

Aotearoa New Zealand UPR pre-session

Tuesday, 13 February 2024

11:15am - 12:15pm

Statement of Te Kāhui Tika Tangata | New Zealand Human Rights Commission

Delivered by Saunoamaali'i Dr Karanina Sumeo

COVER SLIDE

Tena koutou katoa,

It is my pleasure to address you today as the acting Chief Commissioner for the New Zealand Human Rights Commission. We are an independent Crown Entity created to provide better implementation and protection of human rights in Aotearoa New Zealand.

SLIDE 1

Today I will address two key areas highlighted in our written submission and propose recommendations relating to:

1. Constitutional protections of human rights and the Treaty of Waitangi; and
2. Workers' rights – pay transparency and modern slavery.

SLIDE 2

The Commission welcomes positive developments in relation to some of the 160 recommendations the previous government accepted at the last review, including:

- ratifying the Optional Protocol on a Communications Procedure under the Convention on the Rights of the Child;
- introducing a national strategy and action plan to eliminate family and sexual violence; and
- decriminalising abortion.

SLIDE 3

The first issue I would like to address is constitutional protections of the Treaty of Waitangi and human rights

The Treaty of Waitangi, signed in 1840 between the British Crown and Māori, is New Zealand's founding constitutional document. The Treaty grants equal rights to citizens, and affirms Māori sovereignty or self-determination, rights to lands, natural resources, language, culture and way of life.

However, the Treaty lacks legal and constitutional protection, and can only legally bind the government when incorporated into statute, which is rare. Despite repeated UPR recommendations for the Crown and Māori to determine the appropriate constitutional protections of the Treaty, Māori rights remain vulnerable to the political climate of the day.

The New Zealand Bill of Rights Act affirms New Zealand's commitment to the International Covenant on Civil and Political Rights. However, it does not incorporate rights to privacy, self-determination, or a remedy. Nor does it incorporate economic, social, or cultural rights protected in international conventions ratified also by New Zealand.

Currently, mechanisms for assessing whether new policies or legislation under development comply with domestic and international human rights obligations are somewhat ad hoc. The Commission considers the implementation of a standard procedural mechanism (such as a human rights impact assessment process) would help ensure that all Government policy and legislation under development complies with, and is informed by, human rights principles.

SLIDE 4

The Commission recommends that the Government:

- **Progress discussions and action, in partnership with Māori, to determine and implement the appropriate constitutional processes and institutions to recognise, respect, and give effect to the Treaty.**
- **Intensify efforts to implement the Declaration on the Rights of Indigenous Peoples, grounded in the Treaty of Waitangi, including a National Plan of Action.**
- **Amend the Bill of Rights Act to incorporate all civil, political, economic, social and cultural rights, as set out in the International Covenants.**
- **Require and ensure identification of human rights implications in early policy analysis and pre-legislative work, and as required under the Bill of Rights Act, to ensure consistency with domestic and international human rights standards.**

SLIDE 5

The second issue is workers' rights, including equal opportunity and pay equity.

The Government received several recommendations at previous reviews to address discrimination in employment and increase employment opportunities including progression, for marginalised groups, especially women, Maori, Pacific, disabled, and migrant workers. The Commission is very concerned about recent policies and law changes that undermine workers' rights and their dignity.

The Fair Pay Agreements Act was introduced in 2022 to protect the rights of workers by strengthening minimum employment standards across specific industries, including pay and hours of work. Women, youth, Māori, Pacific peoples, and migrants are disproportionately concentrated in essential but often lower paid occupations and FPA would have secured important benefits for them and their dependent households. In December 2023, the new Government repealed the FPA Act, under urgency, without public consultation.

The Commission recommends that the Government:

- **Reinstate fair pay legislation and ensure any changes to the legislation undergo usual democratic processes and human rights implication analysis.**

SLIDE 6

Pay equity

Building on progress made to close the gender pay gap and responding to years of advocacy by civil society and women's groups, the Human Rights Commission conducted a national inquiry between 2021 and 2022 into the cause of pay inequity faced by Pacific people. Pacific workers were shown to earn the least in comparison with other ethnic groups across the NZ workforce. The inquiry elevated the focus on ethnicity, settler groups, and disability characteristics in the promotion equal employment opportunity, beyond gender.

The inquiry found that over 60% of the pay gap between Pacific men and European Men, between Pacific women and European women – could not be explained by the combination of educational attainment, occupational choice, age and other characteristics. Additionally, Pacific people alongside new migrants and disabled workers experienced very high levels of bullying, sexual and racial harassment in the workplace, affecting their wellbeing, performance, and progression, ultimately showing in pay gaps/inequity.

In 2023, the previous Government committed to introducing pay transparency laws, however only requiring companies with 250+ employees to report their pay gap and only by gender. With the vast majority of workplaces in NZ employing under 250 people, this was unfair and not in alignment with the fundamental right to equal protection under the law.

The Commission recommends that the Government:

- **Urgently introduce pay transparency legislation requiring all businesses to end pay secrecy, report pay gaps, and publish initiatives to eliminate pay inequity; and**
- **Require all businesses, with additional support for small, medium and large enterprises, to collect gender, ethnicity and disability workforce data**
- **Amend the Equal Pay Act 1972 to include ethnicity, disability, and gender alongside sex as grounds to make a claim.**
- **Ratify ILO 190 - Violence and Harassment Convention**

SLIDE 7

Modern Slavery legislation

In July 2023 the Government announced that it would introduce modern slavery legislation, but only requiring large organisations and businesses to report their operations and supply chains through a new public register. The announced legislation did not include ‘due diligence’ which would require companies to take actions taken to prevent and address modern slavery.

The Commission recommends that the Government:

- **Introduce modern slavery legislation, with due diligence obligations, and in alignment with the UN Guiding Principles for Business and Human Rights to protect, respect and remedy.**
- **Ensure modern slavery legislation applies to entities of all sizes, in public and private sectors, with domestic and international supply chains.**