

Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to New Zealand: comments by the State

Proposal

- 1 I seek Cabinet's agreement to respond to recommendations made by the United Nations Independent Expert on the enjoyment of all human rights by older persons following her visit to New Zealand in March 2020, attached as Appendix 1.

Relationship to government priorities

- 2 The proposals in this paper progress the Governments objectives to ensure older people can participate fully in a society that supports strong personal, social and economic rights for everyone. Specific 2020 manifesto commitments the response will contribute to are
 - a) continue to implement the Better Later Life – He Oranga Kaumātua (Better Later Life Strategy), which promotes a society where people can age positively and where older people are highly valued and recognised as an integral part of families and communities.
 - b) prioritise a human rights approach to international affairs.

Executive summary

- 3 The United Nations Independent Expert on the enjoyment of all human rights by older persons visited New Zealand in March 2020 and subsequently issued a report setting out a range of recommendations to strengthen the human rights of older persons in New Zealand.
- 4 The main findings of the report fall into seven categories: age discrimination; violence, neglect, maltreatment and abuse; education, training and lifelong learning; standards of living; social protection and the rights to social security and work; care, and digitalization, artificial intelligence and robotics technology.
- 5 I propose submitting the attached document (Appendix 1) as a formal written response to the recommendations. With the agreement of the Independent Expert, this document will be made public by the United Nations.
- 6 Responding to the Independent Expert's recommendations provides an opportunity for New Zealand to progress national and international interests. These include highlighting our commitment to the human rights of older people and profiling work undertaken as part of the COVID-19 response and under Better Later Life - He Oranga Kaumātua – the Government's Strategy for our ageing population.
- 7 The response will also clarify aspects of the recommendations that do not reflect New Zealand's current context, or where explicit policy decisions have been made to meet the human rights needs of older people in other ways. The time elapsed since the Independent Expert's visit, and the Government's ongoing response to the COVID-19 pandemic, means some recommendations have become less pertinent.

Background

- 8 The Independent Expert on the enjoyment of all human rights by older persons (the Independent Expert) is appointed by the United Nations Human Rights Council (the Human Rights Council) to examine and report on the human rights of older persons within Member States. The Independent Expert reports on developments, challenges, and gaps in protection in the realization of the rights of older persons and makes related recommendations. This includes annual reports to the Human Rights Council and United Nations General Assembly, as well as reports on and recommendations to individual Member States.
- 9 The then Independent Expert, Ms Rosa Kornfeld-Matte, conducted an official country visit to New Zealand from 2 to 12 March 2020, at the invitation of the Government. The visit was coordinated by the Office for Seniors, the Ministry of Foreign Affairs and Trade, the New Zealand Human Rights Commission and the Special Procedures Branch of the Office of the United Nations High Commissioner for Human Rights.
- 10 The Independent Expert met with the Ministers for Seniors and of Social Development and Employment and relevant independent Crown entity representatives, including the Chief Human Rights Commissioner. She also met with representatives from numerous government departments, regional and local government authorities, representatives from civil society organizations, academics, private companies and social workers and volunteers working with older people. She visited several aged residential care facilities and related institutions.
- 11 At the end of her visit, the Independent Expert released a report outlining a number of recommendations to strengthen the human rights of older people in New Zealand. This is attached as Appendix 2. Findings of the report were presented to the Human Rights Council on 18 and 21 September 2020. New Zealand responded by making a statement to the Human Rights Council acknowledging the Independent Expert's visit. This is attached as Appendix 3.

The human rights of older persons

- 12 New Zealand is experiencing a significant demographic change. We are living longer than ever before. By 2034, more than 1.2 million New Zealanders, almost a quarter of our total population, will be aged 65 or older. During the next decade there will be more people aged 65 and older than children aged 0 to 14 years.
- 13 This is in line with global trends. Declining fertility rates and longer life expectancy are causing unprecedented proportional growth in the world's older adult population. This will transform many aspects of society and pose new economic and social challenges. Greater numbers of older people are likely to make their rights as a group more prominent.
- 14 The older population in New Zealand is also increasingly diverse. By 2034 the number of Māori aged 65 and older will more than double from 2018 figures, as will the older Pacific population and there will be nearly three times as many Asian New Zealanders aged 65 and older. Projections for the number of persons with disabilities is not currently available but we expect this to increase as the older population continues to grow.
- 15 Addressing the protection of the human rights of older persons is an issue that has become more significant domestically and internationally. There are a range of unique circumstances specific to the experiences of older people such as limited access to employment, inequitable access to health and disability care, social isolation and neglect that render this group in need of protection from possible of human rights abuses. The mistreatment of older people can be normalised within some families and communities.

Cases of elder abuse, particularly those relating to elder financial or psychological abuse are typically underreported. This is important for older persons with disabilities who are at higher risk of experiencing sexual and interpersonal violence.

- 16 The COVID-19 pandemic has influenced international discourse on the importance of protecting and enhancing the human rights of older persons. It has revealed multiple risk factors that can have a disproportionate impact on physical or mental decline when compared to other population groups. Access to health care and disability supports; the risk of neglect and abuse in institutions and care facilities; poverty and unemployment; social isolation and exclusion, stigma and discrimination have been highlighted as significant for the older population.

Opportunities

- 17 New Zealand is not explicitly required to respond to the Independent Expert's report as it would for other United Nations review processes under ratified conventions or similar mechanisms. For the same reason, New Zealand is not obliged to the United Nations to implement any recommendations. However, responding constructively and publicly to the Independent Expert is in line with Government policy priorities and in a 2020 speech to the Human Rights Commission, New Zealand agreed to consider closely the Independent Expert's recommendations in formulating a plan to implement Better Later Life - He Oranga Kaumātua – the Government's Strategy for our ageing population (the Better Later Life Strategy).
- 18 Responding to the Independent Expert's report signals New Zealand's support for the international human rights system and treaty body processes. A response to the report will also align with New Zealand's upcoming bid to be elected as a member of the Human Rights Council at the end of 2024.
- 19 Developing strong links with international institutions and partners helps New Zealand to contribute its expertise and experience to the global effort to address the needs of an ageing population. Growing these relationships also provides opportunities for New Zealand to build and leverage targeted international relationships to pursue other values and interests. Responding to the recommendations reinforces our global reputation and New Zealand's position as a "good citizen" within multilateral institutions.

Progressing the Governments international human rights objectives

- 20 New Zealand is party to 7 core United Nations human rights treaties. In signing these, New Zealand has assumed obligations under international law to respect, protect and fulfil the human rights of everyone in New Zealand. States commit to refrain from actions that interfere with or curtail the enjoyment of human rights, protect individuals and groups against human rights abuses and take positive action to facilitate the enjoyment of basic human rights.
- 21 New Zealand has a strong history of protecting and promoting human rights both at home and internationally. Our foreign policy engagement on human rights includes bilateral, regional and multilateral political advocacy and development assistance, and enhances our reputation as a constructive and committed state in support of the global rules-based system.

Progressing and enhancing broader Government and international frameworks

- 22 Addressing the economic, social, cultural, civil, and political rights of older persons contributes to a number of broader government and international frameworks.
 - 22.1 **Supporting the Living Standards Framework 2021 (LSF):** The Independent Expert's recommendations contribute to enhancing the LSF dimensions of wellbeing. This includes an assessment and reflection of the wellbeing of older

persons in New Zealand across the three LSF levels; individual and collective; institutions and Governance; and the wealth of Aotearoa.

- 22.2 **Supporting the United Nations Sustainable Development Goals (UNSDG's):** Responding to the Independent Expert's recommendations will provide an opportunity for New Zealand to contribute to our responsibilities as a Member State to deliver against the UNSDG's. The UNSDG's were adopted by all United Nations Member States in 2015 and form the 2030 Agenda for Sustainable Development. The 17 goals have a broad focus to address poverty, improve health and education, reduce inequality, and encourage economic growth.
- 22.3 **World Health Organization (WHO) Decade of Action on Healthy Ageing 2020-2030 (the Decade):** Developing a formal statement on Government positions on the human rights of older people contributes to reporting on the United Nations Decade of Healthy Ageing. The WHO is encouraging all Member States to develop a response and to share information and updates about the work they are doing to meet the needs and human rights of older people. The Decade also supports the goals of related strategies and plans on population ageing endorsed by the World Health Assembly, the United Nations General Assembly and other bodies.
- 22.4 **United Nations Human Rights Treaties:** Reinforcing the human rights of older persons overlaps with efforts to strengthen our commitment to other United Nations human rights treaties New Zealand is already party to. This includes the International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the International Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of the Child; the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention on the Rights of Persons with Disabilities.

Progressing and enhancing work between Government Departments and Agencies

- 23 Providing a formal response helps to inform the progression of work across Government to strengthen the human rights of older persons in New Zealand. Many of the recommendations align well with pre-existing cross government strategies and action plans, such as the Better Later Life Strategy (2019-2034) and Better Later Life Action Plan (2021-2024), the Older Workers Employment Action Plan (2021), the Healthy Ageing Strategy (2016) and Priority Actions (2019-2023), the Disability Strategy (2016-2026) and the Disability Action Plan (2019-2023), and the New Zealand Carers Strategy (2008) and Mahi Aroha Carer's Strategy Action Plan (2019-2023). These include the reform of the Health and Disability System, the Making Aotearoa Accessible work programme, and the recent establishment of the Aged Care Commissioner.

Summary of progress

- 24 Responding to the recommendations opens the Government up to public scrutiny both domestically and internationally from a range of different actors. The response outlines that New Zealand takes a considered approach to acknowledge progress made and identify areas where more work is required.
- 25 Recommendations are not explicitly numbered in the Independent Expert's report but provide a general comment on areas of improvement. The Government's response to these areas is as follows:
- 25.1 **General findings:** The Government describes progress to respond to general recommendations to increase funding and support to the Minister for Seniors through further investment in the Better Later Life Strategy. The Government

challenges recommendations to create additional mechanisms that support this portfolio and the human rights of older persons through treaties and protocols not yet committed to by the state. New Zealand has also not taken a position on any proposals to establish a dedicated instrument to support the human rights of older persons at an international level.

- 25.2 **Age discrimination:** The Office for Seniors has taken a lead role in responding to recommendations to address age discrimination, provide support to Government agencies in policy development, as well as to support older people to participate in the implementation of policy at a Governance level.
- 25.3 **Violence, neglect, maltreatment and abuse:** The response outlines significant progress to address recommendations to increase culturally appropriate support for victims of elder abuse. In addition, we highlight the increased investment in prevention initiatives. The response does acknowledge the education gap prevalent across sectors to raise awareness of the mistreatment of older people, and support to help frontline workers identify the risk factors of elder abuse.
- 25.4 **Education, training and lifelong learning:** Actions within the Older Workers Employment Action Plan directly address recommendations made by the Independent Expert to increase opportunities for education, training and lifelong learning. Most notably to analyse the labour market needs of older workers and to eliminate age restrictions and barriers to training, retraining, educational and professional development support.
- 25.5 **Adequate standards of living:** The issue of housing accessibility and affordability was emphasised in this section of the report. The response highlights the work of Kāinga Ora to increase the supply of public rentals, including those that meet universal design standards, and work to review retirement village legislation to ensure that the rights of consumers are adequately protected.
- 25.6 **Social protection and the rights to social security and work:** The Government is not currently considering any changes to New Zealand Superannuation settings to support long term low income earners as recommended by the Independent Expert. We draw attention to investments made to improve the wider welfare system and increase access to other entitlements. The response also maintains that New Zealand legislation does not align with work policies of the International Labour Organisation but progress to strengthen these policies has been addressed through the Older Workers Employment Action Plan.
- 25.7 **Health and support services:** The response outlines a range of initiatives implemented to address growing demands for long term care staff and increased funding into the palliative care sector in line with the Independent Expert's recommendations. Continued investments in the health sector such as home and community support services and dementia care will work to address funding issues and ensure consistency in the implementation of major reforms in the health system.
- 25.8 **Digitalization, artificial intelligence and robotics technology:** The response highlights work progressed by the Office for Seniors to address digital exclusion through essential digital skills training. In addition, the Government continues to progress New Zealand's Digital Strategy, raising awareness of digital safety and scams and exploring ways to improve older people's access to affordable and suitable internet and digital devices.

Limitations

- 26 The Independent Expert calls for New Zealand to ratify international treaties and protocols we are not yet party to. New Zealand has traditionally committed to implementing international human rights obligations domestically. However, we have a

long-standing practice of accepting international obligations only after reviewing and amending the relevant legislation, policy and practice to ensure compliance.

- 27 The Government considers whether legislative and other changes mean that New Zealand can ratify further human rights instruments, withdraw reservations and accede to communications procedures. This was the position provided to the United Nations Human Rights Council in New Zealand's 2019 Universal Periodic Review and has informed this response.

Reporting to the Office of the United Nations High Commissioner for Human Rights

- 28 Competing priorities as a result of COVID-19 resulted in the postponement of work on a formal written response. Appendix 1 is a cross-agency written response to the recommendations, and provides an update on the human rights of older persons in New Zealand during the intervening two years, including as a result of the response to COVID-19.

Population Implications

- 29 Older adults make up an increasingly large proportion of the New Zealand population and this demographic is growing rapidly. As too will the diversity of people within this group such as a change in ethnicity and disability.
- 30 Contributions to strengthen the enjoyment of economic, social, cultural, civil, and political rights for older persons improve outcomes for population groups that exist inside this demographic including older persons of diverse race, ethnicity, language, gender, socio-economic status, disability, sexual orientation and geographical location.
- 31 The Independent Expert highlights a number of findings in relation to issues facing Māori which can be exacerbated by aspects of ageing. The Independent Expert has laid out many of these issues as urgent and pressing. Examples include:
- 31.1 higher concentration of older Māori in disadvantaged rural areas including barriers to accessing health services generally and specialist medical services
 - 31.2 overrepresentation of older Māori in rental or crowded housing which correlates with lower incomes, poorer health outcomes and lower education levels
 - 31.3 overrepresentation of older Māori in New Zealand prisons
 - 31.4 older Māori are less likely to engage with primary care and are at risk of being entirely invisible to the health system until they suffer an acute episode requiring hospital care
 - 31.5 shorter life expectancy and high disability rates for Māori
- 32 Māori rights and interests are recognised and provided for in various pieces of legislation. Whether or not there is an express statutory reference, the Treaty of Waitangi and its principles must be considered, and priority given.
- 33 Older people who have experienced life-long impairments or early onset impairments are less likely than their peers to have achieved educational outcomes or been in full time employment, and less likely to have owned a house or acquired cash assets. The wellbeing of these disabled people will be very different to other older people, which calls for consideration amongst older persons policy and within wider welfare systems.

Financial Implications

- 34 There are no financial implications arising from this paper

Impact Analysis

35 A regulatory impact assessment is not required.

Legislative Implications

36 There are no legislative changes resulting from this paper.

Communications

37 As Minister for Seniors, in consultation with other relevant Ministers, I will release the attached response (if agreed by Cabinet) and any related communications, subject to any minor editorial changes for submission to the Office of the United Nations High Commissioner for Human Rights. Following submission, and with the approval of the Independent Expert, the response will be available on the United Nations website.

Human Rights

38 This paper is not inconsistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Proactive Release

39 This paper will be proactively released within 30 business days of Cabinet confirmation of decisions. Proactive release is subject to redaction as appropriate under the Official Information Act 1982.

Consultation

40 The following departments were consulted: Department of Corrections, Kāinga Ora, Ministry of Disabled People, Ministry of Business, Innovation and Employment, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Social Development, Ministry of Transport, National Emergency Management Agency, New Zealand Human Rights Commission, New Zealand Treasury, Office for Disability Issues, Office for Seniors, Public Service Commission, Te Ara Ahunga Ora Retirement Commission

Recommendations

The Minister for Seniors recommends that the Committee:

1. **note** that the United Nations Independent Expert on the enjoyment of all human rights by older persons visited New Zealand in March 2020 and subsequently issued a report setting out a range of recommendations
2. **note** that New Zealand responded by making a statement at the United Nations Human Rights Council in Geneva on 18 and 21 September 2020
3. **note** that there is no formal requirement to respond to the Independent Expert's report, but that many Member States do prepare a response
4. **note** that preparing a written response to the Independent Expert's report presents an opportunity to strengthen New Zealand's commitment to protecting the human rights of older people, and to profile work undertaken through the COVID-19 response and under the Better Later Life Strategy

5. **note** that the attached represents a formal statement of Government positions on the human rights of older persons in New Zealand, formulated by cross-agency contribution
6. **agree** to submit the attached response to the report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to New Zealand, subject to minor editorial, design and formatting changes by the Minister for Seniors, to the Office of the United Nations High Commissioner for Human Rights
7. **note** that, subject to the approval of the United Nations Independent Expert on the enjoyment of all human rights by older persons, the response will be made publicly available by the United Nations.

Authorised for lodgement

Hon Dr Ayesha Verrall
Minister for Seniors

Appendix 1 - Report of the Independent Expert on the enjoyment of all human rights by older persons on her mission to New Zealand: comments by the State

Appendix 2 – Report of the Independent Expert on the enjoyment of all human rights by older persons on her visit to New Zealand

Appendix 3 – Statement in response to the Independent Expert’s presentation at the United Nations Human Rights Council