

# Making disability rights real

## Whakatūturu ngā Tika Hauātanga



Annual report of the Independent Monitoring Mechanism  
of the Convention on the Rights of Persons with Disabilities  
1 July 2011 – 30 June 2012



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1 July 2011 – 30 June 2012

Please note, names and details in case studies included in this report may have been changed to protect privacy.

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Pupils at Yaldhurst Model School /  
Margaret MacDonald

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# Introduction

Kotahi te kohao o te ngira e kuhuna ai te miro mā, te miro pango, te miro whero.

When the United Nations Convention on the Rights of Persons with Disabilities (the Disability Convention) was signed each state signatory was greeted with brief polite applause at the UN General Assembly, except for one nation.

When New Zealand signed, the world's representatives stood in applause for several minutes. Reflecting a high level of partnership between Disabled People's Organisations and government, and disabled and non-disabled people, the Disability Convention was signed by the then Minister of Disability, the Hon. Ruth Dyson and Disabled Person's Assembly CEO, Gary Williams of Ngāti Porou.

Just as Potatau Te Wherowhero called diverse leaders together, the whakataukī tells how the weaving of individually weak threads with a diversity of colours results in the protectiveness of a beautiful and strong korowai (cloak). This same unity and diversity ensured the voices that were usually forgotten could tell their stories, and the United Nations environment was transformed.

The role played by the New Zealand Government, officials, non-government organisations (NGOs), disabled Kiwis,

and the Human Rights Commission (the Commission) in the development of the Disability Convention was this nation's latest action of international human rights leadership.

The Disability Convention has the potential to change the lives of some of the most forgotten, abused and poverty-stricken people in our global village. When implemented it will help us realise our dreams and aspirations to belong in a family, to love and to be loved, to be included in communities, to learn, have friends, work and earn a good income. It empowers us to aim for not just an ordinary life, but a great life. Whether our life is long or short, the implementation of the Disability Convention will mean we can look back on life knowing we are leaving behind a world better for us having been part of it.

The time has come for us to celebrate the role of Kiwis in the development of the Disability Convention, to monitor our performance against it and to ignite the drive to implement and realise its full potential.

## Where does the Disability Convention come from?

The recognition of the inherent dignity and human rights of every person is the foundation of freedom, justice and peace in the world. New Zealand led, along with other nations, the drafting of the global commitment that became the Universal Declaration of Human Rights (UDHR). This landmark declaration was developed in response to the atrocities of the Second World War when, leading up to the Holocaust, disabled people were experimented on and murdered in their hundreds of thousands. The UDHR led to legally binding international human rights conventions, of which the Disability Convention is the most recent.

As well as leading in developing the UDHR, New Zealand has a proud history as a pathfinder for human rights, peace, and the celebration of diversity. Our nation is founded on a peace-time treaty, the promise made by two peoples to take the best care of each other. Peaceful resistance flourished at Parihaka under Te Whiti and Tohu, before the times of Gandhi or Martin Luther King. New Zealand led the nuclear free Pacific movement and showed it would not be dictated to by other nations. We have a world-leading reputation as multicultural peacekeepers. We are the first nation where women gained the vote, and where a transgender person was elected mayor and later a Member of Parliament. We were the first nation to settle a quota

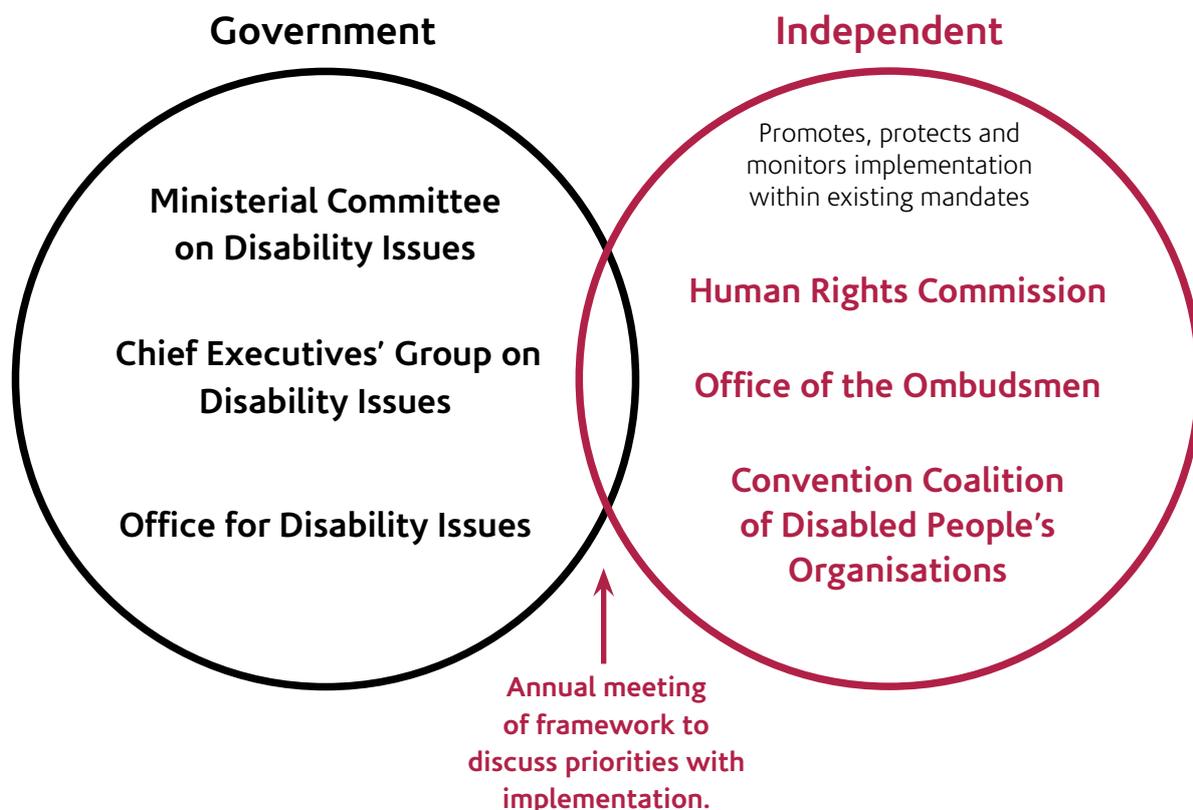
of disabled refugees. These are examples of putting human rights into practice. And most recently we are recognised more outside of New Zealand, than inside, for our leading role in the development of the United Nations Convention on the Rights of Persons with Disabilities.

## The Disability Convention Monitoring Mechanism

The partnership approach to developing the Disability Convention has continued in New Zealand with the establishment of the “monitoring mechanism”. The monitoring mechanism comprises the Human Rights Commission (the Commission), the Ombudsman and the New Zealand Convention Coalition (Convention Coalition). Its mandate derives from Article 33 which requires the establishment of an independent mechanism to promote, protect and monitor the implementation of the Disability Convention.

The Commission and the Ombudsman are established by statute and have roles and responsibilities in relation to discrimination, human rights, access to information and public accountability. The Convention Coalition comprises seven Disabled People’s Organisations (DPOs) and provides an important voice for disabled people. This reflects Article 4.3 of the Disability Convention which provides that all decision-making processes relating to disabled people shall actively involve them through their representative organisations.

## Domestic implementation and monitoring framework



**Ministerial Committee on Disability Issues:** Sets policy direction and monitors progress, and holds government agencies to account for progress.

**Chief Executives' Group on Disability Issues:** Leads implementation by government agencies of the Disability Action Plan, and reports on progress to the Ministerial Committee.

**Office for Disability Issues:** Focal point within government, supports the Ministerial Committee and Chief Executives' Group, promotes and monitors implementation, engagement with the disability sector

Working together under the korowai of human rights is integral to New Zealand progressing human rights for disabled people.

### The approach

In this report, the monitoring mechanism has focused on developing a baseline picture of the current state of disabled

people's rights in New Zealand. With this established, the monitoring mechanism intends to work with government agencies to build capacity to realise the rights in the Disability Convention, while maintaining the right to speak out independently when, and if, issues relating to the Disability Convention rights arise. Future reports may have a particular theme.

The breadth of the Disability Convention, the range of issues and the extent of the disadvantage experienced by many disabled people makes monitoring and implementing the Disability Convention more challenging than most conventions. Acceptance of disability discrimination is deeply embedded in many societies. It is mostly based on ignorance, not ill will. Implementation of the Convention doesn't often require additional funding to meet disabled people's needs, but it requires commitment, creativity and collaboration.

This report reflects the information and data currently available on disabled people. The partners in the monitoring mechanism agreed to focus on certain aspects of the Disability Convention rights for this first year of monitoring, and to set indicators and measures of progress (given the available data). As there are significant gaps in data on disability rights, there are significant gaps in this report. These relate, for example, to disabled children's experiences in schools and the care system, disabled people's disproportionate representation amongst those living in poverty and hardship in New

Zealand, and disabled women's experiences of violence and abuse.

## Key issues

Key issues explored in this report which require the Government's immediate attention are set out below.

## Data

The monitoring mechanism encountered difficulties in accessing data such as statistics and impact evaluations, based on a consistent and sound understanding of disability. There is a dearth of statistics and information relating to disabled people in New Zealand. Few comparisons can be drawn between disabled and non-disabled people, and there are many different approaches to and definitions of disability in use across government. This has been a constraint for the monitoring mechanism. If unaddressed, this will undermine government efforts to progress human rights for disabled people in New Zealand.

## Participation

In the process of developing the Disability Convention, disabled people have shown they can work successfully with the Government. Yet, there is considerable disparity in the way different government agencies consult with disabled people and enable their participation in decision-making. Many government agencies do not have a clear approach to collaborating with and building relationships with disabled people, and still don't recognise

or take seriously their obligations under the Disability Convention. It is recommended that the Government develops a plan to ensure that disabled people, their families and the organisations that support them are involved in decision-making that affects them at every level. It will require sufficient resourcing to build capacity to participate and provide representational leadership.

## **Accessibility**

Accessibility is pivotal to accessing a range of economic, social and cultural rights. In particular, disabled people require access to information, communications, and the built environment. Yet, accessibility continues to be a significant problem for disabled people. More focus needs to be given to designing for everyone's diverse needs from the start (universal design). It is not only more equitable but more efficient and effective. The Canterbury recovery provides a unique opportunity to create the most accessible, inclusive city in the world, one in which all new buildings and surrounding environments are accessible. It is important for all New Zealanders that more accessible housing stock is built so that people have more choices on how to live in the community as they age and experience some form of disability.

## **People at the centre**

Despite the New Zealand Disability Strategy, and the recommendations of the Social Services Select Committee Inquiry into the quality of care and service provision for

people with disabilities (48th Parliament, 2008), disabled people continue to experience significant barriers to living more independently and exercising choice in their lives. As mentioned in this report, there are some promising trials of different support models occurring in New Zealand but the system remains largely unchanged.

As a result, disabled people, including children and the elderly, are denied the same opportunities as others to live independently and be included in the community. Families of disabled children are often denied the support they need to maintain themselves as a family with the ability to envision a positive future for themselves and their children as they grow into the schools and communities of which they are a part.

It is important the Government acts urgently to implement the Social Services Select Committee recommendations. This would establish a person-centred support model for disabled people, one that is based around strengths and facilitating community rather than the current system, which is primarily focused on needs assessment and deficits.

It is also important that law, policy and practice be reviewed to ensure disabled people are supported to make decisions for themselves. The right to live independently is intrinsic to decision-making rights.

## Coordination

A lack of coordination between agencies continues to be a problem for disabled people and their families, particularly for those with higher needs or multiple impairments. People are forced to deal with siloed agencies which have different understandings of disability and different eligibility criteria. It is recommended that a governance mechanism is established to operate across key agencies. It should include disabled people's representatives and would achieve a coordinated system of support, and bring together and progress the various reforming projects.

## Education

The main category of complaint about government activity to the Commission concerns the treatment of disability in the education system. A child's experience of early childhood and school is critical to her or his development as a human being and too often may involve violence, abuse and bullying, and teaching based on an expectation of low achievement.

## Going forward

This report makes a number of recommendations aimed at progressing rights for disabled people under the Disability Convention. Some of these reinforce recommendations previously made to New Zealand by international committees. Key recommendations are set out below. All recommendations can be found in Appendix 1.

The monitoring mechanism will report to the United Nations on the New Zealand Government's report on its performance of the Disability Convention (in late 2014 at the earliest). In this time, it is hoped that New Zealand will have implemented the key recommendations of this report. It is also expected that New Zealand will have signed the Optional Protocol to this convention and re-established itself as an international leader on disability and human rights.

It is important, however, that the Government adequately funds the monitoring mechanism. The Convention Coalition is funded only on an annual basis, so currently lacks the security to adequately plan for and achieve real outcomes. The Commission's disability rights functions are only funded until June 2013.

Together we need to go forward, resolute in our focus on achieving the full realisation of human rights for disabled people and their families. This requires an investment in terms of resourcing, a commitment to long term and sustainable change, an holistic approach and commitment to engaging with and listening to disabled people as experts in their own lives.

## Key recommendations

The monitoring mechanism recommends that the Ministerial Committee on Disability Issues ensures that the following are completed by the end of 2014:

KR1 The Office for Disability Issues, as the

Disability Convention focal point, leads a whole of government programme to ensure Disabled People's Organisations, disabled people, children and families are involved in high level decision-making, including the development of active capacity building programmes.

KR2 Statistics New Zealand develops a programme of work to ensure that key outcomes data for all New Zealanders are collected in a way that makes it possible to compare the outcomes for disabled and non-disabled people. The programme will be developed in collaboration with the monitoring mechanism and Disabled People's Organisations and will include a common understanding of disability.

KR3 Accessibility and universal design are integrated throughout government work as follows:

- a The Ministry of Building, Innovation and Employment ensures an updated regulatory framework and incentives are in place for the built environment, including housing.
- b The Canterbury Earthquake Recovery Authority and Christchurch City Council ensures Christchurch is on track to fulfilling the vision of the world's most accessible city.
- c All government agencies ensure their own and government funded initiatives, for which they are responsible, comply

with the Government Web Standards for accessibility and other accessible information and communication requirements.

- KR4 A board is established including the ministries of Health, Social Development, and Education, Disabled People's Organisations, disabled people and their families. The board would align international best practice in disability support services with New Zealand's Better Public Services outcomes and be directed at:
- a Implementing the recommendations from the Social Services Select Committee inquiry into disability support services.
  - b Supporting disabled people living independently and their inclusion in the community.
  - c Enabling disabled children to get the best start in life through a focus on early support for families and children.
  - d Supporting diversity across all cultures.
  - e Fulfilling Treaty of Waitangi obligations and ensuring disabled Māori and whānau are included in te Ao Māori.
  - f A framework and resources for supported decision-making is developed. This would include reviewing the legislative framework, developing practical tools and issuing guidance on best practice.

g Government delivers on all of its 10 Key Result Areas for Better Public Services for disabled people.

KR5 The Department of Corrections and the Ministry of Health work together, in consultation with the monitoring mechanism, to ensure reasonable accommodation for prisoners with disabilities, and best practice in the detention and treatment of people with an intellectual/learning disability or a mental illness.

KR6 The Ministry of Education meets its inclusive school targets, including through:

- a Establishing an enforceable right to inclusive education
- b Implementing whole of school anti-bullying programmes that ensure that schools are safe and nurturing places for disabled students
- c Establishing initiatives that promote the value of difference and affirm the identity of disabled students.

KR7 New Zealand renews its commitment to international leadership in disability rights promotion, and implements international commitments so that:

- a The Ministry of Health develops and implements a plan to improve the health and wellbeing of people with intellectual/learning disability

as previously communicated to the United Nations.

- b The Ministry of Justice implements recommendations from the United Nations treaty bodies related to disabled people, including recommendations on employment and adequate standard of living.
- c The Government ratifies the Optional Protocol to the Disability Convention.



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Disability Rights Commissioner  
Human Rights Commission



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# At a glance: Making disability rights real

## Overview

### What is the Disability Convention monitoring mechanism?

It was established by the Government to provide independent monitoring, reporting and advice on the implementation of the Disability Convention in New Zealand.

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Consists of the Office of the Ombudsman, the Human Rights Commission and the New Zealand Convention Coalition, a group of seven national Disabled People's Organisations.

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It is instructed by the Government to develop a monitoring framework and report on progress; analyse progress in legislation, policy and practice; and report on priority areas for action.

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### Overall assessment after the first full year of operation

Very few government agencies fully understand their responsibilities under the Disability Convention. Collaboration with disabled people, a whole of government approach and a systematic working towards agreed goals are mostly absent in government responses.

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The lack of good information comparing outcomes for disabled people and non-disabled people makes it very difficult for the monitoring mechanism to carry out its functions.

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Capacity building is required to enable both government agencies and Disabled People's Organisations to be involved in joint decision-making processes.

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## Main issues for the partners

### Human Rights Commission

Disability complaints represent the highest number of complaints received along with race relations complaints.

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The highest number of complaints received are in the areas of government activity, employment and education.

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Government activity complaints are dominated by complaints about education, the Accident Compensation Corporation (ACC) and Work and Income New Zealand (WINZ).

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Employment complaints are dominated by lack of reasonable accommodation, employment terminations, and bullying and harassment.

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Education complaints are dominated by lack of reasonable accommodation, exclusions, expulsions and stand-downs, lack of full participation and bullying and harassment.

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## **The Ombudsman**

A number of complaints highlight the difficulties disabled people experience in communicating with government agencies and accessing relevant information.

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There are a number of concerns relating to the reasonable accommodation of prisoners with disabilities.

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The detention and treatment of people with an intellectual/learning disability and people with a mental illness requires ongoing monitoring, with some isolated cases raising significant concerns.

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Access to funding and support services for disabled students is a common theme among education complaints.

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## **The New Zealand Convention Coalition**

The experience of disabled people is that discrimination in one area adversely affects experience and opportunity in another, e.g. lack of access to transport affects access to employment. Discrimination should be viewed in its full context and not in isolation.

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The Government and its departments and ministries need to partner more closely and more extensively with disabled people, through their representative organisations, to achieve meaningful progress in implementing and monitoring the Disability Convention.

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## **Main issues 2011–2012**

### **Access to the built environment**

This is the issue most frequently raised by disabled people, and the biggest barrier to full participation.

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The Canterbury earthquake rebuild provides an opportunity to make Christchurch the most accessible, inclusive city in the world.

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A review of the full range of standards is needed, including standards in buildings, public facilities, housing and public transport, to ensure universal design principles apply across all these areas.

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### **Access to information**

Government policy for better public services and access to fundamental civil and political rights depends on the wider public sector having fully accessible websites.

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No government agency website fully meets the accessibility aspects of the Government Website Standards.

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There is a need for greater understanding of the right to request official information in accessible formats

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### **Living independently and being included in the community**

There are some good initiatives in giving disabled people increased control over the support they receive and the lives they lead. However, at the current rate of introduction it will take a long time for these to apply to all disabled people in all aspects of their lives.

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There is a need for an overall approach to assessment, service delivery and governance input from disabled people across the main government support providers.

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### **Education**

The Government is to be applauded for aiming to have all schools fully inclusive by 2014.

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The current suite of activities may not be sufficient to meet this goal.

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Having no effective measures of the achievements of disabled students will severely hamper full implementation of the education rights of disabled students.

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Effective measures to counter and report on the bullying and harassment of disabled students are necessary.

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## **Health**

People with intellectual/learning impairments have poor health outcomes compared to the rest of the community. Little has been done to correct the situation that has been known about since 2003.

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## **Habilitation and rehabilitation**

In some areas, government agencies need to be sensitive to the rights of disabled people in accessing habilitation and rehabilitation services.

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## **Liberty and security of the person and freedom from torture, inhuman or degrading treatment or punishment**

In general, the design of prison buildings and amenities means that disabled prisoners do not receive the same level of amenity as other prisoners.

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There are deficiencies regarding the care of mentally unwell prisoners.

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A national policy is needed for the healthcare management of aged and frail prisoners.

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Appropriate processes and facilities are required for the detention (where needed) of people with an intellectual/learning disability who have not committed a criminal offence.

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There are a number of good practices being developed in the area of seclusion and restraint minimisation in health and disability places of detention.

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## **Work and employment**

Disabled people's employment status relative to non-disabled people has not improved in the decade 1996–2006 (the date of the latest reliable statistics).

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The Minimum Wage Exemption Permits system needs to be reviewed to ensure this is the best approach to realising the employment rights of disabled people.

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## **Participation in community life**

Provision of access to aspects of community life, such as sport, leisure and cultural events, is uneven and mostly not provided on an equitable basis with non-disabled people.

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# Article 4

## General obligations

For disabled people's human rights to be fully realised, the United Nations Convention on the Rights of Persons with Disabilities (the Disability Convention) requires that governments undertake through legislation and "to ensure and promote the full realisation of the fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability."

### Law, policy and practice

Research by the Convention Coalition indicates that, with a few exceptions, most New Zealand law is compliant with the Disability Convention. Noncompliance occurs at the policy level but most noncompliance occurs in practice.

Government decision-making processes on disability issues would benefit by directly involving representatives of Disabled People's Organisations (DPOs). Often policy is developed with no formal involvement of DPOs. Sometimes individual views are canvassed but the monitoring mechanism is not used. This may reflect a tendency for government decision-making to be too oriented around risk managing and guarding against feared "capture" of processes by those most affected. It is contrary to international trends not to directly involve those most affected in decision-making.

### Recommendation

R1 That the Office for Disability Issues, as the Disability Convention focal point, leads a whole of government programme to ensure Disabled People's Organisations and disabled people and their families are involved in high level decision-making, including through the development of active capacity building programmes.

As recommended in Article 19, a board should be established comprising staff from key ministries and DPO representatives as an overall mechanism to more adequately coordinate various reform projects across government and to implement the Government's key result areas for disabled people. Capacity currently exists to begin this. To sustain and build on involvement in decision-making depends on resourcing and coordinating a programme of active capacity building for DPOs, disabled people and their families.

# Article 5

## Equality and non-discrimination

Achievement of human rights depends on being treated on the same basis as others in all areas covered by the Disability Convention. In addition, the Disability Convention requires that reasonable accommodation be provided where necessary to achieve equal access. Reasonable accommodation means making modifications or adjustments necessary to ensure disabled people can enjoy or exercise rights on the same basis as others.

### Disability Convention

The Government is obliged to:

- 1 recognise that everyone is equal before the law
- 2 outlaw all forms of discrimination on the basis of disability and ensure effective protection against disability discrimination
- 3 take all reasonable steps to ensure reasonable accommodation is provided for disabled people
- 4 recognise that measures to create equality for disabled people are not discrimination.

### Indicator

*Disabled people are not discriminated against*

### Measure

*Analysis of complaints to the Human Rights Commission on the grounds of disability*

### Law, policy and practice

The Human Rights Act (HRA) makes discrimination on the basis of disability unlawful in a wide range of areas, including government activity, employment, access to goods and services, education, land and accommodation, and membership of professional associations. Other provisions against discrimination are contained in legislation related to employment, residential tenancies and the rights of health and disability consumers.

Reasonable accommodation in the HRA has two main elements:

- 1 making necessary adjustments in order to make a service available to a disabled person
- 2 not imposing an unreasonable burden on the service provider.

“Reasonable accommodation” is a concept used within the HRA. It 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

practices. In employment, reasonable accommodation has two main elements: making the necessary adjustments in order to make employment available to the disabled person; and not imposing an unreasonable burden on the employer. In the provision of services, if a disabled person requires services to be provided in a specific way then the provider must do so unless it is unreasonable to expect it of them. "What is reasonable requires an evaluative analysis of the proportionality or reasonableness of the provider's response."<sup>1</sup>

Consultation by the Commission and the Convention Coalition indicates one of the main barriers to the use of anti-discrimination procedures is lack of knowledge about which avenue to use and what each procedure involves. A resource developed to assist mental health consumers in achieving their rights has been very well received.<sup>2</sup> The monitoring mechanism believes a similar resource covering all anti-discrimination procedures available to disabled people is necessary to

making legislative rights real in practice.

The Commission has a statutory responsibility under the HRA to provide a disputes resolution service in all matters about alleged discrimination. The Commission records approaches in three categories:

- 1 enquiries: seeking information, advice or guidance
- 2 complaints: seeking intervention in a particular matter
- 3 registering concern: expressing an opinion about a matter.

In the four years since the New Zealand Government ratified the Disability Convention, there have been between 500 and 880 complaints per year of unlawful discrimination on the grounds of disability.

The majority of complaints have been in four main areas: government activity, employment, education, and access to goods and services. Complaints can be about:

**Table 1: All new disability matters by year**

Year	Total number of approaches to the Commission	Total number of enquiries	Total number of complaints	Total number registering concern
2008–09	621	96	497	28
2009–10	1179	220	884	75
2010–11	821	231	548	42
2011–12	871	194	628	49

- 1 discrimination by the Government or those performing a public function (Part 1A of the HRA)
- 2 discrimination by the private sector in areas covered by the HRA (Part 2 of the HRA)
- 3 human rights issues other than discrimination (Section 5 of the HRA).

**Table 2: Disability complaints by HRA provision**

Year	Part 1A	Part 2	Part 1A and 2	Section 5
2008–9	140	267	41	159
2009–10	134	246	31	562
2010–11	160	235	48	246
2011–12	184	293	55	208
	618	1041	175	1175

Complaints about the Government and those performing public functions were mainly about education (34 per cent), Accident Compensation Corporation (12 per cent) and Work and Income New Zealand (10 per cent). Employment complaints are dominated by those about unfair termination of employment (24 per cent), lack of reasonable accommodation (24 per cent), and bullying and harassment (14 per cent). Education complaints are dominated by those about a lack of reasonable accommodation (40 per cent) and unfair expulsions, exclusions and stand-downs (16 per cent).

**Table 3: Part 1A and 2 disability complaints by area**

Area	Average of 3 previous years	2011–2012
Advertisements	2	1
Employment	90	121
Government activity	191	244
Land, housing, accommodation	14	14
Places, vehicles and facilities	19	12
Pre-employment	34	37
Professional associations	1	
Goods and services	56	58

**Table 4: Part 1A disability complaints by agency 2011–12**

Agency	Per cent of complaints
Accident Compensation Corporation	12 per cent
Department of Corrections	5 per cent
Courts	8 per cent
Child Youth and Family Services	2 per cent
Education	34 per cent
Health services	7 per cent
Housing New Zealand	3 per cent
NZ on Air	2 per cent
Local council	5 per cent
MPs	5 per cent
Police	7 per cent
Work and Income NZ	10 per cent

**Table 5: Complaints of disability discrimination in employment 2011–12**

Employment terminated	24 per cent
Disciplinary procedure	6 per cent
Inferior pay/conditions	6 per cent
Bullying/harassment	14 per cent
Pre-employment	9 per cent
Disclosure by employer/privacy breach	10 per cent
Lack of reasonable accommodation	24 per cent
Threat of job loss/reduction in hours	7 per cent

**Table 6: Part 1A complaints of disability discrimination in education 2011–12**

Enrolment declined	4
Enrolment conditions	3
Reasonable accommodation	26
Bullying	6
Exclusion/stand down	10
Full participation	6
Funding	6
Other	4

## Key issues and recommendations

Since New Zealand ratified the Disability Convention, disability discrimination complaints to the Commission have been one of the two main areas of complaints. Complaints have been dominated by those about government activity, employment and education. A lack of provision for reasonable accommodation is one of the most common complaints across all three areas. There is a clear and immediate need for guidelines to be developed and education to be conducted to ensure duty bearers are aware of their obligations and equipped to carry them out.

## Recommendations

R2 That the Human Rights Commission approach the Ministry of Justice to develop guidance on the requirements and application of reasonable accommodation and the protections under the New Zealand Bill of Rights Act, in consultation with disabled people.

The monitoring mechanism will develop a guide to assist disabled people in understanding the full range of human rights protections and how to make complaints, and what to expect from reasonable accommodation.

# Article 6

## Women with disabilities

Disabled women and girls often face multiple discrimination. Governments should take all reasonable measures to ensure disabled women can enjoy their full human rights.

Complaints of discrimination to the Commission indicate approximately the same number of males and females make complaints on the basis of disability. Over the past four years there have been 19 complaints where both disability and sex were cited as the grounds of discrimination.

### United Nations guidance

The United Nations Committee on the Elimination of Discrimination against Women recently completed its examination of New Zealand's seventh periodic report on the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women in New Zealand. The committee expressed its concern about the situation of disadvantaged groups of women, including disabled women. It recommended the Government provides data and information about disabled women, including their access to education, employment and health-care services, in its next report.<sup>3</sup>



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### Key issues and recommendations

The monitoring mechanism is concerned government sponsored research on key aspects of women's lives does not often include disabled women as a distinct group. For example, the monitoring mechanism recommends the Commission for Financial Literacy & Retirement Income's Review of Income Policy includes an investigation of the retirement income prospects of disabled women.

### Recommendation

R3 That all government funded research on aspects of women's lives includes a focus on the experiences of disabled women.

# Article 8

## Awareness-raising

### Disability Convention

The Disability Convention requires governments take immediate steps to:

- 1 raise awareness in society to encourage respect of disabled people
- 2 combat prejudice and abuse
- 3 raise awareness of the value of the contribution disabled people make to society.

### Indicator

*Official agencies with complaints mechanisms respond positively when discrimination, stereotypes and prejudices about disabled people are the subjects of complaints*

### Measures

- 1 *Broadcasting Standards Authority identifies complaints that include discrimination and responds appropriately*
- 2 *Advertising Standards Authority identifies complaints that include discrimination and responds appropriately*

### Law, policy and practice

The Broadcasting Standards Authority (BSA) makes determinations on complaints from members of the public who believe a television or radio programme has breached broadcasting standards.

The BSA can order a broadcaster comply with its recommendations, and that it pay costs to the Crown. There have been seven complaints since 2009 that the BSA identifies as involving some element of disability discrimination. The most prominent is a complaint involving derogatory remarks made about singer Susan Boyle by TV One Breakfast host Paul Henry. The case was a landmark case for the disability community, due to the number of people who made complaints, the amount of publicity it generated and because the complaint was upheld.

The Advertising Standards Authority (ASA) is an industry body established to self-regulate advertising in New Zealand. The ASA receives complaints from the public about advertisements in any media. Complaints are heard by the Advertising Standards Complaints Board and appeals can be made to the Advertising Standards Complaints Appeal Board. If a complaint is upheld, the advertiser, agency and media are asked to withdraw the advertisement.

The ASA receives 700-800 complaints a year. Since 2004, only four complaints were received by the ASA relating to disability discrimination.

## Indicator

*Community has positive attitudes towards disabled people*

## Measure

*Evaluations of the Ministry of Social Development's Think Differently campaign indicate positive changes to community attitudes towards disabled people*

## Law, policy and practice

The Think Differently campaign aims to improve attitudes and behaviours towards disabled people by funding national and local initiatives. The programme has funding of \$1 million annually for three years. Examples of projects funded so far include:

### Local community projects

- 1 a market where people with intellectual/learning disability produce and sell their own products
- 2 Pacific Disability Celebration Day
- 3 public transport open day
- 4 a pilot project to increase the knowledge and understanding of disability issues in the legal community.

### National projects

- 1 support for New Zealand Sign Language Awareness week
- 2 engagement with key decision-makers to develop a rebuilt accessible Christchurch
- 3 scoping and planning an employment transition programme for school leavers.

An evaluation commissioned by the Office for Disability Issues of the first two years of the programme is expected before the end of 2012.

## Indicator

*The capability and contribution of disabled people is promoted and recognised*

## Measure

*The Office of Disability Issues appointments service leads to more disabled people being appointed to boards*

## Law, policy and practice

The Office of Disability Issues (ODI) has a nominations service that recommends disabled people for appointment to government boards and committees. There are currently about 100 people on the database. Appointments are made by Cabinet, based on the recommendations of the Appointment and Honours Committee. ODI is not informed of the decisions, so does not know how many appointments have been made as a result of the service. No evaluation of the service has been carried out.



## Recommendation

R4 That The Ministry of Social Development conducts a survey of all those currently on the nominations service database to find out how many people have been successful in appointment to boards, and the boards on which they have served or are serving.

# Article 9

## Accessibility

The ability to move safely and independently gives disabled people access to education, health services, employment, recreation, goods and services, and social connections. Being fully included in society means disabled people are recognised and valued as equal participants in society and not seen as a group with “special” needs.

Most New Zealanders are likely to experience some level of impairment at some stage in their life.

### Disability Convention

The Disability Convention requires the Government to take appropriate measures to ensure all facilities and services provided to the public should be accessible to disabled people on the same basis as others. This includes government taking action in relation to the built environment, transport, public services or facilities, housing, information and communication services, and emergency services. The Government should take appropriate steps to:

- 1 develop and monitor minimum access standards and guidelines for public services and facilities
- 2 ensure the private sector makes services to members of the public accessible

- 3 provide accessibility training
- 4 ensure signs in public buildings are in Easy Read and Braille
- 5 ensure assistance, including sign language interpreters, are available to support access to buildings and facilities
- 6 promote accessible information and access to information and communication technology
- 7 promote inclusive design for new information and communication technologies.

### Indicator

*All new and rebuilt public facilities in Canterbury meet minimum legal requirements for accessibility*

### Measure

*Barrier-free audits, or similar, are conducted, and recommendations are incorporated into the design and construction of new facilities*

### Law, policy and practice

The Government has acknowledged the rebuild of Christchurch, post-Canterbury earthquakes, is an opportunity to make



the city more accessible, safer, easier to navigate, and to have more accessible housing. Initiatives in areas of the accessible built environment include:

- 1 ensuring some temporary housing has ramps, wide doorways and accessible bathrooms, and are matched to applicants with mobility impairments
- 2 assisting Housing New Zealand Corporation, ACC and Ministry of Health clients with disabilities to ensure they have accessible housing after the earthquakes.

In the coming year planned initiatives are mostly around promoting accessible housing rather than the accessibility of buildings and facilities open to the public.<sup>4</sup>

The Christchurch City Council intends to make all new council buildings accessible to barrier-free design standards. It is committed to ensuring accessibility checks are incorporated into its building consent processes at both the design and implementation phases for all council projects.<sup>5</sup>

Various bodies have identified accessibility as a major consideration for the Christchurch rebuild. In April 2011 the Ministerial Committee on Disability Issues agreed to focus the cross-government Disability Action Plan on the Canterbury recovery. Since July 2011 one of the two priority areas for action has been to improve accessibility of the built environment. In May 2012, the Ministerial

Committee on Disability Issues highlighted improved accessibility of the built environment as one of its four priorities for the rebuild.<sup>6</sup> The need to prioritise accessibility in the rebuild was highlighted by the United Nations Committee on Economic, Social and Cultural Rights when it considered the third periodic report of New Zealand in May 2012.<sup>7</sup>

## Indicator

*The Building Act and New Zealand Building Code support increased accessibility of buildings open to the public*

## Measure

*More public facilities having appropriate access for disabled people*

## Law, policy and practice

Two pieces of legislation apply to the accessibility of public facilities: the Human Rights Act (HRA) and the Building Act, including the accompanying regulations containing the New Zealand Building Code. The HRA prohibits discrimination in the use of places, vehicles or facilities because a person has a disability. The provisions of the HRA are subject to the Building Act.

Where a building to which the public is admitted is being constructed or altered the Building Act requires all “reasonable and adequate provision” be provided for persons with disabilities expected to visit or work in the buildings and carry out normal activities”.<sup>8</sup> Building owners

or service providers do not have to provide special services or facilities if it would be unreasonable to do so.<sup>9</sup>

The New Zealand Building Code (the Code) is contained in regulations. The Building Act requires that all building work complies with the Code. Compliance documents issued under the Building Act may be used to show compliance with relevant provisions of the Code. The Building Act provides that New Zealand Standard 4121:2001 Design for Access and Mobility is taken to be a compliance document.<sup>10</sup> This standard is for design for access and use of buildings by disabled people. Compliance documents are not mandatory so a designer can choose to use NZS 4121:2001 to achieve compliance with the Building Act or put forward their own design (known as an alternative solution). If an owner/designer uses an alternative solution they must satisfy the building consent authority that the design will comply with the performance requirements in order to be granted building consent.<sup>11</sup>

The Building Act provides that certain parties may apply to the Ministry of Business, Innovation and Employment for a determination on:

- 1 whether particular matters comply with the building code
- 2 the exercise, failure or refusal to exercise, or proposed or purported exercise by an authority of certain powers – which includes decisions relating to a building consent.

## Case study: Accessible Journey – Progress in the Waikato

Access Coordinators for CCS Disability Action work in the community to identify barriers faced everyday by disabled people. They then work with decision makers to reduce or remove these barriers.

In 2006, Access Coordinator Kevin Churchill and Gerri Pomeroy, Access and Mobility representative on the Waikato Regional Transport Committee, received funding from the New Zealand Transport Agency (NZTA), Hamilton City Council and Waikato Regional Council for a local **Accessible Journey** pilot project. This followed publication of the Commission's inquiry report, *The Accessible Journey* in 2005. Key issues identified in the report included accessible routes and access to public transport. Findings from the pilot project informed the NZTA's **Requirements for Urban Buses**, a first step in developing national standards for use by transport decision makers.

Access Coordinators' work has advanced the case for level footpaths with ramped kerb cutdowns for wheelchairs; tactile warnings for people with vision impairments; better accessible parking;

and ramped access to buildings and other facilities. In 2011, Access Coordinators Roger Loveless and Gerri Pomeroy partnered with Otorohanga District Council to complete a pilot accessibility audit of the town. Working within a limited budget, the Council successfully used the report to apply for NZTA funding. This has enabled the progressive removal of barriers preventing full accessibility for disabled people. Waipa District Council has recently contracted CCS Disability Action to perform accessibility audits in their main towns, including Te Awamutu and Cambridge.

Working with a transport engineer, CCS Disability Action will seek robust statistical evidence to justify to territorial authorities and NZTA the need to progressively remove barriers that prevent disabled people from moving around their communities and accessing the services and facilities they require to live fulfilling and meaningful lives. There are challenges, but working collaboratively has shown that everyone's access requirements can be met.

Any person with a direct interest in a matter relating to the provision of access and facilities for persons with disabilities may apply for a determination.<sup>12</sup> The Ministry consults with the Office for Disability Issues on all determinations relating to access and facilities for disabled people.

## Key issues and recommendations

The monitoring mechanism has received representations from people with considerable experience in the area about the inadequacies of the current system. On occasion, the Building Act appears to be interpreted in a discriminatory way. For example, an assumption was made that disabled people could experience the effect of a sunken garden without actually being able to enter it. Similar assumptions are frequently made about who is likely to use particular buildings.

Because those with the main interest in ensuring accessibility are not involved in the building consent or construction process, concerns with new buildings are not usually identified until the building is complete. So while interested parties may apply for a determination from Ministry of Business, Innovation and Employment about whether the building complies with the Code, this will almost always be after the building has been built, at which point the process has passed a point where any remedial solution is achievable.<sup>13</sup>

Some consider that the definition of the accessible route in the Building Code, and Building Code clause D1 (Access Routes), may allow some buildings to be built so that they are not fully accessible from either the street boundary or the car parking area.

The most reliable way of ensuring that current legal requirements are adhered to is by requiring barrier-free audits at both the design and building phases, and implementing the audit recommendations.

## Recommendations

- R5 That accessibility and universal design is embedded in the building process from the design phase through to completion.
- R6 That NZS 4121:2001 be reviewed by 2014.
- R7 That NZS 4121:2001 be made mandatory, once it is reviewed to cover all aspects of the built environment, including publicly funded housing.
- R8 That all new housing stock is designed and built using Lifetime Design Principles.

## Indicator

*All new buses purchased with central government subsidies meet the Requirements for Urban Buses*

## Measure

*The proportion of accessible buses in each regional council area*

## Case study: Agency fixes access for disabled clients

Hannah, a wheelchair user, visited the local branch of an agency to find there was no longer an accessible counter at which she could be seen or use to write out forms. She complained to the Commission.

The Commission contacted the agency which agreed to mediation.

The agency agreed to review and modify the reception area to be more accessible. They installed a lower reception desk in the office that Hannah had visited and installed accessible counters in its new branch offices.

Hannah learnt about the current disability training for the agency's staff and was invited to make any suggestions or comments for improvement of that training. She received an apology and a payment to acknowledge the humiliation and stress she had experienced.

## Law, policy and practice

The rights of disabled people in their use of public transport services are not directly covered in New Zealand law.

The Land Transport Management Act (LTMA) governs the funding framework for land transport programmes. Regional and territorial authorities seeking funding are required to show how their services will assist the transport disadvantaged, those people least able to access community facilities and activities.<sup>14</sup>

The Commission's 2005 report *The Accessible Journey: Report of the Inquiry into Accessible Public Land Transport* made three key recommendations:

1 The participation of disabled people in all public land transport planning,

funding and implementation processes at central, regional and local government levels.

2 The development of national accessibility design standards for all aspects of public land transport.

3 Industry wide training in disability awareness and disability competence.<sup>15</sup>

Since then, the Commission has been working with disabled people and their organisations to promote the implementation of the recommendations. Progress has been made in the design of new buses and the design of new passenger train carriages.

*The Accessible Journey* recommended that comprehensive national accessibility design

standards be developed within two years. While this has not occurred, a number of significant initiatives have resulted in improvements in access for disabled people, including:

1 *Requirements for Urban Buses in New Zealand (RUB)*.<sup>16</sup> These New Zealand Transport Agency requirements were developed to “provide for the mobility needs of people with physical, sensory and cognitive impairments”. From 2012, the RUB became a condition of funding from the New Zealand Transport Agency. The requirements

do not currently apply to buses used on commercial services or to existing buses. Eventually all contracted scheduled urban bus services will be serviced using buses that conform to the RUB. It is intended the RUB will be further reviewed in 2014 for implementation in 2015.

2 *The Operator Licensing Rule (2007)* requires that all taxis have Braille signage and provides that guide dogs are to be permitted in taxis.

3 *RTS 14: Guidelines for Blind and*

	No. of buses	Super low floor	Per cent wheelchair accessible	Per cent older than 10 years	Number wheel chair accessible	Number older than 10 years
Northland	13	10	10	3	10	3
Auckland	994	831	81.60	37.10	811	369
Waikato	88	76	78	16	69	14
Bay of Plenty	60	49	80	2	48	1
Taranaki	36	0	10	97	10	68
Horizons	48	33	68	47	33	23
Gisborne (excludes school)	3	3	100	100	3	3
Hawke's Bay	26	16	80	23	21	6
Wellington	499	390	65	49	324	245
Nelson	9	4	44	0	4	0
Marlborough	1	1	100	100	1	1
Canterbury	280	280	100	24	280	67
Otago	89	79	77	37	69	33
Invercargill	10	4	40	60	4	6
Total	2156	1776	78	39	1687	838

*Vision-impaired Pedestrians* provides best practice design and installation principles for pedestrian facilities for blind and vision-impaired people including tactile ground surface indicators and audible tactile traffic signals. The guide is not mandatory.

- 4 *The Pedestrian Planning and Design Guide* sets out to improve New Zealand's walking environment. The guide specifically includes the rights of disabled people both by involvement in the planning process and the consideration of their needs in the design processes.<sup>17</sup> Much of the advice in RTS 14 has been incorporated into these guidelines.
- 5 *Auditing public transport accessibility in New Zealand* reviews international best practice for auditing public transport accessibility and piloted a New Zealand-specific audit methodology. It has not been adopted by the NZTA nor the Ministry of Transport but does provide a comprehensive methodology for the auditing of public transport accessibility.<sup>18</sup>

In the year 2011–12, 2156 buses were in use as part of regional council public transport networks. Of these, 1776 were super low floor buses and 1687 (78 per cent) were wheelchair accessible. The table on the opposite page indicates where accessible buses are used regionally.



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There is currently no established way to determine a baseline of provision, define good practice or gather the required information on the Requirements for Urban Buses.

## Recommendation

- R9 That the Ministry of Transport develops national accessibility design standards for all aspects of public land transport.

## Article 11

# Situations of risk and humanitarian emergencies

Disabled people are often among the most vulnerable in situations of risk and humanitarian emergencies. The poor design of public facilities and services that make disabled people's lives difficult are often exacerbated by emergencies.

### Disability Convention

The Disability Convention requires that countries take all necessary measures to ensure the protection and safety of disabled people in situations of risk. This includes situations of armed conflict, humanitarian emergencies and the occurrence of natural disasters.

### Indicators

- 1 *Territorial authorities' emergency response plans include adequate response plans for disabled people in an emergency*
- 2 *National guidelines for emergency preparedness and response include specific measures to respond to disabled people's needs, including access issues*

### Measure

- 1 *The proportion of territorial authorities with emergency response plans that involve disabled people in the planning and responses in emergencies*
- 2 *Ministry of Civil Defence & Emergency Management policy and guidelines are developed with the active involvement of disabled people and include measures identified as essential*

### Law, policy and practice

The Commission conducted five workshops with disabled people, their families, and their organisations in Canterbury. The consultations indicated there were a number of inadequacies in the readiness and response to disabled people in the immediate aftermath of the Canterbury earthquakes. Some of the major inadequacies included:

- 1 Lack of information available in accessible formats, before, during and after the earthquakes.
- 2 Some of the emergency response centres had inadequate physical access.

- 3 Inadequate plans were in place for families who cared for a disabled family member.
- 4 Inadequate emergency strategies for alternative care.

Lack of public transport meant some disabled people were unable to access medication, medical services or mental health support services.

The Convention Coalition reported similar issues, including damaged roads and footpaths which are still not repaired, local community facilities not being available, and difficulty finding suitable accommodation after the earthquakes. A volunteer delivering a chemical toilet to a blind woman who lives on her own was unable to explain how to use the toilet. There were no accessible instructions.

A number of initiatives have been developed. The Earthquake Disability Leadership Group was established to provide a voice for disabled people and their organisations. It is a mix of national and local organisations, individuals and Disabled People's Organisations. The group's initial focus has been on advocating for the rebuilt Christchurch to be world leading in accessibility, using the opportunity provided by the rebuild to maximise employment opportunities for disabled people, and transforming supports to enhance the independence of disabled people. The Disabled Persons Assembly, a national pan-disability Disabled Persons

Organisation, has been running a campaign promoting accessibility in the rebuild.

Despite these and other initiatives, the involvement of disabled people in the recovery and rebuilding process has been inconsistent. The monitoring mechanism is concerned that access issues are still not automatically included in planning and consultation processes in the way that traffic management or safety issues are. Until accessibility is considered as "business as usual", disabled people will continue to have an uphill battle to have the same rights as other citizens.

The Ministry of Social Development and the Office for Disability Issues have produced a guide for including a disability perspective in recovery planning.<sup>19</sup> The Ministry of Civil Defence and Emergency Management has produced advice for preparing for emergencies for disabled people.<sup>20</sup> The Office for Disability Issues held an Emergency Preparedness Symposium for People with Disabilities. Resources and information from the symposium are available on the ODI website.<sup>21</sup> The Ministry of Civil Defence and Emergency Management (MCDEM) is developing guidance for emergency preparation and response for disabled people. This involves guidelines for use by the civil defence and emergency management sector, emergency services, health and disability support services, and the community. The monitoring mechanism partners have been engaged with the MCDEM over the development of

the guidelines and will report on progress in next year's annual report. At this stage the monitoring mechanism believes the initiatives undertaken by MCDEM are appropriate for the situation.

## Emergency 111 text service for Deaf people and people with hearing impairments

If you are Deaf or have a hearing impairment you can now register to use the emergency 111 text service. Registration is necessary to ensure the service is only available to those that can't use a phone to call 111. The police receive and respond to all emergency texts on behalf of the New Zealand Fire Service and ambulance services. The service is the result of collaboration between the Deaf community, the New Zealand Police and the telecommunications industry.<sup>22</sup>

### Indicator

*State sector agencies involved in Canterbury recovery carry out functions in a reasonable and fair way that provides for the needs of disabled people*

### Measure

*Analysis of issues raised with and noted by the Ombudsman concerning Canterbury Earthquake Recovery Authority (CERA), Earthquake Commission (EQC), local authorities and other government agencies*

## Law, policy and practice

The Ombudsman has received, and continues to receive, a significant number of complaints relating to the Canterbury earthquakes, mainly in relation to the Earthquake Commission (EQC).

Many of the complaints received about the EQC have concerned delay and communication issues. Complainants wish to receive information about the progress of their EQC claims, and are frustrated with the delays in having their claims settled. For disabled people, these two issues combine to add to the difficulties faced in the wake of the earthquakes.

The Ombudsman has noted two issues of concern in relation to the rights of disabled people: communication difficulties and the three month time limit for reporting EQC claims.

### Case Study: Communication difficulties

A Deaf person experienced difficulties in communicating with EQC. Responses provided by EQC to the complainant failed to take into account that she had a hearing disability. Although the EQC had been informed of her disability, it repeatedly advised the complainant to telephone its call centre if urgent assistance was required.

EQC has advised that it is reviewing and updating its communication channels. In addition, EQC now has in place a facility to identify when a person may require assistance due to a disability, so that the processing and settlement of a claim can be expedited and dealt with in an appropriate manner.

For a number of years, the Ombudsman has noted with concern the strict three month time limit set out in law for reporting EQC claims. The Ombudsman has previously recommended that the legislation be amended to extend the time limit for lodging a claim, and to allow for claims to be accepted out of time in exceptional circumstances.

### **Case study: Three month time limit for EQC claims**

A complainant suffered from a medical condition affecting her vision that prevented her from noticing damage to her house following an earthquake. It was only when her parents visited that she became aware of the damage, more than three months later. The Ombudsman found that EQC's decision to decline a claim was made in accordance with a law that is unreasonable and improperly discriminatory.

## **Recommendations**

- R10 That all state sector agencies develop internal guidelines for communication with disabled people, including making information available in accessible formats.
- R11 That the Earthquake Commission initiates a review of the three month time limit set out in legislation for lodging a claim.

## Articles 12 and 13

# Equal recognition before the law and Access to justice

These articles are considered together as they ensure disabled people have the same legal rights as others in the community.

### The Disability Convention

The Disability Convention states:

- 1 disabled people have the right to make their own decisions in all areas of life on the same basis as other people
- 2 governments should provide access to support that might be needed by disabled people in making their own decisions
- 3 if decisions are made about a person's capacity to understand, there must be safeguards against abuse
- 4 disabled people have the same rights to go to court, take other people to court, act as witnesses and take part in what happens in court as anyone else
- 5 disabled people must be given support to do this which, for example, may include the provision of sign language
- 6 there should be training for courts, police and prison staff to support this right.

### Indicator

*Disabled people achieve the same access to the law as non-disabled people*

### Measure

*Analysis of complaints and enquiries to Auckland Disability Law and Community Law Centres*

### Law, policy and practice

Auckland Disability Law provides casework services (advice, assistance and representation) to disabled clients and their families and whānau. In the 2010–11 year services were provided to 105 clients; legal information was provided to a further 256 clients. Most clients were aged 25–64, and more females than males contacted the service. Most people who specified their employment were unemployed, with many on benefits and an overwhelming majority identified as disabled people.

Recent key issues were:

- 1 increasing numbers of people being made redundant
- 2 problems with benefits and funding for disability services

- 3 tenancy issues, including large rent increases
- 4 problems with income related rent assessments with Housing New Zealand
- 5 enduring powers of attorney
- 6 welfare guardianship, and property management orders under the Protection of Property and Personal Rights Act
- 7 breaches of the Code of Health and Disability Services Consumers' Rights.

Recent indications of the possible closure of Auckland Disability Law have gathered wide national concern. Although closure now looks less likely, the concern is indicative of the demand for such a service. A similar service will open soon in Christchurch.

Community Law Centres provide free legal advice to disabled people. Some collect disability related demographic information, but it is not mandatory. For the 2010-11 year, 2131 of the 39,067 casework clients of Community Law Centres (5.45 per cent) identified as disabled.

## Indicator

*The rights of Deaf people facing criminal charges are protected*

## Measure

*Deaf people facing criminal charges have access to professional New Zealand Sign Language interpreters at each stage of the proceedings*

## Law, policy and practice

The New Zealand Sign Language Act specifies that in proceedings before any court or tribunal, in which a person's first or preferred language is New Zealand Sign Language (NZSL), an interpreter must be provided. It covers situations where the person is either a member of the court, a party or witness, or is counsel to a party.<sup>23</sup>

Convention Coalition research indicates access to NZSL interpreters in courts is inconsistent. Auckland and Nelson have sufficient access to professional interpreters, but in Palmerston North and some areas of the South Island there is no access to professional interpreters. Court staff are not universally aware of their obligations under the New Zealand Sign Language Act.

## Articles 14 and 15

# Liberty and security of the person, and Freedom from torture or cruel, inhuman or degrading treatment or punishment

These articles are considered together as they concern deprivation of liberty and the treatment disabled people receive in that situation.

### The Disability Convention

The Disability Convention requires governments to ensure disabled people are not unlawfully or arbitrarily deprived of their liberty, and that any disabled people who are deprived of their liberty are provided with reasonable accommodation.<sup>24</sup>

The Disability Convention also requires government to take all effective measures to prevent disabled people from being subjected to torture or cruel, inhuman or degrading treatment or punishment.

### Indicator

*Disabled people in detention receive treatment in accordance with international law, including reasonable accommodation*

### Measure

*Analysis of issues raised with and noted by the Ombudsman*

### Law, policy and practice

The Ombudsman examined the treatment provided by the Department of Corrections (Corrections) to prisoners with disabilities in a recent investigation concerning prisoner health services.<sup>25</sup> A number of suggestions were made, together with 31 recommendations for improvement. Corrections is currently working through these recommendations and is reporting to the Ombudsman on progress.

Particular matters noted by the Ombudsman in this area include:

- 1 prisoners with physical disabilities
- 2 mental health care
- 3 provision of prostheses
- 4 aged and frail prisoners.

### Prisoners with physical disabilities

Prisoners with physical disabilities face significant barriers in prison. Some prisons have designated cells and other facilities for disabled prisoners. However, prison buildings and amenities do not generally support

### Case study: Auckland prison

A visit to Auckland Prison in August 2010 revealed that there were no facilities to accommodate disabled prisoners. Prisoners with mobility problems could not be accommodated on the ground floor, and the communal showers were not fitted with grab rails or other adaptations.

Ombudsman staff observed one prisoner having to manoeuvre up two flights of stairs to access his cell on the top landing while custody staff carried his wheelchair. The prisoner has since been moved to a more suitable unit that caters for disabled prisoners.

A follow up visit to Auckland Prison in August 2011 revealed that disability adaptations had still not been fitted in the showers (see photographs).



### Case study: Prisoner using an electric wheelchair

A prisoner using an electric wheelchair told the Ombudsman that on occasions when he was incontinent, he did not receive timely or appropriate assistance to clean up or change his clothing. The prisoner also complained that the prison was unable to cope with dressings for his severe leg ulcerations, and also noted that there were no bio-hazard laundry bags for washing soiled laundry. In the prison unit where the prisoner was eventually placed, there were no ramps to ease the transition between low and elevated surfaces. Getting in and out of doorways was difficult, as was using a standard toilet.

the needs of disabled prisoners. Prison doorways are narrow, and there is a lack of ramped access to visitors' areas. There is a lack of handrails, special furniture and equipment, and access to staff in control rooms is difficult. Assistance and facilities for Deaf and blind prisoners are limited.

Corrections has acknowledged that "the levels of existing provision within prisons varies significantly" and advises that:

"Generally, progressive upgrades, replacement, and the closure of aged facilities as part of modernisation efforts, will result in improved levels of accessible provision and compliance."

Some adaptations to the physical environment have been carried out at some prisons. At Rata Unit, Waikeria Prison, development of a 20-bed alcove area was undertaken for prisoners with disabilities and/or vulnerable prisoners. Unfortunately, this area does not currently include ramp access to all cells or disability showers. Funding for ramps has now been approved and is expected to be in place by the end of 2012.

New cells at Mount Eden Corrections Facility provide a level of disabled access for male prisoners, which was previously unavailable in the region. New visitors' centres in Rimutaka prison (completed 2010) and Mount Eden Corrections Facility (completed 2011) also provide better access for people with disabilities.

### **Case study: Transfer of mentally ill prisoner**

In one case, a prisoner with a chronic mental illness was transferred so that he could be placed in a Special Needs Unit, due to his deteriorating mental health. However, neither the reason for the transfer, nor medical information regarding the prisoner's condition, was properly passed on to the receiving prison. This resulted in the prisoner being inappropriately placed in a mainstream unit, where he was assaulted by other prisoners.

### **Mental health care for prisoners**

Many prisoners have complex mental health care requirements, often linked to substance abuse, and ranging from acute psychosis, through to personality disorders and high levels of anxiety and depression. The delivery of mental health care for prisoners is made more difficult by the constraints of a prison environment and the transfer of prisoners causing disruptions in continuity of care.

When compared to the general community, prisoners have significantly higher levels of mental health conditions. It is estimated that almost a third of the prison population experience mild to moderate mental health conditions.<sup>26</sup>

The Ombudsman's general investigation of prisoner health services suggests there are

deficiencies regarding the care of mentally unwell prisoners. Significant unmet needs in prison are reported in terms of common mental health conditions including depression, anxiety, emotional distress and adjustment problems.

Many medical officers have limited training in psychiatry, and prison nurses who provide a significant amount of the primary care service are not supported from a clinical perspective. Relationships with forensic teams are good, but medical officers describe a shortage of counselling and therapeutic interventions for primary mental health and substance misuse problems. Some prison health care teams have no mental health nurses to provide specialised care to those who fell beneath the threshold of severe and enduring illness. In general, it was found that services were insufficiently responsive to the diverse needs of prisoners requiring mental health care.

Overall, a much wider examination of the care and treatment of prisoners with mental illness is required. It is understood that the Department of Corrections with the support of the Ministry of Health is leading a project to improve the mental health care of prisoners. The Ombudsman will be monitoring developments.

### **Provision of prostheses for prisoners**

Corrections provides financial assistance for prisoners to pay for prostheses. This is most often used for the purchase of hearing aids, spectacles and dentures.

At its discretion, depending on an assessment of need, Corrections will purchase a prosthesis and the prisoner is required to pay a percentage of the costs. However, practices differ from prison to prison on how the prisoner's contribution is required to be made. Some prisoners are required to pay an up-front deposit which can take a significant amount of time to fund from their earnings while in prison.

### **Case study: Mount Eden Corrections Facility**

The introduction of a Care, Support and Integration Unit at Mount Eden Corrections Facility is a positive development. Corrections has advised that:

“The unit provides a therapeutic environment and individualised treatment for prisoners dealing with physical disabilities and mental health issues. Custodial officers, health specialists and programme team members are co-located within the unit, so that programmes, activities and interventions are all delivered on site. This approach allows vulnerable prisoners to actively participate in prison life during the treatment stage.”

### Case study: Funding of dentures

While one prison, visited by the Ombudsman, paid for dental work as soon as the prisoner had committed to having his contribution deducted from his trust account, other prisons required an up-front deposit from the prisoner of half or two-thirds of the cost before dental work could begin. For one prisoner, this meant having to pay around \$700 up-front, which at payments from him of \$2 per week would result in him having to wait seven years for dental treatment.

### Aged and frail prisoners

Hospice care can be provided to prisoners, but it is geared toward terminal illnesses. Prisoners only become eligible if there is a prognosis of about six months or less to live. There are no specific policies that mention how to care for prisoners with age-related conditions such as Alzheimer's disease or dementia, or the health management of prisoners who require palliative care. With neither standard policy nor targeted funding, individual staff in individual prisons are doing what they can with available resources.

Some prison units visited by the Ombudsman cater for frail and aged prisoners well. However, there is concern about the overall ability of Corrections to provide care for prisoners who in the

outside world would be in a rest home, hospital or hospice type facility.

Corrections will be opening a National High Dependency Unit at Rimutaka Prison by the end of 2012, to accommodate prisoners who have ongoing and significant health needs, including age related conditions. As well as upgrading facilities to accommodate physically disabled prisoners, services will be delivered in a collaborative way by a multi-disciplinary team, including health and custodial staff. While this is a positive step, there appears to be a need for such units in other parts of the country, to allow prisoners to remain in their home region and maintain contact with family and continuity of care from external health services.

### Key issues and recommendations

The monitoring mechanism notes the current project by Corrections and the Ministry of Health to improve the mental health care of prisoners.

### Recommendations

- R12 That the Department of Corrections takes steps to identify any gaps in the current care and facilities provided for prisoners with physical disabilities.
- R13 That the Department of Corrections develops a nationally consistent policy regarding the level of payment by a prisoner that should be required before prostheses are purchased or prosthetic work is undertaken.

R14 That the Department of Corrections develops a national policy regarding the healthcare management of frail and aged prisoners.

- *Criminal Procedure (Mentally Impaired Persons) Act*
- *Mental Health (Compulsory Assessment and Treatment) Act*

## Indicators

- 1 *Protection of the rights of intellectually disabled and mentally disordered offenders*
- 2 *Disabled people in detention receive treatment in accordance with international law, including the Convention against Torture*

## Measures

- 1 *Number of people and commentary on those subject to orders under the:*
  - *Intellectual Disability (Compulsory Care and Rehabilitation) Act*

- 2 *Analysis of issues raised with and noted by the Ombudsman*

## Law, policy and practice

### Intellectual Disability (Compulsory Care and Rehabilitation) Act

There appears to be a lack of appropriate facilities for people with an intellectual disability requiring residential or intensive support and care who have not committed a criminal offence. The Intellectual Disability (Compulsory Care and Rehabilitation) Act was not intended to cover individuals who have not

### Case study: Detention of person with an intellectual /learning disability

Ombudsman staff met a client at one particular mental health site whose primary diagnosis was one of an intellectual/learning disability, but who was being detained under the Mental Health (Compulsory Assessment and Treatment) Act. The client should have been under the care of a specialist service for people with an intellectual disability. Unfortunately, this client (along with other similar clients in the region), was unable to be provided with inpatient treatment under the Intellectual Disability

(Compulsory Care and Rehabilitation) Act, because that legislation only applies to persons who have an intellectual disability and who are charged with, or convicted of, an offence. As there are no inpatient beds in this particular region for the management of acutely disturbed, intellectually or developmentally disabled people, they are inappropriately admitted to the mental health unit in cases where detention is required to manage any identified risk of harm to themselves or others.

committed a criminal offence, because detention would be a breach of their human rights. Where a person with an intellectual disability has been diagnosed with a mental illness they may be committed to an inpatient facility under the Mental Health (Compulsory Assessment and Treatment) Act. However, there is a lack of provision for those whose support needs relate primarily to intellectual disability.

It is concerning that there are no dedicated facilities in some areas, and nor is there specific legislative provision for the procedures that should be followed and considerations that should be taken into account in decision making in this area. In the absence of legislation, decision making is governed by policy and procedure documents. The Ombudsman has raised concerns about this matter with the Ministry of Justice and the Ministry of Health, and will continue to monitor the situation.

During 2011–12, the Ombudsman made informal visits to secure, community care facilities in 14 Regional Intellectual Disability Supported Accommodation Services. All 14 visits were unannounced. There were no concerns with the standard of care being given and positive interactions between care recipients and support workers during the visits were noted.

### **Criminal Procedure (Mentally Impaired Persons) Act**

This legislation allows judges to sentence a

convicted offender to a term of imprisonment while also ordering their detention in hospital as a special patient. These orders are referred to as hybrid orders because they combine aspects of compulsory treatment and imprisonment.

Between 2008 and 2010, the Ombudsman noted several cases where, due to record-keeping errors, offenders subject to hybrid orders had not been given the opportunity to appear before the New Zealand Parole Board as soon as practicable. The situation has now been largely resolved, with a process developed to ensure that the relevant information is captured electronically.

### **Mental Health (Compulsory Assessment and Treatment) Act**

The Office of the Director of Mental Health provides the following data in relation to application of the Mental Health (Compulsory Assessment and Treatment) Act:<sup>27</sup>

“... In 2011, 4755 applications for a compulsory treatment order or extension to a compulsory treatment order were made in the Family Court ... Of the 4181 applications granted, 2251 resulted in compulsory community treatment orders and 1665 in compulsory inpatient treatment orders ...

In 2011, at any given time an average of 85 people per month per 100,000 population were detained under a compulsory community treatment order (section 29), compared with an average

of 77 in 2010. An average of 19 people per month were under a compulsory inpatient treatment order (section 30) in 2011, compared with 14 in 2010.”

Data relating to the length of time people are detained under a compulsory treatment order is not available.

The Ombudsman has seen some good examples of patients having significant input into planning their care, as well as patients being actively involved in how their unit is run. However, a lack of patient involvement continues to be an area of concern.

### **Seclusion and restraint**

The Office of the Director of Mental Health provides the following data in relation to seclusion:<sup>28</sup>

“Between 1 January and 31 December 2011 ... 1167 patients ... experienced at least one seclusion event. Sixty-five per cent of secluded patients were male and 35 per cent were female. Most patients who were secluded were aged between 20 and 54 years ... A total of 49 young people were secluded in the country’s specialist facilities for children and young people ... Most seclusion events (81 per cent) lasted for less than 24 hours.”

The Ombudsman has recently noted a number of good practices in relation to seclusion reduction and restraint minimisation in health and disability places

### **Case study: Seclusion**

In 2008–09, the Ombudsman noted two cases of seclusion that were of concern. One involved a mental health patient who had been in virtually constant restraint and seclusion for nearly six years to prevent the patient from assaulting other patients and staff. Another example was a young intellectually disabled patient who had been kept in seclusion for a lengthy period. In both instances action was taken to move the patients to more suitable facilities, although in the latter case this took over 13 months.

of detention. Many units are introducing sensory modulation rooms, which are used to calm and relax patients exhibiting signs of agitation and stress, without the need for restraint and seclusion. In addition, Auckland District Health Board’s Te Whetu Tawera Mental Health Unit has introduced processes allowing staff to spend more time with service users and their families, as well as transparent reporting of restraint and seclusion data.

### **Consent to detention**

Since 2008, the Ombudsman has noted a number of cases where there was no valid documentation authorising the detention of patients in mental health care facilities, and whose treatment included the use of seclusion and restraint.

The issue of what constitutes “informed consent” is also an area of concern, especially in the case of elderly persons. There is an issue as to whether (and if so when) “informed consent” ceases to be “informed” with the onset of dementia, Alzheimer’s or other debilitating illness.

### **Electroconvulsive therapy**

The Office of the Director of Mental Health provides the following data in relation to electroconvulsive therapy (ECT):<sup>29</sup>

“A total of 286 people received ECT during the year ending 31 December 2011. A total of 151 people were treated with ECT during the period from 1 July to 31 December 2010. The national rate of people receiving ECT treatment was 6.5 per 100,000 in 2011, compared with 5.4 in 2009–10”.

### **Key issues and recommendations**

The monitoring mechanism notes a number of good practices in the areas of seclusion reduction and restraint minimisation in health and disability places of detention.

### **Recommendations**

- R15 That the Ministry of Justice and the Ministry of Health review arrangements for the provision of appropriate detention facilities, where needed, for people with an intellectual/learning disability who have not committed a criminal offence.
- R16 That all service providers ensure appropriate consent is given for the detention of disabled people, particularly where treatment includes seclusion and restraint.

## Article 16

# Freedom from exploitation, violence and abuse

### Disability Convention

Governments must take all appropriate measures to protect disabled people from all kinds of exploitation, violence and abuse. This includes age and gender related violence, exploitation and abuse. The Government must take a range of preventative measures such as help, support and education. Disability services must be independently monitored, and rehabilitation provided for victims.

### Indicator

Disabled people have access to programmes that respond to their rights to be free from violence and abuse

### Measure

Disabled people's rights included in programme planning

### Law, policy and practice

Abuse and violence towards disabled people continues to be invisible, due to the lack of data and recognition in research. The only significant responses to the issue have been instigated by disabled people and allied organisations, such as the National Disability Coalition Against Violence, Auckland Domestic Violence

and Disability, People First's PIP project to address bullying and harassment, and the Disability Clothesline. All these groups have difficulty securing sustainable resourcing.

A disability representative sits on the Domestic Violence Taskforce for Action for Violence within Families. The taskforce is a body of senior representatives from the Government and NGOs who provide national leadership in working to end family violence. There is little evidence of Ministry of Social Development planning in this area as yet.

### Recommendation

R17 That all government funded domestic and anti-violence programmes include elements on disabled people, and that support programmes receive sustainable funding.

## Article 19

# Living independently and being included in the community

The right to live independently and be included in the community is a right many non-disabled people take for granted. Parallel rights for disabled people are not included in any other international human rights treaties.

### Disability Convention

The Disability Convention recognises that:

- 1 disabled people have an equal right to live in and take part in the community
- 2 disabled people have the right to the same choice and control as non-disabled people
- 3 governments should ensure disabled people have the right to choose where they live and who they live with; have access to support services to prevent isolation and support inclusion; and can access the same community services as everyone else.

### Indicators

Disabled people have personal autonomy in the choice of carers, including choosing family members

### Measures

Court decisions affirm the right of disabled people to choose family members as carers

### Law, policy and practice

In 2008, the Government concluded that disabled people should have increased control over the support they receive and the lives they lead.<sup>30</sup> A number of initiatives are now under way with the potential for disabled people to “live everyday lives in everyday ways”.

The monitoring mechanism supports these developments but is concerned at the slow pace and the length of time before benefits are available.

The initiatives are:

- 1 the Ministry of Health’s *New Model for Supporting Disabled People* demonstration project in western Bay of Plenty
- 2 the Ministry of Health’s *Choice in Community Living* demonstration project in Hamilton and Auckland
- 3 the Ministry of Health and Ministry of Social Development’s *Enabling Good Lives* project in Christchurch, Hamilton and Wellington

- 4 the Ministry of Health's *Whāia Te Ao Mārama: The Māori Disability Action Plan for Disability Support Services 2012 to 2017*<sup>31</sup>
- 5 the Ministry of Health's *Ala Mo'ui: pathways to Pacific Health and Wellbeing 2010–2014*.

The evaluation for the first year, 2012, of the demonstration project in the Western Bay of Plenty/Tauranga is to be made available on the Ministry's website in the new year.

The Social Services Select Committee report on its Inquiry into the Quality of Care and Service Provision for People with Disabilities found disabled people living in residential services have little choice over who they live with and that living with non-disabled family or friends is not an option. The same housing choices available to other people, e.g. being a tenant or an owner, are not always available to disabled people.

The Hamilton and Auckland Choice in Community Living project is aimed at providing disabled people with the same housing options as other people. Approximately 150 people will take part in the project over three years to October 2014. The project will be evaluated before a decision on whether it will be implemented nationally.

*The Enabling Good Lives* approach was developed by an independent group

of sector leaders and documented in a report to the Minister for Disability Issues in 2011. *Enabling Good Lives* is a new approach to disability support that is person centred and directed, takes a whole of life approach, is strengths based, and joined up across agencies and funders. It involves a facilitation-based support, for people to do everyday things in everyday places in their communities. The shared outcomes work programme agreed by the Ministerial Committee on Disability Issues in September 2012 includes a future vision for the system to support disabled people, an agreed long term direction for change, and principles to guide decisions on the changes. These are based on the *Enabling Good Lives* approach. The Ministerial Committee has also asked officials to develop a proposal for an initiative to demonstrate the Enabling Good Lives approach to disability support and services.<sup>32</sup>

Where a high level of support is required due to complex needs, multiple agencies will need to be involved. Where a person has multiple impairments, and is also disadvantaged in other ways (such as being disabled and from an ethnic minority) the inadequacies of the current system are most exposed, and critical needs are most likely to go unmet.

The principles within the recently released *Whāia Te Ao Mārama: The Māori Disability Action Plan for Disability Support Services*, being kaupapa Māori, align with the Treaty

of Waitangi and the aspirations of the Disability Convention. Reported spending is still predominantly on residential and day services. Many Māori disabled people can not access aspects of their culture or marae, and many whānau want to bring disabled whānau home from residential services. A realignment of spending is required to support Māori and all disabled people to realise their rights under the Treaty and Disability Convention.

Disabled Pacific people and their families tell similar stories. The system needs to be more flexible, responsive and family centred.

*The New Zealand Disability Strategy*, the *Positive Ageing Strategy* and the *Health of Older People* strategy support the right

of older people to live independently and be included in the community, to “age in place”. The Commission has conducted an inquiry focusing on equal employment opportunities and workforce issues in the age care sector. This inquiry found that the undervaluing of the workforce is a reflection of the undervaluing of older people.<sup>33</sup>

The Government response to the social services select committee report stated young disabled people would not be placed in aged care facilities. Despite this, CCS Disability Action reports that numbers similar to those at the time of the inquiry are placed in aged care facilities.

Progress has been slow in moving towards systems of support which give disabled



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people and their families more choice and control, as well as being more efficient and effective. The recommendation at the time suggested if sufficient progress had not been made in six years, a disability services commission arrangement should be established.

Large NGOs such as IHC and CCS Disability Action have emphasised the need for families to be supported early to ensure disabled children get the best start in life, and have advocated for programs and systems that would provide support in the early years to build family resilience and prevent a segregated and isolated future.

To bring together the various support initiatives, a co-governance arrangement between representatives of the disability community and government is required. Initially, this could include some of the supports funded by the ministries of Health, Education, and Social Development. It is also necessary to determine what is not working.

The Court of Appeal decision in *Ministry of Health v Peter Atkinson in 2012* affirmed the right of parents to be paid as caregivers, where the Ministry of Health has assessed a disabled person requires paid care.<sup>34</sup> The implications of the court decision for the families of disabled people will not be known until the outcome of the Human Rights Review Tribunal hearing and the Ministry of Health consultation is known.

## Indicators

- 1 *A proportion of new houses built in Christchurch post-earthquakes are accessible to allow for a good choice of housing options for disabled people*
- 2 *Rebuilt and substantially renovated social housing in Christchurch is accessible*
- 3 *Disabled people get appropriate accessible temporary housing from the Canterbury Earthquake Temporary Accommodation Service (CETAS)*

## Measures

- 1 *The number of new houses built in Christchurch, post-earthquake, that meet Lifetime Design Standards*
- 2 *All rebuilt social housing meets Lifetime Design Standards*
- 3 *All reasonable requests for accessible housing to CETAS are met*

## Law, policy and practice

The majority of new and existing housing stock is not designed for access, mobility and general safety. By 2061, approximately 27 per cent of the population is likely to be over the age of 65 years. Approximately 45 per cent of this age group are likely to have a disability. For adults with a disability about 45–50 per cent live in homes that are not modified to meet their needs. At present, choices that might normally be

made on the basis of employment, family and community connections, access to facilities etc. are constrained by the lack of accessible housing.

A recent Building Research Association of New Zealand (BRANZ) study indicates that about 80 per cent of new houses require very minor internal changes to meet the universal design criteria developed by Lifetime Design Ltd. External changes, such as better approaches to the front door, would also add to the cost. For the majority of single storey houses, total extra costs are no more than about \$1700, or about 0.5 per cent of the total cost.<sup>35</sup>

It is more efficient for the economy as a whole for all new houses to be built with universal design features that will enable simple and affordable adaptation should a person's needs change either because of a disability or age-related changes such as decreased upper body strength.<sup>36</sup>

Lifetime Design Ltd (LDL) has developed the Lifemark Design Standards to assess whether a dwelling meets universal design principles. While many of the requirements are based on NZS 4121:2001 Design for Access and Mobility, this is the only existing New Zealand guideline developed specifically for housing.<sup>37</sup>

## Recommendations

- R18 That NZS 4121:2001 be reviewed by 2014.
- R19 That NZS 4121:2001 be made mandatory, once it is reviewed to cover all aspects of the built environment, including publicly funded housing.

# Article 20

## Personal mobility

### Disability Convention

The Disability Convention states governments should do everything possible to ensure disabled people can get around as independently as possible, including by:

- 1 ensuring people can travel where they want to at a price they can afford
- 2 ensuring people have access to quality, affordable mobility aids
- 3 providing mobility training to disabled people and staff working with them
- 4 encouraging manufacturers of mobility aids and technologies to consider all aspects of mobility for disabled people.

### Indicator

*Legal provisions for service animals support disabled people having the same access to public places and services as others*

### Measure

*Service animal legislation and its administration support this outcome*

### Law, policy and practice

There are a number of statutes that refer to guide dogs, companion dogs or disability dogs, but they are not consistent in categorising dogs and the rights of access of their owners. The Dog Control Act permits the certification of dogs as disability assist dogs and lists the

#### Case study: Taxi discount denied

After a long journey, Geoff disembarked and searched for a taxi that accepted his Total Mobility card. He could not find one. He laid a complaint with the Commission against the terminal where the discounted service was meant to be available.

The Commission mediator convened a meeting including representatives of the transport terminal, the complainant, disability advocates, the regional authority funding the discount scheme, and the contracting taxi companies tendering services to the terminal.

The transport terminal operators committed to ensuring all licensees are part of the Total Mobility scheme.

organisations that can designate such dogs. Once a dog is registered, the owner and dog have access rights onto premises registered under the Health Act or any public place. Other legislation referring to service animals includes the Conservation Act, the National Parks Act and the Walking Access Act.

The HRA makes it unlawful to discriminate on the grounds of disability, which includes reliance on a guide dog. A person who uses a disability assistance dog that has not

been registered under the Dog Control Act may be able to use the reliance on “other remedial means” to gain similar rights as those with formally registered dogs.

There is some tension between the Dog Control Act and the HRA concerning certifiers or trainers of dogs and disabled people’s rights to reasonably determine their own remedial means.

### **Case study: No room for guide dog**

Stephen is a guide dog user. He booked accommodation for a short getaway and took his guide dog, Jessie.

After a day out they arrived back to find Jessie’s bed and bowls outside. The owner told Stephen that Jessie couldn’t stay in the room. There was a boarding kennel next door they could use. Stephen said he was reliant on Jessie. Despite Stephen’s explanation about the rights of guide dogs and their handlers, the owner refused to allow Jessie inside.

Stephen complained to the Commission about discrimination and access to services and accommodation. Mediation failed to resolve the situation so Stephen took his case to the Office of Human Rights Proceedings.

The Office provided Stephen with legal

representation to take his case to the Human Rights Review Tribunal. Both parties put their case to the Tribunal. The owner claimed a respiratory condition allowed him to discriminate against Stephen, because contact with dogs made his condition worse.

An agreement was reached to settle the case. The owner admitted he had discriminated against Stephen because of his disability, and that his medical condition was not severe enough to justify this. He sent Stephen a written apology and agreed to pay \$8000 for emotional harm.

Stephen was happy with the result and donated \$5000 of the payment to the Royal New Zealand Foundation of the Blind’s Guide Dog Services.

## Article 21

# Freedom of expression and opinion and access to information

The lack of access to information in accessible and appropriate formats is a major barrier to the full realisation of disabled people's rights. Recent consultations with disabled people and two Convention Coalition monitoring reports found common concerns raised included information being provided in limited formats, requests made to government agencies for accessible information showed a lack of respect for disabled people's rights, and the failure to provide accessible information in potentially serious situations.

### The Disability Convention

The Disability Convention states governments should take steps to ensure disabled people can express their views freely and access information on an equal basis to everyone else, including:

- 1 providing disabled people with information in accessible formats and technologies at no extra cost
- 2 ensuring people can use sign language, Braille and other types of communication when they are dealing with public services or the State
- 3 encouraging private sector providers

to provide accessible information, including accessible websites

- 4 encouraging mass media and internet providers to make their services accessible
- 5 recognising and promoting the use of sign language.

### Indicator

Government agency websites meet international standards for website accessibility

### Measure

Proportion of core government agencies that fully meet the Government website accessibility standards

### Law, policy and practice

The internet and modern information and communication technologies have the potential to revolutionise the lives of disabled people, but this potential will only be realised if best practice design is consistently followed.

The Government's Better Public Services initiative has set goals for the public sector to achieve over the next five

years. One of these states that New Zealanders can complete their transactions with the Government easily in a digital environment.<sup>38</sup>

The Government has established the Government Web Standards, based on the widely accepted international Web Content Accessibility Guidelines developed by the World Wide Web Consortium. It is mandatory for all public sector departments, the New Zealand Police, the New Zealand Defence Force, the Parliamentary Counsel Office and the New Zealand Security Intelligence Service to be compliant with the standards.<sup>39</sup> A self-assessment in 2011 indicated “no government website fully conforms to the Government Web Standards”.<sup>40</sup> The Department of Internal Affairs is investigating ways to help agencies meet the standards.

The wider state sector (excluding State Owned Enterprises and Crown Owned Companies) is encouraged to use the guidelines and local government has been invited to adopt the standards.<sup>41</sup>

## Recommendations

R20 That all government agencies ensure their own and government funded initiatives, for which they are responsible, comply with the Government Web Standards for accessibility and other accessible information and communication requirements.

R21 The Government Web Standards become mandatory for all territorial authorities, District Health Boards, other Crown entities and organisations receiving substantial government funding.

## Indicator

*State sector agencies take appropriate action to communicate with and make information accessible to people with disabilities*

## Measure

*Analysis of issues raised with and noted by the Ombudsman*

## Law, policy and practice

### Access to information

Everyone in New Zealand has the right to request information held by state sector agencies,<sup>42</sup> under official information legislation. Individuals can also request personal information about themselves from both state and private sector agencies, under the Privacy Act.

Under the legislation, information may be made available in a number of different formats.<sup>43</sup> Importantly, the acts require that information must be made available in the way preferred by the person requesting it, unless that would impair efficient administration, be contrary to a legal duty of the agency, or prejudice a protected interest.

The legal requirement to make information available in the way preferred by the requester does not appear to be widely known. In the 2011–12 year, the Ombudsman received only five complaints about the form in which information was released.

The Ombudsman occasionally receives complaints about decisions by state sector agencies to release information either in hard copy or electronically in PDF format only, and to refuse to provide the information in Word or another more accessible electronic or hard copy format. Although concerns may not have been specifically raised by a person with a disability, the complaints generally revolve around difficulties in being able to use PDFs or hard copies to easily extract and analyse information. These issues are particularly important for people with vision impairments.

Cases in this area need to be considered on their own merits. However, when a person has a valid reason for seeking information in a particular format, and in the absence of any significant technical or administrative difficulties, it would seem reasonable for agencies to provide information in the particular format requested.

In addition to the format in which information may be accessed, another important issue is the type of information that is made available. The public interest in state sector agencies being transparent

and accountable is advanced by making available more official information that is relevant to people with disabilities.

Some examples of information being made available are:

- 1 the Ministry of Health releasing reports about unannounced inspections of rest homes and hospitals
- 2 annual reports from 2009–10 of serious and sentinel events in all District Health Boards, by the Health Quality and Safety Commission

## Key issues and recommendations

The monitoring mechanism has identified a need for greater understanding of the right to request information in accessible formats. There is also a need to recognise the public interest in state sector agencies being transparent and accountable by making available more information relevant to disabled people. The monitoring mechanism will develop a guide on the provision of information and communicating with disabled people in accessible ways.

### Indicator

*Deaf people have the same access to information as others*

### Measure

*All regions have access to professional New Zealand Sign Language interpreter services*

## Law, policy and practice

Not all regions have access to qualified New Zealand Sign Language (NZSL) interpreters. Auckland is well served, but there are issues with access to interpreters in provincial areas, and in Christchurch and Wellington. For smaller centres, and particularly in the South Island, there are considerable travel costs for interpreters, which results in barriers to access for Deaf people. There are no professional interpreters in Southland or the West Coast. Māori Deaf are particularly poorly served, with only two qualified tri-lingual interpreters in New Zealand.

Video conferencing is an option when there is no local interpreter, but currently this service is not widely used. The Video Relay Service (VRS)<sup>44</sup>, provided by New Zealand Relay Service (NZRS), uses video devices or web cameras to provide NZSL or spoken language interpreting services. It is still in the development stages in areas where

there are no interpreters and funding is being sought. Seeflow, a NZSL translation service, also provides signed documents and website content, making NZSL more readily available.

SLIANZ, the Sign Language Interpreter Association of New Zealand has about 60 members. There are approximately 70 communicators and interpreters in New Zealand.

There is no national strategy for NZSL. This is reflected in a lack of standards and infrastructure to support its use, growth and development as a first language for the Deaf community and a national language of New Zealand.

The Commission has begun a public inquiry into NZSL, which commenced in August 2012 and will be completed in June 2013. It will consider Deaf people's right to education; communication, information and services in NZSL, and the promotion and maintenance of NZSL as an official language of New Zealand.

### Case study: Telephone services for Deaf people

Ralph, who is Deaf, said he was unable to access a company's telephone service using the New Zealand Relay Service (NZRS). This is a national phone service for Deaf people and people with hearing or speech impairments. Ralph felt this was not fair, as it meant he could not access a service in the same way hearing people could. He claimed that when he phoned the company via the NZRS, the company would hang up, saying it was unable to verify his identity. Ralph made a complaint to the Commission.

Representatives from the company visited the NZRS operation centre so they could better understand how the service worked. As a result, the company altered its procedures. It now offers a telephone service to Deaf customers who make calls via the NZRS.

## Article 23

# Respect for home and family

This article covers the right of disabled people to marriage, family, parenting, relationships, fertility and education. Disabled people should have the same rights to adoption and guardianship under the law, taking into account the best interests of the child. Disabled people should have appropriate assistance to help to raise their children if they need it.

Disabled children and disabled parents have the same right to family life, and children should not be arbitrarily removed from their families, in the case of disability of the parent or the child.

### Indicator

*Disabled people have the same access to planned parenting services as others*

### Measure

*Disabled people have the same access to New Zealand Family Planning services as others*

While the Family Planning Association does not collect demographic information on disabled people using its services, it includes disability in its philosophy statement. There is some information on its website designed for people with learning disabilities, and the association runs courses on non-clinical aspects of disability

and relationships for disabled people, and for parents and professionals. The youth site contains basic information and an NZSL video.

### Indicator

*Disabled parents have the same rights to adopt children as others*

### Measure

*Commentary on the Adoption Act*

Although disabled people are not excluded from adopting a child under the Adoption Act, disabled people feel the Act is applied in a discriminatory way. Anecdotal evidence indicates that where one partner is disabled, it is more difficult to adopt. If the mother is disabled, adoption is less likely than if the father is disabled.

Section 8 of the Adoption Act gives courts, in certain circumstances, the power to dispense with a birth parent's or guardian's consent to adoption. Physical or mental incapacity is a ground for applying for dispensation.<sup>45</sup> Section 8 of the Act appears to be inconsistent with Article 23 of the Disability Convention.



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## Recommendation

R22 That the Ministry of Justice reviews the Adoption Act, with particular consideration given to whether section 8 complies with the Disability Convention.

# Article 24

## Education

Without equal access to education disabled people are disadvantaged in other areas of life, such as employment and overall life satisfaction.

### Disability Convention

The Disability Convention recognises that:

- 1 governments must ensure the education system is inclusive and supports disabled people to achieve their full potential and participate equally in society
- 2 disabled people should be able to access free, inclusive primary and secondary school education wherever they live
- 3 disabled people must not be excluded from the general education system, at any level, because of their disability
- 4 disabled people have the right to reasonable adjustments and extra support to take part in education
- 5 governments must promote the learning of Braille, sign language and use appropriate forms of communication for disabled learners. This includes promoting the linguistic identity of Deaf people and ensuring enough teachers are trained in different communication methods.

New Zealand has ratified both the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Rights of the Child. Both instruments provide for the right to education.

### Indicator

*Schools provide inclusive education*

### Measure

*Proportion of schools that meet inclusive education guidelines according to Education Review Office reviews*

### United Nations guidance

Inclusive education is based on the principle that all children should learn together, wherever possible, regardless of difference. Every child has unique characteristics, interests, abilities and learning needs. Education should not regard disabled people as having “special” problems that need to be fixed but should approach individual differences as opportunities to enrich the learning of all. Inclusive education is not the same as integration. Integration often involves the disabled student adapting to the mainstream classroom, sometimes with supports, such as teacher aids, and can lead to exclusion in mainstream schooling.

The United Nations Special Rapporteur on the Right to Education (Special Rapporteur) has provided advice on how countries that have ratified the Disability Convention can fulfil their obligations to provide inclusive education.<sup>46</sup> Countries should establish minimum standards for inclusive education that include: physical access; communication access (e.g. Braille and NZSL); social access to peers; affordability of schooling; early identification of needs; development of a curriculum common to all learners; mandatory pre-service and in-service education for teachers and school administrators; and individualised student support where necessary.

## Law, policy & practice

In New Zealand the legal right to education for disabled students is not established in a way that consistently guarantees disabled students are able to attend their local state school and receive an education aimed at the full realisation of their abilities and talents. The Education Act 1989 recognises that:

- 1 every person between the ages of five and 19 years old has the right to free education at any state school
- 2 people with special education needs, including those with disabilities, have the same rights to enrol and receive education in state schools as those who do not

- 3 the Secretary of Education may direct a person's special education by directing enrolment at a particular state school, class, clinic or service.

What this might mean in practice was tested in *Daniels v Attorney-General*.<sup>47</sup> In 2000, the New Zealand Government had developed a special education policy in order to develop a world-class inclusive education system. The policy involved closing special schools and units. A group of parents sought judicial review of the policy on the grounds their children's right to education would be compromised and the statutory process for closing schools was not adhered to. The Court of Appeal ruled there was no general right to education enforceable by individual students. Rather, the right to education was met by procedural rights to a regular and systematic education, such as through minimum days and hours of tuition, teacher registration and a national curriculum. There is currently a gap between the right to education and the ability and means to enforce it.<sup>48</sup>

This legal situation is often reflected in the experiences of parents of disabled students. In 2011, CCS Disability Action carried out a survey of 204 families who received funding for one or more of their children from the Ongoing Resourcing Scheme (ORS). The ORS provides resources for a group of students who have the highest need for support with their education. The survey found that while over half

of the students were able to attend the school they were zoned for, many parents reported ongoing difficulties to achieve an education that met their child's needs.

Other significant findings included:

- 1 over one third of parents indicated their child's start at school was delayed
- 2 one third of parents felt their child's potential was not being reached, because of their disability
- 3 of those parents that had moved their child to another school, one quarter felt that teachers at previous schools lacked knowledge of their child's needs.

For those parents who did not have a good experience of their school of choice, issues included: difficulties with many basic rights; financial implications of not being able to attend the local school; stress and other health impacts on the students and family; having to move house in order to get access to satisfactory education; the lack of support, advice and information for parents; and the need for legal guarantees for good quality education at the local school.<sup>49</sup>

In 2009–10, the Government conducted a review of special education. The Government undertook to:

- 1 ensure 80 per cent of schools provide inclusive education by 2014 and none provide a poor level of support for disabled students

- 2 require school boards of trustees to provide evidence of how they are supporting the participation and achievement of disabled students
- 3 develop a mediation and complaints resolution service
- 4 expand the number of students, with high and very high support needs, who receive individualised support
- 5 aggregate and improve resources for students with vision and hearing impairments, through three national schools
- 6 retain special schools but require some to provide out-reach specialist services.<sup>50</sup>

In 2010, the Education Review Office (ERO) reviewed 229 schools that provide an inclusive education environment for students with a significant physical, sensory, neurological, psychiatric, behavioural or intellectual/learning impairment. These students account for about three per cent of the population. For the purposes of the evaluation, inclusion involved students with high needs successfully enrolling, participating and achieving in the academic, extra-curricular and social life of their school.<sup>51</sup>

**Table 7: School inclusiveness: Students with high needs 2010**

Mostly inclusive practices	50 per cent
Some inclusive practices	30 per cent
Few inclusive practices	20 per cent

Through the *Success for All* policy, the Government requires all schools to demonstrate inclusive practice by the end of 2014. The goal is for 80 per cent of schools to be doing a good job, and none doing a poor job, of including and supporting students with special education needs.

In 2011, ERO asked all schools reviewed in the first two terms of that year to complete a questionnaire on the school's view of how well they include students with special needs. The way some schools interpreted special needs, for instance including gifted and talented students and those for whom English was a second language, means the results are not comparable with the 2010 review.

Other initiatives reported include using Individual Education Plans, professional

learning and development, and literacy programmes. Most schools did not report on the actual gains made by students, leading ERO to comment:

“The lack of specific information about the academic outcomes for students also suggests that schools’ rating of themselves as inclusive are not well supported by evidence that these students have actually been achieving their potential at school.”<sup>52</sup>

The Special Rapporteur recommends countries develop a transition strategy to transform segregated or partly segregated education systems to a fully inclusive education system. He said part of the transition should include closing special schools. In mid-2012 the Ministry of Education announced it was looking at the future of four residential special schools: Halswell Residential College, McKenzie Residential School, Salisbury Residential School and Westbridge Residential School.

The Ministry of Education’s Statement of Intent for 2012–2017 prioritises the improvement of education outcomes for

**Table 8: Inclusive practices reported by schools in 2011**

Reported inclusive practices	Percentage reporting
Mostly inclusive practices	88 per cent
Special education needs coordinator	81 per cent
Special property projects such as installing ramps, altering bathrooms, installing sound systems	66 per cent
Achievement information reported to boards	15 per cent

four groups of students: Māori, Pacific Island, learners from low socio-economic backgrounds, and learners with special education needs. Increased participation rates in early childhood education and improved accountability for achievement are required for three of the groups, but not explicitly required for disabled students.

It is difficult to see how educational outcomes for disabled students can be improved if they are not being assessed. There is a range of ways in which student learning can be benchmarked, including:

- 1 national standards for primary schools
- 2 achievement at levels 1–3 on the New Zealand Qualifications Framework for secondary school students
- 3 key international studies of literacy and numeracy achievement.

However, none of these allow a comparison with the learning outcomes of non-disabled students.

Since the review of special education in 2010, some progress has been made:

- 1 The reviewable aspect of the funding scheme for students with high or very high support needs (the Ongoing Resourcing Scheme) has been removed and funding is available for 1100 extra students.
- 2 A complaints and disputes resolution service has been developed.

- 3 The ERO has produced school review questions for a safe and inclusive school culture, and indicators for including students with high needs.
- 4 The Modern Learning Environment criteria has added additional criteria for accessibility to those required by legislation and will be used for new and remodelled school buildings.
- 5 Initial teacher training providers are required to incorporate inclusion and education of learners with special education needs in all training programmes.
- 6 Boards of Trustees must state in their charters, strategic and annual plans how they will make their schools more inclusive and what programmes are in place to meet the needs of disabled students.

The work of all three partners in the monitoring mechanism suggests that bullying at school is a particular issue for disabled students. A number of recent reports have identified bullying as an issue that must be addressed in a consistent way in all schools if students are to be able learn in a safe physical and emotional environment.<sup>53</sup>

The Commission has previously reported that the current legislative and regulatory framework fails to provide enough protection from bullying for children and young people. It has recommended that legislation be enacted to require all schools,

whether public, private or integrated, to implement school safety programmes and policies on a whole school basis. Such programmes should include the appointment and training of safety officers to facilitate school responses to violence and bullying, a complaints process and annual reporting to the ERO on the approaches adopted and the results of the programmes.<sup>54</sup>

The Ombudsman, in a report on events that happened at Hutt Valley High School in 2007, recommended that it should be compulsory for all schools to implement an anti-bullying programme. The Ombudsman recommended that the most appropriate means for achieving this change was

to amend the National Administration Guidelines to require each school Board of Trustees to implement an effective anti-bullying programme.<sup>55</sup>

The monitoring mechanism endorses this approach and recommends that whole of school approaches to bullying pay particular attention to the situation of disabled students. Most recently, the Law Commission has recommended that anti-bullying programmes be implemented as part of a broad strategy to combat cyber-bullying.<sup>56</sup>

### Indicator

*State sector education providers and agencies act reasonably and fairly in respect of disabled students*

#### **Case study: Support for students who are blind or have low vision**

Education for blind and low vision children is supported by the Blind and Low Vision Education Network NZ (BLENNZ). Resource Teachers Vision (RTVs) are trained in a course run by Massey University. They are employed by BLENNZ and work in several vision resource centres (VRCs) located in mainstream schools throughout the country. The sector of parents, teachers, and adult consumer groups meet regularly to support the BLENNZ Board of Trustees, providing a united voice to the Ministry of Education and the Government.

The state of the art school headquarters of BLENNZ, which was opened on the Homai campus in May 2012, reflects in its design and execution the choice and flexibility of the education offered by the sector. While most children attend their local schools supported by the RTVs, they may also attend short-term immersion courses at their nearby VRCs or at the Homai Campus of BLENNZ where students receive intensive support from specialist teachers.

Work is underway to develop a similar education model for Deaf children that is appropriate for their needs.

## Measure

*Analysis of issues raised with and noted by the Ombudsman*

## Law, policy and practice

Access to funding and support services for disabled students is a common theme among the complaints made to the Ombudsman, in the primary, secondary and tertiary education sectors.

Complaints often involve differences between the expectations of parents and/or students, the services an education provider has arranged, and the funding available.

Some complaints arise when a student has been excluded or expelled from a school due to behavioural issues relating to their disability. There is a question as to whether the current law relating to suspension, exclusion and expulsion provides for sufficient consideration of a student's disability. Other complaints involve dissatisfaction with the level of assistance provided to students with disabilities for assessments and examinations.

## Key issues and recommendations

The monitoring mechanism supports the initiatives taken to make schools more inclusive. However, it is not convinced they will result in 80 per cent of schools achieving highly inclusive practice by

2014, or in disabled students receiving an education with equitable outcomes to other students. Three issues are of particular concern to the mechanism: the lack of an enforceable and specific right to education, the continuing lack of learning outcomes data for disabled students, and the lack of a comprehensive transition plan to take New Zealand from a mixed segregated-inclusive education system to a fully inclusive education system

## Recommendations

- R23 That the Ministry of Education establishes an enforceable right to inclusive education.
- R24 That the Ministry of Education implements whole of school anti-bullying programmes that ensure that schools are safe and nurturing places for disabled students
- R25 That the Ministry of Education establish initiatives that promote the value of difference and affirm the identity of disabled students.

The monitoring mechanism will be monitoring the development of partnership schools to ensure that the rights of disabled students are protected.

# Article 25

## Health

### Disability Convention

The Disability Convention states disabled people have the right to enjoy the best possible health and the right to the same range, quality and standard of free and affordable health care as everyone else, including sexual health and fertility services. To achieve these rights governments should ensure:

- 1 healthcare professionals are trained to provide an equal service, including issues of informed consent
- 2 health services and treatment are available for a person's specific impairment; and services should ensure impairments and health conditions are identified early and that people get early support
- 3 health and life insurance policies do not discriminate against disabled people.

### Indicator

*Improved health outcomes for people with intellectual/learning disability*

### Measure

*Improved health indicators and life expectancy for people with intellectual/learning disability*

### Law, policy and practice

In the short time the monitoring mechanism has existed, there has been no opportunity to provide an overview of how well the health system in New Zealand complies with international human rights standards. This will be reported on in subsequent annual reports to Parliament. This report concentrates on the health status of people with an intellectual/learning impairment.

People with an intellectual/learning disability have poorer health outcomes than the rest of New Zealand society and they have not had equal access to health services, including basic screening services. The situation is often worse when the person has multiple conditions.

In 2003, the National Health Committee reported on the barriers to community living faced by people with an intellectual/learning disability. The committee found the health status of people with intellectual/learning disabilities was worse than that of the average population across many indicators, including life expectancy. People with intellectual/learning disabilities do not have access to the same levels of preventative health care and health promotion programmes as others. The committee found evidence of systematic discrimination in the health system and

recommended policies be developed for service access, health assessment tools and appropriate staff education.<sup>57</sup> One of the most worrying findings was the over-prescribing of psychotropic and other psychotic medications without psychiatric consultation or diagnosis.

Despite the seriousness of this situation, the Commission reported in 2010 that “no significant change has occurred” since the issues were identified in 2003.<sup>58</sup> This was confirmed with the release of the Ministry of Health’s report *Health Indicators for New Zealanders with Intellectual Disabilities*<sup>59</sup> in 2012. As noted in that report:

“... there is a distinct lack of up-to-date, New Zealand-specific health status and health care utilisation data for people with intellectual disability. This makes it difficult to evaluate the extent to which this group of New Zealanders are currently experiencing poorer health than the rest of the population.”<sup>60</sup>

The report indicates that, as at 2011, life expectancy of males with intellectual/learning disability is 18 years less than other New Zealand males. For females with intellectual/learning disability, it is 23 years less than other New Zealand females.

People with intellectual/learning disability are more likely to be treated for:

- 1 chronic and other physical conditions: coronary heart disease, chronic respiratory disease, diabetes, chronic

kidney disease, cancer and morbid obesity

- 2 epilepsy, other physical conditions and injuries
- 3 mental health conditions: mood disorders, psychotic disorders and dementia.

People with an intellectual/learning disability are also more likely to live in the most socio-economically deprived areas of New Zealand.

The Ministry of Health is finalising a review of effective health programmes for people with intellectual/learning disability. The report will be released later in the 2012 year.

In its report on the Government’s performance of its obligations under the International Covenant on Economic, Social and Cultural Rights, the United Nations Committee on Economic, Social and Cultural Rights was concerned that people with intellectual/learning disabilities experience difficulties in accessing health services. The Committee recommended New Zealand “ensure that its primary health system is adequately equipped to provide care to persons with intellectual/learning disabilities”.

One positive initiative implemented for people with intellectual/learning disabilities is Special Olympics New Zealand’s *Healthy Athletes* screening programme and *Health and Wellness* programme.

## Key issues and recommendations

The monitoring mechanism believes this situation requires urgent attention. It is unacceptable that a group in New Zealand with such poor health outcomes has not received remedial attention for nearly a decade since the situation was reported on.

### Recommendation

R26 That the Ministry of Health work with people with intellectual/learning disabilities and their organisations to establish a comprehensive health monitoring and improvement programme.

### Indicator

*Organised screening programmes are available to disabled people on the same basis as others*

### Measure

*National screening unit figures for usage and commentary*

The National Screening Unit does not collect disability data. This means disabled women's uptake of breast and cervical screening is not known.

# Article 26

## Habilitation and rehabilitation

### Disability Convention

The Disability Convention requires government to take effective and appropriate measures to enable disabled people to attain and maintain:

- 1 maximum independence
- 2 full physical, mental, social and vocational ability
- 3 full inclusion and participation in all aspects of life.

The Government must organise, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services.

The Ministry of Health funds Disability Support Services for people with intellectual, physical and sensory disabilities, generally under 65 years of age. Equipment and modification services are funded for people of all ages. Disability Support Services funding increased from \$888 million in 2008–09 to \$1052 million in 2012–13, enabling 2462 clients to be funded through supported living in 2011–12, compared to 1914 in 2008–09. The Ministry also has a project underway to develop a fairer and more transparent prioritisation system for access to equipment, housing modifications

and vehicle modifications for people with disabilities of all ages.

District Health Boards fund long-term support services for people with long-term mental health needs, people with disabling chronic health conditions and older persons with disabilities.

ACC provides cover and entitlements for people who have suffered a personal injury, including physical, social and vocational rehabilitation. ACC clients requiring mid to longer term support have an individual rehabilitation plan. ACC also operates the National Serious Injury Service (NSIS), a specialist unit that works exclusively with people who have significant impairments or lasting disabilities following an accident. Part of the purpose of NSIS is to improve access to programmes, services and information for people with disabilities, after focus groups with ACC clients had previously identified service gaps and barriers to participation.

Significant ACC changes since 2008 when the Disability Convention was ratified by New Zealand include:

- 1 the introduction of cover for work-related mental injury, without the requirement for an accompanying physical injury

- 2 a protocol between ACC and the Ministry of Education to ensure a consistent, collaborative approach between the agencies' services and provision of assistive technology for children and young people with a covered injury who have special education needs.

## Indicator

*State sector agencies act reasonably and fairly in providing habilitation and rehabilitation for disabled people*

## Measure

*Analysis of issues raised with and noted by the Ombudsman*

## Law, policy and practice

A number of issues have been noted by the Ombudsman in the area of habilitation and rehabilitation provided by state sector agencies for people with disabilities, as outlined below.

### Ministry of Health – home modifications policy

In 2011–12, the Ombudsman investigated a complaint about the Ministry of Health's decision to decline retrospective funding for housing modifications. The following issues were identified:

- 1 The entitlement to housing modification assistance, as an element of disability support services, should be recognised in legislation.

- 2 Expenses for housing modification should be reimbursed regardless of whether modifications are made before or after a funding application. To insist on approval in advance is unreasonable, in that it unduly prefers administrative convenience over recognition of need.

The Ministry of Health has now revised its policy to recognise that, in some circumstances and with appropriate safeguards, reimbursement may be obtained retrospectively. However, the Ministry does not support the entitlement to housing modification assistance being set out in legislation, given that services are based on need and because of issues related to the administration of other health and disability services and current fiscal constraints.

### ACC – functional capacity evaluations

Following an Ombudsman's intervention, ACC recently amended its process for claimants undergoing a "functional capacity evaluation" (FCE) to assist with their rehabilitation. A FCE is a structured process of observing and measuring an individual performing tasks in order to identify performance deficits and safety issues, functional abilities, strengths, skills and capacity.

As a result of safety concerns, ACC has put certain measures in place, including consulting with a claimant's GP or health professional before requesting a FCE, and advising claimants they may stop a FCE at any time.

## **ACC – vocational independence/ rehabilitation process**

The Ombudsman has dealt informally with a number of complaints against ACC, raising concerns about the occupations identified as suitable for a particular claimant when providing vocational rehabilitation.

As part of the vocational rehabilitation process, an assessor identifies a number of occupations that may be suitable for the claimant. It is then determined whether the claimant can medically undertake this occupation. However, there appears to be no assessment of the economic realities of a claimant being able to obtain employment. The effect of this is that a claimant may be assessed as medically able to undertake a specific job and as a result they may lose their entitlement to weekly compensation, when there is in fact very little chance of them finding employment in the identified area.

## **ACC – requirement to provide medical certificates and attend specialist assessments**

The Ombudsman has received several complaints about ACC's requirement for claimants to regularly provide medical certificates and attend specialist assessments, when that may not be necessary or appropriate as in some cases of long-term injury.

### **Case study: Requirement to provide medical certificates**

A complaint was received by the Ombudsman from a 32 year old claimant with long term permanent injuries. The complainant received 80 per cent burns in an accident when five years old. The question was whether ACC's requirement for the claimant to regularly provide medical certificates and attend specialist assessments was reasonable in the circumstances. This complaint was resolved as a result of the Ombudsman's intervention.

## **ACC – costs of review**

The Ombudsman has received a number of complaints about the level of reimbursement for legal costs when claimants review an ACC decision.

The level of reimbursement provided is set out in regulation, and is usually substantially below the legal costs a claimant incurs for legal representation. ACC reviews can involve complex legal arguments and claimants can be disadvantaged if they cannot afford legal representation and have to represent themselves. Sufficient reimbursement should be available to ACC claimants to assist them to fully utilise their rights of review.

## Recommendations

- R27 That the Ministry of Health considers statutory recognition of the entitlement to home modification assistance as an element of disability support services.
- R28 That ACC reviews the vocational rehabilitation/independence assessment process, particularly in light of the employment opportunities that are realistically available in the current economic climate.
- R29 That ACC reviews current requirements for the regular provision of medical certificates and attendance at specialist assessment by persons with long-term injuries.
- R30 That the Ministry of Business, Innovation and Employment considers updating the level of reimbursement for ACC review costs set out in regulation.

## Indicator

*Disabled people receive the same standard of health and disability services as others*

## Measure

*Life limiting unmet needs decrease*

## Law, policy and practice

Many disabled people report their disability-related needs are not being met. The National Census and Disability Survey scheduled for 2011 was cancelled because of the impact of the Canterbury earthquakes. The next Census and Disability Survey will be in 2013.

The most recent data is from the 2006 Census and Survey and there is no comparative information available.

### Unmet needs – care

In the post-Census disability survey in 2006, parents or caregivers of disabled children had unmet needs for help with caring for their disabled child in two main areas – respite or carer support, and household support.

The parents of 15,500 disabled children (seven per cent of all disabled children) need respite care or carer support, and 43 per cent of those parents (an estimated 6600 people) said they had unmet needs.

In relation to household support, parents or carers for 3200 children needed help with repairs to, or maintenance of the home.

For all three groups, the reasons given for this unmet need were the same: it cost too much, they could not afford it, or they did not know free help was available or how to get it.

## **Unmet needs – transport and travel**

Disabled people can have difficulty accessing transport for a number of reasons. They may be unable to get to/use public transport (buses might not be accessible), or unable to access/use private transport.

In relation to transport costs, an average five per cent of disabled adults (27,100) had unmet needs, as did seven per cent (5900) of disabled children. The need is higher for disabled Māori (10 per cent), Pacific peoples (10 per cent) and Asian/other (eight per cent). The unmet need is highest for those who have had an accident (nine per cent), followed by illness/disease and disability from birth (both six per cent).

Of those who said they had unmet needs, 65 per cent of adults and 50 per cent of children did not know how or where to apply for financial help. Twenty nine per cent of adults and 55 per cent of the children had been turned down for assistance.

## **Unmet needs – employment**

Although unmet needs in employment are relatively few, this may not be accurate, as there are a large number of disabled people seeking work who could encounter a similar pattern of unmet needs once at work.

The largest area of unmet needs for disabled people in employment is in other

equipment and services (75 per cent), changes to work area or equipment (52 per cent), ACC funded vocational rehabilitation (49 per cent), and a person to help (38 per cent).

The three biggest areas of unmet needs for Māori disabled people are health, equipment and transport costs.

Data from the 2006 Census did not include unmet needs on housing, health and education, which was provided in the earlier Census.

## **Indicator**

*Disabled people receive the same standard of health and disability services as others*

## **Measure**

*Analysis of complaints to the Health and Disability Commissioner about disability services*

## **Law, policy and practice**

The core role of the Health and Disability Commissioner (HDC) is to promote and enforce the rights and responsibilities contained in the Code of Health and Disability Services Consumer Rights. The Code contains 10 key rights, including the right to: freedom from discrimination, coercion, harassment and exploitation; services of an appropriate standard; to be treated with respect; and to make informed choices and give informed consent.<sup>61</sup>

Over the past few years the Health and Disability Commissioner (HDC) has made considerable efforts to ensure the Code and services offered by the office are widely known to disabled people, including:

- 1 the appointment of a Deputy Commissioner with responsibility for disability
- 2 the appointment of a Consumer Advisory Group including four representatives of the disability community, to advise on policies and procedures and programmes
- 3 making the Code of Rights available in a number of languages and formats, including Easy Read, NZSL and a DVD designed to assist people in residential homes
- 4 health passport being implemented in four District Health Boards
- 5 developing a disability section on the HDC website.
- 6 visiting all residential homes each year, including those for disabled people.

The monitoring mechanism commends the efforts made by the HDC in this area. These efforts have resulted in a widespread knowledge of the Code of Rights and the rights it protects.

Over the past three years complaints related to disability services has remained

steady at approximately seven per cent of HDC complaints and 16–17 per cent of advocacy complaints. Disability related complaints have most commonly involved:

- 1 rest home care
- 2 residential care services
- 3 assessment services
- 4 specialist equipment services
- 5 home care services.

The top five issues people complain about are:

- 1 communication with family
- 2 special needs not accommodated
- 3 attitude or manner issues
- 4 inadequate treatment
- 5 inadequate care.

# Article 27

## Work and employment

The Government has announced it is reforming the welfare system to provide a more work-based approach. At the time of the announcement there were 58,000 people on a sickness benefit and 83,000 people on an invalid's benefit. It is intended that all those on the sickness benefit will transition to the Jobseeker Support benefit, while those on the invalid's benefit will transition to the Supported Living Payment.

Disabled people in New Zealand find attaining and retaining a decent job one of their most significant challenges. The monitoring mechanism aims to ensure the government's reform of welfare will:

- 1 provide adequate opportunities for disabled people to access decent work that makes full use of their talents and qualifications
- 2 support those on Supported Living Payments to undertake work and education and training at an appropriate level
- 3 provide assessment to preserve the rights of disabled people and maximise their potential.

### Disability Convention

The Disability Convention provides that disabled people have the right to earn a living through work that they freely choose and in workplaces that are accessible and inclusive. Governments should promote this right to work by:

- 1 ensuring disabled people are protected against discrimination in employment and have access to reasonable accommodation
- 2 ensuring disabled people enjoy fair working conditions, the same union rights as others and protection against harassment
- 3 employing disabled people in the public sector
- 4 promoting career opportunities for disabled people, including through access to training opportunities
- 5 promoting self-employment and employment in the private sector
- 6 supporting disabled people to stay in and get back into work.

## Indicator

*Minimum Wage Exemption Permits are used appropriately and do not diminish disabled people's rights to open employment*

## Measure

*Numbers of people with Minimum Wage Exemption Permits*

## Law, policy and practice

Disabled people have the same access to work-related legal safeguards as all other workers, including trade union rights, holidays, health and safety, and protection against harassment and unfair dismissal. Wage rates, including minimum wage protections, make no distinctions for disabled people. Under New Zealand's former sheltered employment system, people working in sheltered employment were not covered by minimum wage and holidays protections.

The Minimum Wage Amendment Act was enacted after the repeal of the Disabled Persons Employment Promotions Act. This means sheltered workshops have to pay everyone at least the minimum wage, unless a worker has an exemption. Minimum Wage Exemption Permits are intended for workers who are limited in carrying out the requirements of their work and where any reasonable accommodation has been considered. Department of Labour Inspectors use wage assessment tools to assess eligibility for a Minimum Wage

Exemption Permit. The assessment tool must look at both productivity and individual competencies, be transparent, and clearly show how the assessment is linked to wage rates and how the wage rate is calculated.

**Table 10: Volume of Minimum Wage Exemption Permits issued in the last five financial years**

Financial year	Number of permits issued
2007–08	1188
2008–09	1344
2009–10	1200
2010–11	1300
2011–12	1052

The figures show the number of Minimum Wage Exemption Permits has remained at around the same level for the last five years. The number of people covered by minimum wage exemptions has decreased from approximately 5400 in 2001 to approximately 1000 in 2011–12.

There has been no significant evaluation of the Minimum Wage Exemption Permits since the system began. With reported wage rates as low as under \$1.00 per hour there is concern about whether the system is protecting workers' rights, is administered consistently across the country and if there are more appropriate ways for people to take part in the workforce. For example, supported employment systems have

increased since 2007 and may provide better access to the workforce.

Equal Employment Opportunities are covered in the Local Government Act, the State Sector Act and the Crown Entities Act. The State Sector Act defines an equal employment opportunity programme as one that is aimed specifically at the identification and elimination of all aspects of policies, procedures and other institutional barriers that cause or perpetuate inequality.<sup>62</sup>

The last New Zealand Household Disability Survey (disability survey) in 2006 indicated disabled people were more likely to be unemployed than their non-disabled counterparts.

An analysis of the three disability surveys to date, indicates the employment status

of disabled people has hardly improved in the decade 1996 to 2006. In all surveys disabled people aged 16–64 were more than twice as likely as non-disabled people to not be in the labour force, and disabled people aged 15–64 were considerably less likely to be employed.<sup>63</sup>

Initiatives such as the Government’s reform of welfare require more timely statistics to track the results of initiatives as they are taken up. Other regular employment data, such as the *Household Labour Force Survey* (quarterly), the *Income Survey* (annual) or the State Services Commission’s *Human Resources Capability Survey* (annual) do not provide data for disabled people. Simply tracking the numbers on benefits will not necessarily indicate that those no longer on benefits are now in paid work, or the nature of the work.

**Table 11: Unemployment rate 2006, disability survey**

	Disabled	Non-disabled
Male	5 per cent	3 per cent
Female	9 per cent	5 per cent

**Table 12: Employed adults aged 15-64**

Year	Disabled	Non-disabled
1996	53 per cent	72 per cent
2001	57 per cent	71 per cent
2006	59 per cent	76 per cent

## United Nations guidance

The United Nations Committee on Economic, Social and Cultural Rights has recently examined New Zealand's third periodic report on the implementation of the International Covenant on Economic, Social and Cultural Rights. The committee's report includes the recommendation that the New Zealand Government:

- 1 introduce incentives and other special measures to promote the employment of persons with disabilities
- 2 explicitly regard denial of reasonable accommodation as a form of discrimination.

## Key issues and recommendations

The Government's welfare reforms could result in a significant number of disabled people being supported into employment, education and training. To monitor the results of the reforms there is an urgent need for more frequent, reliable data on employment, unemployment and workforce participation for disabled people.

The monitoring mechanism thinks it is time to review the purpose and operation of the Minimum Wage Exemption Permits to ensure this is still the best approach to ensuring the employment rights of disabled people are realised.

## Recommendations

R31 That the Ministry of Business, Innovation and Employment provides regular statistics on the employment, unemployment and workforce participation of disabled people

R32 That the Ministry of Business, Innovation and Employment conducts a full review of the Minimum Wage Exemption Permits system by 2014, to ensure it reflects the best approach to employment rights of disabled people.

## Article 29

# Participation in political and public life

The right to vote and participate in political and public life is integral to a strong and functioning democracy. The principle of “nothing about us without us” can only be achieved if disabled people have the same ability to participate in political and public life as other citizens.

### Disability Convention

The Disability Convention states disabled people have the same political rights and should be able to enjoy them in the same way as others. Governments must ensure disabled people are able to:

- 1 access polling stations
- 2 access material about elections and polling stations
- 3 vote in secret or with whatever help is needed from another person
- 4 be elected to public office
- 5 form and join disabled people’s organisations.

### Indicator

*Independent and secret voting is available at local authority and central government elections*

### Measure

*Independent and secret voting is available at the next central government elections in 2014*

### Law, policy and practice

The New Zealand Bill of Rights Act provides that every New Zealand citizen over the age of 18 years has the right to vote at parliamentary elections, which shall be by secret ballot.<sup>64</sup> Despite this being technologically possible, it has not been fully implemented. In early 2012 the Electoral Commission sought guidance from the Government about whether funding would be available to trial internet and perhaps telephone voting for a limited group of New Zealanders (for example, overseas and disabled voters) for the 2014 election. The Commission has been advised in the current financial situation this cannot be given a priority.<sup>65</sup>

The Electoral Act and associated regulations have various provisions that assist disabled people to take part in elections, including assistance with completing enrolment, providing accessible voting places, providing voting facilities in hospitals and similar institutions, and providing electoral staff or allowing a nominated person to assist voters.

For the last three general elections, the electoral authorities have developed a disability action plan with the involvement of disability organisations. This has resulted in a number of initiatives and resources; voting information in Easy Read and NZSL, captions on television advertisements, information on accessible polling places, information in accessible formats, a plain English guide to voting, disability awareness training for returning officers and election day staff, table top voting at every polling place, and NZSL interpreters at some polling places. For the 2012 review of MMP, information about the review was produced in NZSL and a number of submissions were received in NZSL.

The Electoral Commission conducts a review of each election, including a survey of voters and non-voters with a disability. The survey, following the 2011 general election, indicates a high level of awareness and approval of the measures the Electoral Commission has undertaken to make the voting process more accessible.<sup>66</sup>

The monitoring mechanism concludes that the Electoral Commission has done an excellent job of ensuring disabled people have the same access to the electoral process as other voters.

## Indicator

*Disabled people are able to take part in elections for public office and serve as members if elected*



© APN / M Mitchell

Mojo Mathers

## Measure

*Processes and resources are in place to enable disabled members of Parliament to be effective representatives*

## Law, policy and practice

In December 2011, a profoundly Deaf person, 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 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.

## Indicator

- 1 *Disabled people are able to take part in the election process on the same basis as others*
- 2 *Disabled people are able to take part in the election process on the same basis as others*

## Measure

- 1 *All party broadcasts on television are signed in NZSL and captioned*
- 2 *Political parties provide their election material in accessible formats*

Evaluations by the Convention Coalition of the main political parties’ websites before

elections showed inadequate attention to accessibility standards, which they have no obligation to meet. Most political party meetings do not have sign language interpreters, even where they are available, and televised party political broadcasts are generally not captioned or signed.

Since the 2011 election, some of the Green Party’s policies and campaign materials have been made available in NZSL on its website.

Potential political candidates who are blind or Deaf are not provided with any funding for interpreters or production of information in alternative formats.

Information about local government elections and candidate information is particularly inaccessible, with no information available in alternative formats. Local government has a considerable impact on disabled people’s lives, through transport provision, community facilities and community life. Local government elections are not organised centrally and some have different electoral systems. Wellington City Council made some arrangements to help disabled people vote before the last local government elections.

## Key issues and recommendations

Within its current mandate, the Electoral Commission does an excellent job of ensuring all aspects of the electoral process are accessible to disabled people. The monitoring mechanism would like the ability

for all electors to vote in an independent and secret manner at the next general election. The technology and systems exist for this to happen.

The issue of accommodating the rights of disabled people who are democratically elected to public bodies needs urgent attention. It is not acceptable for each elected official to have to advocate for the same rights that other elected members take for granted.

## Recommendations

R33 That the Ministry of Justice ensure that the next general election in 2014 is conducted in a way that allows independent and secret voting for all eligible voters

R34 That the Department of Internal Affairs works with local government to ensure that all local body elections in 2013 are conducted in a way that allows independent and secret voting for all eligible voters.

R35 That funding is made available for party political broadcasts for the 2014 election to be available in New Zealand Sign Language and captioned.

R36 That mechanisms are established to ensure that all democratically elected members to government boards and public authorities have access to reasonable accommodation to allow them to carry out their functions.

## Article 30

# Participation in cultural life, recreation, leisure and sport

Countries are to promote participation in cultural life, recreation, leisure and sport by ensuring provision of television programmes, films, theatre and cultural material in accessible formats, by making theatres, museums, cinemas and libraries accessible, and by guaranteeing that persons with disabilities have the opportunity to develop and utilise their creative potential not only for their own benefit, but also for the enrichment of society. Countries are to ensure the participation of disabled people in mainstream and disability-specific sports.

### Disability Convention

The Disability Convention states that:

- 1 disabled people have the right to access books, plays, films and television in accessible formats
- 2 disabled people have the right to access libraries, cinemas, theatres, museums and other places of historical or cultural interest
- 3 disabled people have the right to develop and use their creative, artistic and intellectual potential

- 4 governments should ensure laws protecting the copyright of books and music do not stop disabled people enjoying real access
- 5 disabled people's different cultures and languages must be respected and supported, including Deaf people's language and culture
- 6 governments should do everything to support disabled people to take part in mainstream sport and disability specific sport
- 7 governments should do everything they can to make sure disabled children can take part in play, leisure and sporting activities, in and out of school, on an equal basis as other children.

### Indicators

- 1 *Free-to-air and pay television is captioned*
- 2 *Free-to-air television is audio described*

### Measures

- 1 *Proportion of free-to-air and pay television that is captioned*
- 2 *Proportion of free-to-air television that is audio described*

## Law, policy and practice

There are limited opportunities for blind, visually impaired, Deaf and hearing impaired people to consume television, cinema, DVDs, and the Internet in accessible formats.

Since 2007, the Commission has received 19 complaints and enquiries in relation to captioning issues for Deaf and hearing impaired people, 12 in the last year:

- 1 13 about lack of captioning on television
- 2 5 about captioning on DVDs
- 3 3 about captioning on internet broadcasts
- 4 1 about the lack of caption-enabled televisions in hotels.

The Broadcasting Act establishes NZ on Air as the independent government funding agency. Its functions include reflecting and developing New Zealand identity and culture through broadcasting, including television, radio and online audio-visual media. One of NZ on Air's functions is to ensure that a range of broadcasts is available to provide for the interests of persons with disabilities.<sup>67</sup>

In 2011, NZ on Air provided \$2.4 million for captioning and audio description services. This equals approximately 240 hours per week (from 60 hours in 2000) of captioning and 17 hours per week of audio description

(introduced in 2011). In February 2012, Sky TV announced it would provide captions on 13 channels, including TV One, TV2 and TV3, and 10 of its own channels. By November 2012, Sky has increased its captioning from 13 to 17 channels. Parliament TV, which screens live question time and debates from the House, does not caption live broadcasts.

Broadcasters and NZ on Air view costs and the lack of funding as primary barriers to making television more accessible through captioning and audio description. NZ on Air's briefing to the incoming minister in December 2011 identified captioning and audio description services as among the more pressing needs for additional funding. In other jurisdictions such as Australia, the United Kingdom, the United States of America and Canada regulations have been introduced to both control captioning quality and standards and to increase the proportion of accessible broadcasts available.

## Key issues and recommendations

The number of people with hearing and sight impairments is likely to increase significantly in New Zealand, given the ageing population. The way people consume broadcasting programmes is also changing rapidly. Accessible services are not necessarily keeping up with people's needs. Programmes screened with captions on television are not available with captions on demand online.

There is a need for a comprehensive approach to the accessibility of broadcasting that is not currently in evidence.

## Recommendations

R37 That the Ministry of Culture and Heritage develop an industry-wide voluntary code of practice for broadcasting accessibility in consultation with broadcasters and consumers, taking into account international good practice.

R38 That NZ on Air develop a comprehensive policy on the accessibility of programmes that it funds or supports, in cooperation with broadcasters and consumers, to clarify accessibility objectives and targets.

## Indicator

*Live theatre has audio description*

## Measure

*Number of live theatre performances that are audio described*

Audio description is additional narration of television, cinema or live performance. A narrator describes the visual aspects of the production or event to blind or vision impaired audience members during the gaps in dialogue.

Audio description has become available in New Zealand for live theatre only. It has been an inconsistent introduction, with

provision in some main centres only. In the 2011 and 2012 calendar years there have been 14 audio described theatre performances of which six were in Auckland, three in Wellington and five in Dunedin. As there is no national funding stream for audio description, there is also no method for confirming the total number of such performances.

Funding is inconsistent and comes from a variety of sources, with no consensus on who should provide it.

## Indicator

*Disabled people have the same access to sport and recreation clubs and activities*

## Measure

*Sport New Zealand invests in organisations that deliver opportunities to disabled people both at the community and elite sports levels*

Under the Sport and Recreation Act, Sport NZ must encourage participation in sport and recreation by disabled people, and recognise the rehabilitative role of participation. Sport NZ invests in the Halberg Disability Sports Foundation, Paralympics New Zealand (for elite sport) and Special Olympics New Zealand to deliver opportunities for sport and recreation to disabled people.

## Article 31

# Statistics and data collection

The Disability Convention requires that information be collected, disaggregated as appropriate, and used to help implement the Disability Convention, and to identify and address barriers faced by disabled people exercise their rights.

A fundamental barrier to any assessment of the rights of disabled people in New Zealand is the paucity of demographic and analytical data. The position of disabled people in relation to key social and economic outcomes is most comprehensively measured on a national basis once every five years, in the New Zealand Household Disability Survey (the Disability Survey). Some information is also collected in other surveys such as the New Zealand Health Survey.

A common theme in the monitoring of each article is a lack of statistics, and particularly comparable data that measures the outcomes for disabled people and non-disabled people in key areas. Without these, it is difficult for the monitoring mechanism to comprehensively report on how well New Zealand is implementing the Disability Convention:

- 1 There are many different understandings and definitions of disability across government departments which compound the

challenge of building a whole of life evidence based picture.

- 2 Disability is a core part of necessary demographic information, alongside gender, ethnicity and age, that needs to be collected as a matter of course. Sample sizes need to be statistically relevant. Different sectors have developed different assessment criteria and tools. Work is required across government to simplify and combine processes based on a shared understanding.

The New Zealand Census and Disability Survey is highly regarded internationally but dissemination of the disability-related information is limited. Attaining useful additional information to what is publically available is difficult. A United Nations treaty committee has recommended that New Zealand improve on reporting not only on work programmes, but also on results. Statistics New Zealand is working on an output plan for the 2013 Disability Survey. The monitoring mechanism will seek input into this output plan.

## Recommendation

R39 That Statistics New Zealand develop a programme of work to ensure that key outcomes data for all New Zealanders are collected in a way that makes it possible to compare the outcomes for disabled and non-disabled people. The programme is to be developed in collaboration with the monitoring mechanism and Disabled People's Organisations and will include a common understanding of disability.

## Indicator

*A full range of social statistics is available for monitoring purposes*

## Measures

- 1 *A review of the Household Labour Force Survey contains more disability specific statistics*
- 2 *The disability survey, to be conducted in July 2013, includes improvements in outcomes data in key social and economic areas*

## Law, policy and practice

When considering the overall human rights for all New Zealanders, the Commission rated the need for outcomes measures for disabled people's rights as one of the top 30 priorities for implementing human rights in New Zealand.<sup>68</sup>

The monitoring mechanism is constrained

in fulfilling its function of developing a comprehensive monitoring framework, by the lack of information on the achievements of the rights of disabled people. The Government has mandated that the three independent monitoring participants develop a monitoring framework as detailed in the Cabinet Paper. This will involve:

- 1 working with public and private sectors to develop indicators
- 2 identifying priority areas, drawing on existing programmes of work by DPOs, the Commission and the Office of the Ombudsmen
- 3 analysing progress of legislation, policy and practice that impact on the daily lives of disabled New Zealanders
- 4 engaging with the Government to establish a comprehensive reporting process about the Disability Convention that includes engagement with civil society, integration of public agencies and accountability for publicising reports and following up recommendations.

The United Nations Committee on Economic, Social and Cultural Rights recommends the New Zealand Government:

“collect data to monitor the enjoyment of economic, social and cultural rights by persons with

disabilities and provide information and statistical data in this respect in the next periodic report.”<sup>69</sup>

The Household Disability Survey has been redeveloped and the 2013 survey will contain improved data on social and economic outcomes. One of the key research questions of the 2013 survey is: “To what extent do the social and economic outcomes of disabled people differ from those of non-disabled people, and how do outcomes vary between different groups within the disabled population.”<sup>70</sup>

## Key issues and recommendations

Statistics New Zealand is reviewing the scope and purpose of the General Social Survey and Household Labour Force Survey. The Commission has been involved in preliminary discussions about how these surveys may be developed to better collect human rights outcome information. The Ministry of Education has indicated it is considering ways to collect disabled students’ learning achievement information.

## Recommendation

That the development of a comprehensive range of social statistics comparing rights and achievements of disabled with non-disabled people begins with:

R40 That the Ministry of Education develop achievement statistics for disabled students across all compulsory schooling.

R41 That Statistics New Zealand include the measurement of disabled people’s experiences in the current reviews of the *General Social Survey and the Household Labour Force Survey*.

## Article 32

### International cooperation

New Zealand's acknowledged leadership in the development of the Disability Convention has continued to open doors in fields beyond disability. However, since New Zealand's ratification of the Disability Convention, New Zealand's international presence has declined. Australia has recently picked up the international development leadership role in the Pacific. New Zealand could investigate a more collaborative approach to development with Australia. Other countries with similar legal systems to New Zealand's, including Australia, have ratified the Optional Protocol to the Disability Convention and there is an expectation from inside New Zealand and abroad, for New Zealand to do this as well.

Other commitments New Zealand has made or recommendations of United Nations treaty bodies should be implemented.

An emerging international theme is the lack of any reference to disabled people in the current millennium development goals, due to expire in 2015. There is a need to include disabled people in any post 2015 development framework. Disability is a development issue not only between the global north and global south, but within every nation. There is an expectation from other nations that New Zealand will play a

leading role in ensuring disability is on the post-2015 development agenda because of its key role in the development of this convention.

### Recommendations

- R42 That the Ministry of Health develops and implements a plan to improve the health and wellbeing of people with intellectual/learning disability as previously communicated to the United Nations.
- R43 That the Ministry of Justice implements recommendations from the United Nations treaty bodies related to disabled people, including recommendations on employment and adequate standard of living.
- R44 That the Government ratifies the Optional Protocol to the Disability Convention.

# Appendix 1

## Recommendations

### Key Recommendations

The monitoring mechanism recommends that the Ministerial Committee on Disability Issues ensures that the following are completed by the end of 2014:

KR1 The Office for Disability Issues, as the Disability Convention focal point, leads a whole of government programme to ensure Disabled People's Organisations, disabled people, children and families are involved in high level decision-making, including through the development of active capacity building programmes.

KR2 Statistics New Zealand develops a programme of work to ensure that key outcomes data for all New Zealanders are collected in a way that makes it possible to compare the outcomes for disabled and non-disabled people. The programme is to be developed in collaboration with the monitoring mechanism and Disabled People's Organisations and include a common understanding of disability.

KR3 Accessibility and universal design are integrated throughout government work as follows:

- a The Ministry of Building, Innovation and Employment ensures an updated regulatory framework and incentives are in place for the built environment, including housing.
  - b The Canterbury Earthquake Recovery Authority and Christchurch City Council ensures Christchurch is on track to fulfilling the vision of the world's most accessible city.
  - c All government agencies ensure their own and government funded initiatives, for which they are responsible, comply with the Government Web Standards for accessibility and other accessible information and communication requirements.
- KR4 A board is established including the Ministries of Health, Social Development, and Education, Disabled People's Organisations, disabled people and their families. The board would align international best practice in disability support services with New Zealand's Better Public Services outcomes and be directed at:
- a Implementing the recommendations from the Social Services Select Committee inquiry into disability support services.

- b Supporting disabled people living independently and their inclusion in the community.
  - c Enabling disabled children to get the best start in life through a focus on ensuring early support for families and children.
  - d Supporting diversity across all cultures.
  - e Fulfilling Treaty of Waitangi obligations and ensuring disabled Māori and whānau are included in te Ao Māori.
  - f A framework and resources for supported decision-making is developed. This would include reviewing the legislative framework, developing practical tools and issuing guidance on best practice.
  - g Government delivers on all of its 10 Key Result Areas for Better Public Services for disabled people.
- KR5 The Department of Corrections and the Ministry of Health work together, in consultation with the monitoring mechanism, to ensure reasonable accommodation for prisoners with disabilities, and best practice in the detention and treatment of people with an intellectual/learning disability or a mental illness.
- KR6 The Ministry of Education meets its inclusive school targets, including through:
- a Establishing an enforceable right to inclusive education
  - b Implementing whole of school anti-bullying programmes that ensure that schools are safe and nurturing places for disabled students
  - c Establishing initiatives that promote the value of difference and affirm the identity of disabled students.
- KR7 New Zealand renews its commitment to international leadership in disability rights promotion, and implements international commitments so that:
- a The Ministry of Health develops and implements a plan to improve the health and wellbeing of people with intellectual/learning disability as previously communicated to the United Nations.
  - b The Ministry of Justice implements recommendations from the United Nations treaty bodies related to disabled people, including recommendations on employment and an adequate standard of living.
  - c The Government ratifies the Optional Protocol to the Disability Convention.

## Recommendations

### Article 4 General obligations

R1 The Office for Disability Issues, as the Disability Convention focal point, leads a whole of government programme to ensure Disabled People's Organisations, disabled people, children and families are involved in high level decision-making, including through the development of active capacity building programmes.

### Article 5

#### Equality and non-discrimination

R2 That the Human Rights Commission approach the Ministry of Justice to develop guidance on the requirements and application of reasonable accommodation and the protections under the New Zealand Bill of Rights Act, in consultation with disabled people.

### Article 6

#### Women with disabilities

R3 That all government funded research on aspects of women's lives includes a focus on the experiences of disabled women.

### Article 8

#### Awareness-raising

R4 That the Ministry of Social Development conducts a survey of all those currently on the nominations service database to find out how many people have been successful in appointment to boards, and the boards on which they have served or are serving.

### Article 9

#### Accessibility

R5 That accessibility and universal design is embedded in the building process from the design phase through to completion.

R6 That NZS 4121:2001 be reviewed by 2014.

R7 That NZS 4121:2001 be made mandatory, once it is reviewed to cover all aspects of the built environment, including publicly funded housing.

R8 That all new housing stock is designed and built using Lifetime Design Principles.

R9 That the Ministry of Transport develops national accessibility design standards for all aspects of public land transport.

## **Article 11**

### **Situations of risk and humanitarian emergencies**

R10 That all state sector agencies develop internal guidelines for communication with disabled people, including making information available in accessible formats.

R11 That the Earthquake Commission initiates a review of the three month time limit set out in legislation for lodging a claim.

## **Articles 14 and 15**

### **Liberty and security of the person and Freedom from torture or cruel, inhuman or degrading treatment or punishment**

R12 That the Department of Corrections takes steps to identify any gaps in the current care and facilities provided for prisoners with physical disabilities.

R13 That the Department of Corrections develops a nationally consistent policy regarding the level of payment by a prisoner that should be required before prostheses are purchased or prosthetic work is undertaken.

R14 That the Department of Corrections develops a national policy regarding the healthcare management of frail and aged prisoners.

R15 That the Ministry of Justice and the Ministry of Health review arrangements for the provision of appropriate detention facilities, where needed, for people with an intellectual/learning disability who have not committed a criminal offence.

R16 That all service providers ensure appropriate consent is given for the detention of disabled people, particularly when treatment includes seclusion and restraint.

## **Article 16**

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

R17 That all government funded domestic and anti-violence programmes include elements on disabled people, and that support programmes receive sustainable funding.

## **Article 19**

### **Living independently and being included in the community**

R18 That NZS 4121:2001 be reviewed by 2014.

R19 That all new housing stock be designed and built using Lifetime Design Principles.

## **Article 21**

### **Freedom of expression and opinion, and access to information**

- R20 That all government agencies ensure their own and government funded initiatives, for which they are responsible, comply with the Government Web Standards for accessibility and other accessible information and communication requirements.
- R21 That the Government Web Standards become mandatory for all territorial authorities, District Health Boards, other Crown entities, and organisations receiving substantial government funding.

## **Article 23**

### **Respect for home and family**

- R22 That the Ministry of Justice reviews the Adoption Act, with particular consideration given to whether section 8 complies with the Disability Convention.

## **Article 24**

### **Education**

- R23 That the Ministry of Education establishes an enforceable right to inclusive education.
- R24 That the Ministry of Education implements whole of school anti-bullying programmes that ensure that

schools are safe and nurturing places for disabled students

- R25 That the Ministry of Education establish initiatives that promote the value of difference and affirm the identity of disabled students.

## **Article 25**

### **Health**

- R26 That the Ministry of Health work with people with intellectual/learning disabilities and their organisations to establish a comprehensive health monitoring and improvement programme.

## **Article 26**

### **Habilitation and rehabilitation**

- R27 That the Ministry of Health considers statutory recognition of the entitlement to home modification assistance as an element of disability support services.
- R28 That ACC reviews the vocational rehabilitation/independence assessment process, particularly in light of the employment opportunities that are realistically available in the current economic climate.
- R29 That ACC reviews current requirements for the regular provision of medical certificates and attendance at specialist assessment by persons with long-term injuries.

R30 That the Ministry of Business, Innovation and Employment considers updating the level of reimbursement for ACC review costs set out in regulation.

## **Article 27**

### **Work and employment**

R31 That the Ministry of Business, Innovation and Employment provides regular statistics on the employment, unemployment and workforce participation of disabled people.

R32 That the Ministry of Business, Innovation and Employment conducts a full review of the Minimum Wage Exemption Permits system by 2014, to ensure it reflects the best approach to employment rights of disabled people.

## **Article 29**

### **Participation in political and public life**

R33 That the Ministry of Justice ensures that the next general election in 2014 is conducted in a way that allows independent and secret voting for all eligible voters.

R34 That the Department of Internal Affairs works with local government to ensure that all local body elections in 2013 are conducted in a way that allows independent and secret voting for all eligible voters.

R35 R35 That funding is made available for party political broadcasts for the 2014 election to be available in New Zealand Sign Language and captioned.

R36 That mechanisms to ensure that all democratically elected members to government boards and public authorities have access to reasonable accommodation to allow them to carry out their functions.

## **Article 30**

### **Participation in cultural life, recreation, leisure and sport**

R37 That the Ministry of Culture and Heritage develop an industry-wide voluntary code of practice for broadcasting accessibility in consultation with broadcasters and consumers, taking into account international good practice.

R38 That NZ on Air develop a comprehensive policy on the accessibility of programmes that it funds or supports, in cooperation with broadcasters and consumers, to clarify accessibility objectives and targets.

## **Article 31**

### **Statistics and data collection**

R39 Statistics New Zealand develops a programme of work to ensure that key outcomes data for all New Zealanders are collected in a way that makes it possible to compare the outcomes for disabled and non-disabled people. The programme is to be developed in collaboration with the monitoring mechanism and Disabled People's Organisations and include a common understanding of disability.

R40 That the Ministry of Education develop achievement statistics for disabled students across all compulsory schooling.

R41 That Statistics New Zealand include the measurement of disabled people's experiences in the current reviews of the General Social Survey and the Household Labour Force Survey.

## **Article 32**

### **International cooperation**

R42 That the Ministry of Health develops and implements a plan to improve the health and wellbeing of people with intellectual/learning disability as previously communicated to the United Nations.

R43 That the Ministry of Justice implements recommendations from the United Nations treaty bodies related to disabled people, including recommendations on employment and adequate standard of living.

R44 That the Government ratifies the Optional Protocol to the Disability Convention.

## Appendix 2

# A beginner's guide to disability: Five key messages everyone needs to know

### **Impairment is natural: "Who we are is OK."**

We are part of the natural diversity of humanity. Just as there are women and men, young people and old, people of different ethnicities, there are people born with or who have acquired physical, mental, intellectual, sensory, and other impairments. We all deserve respect.

### **Capability: "We can."**

We have good lives, and given the opportunity, we are capable of, and achieve, small everyday things and great successes, both despite and because of our impairments. To have the same opportunity may require different support.

### **Leadership: "Nothing about us without us."**

We know our own experience and what works for us and how to apply wider learnings to our lives. We must lead in our lives and in the decisions that affect us, from the personal to the global. Listen to us. Support us.

### **Universality: "We are your family."**

We belong in your school, your workplace, your community, we are invisible and visible. We are children, adults, and older people. We are one in five. You too, are likely to temporarily experience some of our experiences, or you may either very suddenly, or over time, or as you age, become one of us. We need to learn from each other.

### **Disablement's everywhere: "Know me, before you judge me."**

By not giving us access or a fair go, by not including us, by not making reasonable adjustments so we can meet our potential and live to the full, by not reasonably removing barriers, is discrimination and a denial of our human rights. It's too common and it's everywhere. That, rather than our impairments, is what disables us.

#### **Universal design**

Universal design is used in the design of products and environments so they can be used by everyone, and will not have to be adapted to suit specific needs.

## Endnotes

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- 3 Committee on the Elimination of Discrimination against Women. *Concluding observations of the Committee on the Elimination of Discrimination against Women: New Zealand*. CEDAW/C/NZ/CO/7.
- 4 Office of the Minister for Disability Issues (May 2012) *Progress Report on the Inclusion of Disabled People in the Canterbury Recovery*. Office for Disability Issues: Wellington.
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- 6 Op Cit.
- 7 United Nations Economic and Social Council. *Concluding Observations of the Committee on Economic, Social and Cultural Rights: New Zealand*. /C.12/NZL/CO/3.
- 8 Section 118 Building Act.
- 9 Section 43(4) HRA.
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- 12 Section 176 and 177 of the Building Act.
- 13 Wrightson, Bill (October 2012) *Report on Review of Department of Building and Housing Determinations on the Building Act Requirements for Access by Persons with Disabilities*.
- 14 Section 28 Land Transport Management Act 2008.
- 15 Human Rights Commission (2005) *The Accessible Journey: Report of the Inquiry into Accessible Public Land Transport*. Auckland: Human Rights Commission.
- 16 See <http://www.nzta.govt.nz/resources/requirements-for-urban-buses/docs/requirements-for-urban-buses.pdf>. Accessed 6 August 2012.
- 17 New Zealand Transport Agency (2011) *Pedestrian Planning and Design Guide*. NZTA: Wellington.
- 18 O'Fallon, C. (2010) *Auditing Public Transport Accessibility in New Zealand*. New Zealand Transport Agency Research Report No. 417.
- 19 See <http://www.odi.govt.nz/resources/guides-and-toolkits/index.html>. Downloaded 22 November 2012.
- 20 See <http://www.getthru.govt.nz/web/GetThru.nsf/web/BOWN-7H442K?OpenDocument> Accessed 5 October 2012.
- 21 See: <http://www.odi.govt.nz/resources/guides-and-toolkits/emergency-preparedness-and-responsiveness/index.html#SymposiumondisabilityinclusiveemergencypreparednessandresponseLearningfromtheCanterburyearthquakesMay20121>.
- 22 See: [www.police.govt.nz/deaf-txt](http://www.police.govt.nz/deaf-txt).
- 23 Section 4 and Section and 7 (1) of New Zealand Sign Language Act 2006.
- 24 "Reasonable accommodation" means: "necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms".
- 25 Refer *Investigation of the Department of Corrections in relation to the provision, access and availability of prisoner health services*, 2012, <http://www.ombudsman.parliament.nz/resources-and-publications/latest-reports>.
- 26 See *National Survey of Psychiatric Morbidity in New Zealand Prisons*, Department of Corrections 1999: [http://www.corrections.govt.nz/\\_\\_data/assets/pdf\\_file/0006/176424/nationalstudy.pdf](http://www.corrections.govt.nz/__data/assets/pdf_file/0006/176424/nationalstudy.pdf)

- and *Services for People with Mental Illness in the Justice System*, Ministry of Health, 2001: [http://www.moh.govt.nz/notebook/nbbooks.nsf/0/f70efe7760cb2804cc256a14007fa8e9/\\$FILE/forensicreviewfindings.pdf](http://www.moh.govt.nz/notebook/nbbooks.nsf/0/f70efe7760cb2804cc256a14007fa8e9/$FILE/forensicreviewfindings.pdf).
- 27 Ministry of Health (2012) *2011 Annual Report, Office of the Director of Mental Health*. p 21.
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- 42 Official information can be requested from the following state sector agencies:
- government departments and ministries;
  - local authorities;
  - crown entities;
  - state-owned enterprises;
  - district health boards;
  - tertiary education institutions;
  - school boards of trustees; and
  - Ministers of the Crown.
- 43 See section 16 Official Information Act, section 15 Local Government Official Information Act and section 42 Privacy Act, which provide that information may be made available in one or more of the following ways:
- “(a) by giving the person a reasonable opportunity to inspect the document; or
- (b) by providing the person with a copy of the document; or
- (c) by making arrangements for the person to hear or view... sounds or visual images; or
- (d) by providing the person with a written transcript of the words recorded or contained in the document; or
- (e) by giving an excerpt or summary of the contents; or
- (f) by furnishing oral information about its contents”.
- 44 <http://www.nzrelay.co.nz/How/VRS/>.
- 45 Section 8(1)(b); note that s8(5) provides that in any case where a mentally disordered person is a parent or guardian of a child in respect of whom an application for an adoption order has been made, service of notice of the application on the manager or administrator of the estate of the parent or guardian, or on the person with whom the parent or guardian resides or under whose care he is, shall (unless the court otherwise orders) be sufficient service thereof for the purposes of this section.

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