



CCS
disability action
Including all people

TE HUNGA HAUĀ MAURI MŌ NGĀ TĀNGATA KATOĀ

Briefing to:

Hon Andrew Little

Minister of Justice

Minister for Courts

Hon Kelvin Davis

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Minister of Police

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Executive summary

- In the 2013 Disability Survey, disabled people aged 15 to 44 were 4.2 times more likely to have been a victim of violent crime in the last 12 months than non-disabled people the same age. Disabled people were also less likely to feel safe at home or in their neighbourhood.
- Current initiatives have often focused on informing disabled people of their rights. While important, the other side is the ability of police to prevent, detect and respond to crime against disabled people.
- It is important that police officers, lawyers and judges are well-versed in understanding how to communicate with disabled people, especially those with communication and/or learning disabilities.
- Assumptions about disabled people can lessen the chance of perpetrators getting caught and taken to trial. Sometimes the police and prosecutors assume disabled people, particularly those with learning disabilities will not be able to give evidence
- Recent changes to the Domestic Violence Act have not clarified existing confusion around the relationship between disabled people and their support workers/carers.
- Judges and lawyers have noted that the restrictions on legal aid and counsel of choice have deeply affected disabled people, especially people with learning disabilities.
- We believe the number of people with access needs, particularly around learning/comprehension, is underestimated and that failing to address these needs results in higher rates of reoffending and wrongful convictions.
- Early identification of people's access needs, especially learning disabilities, is also crucial. New Zealand Research has found cases of learning disabilities only being recognised once court cases were underway.
- There are currently gaps in the monitoring of people in informal support arrangements as well as people who have a legal representative making decisions on their behalf, such as Welfare Guardianship or Enduring Power of Attorney.

Recommendations

That collectively as Ministers you:

1. direct the New Zealand Police and the Ministry of Justice to work together to develop a comprehensive strategy to reduce violence and crime against disabled people.
2. direct the New Zealand Police and the Ministry of Justice to collect data on the type and rate of crime disabled people experience.
3. set the New Zealand Police the target of reducing the crime rate disabled people experience so that it is the same as for non-disabled people.
4. direct the Ministry of Justice to issue guidelines to the New Zealand Police and courts on how to assess relationships between support workers and disabled people as well as relationships in residential facilities, in particular under what circumstances they should be regarded as domestic relationships.
5. direct the Ministry of Justice to ensure accessibility accommodations in courts are available consistently across New Zealand.
6. direct the Ministry of Justice to review the restrictions on legal aid and counsel of choice, especially their effects on people with learning disabilities.
7. direct the Ministry of Justice to expand on its data standard work and publishes data on the level of access/disability-related needs in the justice system.
8. direct the Ministry of Justice to investigate options for improving the protection of people who are supported by others and/or have a legal representative.

Introduction

The Government needs to make reducing the high rate of violence and abuse disabled people face a priority. The Government also needs to ensure that disabled people are treated fairly by the justice system.

Article 13 of the Convention on the Rights of Persons with Disabilities requires the Government to ensure effective access to justice for disabled people, on an equal basis with others. Article 16 Disabilities requires the Government to protect disabled people from exploitation, abuse and violence.

We particularly need action in the following areas for disabled people:

1. More responsive policing.
2. Clarification on how domestic violence law applies to support workers and people living in residential facilities.
3. Earlier identifying of access needs in the justice system.
4. Better protection and advocacy for disabled people who are being supported by others and/or have a legal representative.

About us

CCS Disability Action is a community organisation that has since 1935, supported disabled people and advocated for their inclusion in the community. As of May 31 2017, we were providing support to around 4,000 children, young people and adults through our 17 branches, which operate from Northland to Invercargill. Our support focuses on breaking down barriers to participation. We receive a mixture of government and private funding.

Disabled people are more likely to experience violent crime

In the 2013 Disability Survey, disabled people were more likely to experience violent crime, compared to non-disabled people:

- Disabled people aged 15 plus were 2.3 times more likely to have been a victim of violent crime in the last 12 months.
- Disabled people aged 15 to 44 were 4.2 times more likely to have been a victim of violent crime in the last 12 months than non-disabled people the same age.

In the 2013 Disability Survey, disabled people also were less likely to feel safe at home or in their neighbourhood. Disabled people are over-represented in areas that can increase the risk of abuse and violence, such as poverty and social isolation (Pestkaa & Wendta, 2014). Disabled people aged 15 to 44 were 5 times more likely to have felt lonely often in the last four weeks (Statistics New Zealand, 2014).

An overseas systematic review carried out by the World Health Organisation and Centre for Public Health in 2012 found that disabled adults were 1.5 times more likely to experience violence than non-disabled people (at 95% confidence). The review also noted the need for more robust studies (Hughes, et al., 2012). This higher risk of violence and crime can be a barrier to disabled people living independently in the community. Fear of violence can discourage people from moving out of their family home, especially disabled women (Hendey & Pascall, 1998). It should also be noted that disabled people can also be part-of/identify-with other minority groups and that this can increase their risk of experiencing crime, including hate crimes. For example, disabled people can be part of the lesbian, gay, bisexual, transgender and intersex communities as well as refugees and/or members of disadvantaged ethnic groups.

There clearly needs to be a focus on creating safer communities for disabled people. We note there have been local initiatives, such as workshops between People First New Zealand Ngā Tāngata Tuatahi and Christchurch Police on abuse prevention for people with learning disabilities (People First New Zealand Ngā Tāngata Tuatahi). Likewise, there are two actions in the Disability Action Plan on reducing violence (Office for Disability Issues, 2015, p. 14). The Ministry of Social Development is leading these actions. In addition to these actions, however, there is also a need for police and the courts to develop a comprehensive strategy to reduce violence and crime against disabled people.

Current initiatives have often focused on informing disabled people of their rights. While important, the other side is the ability of police to prevent, detect and respond to crime against disabled people. In addition, the willingness of police to take a prosecution to court. It is important that front-line police officers are well-versed in understanding how to communicate with disabled people, especially those with communication and/or learning disabilities (Parson & Sherwood, 2016) (Mirfin-Veitch, Gates, Diesfeld, & Henaghan, 2014, p. 44). It is vital that front-line officers have this knowledge generally as the urgent nature

of some call-outs means any specialist support may not be available when it is needed the most (Douglas & Harpur, 2016). Police officers should also be aware of the additional barriers some disabled people can face reporting criminal acts from someone who provides support to them.

Assumptions about disabled people can lessen the chance of perpetrators getting caught and taken to trial. Sometimes the police and prosecutors assume disabled people, particularly those with learning disabilities will not be able to give evidence (Grammer, Russell, & Van Eden, 2013, pp. 15-16) (Mirfin-Veitch, Gates, Diesfeld, & Henaghan, 2014, p. 21). Often a person with a learning difficulty is not believed and told they must have remembered it wrong or misunderstood what has happened (Shapiro, 2018). Sometimes they are even labeled as having challenging behaviour resulting in greater abuse and disempowerment.

The Solicitor General's guidelines discourage the police from taking a prosecution to court if they think a conviction is unlikely. As a result, perpetrators of violence against disabled people can feel like they can act with impunity. Overseas, crimes against people with learning disabilities, especially sexual offences, are known to be amongst the hardest to prosecute. This can be changed, however, by using trained interviewers and making court accommodations (Shapiro, 2018a).

There are also other areas that are important to preventing crime but are outside the direct control of the police and the courts. Nevertheless, it is important that the police and the courts are aware of the potential impact of these areas in creating barriers and vulnerabilities for disabled people. Some examples are:

- a lack of accessible transport can force people to be in unsafe places.
- a lack of accessible housing can force people to stay in unsafe living arrangements.
- a lack of adequate support services can force people to rely on unsafe support people.
- Negative public attitudes towards disability can encourage criminal acts, especially hate crimes.

There is a clear need for the police to routinely engage with the disability community to improve their ability to prevent, detect and respond to crime against disabled people.

There is also a need for better data to be collected on the type and rate of crime disabled people experience. The police should be set the target of reducing the crime rate disabled people experience so that it is the same as for non-disabled people.

Recommendations

That collectively as Ministers you:

1. direct the New Zealand Police and the Ministry of Justice to work together to develop a comprehensive strategy to reduce violence and crime against disabled people.
2. direct the New Zealand Police and the Ministry of Justice to collect data on the type and rate of crime disabled people experience.
3. set the New Zealand Police the target of reducing the crime rate disabled people experience so that it is the same as for non-disabled people.

Domestic violence, support workers and residential facilities

Unfortunately, recent changes to the Domestic Violence Act have not clarified existing confusion around the relationship between disabled people and their support workers/carers (Grammer, Russell, & Van Eden, 2013, p. 16). In our view, these relationships should be covered, where the relationship is close and personal.

Some relationships between support workers and disabled people are long-established, close and personal. They can involve a support worker having access to a person's home and significant involvement in their private life. This can give them a high degree of control and power over a person's life. Disabled people who lack power and control over their lives and who are reliant on others for support can be particularly vulnerable to violence and abuse. If the person who has control over your life is the person who is abusing you how do you speak up?

In residential facilities (such as community group homes or aged care facilities), there is ambiguity about the relationship between support workers and residents. It is important people living in residential facilities are protected under the Domestic Violence Act. The residential facility is their home and staff members have a lot of potential power over them. There is also a risk of violence from other residents. There have been a number of high

profile cases involving abuse and neglect in residential facilities (Grammer, Russell, & Van Eden, 2013, pp. 27-29, 35-40).

The current law should be clarified through better advice to the police and the courts on how to assess relationships between support workers and disabled people as well as relationships in residential facilities.

Recommendation

That collectively as Ministers you:

1. direct the Ministry of Justice to issue guidelines to the New Zealand Police and courts on how to assess relationships between support workers and disabled people as well as relationships in residential facilities, in particular under what circumstances they should be regarded as domestic relationships.

Identifying access needs early in the justice system

It is vital that legal and court processes are accessible. Article 13 of the Convention on the Rights of Persons with Disabilities requires the government to ensure effective access to justice for persons with disabilities on an equal basis with others, including through providing appropriate accommodations.

We acknowledge that the courts have implemented a number of accommodations to improve accessibility (Ministry of Justice, 2017). It is important that these accommodations are available across the country including in more provincial areas. We still see cases where court processes are not adequately explained to people, particularly people with learning disabilities.

Judges and lawyers have also noted that the restrictions on legal aid and counsel of choice have deeply affected disabled people, especially people with learning disabilities. For people with learning disabilities being able to request a lawyer they knew was of enormous benefit. For some disabled people lawyers were the only uncompromised advocates in their life, especially if family members were not acting in their best interests. People with learning disabilities emphasize the importance of having someone understand their needs. Lawyers and judges likewise request more education on the needs of people

with learning disabilities (Mirfin-Veitch, Gates, Diesfeld, & Henaghan, 2014, pp. 14, 22, 43, 58-59, 61-62).

We believe the number of people with access needs, particularly around learning/comprehension, is underestimated and that failing to address these needs results in higher rates of reoffending and miscarriages of justice. If people do not fully understand why they are in the justice system, reoffending and false pleas are more likely. Lawyers have reported that many of their clients with learning disabilities do not understand what they did wrong (Mirfin-Veitch, Gates, Diesfeld, & Henaghan, 2014, pp. 44-45).

Early identification of people's access needs, including learning disabilities, is crucial. New Zealand Research has found cases of learning disabilities only being recognised once court cases were underway. Lawyers also reported having to use informal processes to test whether a Section 38 report should be requested and recommended screening to identify people's needs (Mirfin-Veitch, Gates, Diesfeld, & Henaghan, 2014, pp. 27, 45, 47). We understand that the Ministry of Justice has been working on a data standard for measuring access/disability-related needs in the justice system. This work should be expanded, rolled-out and the data published.

Recommendations

That collectively as Ministers you:

1. direct the Ministry of Justice to ensure accessibility accommodations in courts are available consistently across New Zealand.
2. direct the Ministry of Justice to review the restrictions on legal aid and counsel of choice, especially their effects on people with learning disabilities.
3. direct the Ministry of Justice to expand on its data standard work and publishes data on the level of access/disability-related needs in the justice system.

Gaps in monitoring people in vulnerable situations

There are currently gaps in the monitoring of people in informal support arrangements as well as adults who have a legal representative making decisions on their behalf, such as Welfare Guardians, people with Enduring Power of Attorney. There is no proactive checking of these arrangements. The Health and Disability Commissioner can take complaints about service provision, although they have limited resources to investigate.

The police can investigate criminal acts, but this requires certain thresholds of offending and evidence to be met.

There needs to be better protection and advocacy for disabled people who are being supported by others and/or have a legal representative. People can be appointed without the appropriate skills for the role and be unaware of their responsibilities. Providing advice and education to people supporting someone and/or making decisions on their behalf may prevent exploitation and offending from occurring. There should also be a way to assess the suitability of people to perform the role.

One option would be a similar agency to the Office of the Public Advocate in the Australian state of Victoria. This Office is mandated by law to promote and safeguard the rights and interests of people with disabilities (Office of the Public Advocate). This includes:

- advocating for disabled people who have no other advocacy options and are at risk of abuse, exploitation or neglect
- advocating for the best interests of clients under statutory guardianship
- promoting supported decision-making
- responding to concerns and complaints about misrepresentation, exploitation, abuse and neglect
- making inquiries, intervening and requiring others to complete actions.

The Ministry of Justice should investigate options for mandating similar roles and functions in New Zealand. There may be multiple ways to do this, including by strengthening and expanding existing mechanisms.

Recommendation

1. That collectively as Ministers, you direct the Ministry of Justice to investigate options for improving the protection of people who are supported by others and/or have a legal representative.

Thank you

Thank you for taking the time to read this briefing. We hope you have found it useful. We are always happy to offer advice.

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