October 2024

**To Ministry of Justice**

Please find attached our submission on Improving Jury Trial Timeliness Discussion Document 2024

For any further inquiries, please contact:

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**Introducing Disabled Persons Assembly NZ**

**We work on systemic change for the equity of disabled people**

Disabled Persons Assembly NZ (DPA) is a not-for-profit pan-impairment Disabled People’s Organisation run by and for disabled people.

**We recognise:**

* Māori as Tangata Whenua and [Te Tiriti o Waitangi](https://www.archives.govt.nz/discover-our-stories/the-treaty-of-waitangi) as the founding document of Aotearoa New Zealand;
* disabled people as experts on their own lives;
* the [Social Model of Disability](https://www.odi.govt.nz/guidance-and-resources/guidance-for-policy-makes/) as the guiding principle for interpreting disability and impairment;
* the [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html) as the basis for disabled people’s relationship with the State;
* the [New Zealand Disability Strategy](https://www.odi.govt.nz/nz-disability-strategy/) as Government agencies’ guide on disability issues; and
* the [Enabling Good Lives Principles](https://www.enablinggoodlives.co.nz/about-egl/egl-approach/principles/), [Whāia Te Ao Mārama: Māori Disability Action Plan](https://www.health.govt.nz/publication/whaia-te-ao-marama-2018-2022-maori-disability-action-plan), and [Faiva Ora: National Pasifika Disability Disability Plan](https://www.moh.govt.nz/notebook/nbbooks.nsf/0/5E544A3A23BEAECDCC2580FE007F7518/%24file/faiva-ora-2016-2021-national-pasifika-disability-plan-feb17.pdf) as avenues to disabled people gaining greater choice and control over their lives and supports.

**We drive systemic change through:**

**Rangatiratanga / Leadership**: reflecting the collective voice of disabled people, locally, nationally and internationally.

**Pārongo me te tohutohu / Information and advice**: informing and advising on policies impacting on the lives of disabled people.

**Kōkiri / Advocacy**: supporting disabled people to have a voice, including a collective voice, in society.

**Aroturuki / Monitoring**: monitoring and giving feedback on existing laws, policies and practices about and relevant to disabled people.

## United Nations Convention on the Rights of Persons with Disabilities

DPA was influential in creating the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),[[1]](#footnote-2) a foundational document for disabled people which New Zealand has signed and ratified, confirming that disabled people must have the same human rights as everyone else. All state bodies in New Zealand, including local and regional government, have a responsibility to uphold the principles and articles of this convention.

The following UNCRPD articles are particularly relevant to this submission:

* **Article 9 – Accessibility**
* **Article 12 – Equal recognition before the law**
* **Article 13 – Access to justice**

## New Zealand Disability Strategy 2016-2026

Since ratifying the UNCRPD, the New Zealand Government has established a Disability Strategy[[2]](#footnote-3) to guide the work of government agencies on disability issues. The vision is that New Zealand be a non-disabling society, where disabled people have equal opportunity to achieve their goals and aspirations, and that all of New Zealand works together to make this happen. It identifies eight outcome areas contributing to achieving this vision.

The following outcomes are particularly relevant to this submission:

* **Outcome 4 – Rights protection and justice**

# The Submission

**a.) Is there a problem with jury trials?**

**Yes, there are issues for disabled defendants, complainants, jurors, witnesses and lawyers/judges either appearing before or serving our courts, in terms of the need for more support and reasonable accommodations to participate in court processes, including jury trials.**

An example of this is that last year, one of DPA's members, a wheelchair user, had to forgo jury duty after discovering that they would have to sit separately from other jurors due to the courtroom being in an historic (albeit, modified) court building. The member also found that getting to the courtroom and jury room would be an issue and despite wanting to perform jury service, was excused by court staff from doing so.

These and other accessibility issues for disabled and D/deaf people contribute to the delays experienced in arranging timely jury trials as well. Barriers include the difficulty in securing New Zealand Sign Language (NZSL) interpreters for Deaf people appearing before the courts whether they be defendants, complainants, lawyers, jurors or witnesses given that there is a shortage of interpreters.

Similarly, there may be requirements for disabled people to have support people including, for example, social interpreters in courts which is often useful for people with learning disabilities and neurodiverse people whether they are defendants, witnesses, jurors or complainants in understanding how courts work. Given that many disability support agencies are currently under resourced, the requirement for disabled people to access paid support people in courts will become more difficult and could contribute to more delays going forward as well.

Another barrier to timely justice for disabled people - particularly as complainants or defendants in trials - is the responsiveness of the legal profession towards disabled people at all levels. There is only one specialist disability law centre in New Zealand in the form of Auckland Disability Law which is stretched to provide advice and support to not only disabled people and justice/disability sector stakeholders in Auckland but around the country.

For all the above reasons, DPA wants to see barriers for disabled people participating in jury trials as defendants, complainants, lawyers, judges, witnesses, jurors or in other capacities identified and progressively removed by the Ministry of Justice working closely with disabled people and disability organisations.

This would help meet Outcome 4 of the New Zealand Disability Strategy 2016-2026 around improving access to justice and rights for disabled people and our UNCRPD obligations around access to justice for disabled people.

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| **Recommendation 1:**  barriers for disabled people participating in jury trials as defendants, complainants, lawyers, judges, witnesses, jurors or in other capacities be identified and progressively removed by the Ministry of Justice working closely with disabled people and disability organisations. |

Our analysis and recommendations around the proposed changes to jury trial timeliness stems from these considerations.

**b.) Do we think the threshold to elect a jury trial should be increased?**

**DPA does not support increasing thresholds for when defendants can elect jury trials. We are concerned that this could significantly impact on the number of disabled defendants and complainants who can access effective justice.**

We acknowledge the multiple pressures which currently face our court system including that of resourcing. This has been the case since the Covid-19 pandemic which caused significant disruption to courts around the country, something that is only slowly being rectified.

We also note that the previous government committed significant funding to ensure that Covid-19 related case backlogs in our court system could be addressed.[[3]](#footnote-4)

However, DPA is also concerned that the government’s current punitive approach to law and order will lead to more people appearing before the courts.

Decreasing the number of jury trials means that while the court system may be able to conduct proceedings/hearings more efficiently, the downside is that more miscarriages of justice could also occur due to cases not being rigorously examined as they can be at trial.

Facing the prospect of imprisonment for even at least two years means that a person could be locked up for a significant period that - if they are then found innocent of the crime for which they were charged in later appeal proceedings - would still represent a significant loss of time to the defendant and further trauma for any survivors/victims.

As the discussion paper notes, there are still some significant offences which defendants can elect to go to trial on which comes with at least a two-year sentence of imprisonment including assault on a family member, offences around intimate visual recordings, male assaulting female and serial drink driving offences.

We recognise the trauma that is associated with complainants/survivors coming before the courts to testify but both defendants and complainants/survivors have the right to be heard, and their evidence recorded and evaluated by a court of law.

One way in which the trauma could be reduced for complainants/survivors is to develop and resource specialist courts relating to family/domestic violence and drug and alcohol related offending that work on a restorative justice basis meaning that offenders and complainants/survivors don’t have to go through the full-blown process of either a jury or judge-alone trial.

These types of specialist courts also give the opportunity for full case disclosure and discovery to take place meaning that justice can be seen to be done for both complainants/survivors and offenders.

**c.) Greater digitisation of courts is the answer**

Another way is through further increasing the digitisation of our courts system and adopting processes which streamline and speed up planning for jury trials as much as possible, including any planning/organisation around accessibility needs.

DPA has previously submitted in support of the Courts (Remote Participation) Bill which provides for hearings to be conducted via video/audio link.[[4]](#footnote-5)

DPA reiterates its recommendation from that submission to support the ability of complainants and witnesses to attend hearings remotely (something that will benefit disabled victims immensely) and that disabled defendants charged with offences (especially those remanded into the community) can attend hearings remotely, particularly if accessing a courtroom will be an issue.

For remote participation to be accessible to disabled people it is essential that information on remote participation be made available in all accessible formats and that this information is regularly updated on the Ministry of Justice Court website.

Indeed, digital access is one way in which disabled people can have more equitable access to Court services. There must be investment undertaken by the Ministry of Justice in both accessible formats and accessible processes for all disabled people engaging with the Court system.

We recommend that any disabled person requiring accessibility support in a remote hearing is given more than 10 days’ notice to enable time to organise relevant interpreters, transcribers, support and/or assistive technology for the following trial related processes:

* Use of audio links in criminal procedural matters
* Use of audio-visual links and audio links by complainants/survivors and support persons to observe trial and sentencing.
* Use of audio links in civil trial proceedings.

We note that remote participation may not work for some disabled people as their assistive technology may not be compatible with the technology being used.

DPA recommends that sufficient time is provided before any hearing involving remote participation by a disabled person to ensure that the technology used will be compatible with any assistive technology used by that disabled person.

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| **Recommendation 2:** that information on remote participation be made available in all accessible formats on the Ministry of Justice Courts website. |

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| **Recommendation 3:** that the Courts give more than 10 days notification to disabled people participating remotely in Court hearings to ensure compatible accessibility support is provided in a way that meets their needs.  |

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| **Recommendation 4:** considermaking judge only trials the only available option for any offences carrying prison sentences of at least a maximum of two years. |

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| **Recommendation 5:** thatspecialist courts relating to family/domestic violence and drug and alcohol related offending that work on a restorative justice basis are supported. |

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| **Recommendation 6:** that the digitisation of our courts system and adopting more streamlined processes for speeding up the planning of jury trials is further expanded, and this includes the organisation/planning of accessibility needs. |

**If greater digitisation is pursued, then trials will be able to proceed in an efficient manner without the need to increase thresholds.**

**It will also enable disabled people to have more equitable access to our courts system.**

1. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-persons-disabilities> [↑](#footnote-ref-2)
2. <https://www.odi.govt.nz/nz-disability-strategy/> [↑](#footnote-ref-3)
3. <https://www.justice.govt.nz/about/news-and-media/news/budget-2022-ministry-of-justice/> [↑](#footnote-ref-4)
4. <https://www.dpa.org.nz/page/71/AllSubmissions.html> [↑](#footnote-ref-5)