

Annex 3: Submission of the CRPD monitoring mechanism

18th SESSION OF THE HUMAN RIGHTS COUNCIL
UNIVERSAL PERIODIC REVIEW

Making disability rights real
Whakatūturū ngā Tika Hauātanga

*Submission of the Independent Monitoring Mechanism of the
Convention on the Rights of Persons with Disabilities*

The Independent Monitoring Mechanism (IMM) for the implementation of the Convention on Rights of Persons with Disabilities (CRPD) was established by the New Zealand Government in 2011 to fulfil the requirements of Article 33 of the CRPD. The IMM consists of three independent partners: the Ombudsman, the Human Rights Commission and the Convention Coalition. The Convention Coalition is made up of seven national Disabled People's Organisations (DPOs) with provision for more DPOs to join the coalition

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Introduction

1. The IMM produced its first Annual Report in December 2013. The Convention Coalition has also produced two monitoring reports focussing on the perceptions of disabled people of the fulfilment of their rights. This submission is based on these three reports available at:

<http://www.hrc.co.nz/disabled-people/convention-on-the-rights-of-persons-with-disabilities/making-disability-rights-real>

<http://www.dpa.org.nz/other-publications>

2. The IMM recommends that all of the recommendations from its Annual Report for 2012 be considered for incorporation in cross-government Disability Action Plan. The following updates the information in the Annual Report and provides further commentary on the issues.

Nothing about us without us

3. The CRPD requires that disabled people be actively involved in decision making processes that concern them through their representative organisations.¹ The establishment of the IMM and the role given to the Convention Coalition reflects this requirement. However, the IMM is concerned that in other areas of Government activity, the principle has not been established as a habitual way of working.
4. New Zealand struggles to consistently provide effective support services to disabled people. A large part of the failure is due to the lack of governance involvement by disabled people and their families. The Social Services Select Committee Inquiry into the Quality of Care and Service Provision for People with Disabilities, which was established after many incidents of abuse, neglect and deaths in care, reported in 2008. It identified concerns about the quality, training and availability of staff looking after people with disabilities with complex needs and raised questions about the Government's management and funding of the disability sector. Since then there have been a number of promising initiatives and trials around enabling good lives, increasing the housing options available to disabled people, and improving the way Ministry of Health supports are delivered. But progress has been slow in implementing the enquiry's recommendations. At time of writing, after several new instances of abuse, neglect and criminal assault in residential care facilities, the government has launched yet another inquiry into the way disabled people are being treated.
5. The passing of the New Zealand Public Health and Disability Amendment Act 2013 (NZPHDAA) is further cause for concern. The need for the Act arose out of longstanding legal action by a group of families including adult children with disabilities. The Court of Appeal, 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.² In response the Act limits the circumstances in which family members can be paid, the category of family member that can be paid (e.g. parents but not spouses) and imposes a payment system with a lesser pay rate for family than is offered to non-family members using a different delivery system. The Government has closed off further legal action on this issue by declaring that no further complaints can be made regarding the payment, or otherwise, of family members as care givers.³ The IMM sees both the payment regime and the removal of the rights of appeal to the courts as highly undesirable. Rather than fixing a previous inequality the IMM is concerned that the Act regularises a further inequality for disabled people and their families.

¹ Article 4 (3) CRPD

² [2012] NZCA 184

³ Section 70E NZPHDAA

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6. Providing disabled people (and others) with an avenue of last resort for making complaints when all other domestic avenues have failed would further reinforce that the Government is serious about respecting the rights of disabled people. The IMM understands that the Government is investigating what steps need to be taken to make it possible to ratify the Optional Protocol to the CRPD. The IMM sees this as a high priority.

7. **Recommendations:**
 - a **That the government urgently reconsider the New Zealand Public Health and Disability Amendment Bill Act and in particular repeal those sections that limit further legal action and limit the circumstances in which family members can be paid and the categories of family member that can be paid.**
 - b **That all areas in the Government's Disability Action Plan have a clear co-governance process that is adhered to.**
 - c **That the Government ratifies the Optional Protocol to the Convention on the Rights of Persons with Disabilities.**

Statistics and outcomes data

8. The fulfilment of the IMM's role of monitoring, evaluating, reporting, advocating and advising on the implementation of the CRPD in New Zealand is heavily dependant on the availability of reliable data and statistics that track the achievement of disabled people's rights compared to those of non-disabled people. The IMM 2013 Annual Report attempted to establish a base line of achievement across key indicators in each of the rights areas. In most key areas reliable data was not available.

9. The Household Disability Survey provides the only reliable data in a range of areas such as employment, educational achievement, unfulfilled needs and difficulties using transport. The next Disability Survey will be administered in July 2013 with results beginning to be available in 2014. A review of the Disability Survey after the last iteration in 2006 has resulted in a more outcomes based survey that will provide better quality data. Statistics New Zealand, the government agency primarily responsible for gathering national level statistics, has indicated a willingness to include the measurement of disabled people's rights in regular review's of its surveys and other measures. Further work is required to ensure a comprehensive suit is statistics is available.

10. **Recommendations:**
 - a **Statistics New Zealand ensures 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.**

 - b **Statistics New Zealand develops comparable data sets, by December 2014, for education achievement, work force participation and living independently and being included in the community.**

Accessibility

11. Accessibility is central to achieving other rights such as employment, education and freedom of expression. The two areas the IMM believes needs urgent attention are access to buildings and the built environment and access to official information.
12. New Zealand law requires that buildings be built or altered to meet the needs of disabled people and that disabled people have the same access to services and facilities as non-disabled people. Nonetheless buildings continue to be built, facilities developed and public spaces designed that do not comply with universal design principles.⁴ It is apparent from the IMM's monitoring that the problem is caused by a number of factors including inadequate standards implementing the legal requirements, a lack of awareness and commitment to universal design and inconsistent professional competence in designing accessible facilities.
13. The rebuilding of Christchurch after the devastating earthquakes of 2010-11 provides the ideal opportunity to develop the most accessible city in the world. Some progress and commitments have been made, especially with the development of public sector facilities and housing. Commitment and awareness by the private sector is not consistent, with some examples of poor design.
14. The New Zealand Government has undertaken to make all websites associated with core government departments accessible, has produced a timetable for making this happen and is developing tools and professional development programmes to assist with this. The IMM welcomes this initiative and would encourage it to be applied to the wider state sector including Crown agencies, territorial authorities and district health boards.
15. The IMM also believes further consideration needs to be given to making information more accessible in other modes and formats. For example New Zealand Sign Language (NZSL) has been an official language of New Zealand since 2006. Very few government agencies have clear policies about when information should be available in NZSL or when professional NZSL interpreter services should be available.
16. **Recommendations:**
 - a **That the access codes and regulations applying to building and the built environment be reviewed and made mandatory by 2014.**
 - b **That all government agencies ensure that their own websites and the websites of government funded initiatives for which they are responsible comply with the Government Web Standards.**

⁴ Human Rights Commission, *Better Design and Buildings for Everyone: Disabled Peoples Rights and the Built Environment*. Auckland 2012.

Education

17. New Zealand law requires that disabled students have the same access to education as non-disabled students in state schools. Despite this, of complaints to the Human Rights Commission about a government agency, about a third are about education. Complaints to the Commission are dominated by concerns about a lack of reasonable accommodation, unfair expulsions, exclusions and stand downs, bullying and funding issues.
18. The IMM welcomes the Government's requirement that all schools demonstrate inclusive practice by the end of 2014. While there have been some useful reforms it is difficult to see how the current suite of policies and programmes will result in fully inclusive schools.
19. One measure of the success of inclusive schools is educational achievement. Educational achievement is measured in a number of ways including national standards for primary schools, National Certificate of Educational Achievement pass rates at secondary school and international comparative studies. None of these allow a comparison of outcomes between disabled and non-disabled students.
20. Another way of measuring inclusive schools is via the incidence of bullying, harassment and other violence in schools. The work of all three partners to the IMM suggests that bullying at school is a particular issue for disabled students

21. Recommendations

- a That the Ministry of Education establishes an enforceable right to inclusive education.**
- b That the Ministry of Education implements a whole of school anti-bullying programmes that ensure that schools are safe and nurturing places for disabled students.**

Reasonable Accommodation

22. A lack of understanding of the need for reasonable accommodation and the lack of competence to apply the principles of reasonable accommodation to specific situations is at the heart of many complaints and enquiries in both the public and private sector. The IMM 2013 Annual Report identified only a few examples of government agencies that demonstrated by their actions a clear understanding of need for and application of reasonable accommodation.
23. A particularly concerning example of the failure to provide reasonable accommodation is the failure of the health system to provide for the health needs of people with an intellectual/learning impairment. A National Health Committee report in 2003 found that the health status of people with intellectual/learning impairments was worse than the average population across many indicators, including life expectancy.⁵ A Ministry of Health report in 2012 confirmed the poor outcomes.⁶ In 2009 the Government informed the United Nations in its first UPR report that a

⁵ National Health Committee (2003) *To Have an Ordinary Life: Kia Whai Oranga Noa*. Wellington: National Advisory Committee on Health and Disability

⁶ Ministry Of Health (2011) *Health Indicators for New Zealanders with Intellectual Disability*. Wellington: Ministry of Health.

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work plan was in place to address this issue. To date, some district health boards have plans in place, but overall there has been minimal progress.

24. Recommendations:

- a That the Ministry of Justice develop guidance on the requirements and application of reasonable accommodation and the protections under the Bill of Rights Act.**

- b That the Ministry of Health develops and implements a plan to improve the health and wellbeing of people with intellectual/learning disabilities.**

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