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Visual description: A purple Whaikaha logo with a QR scan for the NZSL name.

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Key issues and opportunities for disabled people's access to justice

Purpose

- 1 This paper outlines key issues and opportunities for disabled people, tāngata whaikaha Māori and whānau in accessing justice. It is part of a series of internal papers examining strategic issues and opportunities to steward better outcomes for disabled people across government.
- 2 These papers are intended to provide a starting point for the working groups that will consider each outcome area in more detail, and propose a prioritised set of well-defined, achievable actions for inclusion in the refreshed New Zealand Disability Strategy.

Executive summary

- 3 Disabled people, tāngata whaikaha Māori, and Pacific disabled people are entitled to the same basic human rights and freedoms as non-disabled people. This includes the right to access justice services and to be

treated fairly and equally by the courts, tribunals, and government.

- 4 The New Zealand justice system is complex, made up of many government agencies and non-government organisations. Government agencies that make up the justice sector include the Ministry of Justice, Oranga Tamariki - Ministry for Children, New Zealand Police, Department of Corrections, and the Crown Law Office. The judiciary, made up of judges and other judicial officers, is an independent branch of government.
- 5 Key non-government organisations include Community Law Centres, Citizens Advice Bureau, the legal profession, Victim Support and Women's Refuge.
- 6 Key legislation in the criminal justice system include the Crimes Act 1961, the Sentencing Act 2002, the Criminal Procedure (Mentally Impaired Persons) Act 2003, the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and the Mental Health (Compulsory Assessment and Treatment) Act 1992.

Criminal justice system

- 7 Disabled people are consistently disproportionately represented as victims of crime. Disabled young people face the highest victimisation rates of any demographic group (over 50%). Findings from the New Zealand Crime and Victims Survey, using data from 2018-2023, show disabled women were more likely to be victims of crime compared with non-disabled women (41% compared with 30%) and disabled men were more likely to be

victims of crime compared with non-disabled men (37% compared with 29%).

- 8 These findings likely do not reflect the true prevalence of abuse and crimes against disabled people, however, as disabled people face barriers to reporting crime or abuse and stopping it when it occurs. Barriers include fear of recrimination, not being believed, or losing necessary supports. Disabled people can also face inaccurate assumptions about their competency and credibility on the part of Police and justice staff, including judges. There is also likely to be under-reporting of abuse and crimes against disabled people due to a lack of societal awareness of the legal requirement to report suspected abuse.
- 9 Disabled young people and adults are also persistently disproportionately impacted by the youth and adult criminal justice systems. There is not currently robust, consistent data on disabled people in the youth and criminal justice systems. However, there is growing research that shows that there may be high rates of imprisonment of disabled people, particularly people with intellectual or neuro disabilities, in New Zealand. Some of the key factors that may be contributing to this, include:
 - lack of diagnostic screening earlier in life can mean disabled people have not had the support needed during early development to find positive ways to communicate and find strategies to reduce challenging, or 'not socially acceptable', behaviours.

- lack of disability awareness and responsiveness on the part of the Police, legal professionals, and judiciary can mean disabled people's behaviour may be misinterpreted. Misinterpretation of behaviour risks disabled people being more likely to be apprehended and being treated more aggressively and forcefully than may be necessary.

10 There are significant issues relating to natural justice arising from the application of the Criminal Procedure (Mentally Impaired Persons) Act 2003, the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003, and the Mental Health (Compulsory Assessment and Treatment) Act 1992. Disabled people are treated differently from non-disabled people in the criminal justice system. They can be detained on a lower standard of evidence than non-disabled people. Offenders with intellectual disabilities may be detained in secure facilities for lengthy periods of time, without due process, as their detention is not based on the standard of beyond a reasonable doubt.

Civil justice system

11 Disabled people are more likely to experience legal problems that impact their everyday lives. Results from the Access To Justice: 2023 Legal Needs Survey show that, of the disabled people surveyed, over half (54%) had experienced a legal problem in the past year, compared to almost a third (32%) of non-disabled people. Just under a third (30%) of disabled people surveyed also reported they felt confused as a result of receiving legal services.

- 12 Disabled people face barriers such as long-term costs and availability of accessible information in seeking to resolve their legal problems through the civil justice system.
- 13 Disabled people also face discrimination as parents through the family court as the Adoption Act 1955 allows children of disabled parents to be adopted out from them without their consent.

Potential focus areas and opportunities for the New Zealand Disability Strategy

- 14 There are a range of government work programmes and initiatives underway to improve disabled people's access to justice. The Ministry of Justice, Police,¹ Oranga Tamariki, Department of Corrections, Te Puna Aonui and non-government agencies all have work underway which could be strengthened as part of the refresh of the New Zealand Disability Strategy (NZDS).
- 15 There are a number of focus areas that could be explored. These include strengthening early intervention and supports, addressing abuse and family and sexual violence, strengthening disability responsiveness for Police and the legal profession, and implementing accessibility protocols across the justice system. Through the refresh of the NZDS, work can be done with the disability community and relevant agencies to develop short and longer term actions to address these issues

¹ Since this paper was prepared, Police have released their *Disability Roadmap 2026*, available: <https://www.police.govt.nz/about-us/publication/disability-roadmap-2026>

and to support better access to justice for disabled people.

Background

Disabled people, tāngata whaikaha Māori, and Pacific disabled people have the same right as non-disabled people to access justice services

16 All New Zealanders are entitled to basic human rights and freedoms. These include civil and political rights, such as the right to justice and freedom of expression.

17 Internationally, by ratifying the United Nations Convention on the Rights of Persons with Disabilities (**UNCRPD**) the Government has accepted an undertaking to ensure disabled people are recognised before the law, have access to justice, and enjoy the right to liberty and security on an equal basis to non-disabled people. The key UNCRPD articles in relation to justice are:

18 Article 12 sets out the right of disabled people to enjoy legal capacity on an equal basis with non-disabled people;

19 Article 13 sets out the right of disabled people to have effective access to justice on an equal basis with non-disabled people and that to ensure this, appropriate training of justice professionals is promoted; and

20 Article 14 sets out the right of disabled people to enjoy liberty and security and to not be discriminated against based on having a disability.²

21 Domestically, Te Tiriti o Waitangi/The Treaty of Waitangi guarantees to Māori ongoing rangatiratanga, participation in Crown governance, law and policy, and protection of their rights. Other human rights protections, including the right to justice, are set out in a variety of statutes³ and the common law.⁴ The two main statutes that protect human rights in New Zealand are:

22 The New Zealand Bill of Rights Act 1990 which affirms New Zealand's obligations under the International Covenant on Civil and Political Rights to protect and promote human rights and freedoms in New Zealand. This includes the right to be treated fairly and equally by the courts, tribunals, and government.

23 The New Zealand Human Rights Act 1993 which protects people from discrimination.⁵ The HRA makes it unlawful to discriminate on a range of grounds⁶, including on the basis of disability.

² Other relevant articles include Article 9: Accessibility, Article 15: Freedom from torture or cruel, inhuman or degrading treatment or punishment, Article 16: Freedom from exploitation, violence and abuse, Article 21: Freedom of expression and opinion, and access to information, and Article 22: Respect for privacy.

³ A statute is a law that has been enacted by Parliament.

⁴ Common law is law that has been developed by judges. It may be amended and developed by the courts to meet changing circumstances.

⁵ Discrimination takes place when a person is treated less favourably than another person in the same or similar circumstances.

⁶ Sex (including pregnancy and childbirth), marital status, religious belief, ethical belief, colour, race, ethnic or national origin (including nationality or citizenship), disability, age, political opinion, employment status, family status and sexual orientation. The HRA also makes sexual and racial harassment and inciting racial disharmony unlawful.

The New Zealand justice system is made up of many government agencies and non-government organisations

- 24 This paper discusses the barriers disabled people, tāngata whaikaha Māori me ō rātou whānau, and Pacific disabled people face in accessing and participating in justice services through the criminal justice system (including youth justice) as both an offender or victim, and the civil justice system (including family law).
- 25 Government agencies that make up the justice sector include:
- 26 **Ministry of Justice** - provides justice system leadership, including providing advice to the Government on justice issues, managing New Zealand's court system and running tribunals;
 - 27 **Oranga Tamariki - Ministry for Children (Oranga Tamariki)** - responsible for youth justice and care and protection settings and supporting children whose wellbeing is at significant risk, or might be in the future;
 - 28 **New Zealand Police** - responsible for maintaining public safety, preventing crime, enforcing the law, community support and reassurance, and national security;
 - 29 **Department of Corrections** - responsible for managing the prison system and working with offenders in the community and in prison;
 - 30 **Crown Law Office** - responsible for providing legal advice and representation in matters affecting

the Crown and for the prosecution of criminal jury trials and Crown representation in appeals against conviction and sentences.

- 31 The judiciary, made up of judges and other judicial officers, is an independent branch of government that applies the law by hearing and deciding court cases.
- 32 The Justice Sector Leadership Board is made up of the leaders of core justice sector agencies⁷. The Board takes joint decisions on strategy and planning, and ensures resources are focused on frontline services that can make the most difference.
- 33 The Interdepartmental Executive Board for the Elimination of Family Violence and Sexual Violence brings together the Chief Executives of relevant agencies to deliver a whole-of-government approach to address family and sexual violence. The Board acts as a steward for the family and sexual violence system, tracking the progress made towards delivering the outcomes set out in Te Aorerekura – the National Strategy to Eliminate Family Violence and Sexual Violence (**Te Aorerekura**).⁸
- 34 The Human Rights Commission, established under the HRA, advocates and promotes human rights in New Zealand by providing free, confidential services for the public to address complaints of unlawful discrimination and prohibited behaviour.

⁷ Justice Sector Leadership, *Briefing to Incoming Justice Sector Ministers*, November 2023, available: https://www.justice.govt.nz/assets/Documents/Publications/JSLB-BIM_Redacted- FINAL.pdf

⁸ Made up of the Chief Executives of the Ministry of Justice, Accident Compensation Corporation, Department of Corrections, Ministry of Education, Ministry of Health, Ministry of Social Development, Oranga Tamariki, New Zealand Police, Te Puni Kōkiri, Public Service Commission.

35 The Law Commission reviews New Zealand law and makes recommendations to the Government to improve it. The Minister of Justice selects government-referred projects for the Law Commission's annual work programme following consultation with relevant portfolio Ministers.

36 There are also a number of non-governmental organisations which support access to justice, including Community Law Centres, Citizens Advice Bureau, the legal profession, Victim Support and Women's Refuge.

Criminal justice system

Key criminal justice legislation

37 The key pieces of legislation in the criminal justice system relevant to disabled people are:

- **Crimes Act 1961** – outlines most crimes and their penalties.
- **Sentencing Act 2002** - outlines the purposes and principles of sentencing, guiding judges in their decisions to ensure offenders are held accountable, victims' interests are considered, and the community is protected.
- **Criminal Procedure (Mentally Impaired Persons) Act 2003** (CPMIP) outlines the procedures for determining if a defendant is unfit to stand trial or should be found not guilty by reason of insanity, and to manage their treatment, detention, and care. Two other Acts work alongside the CPMIP. If, after assessments, the court decides the defendant is both

responsible for an imprisonable offence, and unfit to stand trial, the defendant can:

- Become a care recipient under the **Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003** (IDCC&R) which provides courts with compulsory care and rehabilitation options for individuals with intellectual disabilities who are deemed unfit to stand trial or who are convicted of an offence. The IDCC&R contains statutory powers to require people subject to compulsory care orders to comply with their care order, and to seclude, restrain and medicate people under certain limited and defined circumstances. Care is provided in designated secure or supervised facilities (such as hospitals) and the care recipient is required to remain in the facility (other than for periods of approved leave); or
- Become a special patient under the **Mental Health (Compulsory Assessment and Treatment) Act 1992** (MHCAT). People are treated under this Act if they have a mental disorder (rather than an intellectual disability) which requires compulsory treatment. The MHCAT provides statutory powers require people designated as special patients to remain in a secure facility. They can be transferred from a prison to a mental health facility for compulsory treatment.

Disabled people and tāngata whaikaha Māori are disproportionately represented as victims of crime

38 Disabled young people face the highest victimisation rates of any demographic group (around 50%).⁹¹⁰ Results from a survey of young people (9 to 13-years-old) in school settings in 2021 showed 18% of disabled young people had been physically hurt by an adult in their home over the past year.¹¹

39 Findings from the New Zealand Crime and Victims Survey¹² (**NZCVS**), using data from 2018-2023, show disabled people consistently experience higher rates of victimisation. Compared with non-disabled adults, disabled adults were more likely to be¹³:

- victims of family offences (7% compared with 2%)
- victims of any lifetime sexual assault (41% compared with 24%)
- victims of any lifetime partner assault (35% compared with 16%).

40 Disabled women were more likely to be victims of crime compared with non-disabled women (41% compared with 30%) and disabled men were more likely to be victims of crime compared with non-disabled men (37%

⁹ Kim Simpson, Polly Yeung, & Robyn Munford, 2022, *Responses to abuse, neglect, and trauma of children with intellectual disability: Experiences of social workers and health practitioners in Aotearoa New Zealand*, available: <https://anzswjournal.nz/anzsw/article/view/884>

¹⁰ Ministry of Justice, *Disability and victimisation: Young disabled people face one of the highest victimisation rates of any demographic group*, available: <https://www.justice.govt.nz/assets/Documents/Publications/Disability-and-victimisation-factsheet.pdf>

¹¹ Malatest International, *whataboutme.nz: the national youth health and wellbeing survey 2021*, October 2022, available: <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/consultations/youth-health-and-wellbeing-survey-results/the-national-youth-health-and-wellbeing-survey-2021-overview-report-september-2022.pdf> page 105

¹² Ministry of Justice, *New Zealand Crime and Victims Survey. Key results – Cycle 6, 2024*, available: <https://www.justice.govt.nz/assets/Documents/Publications/NZCVS-2023-Key-Results-Cycle-6.pdf>

¹³ Findings have been adjusted for age.

compared with 29%). There was no statistically significant difference in victimisation rates between disabled women and disabled men.

- 41 Disabled people also experience crime more frequently, with 94 incidents reported for every 100 disabled adults (compared with 61 incidents for every 100 non-disabled adults).¹⁴ Further, people with an intellectual disability are at greater risk of being victims of crime, especially sexual victimisation.¹⁵ The 2019 New Zealand Family Violence Study showed disabled people reported significantly higher rates of most forms of intimate partner violence than non-disabled people, among both genders.¹⁶
- 42 Tāngata whaikaha Māori are more likely than non-Māori or non-disabled people to experience other factors associated with higher rates of violence and abuse, such as being sole parents or experiencing financial or psychological stress.¹⁷ Tāngata whaikaha Māori are also more likely than non-disabled Māori to experience violent crime (8% versus 3%).¹⁸
- 43 Pooled 2018-2023 data from the NZCVS shows no statistically significant difference in victimisation prevalence rates between Pacific disabled people and non-disabled Pacific people. However, differences may

¹⁴ Using pooled NZCVS data. Not adjusted for age due to small numbers.

¹⁵ Lambie, Ian, *What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand*, 2020, Office of the Prime Minister's Chief Science Advisor, available: https://www.dPMC.govt.nz/sites/default/files/2022-04/PMCSA-20-02_What-were-they-thinking-A-discussion-paper-on-brain-and-behaviour.pdf

¹⁶ Fanslow, JL, McIntosh, T., *Key findings and policy and practice implications from He Kōiara Matapopore | The 2019 New Zealand Family Violence Study*, 2023

¹⁷ Human Rights Commission, *Honour the Treaty, Protect the Person*, 2021, available: <https://tikatangata.org.nz/our-work/honour-the-treaty-protect-the-person>

¹⁸ King, Dr Paula, *Māori With Lived Experience of Disability, Part 1*, 2019, available: https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_150437272/Wai%202575%2C%20B022.pdf

not be apparent due to the small sample size and associated large errors.

- 44 Evidence provided to the Royal Commission of Inquiry into Historical Abuse in State Care and in the Care of Faith-based Institutions (**Royal Commission**) showed Deaf, disabled people, Māori, and Pacific people disproportionately experienced abuse in care.
- 45 The Royal Commission recommended the government review New Zealand's human rights framework (recommendation 119) to better uphold the human rights of those in care settings.¹⁹ They recommended this review also include identifying changes to other laws relevant to upholding the human rights of disabled people, including the Protection of Personal and Property Rights Act 1988 (**PPPR Act**), the Mental Health (Compulsory Assessment and Treatment) Act 1992, the Adoption Act 1955, and the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (**IDCC&R Act**).

Disabled children and young people are disproportionately impacted by the youth justice system

- 46 There are significant data gaps, meaning there is not a clear picture of the number of disabled children and young people, and their needs, in the care of Oranga Tamariki, including youth justice settings. However, information gathered from the Integrated Data Infrastructure indicates that 10% of children with current

¹⁹ See <https://www.abuseincare.org.nz/assets/Whanaketia/PDF-downloads/Whanaketia-preliminaries.pdf> page 159

or previous Oranga Tamariki involvement have at least one indicator of disability.²⁰ However, this is likely a significant undercount of the prevalence of disability among youth in care settings due to definitional issues related to disability and age group, and undetected/undiagnosed disabilities.

47 The 2022 United Nations Committee on the Rights of Persons with Disabilities' report on New Zealand's implementation of the UNCRPD expressed concern regarding the over-representation of disabled people in care and protection, youth justice, and prison populations.²¹

48 A number of factors, across several life domains, contribute to this:

- Disabled people experience higher levels of violence and abuse, and this may be contributing to increasing levels of disabled children and young people offending. Evidence shows there are strong links between victimisation, such as family violence, and offending by children and young people. This can be because criminal behaviours are normalised, even expected or encouraged. It can also be because of the direct or indirect psychological harm that manifests in challenging and, in some cases, criminal behaviour.²²

²⁰ Faasen, K., Martin, G., Potiki, M., & Jenkin, G., *Evidence Brief: Primary Healthcare Needs of Disabled Children in Care and Protection*, 2023, Wellington, New Zealand: Oranga Tamariki—Ministry for Children, p. 14.

²¹ United Nations Committee on the Rights of Persons with Disabilities, *Concluding observations on the combined second and third periodic reports of New Zealand*, CRPD/C/NZL/CO/2-3, 26 September 2022

²² Principal Youth Court Judge for New Zealand, 2017, *Address to Northern Territory Council of Social Services Conference*, available <https://www.districtcourts.govt.nz/youth-court/publications/when-the-vulnerable-offend-whose-fault-is-it/#:~:text=It%20has%20shown%20that%20around,to%20commit%20serious%20violent%20offences>.

- Interactions with the youth justice system may also occur when other systems have failed to meet the support needs of disabled children and young people. For example, young people with intellectual (learning) disabilities²³ or neuro-disabilities²⁴ are often diagnosed late, or not at all, in the health and education systems. These children and young people will not have had the support needed during early development to find positive ways to communicate and find strategies to reduce challenging, or 'not socially acceptable', behaviours.²⁵²⁶
- For tamariki and rangatahi Māori, although they are more likely to be diagnosed with a neuro-disability early in life²⁷, limited or no options for te ao Māori, whānau and tikanga grounded models of disability support likely mean they do not receive the support they need during early development.

Disabled people are disproportionately represented in the adult criminal justice system

49 Growing research shows that there may be high rates of imprisonment of disabled people, particularly people

²³ Such as dyslexia and communication disorders that involve difficulties with talking, listening, hearing and/or understanding.

²⁴ Such as autism spectrum disorder, traumatic brain injury, and fetal alcohol syndrome disorder (FASD).

²⁵ Ibid

²⁶ Hargraves, V., The Education Hub, *Supporting children with challenging behaviour*, 2022, available: <https://theeducationhub.org.nz/supporting-children-with-challenging-behaviour/>

²⁷ Oranga Tamariki—Ministry for Children, *Children and young people with impairments*, 2020, available: <https://www.orangatamariki.govt.nz/assets/Uploads/About-us/Research/Data-analytics-and-insights/Children-and-young-people-with-impairments.pdf>

with intellectual and neuro disabilities, in New Zealand.²⁸

29

50 The Ombudsman has regularly raised concerns about the lack of early identification of, support for, and ongoing review of individual needs for disabled people in custody³⁰. Specific concerns include a lack of co-ordination to meet the needs of disabled people in custody, with health services not holding a definitive list of those with a disability,³¹ and, in some cases, an absence of identification and assessment of disabled people in custody;³² a lack of suitable accommodation meaning some disabled people are remanded in custody longer;³³ and a need for more tailored support for people in custody with cognitive impairments.³⁴

51 Broad socio-economic and historical issues related to the effects of colonisation, structural causes of offending and systemic racism have contributed to the disproportionate numbers of Māori in the criminal justice system. Data from the 2023 New Zealand Disability Survey showed that when adjusted to the age profile of the total population, Māori have the highest disability

²⁸ United Nations Committee against Torture, Concluding observations on the seventh periodic report of New Zealand, CAT/C/NZL/CO/7, 24 August 2023

²⁹ See, for example, Lambie, Ian, *What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand*, 2020, Office of the Prime Minister's Chief Science Advisor, available: https://www.dpmc.govt.nz/sites/default/files/2022-04/PMCSA-20-02_What-were-they-thinking-A-discussion-paper-on-brain-and-behaviour.pdf

³⁰ Ombudsman New Zealand, *Submission on current issues and good practices in prison management*, 2023, available: <https://www.ombudsman.parliament.nz/resources/submission-current-issues-and-good-practices-prison-management>

³¹ See, for example, Ombudsman New Zealand (2018), *Report on an unannounced inspection of Whanganui Prison - 4 September 2018*, p 31; Ombudsman New Zealand (2019), *Report on an unannounced inspection of Northland Regional Corrections Facility - August 2019*, p 25; and Ombudsman New Zealand (2020), *Final report on an unannounced inspection of Auckland Prison under the Crimes of Torture Act 1989*, p 37.

³² See, Ombudsman New Zealand (2018), *Report on an unannounced inspection of Whanganui Prison - 4 September 2018*, p 41.

³³ See, Ombudsman New Zealand (2019), *Report on an unannounced inspection of Tongariro Prison under the Crimes of Torture Act 1989*, p 19.

³⁴ See, for example, Ombudsman New Zealand (2021), *Report on an unannounced follow up inspection of Christchurch Men's Prison under the Crimes of Torture Act 1989*, p 10; and Ombudsman New Zealand (2017), *Report on an unannounced inspection of Spring Hill Corrections Facility*, p 18.

rate at 24%. Despite a higher prevalence of disability, tāngata whaikaha Māori me ō rātou whānau have disproportionately unmet needs and encounter greater barriers to accessing support across the wider disability support system, which can lead to them becoming involved with the criminal justice system. There is also a small sample of data which points to over-representation of Māori with hearing loss in the prison population.³⁵

Civil justice

Disabled people are more likely to experience legal problems which impact their everyday lives

52 Results from the Access To Justice: 2023 Legal Needs Survey³⁶ show that, of the disabled people surveyed, over half (54%) had experienced a legal problem in the past year, compared to almost a third (32%) of non-disabled people. Just under a third (30%) of disabled people surveyed also reported they felt confused as a result of receiving legal services.

53 Disabled people face barriers in accessing legal services. A 2018 Colmar Brunton Report commissioned by the Ministry of Justice, *Legal Needs among Low Income New Zealanders*³⁷, showed that, of those with a long-term health issue or disability, 35% said the barrier to them seeking help was the cost of legal services.³⁸

³⁵ Carroll, L.M., 2015, Research for Capacity Building to enhance capabilities and quality of life of prisoners with hearing loss in New Zealand prisons: implications for social justice. Participatory Educational Research

³⁶ Ministry of Justice, *Access to Justice: 2023 Legal Needs Survey*, 2024, available: <https://www.justice.govt.nz/assets/Documents/Publications/Access-to-Justice-Legal-Needs-Survey-Final-Report-October-2024.pdf>

³⁷ A copy of this report can be provided upon request. Note that this is the most recent survey conducted in respect of legal needs among low income New Zealanders. It does not reflect potentially higher rates of legal needs among low income New Zealanders since COVID-19 and more recent cost-of-living issues.

³⁸ Chief Justice of New Zealand, 2024, *Address to Aotearoa Disability Law AGM*, available: <https://www.courtsofnz.govt.nz/publications/speeches-and-papers/address-to-aotearoa-disability-law-agm/>

Strict civil legal aid eligibility criteria means most people are unable to access it, and there is a lack of lawyers offering civil legal aid.³⁹ As discussed in the policy brief relating to employment issues, disabled people are less likely to be employed, and those who are employed earn less than non-disabled people. It is reasonable to expect disabled people are more inclined to spend what money they do have on essential needs rather than on seeking legal services. The most common legal problems disabled people experience relate to consumer law, money or debt, welfare, housing and injury or ACC.

54 Adoption is an area of civil justice where disabled people face discrimination. Anyone under 20-years-old can be adopted. Ordinarily, birth parents or guardians must consent to their child being adopted and, if a child is being adopted from birth, birth parents have to wait at least ten days after birth to consent. The 2022 United Nations Committee on the Rights of Persons with Disabilities' report on New Zealand's implementation of the UNCRPD expressed concern about New Zealand's lack of action to their 2014 observation, to repeal section 8 of the Adoption Act 1955 as it allows children of disabled parents to be adopted out from them without their consent. The Government has agreed to consider CO 46(a) through the development of the refreshed New Zealand Disability Strategy.

³⁹ Stewart, K., Toy-Cronin, B., *The New Zealand Legal Services Mapping Project: Finding Free and Low-Cost Legal Services Pilot Report*. University of Otago Legal Issues Centre, 2018, available: <https://ourarchive.otago.ac.nz/esploro/outputs/report/The-New-Zealand-Legal-Services-Mapping/9926480038201891>

Key issues

Decision-making capacity

The PPPR Act permits disabled people's rights to be limited because of their disability

55 If an adult's decision-making is compromised, the law may treat their decisions differently. If a person is considered to not have decision-making capacity, their decision might not have legal effect and another person may be appointed to make the decision for them.

56 The PPPR Act does not provide a single test for incapacity, making it unclear legislation to follow and apply consistently. There are also administrative barriers to making a complaint about the conduct of a welfare guardian under the PPPR Act. A not-for-profit Charitable Trust offering residential and community-based support services for people experiencing mental distress⁴⁰ have stated that they have found it difficult to raise concerns as doing so requires making an application to the Family Court or having the Police press charges. This is a costly and time-consuming process requiring input from a lawyer and a certain threshold of harm occurring.

57 Decision-making capacity is linked to the risk of abuse. Factors that can increase the risk of disabled people being abused include the level of decision-making power other people have over their lives, and being reliant on others who may misuse their position for making

⁴⁰ Stepping Stone Trust, *Submission in response to the Responding to Abuse in Care Legislation Amendment Bill*, 2024, available https://www.parliament.nz/resource/en-NZ/54SCSSC_EVI_c31bf16c-eebd-4f60-8bcf-08dd029d2b58_SSC10953/c1dca4b723cc80ba4b91907d17f3afad713e1e71

decisions on essential needs. Abuse can include removing access to medications, mobility aids, information, provision of care and support, and control of finances.

58 The Law Commission is currently reviewing adult decision-making capacity law, with a focus on the PPPR Act. Their final report will be provided to the Minister of Justice in mid-2025.

Criminal justice

Disabled people, tāngata whaikaha Māori, and Pacific disabled people face barriers to reporting abuse and stopping it when it occurs

59 There are significant system and policy gaps regarding safeguarding disabled people, and gaps in the knowledge and skills of the justice and family and sexual violence systems to safely respond to situations of abuse of disabled people.⁴¹

60 The Chief Ombudsman's report, *Children in care: complaints to the Ombudsman 2019–2023*⁴², identified several barriers for disabled children and young people when engaging with Oranga Tamariki, including failing to uphold agreements made at Family Group Conferences, failing to adequately engage with Police following a

⁴¹ See for example Human Right Commission *Acting now for a violence and abuse free future*, 2021; Health Quality and Safety Commission *Responding to adults at risk who need care and support and who are experiencing family violence*, 2023; Human Rights Commission *Honour the Treaty, Protect the Person*, 2021; Synergia *Rapid Review of the Waitemātā Safeguarding Adults from Abuse (SAFA) Pilot*, 2017; Fanslow, J.L., et al., *Lifetime Prevalence of Intimate Partner Violence and Disability: Results From a Population-Based Study in New Zealand*, 2021; Malihi, Z.A, et al., *Prevalence of Nonpartner Physical and Sexual Violence Against People With Disabilities*, 2021; Dr Michael Roguski, Kaitiaki Research and Evaluation, *The Hidden Abuse of Disabled People Residing in the Community: An Exploratory Study*, 2013

⁴² Ombudsman New Zealand, *Children in care: complaints to the Ombudsman 2019-2023*, 2024, available: https://www.ombudsman.parliament.nz/sites/default/files/2024-02/Children%20in%20care%20complaints%20to%20the%20Ombudsman%202019%E2%80%932023_Digital.pdf

Report of Concern⁴³, and lack of natural justice opportunities (such as opportunities for comment before a decision is made).

61 NZCVS findings likely do not reflect the true prevalence of abuse and crimes against disabled people. This is because it can be difficult for disabled people to know who to reach out to, or make a complaint to, or even recognise they are being victimised or subjected to abuse if they are not fully aware of, or do not understand, their rights. Conversely, there are disabled people who likely are aware of and understand their rights but do not seek help because they fear recrimination, or they fear being judged, stigmatised, or not believed, or they fear losing necessary supports.

62 A further barrier to disabled people disclosing abuse can be inaccurate assumptions about their competency and credibility on the part of Police and justice staff, including judges⁴⁴. Evidence provided to the Royal Commission showed disabled survivors felt unable to interact with the courts, describing a hostile system and difficulties with being understood. Additional barriers to Pacific disabled people disclosing abuse include cultural expectations around faka'apa'apa (respect), mā (shame), and collective family loyalty, which may discourage them from seeking help.

63 There is also likely to be under-reporting due to a lack of awareness of the legal requirement to report

⁴³ A "report of concern" is a notification made to Oranga Tamariki or the Police by anyone who is worried about a child or young person who may be experiencing or at risk of harm, abuse, or neglect.

⁴⁴ Ibid

suspected abuse of vulnerable adults⁴⁵ under the Crimes Act 1961⁴⁶. There are a number of organisations responsible for investigating abuse of 'vulnerable adults', such as the Police, Health and Disability Commissioner, Aged Care Commissioner, or the operator of the hospital, institution or residence where the vulnerable adult lives, with the appropriate option for reporting depending on the nature of the abuse. Given the number of organisations in this space, it can be difficult to know where or who to report suspected abuse to. There is also a risk with raising suspected abuse that is not obvious, such as emotional abuse and neglect. Where a family member is suspected, for instance, and if suspicions are wrong, it could seriously affect the family relationship.

Lack of early diagnostic screening can mean disability support needs are not met in the justice system

64 Claimants participating in the disability phase of the Waitangi Tribunal's inquiry into health services and outcomes (**Wai 2575**) expressed concern about the number of Māori with Fetal Alcohol Spectrum Disorder (**FASD**) entering the criminal justice system and the unresponsiveness of the system to their neurodiversity.⁴⁷ Claimants are seeking an FASD-informed justice system, including increased awareness by the judiciary and Police education on FASD. While this is important, interventions

⁴⁵ A person unable, by reason of detention, age, sickness, mental impairment, or any other cause, to withdraw themselves from the care or charge of another person (s2(1) of the Crimes Act 1961).

⁴⁶ See <https://www.legislation.govt.nz/act/public/1961/0043/latest/DLM327382.html?src=qs>, sections 151, 195, and 195A

⁴⁷ FASD neurodiversity reflects underlying brain and central nervous system damage, including impaired mental functioning, poor executive functioning, memory problems, impaired judgment, inability to control impulse behaviour, inability to understand the consequences of one's actions, and inability to internally modify behaviour control.

in the form of diagnosis and supports are also needed much earlier in life before interactions with the justice system.

65 In the youth justice system, Family Group Conferences and diversion (to keep young offenders out of court for minor offences)⁴⁸ can be more helpful over formal court processes for young people with a diagnosed neuro disability.⁴⁹ However, research shows that the use of Family Group Conferences and diversion presents risks for young people with an *undiagnosed* neuro disability as decisions are often made without any legal representation for them.

66 Without early diagnostic screening and provision of appropriate supports, children and young people may miss out on opportunities for diversion and Family Group Conferences and may need to interact with more adversarial and formal criminal court processes.⁵⁰

There are significant gaps in data on disabled young people and adults in the youth and adult criminal justice systems

67 For children and young people in the youth justice system, there is a lack of data on types of offending, levels of offending, custodial and community sentences, and associated interactions with Oranga Tamariki or Youth Justice Family Group Conferences. Without this

⁴⁸ Diversion focuses on rehabilitation and reparation for victims through alternative actions like apologies, restitution, or attending programs.

⁴⁹ Gibbs, A., *We are not doing enough for children with neuro-disabilities*, 2022, available: <https://anzswjournal.nz/anzsw/article/view/956>

⁵⁰ Oatley, V., and Gibbs, A., *Improving treatment and outcomes for young people with fetal alcohol spectrum disorder in the youth justice system: A social work led response and practice framework*, 2020, available: <https://anzswjournal.nz/anzsw/article/view/737>

information, it is difficult to understand the needs of these children and young people to provide appropriate supports and rehabilitation options. The prevalence of disability among children and young people engaged with Oranga Tamariki is estimated to be anywhere between 47% to 87%, depending on dataset, age, and definition of disability. Available evidence shows that disabilities are undetected and undiagnosed for many children and young people in the care of Oranga Tamariki.⁵¹

68 Limitations in data also pose a challenge in gathering comprehensive and coherent information relevant to Pacific disabled children. More needs to be done to gather cohesive, intersectional information about disabled children and young people in care and youth justice systems so that they receive early intervention and rehabilitative pathways tailored to their needs.

69 In the adult criminal justice system, there are data gaps on the prevalence of disability and needs. The Department of Corrections has recently included the Washington Group Short Set Questions (**WGSS**) in health screenings, including initial health screening upon reception into prison. Of 10,292 prisoners⁵² who responded to a questionnaire, between 1 July 2022 and 5 September 2023, 2,624 (25.5%) identified having one or more functional impairments, in relation to mobility, cognition/remembering, vision, hearing, language and

⁵¹ Faasen, K., Martin, G., Potiki, M., & Jenkin, G., *Evidence Brief: Primary Healthcare Needs of Disabled Children in Care and Protection*, 2023, pp. 3 and 35

⁵² 10,292 is the number of prisoners during that time period who responded, not the total throughput of prisoners for that time period.

communication, and self-care.⁵³ However, the WGSS questions are designed to compare outcomes for disabled and non-disabled people and not to provide estimates of disability prevalence. In particular, the questions do not capture some domains well, such as mental health, intellectual and neuro disabilities.

70 While there is growing research showing that there may be high rates of imprisonment of disabled people, there is not currently robust and consistent data to explore this fully. Closing this data gap is essential to better understand the number and experiences of disabled people in the criminal justice system.

The Police, judiciary, and jurors lack disability responsiveness

Experiences with the Police

71 The Police are often a person's first encounter with the criminal justice system, whether as an offender or victim. Many Deaf and disabled people have had poor experiences with Police, including disrespectful treatment, not feeling heard, frequent use of force, aggressive treatment, and reasonable accommodations not being provided.

72 It is crucial for the Police to have an understanding and awareness of disabled people's needs. Police are responsible for investigating offences and ensuring human rights are upheld in that process. However, without sufficient disability awareness, there is a risk

⁵³ Department of Corrections, *Brief of evidence of Juanita Ryan*, 2023, available: https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_209644844/Wai%202575,%20L009.pdf

that Police may misinterpret disabled people's behaviour as threatening, resistant, or unreliable, particularly in situations where Police need to act quickly.

Misinterpretation of behaviour risks disabled people being treated more aggressively and forcefully than may be necessary.

73 Police rely on disabled people to disclose disability in order to provide reasonable accommodations. However, sometimes there is not enough time to disclose disabilities, and even when there is, reasonable accommodations may not be provided. When reasonable accommodations are not able to be provided, this can lead to disabled people being held in Police custody longer than is necessary. Two examples of when this may occur are:

- Deaf people struggle to get access to a NZSL interpreter after being arrested. This is compounded by a significant shortage of NZSL interpreters and even fewer trilingual interpreters who are able to support Turi Māori (Māori who are Deaf or hard of hearing); and
- A lack of recognition or understanding of disability may result in disabled people not receiving the support or accommodations they need during Police interactions, including questioning.⁵⁴

Experiences in the judicial system

⁵⁴ Donald Beasley Institute, *Understanding Policing Delivery: Tākata Whaikaha, D/deaf, and Disabled People*, 2024, available: <https://www.donaldbeasley.org.nz/projects/understanding-policing-delivery/>, page 12

- 74 Where a disabled person is involved in a jury trial as part of the criminal justice process as a victim, witness or offender, their experience and outcomes may be impacted by unconscious ableist⁵⁵ views held by jurors. Jurors, like all people, can hold unconscious attitudes and stereotypes that can affect their understanding of the facts and ultimately their judgement. Unconscious bias and ableism may lead jurors to associate certain groups of people or behaviours with criminal behaviour or other negative traits. For disabled people this may include inaccurate assumptions being made about their competence and credibility as witnesses or victims. It may also include inaccurate assumptions about their culpability as offenders based on behaviour that does not conform to what jurors may consider to be the 'norm' (for example, self-soothing behaviours people with neuro disabilities may use to manage sensory overwhelm in a stressful situation, such as a jury trial).
- 75 Further, we have heard that physical accessibility barriers in courts can mean people who use a wheelchair may be excluded from exercising their democratic and civic right to participate in jury service.
- 76 Due to persistent negative experiences with the justice system, disabled people are more likely to lack trust in the system. Compared with 56.5% and 74.6% of non-disabled people, institutional trust data from the 2023 General Social Survey showed only 44.4% and 65.1% of disabled people hold a high level of trust in the Courts

⁵⁵ Ableism is discrimination against disabled people based on disability, similar in concept to racism and sexism. It ranges in scale from small microaggressions and offensive stereotypes through to systemic ableism.

and Police respectively. Lack of trust in the justice system among tāngata whaikaha Māori is even more significant, compounded by experiences of racial discrimination. Institutional trust data from the 2023 GSS showed 51.9% and 30.3% of tāngata whaikaha Māori hold a high level of trust in the Police and Courts respectively. There is a lack of data of Pacific disabled people's experiences.

Offenders with an intellectual (learning) or neuro disability face barriers to participating in the legal process

- 77 Offenders with an intellectual (learning) or neuro disability may be more likely to be apprehended. They are at risk of having reduced capacity to understand the consequences of their offending or to understand and effectively participate in legal processes.⁵⁶
- 78 They may also be more susceptible to suggestion and manipulation when in Police custody and during criminal proceedings and may not understand their rights, placing them at greater risk of miscarriages of justice. A key example of this is the case of Mr Teina Pora who was coerced by Police into making a false confession. Mr Pora was convicted twice, and it was only after the second conviction he was diagnosed with FASD and later acquitted of all charges by the Privy Council.
- 79 Intellectual (learning) and neuro disabilities are not routinely screened for upon entry to prison.⁵⁷ Many neuro

⁵⁶ Beltran-Castillon, L., McLeod, K., *From Data to Dignity: Health and Wellbeing Indicators for New Zealanders with Intellectual Disability*, 2023, available: <https://www.ihc.org.nz/publications/from-data-to-dignity-health-and-wellbeing-indicators-for-new-zealanders-with-intellectual-disability>

⁵⁷ Ibid

disabilities require a Clinical Psychologist or Psychiatrist for diagnostic screening. Unless people in prison have the means to seek private treatment, they are often advised by public health professionals that they cannot be waitlisted until released from prison. These prisoners may not have their disability support needs met while in prison and may miss out on rehabilitative opportunities better suited for them.

Offenders with intellectual disabilities may be detained in secure facilities for lengthy periods of time

80 Under the legal framework of the CPMIP, IDCC&R and MHCAT, disabled people and/or people with mental health disorders who are unfit to stand trial for an offence or who are found not guilty for reasons of insanity can be detained in secure facilities such as hospitals. Between 100 to 130 people are estimated to be subject to compulsory care orders under the IDCC&R at any given time.

81 There are issues relating to natural justice arising from the application of this legal framework. Generally, if a person is convicted of a criminal offence, the prosecution needs to provide proof beyond a reasonable doubt that the defendant committed the offence and had the necessary intention. Offenders also cannot be sentenced to more than the maximum penalty for that offence and that sentence needs to be proportionate to the offence. However, under the CPMIP framework, a person unfit to stand trial can be diverted into compulsory care for even low-level offences. Under compulsory care orders,

disabled people can be subject to repeated extensions to their stay (if the Family Court agrees) in a secure or supervised care facility.

82 This results in two issues where disabled people are treated differently from non-disabled people in the criminal justice system:

- Disabled people can be detained on a lower standard of evidence than non-disabled people since the court simply has to decide if they are responsible for the offence on the balance of probabilities⁵⁸. Without standing trial, their detention is not based on the usual standard of beyond a reasonable doubt.
- Disabled people may be detained for far longer than the maximum sentence for the offence had they been convicted in the criminal justice system.

83 A key example of this is the case of Jay – who was charged with wilful damage when he broke four windows in his neighbour's house. Wilful damage is an offence under the Summary Offences Act and carries a maximum penalty of 3 months in prison or a \$2000 fine. Jay did not stand trial and instead has been held for over 18 years, 4 of them in seclusion, under the IDCC&R. In 2024, the Human Rights Commission intervened in a Supreme Court appeal considering Jay's detention, arguing it was discriminatory because disabled people with the same level of risk as non-disabled people are being treated differently.⁵⁹

⁵⁸ Criminal Procedure (Mentally Impaired Persons) Act 2003, sections 11 and 12

⁵⁹ [Commission intervenes in Supreme Court disability rights case](#)

84 Compulsory care under the IDCC&R Act is not intended to be correctional detention. Instead, the length of care is determined by whether the person is assessed as being able to live independently and safely. However, the connection with the CPMIP system as a pathway into the IDCC&R creates issues around differentiated treatment of disabled people for offences. This differentiation breaches the rights of disabled people enshrined in the UNCRPD. The UN Committee has recommended that the Government repeal provisions within the IDCC&R that allow for persons with disabilities to be detained for periods of time exceeding the maximum length of the sentence they would be liable to in the criminal justice system. The Government has agreed to consider this recommendation as part of the refresh of the New Zealand Disability Strategy.

Civil and family law

Disabled people face accessibility barriers in the civil justice system

85 Cost is a significant barrier, preventing many disabled people from seeking to resolve everyday legal problems. For those who do seek to resolve legal problems, the cumulative costs associated with doing so can lead to stress, anxiety, fear, and ongoing financial loss. Taking an issue through the legal process can be disruptive to employment, resulting in potential loss of income. Beyond court and legal service fees, the costs associated with getting the support necessary to recover emotionally from the process and to feel safe are likely to be long-term.

86 Disabled people also face barriers in respect of the availability of accessible information about how to participate in the civil justice process. There can be limited availability of substantive and procedural information in alternate formats and the shift to digital services can exclude those not able, or not comfortable, to access information digitally.⁶⁰ If information is not accessible, disabled people cannot, and in many cases do not, seek civil justice. Enduring legal problems, rather than seeking to resolve them, can also lead to stress, anxiety, fear, and financial loss.

87 The shift to digital public services may also be a barrier for some disabled people in accessing civil justice. While many technological advancements can benefit disabled people and offer them greater independence, the general cost of smart devices that offer this functional accessibility may still mean that some disabled people are excluded from the opportunities that this technology provides. A 2023 IHC report showed less than 50% of people with an intellectual disability aged 55- to 64-years-old have access to the internet.⁶¹

Disabled people face discrimination as birth parents

88 Section 8 of the Adoption Act 1955 sets out circumstances in which the consent of birth parents or guardians may be waived by the Family Court for the purposes of adoption, including if the court is satisfied a parent or guardian is “unfit, by reason of any physical or

⁶⁰ Ibid

⁶¹ Beltran-Castillon, L., McLeod, K., *From Data to Dignity: Health and Wellbeing Indicators for New Zealanders with Intellectual Disability*, 2023, available: <https://www.ihc.org.nz/publications/from-data-to-dignity-health-and-wellbeing-indicators-for-new-zealanders-with-intellectual-disability>, page 105

mental incapacity". The Act does not provide general principles about what is 'unfit' and disabled parents may not be heard by the court before a final decision is made. This creates uncertainty in the law and creates a risk that the best interests of the child and the rights of disabled parents may not be given due consideration in adoption processes.

89 The Disabled Person's Assembly NZ (**DPA**) has also expressed concern⁶² that parents with intellectual (learning) or neuro disabilities may initially be coerced into providing adoption consent and that the current ten days for consenting to an adoption is too short for those parents who may wish to withdraw consent.

Work underway

Current government work programmes and initiatives

Government targets

90 There are two Government Targets in relation to the justice sector. Oranga Tamariki leads responsibility for Target 3 which, by 2030, aims to reduce the total number of children and young people with serious and persistent offending behaviour by 15%. The Ministry of Justice is responsible for Target 4 which aims to have 20,000 fewer victims of assault, robbery, or sexual assault by 2030.

⁶² Disabled Persons Assembly NZ, *Submission on the Adoption in NZ Aotearoa Discussion Paper*, 2021, available: <https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Fwww.dpa.org.nz%2Fstore%2Fdoc%2FDPA-Submission-Adoption-in-NZ-Aotearoa-.docx&wdOrigin=BROWSELINK>, page 9

Government response to justice related UNCRPD concluding observations

91 Cabinet has agreed an approach to progressing New Zealand's response to the UN Committee's 2022 concluding observations (**CO**) [refer SOU-24-MIN-0155]. The Committee made nine justice-related recommendations, and the government has agreed to implement:

- CO 22: repeal any laws and policies and end practices or customs that have the purpose or effect of denying or diminishing the recognition of any person with disabilities as a person before the law and implement a nationally consistent supported decision-making framework that respects the autonomy, will and preferences of persons with disabilities.
- CO 24 (b): Establish and adequately resource free independent advocacy and increase resources for community legal advice services.

92 Other justice related recommendations (including a recommendation relating to the IDCC&R) are being considered in the development of the refreshed New Zealand Disability Strategy. A table summarising these recommendations is attached at **Appendix One**.

Oranga Tamariki

Oranga Tamariki Disability Strategy and Vision

93 The Oranga Tamariki Disability Strategy and Vision outlines intentions and outcomes to upskill Oranga Tamariki staff with a base level, foundational understanding of disability to better inform policies,

processes and practices in helping to meet the needs of disabled children and young people engaged with Oranga Tamariki. This also includes supporting whānau, supports and champions of disabled children and young people in care and protection and youth justice.

Reduced Child and Youth Offending Delivery Plan

94 The Plan sets out three focus areas:

95 strengthening system settings through giving government agencies new tools to respond to serious and persistent youth offending.

96 improving operational performance - setting up an immediate operational response in priority regions, expanding the Fast Track response⁶³ to 14-17-year-olds, and increasing youth justice residence capacity.

97 prevent offending by focussing on locally led solutions and approaches in Auckland, Waikato, Bay of Plenty and Canterbury, supported by community responses for children at risk and a redesigned Gateway service discussed below.

Gateway

98 Gateway provides a one-off comprehensive health, disability, and education assessment to identify and meet the needs for children and young people in care or at higher risk of entering care. The delivery model focuses on identifying disability needs as early as possible, with follow-ups to understand changing needs. Implementation of the redesigned Gateway will be a key

⁶³ A cross-agency community led response to children and young people arrested for serious offences such as ram raiding.

initiative for the refreshed 2025/2026 Oranga Tamariki Action Plan.

Ministry of Justice

Legal Needs Survey

99 In 2023, together with the Ministry of Business, Innovation, and Employment, the Ministry of Justice conducted a nationwide phone survey to explore how New Zealanders are resolving their legal problems. The survey looked at legal needs experienced by more than 5,000 people, with a particular focus on small business owners, Māori and Pacific communities, and people living in rural areas. This survey included important information about the high prevalence of legal issues faced by disabled people.

100 The Ministry of Justice will use the findings to inform the development of projects and policies across government. They also intend to link the data with other government data in Statistics New Zealand's Integrated Data Infrastructure so that approved researchers can explore other factors that may affect legal needs.

Adoption Law Reform Programme

101 Public engagement was undertaken in 2021 and 2022 on options to reform the Adoption Act 1955. Although work is currently paused, the Ministry of Justice intends to provide advice on policy proposals and legislative change in the future.

Judiciary

102 Key initiatives led by the judiciary include:

- **Te Ao Mārama – Enhancing Justice for All**, a way of working for the District Court. It aims to ensure offenders, victims and whānau feel seen, heard, understood and able to participate in the Family and Youth Courts and the criminal jurisdiction of the District Court. Te Ao Mārama brings iwi and communities into court processes through partnerships to design and develop services to meet each community's needs.⁶⁴ Many of the key approaches will be helpful for disabled people, including establishing alternative courtroom layouts; using plain language; and adopting 'solution-focused' judging such as asking, "what has happened to this person to bring them to this point?" and addressing those causes.
- **Young Adult List**, an initiative⁶⁵ operating out of the Porirua, Gisborne and Hamilton District Courts. It helps to connect young people to community services and programmes (such as counselling and training courses) to help them rehabilitate and address their offending. Positive changes young adults make will be taken into account by the judge during sentencing.
- **Kia Mana Te Tangata – Judging in Context Benchbook**, an online benchbook being developed by Te Kura Kaiwhakawā, Institute of Judicial Studies (**Te Kura**), the education arm of the judiciary. The benchbook provides judges with information about communities who face barriers to participating in the

⁶⁴ Ministry of Justice, *Te Ao Mārama – Enhancing Justice for All*, available: <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/te-ao-marama/>

⁶⁵ Ministry of Justice, *Young Adult List*, available: <https://www.justice.govt.nz/courts/criminal/young-adult-list/>

courtroom. The bench book will include chapters on neuro-disability and physical disability.

New Zealand Police

103 Since 2021 Police has been working with disability community members to strengthen its response to victimisation and crime. Police have been working to improve communication with disabled people and have implemented disability training for Police recruits and investigation staff. Key initiatives have included: ⁶⁶

- establishing a Disability Advisory Group to assist with providing guidance and advice to Police to enable, support, develop and maintain mutually beneficial and collaborative relationships with the disability community.
- introducing a disability page for frontline staff on the Checkpoint mobile app and a Disability and Special Considerations Noting function in Police's National Intelligence Application. The function will inform Police staff of a disabled person's needs, such as communication or physical support needs, and let staff know how best to communicate with the person, especially during high-stress or crisis situations.
- reviewing the Police Instruction on NZSL and the use of NZSL interpreters and looking at other ways that policies, guidelines and resources can incorporate disability perspectives and needs. This will include

⁶⁶ Since this paper was prepared, Police have released their *Disability Roadmap 2026*, available: <https://www.police.govt.nz/about-us/publication/disability-roadmap-2026>

identifying where public resources can be made available in accessible formats.

- working with Iwi/Māori partners on Te Pae Oranga Iwi Community Panels (**Te Pae Oranga**)⁶⁷ to address harm from low-level offending and prevent reoffending. Te Pae Oranga is mainly for people with underlying issues needing help to get their lives back on track, including help with overcoming problems such as addiction, abuse, financial stress and employment. Victims are also encouraged to be involved.

Department of Corrections

Disability Action Plan

104 The Department of Corrections (**Corrections**)

launched its first disability action plan in 2023⁶⁸. The plan outlines six focus areas to improve outcomes for disabled prisoners including national leadership; using evidence to make a difference; responding to disability support needs; developing the workforce; and research and evaluation. Some of the actions taken to implement the action plan include:

- Introducing four Social Worker Disability and Older Persons into regions. The Social Workers facilitate and navigate access and continuity of care for disabled prisoners and tāngata whaikaha Māori me ō rātou whānau. The initiative focuses on four core areas:

⁶⁷ There are currently 23 Te Pae Oranga partnerships delivering adult Te Pae Oranga panels and 12 Te Pae Oranaga Rangatahi panels for young people are being established.

⁶⁸ Department of Corrections, *Disability Action Plan 2023-2027*, available: https://www.corrections.govt.nz/_data/assets/pdf_file/0008/49445/Disability_Action_Plan_2023-2027.pdf

early intervention; integrated care and support for people with complex or interconnected needs; general support and advice; and reintegration support including specialist accommodation needs.

- Including the WGSS in health screenings, including initial health screening upon reception into prison.
- Setting up a disability support advisory group in 2024. The group will provide advice on policy, practice and support.
- Undertaking a national survey of tāngata whaikaha Māori and disabled people in prisons. Lessons from the survey will inform practice, policy, and mandatory Disability Awareness Training for Corrections staff.

Specialist pathways programme

105 Corrections are facilitating a cross-agency⁶⁹ specialist pathways programme in response to mentally impaired persons with suspected and diagnosed intellectual disability, as defined under the CPMIP, being inappropriately imprisoned. This work should help to identify appropriate settings for offenders who do not come under the IDCC&R.

106 Corrections provides release conditions and Instructions to Report in easy read format when they are aware a prisoner has low literacy or a neuro disability.

107 Corrections also provide training for staff on understanding neuro disabilities so that they can learn to

⁶⁹ Supporting agencies include Accident Compensation Corporation, Ministry of Health, Ministry of Justice, Ministry of Social Development, New Zealand Police, Oranga Tamariki, and Te Whatu Ora.

work with people in a trait responsive and neuro inclusive way.

Te Puna Aonui

108 Te Puna Aonui agencies are responsible for implementing Te Aorerekura. The second action plan under Te Aorerekura consists of seven focus areas that set the direction for addressing family violence and sexual violence over the next five years. Agencies will prioritise working together on three of the focus areas over the next two years:⁷⁰ investing and commissioning well; keeping people safe through better multi-agency responses to family violence in communities; and stopping violence by holding people accountable and supporting them to change their behaviour.

109 Te Puna Aonui Business Unit supported the establishment of a Strategic Disability Reference Group to provide input into the implementation and monitoring of the action plan. They have also partnered with VisAble (discussed under non-government organisations services and work programmes) to understand and address family violence and sexual violence system barriers.

Ministry of Social Development

110 As part of the implementation of the first Te Aorerekura action plan, the Ministry of Disabled People – Whaikaha established the Disability Abuse Prevention and Response (**DAPAR**) prototype. With the transfer of

⁷⁰ Agencies will continue to deliver services and programmes in support of the other four focus areas: strengthening our workforce, taking action on sexual violence, protecting children and young people, and preventing violence before it starts.

Disability Support Services (**DSS**) to MSD, the DAPAR prototype will now be implemented by MSD. DAPAR is a disabled people-led team made up of trained specialists in family violence and safeguarding adults from abuse. DAPAR responds to disabled people experiencing abuse or neglect or who cannot protect or remove themselves from abusive situations because of their disability support needs. DAPAR also carries out safeguarding training and development for mainstream and disability Family Violence and Sexual Violence services.

111 Two other initiatives have been developed to help safeguard disabled people from violence, abuse and neglect:

112 **Assisting Change**, established in November 2024, is an advisory service for disability support providers. It matches specialist advisors with providers to assist them to work through specific quality issues.

113 **People for Us**, is a peer visiting service which aims to be up and running by mid-2025. Peer workers (disabled people, tāngata whaikaha Māori and whānau) will work with disabled adults who live in residential services, who are most at risk of abuse or neglect, to check they are safe and living a good life. They will help people raise concerns and support them to identify pathways to help resolve those concerns.

114 In 2023, MSD received \$3.419 million over two years to help improve accessibility of family and sexual violence services for disabled people. MSD has procured

training for staff working in the family violence and sexual violence sector;⁷¹ provided funding to the National Collective of Women's Refuges to support development of in-house training in accessibility and disabled people's experiences of family violence; implemented Family Violence and Sexual Violence Accessibility Grants, developed a tool to improve the sector's ability to assess accessibility of their premises, information and digital content;⁷² and partnered with Kāinga Ora to explore and, where possible, implement accessibility modifications to three Women's Refuges across the country.⁷³ Information gathered through these initiatives will help to understand accessibility gaps across the family violence and sexual violence sector and identify future investment options.

Non-government services and work programmes

Aotearoa Disability Law

115 Aotearoa Disability Law (**ADL**) ADL is the only specialist disability law Community Law Centre in New Zealand. They provide free legal services to disabled people on disability and non-disability related legal issues. *Disability Law 2028*⁷⁴ is ADL's strategic plan and sets their priorities for the next five years. ADL aims to educate legal professionals on accessible practice and

⁷¹ The first workshop was launched on 10 March 2025 and will run until June 2025. Currently, 300 participants across the country are registered to attend this training.

⁷² To date, around 200 providers have completed all or part of the self-assessment.

⁷³ As discussed in the policy brief relating to housing issues, this initiative is intended to respond to the critical need for accessible safe housing for disabled people across the country.

⁷⁴ Aotearoa Disability Law, *Disability Law 2028*, available:

<https://view.officeapps.live.com/op/view.aspx?src=https%3A%2F%2Faulanddisabilitylaw.org.nz%2Fwp-content%2Fuploads%2F2023%2F08%2FADL-final-Strategic-Plan.docx&wdOrigin=BROWSELINK>

build capability and capacity within the profession to identify and resolve disability related legal issues.

Wayfinding for Civil Justice

- 116 Wayfinding for Civil Justice⁷⁵ (**Wayfinding**) is a stakeholder led national strategy that aims to coordinate and strengthen access to civil justice. Wayfinding aims to ensure legal assistance is accessible, appropriate, and integrated; legal professionals understand and serve the needs of their communities; dispute resolution is accessible and equitable; and there is knowledge about the system to ensure monitoring, evaluation, and improvements. Wayfinding aims to do this by encouraging a coordinated approach to improving access to civil justice; using sector resources as strategically as possible; and providing clear signals to funders of access to justice (government and non-government) about existing work, where the gaps are, and where co-ordination can be achieved.
- 117 A National Civil Justice Observatory (**Observatory**) is being established to support the implementation of Wayfinding. The Ministry of Justice will provide one-off funding for the Observatory until ongoing funding is secured.

Criminal justice, family violence and victim support services

- 118 There are a number of non-government organisations that provide mainstream services for people interacting

⁷⁵ Spiller, C., et al., *Wayfinding for Civil Justice. National Strategy*, 2023, available: <https://www.justice.govt.nz/assets/Documents/Publications/Wayfinding-for-Civil-Justice-English.pdf>

with the criminal justice system. Disability specific services are set out below:

119 **VisAble**, a disabled people's organisation, works to strengthen national capabilities across agencies and sectors to prevent and respond to violence, abuse, and neglect affecting disabled people and their whānau. Their focus includes tāngata whaikaha Māori and their whānau, tagata sa'ilimalo and āiga-tele, d/Deaf, neurodivergent, and adults at risk.

120 **Emerge Aotearoa (Emerge)** provides Multi Systemic Therapy (**MST**) to support families in addressing challenging behaviour of 10-17-year-olds. Emerge provides support for a range of challenging behaviours that can impact a young person's future and their relationships with family, community, and themselves, including offending behaviour and criminal activity.

International examples of actions taken to improve disabled people's access to justice

Safeguarding measures, including measures for accessibility and financial assistance

121 In the United Kingdom, the Equality Act 2010 sets out rights for disabled people to protect them from discrimination when dealing with the Police. The "Revised Code of Practice for the detention, treatment and questioning of persons by Police Officers" under the Police and Criminal Evidence Act 1984 stipulates that Police should only interview someone who has an intellectual (learning) disability when an 'appropriate

adult' is present. The appropriate adult should not work for the Police and should have intellectual (learning) disability knowledge. The Police should also arrange for an interpreter to be present with people who are Deaf or have hearing or speech difficulties.⁷⁶⁷⁷⁷⁸⁷⁹

- 122 In Australia, the National Access to Justice Partnership⁸⁰ between Commonwealth and state and territory governments aims to improve access to justice for people at risk and in financial hardship. The partnership will provide legal assistance services to people unable to afford private legal services, focus on providing services for women and children at risk of family and domestic violence, and provide culturally appropriate legal assistance services to Aboriginal and Torres Strait Islander peoples, who are overrepresented in the criminal justice system.
- 123 In Singapore, an Appropriate Adult Scheme⁸¹ has been designed to safeguard the rights and welfare of people that may require additional help during Police investigations. The scheme is for people who have an intellectual disability and are required to provide a statement to Police as a suspect, victim or witness. While parents or guardians can provide support during Police interviews, the role of an Appropriate Adult⁸² is to remain

⁷⁶ See <https://www.gov.uk/rights-disabled-person/police>

⁷⁷ See <https://www.legislation.gov.uk/ukpga/2010/15/section/20>

⁷⁸ See <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

⁷⁹ See <https://assets.publishing.service.gov.uk/media/6580543083ba38000de1b792/PACE+Code+C+2023.pdf>

⁸⁰ See <https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2024-12/agreement-national-access-to-justice-partnership-signed.pdf> (commencing on 1 July 2025)

⁸¹ Singapore Legal Advice, *What is the Appropriate Adult Scheme in Singapore?*, 2024, available:

<https://singaporelegaladvice.com/law-articles/appropriate-adult-scheme-singapore/>

⁸² An Appropriate Adult is a trained volunteer, and their role is to facilitate communication between Police and young suspects or people who have an intellectual disability. They act as an advocate for the person's rights and interests, ensuring that they understand the questions being asked and the gravity of their answers.

impartial and ensure that rights are upheld. Individuals or their representatives can request the involvement of an Appropriate Adult during Police investigations by informing the Police at the outset of the interview. Police officers are trained to recognise when an Appropriate Adult is needed and will facilitate the process to ensure support is provided promptly.

Improving disability awareness and responsiveness

- 124 The Australian Capital Territory has developed the Disability Justice Strategy 2019-2029⁸³ to address unequal access to justice. The Strategy focusses on the safety and rights of disabled people, the responsiveness of the justice system and how to achieve and measure change. Five focus areas have been identified as being crucial for improvement and change: information and communication; education and guidance; identification, screening and assessment; better service delivery; and data, research and review.
- 125 In China, training is provided for judges, Police and lawyers on disabled people's human rights.⁸⁴ Further, in January 2020, a national public university in Chongqing, China, launched an experimental programme to train legal practitioners for the public sector who would also be proficient in Chinese Standard Sign Language.⁸⁵ The programme includes community service and field

⁸³ ACT Government, *Disability Justice Strategy 2019-2029: A strategy to address unequal access to justice in the ACT*, available: https://www.act.gov.au/_data/assets/pdf_file/0010/2380798/ACT-Disability-Justice-Strategy.pdf

⁸⁴ Economic and Social Commission for Asia and the Pacific, *Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities: Country Case Study China*, 2023, available: <https://repository.unescap.org/bitstream/handle/20.500.12870/6282/ESCAP-2023-RP-Harmonization-National-Laws-Convention-Rights-Person-Disability-china-Case-study.pdf?sequence=4&isAllowed=y>, page 21

⁸⁵ Economic and Social Commission for Asia and the Pacific, *Sign language, what is it?: an ESCAP guide towards legal recognition of sign languages in Asia and the Pacific*, 2023, available: <https://www.unescap.org/kp/2022/sign-language-what-it-escap-guide-towards-legal-recognition-sign-languages-asia-and-pacific> page 126

opportunities for trainee legal practitioners to interact directly with Deaf people to understand their legal aid needs.

126 In India, the inclusion of material on disabled people's human rights in judicial training and continuous education has been mandated, in accordance with section 47(1) of India's Rights of Persons with Disabilities Act, 2016.⁸⁶

Potential focus areas and opportunities for the New Zealand Disability Strategy

127 There are a number of areas that could be explored through refreshing the New Zealand Disability Strategy to improve disabled people's access to justice in New Zealand. These areas align with the international examples discussed above and with actions recommended in the IMM's third report.⁸⁷

Strengthening early intervention and supports

128 There is opportunity to work with Oranga Tamariki to develop focus areas for the 2025/2026 Oranga Tamariki Action Plan to appropriately reflect the needs of disabled children and young people in care and in the youth justice system, such as communication assistance and behaviour support.

⁸⁶ Economic and Social Commission for Asia and the Pacific, *Harmonization of National Laws with the Convention on the Rights of Persons with Disabilities: National Case Study Republic of India*, 2023, available: <https://www.unescap.org/sites/default/d8files/2023-07/ESCAP-2023-RP-Harmonization-National-Laws-Convention-Rights-Person-Disability-India-Case-study.pdf> page 42

⁸⁷ Independent Monitoring Mechanism, *Making Disability Rights Real Whakatūtu Ngā Tika Hauātanga. Third report of the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities*, 2020, available: <https://www.ombudsman.parliament.nz/sites/default/files/2021-11/Making%20Disability%20Rights%20Real%202014%20to%202019.pdf>

129 The previous action plan was published prior to DSS moving away from the health system. Consideration could be given to updating the action plan to reflect this shift to a social model of disability and to recognise the critical role of early intervention and improving outcomes for young disabled people at risk of entering the youth justice system.

Addressing abuse and family and sexual violence

130 While identified as a group disproportionately impacted by family and sexual violence, there is a lack of visibility of tangible actions for disabled people and tāngata whaikaha Māori in the actions prioritised for implementing Te Aorerekura action plan. There is opportunity to work with Te Puna Aonui in monitoring and supporting implementation of the second Te Aorerekura action plan.

131 There is a need to make accessibility modifications to more Women's Refuges across the country. There are 41 refuges across the country and currently only three have accessibility modifications being considered. Options could also be explored to raise public awareness of the legal requirement to report suspected abuse.

Strengthening disability responsiveness in the justice system

New Zealand Police

132 Getting it right from the first encounter with the criminal justice system is crucial. Reasonable attempts need to be made to communicate situations in an accessible way to avoid unnecessary arrests of disabled

people, including Deaf people and people with an intellectual (learning) or neuro-disability.

- 133 Consideration to include a legislative definition of reasonable accommodation in the HRA (CO 8(a)) is on the Ministry of Justice's longer term work programme, as part of a wider review of the HRA in response to recommendation 119 by the Royal Commission. Options could be explored to support strengthening Police training and processes in accessible communication, reasonable accommodations, safe and appropriate de-escalation methods, and resources for disabled people.⁸⁸ This would demonstrate an active commitment to recognising denial of reasonable accommodation as a form of discrimination.
- 134 There is a significant shortage of NZSL interpreters across the country and Police have previously indicated it is difficult to arrange NZSL interpreters at short notice. Due to rules of evidence, the Courts and Police should not use the same interpreter for the same person in the same case.
- 135 Through the refresh of the NZSL Strategy, a NZSL Capability Plan is being proposed to improve government agencies' responsiveness to Deaf people. There is an opportunity to support this work and explore ways to increase the supply of NZSL interpreters so that Deaf people's rights can be protected in any encounter with the Police.

⁸⁸ As recommended in Donald Beasley Institute, *Developing a more responsive legal system for people with intellectual disability in New Zealand*, 2014, page 15

Legal Profession and judiciary

- 136 In a 2014 study, participants with an intellectual disability who had been involved with the criminal justice system identified four key elements fundamental to quality legal representation: **communication** (I am able to understand my lawyer); **relationship** (I get on with my lawyer); **trust** (I believe my lawyer is there for me); and **openness** (the lawyer listens to my story).⁸⁹
- 137 Options could be explored to work with ADL and the NZLS to educate legal professionals (including Crown solicitors, Māori and Pacific legal professionals) on accessible legal practice and building capability and capacity within the legal profession on disability responsiveness.
- 138 Māori and Pacific legal professionals can play a greater role in ensuring access to justice for tāngata whaikaha Māori and Pacific disabled people. There is opportunity to support existing initiatives led by iwi/Māori and Pacific communities to connect with the justice sector and other government agencies.
- 139 Further, work could be done with the NZLS and universities to explore options for training in disability rights, including the effects of unconscious ableism, for those entering the legal profession.
- 140 Work could also be done with the judiciary to develop guidance for legal professionals and jurors on the effects

⁸⁹ Donald Beasley Institute, *Developing a more responsive legal system for people with intellectual disability in New Zealand*, 2014, available: <https://www.donaldbeasley.org.nz/assets/publications/access-to-justice/Law-Fn-Rpt-Final-Word-Version-2.2.2015.pdf>

of unconscious ableism on perceptions of disabled victims and offenders and how that can impact judgements.

Corrections

- 141 Work could be done with Corrections to explore options for specialised rehabilitation programmes tailored for disabled people and culturally tailored for tāngata whaikaha Māori and Pacific disabled people.
- 142 Also, alternatives to imprisonment for disabled offenders, such as community-based rehabilitation and restorative justice options could be explored. This could involve identifying Māori and Pacific community initiatives, churches, or support networks that provide informal justice support but could be strengthened through government collaboration and support.

Implementing accessibility protocols across the justice system, including courts and tribunal processes

- 143 Information about the justice system should be fully accessible, both in terms of its individual components and the journey through the system as a whole. More work could be done to support justice agencies to provide resources in te reo Māori, Pacific languages, and alternate formats⁹⁰ more widely.
- 144 Work could be done with the Ministry of Justice to explore options to make court and tribunal processes accessible to more disabled people, such as promoting

⁹⁰ People who are blind or have low vision require documents to be made available in Braille, audio or Large Print format; people who have a learning (intellectual) disability require documents to be made available in audio or Easy Read format; and Deaf people or people who are hard of hearing require documents to be in NZSL video format.

the accessibility protocol⁹¹ developed by claimants and applied by the Waitangi Tribunal in the disability phase of Wai 2575. The Protocol provided generalised guidance and procedures to achieve an accessible inquiry including setting out venue accessibility requirements (inside and outside); document requirements and filing timeframes; and arrangements for audio describers, captioners and NZSL interpreters. There is scope to start with strengthening initiatives already underway, such as Te Ao Mārama and the Young Adult List.

145 Digital accessibility is critical for strengthening disabled people's participation in the justice system. All justice agencies, government and non-government, could be required to adopt government web accessibility standards⁹² so information is accessible to disabled people. Options to introduce accessibility audits (physical and digital) and a public register of accessible and non-accessible justice services could also be explored.

146 Affordability is also critical for strengthening disabled peoples' participation in the justice system. The Wayfinding for Civil Justice strategy suggests encouraging lawyers to participate in activities focussed on affordable legal service provision including free legal services, low-cost consultation clinics, and legal aid work. Whaikaha can work with the Ministry of Justice and the Community Law Centres o Aotearoa to support initiatives

⁹¹ Waitangi Tribunal, *Waitangi Tribunal Accessibility Inquiry Protocol for Phase One of Stage Two of the Health Services and Outcomes Kaupapa Inquiry*, 2021, available: [https://forms.justice.govt.nz/search/Documents/WT/WT_DOC_179594807/Wai%202575,%202.6.059\(a\).pdf](https://forms.justice.govt.nz/search/Documents/WT/WT_DOC_179594807/Wai%202575,%202.6.059(a).pdf)

⁹² See <https://www.digital.govt.nz/standards-and-guidance/nz-government-web-standards>

that help disabled people on low incomes to seek legal services.

Promoting choice and control

147 The IMM has acknowledged work underway by the Law Commission, but indicates the government needs to show greater commitment to understanding and implementing a legal framework that protects disabled people's rights to make decisions about their own lives and that work on supported decision making needs to be accelerated and led by disabled people.⁹³ Whaikaha is working with an advisory group to create a website with resources on supported decision-making (CO 22). The website is expected to go live in May 2025 and there may be opportunity for this work to complement the Law Commission's findings.

Risks

148 The risk of not doing anything to improve disabled people's access to justice likely means disabled people will continue to lack trust in the system and continue to be disproportionately represented in the criminal justice system, as both victims and offenders. Whaikaha can support other agencies to better understand and reflect the needs of disabled people in their work programmes.

149 Limitations in data may make it harder to assess where improvements need to be prioritised. To help mitigate this risk, Whaikaha will continue to work with Stats NZ and the Disability Data and Evidence Advisory

⁹³ Ibid

Group and Community of Practice to improve collection and use of disability data across the justice system.

End

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Appendix One: Justice-related UNCRPD recommendations

Ministry of Justice

Concluding Observation 8 (a): Amend the Human Rights Act of 1993 to include an explicit recognition of the denial of reasonable accommodation as a form of discrimination and include a legislative definition of reasonable accommodation consistent with the meaning provided in article 2 of the Convention.

Response: Future actions will be considered through the development of the refreshed New Zealand Disability Strategy. Any action would need to be part of a wider review of the Human Rights Act. Definition of Reasonable Accommodation in the Convention is expansive and might be seen as an additional form of regulation.

Concluding Observation 8 (b): Adopt the legal and other measures necessary to provide for explicit protection from multiple and intersectional forms of discrimination, including discrimination based on the intersection between disability and other identities and life status, such as age, sex, gender, race, indigenous status, lesbian, gay, bisexual, transgender and intersex status, ethnicity, migratory status and national origin.

Response: Future actions will be considered through the development of the refreshed New Zealand Disability Strategy.

Concluding Observation 8 (c): Provide the New Zealand Human Rights Commission and the Human Rights Review Tribunal with the necessary financial and human resources for timely resolution of discrimination complaints.

Response: Future actions will be considered through the development of the refreshed New Zealand Disability Strategy.

Concluding Observation 46 (a): Repeal section 8 of the Adoption Act of 1955 and amend the statute to ensure that parents with disabilities are treated on an equal basis with other parents with respect to adoption.

Response: The Ministry of Justice will provide advice to government through the Adoption Law Reform Program. The Adoption Law Reform Programme involved a comprehensive review of New Zealand's adoption laws. The Ministry will provide advice on policy proposals and legislative change. Further action is dependent on government work programme priorities and will be considered through the development of the refreshed NZDS. No commitment to repeal section 8 has been made at this time.

Oranga Tamariki

Concluding Observation 30: The Committee recommends that the State party take immediate action to eliminate the use of solitary confinement, seclusion, physical and chemical restraints and other restrictive practices in places of detention.

Response: Oranga Tamariki will consider future actions through existing monitoring and assurance activities, practice and policy development processes, implementation planning for the Oranga Tamariki Disability Strategy and alongside the development of the refreshed New Zealand Disability Strategy. The Department of Corrections is addressing the overarching recommendations made by the Inspectorate's 'Separation and Isolation Thematic Report' through a BAU delivery model.

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

Response: Oranga Tamariki will consider future actions through the development of the refreshed New Zealand Disability Strategy. The Department of Corrections is leading

cross-agency work to improve the management of people in prison with significant suspected and diagnosed intellectual disability. The Department of Corrections, along with other agencies, are working to implement system-based improvements so people with a significant suspected and diagnosed intellectual disability are supported through appropriate criminal justice pathways and can access the supports and services they require.

Concluding Observation 24 (a): Develop a disability justice strategy to address the overrepresentation of persons with disabilities in the care and protection, youth justice and prison populations, including by strengthening age-appropriate procedural accommodations, measures to prevent persons with disabilities coming into contact with the justice system, and training on disability rights in the justice and care and protection systems.

Response: No action currently proposed.

Ministry of Health

Concluding Observation 28 (b): Repeal provisions within the Intellectual Disability (Compulsory Care and Rehabilitation) Act of 2003 that allow for persons with disabilities

to be detained for periods of time exceeding the maximum length of the sentence they would be liable to in the criminal justice system.

Response: Future actions will be considered through the development of the refreshed NZDS. Compulsory care under the IDCCR Act is not correctional detention, nor intended as a punishment for the crime that the person has been charged or convicted with. Instead, it provides individuals with support to learn skills and positive behaviours and length of care is determined by whether the person is assessed as being able to live independently and safely. In 2023, the MDP launched the High and Complex Framework, which works alongside the IDCCR Act to provide diversionary pathways away from prison for people with intellectual disabilities.