

November 30 2017

Submission from New Zealand's Independent Monitoring Mechanism to Inform the Development of the List of Issues Prior to Reporting for New Zealand's 2nd Periodic Review under the Convention on the Rights of Persons with Disabilities

An Independent Monitoring Mechanism (IMM) was designated by the New Zealand Government in 2010 to fulfil obligations under Article 33 (National implementation and monitoring) of the Convention of the Rights of Persons with Disabilities (CRPD). It is made up of the Human Rights Commission, the Office of the Ombudsman and the Disabled People's Organisations Coalition (DPOs).

DPOs are an alliance of Disabled People's Organisations that undertake activities such as research on the lives of disabled people.

The Human Rights Commission (Commission) which is part of the IMM derives its statutory mandate from the Human Rights Act 1993 ('HRA'). One of the primary functions of the Commission is to promote and protect the full and equal enjoyment of human rights by persons with disabilities. The Commission has 'A' status accreditation from the International Co-ordinating Committee of National Human Rights Institutions.

The Ombudsmen are Officers of Parliament. Each Ombudsman is appointed by the Governor-General on the recommendation of Parliament. They are responsible to Parliament and independent of the Government. The Ombudsmen investigate, review and inspect the conduct of public sector agencies and provide advice and guidance, to ensure people are treated fairly in New Zealand.

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Introduction

The Independent Monitoring Mechanism (IMM) welcomes the opportunity to provide information to the Committee to inform its development of the List of Issues Prior to Reporting (LOIPR) for New Zealand's 2nd Periodic Report under the CRPD. On 31 October 2014, the Committee issued Concluding Observations following New Zealand's first CRPD review. The New Zealand Government subsequently responded to these in June 2015. While some positive developments have occurred¹, in the opinion of the IMM, rather than the Recommendations being fully actioned, the majority of the responses have only been either partially actioned or there has been no meaningful action.

The IMM is writing to update the Committee as to what the IMM views as the significant developments and key challenges to implementing the CRPD since the Government response was issued.

This paper represents a 'snapshot' of the issues as at the time of submission. If the IMM becomes aware of any substantive changes in any of these areas or issues identified, the IMM will update the Committee prior to the review.

With that in mind, the IMM considers the most pressing issues for New Zealand to be:

- 1) **Data:** there are large gaps in disaggregated disability data in New Zealand.
- 2) **Education:** engagement with education is one of the most critical protective factors and indicators of a life course. Our education system is not fully inclusive. 42% of disabled young people aged 15-24 are not in education, training or employment.²
- 3) **Employment:** Unlocking the employment potential of people with disabilities is critical both for their independence and self-worth. 25% of disabled persons are in the labour force compared to 75% of non-disabled persons.
- 4) **Seclusion and Restraint:** seclusion and restraint is overused and not always used as a last resort as part of a suite of options.
- 5) **Access to information and communication:** disabled people still are not getting fundamental information communicated in accessible ways.
- 6) **Housing:** there is a lack of accessible housing in New Zealand in all housing sectors.

A summary of recommendations, including questions that the Committee may wish to ask and information that it may wish to request is set out below. This summary is followed by detailed

¹ The State Party would note the work that New Zealand is continuing to progressively realise the UN Convention, for example, around:

- the revision of the New Zealand Disability Strategy,
- the transformation of the Disability Support System, and
- the use of the Washington Short Set of Disability Questions in the 2018 Census.

² <https://www.stats.govt.nz/information-releases/labour-market-statistics-september-2017-quarter>

background information and a table recording progress in implementing the Committee's 2014 recommendations.

Summary of recommendations and information that could be requested by the Committee

The IMM recommends that the following questions (and requests for information) be included in the Committee's LOIPR for New Zealand:

1. Prenatal Screening Related Discrimination – Article 5

- a.) What legal and policy requirements are in place to ensure that doctors and other medical professionals provide full information to people who receive positive prenatal test results for disabilities, particularly Down Syndrome?
- b.) Does this include a requirement to provide information regarding resources, support and advice that is available to assist children with Down Syndrome or other identified disabilities to live full and meaningful lives within the community?
- c.) What steps are taken to ensure that these requirements are complied with in all cases?
- d.) Please provide data regarding termination of pregnancies for reasons related to the detection of disabilities in utero in general, and Down Syndrome in particular.

2. Māori/Pasifika – Article 5

- a.) Please provide information about the underlying root causes which lead to the high rate of Māori with disabilities represented in poor socio-economic outcomes in comparison to other ethnic groups (and as a proportion of the population?).
- b.) Please provide information about the underlying root causes which lead to the high rate of Pasifika people with disabilities represented in poor socio-economic outcomes in comparison to other ethnic groups (and as a proportion of the population?).
- c.) With regards to ethnicities overrepresented in negative disability-related statistics, please provide information as to any specific programmes and initiatives aimed at reducing poor socio-economic outcomes for these groups (information to be disaggregated by ethnicity, gender, disability et-cetera).
- d.) Please provide information on the multiple or compounding barriers or discrimination(s) that Maori and Pasifika peoples can be subject to?

3. Women – Article 6

- a.) Please provide information as to what actions have occurred since the last reporting period to assist women with disabilities in obtaining education and employment and in combating domestic violence.

4. Children – Article 7

- a.) Please provide information about how the voices of disabled children and young people are sought and considered in relation to decisions and processes (such as compliance processes) that affect them.
- b.) Please provide information about what impacts the recently formed Ministry for Vulnerable Children has had on children and young people with disabilities in the care and protection system.
- c.) What actions are being taken to ensure that disabled children and their families receive services that are well co-ordinated across the social sector?

5. Historic abuse – Article 7

- a.) In regard to the Ministry of Social Development's processes for redressing historic abuse in state care, please provide information on the progress in resolution of the complaints made in these processes and advise of any other outstanding issues.
- b.) What steps are the Government taking to conduct prompt, impartial and thorough investigations into all allegations of ill-treatment of disabled people in State care – including healthcare institutions?
- c.) Does the Government accept that systemic abuse of disabled people took place? What steps has the Government taken to fully understand and publicly acknowledge this?
- d.) Did the Government act on all the recommendations made by Judge Henwood in her final report of the '*Some Memories Never Fade—Confidential Listening and Advice Service 2015*'?³ If not, why not?
- e.) What response does the Government have to the conclusions and recommendations of the Donald Beasley Institute's report, '*Institutions are places of abuse: The experiences of disabled children and adults in State care.*'⁴
- f.) What are the processes the Government has in place to ensure there is no current abuse occurring for people with disabilities in State care?

6. Accessibility of government information – Article 9

- a.) Which organisations have been notified to assess and report on their conformance with the Web Accessibility Standards?⁵

³ Accessed 28 August 2017: [https://www.dia.govt.nz/diawebsite.nsf/Files/Confidential-Listening-and-Assistance/\\$file/Confidential-Listening-and-Assistance-Service-Final-Report-Some-Memories-Never-Fade.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Confidential-Listening-and-Assistance/$file/Confidential-Listening-and-Assistance-Service-Final-Report-Some-Memories-Never-Fade.pdf)

⁴ Mirfin-Veitch, B. & Conder, J. (2017). "Institutions are places of abuse": The experiences of disabled children and adults in State care. Dunedin: Donald Beasley Institute.

⁵ Accessed 29 August 2017: <https://webtoolkit.govt.nz/>

- b.) Please provide the assessment methodology and reporting mechanism communicated to organisations at the time of notification.
- c.) How many organisations have been deemed not to have fully met the Web Accessibility Standards?
- d.) How many organisations have submitted risk assessments and time-bound plans to address those areas of non-conformance?
- e.) How are such plans and risk assessments being monitored?

7. Transport – Article 9

- a.) What consultation with disabled people and their representative organisations took place before the Land Transport Amendment Bill proposed the removal of regulations for braille signage in taxis? What policy processes are there in place to monitor in an ongoing way the impact of the removal of the signage on disabled people?
- b.) How many wheelchair accessible taxis are there in New Zealand? How will government ensure that the deregulation of the taxi system does not lead to fewer wheelchair accessible taxis?
- c.) Please provide the numbers of wheelchair accessible buses in NZ in each of the last four years. By when will all public buses be wheelchair accessible?
- d.) What measures have been put in place to ensure that electronic (card) ticketing systems for public transport are accessible to disabled people, including providing information on transactions at the time of use?
- e.) What systems have been put in place to ensure that journey/travel/timetable information is available to disabled public transport users?

8. Neurodisability in the justice system – Article 13

- a.) What steps is the Government taking to collect data related to the prevalence of young people with neurodisability in the youth justice system?
- b.) What is the Government doing to ensure that all people with neurodisabilities are identified and are provided with support and services in an education or health context rather than a justice context?

9. Mental Health (Compulsory Assessment and Treatment) Act 1992

- a.) What measures are the Government taking to reduce the number of people being detained under a Compulsory Treatment Order under the Mental Health Act 1992?
- b.) How does the Government ensure that there are appropriate and safe alternatives to detention provided for people at risk of suicide?

10. Substance Addiction (Compulsory Assessment and Treatment) Bill – Article 14

- a.) Why has the Government decided to introduce further legislation to allow detention and non-consensual treatment?
- b.) Why has this Act been introduced given the UN Disability Committee's previous concerns about the compliance of the Mental Health (Compulsory Assessment and Treatment) Act 1992 with the CRPD.
- c.) What evidence does the Government have confirming the efficacy of compulsory treatment in persons who are deemed to have substance addictions?
- d.) How many people do the New Zealand Government anticipate may be subject to compulsory treatment under this Act on a yearly basis?
- e.) Can the Government provide details about new resources, funding and/or facilities that may be used to accommodate people subject to compulsory treatment under this Act?

11. Mental health services in prisons – Article 14

- a.) What steps is the Government taking to improve mental health services in prisons?
- b.) What impact is the increasing prison population, particularly for women and youth who are being housed far from home, having on the ability to provide appropriate mental health services within prisons?
- c.) Does the Department of Corrections keep statistics on the mental health of prisoners, and if so, please provide these and explain how the statistics are used for treatment and planning?
- d.) What funding does the Government provide for mental health services within prisons and the criminal justice sector generally? How is any new funding being utilised?
- e.) Does the Department of Corrections work in agreement/unison with other government agencies on the mental health needs of prisoners? If so, please provide detailed information as to what agencies, and how?

12. Seclusion and restraint – Article 14

- a.) What action is the New Zealand Government taking in respect of the general management of at-risk prisoners in New Zealand (noting that the OOTO found this was substandard and detrimental in the '*Question of Restraint*⁶ report in March 2017)?⁷

⁶ Accessed 29 August 2017: <http://www.ombudsman.parliament.nz/resources-and-publications/documents/a-question-of-restraint>

⁷ Human Rights Commission's '*Thinking Outside the Box? – A Review of Seclusion and Restraint Practices in New Zealand*' report of April 2017 <http://www.seclusionandrestraint.co.nz/>

- b.) In what circumstances are tie-down beds used in the treatment of at-risk prisoners in New Zealand, and why?
- c.) Are tie down beds and other restraints being used in prisons for behaviour modification and/or punishment purposes?
- d.) What sort of training do staff working in at-risk units receive given the complex needs of these prisoners?
- e.) Can authorities assure the Committee that chemical restraints will not be used increasingly as an alternative to seclusion or physical restraints?
- f.) What plans are in place to phase out Night Safety Orders in mental health facilities?
- g.) How are the new Ministry of Education guidelines⁸ on the restraint of children and young people being monitored? What support/education is available to schools to ensure they comply with the guidelines?
- h.) How is the Government ensuring that all schools are complying with the recent law change⁹ that prohibits the use of seclusion in schools? What is the Government doing to support schools in the use of alternatives to seclusion?

13. Integrity of the Person– Article 17

- a.) What data does the Government have about the use of the ‘Ashley Treatment’ or growth attenuation procedures by New Zealand citizens? What does the Government propose to do about people who travel overseas for these procedures and then return to New Zealand for follow up treatment?

14. Immigration refusal of residency on the grounds of not meeting an ‘acceptable standard of health’ – Article 18

- a.) In the past five years, how many people have been refused residency in New Zealand on the grounds that they did not meet an acceptable standard of health?
- b.) How many appeals have been taken and how many have been successful/unsuccessful over decisions to refuse residency on the grounds of unacceptable standard of health?
- c.) How many children born in New Zealand to non-resident parents have been refused residency on the ground of not having an acceptable standard of health?
- d.) If residency is refused on the likelihood of a child needing Ongoing Resourcing Scheme (ORS) funding, how is this likelihood established and assessed?

⁸ Accessed 30 August 2017: <https://education.govt.nz/school/student-support/special-education/behaviour-services-to-help-schools-and-students/support-for-schools-to-minimise-physical-restraint/>

⁹ Accessed 30 August 2017: http://www.legislation.govt.nz/act/public/2017/0020/latest/DLM7167908.html?search=sw_096be8ed815808b2_seclusion_25_se&p=1&sr=1

- e.) How is the figure of \$41,000 on medical costs in a five year period (deemed the test for not having an acceptable standard of health) calculated, assessed and monitored to ensure that it is not discriminatory?
- f.) What plans does the Government have to review and if necessary change those elements of immigration policy that could discriminate against disabled people?

15. Inclusive education – Article 24

- a.) What steps is the Government taking to ensure that the principles of inclusive education are built into all levels of the education system; from the legislation, to the training of teachers, to on the job support and guidance, to work planning and budgeting for the school year by School Boards?
- b.) What definition of ‘disability’ will be used in the education system to ensure that all students who need support in order to receive the best possible education receive it?
- c.) Is legislative change being considered to ensure that there is an enforceable right to inclusive education at local schools (or similar)? If not, why not?
- d.) Can the Government include a purpose statement incorporating the right to inclusive education in Part 1 of the Education Act 1989, including a CRPD-compliant definition?
- e.) How will the Government ensure inclusive education is operationalised at the Board, Principal and School level?
- f.) Can the Government develop a data strategy to accurately assess and monitor the implementation of inclusive education policies and practices and enable a social investment approach which takes account of human rights principles?
- g.) What training and support are teachers and schools being given to identify and work with children with neurodisabilities, particularly with autism and learning/communication disabilities?

16. Employment – Article 27

- a.) For the purposes of comparing outcomes for disabled people compared to non-disabled people, please provide statistical data on unemployment, underemployment and multiple employment, as well as on persons who are not currently involved in any form of education, employment or training. Please disaggregate this data by sex, age, ethnicity, disability, urban or rural area, and family status, on an annual comparative basis over the past five years.
- b.) In light of the data as per 14 (i) please provide an update on the impact of all measures taken to increase the participation of people with disabilities in employment.

17. Housing – Article 28

- a.) Please provide data (from Housing New Zealand Corporation and Ministry of Social Development and other relevant sources of data) as to:
- a. average time for people requiring disability-related modified housing
 - b. median time for people requiring disability-related modified housing
 - c. number of people requiring disability-related modified housing
 - d. proportion of people requiring disability-related modified housing
 - e. the number of housing modification grants over the past five years (with a breakdown for grants for owner-occupied homes and privately rented houses.)
 - f. the number of HNZC houses that have been built or modified for disability-related reasons over the past five years and what proportion of the HNZC housing stock has been modified?

Background information on each of the above issues is included at [Appendix 1](#). In addition, attached at [Appendix 2](#) is a table recording progress in implementing the Committee's 2014 concluding observations.

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Appendix 1. Background information

Prenatal Related Discrimination – Article 5

The development of increasingly precise screening technologies raises the possibility that Down Syndrome and other disabilities, or indeed other human characteristics, could be eliminated across the world in years to come.

While limited data about screening/termination rates is available in New Zealand, internationally screening/termination practices are at such a rate that Down Syndrome could soon be eliminated from regions of the world. Iceland, for example, has reportedly not had any Down Syndrome births for five years¹⁰ while in 2014, termination rates in Denmark were reportedly 98 percent, which according to a local survey was considered by 60 percent of Danes to be a positive development.¹¹

A disability-selective antenatal screening policy that has the purpose or effect of birth prevention of a protected minority group could be considered as raising issues of discrimination insofar as it impacts the social (and other rights) of the protected group. Practically, birth prevention of a specific group impacts on that group and the wider disability community in that it increases stigma in society, means there are fewer people with lived experience to advocate for protections and services, and adds to the notion that disability is a negative experience rather than a facet of human diversity.

When parents are presented with a positive result for Down Syndrome it is important that they receive balanced information as to the implications of having a child with a disability, to make consent informed. This should include options and information about raising a child with Down Syndrome, not just the option of termination.

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Māori/Pasifika – Article 6

Māori have a relatively high disability rate for a population with a relatively young age structure.

The 2013 Disability Survey¹² identified one in four Māori as disabled, with the most common types of impairment being those related to mobility. Disabled Māori tend to have poorer outcomes than non-disabled Māori in terms of both material well-being and quality of life, with the material disparities being the most marked:

- a.) In 2013, just over half of disabled Māori adults were participating in the labour force, but they had a relatively high unemployment rate of 17 percent.
- b.) Disabled Māori adults tended to have lower incomes than other Māori, with over two-thirds having personal annual incomes of \$30,000 or less.

¹⁰ <http://www.bbc.com/news/magazine-37500189>

¹¹ <http://cphpost.dk/news/down-syndrome-heading-for-extinction-in-denmark.html>

¹² http://www.stats.govt.nz/browse_for_stats/health/disabilities/DisabilitySurvey_HOTP2013.aspx

- c.) A quarter of disabled Māori adults said their household income was not sufficient to meet their everyday needs.
- d.) Four in ten disabled Māori adults had no formal educational qualifications – almost double the proportion of non-disabled Māori.
- e.) Over a third of disabled Māori said their health was excellent or very good, while just under a third rated their health as fair or poor.

There is even less information on Pacific people, who like Māori have higher-than-average disability rates, after adjusting for differences in ethnic population and age profiles.

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Women – Article 6

A study involving 44 participants focusing on violence against disabled people¹³ highlighted the hidden nature of much abuse directed against disabled people living in care situations akin to a family relationship within the community. In addition to the physical, emotional and sexual abuse experienced by non-disabled people, ‘locked in’ and ‘silencing’ violence is often specifically directed at disabled people. The report noted that it was reasonable to interpret the Domestic Violence Act 1995 as generally excluding people in employer/employee relationships, such as care workers, from the definition of a domestic relationship. The author continued:

*As such, it is not clear whether the Act adequately protects disabled people experiencing abuse in home-care/live-in support situations. There appears to be an uncertainty about the legal protection available to disabled people experiencing such abuse, and particularly emotional and psychological abuse.*¹⁴

The Family and Whānau Violence Legislation Bill amends the Domestic Violence Act 1995 and other legislation, including the Crimes Act 1961, to implement proposed reforms to family violence laws. At the Bill’s select committee stage, several submitters raised concerns about disabled people living in violent home care/support situations. The Bill is currently awaiting its second reading.

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¹³ *The Hidden Abuse of Disabled People Residing in the Community: An Exploratory Study*, Roguski, M (18 June 2013) <http://www.communityresearch.org.nz/research/the-hidden-abuse-of-disabled-people-residing-in-the-community-an-exploratory-study/>

¹⁴ Ibid.

Children – Article 7

Children with disabilities can be especially vulnerable to poor outcomes. We understand children with disabilities are significantly over represented in the care and protection population in State Care.¹⁵

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Historic cases of abuse – Article 7

Many New Zealanders who were placed in government institutions suffered sexual, physical and psychological abuse. Of these people, people with disabilities were overrepresented.

A recent report from the Donald Beasley Institute concluded that people with learning disability were subjected to systemic abuse in institutions, care homes, educational facilities, and foster homes in New Zealand between 1950 and 1992.¹⁶

Allegations of abuse in State care are dealt with through a variety of mechanisms. These include the:

- a.) existing social security regime.
- b.) Accident Compensation framework.
- c.) Ministry of Social Development's Historic Claims process.
- d.) Courts (to a very limited degree).

The IMM notes the Ministry of Social Development's Historic Claims processes (which may provide individuals who chose to engage with them a remedy). However, the IMM is concerned that existing processes do not enable examination of underlying systemic questions and therefore do not ensure that events like this are prevented from occurring in the future.

The IMM believes that several things need to happen to address Historic cases of abuse in State Care, namely:

- a.) The voices of those abused need to be heard and the ongoing impact the events have had on their lives understood and officially acknowledged.
- b.) Prompt and impartial investigation and redress processes need to be considered to establish whether there were any systemic failings of past governments.
- c.) The impact on disabled people (including those with intellectual disabilities) and Māori must be identified and recognised. Lessons need to be learned from the past and action taken to prevent future abuse.

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¹⁵ <https://www.msd.govt.nz/documents/about-msd-and-our-work/work-programmes/cyf-modernisation/cabinet-paper-modernising-cyf-expert-panel-interim-report.pdf>

¹⁶ Mirfin-Veitch, B. & Conder, J. (2017). *"Institutions are places of abuse": The experiences of disabled children and adults in State care.* Dunedin: Donald Beasley Institute.

Accessibility of Government Information – Article 9

In 2013, the New Zealand Government published its Web Accessibility Standard 1.0. The Standard took a phased approach to public sector organisations making their web pages and web applications accessible. The implementation schedule for the Standard stated that all externally-facing webpages must comply with the Standard by 1 July 2017 and that every webpage created, redesigned or redeveloped from 01 July 2014 must comply with the Standard:

Assessment and reporting

Organisations must be prepared, when notified, to assess and report within a reasonable timeframe on their conformance with the Standard. The assessment methodology and reporting mechanism will be communicated to organisations at the time of notification.

In the case that an organisation does not fully meet the Standard, it will be required to manage any risk associated with that lack of conformance by performing a risk assessment and submitting a plan to address, over time, those areas of non-conformance.¹⁷

Disabled people and their organisations report that public sector organisations' webpages are not fully compliant with the standard. In order to ascertain the level of compliance and action required to reach compliance two things are required:

- a.) Organisations need to be notified according to the Web Access Standard guidance and asked to report on compliance.
- b.) Organisations found not to be fully compliant need to carry out risk assessments and submit a plan to demonstrate how they will reach conformance.

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Transport – Article 9

In 2017, the New Zealand Parliament passed the Land Transport Amendment Bill. This Bill explicitly sought to deregulate the small passenger services sector. Regarding taxis, the Bill removed the requirements for taxis to: display braille and large print signage (including the name and contact details of the taxi company and the unique taxi number) in the front of each taxi; the requirement for urban taxi drivers to have area knowledge; and, allowed taxi companies to operate less than 24-7. The latter issue has raised concerns from the disability community that this will lead to a reduction in the availability of wheelchair accessible taxis outside peak hours. The removal of the regulation not to mandate the displaying of braille and large print signage in taxis will mean that blind and vision impaired passengers will have no access to this information which raises issues for their safety.

¹⁷ Accessed 29 August 2017: <https://webtoolkit.govt.nz/guidance/about-the-standards/about-the-web-accessibility-standard/#assessment-and-reporting>

DPOS and wider disability community report issues regarding access to public transport including: to transport vehicles, electronic ticketing systems and timetable/journey information.

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Neurodisability in the Justice System – Article 13

‘Neurodisability’ is a catch all term, meant to cluster a range of invisible or less visible disabilities with similar characteristics/support needs. Some people prefer to say ‘learning disability’ or ‘neurodiversity’. Generally, communication needs are present or need to be accommodated.

People with neurodisabilities are overrepresented in a number of poor outcome areas including education, justice and health. For example, we understand from anecdotal Youth Court evidence, some targeted studies, and studies from comparable jurisdictions¹⁸ that there is a significant overrepresentation in our youth justice system of people with neurodisabilities.

There is a lack of comprehensive disaggregated data on people with neurodisabilities, but that data is critical to early, effective identification and service delivery. People with neurodisabilities who are not identified early, for example in an education context, are at risk of increasing poor outcomes and poor resilience.

The IMM wants the Government to gather data on the prevalence of neurodisability and use that data to inform targets and indicators to ensure better service delivery to people with a neurodisability.

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Substance Addiction (Compulsory Assessment and Treatment) Bill – Article 14

The Government introduced the Substance Addiction (Compulsory Assessment and Treatment) Bill¹⁹ in Parliament in 2015.

The IMM are concerned that the Government is enacting another piece of legislation that has provisions for the compulsory treatment of people, given the concerns that the UN Disability Committee raised regarding this in the Mental Health (Compulsory Assessment and treatment) Act 1992.

The IMM is further concerned that the Government has not provided sufficient evidence as to the efficacy of compulsory treatment for people who are deemed to have substance addictions.

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¹⁸ Accessed 29 August 2017: UK 2012 Children’s Commission Report ‘*Nobody made the connection*’ <https://www.childrenscommissioner.gov.uk/sites/default/files/publications/Nobody%20made%20the%20connection.pdf>

¹⁹ Accessed 29 August 2017: <http://www.legislation.govt.nz/bill/government/2015/0116/latest/DLM6609057.html>

Mental health services in prisons – Article 14

Both the Human Rights Commission and the Office of the Ombudsman are partners in New Zealand's National Preventative Mechanism in addition to being partners in the IMM.

Through our Optional Protocol to the Convention against Torture (OPCAT) inspections we have grave concerns about the lack of a systematic approach to prisoners experiencing mental illness. We have made it clear to both the Corrections Service and the Ministry of Health that we expect them to develop an overall framework that outlines how the individualised/specialised projects underway, fit into the larger picture of improved mental health services in prisons.

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Seclusion and restraint – Article 14

The Chief Ombudsman published his Report '*A Question of Restraint*' into the use of tie-down beds in the New Zealand Prison Service in March 2017. The report found that the general management of at-risk prisoners in New Zealand was substandard and detrimental.

In 2017, the Human Rights Commission published '*Thinking outside the Box: A review of seclusion and restraint practises in New Zealand*' which made a number of recommendations for agencies employing seclusion and restraint in New Zealand.

Night Safety Procedures are used in health and disability places of detention and are the practice of locking a patient in their room during the night. It is a restrictive practice.

It is not clear whether the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 is fully compliant with the Convention, particularly with respect to its enabling provisions relating to compulsory care and seclusion.

In 2016 the NZ media reported on two cases of children being put in seclusion rooms at school. Seclusion at schools has since been made unlawful. The Chief Ombudsman recently published the outcome of an investigation into incidents of seclusion at a particular school.²⁰

The Ministry of Education issued '*Guidelines on Managing Behaviour*', including the use of restraint. The IMM is interested to follow the progress of schools under this new regime.

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Immigration – Article 18

People are being refused New Zealand residency on the grounds that they do not meet an acceptable standard of health: including a number of children born in NZ to non-New Zealand residents. Applicants for residence class visas are considered to have an acceptable standard of health if, among other things, they are unlikely to impose significant costs or demands on New Zealand's health services or special education services. Currently, there is a list of

²⁰ <http://www.ombudsman.parliament.nz/newsroom/item/opinion-on-ruru-school-seclusion-complaint>

medical conditions that are deemed to impose a significant cost on medical and education services and a threshold of \$41,000 medical costs over five years. Furthermore, children deemed, but not assessed to need, Ongoing Resourcing Scheme²¹ funding are also denied residency. These factors are considered along with the applicant's connections with, and ability to contribute to, New Zealand.

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Inclusive education – Article 24

Advocating for an enforceable right to inclusive education for students with disabilities has been a priority for the IMM. In 2016, the IMM released a report '*Article 24, The Right to an Inclusive Education*' on the progress being made in New Zealand (based on current data) toward the realisation of the right to an inclusive education as set out in Article 24 of the CRPD.²²

Section 3 of the Education Act 1989 protects the right of any person (with a disability or without) to enrol and receive education at any school, while section 8(1) affirms equal rights to primary and secondary school students who have '*special educational needs*'. However, the current legislative framework does not specifically incorporate inclusive education or reasonable accommodation principles.

In practice, many aspects of the education system in New Zealand lack consistent working knowledge of what an inclusive education system is and how it functions. People with a disability are at a high risk of being bullied. There is a lack of data as to what students require, what supports students are/are not getting and the supports they need to thrive. Recently it was discovered that children with disabilities were being held in seclusion-like conditions in several schools. This led to the practice of seclusion being explicitly outlawed in an updated version of the Education Act 1989.

The Government needs to gather comprehensive data and evidence to fully understand what is required to ensure the right to an inclusive education is realised for people with disabilities.

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Employment – Article 27

Disabled people are less likely to be employed than the general population or other minorities. In the June 2017 quarter, disabled people were more likely to be unemployed and their average weekly incomes were just over half those of non-disabled people.

²¹ The Ongoing Resourcing Scheme (ORS) provides support for students with the highest level of need for special education to join in and learn alongside other students at school.

²² <http://www.ombudsman.parliament.nz/resources-and-publications/documents/article-24-the-right-to-an-inclusive-education>

In the June 2017 quarter, 42.3 per cent of disabled youth aged 15–24 years were not in employment, education, or training (NEET). This was more than four times the NEET rate of non-disabled 15–24 year-olds (10.0 percent).

NEET is made up of those who are:

- a.) unemployed – not in education
- b.) not in the labour force – not in education and caregiving
- c.) not in the labour force – not in education and not caregiving.

The group that contributed the most to the higher NEET rate for disabled youth were those not in the labour force, not in education, and not caregiving (35.8 percent). Employment for disabled people is often limited by opportunity and people's attitudes rather than disability.

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Housing – Article 28

There appears to be a lack of accessible housing in New Zealand.²³ This includes owner-occupied housing, housing in the private rental sector, state housing (housing stock of HNZC), and social housing.

A recent report²⁴ released by the Salvation Army concluded New Zealand needs to build about 2,000 more social houses per year over the next decade to adequately respond to unmet demand. According to the report, disabled people make up a large proportion of long-term social housing tenants.

The Ministry of Health does offer Housing Modification Grants but only to the owners of houses or if the owner agrees to the modification: so unless a disabled person can persuade their landlord to apply for a grant then houses in the private rental market are very unlikely to be modified for a disabled person. There is poor data on the number of modified or accessible houses, and the waiting time for modified state or community housing.

²³ For example, 'Lifemark', a company which offers advice to designers and builders on how to ensure homes are usable by people of different ages and abilities, reports that less than 2% of New Zealand's current housing stock is accessible.

²⁴ <http://www.salvationarmy.org.nz/research-media/social-policy-and-parliamentary-unit/latest-report/TakingStock2017>

Appendix 2. Implementation of the 2014 Concluding Observations

The following table is produced based on our current knowledge in relation to each recommendation. The intention is to provide a high-level overview of the Government's progress towards implementing the Concluding Observations of the Committee:

Key

- a.) Red = No action
- b.) Yellow = Some improvement/work underway. (Note, 'yellow' does not quantify the amount of improvement/work that has been undertaken.)
- c.) Green = actioned

CRPD Article	Recommendation	Status
General Principles and Obligations (Articles 1-4)	New Zealand ratify the Optional Protocol as soon as is practicable.	GREEN
General Obligations (Article 4)	New Zealand bring the matter of offending phrases that come up with searches related to autistic persons to the attention of Google to discuss what can be done to prevent or eliminate this type of "hate speech".	GREEN
Specific Rights (Articles 5-30)		
Equality and Non-discrimination (Article 5)	All family members who are carers are paid on the same basis as other carers are, and that family members who are carers be entitled to make complaints of unlawful discrimination in respect of the State party's family care policy.	RED
Equality and Non-discrimination (Article 5)	Consideration be given to amending the Human Rights Act 1993 to include a definition of reasonable accommodation in conformity with the definition of reasonable accommodation in Article 2 of the Convention.	RED
Equality and Non-discrimination (Article 5)	Guidelines on Reasonable Accommodation be completed and distributed.	GREEN

CRPD Article	Recommendation	Status
Women with Disabilities (Article 6)	Work be continued and strengthened to assist women with disabilities in obtaining education and employment and in combating domestic violence. Organizations representing women and girls with disabilities be involved in these programmes.	YELLOW
Children with Disabilities (Article 7)	Work be increased to ensure that all children with disabilities are able to access government and related services, including to receive support to express their views.	YELLOW
Accessibility (Article 9)	Enact measures to ensure that all public buildings, as well as public web pages providing services for all, are made accessible to persons with disabilities, and recommends that consideration be given to ensuring that new future private houses are made fully accessible. The exemption of factories and industrial premises where fewer than 10 people are employed, from the accessibility requirements of the Building Act 2004 and the Building Code, be discontinued.	YELLOW
Equal Recognition before the Law (Article 12)	Immediate steps to revise the relevant laws and replace substituted decision-making with supported decision-making.	YELLOW
Access to Justice (Article 13)	Examine the processes for the assessing of compensation by the Accident Compensation Corporation to ensure that adequate legal aid is available and that its processes are fully accessible to all claimants, and finally to ensure that this mechanism has a human rights focus.	RED
Access to Justice (Article 13)	Organisations representing persons with disabilities be consulted about the proposal to establish an accident compensation tribunal. The Committee also recommends that the tribunal adopt a flexible approach to the admission of evidence, and that those who lack the means should be given adequate legal aid to ensure full access to the tribunal.	GREEN
Access to Justice (Article 13)	Training programmes be run on the Convention and on the Rights of Persons with Disabilities who come before New Zealand courts and tribunals.	YELLOW

CRPD Article	Recommendation	Status
Liberty and Security of the Person (Article 14)	All the immediate necessary legislative, administrative and judicial measures to ensure that no one is detained against their will in any medical facility on the basis of actual or perceived disability.	RED
Liberty and Security of the Person (Article 14)	All mental health services are provided on the basis of the free and informed consent of the person concerned, in accordance with the Convention.	YELLOW
Liberty and Security of the Person (Article 14)	Mental Health (Compulsory Assessment and Treatment) Act 1992 be amended to comply with the Convention.	RED
Liberty and Security of the Person (Article 14)	Immediate steps be taken to eliminate the use of seclusion and restraints in medical facilities.	YELLOW
Liberty and Security of the Person (Article 14)	Review of the criminal justice system to ensure that criminal procedure is followed in accordance with all the safeguards and guarantees that are applicable to non-disabled persons, and that deprivation of liberty should be applied as a matter of last resort and when other diversion programmes, including restorative justice, are insufficient to deter future crime.	RED
Liberty and Security of the Person (Article 14)	Ensure that reasonable accommodation in prison settings operates in respect of persons with disabilities	YELLOW
Freedom from Exploitation, Violence and Abuse (Article 16)	Strengthen programmes and initiatives to protect persons with disabilities, especially those living in institutions, from violence and harm, and that it ensure that a system is put in place to detect and respond effectively to cases of abuse.	YELLOW
Freedom from Exploitation, Violence and Abuse (Article 16)	That legislation, policy and practice relating to domestic violence covers persons with disabilities in the domestic situations that they encounter.	YELLOW

CRPD Article	Recommendation	Status
Protecting the Integrity of the Person (Article 17)	Enact legislation prohibiting the use of sterilization on boys and girls with disabilities, and on adults with disabilities, in the absence of their prior, fully informed and free consent.	RED
Living Independently and being included in the Community (Article 19)	Independent living model and the Enabling Good Lives programme be extended to enable more persons with disabilities to live independently in the community. A range of supports be made available in the community to ensure that persons with disabilities can exercise choice and control regarding where they live.	YELLOW
Freedom of expression and Opinion, and Access to information (Article 21)	Sign Language Board work to ensure funding for the training and employment of sufficient numbers of sign language interpreters, as well as an increased use of New Zealand Sign Language in all aspects of life, including educational and cultural activities. Greater efforts be made to enable Māori and Pacific people with disabilities, and especially those who are deaf and deaf-blind, to access information.	YELLOW
Respect for Home and the Family (Article 23)	The Children, Young Persons and Their Families Act 1989 and the Vulnerable Children Act 2014 be re-examined to ensure that children with disabilities have the same safeguards as other children when they are placed in out-of-home care.	YELLOW
Respect for Home and the Family (Article 23)	Section 8 of the Adoption Act 1955 be repealed and that the statute be amended to ensure that parents with disabilities are treated on an equal basis with other parents with respect to adoption.	RED
Education (Article 24)	Increase the provision of reasonable accommodation in primary and secondary education, and to increase the levels of entry into tertiary education for persons with disabilities.	RED
Education (Article 24)	Implement anti-bullying programmes	YELLOW
Education (Article 24)	Establish an enforceable right to inclusive education	RED
Health (Article 25)	Further measures be taken to ensure access to full health care for all persons with disabilities. Measures be strengthened to enhance the health outcomes of Māori and Pacific persons with disabilities.	YELLOW

CRPD Article	Recommendation	Status
Work and Employment (Article 27)	Further steps be taken to increase the employment levels of persons with disabilities.	YELLOW
Work and Employment (Article 27)	Examine alternatives to minimum wage exemption permits in the employment of persons with disabilities.	YELLOW
Adequate standard of living and social protection (Article 28)	A review be undertaken of disability-related costs to ensure a sufficient allocation of income/pension, in particular for children with disabilities, and their families.	GREEN
Participation in Political and Public Life (Article 29)	Consider the introduction of accessible electronic voting to enable persons with disabilities to cast their votes in a truly secret manner.	YELLOW
Participation in cultural life, recreation, leisure and sport (Article 30)	Further measures to increase the captioning and audio description of television programmes.	YELLOW
Participation in cultural life, recreation, leisure and sport (Article 30)	All appropriate steps to speedily ratify the Marrakesh Treaty.	YELLOW
Specific Obligations (Articles 31–33)	A report from the Disability Survey 2013 comparing the human rights outcomes of disabled women and men with those of non-disabled women and men, and where possible, make data tables available from the Disability Survey 2013 so that data users are able to compare the human rights outcomes of disabled men and women with those of nondisabled men and women.	YELLOW
Specific Obligations (Articles 31–33)	Government departments, crown entities and local authorities should collect and publish disaggregated data on people with disabilities in their annual reports.	RED

CRPD Article	Recommendation	Status
International Cooperation (Article 32)	That foreign aid programme should continue a focus on disability-inclusive development.	YELLOW
International Cooperation (Article 32)	Reinstate the provision of financial and other resources to the Pacific region.	YELLOW

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Document ends.