



Disability (United Nations Convention on the Rights of Persons with Disabilities) Bill (232—1) and international treaty examination of the Convention on the Rights of Persons with Disabilities

Report of the Justice and Electoral Committee

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| Contents | |
| Recommendations | 2 |
| Introduction | 2 |
| Reasonable accommodation | 2 |
| Disqualification | 3 |
| Financial costs | 3 |
| Optional protocol | 3 |
| Ratification | 4 |
| Conclusion | 4 |
| New Zealand National Party minority view | 4 |
| Appendix A | 5 |
| Appendix B | 6 |

Disability (United Nations Convention on the Rights of Persons with Disabilities) Bill and international treaty examination of the Convention on the Rights of Persons with Disabilities

Recommendations

The Justice and Electoral Committee has examined the Disability (United Nations Convention on the Rights of Persons with Disabilities) Bill, and recommends that it be passed.

The Justice and Electoral Committee has also conducted an international treaty examination of the Convention on the Rights of Persons with Disabilities, and recommends that the House take note of its report.

Introduction

The Convention on the Rights of Persons with Disabilities was adopted by consensus by the United Nations General Assembly in New York on 13 December 2006. New Zealand signed the convention on 30 March 2007. The Disability (United Nations Convention on the Rights of Persons with Disabilities) Bill would allow the ratification of the convention to proceed, by amending the Human Rights Act 1993 to align the provisions regarding the rights of disabled people with the convention's definition of "reasonable accommodation", and amending other legislation that is inconsistent with the convention.

The New Zealand Disability Strategy was launched on 30 April 2001. The strategy is designed to provide a framework to enable the Government to remove barriers to and to promote disabled people's full participation in society. The strategy has 15 objectives and more than 100 action points. We were pleased to hear that the ratification of the convention and enactment of this bill would uphold the New Zealand Disability Strategy.

Reasonable accommodation

We were interested in the meaning of "reasonable accommodation", which the convention specifies as a right of disabled people, and its practical application. The bill amends the Human Rights Act 1993, and while there is no explicit definition of "reasonable accommodation" in the Act, the proposed amendments in the bill are to clarify rights and obligations in specific contexts, such as partnerships, vocational training bodies, and in educational institutions. This would allow analysis of each situation and the application of individual proportionality. We were advised that the application of the obligation in the Human Rights Act to accommodate disabled people can, in some circumstances, be unclear. The proposed amendments would clarify these obligations.

Disqualification

Part 2 of the bill amends many statutes that use the definition of mental disorder provided by the Mental Health (Compulsory Assessment and Treatment) Act 1992 in order to disqualify a person from some public or fiduciary offices. The bill would remove this disqualification in some instances, and in others replace it with a test based on the exercise of certain powers under the Protection of Personal and Property Rights Act 1988. This change would affect the right to hold office in various institutions and organisations, including school boards of trustees, councils of tertiary institutions, local authorities, registered traders of motor vehicles, and many others. We consider that the amendments proposed in the bill would give clear guidelines for disqualifying people from holding office and for testing whether they were generally capable of holding office.

Financial costs

It is expected that the cost of implementing this bill and ratifying the convention will be minimal. We heard that unless the Government were to accelerate the progressive implementation of the convention, there would not be a large increase in the expenditure incurred by Government agencies. Agencies are already working to implement the New Zealand Disability Strategy, and the requirements for implementing the convention would be expected to align with this work. Any necessary increases in funding would be met by increases to baseline funding.

We regard the convention as an important step forward that will lead to increased participation in society by people with disabilities, and more awareness of their rights. Most of us accept the advice that the rights conferred under the convention merely confirm the existing position under law. Accordingly, we are very satisfied that the consultation exercise conducted was appropriate.

Optional protocol

There is also an Optional Protocol to the Convention on the Rights of Persons with Disabilities. It is not proposed that New Zealand become a party to the optional protocol at present.

The optional protocol gives victims of alleged breaches of the convention the right to make complaints to the United Nations Committee on the Rights of Persons with Disabilities. There is an overlap between this optional protocol and an optional protocol to the International Covenant on Economic, Social and Cultural Rights, which is under negotiation and will be considered further during this year's session of the United Nations General Assembly. New Zealand has been a party to this covenant since 1979. Once the optional protocol to the International Covenant on Economic, Social and Cultural Rights is adopted, the Government will consider its position on both protocols.

Even if they do not ratify the convention's optional protocol, States will be examined for compliance with it. States are required to submit a report on implementation and compliance within two years of becoming party to the convention, and then every four years after that. The United Nations Committee on the Rights of Persons with Disabilities examines the reports and makes recommendations.

Ratification

We consider that the ratification of this convention would increase scrutiny of compliance with its obligations by both the private and the public sector. We consider it imperative that organisations, companies, and institutions should consider the convention when any pertinent changes are being made or policies are being developed, to avoid having to make changes to comply retrospectively.

During our examination of this bill and the convention, we heard from the Human Rights Commission, which referred to its report *The Accessible Journey: Report of the Inquiry into Accessible Public Land Transport*. The commission expressed frustration that disability issues are not being taken into account when changes are made, especially in areas such as transport. We welcome the focus on disability issues that the bill would bring about if it were enacted and the convention ratified, and hope that the needs of people with disabilities will become mainstream issues to consider in the making of decisions.

Conclusion

This bill was strongly supported by all the oral submitters. They also supported ratifying the convention as soon as possible. We were advised that for New Zealand to participate in the first Conference of States Parties the convention must be ratified by 3 October 2008. We agree with these sentiments and urge the House to pass the bill, and thereby enable the ratification of the convention, as soon as practically possible.

New Zealand National Party minority view

National supports the excellent submissions to this bill from the disability sector and agrees there are advantages to having the convention ratified in an expeditious manner.

However, we are concerned, considering the long time from signing the convention on 30 March 2007 the Government had to prepare for ratification, that a wide range of potentially affected stakeholders were not given the opportunity to submit, or comment on the bill. Submissions were opened and closed within a very short timeframe.

We agree with the provision of “reasonable accommodation” but to make it work for disabled people, employers, unions, and businesses up and down New Zealand will be affected and should have been consulted, educated, and hopefully brought on board.

We also consider a realistic appraisal for the financial implications of this Bill were not made. This should be a responsibility of Government, and an important mechanism to ensure that expectations are met.

Despite these shortcomings, National is moved by the sincerity and strong calls by the disability sector that supporting this bill will help their lives and others elsewhere around the globe.

Appendix A

Committee procedure

We called for public submissions on the United Nations Convention on the Rights of Persons with Disabilities. The closing date for submissions was 21 July 2008. We received 17 submissions from interested groups and organisations. We heard five submissions.

The Disability (United Nations Convention on the Rights of Persons with Disabilities) Bill was referred to us on 22 July 2008.

We received advice from the Office of Disability Issues, the Ministry of Justice, the Ministry of Social Development, and the Ministry of Foreign Affairs and Trade.

Committee members

Lynne Pillay (Chairperson)

Christopher Finlayson (Deputy Chairperson)

Chris Auchinvole

Mark Blumsky (from 30 July 2008)

Charles Chauvel

Hone Harawira (nonvoting member)

Mētiria Tūrei

Nicky Wagner (until 30 July 2008)

Louisa Wall

Appendix B

Convention on the Rights of Persons with Disabilities

National Interest Analysis

1. Executive summary

1 It is proposed that New Zealand ratify the Convention on the Rights of Persons with Disabilities (“the Convention”). A copy of the Convention is attached as Appendix A.

2 The Convention’s purpose is set out in article 1: “To promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.

3 States are required to ensure disabled people enjoy, on an equal basis with others, their human rights. It does not create new rights for disabled people per se, although it does build on conventional understandings of what is required to implement existing human rights as they relate to disabled people.

4 The Convention will complement the outcomes-oriented objectives of the New Zealand Disability Strategy by providing practical guidance on removing barriers that prevent disabled people enjoying rights on an equal basis with others.

5 Since 2002, New Zealand played a leading role in the development of the Convention. Partnerships with the disability sector, both through domestic consultation and as members of the official delegation at the United Nations negotiations, significantly informed the New Zealand approach.

6 New Zealand disability sector organisations strongly support the Convention. They expect that New Zealand will follow up on its leadership with the Convention to date by ratifying it and implementing its obligations.

2. Nature and timing of proposed treaty action

7 The Convention on the Rights of Persons with Disabilities (“the Convention”) was adopted by consensus by the United Nations General Assembly in New York on 13 December 2006. New Zealand signed the Convention on 30 March 2007.

8 It is proposed that New Zealand ratify the Convention, preferably by September 2008 to enable New Zealand to participate in the first Conference of State Parties.

9 The Convention will enter into force for New Zealand on the thirtieth day after the deposit of our instrument of ratification.

3. Reasons for New Zealand becoming Party to the treaty

10 At the end of the 1990s, statistics compiled by the United Nations showed that disabled people were often denied the human rights enjoyed by others, and as a consequence were often marginalised in their participation in society. Disabled people were shown to experience multiple disadvantages in many aspects of daily life, and were often States' most marginalised and vulnerable population group.

11 The government is committed to promoting the rights and full participation of disabled people in society, on an equal basis with others. In New Zealand, one in five people report having an impairment (or disabilities). Disabled New Zealanders typically have lower employment rates, lower incomes, lower education attainment, and more unmet health needs than non-disabled people (from the 2001 Post Census Disability Survey).

12 This commitment has been demonstrated through the New Zealand Disability Strategy and progress in its implementation by government agencies and others. The Convention will support this commitment and help generate further momentum to contribute to making real differences in the lives of disabled people.

13 In July 2002, the Office for Disability Issues was established within the Ministry of Social Development to provide a dedicated focus in government on disability. Its core role is to promote and monitor implementation of the New Zealand Disability Strategy, and support the Minister for Disability Issues.

14 Despite the significant progress achieved through the New Zealand Disability Strategy, there remain many barriers experienced by disabled people in New Zealand that prevent their full participation in society. It remains a high priority for government to identify and remove these barriers. The Convention will provide a new impetus and practical focus to removing these barriers. It will reinvigorate activity to implement the New Zealand Disability Strategy and the commitment to ensuring full rights of citizenship for disabled people.

15 As of 5 June 2008, 129 States have signed the Convention, and 27 have ratified it. The Convention entered into force on 5 May 2008. The signatories include many like-minded States such as: Australia, Canada, the UK, Netherlands, Denmark, Norway, and Sweden.

16 Consistent with its leading role in the development of the Convention, New Zealand is more advanced in the process towards ratification than many other like-minded States.

4. Advantages and disadvantages to New Zealand of the treaty entering into force for New Zealand

Advantages

17 Ratification of the Convention has advantages for New Zealand domestically and internationally.

18 The Convention provides practical guidance for States on measures they should take to remove barriers to disabled people being able to enjoy those rights. Accordingly, New Zealand's ratification will focus action domestically on enabling disabled people to

participate in and contribute to all aspects of society, and at all life stages, on an equal basis with others.

19 Greater impetus and support for implementation of the New Zealand Disability Strategy will be provided by ratification. The Convention provides practical guidance on the implementation of the rights of disabled people, both immediately in the text and over time through the regular periodic reporting process to the United Nations treaty body established by the Convention. This will assist government agencies to analyse and improve, where necessary, the current mechanisms for promotion and monitoring of policy that impact on disabled people. It will also help to ensure that mainstream services are inclusive of disabled people and delivered in a non-discriminatory way.

20 Internationally, ratification will continue support for a rules-based international system, which strengthens New Zealand's security and prosperity goals and promotes our values internationally. In this regard, ratification, at an earlier stage than most like-minded partners, will consolidate the leadership New Zealand has shown in relation to this Convention. Ratification of this, the most significant United Nations human rights treaty of the new millennium, will add to New Zealand's strong role as a human rights defender country in United Nations fora.

Disadvantages

21 There are no perceived disadvantages to New Zealand ratifying the Convention. Its obligations are consistent with current government policy based on the New Zealand Disability Strategy, and with other human rights treaties that New Zealand has ratified.

22 Over time, government departments may experience increased pressure from disabled people and disability sector organisations to further implement the Convention and increase funding towards meeting obligations under it. These pressures and expectations will need to be managed through a considered setting of government priorities and budget allocations, and open communication with respect to how the government is meeting the Convention's obligations.

5. Legal obligations which would be imposed on New Zealand by the treaty action, the position for reservations to the treaty, and an outline of any dispute settlement mechanisms

23 The Convention does not create new rights for disabled people per se, although it does build on conventional understandings of what is required to implement existing human rights as they relate to disabled people. The Convention elaborates on obligations already applicable to New Zealand internationally through other human rights instruments and domestically through human rights legislation.

24 Disabled people are defined in the Convention as including "those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others". This definition is consistent with the New Zealand Disability Strategy.

General obligations

25 The Convention makes it explicit that States must ensure the full realisation of all human rights and fundamental freedoms for all disabled people, on an equal basis with others, without discrimination of any kind on the basis of disability. This is already a feature of New Zealand law.

26 The Convention requires States to take action to remove barriers to the participation of disabled people in society, whether this is done through legislation, practice, or other measures (article 4). The principles that underlie the Convention are presented in article 3.

27 Many articles interweave civil and political rights (such as non-discrimination or access to justice) which must be immediately realised at the time of ratification) and economic, social and cultural rights (such as the right to the highest attainable standard of health or accessible transport services, which may be realised progressively, to the maximum of available resources).

28 Where rights can be progressively implemented, it is up to the Government to decide how quickly and to what degree the implementation will happen, so long as there is a clear and concrete commitment that action will happen to the maximum of its available resources.

29 This process is similar to the current implementation of the New Zealand Disability Strategy, where any costs are met by government agencies' ordinary funding processes, whether by internal resource allocation or budget bids, and implementation is subject to obtaining the resources needed.

30 A right in the Convention that is not explicit in earlier human rights treaties is article 19 (living independently in the community). This article expands the need for States to recognise the right of disabled people to live in the community, with choices equal to others, and to take effective and appropriate measures to facilitate this happening. Such measures include enabling disabled people to: choose their place of residence and choose who they live with; access a range of in-home and community support; and access community services and facilities available to the general population. This is consistent with the New Zealand Disability Strategy, but ratification of the Convention may result in pressure for increased pace of change in its implementation.

31 Many rights and articles are interdependent. Some articles describe action that may be a means to achieve an outcome but which is not an end in themselves. For example, personal mobility (article 20) requires access to buildings and transport services (article 9), as well as other supports to enable someone to enjoy independent living and being included in the community (article 19).

32 At a minimum, States should not do anything that restricts the freedom or liberty of disabled people. States need to ensure that disabled people enjoy full rights of citizenship, on the same basis with others. States should also provide mainstream goods and services in a non-discriminatory way.

33 Specific areas focused on in the Convention are: experiencing equality and non-discrimination (article 5), the right to life (article 10), equal recognition before the law

(article 12), protection and safety in situations of risk and humanitarian emergencies (article 11), access to justice (article 13), liberty and security of the person (article 14), freedom from torture or cruel, inhuman or degrading treatment or punishment (article 15), freedom from exploitation, violence and abuse (article 16), protecting the integrity of the person (article 17), liberty of movement and nationality (article 18), freedom of expression and opinion, and access to information (article 21), respect for privacy (article 22), and participation in political and public life (article 29),

Accessibility

34 Accessibility is an underlying principle of the Convention (see article 3), as well as being dealt with in an article in its own right (article 9). Article 9 requires States to ensure that disabled people can access their built environment, transportations, public facilities, supports, services and communication technologies (websites, print publications).

35 Accessibility is explicitly mentioned in other articles, such as justice (article 13), living independently and being included in the community (article 19), information and communication services (article 21), education (article 24), health (article 25), habilitation and rehabilitation (article 26), work and employment - human resource policies and practices (article 27), adequate standard of living and social protection (article 28), participation in political and social life (article 29), and participation in cultural life, recreation, leisure and sport (article 30).

Reasonable accommodation

36 Reasonable accommodation is another underlying principle that is threaded throughout the Convention. It is explicitly mentioned in articles 14 (liberty and security of the person), 24 (education), and 27 (employment).

37 The Convention describes reasonable accommodation (in article 2) as “necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms”.

38 The Convention also describes discrimination to include the denial of reasonable accommodation (in article 2), and that “State parties shall take all appropriate steps to ensure that reasonable accommodation is provided” (article 5).

Participation and inclusion

39 Access to transport and personal mobility are described in article 9 (accessibility) and article 20 (personal mobility), and are required to fulfil other rights such as article 19 (living independently and being included in the community).

40 The provision of supports is described in several articles (9, 19, 20, 21, 24, 30, 31). Access to appropriate supports is sometimes required for the enjoyment of other rights, such as in articles 25 (health), or 27 (work and employment).

41 Participation in cultural life, recreation, leisure and sport (article 30) describes equal access for disabled people, as a necessary part of having an ordinary life and being included in society on an equal basis with others.

42 The right to education is described in article 24 as the right to access an inclusive education system at all levels and life long learning. This includes compulsory education, tertiary education and vocational training opportunities.

43 Article 25, on health, requires States to ensure access for disabled people to the same quality and range of health services with others, but also to those services needed specifically because of their impairments.

44 A range of comprehensive measures (such as health, employment, education, and other social services) are promoted in article 26 (habilitation and rehabilitation) to support disabled people being able to attain and maintain their maximum independence and participation in all aspects of life.

45 Ensuring that disabled people are guaranteed an adequate standard of living, including things like income, food, clothing and housing, and other basic necessities of life (such as clean water) is described in article 28.

46 Work and employment is described in article 27 as a right to earn a living in the open labour market without experiencing discrimination on the basis of disability. Critical to making this happen is the provision of reasonable accommodation, being responsive to accessibility needs, and accessing appropriate supports.

47 The collection of data will inform monitoring of progress in realising the rights of the Convention. Collecting and publishing data on disabled people is covered in article 31, and is an important part of promoting the visibility of disabled people in society.

Addressing discrimination

48 Other articles address discrimination experienced by disabled people on the basis of their impairment (articles 5, 6, 7, 8, 23). Negative social attitudes can prevent disabled people from participating in society as much as any physical barrier.

49 The Convention acknowledges that women (article 6) and children (article 7) can experience discrimination in addition to their experience of disability, and require extra attention to ensure they enjoy rights on the same basis with others.

Implementation measures

50 Article 33 requires a focal point in government with responsibility for implementation of the Convention and facilitating action, and a framework to promote, protect and monitor implementation. There should be one or more independent mechanisms in the monitoring framework, and civil society should be fully involved in the monitoring process.

51 Article 35 requires reporting by State parties to the United Nations committee set up under the Convention. The first report shall be first due two years after the Convention enters into force for New Zealand, and then at least every four years thereafter.

Reservation

52 Article 46 provides for State parties to make reservations, provided they are compatible with the object and purpose of the Convention.

Dispute settlement

53 There is no dispute settlement provision in the Convention.

6. Measures the Government could or should adopt to implement the treaty action, including specific reference to implementing legislation

New legislation

54 No new legislation is required for New Zealand to implement the Convention domestically.

Changes to current legislation

55 Provisions in various enactments have been identified that are inconsistent with the Convention, or that need clarifying so those people affected are not denied rights required by the Convention and other treaties that New Zealand has ratified. The proposed legislative changes are primarily minor and technical and have been agreed with agencies administering the legislation. The Minister for Disability Issues is leading amendments to the enactments in question, with the aim of enacting the amendments by September 2008 if possible.

56 As the legislative amendments are primarily minor and technical, it is preferred to proceed with an omnibus bill to enact the changes. The fiscal impact of the amendments will be minimal, if any.

57 Government agencies administering the enactments being amended have the responsibility to inform those organisations affected of the changes proposed and any likely effects.

Amendments to references in enactments to a person's status as defined in the Mental Health (Compulsory Assessment and Treatment) Act 1992

58 Legislative amendments are proposed to enactments where a person is disqualified from office, vacates office, or is disqualified from carrying out an activity or performing a function, solely on the basis of their status under the Mental Health (Compulsory Assessment and Treatment) Act 1992 rather than on any assessment of their capacity or capability.

59 These enactments use as a proxy or test for a person's capacity or capability that person's status as being or having been mentally disordered within the meaning of the Act or its predecessor, and/or subject to detention or compulsory treatment orders under that Act.

60 The problem is not with the Mental Health (Compulsory Assessment and Treatment) Act 1992 itself, but with the references by other enactments to it. It is clear that these enactments are using a person's status under the Act for a purpose that the Act was not intended or designed to achieve. That Act enables the compulsory assessment and

treatment of people with mental disorder, and seeks to provide better protection for the rights of those people. The Act does not and was never intended to establish a mechanism for determining whether a person has the legal capacity for appointment to office and/or capability to undertake a role or function.

61 A number of enactments contain disqualification or removal provisions that refer to a person's status under the Mental Health Act 1969, the predecessor to the Mental Health (Compulsory Assessment and Treatment) Act 1992. These provisions were not consequentially amended by the 1992 Act. Under section 22(2) of the Interpretation Act 1999, these references to the 1969 Act are generally to be interpreted as references to the 1992 Act. It is proposed that the inconsistent provisions in these enactments are amended similarly.

62 Customised amendments are required to meet the different context and application of each enactment. Responsible government agencies have each agreed to the proposed amendments, which are administrative in nature. It is proposed that the enactments concerned are amended by either:

- repealing the inconsistent provision(s); or
- amending its wording so that it is clear that the criteria for disqualification from or vacation of office, or disqualification from carrying out an activity or function, are that the person is either not capable or unable to carry out the duties of the office or the activity or function; or
- amending its wording to be consistent with other disqualification provisions that are near equivalents.

63 Also proposed for amendment are a number of older enactments that make reference to people being mentally disordered without reference to the Mental Health (Compulsory Assessment and Treatment) Act 1992 or its predecessor.

64 The result of the amendments will be that boards or agencies will rely on existing mechanisms to regulate the non-performance of a person carrying out a role, in the same way as for other people. If an assessment of capacity is required, boards or agencies may need to obtain (and pay for) assessments of capacity before they can decide whether a person is disqualified for appointment or can be removed from office.

Trustee Act 1956

65 Section 15(1)(j) of the Trustee Act 1956 enables a trustee to appropriate property towards or in satisfaction of a legacy provided the trustee first gives notice to all interested persons who are of full age and mental capacity.

66 It is proposed to amend this provision to remove the reference to full age and mental capacity.

Juries Act 1981

67 Section 8(i) of the Juries Act 1981 disqualifies a person with a mental disorder from serving on a jury. The definition of mental disorder is overly broad and includes mood disorders no matter how severe their effect.

68 It is proposed to repeal this provision and amend other provisions that allow a person to be excused or discharged from jury service, or for a challenge on the ground of physical disability to include mental disability.

Waitangi National Trust Board Act 1932

69 Schedule 1, clause 8(c) of the Waitangi National Trust Board Act 1932 provides that any person holding a position on the board of trustees shall vacate their position if that person becomes mentally defective and is received or detained in any mental hospital. The provision focuses on status as an inpatient and not capacity to undertake the functions and duties of the position.

70 The schedule is a copy of the Trust Deed which, as an historical document, cannot be amended easily. It is proposed, however, that a provision be inserted into the Act which deems the reference to becoming mentally defective or being received or detained in any mental hospital to mean becoming subject to a property order under sections 30 or 31 the Protection of Personal and Property Rights Act 1988.

New Zealand Superannuation and Retirement Income Act 2001 and Social Security Act 1964

71 The New Zealand Superannuation and Retirement Income Act 2001 (section 19(6)(b)) and the Social Security Act 1964 (section 75(4)(b)) state that people in hospital or a secure psychiatric unit for more than 13 weeks may be paid a lesser amount than the hospital rate .

72 The Ministry of Social Development's Chief Executive has the discretion to pay less than the hospital rate to a patient based on their capacity to appreciate payments. The advice of the hospital is taken on the ability of the patient to use the money and the rate of payment is set at a level considered sufficient to meet the average weekly expenditure of the client. However, the Ministry has indicated that this provision is rarely, if ever, used and therefore may be repealed without consequence.

Human Rights Act 1993 and reasonable accommodation

73 There is uncertainty whether the Human Rights Act 1993 fully implements the obligation prescribed in the Convention to "prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds." The definition of discrimination includes the denial of reasonable accommodation.

74 Reasonable accommodation is defined as necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms. The actual modification and adjustments required to put reasonable accommodation in practice depend on the situation in question, and may not always involve cost. An example is where an employer accommodates an employee by being flexible in the person's job arrangements, such as the physical location of where they work or start and finish times.

75 The Human Rights Act 1993 (the Act) is primarily an anti-discrimination statute applying to both the public and private sectors. The substantive protections in Part 1A (public sector) and Part 2 (primarily relating to the private sector) operate at different levels of prescription.

76 Part 1A of the Act, which applies to the full range of public sector activities (excluding employment), appears to be consistent with the Convention's obligation to provide reasonable accommodation.

77 Unlike Part 1A, Part 2 does not contain a general prohibition on discrimination. Instead, Part 2 targets certain discriminatory conduct and contains prohibitions on conduct amounting to unlawful discrimination:

- by the private sector in nine specified areas of activity (such as the provision of goods and services, and transport)
- by the private and public sectors in employment.

78 Each of the prohibitions in Part 2 is subject to its own exceptions and qualifications. Some of these expressly incorporate the concept of reasonable accommodation, but others do not.

79 There is some uncertainty as to whether the prohibition on the denial of reasonable accommodation in Part 2 accords with the scope or standard in the Convention. It is possible to argue that without amendments to the Act, there is substantial risk that Part 2 may be applied in a manner that could place New Zealand in breach of its obligations under the Convention. This risk is substantial because litigation on the issue would likely involve private sector defendants.

80 It is also possible to argue, however, that there is a general requirement to make accommodation for persons with disabilities and that the explicit references to reasonable accommodation are only in those areas of the Act that are of most significance or impact, where employers and service providers, for example, require some leeway. This is supported by the following points:

- the need to interpret the Act in a broad and purposive manner
- the need to take into account New Zealand's international obligations
- the definition of disability in the Act includes "(vi) Reliance on a guide dog, wheelchair or other remedial means"
- the prohibition of indirect discrimination in section 65 of the Act
- the explicit references in the Act to the notion of reasonable accommodation are stated to be exceptions, suggesting the existence of a general duty of accommodation to which the exception can apply.

81 In those areas where no exception is provided, accommodation is arguably easily achieved or not in issue, and in some limited cases, the denial of reasonable accommodation appears always to be justified.

82 This uncertainty creates a substantial risk that ratification, in the absence of amendments to the Act, may lead to New Zealand being criticised by the United Nations Committee on the Rights of Persons with Disabilities for failing to actively meet the Convention's obligations for reasonable accommodation. This scenario might eventuate from independent comment to the Committee or as the result of litigation where the Courts reject an interpretative approach that is consistent with the Convention.

83 Such criticism is considered unlikely given that the Committee is expected to examine whether New Zealand's legislative and policy provisions and practice, as a whole, are consistent with the spirit of the Convention. There are considerably more references to reasonable accommodation in the Convention than just the prohibition of discrimination. Some of these references were intended to provide qualifications and clarification around the extent of the requirement for reasonable accommodation.

84 Moreover, other domestic enactments, such as the Building Act 2004 and the Education Act 1989, also include measures requiring reasonable accommodation. It is yet to be determined how these overall reasonable accommodation requirements, which add an inherently positive and progressive element to an immediately realisable and negative right, that is to not discriminate, will be approached by the Committee.

85 In any case, to mitigate the risk identified above it is proposed that the following amendments be made to the Human Rights Act 1993:

- amending section 36 to clarify that partnerships are required to reasonably accommodate persons with disabilities
- amending section 37 to ensure that industrial and professional associations are required to give reasonable accommodation in relation to the provision of special facilities and services and in relation to the mitigation of harm
- amending section 39 to clarify that qualifying bodies are required to take into account downstream options for accommodation measures by employers in conferring qualifications
- amending section 41 to ensure that vocational training bodies are obligated in their provision of training, facilities or opportunities for training to do so in a special manner to accommodate disabilities to the extent that is reasonable
- amending section 56 to ensure that persons dealing in land, housing and accommodation are required to give reasonable accommodation in relation to the provision of special services and facilities
- amending section 60 to ensure that educational establishments are required to provide reasonable accommodation in relation to all the actions prohibited by section 53.

National monitoring mechanism

86 The Convention obliges States (in article 33) to maintain, strengthen, designate or establish a framework, including one or more independent mechanisms to promote, protect and monitor implementation of the Convention. It also requires civil society to participate in the monitoring process.

87 The Office for Disability Issues has been a government focal point on disability since its establishment in 2002. Its main role is to monitor and report on implementation of the New Zealand Disability Strategy. These existing monitoring processes will need to be adapted to accommodate obligations under the Convention. Resource implications for the Office for Disability Issues will need to be considered. However, they will be manageable by the Ministry of Social Development.

7. Economic, social, cultural and environmental costs and effects of the treaty action

88 The long-term result of implementing the Convention will be a more inclusive society, where disabled people will be able to participate fully in their community.

89 The impact of ratifying the Convention might be limited in the short term due to government agencies' progress with implementing the New Zealand Disability Strategy over the last seven years, and through meeting obligations under existing human rights treaties that New Zealand has ratified. Parts of the Convention are to be progressively realised and are subject to the maximum available resources.

90 However, the Convention has already been making a difference. For example, during negotiations on the Convention, the government was able to use the developing text to inform changes in domestic legislation, including the enduring power of attorney provisions in the Protection of Personal and Property Rights Act 1988 which were developed to take into account the Convention's obligations for legal capacity and supported decision making.

91 In the longer term, New Zealand's implementation will be influenced by the monitoring and feedback mechanism to guide States' implementation that is established under the Convention. New Zealand will be required, once we ratify the Convention, to report to the United Nations every four years on our implementation progress. The United Nations Committee on the Rights of Persons with Disabilities will consider our report and make comment, including recommendations for improvement. While these recommendations are non-binding, the government would respond in the next report to the Committee on what had been done in response to the recommendations.

92 There are no environment costs or effects as the result of the Convention.

93 There may be a positive impact on the economy, as disabled people will increasingly be able to participate in and contribute to society as barriers preventing this are progressively removed. Employment of disabled people should improve over time, and disabled people should be enabled to have business opportunities on an equal basis with others.

94 The result of legislative amendments to enactments referring to the Mental Health (Compulsory Assessment and Treatment) Act 1992 or its predecessor is that boards or agencies will instead rely on existing mechanisms to regulate the non-performance of a person carrying out a role, in the same way as for other people. If an assessment of capacity is required, boards or agencies may need to obtain (and pay for) assessments of capacity before they can decide whether a person is disqualified for appointment or can be removed

from office (instead of relying on a person's status under the Mental Health (Compulsory Assessment and Treatment) Act 1992) or its predecessor.

8. The costs to New Zealand of compliance with the treaty

95 It is considered that minimal financial costs will be incurred by New Zealand as a result of implementing the Convention.

96 Government agencies have assessed legislation, policy and practice to be largely consistent with obligations of the Convention, and have already made progress in reducing barriers experienced by disabled people through implementation of the New Zealand Disability Strategy. Therefore, the impact of ratifying the Convention is limited in the short term.

97 The primary cost for departments will be in contributing to new reporting and accountability requirements, every four years (article 35) to the treaty body established by the Convention. It is considered that existing government mechanisms (such as the Office for Disability Issues) will facilitate the new reporting requirement and that it will operate similarly to the existing mechanisms for the other core United Nations human rights treaties to which New Zealand is already party and has to meet reporting requirements. Government agencies are required to report annually to the Office for Disability Issues on their implementation of the New Zealand Disability Strategy. This process can be adapted for the purposes of reporting on the Convention. Thus any additional costs are expected to be able to be met through existing baselines.

98 Some costs may also be incurred through initial promotion and education about the Convention.

99 Over the longer term, new initiatives to implement the Convention will require decisions by departments taking into account resources available. Those obligations in the Convention that relate to economic, social or cultural rights are to be progressively realised, which occurs already through the actions required for progressive implementation of the New Zealand Disability Strategy.

100 Government agencies may experience increased pressure from disabled people and disability sector organisations to accelerate activity that meets the obligations under the Convention, such as the level of funding for disability support services. However, ratification of the Convention will not force government agencies to provide any increase in services or funding for implementation of progressively realisable rights beyond their available resources. As is already the case, these pressures and expectations will need to be managed through a considered setting of government priorities and budget allocations, and open communication with respect to how the government is meeting the Convention's obligations.

101 The existing requirements in the Human Rights Act for reasonable accommodation, along with the proposed amendments which clarify these requirements in a few areas, are unlikely to impose significant burdens as they are not required to provide special services or facilities that that would constitute a disproportionate or undue burden. However, while these requirements exist already it is possible that some organisations are not aware of, or do not always meet, the necessary standard and the process of amending the Act and

ratifying the convention may therefore be perceived to impose costs not previously incurred.

9. Completed or proposed consultation with the community and parties interested in the treaty action

102 There is strong and widespread support in the disability sector for New Zealand to ratify the Convention. The Office for Disability Issues has involved, and kept informed, key disability sector organisations with expertise in the Convention, including in work towards ratification of the Convention. This involvement was achieved through face-to-face meetings as a group or individually, and electronic communications from the Minister for Disability Issues and the Office for Disability Issues. The Human Rights Commission and the Mental Health Commission were also involved in this process.

103 In April 2008, the Minister for Disability Issues consulted with the disability sector on a draft of this National Interest Analysis.

104 The Office for Disability Issues has actively consulted with the following disability sector organisations about the Convention: DPA New Zealand, Association of Blind Citizens, Deaf Association, IHC Advocacy, CCS Disability Action, People First, Hearing Association, Central Potential, SAMS, Workbridge, NZ VASS, Royal New Zealand Foundation of the Blind; and New Zealand representatives of Disabled Persons International, Rehabilitation International, and Inclusion International.

105 Government agencies informed and/or consulted during the process necessary to enable ratification of the Convention were: the Ministries for Culture and Heritage, the Environment; the Ministries of Agriculture and Forestry, Defence, Economic Development, Education, Fisheries, Foreign Affairs and Trade, Health, Justice, Pacific Island Affairs, Research Science and Technology, Social Development (including the Office for Senior Citizens, Ministry of Youth Development), Transport, Women's Affairs; the Departments of Building and Housing, Conservation, Corrections, Internal Affairs, Labour, and Prime Minister and Cabinet; Archives New Zealand, Crown Law, Education Review Office, Government Communications and Security Bureau, Inland Revenue, Land Information New Zealand, National Library of New Zealand, New Zealand Customs Service, New Zealand Food Safety Authority, Te Puni Kokiri, Serious Fraud Office, State Services Commission, Statistics New Zealand, Housing New Zealand Corporation, ACC, SPARC, the Treasury, New Zealand Defence Force, New Zealand Security Intelligence Service, Office of the Clerk of the House of Representatives, Parliamentary Service, Public Trust, Reserve Bank, and New Zealand Police.

10. Subsequent protocols or amendments to the treaty and their likely effects

Future protocols

106 There is an Optional Protocol to the Convention which would allow the Committee on the Rights of Persons with Disabilities (which will be set up under article 34 of the Convention) to receive and consider communications from or on behalf of individuals or groups of individuals who claim to be victims of a violation of the provisions of the Convention.

107 New Zealand has no immediate plans to become party to the Optional Protocol. Any proposal to do so would be subject to the usual Cabinet and parliamentary treaty making procedures.

108 There are no current plans to develop any further protocols to the Convention.

Amendment procedure

109 Article 47 allows for amendments to the Convention to be made. Any State Party may propose an amendment which will be circulated to States Parties by the depositary. If one-third of States Parties favour doing so, a Conference of States Parties will be convened. An amendment adopted by a majority of two-thirds of States Parties present and voting at such Conference of States Parties will be transmitted to the General Assembly of the United Nations for adoption, and thereafter for the acceptance of States Parties. However, any amendment is only binding on State Parties that explicitly accept it. For New Zealand, any such amendment to the Convention would be subject to the usual Cabinet and parliamentary treaty making processes.

11. Withdrawal or denunciation provision in the treaty

110 Article 48 allows for denunciation of the Convention by States Parties. A denunciation comes into effect one year after notification has been received by the depositary.

12. Adequacy statement

111 Various amendments to legislation are proposed to make the enactments in question consistent with the Convention. However, these amendments are primarily minor and technical and will not result in any significant fiscal impact or effect on economic development. The Office for Disability Issues considers that this National Interest Analysis adequately meets the Regulatory Impact Statement requirements for the proposed legislative changes.