clients “talk about delays leading to despair and depression. Some mention worry about another ‘d’ outcome – the death of elderly property owners exhausted by perceived dishonesty, dubious tactics and double-dealing on the part of both EQC and insurers.”

Affected people have reported confusion and feeling disempowered by the different approaches taken by EQC and private insurers.

Those living in TC3 (see footnote page 32) areas have been particularly affected. The situation feels confusing for residents and is causing despair for many:

“EQC is refusing to pay out our cap, despite our house being deemed a complete loss by the insurance company and EQC. House was inspected eight months ago, after previous inspection (in July 2011) documentation was ‘lost’ and never recorded on their system.”⁴¹⁹

“Wrongly apportioned and house still sinking. Lack of action and apportionment means my insurer will not get involved. Two neighbours have been advised by their insurer land is too costly to repair. All three of our houses are sinking in line with the land. Let us move on!”⁴²⁰

“Our house is unsafe to live in and we are on TC3 land ... Because EQC have not paid our over-cap amount which EQC have acknowledged they owe us, our file is now under dispute between EQC and the insurer, and has reached a standstill. The battles with EQC and our insurance company, are affecting our health and mental wellbeing.”⁴²¹

The complexity of the insurance situation resulting from the Canterbury earthquakes should not be underestimated. The high number of

multiple events has created a complicated factual scenario, which has been challenging for insurers to deal with. However, many affected people have faced high levels of uncertainty and confusion as they have sought to navigate the complex path of resolving their insurance and home repair situations. These difficulties have been magnified for those who were already vulnerable or marginalised prior to the earthquakes.

Despite many affected residents experiencing and expressing frustration with EQC, it is important to note that to date, approximately 107,000 Canterbury families have had their houses repaired or received a settlement from EQC since the earthquakes.⁴²² In addition, EQC has played a broader role in the rebuild and recovery than it was historically geared up to do. Through initiatives such as the Chimney Replacement Programme/Winter Heat Programme and the scale of emergency repairs, EQC has undertaken to help people to remain in their homes. EQC notes that:

Private insurers are, for the most part, acutely aware of the difficulties being experienced by some of their customers. They recognise that business can make a positive impact on respecting human rights, and the pace of the rebuild, while criticised by many as slow, is from an insurance perspective, taking place at a pace which allows quality rebuilds for clients, which will ensure better long-term outcomes. Private insurers also recognise the need to identify and prioritise their most vulnerable clients, and utilise vulnerability indexes to do so.⁴²³

Business can make a positive impact on respecting human rights

Many large-scale businesses involved in the Canterbury earthquake recovery acknowledge that while they can potentially adversely impact on human rights, they can play a very positive role in respecting human rights in the course of their engagement in the recovery. Many large-scale businesses have been affected directly themselves, and know first-hand the impact of the earthquakes on the rights and wellbeing of their own Canterbury-based staff. This provides

some level of firsthand insight and understanding which businesses can apply when dealing with their customers through the recovery.

The need to take a case-by-case approach in many situations raised by the recovery is essential for business to acknowledge and action. Given the complexity of the recovery situation a one-size-fits-all approach is, in many instances, unlikely to lead to outcomes that respect and protect human rights.

In its approach taken to mail delivery to red zone residential houses, where residents remain, New Zealand Post has shown how a more flexible and customer-centric approach, balanced with the need to protect the safety of its staff, can lead to positive outcomes. It has done so by providing a range of free, alternative mail-delivery options to affected residents, in lieu of the discontinuation of regular services in the residential red-zone. The Communities' Earthquake Recovery Network (CanCERN) recently highlighted this very positive approach by New Zealand Post in a regular newsletter, writing:

"Some time ago NZ Post announced they would not be delivering mail to the residential red zone because of the health and safety issues for their staff delivering in such damaged areas. The residents were understandably concerned about this and NZ Post came to the party by working towards win-win solutions.

"NZ Post have taken a very flexible approach to mail delivery in the residential red-zone, and in many cases taken a case-by-case approach, offering a range of different alternatives, which may be appropriate in any one situation. This has been balanced with NZ Post's concern to keep their staff safe, while continuing to provide a mail delivery service to customers.

"The approach NZ Post has taken seems like a very positive one to us – it seems to set a positive example for other businesses which might also be faced with making difficult decisions through the recovery, and which could learn from the balanced approach that has been taken in this instance. Well done NZ Post."⁴²⁴

The Bank of New Zealand's (BNZ) establishment of Future Hub, in August 2013, is another example of business trying to put the human at the centre of its services in the context of a disaster recovery.⁴²⁵ Future Hub is a new advisory service designed to assist Canterbury residents to navigate their way through complex and often confusing earthquake-related residential difficulties, and to help people with the important financial decisions they face as a result of the earthquakes.

It is premised on ensuring that people have the right to the information they need to make decisions related to finance and insurance, and will refer people to other services if they are not directly available through Future Hub. It aims to provide practical help and enable people to embark on the next stage of their lives. The initiative is available to anyone, not just BNZ customers, and its services are in conjunction with CERA's Residential Advisory Service, insurance and property experts, independent legal professionals and chartered accountants.

Maintaining business operations has protected some human rights in Canterbury

The Recover Canterbury initiative provided support for business owners to maintain operations through a time of great uncertainty. It enabled Canterbury employees to continue to realise their right to work. This continuity allowed people to arrange care for family, organise essential repairs or relocation, and contribute to the re-building of community networks and social activities.

Recover Canterbury was created to help earthquake-affected small and medium-sized enterprises (SMEs) in the short to medium term to survive, revive and thrive.

Its aims were to:

- help Canterbury business to survive, revive and thrive post-earthquake
- accelerate business recovery and enhance business capability for future growth

- provide a mechanism to connect government support to businesses to effectively maintain economic activity in the region.⁴²⁶

Recover Canterbury partners were the Canterbury Employers Chamber of Commerce (CECC), Canterbury Development Corporation (CDC), Christchurch City Council, central government agencies and Canterbury businesses.

In an economy such as New Zealand, which is dominated by SMEs and with little in the way of contingency resourcing, it quickly became clear following the earthquakes that some form of assistance was necessary to prevent business failures. Recover Canterbury couldn't assist every business: some did not meet the initiative's criteria, or needed help of a kind or extent beyond Recover Canterbury's mandate.

Recover Canterbury's initial role was to identify the emergency help that businesses needed to maintain operations and employment, and to ensure they received it. At its peak, Recover Canterbury had 30 team members providing support in the business community.

In 2012, the CDC assessed the impact of Recover Canterbury. Conservative estimates indicate the initiative saved 617 jobs and kept \$39 million in the economy. Almost 400 businesses received a portion of funding totalling \$6.1 million. This has had flow-on effects; supporting the people of Canterbury with continued employment and helping families manage their losses in the recovery period.

By the time Recover Canterbury ceased operating at the end of April 2013, the organisation had been in contact with around 7000 businesses. Recover Canterbury's Chief Executive observed that the earthquakes had increased awareness of how "inextricably the various parts of people's lives are linked; home, community, business. Until people's most basic needs are met, businesses and the community cannot move on."⁴²⁷

Broader support provided by business

In the initial period following the earthquakes many businesses provided employees with special leave, the use of facilities and counsellors, with some



The Pallet Pavilion.

employers extending this assistance to immediate family. The routine of work helped many employees adjust to what had happened. Over the months following, many staff benefited from counselling. As has been documented in other disaster settings, counselling services are not particularly useful in the immediate early post-disaster stages.

Privately communicated reports to the New Zealand Psychological Society President from several counselling providers confirm that the distress experienced by members of the public was as much due to uncertainty, of possible changes in employment, housing, schooling and other life arrangements, as it was to the damage caused by earthquakes. In providing suggestions for disaster preparation in future, Recover Canterbury noted the importance of allowing flexibility for staff to deal with personal, housing and insurance issues, over an extended period of time.⁴²⁸

According to the Chief Executive of the Canterbury Employers' Chamber of Commerce, collectively, the Canterbury Employers' Chamber of Commerce, the Canterbury Development Corporation and Recover Canterbury provided safe hands for local businesses and the people running them. These organisations had a significant impact on the wellbeing of business owners and employers, from the days after the first earthquake.

Limitations of insurance provisions for businesses

While Work and Income provided a special benefit to top up or replace income lost by employees for a short period after the February earthquake, employers had other ordinary and extraordinary outgoings to meet so they could stay in business and continue to provide work opportunities.

Business interruption insurance is a commercial arrangement, existing to provide a buffer in the event of specified circumstances preventing the ordinary conduct of business. Many businesses had difficulty making and settling business interruption claims. Recover Canterbury found the insurance industry's focus was seen as minimising claims and delaying payouts. Proving business interruption claim to insurers was challenging for many.

Recover Canterbury's final report noted concerns about a lack of respect for individual's human rights in a few cases.

"BRCs [private sector Business Recovery Coordinators] noted that claimants for whom English was a second language were often not well treated by brokers, loss adjustors and ultimately their insurers. Many said they felt bullied into settling at well below a reasonable level, due in part to not understanding what they should have been entitled to."⁴²⁹

Recover Canterbury encountered a number of difficulties in settling claims for businesses, which affected security of work and the corresponding benefits of work in some instances. For a few months, there was a shortage of people to prepare effective claims. Contracted cover for some SMEs was generic, resulting in inadequate cover. Many business owners did not properly understand clauses limiting payout. After the event, Recover Canterbury BRCs reported that brokers often appeared to prioritise the insurance companies' interests over the businesses that had bought cover. This pattern reduced employers' ability to provide work opportunities.



Building checked by Taiwanese urban search and rescue team February 2012.

Case Study 1: Bringing home the business

With the centre of Christchurch cordoned off, businesses had to find other premises and communicate transitional arrangements to customers and staff. While goodwill resulted in greater flexibility about paying bills and making deliveries in the early weeks, business people knew payments would need to be made, goods and services would need to be assembled and customers would need to be found and served. Many existing business-to-business arrangements were revised frequently. However, the greatest challenge many businesses faced was finding a place to operate from after the earthquake.

The Canterbury Employers' Chamber of Commerce team temporarily relocated to the home of their Chief Executive after the February earthquake. Bedrooms and living rooms were converted to workspaces and the Chief Executive's own "office" was tucked into the lean-to beyond the kitchen.

Care was taken with cable dressing, the placement of furniture as well as the necessary piles of paper records meant that frequent evacuations during aftershocks were done safely and smoothly. A briefing to visitors pointed out escape routes, hazards and emergency provisions, demonstrating the ability to provide for the needs of people and businesses under trying conditions. From these temporary premises, CECC's services were provided to businesses across the province, and continuity in liaison with government agencies and business entities elsewhere meant easy reporting of concerns and urgent needs.

A similar solution was used by a number of Christchurch's private education institutions, which offer accredited qualifications for mostly international students from premises in the central city. After the February 2011 earthquakes, the Royal Business College's Christchurch campus at Hereford Street in the Central Business District was badly damaged, as were the homes of many of the students and 28 staff. Canterbury College, operating from premises in Worcester Street near the central Cathedral, was also badly damaged, and was also affected by one of the few fires that followed the February event.

College staff ascertained the whereabouts and safety of their staff and students in Christchurch, and provided emergency information to those in need. This included support to find new or temporary accommodation, food and transport, and translation support for those struggling to get messages home about their safety and circumstances. Directors of these colleges provided emergency accommodation for some affected staff and students at their homes. They continued paying staff salaries and provided support while also looking after their own families.

Some students wanted to return to their countries of origin immediately after the earthquakes and the colleges facilitated their travel. Many students chose to stay, learning in homes and gardens until other premises could be found. As soon as power supply was restored, they arranged classes for those who could attend, providing continuity, a sense of normalcy and community activity.

Case study 2: Making work possible

The February earthquakes badly damaged many business premises and disrupted supplies of power, information and goods. It was not just a matter of finding premises: several organisations found that only when people had both their

work equipment and personal effects were they comfortable enough to work between the numerous aftershocks that continued to affect Canterbury.

Management at Meridian Energy successfully retrieved most personal items for its 300 Manchester Street-based staff, which helped minimise a sense of loss. Like many other larger employers, Meridian immediately set up a disaster recovery team. Their property team sought alternative venues in order to bring staff back together again as soon as possible.

The Inland Revenue Department (IRD) Christchurch operation is vital to collection of tax, both from the region and nationally. As the principal source of funds for day-to-day Government expenses, IRD's continued functioning was essential. Part of IRD's adaptive response was allowing staff to decide for themselves when they were able to return to work.

Managers checked on the wellbeing of team members who were not yet ready to return and did what they could to maintain work information flows about how people were getting on, what work was available and where temporary workplaces were being set up. Innovative remote

access arrangements were made to allow work to be completed from home as soon as secure communications links could be made.

Flexible working hours were permitted. The extent of collaboration, to provide support between management and the local PSA delegates, has been remarked on by many parties.

As with the IRD, flexible working arrangements were adopted at Meridian and both employers continue to have more flexible arrangements than before the earthquakes.

IRD and Meridian temporarily shifted call centre services away from Christchurch, and many staff worked from cafes or in their homes until alternative premises could be set up. Both IRD and Meridian ensured staff could continue working in Christchurch if they chose to do so, managing to avoid job losses that affected many other Canterbury businesses.

Challenges remain

While business recognises its potential impact on human rights in the recovery, and even though business and the Government are continuing to work more closely together, challenges remain in terms of business and human rights in the Canterbury recovery. Greater focus on the customer – particularly the most vulnerable affected people – is needed, and large-scale business, especially in the insurance, building and finance sectors can still be more responsive to the needs of these vulnerable customers. Large-scale businesses especially, have an opportunity to lead by example with their practice and approach to the recovery, but small and medium sized enterprises also have their part to play.

More could be done to put the *UN Guiding Principles* into practice, to ensure that the business approach to recovery is protecting, respecting, and where necessary, remedying breaches of human rights. Making a commitment to meeting human rights responsibilities, and introducing a

human rights due diligence process will be essential for businesses no matter what their size. Building on the many positive and innovative business responses following the Canterbury earthquakes provides a valuable starting point for the continued strengthening and expansion of good practice in business and human rights.

Recommendations

Business and human rights

The Commission recommends that:

- 1 large-scale businesses involved in the Canterbury earthquake recovery commence progressive implementation of the framework set out in the *UN Guiding Principles on Human Rights and Business*, seeking advice from the Human Rights Commission where necessary.

Kupu whakatepe

Hokia ngā whakaaro ki onamata, hei whakaū onāianeī kia anamata

Look to the past, so we can understand the present and plan for the future





Street art by graffiti artist Nick "Ikarus" Tam.

Human Rights Protection Toolbox

Challenging official decisions can be daunting. We can all make ourselves heard and assert our rights. This Toolbox outlines several ways of protecting rights through domestic and international channels. The second part of this Toolbox outlines ways for government agencies and businesses to apply and operate a human rights-based approach to business operations, particularly in post-disaster situations.

Domestically, there are independent government and non-government organisations that can provide advice and support when dealing with government agencies and businesses. Free language support can be requested through the Office of Ethnic Affairs' Language Line for the most common community languages. There are also international mechanisms that work to hold the Government to account.

International

United Nations Human Rights Treaty bodies

The United Nations covenants or conventions on human rights are commonly referred to as international human rights instruments. New Zealand is party to seven of the nine core United Nations human rights instruments (See Appendix 3).

Reporting procedures

Each instrument provides for a reporting procedure, with reporting periods ranging from two to five years.

New Zealand must submit periodic government reports to each instrument's committee at the UN. These reports set out the measures the Government has adopted during the reporting period to give effect to the instruments.

Each UN committee examines the Government reports and then publishes its views on New Zealand's progress. Recommendations are made for New Zealand to better realise the rights contained in the respective instruments. Although not legally binding, they are considered authoritative.

Non-governmental organisations (NGOs) and interested individuals can make "shadow reports". These provide a valuable resource to committees and can affect the final recommendations. Shadow reports can focus on systemic issues or bring individual cases to the committees' attention.

For information on NZ's reporting calendar visit the Human Rights Commission's website or the Ministry of Justice website.

Website: www.justice.govt.nz

Individual complaints mechanisms

Many human rights instruments provide for individual complaints procedures. Complaints can be lodged with the UN against a State that has accepted the procedure with regard to the relevant instrument, providing that:

- all the available domestic (judicial) remedies have been exhausted to the point where a final decision has been reached and no further appeal is possible

- the complaint is not being considered by any other international procedure.

Complaints mechanisms New Zealand has ratified and which can consider individual complaints relating to New Zealand include:

- the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR)
- the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)
- the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).

More information on how to make an individual complaint is available at:

www2.ohchr.org/english/bodies/petitions/individual.htm.

Other mechanisms

In addition, some of the instruments provide for other procedures such as:

- State-to-State complaints procedures (ICCPR, CAT, CERD)
- inquiry procedures (CAT, CEDAW)
- State visits (CAT)
- an early warning and urgent action procedure (Convention on the Elimination of Forms of Racial Discrimination (CERD)).

More information about these procedures can be found at: **www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx**.

Special Procedures of the UN Human Rights Council

The UN Human Rights Council (UNHRC) can establish Special Rapporteurs or working groups focusing on a particular country or a thematic issue. These procedures can consider individual complaints, including those needing urgent

attention. In some cases they may be able to investigate.

More information can be found at:

www.ohchr.org/en/HRBodies/SP/Pages/Welcomepage.aspx.

Universal Periodic Review (UPR)

Every four and a half years, New Zealand's human rights performance is reviewed by the United Nations Human Rights Council in Geneva. Any group or individual can make a submission to inform this process. The outcome is a series of recommendations to which the Government must respond. When the Government accepts a recommendation, it commits to implementing this over the next review period.

Visit **www.hrc.co.nz** for more information on the Universal Periodic Review (UPR) process.

Other ways stakeholders can participate

- comment on New Zealand's draft report
- lobby the Government to make voluntary pledges and/or accept recommendations
- lobby the Working Group of countries reviewing New Zealand's report
- make presentations to the United Nations Human Rights Commission (UNHRC) when the report is being adopted
- monitor and participate in New Zealand's implementation of (Universal Period Review) UPR recommendations.

More information, including ways to engage in the process, can be found at **www.upr-info.org**, the Commission's website at **www.hrc.co.nz**, or the Ministry of Foreign Affairs and Trade at **www.mfat.govt.nz**.

Domestic

Office of the Ombudsman

As the review body for complaints of administrative misconduct in the public sector, the Ombudsman helps the community in its dealings with government agencies and encourages good administration by providing feedback and training to agencies. The Ombudsman investigates complaints against state sector agencies (including in relation to official information requests) and attempts to resolve them through binding or non-binding recommendations. Individuals or groups can make a complaint online or by email, fax or letter.

Phone: **0800 802 602**

Website: **www.ombudsman.parliament.nz**

New Zealand Banking Ombudsman

The Banking Ombudsman Scheme investigates and resolves disputes between customers and their banking service providers. The Banking Ombudsman is independent of scheme participants (i.e. participating banks and other financial institutions), customers and government. Individuals or groups can make a complaint online or by email, fax or letter.

Phone: **0800 805 950**

Website: **www.bankomb.org.nz**

Insurance and Savings Ombudsman (ISO)

The ISO Scheme provides consumers with the opportunity to resolve disputes with participating financial service providers. It provides an independent and impartial opinion on disputes.

Phone: **0800 888 202**

Website: **www.iombudsman.org.nz**

Privacy Commissioner

The Privacy Commissioner's Office works to develop and promote a culture where personal information is protected and respected. The Privacy Commissioner administers the Privacy Act 1993, which applies to

almost every person, business or organisation in New Zealand. It can investigate complaints about breaches of privacy, run education programmes and examine proposed legislation and how it may affect individual privacy.

Phone: **0800 803 909**

Website: **<http://privacy.org.nz>**

Office of Auditor-General (OAG)

The work of the OAG gives Parliament, public entities and the public independent assurance that public entities are accountable for their performance. You can raise concerns with the OAG about improper conduct affecting a public entity's efficiency or effectiveness. The OAG cannot examine or attempt to resolve individual disputes that a person may have with a public entity.

Phone: **04 917 1500**

Website: **www.oag.govt.nz**

Serious Fraud Office (SFO)

The SFO is responsible for complex or serious fraud investigations and prosecutions. These do not include more common dishonesty offences, which are matters for the Police. It monitors, investigates and prosecutes within the corporate environment, so that fraud does not go undetected or unpunished.

Phone: **0800 109 800**

Website: **www.sfo.govt.nz**

Health and Disability Commissioner

The main role of the Health and Disability Commissioner is to ensure the rights of health consumers are upheld.

A health and disability advocate will explain the options available and offers support in the resolution of a problem. This service is free, confidential, and independent.

Phone: **0800 555 050**

Website: **www.hdc.org.nz**

Office of the Children's Commissioner

The Office of the Children's Commissioner advocates for the best interests of all children and young people in New Zealand. Contact the Office if you have concerns about the rights, safety, welfare, or wellbeing of a child or young person.

Phone: **0800 224 453**

Website: **www.occ.org.nz**

Human Rights Commission

The Commission has a unique role in the Canterbury recovery. It has the mandate and expertise to help Canterbury residents find practical ways to sort out problems with a foundation in human rights. Individuals or groups can make a complaint online or by email, phone, fax or letter.

Phone: **0800 496 877**

Website: **www.hrc.co.nz**

Human Rights Review Tribunal (HRRT)

The Human Rights Review Tribunal deals with matters relating to some aspects of domestic human rights law, the privacy principles in the Privacy Act, and the Code of Health and Disability Services Consumers' Rights. It deals with cases brought under the Human Rights Act 1993, the Privacy Act 1993, and the Health and Disability Commissioner Act 1994. There are no filing fees for proceedings in the Tribunal, or for any steps that have to be taken in the course of any proceedings. Costs can be involved.

Phone: **04 462 6660**

Website: **www.justice.govt.nz/tribunals/human-rights-review-tribunal**

Community Law Centres

Community Law Centres are independent community organisations providing free legal help for members of the public. Community Law Centres aim to help people solve their own legal problems before they escalate, and provide a range of services.

Website: **www.communitylaw.org.nz**

Citizens Advice Bureau (CAB)

Citizens Advice Bureau provide a free and confidential service of information, advice and support.

Phone: **0800 367 222**

Website: **www.cab.org.nz**

Judicial Review

A judicial review is carried out by a judge of the High Court. It subjects the Government's legislative and executive actions to review, to determine whether a decision made by a public body has been made lawfully. A High Court decision can subsequently invalidate the Government's actions. High Court fees may apply when seeking a judicial review. Private lawyers can provide advice and legal representation and support (standard fees apply).

Petitioning Parliament

A petition asks the House of Representatives to act on a matter of public policy or law, or to rectify a local or private concern. Anyone can petition the House including corporations and unincorporated bodies.

Website: **www.parliament.nz**

Contact a Member of Parliament (MP)

Members of Parliament are your representatives in Parliament. Their contact details can be found online or in the phonebook. Those who want to send a letter to all members of Parliament can send 121 copies in one envelope, along with a covering note asking to distribute one copy to each member. Address to:

All Members of Parliament
C/- Distribution Services
Private Bag 18041
Parliament Buildings
Wellington 6160
Website: **www.parliament.nz**

The human rights framework in the context of post-disaster situations

The human rights framework helps inform the decision-making process by ensuring human rights are considered in all stages of disaster planning, from preparedness, during the emergency phase, and in the recovery phase. When considering how earthquakes and recovery affect these rights, it is important to refer to human rights aspects in the planning, implementation and evaluation of recovery efforts.

Several operational guidelines and sets of principles further reinforce the rights New Zealand has committed to under international human rights instruments. Some of these guidelines and sets of principles are set out below:

Global Facility for Disaster Reduction and Recovery (GFDRR) handbook

The GFDRR has developed *Safer Homes, Stronger Communities: A Handbook for Reconstructing after Disasters* to assist policy makers and project managers engaged in large scale post-disaster reconstruction programmes to make decisions on how to reconstruct housing and communities after natural disasters.

Find out more: www.gfdr.org

Inter-Agency Standing Committee (IASC) operational guidelines

The IASC is a forum of UN and non-UN humanitarian agencies and organisations. To promote and facilitate a rights-based approach to disaster relief, the IASC adopted *Operational Guidelines on Human Rights and Natural Disasters* in 2006. These contribute to the promotion of a rights-based approach in natural disaster situations. Following feedback from field-testing, the guidelines have been revised. The updated version expands the rights-based approach to include preparedness measures. Thorough pre-planning can have a major impact if disaster strikes.

Read the IASC Operational Guidelines here at www.unhcr.org.

Hyogo framework

The Hyogo Framework for Action (HFA) is the first plan to explain, describe and detail the work required to reduce disaster losses. The HFA development partners included governments, international agencies, disaster experts and many others. Developing the HFA means partners will use a common system of coordination in the event of a disaster. The HFA outlines priorities for action, offers guiding principles and practical means for achieving disaster resilience. Its goal is to reduce disaster losses by 2015.

The HFA can be found at www.unisdr.org.

Pinheiro Principles

The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles) outline the rights of refugees and displaced persons to return not only to their countries, but to their original homes and lands as well.

Find out more about the Pinheiro Principles at www.unhcr.org.

UN Guiding Principles on Internal Displacement

The Guiding Principles on Internal Displacement (the Guiding Principles) set out the rights and guarantees relevant to the protection of Internally Displaced People (IDP) in all phases of displacement: providing protection against arbitrary displacement; protection and assistance during displacement; and during return or internal resettlement and reintegration. IDPs do not benefit from the specialised protection of international refugee law because they have not crossed an international border. Displacement from their homes makes IDPs particularly vulnerable to human rights abuses and neglect.

Find out more about the The Guiding Principles: www.idpguidingprinciples.org

Human Rights and Business

There is a range of resources and guidelines available for incorporating a human rights approach in business. A good overview can be found at the Business and Human Rights Resource Centre at www.business-humanrights.org.

The UN Guiding Principles on Business and Human Rights (Ruggie Principles)

The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework have provided a reference for business to understand its human rights responsibilities. The Ruggie Principles provide guidelines to ensure companies do not violate human rights in the course of their transactions and that they provide redress when infringements occur.

Website: www.ohchr.org

The UN Principles of Sustainable Insurance

The UN Principles of Sustainable Insurance (PSI) are the largest collaborative initiative between the UN and the insurance industry, aimed at propelling environmental, social and economic sustainability. The principles were developed by the United Nations Environment Programme Finance Initiative (UNEP FI) a platform associating the UN and the financial sector globally. The principles seek to strengthen the insurance industry's resilience and contribution to building sustainable communities and economies.

Website: www.unepfi.org

The UN Principles for Responsible Investment (PRI)

The UN-supported PRI initiative is an international network of investors aiming to understand the implications of sustainability for investors and support signatories to incorporate these issues into their investment decision-making and ownership practices. The principles contribute to the development of a more sustainable global financial system.

Website: www.unpri.org

The UN Global Compact

The UN Global Compact's 10 principles in the areas of human rights, labour, the environment and anti-corruption enjoy universal consensus. It asks companies to embrace, support and enact within their sphere of influence, a set of core values in all these areas.

Website: www.unglobalcompact.org



Farewell celebration for red-zoned suburb of Brooklands.

Appendix 1

Glossary

Abbreviation	Meaning
APF	Asia Pacific Forum of National Human Rights Institutions
BRANZ	Building Research Association of New Zealand
CAB Min	Cabinet Minutes
CBD	Central Business District
CanCERN	Canterbury Communities' Earthquake Recovery Network
CCC	Christchurch City Council
CCDU	Christchurch Central Development Unit
CDHB	Canterbury District Health Board
CER Act	Canterbury Earthquake Recovery Act
CERA	Canterbury Earthquake Recovery Authority
CETAS	Canterbury Temporary Accommodation Service
CDHB	Canterbury District Health Board
CECC	Canterbury Employers Chamber of Commerce
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERA	Canterbury Earthquake Recovery Authority
(the) Commission	The Human Rights Commission
CESCR	Committee on Economic, Social and Cultural Rights
CHRP	Canterbury Home Repair Programme
CRPD	United Nations Convention on the Rights of Persons with Disabilities
ECAN	Environment Canterbury Regional Council
EDLG	Earthquake Disability Leadership Group
EQC	Earthquake Commission
EQR	Earthquake Repair
FTE	Full-time equivalent
HDC	Health and Disability Commissioner
HDCA	Health and Disability Consumer Advocacy
HELP	Housing Emergency Lease Programme
HRA	The Human Rights Act 1993
Housing NZ	Housing New Zealand
Housing NZ Corporation	Housing NZ
IASC	Inter-Agency Standing Committee
IASCC	Irradiation Assisted Stress Corrosion Cracking
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of Racial Discrimination

Abbreviation	Meaning
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICNZ	Insurance Council of New Zealand
ISO	Insurance and Savings Ombudsman
MBIE	Ministry of Business, Innovation and Employment
MSD	Ministry of Social Development
NGO	Non-government organisation
NZ	New Zealand
NZS	New Zealand Standard
NZBORA	New Zealand Bill of Rights Act 1990
NZHC	New Zealand High Court
NZTA	New Zealand Transport Agency
NZSEE	New Zealand Society for Earthquake Engineering
OCC	Office of the Children's Commissioner
OECD	Organisation for Economic Co-operation and Development
OHCHR	United Nations Office of the High Commissioner for Human Rights
OIA	Office of Internal Affairs
NZSL	New Zealand Sign Language
RMA	Resource Management Act
SCIRT	Stronger Christchurch Infrastructure Rebuild Team
TAA	Temporary Accommodation Assistance
TC1	Technical Category 1
TC2	Technical Category 2
TC3	Technical Category 3
The Commission	The Human Rights Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCROC or CROC	Convention on the Rights of the Child
UNCRPD or CRPD	The United Nations Convention on the Rights of Persons with Disabilities
UNDRIP	The United Nations Declaration on the Rights of Indigenous Peoples
UNESCO	United Nations Educational Scientific and Cultural Organization
UNHRC	United Nations Human Rights Council
UPR	Universal Periodic Review

Appendix 2

The international human rights framework in disaster contexts

Modern day conceptions of human rights have their origin in the Universal Declaration of Human Rights (the Declaration). The Declaration marks the start of the transformation of human rights from moral or philosophical imperatives into rights that are legally recognised internationally and, increasingly, by nations in their domestic law. It has been described as a statement of principles which provide “a common standard of achievement for all peoples and all nations”.

To give the standards in the Declaration legal force, two major covenants were developed – the International Covenant on Civil and Political Rights (ICCPR) which deals with civil and political rights, and the International Covenant on Economic Social and Cultural Rights (ICESCR) which deals with social, economic and cultural rights. The Declaration, together with these two main treaties – make up the International Bill of Rights.

The rights in the ICCPR are effective as soon as a State ratifies the Covenant. They apply to everybody equally, without discrimination and can be limited only in situations of public emergency where the life of the nation is under threat and “to the extent strictly required by the exigencies of the situation”.⁴³⁰ New Zealand has ratified both the ICCPR and the ICESCR.⁴³¹

A State’s commitment to its international human rights obligations is reflected in how it develops and shapes legislation and policy, and how it behaves toward vulnerable people. As vividly demonstrated by the Tōhoku earthquake in Japan and Hurricane Katrina, natural disasters can exacerbate pre-existing inequalities and vulnerabilities. In these events residents in poorer areas where the disaster struck were disadvantaged because they were less likely to have access to their own transport and therefore found it more difficult to relocate to safer areas.

This also appears to have been the case in some areas in Canterbury, particularly for elderly people and for people with disabilities. While many were well supported by their family networks, those who did not have these social ties were left extremely vulnerable and some people received no support at all.⁴³²

There is a growing body of research that focuses on inequality in exposure and sensitivity to risk, as well as inequality in access to resources, capabilities, and opportunities that systematically disadvantage certain groups of people, rendering them more vulnerable to the impact of natural disasters.⁴³³ Research on the impact of natural disasters on women and girls, for example, points to increased vulnerability and higher mortality rates than for boys and men.⁴³⁴ Contemporary environmental justice literature increasingly focuses on the unequal distribution of environmental hazards to poor and minority communities.⁴³⁵

In considering the impact of the Canterbury earthquakes on the people of Canterbury, the UN Committee on Economic, Social and Cultural Rights advised the New Zealand Government in 2012 that adopting a “human rights approach” to the recovery effort would help it to meet its obligations.⁴³⁶ In essence this means integrating the principles, standards and goals of human rights into the process of developing and implementing policies to advance the recovery.⁴³⁷ The Human Rights Commission was heartened that, in its response, the Government assured the Committee that while it recognised that such rights were not justiciable domestically, this did not lessen New Zealand’s duty to meet its international commitments. The Commission welcomed this stance taken by the Government.

In addition to the International Bill of Rights, a series of human rights treaties apply to

thematic issues such as racial discrimination and discrimination against women. These are listed in Appendix 3, page 160.

The international human rights framework additionally provides for “special procedures” which deal with specific issues or thematic matters. They may be individuals (Special Rapporteurs or Special Representatives) or a working group of up to five people, and are designed to promote and ensure compliance with human rights standards.⁴³⁸ These procedures and how they work are outlined in more detail in the Human Rights Protection Toolbox section of this Report.

As well as binding international human rights law, a large number of United Nations resolutions or declarations establish human rights standards and best practice guidance. Although not binding in the same way as treaties, they can acquire significant status as a result of their moral force given the nature of the subject they relate to, the endorsement of a number of States and their specific application in practice. The most relevant to the Canterbury earthquake recovery context are the Inter-Agency Standing Committee (IASC) Operational Guidelines, the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles), the Guiding Principles on Internal Displacement (the Guiding Principles) and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). These are briefly outlined below.

Human rights principles and commitments are embedded in the governance framework of New Zealand. The governance framework (kāwanatanga) of New Zealand was founded by the Treaty of Waitangi, which gave the Crown authority to govern, affirmed the existing rights of tangata whenua and guaranteed shared citizenship. The Treaty affirmed the tūrangawaewae status that tangata whenua (Māori) already possessed and established tūrangawaewae status for all other New Zealanders. Tūrangawaewae describes New Zealanders’ authority to belong – their foundation, their place in the world and home or place from where they feel empowered and connected.⁴³⁹

Tūrangawaewae is intertwined with the concepts and practice of democracy, in particular elective and participatory government and the rule of law. It implies the rights and responsibilities of citizenship reflected in the New Zealand Bill of Rights Act, the Human Rights Act and the United Nations Conventions to which New Zealand is a party. It is underpinned by obligations on the Crown to provide “good governance”, particularly in the context of a recovery from a natural disaster.

The IASC Operational Guidelines

The Inter-Agency Standing Committee (IASC) is the primary mechanism for inter-agency coordination of humanitarian assistance. It is a unique forum involving key UN agencies and non-UN humanitarian partners that is mandated to develop system-wide humanitarian policies and a common ethical framework for all humanitarian activities. It is also a forum that advocates for common humanitarian principles to parties outside the IASC.

Due to the increasing frequency and magnitude of natural disasters worldwide the IASC has developed the *Operational Guidelines on Human Rights and Natural Disasters*. These guidelines are designed to ensure that relief and reconstruction efforts are carried out in a way that protects and promotes human rights.⁴⁴⁰ They primarily aim to help international and non-governmental humanitarian organisations and provide a pragmatic guide to ensure adequate protection of people affected by natural disasters, including displaced people.

The guidelines offer a particularly useful guide for government agencies and civil society organisations because they are based on significant international experience in dealing with what are relatively common “natural disaster” events, no matter how “unprecedented” the event might be to the specific people and government affected by a disaster. They are also relevant to the private sector.

In the response to or recovery from a natural disaster it is obviously difficult to promote all rights for all of those affected – balancing is required and is acceptable.

The devastation caused by the Canterbury earthquakes was not comparable to that of Hurricane Katrina or the 2004 Boxing Day Pacific tsunami. Nor was it of the scale of the earthquake in Japan in March 2011. New Zealand is also a relatively affluent country with a generally good infrastructure and no internal conflict. It follows that while some of the issues identified in the guidelines are applicable, not all are relevant to the situation in Canterbury.

Although as a general principle it is inappropriate to prioritise some rights over others, it is almost a given in natural disaster and emergency situations that the first priority will be the protection of life and personal security. This is closely followed by:

- Provision of the basic necessities of life including access to goods and services and humanitarian assistance.
- Provision of adequate food, sanitation, shelter, clothing and essential health services.
- Protection of economic, social and cultural rights including education, property and possessions, housing, livelihood and work.
- Civil and political rights including freedom of movement, freedom of expression (which includes the right to receive information) and right to take part in public affairs.

The IASC guidelines emphasise that:

- People affected by natural disasters have the same rights and freedoms under human rights law as everybody else in the country affected including the right to freedom from discrimination.
- States have the primary duty and responsibility to provide assistance to people affected by natural disasters and to protect their human rights.
- Organisations providing protection and assistance accept that human rights underpin all humanitarian action.
- All communities affected by a disaster should be entitled to easily accessible information

concerning the nature of the disaster they face, what measures can be taken to mitigate the effect, early-warning information and information about ongoing humanitarian assistance.⁴⁴¹

The United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (the Pinheiro Principles)

The Pinheiro Principles outline the international standard on the right of refugees and displaced persons to return to their original homes and country of residence. They highlight the right to restitution for displaced persons and are grounded in the principle of restorative justice and restitution as a legal remedy.⁴⁴² The Pinheiro Principles are noteworthy for reflecting a shift from an approach based on charity to one emphasising entitlement to a right.

The Guiding Principles on Internal Displacement (the Guiding Principles)

The Guiding Principles are based on international humanitarian law and are intended to serve as a standard to guide governments in providing assistance and protection to internally displaced persons. The Principles define an internally displaced person and identify the rights and guarantees relevant to protection of internally displaced people at all phases of displacement, including prevention of and protection from arbitrary displacement, access to protection and assistance during displacement itself and rights relating to durable solutions.⁴⁴³ The standard recommends that the Government protect people from involuntary displacement and that wherever possible alternatives to displacement should be explored to ensure that displacement occurs only as a last resort.

The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)

The United Nations General Assembly adopted a Declaration on the Rights of Indigenous Peoples in September 2007. It was described by the UN as “a landmark declaration that brought to an end nearly 25 years of contentious negotiations over the rights of native people to protect their lands and resources, and to maintain their unique cultures and traditions”. New Zealand endorsed UNDRIP in 2010. Many of the articles in the Declaration intersect with the principles of the Treaty of Waitangi.

The Declaration sets out a universal framework of minimum standards for the survival, dignity, wellbeing and rights of the world’s indigenous peoples. The Declaration addresses both individual and collective rights, cultural rights and identity, rights to education, health, employment, language, and others. It declares discrimination against indigenous peoples unlawful and promotes their full and effective participation in all matters that concern them. It also affirms their right to remain distinct and to pursue their own priorities in economic, social and cultural development. The Declaration explicitly encourages harmonious and cooperative relations between States and indigenous peoples.

The Preamble proclaims the Declaration to be “a standard of achievement to be pursued in a spirit of partnership and mutual respect”. It is an aspirational document, with text that is not legally binding on states.

Of particular relevance to a disaster recovery context are Articles 5, 10, 18, 23 26, 28, 32, 39, 40.⁴⁴⁴

Appendix 3

United Nations human rights instruments signed by New Zealand

In addition to the International Bill of Rights, a series of human rights treaties apply to thematic issues, such as racial discrimination and discrimination against women.

They include the International Convention on the Elimination of All Forms of Racism (CERD), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Rights of the Child (UNCROC), the Convention on the Rights of Migrant Workers and their Families (MWC) and the Convention on the Rights of Persons with Disabilities (CRPD). With the exception of the MWC, New Zealand has ratified all these treaties.

New Zealand is party to seven of the nine core United Nations human rights instruments:

- International Covenant on Civil and Political Rights (ICCPR)
- International Covenant on Economic, Social and Cultural Rights (ICESCR)
- International Convention on the Elimination of all forms of Racial Discrimination (CERD)
- Convention on the Elimination of all forms of Discrimination against Women (CEDAW)
- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Convention on the Rights of the Child (UNCROC)
- Convention on the Rights of Persons with Disabilities (CRPD).

Appendix 4

Monitoring economic and social rights

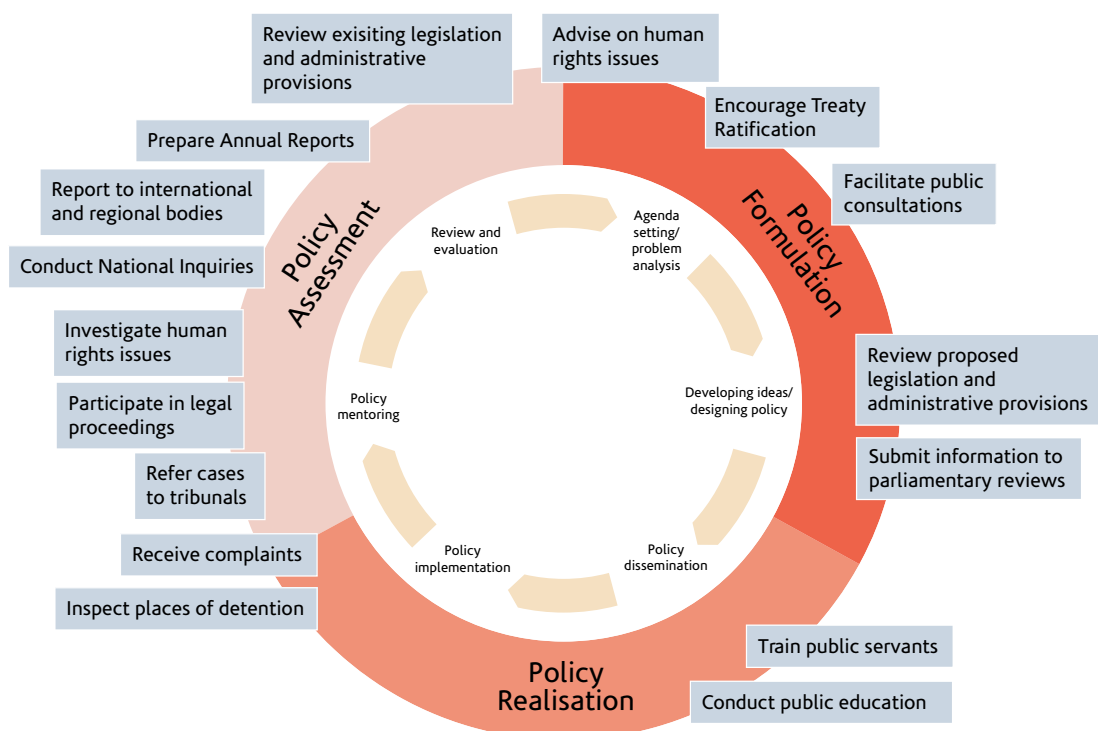
What is human rights monitoring?*

Human rights monitoring is the active collection, verification and use of information to address human rights problems.

It has two defining features:

- An ongoing activity that systematically uses information in order to measure the achievement of defined targets and objectives within a specified time frame.
- It provides feedback on the processes for implementing these targets and the problems they may face.

How do we monitor policy?



Why monitor policies?

Effective social and economic policy is key to **fulfilling** economic and social rights.

Monitoring **ensures accountability** when policies do not lead to improvements and **provides feedback** on how they should be changed.

- Has a policy led to greater enjoyment of human rights?
- Did the policy process reflect human rights principles?

But, the obligation to fulfil is more difficult to monitor because it requires an assessment of **progressive realisation against** maximum available **resources**.

* The information in this section is provided by the Centre for Economic and Cultural Rights (CESR). For CESR monitoring tools and further information See: <http://www.cesr.org/article.php?list=type&type=53>.

Relevant standards and principles

Obligations of conduct:	Obligations of result:
To take steps (legislative, judicial, budgetary, administrative and other) to fulfill economic social and cultural rights (International Covenant on Economic Social and Cultural Rights ICESCR, Optional Protocol ¹)	Progressive realisation: move swiftly towards increased levels of rights enjoyment, with no deliberate retrogression (ICESCR Article 2 ²)
To use maximum available resources to ensure progressive realisation, including resources to be provided through international cooperation (ICESCR, Optional Protocol)	Minimum core obligations: immediate duty to prioritise achieving minimum essential levels of rights enjoyment universally (ICESCR General Comment) ³
To ensure participation, accountability and transparency in the policy-making/ monitoring process (ICESCR, General Comments)	Non-discrimination: duty to ensure substantive equality in enjoyment of rights (ICESCR, General Comments)
	To ensure that relevant services are available, accessible to all, acceptable and of adequate quality (ICESCR, General Comments)

The missing middle in human rights analysis

Cultural Economic and Social Rights goals in designing a framework

- To provide a simple, coherent structure in order to build a persuasive advocacy argument.
- To systematically bring together the standards and principles underpinning states' obligation to fulfill economic and social rights.
- In particular, to link evidence about a State's conduct, with evidence about the outcomes that result from that conduct.
- To benefit from the strengths of quantitative tools and techniques in supporting such evidence, at the same time respecting the need to balance quantitative and qualitative analysis and personal testimonies.
- It incorporates steps that cover all human rights principles.
- Each step suggests a checklist of indicative questions and suggests a broad array of quantitative and qualitative methods.
- Which questions demand greater attention and which methods are most appropriate, will depend on the particular context.
- It is adaptable according to user, purpose and audience.
- Monitoring can never be a purely technical exercise, it is an exercise of judgment, which OPERA aims to acknowledge.

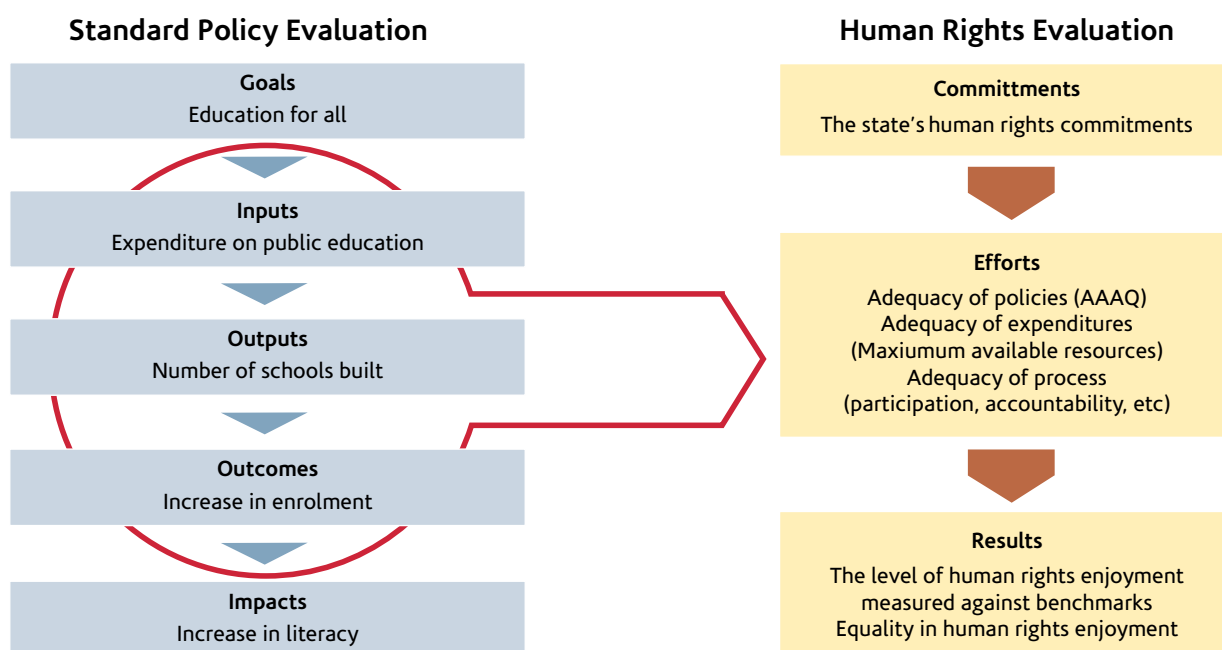
Features of the OPERA framework

- OPERA is not a one-size-fits-all model, but rather a flexible, overarching framework to guide monitoring of economic and social rights.

1 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights http://www2.ohchr.org/english/law/docs/A.RES.63.117_en.pdf.

2 International Covenant on Economic, Social and Cultural Rights. See: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/ICESCR.aspx>.

3 CESCR General comment 3. The nature of States parties obligations. See: <http://www.unhcr.ch/tbs/doc.nsf/0/94bdbaf59b43a424c12563ed0052b664>.



OPERA A four-step framework: Linking principles with measures

Outcomes	Measure aggregate levels of rights enjoyment	Measure disparities in rights enjoyment	Measure progress over time
	Minimum core obligations	Non-discrimination	Progressive realisation
Policy	Identify legal and policy commitments	Examine policy content and implementation	Analyse policy processes
Efforts	Take steps	AAAAQ criteria ⁴	PANTHER principles ⁵ , right to remedy
Resources	Evaluate resource allocation	Evaluate resource generation	Analyse budget processes
	Maximum resources	Availability of resources	PANTHER principles
Assessment	Identify other determinants	Understand state constraints	Determine state compliance
	Indivisibility and interdependence	Respect and protect, duty to cooperate	Obligation to fulfil

4 Available, accessible to all, acceptable and of adequate quality.

5 First devised by the United Nations Food and Agriculture Organization (FAO), PANTHER stands for Participation, Accountability, Non-Discrimination, Transparency, Human dignity, Empowerment and Rule of Law.

Appendix 5

Community actors in Canterbury earthquake recovery

Organisation and web address	Purpose
CanCERN cancern.org.nz	To aim for full community engagement in recovery processes and to work in partnership with recovery agencies.
Farmy Army facebook.com/pages/Farmy-Army-Federated-Farmers/203178676360140	Contributed to liquefaction clean-ups and other associated activities.
Gapfiller gapfiller.org.nz/	To temporarily activate vacant sites within Christchurch with creative projects for community benefit, to make for a more interesting, dynamic and vibrant city.
Greening the rubble greeningtherubble.org.nz/wp/	To respond creatively to extensive damage caused by the earthquakes by creating temporary public parks and gardens on sites of demolished buildings, usually in commercial rather than residential streets.
Insurance Watch insurancewatch.org.nz/who.htm	To improve the insurance response in Canterbury, and also let all New Zealanders know which insurers will provide effective support when most needed.
Life in Vacant Spaces livs.org.nz/	To encourage the productive, temporary use of vacant land and buildings around the city.
Mount Pleasant Community Centre & Residents Association Inc mpcc.org.nz/	To ensure that the social, cultural and recreational needs of our community are fulfilled.
Quake Outcasts savemyhomenz.org/index.html	To advocate and protect red-zoned homeowners' rights in relation to the Canterbury earthquakes.
Rebuild Christchurch rebuildchristchurch.co.nz/	To provide a platform for both community empowerment and hope following the earthquakes.
St Albans Residents Association stalbans.gen.nz/?page_id=3382	Is to play a part in the development of a vibrant and healthy community brought about by involvement and empowerment of its residents.
Student Volunteer Army sva.org.nz/	Contributed to shovelling liquefaction from properties, with a focus on the wellbeing of residents; showing a presence in the streets offering hot meals, clean water and guidance to professional assistance. Now switched to serving the community.
Sumner Red Stickered Group sumnercommunity.co.nz/Support/Red-Stickered	Provides information on legal, practical and financial issues facing those who have been displaced by the earthquake.
Wecan wecan-nz.com/	To publicly highlight injustices and issues affecting residents following the earthquakes.

Blogs and Canterbury pages	Activity
Avonsideblog avonsideblog.org/	About those living in Cowlshaw Street, Chaddesden Lane, Patten Street, Retreat Road (and close by) in the suburb of Avonside.
Christchurch Earthquake christchurchearthquakenews.blogspot.co.nz/	Records damage to Christchurch.
Canterbury Red zones facebook.com/CanterburyRedZones	Networks with people affected by the Canterbury earthquakes, assisting them to get advice, and support as they seek to get back to normality.
The Christchurch Fiasco thechristchurchfiasco.wordpress.com/	Blog by Sarah Miles featuring her book <i>The Christchurch Fiasco and the Insurance Aftershock</i> .
Christchurch Earthquake Photos https://www.facebook.com/CHCH.EQ.Photos	Contributing to the documentary record in photographs of the changing landscape of Christchurch and Canterbury after the earthquakes of 2010-2012.
Christchurch Voices christchurchvoices.co.nz/blog.html	Forum designed to give the people of Canterbury a voice, particularly those most affected by the earthquakes.
Poetica. The Christchurch urban poetry project https://www.facebook.com/Poetica.christchurch	Poetica stands for international poetry in combination with visual arts, written in their original language on walls in unexpected places in Christchurch for everybody to discover.
TC3 Christchurch Blue Zone facebook.com/TC3ChristchurchBlueZone	An opportunity for residents to share EQC and insurance stories.

Endnotes

- 1 In 2012, the United Nations Committee on Economic, Social and Cultural Rights considered the third periodic report of New Zealand on the implementation of the International Covenant on Economic, Social and Cultural Rights and adopted, at its 28th meeting held on 18 May 2012, a number of concluding observations. In respect of adequate housing and the Canterbury Earthquake recovery these included the following:
 21. The Committee notes the challenges caused by the recent earthquakes on the enjoyment of Covenant rights by persons affected, especially their right to housing. (art. 11, 2(2))
 - The Committee recommends that the State party adopt a human rights approach to reconstruction efforts, ensuring thereby appropriate consideration to availability, affordability and adequacy of housing, including for temporary housing. In this regard, the Committee refers the State party to its general comment No. 4 (1991) on the right to adequate housing.
 22. The Committee notes with concern the long waiting list for social housing in the State party. It further regrets the decision of the State party to restrict eligibility for social housing to only those 'in the greatest need', which denies many people of their right to adequate housing. (art. 11)
 - The Committee calls on the State party to ensure that its enactments and policies guarantee the right to adequate housing for everyone, including for all those in need of social housing and especially those who are no longer eligible to it. The Committee also urges the State party to take appropriate measures to address the problem of the long waiting list in respect of social housing. The Committee draws the attention of the State party to its general comment No. 4 (1991) on the right to adequate housing. (art. 11)
 - For the full Report See: <http://www.converge.org.nz/pma/E-C.12-NZL-CO-3.pdf>.
- 2 As set out in CESCR General Comment 4 The right to adequate housing, Contained in document E/1992/23.
- 3 As above.
- 4 As above.
- 5 Bulletin of the New Zealand Society for Earthquake Engineering, Vol. 44, No. 4, December 2011. [http://www.nzsee.org.nz/db/SpecialIssue/44\(4\)0227.pdf](http://www.nzsee.org.nz/db/SpecialIssue/44(4)0227.pdf).
- 6 Environment Canterbury, Preliminary Draft Land Use Recovery Plan, (2013) page 36.
- 7 Cited in *Ministry of Business, Innovation and Employment Housing Pressures in Christchurch: A Summary of the Evidence* (March, 2013), page 4.
- 8 EQC Scorecard, Home Repairs, 1 November, 2013. See: <http://www.eqc.govt.nz/canterbury-earthquakes/progress-updates/scorecard>.
- 9 New Zealand Government, Minister of Finance Budget Speech 2013, <http://purl.oclc.org/nzt/b-1545>.
- 10 EQC Scorecard, Home Repairs, 1 November 2013. See: <http://www.eqc.govt.nz/canterbury-earthquakes/progress-updates/scorecard>.
- 11 CERA Overview of Offer Settlements, 6 August, 2013.
- 12 Canterbury economic indicators, Quarterly reports, May 2013, Canterbury Earthquake Recovery Authority.
- 13 See: <http://cesr.org/article.php?id=1492>.
- 14 Photovoice is a community engagement tool that highlights community issues from youth perspectives. It has particular value in engaging young people in shaping and improving their social and physical environments. Photovoice has been utilised as a participatory action research tool in Auckland, Rotorua, Upper Hutt, and Canterbury. Photovoice has three goals: to give people a way to record and reflect their strengths and challenges; to promote conversation about important issues through group discussion and photographs; to engage policymakers. It entrusts people with an opportunity to use cameras as a means of recording community conditions and in becoming potential catalysts for social action and change, in their community.
- 15 Moorhouse, R., *Berlin at War*, Random House, May, 2010, page xviii.
- 16 As above.
- 17 Rt. Hon John Key, Better Public Services, Speech to the Auckland Chamber of Commerce, 15 March 2012. See: <http://www.national.org.nz/Article.aspx?articleId=38113>.
- 18 IASC Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (the IASC Operational Guidelines). Formally adopted by the Inter-Agency Standing Committee in June

- 2006 and revised and republished in January 2011, page 3.
- 19 Guha-Sapir, D., Hoyois P. and Below R., (2012), *Annual Disaster Statistical Review 2012*, Centre for Research on the Epidemiology of Disasters (CRED); Institute of Health and Society (IRSS); Université catholique de Louvain, Brussels, Belgium.
 - 20 The Hyogo Framework for Action 2005-2015: *Building the Resilience of Nations and Communities to Disasters*, Extract from the final report of the World Conference on Disaster Reduction (A/COMF.206/6).
 - 21 United Nations General Assembly. Human Rights Council Sixteenth session on Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, paragraph 20.
 - 22 Fothergill, A., Peek, L., "Poverty and Disasters in the United States: A review of Recent Sociological Findings." *Natural Hazards*, 32: 89-110, 2004.
 - 23 See <http://www.scribd.com/doc/54547800/Poverty-and-Disasters-in-the-United-States-A-Review-of-Recent-Sociological-Findings>, pages 92-3.
 - 24 The situation of the eastern suburbs, home to large number of Māori, Pacific people and people on low incomes who were disproportionately affected by the damage caused by the quake, provides an illustration of how discrimination can sometimes occur unintentionally. Authorities took longer to provide portaloos and chemical toilets than in more affluent suburbs, partly it seems because residents were less able to make their needs known to the authorities and relief agencies. This served to reinforce the perception of residents in the Eastern suburbs that they had been forgotten in the early stages of the recovery. See: Potangaroa, R., "The Management of Portable Toilets in the Eastern Suburbs of Christchurch after the February 22, 2011 Earthquake", *Australasian Journal of Disaster and Trauma Studies*, Regan Potangaroa, Volume 2011–2, page 37. See also: Thornley, T., Ball, J., Signal, L., Lawson-To Aho, K., Rawson, E., *Building Community Resilience: Learning from the Canterbury earthquakes: Final report to the Health Research Council and Canterbury Medical Research Foundation*, March 2013, page 26. Also: Cummings, A., "Would You Like a Toilet With That?" a personalised account of the recovery by an eastern suburb resident, <http://www.stuff.co.nz/national/christchurch-earthquake/4725553/Christchurch-earthquake-Suburbs-not-forgotten>.
 - 25 *Climate shocks: risk and vulnerability in and unequal world*, UNDP Human Development Report, 2007-8., Chapter 2, p. 78. See: http://hdr.undp.org/en/media/HDR_20072008_EN_Chapter2.pdf.
 - 26 Morrow, B. H., "Identifying and mapping community vulnerability." International Hurricane Centre, Florida International University, 1999, page 2.
 - 27 Sir Peter Gluckman, The Psychosocial Consequences of the Canterbury Earthquakes, briefing paper, Office of the Prime Minister's Science Advisory Committee, 10 May, 2011.
 - 28 Guidance Note of the Secretary-General on Democracy (2009). See: <http://www.un.org/democracyfund/guidance-note-un-secretary-general-democracy>.
 - 29 Standards of Operation: International Human Rights Standards on Post-Disaster Rehabilitation and Settlement (2005) para 33.
 - 30 OHCHR. Right to Housing Factsheet, p.37.
 - 31 General Comment No. 4, para 12.
 - 32 See ICESCR: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.
 - 33 OHCHR. Human Rights and Poverty Reduction: A Conceptual Framework. Geneva, UN. 2004. <http://www2.ohchr.org/english/issues/poverty/docs/povertyE.pdf>.
 - 34 See: <http://www.legislation.govt.nz/act/public/2011/0012/latest/DLM3653522.html>.
 - 35 In the Canterbury Earthquake Recovery Act 2011, 'greater Christchurch' is defined as the districts of the Christchurch City Council, the Selwyn District Council and the Waimakariri District Council, and includes the coastal marine area adjacent to these districts.
 - 36 CERA Annual Report 2012, page 5.
 - 37 The Chief Executive of CERA told the Finance and Expenditure Committee this year that businesses have adapted remarkably well to the disruption, with many finding alternative premises, and the productive sector being largely unaffected: 2010/11 Financial Review of CERA and EQC para 3.

- 38 Te Rūnanga o Ngāi Tahu was established by the Te Rūnanga o Ngāi Tahu Act 1996. It services the tribe's statutory rights and ensures that the benefits of the Settlement are enjoyed by Ngāi Tahu whānau. Ngāi Tahu has a strong asset basis and is a key player in Canterbury's economy.
- 39 S17(2) CER Act 2011; CBD is defined in S4(1) as the area bounded by the four avenues that are Bealey Avenue, Fitzgerald Avenue, Moorhouse Avenue, and Deans Avenue; and Harper Avenue.
- 40 He Hua Nui Ara Ake mo Waitaha 22 July 2011.
- 41 Human Rights Commission engagement, 5 September 2012.
- 42 Canterbury Earthquake Recovery Authority (2012) Recovery Strategy for Greater Christchurch Mahere Haumanutanga o Waitaha. Canterbury Earthquake Authority.
- 43 As above. See: <http://cera.govt.nz/recovery-strategy/built-environment/rebuilding-programme>.
- 44 As part of the contingency plan for emergency housing, the Ministry of Business Innovation and Employment (MBIE) undertook two initiatives to make temporary accommodation available in case the market was unable to provide it. It arranged for 70 portable temporary dwellings to be built and taken to properties with damaged homes. This would have given residents choice about where they wanted to stay. Units were proposed for displaced residents on private property as well as on temporary village sites so that where residents were unable to have a unit located on their own property, they could be located on other private property or at the temporary accommodation villages. There was insufficient uptake however on the scheme. Of these, MBIE is quoted as saying only 27 households expressed interest in getting portable houses, and that of these 20 sites were either unsuitable or the family found alternative accommodation (See: <http://www.stuff.co.nz/national/politics/5782843/2-84m-spent-on-scrapped-housing-scheme>) MBIE reports that this scheme was not progressed for two reasons: logistical costs proved too expensive to transport units and connect them for such short periods. Also the timing was not appropriate as households still had one to two years of insurance issues resolution to occur before they would be ready for temporary accommodation while their homes were being rebuilt or repaired. These units have since been used for other purposes, for example, 20 formed the Rawhiti Domain temporary village, 12 were sold for temporary accommodation for workers, and remaining units are now being used for rebuild workers accommodation.
- 45 Of these, MBIE is quoted as saying only 27 households expressed interest in getting portable houses, and that of these 20 sites were either unsuitable or the family found alternative accommodation (See: <http://www.stuff.co.nz/national/politics/5782843/2-84m-spent-on-scrapped-housing-scheme>).
- 46 Linwood Park Village has 41 units with a mix of two, three and four bedroom units. Rāwhiti Domain in North New Brighton has 20 two-bedroom units while Kaiapoi has 22 units with a mix of one, two, three and four bedroom units. Ranger's Park subdivision will provide a further 40 homes and will bring the total number of government supported temporary homes that are managed by the Canterbury Earthquake Temporary Accommodation Service (CETAS) to 124.
- 47 Earthquake Support Coordination Service Seismic Shifts, Christchurch Innovations, Case Study 3, State Services Commission. See: <http://www.ssc.govt.nz/sites/all/files/ci-earthquakesupport-long-2012.pdf>.
- 48 CERA, EQC, MBIE Joint Feedback on Draft Report, M/12-13/494, para 59.
- 49 CERA, EQC, MBIE Joint Feedback on Draft Report, M/12-13/494, para 60.
- 50 As above.
- 51 As above.
- 52 CERA pamphlet. Crown offer to uninsured improved properties in the flat land residential red zones, September 2012. <http://cera.govt.nz/sites/cera.govt.nz/files/common/fact-sheet-crown-offer-to-uninsured-improved-properties-in-the-flat-land-residential-red-zones-20120913.pdf>.
- 53 See: <http://cera.govt.nz/sites/cera.govt.nz/files/common/cabinet-paper-land-decisions-june-2011.pdf>.
- 54 Wright, Michael. "Compensation offer slammed by owners." 14 September 2012. <http://www.stuff.co.nz/the-press/news/7674290/Compensation-offer-slammed-by-owners>.
- 55 As above.
- 56 For an updated version of this information see CERA website: <http://cera.govt.nz/sites/cera.govt.nz/files/common/residential-red-zone-purchase-offer-supporting-information-booklet-20130327.pdf>

- 57 "Resigned red-zoners take the money and run" The Christchurch Press, March 20, 2013. See: <http://www.stuff.co.nz/the-press/news/christchurch-earthquake-2011/8446696/Resigned-red-zoners-take-the-money-and-run>.
- 58 See statement regarding services in: "Outcasts win High Court Battle" 26 August, 2013. See also: <http://www.stuff.co.nz/national/9089018/Outcasts-win-High-Court-battle>. See also Prime Minister's comment on 3 News at Six, 2 April 2013.
- 59 "Christchurch red-zoners will lose services" 3 News, 26 June. See: <http://www.3news.co.nz/Chchs-red-zoners-will-lose-services/tabid/423/articleID/302839/Default.aspx>; See also: http://img.scoop.co.nz/media/pdfs/1204/Lane_Neave_Legal_Opinion.pdf.
- 60 OIA request from resident to Christchurch City Council. Ref: Lex11942, See: <http://www.pay100.co.nz/>.
- 61 Canterbury Earthquake Recovery Authority. See: <http://cera.govt.nz/residential-red-zone/crown-offers>.
- 62 Canterbury Earthquake Recovery Authority, Ref: CE 1039/2012, HRC Ref: 92261.
- 63 In a briefing to the Department of the Prime Minister and Cabinet on March 25, the Commission urged the Government to "adopt a more individualised approach to red zoning" and argued that there was a strong case to be made for an extension of the deadline for all red-zoned residents, until such time as:
- The Government has determined and communicated the outcome for residents who choose to decline the Government's offer
 - The Port Hills zoning review has been completed.
 - MBIE has finalised the review process for s 124 determination process
 - CCC guidelines for rock protection structures are released. Human rights Commission, DPMC Briefing, 25 March, 2012.
- 64 See: Judgement of Panckhurst, Fowler Developments Ltd v the Chief Executive of the Canterbury Earthquake Recovery Authority (Quake Outcasts) [2013] NZHC 2173, at 42-43. See also: <http://www.stuff.co.nz/the-press/news/8711140/Red-zone-reprieve-option-kept-quiet>.
- 65 As above.
- 66 Minister for Canterbury Earthquake Recovery Hon. Gerry Brownlee, media release, 15 June, 2012. See: <http://www.beehive.govt.nz/release/red-zone-offers-roaring-success>.
- 67 Canterbury Earthquake Recovery Authority. See: <http://cera.govt.nz/news/2013/case-by-case-extension-criteria-confirmed-28-may-2013>.
- 68 CERA, Communications, 6 November 2103.
- 69 CERA, Communications, 13 November 2012, ref CER/324.
- 70 See: <http://cera.govt.nz/zoning-review/flat-land>
- 71 CERA, EQC, MBIE Joint Feedback on Draft Report, M/12-13/494, para 49.
- 72 Determination 2013/037. 2 July 2013. Regarding the issuing of a dangerous building notice under section 124 of the Building act relating to geotechnical hazards on the property at 4 Awaroa Lane, Sumner.
- 73 "Brownlee: Council has got it wrong," Hamish Rutherford, *The Press*, 7 June, 2103. See: <http://www.stuff.co.nz/the-press/news/hills-and-harbour/8766684/Brownlee-Council-has-got-it-wrong>.
- 74 See: <http://cera.govt.nz/news/2013/government-postpones-port-hills-announcement-28-august-2013>.
- 75 EQC Briefing to the Incoming Minister, December 2011, page 6.
- 76 EQC Correspondence to HRC, June 2013.
- 77 CERA, EQC, MBIE Joint Feedback on Draft Report, M/12-13/494, para 150.
- 78 Earthquake Risk Insurance, Knowledge Note 6-2, Cluster 6: The economics of disaster risk, risk management and risk financing, World Bank, page 10. See also "Removing the Roadblocks to Claims Success," Presentation by John Lucas, Insurance Manager, ICNZ, AICLA/ANZIIF Claims Convention, 1 August 2013; and Insurance Council New Zealand. See also: <http://icnz.org.nz/statistics-data/canterbury-compared-with-other-world-events-of-2011/>.
- 79 Insurance Council New Zealand. For a useful schematic overview of over-cap and claims out of EQC scope see: <http://icnz.org.nz/wp-content/uploads/stats-oct-2013-full.gif>.
- 80 As above.
- 81 As above.

- 82 See: <http://www.eqc.govt.nz/canterbury-earthquakes/home-repair-process/vulnerable>.
- 83 Incoming correspondence, Tim Grafton Chief Executive of the Insurance Council New Zealand, 12 July, 2013.
- 84 Incoming correspondence, Tim Grafton Chief Executive of the Insurance Council New Zealand, 5 August, 2013.
- 85 Insurance Council New Zealand, Over cap and claims 'out of scope' – summary of ICNZ insurer progress as at 01/10/2013. See: <http://icnz.org.nz/wp-content/uploads/stats-oct-2013-full.gif>.
- 86 As above.
- 87 EQC flier, EQC & Winter Wellness. For a full list of EQC's vulnerability criteria see: <http://www.eqc.govt.nz/canterbury-earthquakes/home-repair-process/vulnerable>.
- 88 CanCERN media Release, 27 March, 2012. See: <http://www.addingtonaction.org.nz/2012/03/day-398-cancern-provides-govt-with-3.html>.
- 89 Steeman, M., "Insurance firms playing fast and loose." The Press, 23 July, 2013. See: <http://www.stuff.co.nz/the-press/business/your-property/7321157/Insurance-firms-playing-fast-and-loose>.
- 90 Representative comments from InsuranceWatch.org.nz baseline survey, May-July 2012. See: <http://www.insurancewatch.org.nz/docs/In%20Your%20Words%20-%20August%201%20-%20Survey%20Comments.pdf>.
- 91 Grafton, T., Speech to the Canterbury branch of the New Zealand Insurance Law Association, 26 March, 2013.
- 92 External Review of EQC's Operational Capability 2009, p. iv.
- 93 Planning for a large event was based on a Wellington earthquake resulting in as many as 150,000 claims.
- 94 Martin Jenkins and Associates, Draft report: Lessons Learned: EQC Response to Canterbury Events, March, 2012, See: <http://www.eqc.govt.nz/about-eqc/publications/reports>
- 95 Controller and Auditor-General Earthquake Commission Managing the Canterbury Home Repair Programme October 2013 <http://www.oag.govt.nz/2013/eqc/2013/eqc/docs/2013/eqc/docs/oag-earthquake-commission.pdf>.
- 96 External Review of EQC's Operational Capability 2009, p.10.
- 97 EQC Briefing to the incoming Minister, December 2011, page 10.
- 98 As above.
- 99 As above.
- 100 See: Insurance Council New Zealand, Over-cap claims and out of EQC scope – summary of ICNZ insurer progress as at 1 October, 2013. <http://icnz.org.nz/wp-content/uploads/stats-oct-2013-full.gif>.
- 101 Jha, Abhas K.; Barenstein, J. D. Phelps, P.M., Pittet, D. Sena, S. Safer homes, stronger communities:a handbook for reconstructing after natural disasters 2010. Washington D.C. <http://documents.worldbank.org/curated/en/2010/01/11702495/safe-homes-stronger-communities-handbook-reconstruction-after-natural-disaster>.
- 102 As above.
- 103 As above.
- 104 Department of Building and Housing. Revised guidance on repairing & rebuilding houses affected by the Canterbury earthquake sequence. November 2011.
- 105 EQC: FAQ "Can I see my scope of works?" See: <http://www.eqc.govt.nz/canterbury-earthquakes/progress-updates/canty-faq>.
- 106 I.e. a connection with family is maintained. This can be important for Māori where a place has a strong ancestral connection.
- 107 CESCR, General Comment No. 4, The Right to Adequate Housing, (Art 11 (1) of the Covenant), UN doc. E/1992/23, Dec 1991, para. 7.
- 108 The indispensable and indivisible significance of adequate housing to the enjoyment of other human rights is reflected in other international statements of law and policy, including the International Covenant on Civil and Political Rights (Article 17), and the International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(e)(iii)); International Convention relating to the Status of Refugees (Article 21); International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families (Article 43(1) (d)).
- 109 The Declaration on the Rights of Indigenous People, adopted by the General Assembly in 2007, acknowledges the right of indigenous

- people to improve their housing and to determine housing priorities and strategies. See Declaration on the Rights of Indigenous Peoples, arts 21, 23, G.A Res 61/295, U.N. Doc. A/RES/61/295 (Oct 2, 2007).
- 110 ICESCR: General Comment No 12, para.7.
- 111 United Nations General Assembly. Human Rights Council Sixteenth session on Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Raquel Rolnik, para15.
- 112 Hon Tariana Turia, 2012 National Māori Housing Conference National Māori Housing Conference, 26 March, 2012. See: <http://www.scoop.co.nz/stories/PA1203/S00335/turia-2012-national-Māori-housing-conference.htm>.
- 113 *Human Rights in New Zealand 2010 – Ngā Tika Tangata o Aotearoa 2010 – Whakarāpopototanga*. Human Rights Commission. 2011, pp. 204-219.
- 114 New Zealand Productivity Commission. Housing affordability inquiry, April 2012. See: http://www.productivity.govt.nz/sites/default/files/Final%20Housing%20Affordability%20Report_0_0.pdf.
- 115 See <http://www.treasury.govt.nz/publications/informationreleases/housing>.
<http://beehive.govt.nz/release/govt-responds-housing-affordability-report>.
- 116 See <http://www.mbie.govt.nz/about-us/publications/cabinet-papers/Housing%20Accords%20and%20Special%20Housing%20Areas%20Bill%20Approval%20for%20introduction%202013%20Cabinet%20Minute.pdf>.
<http://www.beehive.govt.nz/speech/housing-accords-and-special-housing-areas-bill-third-reading>
- 117 Housing NZ, 2010 Māori Housing Trends Report: para 12.
- 118 New Zealand was one of the first countries to provide state housing for low income workers unable to purchase through the open market and with less bargaining power in the private rental market. *Human Rights in New Zealand 2010 – Ngā Tika Tangata o Aotearoa 2010 – Whakarāpopototanga* Human Rights Commission. 2011. p.208.
- 119 See: s.18 (2) (a) and s.18 (1).
- 120 See: s.1A (b) and s.61 DH.
- 121 Section 59 of the Residential Tenancies Act expressly provides for the abatement of rent where premises are destroyed or seriously damaged, and therefore fully or partially uninhabitable. Section 54 of the Residential Tenancies Act 1986 provides statutory protection against retaliatory notice (e.g. because a tenant has requested repairs).
- 122 Housing New Zealand, Strategic Plan 2010-15, p.6.
- 123 New Zealand Productivity Commission: Housing affordability inquiry, pp. 216-221.
- 124 Christchurch Housing Dynamics Report, Commissioned by CERA and MBIE, prepared by Martin Jenkins, October 2012.
- 125 Environment Canterbury, Preliminary Draft Land Use Recovery Plan, (2013) page 36.
- 126 Cited in Ministry of Business, Innovation and Employment Housing Pressures in Christchurch: A Summary of the Evidence (March, 2013), page 4.
- 127 MIBE., Key Indicator Report, Housing, August, 2013, See: <http://www.dbh.govt.nz/UserFiles/File/Sector%20info/key-indicator-reports/2013/kir-canterbury-august-2013.pdf>.
- 128 Also known as the “Median Multiple” and used by the World bank, United Nations and the Harvard Joint Centre on Housing. See: <http://www.demographia.com/dhi.pdf>.
- 129 The Ninth Annual Demographia International Housing Affordability Survey <http://www.demographia.com/dhi.pdf>. Other centres were: Tauranga-Western Bay of Plenty (5.9), Dunedin (5.2) and Wellington (5.1) were severely unaffordable. Three New Zealand markets were seriously unaffordable, Palmerston North (4.1), Napier-Hastings (4.8) and Hamilton (4.8). New Zealand had no affordable markets and no moderately unaffordable markets (Table 10).
- 130 As above, page 5.
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- 30 per cent rates remission for business properties located within the Central City cordon as at 1 July 2012 and for the period they remain within the cordon (an extension of the current policy).
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21. The Committee notes the challenges caused by the recent earthquakes on the enjoyment of Covenant rights by persons affected, especially their right to housing. (art. 11, 2(2)).
- The Committee recommends that the State party adopt a human rights approach to reconstruction efforts, ensuring thereby appropriate consideration to availability, affordability and adequacy of housing, including for temporary housing. In this regard, the Committee refers the State party to its general comment No. 4 (1991) on the right to adequate housing.
22. The Committee notes with concern the long waiting list for social housing in the State party. It further regrets the decision of the State party to restrict eligibility for social housing to only those 'in the greatest need', which denies many people of their right to adequate housing. (art. 11)
- The Committee calls on the State party to ensure that its enactments and policies guarantee the right to adequate housing for everyone, including for all those in need of social housing and especially those who are no longer eligible to it.
- The Committee also urges the State party to take appropriate measures to address the problem of the long waiting list in respect of social housing. The Committee draws the attention of the State party to its general comment No. 4 (1991) on the right to adequate housing. (art. 11).
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