

14 November 2022

To Ministry of Justice and the Electoral Review Panel

Please find below DPA’s submission on the Independent Electoral Review.

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# Introducing Disabled Persons Assembly

**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. Since our formation in 1983, DPA has brought disabled people together and shaped our collective input in a way that drives system level change.

**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;
* the [Enabling Good Lives Principles](https://www.enablinggoodlives.co.nz/about-egl/egl-approach/principles/) and [Whāia Te Ao Mārama: Māori Disability Action Plan](https://www.health.govt.nz/publication/whaia-te-ao-marama-2018-2022-maori-disability-action-plan) as avenues to disabled people gaining greater choice and control over their lives and supports.

**We drive systemic change through:**

* **Leadership** -reflecting the collective voice of disabled people, locally, nationally, and internationally;
* **Information and advice** -informing and advising on policies impacting on the lives of disabled people;
* **Advocacy** -supporting disabled people to have a voice, including a collective voice, in society;
* **Monitoring** - giving feedback on existing laws, policies, and practices about and relevant to disabled people.

# Guiding Documents Relevant to this Briefing

## United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

DPA upholds the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)[[1]](#footnote-2) as the minimum standard for our participation in society. It places an obligation on Government to ensure and promote the full realisation of all human rights and fundamental freedoms for all disabled people without discrimination of any kind on the basis of disability.

The implementation of the UNCRPD depends on a partnership between DPOs and the Government. This is highlighted in Article 4.3 which says governments shall consult closely with and actively involve disabled people through their representative organisations. This partnership goes beyond just consulting with disabled people; it mandates governments to actively involve disabled people and our organisations in everything that affects us.

Of importance to this review are a number of UNCRPD articles. Particularly relevant are Articles 3 and 29.

**Article 3 - General Principles**

The principles of the present Convention shall be:

1. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
2. Non-discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disability as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Equality between men and women;
8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

**Article 29 – Participation in public and political life**

a. To ensure that persons with disabilities can effectively and fully participate in political and public life on an equal basis with others, directly or through freely chosen representatives, including the right and opportunity for persons with disabilities to vote and be elected, inter alia, by:

i. Ensuring that voting procedures, facilities and materials are appropriate, accessible and easy to understand and use;

ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation, and to stand for elections, to effectively hold office and perform all public functions at all levels of government, facilitating the use of assistive and new technologies where appropriate;

iii. Guaranteeing the free expression of the will of persons with disabilities as electors and to this end, where necessary, at their request, allowing assistance in voting by a person of their own choice. [[2]](#footnote-3)

**Other key Articles of the UNCRPD relevant to this submission are:**

* Article 5 – Equality and Non-Discrimination
* Article 9 – Accessibility
* Article 21 – Freedom of expression and opinion, and access to information

## The New Zealand Disability Strategy (2016 - 2026)

The New Zealand Disability Strategy[[3]](#footnote-4) is the Government’s primary vehicle for implementing the UNCRPD. One of the key outcomes relevant to this submission is Outcome 8.

**Outcome 8 – Leadership**

A priority was made (Priority 11) to promote disabled people participating in political and civic processes. The scope of this action includes identifying existing opportunities and developing practical strategies to overcome barriers that limit the involvement or performance of disabled people in the following areas:

* Casting a fully informed confidential vote in national elections.
* Casting a fully informed confidential vote in local elections.
* Becoming active in political parties and standing for election to Parliament.
* Becoming active in local politics and possibly standing for election to a local authority such as a regional or city council, a local community board, disability advisory group, district health board, school board of trustees, etc.
* Holding office in an elected national or local political position.
* Joining and participating fully in non-government organisations concerned with the political life of New Zealand.
* Forming organisations that have the capacity to effectively represent the voice of disabled people at local, national and international level.[[4]](#footnote-5)

**Other key Outcomes of the New Zealand Disability Strategy relevant to this submission are:**

* Outcome 5 – Accessibility
* Outcome 7 – Choice and Control

# Our Submission

This feedback is organised to cover the four components of the electoral process: the voting system, voters, parties and candidates, and electoral administration.

## Disability in Aotearoa New Zealand

### Statistics

1 in 4 people are identified as disabled according to the 2018 Census. The Access 2020 Disability Strategy[[5]](#footnote-6) published by the Electoral Commission after the 2011 general election reported that 80% of disabled voters went to a voting place on election day. 18% went to an advance voting facility, 1% voted from a hospital or care home, and 1% voted using papers delivered by mail.

Since that election, telephone dictation and online voting options have been implemented, leading to 80% of disabled voters voting in advance in the 2020 general election, compared with 49% in the 2017 general election.[[6]](#footnote-7)

### Systemic barriers to full participation in society

There are many systemic issues that affect disabled people’s full participation in society, particularly in relation to voting. For example, the physical accessibility of polling booths, inaccessible transport and streets, lack of political information in accessible formats or paucity of information aimed at disabled people, lack of physical access to election meetings, attitudes of others, not being allowed a political opinion by family/friends/carers and the belief that some disabled people are not capable of making political decisions.

#### Transport

Being able to access affordable and accessible transport impacts a person’s ability to reach polling booths. Access to both private and public transport are key to ensuring accessible transport choices. Car ownership is unattainable for many disabled people due to systemic inequity in relation to employment and lower incomes, as well as the high cost of vehicle modifications.[[7]](#footnote-8) Disabled people who do not have access to a private vehicle, are more likely to use a taxi service, [[8]](#footnote-9) and/or rely on accessible public transport.[[9]](#footnote-10) Many cannot afford taxi services, even with the Total Mobility scheme. Transport costs are a significant barrier to political participation for disabled people and mitigating these costs with sufficient funding is an important step towards reducing this barrier.

#### Digital inequity

Many disabled people are excluded from digital participation due to prohibitive costs of specialised devices and software, and these devices and software are often inaccessible.[[10]](#footnote-11) It is not only the lack of access to data and devices that exclude people from participating in exercising their right to vote, but also the skills to use these devices.

#### Devaluation of disabled people

Low expectations impact upon many in the disabled community, with disabled people often being discouraged from holding political opinions or society believing that disabled people, or some disabled people, are not capable of exercising political rights and choices.

**Recommendation:** DPA recommends that Government work to remove the systemic barriers facing disabled people in political participation.

### Whaikaha – Ministry of Disabled People

With the recent establishment of Whaikaha – Ministry of Disabled People, DPA believes the Ministry has a key role to play in providing insights into the many issues for disabled people regarding the electoral process.

**Recommendation:** DPA recommends that Whaikaha – Ministry of Disabled People be a party to the Independent Electoral Review process.

We note that the consultation document states that the review should include a Te Tiriti o Waitangi informed approach.

**Recommendation:** DPA recommends that Ministry of Justice engage more fully with tangata whaikaha / disabled Māori to ensure that a Te Tiriti o Waitangi informed approach to access is taken.

## The Voting System

Aotearoa New Zealand uses a Mixed Member Proportional (MMP) voting system and general elections are held every three years.

### MMP

#### Party vote threshold

The party vote and one electorate seat threshold: The party vote threshold should be lowered to 4% to both increase representation by smaller parties and potentially enable a disability party (were one to ever be set up in Aotearoa) to be elected.

**Recommendation:** DPA recommends that the party vote threshold be set at 4%.

### Parliamentary term and election timing

#### The length of the parliamentary term

The current three-year term leads to short term policy making and rushed legislation. DPA believes that the Parliamentary term in Aotearoa needs to be four years to encourage longer term policy development and allow policies to bed in. This is especially important for disabled people.

**Recommendation:** DPA recommends that the Parliamentary term in Aotearoa be set at 4 years.

## Voters

Voters: Eligible voters get to choose who will represent their interests in Parliament when they exercise their right to vote. This section covers voter eligibility and enrolment, how people can vote, emergencies and disruption, and how the vote is counted.

### Enrolling to vote

Enrolling to vote needs to be accessible and straightforward for disabled people.

### Voting in elections

#### Accessibility of elections

DPA has received feedback that Telephone Dictation voting generally seems to work well, but is still messy: having to pre-register, receive a number via text or email then call back again to vote.

All polling booths need to be physically accessible: Currently the only legal requirement for polling booths is that at least 12 are accessible. This needs to be updated so that it is the exception to be inaccessible.

Staff training is required to enable staff to respond appropriately and in a mana enhancing way to disabled people casting their vote.

DPA strongly believes that the legislation requiring voters to state their name before they receive their ballot paper needs to be repealed: whether someone can ‘voice’ their name should not be the deciding factor in whether they can or cannot vote. Many disabled people have issues in saying their name out loud publicly and this imposition does not comply with New Zealand’s obligations under the UNCRPD.

#### Overseas voting

The process for overseas voting is not accessible for many overseas disabled voters i.e., Telephone Dictation voting is not permitted and having to get to a diplomatic post is a barrier to voting for some disabled people.

#### Right to vote: Prisoners

DPA supports all prisoners having the right to vote. Disabled people are both disproportionately represented in prison and disproportionately unjustly convicted. For example, Allan Hall and Tenia Pora.

**Recommendation:** DPA believes that all prisoners, regardless of sentence length, should be allowed to vote and that the process of voting while in prison should be accessible.

#### Right to vote: People disqualified under section 80 of the Electoral Act (1993)

Although most disabled people have the right to vote, under section 80 of the Electoral Act 1993 people who have been detained for three years for criminal offending but not been convicted due to a serious mental health condition or intellectual impairment are prevented from voting.

**Recommendation:** DPA believes that Section 80 of the Electoral Act 1993 is inconsistent with the Government’s obligations under the UNCRPD and should be repealed.

#### Right to vote: Residential care

DPA believes that we need to uphold the right of disabled people in residential care to vote. Some residential care facilities don’t support disabled people to vote.

**Recommendation:** DPA recommends that residential care facilities be reminded that they should support people to vote and surveys of a sample of disabled people in residential settings should be undertaken on election issues following each general election.

#### Enrolling on behalf of someone with a physical or mental Impairment

DPA has been contacted by parents enrolling to represent their adult children who have a learning disability or mental impairment. These parents were unhappy with the language used on the various forms surrounding this process.

**Recommendation:** DPA calls for a review of enrolment forms to eliminate any outdated language.

## Parties and Candidates

Political parties (parties) and candidates contest elections to enable voters to choose their political representatives. This section covers eligibility for candidates and parties, how they are funded and regulated, and rules for election campaigns and advertisements.

### Standing for election

Whilst DPA supports the Election Access Act, we are aware of its progress and limitations, e.g., the fund does not cover local body elections, which are often seen as a pathway to general elections.

### Financing of parties and candidates

#### The funding of political parties

DPA believes that any state funding of political parties needs to be tied to accessibility, both internal and external, within party structures. A party’s internal processes need to enable disabled people to be active and put themselves forward as candidates, and manifestos, leaflets, advertisements, and meetings all need to be accessible to disabled people.

**Recommendation:** DPA believes that if political parties are to receive state funding this must be linked to the duty to make both internal and external party processes, procedures and all election material issued by them accessible.

### Election advertising and campaigning

#### Election broadcast advertising

All broadcast election advertising should be required to be accessible – captioned and audio described. There has never been an audio described election advertisement broadcast on television in Aotearoa.

**Recommendation:** DPA believes that all election television broadcasts should be captioned, audio described and interpreted into New Zealand Sign Language.

## Electoral Administration

Several agencies and the courts have a role in administering the electoral system to ensure the rules are followed. This part covers setting electorate boundaries, administering the electoral rolls, running elections, enforcement, dispute resolution, disinformation, misinformation, and foreign interference.

### Roles and function of the Electoral Commission

The Electoral Commission should by law have regard to the accessibility of election processes and procedures for disabled people. DPA believes that the Electoral Commission needs to employ more disabled people to fulfil this function. Despite 24% of the population being identified as disabled, only 5.5% of public service employees are identified as disabled.[[11]](#footnote-12)

**Recommendation:** That the Electoral Commission be given a legal duty to ensure that election policies, procedures and materials are accessible to disabled people.

### Maintaining and accessing electoral rolls

#### Electoral roll

The Electoral Commission is required to make this available for local council elections, though local council elections are run and overseen by local councils. DPA believes that given they update and keep the roll, the Electoral Commission should run and oversee local body elections. This would ensure greater consistency of practices to support disabled voters across the country.

**Recommendation:** DPA recommends that local government elections be overseen and run by the Electoral Commission.

The Electoral Commission needs to do more to encourage people to update their details in between elections. Disabled people may be more likely to miss out on voting or updating details because of predominantly living in rented and insecure housing.

### Enforcement and dispute resolution

The Electoral Act 1993 contains over 100 offences. The Electoral Commission has noted that many have not been reviewed since they first appeared in electoral legislation in the 19th century.

**Recommendation:** DPA calls on the Electoral Commission to review all electoral laws to ensure they do not discriminate against disabled people, and instead that they are designed and monitored to ensure that they positively promote, encourage, and enable disabled people to fully participate in the electoral process.

### Disinformation, misinformation, and foreign interference

Following overseas trends may play a bigger role in future elections. Disabled people may be more likely to be ‘taken in’ by misinformation. The Electoral Commission should work with the Ministry of Justice and other agencies and in partnership with disabled people and other marginalised groups to develop accessible campaigns about the dangers of disinformation and misinformation at elections.

# Summary of Recommendations

In summary, DPA recommends that:

1. Government work to remove the systemic barriers facing disabled people in political participation;
2. Whaikaha – Ministry of Disabled People be a party to the Independent Electoral Review process;
3. Ministry of Justice engage more fully with tangata whaikaha / disabled Māori to ensure that a Te Tiriti o Waitangi informed approach to access is taken;
4. the party vote threshold be set at 4%;
5. the Parliamentary term in Aotearoa New Zealand be set at 4 years;
6. all prisoners, regardless of sentence length, should be allowed to vote and that the process of voting while in prison should be accessible;
7. Section 80 of the Electoral Act 1993 be repealed as it is inconsistent with the Government’s obligations under the UNCRPD;
8. residential care facilities be reminded that they should support people to vote and that surveys of a sample of disabled people in residential care be taken on election issues following each general election;
9. there be a review of electoral enrolment forms to update any outdated disability language;
10. if political parties receive state funding, then this must be linked to the duty to make both internal and external party processes, procedures, and all election material accessible;
11. all election television broadcasts should be captioned, audio described and interpreted into New Zealand Sign Language;
12. the Electoral Commission be given a legal duty to ensure that election policies, procedures and materials are accessible to disabled people;
13. local government elections be overseen by the Commission; and
14. the Electoral Commission review all electoral laws to ensure they do not discriminate against disabled people, and that they are designed and monitored to ensure they positively promote, encourage, and enable disabled people to fully participate in the electoral process.
1. United Nations. *Convention on the Rights of Persons with Disabilities – Articles*. Accessed from: https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/convention-on-the-rights-of-persons-with-disabilities-2.html [↑](#footnote-ref-2)
2. https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-29-participation-in-political-and-public-life.html [↑](#footnote-ref-3)
3. Office for Disability Issues. *New Zealand Disability Strategy*. Accessed from: https://www.odi.govt.nz/nz-disability-strategy/ [↑](#footnote-ref-4)
4. Office for Disability Issues. *Outcome 8 – Leadership. Accessed* from: https://www.odi.govt.nz/nz-disability-strategy/outcome-8-leadership/ [↑](#footnote-ref-5)
5. Electoral Commission. *Access 2020 Disability Strategy.* Accessed from: https://elections.nz/assets/access-2020-disability-strategy.pdf. [↑](#footnote-ref-6)
6. Electoral Commission. (2021). *Report of the Electoral Commission on the 2020 General Election and referendums.* Accessed from: https://elections.nz/assets/2020-general-election/Report-of-the-Electoral Commission-on-the-2020-General-Election-and-referendums.pdf [↑](#footnote-ref-7)
7. Woodbury, E. (2012). *Auto-Mobile: Disabled Drivers in New Zealand* [Doctoral dissertation, University of Otago]. Our Archive. Retrieved from: https://ourarchive.otago.ac.nz/bitstream/handle/10523/3715/WoodburyEstherZ2013PhD.pdf?sequence=1 [↑](#footnote-ref-8)
8. Velho, R. (2019). Transport accessibility for wheelchair users: A qualitative analysis of inclusion and health. *International Journal of Transportation Science and Technology, 8*(2), 103-115. [↑](#footnote-ref-9)
9. CCS Disability Action. (2018). *Briefing to Hon Phil Twyford Minister for Transport.* Retrieved from: https://www.ccsdisabilityaction.org.nz/assets/resource-files/Briefing-to-the-Minister-of-Transport.pdf [↑](#footnote-ref-10)
10. Smith, K. (2016). *New Zealanders with disabilities and their Internet use.* Retrieved from:https://icdc.aut.ac.nz/\_\_data/assets/pdf\_file/0008/73439/New-Zealanders-with-disabilities-and-their-internetuse.pdf. [↑](#footnote-ref-11)
11. Public Service Commission. *Guidance: Data drilldown and technical guidance.* Accessed from: https://www.publicservice.govt.nz/research-and-data/guidance-data-drilldown-and-technical-guidance/ [↑](#footnote-ref-12)