

October 2024

**To Justice Select Committee**

Please find attached our submission on the Sentencing (Reform) Amendment Bill 2024

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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/$file/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 12 – Equal recognition before the law**
* **Article 13 – Access to justice**
* **Article 15 – Freedom from torture or cruel, inhuman or degrading treatment or punishment**

## 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

DPA opposes this legislation on the basis that it will disproportionately impact disabled people who are already overrepresented in the prison population.

According to multiple reports including the Turuki! Turuki! Safe and Effective Justice Advisory Group Report (2018)[[3]](#footnote-4) disabled people already make up a significant part of of our prison population. The longer sentences, decreased discretion for judges to hand out sentencing discounts, preventing repeated use of sentence reductions for youth and remorse and greater encouragement to the judiciary to use cumulative sentencing are all likely to result in more disabled people being imprisoned and for longer.

People with a wide range of impairments are already overrepresented within our justice and prison systems. These include people with learning and psychosocial impairments, autistic and neurodiverse people and those who are hard of hearing/ Deaf as well as those who acquire impairments while incarcerated.

The preliminary report of the Royal Commission of Inquiry into Abuse in Care ‘Tāwharautia: Pūrongo o te Wā (Tāwharautia)’ (2020)[[4]](#footnote-5) found that many survivors of the state care system became gang members because of the abuse and harm they experienced while in care.

The high level of disability related incarceration intersects with the highly disproportionate rates of imprisonment experienced by Māori of whom a considerable number are Tāngata Whaikaha disabled Māori.

These and many other existing inequities have been created by the long-term impacts of colonisation by the Crown on Māori, including disabled Māori.

The Waitangi Tribunal has also acknowledged the connection between State care and gang membership, highlighting that around 80 to 90 per cent of Mongrel Mob and Black Power gang whānau have been State wards.[[5]](#footnote-6) Gang-based survivors of state care have shared their experiences of being disabled tamariki who were actively recruited into gangs, leading many to serve time in prison for violent crimes and other offending.[[6]](#footnote-7)

While both Māori and non-Māori are impacted by disabling conditions or impairments, there are wide disparities in terms of their experiences with 50.9% of Māori in prison identifying as disabled.[[7]](#footnote-8)

These historical inequities will only be exacerbated by retributive law and order policies which do not address the roots of offending which include all the above factors along with inaccessible options for support and rehabilitation plus poverty and poorer health and educational outcomes.

Disabled people are also disproportionately at higher risk of being the victims of violence and crime compared to non-disabled New Zealanders.[[8]](#footnote-9)

However, placing people who have also themselves been victimised extensively in prison for longer will not tackle the cycles of violence and crime which impact on our society. Ministry of Justice figures from 2023 show that 56.5% of people with previous convictions are reconvicted within two years of being released from prison.[[9]](#footnote-10)

DPA supports the recommendations of the Turuki! Turuki! Report which called for a more restorative-based justice system where both victims/survivors and offenders would be supported to heal and rehabilitate.

Some people argue that offenders have choices around their offending. Yet for many, their choices and opportunities are limited due to circumstances that they grow up in, and the barriers to inclusion that exist for many. When both community and state have failed individuals while they are growing up or the nature of their impairments mean that they are denied access to education, training or employment, then people's choices narrow even further.

Serious steps need to be taken to address the root causes of crime, violence, power imbalances and societal inequity that lead to disabled people being statistically overrepresented as both victims or as offenders. If passed, this Sentencing (Reform) Amendment Bill will undermine efforts to effectively rehabilitate offenders and stop more people from becoming victims, hence DPA opposes this bill in full.

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. [turuki-turuki.pdf (justice.govt.nz)](https://www.justice.govt.nz/assets/turuki-turuki.pdf) [↑](#footnote-ref-4)
4. <https://www.abuseincare.org.nz/our-progress/library/v/194/tawharautia-purongo-o-te-wa-interim-report> [↑](#footnote-ref-5)
5. [Gangs’ first-ever joint hui to discuss State’s role in their formation, Royal Commission invited | Abuse in Care - Royal Commission of Inquiry](https://www.abuseincare.org.nz/our-progress/news/gangs-first-ever-joint-hui-to-discuss-states-role-in-their-formation-royal-commission-invited/) [↑](#footnote-ref-6)
6. <https://www.stuff.co.nz/pou-tiaki/131282484/disabled-gang-members-abused-by-state-found-welcoming-whnau-in-life-of-crime> [↑](#footnote-ref-7)
7. <https://www.corrections.govt.nz/resources/strategic_reports/disability_action_plan_2023_2027/introduction> [↑](#footnote-ref-8)
8. <https://www.equaljusticeproject.co.nz/articles/disabled-and-disadvantaged-disabled-people-as-victims-of-crime-in-new-zealand2023> [↑](#footnote-ref-9)
9. <https://www.justice.govt.nz/justice-sector-policy/key-initiatives/key-initiatives-archive/hapaitia-te-oranga-tangata/> [↑](#footnote-ref-10)