

3 August 2011

Inquiry into Housing Affordability  
New Zealand Productivity Commission  
Level 15, Fujitsu Tower  
141 The Terrace  
PO Box 8036  
WELLINGTON 6143

Attention: Steven Bailey

Dear Mr Bailey

The Human Rights Commission (the Commission) welcomes the opportunity to make this submission on the Productivity Commission's Issues paper on Housing Affordability.

The Commission is an independent Crown Entity that derives its mandate from the Human Rights Act 1993 (HRA). Its primary functions include advocating and promoting respect for, and an understanding of, human rights in New Zealand society and encouraging harmonious relationships between individuals and the diverse groups in New Zealand. To carry out these roles the Commission has a number of secondary functions. They include the development of a national plan of action to promote and respect human rights in New Zealand.

In order to develop a plan of action that reflected the views of all New Zealanders, the Commission undertook a nation wide consultation in 2004. This informed the action plan that was adopted in 2005.<sup>1</sup> Last year the Commission undertook a further consultation to see if the situation had improved since the first review. As a result, the Commission identified a number of priorities relating to the right to housing including:

- enhancing housing affordability by extending measures to support first home ownership and improve rental affordability
- increasing the supply and diversity of social and housing provision through enhanced direct provision by central and local government and supporting community housing providers
- developing universal design standards to improve housing habitability, accessibility, cultural adequacy and safety.

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<sup>1</sup> Human Rights Commission, *The New Zealand Action Plan for Human Rights: Mana ki te Tangata* (2005). The findings of the 2004 review can be found in *Human Rights in New Zealand Today: Nga Tika Tangata O Te Motu* (2004) which can be accessed at <http://www.hrc.co.nz/report/>



## The Right to Housing

The right to housing is considered integral to the right to an adequate standard of living and fundamental to the enjoyment of economic, social and cultural rights in general, and rights such as the right to health and education, in particular.

The right to housing is found in the International Covenant on Economic Social and Cultural Rights (ICESCR)<sup>2</sup> and is referred to in treaties addressing the specific needs of groups such as women<sup>3</sup>, children<sup>4</sup> and the disabled<sup>5</sup>. The significance of the right to housing is also reflected in other major treaties including the International Covenant on Civil and Political Rights,<sup>6</sup> the International Convention on the Elimination of All Forms of Racial Discrimination<sup>7</sup> and the Refugee Convention.

The Committee on Economic, Social and Cultural Rights (the body which monitors the Convention) has defined the scope of the right to housing as including security of tenure, availability of services and facilities, habitability, affordability, accessibility, location and cultural adequacy.<sup>8</sup> In 2008 Raquel Rolnik, the Special Rapporteur on Adequate Housing,<sup>9</sup> stated in relation to the global housing and mortgage crisis:

*One of the fundamental errors has been to consider housing only as a commodity and an investment asset ... the current crisis represents an opportunity for reflection and to consider how to improve housing systems, policies and programmes so as to ensure adequate housing for all ... it is essential that all actors involved in the housing sector fully recognise the subtle dimensions of housing, which is much more than a mere financial asset, and recognise it as a human right.<sup>10</sup>*

## The Commission's approach

The inquiry will cover the full range of housing issues including rental accommodation and social housing and canvas a variety of community perspectives to identify what

<sup>2</sup> Article 11(1) states that States Parties ... recognise the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing...

<sup>3</sup> Convention on the Elimination of all forms of Discrimination against Women, Art. 14(h)

<sup>4</sup> Convention on the Rights of the Child, Art. 27(1)

<sup>5</sup> Convention on the Rights of Persons with Disabilities, Art. 19

<sup>6</sup> Art. 17

<sup>7</sup> Art. 5(e)(iii)

<sup>8</sup> United Nations Committee on Economic, Social and Cultural Rights (1991), *The Right to Adequate Housing: Article 11(1) CECSR General Comment No. 4*, Geneva: United Nations (E/1992/23)

<sup>9</sup> A Special Rapporteur is an individual designated by the UN to address thematic issues throughout the world and to report to the UN body governing their implementation. As a mechanism of the UN human rights system, the role of the Special Rapporteur is to promote and ensure compliance by Member States with human rights standards.

<sup>10</sup> Raquel Rolnik, *Statement 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*. A/HRC/10/7 (9/3/08)



might contribute to favourable social outcomes such as greater community stability and improved health and education.<sup>11</sup> A number of characteristics which influence supply and demand have been identified as an initial framework but the Productivity Commission is asking whether some other framework is more appropriate. It also asks where the focus of the Inquiry should lie.

While the diagram on page 9 of the paper identifies the factors that affect housing affordability, it overlooks the link with social well being and the importance of providing an opportunity for community input. The Commission considers this would be remedied if the Productivity Commission employed a human rights approach. While it may seem obvious for the Commission to advocate for such an approach, a human rights approach would have the benefit of reflecting a community-wide perspective, ensuring a more satisfactory outcome with greater buy-in from all those involved. It would also emphasise the social benefits and economic well-being for individuals and families that are inevitably linked with improved housing.

A human rights approach provides a conceptual base for assessing the human rights status of legislation, policy and practice. While principally procedural, it would ensure that any outcome is fair and reflects the concerns of the more vulnerable sections of the community. A human rights approach involves linking decision making at every level to agreed human rights standards, balancing rights where necessary in order to maximise respect for all those involved and protecting those who are most vulnerable. It also emphasises the importance of participation, empowerment and non-discrimination

We would draw the Productivity Commission's attention in particular to the balancing exercise that is so essential to a human rights approach. This would tip the balance in favour of the more vulnerable groups including those on low incomes and those who rent. A human rights approach also requires that those affected are able to participate in decisions about housing or any measures introduced to ameliorate the situation.<sup>12</sup>

If a human rights approach was adopted in addressing the issue of housing affordability, the outcome is likely to better reflect the needs of the community and offer a more permanent and durable solution.

## **Planning policy**

This raises two discrete issues - the nature of planning policy and whether it accommodates changing community preferences (and needs). The Productivity

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<sup>11</sup> Productivity Commission, *Housing affordability: Issues Paper* at pp 8,9

<sup>12</sup> The Human Rights Council has urged States to "promote participation in decision-making processes ... in the planning stage ... in particular at the local level when developing an adequate standard of living and housing". Human Rights Council, *Adequate housing as a component of the right to an adequate standard of living* Resolution 6/27 (14/12/07)



Commission will be aware of the *Affordable Housing: Enabling Territorial Authorities Act 2008* which, among other things, provided territorial authorities who wished to address issues relating to housing affordability, with the regulatory tools to achieve it.

Effectively, the Act enabled territorial authorities to assess the amount of affordable housing in their districts and develop policies to promote the provision of housing for low and moderate income earners, taking into account the need for a variety of housing sizes, tenures and costs. In return for implementing the policy, a developer received certain benefits such as remission or postponement of rates. It also provided for the public to participate in the development of affordable housing policies, a right of objection and appeal for those affected. As a result the Act promoted a process which fostered community participation and empowerment and was consistent with a human rights approach.

In 2009 the Act was repealed. The reasons given at the time were that developers and local councils considered that it was counterproductive.<sup>13</sup> The Commission considered that there was little compelling evidence to support this view and that, while it was undoubtedly correct that developers could be required to contribute money, land, housing – or a mix of these – towards affordable housing, they were also provided with incentives to off-set these costs.

The Human Rights Commission was concerned that the Act was repealed without anything being put in its place to address the need for affordable housing. While regulation may not necessarily be the answer we remain concerned to ensure that the focus is on the needs of people on modest or low incomes.

### **“Land Banking”**

Among the issues that were identified as presenting a problem in relation to good urban planning was the practice of “land banking” whereby owners place restrictive covenants on land to prevent its use for certain purposes or to stop it being used for social housing.

Again, the *Affordable Housing: Enabling Territorial Authorities Act 2008* was relevant in this regard as it would have rendered a restrictive covenant void if “one of its purposes” was to stop the provision of affordable housing or the development of social housing.<sup>14</sup> The Commission considered that this could be justified as being in the public interests since it both improved the chances of people on low incomes and benefits accessing housing as well as resulting in a safer community overall by allowing for more diversified housing.

<sup>13</sup> Hon Bill English, Infrastructure Bill (First reading), Hansard [25 August 2009]

<sup>14</sup> Although the Commission has received complaints about restrictive covenants, it can be difficult to deal with them as discrimination because they are often not overtly linked to a prohibited ground. For example, a covenant might restrict sale to HCNZ (rather than beneficiaries) or stipulate that only family homes or domestic dwellings can be built in a particular area (which could have the effect of eliminating group homes for people with intellectual disabilities).



The repeal of the Act was accompanied by a consequent amendment to the *Property Law Act 2007* (PLA) which retained - but modified - the provision relating to restrictive covenants. Section 277A PLA now reads:

- (1) *A covenant concerning land is void if a principal purpose of the covenant is to stop the land being used for housing for –*
- (a) people on low incomes; or*
  - (b) people with special housing needs; or*
  - (c) people whose disabilities mean that they need support or supervision in their housing*

Reintroducing the requirement that the covenant must be for a “principal purpose” means that covenants will not be void even if they have the aim of stopping the land being used for the purposes in ss(1) if the purpose is not a *principal* purpose. The Commission recommended at the time that s.227A PLA should be reworded to ensure that a covenant will be void if *one* of its purposes was to stop land being used for social housing. We also recommended clarifying that covenants should be rendered void if their purpose is to undercut the provision of rental housing (in the sense of social housing) or home ownership for people on low or moderate incomes.

We consider this remains an issue and if there is a genuine commitment to stop - or prevent - the practice of “land banking” then the PLA should be amended to ensure restrictive covenants cannot be used to prevent certain types of development.

### **Inclusive housing**

The paper recognises that population and demographic trends can influence housing demand. It refers to migration flows and changing household characteristics such as age, size and structure. However, the commentary refers principally to household size – noting, for example, a decline in the number of households with children and an increase in the number of households made up of single people or couples. This is said to have the potential to result in a mismatch between the increasing size of dwellings being added to the housing stock and the projected change to smaller households.

In our view this only represents one part of the problem. The Commission’s Review of Human Rights in 2010 found there was a clear correlation between levels of income and home ownership and overcrowding. Studies have shown that more than 60% of Pacific children and young people and more than 40% of Maori live in overcrowded conditions.<sup>15</sup> It would follow that there may not be enough affordable

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<sup>15</sup> Craig, E., Jackson, C. & Han, D.Y (2007) *Monitoring the health of New Zealand children and young people* (Auckland: Paediatric Society of New Zealand, New Zealand Child and Youth Epidemiology Service)

larger houses available for ethnic groups who may prefer to live in extended families<sup>16</sup>.

A further issue that is not mentioned is the question of housing for people with disabilities. Until recently the provision of housing for people with disabilities has focussed on removing barriers to or modifying existing housing. Increasingly, however, this is changing with the promotion of a way of building that is more inclusive and meets the needs of all users regardless of age or disability. This is known as universal design. Universal design improves the usability of the built environment; promotes safety and well-being for everyone; enables the independent use of the built environment and ensures no one is excluded from the use of the built environment by physical barriers.<sup>17</sup>

The Commission suggests that the Productivity Commission takes the principles of Universal Design into account in deciding future housing stock and consults with the diverse and different communities that make up contemporary New Zealand before making decisions about the type of housing to promote.

To conclude, therefore, the Human Rights Commission recommends that the Productivity Commission:

- recognises that affordable healthy housing is a human right
- adopts a human rights approach to addressing the problem of affordable housing
- ensures that the inquiry addresses the needs of people on modest or low incomes
- gives consideration to amending s.277A of the PLA to ensure that restrictive covenants are not used to prevent the development of social housing
- considers recommending the adoption of the principles of Universal Design
- consults with the diverse communities in New Zealand – including different ethnic communities, refugees and people with disabilities - about their particular concerns.

We reiterate the point made at the beginning of this submission. Namely, that affordable, secure, healthy housing is absolutely integral to an adequate standard of living and fundamental to all the other political and civil, social and economic rights, particularly in the case of children and young people. This is why this inquiry is so significant and why the Commission has submitted on it.

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<sup>16</sup> The Commission considers that there also needs to be protections in relation to boarding houses which are the homes of many people. The Commission's submission to the present Select Committee Inquiry into Boarding Houses can be accessed at [www.hrc.co.nz](http://www.hrc.co.nz)

<sup>17</sup> See [www.barrierfreenz.org.nz](http://www.barrierfreenz.org.nz)



I would welcome the opportunity to have an initial discussion with you about what I regard as a very significant inquiry. I have asked the Commission's Principal Legal and Policy Analyst, Sylvia Bell, to contact you.

Yours sincerely

A handwritten signature in green ink, appearing to read 'Rosslyn Noonan', with a long horizontal flourish extending to the right.

**Rosslyn Noonan**  
Chief Commissioner  
Te Amokapua