19th December 2013

Justice and Electoral Committee

Committee Secretariat  
Parliament Buildings  
Wellington 6160

**Submission on the Human Rights Amendment Bill**

To the Justice and Electoral Committee

**Submission from Disabled Persons Assembly (DPA) Inc.**

DPA Inc. wish to appear before the Committee to speak to our submission.

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**About DPA New Zealand Inc.**

DPA Inc. (New Zealand) is the national assembly and collective voice of disabled New Zealanders.

DPA Inc. is a Disabled Person’s Organisation (DPO) meaning it is governed by disabled people and the organisation’s main purpose is to articulate the aspirations of its members.

DPA has some 900 individual members who have disabilities themselves or are the parent, or guardian of a disabled person, and some 200 corporate members who represent or deliver services to disabled people. [DPA members](http://www.dpa.org.nz/our-organisation/our-members) form a network of regional assemblies to debate local and national issues.

DPA’s functions include:

* to promote the interests and wellbeing of all disabled people regardless of age, for our whole lives
* to engage with disabled people, DPOs and our valued allies, with the United Nations Convention on the Rights of Persons with Disabilities (CRPD) being the driver of our work
* to progress the CRPD in Aotearoa New Zealand.

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

Government accountability

The United Nations Convention on the Rights of Persons with Disabilities (CRPD) provides the mandate for disabled people to hold the Government to account on ensuring the full and equal enjoyment of all human rights by disabled people.

Partnership with DPOs

The implementation of the CRPD 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, including disabled children, through their representative organisations.[[1]](#endnote-1) This partnership goes beyond just consulting with disabled people.

CRPD is the minimum standard

DPA uphold the CRPD as the minimum standard for our participation in society.

**DPA Comments on this Bill**

1. DPA support a specialized and permanent disability rights role

DPA support the amendment of the Human Rights Act 1993 to provide a permanent and stronger focus on disability rights, however we have significant concerns about the way the Human Rights Amendment Bill proposes to do this.

DPA believe a dedicated specialist and permanent role of a Disability Rights Commissioner needs to be established to ensure the effective leadership of disability rights by the Human Rights Commission (HRC).

1. The case in support of a Disability Rights Commissioner role

The case for a Disability Rights Commissioner within the Human Rights Commission is supported by two significant facts:

1. the HRC’s specific role in promoting protecting and monitoring the UN CRPD, and
2. the persistently high proportion of disability discrimination complaints received by the HRC.

The HRC has a clear role in protecting the human rights of disabled people. It is an independent Crown entity established to promote and protect human rights, as well as to monitor compliance with national and international human rights law[[2]](#endnote-2). The HRC has an important role in educating and raising awareness of human rights, including the interrelationship of those rights with the Treaty of Waitangi.[[3]](#endnote-3)

In addition to its generic role to promote and protect human rights, in 2010 the Government gave the HRC a specific role in promoting, protecting and monitoring the implementation of the UN CRPD.[[4]](#endnote-4)

Much of the recent focus on disability rights within the HRC has been fueled by its new role in relation to the CRPD. However, it is important to also consider the persistent and high proportion of disability related complaints received by the HRC.

Every year since 2006 approximately 30% of all complaints of discrimination to the HRC have been related to disability discrimination. This pattern of high disability discrimination complaints received by the HRC was apparent well before the HRC was given a role in promoting and monitoring the CRPD. It may be argued that approximately one-third of the membership of the Commission and its subsequent work programme and staffing should be dedicated to addressing disability rights issues.

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| **Recommendation 1:**  That the persistent and high proportion of disability discrimination complaints received by the HRC be considered alongside the HRC’s specific role in relation to the CRPD when considering amendments to the membership of the HRC and the subsequent focus of the HRC’s work. |

1. The distinction between full-time and part-time Commissioners *(Clause 6)*:

DPA support removing the distinction between part-time and full-time Commissioners in a way than enables the appointment of either full-time or part-time Commissioners as appropriate. People should not be discriminated against on the grounds of whether they are able to work full-time or not. The Human Rights Act 1993 should enable the appointment of the best person for the position irrespective of whether that person is able to work full-time or part-time. Some disabled people, for reasons of their disability or otherwise, may be unable to work full-time. Ensuring this flexibility in working full-time or part-time is consistent with the CRPD’s principles of non-discrimination[[5]](#endnote-5), equal opportunities[[6]](#endnote-6) and reasonable accommodation.[[7]](#endnote-7)

As highlighted in point 2 above, there is a large volume of disability related work within the HRC and that should be taken into account when appointing a Commissioner or Commissioners. In the case that a part-time Disability Rights Commissioner is appointed working a lower number of hours, other generic Commissioners should be enabled to share the disability rights work load.

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| **Recommendation 2:**  DPA support the removal of the distinction between part-time and full-time Commissioners. |

1. A specialist Disability Rights Commissioner role *vs* a Disability Rights “portfolio”

The most significant change proposed by the Human Rights Amendment Bill is to remove the specialist roles of Race Relations Commissioner and Equal Employment Opportunities (EEO) Commissioner and instead appoint generic Human Rights Commissioners. The Bill then proposes that these generic Human Rights Commissioners provide leadership in the priority areas of race relations, EEO and disability rights by enabling the Chief Commissioner to designate Commissioners responsible for these, and any other, priority areas. This change proposes something akin to a disability rights portfolio instead of a clear dedicated Disability Rights Commissioner position.

DPA wish to express concerns with this proposal because it enables Commissioners to be appointed more than one priority area.

Perhaps the greatest risk to the effectiveness of the disability rights Commissioner work is that a Commissioner appointed to lead work in disability rights may also be designated to lead in other priority areas. As highlighted above, the amount of disability rights work within the Commission is significant with 30% of the HRC discrimination complaints being disability related and the HRC having a significant role in the promotion and monitoring of the CRPD. Thus, appointing a Commissioner to lead disability rights and another priority area greatly risks reducing that Commissioner’s effectiveness on disability rights.

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| **Recommendation 3:**  A specialist position of Disability Rights Commissioner be provided for in the Human Rights Act 1993, and this be a dedicated position with specific appointment criteria and functions (see Recommendations 4 and 5 below). DPA do not support creating a disability rights portfolio to be designated to a Commissioner. |

1. Appointment criteria

In addition to generic criteria for appointment provided in section 11 of the Human Rights Act 1993, the Human Rights Amendment Bill proposes “Further criteria” (clause 13) for the appointment of a Commissioner appointed to lead Commission work in a priority area. This further criteria includes that the person understand the principles and practice of that priority area, and have an appreciation of the issues and trends internationally and their relevance to New Zealand. DPA view this further criteria as very loose and potentially meaningless in relation to appointing a person to effectively lead disability rights issues.

In contrast, the *Human Rights (Disability Commissioner) Amendment Bill* that was developed by Catherine Delahunty in consultation with disabled people, provided more meaningful criteria for appointing a Disability Rights Commission, including that the person have:

* Knowledge of disabled people, and
* A commitment to actively engage with and report to disability communities.[[8]](#endnote-8)

Disability issues are wide ranging and complex. Understanding the disability sector, its various stakeholders and the real and perceived tensions around disability issues is vital for a Commissioner to provide effective leadership on disability rights issues. Furthermore, the CRPD requires that the government ensure that disabled people are involved in decisions that affect them.[[9]](#endnote-9) More often than not this does not happen. The CRPD independent monitoring report of 2012 found there is considerable disparity in the way different government agencies consult with disabled people and enable their participation in decision making.[[10]](#endnote-10) Thus, ensuring the Disability Rights Commissioner actively engages with disability communities is very important in order for this role to be effective and meaningful to disabled people.

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| **Recommendation 4:**  Appointment criteria for a Disability Rights Commissioner include that the person have:   * Knowledge of disabled people, and * A commitment to actively engage with and report to disability communities. |

1. Functions of a Disability Rights Commissioner

The Human Amendment Bill proposes additional functions for Commissioners appointed to lead work of the Commission in priority areas (clause 12 of the Human Rights Amendment Act). These additional functions include that that Commissioner will:

* Lead discussions in relation to that priority area
* Provide advice and leadership on that priority area, and
* Contribute to public debate on that priority area.

In contrast, the *Human Rights (Disability Commissioner) Amendment Bill* that was developed by Catherine Delahunty in consultation with disabled people, provided more meaningful functions for a Disability Rights Commissioner role, including:

* Actively engage with and regularly report to the various disability communities
* Act as an advocate for the rights and well-being of disabled people
* Advocate for and assist government agencies to implement the CRPD
* Monitor, analyse and promote the implementation of the CRPD
* Promote the participation of disabled people in decisions that affect them, and
* Advocate for and assist government agencies to implement the realisation of the human rights of indigenous disabled people in accordance with Te Tiriti o Waitangi.[[11]](#endnote-11)

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| **Recommendation 5:**  Functions of a Disability Rights Commissioner to include:   * Actively engage with and regularly report to the various disability communities * Act as an advocate for the rights and well-being of disabled people * Advocate for and assist government agencies to implement the CRPD * Monitor, analyse and promote the implementation of the CRPD * Promote the participation of disabled people in decisions that affect them, and * Advocate for and assist government agencies to implement the realisation of the human rights of indigenous disabled people in accordance with Te Tiriti o Waitangi. |

1. Expanding the functions of the Commission (clause 5(3)(c))

The Human Rights Amendment Act clause 5(3)(c) proposes to enable the HRC to make statements on matters that may affect or infringe human rights whether or not those human rights are affirmed in New Zealand domestic human rights law or international human rights law.

DPA support this change because some human rights related to disability may at times be articulated more clearly in international law that may not be affirmed in New Zealand domestic law. An example of this may be human rights related to disabled indigenous people.

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| **Recommendation 6:**  DPA support expanding the functions of the Commission to enable the Commission to make comments on matters that may affect or infringe human rights whether or not those human rights are affirmed in New Zealand domestic human rights law or international human rights law *(Human Rights Amendment Act clause 5(3)(c))*. |

1. Limited scope of the Human Rights Amendment Bill

The scope of this review of the Human Rights Act 1993 and Human Rights Commission was limited to looking at structural matters affecting the effectiveness and efficiency of the HRC. Other matters contained in the Human Rights Act 1993, such as the prohibited ground of discrimination and the exceptions were outside the scope of this review.[[12]](#endnote-12)

DPA wish to express its disappointment and concern that other aspects of the Human Rights Act 1993 could not be included in this review. Some human rights matters that impact on the promotion and protection of human rights for disabled people are unclear or missing from the Human Rights Act 1993 and as a result disabled people are not afforded the same human rights protections as non-disabled people. Examples include:

1. The Human Rights Act 1993 does not provide a clear definition of “reasonable accommodation” and this has been problematic to the detriment of disabled people. The HRC commented that:

*“the interests of disabled people would be better served if the HRA [Human Rights Act] contained a general obligation to accommodate disability and a definition of reasonable accommodation”*.[[13]](#endnote-13)

1. The prohibited grounds of discrimination do not include “language”. This was criticized by the United Nations Covenant on Civil and Political Rights Committee who expressed regret that New Zealand does not consider it necessary to protect all the prohibited grounds of discrimination stated in the Covenant, in particular language.[[14]](#endnote-14) The exclusion of “language” as a prohibited ground of discrimination in the Human Rights Act 1993 means that Deaf people may only claim discrimination under “disability” yet there are times when Deaf people experience discrimination on the basis of not being able to access New Zealand Sign Language (NZSL).
2. Sections 61 through to Section 69 of the Human Rights Act 1993 deal with other forms of discrimination, including racial disharmony, sexual harassment and victimization.[[15]](#endnote-15) Section 61 relates to racial disharmony and provides that it is unlawful to publish material that is abusive or insulting if it is likely to excite hostility against a group of people by reasons of their colour, race or national or ethnic origin. This limitation on publishing such abusive material exciting hostility is limited only to racial or ethnic groups and not disabled people.

A recent example highlights the need to also provide limitations on publishing such abusive and insulting material against disabled people. Recently, Michael Laws published on his Facebook page a view that it would be a “fantastic achievement” if all women pregnant with a baby with Downs Syndrome aborted their baby, and that Downs Syndrome was “eradicated”.

If a prominent New Zealander published similar comments on wishing to eradicate Maori or Asian or Islamic people there could have been public outrage and a formal complaint may have been made under the Human Rights Act. However, making these comments about a group of disabled people appears to be acceptable. This is not acceptable. Having no limitations or checks in place on publishing such abusive and insulting material against disabled people affords lesser protections to disabled people. New Zealand laws should uphold that disabled people, including people with Downs Syndrome, are no less valuable to society and have no less human rights than non-disabled people or people without Downs Syndrome.

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| **Recommendation 7:**  DPA recommend that the Justice and Electoral Committee note that the limitations of this review of the Human Rights Act 1993 has prevented the opportunity to amend other aspects of the Human Rights Act 1993 to provide disabled people the same human rights protections as non-disabled people. |

Thank you for considering DPA’s submission.

Sincerely



Rachel Noble

Chief Executive

1. **Endnotes**

   United Nations Convention on the Rights of Persons with Disabilities, Article 4.3 [↑](#endnote-ref-1)
2. Human Rights Act 1993. Sections 5(2)(a), 5(2)(c) and 5(2)(k). [↑](#endnote-ref-2)
3. Human Rights Act 1993. Sections 5(2)(a), 5(2)(d). [↑](#endnote-ref-3)
4. Ministry of Justice (2011) “Regulatory Impact Statement: Human Rights Amendment Bill”, 28th June 2011. P.5 [↑](#endnote-ref-4)
5. United Nations Convention on the Rights of Persons with Disabilities, Article 3(b) [↑](#endnote-ref-5)
6. United Nations Convention on the Rights of Persons with Disabilities, Article 3(e) [↑](#endnote-ref-6)
7. United Nations Convention on the Rights of Persons with Disabilities, Article 5.3 [↑](#endnote-ref-7)
8. Human Rights (Disability Commissioner) Amendment Bill. Clause 6. [↑](#endnote-ref-8)
9. United Nations Convention on the Rights of Persons with Disabilities, Article 4.3 [↑](#endnote-ref-9)
10. Human Rights Commission (2012) “Making disability rights real: Whakatūturu ngā Tika Hauātanga. Annual report of the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities.” 1 July 2011 – 30 June 2012. P.16 (Word Doc). [↑](#endnote-ref-10)
11. Human Rights (Disability Commissioner) Amendment Bill. Clause 7. [↑](#endnote-ref-11)
12. Ministry of Justice (2011) “Regulatory Impact Statement: Human Rights Amendment Bill”, 28th June 2011. P.1 [↑](#endnote-ref-12)
13. Human Rights Commission Letter to the Justice and Electoral Committee 1st August 2008. Accessed on 19th December 2013 at: <http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/02-Dec-2008_14-13-54_Letter_to_Select_Committee_Disability.html> [↑](#endnote-ref-13)
14. Human Rights Committee, *Concluding observations of the Human Rights Committee: New Zealand*, CCPR/CO/75/NZL (2002), paragraph 9. [↑](#endnote-ref-14)
15. Human Rights Act 1993. Sections 61 – 69. [↑](#endnote-ref-15)