

Executive Summary: Individual NGO Submission: Fuel Poverty in New Zealand

The living conditions in many New Zealand households are falling because costs of most essential services, especially electricity, are rising faster than inflation. The International Convention on Economic, Social, and Cultural Rights (ICESCR), and in particular article 11, requires states to make every effort to ensure the satisfaction of, at the very least, minimum essential levels of basic shelter and other essential services. The fact that electricity is supplied partly by private companies does not absolve the state from its obligations to constantly strive to improve the level of realisation of the human right to an acceptable standard of living for all. Where resources are demonstrably inadequate to enable this, the state is obliged to protect the most vulnerable. It must also monitor any non-realisation of rights, and devise strategies and programmes for their promotion.

New Zealand's houses are colder than those in much less temperate countries, especially the U. S. and Europe, where central heating is usual. New Zealand has a high rate of excess winter mortality. Elderly people, disabled people and babies are the most vulnerable. The impact of rising household energy prices on budgets of low-income households is serious and increasing: disconnections for non-payment are rising steadily. By several measures, fuel poverty is increasing.

New Zealand is obliged to pay particular attention to the rights of older persons, as elaborated by the Committee on Economic, Social and Cultural Rights (CESCR) in General Comment No 6 (The economic, social and cultural rights of older persons) and elsewhere. This population sector is particularly vulnerable to the effects on physical, mental and social well-being of cold damp houses – elderly people spend typically 95% of their time at home.

To meet its obligation to protect the most vulnerable, and to progressively realise the right to an adequate standard of living under the fiscal restraints now facing it, New Zealand will need to change funding priorities and take steps to reverse the steadily rising price path for residential electricity.

Grey Power recommends that New Zealand form a strategy and action plans to reverse the current trends in fuel poverty. Policy must be based on evidence on fuel poverty, followed by cross-department and cross-party agreements to respond. New Zealand must embed affordable access to energy services as a NZ Energy Policy objective, leading to fair tariffs for the fuel poor, minimum standards for rentals, a needs-based funding framework, and greater local autonomy and jurisdiction over responses and priorities. Residential consumers must be enabled and facilitated to participate effectively in relevant regulatory processes.

Background and Framework

Promotion and Protection of Human Rights on the Ground

A. Cooperation with human rights mechanisms

1. New Zealand has signed the International Covenant on Economic, Social and Cultural Rights, but has not ratified the Optional Protocol. In its statement of progress on the NZ Universal Periodic Review¹ it says, “New Zealand will not ratify conventions or international standards that

¹ New Zealand Government “NZ Universal Periodic Review Progress Chart” (July 2011) Ministry of Justice <<http://www.justice.govt.nz>>.

are inconsistent with New Zealand's unique legal, constitutional and Treaty of Waitangi arrangements”

2. New Zealand accepted the 2009 UPR recommendations to “further incorporate, as appropriate, its international human rights obligations into domestic law” (in response to recommendations 15 and 16), by general and specific policies and practices – if required. However, New Zealand does not accept that all obligations should be incorporated into the Bill of Rights Act, which is concerned only with primary civil and political rights, and does not directly limit Parliament's legislative powers. Economic, social, and cultural rights are implemented through subject-specific legislation and through other government policies and practices. There is no redress to the courts for such matters.

3. A 1997 OECD report on regulatory reform notes that competitive markets can increase risks for consumers as firms seek ways to reduce costs. Governments should intervene as appropriate, using substantive regulatory principles, to ensure that social objectives are not jeopardised and regulations are efficient.² A 2003 report on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights confirms that states have primary responsibilities regarding human rights, including “assuring that transnational Corporations and other business enterprises respect human rights.”³ Amnesty International in 2005 noted the obligation for private providers of essential services to provide a safety net, and for the state to ensure this absorbs the social costs of privatisation.⁴ A recent analysis by Dr Petra Butler summarises the application of human rights to privatisation, saying:⁵

If a state privatises a service, than any agreement with the private service providers must be structured so that it is consistent with the relevant human rights norms. ... One of the means to achieve this is by regulating the particular industry and thereby setting standards which help to protect citizens from human rights violations.

4. New Zealand has an Action Plan for Human Rights 2005-2010⁶, which was reviewed in 2008⁷. This says New Zealand meets and even exceeds international standards in many respects, and speaks favourably of our record on “affordable, healthy housing”. There was then a strong programme to insulate and heat low-income houses, but that has been cut back since. The Action Plan's section on poverty reduction acknowledges the extent that poverty undermines the realisation of most basic human rights, and suggests development of an official poverty measure. Its section on housing fails to mention the importance of the indoor environment to society's health and welfare.

² Organization for Economic Cooperation and Development *The OECD Report on Regulatory Reform: Synthesis* (OECD, Paris, 1997) at 37.

³ United Nations “Draft Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights” (2003) University of Minnesota Human Rights Library <<http://www1.umn.edu/humanrts/links/NormsApril2003.html>>

⁴ Amnesty International “Human Rights and Privatisation” (17 March 2005) <<http://www.amnesty.org/en/library/asset/POL34/003/2005/es/fe6b668d-d50f-11dd-8a23-d58a49c0d652/pol340032005en.pdf>>

⁵ Petra Butler “Rights and Regulation” in Susy Frankel (ed) *Learning from the Past, Adapting for the Future: Regulatory Reform in New Zealand* (LexisNexis, Wellington, 2012) at 281.

⁶ Human Rights Commission “The New Zealand Action Plan for Human Rights: Priorities of Action 2005-2010” (2005) <<http://www.hrc.co.nz/>>.

⁷ Human Rights Commission “The New Zealand Action Plan for Human Rights: Mid-term Review of Progress” (2008) <<http://www.hrc.co.nz/>>.

Recommendation: That New Zealand incorporate into its Action Plan a commitment to a Warm Homes standard applied in a way that progressively improves the indoor environment of the New Zealand housing stock.

5. Ian McChesney, in his study of fuel poverty in New Zealand⁸, considers whether affordability of energy services (not just electricity) should be treated as a justiciable human right. ICESCR makes no direct reference to adequacy of household energy, so it must be argued by association with the human rights to standard of living, and to life. He documents extensive literature confirming such an association (pp. 37ff). He then refers to a study by Geiringer & Palmer⁹ to suggest that a better approach under New Zealand law is to set a rights-based framework for institutional responses to the documented evidence of fuel poverty (which he terms energy service deprivation). Elements of this framework include continual progress, no retrogressive measures, enable participation in processes of policy and implementation, and provide special protection for the disadvantaged.

6. This framework sets a clear path to prioritise and monitor government action to progressively realise and improve the human right to an acceptable standard of living, in contrast to the New Zealand responses on the UPR progress chart on the Action Plan, #22: which states “that the most suitable approach is for government departments to consider the appropriateness of implementing the Plan’s priorities for action as part of normal business.” This response would seem to convert “affordable energy services” from a human right into a political issue, because policies could change with every change in government. This is inappropriate because affordable energy requires long-term investments in development of natural resources, human capital and infrastructure for energy supply, and most importantly investment in the thermal performance of houses, which can make a two-fold or greater difference in energy expenditures.¹⁰

Recommendation: that New Zealand’s regulatory regime is revised to protect residential consumers from the human rights violations caused by fuel poverty.

B. Implementation of International Human Rights Obligations

7. The human rights addressed in this submission include the right to life (and to health), the right to social security and an adequate standard of living, and right to participate in the life of the community. These, and other relevant human rights are articulated in the ICESCR, and elaborated in the CESCR’s General Comments (in particular, General Comment No. 3), and elsewhere. We address:

- a) falling standard of the living environment of those people who spend most of their time at home;
- b) increasing poverty of older people and beneficiaries caused by rising (in real terms) prices for essential outgoings, especially electricity.
- c) a rights-based approach to fuel poverty requires public participation.

⁸ Ian McChesney “Fuel poverty in New Zealand: a public policy investigation” (MPP Thesis, Victoria University of Wellington, 2012).

⁹ Claudia Geiringer and Matthew Palmer “Human rights and social policy in New Zealand” (2007) 30 Social Policy Journal of New Zealand 12.

¹⁰ “Fuel Poverty In New Zealand: a public policy investigation” above n 8, at p. 90

Specific concerns

a) Cold houses: falling quality of the living environment, especially the housebound.

8. The International Energy Agency Country Review for New Zealand¹¹ reports that many New Zealand houses have poor energy efficiency performance relative to European or North American homes. For example, central heating is rare in New Zealand. Approximately 700,000 houses are uninsulated or poorly insulated. To achieve indoor temperatures expected overseas, a quarter to a half of New Zealand households, depending on both local climate and incomes, would have to spend more than 10% of their income on household fuel and power.

9. Howden-Chapman et. al.¹² found that:
vulnerable populations, particularly those on low incomes, the old and the young are more likely to be hospitalized in winter for respiratory and cardiovascular conditions. They are also more likely to die prematurely in winter . . . Low housing and heating standards are having serious effects on New Zealand's population health.

Recommendation: that New Zealand implements a Warrant of Fitness for all rental housing, with standards monitored periodically, enforced effectively and increased over time. The standard should also be applied at the time of sale of any private house.

b) Rising electricity prices in real terms, and social impacts

10. New Zealand residential electricity prices have risen in real terms almost continuously since restructuring began in 1986. (Figure 1). This pattern is unique in the developed world – in all other countries residential electricity prices are observed to rise and fall over the years (Figure 2). Prices of other household fuels, gas and firewood, follow electricity price trends precisely, allowing householders no escape from rising prices. [Figure 3]

11. The lowest decile income group spends by far the most percentage of their income on household fuel and power. All income groups have faced a rising percentage of their income on energy over the past twenty years. (Figure 4)

12. A very recent survey found that over a third of New Zealanders could not afford to heat their houses adequately. Three quarters have changed their behaviour to limit their electricity use. Regional breakdowns show that affordability depends more on incomes than on climate: Auckland is in the warmest climate zone but has highest percentage of people in that category. The figures are also suggestive of the great benefit of home insulation and heating programmes: Christchurch was the first area to subsidise insulation and clean heating, and has one of the longest-serving and active community energy schemes. It now has one of the lowest percentages of people with affordability problems. (Table 1)

13. The NZ Federation of Family Budgeting Services reports an increase in total debts owed to utilities, from \$2.6 million in 2008, to \$5 million now.¹³

¹¹ International Energy Agency “Energy Policies of IEA Countries: New Zealand 2010 Review” (2011) <www.iea.org>

¹² Phillipa Howden-Chapman and others “Tackling cold housing and fuel poverty in New Zealand: A review of policies, research, and health impacts” (2012) 49 Energy Policy 134.

¹³ Personal communication from Raewyn Fox, Chief Executive NZ Federation of Family Budgeting Services

14. The Dunedin Community Law Centre, in a submission to the Electricity Authority¹⁴ on improving competitiveness of retailing, details impacts of power prices on different sectors. They say:

the elderly, for example, face considerable costs in staying in their own home, especially in winter. For many older people the pension is the only income they have, and it is a fixed-income. Keeping warm in winter is important for wellbeing, both mental and physical. ... Disabled people also feel the impact of high electricity costs, rating electricity alongside healthcare, housing and transport as “an income concern. ... Conflict over utility bills such as electricity is a common occurrence in student flats.

15. A continuous increase in disconnections of electricity for non-payments of bills has been observed from 2007 to 2012. In 2007, the death of a medically dependent person led to a revision of the electricity code to provide for medically dependent customers; this had resulted in a rapid but temporary decline in disconnections. (Figure 5)

c) A rights-based approach requires public participation

16. Geiringer & Palmer’s study concludes:

...the long-term effectiveness of New Zealand’s engagement with human rights, and of a rights-based approach to social policy more generally, depends on dialogue with and within the wider community. ... Participation and community engagement are an inherent feature of engagement with rights.

17. An analysis of public participation in New Zealand's electricity regulation notes that it incorporates extensive consultation, but within a framework that “makes certain political arguments irrelevant to any decision”¹⁵. The technocratic approach of the regulation splits off questions of economic efficiency and competition, leaving wider goals for governments to resolve. This view is however contestable, because not all participants agree on the value judgment written into the law. The chapter concludes that New Zealand is one place where funding of consumer advocacy groups is especially suited – in Australia and the UK, industry and government contribute millions of dollars to consumer advocacy groups every year.

18. In fact, the meaning of the regulatory objective written into law by Parliament is contested by some parties,¹⁶ who argue that the current Electricity Authority's statutory objective, "long-term benefit to consumers" is misdirected. The proper test for determining long-term benefits is that of a consumer benefits test, rather than a public benefit test.

Recommendation: that New Zealand ensures domestic consumers can participate effectively in electricity regulatory procedures, with funding to prepare submissions on key elements of electricity regulation, utilising expert advice where appropriate.

¹⁴ Dunedin Community Law Centre “Submissions on Options for increasing consumers propensity to compare and switch retailers” Electricity Authority < <http://www.ea.govt.nz/dmsdocument/15075>>.

¹⁵ Mark Bennett and Joel Colón-Ríos “Public Participation in New Zealand’s Regulatory Context” in Susy Frankel and Deborah Ryan (ed) *Recalibrating Behaviour: Smarter Regulation in a Global World* (LexisNexis, Wellington, 2013) at 6.2.3(a) 6.4.1

¹⁶ Domestic Energy Users’ Network “Cross-submission Transmission Pricing Methodology” (28 March 2013) Electricity Authority <<http://www.ea.govt.nz/dmsdocument/14585>> at 7.