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Stakeholders Report to the United Nations Universal Periodic Review of New Zealand

About this Stakeholders' Report

This submission has been prepared and submitted by a collaboration of non-profit organisations working in the health and disability sector in New Zealand including:

- **Cystic Fibrosis Association of New Zealand**

Kate Russell, Chief Executive, email: kate@cfnz.org.nz

Website: www.cfnz.org.nz

- **Diabetes New Zealand**

Joe Asghar, Chief Executive, email: joe.asghar@diabetes.org.nz

Website: www.diabetes.org.nz

- **Haemophilia New Zealand**

Belinda Burdett, CEO, email: Belinda@haemophilia.org.nz

Website: www.haemophilia.org.nz

- **Motor Neurone Disease Association of New Zealand**

Ian Mathieson, National Manager, email: mgr@mnda.org.nz

Website: <http://www.mnda.org.nz>

- **Muscular Dystrophy Association of New Zealand**

Chris Higgins, Chief Executive, email [Chris Higgins <Chris@mda.org.nz>](mailto:Chris@mda.org.nz)

Website: www.mda.org.nz

- **New Zealand Organisation for Rare Disorders**

John Forman, Executive Director, email: exec.director@nzord.org.nz

Website: www.nzord.org.nz

- **The National Foundation for the Deaf**

Louise Carroll, CEO, email: louise.carroll@nfd.org.nz

Website: www.nfd.org.nz

For further information please contact:



Louise Carroll QSO, JP, GDPPA, MPM

Chief Executive Officer

The National Foundation for the Deaf

Email: louise.carroll@nfd.org.nz

Telephone: 00 64 2107 66990

Postal Address:

The National Foundation for the Deaf

PO Box 37729

Parnell

Auckland 1151

New Zealand

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

1. New Zealand signed the Convention on the Rights of Persons with Disabilities on 30th March 2007 and ratified the Convention on 26th September 2008.¹

2. State parties are obliged to consult closely with and actively involve persons with disabilities, *through their representative organisations*, in legislation and policies implementing the Convention.² Article 3 of the Convention recognises the need for full and effective participation and inclusion of disabled persons in society.³ Article 29(b) of the Convention requires states to “promote actively an environment in which persons with disabilities can effectively and fully participate in the conduct of public affairs”, including participation in public and political life associations and organisations representing persons with disabilities at international, national, and local levels.⁴

B. Constitutional and legislative framework

3. Under the New Zealand Public Health and Disability Act 2000, the Minister for Disability Issues is required to maintain a New Zealand Disability Strategy.⁵ The aim of the Strategy is to guide Government actions in promoting a more inclusive society, and to require government departments and other government agencies to consider disabled needs before decision making.⁶ The objectives of the Strategy include fostering an aware and responsive public service.⁷

¹ Human Rights Commission “Convention on the Rights of Persons with Disabilities” (2013) <www.hrc.co.nz/disabled-people/convention-on-the-rights-of-persons-with-disabilities>.

² United Nations Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (opened for signature 30 March 2007, entered into force 3 May 2008), art 4(3).

³ Article 3.

⁴ Article 29(b).

⁵ New Zealand Public Health and Disability Act 2000, s 8(2).

⁶ Minister for Disability Issues *The New Zealand Disability Strategy: Making a World of Difference – Whakanui Oranga* (Office for Disability Issues, April 2001) at iii.

⁷ At 13.

4. The government must make available to disabled persons and their advocacy organisations information regarding how to influence government policy;⁸ the government is further required to develop mechanisms to ensure that all policy and legislation is consistent with the objectives of the Strategy. Under Objective 13, the state must establish a process for including advice from disabled persons on children and youth disability issues within relevant government agencies and Commissioners' offices.⁹

5. The Minister is required to consult with any organisations and individuals that the Minister considers appropriate *before* amending or replacing the Disability Strategy.¹⁰

C. Institutional and human rights infrastructure

6. The New Zealand Bill of Rights Act 1990 prohibits discrimination based on any of the grounds laid out in s 21 of the Human Rights Act 1993.¹¹ This includes discrimination on the basis of a disability or age.¹² Disabled persons are entitled to the full benefit of all laws in New Zealand, including human rights laws and obligations.

D. Policy measures

7. While there have been significant changes in the area of care and recognition of disabled persons, many continue to be dependent on welfare and health services.¹³ For this reason it is important that disabled persons have access to representation and the chance to consult with policy makers.

8. The Office for Disability Issues is responsible for monitoring and promoting disability strategies as well as being an access point for disabled persons in the community.¹⁴

⁸ At 19.

⁹ At 27.

¹⁰ New Zealand Public Health and Disability Act 2000, s 8.

¹¹ New Zealand Bill of Rights Act 1990, s 19.

¹² Human Rights Act 1993, s 21.

¹³ Human Rights Commission *Human Rights in New Zealand Today: The New Zealand Context* (Human Rights Commission, August 2004) at ch 5.

¹⁴ Minister for Disability Issues, above n 6.

Progress remains slow despite efforts made to increase access to the Office. The Human Rights Commission describes the provision of disability services as a “charitable add-on” rather than the strategic imperatives of government.¹⁵

9. The Ministry of Social Development recognises the disabled community as a non-homogenous group with “significantly varied needs and interests”.¹⁶ The Ministry acknowledges “tensions over issues of representation” as well as “competition for resources and perceived legitimacy”, and advocates for a consultation mechanism that is inclusive of the whole sector.¹⁷ But this is not happening in practice. The government has been selective in the representatives it chooses to consult with, and has declined to meet and engage with organisations from all relevant parts of the sector. The government is also refusing to recognise organisations that do not primarily identify with the disability sector, such as mental health organisations or representatives of the interests of the elderly. The result is exclusion of some health and disability organisations from legislative and policy input and a failure to address the support needs of all persons with impairments and disabilities.

10. More needs to be done to ensure fundamental rights are met and the contribution and value of disabled members of society is recognised. This requires an institutional infrastructure that grants the disabled community a voice and is responsive to their needs and rights as a group — essentially, “nothing about us, without us”.¹⁸

II. COOPERATION WITH HUMAN RIGHTS MECHANISMS

A. Cooperation with treaty bodies

11. The New Zealand government submitted its first report to the Committee on the Rights of Persons with Disabilities in March 2011.¹⁹ Although that report purports to

¹⁵ Human Rights Commission, above n 13.

¹⁶ Office for Disability Issues “Consultation with the disability sector” *Ministry of Social Development* <www.odi.govt.nz/resources/guides-and-toolkits/disability-perspective/consultation.html>.

¹⁷ Office for Disability Issues, above n 16.

¹⁸ United Nations Enable “*Nothing about Us, Without Us*” – *International Day of Disabled Persons, 2004* (United Nations, 2004).

¹⁹ Office for Disability Issues *First New Zealand Report on Implementing the United Nations Convention on the Rights of Persons with Disabilities* (Office for Disability Issues, March 2011).

highlight statutory and policy measures showing implementation of the Convention, several aspects are nonetheless lacking.

12. First, article 33 of the Convention refers to national implementation and monitoring. The first report has noted the designation of the Office for Disabilities Issues as the “focal point” of implementation,²⁰ and drew attention to funding of the Convention Coalition – “a group of disabled people’s NGOs”.²¹ However, despite such overarching institutions, successive governments have failed to consult effectively with the *whole* disability sector and other relevant Ministries.

13. Such lack of communication has engendered institutional gaps: for example, the crossover between the Ministry of Health and the Ministry of Social Development has led to services being funded by one Ministry, but not the other. The government must recognise that complex disability cases often involve overlap across sectors. Issues such as an ageing caregiver may be compounded by mental health problems, as well as misunderstanding as to how Work and Income operates. Clearly, the delegation of responsibilities to centralised organisations and civil societies does not absolve the need for comprehensive engagement and communication, especially between Ministers, the Ministry of Health, the Ministry of Social Development, and the wider NGO and disability sector.

14. Secondly, article 19 provides for independent living and inclusion in the community. The first report focused mostly on community support services to enable independent living.²² It noted that services have been withdrawn in urgent cases and funnelled elsewhere despite disabled individuals qualifying for those services, ultimately leading to dissatisfaction.²³ It would seem the government has over-emphasised the “personal assistance” element in article 19(b), and neglected the spirit of article 19, which is to allow community integration. As such, focus should again be placed on the community, through implementation of agreed frameworks, or investing in training the community to “self-navigate” the access and monitoring of disability support.

²⁰ At [267].

²¹ At [272].

²² At [129] – [132].

²³ At [130].

B. Cooperation with special procedures

15. The rights of disabled persons are not an independent thematic issue under the Special Procedures of the United Nations Human Rights Council. The Special Procedure Mandate Holders have not referred to the rights of persons with disabilities in the context of effective government consultation.

III. RECOMMENDATIONS

16. We call on the government to:

- Effectively engage, communicate, and consult between Ministers, the Ministry of Health, the Ministry of Social Development, other government departments, and the wider NGO health and disability sector;
- Ensure equal access to all service areas for people with health and disability issues;
- Recognise, engage, and include persons with disabling health conditions who do not necessarily identify as disabled persons;
- Adopt a human rights model between the government and health and disability service providers that focuses on promoting equity and access for disabled persons, but does not beholden service providers to the government;
- Promote the innovative use of technology amongst health and disability agencies, such as e-care and tele-health.