

**Universal Periodic Review of New Zealand 18th
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Single NGO submission

The rights of Persons with Disabilities

Disabled Persons Assembly NZ Inc (DPA)

Submitted by:



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Executive Summary

This submission provides information about the New Zealand (NZ) government's approach to disabled persons rights. This submission is provided by Disabled Persons Assembly. Our comments are referenced to the United Nations Convention on the Rights of Persons with Disabilities. This is the first report to the UPR by DPA.

About DPA (New Zealand) Inc.

DPA is the national assembly of people with disabilities. It is an umbrella organisation for the full range of people with disabilities in New Zealand. DPA has some 1,200 individual members who either have disabilities themselves, or are the parent, or guardian of a person with a disability and some 300 corporate members who represent or deliver services to people with disabilities. DPA advocates across the range of age and impairment at a societal level and this issue-level advocacy is grounded in human rights.

Our comments are based on referenced from international treaty. the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), and the domestic requirements to comply with the Bill of Rights Act 1990 (BoRA), the Human Rights Act 1993 (HRA) and the Treaty of Waitangi 1840.

Background and Framework

Promotion and Protection on Human rights on the Ground.

A. Cooperation with Human Rights Mechanisms

NZ has signed and ratified the UN Convention on the Rights of Persons with Disabilities,¹ but has not ratified the Optional Protocol. In its statement on the NZ Universal Periodic Review (UPR) it states that: *“New Zealand will not ratify conventions or international standards that are inconsistent with New Zealand’s unique legal, constitutional and Treaty of Waitangi arrangements”*.² This is the consistent approach NZ has applied with the UNCRPD. However, as a result it has placed the State in a position where disabled are at risk of having the UNCRPD ignored and there is a concern this is happening since the ratification with multiple allegations of breaches by the State. We set out four such breaches with

¹ NZ signed the UNCRPD in March 2007 and ratified it in Parliament in October 2008

² NZ Universal Periodic Review Progress Chart, Ministry of Justice, July 2011.

recommendations by us to resolve these issues we consider to be serious breaches of the UNCRPD.

B. Implementation of International Human Rights Obligations.

The human rights addressed in this submission are the rights of disabled persons through the UNCRPD. We address four specific concerns:

- a) Legislation not in compliance of the UNCRPD in relation to building codes and accessibility
- b) Whanau paid as carers, the Governments response to their losing court cases due to their lack of compliance to the UNCRPD
- c) Constitutional review, and how to include disabled persons as per the UNCRPD.
- d) Abuse of disabled who being abused in all areas of society, including systemic violence.

Specific Concerns

a) Earthquake strengthening amendment to Building Act 1991

In December 2012 the Ministry of Business, Innovation and Employment (the Ministry) released a set of proposals relating to the earthquake strengthening of existing buildings. The recommendations were to repeal Section 112 of the Building Code 2004³ and exempt any earthquake strengthening from having to make the buildings earthquake compliant. The Ministry has appeared to ignore disability submissions requesting that no change be made to the Building Act 2004 as this would create costs later to the developers, and create significant hardships for disabled persons wanting to access those buildings being strengthened. If the Ministry allows for this inconsistency to the UNCRPD there will be breaches of Article 3, in particular (a) (c) and Article 4 in particular, (a-e).

Recommendation: That the State do not allow the exemption to be passed despite recommendations for it to happen. By retaining section 112, it will bring the legislation to bring it into consistency with a soft law to Article 3 and Article 4 of the UNCRPD. To recognise its General Obligations and reduce situations of risk and humanitarian emergencies as set out in Article 10 of the UNCRPD.

³ The Building Amendment Act 2012 came into force on 13 March 2012.

We recommend the State strengthen section 112 to ensure complete compliance in all aspects of accessibility of all public facilities to ensure Article 19 is met. By denying access to certain buildings, it limits our inclusion in all aspects of the community. In particular 19 (c) which outlines our right to access community services and facilities for the general population on an equal basis⁴.

b) Whanau paid as carers

This concern arose from the Atkinson⁵ court case, where the Crown lost the initial tribunal hearing and each subsequent case. To prevent further legal action, the State agreed to develop a policy to ensure family/whanau be paid as caregivers of their disabled adult family/whanau member. It became evident there would be a further breach of the rights of disabled at the 17 May 2013 budget, when the State enacted an amendment to the Public Health and Disability Act 2000. While it allowed parents to finally be paid minimum wage only for up to forty hours each week to care for high or very high needs adult children over the age of 18 years, there were conditions attached. The State refused the rights of partners/spouses to care for disabled partners/spouses, for siblings to care for siblings, adult children to care for parents and parents who care for under 18 disabled children. The State also refused the right for the parent to be paid higher than minimum wage, despite the parent often paying other carers through funding a higher than minimum wage themselves. The State then invoked the inconsistency clause of the BoRA and denied any citizen or organisation the right to take any legal action on this matter as of the 16 May 2013 not giving anyone any ability to challenge their decision. This is in clear breach of the UNCRPD, in particular Articles 19, 20, 23, 28.

Recommendation: That the State revokes the inconsistency clause in the BoRA and bring into compliance the ability for all Whanau to be paid as carers regardless of age, marital status and relationship to the individual as long as it is the choice of the individual where it is possible to articulate that choice. That the State allow the whanau to be paid on the same rates of pay given to that of stranger carers of their whanau/family members.

⁴ Refer: United Nations Convention on the Rights of Persons with Disabilities Articles 3,4, 10 and 19 <http://www.un.org/disabilities/convention/conventionfull.shtml>

⁵ *Ministry of Health v Atkinson and Ors* – CA 205-2011 – 14 May 2012

It is further recommended that a Disabilities Act be enacted to ensure complete compliance with the UNCRPD is achieved and that there be established a new Ministry known as the Ministry of Disabilities to oversee all disability issues. This new Ministry and the legislation be designed by, and in consultation with disabled persons, their DPO's and their allies in partnership with them with the Ministry itself being led by a suitably skilled disabled person.

c) Constitutional review

In May/June 2013 the State have called for submissions into the Constitutional Review. While there is an emphasis on the Treaty of Waitangi and rightly so, there is little call for social justice inclusion into a proposed constitution. Without looking into the protections of groups such as disabled or minority groups in a written constitution, we run the risk of them being vulnerable under any proposed constitution.

Recommendation: That in any constitution developed, the State gives a higher status to such legislation as the BoRA and the HRA which give core rights to all citizens that cannot be weakened or revoked by the State.

That the State consider the need to ensure the inclusion of social justice articles within any written constitution that give core protections to such groups as disabled persons.

d) Abuse of disabled.

Multiple issues of abuse of disabled have come to the surface since the signing of the UNCRPD although it was also prevalent prior to the signing of the Convention, it has not abated nor has there been any process or policy to reduce the violence of disabled persons which is in breach of Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment and Article 16 – Freedom from exploitation, violence and abuse.

When the second earthquake happened in ChristChurch in February 2010, a young autistic youth⁶ was arrested for gathering light fittings in damaged and condemned buildings. This was when a curfew was on and when he was caught by security, they

⁶ Arie Smith-Voorkamp was the autistic youth this affected, he was later acquitted although the Police were never held accountable for the beatings and abuse of him while he was in their custody. The security people who also beat him were not held accountable either.

beat him up, then when the police took over they further assaulted him, then photographed him and displayed his picture on the news which lead to him being demeaned and vilified. It later transpired he had permission from the landlord to have those light fittings and that he was borderline mentally challenged as well as autistic.

More recently, several findings of abuse and violence against disabled in residential care has been exposed publically with the clients eventually being moved in some cases although some other cases nothing is done as Police can't take evidence from the clients the abuse is alleged to have occurred. All of these incidences are breaches of the UNCRPD, Articles 12, 13, 15 and 16.

Recommendation: That the State through the establishment of a disabilities Ministry and a Disability Act move to ensure all disabled persons are protected whether they be in private care or in residential care.

That the police be educated in disability rights and recognise that includes equal recognition before the law Article 12 and access to justice Article 13.

That punitive penalties be developed by the State to discourage abuse and violence towards disabled in general but particularly whilst in any residential care or under any form of State funded service through monitoring and auditing.

- 17 June 2013