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To Ministry of Justice

Please find below DPA’s submission on the Incitement of Hatred and Discrimination in Aotearoa New Zealand - discussion paper

## Disabled Persons Assembly NZ

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# Introducing Disabled Persons Assembly NZ

The Disabled Persons Assembly NZ (DPA) is a pan-impairment disabled person’s organisation that works to realise an equitable society, where all disabled people (of all impairment types and including women, Māori, Pasifika, young people) are able to direct their own lives. DPA works to improve social indicators for disabled people and for disabled people be recognised as valued members of society. DPA and its members work with the wider disability community, other DPOs, government agencies, service providers, international disability organisations, and the public by:

* telling our stories and identifying systemic barriers
* developing and advocating for solutions
* celebrating innovation and good practice

# The Submission

DPA Fully supports efforts to better protect people from speech that incites hatred and improves protections against discrimination.

DPA is largely supportive of the six proposals being consulted on and will provide a detailed response to each proposed provision below.

# Disability Discrimination

As incitement to violence and discrimination against disabled people is not an offence in New Zealand, there is no data about the prevalence of such language and behaviour.

However, we do have information on complaints of disability discrimination taken to the Office of Human Rights proceedings (OHRP), data on discrimination reported by disabled people as well as statistics from overseas that show high levels of abuse directed at disabled children.

In its report ‘The Disability Gap’ 2018 [[1]](#endnote-2) Statistics NZ reports that: “37 percent experienced discrimination in the past 12 months, compared with 19 percent of non-disabled people.”

The Human Rights Commission reports that for the year 2019-2020, 37% of the cases dealt with by the Director of Human Rights Proceedings were brought on the grounds of disability.[[2]](#endnote-3)

Data from UK studies show that:

• 79% of parents of a disabled child have had offensive comments aimed toward them and their child on either social media or to their face; and

• 57% of parents of disabled children have had offensive comments aimed toward them and their child, in a public setting.[[3]](#endnote-4)

DPA considers it highly likely that disabled children and their parents in NZ experience similar levels of abuse and offensive comments. Such comments have a lasting and profound impact for many disabled people.

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

Many of the Articles and principles contained in the UNCRPD[[4]](#endnote-5) are relevant to this discussion paper. We highlight those most relevant below:

**Article 3** **General Principles:**

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 disabilities 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 4.3 - Actively Engage with Organisations of Disabled People**

**Article 5** **- Equality and Non-Discrimination**

**Article 8** **- Awareness Raising**

**Article 13 - Access to Justice**

# The New Zealand Disability Strategy (2016-2026)

The New Zealand Disability Strategy,[[5]](#endnote-6) which is the Government’s primary vehicle for implementing the UNCRPD, has the following Outcomes relevant to this discussion paper:

**Outcome 4 - Rights Protection and Justice**

**Outcome 6 - Attitudes**

# Proposal 1

***Changing the language in the incitement provisions in the Human Rights Act 1993 so that they protect more groups that are targeted by hateful speech.***

DPA strongly believes that the language in the incitement provisions of the Human Rights Act (1993) should be changed to incorporate all protected groups (all groups currently protected under Section 21). Furthermore, we agree with Proposal 6, to add to the grounds in the Human Rights Act (1993) to clarify that trans, gender diverse and intersex people are protected from discrimination.

In order to avoid the need for repeated changes to the law whenever a new protected ground of discrimination is added to the Human Rights Act (1993), we recommend that the law is written in such a way that any new grounds can automatically be covered by incitement of hatred and discrimination.

# Proposal 2

***Replacing the existing criminal provision in the Human Rights Act 1993 with a new criminal offence in the Crimes Act 1961 that is clearer and more effective.***

DPA agrees with Proposal 2. We believe that changing the law so that a person who intentionally incites, stirs up, maintains or normalises hatred against any specific group of people based on a characteristic listed in Proposal 1, would break the law if they did so by being threatening, abusive or insulting, including by inciting violence.

DPA believes that whether a threat is made to someone verbally, in writing or a drawing, or online / electronically, that person is breaking the law and therefore welcomes this proposed change.

# Proposal 3

***Increase the punishment for the criminal offence to better reflect its seriousness. This would be changed from up to three months’ imprisonment or a fine of up to $7,000, to up to three years’ imprisonment or a fine of up to $50,000.***

Given the seriousness of this kind of behaviour and its profound adverse effect on disabled people, DPA supports the proposed increase in punishment as suggested in Proposal 3.

# Proposal 4

***Change the language of the civil incitement provision to match the changes being made to the criminal provision.***

DPA believes it makes sense to change the language in the civil incitement provision to match that of the criminal provision.

# Proposal 5

***Change the civil provision so that it makes “incitement to discriminate” against the law.***

DPA supports the proposal that the civil provision be changed so that a person is prohibited from inciting or stirring up other people to discriminate against any groups because of a characteristic protected by that law.

We also support this change as it would allow people to complain to the Human Rights Commission if someone encourages others to treat a person in a protected group worse or differently, as this would be breaking the law.

# Proposal 6

***Add to the grounds of discrimination in the Human Rights Act 1993 to clarify that trans, gender diverse and intersex people are protected from discrimination.***

As disabled people can be members of other protected groups in addition to disability, DPA strongly supports Proposal 6 to make it clear in law that trans, gender diverse and intersex people are protected from discrimination.

We recommend that government consult widely with rainbow communities and organisations to ensure that the language used in legislation reflects language used by the community and the evolving nature of this.

DPA wishes to restate that Proposal 1 covering incitement should be broadened to cover trans, gender diverse and intersex people.

1. `https://www.stats.govt.nz/infographics/the-disability-gap-2018 [↑](#endnote-ref-2)
2. Human Rights Commission Annual Report Pūrongo ā Tau 2019/20 Page 22 <https://www.hrc.co.nz/files/8116/0850/9706/HRC_Annual_Report_19-20_FINAL.pdf> [↑](#endnote-ref-3)
3. House of Commons Library Briefing paper 8537 Hate Crime Statistics Page 28 <https://researchbriefings.files.parliament.uk/documents/CBP-8537/CBP-8537.pdf> [↑](#endnote-ref-4)
4. [United Nations Convention on the Rights of Persons with Disabilities - Office for Disability Issues (odi.govt.nz)](https://www.odi.govt.nz/united-nations-convention-on-the-rights-of-persons-with-disabilities/) [↑](#endnote-ref-5)
5. [New Zealand Disability Strategy - Office for Disability Issues (odi.govt.nz)](https://www.odi.govt.nz/nz-disability-strategy/) [↑](#endnote-ref-6)