

3 October 2023

# Submission from New Zealand's Independent Monitoring Mechanism to inform New Zealand's fourth Universal Periodic Review by the Human Rights Council

The New Zealand government established an Independent Monitoring Mechanism (IMM) in 2011 to fulfil obligations under Article 33 (National implementation and monitoring) of the United Nations Convention on the Rights of Persons with Disabilities (CRPD). It is made up of the Human Rights Commission Te Kāhui Tika Tangata, the Office of the Ombudsman Tari o te Kaitiaki Mana Tangata and the Disabled People's Organisations Coalition (DPO Coalition).

The DPO Coalition is made up of six disabled people's organisations (DPOs). These are: the Association of Blind Citizens of New Zealand, Balance New Zealand, Deaf Aotearoa Tāngata Turi, Disabled Persons Assembly New Zealand, Muscular Dystrophy Association of New Zealand Incorporated, and People First New Zealand Ngā Tāngata Tuatahi.

DPOs are membership organisations of disabled people, mainly governed by disabled people. The CRPD sets out the key roles for DPOs, specifically Articles 4.3 and 33, which obliges government to closely consult with and actively involve disabled people through their representative organisations (DPOs), and to fully participate in promoting, protecting and monitoring the CRPD. The DPO Coalition works with government (and others) to make the CRPD rights real for disabled people.

The Human Rights Commission (the Commission) derives its statutory mandate from the Human Rights Act 1993 ('HRA'). One of the key functions of the Commission is to promote and protect the full and equal enjoyment of human rights by disabled people.

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.

The reports of the IMM cited in this submission are based on direct consultation with disabled people.

## Contact person

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## Background

In New Zealand, barriers persist preventing disabled people<sup>1</sup> from having the support and opportunity to participate in all parts of home, community and public life. These barriers have been exacerbated by recent humanitarian disasters experienced regionally and nationally.

New Zealand's 2022 examination by the United Nations Committee on the Rights of Persons with Disabilities (the Committee) set out a number of recommendations in its Concluding Observations (COs) to address some of these barriers. Of note, some repeated from New Zealand's first examination in 2014.

The government has issued its plan for responding to the Committee's 2022 COs in a Cabinet paper, [United Nations Convention on the Rights of Persons with Disabilities: Government response and proposed mechanisms to support implementation](#). Out of the 60 COs that the Committee put to the government, 51 were either 'accepted' with no modification or 'accepted with modification'. Those not accepted were 'noted', a formal way of the government stating it does not intend to implement these at present but could be addressed in the future.

The IMM acknowledges the significant work by Whaikaha (Ministry of Disabled People) to reach a decision on progressing the COs. However, it is concerned that of the 51 accepted, only 21 were accepted outright, with the balance 'accepted with modification'. The government's rationale for 'accepting with modification' is to amend the COs to suit New Zealand's domestic context. The IMM believes it is important that the government agrees to the overall intent of the Committee's COs, and does not alter the meaning or recommended actions. The IMM will closely monitor progress to ensure recommendations 'accepted with modification' do not limit genuine progress for disabled people.

This submission focuses on some priority areas where the IMM believe the government response has not shown full commitment to implementing the COs in their decision to either 'note' or 'accept with modification'. While the exact nature of the modifications is not yet known, the IMM addresses these areas within the context of our assessment of the Committee's intended action and outcomes. In each area, we have outlined:

- The relevant Concluding Observation;
- The initial government response (note' or 'accept with modification' or 'accept'); and
- The IMM's comments on the current realisation of these rights in New Zealand.

In this way we hope to provide a clear sense of what work is currently underway and where the IMM feels more focus is required.

The IMM welcomes the opportunity to provide a submission to the Human Rights Council Committee (HRC Committee) for New Zealand's fourth Universal Periodic Review (UPR).

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<sup>1</sup> The term disabled people is used in this report to encompass Deaf, tāngata whaikaha Māori (disabled Māori, New Zealand's indigenous people) and disabled people, young people and children.

## Tāngata Whaikaha Māori

### Committee's Concluding Observations and response

6 (b) Develop legislative and policy frameworks that reflect the Treaty of Waitangi, the Convention on the Rights of Persons with Disabilities and the United Nations Declaration on the Rights of Indigenous Peoples to ensure that Māori persons with disabilities are closely consulted and actively involved in decision-making processes and that their right to self-determination is recognized.

*Whaikaiha / the Ministry of Disabled People has accepted this recommendation with modification.*

### IMM comment

1. Positive life outcomes for Māori, New Zealand's indigenous people, are comparatively lower than other population groups. Māori have higher rates of disability, poverty, suicide and unemployment, and a lower life expectancy. Tāngata whaikaha Māori are likely to experience worse outcomes when compared to non-disabled Māori.<sup>2</sup>
2. Tāngata whaikaha Māori, their supporters, and iwi should have access to the right resources to allow self-determined solutions to ensure equity is a reality and life outcomes are improved.
3. Further progress is required in the collection of data by and about Tāngata whaikaha Māori. In order for the IMM to monitor the rights of tangata whaikaha Māori and to ensure they do not continue to be compromised.<sup>3</sup>

## Accessibility (Art. 9)

### Committee's Concluding Observations and response

16 (a) Expedite implementation of the Building Act of 2004 and commit to targets and time frames for implementation measures.

*The Ministry of Business, Innovation and Employment and Ministry of Housing and Urban Development have accepted this recommendation with modification.*

16 (b) Adopt and implement an accessibility strategy underpinned by the principle of universal design to eliminate existing access barriers, in close consultation with and with the active involvement of organizations of persons with disabilities, including underrepresented groups, such as persons of small stature.

*The Ministry of Social Development has accepted this recommendation with modification.*

16 (c) Adopt the principle of universal design and commit to a target of 100 per cent accessibility for any newly built public housing and introduce mandatory accessibility requirements for new housing constructed by the private sector.

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<sup>2</sup> See *Making Disability Rights Real, Whakatūtu Ngā Tika Hauātanga – 2014-2019*, Recommendation 3.

<sup>3</sup> Ibid, Recommendation 1.

*The Ministry of Housing and Urban Development has accepted this recommendation with modification.*

16 (d) Establish a co-design and co-production process with organizations of persons with disabilities to address concerns about the Accessibility for New Zealanders bill, following release of the Select Committee's report.

*The Ministry of Social Development has accepted this recommendation with modification.*

## IMM comment

1. Disabled people continue to live in inaccessible, inadequate, unsafe and unaffordable housing. They also face unacceptable wait times for accessible houses to become available.<sup>45</sup>
2. The IMM shares the Committee's disappointment at the slow progress to implement the Building Act 2004, which continues to be a barrier to disabled people being able to fully access public spaces and buildings, preventing them from fully participating in community and public life.<sup>6</sup>
3. Previous UPR, COs and IMM recommendations have urged the government to ensure that universal design principles and accessibility are built into social housing stock. The current target of 15 percent for accessible housing in new government housing stock is inadequate.<sup>7</sup>
4. In light of this the IMM believes the Government should set tangible targets for accessible housing with universal design homes embedded in design processes, procedures, and legislation, to avoid disabled people continuing to face unacceptable barriers to live where they choose, with the supports in place to live independently.<sup>8</sup>
5. In July 2022, the Government introduced the Accessibility for New Zealanders Bill to Parliament. It is currently at the Second Reading stage of the parliamentary process. The Bill's purpose is to '*accelerate progress towards a fully accessible New Zealand where disabled people, tāngata whaikaha Māori, and their families or whānau, and others with accessibility needs have an equal opportunity to achieve their goals and aspirations.*' However, the Bill has no enforceable mechanisms or standards in place to make a real difference to improving life outcomes for disabled New Zealanders.<sup>9</sup>

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<sup>4</sup> See <https://www.donaldbeasley.org.nz/assets/projects/UNCRPD/My-Experiences-My-Rights-A-Monitoring-Report-on-Disabled-Persons-Experience-of-Housing-in-Aotearoa-New-Zealand/My-Experiences-My-Rights-A-Monitoring-Report-on-Disabled-Persons-Experience-of-Housing-in-Aotearoa-New-Zealand.pdf> Accessed August 31 2023.

<sup>5</sup> See *Making Disability Rights Real, Whakatūturū Ngā Tika Hauātanga – 2014-2019*, Recommendation 27.

<sup>6</sup> Ibid, Recommendation 27.

<sup>7</sup> Ibid, Recommendation 27.

<sup>8</sup> Ibid, Recommendation 29.

<sup>9</sup> Ibid, Recommendation 29.

## Equal recognition before the law (Art. 12)

### Committee's Concluding Observations and response

22. The Committee recommends that the State party repeal any laws and policies and end practices or customs that have the purpose or effect of denying or diminishing the recognition of any person with disabilities as a person before the law, and implement a nationally consistent supported decision-making framework that respects the autonomy, will and preferences of persons with disabilities.

*Whaikaha has accepted this recommendation with modification.*

### IMM comment

1. Substitute decision making practices continue to be used on behalf of disabled New Zealanders, often not reflecting the person's will and preferences. Substitute decision making should be used as a last resort. Disabled people have the right to be involved in all decisions made about them.<sup>10</sup>
2. The Law Commission is undertaking a review of adult decision making capacity with its findings available in 2024. In response, the government will need to develop a supported decision making strategy to ensure disabled people's rights are not abused through the outdated process of substituted decision making.<sup>11</sup>
3. [Current policy proposals](#) on the repeal and replacement of the Mental Health (Compulsory Assessment and Treatment) Act 1992, signal that treatment without consent will continue to be permitted although potentially in more limited circumstances and with strengthened protections.<sup>12</sup>

## Freedom from exploitation, violence and abuse (Art. 16)

### Committee's Concluding Observations and response

34. The Committee recommends that urgent action be taken to amend legislative and policy frameworks that facilitate violence, abuse and neglect in institutions, to remove persons with disabilities from institutional settings with adequate support for living in the community, to investigate and sanction institutions and perpetrators and to provide victim and recovery support services and redress.

*Whaikaha and Oranga Tamariki have accepted this recommendation with modification.*

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<sup>10</sup> See *Making Disability Rights Real, Whakatūturū Ngā Tika Hauātanga – 2014-2019*, Recommendation 36c.

<sup>11</sup> Ibid, Recommendation 36c.

<sup>12</sup> See [Cabinet Material: Policy decisions for transforming mental health law | Ministry of Health NZ](#) Accessed, 21 September 2023.

## IMM comment

1. Governments are tasked with ensuring disabled people are free from harm and disability services are monitored to ensure disabled people are free from violence, abuse and neglect. However, violence continues to be perpetuated towards disabled people and children living in institutional care facilities, educational settings, work places and home environments.<sup>13</sup>
2. Disabled people and disabled children are more likely than non-disabled adults and children to be subjected to violence and abuse.<sup>14</sup> Although improved collection of data by the Ministry of Justice is encouraging, the violence levelled against disabled people revealed by the data, especially against women and children, is of grave concern.<sup>15</sup>
3. Although some progress has been made, with disabled people more visible in violence prevention strategies, and an increased focus on Safeguarding in Whaikaha Ministry of Disabled People, there is still further strengthening required for systems to protect those disabled people living in institutions or receiving in-home support services from violence, harm and neglect.

## Protecting the integrity of the person (Art.17)

### Committee's Concluding Observations and response

36 (a) Immediately place a moratorium on sterilization, contraception and abortion procedures performed without personal consent, and take urgent action to adopt uniform legislation prohibiting such procedures on women and girls with disabilities;

*The Ministry of Health has accepted this recommendation with modification.*

36 (b) Adopt clear legislative provisions that explicitly prohibit the performance of unnecessary, invasive and irreversible medical interventions, including surgical, hormonal or other medical procedures on intersex children before an age at which they can provide informed consent;

*The Ministry of Health has accepted this recommendation with modification.*

36 (c) Recalling previous recommendations made by the Committee on the Rights of the Child, develop and implement a child rights-based health-care protocol for intersex children, setting the procedures and steps to be followed by health teams, ensuring that no one is subjected to unnecessary medical or surgical treatment during infancy or childhood, guaranteeing the rights of children to bodily integrity, autonomy and self-determination, and provide families with intersex children with adequate counselling and support;

*The Ministry of Health has accepted this recommendation with modification.*

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<sup>13</sup> See *Making Disability Rights Real, Whakatūturū Ngā Tika Hauātanga – 2014-2019*, Recommendation 44.

<sup>14</sup> See <https://www.odi.govt.nz/whats-happening/violence-against-disabled-people-in-new-zealand-new-research/> Accessed 31/8/2023.

<sup>15</sup> See *Making Disability Rights Real, Whakatūturū Ngā Tika Hauātanga – 2014-2019*, Recommendation 44 d.

36 (d) Adopt legislative provisions to prohibit growth attenuation treatment (Ashley Treatment), including a prohibition on procedures sought outside New Zealand;

*The Ministry of Health has accepted this recommendation with modification.*

36 (e) Adopt legal provisions to provide legal remedies and holistic redress to victims of medical interventions performed without personal consent, including access to support and recovery services and adequate compensation;

*The Accident Compensation Corporation has noted this recommendation without accepting.*

36 (f) Develop measures to ensure reporting and data collection on sterilization, contraception and abortion procedures performed without personal consent, on non-urgent medical interventions performed on intersex children and on growth attenuation treatment.

*The Ministry of Health has accepted this recommendation with modification.*

## IMM comment

1. The IMM has previously recommended the government prohibit of the use of sterilisation or any other non-therapeutic medical procedure on disabled children and disabled adults without their prior, fully informed, and free consent. The CRPD references a need for prohibiting non-consensual sterilisation in previous COs. Current legislation continues to allow for such procedures in a number of circumstances.<sup>16</sup>
2. There remains limited data available around the extent to which these procedures are carried out within New Zealand, and the number of procedures performed overseas on New Zealanders. Anecdotal evidence suggests that these procedures continue to occur.<sup>17</sup>
3. A work programme identified as part of delivery for the current Disability Action Plan in 2016 to explore the existing framework to protect children and adults with disabilities against non-therapeutic procedures, has not produced clear outcomes.<sup>18</sup>

## Living independently and being included in the community (Art. 19)

### Committee's Concluding Observations and response

40 (a) Expedite the national rollout of the Enabling Good Lives programme and ensure that all persons with disabilities, including people with foetal alcohol syndrome disorder, are eligible;

*Whaikaha has accepted this recommendation with modification*

40 (b) Develop a comprehensive deinstitutionalization strategy, with specific time frames and adequate budgets, to close all residential institutions, including group homes and residential specialist schools, to provide community supports for persons with disabilities to live independently

<sup>16</sup> See *Making Disability Rights Real, Whakatūturū Ngā Tika Hauātanga – 2014-2019*, Recommendation 45.

<sup>17</sup> Ibid Recommendation 46.

<sup>18</sup> <https://www.odi.govt.nz/nz-disability-strategy/outcome-7-choice-and-control/action-explore-the-framework-that-bodily-integrity-of-disabled-people/> Accessed 28/8/2023.

in the community;

*Whaikaha has accepted this recommendation with modification*

40 (c) Develop measures to remove barriers for persons with disabilities to choose where and with whom they live, including by committing to increase the supply of affordable and accessible housing and by reforming programmes, such as the Disability Community Residential Support Services Strategy to prevent congregate living arrangements linked with shared support;

*Whaikaha has accepted this recommendation with modification*

40 (d) Take measures to cease investment in residential specialist schools for children with disabilities and establish a deinstitutionalization process that ensures adequate support is provided for children with disabilities to return to their families and exercise their right to an inclusive education.

*The Ministry of Education has noted this recommendation without accepting.*

## IMM Comment

1. An ongoing shortage of housing stock that meet basic accessibility standards, and limitations to available funding for housing modifications mean that many disabled New Zealanders continue to face significant barriers to independent living.<sup>19</sup>
2. Many people are not able to access the tailored or self-determined supports that would facilitate meaningful participation and belonging in community.
3. Ongoing efforts to broaden enrolment in residential specialist schools is concerning, in light of previous recommendations from both the IMM and CRPD that the system should transition away from these facilities, towards a genuinely inclusive education system.<sup>20</sup>

## Education (Art. 24)

### Committee's Concluding Observations and response

48 (a) Develop an inclusive education strategy that includes measures for the devolution of segregated education settings into a mainstream inclusive education system, to transition funding and resources from specialist education to inclusive education, to prioritize inclusive education in teacher training, to establish uniform, inclusive education policies and guidelines, to develop an inclusive education curriculum and to promote and raise community awareness;

*The Ministry of Education has accepted this recommendation with modification.*

48 (b) Withdraw the proposal to change entry requirements for enrolment in residential specialist schools and redirect funding and resources into an inclusive education system;

*The Ministry of Education has noted this recommendation, without accepting.*

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<sup>19</sup> See *Making Disability Rights Real, Whakatūtu Ngā Tika Hauātanga – 2014-2019*, Recommendation 49.



48 (c) Develop specific culturally appropriate strategies to address the high proportion of Māori children with disabilities in residential specialist schools, including the provision of supports to remain with whānau (extended family networks) in their local communities.

*The Ministry of Education has noted this recommendation, without accepting.*

## IMM Comment

1. Access to an inclusive and quality education is a key element in an individual's personal development and growth. The New Zealand education system is not yet fully inclusive, and disabled children continue to face barriers to accessing appropriate support and school environments. These include the availability of adequate resources for support, barriers to accessing funding, and a lack of appropriate training for educators and other education staff in providing genuinely inclusive education.<sup>21</sup>
2. The Committee has noted that only inclusive education can provide both quality education and social development for disabled people, and a guarantee of universality and non-discrimination in the right to education.<sup>22</sup>
3. The Committee also noted with concern the efforts under way to broaden the admission criteria for residential specialist schools, with a view to increasing attendance. They made a number of recommendations regarding the need to transition from segregated educational settings into a mainstream inclusive system (48a/40b/40d).
4. Section 34 of the Education and Training Act protects the right of students' 'special educational needs' to have the same rights to education at State schools as others.<sup>23</sup> But as noted in [recent evaluations](#) disabled learners face many barriers to enrolling and participating in schooling.<sup>24</sup>

## Adequate standard of living and social protection (Art.28)

### Committee's Concluding Observations and response

54 (a) Expedite implementation of the recommendations of the report from the Welfare Expert Advisory Group to address the inequity and complexity within the social security system for persons with disabilities

*Ministry of Social Development and Ministry of Business, Innovation and Employment have accepted this recommendation with modification.*

54 (b) Urgently address the fragmentation of the support system for persons with disabilities through a co-design and co-production process to address the inequity between Accident Compensation Corporation recipients and other persons with disabilities, including considering an

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<sup>21</sup> See *Making Disability Rights Real, Whakatūturū Ngā Tika Hauātanga – 2014-2019*, Recommendation 77.

<sup>22</sup> UNCRPD General Comment No.4 (2016) on the right to inclusive education, p 1.

<sup>23</sup> Education and Training Act 2020, Section 34 (1).

<sup>24</sup> See, <https://ero.govt.nz/our-research/thriving-at-school-education-for-disabled-learners-in-schools>. Accessed 21 September 2023.

integrated model of support to ensure uniform standards for all persons with disabilities.

*The Accident Compensation Corporation has accepted this recommendation with modification.*

54 (c) Ensure people with foetal alcohol syndrome disorder, chronic fatigue syndrome and other chronic and rare conditions have access to the disability support system and are included in disability policies and programmes.

*Whaikaha has accepted this recommendation with modification.*

## IMM comment

1. Statistics continue to show disabled people's participation in the education system and work force as significantly lower than those non-disabled. This directly affects life outcomes, as disabled people not in the workforce are more likely to be affected by poverty due to a lack of or diminished income. Acting on the disability-related recommendations set out in the Welfare Expert Advisory Group's report *Whakamana Tāngata*<sup>25</sup> would allow for more equitable outcomes for disabled people compromised due to poverty and lack of support.<sup>26</sup>
2. Government support systems need to be equitable as presently there is a disparity in State supports and resources based on how a person's 'disability' is determined or arrived at. Currently there is a clear discrepancy between the support available to many New Zealanders receiving support under the Disability Support System, and those receiving support under the Accident Compensation Corporation.<sup>27</sup>
3. The government has a responsibility to provide appropriate, adequate and equitable support to disabled people based on their specific needs and requirements.<sup>28</sup>
4. Encouragingly, the Enabling Good Lives programme is set to be implemented throughout New Zealand. However, the IMM is concerned that the limitations to the current roll out of Enabling Good Lives, and the variations in the model that is available where roll out has occurred, has led to significant local variations in available support and services.
5. The current definitions of disability in place for the purposes of funding in New Zealand also exclude many people living with chronic long-term conditions, for example, but not limited to, FASD and chronic fatigue/ME.
6. Disabled people should receive the support and funding they require to live a life they choose to live, where they want to live, and be able to participate fully in home, community and public life.

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<sup>25</sup> See <https://www.weag.govt.nz/weag-report/whakamana-tangata/>. Accessed 31 August 2023.

<sup>26</sup> See *Making Disability Rights Real, Whakatūturū Ngā Tika Hauātanga – 2014-2019*, Recommendation 98.

<sup>27</sup> Ibid Recommendation 98i.

<sup>28</sup> Ibid Recommendation 98a.