

## 17. Rights of Disabled People

Tikanga o te hunga hauā

**“People with disabilities should be involved in decisions that affect them.”**



## Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.

United Nations Convention on the Rights of Persons with Disabilities, Preamble

### Introduction Tīmatatanga

#### WHAT IS DISABILITY?

Disability is an evolving concept. The Convention on the Rights of Persons with Disabilities (CRPD) says that disability results from the interaction between a non-inclusive society and individuals with impairments. Persons with disabilities include “those who have long-term physical, mental, intellectual or sensory impairments which, in interaction with various barriers, may hinder their full and effective participation in society on an equal basis with others”.<sup>1</sup>

Internationally, disabled people remain among the most marginalised in every society. Regardless of the human rights or economic situation of a country, disabled people are generally among the last to have their human rights respected. There are at least 650 million disabled people worldwide, making them the world's largest and most disadvantaged minority. An estimated 20 per cent of the world's poorest people are those with disabilities; 98 per cent of children with disabilities in developing countries do not attend school; and the literacy rate for adults with disabilities is as low as 3 per cent.<sup>2</sup>

From the little reliable national information available, it is clear disabled people in New Zealand have poor outcomes compared with the general population. There have now been three national disability surveys run in conjunction with the national census: in 1996, 2001 and

2006. The position of disabled people relative to the general population has barely changed in that period. In areas as fundamental as employment, education, adequate standard of living and accessible public transport, disabled people are significantly disadvantaged.

### International context Kaupapa ā taiao

#### THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES (CRPD)

Disabled people are often denied the basic rights and fundamental freedoms that most people take for granted. The CRPD affirms that disabled people enjoy the same human rights as everyone else and are able to lead their lives as full citizens. It does not recognise any new human rights, but clarifies the obligations and legal duties of states to respect and ensure the equal enjoyment of all human rights by all persons with disabilities.

The CRPD was necessary primarily because of repeated failures to consider the just claims of disabled people within the existing human rights treaties. A leading international advocate says that the convention will have achieved its aim when governments internalise its values and when the just claims of disabled people are considered to be ‘normal’ politics.<sup>3</sup>

New Zealand ratified the CRPD on 26 September 2008, after its adoption by the United Nations General Assembly two years earlier. New Zealand has a long-standing policy of ratifying international treaties only once all domestic law is consistent with them. The Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 was passed after a comprehensive assessment of New Zealand's laws relating to disability. Its main effects were to change various laws that involve automatic disqualification for office because the person has a mental disorder, and to change the way some sections of the Human Rights Act 1993 (HRA) deal with reasonable accommodation.<sup>4</sup>

1 CRPD, Article 1

2 Office of the High Commissioner for Human Rights (2007), *From Exclusion to Equality: Realizing the Rights of Persons with Disabilities* (Geneva: United Nations). Accessible online at <http://www.un.org/disabilities/default.asp?id=212>

3 Quinn G (2008), ‘The CRPD as an Engine for Domestic Law Reform’. A presentation at the Conference of States Parties to the Convention on the Rights of Persons with Disabilities, New York, 31 October 2008

4 ‘Reasonable accommodation’ is a term used to describe the creation of an environment that will ensure equality of opportunity for people with disabilities, family commitments or particular religious beliefs.

Article 1 says the purpose of the CRPD is to “promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.

Article 3 outlines the principles that govern the CRPD:

- a. respect for the inherent dignity and individual autonomy of persons with disabilities, including the freedom to make one’s own choices
- b. non-discrimination
- c. full and effective participation and inclusion in society
- d. respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- e. equality of opportunity
- f. accessibility
- g. equality between men and women
- h. respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

### MONITORING THE CRPD

The CRPD anticipates a new approach to the protection, promotion and monitoring of human rights by signatory countries under Article 33. The Office for Disability Issues, as the focal point within the Government, and the Ministerial Committee for Disability Issues, as the co-ordinating mechanism, have joint responsibility for ensuring that all government agencies have a consistent and comprehensive approach to implementation. The Human Rights Commission, the Office of the Ombudsmen and the Disability Convention Coalition together form the independent mechanism that is responsible for promoting, protecting and monitoring implementation of the CRPD.

The CRPD Optional Protocol provides for individual complaints once all domestic remedies have been used, and allows the United Nations CRPD Committee to investigate any situation in New Zealand that may involve violations of the CRPD. New Zealand has not ratified the optional protocol and is not currently working towards ratification.

New Zealand’s first periodic report to the committee on the implementation of the CRPD is due in October 2010,

and every four years thereafter. The Commission, as New Zealand’s national human rights institution (NHRI), has the role of providing an independent assessment to the United Nations of progress towards implementing the CRPD. The Commission is developing a monitoring framework and has appointed a reference group of disabled people to assist with this task. This chapter will inform the Commission’s report to the committee.

The CRPD Committee has identified three issues which are likely to apply in all states that have ratified the CRPD. These are accessibility, reasonable accommodation, and legal capacity and supported decision-making.

Access to the built and social environment is one of the key requirements to enable disabled people to “live independently and participate fully in all aspects of life”. Article 9 requires the Government to ensure that all disabled people can access the built environment, transport services, public facilities, individual supports, public services and communication technologies on an equal basis with others. To ensure this happens, the CRPD recognises that minimum standards and guidelines may need to be developed, used and monitored.

Reasonable accommodation is related to the requirements of many disabled people for adjustments to the standard way in which goods, services and facilities are delivered, in order for them to be available to disabled people on an equal basis with others. Over time, universal design and developing services to suit the whole population will lessen the need for specific adjustments. The CRPD says that failing to provide reasonable accommodation constitutes discrimination. Reasonable accommodation has two main elements: making the necessary adjustments in order to make the service available to the disabled person; and not imposing an undue burden on the service-provider.<sup>5</sup>

Reasonable accommodation is a specific requirement in articles dealing with the liberty and security of person (Article 14), education (Article 24) and employment (Article 27).

An area of concern for disabled people has been their rights to legal capacity on an equal basis with others. Article 12 provides that an individual cannot lose her or his legal capacity to act simply because of a disability.

5 CRPD, Article 2

Some disabled people will require assistance to exercise this capacity. The CRPD requires that states do what they can to support those individuals, and introduce safeguards against abuse of that support. Supported decision-making includes the principle that the person should be supported to exercise legal capacity to the greatest extent possible in every situation or circumstance. There are some models, such as the circle of support, which could be adapted for the New Zealand context.

## New Zealand context Kaupapa o Aotearoa

### LEGISLATION

Disabled people have the same rights and legal entitlements as other New Zealanders. The Human Rights Act 1993 (HRA) and the New Zealand Bill of Rights Act 1990 (BoRA) protect the right of people with disabilities to freedom from discrimination.<sup>6</sup> Both rely on the HRA definition of disability:

- physical disability or impairment
- physical illness
- psychiatric illness
- intellectual or psychological disability or impairment
- any other loss or abnormality of psychological or anatomical structure of function
- reliance on a guide dog, wheelchair or other remedial means
- the presence in the body of organisms capable of causing illness.

In 2008, the High Court described the definition in the HRA as exhaustive. Although it held that the definition did not include the 'cause' of a disability, the court qualified this by stating that the definition needed to be interpreted in a broad and purposive way and considered in the context of the legislation as a whole.<sup>7</sup>

The HRA provides exceptions that permit disabled people to be treated differently in certain situations. Reasonable

accommodation is a general term used to describe specific exceptions in particular areas. It refers to changes to a workplace or provision of services to ensure that a person with a disability can, for example, do a job or access premises. Whether an employer should make such changes is balanced against the disruption that may result. If it is unreasonable to expect the employer or service-provider to provide the necessary services or facilities (for example, relocating an office), then they are not obliged to do so. In 2008, changes were made to some of the employment-related areas of the HRA to ensure that the reasonable accommodation criteria in the act were consistent with the standards in the CRPD.

A further exception relates to the risk of harm. If a disability poses a risk of harm to the individual or others but measures can be taken to reduce the risk without unreasonable disruption, then the provider or employer should take those measures. If it is unreasonable to take the risk or measures to reduce the risk, an employer or service provider may be justified in discriminating.

In 2003, the Human Rights Review Tribunal considered that the test for deciding whether it is reasonable to make changes or adjustments is 'reasonableness', not 'undue hardship'.<sup>8</sup> This is a relatively low threshold, and one that is easier for an employer or service-provider to satisfy.

The Ministry of Justice is developing a guide to reasonable accommodation. The Commission sees this as a high priority, as there is widespread misunderstanding about the concept and how it should be applied. Equally important is the need to clarify how the interpretation of reasonable accommodation in the CRPD will be reconciled with the way reasonable accommodation is described in the HRA and other legislation. Cases currently before the courts may help with this.

The HRA contains some exceptions to take account of genuine occupational qualifications and justifications.<sup>9</sup> Special measures are permitted to ensure equality for vulnerable or disadvantaged groups or address historical

6 For more detailed comment on the structure of the HRA, see the chapter on equality and freedom from discrimination.

7 *Trevethick v Ministry of Health* (1/4/08) HC Wellington CIV-2007-485-2449. HRRT [2007] NZHRRT 21Dobson J

8 *Smith v Air New Zealand Ltd*, HRRT decision 23/03 (24/6/03) at para 126

9 Section 97 HRA. In *Avis Rent A Car Ltd v Proceedings Commissioner* (1998) 5 HRNZ 501, the tribunal accepted that the practice of rental car companies passing higher insurance costs for drivers under 25 on to the client was justified.

disadvantage.<sup>10</sup> A genuine occupational qualification could be, for example, specifying a male actor to play Macbeth in Shakespeare's play of the same name.

The BoRA affirms a number of the rights and freedoms in the International Covenant on Civil and Political Rights (ICCPR). In addition to the right to freedom from discrimination, the protections of the BoRA that may be relevant to disabled people include the right to be free of unreasonable search and seizure and arbitrary arrest and detention; the right to be treated with dignity and humanity if detained; and the right not to be subjected to cruel and unusual treatment or medical or scientific experimentation. Under section 5, the rights and freedoms in the BoRA can be restricted if the limitation can be justified in a "free and democratic society". The BoRA is also subordinate to other enactments. This means that rights, such as the right to refuse medical treatment, may not apply if another law has a provision specifically related to this right.

The Health and Disability Commissioner Act 1994 and the associated Code of Health and Disability Services Consumers' Rights protect the rights of disabled people as consumers of health and disability services. The code identifies 10 consumer rights, including the right to be treated fairly and without discrimination, the right to informed consent, the right to be treated with respect, the right to make decisions about your own care and the right to receive a quality service. A review of the act and the code in 2009 recommended that disability services include needs assessment and service co-ordination services, and that the code be amended to include the right to timely access to disability services.

Other laws that may apply to disabled people include:

- Mental Health (Compulsory Assessment And Treatment) Act 1992
- Protection of Personal and Property Rights Act 1988
- Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003
- Criminal Procedure (Mentally Impaired Persons) Act 2003<sup>11</sup>

- Privacy Act 1993
- Injury Prevention, Rehabilitation and Compensation Act 2001
- Building Act 2004.

### THE NEW ZEALAND DISABILITY STRATEGY

In addition to legislation, New Zealand has a high-level framework across the government sector relating to disabled people. The New Zealand Disability Strategy (NZDS) was established by the New Zealand Public Health and Disability Act 2000 to ensure that all government agencies consider disabled people in their decision-making processes. It has 15 separate objectives, which have subsequently been grouped into:

- rights of citizenship
- government capacity
- participation in all areas of life
- specific population groups.

The act requires the Minister for Disability Issues to report annually to Parliament on the progress made in implementing the NZDS. While it had no specific funding, departments and ministries were directed to consider the needs of disabled people as part of their normal planning cycles and to report on progress annually. The Office for Disability Issues (ODI) was set up within the Ministry of Social Development to provide policy advice to the Government on disability issues, and to monitor and report on progress on implementing the NZDS.

More recently, the Government has established a Ministerial Committee on Disability Issues under the chair of the Minister for Disability Issues. The committee requires that the Government's actions be focussed on improving the circumstances of disabled people and their whānau and friends who support them, improving the accessibility of the world they live in, and improving disability supports.<sup>12</sup>

In a 2007 review of the first six years of the NZDS, disabled people acknowledged that the implementation

10 Both the HRA and the BoRA provide for special measures. The provisions are similar. Both require any measures to be taken in good faith and permit actions that would otherwise be unlawful. The person or groups must also need, or be reasonably supposed to need, assistance in order to achieve an equal place in the community.

11 These four acts are covered in the chapter on the rights of people who are detained.

12 Office for Disability Issues (2009), *Work in Progress: 2009* (Wellington: Office for Disability Issues)

of the strategy had resulted in improvements in accessibility and communications, wider recognition of their value and contribution within their communities, and some inclusion within central decision-making processes. However, many participants in the review felt that progress had been too slow, some disabled people have benefited more than others, and there was still a long way to go before disabled people felt they lived in a fully inclusive society. The report recommended establishing a national implementation plan, with linked funding, which would focus on:

- improvements for those disabled people who are most disadvantaged
- multi-year plans and reports for priority areas that involve multiple agencies
- greater partnership between central government agencies and disabled people
- developing the capacity of disabled people
- improved information to monitor outcomes for disabled people.<sup>13</sup>

The legal requirements of the NZDS do not apply to territorial authorities. Nonetheless, a number of city councils have developed strategic plans and/or action plans based on the strategy or making reference to the strategy. These include the former Waitakere, Auckland and Manukau City Councils, and Christchurch and Dunedin City Councils.<sup>14</sup>

The NZDS has provided a focus and platform for action within the Government that has, for instance, provided an impetus for the passing of the New Zealand Sign Language Act, New Zealand's leadership in negotiating the CRPD, and some improvements in the way the Government involves disabled people in decision-making. Progress overall in achieving full human rights has, however, been slower than many disabled people had hoped for.

The New Zealand Public Health and Disability Act 2000 requires that a disability strategy be developed and

reported on annually. Both the report on the first six years of the NZDS and the Social Services Select Committee report on the provision of disability services recommend, as a matter of some urgency, that a programme of work be developed to implement the NZDS, including targets, benchmarks, indicators and dedicated funding.<sup>15</sup> The Commission strongly agrees with this recommendation and notes that one of the early outcomes of New Zealand's ratification of the CRPD has been to raise expectations among disabled people of faster progress in realisation of their rights.

## New Zealand today Aotearoa i tēnei rā

Reviewing the rights of disabled people since 2004 reveals that they remain the most disadvantaged group in New Zealand society. While gains have been made in various areas, the breadth of marginalisation of disabled people, including children and young people, cannot be underestimated and is not easily quantified. Different groups of disabled people have different needs and there are intersectional issues such as gender, ethnicity, age and socio-economic disparities that make the rights of disabled people one of the most complex and pressing areas of human rights in New Zealand.

### THE LACK OF INFORMATION ABOUT DISABLED PEOPLE

One fundamental barrier to any assessment of the rights of disabled people in New Zealand is the paucity of demographic and analytical data available about them. This lack plus their daily experiences, the barriers they face and their aspirations will impact on implementation of the CRPD and monitoring of the convention.

Article 31 requires countries to collect information to enable planning for implementation and assessing the success of implementation. Overall, the position of disabled people in relation to key social and economic

13 Litmus Consulting (2008), *New Zealand Disability Strategy Implementation Review 2001–2007* (Wellington: Office for Disability Issues). Accessible online at <http://www.odi.govt.nz/nzds/progress-review/index.html>

14 See, for example, Dylan S (2009), *Strengthening Contribution: The Waitakere Disability Strategic Plan 2009–2011* (Auckland: Waitakere City Council)

15 Litmus Consulting (2008); Social Services Committee (2008), *Inquiry into the Quality of Care and Service Provision for People with Disabilities: Report of the Social Services Committee* (Wellington: House of Representatives), accessible online at [http://www.parliament.nz/NR/rdonlyres/06259D2F-780B-40A0-9170-005C8C046E72/93089/DBSCH\\_SCR\\_4194\\_6219.pdf](http://www.parliament.nz/NR/rdonlyres/06259D2F-780B-40A0-9170-005C8C046E72/93089/DBSCH_SCR_4194_6219.pdf)

outcomes such as employment, labour-force participation, educational participation and achievement, and public transport use and barriers is reliably measured on a national basis only once every five years. This limits effective programme and policy design, monitoring, reporting and evaluation.

The only reliable national survey of outcomes for disabled people is the New Zealand Household Disability Survey (the Disability Survey). Although the New Zealand General Social Survey (NZGSS) is described as a biennial survey of social and economic outcomes for all New Zealanders aged 15 years and over, it does not provide disaggregated data for disabled people. Other more regular surveys, such as the Household Labour Force Survey, do not provide data on disabled people. The Social Report provides an annual summary of how New Zealanders are faring on a range of social and economic indicators. The 2009 report included 43 indicators, yet none of these reported on how disabled people are faring compared with the population as a whole. Disability was mentioned only in the commentary about New Zealand's population and in the section on perceived discrimination, which is based on a Human Rights Commission-sponsored survey.<sup>16</sup>

The 2011 Disability Survey is being substantially redesigned to reflect the changing understanding of disability and changing requirements for data, particularly since the Government ratified the CRPD in 2008. From the 2006 Disability Survey, five in-depth reports have been produced, covering the labour market, education, disability and Māori, disability and informal care, and travel and transport. Some of the information from these reports is covered below.

In 2006, 17 per cent of New Zealanders reported having a disability. The general pattern of results is consistent with previous surveys.

Disability increases with age. Across all New Zealanders, 10 per cent of children aged 0–14 years had a disability, as did 20 per cent of adults aged 45–65 years, and 45 per cent of adults aged 65 years and over. The gender split was approximately equal at all ages except for children, where boys made up 59 per cent of those with a disability.

Accidents or injuries were the most common cause of disability for adults. An estimated 166,300 adults aged 15 years and over had disabilities caused by accidents or injuries, with most injuries occurring in the workplace. Among those with a disability, accident or injury was the cause for 31 per cent of those aged 15–44 years and 34 per cent of those aged 45–64 years.

There are significant differences in disability rates across different ethnicities. Total disability rates were 18 per cent for Europeans, 17 per cent for Māori, 11 per cent for Pacific peoples and 5 per cent for those of Asian ethnicity. Much of this variation is explained by the differences in the age structure of the populations. In every age group, Māori had a higher disability rate than other ethnic groups. Adjusting for the different age structures of the Māori and non-Māori populations, the disability rate for Māori was 19 per cent, compared with 13 per cent for non-Māori.<sup>17</sup>

Inquiries, complaints and consultation with disabled people indicate a number of issues where further research and information is urgently needed. These issues have a large impact on their ability to participate fully in all aspects of society. The Commission recommends that the Government's social research and evaluation work programme take into account these issues as a high priority.

### THE COST OF DISABILITY

Many disabled people face additional costs that their non-disabled peers do not face. These are both direct costs and opportunity costs. Direct costs include medical treatment, support needs and transport modifications. Opportunity costs include the extra time and energy required to do things, especially where there are significant barriers. Not being able to use mainstream facilities and services and having to arrange alternative ways to get things done often involve significant ongoing cost to either the individual or society. A more effective long-term solution would be to invest in systemic, inclusive, universal design approaches. The cost of disability is often highest for people with high support needs and/or multiple impairments.

16 Ministry of Social Development (2009), *The Social Report 2009: Te Pūrongo Oranga Tangata*, (Wellington: MSD)

17 Ministry of Social Development (2009), p 1

Research carried out in 2006 identified the additional resources, and the costs associated with those resources, required by disabled people aged 18–64 years in order to live in the community and achieve an ordinary standard of living. Budgets were constructed for people with physical, vision, hearing, intellectual and mental health impairments, and arranged according to items required to meet moderate and high needs. The research did not cover those with multiple impairments or dependents, nor did it address where the funding would come from, among the mix of government funding, personal provision and natural supports. In 2006 values, additional weekly costs for the 10 identified groups ranged from \$210 to \$2560. An analysis of the needs of each group reinforces the principle that each person's situation needs to be assessed on its own merits, as no response will work for all disabled people. Other factors such as age, geographical location and cultural needs have a substantial effect on legitimate needs and associated costs.<sup>18</sup>

#### **CAUSE OF DISABILITY AS A MEANS OF ALLOCATING RESOURCES**

Support services for education, employment and income, personal, family and household support needs are currently allocated differently depending on how a person has acquired their impairment. Those who have acquired it through congenital or birth conditions, illness or an accident occurring prior to April 1974 have access to one set of support services, and those who have acquired their impairment due to an accident occurring after April 1974 are entitled to a different set. Many in the community perceive the second set of supports, usually paid through the national accident compensation scheme, to be more generous and aimed more clearly at achieving an ordinary standard of living. The Court of Appeal has determined that the cause of disability is not included in the definition of disability in the HRA.<sup>19</sup> It is clear that this continued distinction is contrary to the provisions of the CRPD.

#### **ISSUES FOR PEOPLE WITH INTELLECTUAL DISABILITY**

People with an intellectual disability experience a lower life expectancy and greater prevalence of health problems

compared with the general population. They also do not have access to the same levels of preventative health care and health promotion programmes as others. No significant change has occurred since the National Health Committee identified this issue in 2003.<sup>20</sup>

The level of support services provided is currently determined by a person's background and history rather than their needs. Those who have moved from institutions to community-based facilities often have access to fully funded support, while those living in residential care services or living at home with their families often have access to lesser levels of support.

#### **SYSTEMIC ISSUES**

The problems disabled people face in relation to a number of issues are systemic and enduring and require action. Improving them will make a significant difference to the daily lives of disabled people, including children and young people. These issues are discussed below. They include two of the core basic human rights, employment and education, as well as discrimination and social inclusion, freedom from violence and abuse, and concerns about accessible transport, information, the physical environment and services.

#### **EMPLOYMENT**

Access to employment is a fundamental requirement for independent living and one of the top three issues identified in an online survey conducted by the Commission in November 2009. Article 27 of the CRPD recognises the right of disabled people to work on an equal basis with others, including the right to gain a living in a labour market and work environment that is open, inclusive and accessible. The convention prohibits discrimination in all aspects of employment. It also protects trade union rights and access to vocational guidance services, promotes employment in the public and private sectors, and specifically provides for reasonable accommodation.

Article 27 is the most modern expression in international treaties of the right to work. It refers explicitly to equal employment opportunities, equal pay for work of equal

18 Disability Resource Centre Auckland Inc (2010), *The Cost of Disability: Final Report* (Auckland: Disability Resource Centre)

19 *Trevethick v Ministry of Health* (1/4/08), HC Wellington CIV-2007-485-2449. HRRT [2007] NZHRRT 21Dobson ]

20 National Health Committee (2003), *To Have an Ordinary Life: Kia Whai Oranga Noa*, (Wellington: National Advisory Committee on Health and Disability)



value, employment in the public sector, and concepts such as affirmative action.

### Discrimination in employment

The gap between the employment rates of disabled people and non-disabled people has barely changed in more than a decade, despite favourable economic conditions for much of that time and support programmes provided by the Government. Many disabled people feel discrimination still operates at a systemic and attitudinal level to exclude them from work they are qualified and able to do.

In recent years, government policy has moved towards providing strategies, policies and funding to achieve greater inclusion in the workplace, but progress has been slow. The recently launched Employers' Disability Network aims to provide resources to employers to assist them to recruit and retain disabled employees.

### Employment data

The most reliable information about the labour market outcomes for disabled people comes from the Disability Surveys, which followed the 1996, 2001 and 2006 Censuses.<sup>21</sup> In 2006, disabled Māori adults were least likely to be employed in the 15–64 age group.<sup>22</sup>

While participation in the workforce has steadily increased among both disabled and non-disabled between 1996 and 2006, the gap in employment rates has not reduced. The data for 2006, although not directly comparable with 1996 and 2001, indicates that government policy has had limited success in improving labour-market outcomes for disabled people.

#### EMPLOYMENT RATES OF PEOPLE WITH DISABILITIES: MĀORI AND NON-MĀORI

Group	Employment rate
Disabled Māori adults	45%
Disabled non-Māori adults	62%
Non-disabled Māori adults	67%
Non-disabled non-Māori adults	77%

There is a pattern of lower workforce participation for both men and women, across all major age groups and for all recorded ethnic groups. As for the total population, participation rates are higher for disabled men than disabled women across all age groups. Among both men and women with disabilities, participation is highest at the younger working ages (15–44 years); in the non-disabled population, participation peaks at 45–65 years. Pacific men with a disability (46 per cent) have a much lower participation rate than Māori men (63 per cent) and men from other ethnic groups (73 per cent). For disabled women, there is less variation among ethnic groups.

As with the total population, there is a positive association between educational attainment and labour force participation. At every level of qualification, however, disabled people are less likely than non-disabled people to be in the labour force, with the gap being widest among those with no qualifications. The participation rate of disabled people with post-school qualifications (76 per cent) is about the same as that of non-disabled people with no qualifications.

A similar pattern emerges for unemployment. In 2006, the unemployment rate for disabled men was 5 per cent, compared with 3 per cent for non-disabled men. For women, the comparable rates were 9 per cent and 5 per cent. Among Māori disabled, 16 per cent were unemployed, as were 20 per cent of Pacific disabled.

For employed people with disabilities, incomes are lower on average than for those without disabilities, due in part to lower levels of educational attainment and a heavier concentration in manual occupations.

The likelihood of being in the labour force is greater for some types of disability than others. People with a vision or hearing impairment are the most likely to be in the labour force, while people with an intellectual impairment or experience of mental illness are the least likely.

In employment, reasonable accommodation might include the provision of different equipment to enable work tasks to be completed, the provision of different training and support, and adjustments to workplace practices.

21 Statistics New Zealand (2008), *Disability and the Labour Market in New Zealand in 2006* (Wellington: StatsNZ)

22 Statistics New Zealand (2010), *Disability and Māori in New Zealand in 2006: Results from the New Zealand Disability Survey* (Wellington: StatsNZ)

### Equal employment rights

The repeal of the Disabled Persons Employment Promotion Act 1960 in 2007 removed the exemption for sheltered workshops from minimum wage and conditions of employment provisions. Minimum wage exemption permits (MWEPs) are granted only if it can be shown that a disabled worker's competence or productivity is less than those of a non-disabled worker doing the same job. Negotiating MWEPs is supposed to include fair, good-faith bargaining between employers and workers who are properly represented and advised. Information from People First, the self-advocacy organisation for people with learning disabilities, indicates that only 5 per cent of workers are being represented by truly independent advocates.<sup>23</sup>

The Commission recommends the Department of Labour reports on the use of the Minimum Wage Exemption Permits and other labour-market support mechanisms, to ensure they are consistent with the work and employment requirements of the CRPD.

### State-sector employment

Article 27 of the CRPD specifically requires countries to take appropriate steps, including through legislation, to employ disabled people in the public sector.

The State Services Commissioner has a responsibility under the State Sector Act 1988 to "promote, develop, and monitor equal employment opportunities for the Public Service", including for disabled people. In addition, chief executives must recognise the employment requirements of people with disabilities.<sup>24</sup> Prior to 2006, the State Services Commission collected data on disabled people in the public sector and published it in the Human Resource Capability (HRC) survey. Difficulties with the integrity and comparability of the data led to the collection being stopped. No alternative data collection method has since replaced the HRC data.

The most recent data indicates that people with a disability are:

- more likely to be employed in the 'associate professional' occupational group (social workers, customs

officers, call-centre operators) than in the office-clerk occupational group (secretary, word-processing operator)

- more likely to work less than 30 hours a week
- more likely to be older than their non-disabled work colleagues.

Qualitative interviews carried out by the State Services Commission in 2008 indicated:

- There were no specific departmental initiatives for actively identifying and recruiting people with disabilities as a potential candidate pool.
- The public service needs to be more proactive in its strategies, policies and practices in attracting people with disabilities as candidates for vacancies.
- Disabled people are more likely to be concerned that the selection process for higher level positions would not be fair.

Overall recruitment, selection and accommodation processes were seen to be fair and based on merit, but not particularly innovative or proactive.

The Commission recommends that the State Services Commissioner adopt a work programme to promote and develop equal employment opportunities for disabled people in the state sector, and report on its outcomes.

### National Conversation about Work

During 2009 and 2010, the Commission undertook extensive consultations with employers, employees and community groups about their experiences of work. More than 3000 people participated, including a significant number of disabled people and organisations working with disabled people. The evidence from the National Conversation about Work suggests that disabled people face significant barriers in achieving good work outcomes, including:

- inaccessible infrastructure, such as buildings and public transport
- inadequate and inconsistently applied benefit and support systems
- inaccurate health-and-safety concerns from employers

<sup>23</sup> People First (2009), *Works 4 Us* (employment advocacy pamphlet)

<sup>24</sup> State Services Commission (2008), *Enabling Ability: Meeting the employment requirements of people with disabilities in the public services* (Wellington: SSC)

- discrimination
- lack of part-time work
- unequal effects of the recession.

The inaccessibility of the built environment and public transport has long been identified as a significant barrier to disabled people getting and keeping work. People from the West Coast reported that there is still only one wheelchair-accessible taxi for the whole region, and this is not available to people going to work. Even in larger cities such as Wellington, with relatively good public transport systems, the lack of accessible public transport was cited as a barrier to working.

The complexities of the rules around benefit abatement often mean that people do not take up part-time work opportunities for fear of losing their benefit. The range of services available to support disabled people to get and keep work is often so fragmented and unco-ordinated that people do not receive the optimum mix of services that might support their work choices. Subsidy schemes are often used to different extents in different regions. The state sector two-year work-subsidy programme works well in some regions and not at all in others, and may not result in a permanent position.

Perceived health-and-safety issues are often an attitudinal barrier to disabled people getting work. Support workers report that disabled people are often not asked about health-and-safety issues, so that these can be explored. Employers simply assume that the issues would be difficult or expensive to fix and decide not to employ the disabled person. For Deaf people, this experience is particularly widespread. Many employers assume that a lack of hearing creates a higher occupational health risk. Discrimination can often be unintended. For example, many job advertisements require a response by telephone, which can be difficult for many Deaf people, even with the Relay Service.

Deaf people as a group are particularly susceptible to discrimination. Among a group of 12 Deaf people in Hawke's Bay, only three had full-time work. The rest were either unemployed or in part-time work supplemented by benefits. Two of the Deaf people who could not find jobs

had professional qualifications and those in work were working at (or close to) the minimum wage.

People with intellectual disabilities find it difficult to be treated seriously when applying for work. The Community Living Trust in Hamilton listed the barriers as including a lack of knowledge and understanding, prejudice and an unwillingness to make accommodations. Many disabled people, however, find work essential to their well-being. As the trust regional coordinator commented, "When people get a job, they get a real life. They have improved self-esteem, financial stability and can get a house. It's life-changing."

For some disabled people, part-time work is the only viable option, while for others it represents a pathway to full-time employment. The lack of opportunities for part-time work often means that more expensive support services have to be put in place.

The global recession has affected all levels of society, but there is some evidence that it has disproportionately affected disabled people. Part-time work is less available and employers are less willing to offer work experience. Some employers have responded to the recession by amalgamating previously separate jobs into one new job. While this can result in a more interesting and varied work environment, it can also mean that workers with learning disabilities are unable to easily adapt to the new environment. Some employment support agencies suggest that when there is low unemployment and people are struggling to fill vacancies, employers can be more open to employing disabled people. With a recession, the pressure is off and some employers go back to using the easiest way to fill vacancies.

#### **Work for blind and visually impaired people**

Higher rates of unemployment and lower rates of labour-force participation were patterns confirmed in a Royal New Zealand Foundation of the Blind (RNZFB) survey of working-age members to identify the numbers who were employed or unemployed and the barriers they faced in seeking employment.<sup>25</sup> The survey also points to a large and growing number of members who are willing to work but are discouraged from actively seeking work, and to a

25 Wilkinson-Meyers L, McNeill R, Inglis C and Bryan T (2008), *Royal New Zealand Foundation of the Blind 2007 Employment Survey* (Auckland: Centre for Health Services Research and Policy, Faculty of Medical and Health Sciences, University of Auckland)

large proportion of employed members (42 per cent) who would prefer to work longer hours.

For blind, vision-impaired and Deaf-blind people, the top six barriers to employment were:

- presence of other disabilities (62 per cent)
- limitations due to an eye condition (61 per cent)
- lack of access to transport (59 per cent)
- lack of available work in their community (43 per cent)
- lack of skills and training (42 per cent)
- employer attitude (39 per cent).

A survey of New Zealand employers found that although attitudes towards blind and visually impaired people tend to be positive, they remain among the “less favoured groups of employees employers are willing to hire”.<sup>26</sup> “Employers are ignorant of the abilities and capabilities of blind and vision-impaired people, the aids and adaptations that are available to assist them in their roles, and associated costs.”

#### **Work for people with experience of mental illness**

The Mental Health Foundation undertook interviews with 22 people with experience of mental illness to understand the issues they faced in gaining and retaining employment. The majority found that employment was a positive experience that provided financial and social benefits and a focus in their lives. Beyond that, people’s experience was varied. Some were able to negotiate accommodations with employers, others were not. Several had chosen to tell their employer and colleagues of their illness while others had not, fearing repercussions. Of those who had experienced discrimination, the unacceptable behaviour included not being offered employment, being teased by colleagues and being treated differently from workers without experience of mental illness.

The report also included an international literature review which concluded that work was important for recovery. However, people with experience of mental illness had higher levels of unemployment and lower levels of educational achievement, and there is a lack of knowledge of mental illness among employers.

## **EDUCATION**

Education is a fundamental area in which many disabled people are fundamentally disadvantaged. This was a major issue identified in the Commission’s online survey. Article 24 of the CRPD recognises the right of people with disabilities to education, without discrimination, on the basis of equal opportunity, with the purpose of achieving “the full development of human potential and sense of dignity and self-worth, and the strengthening of respect for human rights, fundamental freedoms and human diversity”. It further recognises that for disabled students to reach their full potential, reasonable accommodation and support measures may need to be provided, and measures taken to ensure that professional staff are available to support this objective. For these objectives to be met, an “inclusive education system” should be provided at all levels, including lifelong learning.

#### **Inclusive education**

Inclusive education is based on the premises that:

- all students come to school with diverse needs and abilities
- it is the responsibility of the general education system to be responsive to all needs
- a responsive education system provides the resources, curriculum, environment and teachers to address the needs of all students
- the most successful outcomes are achieved by schools and communities working together.

The United Nations Special Rapporteur on the Right to Education has provided advice on how countries that have ratified the CRPD can provide an inclusive education system, by:

- recognising that inclusive education is a right
- identifying minimum standards in relation to the right to education
- identifying minimum standards in relation to the underlying determinants of the right to education
- developing a transition plan from special education to inclusive education

<sup>26</sup> Inglis C (2006), *Blind People Can Do Anything But Not in My Company: Employer Attitudes Towards Employing Blind and Vision-Impaired People* (Auckland: Royal New Zealand Foundation of the Blind)

- providing resources
- identifying those with responsibilities and what their responsibilities are
- establishing monitoring and evaluation mechanisms.<sup>27</sup>

International and national views are divided in relation to two groups of students with disabilities: those with an acute sensory impairment, such as students who are either Deaf or blind; and those with severe and/or multiple disabilities.

Many parents of Deaf students believe that on both cultural and language grounds, separate schools or units are the only way students can be educated in their primary culture using their first language. Other parents believe that the facilities and/or teaching skills needed for their child to reach their full potential can be made available only in separate units or schools. There is no clear consensus either among educators or parents about the best option(s).

#### The New Zealand situation

The Education Act 1989 recognises that “people who have special educational needs (whether because of a disability or otherwise) have the same rights to enrol and receive education at state schools as people who do not”.<sup>28</sup> Special Education 2000 stated that the aim for special education was to achieve “a world-class inclusive education system that provides learning opportunities of equal quality for all students”.<sup>29</sup> In general terms students with moderate support needs are funded through the bulk grant paid directly to the school, while those with high or very high needs are funded through individualised funding packages. Approximately \$450 million is spent by the Government each year on programmes to support students with special education needs. While there has been a noticeable shift away from supports

being provided to students in segregated facilities towards maintaining students in their local community contexts, there are still situations where the local school is not a real option, where schools discourage students with special education needs from enrolling, and where schools enrol children but are not able to deliver the needed outcomes.<sup>30</sup>

In August 2009, the Associate Minister of Education released the terms of reference for the Review of Special Education. The aim of the review was to ensure that policies and processes are fair and consistent, reach those most in need and make the best use of government funding, and that parents have choices. The review must “result in services and supports which are consistent with the United Nations Convention on the Rights of Persons with Disabilities and the New Zealand Disability Strategy”.<sup>31</sup>

The launch of Success for All: Every School, Every Child in October 2010 goes some way to fulfil this objective. The programme aims to have 80 per cent of schools fully inclusive by 2014. To achieve this, the Government has allocated extra resourcing for students with high or very high needs, and has made more money available for children to receive individualised specialist support in the first three years of school. The Blind and Low Vision Education Network New Zealand (BLENZ) and the two Deaf Education Centres (DEC) will have more access to specialist teachers, interpreters and note-takers. The New Zealand Teachers Council will require teacher education providers to focus on inclusive education in future initial teacher education programmes. Special schools will remain open, but will be encouraged to provide outreach specialist teaching services to support students with high needs in mainstream schools.<sup>32</sup>

The analysis of the responses to the education questions in the 2006 Household Disability Survey provides the

27 United Nations (2007), *The Right to Education for Persons with Disabilities: Report of the Special Rapporteur on the Right to Education*, Vernor Muñoz (February), A/HRC/4/29

28 Education Act 1989, section 8 (1)

29 Ministry of Education (1996), *Special Education 2000* (Wellington: MoE)

30 Ministry Of Education (2010), *Review of Special Education 2010: Discussion Document* (Wellington: MoE)

31 Ministry of Education (2010), Terms of Reference for the Review of Special Education. Accessed 20 September 2010 from <http://www.minedu.govt.nz/theMinistry/Consultation/ReviewOfSpecialEducation.aspx>

32 Ministry of Education (2010), *Success for All: Every School, Every Child* (Wellington: MoE). Accessed 27 October 2010 from <http://www.minedu.govt.nz/NZEducation/EducationPolicies/SpecialEducation.aspx>

most reliable data available on the achievement of the right to education for disabled people.<sup>33</sup>

There are many more disabled boys than girls of school age. Of the approximately 74,400 disabled children aged 5–14, 45,300 were boys and 29,100 were girls. The majority were enrolled in mainstream primary, intermediate, secondary or composite schools; approximately 2 per cent were in Kura Kaupapa Māori and 3 per cent were in special schools.

Of the students in this age group, 25 per cent were receiving special education support and 40 per cent needed at least one type of equipment or support service to help with their education. For many students, equipment and support services were not available. The main categories of shortage were:

- computer access (34 per cent)
- specialist teaching and therapy (32 per cent)
- help with note-taking, writing and reading (25 per cent)
- teacher aides (23 per cent)
- itinerant teachers (20 per cent).

The survey found that approximately 4700 children (6 per cent) were not able to enrol in the school of their choice. For others, the problem was not being able to take part in the full range of school activities. Activities which disabled students were most excluded from included taking part in sports or games (29 per cent); playing at school (24 per cent); making friends (23 per cent); and going on school outings or camps (17 per cent).

Among disabled adults, women were more likely (8 per cent) to enrol in formal education than men (6 per cent). People with a psychiatric or psychological disability or a learning disability were least likely to enrol in formal education.

The Ministry of Education provides a wide range of indicators of both student participation and education and learning outcomes for the general population. However, none of the data for these indicators are available on a

comparative basis for disabled students or by student impairment type.<sup>34</sup>

Those students with high or very high support needs have a significantly lower achievement rate in National Certificate in Educational Achievement (NCEA) qualifications than the general population. Overall, 22.11 per cent of students receiving Supplementary Learning Support funding or Ongoing Reviewable Resource Scheme (ORRS) funding gained NCEA awards in 2009, compared with 66.24 per cent of all students. The higher the level of the certificate, the wider the gap in achievement rates.<sup>35</sup>

#### NCEA QUALIFICATIONS GAINED BY SECONDARY SCHOOL AGED STUDENTS IN 2009

	<i>Students with high or very high needs gaining NCEA awards (%)</i>	<i>All students gaining NCEA awards (%)</i>
Less than /equal to Level one	<b>18.34</b>	<b>39.54</b>
Level 2	<b>2.76</b>	<b>17.04</b>
Level 3+	<b>1.00</b>	<b>9.67</b>
All qualifications	<b>22.11</b>	<b>66.24</b>

A number of recent official reports identify areas where further improvement is needed in the provision of special education. The Controller and Auditor-General has recently conducted a performance audit of how well the Ministry of Education manages four initiatives set up to support up to 20,500 disabled students with the highest level of support needs. The report concluded that identification of students with high support needs has to be improved, data collection needs to be more systematic and practices must be consistent throughout the country. The report suggests that improvements have begun, including increased funding allocated in the 2009 Budget.<sup>36</sup>

33 Statistics New Zealand (November 2008), *Disability and Education in New Zealand in 2006* (Wellington: StatsNZ)

34 Outcome indicators include school-leaver qualifications, participation in early-childhood education, suspensions, exclusions and expulsions from school, and early leaving exemptions. See Ministry of Education, 'Education counts'. Accessed 20 September 2010 from [http://www.educationcounts.govt.nz/indicators/education\\_and\\_learning\\_outcomes](http://www.educationcounts.govt.nz/indicators/education_and_learning_outcomes)

35 Information supplied by the Ministry of Education in response to a request from the HRC, 11 August 2010

36 Controller and Auditor-General (October 2009), Ministry of Education: Managing support for students with special educational needs (Wellington: OAG)

In 2009, the Education Review Office (ERO) completed a second evaluation of the Resource Teachers: Learning and Behaviour service (RTLb). The Government allocates approximately \$73 million per annum to fund the service to support students with learning and behaviour difficulties and to build teacher capability in working with diverse groups of students. The report identified problems with governance and management of the scheme; poor self-review; failure to identify needs and priorities; and problems with supervision, performance management and inconsistent practices.<sup>37</sup>

The support of children with special needs is also one of the five most important concerns identified in the Ombudsmen's most recent annual report. The issues raised included inadequate support for students and teachers; the high number of suspensions and expulsions; and complaints about student discipline and bullying.<sup>38</sup>

The Education Review Office (ERO) recently reviewed how well 229 schools have provided an inclusive education environment for students with a significant physical, sensory, neurological, psychiatric, behavioural or intellectual impairment, who account for about 3 per cent of the student population. The review concluded that approximately half of the schools demonstrated mostly inclusive practice, a further 30 per cent had some inclusive practices and the remaining 20 per cent had few inclusive practices. ERO recommended that the Ministry of Education build school-wide capability through whole-of-school professional development programmes, review how well principal training and support fosters leadership for inclusive schools, and consider how the review of special education might recommend measures to improve the level of inclusion in New Zealand schools.<sup>39</sup>

In education, reasonable accommodation might include providing curriculum materials in alternative formats, providing access to the curriculum in a person's first language (such as New Zealand Sign Language), or making adjustments to the way a person's knowledge and skills are assessed. It may also involve providing learning

experiences that are specially designed and adapted to the learning and behavioural needs of particular individuals.

#### Discrimination and social inclusion

Article 2 of CRPD defines discrimination on the basis of disability as any distinction, exclusion or restriction on the basis of disability which has the purpose or effect of preventing or impairing the enjoyment, on an equal basis with others, of all human rights and fundamental freedoms. It includes all forms of discrimination, including the denial of reasonable accommodation.<sup>40</sup>

For the past seven years, the Commission has sponsored a nationwide survey of perceived discrimination. In every year, over half the respondents have perceived disabled people as being subject to a great deal of or some discrimination. The level of perceived discrimination has remained relatively stable over the period, with 61 per cent in 2000 and 57 per cent in 2008 believing that disabled people are subject to significant discrimination.

One of the indicators of the barriers faced by disabled people is the nature of complaints about discrimination made to the Commission. Over the past four years, the Commission has also worked on a number of systemic issues.

For every year between 2005 and 2009, approximately 30 per cent of all complaints about discrimination have been on the grounds of disability. Disability has consistently been one of the two areas (the other being race) receiving the most complaints.

#### COMPLAINTS RECEIVED BY THE COMMISSION

Year	2005	2006	2007	2008	2009
Disability complaints	26%	28.4%	28%	32%	30%
Race-related complaints	30%	28.2%	31%	28%	32%

37 Education Review Office (2009), *Resource Teachers: Learning and Behaviour, An Evaluation of Cluster Management* (Wellington: ERO)

38 Office of the Ombudsmen (2009), *Report of the Ombudsmen: Nga Kaitiaki Mana Tangata* (Wellington: Office of the Ombudsmen)

39 Education Review Office (2010), *Including Students with High Needs* (Wellington: ERO)

40 CRPD, Article 2

Complaints related to employment and pre-employment are consistently among the most common the Commission receives. Over the past five years, the majority of employment complaints from disabled people have related to three issues: termination of employment, lack of reasonable accommodation in the workplace, and treatment on less favourable terms. In relation to pre-employment, being declined employment because of a disability and inappropriate questions on application forms were the two most common sources of complaint.

Another significant area of complaints relates to education. A 2009 Commission review of complaints and enquiries revealed that in the seven years from January 2002 to December 2008, the Commission received 261 complaints and enquiries about disabled students' right to education in the compulsory education sector.<sup>41</sup> The number of complaints rose sharply in 2007 and 2008. This may reflect increased awareness of the availability of the complaints process as an avenue to pursue complaints against the Government.

Approximately 60 per cent of education-related complaints and enquiries concern four general themes:

- problems surrounding the enrolment of children in school (51 complaints)
- students being stood down, suspended, excluded or expelled from school because of their disability or disability-related behaviour (43 complaints)
- funding or the need for special assistance (44 complaints)
- problems participating in the full school curriculum (24 complaints).

Other matters raised include issues related to discipline, lack of reasonable accommodation and bullying.

In the non-compulsory education sector, complaints reflect similar themes, with gaining enrolment (24 per cent), lack of reasonable accommodation (19 per cent) and expulsions and suspensions (12 per cent) the main areas of complaint.

The Commission has also received two major complaints from national disability organisations citing systemic discrimination against disabled students in education policies and practices. IHC Advocacy has brought a class action complaining about acts and omissions of the Government that prevent disabled students fully accessing the curriculum at their local mainstream state school. Deaf Aotearoa New Zealand has complained that government policy and practice discriminates against Deaf children by not providing the option of accessing their education in New Zealand Sign Language.

A third significant area of discrimination about which the Commission receives an increasing number of complaints is accessibility of transport. From September 2005 to September 2009, the Commission received 65 complaints about public transport. Most complaints were about access to buses (27) or aeroplanes (14). Complaints cover many issues, including inaccessible buses for wheelchair users; poor treatment by drivers; drivers failing to provide assistance; refusal of drivers to use accessible features, such as the kneeling facility; lack of information on which routes and times will be serviced by an accessible bus; and inaccessible bus stops.

#### **Freedom from exploitation, violence and abuse**

Overseas evidence and the experience of organisations working in the area suggest that disabled people are at a higher risk of domestic violence and abuse than the general population. Disabled women are one of the highest at-risk groups for sexual violence. Recent Ministry of Women's Affairs research revealed that a third of all sexual violence victims interviewed had a psychological or physical disability.<sup>42</sup> Evidence from Australia suggests that a person with an intellectual disability is twice as likely to be a victim of personal crime and 10 times more likely to be a victim of sexual assault.<sup>43</sup>

Article 16 of the CRPD requires states to take all appropriate legislative, administrative, social, educational, and other measures to protect persons with disabilities from all forms of exploitation, violence and abuse. The CRPD

41 Human Rights Commission (2009), *Disabled Children's Right to Education* (Auckland: HRC)

42 Ministry of Women's Affairs (2009), *Restoring Soul: Effective Interventions for Adult Victims/Survivors of Sexual Violence* (Wellington: MWA). Accessible online at <http://www.mwa.govt.nz/news-and-pubs/publications/restoring-soul-part-one#2-2-who-is>

43 Higgins D (2010), Sexuality, Human Rights And Safety for People with Disabilities: The Challenge of Intersecting Identities, *Sexual and Relationship Therapy* 25(3), August, pp 245–257



further requires that those who are victims of violence and abuse have access to appropriate recovery, rehabilitation and social reintegration services, and that allegations of exploitation, violence or abuse are identified, investigated and, where appropriate, prosecuted.

The Government's Taskforce for Action on Violence within Families has the primary responsibility for tackling this issue. The Disability Coalition against Violence, a group of organisations working to stop violence, ensures that disabled people have a voice and has developed a training package on the relationship between violence and disability. The 'Speaking Out' training has recently been trialled in four places around the country.

The Disability Clothesline is one of the coalition's projects. It aims to create a medium for disabled people to tell their stories safely by decorating colour coded T-shirts with their stories. The T-shirts can be viewed on-line or shown in displays around New Zealand.<sup>44</sup>

## ACCESSIBILITY

Accessibility is one of the guiding principles of the CRPD and one of its most important articles requiring implementation by state parties.

### Public land transport

Article 9 of the CRPD recognises accessibility as one of the key requirements to ensure disabled people are able to live independently and participate fully in all aspects of life. It requires that the Government identify and remove all obstacles and barriers to accessibility, including barriers to using transport services.

Accessible public land transport is essential to enable disabled people to take part in all aspects of community life, such as education, employment, recreation and leisure, and to access essential services such as health. A disproportionate number of disabled people do not have independent access to a motor vehicle and so are more reliant on public transport for independent mobility. After receiving a significant number of complaints and enquiries on this issue, the Commission conducted a national inquiry. Their findings were published in September 2005 as *The Accessible Journey*.<sup>45</sup>

The inquiry found that public land transport is significantly less available, less accessible, less affordable and less acceptable to disabled people than it is to non-disabled people. For transport services to be fully accessible, information, booking services, pedestrian infrastructure, transport facilities and transport vehicles must all be usable by everyone.

Since the inquiry report, a number of initiatives have significantly improved the accessibility of public land transport services:

- accessibility standards for all new urban buses
- improved regulations covering such things as the design and construction of wheelchair hoists, ramps and safety features, and the requiring of all taxis to display signs in Braille
- accessibility features developed for all new urban train carriages in Auckland and Wellington
- regional councils being able to impose controls on commercial public-transport operators, including accessibility standards, and Regional Public Transport Plans having to take into account the needs of the 'transport-disadvantaged', including disabled passengers
- clarification of the licensing rules for community transport services
- all new taxi and bus drivers being required to have a basic knowledge of the needs of disabled passengers.

The Ministry of Transport is currently investigating options for establishing an advisory committee on accessible public transport.

The inquiry recommended three main requirements for the development of accessible public land transport:

- involvement of disabled people in all levels of the planning process
- industry-wide education in disability awareness and competency
- mandatory national accessibility-design performance standards.

44 See [www.disabilityclothesline.org.nz](http://www.disabilityclothesline.org.nz)

45 Human Rights Commission (2005), *The Accessible Journey: Report of the Inquiry into Accessible Public Land Transport* (Wellington: HRC). Accessible online at <http://www.hrc.co.nz/home/hrc/disabledpeople/inquiryintoaccessiblepubliclandtransport/finalreporttheaccessible-journey.php>

While disabled people have opportunities to participate in transport planning at a local and regional level, there are limited opportunities at a national level. There are still no national standards for infrastructure and pedestrian facilities. The Transport Monitoring Indicator Framework, by which the Government measures progress across the transport network, has no indicators for accessibility. There are no industry-wide requirements for disability awareness and competency training and transport infrastructure projects are still planned and assessed without any reference to benefits for access for disabled people.

#### Information and environments

Some barriers to accessibility have recently improved. For example, the adoption of internet (web) standards for accessibility, which are mandatory for all core government departments and ministries, has led to an improvement in the accessibility of information. However, there are still many examples of 'high stakes' information not being available in accessible formats, such as personal health information and records, informed consent documentation for operations or medical procedures, patient information leaflets, labelling for medicines and self-test kits, school enrolment information for parents, and school reports of a student's progress.

The adoption of the web standards has not generally had any effect on the availability of official information in easy-to-read formats. Further work is needed in this area for people with an intellectual disability to be able to access information easily about their legal and citizen rights. The increased use of 'total communication' will also support the communication needs of people with intellectual disabilities.

Access to the built environment has deteriorated in recent years, according to some experts. At one time New Zealand's approach to building access provision, together with our enforcement procedures, were considered an international benchmark. However, New Zealand's standards have not kept pace with awareness

of the diversity of needs, and the definition of disability in building legislation is not consistent with the HRA. New Zealand also lacks a mechanism for ensuring that older buildings which are not being altered have some minimum standards of accessibility.<sup>46</sup>

#### Services

Getting access to appropriate support services, where and when they need them, in the right amounts and to a professional standard is one of the longest-running battles that disabled people face.

In September 2008, the Social Services Select Committee reported on its inquiry into the quality of care and service provision for disabled people.<sup>47</sup> The inquiry was prompted by concerns raised in the media about two major residential service -providers, and by more general dissatisfaction with service provision. The report concluded that the provision of disability services lacks direction and leadership, services are variable throughout the country, and the NZDS has not been effectively implemented. The report recommended: establishing a national plan of action to implement the NZDS; improving service co-ordination, information and assessment; improving complaints and advocacy services; and providing age-appropriate services to younger disabled people.

The Government's response to the inquiry acknowledged that the underlying principle which should guide all disability support services is "a citizen-based model for disability supports that is based on improving disabled people's ability to live everyday lives through giving them increased choice and control over the supports they receive and the lives they lead".<sup>48</sup>

### DIFFERENT COMMUNITIES

#### Deaf people in New Zealand

The Deaf community define themselves as a distinct language and cultural group, rather than a group of people with a specific impairment. In New Zealand law, policy and practice, Deaf people are commonly

46 Submissions of Bill Wrightson from Wrightson Associates and Richard Cullingworth as part of the consultation for this chapter

47 Social Services Committee (2008)

48 Government response to the report of the Social Services Select Committee on its Inquiry into the Quality of Care and Service Provision for People with Disabilities, 9 February 2009. Accessed 20 September 2010 from <http://www.odi.govt.nz/what-we-do/improving-disability-supports/index.html>

recognised only for their hearing loss and defined as disabled. This often means that the policy response is related to removing the disability-related barriers to participation, rather than protecting and enhancing the unique language and culture of Deaf people.<sup>49</sup>

The New Zealand Sign Language Act 2006 establishes New Zealand Sign Language (NZSL) as an official language of New Zealand. The act provides the right to use NZSL in legal proceedings and sets out the principles that should guide government departments in making their services and information accessible to Deaf people. The Government has indicated that the scheduled review of the act will take place in the second half of 2010.

The Government has provided some support for the development of NZSL. This includes funding to develop an online dictionary and translate some information into NZSL. There have been more cuts than initiatives, however. The Advance Centre in Auckland, which supported Deaf students to attend tertiary institutions, closed recently. In December 2009, the three Deaf resource person positions established under the Van Asch Deaf Education Centre were discontinued. These were the only state-funded positions available to support children and their families to learn NZSL. Cuts to adult community education funding also threaten the viability of one of the main sources of learning NZSL in the community.

The cumulative result is that Deaf people suffer inequalities through linguistic discrimination. Deaf children are not fully supported to access their schooling in NZSL. Parents and families of Deaf children struggle to access NZSL resources, and Deaf people are often unable to access interpreters, including in situations such as police interviews, hospital appointments and participation in the labour market.

In the period since the last status report, the Commission has received 13 complaints or enquiries about discrimination against Deaf or hearing-impaired students in education. The Commission also received two class-action complaints related to NZSL. One relates to the lack of access to education in NZSL, and the other to the non-regulation of NZSL interpreters. The Deaf community

have identified the immediate priorities as making education accessible through NZSL, support for families to learn NZSL, and raising the quality and quantity of interpreting services.

#### People with hearing impairments

There are estimated to be over 450,000 people with hearing impairment in New Zealand, 290,000 of whom are reported to have some difficulty in performing the usual tasks of life. For most of these people, the desired solutions are aids, devices and therapies to correct their hearing loss. This will include access to amplification systems, assistive devices, FM equipment, hearing aids, audio loops and cochlear implants.

For people with hearing impairments, the right to access information and the right to equal communication are the key human rights issues. Access to information includes education and text-based information in all environments; the right to equal communication includes the right to use telephone-based services as freely as hearing people do.<sup>50</sup>

#### Whānau hauā: Māori disabled people

Allowing for the different age structures of the Māori and non-Māori populations, Māori are more likely to be disabled than non-Māori. The age-standardised disability rate is 19 per cent for Māori, and 13 per cent for non-Māori. Disabled Māori children and disabled non-Māori children are equally likely to attend early-childhood education and school. Disabled Māori adults have lower levels of educational achievement than disabled or non-disabled non-Māori adults or non-disabled Māori adults. A total of 42 per cent have no educational qualifications. Disabled Māori are much more likely

Group	Percentage living in the most deprived areas (NZDep 9–10)
Disabled Māori	42%
Disabled non-Māori	17%
Non-disabled Māori	34%
Non-disabled non-Māori	11%

49 Mckee R (2005), *The Eyes Have It! Our Third Official Language: New Zealand Sign Language*, *Journal of New Zealand Studies* (October), pp 129–141

50 Submission of the National Foundation of the Deaf Inc, as part of the consultation on this chapter

to live in the most deprived areas of New Zealand, as measured by the New Zealand Deprivation Index.

Given the employment rates already noted, it is obvious that disabled Māori are among the most disadvantaged groups in New Zealand.<sup>51</sup> Despite this, the Government appears not to have regularly consulted with this group in order to find out their needs and incorporate them in various strategies and work programmes.

## Conclusion Whakamutunga

Disabled people are among the most marginalised in New Zealand. In fundamental areas such as employment, education, an adequate standard of living and accessible public transport, disabled people are significantly disadvantaged. Disabled children and young people who are reliant on adults for fulfilment of their rights are particularly vulnerable.

Government policy has moved towards providing strategies, policies and funding to meet these challenges, but progress has been slow.

New Zealand adopted a strong leadership role in ensuring that the CRPD was developed as a partnership between disabled people and their organisations, national human rights institutions and government representatives. It also enhanced its commitment to the CRPD by ensuring that New Zealand's laws were consistent with it before ratification took place. The role New Zealand played internationally in the development of the most recent international treaty has brought with it heightened expectations that New Zealand will continue to be a leader in promoting and implementing the CRPD.

The continuation of a dedicated ministerial portfolio (a Minister and an Associate Minister for Disability Issues) and the formation of a Ministerial Committee on Disability Issues to co-ordinate the implementation of the CRPD set in place high-level leadership to continue the work on implementation.

Other areas in which New Zealand has made good progress for disabled people include:

- the adoption of NZSL as an official language of New Zealand

- the development and review of the Telecommunications Relay Service to assist people with hearing or speech impairments to use telecommunications services on a similar basis to others
- the development of web standards for all core government department and ministry websites, meaning a gradual improvement in the accessibility of some official information for those able to use this means of communication.

There remain, however, significant issues in relation to supported living services, education, employment, health and transport, as well as to the participation of disabled people in decisions that affect them.

A singular barrier to effective measurement of progress for disabled people is the absence of data about them and their experiences. Their lack of visibility in statistics on many important areas, such as employment and labour-market participation, prevents comparisons and limits time series data. The result is a limited policy overview of the progress disabled people are making. It will also limit the monitoring of the CRPD and will impact on New Zealand's first report to the UNCRPD Committee.

Among the most important systemic issues for adult disabled people in New Zealand is equal access to employment opportunities. The gap between employment rates for disabled people and non-disabled people has barely changed in more than a decade, despite favourable economic conditions for much of that time. Particular issues include the transition from school to work; further education and community life; the integrated functioning of various government supports to produce high quality employment outcomes; residual discrimination; and the operation of supported employment systems to produce the best solutions for those not able to obtain or maintain mainstream employment.

A significant issue for many disabled children and young people is universal access to inclusive education. New Zealand has made progress in shifting education for disabled students away from segregated facilities and towards supporting students in their local communities. There are a number of very good initiatives at the national, regional and local level. However, a significant

51 Statistics New Zealand (2010), *Disability and Māori in New Zealand in 2006: Results from the New Zealand Disability Survey* (Wellington: StatsNZ)

number of disabled students cannot get access to their local school, have difficulty accessing the supports necessary to reach their full potential, and cannot access the full curriculum. A number of recent official reports highlight both the progress made and the work yet to be done. The requirements for inclusive education set out by the UN Special Rapporteur on Education provide guidelines for future progress in this area.

The Commission consulted with interested stakeholders and members of the public on a draft of this chapter. The Commission has identified the following areas for action to progress the rights of people with disabilities:

#### **Measuring outcomes**

Developing a full range of social statistics to ensure that key outcomes for disabled people are measured.

#### **Inclusive education**

Ensuring all disabled students have a right to inclusive education, including explicit protection in the Education Act, mandatory minimum standards and adopting the United Nations guidelines on inclusive education.

#### **Whole of government approach**

Adopting a whole of government approach to providing supports to disabled people, so they can achieve an ordinary standard of living and access to, and maintenance of, equal employment opportunities.

#### **Implementing the Convention on the Rights of Persons with Disabilities**

Ensuring an integrated and co-ordinated government response to implementing the CRPD, including the full participation of disabled people in the process and the adoption of the optional protocol.

#### **Public land transport**

Ensuring all public land transport services are fully accessible through the development, by the Ministry of Transport and the New Zealand Transport Agency, of a comprehensive work programme to respond to all outstanding issues arising from the *Accessible Journey: Report of the Inquiry into Accessible Public Land Transport*.

#### **New Zealand Sign Language**

Developing a mechanism to promote the maintenance and development of NZSL, including competency standards for interpreters and educators and promoting respect for NZSL to all New Zealanders.

#### **Equality before the law**

Reviewing all relevant legislation to ensure that disabled people have equal recognition before the law and, where necessary, have access to supported decision-making.

#### **Whānau hauā – Māori disabled people**

Ensuring that the needs of whānau hauā (Māori disabled) are assessed and responded to by inclusion in government strategies for health, mental health, employment and education.

