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**To Department of Corrections**

Please find attached our submission on Options to Improve Safety in Prisons

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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 9 – Accessibility**
* **Article 13 – Access to justice**
* **Article 14 – Freedom from torture or cruel, inhuman or degrading punishment and treatment**
* **Article 16 – Freedom from exploitation, violence and abuse**
* **Article 22 – Respect for privacy**

## 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**
* **Outcome 5 – Accessibility**

# The Submission

DPA welcomes the opportunity to engage with the Department of Corrections on the discussion paper around improving prisoner safety in prisons.

Disabled people according to multiple reports including the Turuki! Turuki! Safe and Effective Justice Advisory Group Report (2018)[[3]](#footnote-4) already comprise a disproportionate number of our prison population.

While Corrections’ Disability Action Plan 2023 – 2027 carries Washington Short Set data showing that 17.3% of the country’s prison population experiences some form of impairment,[[4]](#footnote-5) the rate of imprisonment amongst disabled people is far higher. This is due to the Washington Short Set being limited in scope in that it omits autistic/neurodiverse people and people experiencing psychosocial disability from data sets.[[5]](#footnote-6)

One of the other key reasons as to why the number of disabled people in our prison system is undercounted was outlined in research by psychologist Ian Lambie for the Office of the Prime Minister’s Chief Science Advisor (2020). He found that there were a high number of un-diagnosed people living with head injuries, learning disability and neurodiversity within our prisons.[[6]](#footnote-7) This includes prisoners who have undiagnosed Foetal Alcohol Syndrome (FASD), attention deficit hyperactivity disorder (ADHD) and dyslexia.

For these reasons, people with a wide range of impairments are already overrepresented within our prison system. It is not only people with undiagnosed impairments/conditions who are impacted but also people living with every type of impairment including those who identify as D/deaf people.[[7]](#footnote-8) People may acquire impairment or become Deaf or hard of hearing either prior to imprisonment or during incarceration.

Also, 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 tāngata whaikaha disabled Māori.[[8]](#footnote-9)

The issue of the need to improve the security environment for all prisoners as well as staff and visitors is timely as it is likely that the prison population will increase substantially over the next five years.

This will mean that prison staff may also under greater pressure to secure and service the needs of a growing prison population.

Amongst this will be more disabled people who become entangled - both through committing serious offences and/or being imprisoned due to their being minimal support for them - with the criminal justice system.

There is a need for the entire prison system to address the barriers facing disabled prisoners to rehabilitation while making the changes outlined in the discussion paper.

DPA also recognises that disabled staff who work in our prison system need protection and accommodations too, as some will have acquired their impairments through being injured in assaults by prisoners.

We want to see changes be done in accordance with the relevant articles of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which apply to the need for disabled people’s rights to be respected within the justice system and to be protected against violence and abuse (from both other prisoners and staff) while in prison.

Accordingly, we seek to identify the options that best achieve the aims of striking a balance between the need to protect staff while upholding the rights of prisoners, especially disabled prisoners.

DPA acknowledges that the Department’s own Disability Action Plan (DAP) 2023 – 2027 is now being implemented. We see the most important components of Corrections DAP which apply to these proposals as being:

* Strategic Focus Area 1: National leadership
* Strategic Focus Area 3: Responding to disability support needs
* Strategic Focus Area 4: Developing the workforce
* Strategic Focus Area 5: Research and evaluation
* Strategic Focus Area 6: Working with tāngata whaikaha Māori/disabled people and their whanau

## 1.) Introducing additional or new cell features to support the safety of Corrections officers

DPA supports Option 2 in terms of the installation of cameras in some cells to enable staff to determine a prisoner’s whereabouts in a cell. We feel that this is the most appropriate option given that the other options of installing visual aids in all cells, and greater use of prisoner restraints (i.e., the drop pin door system) could violate the privacy rights of prisoners, especially disabled prisoners who would have to face more unwarranted violations of their privacy than would be justifiable. There would also be the risk with the greater use of restraints of disabled prisoners experiencing pain, discomfort or immobility.

It is essential that for disabled prisoners in cells with cameras, particularly people who experience psychosocial disability/mental distress, learning/intellectual disability and/or who are neurodiverse and D/deaf people have the purposes for the cameras clearly explained to them in an accessible way that is appropriate for their communication needs along with ensuring that the information is provided in in accessible formats.

All prison staff should receive disability responsiveness training both as part of the induction for new staff and as part of ongoing training.

Disability responsiveness training will help support staff to gain skills on how to appropriately communicate with prisoners, especially those with learning/intellectual disabilities, autism/neurodiversity and mental distress, and this includes when opening and closing cell doors.

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| **Recommendation 1:** that disabled prisoners in cells with cameras have the purposes for their presence explained to them in ways that are appropriate and meets their communication needs. |

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| **Recommendation 2:** that all prison staff are trained in disability responsiveness. |

## 2.) Providing greater transparency and clarity to Corrections’ use of cameras to record and monitor prisoners

DPA considers that options 1, 2, 3 and 4 outlined in the discussion document around the introduction of specific provisions about where cameras either can or cannot be placed in prisons strike a balance between upholding the legal rights of prisoners to enjoy a reasonable level of privacy while ensuring staff and prisoner safety.

Option one around specifying where CCTV cameras cannot be placed would be advantageous for all prisoners, including disabled prisoners, who would welcome their not being placed in areas such as Mothers and Babies Units; feeding and bonding rooms; medical examination rooms; or inside any cells apart from those for used to house prisoners who are at risk of self-harm.

Options two and three around the proposal to develop criteria for the placement of CCTV cameras in places where they are necessary and justified including exercise yards, communal areas, corridors, perimeters, and any areas where prisoners associate with one another would be advantageous for disabled prisoners and staff who would be better protected against the threat of intimidation and other harassment through their presence.

Option four around the proposal to clarify when body-worn cameras can be used in prisons, particularly when it comes to the recording of incidents, would be welcome.

We appreciate the need to increase transparency and accountability around when they are used, especially with respect to requiring prison staff to take reasonable steps to inform prisoners that they will be recorded before activating the cameras.

## 3.) Improve prison safety by increasing and clarifying Corrections’ powers to manage funds held by prisons for prisoners in trust accounts

DPA supports all options outlined in the discussion document around how to better manage prisoner funds held in prisoner trust accounts (PTAs).

We welcome this move as disabled prisoners are disproportionately more likely to be intimidated by fellow prisoners for money.

Option one around clarifying prison managers’ powers to regulate prisoners' withdrawals from PTA accounts, option two the ability for Corrections chief executive to set consistent standards around PTA management, option three around clarifying the powers Corrections has to stop or return deposits, and option four around giving prison managers the power to segregate any PTA funds that take a prisoner over their allowed balances all sound reasonable.

DPA recommends that a combination of regulatory and operational policy changes blending the best and most workable elements of all these proposals would be the most effective way to achieve this.

However, the need for prisoners to apply to prison managers before receiving overbalance deposits to purchase essential items like new glasses, should be as administratively straightforward as possible while preserving the need to protect prisoners doing this. This would avoid any unnecessary delays which can be important for disabled prisoners who may need to access essential disability supplies (i.e., sanitary underpants) quickly.

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| Recommendation 3: that the need for prisoners to apply to prison managers before receiving overbalance deposits to purchase essential items is administratively straightforward for prisoners and that service charges are kept to a minimum. |

## 4.) Increase the use of security classifications for remand prisoners to determine management, where practicable, to efficiently use prison resources

DPA supports option 2 of Corrections using existing non-regulatory measures to issue guidelines and operational procedures around the security classification of all remand prisoners.

We acknowledge that for remand prisoners awaiting sentence, there might be a need for Corrections to determine their classification prior to the potential for any long-term sentence (of at least two years duration) being handed down.

The reason for this is that for prisoners on remand, including disabled prisoners, there is the need to prematurely avoid imposing any security classification which may see them stigmatised if they are acquitted. That is why there is a need to ensure that any classification process does not impact on the health and wellbeing of remand prisoners, particularly on those who may be acquitted and freed.

However, we recognise that there will be times when remand prisoners will need to have security classifications, particularly high ones, imposed upon them. The case of the Christchurch Mosque terrorist is a good example of this as he was a potential danger to other people including prison staff and prisoners and those responsible for escorting and trying him within the court system.

DPA recognises that giving Corrections flexibility over decisions around whether to classify remand prisoners is vital as there will be times when this is appropriate and others not.

## 5.) Update provisions relating to prisoner haircuts and the growth and removal of facial hair to remove redundant requirements

DPA supports option one around removing all regulations placing restrictions on haircuts and facial hair and replacing this with operational procedures.

## 6.) Ensure that clothing and footwear worn by remand accused prisoners prioritises prison safety

DPA cannot endorse any of the options outlined as they don’t account for the needs of disabled prisoners and prisoners with health conditions.

While acknowledging references to the need to have appropriate footwear and clothing in prisons for both remand and sentenced prisoners, there is a specific need to recognise in operational procedures and regulations the requirement to be flexible when it comes to the needs of disabled prisoners and prisoners with health conditions.

For example, some disabled people may need to wear prosthetic footwear while in prison or extra warm or cool clothing if they have conditions which make it difficult to regulate body temperature.

There is a need for further discussions with disabled people, disabled people’s organisations (DPOs) and disabled prisoners and their families/whānau around developing flexible operational guidelines around the clothing and footwear needs of disabled prisoners and prisoners with health conditions.

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| **Recommendation 4:** that further discussions are held with relevant disability stakeholders around the clothing and footwear needs of disabled prisoners and prisoners with health conditions. |

1. <https://social.desa.un.org/issues/disability/crpd/convention-on-the-rights-of-persons-with-disabilities-articles> [↑](#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. [www.corrections.govt.nz/\_\_data/assets/pdf\_file/0008/49445/Disability\_Action\_Plan\_2023-2027.pdf](http://www.corrections.govt.nz/__data/assets/pdf_file/0008/49445/Disability_Action_Plan_2023-2027.pdf) [↑](#footnote-ref-5)
5. <https://e-inclusion.unescwa.org/node/1358> [↑](#footnote-ref-6)
6. <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> [↑](#footnote-ref-7)
7. <https://www.newshub.co.nz/home/new-zealand/2016/05/neurologically-disabled-overrepresented-in-prison.html> [↑](#footnote-ref-8)
8. <https://www.corrections.govt.nz/resources/strategic_reports/disability_action_plan_2023_2027/introduction> [↑](#footnote-ref-9)