



**Convention on the Rights
of Persons with Disabilities**

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Committee on the Rights of Persons with Disabilities

**Implementation of the Convention on the Rights
of Persons with Disabilities**

**Initial reports submitted by States parties under article 35 of
the Convention**

New Zealand * **

[31 March 2011]

* The present document is being issued without formal editing.

** Annexes can be consulted in the files of the Secretariat.

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I. Overview

Where we stand

1. **New Zealand's vision of full participation and improved wellbeing** for disabled people of all ages has developed over several decades. The process began in the 1970s with a paradigm shift from exclusion and care outside mainstream society to a social model of disability, with inclusion and mainstreaming as the default option, and supplementary support services for disabled people as required.

2. **The adoption of a national Disability Strategy has further advanced this vision:**¹ Since 2000, New Zealand law has required a national Disability Strategy², under which the Minister for Disability Issues is required to report to Parliament annually on progress made. The Disability Strategy, which includes initiatives across government, is reviewed on an ongoing basis.

3. **New Zealand's vision is reflected in its support for the Convention:** The principles given effect in the Disability Strategy provided the basis for New Zealand's role in the development of the Convention on the Rights of Persons with Disabilities (the Convention). The shift in approach undertaken since the 1970s enabled New Zealand to ratify the Convention in September 2008.

4. **The legislative framework is sound and comprehensive:**³ The rights of disabled people are provided for in New Zealand's general human rights law, the New Zealand Bill of Rights Act 1990, in its specialised non-discrimination law, the Human Rights Act 1993, and in specific recognition in legislation governing health, education and other social services. Before ratifying the Convention, New Zealand reviewed its law for consistency with the Convention and made necessary amendments.

1. Engagement with disabled people

5. **Disabled people are essential partners:** Partnerships between government, disabled people and their families, and the disability sector along with robust means of communication underpin New Zealand's continued commitment to its broad vision and to the Convention:

(a) Disabled people were members of the New Zealand delegation for the negotiation of the Convention;

(b) As part of its engagement with the negotiations, the Government established a standing disability sector reference group. The reference group has continued as a key means of consultation and currently comprises 74 representatives of disabled people, family members, disability advocates and disability service providers;

(c) In both the negotiation and the ratification of the Convention, the Government sought wider input from disability organisations and providers, including the perspectives of children and their advocates.

¹ See, further, Annex, paragraph 6.

² The New Zealand Disability Strategy.

³ See, further, paragraph 14 below.

2. Our challenges

6. **Disabled people are still disadvantaged:** While there have been, and continue to be, improvements, many disabled people experience poorer outcomes in health, education, employment and elsewhere. The degree of relative disadvantage is still greater for women and for Māori and Pacific people.

7. **Disabled people still experience social discrimination and practical barriers:** While the Government has taken many steps to strengthen the standing of disabled people, constraints remain in the attitudes of some people, who see disabled people as less than equal. There are also physical and environmental barriers: for example, New Zealand's small population and geographic diversity means that some services are concentrated in main centres and are not readily accessible in more remote areas.

8. **Data about disabled people is still limited:** While a range of data is collected, more is needed. As one response, the forthcoming national census is to be followed by an improved survey of disabled people to gather more detailed and more specific data.⁴

9. **Support for disabled people can better reflect different cultural contexts:** Across New Zealand's increasingly diverse community, attitudes to disabled people and to appropriate means of support can vary between different cultural groups. The Government includes requirements of cultural sensitivity when contracting for support services and is encouraging the development of indigenous providers and providers using indigenous cultural frameworks. Indigenous provision is still in its early stages.

3. Going forward

10. **There is leadership at the highest level:** Disabled New Zealanders have an advocate in the Minister for Disability Issues, supported by a Ministerial Committee on Disability Issues⁵ and an Office for Disability Issues.⁶

11. **The Government has set priorities for addressing the challenges that we face:**⁷ An independent implementation review found government agencies have undertaken a significant level of activity to implement the Disability Strategy but more is needed to produce real improvements in outcomes for disabled people.⁸ Rather than each agency having their own action plan and focus, having a single combined action plan and priorities was recommended.

12. Realising the rightful place of disabled people in New Zealand society is an ongoing and multi-generational goal. The New Zealand Government is developing a Disability Action Plan and is taking concrete actions around three current priorities:

(a) Accessible New Zealand – including enhanced community acceptance and improved access to transport and to information;

(b) Enabling disability supports – allowing disabled people autonomy, wherever possible, and providing support as early as possible;

⁴ The national census and disability survey were to occur in 2011. They have been delayed as a result of the major earthquake in Christchurch in February 2011, with new dates to be set shortly.

⁵ See, further, Annex, paragraph 1.

⁶ The Office for Disability Issues is the government agency responsible for promoting and monitoring the Disability Strategy and the Convention. It supports the Minister for Disability Issues and the Ministerial Committee on Disability Issues.

⁷ See, further, Annex, paragraph 4.

⁸ Litmus Ltd, *Progress Report - 2006/2007 Review of New Zealand Disability Strategy Implementation*, August 2008.

(c) Contributing as citizens – better ensuring that disabled people can achieve in education and in paid work and can fully experience access to justice and all other rights as members of the community.

4. Preparation of this report

13. In keeping with its engagement with disabled people, the Government consulted widely in preparing this report:

(a) The report and the proposed consultation process were both considered from the outset by the standing disability sector reference group;

(b) A draft was circulated for comment both within the disability sector and across the community as a whole, and consultation procedures also included eight formal meetings, an online discussion forum, an invitation to provide written submissions and a separate survey for young disabled people and their families. Several of the consultation meetings were targeted at particular groups, including Māori and Pacific peoples. Several hundred people and groups took up one or more of these opportunities.

II. General provisions of the Convention

Articles 1–4

1. Implementation of the Convention

14. The Convention is given effect in New Zealand through:⁹

(a) The New Zealand Bill of Rights Act 1990, which guarantees all people fundamental civil and political rights and includes an express prohibition of discrimination against disabled people;

(b) The Human Rights Act 1993, which is a specialised anti-discrimination statute;¹⁰ and

(c) Through other specialised legislation: for example, the right of access to education for disabled children is included within the Education Act 1989 while the New Zealand Public Health and Disability Act 2000 makes specific provision for disability services as part of the public health system.¹¹

15. In addition, New Zealand reviewed its law for consistency with the Convention prior to ratification. Amendments were made to 23 statutes, most commonly to remove references to disability as a criterion for a number of dated statutory provisions.¹² There are no customary laws that discriminate on the basis of disability.

16. New legislation is reviewed for consistency with the Convention:

(a) As outlined below, government decision-making procedures include scope for involvement by the Minister for Disability Issues, the Ministerial Committee on

⁹ See, further, paragraphs 28-30 below and *Common Core Document of New Zealand*, HRI/CORE/NZL/2010, 44.

¹⁰ See, further (including discussion of enforcement mechanisms and reasonable accommodation) Article 5, below.

¹¹ See, further, Annex paragraph 7.

¹² Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008.

Disability Issues and the Office for Disability Issues, as well as formal assessment of consistency with the Convention and with other international human rights instruments; and

(b) At a parliamentary level:

(i) Upon introduction of a Bill, the Attorney-General reviews all proposed legislation for consistency with civil and political rights, including the right of non-discrimination. Since ratification of the Convention, the Attorney-General has advised Parliament of one bill that appeared to be inconsistent with the right of non-discrimination on the ground of disability. The Eden Park Trust Amendment Bill 2009 excluded any trustee from office if he or she were subject to court-ordered care by reason of personal incapacity. In presuming that all people subject to such court orders were not competent to act as a trustee, the Bill gave rise to disability discrimination. Parliament considered the Attorney-General's concerns and the Bill was amended accordingly prior to enactment;

(ii) Following introduction, almost all legislation is referred for consideration by a Parliamentary Select Committee and the hearing of public submissions.

17. The Government is continuing to promote the Convention through the ongoing implementation of the Disability Strategy. It is currently implementing a comprehensive process for monitoring compliance with and promoting the Convention in conjunction with non-governmental bodies, and additional funding has been provided.

2. Disabled people and government decision-making

18. The Government has made a commitment to consult and work in partnership with disabled people:

(a) The Office for Disability Issues is the key government point of contact for the disability sector and is in regular contact with disability groups;

(b) The Ministerial Committee on Disability Issues, headed by the Minister for Disability Issues, specifically considers disability issues and regularly meets with disabled people;¹³

(c) Several government agencies and many local government bodies are supported by specialised disability advisory groups;

(d) Each of the 20 District Health Boards has a Disability Support Advisory Committee;

(e) The Ministry of Health meets several times a year with a Disability Services Consumer Consortium, which includes disabled people nominated by contracted providers;

(f) The Human Rights Commission, New Zealand's national independent human rights institution, has one Commissioner designated as responsible for disability issues and the Commission is robustly engaged with such issues across its work; and

(g) The Mental Health Commission, an independent Crown entity, advocates for people with mental illness and addictions.

3. Disability in New Zealand¹⁴

19. Statistics New Zealand, the government agency which collects statistics on disability, aligns with international definitions and defines disability as any self-perceived

¹³ See, further, Annex paragraphs 1-3.

¹⁴ See, further, Annex, Tables 1-8.

limitation in activity resulting from a long-term condition or health problem lasting or expected to last six months or more, and not completely eliminated by an assistive device. A range of other definitions are used in other contexts and reflect those particular purposes: for example, the national Disability Strategy takes a social and contextual definition,¹⁵ while the non-discrimination protections in the Human Rights Act 1993 take a broader approach that accords protection to, for example, people with short-term disabilities.¹⁶

20. Applying the Statistics New Zealand definition, 660,300 New Zealanders reported a disability, representing 17 per cent of the total population. Rates of disability were roughly equal between men and women but boys make up 59 per cent of disabled children, reflecting higher rates of some disabling medical conditions. The most common types of disability were mobility, agility, hearing and psychiatric/psychological.¹⁷

21. Forty-five per cent of adults aged 65 and over had a disability, comprising one-third of all people with disabilities. The number of disabled people in New Zealand is expected to grow by 60 per cent over the 40 year period from 2006 to 2046. This expectation is based on the marked increase in disability prevalence with increasing age, and a projected steady ageing of New Zealand's population.¹⁸

22. Many disabled people experience lower levels of education, income and marriage or other partnership. The 2006 Disability Survey found:

(a) 38 per cent of disabled people aged 25-64 had no educational qualification, against 18 per cent of non-disabled people;

(b) 39 per cent of disabled people aged 15-64 had annual personal incomes of less than NZ\$15,000, compared to 28 per cent of non-disabled people; and

(c) 66 per cent of disabled people aged 25-64 were married/partnered, against 76 per cent of non-disabled people.¹⁹

23. Māori experience higher relative rates of disability (19 per cent against 13 per cent)²⁰ and are significantly more likely to be unemployed and to have a lower income. Disabled Māori adults in the 15–64 years working-age group were less likely to be

¹⁵ The Disability Strategy defines “disability” as the process which happens when one group of people create barriers by designing a world only for their way of living, taking no account of the impairments other people have. Disability relates to the interaction between the person with the impairment and the environment. This definition moves New Zealand’s focus from a medical to a social model of disability, where it is recognised that society has put up barriers that exclude or disadvantage people with impairments and do not recognise their rights and needs. This is the definition promoted by disabled people, as it focuses on the barriers to participation.

¹⁶ The Human Rights Act 1993 defines disability as physical disability or impairment, physical illness, psychiatric illness, intellectual or psychological disability or impairment, any other loss or abnormality of psychological, physiological, or anatomical structure or function, reliance on a guide dog, wheelchair, or other remedial means and/or the presence in the body of organisms capable of causing illness.

¹⁷ *Household Disability Survey*, Statistics New Zealand, 2006.

¹⁸ Projection based on age group specific disability prevalence rates from the 2006 New Zealand Disability Survey and Statistics New Zealand’s age group specific population projections, base 2006, series 5 (medium birth, death and migration assumptions).

¹⁹ Maskill C, Hodges I. *Indicators from the 1996, 2001 and 2006 New Zealand Disability Surveys for monitoring progress on outcomes for disabled people*. Wellington: Office for Disability Issues 2011 (report prepared by HealthSearch Ltd). <http://www.odi.govt.nz/resources/research/outcomes-for-disabled-people/index.html>.

²⁰ Adjusted for the different age structures of the Māori and non Māori populations. In 2006 Māori were estimated to make up 15 per cent of the population.

employed (45 per cent) than disabled non-Māori adults (62 per cent), non-disabled Māori adults (67 per cent), or non-disabled non-Māori adults (77 per cent). Thirty eight per cent of disabled Māori adults received at least one type of disability-related government financial assistance, relative to 28 per cent per cent of disabled non-Māori.²¹ The national Disability Strategy and public health programmes provide a range of initiatives to improve the position of disabled Māori and Pacific peoples,²² including the Māori Disability Strategy and Action Plan and the National Pasifika Disability Action Plan.

24. Just over half of all disabled children (52 per cent) had a single impairment and the remaining 48 per cent had multiple impairments. The majority of disabled children had low or medium support needs.²³

4. Overview of government support²⁴

25. The Government provides both income support and specialised services to disabled people:

(a) Disability-related income support is provided in the form of the Sickness Benefit, Invalid's Benefit, Disability Allowance and Child Disability Allowance;

(b) Support services for people with long-term impairments, which include personal support, employment assistance, equipment purchase and housing modification. Public expenditure in 2005/2006 on disability support was NZ\$2.876 billion;²⁵

(c) Where disability is caused by accident, the Accident Compensation Corporation (ACC), a public contributory social insurance scheme, provides income support, other compensation and rehabilitation services.

26. Some substantial Government initiatives – for example, the introduction of more accessible commuter train carriages – are staged according to the availability of funding over time. Such measures are, in general, improvements upon existing services.

27. In addition to its ongoing commitment to existing disability support services, the 2010 New Zealand Government budget delivered an extra \$93 million to expand existing disability support services over the next four years. Of this amount, \$72 million will improve access to disability support services. It includes:

(a) \$25.5 million for home and community support services;

(b) \$3.4 million for other disability support services;

(c) \$21 million for residential services for people with intellectual disabilities;

(d) \$7.9 million for supported independent living;

(e) \$2.7 million for respite care.

²¹ *Disability and Māori in New Zealand in 2006: Results from the New Zealand Disability Survey*, Statistics New Zealand, 2006.

²² See Ministry of Health *Ala Mo'ui: Pathways to Pacific Health and Wellbeing 2010-2014* (2010).

²³ Statistics New Zealand *Disability Survey 2006*.

²⁴ See, further, articles 19 and 25-26 and Annex.

²⁵ *Inquiry into the quality of care and service provision for people with disabilities*, Report of the Social Services Committee. Forty-eighth Parliament (Russell Fairbrother, Chairperson), September 2008.

III. Specific rights

Article 5 — Equality and non-discrimination

1. Legislation forbids discrimination

28. The New Zealand Bill of Rights Act 1990 specifically prohibits discrimination on the grounds of disability and extends all protected rights to all people, including disabled people. Under the more detailed provisions of the Human Rights Act 1993 and the Employment Relations Act 2000, less favourable treatment of disabled people is unlawful unless the disabled person requires special services or facilities and it is not reasonable for these to be provided. Other specialised legislation, such as the Education Act, provides guarantees of equal access, again subject to narrow exceptions in similar terms.

29. These legislative protections can be enforced by a range of means:

(a) The Human Rights Commission has the role of receiving, and seeking to resolve, complaints about discrimination under the Human Rights Act. Where complaints cannot be resolved, proceedings can be filed under the Human Rights Review Tribunal. Complainants may seek specialised and publicly-funded representation through the Office of Human Rights Proceedings. Proceedings can result in a range of remedies, including invalidation of government policies and practices and awards of compensation payable by the discriminating party;

(b) Claims under the New Zealand Bill of Rights Act 1990 can be pursued directly through the courts and can result in a range of remedies. Such proceedings can, where appropriate, receive public legal assistance;

(c) Specialised legislation, such as that dealing with employment, residential tenancies, health and disability services and a range of other matters, provide procedures for complaints of discrimination, including through court and other procedures.

2. Reasonable accommodation

30. The Court of Appeal, recently, in relation to a case concerning the provision of supplementary oxygen by Air New Zealand to a disabled woman, observed that the reasonableness provision in that legislation appeared to parallel the standard of reasonable accommodation in Article 2 of the Convention.²⁶ The New Zealand Bill of Rights Act 1990 contains a generally worded prohibition against discrimination on grounds of disability, which will be interpreted by courts consistently with the Convention's non-discrimination right, including the obligation for reasonable accommodation.²⁷

31. The Government considers there to be a need for greater public understanding of the practical application of reasonable accommodation, as there are anecdotal indications that issues of risk, practical difficulty and cost have been unjustifiably used as a rationale to exclude disabled people or to impose additional costs. The Ministry of Justice is currently developing guidance on reasonable accommodation for public activities.

3. Affirmative action

32. Both the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 specifically allow for affirmative action to redress disadvantage, including on the grounds

²⁶ [2011] NZCA 20, 18 February 2011.

²⁷ Section 19, New Zealand Bill of Rights Act 1990.

of disability. As outlined below, for example in respect of education and employment, many programmes to promote participation by disabled people are in place.

4. Disabled people continue to experience discrimination

33. Despite legislation, disabled people still feel discriminated against. A 2008 survey²⁸ indicated that 57 per cent of respondents identified disabled people as being subject to some or a great deal of discrimination.²⁹ Approximately one-third of complaints to the Human Rights Commission involve allegations of disability discrimination, although a substantial majority of these are resolved or withdrawn.

34. Feedback suggests that disabled people may be perceived as having a lower quality of life as a result of their impairment and that this perception may influence decisions on medical treatment.

Article 8 — Awareness-raising

35. Encouragement and education towards a non-disabling society has been the first objective of the New Zealand Disability Strategy since its adoption in 2000. The Government has taken a very broad range of measures within the scope of this objective, such as:

(a) The Minister for Disability Issues actively promotes disability issues and the rights of disabled people, including the Convention, while the Office for Disability Issues promotes awareness through websites and newsletters as well as resources, such as practical guides for policy makers;

(b) Public education programmes to address stigma associated with mental illness. For example, the *Like Minds, Like Mine* has been successful in changing the way New Zealanders think and behave in relation to mental illness,³⁰ while the *National Depression Initiative*, which aims to raise awareness of depression and encourage people to seek help, has received numerous national and international marketing effectiveness awards for its youth-oriented website; and

(c) Promotion of awareness of the Convention itself at several levels, including:

(i) The compilation of resources by the Office of Disability issues, including online provision of the Convention in New Zealand Sign Language (NZSL); and

(ii) Resource materials - *Are you committed to the Convention?* and *Is your agency committed to the Convention?* – produced by the Health and Disability Commissioner to assist governmental and non-governmental organisations that provide disability support.

36. Awareness and understanding of different impairment types by government agencies, professionals and the public varies. Disabled people with uncommon impairments such as those arising from multiple chemical sensitivity syndrome report that there are few or no services available (to respond to severe reactions to chemicals) and health professionals lack knowledge about such conditions.

²⁸ This was a telephone survey of a nationally representative sample of 750 New Zealanders 18 years of age and over, commissioned by the Human Rights Commission.

²⁹ Human Rights Commission UMR research *Treaty of Waitangi, Personal/ Group Discrimination & Disabilities*, December 2008.

³⁰ <http://www.likeminds.org.nz/resourcefinder/index.php?c=listings&m=results&topic=64>.

37. In 2010, the Government announced in 2010 it would undertake a \$3 million public awareness campaign directed at changing attitudes and behaviours that limit opportunities for disabled people.

Article 9 — Accessibility

38. Accessibility of buildings, infrastructure, transport and communications is promoted through a range of measures, including anti-discrimination law, requirements under specific legislation, public services and best practice guidelines. Improving accessibility is a current priority for the Ministerial Committee on Disability Issues.

1. Public buildings are built to be accessible

39. The Building Act 2004 imposes detailed construction requirements for new buildings to ensure accessibility for disabled people, particularly people who use wheelchairs or have limited vision. These requirements are enforced through the building consent process and disputes can be submitted for binding resolution by the Department of Building and Housing.

40. Accessibility can, however, be compromised by exemptions given to new buildings or later failures to maintain accessibility features, although these can be challenged and remedied under the Human Rights Act 1993.

41. In addition, the Government has funded expert advisory resources, including guidance for the building industry and for government officials on disabled access and set up a specialised advisory panel on disabled people's access.

42. In addition, the Barrier Free New Zealand Trust, a non-governmental organisation, serves as a focal point on access issues for disabled people, local councils, architects, engineers, the building industry and the wider community. It has a nationwide advisor network of accredited Barrier Free Advisors to assist in this work.

2. There are initiatives in relation to urban design

43. New Zealand believes that successful towns and cities should be inclusive communities that respect and celebrate diversity. The Urban Design Protocol, a voluntary framework co-ordinated by the Ministry for the Environment, seeks to ensure that successful towns and cities accommodate all citizens and offer opportunities for young and old, people on low incomes and disabled people.³¹

44. Many local councils have disability reference groups made up of disabled people and experts who advise the council on accessibility and other issues affecting disabled people.

3. There are transport policies to help disabled people move around the community

45. Regional public transport plans, prepared by regional councils, must provide for access to basic community activities and services. Disabled people are involved in regional land transport committees and there are a number of organisations who regularly make submissions and advocate for accessible public transport.

46. A 2005 report on accessible public land transport found that significant numbers of disabled people in New Zealand have difficulties using public land transport services:

³¹ <http://www.mfe.govt.nz/issues/urban/design-protocol/index.html>.

buses, trains, taxis and the related services and infrastructure.³² Since then accessibility standards for all new urban buses have been developed and there has been a large increase in the number of accessible buses on scheduled routes.³³

47. The development and upgrade of urban rail networks in Auckland and Wellington has provided opportunities to consult with disabled people and incorporate their needs into train design. The 48 custom built units for the Wellington train network are setting a new benchmark in the accessibility of rail transport for disabled passengers. Auckland rail has sought to improve on the accessibility standards set by the Wellington rail design.

48. The New Zealand Transport Agency (NZTA) has developed a range of voluntary guidance for local councils, including requirements for urban buses and pedestrian planning, and design guides that cover the mobility and access needs of disabled persons. The NZTA administers and assists with the development of land transport rules, including the design and construction requirements for wheelchair hoists, ramps and vehicle occupant restraints.

49. However, challenges remain:

(a) Survey information indicates that some disabled people continue to experience shortcomings in access to public transport;³⁴

(b) Regional and local attention to pedestrian infrastructure (such as curbs and accessible road crossings) is inconsistent;

(c) Consultation with disabled people about public transport planning is not systematic and some transport infrastructure projects are still planned and assessed without reference to possible benefits of access for disabled people.

4. Information should be accessible

50. The Government supports accessible information through a range of means:

(a) Government information is provided in a number of languages, including NZSL videos, in Braille, large print, in easy to read formats, on audio tapes and DVDs. There is, however, no standard for all government agencies and it is up to each agency to decide what communication channels to use;

(b) Public health information broadcast by television is captioned;

(c) The National Library's Print Disabilities Service offers audio books to adults, young adults and children who have a print disability;

(d) Many government agencies provide a number of communication channels such as free phone, fax, email and text services for people to request information, provide feedback, or to make a complaint about Ministry-funded disability support services;

(e) The Government funds captioning of some television programmes and the Ministry of Social Development funds the Royal New Zealand Foundation of the Blind to provide a talking books service to people who are blind or vision-impaired.

51. More specifically, the Government promotes:

(a) Provision of information online, supported by accessibility standards; and

³² Human Rights Commission, *The Accessible Journey*, 2005.

³³ Available at: http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/15-Dec-2010_12-41-59_Chapter_17pp258-279.pdf.

³⁴ CCS Disability Action and Workbridge, *Journey to Work*, 2010.

(b) Telephone, video and text-based communication.

52. New Zealand On Air is a government entity responsible for the funding of public broadcasting content across television, radio and new media platforms. It provides funding of approximately \$4 million annually for disability-related services, which include television captioning services and disability interest programming. In 2011, it began a trial of an audio-description service on the public television digital channels for people who are blind or vision-impaired.³⁵

53. The Government has addressed accessibility of online information for more than a decade. Formal Government Web Standards, which include accessibility requirements, have been developed from the Web Content Accessibility Guidelines. The Standards were last updated in 2009 and direct the use of accessible formats.

54. The Government sees online resources as a key means of providing accessible information and is committed to achieving nationwide high speed broadband coverage. This has the potential, for example, to provide deaf people with much greater access to information in sign language and more communication opportunities via the internet. A limited amount of online information is provided in simplified versions and, more often, in audio format.

55. Compliance with the Standards varies across Government websites, but the Government is providing additional training and support to government agencies, including a self-assessment resource scheduled to be implemented in 2011.

56. Some private website providers follow accessibility standards, but they are not specifically required to do so. The antidiscrimination provisions of the Human Rights Act, including the duty of reasonable accommodation, do, however, apply to websites that provide facilities or services.

57. A Telecommunications Relay Service (TRS) was established in 2004 and allows telephone calls to be made through the internet or by text phone. This is particularly useful for deaf people, hearing impaired people, speech impaired people, and deafblind people. The Service has been regularly reviewed in consultation with its users.

58. A permanent Video Relay Service (VRS) was implemented in 2010, following an initial trial. VRS enables deaf people to use NZSL to communicate with voice telephone users, and vice versa.

59. The New Zealand Police have developed an emergency text messaging service for deaf and hearing impaired people, which provides immediate access to the Police, fire service and ambulance service.

Article 10 — Right to life

60. The New Zealand Bill of Rights Act 1990 provides that no-one shall be deprived of life. The right applies equally to all people.

³⁵ Audio description is a special audio track built into broadcast programmes that describes the non verbal on-screen action in a programme alongside the normal soundtrack. It enables vision-impaired people to better access the programmes.

Article 11 — Situations of risk and humanitarian emergencies

61. Measures taken in instances of risk, disaster or emergency are extended to all people, regardless of whether they are disabled or not.

62. Civil defence authorities are encouraged to assess and mitigate likely impacts on disabled people in their planning and in responding to emergencies. Recent initiatives to include disabled people in civil defence situations include:

(a) Public information resources on emergency preparedness specifically address the needs of disabled people, including a written guide produced by the Whakatane Disabilities Resource Centre Trust and the Bay of Plenty Emergency Management Group;

(b) Resources for people with hearing impairments, to enhance the availability of civil defence emergency management information, were distributed to all local councils in 2010;

(c) Public education resources for people with sight impairments are to be distributed in 2011.

63. In the recent Christchurch earthquakes, disabled people worked in partnership with Civil Defence. For example, after the September 2010 earthquake, Civil Defence provided updates to deaf community groups, which then used their own information networks to disseminate information. Some television coverage was captioned. After the February 2011 earthquake, NZSL interpreters were used at Civil Defence briefings.

International relief

64. New Zealand's international humanitarian responses to disaster and/or conflict are needs based, with a focus on the most vulnerable including groups such as disabled people (see Article 32).

Article 12 — Equal recognition before the law

65. Equality before the law is a fundamental principle of the New Zealand justice system. Disabled people enjoy equal recognition in the law, including protection of civil and other rights and legal capacity to manage their own affairs.

66. The Human Rights Act 1993 prohibits discrimination on the basis of disability, including, for example, in relation to business dealings and access to financial services.³⁶

67. The key mechanism for safeguarding the interests of disabled people who are unable to manage their own affairs is the Protection of Personal and Property Rights Act 1988 (PPPR Act). The PPPR Act provides for a specialised court procedure, including full rights of participation for the individual concerned, to determine whether an individual meets the high threshold of wholly lacking capacity to manage his or her own affairs. Where that threshold is met, a statutory manager can be appointed to act on the individual's behalf for property and/or welfare matters. Alternatively, a previously made enduring power of attorney can be activated.³⁷

³⁶ See above paragraphs 28-29.

³⁷ A person can give an "enduring power of attorney" to one or more other people. This means the person authorises the other person or people to act on his or her behalf to manage his or her affairs. The person must not be incapacitated when they set up the enduring power of attorney. An enduring power of attorney can relate to the person's personal care and welfare, or to their property, or to both.

68. The PPPR Act proceeds on a model of the least and briefest possible interference with individual capacity:

(a) A presumption of competence. Everyone is presumed competent to make decisions and manage their own affairs unless the criteria establishing lack of capacity are satisfied;

(b) The PPPR Act emphasises the ability to make a decision – not the nature of the decision – and cannot be invoked simply because a person makes decisions which others might consider imprudent or foolish;

(c) The principle of the least restrictive intervention. Where there are a number of options available, preference should be given to the one which interferes least with the person's life;

(d) An obligation on a welfare guardian, property manager or attorney to encourage the person subject to an order to use and develop what capacity they have as much as possible.

69. The PPPR Act provides for review of appointments and for court scrutiny of decisions made by those appointed under the PPPR Act.

Article 13 — Access to justice

70. Access to justice is safeguarded for all people across all aspects of the legal system, without distinction as to disability.

71. In courts and tribunals, the Government provides a range of services to ensure that disabled people can participate in legal proceedings on an equal basis. These include NZSL interpreters, Court-appointed representatives for people who lack capacity to instruct a lawyer, including children, accessible courthouses and facilities and the use of audio-visual links in legal proceedings. The Ministry of Justice has developed guidelines to ensure all court staff are aware of its obligations and requirements in terms of engaging with disabled people and their rights.

72. Within the criminal justice system, the right of arrested or accused persons to have a NZSL interpreter or other such necessary assistance is safeguarded in the criminal justice process, including police interviews, under the New Zealand Bill of Rights Act 1990. The New Zealand Police continue to action its responsibilities under the areas of accessibility of information, buildings and services, disability awareness, being a good employer and running a disability network supporting staff.

73. Disabled people can serve on a jury, although their right to serve can be challenged if they are not capable of acting effectively as a juror. The Juries Act 1981 states that "... a Judge may discharge the summons of a person if the Judge is satisfied that, because of disability, ... the person is not capable of acting effectively as a juror." The Judge must make an individualised assessment of the prospective juror's capacity, in consultation with him or her.

74. Under the New Zealand Sign Language Act 2006, NZSL interpreters must be provided in the court system wherever required, including by defendants, witnesses, jurors or otherwise. However, consultation indicates there are significant problems in implementing and monitoring the use of NZSL interpreters in court, including the use of interpreters who lack formal qualifications.³⁸ The provision and quality of interpreters in

³⁸ Undertaken as part of *Review of Human Rights in New Zealand 2010: Ngā Tika Tangata O Aotearoa*.

court forms part of the current review of the NZSL Act 2006, which is due to be completed by mid 2011.

75. Measures to ensure accessibility to those participating in court proceedings were particularly prominent in a 2009 murder trial in which the victim was deaf and which attracted great interest from the local deaf community.³⁹ The court arranged for Deaf Aotearoa⁴⁰ to provide additional training for the court staff involved in the trial and for provision of NZSL interpreters, not only to assist witnesses but also to provide continuous interpretation for deaf people attending the trial in the public gallery. The court received extremely positive feedback from the Christchurch deaf community for this approach.

76. The government legal aid scheme funds legal representation and other assistance to people who would otherwise be unable to afford it. Legal aid funding is provided to Auckland Disability Law, an independent law centre that specialises in advice to disabled people. The Government provides specialised publicly funded representation for some proceedings involving discrimination and health or disability services.

Article 14 – Liberty and security of the person

77. Under the New Zealand Bill of Rights Act 1990, everyone has the right not to be arbitrarily detained or arrested. No distinction is made on the basis of disability.

1. Treatment in custody

78. Disabled prisoners serving a sentence or on remand are accommodated and their custody managed in the mainstream prison environment, with appropriate support in areas such as health and treatment needs, transport and access to visitors. Prisoners whose health or disability needs cannot be adequately managed within the prison environment are referred to the appropriate external agency in the community, such as Mental Health Services and Regional Intellectual Disability Secure Services and may be transferred out of prison custody for this purpose.

79. Health and disability needs are assessed on reception to prison by Prison Health Services staff and on an ongoing basis. Prisoners with complex health needs have an individual treatment plan completed which provides information about their health needs and how these will be addressed.

80. Transportation and escort arrangements are modified as necessary: for example, there are special procedures for the escort of prisoners who use a wheelchair.

81. The Department of Corrections, which is responsible for prisons, has an ongoing work programme in the area of disability that includes continued assessment and improvement of public prison buildings and the improvement of statutory and regulatory access requirements.

82. Disabled prisoners are entitled to receive additional visits from family and support agencies in addition to prisoner minimum entitlements of one private visitor per week.

2. No provision for detention on the basis of disability, unless serious individual risk

83. There is no civil detention in New Zealand of people on the basis of disability.

³⁹ *R v Reid* CA CA794/2008, 7 July 2009.

⁴⁰ The national association for the signing deaf.

84. Two main pieces of legislation authorise the detention and compulsory treatment or rehabilitation of disabled people, however the trigger for detention is not disability but the risk of harm to self or others.

3. Compulsory assessment and treatment on serious mental health grounds

85. Compulsory mental health care is governed by the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MH(CAT) Act). The threshold for compulsory care is that the person concerned must be clinically assessed as having an abnormal state of mind of such a degree that it poses a serious danger to the health or safety of the person or of others, or seriously diminishes the capacity of the person to take care of him or herself.

86. The MH(CAT) Act requires clinical certification of each person both initially and on an ongoing basis. Compulsory treatment orders can either be as an in-patient in a hospital or as an out-patient in the community, and those who are subject to compulsory care may apply for a review of that compulsory status.

4. Compulsory care of criminal offenders with severe intellectual disabilities

87. Compulsory care orders can be made under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act) but only where the court is first satisfied that the person with an intellectual disability has criminally offended and poses an undue risk to themselves or to others. Compulsory care orders can be for secure care or for supervised care in the community. The IDCCR Act also permits the transfer of people from prison or mental health services where they meet the criteria for intellectual disability under the Act.⁴¹

5. Safeguards

88. The new procedures for assessment, treatment, and review under the MH(CAT) Act have created an atmosphere of greater transparency and accountability. This has largely been driven by the increasing regulation of mental health law and practice, and the greater involvement of lawyers in administering the MH(CAT) Act.

89. People under compulsory assessment and treatment orders or compulsory care orders have protections provided by law, such as judicial oversight, the appointment of a legal representative, and the right to an interpreter. The Habeas Corpus Act 2001 provides a means by which the lawfulness of any detention can be challenged in the courts on an urgent basis, whether by the detainee or any other person, as does an application for judicial review or an application under the New Zealand Bill of Rights Act 1990.

90. The establishment of the Mental Health Commission as a powerful advocacy organisation for people experiencing mental illness has given a more urgent focus to their rights and the exploration of alternative, non-coercive interventions consistent with the notion of recovery. The recovery model has now been adopted as a guiding principle in New Zealand's mental health system, requiring mental health professionals to demonstrate competence in this model.

91. While the MH(CAT) Act was deemed compliant with the Convention, some difficulties in the Act and its implementation have been noted.

⁴¹ The High Court recently held that the imposition of repeat care orders requires a correspondingly greater degree of risk. That decision is being appealed by the Government which contends that the right of disabled people not to be subject to arbitrary detention means that compulsory care orders can only be imposed when the risk to self or others is undue, but that this threshold is constant.

(a) While people under compulsory care and rehabilitation orders and compulsory assessment and treatment orders are protected by monitoring and review mechanisms, some commentators believe New Zealand assesses competence conservatively, creating difficulties in the release of people from compulsory treatment;

(b) Regular mandatory reviews⁴² of a person's continued compulsory detention are insufficiently frequent;

(c) The criteria used for release from detention are seen by some as requiring a higher standard of wellness than the criteria for compulsory detention;

(d) The requirement to accept compulsory treatment certified by a responsible clinician is seen to impact on the ability to give free and informed consent.

92. Data from 2005 to 2009 show that only around six per cent of applicants to the Mental Health Review Tribunal who sought discharge from compulsory treatment status were discharged.

6. De-institutionalisation began 30 years ago in New Zealand

93. Large institutions for disabled people in New Zealand no longer exist. In 1973, the Government rejected the use of large institutions in favour of community care.

94. A deinstitutionalisation programme was implemented with the aim of transferring people out of institutions into community homes in suburban and small town settings. The last of these large institutions was closed in 2006.

95. This transition involved:

(a) Working with the families of disabled people and the people living in areas around community homes to achieve acceptance and ensure that community support services were available to disabled people moving into communities; and

(b) Provision of inpatient mental health care in mental health units and other specialised inpatient units in the general public hospital system.

96. Provision of sufficient support services in the community is an ongoing challenge.

7. Review and complaint mechanisms for detention, conditions and treatment

97. The Director and Deputy Director of Mental Health and the Director-General of Health appoint District Inspectors to monitor services provided to those under compulsory care and rehabilitation orders and compulsory assessment and treatment orders. District Inspectors are responsible for visiting facilities, reporting and conducting inquiries into service issues and complaints alleging breaches of a patient's or care recipient's rights. The New Zealand Ombudsmen, who are independent Officers of Parliament, can examine and monitor the treatment of detained persons who are subject to orders under either Act.

98. The monitoring mechanisms under the Optional Protocol to the Convention against Torture (OPCAT) are used to monitor places of detention, which includes secure facilities under both the MH(CAT and IDDCR Acts. OPCAT is domestically implemented by the Crimes of Torture Act 1989 (COTA). COTA establishes five National Preventive Mechanisms (NPMs): the Human Rights Commission, Office of the Ombudsman, Office of the Children's Commissioner, Independent Police Conduct Authority, and the Inspector of

⁴² Compulsory treatment orders are initially reviewed by the courts within 14 days, then must be reviewed again after three months, and every six months thereafter. This is in addition to reviews instigated by the patient, the District Inspector or by others.

Service Penal Establishments. Under COTA, NPMs are entitled to access all information regarding the number of detainees, their treatment (including the rules and procedures of the facility) and their conditions. The NPMs are tasked with examining at regular intervals, and at any other times that the NPM may decide, the conditions of detention of detainees and the treatment of detainees, and are empowered to make recommendations aimed at strengthening protections, improving treatment and conditions, and preventing torture or ill treatment.

99. One issue that has been raised through review and complaint procedures is the clinical use of seclusion of particular patients from others. The Mental Health Commission, the Human Rights Commission and consumer groups have advocated for increased scrutiny and decreased use of seclusion.

100. The Ministry of Health has published guidelines about seclusion for the mental health sector, reflecting its ongoing commitment to promote a culture where, over time, seclusion use will gradually decrease. Mental health services report all seclusion events to the Ministry of Health, which monitors their appropriateness and publishes annual reports on its use.

101. Between 1 January and 31 December 2009 a total of 5,654 patients spent time in New Zealand adult mental health in-patient units (excluding forensic and other regional rehabilitation services). This time represented a total of 185,575 bed nights. Of the 5,654 patients, 1,075 (19 per cent) were secluded at some time in the reporting period. As the same people were often secluded more than once (on average 2.7 times) the number of seclusion events, at 2,880, was higher than the number of people secluded. The majority of those secluded were male (62 per cent) and most were between 20 and 49 years of age. In specialist facilities for children and young people a total of 55 young people were secluded, generating 214 seclusion events. The duration of events ranged from two minutes to 365 days.⁴³

Article 15 — Freedom from torture or cruel, inhuman or degrading treatment or punishment

102. New Zealand protects the rights of disabled people so they are not subjected to torture or cruel treatment, or to medical or scientific experimentation. In addition to the general protections of the criminal and civil law against assault or other ill-treatment, torture is a specific and very serious criminal offence. It is an offence to neglect or ill-treat a patient or proposed patient subject to compulsory treatment.

103. As outlined above, New Zealand has adopted national preventive mechanisms (NPMs) as part of its ratification of OPCAT in 2007.

104. The Human Rights Commission, as the central national preventative mechanism, coordinates the activities of the national monitoring bodies, liaises with the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and engages with the wider community under the OPCAT scheme.

⁴³ Ministry of Health 2010 *Office of the Director of Mental Health – Annual Report 2009*, Wellington, Ministry of Health.

Article 16 — Freedom from exploitation, violence and abuse

1. New Zealand is working to reduce violence in families

105. Violence, particularly domestic violence, is an issue for all of New Zealand society, not just for disabled people. A primary cross-government initiative in this area is the Government's Taskforce for Action on Violence within Families.

106. The Taskforce has identified the lack of New Zealand information on which to take effective action for disabled people. Comparative evidence suggests that disabled people are at higher risk of domestic violence and abuse than non-disabled people. In particular, bullying has been identified by intellectually disabled people as a major barrier limiting their participation in their community.⁴⁴

107. The Government is working with a collective of non-government organisations, the Disability Coalition Against Violence, to address violence issues against disabled people. Since 2008, the Disability Coalition Against Violence has led and participated in many anti-violence projects, partially funded by the Government. The work includes:

(a) Ensuring the disabled voice is heard when there are hui (meetings) and korero (discussions) about domestic and family violence;

(b) Supporting disabled people to tell their stories of violence and abuse and raise public awareness and knowledge about the issues through the Disability Clothesline project;

(c) Publishing a booklet for disabled people and their carers on identifying and responding effectively to family violence with disabled people and how individuals can seek help and increase their safety and that of their children;

(d) Developing a training package on the relationship between violence and disability and best practice responses.

108. In addition, one of the three priority areas identified by the Minister for Senior Citizens that he is using to champion positive ageing is: **Protecting the Rights and Interests of Older People** - by raising awareness of elder abuse and neglect prevention.

2. Protections for disabled people

109. There continues to be a small number of instances where disabled or vulnerable people have been financially exploited or have not received quality services. The Government is working on raising awareness of these issues so that people or their families are prepared to take issues to the appropriate authority – employers, legal and/or professional bodies or the Health and Disability Commissioner. In addition, more funding has been given for training of support staff.

110. In the community:

(a) The New Zealand Police have developed a range of guidance material for police officers on general procedures and duties when dealing with people who have intellectual and physical disabilities. This guidance material is regularly updated, in line with best practice. In addition, all Police staff received human rights awareness training in 2006, delivered jointly with the Human Rights Commission. Dealing sensitively with disabled people was a specific feature of this training;

⁴⁴ *IHC Self Advocacy Forums* (2009).

(b) Where offences do occur, the vulnerability of victims and whether the offender has been motivated by hostility towards particular social groups, including disabled people, are treated as aggravating factors and lead to harsher sentences.

111. Within the context of facilities and support services for disabled people, such services are independently monitored to protect people from exploitation, violence and abuse:

(a) Contracts and specifications for relevant disability support services, especially residential services, have explicit expectations that disabled people are protected from exploitation, violence and abuse;

(b) The Government is also working on raising awareness of issues of exploitation so that disabled people or their families know of, and trust, complaint procedures;

(c) Additional funding has been given for training of support staff involved in service provision.

112. In relation to health and disability services:

(a) The Health and Disability Code of Consumers' Rights also requires service providers to have complaints processes that are accessible to disabled people. In addition, professional complaints procedures apply for most categories of health and disability practitioners;

(b) The Ministry of Health and the District Health Boards audit and evaluate the services they fund. The Ministry also provides a free complaints telephone service where complaints, including anonymous complaints, are received and followed up. If necessary, information can be passed on to the Police who may undertake an investigation into an allegation. The Ministry of Health is kept informed of any Police investigation.

113. More generally, there are also other general and specialised independent entities that can assist in the prevention, detection and resolution of abuse and ill-treatment, including the Human Rights Commission, the Independent Police Conduct Authority, the Privacy Commissioner, the Health and Disability Commissioner and the Children's Commissioner.

3. Response to historical abuse

114. While instances of historical abuse substantially predate the Convention, the Government and a number of non-governmental social service agencies are currently addressing claims of ill-treatment in a range of different institutional and other contexts dating from the 1950s to the early 1990s.

115. The Government has detailed its range of responses to these claims, some of which involved disabled people, in its formal response to the Committee against Torture.⁴⁵

Article 17 – Protecting the integrity of the person

116. Under New Zealand law, everyone has the right to refuse to undergo any medical treatment. This right is subject only to such reasonable limits as can be justified in a free and democratic society.

117. All people accessing health and disability services must be informed of their rights, be treated with respect and receive services in a manner that has regard for their dignity,

⁴⁵ See CAT/C/NZL/CO/5/Add.1, 19 May 2010.

privacy and independence. The Code of Health and Disability Services Consumers' Rights requires that, apart from in exceptional circumstances, people must give informed consent before a service is provided, including sterilisation.

1. Non-consensual treatment only under exceptional circumstances and subject to safeguards

118. As outlined above, New Zealand law does provide for compulsory assessment and treatment in exceptional circumstances. This happens only where a high level of risk is independently determined to exist and is subject to judicial authorisation and continuing scrutiny, as well ensuring independent representation and rights of review and complaint for the person concerned.

119. Court-ordered assessment and treatment does not negate the need for clinicians to obtain informed consent if possible at each stage of assessment and for all treatments.

2. Sterilisation

120. Sterilisation without consent can only occur on the basis of the individually assessed clinical needs of the patient and is subject to strict safeguards. Welfare guardians⁴⁶ are specifically prohibited from consenting to sterilisation or medical experimentation on the person under care. It is generally accepted that a court order should be sought to determine if sterilisation is in the best interests of the person, if the person is not capable of making the decision.

121. The most recent substantial sterilisation case (illustrating the gravity of the issue and the participation of the affected person) is *KR v MR*,⁴⁷ which emphasised that sterilisation is a special case that goes beyond the competence of a guardian and will be authorised by the court only where the affected person lacks sufficient competence and where no lesser measure would be effective.

122. The Paediatric Society, a medical professional body, has developed guidelines for the management of menstrual bleeding and fertility in girls with intellectual disabilities. These support practitioners in making evidence- and principle-based assessments about appropriate treatment for a female minor. If a minor is not capable of making a decision, then it must be a joint decision by parents and clinician that sterilisation is in her best interests. Alternatively, the matter could be taken to court.

Article 18 – Liberty of movement and nationality

123. All New Zealanders, including disabled New Zealanders, have the right of freedom of movement, which can only be constrained in accordance with the law.

124. The right to New Zealand citizenship and to hold a New Zealand passport makes no distinction on the grounds of disability. Every birth in New Zealand must be registered by law.

Immigration policy and health criteria

125. Immigration policies do not differentiate on the basis of disability. However, foreign nationals are generally required to establish that they do not pose a public health risk, such

⁴⁶ Appointed under the Protection of Personal Property Rights Act 1988: see, further Article 12 above.

⁴⁷ [2004] 2 NZLR 847.

as from active tuberculosis, and are unlikely to impose excessive costs or demands on New Zealand's health, education and other services.

126. This assessment involves an objective determination, made in consultation with the person concerned and their certifying doctor, of the health risk and/or costs of the individual's condition and whether those can reasonably be accommodated in New Zealand. The requirement to not incur excessive costs or demands is designed to protect New Zealand's limited resources.

127. A person who does not meet these health requirements may be eligible for a waiver. In particular, refugee protection is accorded regardless of health condition.

Article 19 — Living independently and being included in the community

128. Disability policy and practice in New Zealand emphasises the inclusion, participation in society and independence of disabled people within the community.^{48 49}

1. Community support services aim to enable independent living

129. The Ministry of Health funds disability services that focus, where possible, on assisting disabled people to live in their own homes or, if that is not possible, within their own communities. Services provided by the Ministry of Health and District Health Boards include care to live at home, provision of necessary equipment and housing modifications, supported living, and transport assistance.⁵⁰ Limited funding is available for participation in community activities and meeting personal goals. Assistance is also provided through the ACC scheme.⁵¹

130. The provision of services is given effect through the Needs Assessment Service Coordination (NASC) procedure. NASC identifies and prioritises disability support needs and available support options, authorizes funding, and co-ordinates support services. NASC seeks to ensure access to services is provided according to need and can be sustained within available resources. NASC can result in withdrawal of services from individuals where resources are needed more urgently elsewhere, and that has led to instances of dissatisfaction among some disabled people.

131. For people living with mental illness, independent living schemes can provide accommodation and a support worker to promote individual independence.

132. The Ministry of Health funds a Disability Information and Advisory Service to provide information and advice to disabled people, their families and whānau, caregivers, providers and the general public.

⁴⁸ This definition of disability services as being services that promote inclusion, independence, and participation in society is contained in Section 6 of the New Zealand Public Health and Disability Act 2000.

⁴⁹ This is reinforced by the Government's New Zealand Positive Ageing Strategy, under which older people are highly valued and where they are recognised as an integral part of families and communities.

⁵⁰ There is current litigation (*Atkinson v Attorney-General*) about whether close family members should be eligible to be paid caregivers for disabled people. Currently, families are not paid for such care, but that has to date been held to constitute discrimination on the grounds of family status.

⁵¹ See paragraphs 199-201 below.

2. Housing assistance contributes to independent living and community inclusion

133. Disabled people with physical disabilities who require modified housing are assisted through Housing New Zealand Corporation's (HNZC's) Suitable Homes Service and Healthy Housing programme,⁵² through ACC and/or through the Ministry of Health.

134. In addition, public housing can assist disabled people. The Government, through the State-owned HNZC manages a rental housing portfolio of over 69,000 homes, of which 2,635 have been modified for disabled people. In 2008/2009, HNZC assisted 265 disabled people into modified homes.

135. HNZC provides housing to government funded community providers for group housing and for care and support services for disabled people. At present, 1,183 properties are provided to organisations that target their services to the needs of people with intellectual, physical and psychiatric disabilities.

136. In the private sector, the Government is involved in supporting and promoting accessible housing:

(a) Under the Lifemark project, the Government is working with a non-governmental organisation to promote accessible design standards for new residential houses.⁵³ Lifemark standards require 33 design features, including a level entry, widened doors and passageways and reinforced bathrooms. These measures are directed to ensuring accessibility and adaptability over time;

(b) National standards for retirement villages deal with the needs of disabled residents.

3. Continuing challenges

137. Not all communities and not all private property owners welcome disabled people. In response, the Affordable Housing: Enabling Territorial Authorities Act 2008 was passed in 2008 to supplement general anti-discrimination law and prevent property developments from seeking to exclude houses for disabled people.⁵⁴

138. Disabled people also experience problems:

(a) Loneliness, lack of participation and the ability to develop social networks within local communities can be problematic;

(b) People in community services sometimes have limited choice in where and with whom they live and in their daily activities. In particular, community mental health services sometimes offer disabled people and their families limited or no choice of service providers or fellow residents.

139. The new independent living model seeks to counter these problems.

⁵² Healthy Housing is a joint project between Housing New Zealand Corporation and District Health Boards (DHBs). The programme works with Housing New Zealand tenants in selected areas, and began in 2001. Healthy Housing aims to: raise awareness of infectious diseases like meningococcal disease, rheumatic fever, tuberculosis, cellulitis and respiratory diseases; improve access to health and social services; reduce the risk of housing-related health problems and reduce overcrowding.

⁵³ Lifetime Design, a subsidiary of CCS Disability Action.

⁵⁴ Affordable Housing: Enabling Territorial Authorities Act 2008. Subsequently restated by Section 277A of the Property Law Act 2007.

4. Enhancing community living

140. In June 2010, the Government agreed in principle to further improvements in community support, which are to be trialed in 2011. This new independent living model includes:

- (a) A stronger focus on providing information and personal assistance, including through the appointment of designated Local Area Coordinators;
- (b) Allocation of services according to an indicative dollar value of support, affording more flexibility over how available funding is used; and
- (c) Broadening of accountability arrangements to include government agencies, providers and disabled people, and a stronger focus on quality monitoring in terms of whether recipients of support are able to live an ordinary life.

Article 20 — Personal mobility

1. Assistive aids and equipment are publicly provided

141. The Government provides disabled people with a range of personal mobility assistance, including equipment such as wheelchairs and scooters, assistive devices such as canes and sonar devices, artificial limbs and vehicle and other modifications on the basis of a needs assessment. Training is also provided.

142. Disability assist dogs are provided by charitable and non-governmental organisations, but government funding may be provided for ongoing costs. Specific legislation provides that such dogs can be brought into all publicly accessible places.

2. Transport support is given and is improving

143. In addition to public transport,⁵⁵ the Total Mobility Scheme provides:

(a) A 50 per cent subsidy for taxi services to disabled people who are unable to use public transport; and

(b) Funding assistance for the purchase and installation of wheelchair hoists in taxi vans. There were 298 hoists in use in 2009/2010, almost three times as many as in 2004/2005.

144. ACC provides transport assistance to people disabled by injury.

145. A national mobility parking scheme provides for specified car parks for disabled people with a mobility permit in both public and private parking settings (eg supermarket car parks). The Building Act 2004 requires accessible parking to be supplied for any public building when being constructed or altered. Monitoring and enforcement of the scheme is a problem, particularly with car parks on private property.

Article 21 — Freedom of expression and opinion and access to information

146. All people in New Zealand have the right of freedom of expression, which includes the right to seek, receive and impart information and opinions of any kind in any form.

⁵⁵ Access to public transport is discussed in Article 9 above.

1. Assistance to communicate⁵⁶

147. The Government assists in providing equipment and other resources necessary for self-expression, including assistive technology, speech language therapists and other qualified professionals.

2. New Zealand sign language is an official language

148. More specifically, the New Zealand Sign Language Act 2006 designates NZSL as one of New Zealand's three official languages and provides for its use in legal proceedings and by the Government. In the 2006 Census, a total of 24,090 people reported the ability to use NZSL, although people's fluency in the language was not identified.

149. In addition to provision in the court system, the Government funds interpreter services across a range of government agencies and, in 2008/2009, funded Deaf Aotearoa to establish a range of equipment and promotional material and programmes.

Article 22 — Respect for privacy

150. Everyone in New Zealand has the right to privacy in their personal information under the Privacy Act 1993, subject only to narrowly framed and implemented exceptions where information is required for public purposes.⁵⁷ There are specialised protections for privacy in respect of health and disability support services.

151. In 2010, the New Zealand Law Commission, an independent government law reform body, conducted a review of privacy values, changes in technology, international trends and their implications for New Zealand law. The Commission's report, which is currently under consideration by the Government, identified conditions under which health information should and could be shared as an area for reform.

Article 23 — Respect for home and the family

152. A disabled person has the same right to marry as any other person. There are no distinctions based on disability in relation to adoption, fostering, access to family planning services or whether a couple is eligible for publicly funded in vitro fertilisation.

153. Some disabled people, and particularly those with an intellectual disability, do, however, report negative societal attitudes.

1. Adequate support for families

154. New Zealand child policy sees family as the best environment for all children, including disabled children.

155. Disabled parents with child care responsibilities can receive support services and, subject to an income test, financial assistance. In particular, up to 50 hours of childcare per week is available to disabled parents with dependent children.

156. Parents and other family of disabled people are recognised and supported through the Carers Strategy.⁵⁸ One of the most important services available to families caring for a disabled family member is respite care. A subsidy is available that contributes to the cost of

⁵⁶ See also accessibility of information at Article 8 above.

⁵⁷ Set out in the Privacy Act 1993 and the Official Information Act 1982.

⁵⁸ See, further, Annex, paragraph 8.

non-resident family, neighbours or others providing respite care and funds some spaces in residential or day facilities. Respite care for young adults with complex needs is reportedly difficult to arrange.

2. Protection of disabled children

157. In accordance with the Convention on the Rights of the Child, New Zealand law concerning the care of children treats the welfare and best interests of the child as a paramount consideration in determining and supporting care arrangements.

158. New Zealand has extensive arrangements for supporting and, where necessary, protecting children, including disabled children. However, even where abuse or neglect necessitates intervention by social agencies, disability support is to be maintained in all circumstances. Further, all options for supporting a disabled child or young person to remain living with family must be fully explored before considering an out-of-home placement.

Article 24 — Education

1. Access to education

159. Disabled New Zealanders have equal rights of access to education, including in the early childhood, compulsory and tertiary sectors. Access to public and private education providers is safeguarded both by general anti-discrimination law and by education law and policy requirements. Teachers and others working in the education system are protected by anti-discrimination law.

160. Education for disabled people in New Zealand is governed by the following broad principles:

(a) Students with special education needs have the same rights, freedoms and responsibilities as people of the same age who do not have special education needs;

(b) The primary focus of special education is to meet individuals' learning and developmental needs;

(c) Special education resources are used in the most effective and efficient way possible, taking into account parental choice and the needs of the student;

(d) A student's language and culture comprise a vital context for learning and development and must be taken into consideration in planning programmes;

(e) Partnership between parents and education providers is essential in overcoming barriers to learning; and

(f) Students with special education needs will have seamless access to education, from the time that their needs are identified until they leave school.

161. Reflecting these principles:

(a) More than 30,000 children and young people aged up to 21 years receive specialist education services. Most of these are in mainstream schools. Funding is given to schools to support 40,000 to 60,000 children with more moderate special education needs. Around 5,200 students with special education needs receive subsidised or fully funded daily school transport assistance;

(b) Of the 7,569 children receiving support in early childhood education, 2,247 are girls and 5,322 are boys. Of the students with high needs in primary and secondary schooling, 2,565 are girls and 4,321 are boys. The differences between the numbers of girls

and boys reflect the fact that some medical conditions causing disability appear to be gender linked;

(c) Approximately 2,600 deaf or hearing impaired children and young people receive specialist education support from birth to the time they transition out of school. There are two specialist schools for the deaf that act as resource centres to support deaf children;

(d) In 2008, five per cent of tertiary students identified themselves as disabled. Disabled tertiary students make up seven per cent in lower levels of the tertiary system (studying level 1-3 certificates) compared to four per cent studying for a bachelor's degree.

162. The Education Review Office (ERO) monitors practice across early childhood education centres and schools both at an individual level and systemically. The ERO audit process includes identification of policies or practice that discriminate against disabled students and disabled school staff, which then must be remedied by the school or centre concerned.

2. Support for disabled people in early childhood and compulsory education

163. Pre-school screening tools form part of child health and development checks and are used to detect developmental and behavioural problems in children before they start school, so that any issues can be addressed from the outset.

164. In early childhood education, there are qualified, experienced staff who work with preschool children with special education needs. They provide assessment services, general information, specialist services, knowledge sharing and support to families, educators and other professionals.

165. Within the school system, the majority of disabled students are mainstreamed into local schools, going to the same school and classrooms as other students in the area. All schools receive a special education grant to support students with moderate levels of additional educational need. In addition, school alterations are funded to enable access for children, with approximately 50 per cent of all schools modified to enhance the accessibility for all students. Legislation requires that, as public buildings, all new schools be accessible.

166. Other students are in special school satellites based in mainstream schools, or in special education schools, including specialist schools for children who are deaf or blind or have an intellectual disability. Some specialist schools cover large geographic areas so students may have to be residential boarders at the school.

167. Professional development opportunities are available for teachers to assist them with responding to the diverse needs of students. The extent to which teachers and schools take up these opportunities is variable and teacher training in special education is not mandatory.

168. The Government's nationwide special education service, part of the Ministry of Education, works to remove barriers to accessing education so that children are present, participating and learning within existing school services. These services are available irrespective of the type of school the disabled child is attending. There are 950 frontline specialist field staff working with and for children with specialist education needs and their families.⁵⁹) A further 900 part-time support workers work directly with students to implement individual student learning plans.

⁵⁹ There were 51,974 teachers for all children directly employed by schools, as at 2010.

169. Government spending on special education, not including separate tertiary education expenditure, is approximately \$460 million. Special education services include:

- (a) Orientation and mobility services, and accessible format materials for the vision impaired;
- (b) Specialist teaching services for deaf children;
- (c) Speech language therapy to assist those with communication barriers;
- (d) Occupational and physiotherapy to assist those with physical disabilities;
- (e) Specialist staff such as psychologists, resource teachers, teacher aides, interpreters, note takers and kaitakawaenga,⁶⁰ and
- (f) Assistive technology services such as computer hardware and software, vision equipment, specialised seating, tables and hearing devices.

3. Tertiary education and transition to work

170. Disabled people have access to adult learning, including in formal tertiary education settings. Tertiary institutions are expected to be accessible to disabled students. Additional funding is available to them to help meet the needs of disabled students.⁶¹ Financial support for disabled people attending education and training, including for transport costs, is available through Workbridge, which is funded by the Ministry of Social Development.

171. In 2004, the Tertiary Education Commission (TEC) and Ministry of Education published a voluntary code of practice for tertiary education organisations to use in supporting students with impairments.⁶² It was developed by the tertiary sector disability network ACHIEVE to assist tertiary education providers create a fully inclusive environment for students with impairments.

172. Best practice guidelines suggest that transition from education to employment is an area where improvement is needed. Transition from education to employment should start at about age 14 with a plan for each student. Funding of transition services is available for those with high specialist education needs during their last year in school. Despite this, some schools (and some parents) still appear to assume that open employment is not a viable option for disabled students, and parents of disabled children have commented on the low aspirations that teachers have for disabled students in terms of academic achievements and/or careers.

173. A cross-agency working group is working on how to create a disability confident school so that the transition process is smooth and barrier-free.

4. Continuing challenges

174. Complaint mechanisms continue to indicate gaps in the implementation of accessible schooling. Enrolment and suspension/exclusion decisions involving disabled

⁶⁰ Specialists in Māori cultural advice and support.

⁶¹ This Equity Funding programme is replacing the previous programme, Special Education Special Supplementary Grants. Under Equity Funding, the TEC makes investment decisions based on plans submitted by each Tertiary Education Institute on how each institution plans to respond to government priorities and stakeholder needs over a three year period.

⁶² Kia Orite: Achieving Equity New Zealand Code of Practice for an Inclusive Tertiary Education Environment for Students with Impairments.

students have been the subject of complaints to the Human Rights Commission and the Children's Commissioner, as have levels of support and reasonable accommodation.⁶³

175. More specifically, there are insufficient NZSL teachers and interpreters across the country to support all deaf children to acquire NZSL or be taught through NZSL. The Ministry of Education is taking initiatives to address this problem, including through scholarship funding to encourage interpreter training.

176. In 2010, ERO undertook a systemic audit of schools' inclusive practices in relation to the broader grouping of students who need additional support or assistance, principally comprising disabled students. The audit, concluded in mid-2010, indicated that approximately half of the schools in the study comprehensively demonstrated inclusive practices, with some areas of inclusive practice in 30 per cent and few or no inclusive practice in the remaining 20 per cent.

177. ERO observed that inclusive practices were primarily a question of approach, rather than resources, finding that the level of inclusiveness at schools was not correlated with funding. Instead, the quality of leadership and the extent to which schools adopt a specialised form of teaching for students with high needs.

5. Review and reform of special education

178. In response to the ERO review and wider community concerns, the Government undertook a review of special education, including issues of access to schools, quality of workforce, accountability and cost and volume of services. The review report, *Success for All - Every School, Every Child*, was published in late 2010.⁶⁴

179. The Government has committed to:

- (a) Making schools more accountable for accepting, supporting and including students with special education needs;
- (b) Making it easier for parents and their disabled children to access special education services;
- (c) Extending some special education services and making them more flexible;
- (d) Strengthening teacher and school board of trustees' education and awareness about disabled children; and
- (e) Agreeing to carry out more work in relation to transport and transition from school to employment for disabled youth.⁶⁵

180. One thousand more children with severe educational difficulties will get special education support. A further thousand children will be able to get specialist support in their first three years of school - making the transition to school easier and reducing waiting lists.

⁶³ 17 per cent of all disability-related complaints to the Human Rights Commission in 2009 were about the education of disabled students. Complaints included problems enrolling in schools or tertiary institutions, and disabled children being suspended or excluded from schools due to behaviours associated with their disabilities. Almost a third of the complaints were regarding the reasonable accommodation or support for disabled school and tertiary students.

⁶⁴ *Success for All - Every School, Every Child*, 2010

<http://www.minedu.govt.nz/NZEducation/EducationPolicies/SpecialEducation/SuccessForAll.aspx>.

⁶⁵ <http://www.minedu.govt.nz/NZEducation/EducationPolicies/SpecialEducation/~media/MinEdu/Files/EducationSectors/SpecialEducation/CabinetPaperSuccessForAll.pdf>.

181. Schools have been set targets to improve their performance, with provision for regular progress reports. By the end of 2014, 80 per cent of schools are expected to be including students with special education needs and the remainder well on their way.

Article 25 — Health⁶⁶

182. All people have the right to adequate standards of care. The Government funds a comprehensive range of personal health services, including mental health services and sexual and reproductive health services, for both disabled and non-disabled people. This includes free access to high quality care in public hospitals and subsidised access to primary health care. People who are on low family incomes, including disabled people, are entitled to subsidised primary health care. Subsidised drugs are available through general medical practitioners and specialists.

183. Primary health care organisations that provide free care to children under six years old receive additional subsidies from the Government. The Government also funds a free immunisation programme for all children, to prevent illnesses which could result in secondary disabilities.

184. Public health campaigns do not differentiate on the basis of disability. Campaign promotions are increasingly using a range of media to assist in reaching populations such as disabled people. Examples of this are the public health campaign on H1N1 flu which used sign language, and the public health campaign on the cervical cancer vaccine which used captioning.

185. District Health Boards are required to provide accessible health services. This requirement also applies to primary health care services supplied through primary health care organisations. However, while there is a reasonable understanding about wheelchair and ambulatory mobility issues, there is less of an understanding about barriers that are faced by people with intellectual, mental or sensory disabilities.

186. District Health Boards set priorities for their own communities, which means that the particular mix and level of services can differ from region to region. Economies of scale mean that some services are only available in the larger cities.

1. The need to improve the health of people with intellectual disabilities

187. Analysis of health data, carried out by the Ministry of Health in 2010, indicates the health of people with intellectual disability in New Zealand is markedly poorer than for people without identified intellectual disability. Hospital events relating to coronary heart disease and chronic respiratory disease occur approximately 1.5 to 2 times the rate of people without an intellectual disability. Prevalence data indicates higher than average rates of diabetes, and public hospitalisations for injury and mental health conditions are over three times higher than for people without an intellectual disability. People with intellectual disabilities are also over-represented in mental health and addiction statistics.

188. The Ministry of Health recognises this is an issue and is identifying options to improve health for intellectually disabled people.

⁶⁶ See also paragraphs 85-87 & 117-118 (requirements for non-consensual care and treatment) and paragraphs 97-98 (complaint and audit procedures).

2. Addressing Māori and Pacific disadvantage

189. Strategies targeted towards Māori and Pacific people have been developed to achieve better health outcomes for these groups, including disabled people. The Government purchases specific Māori and Pacific health and disability support services from both Māori and Pacific service providers as well as mainstream providers. Health and disability service standards recognise the values and beliefs of Māori and Pacific health and disability consumers, stating that the needs of individuals must be met in a manner that acknowledges individual and cultural values and beliefs.

3. Addressing multiple impairments

190. Services tend to be set up to meet the specific needs of a client group with a single impairment. When multiple impairments exist, such as mental illness plus a physical or sensory impairment, the person's overall needs and access to appropriate services are not always co-ordinated. The health needs of disabled people can be seen as secondary to their disability needs, and therefore not always treated with the same degree of urgency as a non-disabled person presenting with health needs. The Government has been raising awareness among service providers about people with multiple impairments.

4. Improving training of the health sector workforce

191. There is no overall cross health and disability sector initiative in place to train health professionals on the rights and specific needs of disabled people. The Ministry of Health, ACC, and District Health Boards have invested heavily in building the capacity of the sector workforce in recent years. There are initiatives in place for parts of the health workforce eg mental health professionals. Improved training and skills development has been led by the sector industry training organisation, with various new tertiary level qualifications, including a graduate diploma, receiving approval from the New Zealand Qualifications Authority. Increased levels of funding by Government can be tied to the qualifications of staff, providing financial incentives for many employers to encourage staff to improve their skills.

192. One of New Zealand's two medical schools (the Wellington campus of the Otago Medical School) has commenced training for its students in the subject of disability. This is a joint initiative between the medical school and Capital City Health and offers specific disability awareness training, which had not previously been part of the curriculum.

5. HIV/AIDS

193. The Ministry of Health largely funds the work of the New Zealand AIDS Foundation, a non-governmental organisation. The AIDS Foundation's goals are to prevent the transmission of HIV and to support those affected by HIV to maximise their health and wellbeing. The Foundation is working in partnership with Pacific Island organisations on a three year programme of capacity building work focused on improving the sexual health and wellbeing and human rights of Pacific men who have sex with men, and reducing stigma and discrimination against such men in the Pacific.

6. Insurance

194. It is unlawful for an insurer to refuse to provide a disabled person with insurance or to treat them less favourably. However, insurers can include different terms and conditions in insurance policies on the grounds of sex, age or disability if the difference can be supported by statistical or actuarial data.

195. In the case of disability, differences in policies may be allowed if, in the absence of statistical data, there is medical advice or opinion that it is reasonable to rely on.

Article 26 — Habilitation and rehabilitation

1. Maximising independence

196. The Government funds a wide range of health and disability support services that contribute to habilitation and rehabilitation and in turn support independence. Participation in these programmes is voluntary. Habilitation and rehabilitation are provided in hospital and community settings.

197. The Ministry of Health, District Health Boards and ACC all fund habilitation and rehabilitation services. ACC is responsible for those whose need for rehabilitation arises from an accident, the Ministry funds services to those with a physical, mental or sensory impairment under the age of 65, and District Health Boards fund services to older New Zealanders and those with support needs arising from mental health or addiction issues.

198. National guidelines are in place for Ministry of Health funded services. Since each of the twenty District Health Boards set their own service priorities and funding allocations there can be different thresholds for eligibility between regions.

199. A review of long-term disability supports identified inconsistencies in service provision because different parts of government use different criteria to determine eligibility for support services.⁶⁷ Better co-ordination of the different services a disabled person needs has been identified as an area in which improvement could be made.

2. Social insurance for disability by accident

200. ACC is responsible for all rehabilitation arising from all accidental injury, whether suffered in the workplace or otherwise, and provides a range of support services. Rehabilitative programmes include:

- (a) Supported activities programme – a day programme provided to long-term clients;
- (b) Short-term intensive interventions to increase independence in daily living; and
- (c) School to work transition.

201. The level of services provided by ACC is often higher, particularly in the short term, than those available across the general health and disability support systems. In particular, and in order to minimise costs arising from the ongoing support of injured people, services may be provided faster, at a higher amount, and initially more frequently than for people receiving health and disability supports from other government agencies.

202. A recent case brought under the Human Rights Act 1993 complained that the Ministry of Health's scheme for providing disability support services was discriminatory because it was not as generous as that provided by ACC. However, the Court of Appeal held that it was not discriminatory as any anomalies arose from the trade-off under the 'no fault' ACC scheme, under which there is no right to sue for injury caused by an accident, and the policy choice of government to continue to provide for the cost of illness through the health system.⁶⁸

⁶⁷ <http://www.odi.govt.nz/what-we-do/review-dss/index.html>.

⁶⁸ *Treventhick v Ministry of Health* [2009] NZAR 18 at [18].

Article 27 — Work and employment

203. Disabled people have the same access to legal safeguards as all other workers, including in terms of harassment, unfair dismissal, and trade union rights. Discrimination on the grounds of disability in employment is unlawful both under employment law and under general anti-discrimination law, which impose a duty of reasonable accommodation. Anti-discrimination law exempts affirmative action measures taken to redress disadvantage experienced by disabled people.

204. In addition, all employers' health and safety obligations require employers to take all practical steps to eliminate hazards, which could include harm arising from bullying or harassment, whether by the employer, by other employees or otherwise.

205. Both public and private sector employers are subject to particular duties towards disabled people. Within the public sector, the State Sector Act 1988, the Crown Entities Act 2004 and the Local Government Act 2002 promote the interests of disabled people through the promotion of equal employment opportunities. More broadly, public sector employers are subject to a specific duty to act as a "good employer", in particular by:

- (a) Providing good and safe working conditions for all;
- (b) Ensuring impartial selection of suitably qualified personnel for appointment; and
- (c) Recognising the aims, aspirations and employment requirements of disadvantaged groups, including disabled people.

206. Private sector employers are subject to less specific duties of good faith and mutual trust and confidence, which reflect similar principles.

207. Further, wage rates, including minimum wage protections make no distinctions for disabled people. As part of the move away from sheltered employment, discussed below, the general exemption of such employment from general wage and working conditions ceased in March 2007. In its place, there is a limited scheme for individually assessed exemptions that allow reduced wages to be paid according to individual productivity. Approximately 1,200 individual workers remain under such exceptions, principally in the remaining sheltered workplaces.⁶⁹

208. The exemption process has, however, been criticised as both cumbersome and as sometimes involving inaccurate assessments of individual productivity. The Ministry of Social Development is currently funding an employment advocacy service for workers with intellectual disabilities, in part to assist disabled workers in respect of such exemptions.

1. Major challenges remain in practice

209. Disabled people are less likely to seek work and, if seeking work, less likely to be employed than non-disabled people and tend to be employed in lower-paid work.⁷⁰

210. Several surveys over the last few years have found that disabled people want to work,⁷¹ but employers' lack of knowledge and discrimination are acting as barriers. Recent

⁶⁹ Nationally, there were 1,242 exemptions at 30 June 2008, 1,250 exemptions at June 2009 and 1,236 at the end of June 2010.

⁷⁰ See Annex, table 4.

⁷¹ Ministry of Social Development, Working Paper 07/04: *Wellbeing, Employment, Independence: the Views of Sickness and Invalids' Benefit Clients*, 2004 and 2007 Royal New Zealand Foundation of the Blind survey.

Human Rights Commission research among employers and current and potential employees found:⁷²

- (a) An unwillingness on the part of employers to give opportunities to disabled people;
- (b) Incorrect assumptions about what employing a person with a disability might entail and about health and safety concerns; and
- (c) Concerns that disclosing mental health issues would exclude job applicants from consideration.

2. Government support for disabled workers

211. In a 2000 review of vocational services,⁷³ disabled people said they wanted real work for real wages. Since then, efforts have been made to ensure that mainstream employment services are accessible to disabled people, though disabled people continue to indicate that more should be done.

3. Changing attitudes

212. One of the primary goals of the Government funded Human Rights Commission is for all people in New Zealand to have equal employment opportunities and access to decent and productive work. This work is led within the Commission by a designated Equal Employment Opportunities Commissioner.

213. In addition:

- (a) The Government partially funds the Equal Employment Opportunities Trust, a not-for-profit organisation that provides information and tools to employers and raises awareness of diversity issues in workplaces;
- (b) The Government has recently facilitated the development of an Employers Disability Network, an independent employer-led organisation that supports employers to employ disabled people and to reach disabled customers by promoting best practices.

4. Facilitating real work for real pay

214. Since the 1990s, there has been a continuing shift away from sheltered employment for disabled people, into employment in the general workforce, with additional support where required.

215. Some categories of income support that are paid to disabled people were previously exempted from general obligations to look for appropriate employment. The Government is now encouraging recipients of such support to seek part time work, if appropriate and available, and from May 2011 some recipients may, if assessed as capable of working part-time, be required to look for and accept such work.

216. Further, and in addition to the usual job seeker support, the Government provides a range of assistance. The Government funds a range of vocational services, amounting in 2008-2009 to services for 19,918 disabled people, including 9,384 who were placed or supported into paid open employment and 1,000 supported in sheltered workplaces. Vocational services include.

⁷² Human Rights Commission, *What Next? National Conversation about Work*, 2010.

⁷³ *Pathways to Inclusion*, Department of Labour 2000.

(a) Placement into ongoing open employment by Work and Income, the general government employment assistance agency, or by Workbridge, an independent specialist agency funded on a contractual basis, and other supported employment services;

(b) Financial assistance through Workbridge to meet the additional costs of disability in open employment, training, or self employment, including assistive technology.

217. In addition:

(a) Subsidies are available to support disabled job seekers into self employment; and

(b) The Mainstream Employment Programme provides a package of salary and training subsidies and other support for two years and provides work experience in the State sector to people with significant disabilities as a pathway to ongoing employment.

218. A Welfare Working Group was established by the Government in 2010 to examine long-term welfare dependence. The terms of reference included how best to promote opportunities and independence from benefit for disabled people. The Welfare Working Group concluded in February 2011, and recommended active support for disabled people in accordance with the Disability Strategy.⁷⁴ The Government will respond to this and other recommendations in due course.

5. Work in the informal sector

219. Like anyone else, disabled New Zealanders may perform voluntary work, and all general protections against exploitation apply to them.

Article 28 — Adequate standard of living and social protection⁷⁵

220. Publicly funded income support benefits are available for people who cannot work due to disability. All people aged 65 and over who have met a residency requirement are entitled to publicly funded superannuation, which is paid irrespective of past employment or income.

221. Income assistance for disabled people who are unable to work is fixed at a slightly higher level than general unemployment assistance. However, practice indicates that people are at greater risk of poverty if dependent on income assistance in the long term. While financial assistance is available to people in hardship, the Government emphasises employment, with the forms of support outlined previously, as the most effective way that most people can improve their situation.

222. Specialised supplementary income assistance is provided to assist disabled people who face additional living costs of living:

(a) The Disability Allowance provides income-tested assistance to people who have additional costs because of a disability or health condition;

(b) The Child Disability Allowance is not income-tested and provides assistance to the principal caregivers of dependent children who have a serious disability.

⁷⁴ <http://ips.ac.nz/WelfareWorkingGroup/index.html>.

⁷⁵ See also Article 19.

Article 29 — Participation in political and public life

1. Voting

223. Under the Electoral Act 1993, every adult New Zealand citizen or permanent resident is qualified to be registered as a voter if that person has at some time resided continuously in New Zealand for a period of not less than one year. There is no distinction on the basis of disability.

224. In particular, all people under compulsory care or treatment are entitled to vote unless they have committed criminal offences and have been detained for three years or longer (the same applies to the general population) and are still detained.

2. Ensuring access

225. The Government, in consultation with groups from the disability sector, developed and successfully implemented an accessibility action plan for the 2008 general election. More is planned for the 2011 election. Initiatives in 2008 included:

(a) Development of a simple plain English and pictorial *Easy Guide to Voting* resource for voters with learning and intellectual disabilities, and their caregivers. This resource was developed in conjunction with IHC New Zealand and People First organisations;⁷⁶

(b) Production of a DVD in collaboration with Deaf Aotearoa that uses sign language, captions and spoken English to explain enrolment and voting processes;

(c) Provision of information about voting in a range of formats including Braille, audio tape and large print;

(d) Training of election officials on how to assist disabled people; and

(e) Provision of independent help for some residents of community care homes, for example from Justices of the Peace.

226. As in previous years, disabled voters were surveyed following the 2008 general election.⁷⁷ Eighty five per cent of disabled voters were satisfied with voting information provided and 96 per cent of disabled voters considered the length of time taken to cast a vote to be “about right”. Most (86 per cent) disabled voters cast their votes at a polling station, rather than – as is possible – by post, at a hospital care facility or through advance voting and, while assistance was provided when required, 57 per cent of disabled voters were able to vote unassisted.

3. Support for civil society

227. The Office for Disability Issues, some central government agencies, District Health Boards and local councils have all set up advisory boards of disabled people. Central government agencies in the social sector have a number of contracts with disabled peoples’ organisations, some for the provision of advice and others for provision of services.

⁷⁶ The main provider and advocacy organisations for people with an intellectual disability.

⁷⁷ <http://www.elections.org.nz/study/researchers/satisfaction/disability.html>.

Article 30 — Participation in cultural life, recreation, leisure and sport⁷⁸

228. The Government supports cultural and recreation activities both directly through specialised agencies⁷⁹ and through health, education and other activities, and indirectly through local government, which is required to support sport, culture and leisure for all members of the community. Provision of funding for cultural, sporting and other social activities for disabled people in communities is a priority area for funding allocation from government lotteries.

1. Cultural activities

229. Creative New Zealand, a Government agency, is responsible for supporting cultural activities, including many initiatives for disabled people:

(a) It funds a national non-government organisation, Arts Access Aotearoa: Whakahauhou Katoa o Hanga, which works to increase artistic opportunities and access to the arts for disabled people;

(b) It has published, with Arts Access Aotearoa, *Arts for All: opening doors to disabled* people, a guide on practical and long-term ways for artists and arts organisations to enhance access and market their events to disabled people;

(c) It has convened workshops with arts organisations in 2010, and plans an audit of arts organisations in 2011 to review current standards and capabilities;

(d) It has sponsored a new award, developed by Arts Access Aotearoa, to acknowledge an arts organisation or group that has gone to extraordinary lengths to become more accessible to disabled people;

(e) It plans to develop a diversity strategy that will encompass access to, and participation in, the arts for disabled New Zealanders by 2013.

230. Particular arts organisations, which receive public funding, have initiatives to support disabled people in pursuing cultural activities:

(a) In December 2010, Dance Aotearoa New Zealand launched a disability dance strategy, *Would You Like This Dance?* which is intended as a blueprint for the development of dance participation, creation and performance by disabled people;⁸⁰

(b) The New Zealand Symphony Orchestra is working to assist disabled people better experience classical music, including discounted tickets, transport to events, making open rehearsals accessible to disabled people and a *Music in the Dark* event, which was aimed primarily at the blind and sight impaired.

231. The Copyright Act 1994 provides specific exceptions to intellectual property regulations for the production of Braille and other accessible materials for disabled people.

232. Disabled Māori have identified their right to access Māori culture and language is not always met. Marae (meeting places)⁸¹ are generally not accessible and there are only three qualified trilingual interpreters (English-Māori-NZSL) in New Zealand.

⁷⁸ See also Article 21 above (New Zealand Sign Language).

⁷⁹ See also paragraph 52 (public funding for broadcasting).

⁸⁰ <http://www.danz.org.nz/NZDDS.php>.

⁸¹ These are community facilities owned and operated by kin based descent groups.

2. Sport and recreation

233. In addition to sport and recreation support provided through the education system, other government services and local government, the Government is pursuing three broad objectives under its current *No Exceptions* programme:

- (a) More disabled New Zealanders active in sport and physical recreation;
- (b) More New Zealanders participating in the support and delivery of sport and recreation to disabled New Zealanders; and
- (c) Promoting access to sport and recreation and the achievements of disabled New Zealanders, to encourage participation by more disabled New Zealanders.

234. The Government assists high performance sport for disabled people.

235. This approach will see specific funding for disabled people increase to approximately \$4.7 million from 2009 to 2012.

IV. Situation of disabled boys, girls and women

Article 6 — Women with disabilities

236. New Zealand has ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

237. All disabled women in New Zealand are entitled to enjoy their rights on an equal basis with disabled men, and with non-disabled people. The Human Rights Act 1993 prohibits discrimination on the grounds of gender and applies to all New Zealanders, including disabled women.

1. New Zealand situation – disabled women are further disadvantaged

238. Eighteen per cent (or 332,600) of women aged 15 years and over report having a disability⁸². By virtue of their gender and their disability, they are doubly disadvantaged.

239. Disabled women are disproportionately represented among those who lack qualifications, those who do not work, and those who are living on a low income.⁸³ Detachment from education and employment means that more disabled women experience poorer social and economic outcomes across their life.

2. But there are policies that support disabled women

240. Disabled women have comprehensive access to all forms of State assistance, including assistance into employment. As access to assistance is based on disadvantage, disabled women access a correspondingly high proportion of State assistance. New Zealand's focus is on supporting those with greatest needs rather than setting up affirmative action programmes. For example, at the end of December 2010, 57 per cent of working-age recipients of main benefits (aged 18–64 years) were female.

⁸² Maskill C, Hodges I. *Indicators from the 1996, 2001 and 2006 New Zealand Disability Surveys for monitoring progress on outcomes for disabled people*. Wellington: Office for Disability Issues 2011 (report prepared by HealthSearch Ltd). <http://www.odi.govt.nz/resources/research/outcomes-for-disabled-people/index.html>.

⁸³ 2006 Household Disability Survey.

241. The Ministry of Women's Affairs (MWA) is tasked with addressing disparities for all women, including disabled women. The MWA monitors women's participation in education and the workforce, including disabled women.

242. Both the MWA and the Office for Disability Issues run services nominating candidates for leadership vacancies on State sector boards. Disabled women are nominated for roles for which individual candidates have suitable skills and experience.

243. Reducing violence against women is a priority area for the MWA. From July 2007 to September 2009, the MWA researched effective interventions for adult victims of sexual violence. One study found 33 per cent of victims of sexual violence interviewed⁸⁴ indicated that they had a disability or impairment.⁸⁵ However, the research did not establish whether the disability was the result of sexual violence or preceded it.

244. The Taskforce for Action on Violence within Families is working to reduce the impact of violence against women, including disabled women (see Article 16). Women's refuges, which provide a safe place for women, are not always accessible for disabled women.

Article 7 — Children with disabilities

245. The Human Rights Act 1993, the New Zealand Bill of Rights Act 1990 and the Code of Health and Disability Services Consumers' Rights apply to disabled children and young people. Disabled children and young people are entitled to the same health, education and other services that non-disabled children and young people receive.

246. The Government funds a range of health care and disability support services for disabled children and young people, including child development services and other disability support services. There is specialised provision for disabled children: for example, the Ministry of Health funds early detection and intervention in respect of disabilities in young children, while social workers dealing with disabled children in government care have access to specialist child disability advisors.

247. The 'best interests of the child' principle is broadly reflected across decision-making procedures concerning children, including family law, care and protection and elsewhere.

1. Representing the views of disabled children

248. The Office of the Children's Commissioner, an independent Crown entity, advocates for the best interests of all children and young people in New Zealand and monitors how their rights are respected and upheld. The Children's Commissioner has the statutory responsibility and requirement to promote practices allowing children to have input into issues that affect them. The Office communicates with children and young people through a variety of mechanisms, including a standing Young People's Reference Group and provision of information resources. The Commissioner undertakes advocacy in matters affecting all children, including disabled children, for example contributing to the recent Special Education review.

249. The Ministry of Youth Development offers a broad range of youth participation channels. One of the highest profile events is Youth Parliament, held every three years.

⁸⁴ The survey included 58 victim / survivors interviewed and surveys completed by 17 victim/survivors.

⁸⁵ Kingi and Jordan, *Responding to sexual violence: Pathways to recovery*, Ministry of Women's Affairs, 2009.

250. Young people from around New Zealand are chosen by their local Member of Parliament to participate as Youth Members of Parliament. Youth Members debate current legislation and current issues. Three of the 120 Youth MPs in the 2010 Youth Parliament had disabilities.

2. Current challenges

251. In practice, not all disabled children and their families have access to the supports that they need or knowledge about the full range of services available. With limited resources in the health and education systems and variable levels of co-ordinated services at local levels, both access to and the amount of resources provided can be less than optimal. Services for disabled children can be disjointed or fail to focus on their holistic needs because they are delivered or funded by different agencies in an unco-ordinated way. As in other areas, improved co-ordination of support is a current government focus.

252. Social attitudes are a challenge. In some cultural and other groups, parents often make decisions without consulting their children. This can mean that the views of children, particularly disabled children, are not always heard within their immediate or extended family. Current and planned awareness-raising programmes are seeking to address such attitudes.

V. Specific obligations

Article 31 — Statistics and data collection

253. In addition to the collection of information as part of the five-yearly national census of population, each census is followed by a Household Disability Survey and a Disability Survey of Residential Facilities. These surveys collect information on the prevalence, nature, duration and cause of disability, on demographic characteristics, and on the barriers that disabled people encounter in their everyday lives. Statistical information is collected in a manner that complies with all privacy, data protection and other relevant standards.

254. Statistics New Zealand, which conducts the national census and the two surveys, consults with the community, including the disability sector, over the form and content of these and other data collection exercises. The Office of Disability Issues is also consulted.

Available data

255. The Disability Surveys are currently the best available source of statistical information on disabled New Zealanders. They enable disaggregation of data on a range of variables. However the sample size of these surveys limits the degree of disaggregation possible. Potential alternative sources have been considered, but costs associated with achieving sample sizes that would allow the desired level of disaggregation have proven prohibitive.

256. The next disability surveys to enhance their quality and utility. They will cover more social and economic outcomes-related variables than the previous Disability Surveys.⁸⁶

⁸⁶ A post-census disability survey was developed for 2011. The content of this survey were redeveloped to meet information needs on outcomes and align it more closely with the International Classification of Functioning Disability and Health. The survey, which will sample approximately 20,000 respondents, was to commence in July 2011 but, as with the 2011 Census, has been deferred following the February 2011 earthquake in Christchurch. A new date has yet to be set. This

257. In addition, health authorities compile – in accordance with privacy and other standards - a large amount of health data on health and disability support services, including data used for investigation of the health status and service use of people with intellectual disabilities and the development of an overall database of disability support.

258. There are specific obligations to compile and report on particular matters that affect disabled people, including statutory orders for compulsory care and reporting of every use of electro-convulsive therapy and seclusion in mental health services.

259. However, more specific information on disability is frequently lacking or incomplete in most government agencies' databases. The government regards improvement of data collection as an essential task.

Article 32 — International cooperation

260. New Zealand's aid programme is guided by a policy framework which refers to the need for international co-operation to be inclusive of and accessible to disabled people. It provides support to a number of disability-specific initiatives.⁸⁷

261. New Zealand's aid programme recognises some people as more marginalised and vulnerable than others. Disabled women, disabled youth and people with mental illness and intellectual impairment are specifically identified.

262. New Zealand is committed to the Millennium Development Goals (MDGs). New Zealand's international development assistance programme is focused on development in the Pacific and the MDGs are a crucial measurement of achievement.

263. The New Zealand aid programme's core funding to the Pacific Development Fund includes specific support to women and youth. The Fund has a one day meeting for disabled women each year within their Annual General Meeting. With the support of New Zealand, the Fund has taken on specific responsibility for people with mental illness or intellectual impairment. New Zealand has supported two Pacific initiatives focused on mental health, both of which took a rights-based approach.

264. New Zealand has provided technical advice to the Pacific Development Fund on broader issues concerning disabled people.

265. Capacity building for disabled people and disabled persons organisations is an important component of New Zealand's aid programme. Most initiatives include an element of capacity building, from the provision of organisational capacity development to specific training courses (eg training disabled people to become disability rights advocates). New Zealand provided initial funding to support the establishment of the Pacific Disability Forum for disabled persons' organisations in the Pacific.

266. Support to minimise and prevent secondary disability is included in some health programmes. This includes prevention of non-communicable diseases in the Pacific, which are a significant contributor to disability in the region. One example includes testing for diabetic retinopathy in Fiji.

Household Disability Survey will be followed by a shorter and smaller survey of disabled people in residential care.

⁸⁷ See Annex, Table 11.

Article 33 — National implementation and monitoring

1. Government monitoring and implementation

267. The Government has designated the Office for Disability Issues as the focal point for implementation issues and, as noted previously, has established the Ministerial Committee on Disability Issues, chaired by the Minister for Disability Issues, with responsibility for overall co-ordination of government policies and practices.

268. The Ministerial Committee is tasked with overseeing the improved effectiveness of government agencies' implementation of the Disability Strategy. The membership of the Committee includes senior Ministers, who are responsible for decisions on disability issues across the key portfolios that impact on disabled people.

269. The Government is continuing to undertake awareness-raising both within and beyond government decision-making to reinforce engagement with the Convention.

2. Independent agencies

270. The Human Rights Commission and the Office of the Ombudsmen, both of which are publicly funded agencies with statutory independence, have been funded to provide independent oversight of the ongoing application of the Convention. The 2010 budget allocated additional funding of \$1.59 million to reflect these particular responsibilities.

3. Civil society

271. As outlined previously, the Government has consulted with disabled people and others involved with disability in the course of supporting and then ratifying the Convention and across the scope of government decision-making.

272. In addition, and to support participation by civil society in Convention implementation, the Government has funded the Convention Coalition, a group of disabled people's non-governmental organisations, to monitor implementation of the Convention. These organisations include the Association of Blind Citizens, Deaf Aotearoa, the Disabled Persons Assembly, Nga Hau E Wha,⁸⁸ Ngati Kāpo⁸⁹ and People First.⁹⁰

273. In the 2010 budget process \$750,000 was allocated from 2010-2013 for resourcing disabled people's organisations to collect evidence directly from disabled people and report on changes in disabled people's lives and the impact of government-funded services.

274. This will involve implementing a qualitative research and monitoring programme, with oversight by the Disability Rights Promotion International Project.⁹¹ The first report, *Disability Rights in Aotearoa New Zealand*, was published in 2010.⁹²

⁸⁸ A network of organisations of people with experience of mental illness.

⁸⁹ A nationwide consumer driven Māori health and disability service provider.

⁹⁰ A national organisation for people with intellectual disability.

⁹¹ Based at York University, Canada.

⁹² <http://www.dpa.org.nz/publications/index.html>.