

Political Participation for Everyone: Disabled People's Rights and the Political Process

Book 3 of 3



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Te Kāhui Tika Tangata

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Introduction

The right to vote and the broader right to participate in political and public life are integral to a functioning democracy. By exercising the right to vote disabled people assert individual autonomy, which includes the freedom to make one's own choices, and the right to be recognised as persons before the law.¹ Through involvement in political activity, law and policy reform, disabled people and their representative organizations can influence improvements in the areas of health, rehabilitation, education, employment and access to goods and services.

New Zealand's voting and political systems are not designed for everyone. Disabled people encounter barriers to exercising their rights to vote and participating politically. These include inaccessible information and voting papers, limited voting methods, and a lack of physical facilities that enable engagement with politicians.

This report

In December 2011 the Commission released and sought feedback on *The Wider Journey* discussion document, which raised issues relating to the right to vote, accessibility of the built environment and access to information. The feedback provided in submissions has been reflected in three distinct reports.

This report deals only with the issue of the right to political participation which includes voting procedures, voting by secret ballot, access to political information and participation in political parties. The issues of information accessibility and built environment accessibility are addressed in separate reports.

This report covers:

- 1 the Commission's experience and research
- 2 the relevant international standards and domestic legislation
- 3 international good practice
- 4 ideas to improve political participation in New Zealand.

The Commission's experience and research

The Human Rights Commission has received a number of complaints about inaccessible voting procedures relating to both local and national elections. It has also received complaints about barriers to political participation. For example, in 2012, the Commission received eleven complaints about a lack of facilities in place for a newly elected member of parliament who is deaf.

In its review *Human Rights in New Zealand – Ngā Tika Tangata O Aotearoa 2010* the Commission identified a number of barriers to disabled people's rights to political participation, which were also highlighted by submitters to *The Wider Journey* discussion document.

These barriers largely concern the ability to access information such as a lack of alternative formats and voting options for people who have reading, writing and/or literacy difficulties. Other barriers exist for those who have impairments that affect the ability to hold a pen for example, or access appropriate transport to polling booths on election day. As highlighted by submitters there is a need to introduce initiatives such as voting by telephone, electronic voting and ballot papers in large print and Easy Read with transparent Braille overlays.

Photo: Australian Electoral Commission



Graham Innes, Australia's Disability Discrimination Commissioner and Race Discrimination Commissioner, voting independently by telephone at the 2010 Australian Federal Elections.

International human rights standards

A wide range of international human rights instruments guarantee and elaborate on the right to universal and equal suffrage. These include the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights ², the Convention on the Elimination of All Forms of Racial Discrimination ³ and the Convention on the Elimination of All Forms of Discrimination against Women.⁴

The International Covenant on Civil and Political Rights (ICCPR) recognizes and protects the right of every citizen to participate in the conduct of public affairs, the right to vote and be elected and the right to have access to public service.⁵ Article 25(b) of the ICCPR recognises the right of every citizen “to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage.”

Convention on the Rights of Persons with Disabilities (Disability Convention)

The Disability Convention is the defining international standard for disabled people’s rights, which New Zealand ratified in 2008. It does not create new rights but clarifies the human rights of disabled people. It explains

the State’s obligations and provides guidance on how to ensure disabled people’s rights can be realised.

As part of its obligations under the Disability Convention, New Zealand has agreed to:

- adopt all appropriate legislative, administrative and other measures for the implementation of the Disability Convention
- take all appropriate measures to eliminate discrimination on the basis of disability
- closely consult with organisations representative of disabled people in the development of legislation and policies

Article 29 of the Disability Convention relates to participation in political and public life, including the right to vote and be elected. It requires states to take measures to ensure voting procedures and facilities are accessible, to protect the right to vote by secret ballot and to promote participation in political parties. Such measures should be given priority to ensure compliance with the Disability Convention.⁶

Relevant New Zealand legal framework

A disabled person has the same right to vote as any other adult person in New Zealand law. This is affirmed by section 12 of the New Zealand Bill of Rights Act 1990 which protects the right of every person over the age of 18 years to vote by “equal suffrage and by secret ballot.” However, in some contexts and for different reasons, disabled people can be denied the right to vote. For example, section 80 of the Electoral Act 1993 disqualifies certain categories of people from voting, including people who have been detained for three years for criminal offending but not been convicted due to a serious mental health condition.⁷ The Human Rights Commission recommends that this type of disqualification be reconsidered.

New Zealand law provides for people with certain disabilities to be assisted with voting.⁸ Disabled voters can be accompanied into a voting compartment, and assisted with the marking of the ballot papers by the Deputy Returning Officer or by a person of their choice. These provisions cover voters who are wholly or partially blind, those unfamiliar with the English language and

those who are unable to read or write, or who have severe difficulty doing so. They are problematic however because they require the disabled voter to disclose their voting preference to another and do not therefore ensure the right to an independent and secret vote.⁹

Recent moves to address barriers to voting

Since the early 1990s, the Electoral Commission has progressively implemented measures to remove barriers to the right to vote and to access information about voting. Voting information is provided in Easy Read, New Zealand Sign Language, captions on television advertisements and with information on accessible polling places. Voting options include postal voting, advance voting and assisted voting (with a friend, family member or electoral officer) for people who are blind, unable to read or write or mark the ballot paper.

Alternative format publications produced by the Electoral Commission were the topic of a survey of disabled voters and non-voters following the 2008 general election. Positive feedback was received from those surveyed.¹⁰

Information about political parties

Exercising the right to vote is linked to the ability to access information about those standing for election. This includes campaign information, party policies and priorities, candidate information and their websites. Responsibility for ensuring that information is accessible lies with each political stakeholder.

Barriers to access exist. There is a need to raise awareness for political parties that disabled people comprise a significant population of potential voters and to encourage use of accessible information formats such as Easy Read and plain language. It is also important that political parties and politicians ensure that they are accessible to disabled people, for example, by ensuring their offices are accessible and that arrangements are made for deaf people to access NZSL for meetings.

The need for accessibility also applies to local authority elections. Submitters reported that local election candidate booklets are not produced in accessible formats so that those unable to read print or access the Internet are significantly disadvantaged. Although Local Government

New Zealand's website provided comprehensive access to candidate information, fewer than ten per cent of members of the Royal New Zealand Foundation of the Blind can access the Internet independently.¹¹

The right of disabled people to stand for elections and effectively hold office

In December 2011, a profoundly deaf Green Party member, Mojo Mathers, was elected to Parliament. Her request for electronic note-taking services resulted in a debate about how this should be funded. The issue received significant media exposure and threw a spotlight on accessibility issues in Parliament.

The Speaker of the House provided the Commission with the following comments about the events:

“In December 2011, a profoundly deaf person, Mojo Mathers, was elected to Parliament. Her needs were identified and technology was made available to support her in her new role. However, additional staff were required to provide some of this support and although there was no doubt that this support would be provided on an

on-going basis, the issue did engender debate about the appropriate source of funding for that support. Clearly, It is essential that Parliament is accessible to a broad representation of our population, 17 – 20 per cent of whom have a disability.”

Depending on the particular circumstances of a Member of Parliament, mechanisms to address the funding of reasonable accommodation obligations appear to need further clarification.

Statistics and data collection

New Zealand does not have accurate statistics on how many people are affected by barriers to political participation. According to the 2006 Disability Survey, 71,000 New Zealanders said they had a vision impairment and of these 57,600 were of voting age. However, this does not mean that all of those people would have difficulties with aspects of the voting process.

The current electoral roll enrolment form does not collect information on voters with disabilities. The collection and maintenance of statistical data is critical to give full effect to the Disability Convention¹², as such data helps to identify where barriers to the

political participation of disabled people lie. The Commission recommends that the Government commit to improved data collection relating to disabled people.

Photo: Hillsborough County, Florida.



Accessible voting equipment that features “Sip/N/Puff,” which allows quadriplegic voters to independently mark a ballot; headphones and a navigation system that allows persons with visual impairments to independently mark a ballot; and a hand/foot pedal device so voters may use their hands or feet to mark a ballot if necessary.

International good practice

Overseas, a range of voting options has been implemented to ensure disabled people can vote secretly and independently. In both the United States and Australia, touch screen kiosks have been used in recent elections. These kiosks guide the voter through the voting process with enlarged print on the touch screen or by synthetic speech instructions listened to through earphones. Once the voter has voted, a ballot paper is printed and counted in the usual way. However, concerns were expressed about the potential for users to become flustered and confused by unfamiliar equipment.

Telephone and internet voting are other options which have been made available to disabled voters in overseas elections. Both these options can be carried out at a place of the voter's choosing using equipment already familiar to them. Internet voting is the only technology option for deaf-blind voters who can access the Internet with Braille computers but are unable to use a telephone. Internet voting has been successfully used overseas to ensure accessible and secret voting for disabled people, as well as to improve voter turnout and make the process more convenient.¹³

In Australia, the United Kingdom, Canada,

South Africa and Japan¹⁴ tactile voting templates are available for blind and vision impaired people. This ensures their right to a secret and independent vote where they do not have to disclose their vote to another person to mark their ballot paper. Another option is the use of Braille transparent overlays for ballot papers. These clear overlays have slots in them which line up with the spaces where the ballot papers are to be marked. Canada makes large-print information and sign language interpreter services available on request.¹⁵

Recent developments in Australia

In Australia it is compulsory for every eligible voter to cast their vote in federal and state elections. The philosophy of the Australian Electoral Commissions supports enabling voters to cast their votes by as many methods as practical.

In 2010, the Commonwealth Government and the states of Victoria and New South Wales enacted legislation that permits their electoral commissioners to implement accessible voting for blind and vision impaired voters. Eligible voters were able to phone in their votes to a call centre during the 2010 federal elections. Electronically

assisted voting by telephone, internet and touch screen kiosk with synthetic speech was made available in recent New South Wales and Victorian elections.

An assessment of internet voting in Australia indicated it was effective in facilitating a secret and independently verifiable vote for blind and vision impaired voters. The system was also identified by users as making voting easier and more convenient. Importantly, it demonstrated that such a system can work and is appropriate in a real election environment.¹⁶

Australia's experiences in alternative voting options highlighted the need for high levels of security and the importance of promoting these options.¹⁷ The telephone voting system adopted in New South Wales complies with standards for telephone voting developed in 2010 by the Electoral Council of Australia¹⁸ and internet standards align with those used by banking websites.

Photo: Jeremy Knop/News21



Disabled voter parking signs in storage. These signs provide access for disabled voters at polling locations in Maricopa County, Phoenix, USA

The way ahead

There is a need for New Zealand to continue to implement initiatives to address barriers to disabled people's rights to vote and participate in political processes and public affairs. Lessons can be drawn from overseas and can build on promising New Zealand examples such as those below.

As described previously, the Electoral Commission has taken a number of steps to improve accessibility for disabled voters. It has advised that it is planning to continue work on e-voting options before the next election but that this is dependent on funding. The Human Rights Commission also understands that online voting may be trialled for the Auckland Council elections in 2013. Overseas examples show e-voting to be a highly effective accessibility strategy.

Other examples of effective accessibility strategies include processes used by some disabled people's organisations to elect their governance bodies. The Royal New Zealand Foundation of the Blind (RNZFB), for example, uses a TIS secret voting system. This is an interactive voice response system developed in 2004. It has also been used by the Association of Blind Citizens board and other consumer groups as the method of voting in their elections. In addition,

information is provided in accessible formats, including Braille, large print, audio, electronically and by telephone.

Political parties may be becoming more aware of the need to take steps to ensure their campaign information and events are accessible to disabled people. Submitters highlighted how, for example, during the 2011 election, the Green Party translated some of their campaign information into NZSL video clips, used captioning and took steps to enable accessibility to meetings with candidates.

Recommendations

The Human Rights Commission has identified the following issues to progress in order to ensure compliance with article 29 of the Disability Convention to promote and ensure full exercise of the right to vote and participate in political life:

- a. **relevant bodies provide election information, candidate profiles and party information in accessible formats for both local body and national elections**
- b. **the Electoral Commission continues to provide and enhance accessibility of election information and voting materials**
- c. **the Electoral Commission considers improving data collection relating to disabled people including the consideration of collecting information on voters with disabilities on the electoral enrolment form**
- d. **introduction of electronic and telephone voting in the 2013 local body elections and the 2014 general election to allow disabled people access to an independent, secret ballot.**

Appendix A

Electoral Act, Section 80

Disqualifications for registration

(1) The following persons are disqualified for registration as electors:

(a) a New Zealand citizen who (subject to subsection (3)) is outside New Zealand and has not been in New Zealand within the last 3 years:

(b) a permanent resident of New Zealand (not being a New Zealand citizen) who (subject to subsection (3)) is outside New Zealand and has not been in New Zealand within the last 12 months:

(c) a person who is detained in a hospital under the Mental Health (Compulsory Assessment and Treatment) Act 1992 or in a secure facility under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and to whom one of the following applies:

(i) the person has been found by a Court or a Judge to be unfit to stand trial within the meaning of the Criminal Procedure (Mentally Impaired Persons) Act 2003, or has been acquitted on account of his or her insanity, and (in either case) is

detained under an order or direction under section 24 or section 31 or section 33 of that Act or under the corresponding provisions of the Criminal Justice Act 1985 and has been so detained for a period exceeding 3 years:

(ii) the person has been found by a court, on conviction of any offence, to be mentally impaired, and is detained under an order made under section 34 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 or section 118 of the Criminal Justice Act 1985, and has been so detained for a period exceeding 3 years:

(iii) the person is subject to, and has for a period exceeding 3 years been subject to, a compulsory treatment order made following an application under section 45(2) of the Mental Health (Compulsory Assessment and Treatment) Act 1992 or a compulsory care order made following an application under section 29(1) of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003:

(iv) the person is detained under section 46 of the Mental Health (Compulsory Assessment and Treatment) Act 1992, and is a person to whom paragraph (d) would otherwise apply:

(d) a person who is detained in a prison pursuant to a sentence of imprisonment imposed after the commencement of the Electoral (Disqualification of Sentenced Prisoners) Amendment Act 2010:

(e) a person whose name is on the Corrupt Practices List made out for any district.

(2) The Registrar of the Court in which any compulsory treatment order or any order under section 24 or section 34 of the Criminal Procedure (Mentally Impaired Persons) Act 2003 is made or any person is convicted of a corrupt practice shall, not later than the fifth day of the month next succeeding the date of the order or conviction, forward to the Registrar of Electors of the electoral district in which the patient or offender was residing a certificate showing the name, place of abode, and description of the patient or offender and particulars of the order or conviction.

(3) Nothing in subsection (1)(a) or (b) applies to—

(a) a person, being—

(i) a public servant or a member of the Defence Force; or

(ii) a head of mission or head of post within the meaning of the Foreign Affairs Act 1988, who is outside New Zealand in the course of that person's duties; or

(iii) an officer or employee of New Zealand Trade and Enterprise established by the New Zealand Trade and Enterprise Act 2003; or

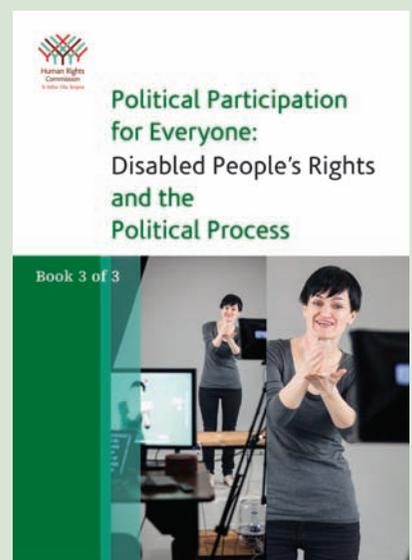
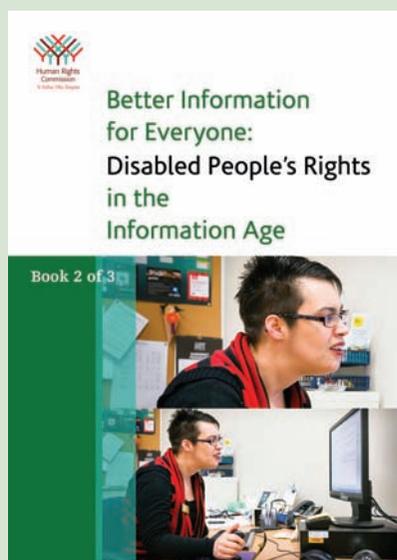
(b) a person who—

(i) is accompanying a person described in subparagraph (i) or subparagraph (ii) or subparagraph (iii) of paragraph (a) who is outside New Zealand in the course of that person's duties; and

(ii) is the spouse, civil union partner, de facto partner, or child of the person referred to in subparagraph (i), or the child of the spouse, civil union partner, or de facto partner of that person.

Notes

- 1 United Nations “Thematic study by the Office of the United Nations High Commissioner for Human Rights on participation in political and public life by persons with disabilities” (December 2011). A/HRC/19/36, p.5.
- 2 New Zealand ratified the International covenant on Civil and Political Rights on 28 December 1978.
- 3 New Zealand ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 22 November 1972.
- 4 New Zealand ratified the Convention on the Elimination of All Forms of Discrimination Against Women on 10 January 1985.
- 5 Article 25 of the International Covenant on Civil and Political Rights.
- 6 It is an expectation in international law that civil and political rights are implemented immediately
- 7 Section 80 of the Electoral Act is provided in Appendix A.
- 8 Electoral Act 1993 s170 Blind, disabled or illiterate voters; and Local Electoral Act 2001 s4(c)iii.
- 9 Section 12 of the Bill of Rights Act states that every New Zealand citizen over the age of 18 has the right to vote by equal suffrage and by secret ballot.
- 10 *Disability Voter and Non-Voter Satisfaction Survey*, accessed 19 January 2011 from <http://www.elections.org.nz/study/researchers/satisfaction/disability.html>
- 11 Bijl, Ruth, Schnackenberg, Mary and Lansink, Clive: *Internet delivery of DAISY talking books - achievability and acceptability for blind and vision impaired seniors: the New Zealand experience*. Royal New Zealand Foundation of the Blind. Paper available from the Library, RNZFB, Private Bag 99941, Newmarket, Auckland 1149.
- 12 Article 31 of the Disability Convention.
- 13 *Evaluation of technology assisted voting provided at the New South Wales State General Election March 2011. Report to the New South Wales Electoral Commission* (July 2011). Allen Consulting Group, p. 9.
- 14 Submission made to the Human Rights Commission on *The Wider Journey* discussion document.
- 15 Accessed 17 January 2011, from <http://www.elections.ca/content.aspx?section=vot&dir=bkg&document=ec90505&lang=e>.
- 16 *Evaluation of technology assisted voting provided at the New South Wales State General Election March 2011. Report to the New South Wales Electoral Commission* (July 2011). Allen Consulting Group.
- 17 *ibid*, p. 12.
- 18 *Automated Telephone Voting: Australian Electoral Industry Standard*, <http://www.eca.gov.au/research/files/telephone-voting-standard.pdf>



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