

15 December 2010

Gail Cooper
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Email: odi@msd.govt.nz

Dear Ms Cooper

RE: Draft report on the United Nations Convention on the Rights of Persons with Disabilities

Thank you for the opportunity to comment on the draft New Zealand report on implementing the United Nations Convention on the Rights of Persons with Disabilities (the draft report).

I commend the Office for Disability Issues for preparing a well-written and comprehensive draft report. Overall, the draft report appears to satisfactorily cover the current state of disability support services and relevant legislation. I have only a few comments to make regarding the draft report, based on complaints and enquiries commonly received by the Office of the Health and Disability Commissioner (HDC).

Article 9 - Accessibility

Key current issues regarding accessibility in health and disability services that are not identified in the draft report are:

- Not all health care facilities are fully accessible for people with impairments. For example, not all facilities have height-adjustable examination tables, and medical laboratories do not all have accessible toilets.
- Information is not always available in accessible formats, for example announcements in hospital waiting rooms are made only in audio format.

Article 19 - Living in community

Key issues regarding living independently that are not identified in the report are:

- Lack of choice: in many parts of the country there are a limited number of service providers, so disabled persons and their families have limited or no choice of service provider.
- Service gaps: HDC often receives complaints about a lack of services available that cater to needs of specific groups, such as Autistic Spectrum Disorder. These gaps in service often result in persons with such needs having to live in the community houses with people with intellectual impairments, and their specific behaviour and cognitive needs are not adequately met.

References to HDC

Paragraphs 63, 125, 149 and 172 refer to the “Code of Health and Disability Consumer Rights”. The correct title is “Code of Health and Disability Services Consumers’ Rights”, and I recommend correcting this throughout the document.

Paragraph 151 sets out that, outside the compulsory assessment and treatment for mental illness regime, patients must give written consent for treatment. However, consent for treatment is only required in writing if the consumer is to participate in any research, the procedure is experimental, the consumer will be under general anaesthetic, or there is a significant risk of adverse effects on the consumer (see Right 7(6) of the Code). Thus I recommend removing reference in this paragraph to consent being “written”.

Paragraph 172 states that the Code “protects people in New Zealand from forced sterilisation”. I am unsure of the authority for this proposition; while the Code does set out the right to give informed consent before any service is provided (Right 7), there are no particular protections regarding compulsory sterilisation. My understanding is that it is generally accepted that a court order should be sought for sterilisation if the patient is an adult and incompetent. I recommend this paragraph is revised.

Paragraph 214 refers to the right of any person to make a complaint to HDC about a breach of the right to privacy (Right 1(2) of the Code). As HDC does not always investigate such complaints and may resolve the complaint through other resolution avenues, I recommend amending this sentence to read “*may* investigate and rule on that complaint”.

HDC’s promotion of the Convention

HDC has taken proactive measures to promote the purpose of the Convention by creating two informative resources. The resources were launched in March 2010:

- For disability service providers: “Are you committed to the Convention?” This resource provides useful tips for implementing the United Nations Convention at an organisational level for disability service providers. The resource also includes links to useful websites that could provide further information.
- For Government agencies: “Is your agency committed to the Convention?” This resource provides useful tips for implementing the United Nations Convention at an organisational level for government agencies. The resource also includes links to useful websites that could provide further information.

HDC takes into account the Convention when assessing disability complaints, and aligns our education for providers with the Convention.

Thank you again for the opportunity to comment on the draft report.

Yours sincerely

Tania Thomas
Deputy Health and Disability Commissioner, Disability