

Joint submission on New Zealand's Universal Periodic Review: 4th cycle, 2023 – 2024

1. Introduction to CLCA

- 1.1. Community Law Centres o Aotearoa (**CLCA**), along with Peace Movement Aotearoa, welcomes the opportunity to provide a stakeholders report on New Zealand's Universal Periodic Review: 4th cycle, 2023 - 2024.
- 1.2. CLCA is the national body that coordinates and advocates for the 24 Community Law Centres (**CLCs**) across Aotearoa. The Community Law movement is almost 50 years old; the first CLC was established in 1978. CLCA, as the peak and co-ordinating body for CLCs, was established in 2011.
- 1.3. Our member CLCs work out of over 140 locations to provide free legal help to those who are unable to pay for a private lawyer and do not have access to legal aid. As well as around 300 staff, CLCs' services are supported by over 1,200 volunteer lawyers who run legal advice clinics and deliver free assistance. Each year, these CLCs provide free legal support across a large range of legal issues to 43,000 clients and free law-related education to 24,000 people. In addition, we provide free legal information via the Community Law Manual (the digital version of which has 3,900 views per day on average) as well as an estimated 200,000 people who contact CLCs directly. Te Ara Ture is the nationwide clearinghouse for pro bono legal services, and it is a division of CLCA.
- 1.4. This submission covers UPR 3rd cycle recommendations on the following topics:
 - Section 2: Rights of women (immigration policy relating to family violence, protection orders, access to justice for women, criminal justice response to sexual violence, responsiveness of the Courts to family violence);
 - Section 3: Migrant exploitation (sex workers, responses to migrant exploitation);
 - Section 4: Housing;
 - Section 5: Social welfare;
 - Section 6: Immigration;
 - Section 7: Workers' Rights;
 - Section 8: Disability rights (including housing issues, justice system, Accessibility for New Zealanders Bill); and
 - Section 9: Education (Disputes Resolution Panels).

2. Rights of Women

Immigration policy relating to family violence (recommendations 61, 109-145)

- 2.1. Little progress has been made to implement recommendations to address family violence in migrant communities. CLCs (and more recently CLCA) have been advocating for change since 2012 concerning the significant problems with the 'Victims of Family Violence' visa categories. The gaps in the policy prevent many migrant women from being able to leave situations of violence. Reform of this policy must be progressed as a priority, as life threatening harm is occurring due to the inadequacy of current policy.
- 2.2. Our CLCs regularly see women returning to ongoing abuse because, for them, deportation is such a high risk. We refer to a report which comprehensively outlines the problems CLC clients experience with these visa categories and possible solutions.¹ New Zealand's extremely restrictive policy is far out of step with comparable visa regimes in other jurisdictions like Australia and the United Kingdom. While the United Kingdom and Australia's family violence visa programmes seek to ensure that immigration policy does not incentivise any woman to stay with the person who is abusing her and/or her children, New Zealand's visa regime is more akin to a form of refugee status for women who face extreme hardship or risk if returned to their home country. It is therefore unavailable to a large number of women and children, and many women remain in situations of serious violence.
- 2.3. Immigration New Zealand (**INZ**) undertook the *Victims of Family Violence Project* in 2019 to assess the effectiveness of INZ's approach to preventing and responding to family violence for recent migrants.² The Project's final report noted "*a number of immigration policy issues*" in relation to family violence and commented that "*within the wider context of Government action to eliminate family violence additional immigration operational and policy changes may be considered in the future*".³ INZ began scoping work on a review of the Victims of Family Violence Visa regime early in 2023 and this work was put on hold in June 2023 because of other pressing matters and a lack of resource. This review should progress as a priority.
- 2.4. Immigration policy is inconsistent with the New Zealand's efforts in *Te Aorerekura: National Strategy to Eliminate Family Violence and Sexual Violence* to combat family violence, which was launched in December 2021.⁴ Examples of sound policy

¹ We refer to Sarah Croskery-Hewitt, 'Fighting or Facilitating Family Violence? Immigration Policy and Family Violence in New Zealand' <https://communitylaw.org.nz/wp-content/uploads/2023/03/Borrin-Foundation-FV-Visa-Report.pdf>.

² The *Recent Migrant Victims of Family Violence Project 2019: Final Report* provides an account of the Project's key phases and findings: [Recent Migrant Victims of Family Violence Project 2019 \(mbie.govt.nz\)](https://www.mbie.govt.nz/recent-migrant-victims-of-family-violence-project-2019-final-report)

³ Immigration New Zealand, *Recent Migrant Victims of Family Violence Project 2019: Final Report*, at p 36.

⁴ See [National Strategy to Eliminate Family Violence and Sexual Violence | Te Puna Aonui](#)

alternatives (such as Australia's) exist and could be implemented with relatively minimal resourcing. Jan Logie's member's Bill, "*Protecting Migrant Victims of Family Violence*" addresses the problems that we have identified with current policy. In fact, little legislative change is actually required.⁵ Most of the proposed changes can be implemented through policy change. This small piece of work would have an enormous impact on the safety and wellbeing of migrant women and children.

2.5. Recent changes⁶ extended the eligibility criteria to allow partners of temporary work visa holders to apply for the 6 month family violence work visa. We do not consider that this will significantly improve the precarious visa situation for migrant victim-survivors of family violence and consider that this does not go far enough in providing a pathway out of violent relationships, particularly if partners of temporary work visa holders will cannot apply for the family violence *residence* visa. It is very difficult to secure employment with less than 6 months left on a temporary visa and, in our experience, INZ will only allow applicants to renew a family violence work visa if they have a residence visa being processed.

2.6. Recommendations:

- a) New Zealand must progress the Review of the the Victims of Family Violence Visa regime as a priority.
- b) New Zealand must enact the member's Bill, "*Protecting Migrant Victims of Family Violence*" or use its provisions to develop policy for the Victims of Family Violence Visa.

Reforming the Protection Order regime (recommendations 61-62, 109-145)

2.7. Some progress has been made in implementing recommendations 61-62, 109-145 to combat family violence, but there are many issues that have not been addressed. Survivors of family violence continue to face enormous challenges in engaging with the justice system. A 2018 Cabinet paper acknowledged that: "*Navigating the current [family violence] system requires extraordinary effort from victims and their children entrapped in violent relationships, particularly those facing compounding forms of disadvantage, such as Māori and those with a disability.*"⁷ Recent reports by advocacy organisations (like the Backbone Collective) and reports in the media have similarly highlighted the serious issues with the Family Court's responsiveness

⁵ Only the Bill's proposed changes to legal aid and access to social welfare would require legislative change, the changes to the visa category itself can be made by amending policy. See the Bill here: [protecting-migrant-victims-of-family-violence-bill.pdf \(www.parliament.nz\)](https://www.parliament.nz/~/media/Parliamentary_Bills/2023/protecting-migrant-victims-of-family-violence-bill.pdf)

⁶ [Strengthened protections and improved processes for partners of migrant workers | Beehive.govt.nz](https://www.beehive.govt.nz/news/strengthened-protections-and-improved-processes-for-partners-of-migrant-workers) (February 2023).

⁷ *Breaking the inter-generational cycle of family violence and sexual violence: Cabinet paper*, Offices of the Ministers of Justice and for Social Development and the Under-Secretary (Domestic and Sexual Violence Issues), 2018.

to family violence.⁸

2.8. In our experience, Family Court judges often fail to recognise the significance of the violence and thus fail to prioritise safety, and Family Court processes can be open to exploitation by perpetrators as a means of maintaining control. We further believe that family violence survivors should be entitled to give evidence in any of the alternative ways allowed for sexual violence complainants in the Sexual Violence Legislation Act 2021, as was recommended in the Law Commission's report *The Second Review of the Evidence Act 2006*.

2.9. Attention to the ineffective Protection Order regime is urgently required. Final Protection Orders are unduly difficult and slow to obtain, the process can be exhausting and retraumatising for survivors. Final Orders are so difficult to obtain that survivors are often persuaded to abandon their applications in favour of an unenforceable 'undertaking' by the perpetrator. Even where an Order is secured, we find that breaches of an Order are often not pursued by Police. A review of the Protection Order regime is necessary to make sure that it is meeting the needs of victims, including children.

2.10. **Recommendations:**

- a) Family violence survivors be entitled to give evidence in any of the alternative ways allowed for sexual violence complainants in the Sexual Violence Legislation Act 2021, as was recommended in the Law Commission's report *The Second Review of the Evidence Act 2006*.
- b) New Zealand must undertake a review of the Protection Order regime to make sure that it is meeting the needs of victims, including children.

Access to Justice for Women (recommendation 61-62)

2.11. In our view, recommendations 61-62 regarding greater access to legal assistance and legal aid for women have not been implemented. An issue of significant concern is the legal costs associated with applying for a Protection Order for those who are not eligible for legal aid. Our CLCs have seen bills of \$10,000 where an application for a protection order has been defended. We have seen cases where the wealthier respondent has dragged out proceedings knowing that the applicant can not afford the legal fees to continue with the application. In addition, family violence often involves financial abuse, for example, restricting access to money. Legal costs for protection orders are unaffordable for many women leaving a violent relationship and who are also facing costs in setting up a new home. They

⁸ For background, see these Stuff articles: "*She spent \$50,000 trying to get safe. In the end, she gave up*" (24 September 2020), available at <https://www.stuff.co.nz/national/crime/300113758/she-spent-50000-trying-to-get-safe-in-the-end-she-gave-up>, "*The Court said she was lying about being abused. She did a year on home detention. She wasn't lying*" (15 April 2021), available at [The court said she was lying about being abused. She did a year on home detention. She wasn't lying | Stuff.co.nz](https://www.stuff.co.nz/national/crime/300113758/the-court-said-she-was-lying-about-being-abused-she-did-a-year-on-home-detention-she-wasnt-lying)

may have other legal costs in relation to care of children and relationship matters. Legal aid should be made available for all protection order applications.

2.12. A further issue is that legal aid is not available to migrant women at all for Victims of Family Violence Visa applications discussed above (legal aid is available for protection orders and care of children matters, provided eligibility criteria are met). In most cases, women have experienced financial abuse, are unable to work due to visa uncertainty, and cannot afford legal assistance with their visa applications. Generally, social welfare support, which is very limited, is not available until a family violence work visa has been granted and is only available to ex-partners of New Zealand citizens or residents. Family violence visa applications tend to be complex and difficult to navigate without assistance and the inability to access legal aid is a significant barrier for many women in regularising their visa status.

2.13. Our CLCs have reported repeatedly that even where clients are eligible for legal aid and their legal matter is covered by legal aid, there is a real shortage of civil legal aid providers, especially in the regions. Given that our CLCs are predominantly seeing clients who identify as women about adult relationships, protection orders and care of children, women are most impacted by the limitations of the legal aid system in relation to these matters. A first principles review of legal aid is necessary to address these (and other) issues with legal aid. Recent changes to legal aid did not address any of these issues.⁹

2.14. **Recommendations:**

- a) Legal aid must be made available for all protection order applications.
- b) Legal aid must be made available to migrant women for Victims of Family Violence Visa applications.
- c) A first principles review of the legal aid regime must be conducted with a view to addressing access to justice issues across the board, for women and others.

The criminal justice response to sexual violence (recommendations 130, 133, 141)

2.15. Recommendations relating to improving the response to sexual violence have been partially implemented. The passage of the Sexual Violence Legislation Act 2021 has made significant improvements to the experiences of survivors during the sexual violence trial process. However the adequacy of adversarial trial processes to provide access to justice for many survivors, and particularly for Māori, requires attention at a more fundamental level.

⁹ See a summary of the changes here: [Government delivers changes for fairer access to legal assistance | Beehive.govt.nz](https://www.beehive.govt.nz/government-delivers-changes-for-fairer-access-to-legal-assistance) (August 2023).

2.16. As a narrower issue, we recommend that a restriction on defence counsel access to sexual violence complainants' confidential counselling and therapeutic records should be enacted (which has been termed a "sexual assault communications privilege"). Knowing that their highly sensitive records could be released during the criminal process, to a defence lawyer who will seek to attack their credibility, is a significant deterrent to survivors' full participation in therapeutic processes. Conversely, where the survivor is already engaged with support services, or has previously seen health practitioners regarding mental health matters, the knowledge that their counselling and other sensitive records could be disclosed in criminal proceedings is a barrier to reporting and participation in the criminal process. Unfortunately, there is presently a real risk of disclosure of their confidential records. There is a strong public interest in ensuring that survivors of sexual violence feel able to report violence and seek the support they need.

2.17. **Recommendation:** It is appropriate for New Zealand to enact a "sexual assault communications privilege" (models of such provisions can be found across Australia).¹⁰

Responsiveness of courts and tribunals to the needs of women, particularly family violence survivors (recommendations 130, 133-134, 141)

2.18. We welcome the changes to the Residential Tenancies Act in 2021 to allow victim-survivors of domestic violence to leave a tenancy at short notice. This is one measure towards implementing recommendations to improve responses to victim-survivors of domestic violence.

2.19. More needs to be done to improve the experience of victim-survivors of domestic violence. We have assisted clients facing civil proceedings involving their abuser; for instance, seeking the recovery of debts or belongings from their abuser in the Disputes Tribunal. In our experience, the Disputes Tribunal and the Tenancy Tribunal have had little understanding of the dynamics of family violence and have not been well-equipped to ensure that appropriate safety measures are in place. Being physically present in a confined space with their abuser and having to disclose the context of abuse can be immensely distressing and unsafe for victims. Even where existing legislation allows for appropriate procedural accommodations to be made, Court staff and decision makers tend to be confused by such requests outside of the criminal jurisdiction and we think that training is urgently required. The procedural accommodations in the Sexual Violence Legislation Act 2021 provide precedent examples of how victim-survivors safety needs can be met during a civil court process.

2.20. We also have questions around the adequacy of training for Immigration and Protection Tribunal (**IPT**) decision-makers given the treatment of appeals involving

¹⁰ See, for example, Criminal Procedure Act 1986 (NSW) Chapter 6, Part 5, Division 2 'Sexual assault communications privilege'; Evidence Act 1929 (SA), s 67E.

family violence. The *'Fighting or Facilitating Family Violence?'* report highlights troubling attitudes towards family violence victim-survivors and repeated minimisation of serious harms.

2.21. **Recommendations:**

- a) That procedural accommodations in the Sexual Violence Legislation Act 2021 be used to provide precedent examples of how victim-survivors safety needs can be met during a civil court process.
- b) That Family Court and IPT decision-makers undergo further training about the complexities of family violence.

3. Migrant Exploitation (recommendations 71-79, 184-188)

3.1. The recommendations about improving responses to migrant exploitation have been partially implemented. We note New Zealand is still not party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Exploitation of sex workers

3.2. Section 19 of the Prostitution Reform Act 2003 provides that while in New Zealand on a temporary entry class visa, a person may not provide commercial sexual services; or operate or invest in a business of prostitution. We are aware of women who have experienced abuse and exploitation in sex work facing threats of deportation by their abusers if they report. Those who have reported the abuse to the New Zealand Police have been told that INZ must be informed of any visa breaches (despite visa breaches not actually constituting a criminal offence) and that this is likely to lead to deportation. Obviously, this creates a powerful disincentive to reporting exploitation.

3.3. The Government released its response to the Report of the Education and Workforce Committee on the Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003 in February 2023.¹¹ The Government said it will consider the matters and evidence and identify pathways for progressing the work necessary to address exploitation and abuse of migrant sex workers. The Government's final 9th CEDAW report in July 2023 stated that no current work is underway and it could be part of a future review.¹²

3.4. **Recommendation:** New Zealand must undertake work to address the exploitation of migrant sex workers, with input from relevant representative stakeholders.

¹¹ See [Petition of Pandora Black: Repeal Section 19 of the Prostitution Reform Act 2003](https://selectcommittees.parliament.nz) (selectcommittees.parliament.nz).

¹² [FINAL Ninth Periodic NZ CEDAW Report.pdf](https://www.women.govt.nz) ([women.govt.nz](https://www.women.govt.nz)).

Comments on New Zealand's response to migrant exploitation

- 3.5. In recent years, New Zealand has put more resource into preventing other forms of migrant exploitation and supporting victims of it. However, we consider that not enough is being done. In our view, removing visa conditions that tie temporary migrants to a specific employer is necessary to address the clear power imbalance between migrant workers and employers.¹³
- 3.6. The Select Committee Inquiry on Migrant Exploitation report (released in August 2022) contained a number of concerns and recommendations. Some of these were addressed by the Government's response released in early March 2023, but substantive action has not been taken:
- a) The Select Committee recommended that the Migrant Exploitation Protection Visa (**MEPV**) (implemented in 2021) be valid for a longer period of time. There are many other problems with the visa criteria, and they should be widened (ie, migrants can only get the visa if on an employer sponsored visa and not if their current visa is expired). The Government's response was that a Temporary Migrant Worker Exploitation Review will take place in 2023, including the length of the MEPV. It was announced in September 2023 that an additional 6-month MEPV will be available, 90 day trials will not be allowed, and temporary financial support for victims will be extended until March 2024.¹⁴ These are good changes. As a reaction to media stories, a narrow review into the Accredited Employer Work Visa (**AEWV**) scheme processes was announced in August 2023.¹⁵ This is not a substantive review, which is much needed. However, we are hopeful this review will result in some meaningful changes.
 - b) The Select Committee recommended more funding to NGO's that support victims of migrant exploitation. The Government's response said officials will investigate and report back on the need, scale and budget for any initiatives. This needs urgent attention.
 - c) The Select Committee recommended that the Government investigate how it can prevent exploitation from occurring in the first place. The Government said it is confident in the changes made and those to be made to reduce migrant exploitation. In our view, binding migrant workers to their employers through work visas (through the AEWV regime) creates a huge power imbalance. Making it easier for migrant workers to move between employers is essential to reducing migrant exploitation.

¹³ See [Migrant workers pay thousands for visas, only to be left without jobs | RNZ News](#) (June 2023).

¹⁴ See INZ's media release on this and other changes: [Government announces more support for migrants who have been exploited | Immigration New Zealand](#) (September 2023).

¹⁵ See [Review into the Accredited Employer Work Visa | Immigration New Zealand](#) (August 2023).

- d) The Select Committee also recommend the Government do more work to monitor family violence in migrant families and to consider the eligibility criteria for the family violence visa. The Government has said that it is considering wider criteria for the family violence visa and will conduct a broader review of family and partnership settings this year. We have mentioned above that this review has been delayed and is urgently needed.
- e) The Select Committee was concerned that removing open work rights for partners on temporary visas will limit their financial independence and make them more vulnerable to exploitation or abuse (this was originally to take place in December 2022 and was delayed until May 2023). The change predominantly affects women as the partners, and means they cannot exercise financial independence and will find it more difficult to leave a violent relationship. The Government's response was to continue to monitor instances of family violence in migrant families and whether immigration settings should be changed. Open work rights have been replaced with an onerous process that increases risks for women.

3.7. The Worker Protection (Migrant and other Employees) Act, introduced as part of the Government's Temporary Migrant Worker Exploitation Review, will come into force in January 2024 and has significant limitations:

- a) Assessing employer compliance with the law must be more nuanced than comparing pay slips against the employee's entitlements. Exploitative employers find ways to doctor documents to make it look like the standards are being met. Document production powers are the focus of the Bill, but forensic interrogation of those documents to check their authenticity is necessary as a matter of course.
- b) Our experience is that despite increased funding, Labour Inspectors do not have the capacity to deal with the amount of migrant exploitation complaints made.
- c) We understand that the Ministry of Business, Innovation and Employment's (MBIE) Migrant Exploitation Joint Taskforce is currently having to prioritise group exploitation claims above those of individuals because there are too many migrant exploitation complaints to deal with. MBIE may be missing opportunities to uncover group exploitation that may emerge from an individual complaint and, this system of prioritisation undermines an individual's experience.

3.8. **Recommendations:**

- a) That New Zealand remove visa conditions that tie temporary migrants to a specific employer in order to address the clear power imbalance between migrant workers and employers.
- b) New Zealand must reinstate open work rights for partners on temporary visas;
- c) New Zealand must provide specific and ongoing funding to NGO's that support victims of migrant exploitation.
- d) New Zealand must review the resourcing and role of the Labour Inspectorate so that it can respond adequately to the needs of migrant and other workers.

4. Housing (recommendations 91-92)

- 4.1. The recommendations about the availability of affordable housing have not been implemented. Housing unaffordability is one of the greatest drivers of poverty and social issues in New Zealand. New Zealand has one of the highest price-to-rent ratios in the world.¹⁶ In addition, despite the Healthy Homes legislation, many New Zealand renters are living in cold and damp housing evidenced by the recent MBIE report showing that 8% of renters are living in cold and damp homes.¹⁷
- 4.2. A large number of people are renting as flatmates or otherwise outside the Residential Tenancies Act 1986. These people have no rights as to notice, quiet enjoyment or maintenance that are available to those renters who fall under the Residential Tenancies Act. Some reform around the rights of these non-tenant renters is necessary to make sure that their interests are protected.
- 4.3. We highlight the value in the ban of no-cause evictions and name suppression in allowing tenants to enforce their rights and giving tenants security of tenure amidst the current housing crisis. However, many tenants still remain fearful of angering their landlord or ending up on a 'tenant blacklist'. This results in 80% of Tenancy Tribunal applications being made by landlords against tenants.
- 4.4. **Recommendations:**
 - a) New Zealand must significantly improve the number of, and access to, state houses to house our most vulnerable. The private rental system cannot provide housing for this population.
 - b) New Zealand must implement a legislative regime for the rights of renters who are currently outside the protections of the Residential Tenancies Act.

¹⁶ See https://www.imf.org/external/research/housing/images/pricetorent_lg.png.

¹⁷ See <https://www.mbie.govt.nz/assets/asures-of-energy-hardship-june-year-2022-report.pdf>, at p 14.

- c) New Zealand must ramp up compliance and investigations efforts by the executive to ensure vulnerable tenants' rights are upheld.

5. Immigration (recommendations 189-194)

- 5.1. We note with approval that no asylum seekers have been detained since 2020 as the Government is implementing, in part, the recommendations of Victoria Casey QC's 2022 report on the Restriction of Movement of Asylum Claimants.¹⁸
- 5.2. However, concerns raised at previous UPR's regarding the Immigration (Mass Arrivals) Amendment Act 2013 remain and we consider recommendations 189-194 have not been implemented. The Act allows for detention of asylum seekers arriving en masse (30 or more persons) without a warrant for 96 hours and with a current amendment bill underway to allow warrantless detention for up to 28 days. The Act then allows for up to 6 months detention, judicial oversight of this further detention is insufficient and amounts to a rubber-stamp in many cases.
- 5.3. CLCA considers that the Immigration (Mass Arrivals) Amendment Act 2013 remain allows for arbitrary detention and the currently proposed amendment bill increases the length and possibility of such detention.¹⁹

5.4. Recommendations:

- a) New Zealand must continue to implement the Casey report with regard to asylum seekers.
- b) The legal aid regime must be reviewed to ensure that asylum seekers are able to access representation in a timely manner.
- c) The Immigration (Mass Arrivals) Amendment Bill must not be passed and the 2013 changes must be repealed.

6. Social Welfare (recommendation 156)

- 6.1. We consider the following issues require attention in relation to social welfare:

- a) The Disability Allowance Scheme is complex and difficult to utilise meaning that many disabled people are unable to access support they are entitled to.

Recommendation:

New Zealand must improve access and accessibility to the Disability Allowance Scheme.

¹⁸ See <https://www.mbie.govt.nz/dmsdocument/20130-report-to-deputy-chief-executive-immigration-of-the-ministry-of-business-innovation-and-employment-restriction-of-movement-of-asylum-claimants>.

¹⁹ See [Immigration \(Mass Arrivals\) Amendment Bill 214-1 \(2023\), Government Bill Contents – New Zealand Legislation](#)

- b) Social welfare is a huge holder of debt for the most vulnerable and lowest income New Zealanders. **Recommendation:** That New Zealand implements the changes listed in the report by a collaboration of NGOs, *Lifting the Weight: A Fairer Future Report on Experiences of Debt to the Ministry of Social Development*.²⁰

7. Workers' rights (recommendations 61-62)

7.1. 3rd UPR recommendations 61 and 62 relate to legal assistance and aid for women as discussed above in section 2. However, many other employees are not eligible for much needed legal assistance and advice in relation to their employment rights. Many workers are slightly above the (extremely low) income threshold for civil legal aid but cannot afford the cost of a private lawyer. There are very few legal aid providers in the employment jurisdiction, the process is onerous for providers, and time allocations are too low. A review is needed of how legal aid is operating across the board to deliver access to justice, not only in the employment jurisdiction.²¹ The New Zealand Government, in its views on conclusions and/or recommendations of the Report of the Working Group on the 3rd UPR, stated that legal aid settings are under review. The recent changes to legal aid marginally increased allowances but did not address the issues adequately.²²

7.2. In addition, breaches of minimum standards are entirely inappropriate to resolve through mediation (where they are currently often referred), and the Labour Inspectorate should be better resourced to address these. As discussed above, we understand that the Labour Inspectorate's capacity is limited by resourcing, and this should be addressed as a priority.

7.3. Recommendations:

- a) New Zealand must conduct a first principles review of legal aid with a view to addressing access to justice issues across the board (not just in employment); and
- b) New Zealand must review the resourcing and role of the Labour Inspectorate so that it can respond adequately to the needs of workers.

8. Disability rights (recommendations 157-161)

8.1. This section draws on the work of Auckland Disability Law (**ADL**). ADL is a member of CLCA. It is the only CLC in New Zealand which solely provides legal services and activities to the deaf and disability community around their disability-related legal

²⁰ [Lifting the Weight | Fairer Future](#) (May 2022).

²¹ Note that the number of Employment Relations Authority determinations in 2022 in which parties were legally aided or assisted by a CLC is very small: [era-2023-annual-report](#), p 21.

²² See [Government delivers changes for fairer access to legal assistance | Beehive.govt.nz](#) (August 2023).

issues. This includes client casework, legal education, and law reform work. Measures taken by New Zealand to date mean that recommendations relating to protecting the rights of people and children with disabilities have not been implemented. A major measure implemented since the 3rd UPR, the Accessibility for New Zealanders Bill, lacks force and effect.

Housing issues

- 8.2. ADL's experience is that disabled people are living in housing where landlords have delayed providing reasonable and necessary accommodations to accommodate the needs of those with disabilities ("accessibility accommodations"). Some clients have been waiting for these for up to five years. Several clients have issues with Kāinga Ora (the State rental housing provider), when Kāinga Ora are not upholding their obligations as a landlord. Tenants are hesitating to speak out for fear of creating an erosion of their relationship with their landlords because of their vulnerable situation. They are concerned if they raise issues then they will be evicted and then they won't be able to find anywhere else to live. This unique dynamic sometimes produces a chilling effect on complaints from tenants and means that the power imbalance inherent in any landlord-tenancy relationship is exacerbated in the case of Kāinga Ora. There is a power imbalance in these tenancy relationships.
- 8.3. ADL sees many situations where landlords won't make reasonable accessibility accommodations, which means there is a lack of choice for disabled people and lack of control over where they live. In one housing situation, a disabled person was forced to shower outdoors due to a dispute over whether their house construction complied with accessibility requirements. The private sector fails to provide sufficient accessible housing, which leaves Kāinga Ora as sometimes the only option for disabled people. Regulations which are more lenient on Kāinga Ora, such as the extended timeframe given to Kāinga Ora before it is required to comply with the Healthy Homes Standards 2019, have a disproportionate effect on disabled people across Aotearoa.
- 8.4. **Recommendation:** New Zealand must take steps to better protect the rights and needs of disabled tenants.

Employment issues

- 8.5. ADL is aware through its casework that there is still a lot of inequity in employment. Statistics NZ's Labour Market Statistics (Disability) for the June 2022 quarter show that in regard to disabled people aged 15–64 years:
- the unemployment rate was 7.9 percent for disabled people and 3.3 percent for non-disabled people.
 - 41.5 percent of disabled people were in paid employment, compared with 80.4 percent of non-disabled people.

- c) Despite strong annual growth in wages and salaries nationally, there were no significant increases to either the hourly or weekly median earnings for disabled wage and salary earners.
- 8.6. Disabled people experience significant barriers accessing employment. ADL has represented multiple clients recently in situations where disabled job applicants were advised by their prospective employers that they did not get offered a role due to their disability, in circumstances where the prospective employers had never even discussed the possibility of making reasonable accommodations to assist the job applicants.
- 8.7. ADL also recently advised a client on a matter where a former employer would only agree to be an employment referee if the client was willing to disclose their disability to all prospective employers. The Human Rights Act 1993 does not appear to apply in this situation.
- 8.8. ADL is also advised of many situations where disabled employees will stay in substandard working conditions because it has been very difficult for them to gain employment and so they have high levels of anxiety over losing their role. This anxiety has a chilling effect on complaints by disabled workers and can lead to them putting up with illegal employment situations.
- 8.9. **Recommendation:** New Zealand must take steps to better protect the rights of disabled employees.

Justice system reform

- 8.10. There is still a lot of work to be done to meet the needs of disabled people in the justice system. New Zealand has ratified the United Nations Convention on the Rights of Persons with Disabilities (**UNCRPD**). The UN Disability Committee published its Concluding Observations on New Zealand's Combined Second and Third Periodic Report in August 2022.
- 8.11. There is currently no free national independent advocacy service for disabled New Zealanders. A *national* disability law service is vital if New Zealand is to meet its obligations under the UNCRPD. New Zealand needs the existing ADL services to be rolled out across the country. All of New Zealand deserves what Auckland gets, for disabled people. It is not enough to just provide advice to lawyers. When disability itself may be a key issue in a case, New Zealand must meet its obligations under the UNCRPD by providing access to lawyers who specialise in the field.
- 8.12. **Recommendation:** New Zealand must finalise and implement the national disability law service currently under discussion.

Rights of Children

8.13. ADL would like New Zealand to recognise the rights of children to receive New Zealand Sign Language (**NZSL**) education. This should be incorporated as a right in the New Zealand Sign Language Act 2006. Sign Language education is correlated with success in many other domains. For Deaf and Hard of Hearing children in particular, being well-educated in NZSL provides independence. Children must have access to NZSL in the primary and secondary education system. This education ought to start at pre-school and should continue throughout a child's education. With its importance acknowledged in the New Zealand Sign Language Act, it will provide more authority within the education sector. There needs to be the ability to make regulations setting competency standards in NZSL education.

8.14. **Recommendation:** that New Zealand incorporates a right for children to receive NZSL education in the New Zealand Sign Language Act 2006.

Disability Rights – Accessibility for New Zealanders Bill

8.15. The Accessibility for New Zealanders Bill was recently reported back to Parliament without the necessary changes to improve the lives of Deaf and disabled people. These necessary changes were advocated for by 93% of the 523 submissions to the Select Committee. This has led to an ineffective Bill. This is a backwards step in progressing towards a fully accessible New Zealand where Disabled People, tāngata whaikaha, their families or whānau, and others with accessibility needs have an equal opportunity to achieve their goals and aspirations. As the Bill stands, it lacks real force and real effect. The positive changes that should flow from it for the benefit of society, and in particular for deaf and disabled people, are not going to eventuate. The bill needed to be re-written to align it with both New Zealand human rights law and the UNCRPD.

8.16. **Recommendation:** The Accessibility for New Zealanders Bill is re-written through a genuine process of co-design with Deaf and disabled people and their representative organisations, to meet Aotearoa New Zealand's UNCRPD obligations.

Health

8.17. Currently the New Zealand Sign Language Act only provides for the use of NZSL in legal proceedings. It empowers the making of regulations setting competency standards for the interpretation of NZSL in legal proceedings.

8.18. **Recommendation:** That New Zealand extend the use of NZSL to cover medical settings.

9. Education (recommendations 104, 159)

9.1. YouthLaw is a member of CLCA. CLCA supports YouthLaw's submissions on the 4th UPR about the importance of and need for Disputes Resolution Panels.

9.2. **Recommendation:** That New Zealand implement Disputes Resolution Panels.

Word count: 5585 (excluding footnotes)