

## **New Zealand's written response to the CEDAW Committee following the 70<sup>th</sup> session review on Thursday 12 July 2018**

### **1. Provide more detail on declarations of inconsistency, how they are intended to operate, and the extent of their application.**

There are several mechanisms that ensure that the fundamental rights and freedoms of New Zealanders are preserved. These mechanisms provide checks and balances on decision makers and the decision-making process in our system of Government. This includes from the development of initial policy proposals, the development and passage of legislation through Parliament, and the application and enforcement of legislation by the courts.

#### **New Zealand Bill of Rights Act 1990**

The New Zealand Bill of Rights Act 1990 (the Bill of Rights) protects and promotes human rights and fundamental freedoms in New Zealand. The Bill of Rights Act sets out the civil and political rights of New Zealand citizens, and applies to acts done by the legislative, executive and judicial branches of the Government, or by any person or body in the performance of public function, power, or duty imposed by the law.

#### **Human Rights Act 1993**

The Human Rights Act 1993 sets out New Zealand's anti-discrimination framework that protects people in New Zealand from discrimination in many areas of life, including but not limited to employment matters, provision of goods and services, and access to public places and facilities. The Human Rights Act sets out several grounds where discrimination is unlawful, including sex; marital status; religious belief; ethical belief; colour; race; ethnic or national origins; disability; age; political opinion; employment status; family status or sexual orientation; rights of minorities to enjoy their culture, profess and practise their religion and to use their language; rights to manifest religion or belief; and freedom of expression, assembly and association.

#### **Executive Government requirements for human rights and gender considerations during policy development**

##### *Human rights considerations*

All policy proposals leading to legislation must be assessed for consistency with the Bill of Rights Act and the Human Rights Act. This is a mandatory requirement. The Cabinet Manual, the authoritative guide to central government decision making for Ministers, their offices, and those working within government, states New Zealand governmental institutions must have regard to international obligations and standards.

The Ministry of Justice works with other Government agencies to ensure fundamental human rights affirmed in international human rights treaties and in legislation are considered in policy development.

All papers submitted to Cabinet must include a human rights implications statement on the consistency of the proposals with the Bill of Rights Act and the Human Rights Act.

### *Gender considerations*

Gender analysis assists decision making by examining how gender differences are affected by government policy and action, and communicating that information to decision makers to inform their decisions.

All papers submitted to the Cabinet Social Wellbeing Committee<sup>1</sup> must include a gender implications statement. This statement should say whether gender analysis has been undertaken and if not, why not.

### **Section 7 of Bill of Rights reporting mechanism**

As with the development of policy proposals, proposed legislation is also subject to specific checks and balances. All proposed legislation is required to be scrutinised to determine whether it complies with the rights and freedoms affirmed in the Bill of Rights Act. The Ministry of Justice advises the Attorney-General whether all bills (other than Budget bills and bills developed by the Ministry of Justice) are consistent with the Bill of Rights Act. The Crown Law Office advises the Attorney-General in relation to Ministry of Justice Bills. Section 7 of the Bill of Rights Act requires the Attorney-General to notify Parliament about any inconsistencies. In the case of Government bills, this must occur upon the introduction of the bill.

Parliamentary Standing Orders provide that if a Bill is found to be inconsistent, the report must automatically be referred to a Parliamentary select committee for consideration. Though these reports do not require Parliament to correct the inconsistency, they help to ensure that Parliament makes decisions with full knowledge and proper consideration of the issues involved.

### **Disclosure statements for Government bills**

Disclosure statements are a mechanism to further scrutinise legislation and provide protection to New Zealand's constitutional arrangements. They are intended to promote greater visibility, inform public scrutiny of proposed legislation, and help to ensure the ongoing compatibility of New Zealand's laws with international standards.

Since 2013, the New Zealand Government has required departments to prepare and publish a disclosure statement to accompany the introduction of most Government Bills and substantive Supplementary Order Papers.

The Legislation Bill, which is currently before Parliament, will if passed, make disclosure statements a binding legal obligation for most Government bills and most disallowable instruments. This is intended to lead to more informed parliamentary and public scrutiny of legislation and produce more robust legislation of a high quality.

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<sup>1</sup> This Cabinet Committee is the decision-making body for the Government on strategic and policy matters relating to social wellbeing.

## Declarations of inconsistency

A declaration of inconsistency is a formal statement, granted by a court as a remedy, that legislation is inconsistent with the plaintiff's fundamental human rights, specifically rights and freedoms affirmed under domestic law via the Bill of Rights Act. A declaration of inconsistency will not affect the validity, operation, or enforcement of the law. However, the declaration informs the public (and Parliament) that an Act is inconsistent with fundamental human rights, but it does not affect the validity of the Act or anything done lawfully under the Act.

In February 2018, the New Zealand Government announced an in-principle decision to amend the Bill of Rights Act to provide a statutory power for the senior courts to make declarations of inconsistency under the Bill of Rights Act, and to require Parliament to respond.

Declarations of inconsistency can perform an important function by informing Parliament that the senior courts consider an Act of Parliament to be inconsistent with the fundamental human rights affirmed in the Bill of Rights Act.

The Government will carry out further work to enable this proposed change. Any decision will follow the judgment of the Supreme Court (in *Attorney-General v Taylor*<sup>2</sup>). This is so the Government has the benefit of the opinion of New Zealand's most senior judges before developing legislation.

### *Current statutory power for declarations of inconsistency*

Currently, section 92J of the Human Rights Act empowers the Human Rights Review Tribunal to issue declarations of inconsistency, stating that legislation is inconsistent with the right to be free from discrimination affirmed in section 19(1) of the Bill of Rights Act. Where the Human Rights Review Tribunal issues a declaration, section 92K of the Human Rights Act requires the Minister responsible for administering the inconsistent legislation to inform Parliament about the declaration within 120 days, and provide the Government response. This helps to ensure transparency when breaches of the right to be free from discrimination are identified.

## **2. Please provide data on women in senior positions in New Zealand Defence Force (NZDF) and New Zealand Police. Please also provide data on women currently on deployment.**

### **New Zealand Police**

The following numbers represent those females at Inspector level or higher:

- 47 Constabulary
- 92 Employee Females

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<sup>2</sup> In 2015, in *Taylor v Attorney-General* [2015] NZHC 1706, the High Court made a declaration that a provision of the Electoral Act 1993 is inconsistent with the New Zealand Bill of Rights Act 1990. The plaintiffs sought a declaration that section 80(1)(d) of the Electoral Act 1993 is inconsistent with the Bill of Rights because it disqualifies sentenced prisoners who are in prison from registering as electors. In 2017, the Court of Appeal dismissed an appeal against the High Court decision (*Attorney-General v Taylor* [2017] NZCA 215). The matter is currently being considered by the Supreme Court.

The number of female staff on deployment overseas by New Zealand Police:

- New Zealand Police has increased females on overseas deployment from 17.7% (2016) to 26.2% (2017), an increase of 12% of those deployed.
- Currently New Zealand Police has two females deployed in a senior role in-country, which is an increase from one in 2016.
- These figures are based on our 2017 Report on the New Zealand National Action Plan and UNSC 1325.

### **New Zealand Defence Force**

There are three tables attached.

The first table of NZDF Women Deployed shows a total of 37 women deployed by service, rank and location as at 13 July.

Women who are crew on Royal New Zealand Navy ships at sea are not included in deployed data as they are not on 'operations' as such. Women are part of every crew at sea with a steady average of 24% women in the Royal New Zealand Navy overall.

The second table shows the rank and appointment of women in senior positions in the NZDF (including women who are in command positions on deployed operations).

Table 3 shows the overall percentage and number of women in the NZDF by service, compared to percentage and number of men.

The NZDF is committed to attracting, attesting, and retaining more women across all sectors of the Defence Force to ensure we have the best talent possible within our workforce and representing New Zealand. Further the NZDF seeks to remove bias and barriers, and support women through their careers so they can reach their full potential in operations, support of the force and senior leadership. The NZDF has a senior military full time appointment within the Diversity and Inclusion team leading the More Military Women programme.

The NZDF Diversity and Inclusion Strategy (D&I) brings a broader frame to work that commenced with a Ministry of Defence Review of Women in the NZDF (2014). Its purpose is to ensure that the NZDF continues to attract, recruit and retain mission-critical talent.

The D&I plan prioritises actions to promote inclusion and cultural change. This will include visible diversity – such as gender, ethnicity and age, as well as invisible diversity – such as ways of thinking, religions, skills etc. Operation RESPECT, a NZDF-wide programme to educate and enhance respectful relationships between and with all personnel, has been an initial element in the inclusion strand of the D&I strategy, along with the More Military Women programme that initiated from the Ministry of Defence Review.

There will be measures for retention (equalised levels for women and men) and recruitment targets. Work continues to develop.

**TABLE 1 NEW ZEALAND DEFENCE FORCE  
WOMEN DEPLOYED ON OVERSEAS OPERATIONS AS AT 13  
JULY 2018  
(TOTAL 37 WOMEN)**

RANK	SERVICE	DEPLOYMENT RETURN DATE	LOCATION
ACTING CAPTAIN	ARMY	15/12/2018	IRAQ
ACTING CAPTAIN	ARMY	15/12/2018	IRAQ
ACTING CAPTAIN	ARMY	27/10/2018	BAHRAIN
ACTING CORPORAL	ARMY	30/11/2018	EGYPT
ACTING CORPORAL	ARMY	15/12/2018	IRAQ
ACTING LIEUTENANT COLONEL	ARMY	7/04/2019	SOUTH KOREA
ACTING SERGEANT	ARMY	1/10/2018	AFGHANISTAN
ACTING SERGEANT	ARMY	15/12/2018	IRAQ
ACTING SERGEANT	ARMY	2/12/2018	EGYPT
CAPTAIN	ARMY	15/12/2018	IRAQ
COLONEL	ARMY	1/11/2018	AFGHANISTAN
COLONEL	ARMY	5/02/2019	MALI
CORPORAL	ARMY	2/12/2018	EGYPT
CORPORAL	ARMY	1/11/2018	NEW ZEALAND
LANCE CORPORAL	ARMY	15/12/2018	IRAQ
LANCE CORPORAL	ARMY	15/12/2018	IRAQ
LANCE CORPORAL	ARMY	15/12/2018	IRAQ
LANCE CORPORAL	ARMY	15/12/2018	IRAQ

LIEUTENANT	ARMY	15/12/2018	IRAQ
LIEUTENANT COLONEL	ARMY	14/10/2018	SUDAN
MAJOR	ARMY	10/09/2018	IRAQ
PRIVATE	ARMY	15/12/2018	IRAQ
SERGEANT	ARMY	15/12/2018	IRAQ
WARRANT OFFICER CLASS ONE	ARMY	2/12/2018	EGYPT
CORPORAL	AIR FORCE	5/09/2018	UNITED ARAB EMIRATES
FLYING OFFICER	AIR FORCE	10/12/2018	SOUTH KOREA
FLYING OFFICER	AIR FORCE	5/09/2018	UNITED ARAB EMIRATES
FLIGHT LIEUTENANT	AIR FORCE	5/09/2018	UNITED ARAB EMIRATES
FLIGHT LIEUTENANT	AIR FORCE	1/11/2018	UNITED ARAB EMIRATES
FLIGHT LIEUTENANT	AIR FORCE	10/06/2019	SOUTH KOREA
LEADING AIR CRAFTSMAN	AIR FORCE	9/12/2018	UNITED ARAB EMIRATES
LEADING AIR CRAFTSMAN	AIR FORCE	5/09/2018	UNITED ARAB EMIRATES
SERGEANT	AIR FORCE	25/07/2018	UNITED ARAB EMIRATES
SQNLDR	AIR FORCE	5/09/2018	UNITED ARAB EMIRATES
A/LT	NAVY	1/10/2018	BAHRAIN
LT	NAVY	27/02/2019	IRAQ
LT	NAVY	2/12/2018	EGYPT

**TABLE 2 NEW ZEALAND DEFENCE FORCE**  
**WOMEN, LIEUTENANT COLONEL EQUIVALENT AND ABOVE**  
**BY APPOINTMENT**  
**AS AT 13 JULY 2018**

RANK	SERVICE	APPOINTMENT
COLONEL	ARMY	SENIOR STAFF OFFICER MALI
COLONEL	ARMY	SENIOR STAFF OFFICER AFGHANISTAN
LIEUTENANT COLONEL	ARMY	SENIOR NATIONAL OFFICER SOUTH SUDAN
COLONEL	ARMY	US ARMY WAR COLLEGE
CAPTAIN	NAVY	DWIGHT D EISENHOWER SCHOOL OF NATIONAL SECURITY AND RESOURCES
LIEUTENANT COLONEL	ARMY	STAFF OFFICER US PACIFIC COMMAND
BRIGADIER	ARMY	DIRECTOR DEFENCE LEGAL SERVICES
COLONEL	ARMY	SPECIAL PROJECTS OFFICER RESERVE FORCE
COLONEL	ARMY	JSCC
COLONEL	ARMY	SENIOR STAFF OFFICER HEADQUARTERS NZDF
COLONEL	ARMY	CLIN LDRS
LIEUTENANT COLONEL	ARMY	J1 HEALTH JOINT FORCE HEADQUARTERS
LIEUTENANT COLONEL	ARMY	DSC REG
LIEUTENANT COLONEL	ARMY	COMMANDING OFFICER 2 CSSB
LIEUTENANT COLONEL	ARMY	DEPUTY DIRECTOR, DEFENCE LEGAL SERVICES
LIEUTENANT COLONEL	ARMY	MILITARY ATTACHE, LONDON
LIEUTENANT COLONEL	ARMY	DIRECTORATE OF STRATEGIC COMMITMENTS AND ENGAGEMENTS
LIEUTENANT COLONEL	ARMY	LAND CAPABILITY, CAPABILITY BRANCH
LIEUTENANT COLONEL	ARMY	NZDF MILITARY POLICE
LIEUTENANT COLONEL	ARMY	G3, ARMY GENERAL STAFF
LIEUTENANT COLONEL	ARMY	EXECUTIVE OFFICER, DEFENCE HEALTH
	AIR FORCE	
GROUP CAPTAIN	AIR FORCE	PROGRAMME MANAGER CAPABILITY BRANCH
GROUP CAPTAIN	AIR FORCE	SENIOR STAFF OFFICER, AIR STAFF HEADQUARTERS
ACTING GROUP CAPTAIN	AIR FORCE	BASE COMMANDER OHAKEA

WING COMMANDER	AIR FORCE	OFFICER COMMANDING 230 SQUADON
WING COMMANDER	AIR FORCE	AIR ATTACHE, LONDON
WING COMMANDER	AIR FORCE	WFP DHR
WING COMMANDER	AIR FORCE	LOGISTICS MSW AK
WING COMMANDER	AIR FORCE	AIR STAFF DSE
WING COMMANDER	AIR FORCE	SPECIAL PROJECTS OFFICER
WING COMMANDER	AIR FORCE	TRAINING AND EDUCATION
WING COMMANDER	AIR FORCE	SENIOR OFFICER BASE HQ AUCKLAND
WING COMMANDER	AIR FORCE	JIP CAPABILITY BRANCH
WING COMMANDER	AIR FORCE	JNSE JFNZ HEADQUARTERS
WING COMMANDER	AIR FORCE	BASE COMMANDER WOODBURN
WING COMMANDER	AIR FORCE	DEFENCE ATTACHE KUALA LUMPUR
WING COMMANDER	AIR FORCE	EMAR AUCKLAND
ACTING WING COMMANDER	AIR FORCE	AIR MRO
CAPTAIN	NAVY	DIRECTOR DIVERSITY AND INCLUSION
CAPTAIN	NAVY	ACTING DEPUTY CHIEF OF NAVY
COMMANDER	NAVY	LCM SCG NAVAL BASE AUCKLAND
COMMANDER	NAVY	DIRECTOR WFP DEFENCE HEALTH DIRECTORATE
COMMANDER	NAVY	DEFENCE HEALTH DIRECTORATE
COMMANDER	NAVY	NZDF REG CAPABILITY
COMMANDER	NAVY	DEPUTY DIRECTOR DIVERSITY AND INCLUSION
COMMANDER	NAVY	NAVAL STAFF DSC AND S
COMMANDER	NAVY	NAVAL BASE AUCKLAND
COMMANDER	NAVY	FUTURE FORCE DEVELOPMENT NAVY
COMMANDER	NAVY	NZDF REG CAPABILITY
COMMANDER	NAVY	COMMANDING OFFICER HMNZS TE MANA
COMMANDER	NAVY	OFFICE OF CHIEF OF STAFF NAVY
COMMANDER	NAVY	FEA FUTURE OPERATIONS
COMMANDER	NAVY	NTSG



**TABLE 3 NEW ZEALAND DEFENCE FORCE**

**BY SERVICE AND OVERALL: WOMEN AS NUMBER AND PERCENTAGE (AND MEN AS NUMBER AND PERCENTAGE)**

**AS AT 13 JULY 2018**

**BY RANK**

ARMY		MAJGEN		BRIG		COL		LTCOL	
	Male	3	100%	8	89%	23	77%	98	88%
	Female	0	0%	1	11%	7	23%	13	12%
	<b>Total</b>	<b>3</b>	<b>100%</b>	<b>9</b>	<b>100%</b>	<b>30</b>	<b>100%</b>	<b>111</b>	<b>100%</b>

MAJGEN(E)+	
6	100%
0	0%
6	100%

NAVY		RADM		CDRE		CAPT		CDR	
	Male	1	100%	5	100%	19	86%	64	83%
	Female	0	0%	0	0%	3	14%	13	17%
	<b>Total</b>	<b>1</b>	<b>100%</b>	<b>5</b>	<b>100%</b>	<b>22</b>	<b>100%</b>	<b>77</b>	<b>100%</b>

BRIG(E)+	
25	96%
1	4%
26	100%

AIR		AM/AVM		AIRCDRE		GPCAPT		WGCDR	
	Male	2	100%	6	100%	17	89%	65	83%
	Female	0	0%	0	0%	2	11%	13	17%
	<b>Total</b>	<b>2</b>	<b>100%</b>	<b>6</b>	<b>100%</b>	<b>19</b>	<b>100%</b>	<b>78</b>	<b>100%</b>

COL(E)+	
84	87%
13	13%
97	100%

OVERALL		MAJGEN(E)		BRIG(E)		COL(E)		LTCOL(E)	
	Male	6	100%	19	95%	59	83%	227	85%
	Female	0	0%	1	5%	12	17%	39	15%
	<b>Total</b>	<b>6</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>71</b>	<b>100%</b>	<b>266</b>	<b>100%</b>

LTCOL(E)+	
311	86%
52	14%
363	100%

**Diversity and Inclusion in the Public sector**

The Government recognises that, we need to value, reflect and understand the communities we serve.

To do this, we are growing our leaders and our talent to produce a more diverse and inclusive workforce and workplaces. Developing a more diverse workforce is not just about ethnicity. Diversity involves gender, age, disability, sexual orientation, education, national origin, and religion. Diversity encompasses a broad spread of experience, culture, perspective and lifestyle of those who live in New Zealand.

Similarly, developing State services that are inclusive ensures our people and the people we work with and for feel valued, supported, and respected. We are committed to building a culture where New Zealanders can achieve its full potential.

### *Our priority work*

Our priorities are developing the following areas, so that we can meet the future and current needs of New Zealanders better: leadership and talent; flexible work initiatives; diverse and inclusive recruitment and supply; inclusive workplaces; Communities of Practice; information and analytics.

We will be working to develop specific initiatives for each of the above priorities.

### *Resources*

As part of our work towards ensuring a more diverse and inclusive State sector, we have developed a number of resources.

These resources include:

**Public Service Workforce Data:** This annual report provides a snap-shot of the people who make up the Public Service. There is also some additional information on timely topics, including diversity and inclusion, flexible working, and leadership development. It aims to assist Public Service employers to create more inclusive environments for employing more disabled people.

**Mental Health Foundation:** mental health in the workplace toolkit Mental Health in the Workplace. This toolkit has been developed by the Mental Health Foundation with support from the State Services Commission (SSC) and other Public Service agencies. It aims to improve the capability of agencies when it comes to working with mental health issues.

**Positive Workplace Behaviours:** The Positive Workplace Behaviours guidance has been developed in collaboration with the Public Service Association (PSA) and provides good practice examples to State services on how the standards of integrity and conduct should be applied at agency, leadership and staff levels.

**Diversity and Inclusion Network:** SSC co-ordinate a Diversity and Inclusion Network for people from the State sector to discuss key diversity and inclusion issues, share best practice, and keep informed of new initiatives and resources. The Network aims to meet every two months, and covers a wide-variety of diversity topics. The Network helps to shape the work we are doing around ensuring our State services have New Zealanders' current and future needs at the centre.

### **3. Provide information on specific programmes to increase women's participation in peace building negotiations.**

New Zealand has been a strong advocate of full and meaningful participation of women in all stages of conflict prevention, resolution and peace-building. This was a key feature of New Zealand's recent term on the United Nations Security Council (2015-16) where New Zealand spoke regularly on this issue in Security Council meetings and discussions on United Nations (UN) peace operation mandates. New Zealand supported the recognition of women's rights and gender perspectives being part of all programmes and policies for conflict resolution and post conflict development. New Zealand also hosted a Security Council Arria Formula meeting with Human Rights Components from UN peacekeeping missions, which enabled discussion with Council members on issues, including women, peace and security.

New Zealand has long reflected women, peace and security considerations in our doctrine, policy and training for uniformed personnel serving internationally. Our experience in gender-sensitive approaches to community policy in post-conflict settings has proven the value of women's participation.

In November 2015, an all-women New Zealand Defence Force team provided training on the 'Operationalisation of Gender' at the Kofi Annan International Peacekeeping Training Centre in Ghana. This training incorporated conflict prevention techniques through the inclusion of women, increasing the employment of women in conflict prevention and resolution processes, and women's experiences of leadership in conflict.

Gender considerations are embedded in business processes related to the New Zealand Aid Programme.

**4. Does New Zealand intend to provide for more significant sentences for human trafficking beyond fining?**

The Crimes Act 1961 states that the penalty for trafficking is "*imprisonment for a term not exceeding 20 years, a fine not exceeding \$500,000, or both*". We have only had one sentence for trafficking, and this resulted in the trafficker being imprisoned for 9 years 6 months as well as ordered to pay \$28,167 in reparation to his victims.

Proceedings for an offence against section 98D (Trafficking in Persons) cannot be brought in a New Zealand court without the Attorney-General's consent. Given the high level of severity required to bring something to the Attorney-General, it is unlikely that the sentencing would only result in a fine. We are currently considering amendments to the Crimes Act, including to remove the penalty option of only a fine.

**5. Does New Zealand intend to remove the requirement for deception or coercion in the crime of child sex trafficking?**

We are currently considering amendments to the Crimes Act, including the introduction of a separate trafficking in children offence in line with international best practice and the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children.

**6. What is the status of the National Action Plan on Trafficking, timeframes for its progress, and what challenges are faced in implementation?**

New Zealand has had a National Plan of Action on the Prevention of Trafficking in Persons since 2009. It is still fit for purpose, but is currently being refreshed to better reflect the current landscape. In 2009, for example, there were no known trafficking cases, whereas now we have prosecuted three cases. We are also looking to include a broader understanding of modern slavery, trafficking, and forced labour, and will seek to align with the ILO Protocol of 2014 to the Forced Labour Convention. We expect a finalised refreshed Plan by early 2019.

## **7. How is New Zealand addressing financial flows relating to trafficking?**

New Zealand is actively investigating the financial flows linked to both human trafficking and people smuggling. From the financial crime perspective, preventing money laundering through the various means possible is paramount to preventing financial gain and further investment in the practices and processes which allow exploitation of people.

In New Zealand, cross sector focus remains on preventing human trafficking becoming a problem. While New Zealand's geographical circumstances provide a barrier to both human trafficking and people smuggling, New Zealand is not immune from situations leading on from these activities. In a recent case – Operation Masala – labour exploitation was identified by an investigation initiated by the Inland Revenue Department which demonstrated the value in financial monitoring.

With both people smuggling and human trafficking, criminal networks profit from a business involving the recruitment, harbouring and transportation of human beings. The life of a smuggled migrant can be endangered and/or they can become a victim of other crimes in the course of being smuggled. This extensive process of multiple and specific practices requires a correspondingly wide ranging preventative approach using multi-disciplinary teams and international cooperation.

In looking for specific indicators of money laundering associated with human trafficking and people smuggling, it is vital to consider contextual factors that, although not indicators on their own, provide insight into how businesses are targeted by criminals to launder funds that have been generated by exploiting victims. This includes looking at the modelling of financial flows, the collection and analysis of relevant data, finding weak points in the business, and the disruption of financial flows. Since human trafficking and people smuggling rely on a business or 'commercial methodology', investigations need to include a parallel and complementary financial investigation.

With the continuing growth of professionals in the financial industry, together with advocates for human trafficking victims, institution and technology-based rules and typologies for transaction monitoring systems which seek to capture specific patterns and behaviours are on the increase. Looking for 'ring activity' is now facilitating easier identification of terrorist financing, drug rings and human trafficking rings.

Financial institutions are in a unique position to spot red flags in transaction activity and report them to law enforcement. However, professionals need to understand the problem first. Other than filing suspicious transaction reports, compliance professionals should periodically review accounts, and remain aware of current human trafficking indicators. This can mean training cashiers to be on the lookout for a number of warning signs that may indicate human trafficking for sexual or labour exploitation.

## **8. Provide more information on New Zealand's engagement in the Bali Process? What is currently being done?**

New Zealand is a member of the Bali Process Steering Group along with Australia, Indonesia, Thailand, the IOM, and the UNHCR. The Steering Group is responsible for

setting the direction of the Bali Process and is the forum wherein new initiatives can be progressed for adoption by the broader membership.

The Bali Process initiatives are operationalised through the Regional Support Office. New Zealand currently seconded an immigration official into the Regional Support Office as a Programme Coordinator. We have also provided financial support for several capacity building and research projects, including a recent study on safe and legal pathways for migration.

Over the years, New Zealand has co-chaired and participated in various initiatives and activities. Since 2014, we have co-chaired (originally with Sri Lanka and now with Malaysia) a Working Group on the Disruption of People Smuggling and Trafficking Networks. The flagship initiative of this Working Group is the 'Joint Period of Action', which involves two or more countries working together on a specific investigation by sharing intelligence, gathering evidence, or disrupting a specific human trafficking or smuggling syndicate over a six month period. The most recent Joint Period of Action (March to August 2017) saw law enforcement and immigration agencies from ten countries – Australia, Bangladesh, Indonesia, Malaysia, the Maldives, New Zealand, the Philippines, Sri Lanka, Thailand and the USA – carry out nine joint operations aimed at dismantling criminal networks in the Asia-Pacific region. Criminal networks involved in the online commercial sexual exploitation of children were also targeted.

Our 4th Joint Period of Action was launched at the beginning of June, involving ten countries – Australia, Bangladesh, Fiji, Indonesia, Malaysia, New Zealand, Sri Lanka, Thailand, the USA, and Vietnam. The co-chairs were very pleased to welcome two new members – Fiji and Vietnam – to the Working Group. It will run for a period of six months from June to November. Because the Working Group has significantly contributed to the establishment of contacts, reinforced trust, and enhanced operational cooperation between countries in the region, the co-chairs are confident that the 4th Joint Period of Action will be as successful as ever.

## **9. What measures are in place to collect data on trafficking in New Zealand?**

The Ministry of Business, Innovation and Employment (MBIE) conducts research on trafficking and migrant exploitation to support its functions (including immigration and labour inspection). MBIE staff participated at the International Metropolis Conference held in The Hague in 2017 and presented a paper on exploitation of migrant workers "Te Tika me Te Pono: New Zealand's response to migrant exploitation". This paper triangulated information gathered through a combination of primary and secondary methods across multiple migrant worker groups, including surveys, administrative data and key informant interviews to present a picture of exploitative practices impacting on temporary foreign workers in two New Zealand industries (construction and hospitality).

The New Zealand Government also works closely with NGOs and draws on their research and insights to understand human trafficking and migrant exploitation in New Zealand. MBIE has most recently commissioned some research through Otago University in to the scope and scale of migrants working in the sex industry and their understanding of exploitation and trafficking.

The New Zealand Government also invests in activities that increase the likelihood of noncompliant employers being caught and held accountable by improving MBIE's ability to detect, investigate, and effectively prosecute employers who engage in migrant exploitation and the supply chains of which they are a part. This includes developing Sector Strategies and proactive, intelligence-led targeting of employers who exploit migrants.

Information is also shared internally among agencies (e.g. between Immigration New Zealand and the Labour Inspectorate) and externally to assess the human trafficking problem in New Zealand.

**10. Provide information on New Zealand's position with regards to classification of charges relating to trafficking.**

New Zealand is aware that labour exploitation and trafficking is extensive and covers a range of offences, and combatting this is a priority for the Government. New Zealand recognises the relationship between forced labour, labour exploitation and trafficking, and that enforcement of labour laws and labour inspection are important measures to reduce vulnerability to both labour exploitation and trafficking. New Zealand ratified the International Labour Organisation (ILO) Conventions on Forced Labour, 1930 (No. 29) in 1938, and on Abolition of Forced Labour, 1957 (No. 105) in 1968, and ratified the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons in 2000.

The Government recognises some populations may be at greater risk of being exploited by employers in New Zealand's labour market. This includes recent migrants who may agree to work under substandard terms and conditions because they are not aware of minimum employment standards, and people working unlawfully who may be reluctant to report employers who are failing to comply with employment standards and seek help due to fear of authorities.

To pursue trafficking charges, the threshold is high within the Crimes Act 1961. Proceedings for an offence against section 98D (Trafficking in Persons) cannot be brought in a New Zealand court without the Attorney-General's consent. A person alleged to have committed an offence against section 98D may be arrested, or a warrant for the person's arrest may be issued and executed, and the person be remanded in custody or on bail even though the Attorney-General's consent to the bringing of proceedings against the person has not been obtained. Although investigations may produce prima facie evidence of human trafficking or serious exploitation, trafficking in persons charges may not be laid (with other charges laid instead). Not all investigations will also result in criminal prosecutions, and there are a number of reasons why prosecutions may not be pursued, such as the availability of witnesses.

There is an important distinction to be drawn between people in circumstances of human trafficking and slavery, and those who may be experiencing substandard working conditions (such as underpayment of wages or the failure to meet guaranteed minimum leave entitlements). The latter are best dealt with by the Employment Relations Authority/Employment Court as these cases are breaches of employment standards, which is different to trafficking.

**11. The Committee is concerned that a mother who does not have the right to remain in New Zealand, but whose children have New Zealand citizenship, may be deported and therefore separated from her children. Advise whether consideration is being given to amending immigration legislation to prevent such separation?**

New Zealand takes seriously its international obligations in respect of the rights of the child, including the rights of children to a family life, when making decisions about parents' visa status. Immigration New Zealand has processes in place to ensure that obligations under the United Nations Convention on the Rights of the Child (UNCROC) are always taken into consideration at appropriate stages of immigration decision-making.

If a person is liable for deportation for being unlawfully in New Zealand, and they raise matters relating to New Zealand's international obligations, then an immigration officer must consider cancelling the deportation order (in line with s 177 of the Immigration Act 2009). New Zealand Courts have also found that international obligations, such as the rights of children under UNCROC and the right to family life are primary (but not paramount) factors to be considered when exercising discretion under the Immigration Act. Visas can be granted as exceptions to the Immigration Instructions to enable parents to remain in New Zealand when they would otherwise not have an ability to do so.

The Care of Children Act 2004 requires all child care related decisions made by the Family Court to take into account the welfare and best interests of the child. This includes the principle that a child's safety must be protected and that, where possible, a child should continue to have a relationship with both of their parents.

**12. Provide data on the number of teenage mothers who are not enrolled in education, and the number of teenage mothers who are enrolled in education.**

The Ministry of Education does not classify students by whether they are a parent (or not). However data is collected for students enrolled in Teen Parent Units.

The Ministry of Education does not collect information about whether students are parents as these data are not necessary for the operation of a school or for funding (beyond explicit funding of teen parent units).

Note that not all teenage parents will be enrolled in Teen Parent Units.

The Ministry of Education does not hold information about teen parents not enrolled in education and therefore cannot provide these data. Information is periodically available from the National Census. This data can be linked to education data but only for research purposes.

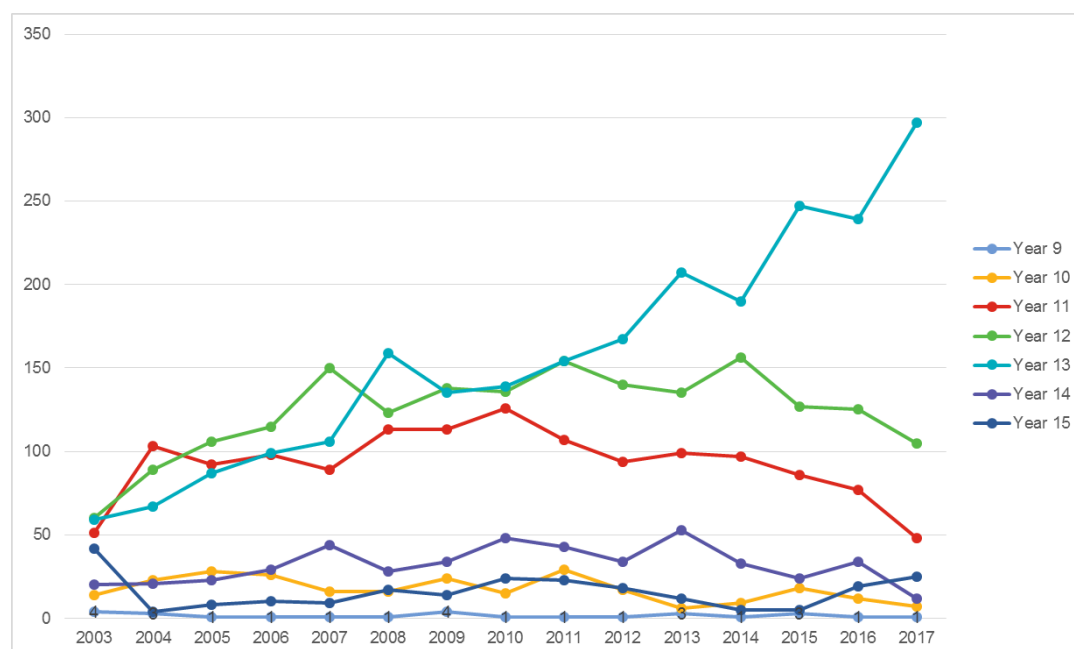
Teen Parent Units have a notional roll (i.e. a maximum headcount for which they are funded). Theoretically, students may be enrolled in the host school and still be parents engaging with the Teen Parent Unit.

## Students enrolled in Teen Parent Units (TPUs)<sup>3</sup>

**Figure One:** Table showing number of female students enrolled in Teen Parent Units by Year (as at 1 July) and Year Level

Year (as at 1 July)	Year Level							Grand Total
	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	
2003	4	14	51	60	59	20	42	250
2004	3	23	103	89	67	21	4	310
2005	1	28	92	106	87	23	8	345
2006	1	26	98	115	99	29	10	378
2007	1	16	89	150	106	44	9	415
2008	1	16	113	123	159	28	17	457
2009	4	24	113	138	135	34	14	462
2010	1	15	126	136	139	48	24	489
2011	1	29	107	154	154	43	23	511
2012	1	17	94	140	167	34	18	471
2013	3	6	99	135	207	53	12	515
2014	1	9	97	156	190	33	5	491
2015	3	18	86	127	247	24	5	510
2016	1	12	77	125	239	34	19	507
2017	1	7	48	105	297	12	25	495

**Figure Two:** Chart showing number of female students enrolled in Teen Parent Units by Year (as at 1 July) and Year Level



<sup>3</sup> <https://www.educationcounts.govt.nz/home>



## Teen Parent Unit leavers highest attainment

**Figure Three:** Table of highest level of attainment for female school leavers who were enrolled in Teen Parent Units by Year (as at 1 July)

Highest level	Year							
	2009	2010	2011	2012	2013	2014	2015	2016
Below Level 1 Qualification	93	79	76	75	97	71	81	58
Level 1 Qualification	50	64	63	51	53	53	38	36
Level 2 Qualification	73	87	79	76	86	79	83	71
Level 3 or above	33	36	45	40	34	46	51	52
University Entrance	13	16	22	20	23	13	13	9

## Teen Parent Unit leavers attainment by level

**Figure Four:** Percentage of Female School Leavers in Teen Parent Units with NCEA Levels 1, 2, 3 and above, and with UE compared to all schools (2009-2016)

	Level 1 or above		Level 2 or above		Level 3 or above		University Entrance	
	Teen Parent Units	All Schools	Teen Parent Units	All Schools	Teen Parent Units	All Schools	Teen Parent Units	All Schools
<b>2009</b>	64.5	83.1	45.4	71.7	17.6	48.2	5	42.2
<b>2010</b>	72	85.7	49.3	74.8	18.4	50.5	5.7	43.3
<b>2011</b>	73.3	86.6	51.2	76.9	23.5	53.6	7.7	44.3
<b>2012</b>	71.4	87.6	51.9	78.9	22.9	56.9	7.6	48.7
<b>2013</b>	66.9	87.4	48.8	78.1	19.5	56.4	7.8	48.4
<b>2014</b>	72.9	89.3	52.7	81.4	22.5	58.1	5	45.9
<b>2015</b>	69.5	90.3	55.3	82.9	24.1	60.8	4.9	48.1
<b>2016</b>	74.3	90.6	58.4	82.8	27	60.3	4	47.2

**13. Please provide data on the sole parent beneficiaries disaggregated by ethnicity.**

<b>Recipient characteristic</b>	<b>Mar-16</b>	<b>Jun-16</b>	<b>Sep-16</b>	<b>Dec-16</b>	<b>Mar-17</b>	<b>Jun-17</b>	<b>Sep-17</b>	<b>Dec-17</b>	<b>Mar-18</b>
<b>Gender</b>									
Male	5,420	5,322	5,235	5,231	4,963	4,844	4,842	4,884	4,815
Female	60,967	60,100	59,137	59,739	57,249	55,787	54,660	55,794	54,015
<b>Ethnic Group</b>									
NZ European	20,183	19,753	19,259	19,403	18,430	18,083	17,623	18,026	17,315
Māori	31,461	31,040	30,688	31,036	29,660	28,849	28,414	29,037	28,071
Pacific peoples	7,202	7,020	6,927	6,898	6,659	6,459	6,366	6,338	6,287
All other ethnicities	6,560	6,538	6,369	6,435	6,291	6,058	5,920	6,036	5,912
Unspecified	981	1,071	1,129	1,198	1,172	1,182	1,179	1,241	1,245
<b>Total Sole Parent Support</b>	<b>66,387</b>	<b>65,422</b>	<b>64,372</b>	<b>64,970</b>	<b>62,212</b>	<b>60,631</b>	<b>59,502</b>	<b>60,678</b>	<b>58,830</b>

**14. Provide updated information on the actions taken to ensure that parents do not feel pressured to pay voluntary contributions (school fees).**

In July 2017, an amendment was made to the Secretary's Instructions issued under section 11G of the Education Act 1989 to include a new clause which prohibits the seeking of donations in respect of enrolment applications from out-of-zone students - <http://www.education.govt.nz/assets/Documents/School/Running-a-school/Enrolment-and-attendance/Secretarys-Instructions-2017.pdf>. The amendment came into force on 13 July 2017 (<https://gazette.govt.nz/notice/id/2017-go3461>).

Updated guidelines on payments by parents of students in schools (Circular 2018/01) were made available to all New Zealand schools on 2 July 2018. During its development, the Circular went through an extensive consultation and review process to ensure the content was informed by the sector, and also that it uses plain language. The Circular provides advice on the rights of parents, students, boards of trustees, proprietors, and sponsors about requests for donations and other forms of payment in schools. It replaces a previous Circular (Circular 2013/06), which has been refreshed, and now includes a summary chart with examples. The substance of the advice has not changed, because the law has not changed. There is one exception related to enrolment costs in schools with enrolment schemes (see 'Enrolment' under 'Item categories' in the appendix) – this reflects the amendment to the Secretary's instructions set out above.

The Circular, appendix and summary chart are available to parents and the general public from the Ministry's website: <https://www.education.govt.nz/ministry-of-education/publications/education-circulars/2018-circulars/circular-201801/>. If it is brought to the attention of the Ministry of Education that a board of trustees, proprietor, or sponsor may be acting unlawfully in respect of matters covered by this Circular, the Ministry will work with the parties to resolve the matter based on the advice set out in this Circular.

## **15. Provide information the public availability of New Zealand's business registry.**

New Zealand's Companies Register is an electronic register which is available to the public 24 hours a day, 7 days a week and provides online searching, incorporation and maintenance services. New Zealand was the first in the world to allow the incorporation of companies over the Internet.

The online incorporation process involves:

- an application to reserve the company's name; and
- an application to incorporate the company, which includes providing the company's statutory address details (registered office address and address for service), proposed director and shareholder details (names and residential addresses) and is accompanied by a signed consent form for every proposed director and shareholder. As part of the incorporation application process, the applicant can also apply to register the company with Inland Revenue (IR) to be issued an IR number.

On incorporation, the company's details are entered into the register; a New Zealand Business Number (unique identifying number) is allocated; and an incorporation certificate is issued.

Information about a company's statutory addresses and the company's directors and shareholders details are available to the public. However, the Registrar of Companies may withhold a director's or shareholder's residential address from the public register if the director or shareholder has been granted an order from the High Court of New Zealand under the Domestic Violence Act 1995 or Sentencing Act 2002 to protect that person.

No financial information about the company is provided at the time of incorporation, nor is financial information required to be provided in the annual return which every company is required to file each year on the Companies Register.

However, some large New Zealand, and all large overseas companies, must file annual audited financial statements under the Companies Act 1993 and these financial statements are available on the Companies Register to the public for inspection.

"Large" is defined in legislation – for example, an entity (other than an overseas company or a subsidiary of an overseas company) is large in respect of an accounting period if at least 1 of the following paragraphs applies:

(a) as at the balance date of each of the 2 preceding accounting periods, the total assets of the entity and its subsidiaries (if any) exceed \$60 million:

(b) in each of the 2 preceding accounting periods, the total revenue of the entity and its subsidiaries (if any) exceeds \$30 million..

It is free to search the Companies Register.

## **16. How will New Zealand fulfill extra-territorial obligations around tax avoidance?**

New Zealand has been working diligently to combat base erosion and profit shifting (BEPS) which is the global problem of aggressive tax practices used by multinational companies to pay little or no tax anywhere in the world. New Zealand's response to the BEPS problem is a coherent package of domestic law reforms, tax treaty changes and administrative measures to ensure that multinationals pay their fair share of tax in New Zealand. It is generally consistent with the OECD/G20 BEPS Action Plan, although specific proposals have been tailored for the New Zealand environment where appropriate. The Taxation (Neutralising Base Erosion and Profit Shifting) Act 2018 was recently enacted and represents New Zealand's main legislative commitment to the OECD/G20's BEPS Action Plan. In June 2018 New Zealand also ratified the OECD's Multilateral Instrument, which is a treaty that amends the majority of New Zealand's tax treaties to deal with treaty-based BEPS risks. New Zealand is well represented at international organisations that consider tax avoidance issues and will continue to monitor developments in this area.

## **17. Provide information on what is being done to improve access to education in rural areas.**

The Government works in a number of ways to ensure access to education for women and people in rural areas.

These include:

- Fees free 2018 and student allowances
- Access to transport - for rural women studying at tertiary level, Student Allowances are available to cover the cost of travel to and from their places of education.
- Mobile and broadband connections
- The Government has stated it will provide additional funding to Adult and Community Education which will support more rural woman to access education in their communities.

### School Closures

New Zealand recognises the importance of schools as not only an education provider, but as an important cultural and social centre for a community as well. Consequently, school closures are governed by a comprehensive legislative process set down in the Education Act 1989 which involves extensive consultation with all students, families and communities that would be affected by the closure.

A board of trustees may decide that a school is no longer educationally viable and on that basis, it may apply to the Minister of Education for voluntary closure. This is usually done when a board, after careful consideration of the available options, comes to the conclusion that the students would have better educational opportunities in a different setting. The final decision to close a school is made under section 154 of the Education Act 1989 (the Act) and after consultation under section 157 of the Act.

A different process applies to integrated schools. This requires that the integration agreement is cancelled by the mutual agreement of the Minister and the proprietor.

## 18. Provide examples of case law referencing CEDAW.

The Convention has sporadically been referred to in New Zealand cases. Recent examples include:

- Terranova Homes and Care Ltd v Service and Food Workers Union Nga Ringa Tota Inc. [2015] 2 NZLR 437

Ms Bartlett lodged proceedings under the Equal Pay Act 1972 with the Employment Relations Authority. The proceedings claimed that, because support workers are predominantly women, a support worker is paid less than would be paid to a man performing work involving the same or substantially similar degrees of skill, effort and responsibility and in similar conditions. Related proceedings were lodged by the Service and Food Workers Union with the Employment Court pursuant to s 9 of the Equal Pay Act. Preliminary questions of law relating to s 3(1)(b) of the Equal Pay Act on both matters were submitted to the Employment Court for determination.

The Employment Court found that s 3(1)(b) of the Act requires that equal pay for women for work predominantly or exclusively performed by women, is to be determined by reference to what men would be paid to do the same work abstracting from skills, responsibility, conditions and degrees of effort as well as from any systemic undervaluation of the work derived from current or historical or structural gender discrimination; and that the Authority or Court is entitled to have regard to what is paid to males in other industries if enquiries of other employees of the same employer or of other employers in the same or similar enterprise or industry or sector would be an inappropriate comparator group.

The appellant, Terranova Home and Care appealed the findings of the Employment Court. The Court of Appeal confirmed the findings of the Employment Court and dismissed the appeal.

The Court of Appeal decision does not refer to CEDAW. However, the Court did consider the usefulness of the International Labour Organisation's Convention Concerning Equal Remuneration for Men and Women Workers of Equal Value (ILO 100) as an interpretative aid to the Equal Pay Act. The Court concluded its usefulness is "limited" as the obligations under the Convention are expressed at a high level of generality and are subject to qualification (namely that the means by which the principle of equal pay is implemented must be consistent with the member state's methods of remuneration) the effect of which is not clear.

The earlier Employment Court decision does refer to CEDAW, along with other international instruments which the Employment Court considered as interpretative aids. The Employment Court considered the international instruments "make it clear that pay rates for women should not reflect the effects of gender discrimination".

- BY (China) v Refugee and Protection Officer [2016] NZAR 1595

The applicants (husband and wife and two of their three children) sought leave to appeal a decision of the Immigration and Protection Tribunal under s 245 of the

Immigration Act 2009, or alternatively, leave to bring judicial review proceedings. The applicants claimed that if returned to China, the wife would be forcibly sterilised or subjected to forcible insertion of an inter-uterine device; and that the Tribunal erred in various ways in not recognising their claims to a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” and thus to refugee status under the terms of art 1A(2) of the Refugee Convention 1951 (the Convention). The Court dismissed the applicants’ applications under ss 245 and 249 of the Act.

One of the issues addressed by the High Court was whether the Tribunal erred in law in its assessment of “being persecuted” and “well-founded fear” by not referring to CEDAW (arts 12; 16) or a report of the relevant CEDAW committee. The Court found no relevant error of law on this basis.

The Court considered arts 12 and 16 of CEDAW are “directed primarily to issues related to the equality of the sexes”, including with respect to decisions relating to the number and spacing of children. It was therefore immaterial that the CEDAW articles were not discussed in the Tribunal’s decision. The Court also noted that the CEDAW committee report was never filed with the Tribunal by the applicants, and in any event, was summarised in another report that was extensively reviewed by the Tribunal. *New Zealand Van Lines Ltd v Proceedings Commissioner* [1995] 1 NZLR 100

The complainant was a former employee of a branch of the appellant company. She had been subjected to offensive and demeaning sexual harassment by two male employees for some three months before she terminated her employment. The branch manager was aware of the conduct but took no effective steps to prevent it or to control the offending employees.

The Equal Opportunities Tribunal found that the appellant had committed a breach of s 15(1)(c) of the Human Rights Commission Act 1977 in that it had caused the complainant, a sole female employee at the a branch at the time, to suffer detriment by reason of her sex in the course of her employment. The Tribunal made orders under ss 38, 40 and 54 of the Act. The appellant appealed against three orders made by the Tribunal on the basis that the first order (restraining it from subjecting women employed at the relevant branch to detriment in the nature of sexual harassment by reason of their gender) was much wider than the form of order authorised by the section; that the Tribunal lacked jurisdiction in relation to the second order (that the appellant implement an anti-sexual harassment policy at the relevant branch); and that the Tribunal had wrongly exercised its discretion in relation to the third order (prohibiting the publication of any report or part of the evidence or any part of the decision which could lead to the identification of the complainant).The High Court allowed the appeal in part, finding that the third order was made in excess of the jurisdiction and must be struck down.

In the course of its decision, the High Court considered whether CEDAW and the United Nations Declaration on the Elimination of Violence against Women were of particular relevance to interpreting the terms of the Act. Smellie J expressed “some doubt” as to how directly relevant those international documents are to the Act, noting the relevant chronology (including that the Act received the royal assent prior

to CEDAW being ratified in New Zealand, although CEDAW had been signed before the Act came into place). In any event, the Court considered “it is clear that legislation of this kind is to be accorded a liberal and enabling interpretation”.