Government response to the United Nations Committee on the Rights of Persons with Disabilities’ Concluding Observations on New Zealand

June 2015

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This document was published by the Office for Disability Issues,   
Ministry of Social Development, on behalf of the New Zealand Government.

It is available online at [www.odi.govt.nz](http://www.odi.govt.nz)

Published

June 2015

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# Introduction

The New Zealand Government welcomes the Concluding Observations by the Committee on the Rights of Persons with Disabilities from the first examination on New Zealand’s implementation of the Convention on the Rights of Persons of Disabilities (CRPD) on 15-16 September 2014.

The Government considers the examination to provide a valuable opportunity to reflect critically on areas of good progress in implementing the CRPD, and also those areas where further work is required. In this respect, the Government acknowledges the commendations from the Committee including regarding the New Zealand Disability Strategy and the Disability Action Plan 2014 – 2018. The Government is committed to continuing to work in a co-design approach with representatives of disabled people in decision-making that concerns them and to thus uphold the obligations under Article 4.3 of the CRPD. The positive comments regarding New Zealand Sign Language being one of New Zealand’s official languages and the establishment of an Independent Monitoring Mechanism that fulfils obligations under Article 33 are also welcomed.

The Government is pleased that many of the responses to the recommendations note work is already underway through the Disability Action Plan 2014 – 2018. We consider this to be a positive reflection of the partnership between the Government and disabled people, through their representative organisations. Building on and strengthening this partnership is a priority, and as such, many responses note that the issue identified in the recommendation will be considered through the update of the Disability Action Plan. This will ensure disabled people can have a say about the issues that are the most important to them.

In some areas the Government agrees that there is an issue but there is a requirement to complete policy and legislative processes before a final decision is made. In other areas, the Government agrees there is an issue but considers there is another way that it can be addressed. An explanation for these responses is given.

The recommendations and responses are grouped into general, access, justice and self-determination, community living, reasonable accommodation, data and international cooperation as below.

The New Zealand Government also welcomes and accepts the Committee’s offer of simplified reporting for the second and third progress reports.

# Government response to Concluding Observations[[1]](#footnote-1)

## General

1. The Committee recommends that the State party ratify the Optional Protocol as soon as is practicable (refer paragraph 6).

In progress. New Zealand is beginning the domestic treaty examination process with a view to acceding to the Optional Protocol-Convention on the Rights of Persons with Disabilities.

2. The Committee recommends that the State Party bring this matter [the Google search engine brings up disturbing phrases when some phrases relating to autistic persons are typed into the search box] to the attention of Google, which has a registered office in New Zealand, to discuss what can be done to prevent or eliminate this type of “hate speech” (refer paragraph 8).

In progress. The Government notes this recommendation concerns automated suggestions from search engines and not the search results themselves. The Office for Disability Issues has written to Google about changing automated processes that lead to hate speech in auto-suggestions.

3. The Committee recommends that this work [projects funded by the Ministry of Social Affairs to assist women with disabilities] be continued and strengthened to assist women with disabilities in obtaining education and employment and in combating domestic violence. The Committee also recommends that organizations representing women and girls with disabilities be involved in these programmes (refer paragraph 16).

In progress. This work is being integrated into the long-term work programme to improve employment outcomes and the Ministerial Group on Family Violence and Sexual Violence Work Programme.

4. The Committee recommends that this work [undertaken as part of the Disability Action Plan 2014–2018 to make services more accessible] 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 (refer paragraph 18).

In progress. This recommendation will be considered during the update of the Disability Action Plan.

## Access

5. The Committee recommends that the State party take all appropriate steps to speedily ratify the Marrakesh Treaty (refer paragraph 66).

In progress. Work on a discussion document is underway to inform the National Interest Analysis (which is required in order for the Government to consider ratification/accession of international treaties).

6. The Committee recommends that the 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 (refer paragraph 42).

In progress. The five initial priorities for the New Zealand Sign Language (NZSL) Advisory Board will be: including NZSL in education, promoting NZSL in the home, providing access to information and services in NZSL, providing access for deaf Maori and developing interpreter standards.

7. The Committee recommends that the State party consider the introduction of accessible electronic voting to enable persons with disabilities to cast their votes in a truly secret manner (refer paragraph 62).

In progress. The Government has extended telephone dictation voting, and this was used by a number of blind and disabled voters at the 2014 General Election.

8. The Committee recommends that the State party 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 Committee also recommends that 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 (refer paragraph 20).

In progress. The Government will consider a long-term plan to address the accessibility of public buildings in 2015. Further work on housing will be considered during the update of the Disability Action Plan.

9. The Committee recommends that greater efforts be made to enable Maori and Pacific people with disabilities, and especially those who are deaf and deaf-blind, to access information (refer paragraph 44).

In progress. The Disability Action Plan 2014-2018 already includes an action ‘increase accessibility across government agencies’. Further work will be considered during the update of this Plan.

10. The Committee recommends that these two statutes [sections 141, 142, and 144 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 (refer paragraph 46).

In progress. There is already an action on the Disability Action Plan 2014 – 2018 on this issue and consultation documents have been released.

11. The Committee recommends that the State party take further measures to increase the captioning and audio description of television programmes (refer paragraph 64).

The Government will be considering the extent to which captioning and audio description of television programmes is available during the annual update process of the Disability Action Plan.

## Justice and self-determination

12. The Committee recommends that the State party 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 (refer paragraph 24).

This recommendation is accepted to the extent that legal aid is available to all persons who cannot afford a lawyer and are seeking to challenge, through a review, court or tribunal, a decision made by the Accident Compensation Corporation (ACC). Subject to other Government priorities, consideration will be given to a review of regulations governing costs/expenses for review hearings.

13. The Committee recommends that organizations 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 (refer paragraph 26).

There will be an opportunity for submissions on the proposal to establish an Accident Compensation Appeal Tribunal, and its procedures. Within the broader tribunals reform process, it is considered that full, robust and effective consultation with stakeholders could be achieved.

14. The Committee recommends that the Institute of Judicial Studies, in conjunction with disabled persons’ organizations, run training programmes on the Convention and on the rights of persons with disabilities who come before New Zealand courts and tribunals (refer paragraph 28).

In progress. Noting that while the Ministry of Justice funds and administratively assists the Institute of Judicial Studies, it also affirms judicial independence as the guiding principle for managing the Institute and developing education programmes and resources. The Government will bring the Committee’s recommendation to the attention of the Institute for Judicial Studies.

15. The Committee recommends that the State party strengthen these programmes and initiatives [under the Domestic Violence Act 2013 to assist persons with disabilities who suffer violence — especially women, girls and boys with disabilities] 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. It also recommends that the State Party ensure that legislation, policy and practice relating to domestic violence covers persons with disabilities in the domestic situations that they encounter (refer paragraph 36).

In progress. This recommendation is already in of the Disability Action Plan 2014 – 2018 through the ‘reduce the number of disabled children and adults who are victims of violence, abuse and neglect’ priority and three associated actions.

16. The Committee recommends that the independent living model and the Enabling Good Lives programme be extended to enable more persons with disabilities to live independently in the community. The Committee also recommends that 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 (refer paragraph 40).

In progress. This recommendation is already included in the Disability Action Plan 2014-2018 through actions around the Enabling Good Lives demonstration.

17. The Committee recommends that the State party reconsider this matter [of not paying some family carers to provide disability support services to adult disabled family members] to ensure that all family members who are carers are paid on the same basis as other carers are, and recommends that family members who are carers be entitled to make complaints of unlawful discrimination in respect of the State party’s family care policy (refer paragraph 10).

A decision has recently been made by the Courts and the Government is currently considering a response. The Ministry of Health is undertaking an evaluation of the Funded Family Care scheme. Following the evaluation, the Ministry will make recommendations about the way forward.

18. The Committee recommends that the State party take immediate steps to revise the relevant laws and replace substituted decision-making with supported decision-making. This should provide a wide range of measures that respect the person’s autonomy, will and preferences, and is in full conformity with article 12 of the Convention, including with respect to the individual’s right, in his or her own capacity, to give and withdraw informed consent, in particular for medical treatment, to access justice, to marry, and to work, among other things, consistent with the Committee’s general comment No. 1 (2014) on equal recognition before the law (refer paragraph 22).

There is already an action in the Disability Action Plan 2014-2018 to ‘Ensure disabled people can exercise their legal capacity, including through recognition of supported decision making. This work may recommend changes to legislation, however no decisions have been made yet. Legislative provisions for non-consensual assessment and treatment may be necessary to treat severe mental illness where an individual may not be capable of giving or communicating informed consent to medical treatment.

19. The Committee recommends that the State party take 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. The Committee also recommends that the State party ensure that all mental health services are provided on the basis of the free and informed consent of the person concerned, in accordance with the Convention. The Committee further recommends that the Mental Health (Compulsory Assessment and Treatment) Act 1992 be amended to comply with the Convention (refer paragraph 30).

In New Zealand, no-one is allowed to be detained against their will in any medical facility on the basis of disability alone. Legislative provisions for allowing non-consensual assessment and treatment in limited circumstances are needed to protect people with a mental disorder that pose a serious danger to themselves or others, including from self-neglect. The issue of whether the *Mental Health (Compulsory Assessment and Treatment) Act 1992* complies with the CRPD will be explored in new work to commence in 2015 in the Disability Action Plan 2014-2018.

20. The Committee recommends that immediate steps be taken to eliminate the use of seclusion and restraints in medical facilities (refer paragraph 32).

Seclusion and restraint are sometimes needed in mental health facilities when a patient poses a serious risk to themselves and/or others, and other interventions have proved ineffective. Restraint is sometimes needed in acute medical or surgical care (for example to protect medical devices such as intubation tubes, intravenous lines, indwelling urinary catheters, and feeding tubes). The Government acknowledges that this issue is relevant to the recommendations regarding supported decision-making which is already an action on the Disability Action Plan 2014 – 2018.

21. The Committee recommends that the State Party review 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. The Committee also recommends that the State Party ensure that reasonable accommodation in prison settings operates in respect of persons with disabilities (refer paragraph 34).

The Government agrees the issue identified by the recommendation is important and that further work is required but does not accept the specific recommendation. The Ministries of Health, Justice and the Department of Corrections are working jointly to ensure the criminal justice system is responsive in supporting prisoners with disability-related needs.

22. The Committee recommends that the State party 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 (refer paragraph 38).

Sterilisation is sometimes needed on clinical grounds (for example, hysterectomy) and legislative provisions to do so are required where an individual may not be capable of giving or communicating informed consent (for example, severe intellectual incapacity).

## Community living

23. The Committee recommends that further work be undertaken to 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. The Committee encourages the State party to implement anti-bullying programmes and to establish an enforceable right to inclusive education (refer paragraph 50).

In progress. The Government agrees further work is required to increase levels of tertiary education for disabled people and to implement anti-bulling programmes. Regarding reasonable accommodation, the first step will be the development of reasonable accommodation guidelines in employment by the Ministry of Social Development. Further guidelines on reasonable accommodation will be considered during the update of the Disability Action Plan and will build on those for employment. The Government considers that the provisions in the Education Act 1989 already provide for an enforceable right to inclusive education. This Act stipulates that every child has the right to attend their local school and that exceptions to this (where children require a special school) require approval from the Secretary of Education. Furthermore the special education funding framework enables a child with additional support needs to access the full range of additional supports within their local school. There are a range of programmes and initiatives focussed on improvements to inclusive education.

24. The Committee recommends that measures be strengthened to enhance the health outcomes of Maori and Pacific persons with disabilities (refer paragraph 54).

In progress. The Government is focused on addressing health inequalities for Maori and Pacific peoples, including those with disabilities.

25. The Committee recommends that further measures be taken to ensure access to full health care for all persons with disabilities (refer paragraph 52).

In progress. This issue is already included in the Disability Action Plan 2014-2018 and the Ministry of Health’s work programme on intellectual disability.

26. The Committee recommends that further steps be taken to increase the employment levels of persons with disabilities (refer paragraph 56).

In progress. Measures to address this are covered within the ‘ensure employment and economic opportunities’ work stream of the Disability Action Plan 2014-2018.

27. The Committee recommends that the State party examine alternatives to minimum wage exemption permits in the employment of persons with disabilities (refer paragraph 58).

In progress. The Disability Action Plan 2014-2018 already includes an action to develop better alternatives to replace the minimum wage exemption, looking at existing and new schemes. Scoping work has been undertaken and it is expected that recommendations for any change will be made by late 2015, with implementation of any changes, including legislative changes, occurring after then.

28. The Committee recommends that 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 (paragraph 48).

In New Zealand, the welfare and interests of the child are the primary consideration in the adoption process. The Government also notes that in practice, Family Court Judges take great care before dispensing with a person’s consent to adoption. Where possible, the section should be interpreted in a way that is consistent with the New Zealand Bill of Rights Act 1990. The Committee’s recommendation will be considered when the legislation is reviewed. This is because the recommendation requires an amendment to the Act, which requires the agreement of Cabinet and enactment by Parliament.

29. The Committee recommends that 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 (paragraph 60).

One of the Government’s priorities is to address child hardship for all children in New Zealand. Families with disabled children are eligible for child disability allowance in recognition of the constant care and attention required. They may also be eligible for the disability allowance which covers the extra costs of disability. These costs are reviewed annually.

## Reasonable accommodation

30. The Committee recommends that these guidelines [on the application of the principle of reasonable accommodation especially in the area of employment] be promptly completed in line with provisions of the Convention, and distributed (refer paragraph 14).

In progress. The first step will be the development of reasonable accommodation guidelines in employment by the Ministry of Social Development. Further guidelines on reasonable accommodation will be considered during the regular update of the Disability Action Plan and will build on those for employment.

31. The Committee recommends that, in order to clarify the meaning of reasonable accommodation, the State Party give consideration 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 (refer paragraph 12).

The Government does not agree with the recommendation because the Court of Appeal already considers the definition of reasonable accommodation in the Human Rights Act 1993 to be consistent with the definition in Article 2 of the CRPD. Further clarification will be provided through the development of guidelines.

## Data

32. The Committee recommends that Statistics New Zealand produce 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 non disabled men and women (refer paragraph 68).

The Committee recommends that government departments, crown entities and local authorities should collect and publish disaggregated data on people with disabilities in their annual reports (refer paragraph 70).

In progress. The issues identified in both recommendations will be addressed by a new cross-government and cross-sector group to be established jointly by the Office for Disability Issues and Statistics New Zealand.

## International cooperation

33. The Committee recommends that the State party’s foreign aid programme should continue a focus on disability-inclusive development. The Committee also recommends that the State party reinstate its provision of financial and other resources to the Pacific region (refer paragraph 72).

In progress. New Zealand gives effect to Article 32 through direct funding and support of activities through the NZ Aid Programme, information sharing, supporting the focus on persons with disabilities in international fora and conventions, such as the Sustainable Development Goals, and facilitating the participation of persons with disabilities as part of official New Zealand delegations to relevant international events. The NZ Aid Programme acknowledges the needs and rights of persons with disabilities and this informs its activities and funding.

1. Note that the paragraph reference is to the United Nations Committee on the Rights of Persons with Disabilities *Concluding observations on the initial report of New Zealand* document 31 October 2014, available at: <http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD%2fC%2fNZL%2fCO%2f1&Lang=en> [↑](#footnote-ref-1)