

Access to justice for children and young people in Aotearoa New Zealand

Working paper No. 2 - Disabled and neurodiverse children and young people

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Table of contents

Introduction	4
Context	4
Executive Summary	5
Justice Problems	5
Barriers to access	6
Possible solutions	8
Justice problems	10
Education system issues	10
Right to Education	10
Rights in education	11
Bullying	13
Disciplinary issues	14
Victimisation	18
Involvement in the care system	20
Involvement in criminal justice system	21
Prevalence of neurodiversity and disability	21
Experiences in the youth justice system	24
Poverty	25
Other justice problems	26
Barriers	28
Attitudinal Barriers	28
Attitudes of system actors	28
Attitudes of disabled people	30
Structural / Systemic Barriers	31
The system isn't designed for disabled people	31
Disabled and neurodiverse children and young people are even more forgotten	32
Practical Barriers	33
Diagnosis	33
Lack of data & monitoring	34
Professionals' lack of understanding of disability and neurodiversity	36
Lack of knowledge about their rights and legal processes	37
Dependence / need for support	39
Lack of tailored or targeted support	39
Lack of an effective complaints process	40
Specific barriers relating to the nature of disability or neurodiversity	40
Neurodisabilities generally	41

Communication disorders.....	42
FASD	44
Intellectual disabilities.....	45
Acquired brain injury.....	46
ADHD.....	47
Autism.....	48
Possible solutions	49
Introduction.....	49
A combined approach.....	49
Legal services.....	51
Making generalist services more accessible.....	51
Specialist or tailored services	52
Information and education.....	54
Screening & diagnosis	54
Communication assistance	55
Other support and advocacy.....	56
Training and education	57
Teachers.....	58
Police	58
Lawyers.....	60
References.....	62

Introduction

Context

This working paper forms part of an overall research project exploring the extent to which children and young people are able to access to justice in Aotearoa New Zealand. The findings of the research study are presented in three parts:

Part One contains my analysis of data from key informant interviews with adults with expertise in the justice system and/or working with particular groups of children and young people, as well as from a survey of children and young people aged 14 to 24.

Part Two discusses the meaning of access to justice and other related concepts such as legal empowerment as well as the specific meaning of access to justice for children and child-friendly justice. It then discusses the justice problems experienced by children and young people generally, as well as common barriers to accessing justice. The analysis in this report is based on my review of the research and literature in New Zealand and overseas as well as analysis of information obtained from the government and Crown entities.

This report is supported by a series of ten working papers discussing the justice problems and barriers to accessing justice experienced by particular groups of children and young people and is broken up into a series of reports relating to groups identified as likely to experience differing justice problems or barriers to access. These working papers are:

1. Children and young people in care or with care experience;
2. Disabled and neurodiverse children and young people;
3. Tamariki and rangatahi Māori;
4. Pacific children and young people;
5. Rainbow and takatāpui children and young people;
6. Girls and young women;
7. Boys and young men;
8. Poverty and socio-economic disadvantage;
9. Trauma; and
10. Intersectionality.

Part Three explores possible solutions or ways to close the justice gap for children and young people in Aotearoa New Zealand. This part of the study is also supported by a series of working papers in relation to possible solutions. At the time of writing these working papers consider the following topics with additional working papers likely to follow:

11. Strategic litigation;
12. Legal service delivery, non-lawyer services, and integrated services;
13. Data, evidence and measuring change;
14. Technology;
15. Training for professionals;
16. Legal education and continuing professional development for lawyers and judges; and
17. Law-related education for children and young people.

The reports and working papers are available at: <https://www.cypaccesstojusticenz.com>.

Executive Summary

This working paper explores the justice problems and barriers to access experienced by disabled and neurodiverse children and young people, followed by some of the possible solutions raised in the research and literature from Aotearoa New Zealand and overseas. Each section is briefly summarised below.

Justice Problems

Education system issues. There is clear evidence that disabled children and young people experience a range of justice issues in the education system starting from entry into education, such as difficulty enrolling, and then once they are in school disabled children and young people are more likely to experience bullying, discrimination, and disciplinary issues.¹

Victimisation. There is a lack of comprehensive data collection in relation to abuse of disabled children and young people in Aotearoa New Zealand.² However, the data we do have and overseas research suggests that disabled children and young people are more significantly more likely to experience victimisation.³ Research and literature identifies a range of factors that increase disabled people's risk of victimisation including myths about disabled people as asexual, innocent and dependent; exclusion from sexuality and healthy relationship education; learnt compliance with authority/carers; being accustomed to intimate handling which mask abusive behaviour; inappropriate responses to challenging behaviour; and social and physical isolation.⁴

Involvement in the care and protection system. The lack of comprehensive data collection in relation to the abuse of disabled children and young people in Aotearoa New Zealand also translates into a lack of data in relation to disabled and neuro-diverse children in care.⁵ However, again the data we do have and overseas research suggests that disabled and neurodiverse children and young people are over-represented in care.⁶ The available data and evidence also

¹ Kearney, A. (2016). [The right to education: What is happening for disabled students in New Zealand?](#) *Disability Studies Quarterly*, 36(1); Te Ihu Waka Education Evaluation Centre. (2022). [A Great Start? Education for Disabled Children in Early Childhood Education](#). Education Review Office at 3 & 8-10; Te Ihu Waka Education Evaluation Centre. (2022). [Thriving at School? Education for Disabled Learners in Schools](#). Education Review Office at 2 & 8-10; Mhuru, M. (2020). [He Whakaaro: The educational experiences of disabled learners](#). Ministry of Education at 7; Walsh, J. (2016). [Barriers to Education in New Zealand: The Rise of Informal Removals of Students in New Zealand](#). YouthLaw Aotearoa at 32-33.

² New Zealand Human Rights Commission - Te Kāhui Tika Tangata. (2021). [Whakamahia te tūkinokore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 33.

³ Ministry of Justice. (2022). [Survey findings - Cycle 4 report Descriptive statistics. June 2022. Results drawn from Cycle 4 \(2020/21\) of the New Zealand Crime and Victims Survey](#) at 92; Briggs, F. (2006). [Safety issues in the lives of children with learning disabilities](#). *Social Policy Journal of New Zealand*, 29, 43–59 at 43-53.

⁴ Simpson, K. L., Yeung, P., & Munford, R. (2022). [Responses to abuse, neglect, and trauma of children with intellectual disability: Experiences of social workers and health practitioners in Aotearoa New Zealand](#). *Aotearoa New Zealand Social Work*, 34(1), 72–87 at 73, 78-19; New Zealand Human Rights Commission, [Whakamahia te tūkinokore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 35.

⁵ New Zealand Human Rights Commission, [Whakamahia te tūkinokore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 33-34; Independent Children's Monitor, [Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations, Reporting period 1 July 2020 – 30 June 2021](#) at 105.

⁶ Independent Children's Monitor. (2023). [Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations, Reporting period 1 July 2021 – 30 June 2022](#) at 12; Fleming, T., Archer, D., Sutcliffe, K., Dewhirst, M., & Clark, T.C. (2021). [Young people who have been involved with Oranga Tamariki: Mental and physical health and healthcare access](#). The Youth19 Research Group, The University of Auckland and Victoria University of Wellington, New Zealand at 15.

presents a concerning picture in relation to shortcomings in care of disabled and neurodiverse children and young people.⁷

Involvement in the criminal justice system. Once again, there is a lack of data in relation to the prevalence of neurodiversity and disability in the cohort of children and young people involved in the youth and criminal justice system.⁸ However, overseas prevalence studies show that children and young people with a range of neurodevelopmental disorders are overrepresented including those with learning disabilities, dyslexia, communication disorders, attention deficit hyperactive disorder, autistic spectrum disorder, traumatic brain injury, epilepsy and fetal alcohol spectrum disorder.⁹ Research and literature also shows the negative impact that contact with the justice system has on disabled and neurodiverse children and young people who are already more likely to experience poor outcomes in terms of education, career prospects and likelihood of reoffending.¹⁰

Poverty. Data shows that disabled children and children in disabled households are significantly more likely to be living in poverty as determined by a range of measures.¹¹

Other justice problems. Legal needs research in Aotearoa New Zealand and overseas has found that disabled people both experience distinct justice issues e.g. issues relating to disability entitlements, medical treatment, State and schools' obligations in relation to schooling, special education funding and transition services, and the use of segregation and restraint in care as well as more frequent and more serious legal issues also experienced by other groups such as money and debt problems, housing, employment, and family court issues.¹²

Barriers to access

The research and literature describes the varying and often multiple barriers to accessing justice experienced by disabled and neurodiverse children and young people. As with the other groups of children and young people I have considered, these attitudes are grouped into attitudinal

⁷ Independent Children's Monitor, [Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations, Reporting period 1 July 2020 – 30 June 2021](#) at 21 & 104-105; Office of the Children's Commissioner, [Oranga Tamariki Residence Visit \(Unannounced OPCAT monitoring\) Office of the Children's Commissioner OPCAT Monitoring – Unannounced visit Epunu Care and Protection Residence](#) at 9.

⁸ Lynch, N. (2016). [Neurodisability in the Youth Justice System in New Zealand: How Vulnerability Intersects with Justice](#) (report summarising the contributions of participants at the 2016 Neurodisabilities Forum, hosted by DFNZ in Wellington, 12 May 2016) at 7; Fitzgerald, Ko Te Rongoā, Ko Te Aro, Ko Te Whai Kia Tika Ai, Mo Ngā Rangatahi: Solution-Focused Justice For Young People at 21-22.

⁹ Hughes, N., Williams, H., Chitsabesan, P., Davies, R. & Mounce, L. (2012). [Nobody made the connection: The prevalence of neurodisability in young people who offend](#). The Office of the Children's Commissioner at 23; Boiteux, S. & Poynton, S. (2023). [Offending by young people with disability: A NSW linkage study \(Crime and Justice Bulletin No. 254\)](#). NSW Bureau of Crime Statistics and Research at 5.

¹⁰ Centre for Justice Innovation. (2022). [The right support at the right time: Where the justice system fits in](#) at 1; Revolving Doors. (2022). [Exploring the links between neurodiversity and the revolving door of crisis and crime: Policy briefing](#) at 3; Day, A. (2022). [Disabling and criminalising systems? Understanding the experiences and challenges facing incarcerated, neurodivergent children in the education and youth justice systems in England](#). *Forensic Science International: Mind and Law*. 3,100102 at 4.

¹¹ Murray, S. (2019). [The state of wellbeing and equality for disabled people, their families, and whānau](#). CCS Disability Action at 24; Perry, B. (2022). [Child Poverty in New Zealand](#). Ministry of Social Development at 45.

¹² Maxwell, G., Shepherd, P., Smith, C., & Morris, A. (1999). *Meeting legal needs*. Legal Services Board; Diesfeld, K., Patston, P., McLean, M., Miller-Burgering, W., Vickery, R. & Phelan, T. (2006). *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1*. Legal Services Agency; Law Council of Australia. (2018). [The Justice Project: Final Report Part 1 People with Disability](#) at 14-15.

barriers, systemic or structural barriers, and practical barriers. I have also discussed some of the differing barriers experienced by people with different types of impairments.

Attitudinal barriers. Attitudinal barriers can cut both ways with disabled and neurodiverse children and young people facing a range of attitudinal barriers including not being believed, not being seen as a credible witness, difficulty engaging with police due to police attitudes, and overt demonstrations of prejudice.¹³ The negative and prejudicial attitudes of system actors and/or prior negative experiences in the system or with authority can also result in disabled people not trusting the system or being reluctant to engage with it.¹⁴ Prior negative experiences also have an impact on the families of disabled children and young people who can be left with an attitude of distrust.¹⁵

Structural and systemic barriers. The justice system simply is not designed for disabled and neurodiverse people, and it is even less appropriate for disabled and neurodiverse children and young people. This includes things like the amount of time allowed to consult with a lawyer under the legal aid system failing to reflect the time required to work effectively with disabled clients,¹⁶ and the lack of trained services and professionals who can respond appropriately to disabled people who have experienced domestic or family violence.¹⁷ Disabled and neurodiverse children and young people are often even more disadvantaged than adults as they can be both disregarded when children and young people and their rights are considered, and disregarded when the rights of disabled people are considered.¹⁸

Practical barriers. A primary barrier is lack of a diagnosis whether this is because the impairment is not easy to identify, no one considers that there may be a need for diagnosis, or a lack of diagnostic services.¹⁹ Data gaps are another primary barrier with significant data gaps about disabled children and young people in the Oranga Tamariki system and a Ministry of Education failure to collect data in relation to the disability status of children and young people who are subject to stand-downs, suspensions, exclusion and expulsion.²⁰

¹³ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1.* at 10; New Zealand Human Rights Commission, [Whakamahia te tūkino kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 42; Senate Community Affairs Committee Secretariat. (2015). [Community Affairs References Committee: Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability.](#) Commonwealth of Australia at 174.

¹⁴ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1.* at 12.

¹⁵ Starr, K. & Janah, N. (2016). [Challenging the barriers: Ensuring access to education or children with special educational needs.](#) YouthLaw Aotearoa at 37.

¹⁶ Mirfin-Veitch, B., Diesfeld, K., Gates, S., & Henaghan, M. (2014). [Developing a more responsive legal system for people with intellectual disability in New Zealand.](#) Donald Beasley Institute at 36.

¹⁷ New Zealand Human Rights Commission, [Whakamahia te tūkino kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 35.

¹⁸ Lansdown, G. (2014). Children with disabilities. In M. Sabatello & M. Schulze, (Eds.) *Human Rights and Disability Advocacy.* (pp. 97-112) University of Pennsylvania Press at 97.

¹⁹ Lambie, I. (2020). [What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand.](#) Office of the Prime Minister's Chief Science Advisor at 11.

²⁰ New Zealand Human Rights Commission - Te Kāhui Tika Tangata. (2022). *New Zealand's 6th Periodic Review under the UN Convention on the Rights of the Child: Submission of the New Zealand Human Rights Commission to the Committee on the Rights of the Child* at 12-13; Office of the Ombudsman, Disabled People's Coalition & Human Rights Commission. (2020). [Making Disability Rights Real Whakatūtu Ngā Tika Hauātanga: Third report of the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities](#) at 66. See also Bourke, R., Butler, P. & O'Neill, J. (2021). [Children With Additional Needs.](#) Massey University at 14-22.

Lack of knowledge and understanding is another significant barrier.²¹ This includes services and professionals' lack of knowledge about disability related needs, as well disabled children and young people and those supporting them not knowing what their rights are and/or not understanding what is happening in legal processes.²²

Another set of related barriers is disabled children and young people's dependence on adults and need for support. This dependence can leave disabled children and young people vulnerable to abuse from those that they rely on for care and support.²³ Disabled children and young people can also require support to engage in with professionals and justice system processes. The other side to this is a lack of tailored, specialist services with expertise in relation to the specific needs of disabled children and young people.²⁴

A final practical barrier to accessing justice is the lack of an effective complaints process or avenue to address issues in the education system as there is no real ability to challenge decisions made by schools.²⁵

Some disabled and neurodiverse children and young people can also experience additional or differing barriers relating to the nature of their impairment/s.²⁶

Possible solutions

My discussion of on possible solutions to the justice gap for disabled and neurodiverse children and young people begins with the need for a combined approach to the provision of legal services including both improvements to generalist services to ensure that they are accessible, and the provision of specialist services tailored to the needs of disabled and neurodiverse children and young people. I then discuss the importance of screening and diagnosis particularly in contexts where it is known that there is an increased prevalence of disabled and neurodiverse children and young people such as the criminal justice system. I also discuss the importance of additional support for some people such as communication assistance for children and young people with communication disorders or challenges and the value of support provided by staff with a pre-existing relationship of trust. This section concludes by discussing the importance of

²¹ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1*; Revolving Doors, [Exploring the links between neurodiversity and the revolving door of crisis and crime: Policy briefing](#); Her Majesty's Inspectorate of Prisons. (2021). [Neurodiversity in the criminal justice system: A review of evidence](#). Criminal Justice Joint Inspection at 8.

²² Simpson et al., [Responses to abuse, neglect, and trauma of children with intellectual disability: Experiences of social workers and health practitioners in Aotearoa New Zealand](#) at 78; Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1* at 5, 10-12; Gibbs, A. (2022). [Best practices for justice: Practitioner views on understanding and helping youth living with fetal alcohol spectrum disorder \(FASD\)](#). *Aotearoa New Zealand Social Work*, 34(4), 6–18 at 15; Landsell, G., Sunders, B. & Eriksson. (2022). [Young people with acquired brain injury: Preventing entrenchment in the criminal justice system](#). In Australian Institute of Criminology *Trends & issues in crime and criminal justice* at 8.

²³ New Zealand Human Rights Commission, [Whakamahia te tūkino kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 36.

²⁴ New Zealand Human Rights Commission, [Whakamahia te tūkino kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 37; Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1* at 11; Mirfin-Veitch et al., [Developing a more responsive legal system for people with intellectual disability in New Zealand](#) at 48-49.

²⁵ Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 92 & 104; McMenamin, R. (2017). [Reasonable Accommodation: Equal Education for Learners with Disabilities](#). *Public Interest Law Journal of New Zealand*. 4, 5-28 at 23-24.

²⁶ Bruce, E. (2020). *Understanding and Being Heard: Exploring the Right to Participate in the New Zealand Youth Court*. [Masters Thesis, Victoria University of Wellington Te Herenga Waka] at 118 & Lambie, [What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand](#) at 11 for a discussion of some potential impacts of various impairments.

training and education in relation to the needs and rights of disabled and neurodiverse children and young people for all system professionals including teachers, police, and legal professionals.

The section on possible solutions is not a complete analysis, nor an attempt to identify all possible ways to resolve the access to justice challenges experienced by disabled and neurodiverse children and young people. It should be read together with working papers 11-17 which discuss possible ways of increasing access to justice for children and young people more generally.²⁷

²⁷ Working papers 11-17 discuss Strategic litigation; Legal service delivery, non-lawyer services, and integrated services; Data, evidence and measuring change; Technology; Training for professionals; Legal education and continuing professional development for lawyers and judges; and Law-related education for children and young people.

Justice problems

The Committee has previously highlighted the widespread prejudice, exclusion, social isolation and discrimination faced by many children with disabilities.¹³ Adolescents with disabilities are, in many States, commonly excluded from opportunities available to other adolescents. They can be barred from participating in social, cultural and religious rites of passage. Significant numbers are denied access to secondary or tertiary education or vocational training, and consequent acquisition of the social, educational and economic skills necessary for future employment and freedom from poverty. They are widely denied access to sexual and reproductive health information and services and may be subjected to forced sterilization or contraception, which is in direct violation of their rights and can amount to torture or ill-treatment.¹⁴ Adolescents with disabilities are disproportionately vulnerable to physical and sexual violence, as well as child or forced marriage, and are routinely denied access to justice or redress.²⁸

The United Nations Committee on the Rights of the Child released its Concluding Observations on Aotearoa New Zealand's compliance with the UN Convention on the Rights of the Child issued in February 2023 raised specific concerns about disabled children in New Zealand:²⁹

The Committee is deeply concerned that children with disabilities are at higher risk of violence and abuse, and that their families disproportionately experience deprivation, poverty and inadequate housing conditions. It is further concerned about the significantly high proportion of adolescents with disabilities who are unemployed or are not enrolled in any education or training program.

Education system issues

There is clear evidence that disabled children and young people are more likely to experience a range of barriers to entry into education as well as negative outcomes in the education system from entry into education including difficulty enrolling, bullying and discrimination, and disciplinary issues.

Right to Education

Alison Kearney's survey of parents of disabled students who had been excluded and/or marginalized from school found a range of justice issues relating to children and young people's right to education:³⁰

[F]or some disabled students in New Zealand, barriers still exist in relation to the accessibility, availability, adaptability and acceptability of education. These issues are all associated with equality of opportunity and treatment for disabled students when compared to the opportunities and treatment of non-disabled students. In relation to availability and accessibility (rights to education), this amounted to a less than free, and less than compulsory education being available to disabled students. Parents were asked to fund aspects of their child's education, keep their child home

²⁸ United Nations Committee on the Rights of the Child. (2016). [General Comment No. 20. On the Implementation of the Rights of the Child During Adolescence CRC/C/GC/20](#). The Office of the High Commissioner for Human Rights at 9.

²⁹ United Nations Committee on the Rights of the Child. (2023). [Concluding observations on the sixth periodic report of New Zealand](#). The Office of the High Commissioner for Human Rights at 9.

³⁰ Kearney, [The right to education: What is happening for disabled students in New Zealand?](#)

for parts of the school day or week, and had special conditions put on the enrolment of their child at school.

In 2022 the Education Review Office (ERO) partnered with the Human Rights Commission (HRC) and the Office for Disability Issues (ODI), to look at how well the education system is supporting disabled children in early childhood education and schools using a mixed methods approach including surveys, interviews and site visits.³¹ The ERO report on early childhood education described parents of disabled children reporting being discouraged from enrolling or being refused enrolment with 26 percent of parents surveyed having been discouraged from enrolling their disabled child at one or more services.³² ERO found a similar pattern in schools with a significant proportion of disabled learners reporting being discouraged from enrolling in their local school, the school placing conditions on their enrolment, being sent home or asked by the school to stay home due to resourcing issues, typically when their teacher aide is not there.³³

Other research in the last few years has reached similar findings. For example, in a 2020 survey by IHC 27% of parents of disabled children reported that their child had been refused enrolment or had conditions placed on their enrolment at school.³⁴ A 2016 YouthLaw report also identified significant barriers to inclusive education including barriers at the entry into education and with access and participation in the school curriculum and ancillary school activities on a daily basis.³⁵ Another study the same year that involved interviews with disability and education specialists and people with experience in this intersection of disability rights law and education, also found that discriminatory practices existed from the point of enrolment despite it being unlawful to refuse enrolment.³⁶

Rights in education

Kearney's survey also identified issues relating to disabled children and young people's rights in the education system:³⁷

Some parents also reported that their children did not have access to skilled teachers in relation to their specific needs, and in some instances, teachers were unwilling to learn about those specific needs. Similarly, parents reported that some teachers did not take responsibility for their children. Difficulties with disabled students accessing the curriculum and accessing their peer groups were also reported. In relation to acceptability and adaptability (rights in education) parents reported teacher and peer bullying, and a lack of willingness on the part of the school and teachers to adapt to the needs of the students.

The most recent Disability Survey in 2013 found that "around 24% of children with disabilities have an unmet need for help with their schoolwork in class, about 13% have an unmet need for special equipment to help with their learning and about 28% have an unmet need for adapted

³¹ Te Ihu Waka Education Evaluation Centre, [A Great Start? Education for Disabled Children in Early Childhood Education](#) at 3 & 8-10; Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 2 & 8-10.

³² Te Ihu Waka Education Evaluation Centre, [A Great Start? Education for Disabled Children in Early Childhood Education](#) at 24.

³³ Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 130.

³⁴ Mhuru, [He Whakaaro: The educational experiences of disabled learners](#) at 7.

³⁵ Walsh, [Barriers to Education in New Zealand: The Rise of Informal Removals of Students in New Zealand](#) at 32-33.

³⁶ McMenamin, [Reasonable Accommodation: Equal Education for Learners with Disabilities](#) at 9.

³⁷ Kearney, [The right to education: What is happening for disabled students in New Zealand?](#)

classroom materials.”³⁸ A study commissioned by the Ministry of Education using data from the integrated data infrastructure (IDI) identified concerning discrepancies between those children identified as disabled in the Disability Survey and those receiving learning support. The authors report that about two-fifths (41%) of the younger group and three-fifths (59%) of the older group of disabled students did not have any record of Ministry-funded learning support in the IDI.³⁹

While definitions and thresholds vary, the disability survey identifies disability on the basis of a functional impairment: “there is a day-to-day activity that the student cannot perform or can only perform to a limited extent” which gives good reason for thinking that impairments as identified by the survey might indicate unmet need.⁴⁰ Moreover, when the data is broken down by impairment type, one-third of 5-11 year old students with learning impairments did not have a record of receiving any Ministry-funded learning support, nor did a third of students with each of the psychological/psychiatric and hearing impairments, which strongly suggests that at least some students in this group have an unmet need for additional learning support.⁴¹

YouthLaw Aotearoa’s 2016 study on access to education for children with special educational needs reported that the most common problems raised in requests for their advice were issues with schools’ process and decisions, difficulties with funding, and ‘Kiwi Suspensions’ (being sent home without the proper disciplinary procedure and voluntary withdrawal of a student following a school’s request).⁴² YouthLaw Aotearoa also reported receiving requests for advice in relation to complaints raised about staff handling of incidents as well as formal disciplinary processes.⁴³

Another New Zealand research study involving interviews with 18 disability and education experts about their views and experiences regarding challenges and discrimination in the learning environment also reported exclusion in day-to-day school life including children not being allowed to go on camp, being sent home at midday when their teacher aide left, or being sent to the library for most of the day.⁴⁴ More recently, the Education Review Office’s evaluation of educational provision for disabled children in early childhood education found that:

- Disabled children with complex needs typically experience more exclusion with significantly fewer parents of children with complex needs reporting their service supports their child to be included.⁴⁵ Children with more complex needs also find it harder to access ECE and have poorer experiences once they are enrolled.⁴⁶
- There is a lack of information showing how disabled children are progressing and learning and how well services are providing for disabled children;⁴⁷
- Kaiako report a lack of confidence in ensuring Māori disabled children succeed as Māori and in adapting their curriculum for disabled children;⁴⁸

³⁸ Starr & Janah, [Challenging the barriers: Ensuring access to education or children with special educational needs](#) at 4 citing a customised report drawing from the Statistics New Zealand, Disability Survey 2013.

³⁹ Mhuru, [He Whakaaro: The educational experiences of disabled learners](#) at 12.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² Starr & Janah, [Challenging the barriers: Ensuring access to education or children with special educational needs](#) at 24. YouthLaw Aotearoa is a community law centre which provides free legal information, education, advice and assistance to children and young people and those assisting them.

⁴³ Ibid. YouthLaw Aotearoa is a community law centre which provides free legal information, education, advice and assistance to children and young people and those assisting them.

⁴⁴ McMenamin, [Reasonable Accommodation: Equal Education for Learners with Disabilities](#) at 10.

⁴⁵ Te Ihu Waka Education Evaluation Centre, [A Great Start? Education for Disabled Children in Early Childhood Education](#) at 32.

⁴⁶ Ibid at 106-107.

⁴⁷ Ibid.

⁴⁸ Ibid.

- ECE services' physical environments are not universally accessible which may be a barrier to enrolment for children who need additional adaptations; and
- Transitions from ECE services into school are not working well with concerns over information sharing between ECEs and schools being key concerns.⁴⁹

The Education Review Office's findings in relation to schools also raise significant concern including that:⁵⁰

- Quality and inclusiveness of education varies between schools resulting in inequitable outcomes for disabled students. Schools in low socio-economic areas and those with high numbers of Māori students tend to be more inclusive.
- Disabled students are "still experiencing exclusion, including being discouraged from enrolling at their local school, being asked to stay at home due to resourcing issues, being stood down, and having to move schools". A significant proportion of disabled learners also report not feeling accepted and that they are not supported to engage in learning or participate in wider school activities.
- Teachers are not confident in teaching disabled learners, particularly those with complex needs, and learners with more complex needs report poorer outcomes and experiences in school.
- The legislation contains robust expectations but there is no systematic tracking of how well these expectations are being met.
- Some whānau are not aware of their child's education rights or how to raise concerns. When complaints about experiences at school are made, they are not resolved effectively.

In 2014 IHC filed a claim with the Human Rights Review Tribunal alleging that despite the statutory right to education,⁵¹ many disabled children who needed accommodations to learn experienced multiple, severe barriers "preventing them as a class of their right to an education".⁵² These barriers included being discouraged or denied attendance at school, exclusion from participation in curricular and extracurricular activities, exclusion for part of the day, learning in environments with no or limited inclusive practices, being taught by teachers with no or extremely limited training in inclusive education, being unable to access specialist educational support, disproportionate representation in disciplinary action, and insufficient resourcing to cover the accommodations needed to learn.⁵³ After lengthy delays, the Human Rights Review Tribunal released their decision dismissing the Crown's application to strike out the claim in December 2020.⁵⁴ IHC continue to pursue this claim⁵⁵ but it is unclear when the substantive hearing will take place.

Bullying

IHC conducted a survey in 2019 in relation to the experiences of disabled children in school. Parents were asked if their child had experienced bullying or cyberbullying in the last five years

⁴⁹ Te Ihu Waka Education Evaluation Centre, [A Great Start? Education for Disabled Children in Early Childhood Education](#) at 106-107.

⁵⁰ Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 129-130.

⁵¹ At the time the right to education was under the [Education Act 1989](#), ss3 & 8.

⁵² [Witness Statement of Trish Grant](#) WITN0092001-0001 (Royal Commission of Inquiry into Abuse in Care, n.d.) at 8.

⁵³ [Witness Statement of Trish Grant](#) at 9.

⁵⁴ [IHC New Zealand Incorporated v Attorney-General](#) [2020] NZHRRT 47.

⁵⁵ IHC New Zealand Inc. (2021, June 17). *Disabled children deserve a fair chance at school – IHC takes its fight back to the Human Rights Review Tribunal* [press release]. <https://ihc.org.nz/disabled-children-deserve-fair-chance-school-%E2%80%93-ihc-takes-its-fight-back-human-rights-review-tribunal>

– 58% answered yes and 42% answered no. Education professionals were also asked if they were aware of students with disabilities who have been bullied in the last five years – 67% answered yes and 33% answered no.⁵⁶ Data from the Youth19 study found that rangatahi with disabilities are less likely to feel safe at school (77% versus 88%) and less likely to have friends they can turn to for support (78% versus 85%), than those without a disability.⁵⁷

Ministry of Education analysis found that disabled children and young people were 1.6 times as likely to experience bullying as non-disabled children and young people.⁵⁸ Surprisingly, the Education Review Office's research on bullying does not report bullying rates by disability status,⁵⁹ nor does the PISA reports.⁶⁰

Disciplinary issues

Data in relation to disciplinary processes unclear as the Ministry of Education does not systematically collect disability information when it collects data on stand-downs, suspensions and exclusions, nor does it plan to do so.⁶¹ However, a series of research projects over the last few years has started to develop a concerning picture of the over-representation of disabled children and young people in school disciplinary action.

YouthLaw's 2016 research in relation to informal removals⁶² found that students with special educational needs were "grossly over-represented" in their informal removal statistics.⁶³ The report also identified concerning discrepancies between schools' approaches to misconduct and discipline and a substantial misunderstanding of the law in relation to school's ability to invoke informal processes.⁶⁴ Research commissioned by the Ministry of Education based on data from the 2013 New Zealand Disability Survey which was then linked to educational data available in Statistics New Zealand's Integrated Data Infrastructure (IDI) also identified over-representation of disabled students finding: "secondary school-aged disabled students are between twice and three times more likely to be stood down or suspended at least once compared to non-disabled students."⁶⁵ Table 1 below compares the experiences of disabled and non-disabled children aged 5-11 years old and children and young people aged 12-19 years old in relation to various administrative measures of school inclusion.

⁵⁶ IHC New Zealand Inc. (2020). [Submission on the Education and Training Bill](#) at 19.

⁵⁷ Clark, T.C., Kuresa, B., Drayton, B., King-Finau, T., & Fleming, T. (2021). [A Youth19 Brief: Young People With Disabilities](#). The Youth19 Research Group, Victoria University of Wellington & The University of Auckland, New Zealand at 4.

⁵⁸ Mhuru, M. (2020). [He Whakaaro: What do we know about bullying behaviours in New Zealand?](#) Ministry of Education at 5-6.

⁵⁹ Education Review Office - Te Tari Arotake Mātauranga. (2019). [Bullying Prevention and Response in New Zealand Schools](#) & Education Review Office - Te Tari Arotake Mātauranga. (2019). [Bullying Prevention and Response: Student Voice](#).

⁶⁰ Jang-Jones, A. & McGregor, A. (2019). [PISA2018 New Zealand Students' Wellbeing School climate & student mindsets of 15-year-olds](#). Ministry of Education.

⁶¹ Henry, D. (2022, May 17) Autistic students in NZ three times more likely to be stood down, suspended - new research. *New Zealand Herald*. <https://www.nzherald.co.nz/nz/autistic-students-in-nz-three-times-more-likely-to-be-stood-down-suspended-new-research/KB7MJR2WPAB7KDXQPLTO3JG6NU/>

⁶² Informal removals or what is sometimes known as 'kiwi suspensions' where students are encouraged or asked to withdraw from school, often with the threat of formal action such as exclusion in the background. See Walsh, [Barriers to Education in New Zealand: The Rise of Informal Removals of Students in New Zealand](#) at 31.

⁶³ Walsh, [Barriers to Education in New Zealand: The Rise of Informal Removals of Students in New Zealand](#) at 36.

⁶⁴ *Ibid* at 32-33.

⁶⁵ Mhuru, [He Whakaaro: The educational experiences of disabled learners](#) at 7-8. See pages 2-3 or the report for a more detailed explanation of the methodology.

Table 1 Administrative measures of school inclusion for disabled students⁶⁶

Educational experiences	5-11 year olds			12-19 year olds		
	Disabled	Non-disabled	Ratio	Disabled	Non-disabled	Ratio
% 1+ non-structural moves	31%	21%	1.5	39%	32%	1.2
% 3+ non-structural moves	8%	2%	3.7	13%	7%	1.8
% home schooling	s	s	s	3%	1%	1.9
% 1+ stand-down	s	1%	s	15%	8%	2.0
% 3+ stand-downs	s	s	s	5%	1%	3.1
% 1+ suspension	s	s	s	4%	2%	2.5

The Education Review Office referred to this research in their 2021 review concluding that: “[d]isabled learners are more likely to be stood down or suspended compared to non-disabled peers and are also more likely to change schools, mostly because they are unhappy with how they are treated by the school, but sometimes at the request of the school.”⁶⁷

Another study in 2018 using IDI data from 736,911 students in New Zealand aged 5 to 16 years found that autism was associated with significantly higher odds of suspension.⁶⁸ However, receiving high-need education based funding was associated with a significant and substantial reduction in odds of suspension, after controlling for characteristics associated with funding receipt, including demographic characteristics, co-occurring conditions, and level of disability support need.⁶⁹ The authors hypothesised a range of possible pathways including that recognition of the level of students’ needs could result in increased tolerance and understanding, that increased funding allows for more tailored support, better behaviour management and less bullying (which can be a trigger causing students to act out), and least charitably, that schools may be more accommodating of students who receive funding because they do not want to lose that funding.⁷⁰

Research in other jurisdictions reveals a similar, if not worse, picture to the existing data in Aotearoa New Zealand raising questions as to whether the extent of over-representation is even greater than that shown by the very limited data currently available. For example, research conducted by the Commissioner for Children with South Australian children and young people with lived experience of school suspension, exclusion or expulsion found that despite legislative protections, “recent evidence suggests that exclusionary practices systematically discriminate against children with disability, as well as those with complex social, emotional and behavioural

⁶⁶ Mhuru, [He Whakaaro: The educational experiences of disabled learners](#) at 7.

⁶⁷ Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 130-131.

⁶⁸ Bowden, N., Gibb, S., Audas, R., Clendon, S., Dacombe, J., Kokaua, J., Milne, B.J., Mujoo, H., Murray, S.W., Smiler, K., Stace, H., van der Meer, L., & Taylor, B.J. (2022). Association Between High-Need Education-Based Funding and School Suspension Rates for Autistic Students in New Zealand. *JAMA Pediatrics*. 176(7), 664-671 at E5-E6. The study used linked health and education data from New Zealand's Integrated Data Infrastructure. Data were obtained for students aged 5 to 16 years from January 1 to December 31, 2018.

⁶⁹ Ibid.

⁷⁰ Ibid.

needs.”⁷¹ This study also cited a 2017 report on access to the South Australian education system for students with disability which found that they made up 23% of all suspensions but only 9% of the student population.⁷² The young participants in the study described teachers not responding to their needs and explained that their ‘poor’ behaviour was often due to a lack of understanding or boredom impacting their ability to engage with the lessons. They also reported being “labelled, judged, treated poorly and ‘ignored’ by teachers who thought they were ‘dumb’, ‘lazy’ or ‘disinterested’ rather than in need of support.”⁷³

An inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools the same year also found that exclusions were being used for disabled students who had not been “provided with the level of reasonable adjustments likely necessary to prevent incidents that lead to the use of exclusion” and that the use of exclusions meant that children were removed from school for significant periods of time during which they had no or limited access to educational opportunities.⁷⁴ The inquiry also found ongoing use of informal suspensions and misuse of formal suspensions as part of a case for increased funding or support.⁷⁵

The picture in the United Kingdom is quite similar. For example, a recent paper by Anne-Marie Day cites evidence that children in England and Wales with an identified special educational need were at least seven times more likely to be excluded from mainstream education than their peers.⁷⁶ She also cites statistics in relation the differing rates of disciplinary action for children receiving differing levels of support and suggests that this difference may reflect differences in the exclusion guidance relating to these sub-groups:⁷⁷

Children with SEN support plans are twice as likely to be excluded from school as children with EHCPs, and at over 5 times the rate as children with no identified SEN (Ibid, 2021). This may be due to the strength of exclusion guidance, which states that head teachers should do everything in their power to avoid children with EHCPs being permanently excluded. The same level of protection is not afforded to fixed term exclusions for children with EHCPs, or children with SEN support, where rates of exclusion are higher.

The New Zealand guidelines for principals and boards of trustees do not contain this form of protection from exclusion although they do emphasise the importance of considering the individual student’s circumstances, including any special educational needs, whether an Individual Education Plan was in place at the time of the incident, and if so, whether it was fully supported by school staff and teaching staff at the time the incident occurred.⁷⁸

⁷¹ Connolly, H. (2020). [*The Blame Game – The perspectives from South Australian children and young people on the causes and impacts of education exclusion and why we need to stop blaming children for system failure*](#). Commissioner for Children and Young People SA at 14. The research direct peer-based research, online surveying, one-on-one consultations and interviews with children and young people, their families, parents and care givers, as well as advocates working in this area (see 7).

⁷² Ibid at 15.

⁷³ Ibid at 18.

⁷⁴ Graham, L., McCarthy, T., Killingly, C., Tancredi, H. & Poed, S. (2020). [*Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools: Final Report*](#). The Centre for Inclusive Education, QUT at 22.

⁷⁵ Ibid at 23.

⁷⁶ Day, [*Disabling and criminalising systems? Understanding the experiences and challenges facing incarcerated, neurodivergent children in the education and youth justice systems in England*](#) at 3.

⁷⁷ Ibid. This issue is also raised in Secretary of State for Education. (2019). [*Timpson Review of School Exclusion*](#). Department for Education at 36.

⁷⁸ Ministry of Education. (2009). [*Good practice Guidelines for principals and boards of trustees for managing behaviour that may or may not lead to stand-downs, suspensions, exclusions and expulsions*](#)

Day also argues that these figures are likely to be the tip of the iceberg as like in Aotearoa New Zealand, there is a practice of 'off rolling' or 'hidden exclusions' where children are removed from the school register by placing them in alternative education or home schooling.⁷⁹ The fact that in the United Kingdom there are 5 times the number of children being educated in schools for excluded pupils than the number officially reported as permanently excluded each year⁸⁰ gives an indication of the size of this problem. In Aotearoa New Zealand the discrepancy between the numbers of children excluded from school and in alternative education seems less stark but the age standardisation of exclusion data makes it difficult to make direct comparisons.⁸¹

The Timpson Review of School Exclusion also cites the disproportionate representation of children with SEN in exclusion data and notes that "as well as evidence that children identified as having particular types of SEN are more likely to be excluded, there is evidence that children who have been excluded are more likely to go on to be identified as having SEN, or those with SEN support being issued with a EHC plan after their exclusion". The authors note that this reflects the experience of many parents and carers who described school exclusion being due to a failure to either understand and properly identify children's needs, or to use using this information to put in place the right support which then results in poor behaviour by the child.⁸² Kulz also identified this issue in her qualitative study of the exclusion process:⁸³

A story of parents struggling to have their child's SEN assessed, or to have the appropriate support put into place for an already diagnosed condition, often accompanied stories of permanent exclusion. Many parents described how schools had overlooked their children's needs. Parents, as well as a few headteachers and exclusion officers raised concerns about mainstream educational institutions being appropriately equipped to support SEN students. A lack of time, financial resources and staff expertise was thought to account for the large numbers of SEN students excluded from mainstream education each year.

Data from the United States also presents a similar picture with students receiving support under the Individuals with Disabilities Education Act (IDEA) more than twice as likely to receive one or more out-of-school suspensions.⁸⁴ Hill describes these students as being in a double-bind where the nature of their disabilities makes it difficult for them to manage their behaviour (arguably making them less 'at fault') however they are more likely to be punished for this

[Part II](#) at 25. The guidelines also contain a series of self-reflection questions including whether the school has met with the family and health professionals to assess the needs of the student and what can you do to meet these needs and whether a referral should be made to Special Education for support with behaviour, high health needs, communication issues or complex needs.

⁷⁹ Day, [Disabling and criminalising systems? Understanding the experiences and challenges facing incarcerated, neurodivergent children in the education and youth justice systems in England](#) at 3.

⁸⁰ Gill, K., Quilter-Pinner, H., & Swift, D. (2017). [Making the difference: Breaking the link between school exclusion and social exclusion](#). Institute for Public Policy Research at 13.

⁸¹ As set out above, stand-down, suspension, exclusion and expulsion data is presented as age-standardised rates whereas the number of students in alternative education is presented as a total figure: Figure.NZ. (2023). [Alternative Education students in primary and secondary schools in New Zealand](#). <https://figure.nz/chart/lhKTJOvO6Fyv4fnD-vSHLC7WpT9FUis92>

⁸² Secretary of State for Education, [Timpson Review of School Exclusion](#) at 38.

⁸³ Kulz, C. (2021). [Mapping the Exclusion Process: Inequality, Justice and the Business of Education](#). Communities Empowerment Network at 54. Her study involved 26 semi-structured, face-to-face interviews with parents, local authority workers, headteachers, one assistant headteacher, a clerk and two excluded children (see p. 6).

⁸⁴ Hill, L.A. (2017). [Disrupting The Trajectory: Representing Disabled African American Boys In A System Designed To Send Them To Prison](#). *The Fordham Urban Law Journal*, 45(1), 201 at 214.

behaviour.⁸⁵ Researchers and advocates overseas also raise concerns about the ‘school exclusion to prison pipeline’ for disabled and neurodivergent children.⁸⁶

Victimisation

In 2022 the United Nations Committee on the Rights of the Child & United Nations Committee on the Rights of Persons with Disabilities issued a joint statement on the rights of disabled children: “discrimination against children with disabilities make them disproportionately vulnerable to violence, including corporal punishment, neglect and abuse, in all settings, such as the family home, mental health, educational, or child care institutions.”⁸⁷

The most recent New Zealand Crime & Victims’ Survey found that more than half of disabled people aged between 15 and 29 (55%) were victimised within a 12-month period – this makes them more than 50% more likely to be victimised than non-disabled people in the same age group.⁸⁸ This difference is even greater for personal offences with disabled people aged 15-29 twice as likely to experience personal offences as non-disabled people.⁸⁹ The New Zealand Crime & Victims’ Survey does not collect data in relation to those aged under 15 so there is no clear picture of the victimisation rates for disabled children aged 0-14 in Aotearoa. A 2021 report by the New Zealand Human Rights Commission (HRC) raises concerns about the lack of data in relation to abuse of disabled children in Aotearoa⁹⁰ arguing that this lack of data collection constitutes a failure to adequately monitor the wellbeing of disabled children.⁹¹ However, the data that is available and overseas research suggests that disabled children and young people are significantly more vulnerable to abuse.

Briggs collected quantitative and qualitative data from 116 special education students with learning difficulties aged 11–17 years (61 females and 55 males) found that this cohort of children was more vulnerable to the risks of drugs, violence, psychological bullying, pornography and sexual abuse.⁹² A quarter of participants thought there was a lot of violence in their own homes;⁹³ 38% of students reported bullying in special education and 56% when they attended a mainstream school;⁹⁴ 32% of female respondents reported being the victims (substantiated) sexual abuse;⁹⁵ sexual abuse was equally common for boys and girls with older youths being responsible for sex offences in a little over half of the cases;⁹⁶ and 22% of respondents reported that other students had used force or tricks to involve them in underage sex.⁹⁷ Briggs also identified a range of factors that made children with learning difficulties more

⁸⁵ Hill, [Disrupting The Trajectory: Representing Disabled African American Boys In A System Designed To Send Them To Prison](#) at 214.

⁸⁶ Day, [Disabling and criminalising systems? Understanding the experiences and challenges facing incarcerated, neurodivergent children in the education and youth justice systems in England](#) at 3; Hill, [Disrupting The Trajectory: Representing Disabled African American Boys In A System Designed To Send Them To Prison](#) at 214.

⁸⁷ United Nations Committee on the Rights of the Child & United Nations Committee on the Rights of Persons with Disabilities. (2022). [Joint Statement on the Rights of Children with Disabilities](#). The Office of the High Commissioner for Human Rights at 2.

⁸⁸ Ministry of Justice, [Survey findings - Cycle 4 report Descriptive statistics. June 2022. Results drawn from Cycle 4 \(2020/21\) of the New Zealand Crime and Victims Survey](#) at 92.

⁸⁹ Ibid at 93.

⁹⁰ New Zealand Human Rights Commission, [Whakamahia te tūkino kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 33.

⁹¹ Ibid at 34.

⁹² Briggs, [Safety issues in the lives of children with learning disabilities](#) at 43.

⁹³ Ibid at 46.

⁹⁴ Ibid at 47.

⁹⁵ Ibid at 49. School counsellors indicated the actual figure was even higher – 44%.

⁹⁶ Ibid at 49.

⁹⁷ Ibid at 50.

vulnerable to abuse and/or created barriers to reporting including being afraid of violent retribution, embarrassment or that they would not be believed,⁹⁸ confusion about rights and responsibilities in relation to sexual behaviour and whether boys should force girls to have sex,⁹⁹ not knowing what to do if an older person tried or forced them to engage in sexual misbehaviour;¹⁰⁰ and safety advice being limited to avoiding strangers.¹⁰¹

Simpson et al. cite research that intellectually disabled children are three to four times more likely to be abused and neglected than their peers without intellectual disabilities as well as being more likely to experience multiple incidents of abuse over time with parental stress caused by financial pressures being a possible cause.¹⁰² Simpson et al.'s qualitative study which involved focus groups and interviews with social workers and health practitioners in Aotearoa New Zealand also identified other mediating factors including that it was more difficult to identify indicators of abuse when children lack communication skills,¹⁰³ children with intellectual or physical difficulties are more vulnerable to abuse because they are less likely to be able to identify abuse making disclosure more challenging,¹⁰⁴ participants also reported children with intellectual disability not being moved despite an identified care & protection issue because their care needs were too high and an alternative placement could not be found.¹⁰⁵

The New Zealand Human Rights Commission's 2021 report also identifies various factors that increase disabled people's risk of sexual and other violence including myths about disabled people as asexual, innocent and dependent; being excluded from sexuality and healthy relationship education; learnt compliance with authority/carers; and being accustomed to intimate handling which can make it harder to identify abusive behaviour.¹⁰⁶

Overseas data provides an even starker picture for disabled children. For example, data presented to the Senate Community Affairs Committee reference in relation to abuse of disabled people showed that children with disability are three times more likely to be abused than their peers and that children with communication difficulties and high behaviour support needs have a heightened risk of abuse.¹⁰⁷ Baidawi & Piquero also note that while studies that specifically report on maltreatment among children with neurodisability are negligible, the available evidence indicates that children with certain neurodisabilities (including but not limited to autism spectrum disorder, attention deficit hyperactivity disorder, intellectual disability and conduct disorder) are at increased risk of childhood maltreatment and protective services involvement.¹⁰⁸ They also discuss possible causes including that children with behavioural difficulties may be more challenging to care for leading to more negative responses from caregivers and denying them the relational environment they need to address their needs.¹⁰⁹ Children's increased risk

⁹⁸ Ibid at 51.

⁹⁹ Ibid at 51.

¹⁰⁰ Ibid at 52.

¹⁰¹ Ibid at 53.

¹⁰² Simpson et al., [Responses to abuse, neglect, and trauma of children with intellectual disability: Experiences of social workers and health practitioners in Aotearoa New Zealand](#) at 73.

¹⁰³ Ibid at 78.

¹⁰⁴ Ibid at 78-79.

¹⁰⁵ Ibid at 79.

¹⁰⁶ New Zealand Human Rights Commission, [Whakamahia te tūkinō kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 35.

¹⁰⁷ Senate Community Affairs Committee Secretariat, [Community Affairs References Committee: Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability](#) at 173.

¹⁰⁸ Baidawi, S. & Piquero, A.R. (2021). Neurodisability among Children at the Nexus of the Child Welfare and Youth Justice System. *Journal of Youth and Adolescence* 50, 803–819 at 805.

¹⁰⁹ Ibid.

of victimisation is also related to characteristics of those who are looking after them such as a socially and economically impoverished caregiver with their own personal challenges or inadequately trained, supported, and paid staff in residential care.¹¹⁰

A study in relation to sexual victimisation of autistic women found staggeringly high rates – an open question resulted in 68.9% victimization, compared to 88.4% from questions from the Sexual Experiences Survey Short Form Victimization questionnaire.¹¹¹ The research results also indicated that most of the victims were underage or barely able to legally consent when sexual aggression first occurred (68%, or 135 participants were aged 18 or below and 56% or 112 participants were at or below age of consent).¹¹² Just under 85% of victims were revictimised,¹¹³ and only one third of the victims reported the assault. No medico-legal action was taken for three quarters of those that reported and 18 out of the 52 who reported were not believed.¹¹⁴

Involvement in the care system

As discussed in the care-experienced children and young people report, a series of reports by the Human Rights Commission and the Independent Children’s Monitor have raised concerns about Oranga Tamariki’s lack of data in relation to the disability status of children and young people in care. For example, a 2021 report by the New Zealand Human Rights Commission (HRC) raises concerns that there is little information about the abuse of disabled children in Aotearoa¹¹⁵ citing a response from Oranga Tamariki “that they were unable to provide details about the numbers, or situations, of disabled children in care”.¹¹⁶ The HRC argued that this lack of data collection constitutes a failure to adequately monitor the wellbeing of disabled children.¹¹⁷

The Independent Children’s Monitor’s report for the year 1 July 2021 to 30 June 2022 states that Oranga Tamariki had reported that they had 847 disabled children in care. However, the ICM also noted that the figure should be treated with care as Oranga Tamariki had also reported that they have not yet defined disability.¹¹⁸ The ICM also reported that in a case review by Oranga Tamariki, 129 of the 729 cases (18%) reviewed were disabled tamariki.¹¹⁹ This compares with the 2013 Disability Survey data that 11% of children under 15 and 16% of those aged 15-44 have a disability.¹²⁰ The ICM’s report for the 2021-2022 year reported casefile

¹¹⁰ Ibid.

¹¹¹ Cazalis, F., Reyes, E., Leduc, S. & Gourion, D. (2022). [Evidence That Nine Autistic Women Out of Ten Have Been Victims of Sexual Violence](#). *Frontiers in Behavioral Neuroscience*, 16, 852203 at 13.

¹¹² Ibid at 13.

¹¹³ Ibid at 14.

¹¹⁴ Ibid at 15.

¹¹⁵ New Zealand Human Rights Commission, [Whakamahia te tūkinō kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 33.

¹¹⁶ Ibid at 34.

¹¹⁷ Ibid at 34.

¹¹⁸ Independent Children’s Monitor. (2022). [Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations, Reporting period 1 July 2020 – 30 June 2021](#) at 105. Oranga Tamariki reported that work was underway to “come up with a working definition of disability, informed by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) definition.”

¹¹⁹ Ibid at 106. Oranga Tamariki reported that work was underway to “come up with a working definition of disability, informed by the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) definition.”

¹²⁰ Statistics New Zealand. (2014). *Disability Survey: 2013*. <https://www.stats.govt.nz/assets/Uploads/Disability-survey/Disability-survey-2013/Disability-survey-2013-additional-documents/Disability-Survey-2013.pdf> at 3.

analysis of a sample of 756 children in care estimated that 25 percent have a disability.¹²¹ However, ICM also noted that the ongoing use of the disability indicator which significantly undercounts disability rates meant that neither Oranga Tamariki nor the Monitor can adequately see what the quality of care looks like for tamariki with disabilities.¹²²

Another study by the Youth 19 research team in relation to the mental and physical health of young people who had been involved with Oranga Tamariki found that young people ever or currently involved with Oranga Tamariki reported nearly double rates of reporting a disabling condition as compared with young people without involvement.¹²³ A 'disabling condition' is defined as "a long-term disability, chronic condition, or pain that impacts their day-to-day functioning".¹²⁴ Although this definition differs from that used by Oranga Tamariki and in the Disability Survey, the relative proportions shows a clear over-representation of disabled children and young people in care.

The ICM also reported comments from some Oranga Tamariki staff and caregivers about a lack of disability knowledge and support as well as concerns over poor communication between agencies providing support to disabled children and young people.¹²⁵ In particular, the ICM found that Oranga Tamariki support of health needs, especially mental health needs is variable including low screening for substance abuse, psychological distress and suicide risk.¹²⁶ Reports by the Office of the Children's Commissioner into Oranga Tamariki residences have also identified shortcomings in care. For example, an unannounced visit to Epuni Care & Protection residence found that that staff were unable to provide adequate care for children and young people with complex mental health needs¹²⁷ as well as an increase number of self-harming and suicide attempts with some that could have resulted in fatalities.¹²⁸

Involvement in criminal justice system

Prevalence of neurodiversity and disability

There is limited evidence of the number of neurodiverse and/or disabled children and young people involved in the youth justice system in Aotearoa,¹²⁹ but it is believed that rates are likely to be similar to those found in a significant prevalence study by the Office of the Children's Commissioner for England.¹³⁰ The results of that study are set out in the table below.

¹²¹ Independent Children's Monitor. (2023). [*Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations, Reporting period 1 July 2021 – 30 June 2022*](#) at 12.

¹²² Ibid.

¹²³ Fleming et al., [*Young people who have been involved with Oranga Tamariki: Mental and physical health and healthcare access*](#) at 15.

¹²⁴ Ibid.

¹²⁵ Independent Children's Monitor, [*Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations, Reporting period 1 July 2020 – 30 June 2021*](#) at 106.

¹²⁶ Ibid at 21 & 104-105.

¹²⁷ Office of the Children's Commissioner. (2021). [*Oranga Tamariki Residence Visit \(Unannounced OPCAT monitoring\) Office of the Children's Commissioner OPCAT Monitoring – Unannounced visit Epuni Care and Protection Residence*](#) at 9.

¹²⁸ Ibid at 8.

¹²⁹ Lynch, [*Neurodisability in the Youth Justice System in New Zealand: How Vulnerability Intersects with Justice*](#) at 7.

¹³⁰ Fitzgerald, A. (2021). *Ko Te Rongoā, Ko Te Aro, Ko Te Whai Kia Tika Ai, Mo Ngā Rangatahi: Solution-Focused Justice For Young People* (unpublished paper) at 21-22.

Table 2 Prevalence of neurodevelopmental disorders¹³¹

Neurodevelopmental disorder	Young people in general population	Young people in custody
Learning disabilities	2 - 4%	23 - 32%
Dyslexia	10%	43 - 57%
Communication disorders	5 - 7%	60 - 90%
Attention deficit hyperactive disorder	1.7 - 9%	12%
Autistic spectrum disorder	0.6 - 1.2%	15%
Traumatic brain injury	24 - 31.6%	65.1 - 72.1%
Epilepsy	0.45 - 1%	0.7 - 0.8%
Foetal alcohol syndrome	0.1 - 5%	10.9 - 11.7%

There is also some local data in relation to the prevalence of some forms of neurodisability. For example:

- An audit of the files of 184 female youth offenders from the Auckland Regional Forensic Service client register, 29.3% had ADHD type symptoms and 14.7% had low intellect/cognitive impairment.¹³²
- A 2017 study found that 64% of young people in youth justice residences in Aotearoa New Zealand were language impaired compared to 10% of a control group.¹³³ This figure is consistent with, albeit slightly higher than, overseas estimates that it would be reasonable to expect that 50–60% of youth offenders may present with language difficulties.¹³⁴
- Analysis using the IDI¹³⁵ found that large proportions of people interacting with the justice sector in 2015 have had a prior recorded TBI – 34% of people proceeded against by Police; 36% of people charged in court; 40% of people starting a community sentence; 47% of people remanded in custody and 46% of people starting a prison sentence. This compares with a 13% rate among the public.¹³⁶

¹³¹ Hughes et al., [Nobody made the connection: The prevalence of neurodisability in young people who offend](#) at 23.

¹³² Lim, S., Lambie, I. & Van Toledo, A. (2018). Characteristics of Female Youth Offenders in New Zealand. *International Journal of Offender Therapy and Comparative Criminology*, 63(2), 198-217 at 208.

¹³³ Lount, S. A., Purdy, S. C., & Hand, L. (2017). Hearing, Auditory Processing, and Language Skills of Male Youth Offenders and Remandees in Youth Justice Residences in New Zealand. *Journal of Speech, Language, and Hearing Research*, 60(1), 121-135 at 127.

¹³⁴ Lount et al., Tough talk: Youth offenders' perceptions of communicating in the youth justice system in New Zealand at 596.

¹³⁵ Integrated Data Infrastructure (IDI) is research database which holds de-identified microdata about people and households about life events, like education, income, benefits, migration, justice, and health sourced from government agencies, Stats NZ surveys, and non-government organisations (NGOs). The data is linked together, or integrated, to form the IDI. Statistics NZ. (2022). *Integrated Data Infrastructure*. <https://www.stats.govt.nz/integrated-data/integrated-data-infrastructure/>

¹³⁶ Horspool, N., Crawford, L. & Rutherford, L. (2017). [Traumatic brain injury and the criminal justice system](#). Ministry of Justice at 1. Research in the United Kingdom found an even higher rate with one study finding that 74% of 16- to 18-year-olds male young offenders reported a lifetime of traumatic brain injury: Kent, H. & Williams, H. (2021). [Traumatic Brain Injury](#). HM Inspectorate of Probation at 7.

There has not yet been a funded study of FASD prevalence in Aotearoa New Zealand in care or justice settings.¹³⁷ However, a frequently cited Australian study found that 89% of young people in a youth detention centre in Western Australia had at least one domain of severe neurodevelopmental impairment, and 36% were diagnosed with fetal alcohol spectrum disorder FASD.¹³⁸ They study also found that the prevalence in Aboriginal youth was 47%, more than twice that of the highest population estimate of FASD in Australia of 19%.¹³⁹

An Australian qualitative study that sought to examine the reasons for the entrenchment of children and young people with acquired brain injury (ABI) in the criminal justice system in Victoria, Australia also commented on the lack of prevalence data due to the reluctance to diagnose young people with a stigmatising condition.¹⁴⁰ Despite the lack of data, the authors commented that young people with ABIs are both very likely to be over-represented in the criminal justice system and more vulnerable to experiencing the criminal justice system as a 'revolving door'.¹⁴¹

A study published in 2023 by Boiteux & Poynton used NSW population level information from linked administrative data to describe offending by young people with disability in NSW.¹⁴² The authors found that the proportion of disabled people who had any recorded offence under the age of 18 was more than twice that of people without disability (13%, vs. 6%).¹⁴³ The difference was even greater in relation to disabled young people experiencing an episode in youth detention - nearly six times higher than that of people without disability (4%, vs. 0.7%).¹⁴⁴ There were also differences by type of disability, with "a much higher proportion of people with psychosocial disability (16%) and cognitive disability (12%) having offended before the age of 18 compared with young people without disability".¹⁴⁵

Boiteux & Poynton also found a significant association between youth offending and the frequency of child protection reports with disabled young people who were the subject of child protection reports were between 2.5 and 4.5 times higher than disabled young people who had not been the subject of reports with the likelihood increasing as the number of reports increased.¹⁴⁶ They also found preliminary evidence that providing disability services at a younger age could "prevent or delay contact with the youth justice system".¹⁴⁷ That is, if disabled children and young people received the support they need, they were less likely to be involved in the criminal justice system.

¹³⁷ Gibbs, [Best practices for justice: Practitioner views on understanding and helping youth living with fetal alcohol spectrum disorder \(FASD\)](#) at 7.

¹³⁸ Bower et al. , C., Watkins, R.E., Mutch, R.C., Marriott, R., Freeman, J., Kippin, N.R., Safe, B. Pestell, C., Cheung, C.S.C., Shield, H. Lodewicka, T., Springall, A., Taylow, J., Walker, N., Argiro, E., Leitao, S., Hamilton, S., Condon, C., Passmore, H.M. & Giglia, R. (2018). [Fetal alcohol spectrum disorder and youth justice: A prevalence study among young people sentenced to detention in Western Australia](#). *BMJ Open*, 8(2), E019605 at 1.

¹³⁹ Ibid at 7.

¹⁴⁰ Landsell et al., [Young people with acquired brain injury: Preventing entrenchment in the criminal justice system](#) at 5.

¹⁴¹ Ibid.

¹⁴² Boiteux & Poynton, [Offending by young people with disability: A NSW linkage study \(Crime and Justice Bulletin No. 254\)](#) at 5.

¹⁴³ Ibid at 10.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ Ibid at 20.

¹⁴⁷ Ibid at 23.

Her Majesty's Inspectorate of Prisons describes the difficulties in relation to making a confident estimate of the prevalence of neurodivergence in the criminal justice system:¹⁴⁸

Different conditions are measured in various settings and using different criteria. The figures quoted for some conditions are likely to include people who experience minor difficulties as well as severe impacts. Comorbidity between neurodivergent conditions is known to exist, but to an unknown extent. However, given the prevalence estimate for dyslexia alone (50%), it would not seem unreasonable to suggest (as a conservative working assumption) that maybe half the adult prison population experiences some kind of neurodivergence challenge – that neurodivergence could therefore be as common as neurotypicality in the prison population. It is even more difficult to make an estimate of prevalence in other parts of the CJS, as data is so limited.

Recent data from the United Kingdom comparing the prevalence of special educational needs (SEN) found that while only 45% of the all-pupil population had been recorded as ever having SEN, the percentage was 80% for those who had been cautioned or sentenced for an offence, 87% for those cautioned or sentenced for a serious violence offence, and 95% for those whose offending had been prolific.¹⁴⁹

Experiences in the youth justice system

Recent Youth Court decisions have called attention to the many ways that Aotearoa fails disabled children who are involved in the youth justice system. For example:¹⁵⁰

[T]here have been breaches of [HNJ]'s rights on account of his disability, both under the CRC and the CRPD. Three significant ways in particular in which that has happened, common to most cases of young people in the Youth Justice system who have a disability, are the lack of access to appropriate supports and services, the often long-term detention in Youth Justice facilities, as well as significant delays in resolving the proceedings.

The Centre for Justice Innovation describe the negative impact that contact with the justice system has on disabled and neurodiverse children and young people who are already more likely to experience poor outcomes in terms of education, career prospects and likelihood of reoffending.¹⁵¹ For example, the disruption caused by an arrest, court attendance and possible custodial sentence to a child's attendance at school is particularly acute for children who rely on additional support in school and the negative impact of a criminal record on employment prospects will be even larger for children who already face additional challenges entering the workforce.¹⁵² The Centre for Justice Innovation also cite evidence that children with neuro-disabilities are treated more severely with "higher rates of children entering custody from an earlier age, receiving longer custodial sentences and being associated with higher rates of reoffending and more violent crimes."¹⁵³

¹⁴⁸ Her Majesty's Inspectorate of Prisons. (2021). [Neurodiversity in the criminal justice system: A review of evidence](#). Criminal Justice Joint Inspection at 20-21.

¹⁴⁹ Department for Education & Ministry of Justice. (2022). *Education, children's social care and offending: Descriptive Statistics*. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1059556/Education_children_s_social_care_and_offending_descriptive_stats_FINAL.pdf

¹⁵⁰ *New Zealand Police v HN* [2021] NZYC 364, at [83].

¹⁵¹ Centre for Justice Innovation, [The right support at the right time: Where the justice system fits in](#) at 1.

¹⁵² Ibid.

¹⁵³ Ibid.

Research and literature also discusses the many ways that the criminal justice system is unsuitable for disabled and neurodiverse people including:

- Police misrecognising neurodiverse conditions and related behaviours leading to the unnecessary escalation of force;¹⁵⁴
- Difficulties dealing with the police custody leading to not being in the right headspace to make informed decisions;¹⁵⁵
- Not being able to understand the court process limiting engagement with it and the ability to make informed decisions;¹⁵⁶
- Not understanding bail conditions potentially resulting in breach;¹⁵⁷
- Custodial environments involving busy and noisy wings, cell-sharing and changes to the daily routine can be triggering and harmful to neurodivergent people. Behaviours linked to the stress of the environment can also lead to higher levels of restraint and segregation / isolation;¹⁵⁸ and
- Rehabilitation programmes being based on cognitive behavioural techniques that are unsuitable for both neurodivergent children and adults and the lack of alternative, suitable programmes trapping people in the 'carceral web'.¹⁵⁹

The clear evidence of the increased vulnerability of children and young people with neurodisabilities led to the United Nations Committee on the Rights of the Child to state that they should not be involved in the criminal justice system at all:¹⁶⁰

Children with developmental delays or neurodevelopmental disorders or disabilities (for example, autism spectrum disorders, fetal alcohol spectrum disorders or acquired brain injuries) should not be in the child justice system at all, even if they have reached the minimum age of criminal responsibility. If not automatically excluded, such children should be individually assessed.

Research and literature in the United Kingdom also raises issues in relation to the transition from the youth justice system to the adult criminal justice system including disparities in the understanding and skills of system professionals and in the treatment and support provided.¹⁶¹

Poverty

The last national disability survey in 2013 found that households with disabled children were 1.4 to 1.6 times more likely to be below all three poverty thresholds than households that only had non-disabled children.¹⁶² The 2013 Disability Survey also found that carers of disabled children were 1.5 times more likely to report not having enough income or only just enough income than

¹⁵⁴ Revolving Doors, [Exploring the links between neurodiversity and the revolving door of crisis and crime: Policy briefing](#) at 3.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Ibid.

¹⁵⁸ Day, [Disabling and criminalising systems? Understanding the experiences and challenges facing incarcerated, neurodivergent children in the education and youth justice systems in England](#) at 4.

¹⁵⁹ Ibid at 4.

¹⁶⁰ United Nations Committee on the Rights of the Child. (2019). [General Comment No.24. on children's rights in the child justice system](#). The Office of the High Commissioner for Human Rights at 7.

¹⁶¹ Alliance for Youth Justice. (2023). [Young people in transition in the criminal justice system: Evidence review](#) at 38.

¹⁶² Murray, [The state of wellbeing and equality for disabled people, their families, and whānau](#) at 24.

all parents (63% of carers of disabled children compared to 46% of all parents).¹⁶³ The next survey is planned for 2023.¹⁶⁴

A 2022 report drawing from the Stats NZ February 2022 Child Poverty release found that disabled children and children in disabled households (i.e. households with at least one disabled person) are much more likely to be living in hardship or severe hardship. 21% of disabled children live in hardship as compared with 10% of non-disabled children and 10% of disabled children live in severe hardship as compared with 4% of non-disabled children. Similarly, 21% of children in disabled households live in hardship as compared with 7% of children in non-disabled households and 10% of children in disabled households live in severe hardship as compared with 3% of children in non-disabled households.¹⁶⁵

Other justice problems

Legal needs surveys and research are generally limited to adults or those aged 15 or older. However, given the lack of specific focus on disabled children and young people, I have also considered the research in relation to disabled adults.

Diesfeld et al's 2006 literature review in 2006 helpfully summarised research in relation to the legal needs of disabled adults in New Zealand up to that date including:¹⁶⁶

- Maxwell et al's national study in 1999 which considered disabled people as a sub-group reporting that disabled people had distinct legal needs, particularly in relation to access to statutory entitlements, as well as experiencing more frequent problems relating to debt, wills, incapacity and legal issues related to children.¹⁶⁷
- Mitchell et al's research which identified the right to access education and special education services as well as the need for assistance to understand their rights and the schools' obligations in relation to schooling, special education funding and transition services.¹⁶⁸
- A 2005 legal needs assessment of the Wellington region by Ignite Research which found that people with mental illness encountered the same legal issues experienced by other vulnerable groups including housing, employment, child custody, and statutory entitlements.¹⁶⁹
- Research by the Human Rights Commission and Bray et al in relation to people with intellectual disability include inappropriate medication, the use of isolation and restraint, assault by other service-users, and difficulties with complaint processes.¹⁷⁰

I am not aware of any other focussed research on the legal needs of disabled people in Aotearoa New Zealand since 2006 (other than the reports discussed above). However, the 2017 survey of low income New Zealanders found that people with a long-term health problem or disability were more likely than others to have experienced an impactful legal problem in the last two

¹⁶³ Ibid at 26. This comparison is between the carers of disabled children and all parents. This will underestimate the level of inequality because carers with disabled children are included in the all parents' data too.

¹⁶⁴ Office for Disability Issues. (n.d.). *Survey data*. <https://www.odi.govt.nz/guidance-and-resources/disability-data-and-evidence-resources/survey-data/>

¹⁶⁵ Perry, *Child Poverty in New Zealand* at 45.

¹⁶⁶ Maxwell et al., *Meeting legal needs*; Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1*.

¹⁶⁷ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1*. at 4 citing Maxwell et al, *Meeting legal needs*.

¹⁶⁸ Ibid at 5 citing Mitchell Research.

¹⁶⁹ Ibid at 5.

¹⁷⁰ Ibid at 9.

years,¹⁷¹ to say that their problem has lasted (or did last) longer than a year,¹⁷² to say that the costs of lawyer's fees had stopped them from approaching a lawyer,¹⁷³ and be aware of legal aid¹⁷⁴ and community law centres.¹⁷⁵ The 2017 survey of community law centre clients also found that clients with a long-term disability or health problem were more likely to experience money or debt problems and product or service problems,¹⁷⁶ to report that they had a legal problem they did not seek help for,¹⁷⁷ experience three or more different types of problem,¹⁷⁸ and experience problems lasting longer than a year¹⁷⁹ and ongoing problems.¹⁸⁰

Overseas research and legal needs studies have also identified the experience of specific legal issues as well as increased prevalence of common issues. The Law Council of Australia's LAW Survey found having a disability was one of the strongest predictors of prevalence and that "people with a disability had high prevalence of legal problems overall, substantial legal problems, multiple legal problems and problems from all of the problem groups."¹⁸¹ Coumarelos et al. suggest that this increased propensity to experience legal problems is consistent with the increased level of social exclusion experienced by disabled people.¹⁸² This connection is also likely to be bi-directional with the experience of legal problems further entrenching social exclusion.¹⁸³

The Law Council of Australia also drew on the data from LAW study explaining that many of the legal problems experienced by disabled people arises from "socio-economic disadvantage, such as social security issues, housing and tenancy, debt recovery and fines."¹⁸⁴ Others have a direct connection to "a person's disability, such as personal injury claims, discrimination complaints, and issues relating to legal capacity, adult guardianship or substitute decision making."¹⁸⁵ In addition, disabled people can also experience the same or similar legal problems to people without disability with the problem being additional barriers to accessing justice."¹⁸⁶ Research by Statistics Canada found that disabled people were more than twice as likely as people without disabilities to report experiencing one or more serious problem in the last three years and much more likely to experience three or more problems in the preceding three years.¹⁸⁷ They also found differences in the frequency of experiencing some types of legal problems: disabled people were more likely to experience a problem relating to poor or incorrect medical treatment (29% versus 13%), a problem with receiving disability assistance (17% versus 2%), with government assistance payments (12% versus 4%), harassment (20% versus 15%), and discrimination (19% versus 15%).¹⁸⁸

¹⁷¹ Colmar Brunton. (2018). *Legal needs among low income New Zealanders*. Ministry of Justice at 34.

¹⁷² Ibid at 44.

¹⁷³ Ibid at 13.

¹⁷⁴ Ibid at 13.

¹⁷⁵ Ibid at 15.

¹⁷⁶ Colmar Brunton. (2018). *Community Law Centre client survey*. Ministry of Justice at 10.

¹⁷⁷ Ibid at 13.

¹⁷⁸ Ibid at 14.

¹⁷⁹ Ibid at 24.

¹⁸⁰ Ibid at 44.

¹⁸¹ Coumarelos, C., Macourt, D., People, J., McDonald, H.M., Wei, Z., Iriana, I., & Ramsey, S. (2012). [Legal Australia-Wide Survey: legal need in Australia](#), Law and Justice Foundation of New South Wales at 174.

¹⁸² Ibid at 19.

¹⁸³ Ibid.

¹⁸⁴ Law Council of Australia, [The Justice Project: Final Report Part 1 People with Disability](#) at 14-15.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid at 14.

¹⁸⁷ Savage, L. & McDonald, L. (2022) [Experiences of serious problems or disputes in the Canadian provinces, 2021](#). Statistics Canada at 7.

¹⁸⁸ Ibid at 7.

Barriers

As Diesfeld et al. explained in their literature review:¹⁸⁹

[D]isabled people face varying and often multiple barriers...[b]arriers exist in the built environment, in information and services and in societal attitudes and behaviours... disabled people have fewer resources than the general public and were more likely than others to report that barriers (including cost) to accessing legal services were too great

Some of these barriers are common to all people with disabilities, while others will vary depending on the individual and the disability involved.¹⁹⁰ For example, common barriers include information not being available in formats that cater for disabled people and experiencing negative attitudes when going to court. Barriers affecting specific groups include a lack of technological devices to assist people with hearing impairment or lack of qualified sign language interpreters affects deaf and blind people, intellectually disabled people can be particularly disadvantaged in terms of understanding what is happening at court, and those with psychiatric or psychological disabilities may experience high levels of stress at court.¹⁹¹ In the following section I discuss the common barriers with reference to specific groups of disabled or neurodiverse children and young people where relevant before discussing the specific barriers experienced by some groups. As with the discussion of justice needs, I will discuss the research and literature relating to disabled or neurodiverse adults where there is limited material specifically focussing on children and young people.

Attitudinal Barriers

Attitudes of system actors

The primary barrier to accessing justice discussed in the literature is the negative attitudes to disabled people generally and disabled children in particular. As Diesfeld et al. explain:¹⁹²

The way in which the broader community or indeed professionals act toward disabled people is underpinned by their assumptions about what constitutes disability...The stigma associated with impairment and disability often results in disabled people being either not respected by legal professionals or viewed as incapable of making independent decisions (Maxwell et al., 1999). Conversely, legal professionals may not recognise a person's impairment, with negative implications for the person.

The New Zealand Human Rights Commission also describe a series of interrelated attitudinal barriers to accessing justice via the criminal justice system in cases of abuse and violence including not being believed, not being perceived as a credible witness, a lack of support-people within the system, significant problems engaging with police due to police attitudes, and demonstrations of prejudice.¹⁹³ Children with Disability Australia (CDA) raised similar concerns

¹⁸⁹ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1*. at 9-10.

¹⁹⁰ Te Aka Matua o te Ture - New Zealand Law Commission. (2002). [Seeking solutions: Options for change to the New Zealand court system](#) (Preliminary Paper 52) at 48.

¹⁹¹ Te Aka Matua o te Ture, [Seeking solutions: Options for change to the New Zealand court system](#) at 221.

¹⁹² Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1*. at 10.

¹⁹³ New Zealand Human Rights Commission - Te Kāhui Tika Tangata, [Whakamahia te tūkinō kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 42.

in their submission to the Senate Community Affairs Committee inquiry in relation to violence, abuse and neglect against people with disability:¹⁹⁴

[P]olice have been unwilling to take a statement from a child either based on the assumptions of capacity regarding making a statement or because there is no communication support available if required...The perpetuation of the stereotype that people with disability make 'poor witnesses' inhibits prosecution of crimes against children with disability. The curtailed opportunity to demonstrate credibility as a witness in a court of law further perpetuates this view.⁷⁵

An Australian study involving young people who had experienced domestic violence quoted a young person who reflected on the challenges experienced by their young brother, who was largely mute during childhood:¹⁹⁵

Like so many young people are ignored even when they have an oral voice that him not having – not being able to speak is that no one ever would have asked him the question, and no one ever would have even bothered to go to him. And no one has ever bothered to go to him. ... there is so much abuse that goes unheard of. And when it is brought up, there is no value given to the voice of the young disabled person.

Her Majesty's Inspectorate of Prisons highlight how attitudes about disabled and neurodiverse people can influence how the problem is defined (in this case, whether the problem is seen as the person or the system that is inaccessible to them):¹⁹⁶

We were struck by the number of times the word 'difficult' was used in evidence, most commonly in relation to perceptions of the behaviour of neurodivergent people. It would perhaps be more useful to reflect on how 'difficult' the CJS is for people with neurodivergent needs, and what could be done to change this.

Some studies also discuss attitudinal barriers about specific disabilities such as Anita Gibbs' research in relation to youth with fetal alcohol spectrum disorder (FASD):¹⁹⁷

Practitioners discussed the major concerns they had about the levels of ignorance, intolerance and incompetence, not only amongst the general population but significantly amongst their own justice professions and from other justice workers currently involved in the lives of youth living with FASD.... The word punishment was used by three participants, as well as noting the deep levels of stigma and oppression that youth living with FASD face as they have contact with the justice system. And youth were blamed for failing to keep to the expectations of justice.

Participants in an Australian study in relation to young people with acquired brain injury in the criminal justice system reported observing police and custodial officers responding to young people with cognitive issues in inappropriate and disrespectful ways due to "a lack of

¹⁹⁴ Senate Community Affairs Committee Secretariat, [Community Affairs References Committee: Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability](#) at 174.

¹⁹⁵ Fitz-Gibbon, K., McGowan, J. & Stewart, R. (2023). [I believe you: Children and young people's experiences of seeking help, securing help and navigating the family violence system](#). Monash Gender and Family Violence Prevention Centre, Monash University at 39.

¹⁹⁶ Her Majesty's Inspectorate of Prisons, [Neurodiversity in the criminal justice system: A review of evidence](#) at 9.

¹⁹⁷ Gibbs, [Best practices for justice: Practitioner views on understanding and helping youth living with fetal alcohol spectrum disorder \(FASD\)](#) at 9.

awareness, inadequate education and training, and institutional attitudes that favoured punitive actions over responsive, empathetic and rehabilitative approaches”.¹⁹⁸ A systemic review of the literature in relation to care criminalisation of children with disability in the child protection system identifies the wider impacts of punitive responses to disability:¹⁹⁹

An important factor is the generally punitive responses to disability, particularly where disability causes children difficulties with emotional and behavioural regulation. Reliance on punitive responses to these impacts of disability is seen in educational contexts, to behaviours seen as adolescent family violence, and in out-of-home care settings. Punitive responses are exacerbated by a lack of understanding and responsiveness by police and justice systems to children with disability in child protection, as well as the low age of criminal responsibility across much of Australia (10 years), which results in children with disability in child protection systems being criminalised at ages far younger than recommended by international standards.

Other research and literature has also identified attitudinal barriers in the education system. For example, McMenamin raises concerns about school board members’ inaccurate perceptions about autistic children as a threat based on prejudice, fear and ignorance.²⁰⁰ Participants in Kearney’s research with parents of disabled students who had experienced exclusion from and within schools reported that they identified the poor attitudes of both the classroom teacher and school principal as barriers that acted to exclude or marginalise their children.²⁰¹ The Office of the Children’s Commissioner’s report *What Makes a Good Life for Disabled Children and Young People?* described similar comments from disabled children and young people:²⁰²

[T]eacher’s attitudes can be a barrier to a good life. We heard how teachers can contribute to the discrimination that some young people face. For example by asking inappropriate questions about their disability, which feel invasive. Some young people told us they find school hard when teachers do not interact with them or are not patient with them.

Another young person said they feel people expect less of them because of their disability.²⁰³

A 2020 inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools also identified similar barriers concluding that some education staff continued to hold attitudes towards disabled students that were not aligned with best practice, international human rights obligations, or domestic legal obligations.²⁰⁴

Attitudes of disabled people

As discussed in relation to other groups, the negative and prejudicial attitudes of system actors and/or prior negative experiences in the system or with authority can also result in disabled

¹⁹⁸ Landsell et al., [Young people with acquired brain injury: Preventing entrenchment in the criminal justice system](#) at 8.

¹⁹⁹ Baidawi, S., Ball, R., Newitt, R., Turnbull, L., Kembhavi-Tam, G., Avery, S., & Sheehan, R. (2023). [Research Report: Care criminalisation of children with disability in child protection systems](#). Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability at 12.

²⁰⁰ McMenamin, [Reasonable Accommodation: Equal Education for Learners with Disabilities](#) at 10.

²⁰¹ Kearney, [The right to education: What is happening for disabled students in New Zealand?](#)

²⁰² Office of the Children’s Commissioner. (2021). [What Makes a Good Life for Disabled Children and Young People?](#) at 3.

²⁰³ Office of the Children’s Commissioner, [What Makes a Good Life for Disabled Children and Young People?](#) at 2.

²⁰⁴ Graham et al., [Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools: Final Report](#) at 26.

people not trusting the system or being reluctant to engage with it. For example, Diesfeld et al. describe how being treated disrespectfully within the system and a distrust of authority or a fear of being labelled as difficult by agencies can discourage people from taking action.²⁰⁵ Starr and Janah also explain how the lack of accountability in the education system can leave families of disabled children feeling “defensive and entrenched in an attitude of distrust when they feel that they have limited agency in the process”.²⁰⁶

Structural / Systemic Barriers

The system isn’t designed for disabled people

Diesfeld et al’s literature review regarding the unmet legal needs of people with disabilities identified a number of access barriers in the legal aid system including the criteria for obtaining legal, the limited time allocated for legal advice and representation, the fee attached to some legal aid provision, and the inability to obtain legal aid for some common legal issues (e.g. applications under the Protection of Personal and Property Rights Act 1998) or where an issue is not seen as serious enough but the person requires legal representation because of their level of impairment.²⁰⁷ Mirfin-Veitch et al also raise concerns about the number of people who require support within the legal system but who do not qualify for government resources that may assist them to have their legal needs more adequately met.²⁰⁸

Mirfin-Veitch et al.’s research in relation to intellectually disabled people’s access to the legal system found that inadequacies in the legal aid system were a significant theme in the lawyers’ data with participants describing how legal aid allowances did not reflect the actual time required to work effectively with clients with intellectual disability as this required a range of additional tasks.²⁰⁹ Judges also recognised this issue reporting that it had caused some lawyers to withdraw from legal aid work with clients that would be likely to need more time than provided under the legal aid scheme.²¹⁰

Lawyers participating in Mirfin-Veitch et al’s research also raised concerns about the reduced access to a lawyer of choice because this meant that people had to disclose their story multiple times reducing the opportunity to develop a trusting relationship with their lawyer.²¹¹ Mirfin-Veitch et al also found that the need to work within the conventional, adversarial legal system created was a systemic barrier to access with the majority of judges commenting on the difficulties the system posed for intellectually disabled people including the customary method of cross examination.²¹² Some of the lawyers participating also raised concerns about the system’s preoccupation with achieving resolution which they felt could come at the expense of upholding a person’s legal rights. For example, some lawyers raised concerns about intellectually disabled people’s vulnerability to being pressured to confess or plead guilty given

²⁰⁵ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1*. at 12.

²⁰⁶ Starr & Janah, [Challenging the barriers: Ensuring access to education or children with special educational needs](#) at 37.

²⁰⁷ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1*. at 11.

²⁰⁸ Mirfin-Veitch et al., [Developing a more responsive legal system for people with intellectual disability in New Zealand](#) at 48-49.

²⁰⁹ *Ibid* at 36.

²¹⁰ *Ibid* at 58.

²¹¹ *Ibid* at 37.

²¹² *Ibid* at 62.

their tendency to acquiesce or agree to suggestions put to them by other people due to a desire to please or to communicate understanding.²¹³

New Zealand Human Rights Commission research in relation to abuse of disabled people identified the lack of trained services and professionals in those services who are able to respond appropriately to violence, neglect and abuse of disabled people.²¹⁴ This includes a lack of services for people who are nonverbal and or require support for comprehension and decision making, the lack of accessible services/houses/refuges, and police lack of “knowledge and skills to follow up disclosures of care giver abuse, refer abused people to support services, or initiate prosecutions”.²¹⁵

Disabled and neurodiverse children and young people are even more forgotten

Disabled children and young people can be doubly disadvantaged as Gerison Lansdown notes: “[w]hen children’s rights are considered, children with disabilities tend to be forgotten. When the rights of people with disabilities are considered, children with disabilities tend to be forgotten.”²¹⁶ In Aotearoa New Zealand we see examples of both forms of exclusion.

The United Nations Committee on the Rights of the Child raised specific concerns about the Disability Action Plan’s failure to focus on the needs of disabled children in New Zealand:²¹⁷

The Committee ... regrets that limited action in the Disability Action Plan (2019-2023) specifically focus on the needs of children with disabilities and that the Action Plan has limited mention specifically of the rights of children with disabilities, including their right to express their views on all matters affecting them.

Disabled children and young people are also largely absent from the Child and Youth Wellbeing Strategy with no references at all in the framework and only one reference in the Programme of Action - “support for disabled people and people with health conditions” under the heading “...have what they need”.²¹⁸ The Annual Reports on progress against the strategy do include a short section in relation to disabled children, however the data used for this section in the 2020/2021 report was very poor including using almost ten year old data from the 2013 Disability Survey to report on rates of material hardship.²¹⁹ Other key strategies such as *Te Aorerekura: The National Strategy to Eliminate Family Violence and Sexual Violence*, mentions both disabled people, and children and youth, but not disabled children and youth except for one reference to violent behaviour potentially being related to a young person’s developmental disabilities.²²⁰ A document setting out the themes that came out of hui and written submissions on the draft strategy in relation to the needs and wellbeing of children and young people included only one reference to disabled or disabilities, a general comment that “negative outcomes and life experiences are disproportionately borne by children and young

²¹³ Ibid at 31.

²¹⁴ New Zealand Human Rights Commission, [Whakamahia te tūkinō kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 35.

²¹⁵ Ibid at 35.

²¹⁶ Lansdown, Children with disabilities at 97.

²¹⁷ United Nations Committee on the Rights of the Child, [Concluding observations on the sixth periodic report of New Zealand](#) at 9.

²¹⁸ Child Wellbeing and Poverty Reduction Group. (2019). [Strategy on a page: Child and Youth Wellbeing Strategy](#). Department of Prime Minister in Cabinet.

²¹⁹ Child Wellbeing and Poverty Reduction Group. (2022). [Child and Youth Wellbeing Strategy Annual Report for the year ending 30 June 2021](#). Department of Prime Minister in Cabinet at 18.

²²⁰ The Board for the Elimination of Family Violence and Sexual Violence. (2021). [Te Aorerekura: The National Strategy to Eliminate Family Violence and Sexual Violence](#). Te Kāwanatanga o Aotearoa - New Zealand Government at 11.

people with disabilities” and no discussion in relation to disabled children and young people’s vulnerability to abuse.²²¹

The failure to consider disabled children has also been raised in other countries. For example, submissions to the Australian Senate Community Affairs Committee reference in relation to abuse of disabled people also raised concerns about how children’s policies, strategies and services generally pay little attention to disabled children with the Disability Alliance noting that:²²²

[T]he only appearance that children with disability make in the National Framework for Protecting Australia's Children is where their disability is treated as a cause of the violence and abuse they experience: a clear case of blaming the victim.

Practical Barriers

Diagnosis

The first barrier to accessing justice for disabled children and young people in the criminal justice system is often the lack of a diagnosis. This can be because some forms of impairment can be difficult to identify. For example, communication difficulties can present (or be interpreted) as laziness, rudeness or bad behaviour²²³ with no-one considering that a child’s behaviour is anything more than being ‘bad’.²²⁴ It can also be because disability may not be readily apparent, particularly to an untrained eye.²²⁵ People often choose not to announce their impairment to avoid stigma, discrimination and shame with many becoming skilled at masking their difficulties.²²⁶

Issues can also arise in relation to access to diagnostic services with different aspects of a particular condition being diagnosed by different professionals e.g. ADHD can be assessed by child mental health or paediatric services, whereas associated reading difficulties would be diagnosed in the education system, motor coordination problems by an occupational therapist, and speech and language therapists would diagnose language or social communication issues.²²⁷ There can also be delays in diagnosis for example, professionals can be reluctant to diagnose children and young people with acquired brain injury due to concerns about the stigma that might follow diagnosis, the financial and social costs of diagnosis, and as young people’s

²²¹ Te Puna Aonui. (2022). [Analysis: Children and young peoples](#) at 3.

²²² Senate Community Affairs Committee Secretariat [Community Affairs References Committee: Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability](#) at 175.

²²³ Howard, K., McCann, C., & Dudley, M. (2020). "It was like more easier": Rangatahi (young people) and their whānau (family) talk about communication assistance in the New Zealand youth justice system. *Youth Justice*, 21(2), 210-229 at 211.

²²⁴ Lambie, [What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand](#) at 11.

²²⁵ Howard et al., "It was like more easier": Rangatahi (young people) and their whānau (family) talk about communication assistance in the New Zealand youth justice system at 211.

²²⁶ Mirfin-Veitch et al., [Developing a more responsive legal system for people with intellectual disability in New Zealand](#) at 32; Howard et al., "It was like more easier": Rangatahi (young people) and their whānau (family) talk about communication assistance in the New Zealand youth justice system at 211; National Autistic Society, [“My life could be so different” Experiences of autistic young people in the youth justice system](#) at 43; Kirby, A. (2021). [Neurodiversity – a whole-child approach for youth justice](#). HM Inspectorate of Probation at 7-8.

²²⁷ Lambie, [What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand](#) at 11.

brains continue to develop up to the age of 25.²²⁸ Girls and boys may also present differently with some conditions including ABI²²⁹ and autism²³⁰ which can result in under-diagnosis. Additional challenges can also arise in the context of children and young people in care including difficulties engaging with families, children and young people's transience and placement instability, and refusal to be assessed.²³¹

This lack of screening, assessment and diagnosis mean that it is often left to practitioners to identify and understand disability and neurodivergence despite their low levels of knowledge and confidence.²³² The consequences include limited awareness and understanding of some conditions and resulting symptoms,²³³ people being presumed to have a higher level of intellectual capacity than they actually have,²³⁴ and not receiving necessary accommodations or adjustments when engaging in system processes.²³⁵ Being unable to get a timely diagnosis can also mean that children and young people do not get the support they need in the education and healthcare systems which can have flow on effects on their behaviour.²³⁶

Lack of data & monitoring

As discussed above, there is an overall lack of disaggregated data in relation to disabled children. For example, Oranga Tamariki does not collect disaggregated data on disabled children entering care and protection and the Ministry of Education also fails to collect enrolment, achievement, stand-down, suspension, expulsion or exclusion data disaggregated for disabled children and young people.²³⁷ This lack of data and issues with the quality and usability of data causes a range of problems including making it difficult to define the problem or measure any progress to addressing it.

The Oranga Tamariki (National Care Standards and Related Matters) Regulations 2018 now require reporting of disaggregated data on disabled children in state care to the Independent Children's Monitor.²³⁸ However, the ICM noted Oranga Tamariki are yet to define disability

²²⁸ Landsell et al., [Young people with acquired brain injury: Preventing entrenchment in the criminal justice system](#) at 6.

²²⁹ Ibid.

²³⁰ See Chellew, T., Barbaro, J. & Freeman, N.C. (2022). [The Early Childhood Signs of Autism in Females: a Systematic Review](#). *Review Journal of Autism and Developmental Disorders* <https://doi.org/10.1007/s40489-022-00337-3> for a discussion of the sex/gender bias in diagnosis of autism.

²³¹ Baidawi et al., [Research Report: Care criminalisation of children with disability in child protection systems](#) at 26.

²³² Day, [Disabling and criminalising systems? Understanding the experiences and challenges facing incarcerated, neurodivergent children in the education and youth justice systems in England](#) at 4.

²³³ Landsell et al., [Young people with acquired brain injury: Preventing entrenchment in the criminal justice system](#) at 6.

²³⁴ Mirfin-Veitch et al., [Developing a more responsive legal system for people with intellectual disability in New Zealand](#) at 32.

²³⁵ Ibid; National Autistic Society, ["My life could be so different" Experiences of autistic young people in the youth justice system](#) at 46.

²³⁶ National Autistic Society, ["My life could be so different" Experiences of autistic young people in the youth justice system](#) at 7. See also Baidawi et al., [Research Report: Care criminalisation of children with disability in child protection systems](#) at 26 for a discussion of these issues in the context of the child protection system.

²³⁷ New Zealand Human Rights Commission - Te Kāhui Tika Tangata. (2022) *New Zealand's 6th Periodic Review under the UN Convention on the Rights of the Child: Submission of the New Zealand Human Rights Commission to the Committee on the Rights of the Child*. New Zealand Human Rights Commission at 12-13; Office of the Ombudsman, Disabled People's Coalition & Human Rights Commission, [Making Disability Rights Real Whakatūtu Ngā Tika Hauātanga: Third report of the Independent Monitoring Mechanism of the Convention on the Rights of Persons with Disabilities](#) at 66.

²³⁸ [Oranga Tamariki \(National Care Standards and Related Matters\) Regulations 2018, r81\(2\)\(b\) & \(g\)](#).

meaning any figures that they provide need to be treated with care.²³⁹ The Independent Children’s Monitor also found that they could not say whether Oranga Tamariki are meeting all obligations for disabled tamariki due to gaps in their self-monitoring data.²⁴⁰ These gaps include the fact that Oranga Tamariki can only provide data for 5% of the 199 measures in the monitoring framework meaning it needs to rely on reviewing and analysing samples of case files and QPT for its self-monitoring.²⁴¹ The UN Committee on the Rights of the Child raised concerns about the lack of data in its 2023 Concluding Observations on New Zealand.²⁴²

The Education Review Office’s recent reports on disabled learners in ECE and schools also identifies the lack of data, particularly in the ECE sector where there is no national reporting mechanism or requirement to provide information on disabled children including how well national expectations are being met.²⁴³ ERO also found there was a failure to systematically track how well legislative expectations for disabled learners in the school system are being met.²⁴⁴ Bourke et al. also raise a series of concerns about the data in relation to children and young people’s special educational needs in Aotearoa New Zealand including:

- The lack of good quality data in relation to prevalence which leading to reliance on estimates and international data.²⁴⁵ This lack of data, and the challenges of data retrieval across multiple social agencies and databases, makes it difficult to develop equitable and effective long-term policy and funding or monitor and accurately estimate additional support needs;²⁴⁶
- Differing definitions of ‘special educational needs’ both internationally and between / across different cultures.²⁴⁷ Bourke et al. also note that the category ‘special educational needs’ has been referred to as a ‘super-ordinate category’ of limited practical use and raise concerns that that recent usage of the label ‘neurodiverse’ may present similar challenges;²⁴⁸
- A lack of data in relation to whether and to what extent Māori children with special education needs are overlooked, inadequately provided for, or even excluded;²⁴⁹
- The lack of explanation for the Ministry of Education’s statements that one in five children, or 20%, need additional support for their learning and the difficulty matching this figure to the level of resourcing provided by the Ministry.²⁵⁰

The lack of data is also an issue in other jurisdictions. For example a review of the evidence in relation to neurodiversity in the criminal justice system by the Welsh Criminal Justice Joint Inspection concluded that although it seems that around half of those entering prison have some

²³⁹ Independent Children’s Monitor, [Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations, Reporting period 1 July 2020 – 30 June 2021](#) at 105.

²⁴⁰ Ibid at 9.

²⁴¹ Independent Children’s Monitor, [Experiences of Care in Aotearoa: Agency Compliance with the National Care Standards and Related Matters Regulations, Reporting period 1 July 2020 – 30 June 2021](#) at 43.

²⁴² United Nations Committee on the Rights of the Child, [Concluding observations on the sixth periodic report of New Zealand](#) at 8.

²⁴³ Te Ihu Waka Education Evaluation Centre, [A Great Start? Education for Disabled Children in Early Childhood Education](#) at 13, 106.

²⁴⁴ Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 129.

²⁴⁵ Bourke et al., [Children With Additional Needs](#) at 14-15.

²⁴⁶ Ibid at 56.

²⁴⁷ Ibid at 14-22.

²⁴⁸ Ibid at 58.

²⁴⁹ Ibid at 14-22.

²⁵⁰ Ibid at 11.

form of neurodivergent condition which impacts their ability to engage, they cannot know for sure as “there is no reliable, consistent or systematic data collection, either within individual services or across the CJS as a whole, which can tell us about the extent of neurodiversity.”²⁵¹ This means that the scale of the challenge is unknown which has wide-ranging implications for the commissioning of services and support.²⁵²

Professionals’ lack of understanding of disability and neurodiversity

Professionals’ lack of understanding about disability and neurodiversity is frequently identified as a barrier to accessing justice in a range of contexts including education, child protection, family and sexual violence, the criminal justice system, and the justice system more widely.²⁵³ This lack of knowledge and understanding is sometimes attributed to a lack of training, or to poor quality training.

The Education Review Office found that ECE centres’ legal obligations and policies relating to inclusive education were widely disseminated but poorly understood, possibly because these policies were written by professional policy writers or centre governance rather than being developed by staff as a team.²⁵⁴ ERO also found that many teachers in primary and secondary schools were not confident in teaching disabled students, particularly those with complex needs.²⁵⁵

In the child protection system or cases of family and sexual violence lack of understanding about disability / disability knowledge can present a number of difficulties including that social workers may have difficulty communicating with the child and may not be able to understand and identify potential indicators of abuse.²⁵⁶ Lack of disability knowledge and understanding can also mean social worker are not able to identify the support needs of disabled children or write good quality reports addressing those needs.²⁵⁷

The New Zealand Human Rights Commission’s (HRC) report on violence and abuse of disabled people in Aotearoa identifies a range of negative consequences that can follow from lack of knowledge and understanding including practitioners reinforcing societal myths about disability, family and sexual violence, failing to understand victim’s complex lives leading to their revictimisation, not holding perpetrators accountable, and poor risk assessments.²⁵⁸ The HRC also raise concerns about professionals in the disability sector’s lack of training, and therefore understanding, about issues like family and sexual violence.²⁵⁹

Diesfeld et al. explain how the limited awareness of disability by legal professionals, court personnel and the police can result in a lack of attention to disabled people’s issues and needs

²⁵¹ Her Majesty’s Inspectorate of Prisons, [Neurodiversity in the criminal justice system: A review of evidence](#) at 8.

²⁵² Ibid at 8.

²⁵³ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1.*; Revolving Doors [Exploring the links between neurodiversity and the revolving door of crisis and crime: Policy briefing](#); Her Majesty’s Inspectorate of Prisons, [Neurodiversity in the criminal justice system: A review of evidence](#) at 8.

²⁵⁴ Te Ihu Waka Education Evaluation Centre, [A Great Start? Education for Disabled Children in Early Childhood Education](#) at 45-46.

²⁵⁵ Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 131.

²⁵⁶ Simpson et al., [Responses to abuse, neglect, and trauma of children with intellectual disability: Experiences of social workers and health practitioners in Aotearoa New Zealand](#) at 78.

²⁵⁷ Ibid at 78.

²⁵⁸ New Zealand Human Rights Commission - Te Kāhui Tika Tangata, [Whakamahia te tūkinō kore ināianei, ā muri ake nei: Acting now for a violence and abuse free future](#) at 43.

²⁵⁹ Ibid.

in the justice system including communication needs such as access to an interpreter in police interactions, legal interviews and courts.²⁶⁰ Lack of understanding of disability and neurodiversity can also mean that behaviours are misunderstood, e.g. neurodivergence can be interpreted as aggression, indifference, or intoxication which could make a child or young person is more likely to be arrested, and less likely to be diverted away from the criminal justice system.²⁶¹ An inability to meet the justice system's expectations to "follow rules, keep appointments, work out alternative strategies, understand what the complicated conditions are, and communicate well with neuro-typical adults" can also result in the system reacting negatively and pushing young people for failing to meet these unrealistic expectations.²⁶²

Where lawyers lack disability knowledge and understanding this can mean that they are not able to identify whether their client has an impairment, what the impairment is, or what their client's needs may be.²⁶³ This also applies to other criminal justice professionals. However, many report that they have had little to no training with a staff survey undertaken by the HM Inspectorate review in the United Kingdom finding that only "28% of respondents from police and probation services, and 24% of those from prisons, said that they had received any training about neurodiversity."²⁶⁴ This is not to say that frontline staff should be experts on disability and neurodiversity, rather they need to understand the range of conditions and how they may present, the type of challenges each group experiences, what adjustments are required, and how to access further support.²⁶⁵

Lack of knowledge about their rights and legal processes

Diesfeld et al.'s literature review discusses a number of studies which indicate that disabled people lack understanding of their rights and statutory entitlements (e.g. benefits, accident compensation and health services).²⁶⁶ In particular, people with intellectual disabilities and those with mental illness.²⁶⁷ Diesfeld et al also discuss what could be described as the other side of the coin, the difficulty obtaining accessible information and education about legal rights and legal services.²⁶⁸ These difficulties include information not being available in accessible formats such as simply worded documents, Braille, large print or audiotape.²⁶⁹ They raised particular concerns about information about the justice system (including a lack of information in courts, legal services and prisons) and education about disability rights.²⁷⁰

The Human Rights Commission identified the lack of knowledge about rights as a barrier in cases of family and sexual violence commenting that many disabled people have had little opportunity to learn about their rights and limited exposure to situations where those rights are

²⁶⁰ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1* at 10-12.

²⁶¹ Revolving Doors, [Exploring the links between neurodiversity and the revolving door of crisis and crime: Policy briefing](#) at 5.

²⁶² Gibbs, [Best practices for justice: Practitioner views on understanding and helping youth living with fetal alcohol spectrum disorder \(FASD\)](#) at 15.

²⁶³ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1* at 5.

²⁶⁴ National Autistic Society, ["My life could be so different" Experiences of autistic young people in the youth justice system](#) at 51. I am not aware of any similar research in Aotearoa New Zealand.

²⁶⁵ Her Majesty's Inspectorate of Prisons, [Neurodiversity in the criminal justice system: A review of evidence](#) at 8.

²⁶⁶ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1* at 5.

²⁶⁷ *Ibid* at 12.

²⁶⁸ *Ibid* at 5.

²⁶⁹ *Ibid* at 12.

²⁷⁰ *Ibid* at 12.

actively upheld.²⁷¹ The HRC also commented on the lack of accessible information about how to access help.²⁷²

Judges participating in Mirfin-Veitch et al's study recognised that communication barriers were created both by inaccessible language, and by the way the court operated. They reported mixed views regarding lawyers' interactions with people with intellectual disabilities and provided many examples of intervening in these exchanges in order to increase understanding or challenge inappropriate cross-examination.²⁷³ A key challenge for people with intellectual disability in the legal system was when they were complainants or witnesses but experienced judges reported that intellectually disabled people with could be competent witnesses if they were given appropriate support, including accommodations in the court.²⁷⁴

Lack of understanding can play out in a range of ways in the criminal justice system. For example, in one study lawyer participants identified a series of challenges for young people with ABI:²⁷⁵

The inability to understand the consequences and the severity of their actions, to understand court processes and bail conditions, and to comply with court orders, including engagement in mandated programs, were cited as key challenges that young people with ABI faced... These tasks were described as 'difficult' and 'impossible' ... Service providers and lawyers further emphasised that clients with ABIs were often unable to give instructions due to their limited ability to contemplate the long-term consequences of their actions.

Other research suggests not being able to understand justice system processes can lead to harsher treatment of children with neuro-disabilities:²⁷⁶

[F]inding it hard to understand the behavioural expectations and consequences of a police interview, being charged, cautioned, bail conditions and court orders, with children pleading guilty to an offence without fully understanding the impact on their case and future life chances.⁴ This, in combination with associated social and emotional behavioural difficulties, can lead to children being excluded from diversion schemes, which act as a gateway out of the youth justice system and into a programme of support.⁵

Lack of knowledge about legal rights and processes could also operate as a barrier to those supporting a child or young person such as their parents. For example, the Education Review Office identified concerns that whānau were not aware of their child's education rights or how to raise concerns or make complaints, which had a negative impact on their confidence and ability to advocate for their child when schools refuse enrolment or their child is not being well or fairly supported.²⁷⁷ ERO reported that in some cases,²⁷⁸ the lack of knowledge resulted in parents withdrawing their child from the school.

²⁷¹ New Zealand Human Rights Commission, [Whakamahia te tūkino kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 36.

²⁷² Ibid at 37.

²⁷³ Mirfin-Veitch et al., [Developing a more responsive legal system for people with intellectual disability in New Zealand](#) at x.

²⁷⁴ Ibid at 56.

²⁷⁵ Landsell et al., [Young people with acquired brain injury: Preventing entrenchment in the criminal justice system](#) at 8.

²⁷⁶ Centre for Justice Innovation, [The right support at the right time: Where the justice system fits in](#) at 1.

²⁷⁷ Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 103 & 133.

²⁷⁸ Ibid at 103.

Dependence / need for support

As discussed above, children generally depend on adults, principally their parents or other guardians, with this dependence reducing as they get older. Disabled people can however remain reliant on others such as family members and/or carers (who may not be family members). Disabled people can face a number of additional barriers to reporting or seeking help when the people upon whom they rely are abusive including:²⁷⁹

- Limited options for people to change carers;
- People with communication difficulties may experience the equipment or interpreters required not being provided or withheld by an abuser.
- The need for support to understand information and/or for decision making.
- The use of medication can impede people's functioning, prevent communication, or inhibit perceived credibility.

Evidence presented to the Senate Community Affairs Committee reference in relation to abuse of disabled people also highlighted the practical barriers disabled children and young people experience in reporting to police and seeking access to justice including failures to provide the necessary supports and adjustments to assist and enable their participation.²⁸⁰

Lack of tailored or targeted support

A key concern across the different aspects of the justice system is the lack of targeted support and trained services or professionals. For example, the Human Rights Commission raised concerns that there are few trained services or professionals able to respond appropriately to violence, neglect and abuse of disabled people, particularly those who are nonverbal and/or who require support for comprehension and decision making. There are also almost no accessible services, houses or refuges and concerns about the police personnel's "knowledge and skills to follow up disclosures of care giver abuse, refer abused people to support services, or initiate prosecutions."²⁸¹

Diesfeld et al raised similar concerns about the lack of readily available, individual specialist support throughout the legal process including in court.²⁸² Mirfin-Veitch et al also raise concerns about the absence of services designed for people with less obvious cognitive and social impairments such as ASD, ADHD and FASD who Judges were clear had significant needs that were not being met either within the legal system or the community.²⁸³ This includes a lack of focused rehabilitative support for neurodivergent offenders.²⁸⁴

²⁷⁹ New Zealand Human Rights Commission, [Whakamahia te tūkinō kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 36.

²⁸⁰ Senate Community Affairs Committee Secretariat, [Community Affairs References Committee: Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability](#) at 174.

²⁸¹ New Zealand Human Rights Commission, [Whakamahia te tūkinō kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 37.

²⁸² Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1* at 11.

²⁸³ Mirfin-Veitch et al., [Developing a more responsive legal system for people with intellectual disability in New Zealand](#) at 48-49.

²⁸⁴ Her Majesty's Inspectorate of Prisons, [Neurodiversity in the criminal justice system: A review of evidence](#) at 9.

Lack of an effective complaints process

One of the key findings of the Education Review Office's report on education for disabled learners was that more than a quarter (27%) of parents and whānau had made complaints about their child's experiences at school to the Ministry of Education and most (72%) were not happy with the response they received or did not think their complaint was resolved effectively.²⁸⁵ Just over a quarter of (26%) of Māori whānau reported they had made complaints, of these the vast majority (85%) said the matter was not resolved effectively.²⁸⁶ ERO reported that parents who spoke of their experiences of making a complaint described the "importance of 'social capital' and personal contacts in advocating effectively for their disabled children"²⁸⁷ which raises further concerns of inequitable responses to complaints.

McMenamin considered the limited effectiveness of the law in remedying discrimination against disabled students by State schools in a 2017 article in the Public Interest Law Journal.²⁸⁸ She concluded that although the legislation provides a substantive right to education, "the law has limited effectiveness because it is often impractical to bring a legal claim in these situations, and schools may be able to justify discrimination by pointing to inadequate funding."²⁸⁹

Both the parents and lawyers McMenamin interviewed talked about the resources, time and energy required to bring a claim, all of which many parents of disabled children lack, as barriers to taking legal action.²⁹⁰ Participants also identified psychological barriers such as not wishing to force themselves into a school where the child is not wanted and for parents who are "culturally alienated from asking for help and negotiating a Western-based bureaucracy".²⁹¹ Another barrier McMenamin identified is that litigation does not guarantee that the student's needs will be addressed in the best way or the way sought by the family with one participant suggesting that it was better to seek agreement with schools although this could also be ineffective due to the disparity in bargaining power.²⁹²

Specific barriers relating to the nature of disability or neurodiversity

The barriers disabled or neurodiverse children and young people experience can also vary by diagnosis and setting or context. As Bruce explains, court processes which demand understanding of oral communication will be challenging for those with communication disorders, written communication such as bail bonds may be hard for a person with a learning disability to understand, having to concentrate in a court hearing to understand what is going on may be challenging for someone with ADHD, and a young person's ability to share and have their views taken into account may be affected by a disability affecting social interactions such as ASD or FASD.²⁹³ However, this is not to say that all autistic people experience the same barriers or that autistic people and people with FASD do not experience any of the same barriers

²⁸⁵ Te Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 104.

²⁸⁶ Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 92. The percentage of non Māori whanau who reported that their complaint was not resolved effectively was 70%.

²⁸⁷ Ibid at 104.

²⁸⁸ McMenamin, [Reasonable Accommodation: Equal Education for Learners with Disabilities](#) at 5.

²⁸⁹ Ibid at 23.

²⁹⁰ Ibid at 23-24.

²⁹¹ Ibid at 24. This quote is from participant 13, mainstream teacher with lived experience of disability (the author, 14 July 2016).

²⁹² Ibid at 24.

²⁹³ Bruce, [Understanding and Being Heard: Exploring the Right to Participate in the New Zealand Youth Court](#) at 118.

as there is a lot of overlap between neurodevelopmental disorders and symptoms.²⁹⁴ Some people also have dual or multiple diagnoses which can complicate the picture. Overall, it is important to understand each person's individual experiences as I have argued elsewhere.

In this section I discuss the research and literature in relation to some of the barriers experienced by disabled and neurodiverse children and young people including where barriers are particularly prevalent in specific settings. Much of the research and literature relates to the criminal justice system but in my view, there are clear parallels with processes and systems in other areas of the law affecting children and young people. For example, a child or young person who experiences communication challenges in the verbally based processes youth justice system is also likely to experience the same challenges in other high stress, verbally based processes such as appearing before the Board of Trustees considering their suspension from school.

Neurodisabilities generally

Justice system processes can be very challenging for both victims and offenders with brain and behaviour issues as Nessa Lynch's report summarising the contributions of participants at the 2016 Neurodisabilities Forum explains:²⁹⁵

In the justice system, where all procedures are essentially word-based, a person's inability to quickly process and comprehend information in written or verbal form leaves them open to manipulation and entrapment. Propensities to take statements literally, to become confused by information and sensory overload, to act impulsively, to not see their actions in context, and to speak before thinking make it difficult to navigate the complexities and nuances of the legal process.

The report brings together the areas of challenge in interactions with the police and regarding participation in justice processes.²⁹⁶

- Police questioning and investigation - young people with neurodisabilities are prone to false or exaggerated confessions, can agree with interviewers in an effort to escape the situation, will answer 'yep', 'yup' or 'yes' as a default answer, can struggle with explanations of key rights including the rights to a lawyer and an independent nominated person. They can also become stressed or overwhelmed and have difficulty with sensory processing, such as getting a headache from bright lights and/or being enclosed in small rooms.
- Court proceedings - although the law requires defendants to be fit to stand trial, this is a fairly low standard requiring only a basic understanding of the process and does not mean those meeting the standard are fully capable of understanding and participating in the trial process. In particular, an inability to quickly process written or verbal information presents challenges in the word-based court process. Neurodiverse young people may also struggle with eye-contact, grunt in response to questions or be reluctant to speak up which can be misinterpreted by decision makers and victims.

²⁹⁴ Lambie, [What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand](#) at 11.

²⁹⁵ Ibid at 5.

²⁹⁶ Lynch, [Neurodisability in the Youth Justice System in New Zealand: How Vulnerability Intersects with Justice](#) at 12-14. See also Her Majesty's Inspectorate of Prisons, [Neurodiversity in the criminal justice system: A review of evidence](#) at 13-14 which describes the ways that neurodivergent people can be disadvantaged in a range of ways at each point of contact with the criminal justice system.

- Family group conferences – the process depends on oral communication and victims may expect expressions of remorse both of which can present challenges for neurodiverse children and young people.

Lambie also explains that difficulties understanding are less obvious than expressive language or speech problems particularly as children can find ways of coping such as avoidance and comprehension difficulties can appear to be just difficult behaviour or disengagement.²⁹⁷

Research involving 118 people in prison and on probation who had a diagnosed neurodiverse conditions across 10 probation services in England identified a series of common issues:

- Literacy: Service users with literacy issues struggle to navigate the criminal justice system. Failing to understand documents or complete literacy-based tasks affected their self-esteem and meant that they could not successfully engage with services and support or develop the skills to successfully move on with their lives.²⁹⁸
- Understanding what is going on: Not being able to understand exactly what was happening at different stages of the criminal justice system left participants feeling overwhelmed and scared.²⁹⁹
- Memory loss: Memory loss affected their ability to remember appointment times for probation.³⁰⁰
- Fitting in: Service users described not being able to easily adjust to the routine and demands of the criminal justice system and feeling excluded as a result.³⁰¹
- Frustration: Not being understood, believed or listened to and the lack of adjustments for their neurodivergent needs, and the sense that they were not believed caused frustration which for some contributed to their offending behaviour.³⁰²
- Low self-esteem: The lack of adjustments made for them in the criminal justice system severely affected their self-esteem and made them feel worthless. A lack of empathy contributed to the deterioration of their mental health and feelings of depression.³⁰³
- Let down: Service users reported an overwhelming sense of feeling let down by the system, which they perceived as not caring about them.³⁰⁴
- Feeling misunderstood: Participants described several examples where others had failed to recognise they had a neurodivergent condition and therefore did not understand or account for their behaviour including the making the assumption that individuals were simply acting up.³⁰⁵

Communication disorders

Children and young people with communication disorders face specific barriers in settings or contexts that rely upon communication skills – this includes many of those settings that children and young people will encounter when seeking justice such as interactions with the police as either victim, witness or as an alleged perpetrator, family group conferences in the care & protection or youth justice systems, in-school restorative justice meetings or appearing before the Board of Trustees in disciplinary matters, mediation at the Human Rights Commission or

²⁹⁷ Lambie, [What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand](#) at 8.

²⁹⁸ User Voice. (2021). [“Neuro...what?” Neurodiversity in the criminal justice system](#) at 12.

²⁹⁹ Ibid at 12.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid at 16.

³⁰³ Ibid.

³⁰⁴ Ibid.

³⁰⁵ Ibid at 18.

the Employment Relations Authority, and in civil matters before the Tenancy Tribunal or the Disputes Tribunal. Most of the existing research is in relation to the youth and criminal justice systems but the issues identified are likely to be common to other talk-based settings which rely on communication skills.

A Talking Trouble report in relation to the language and communication skills of young people in a youth justice residence identified a number of common challenges including it being hard to understand everything because people used long, complicated words that they didn't understand.³⁰⁶ Young people also reported finding it hard to speak up in formal meetings and places like court as it could be hard to put their ideas into words.³⁰⁷ Some young people told the researchers that they had developed ways to manage "difficult talking situations" such as nodding their heads and hoping it would finish quickly or get easier and laughing or doing silly things.³⁰⁸ Though understandable, these ways of managing were not always helpful.³⁰⁹

Communication and comprehension issues can have an impact on all stages of a criminal investigation. For example, reporting insufficient and inconsistent details in a police interview can impede investigations when the child or young person is interviewed as a witness and where the child or young person is being interviewed as a perpetrator, the communication difficulties could be negatively perceived as rudeness or non-compliance.³¹⁰ Not being able to understand questions during interview can also lead a child or young person to make false admissions or 'overly honest' comments which may affect their defence.³¹¹

If a child or young person does not understand the case and evidence against them they may plead guilty (or not guilty), without fully considering the effect that this may have and if they are not able to read written communications, they may inadvertently fail to comply with them e.g. not attending a court hearing.³¹² Moreover, most interventions designed to help vulnerable young people in the criminal justice system involve talking (and often literacy): "[a]nger management, stress management, Family Group Conferences, counselling, Court Hearings and classrooms are all highly verbal settings".³¹³

Hayes & Snow describe how these challenges in the context of youth justice conferencing:³¹⁴

[T]he medium by which the conference is transacted (auditory– verbal communication) is likely to be one of the most fragile skillsets that the young offender brings to the conference. In order to be an effective conference participant, the young person must be able to attend to and process the language of others, must be able to process both literal and figurative language used by other participants, and must be able to process vocabulary that describes a range of mental states and emotions. At an expressive level, young offenders must be able to draw on vocabulary and narrative skills to provide an account of their

³⁰⁶ Kedge, S. & McCann, C. (2020). [Report for Kingslea School: Language and communication skills among young people at a youth justice residence](#). Talking Trouble; University of Auckland at 23.

³⁰⁷ Ibid.

³⁰⁸ Ibid at 35-36.

³⁰⁹ Ibid.

³¹⁰ Kippin, N.R., Leitao, S., Finlay-Jones, A., Baker, J. & Watkins, R. (2021). [The oral and written narrative language skills of adolescent students in youth detention and the impact of language disorder](#), *Journal of Communication Disorders*, 90, 106088 at 13.

³¹¹ Kirby, [Neurodiversity – a whole-child approach for youth justice](#) at 7-8.

³¹² Ibid.

³¹³ Kedge, S. (2014). [Special Report: Talking Trouble NZ Language and communication difficulties: children and young people involved with the legal system](#). *Court in the Act*. 66, 7-9 at 9.

³¹⁴ Hayes, H. & Snow, P. (2013). [Oral language competence and restorative justice processes: Refining preparation and the measurement of conference outcomes](#). *Trends & issues in crime and criminal justice* no. 463. Australian Institute of Criminology at 4.

actions/motivations and convey remorse and regret with genuineness and authenticity (in the eyes of their victim). Consider too that these processes need to occur in the likely context of elevated stress levels, in and of themselves a threat to successful communication

Perhaps unsurprisingly, there is little research in relation to the challenges that children and young people with communication disorders experience in other settings but it is easy to see the similarities and how the same challenges are likely to arise. For example, these challenges can play out in a number of ways:

- Difficulties at school can be linked to behaviour problems, rather than to weak language skills;³¹⁵
- When an incident occurs at school such as a conflict between students or alleged bullying, school staff need to interview the children involved in order to find out what happened;³¹⁶ and
- Once a child or young person is suspended the disciplinary process before the Board of Trustees relies on oral language and as with a family group conference, the child or young person is generally expected to explain their actions and express remorse.

However, Snow explains how “SLPs can support [teachers who need to interview children at school about a conflict] by promoting the adoption of evidence-based interviewing principles with children at different developmental stages”.³¹⁷ Other research has found that while young people with speech, language and communication needs have an elevated risk of youth antisocial behaviour and crime, the identification and subsequent treatment can change the offending risk trajectory.³¹⁸

FASD

A Canadian literature in relation to FASD and access to justice describes the barriers faced by people with FASD when interacting with legal processes or the justice system:³¹⁹

- Not being able to understand legal advice or legal processes;
- Not being able to communicate with justice system professionals such as lawyers or the police;
- Missing appointments due to poor memory capabilities and difficulties coping with everyday tasks;
- Justice system professionals’ lack of understanding of and inability to identify FASD and therefore to refer to appropriate support services; and
- Other co-occurring and/or interrelated barriers such as poverty, addictions or other disabilities.

³¹⁵ Kippin, [The oral and written narrative language skills of adolescent students in youth detention and the impact of language disorder](#)

³¹⁶ Snow, P. C. (2019). [Speech-Language Pathology and the Youth Offender: Epidemiological Overview and Roadmap for Future Speech-Language Pathology Research and Scope of Practice](#). *Language, Speech & Hearing Services in Schools*, 50(2), 324-339 at 331.

³¹⁷ Ibid at 331.

³¹⁸ Cronin, P., & Addo, R. (2021). Interactions with youth justice and associated costs for young people with speech, language and communication needs. *International Journal of Language & Communication Disorders*, 56(4), 797-881 at 806.

³¹⁹ Rajan, D. (2015) [People with Mental Health and Cognitive Disabilities & Access to the Justice System: Report on a Review of the Literature](#). IRIS – Institute for Research and Development on Inclusion and Society at 29.

Sherwood's thesis in relation to young people with FASD in the New Zealand youth justice system identifies a series of behaviours that are typical of someone with FASD: impulsiveness, fearlessness, poor judgement, inability to link events with their consequences, and an inability to understand how their behaviour can affect others.³²⁰ Sherwood explains that these behaviours may be due to damage to the cortex can be exacerbated by abusive or neglectful experiences during childhood which also constitute trauma to the developing brain and can impair brain development.³²¹ Oakley and Gibbs identify other deficits in executive functioning commonly experienced by young people with FASD which can lead to offending behaviour and difficulties engaging in the criminal justice system including impaired memory, difficulty composing rational, logical thoughts, and confusion over abstract concepts such as ownership and time.³²²

As discussed above, both oral and written language play a fundamental role in the justice system and young people with FASD also commonly present with language deficits making these processes inaccessible for them.³²³ Oakley and Gibbs explain that many of the sanctions and punitive measures used in the justice system are also ineffective for young people with FASD because they assume that the brain can understand concepts that are challenging to young people with FASD such as cause and effect.³²⁴

Intellectual disabilities

Many of the difficulties experienced by intellectually disabled people are discussed in the sections above, particularly by reference to Mirfin-Veitch et al's research.³²⁵ The Canadian study discussed above also cites research by IRIS - the Institute for Research and Development on Inclusion and Society which identified the following needs of people with intellectual disabilities in the justice system:

- To have help explaining what constitutes abuse and why they may be in conflict with the law;
- For a support person who understands how they communicate in order for them to express what has happened to them or what they understand has happened;
- For information about their rights and the services available to assist them when they have experienced victimization and/or conflict with the law; and
- For justice services to understand how to provide accessible services including using plain language, pictures instead of words, and so on.³²⁶

³²⁰ Sherwood, K. N. (2020). [*Fallen by the wayside: Young people with fetal alcohol spectrum disorder \(FASD\) in New Zealand's youth justice system*](#) [Doctoral Thesis, University of Otago] at 16.

³²¹ Sherwood, [*Fallen by the wayside: Young people with fetal alcohol spectrum disorder \(FASD\) in New Zealand's youth justice system*](#) at 16.

³²² Oatley, V., & Gibbs, A. (2020). [*Improving treatment and outcomes for young people with fetal alcohol spectrum disorder in the youth justice system: A social work led response and practice framework*](#). *Aotearoa New Zealand Social Work*, 32(2), 5-16 at 7.

³²³ Ibid at 9.

³²⁴ Ibid at 8-9.

³²⁵ Mirfin-Veitch et al., [*Developing a more responsive legal system for people with intellectual disability in New Zealand*](#).

³²⁶ Rajan, [*People with Mental Health and Cognitive Disabilities & Access to the Justice System: Report on a Review of the Literature*](#) at 33.

Acquired brain injury

Centre for Innovative Justice & Jesuit Social Services report that people with acquired brain injury (ABI) are imprisoned at staggering rates across English speaking countries, including Australia, the United States, Canada, New Zealand and the UK with one Australian study finding that 42% of men and 33% of women in a sample prison population had been diagnosed with ABI.³²⁷ They explain:³²⁸

The group may be more likely to have contact with police; more likely to be arrested and charged if they do have contact; more likely to be refused bail and remanded in custody; more likely to be convicted of a crime; more likely to be sentenced to imprisonment; less likely to be able to comply with a community corrections order.

An Australian study by Landsell et al in relation to young people with acquired brain injury in the youth justice system drew from the literature to identify a series of challenges this cohort can face which can bring them into the criminal justice system and keep them there:³²⁹

- Difficulties in regulating behaviour and emotions, including impulsivity and memory issues, fear of stigma and labels which could lead to criminal offending and cause difficulties in engaging with justice system processes;
- Frustration when feeling unheard or misunderstood at all stages of the criminal justice process;
- Inability to understand the consequences and the severity of their actions which could mean that clients were not able to give instructions;
- Inability to understand court processes, bail conditions and court orders which could result in non-compliance or failure to engage in mandated programmes;
- Difficulty remembering court and legal appointments.

The Centre for Innovative Justice & Jesuit Social Services also explain that it is necessary to contextualise the over-representation of people with an ABI in the criminal justice system as the risk factors for sustaining an ABI overlap significantly with the risk factors for a person to be imprisoned: “experiencing poverty, low levels of education, unemployment, drug or alcohol misuse, childhood trauma, homelessness, prior experience of domestic violence or poor mental and physical health”.³³⁰ Every participant in their qualitative study involving interviews with 21 people in Victoria with ABI and lived experience of the criminal justice system identified a co-occurring (and often more than one) disability or hardship.³³¹

Landsell et al’s research with young people with ABI also identified co-occurring conditions including experiences of complex trauma, fetal alcohol spectrum disorder, post-traumatic stress

³²⁷ Centre for Innovative Justice & Jesuit Social Services. (2018). [Recognition, respect and support: Enabling justice for people with an Acquired Brain Injury](#). RMIT Centre for Innovative Justice at 11. See also Horspool et al., [Traumatic brain injury and the criminal justice system](#) for New Zealand based data.

³²⁸ Centre for Innovative Justice & Jesuit Social Services, [Recognition, respect and support: Enabling justice for people with an Acquired Brain Injury](#) at 11.

³²⁹ Landsell et al., [Young people with acquired brain injury: Preventing entrenchment in the criminal justice system](#) at 7. See also the Centre for Innovative Justice & Jesuit Social Services, [Recognition, respect and support: Enabling justice for people with an Acquired Brain Injury](#) for a more detailed discussion of each of these challenges and the experiences of the participants in their qualitative study.

³³⁰ Centre for Innovative Justice & Jesuit Social Services, [Recognition, respect and support: Enabling justice for people with an Acquired Brain Injury](#) at 13.

³³¹ Ibid at 14.

disorder, intellectual disability, and speech developmental issues as a key theme.³³² They reported that their research participants' interactions with police from first point of contact.³³³

[W]ere often influenced by the effects of poor social and familial support, gender, age, complex or intergenerational trauma, cultural and linguistic diversity, and other co-occurring variables. Importantly, these intersecting factors render young people vulnerable to repeated criminal justice interactions and possible acquisition of further brain injury, psychological trauma and stress with each institutional interaction. Institutional issues that further complicate the situation include stigmatising labels, systemic discrimination, overtly punitive attitudes, institutional abuse, racism and inappropriate or insufficient support, all of which render young people with ABIs vulnerable to vicious cycles of homelessness and precarious living, substance misuse, and systemic entrenchment.

ADHD

An Australian study in relation to investigative interviewing of young people with ADHD describes how this disorder can play out in justice system contexts beginning with the executive function deficits in individuals with ADHD making them vulnerable to an early and high rate of contact with the criminal justice system as either (or both) as a victim/witness or as a suspect.³³⁴ Cunial et al explain that detectives report that ADHD-type behaviours have a significant negative impact on the interviewing process particularly in relation to time efficiency and the quality of information gathered.³³⁵ They explain that the impact is greatest when the interview draws most heavily on executive function skills which are recognized to be challenged in ADHD-affected youth.³³⁶ As a result, there is a need for more training for detectives about the impact of ADHD and for accommodations and adjustments to “manage the executive function deficits and emotional regulation difficulties associated with the diagnosis, as well as implementing processes to screen and identify such youth as promptly as possible, as well as to engage early intervention services”.³³⁷

Another recent Australian study assessed 32 Australian Supreme Court cases where the person being dealt with by the Court had, or was suspected to have, ADHD.³³⁸ The themes identified in the case analysis included:

- The extent of comorbidities – there were only two cases where ADHD was the sole mental health condition mentioned. The other co-occurring conditions included “anxiety, depression, autism spectrum disorder, intellectual disability, schizophrenia, conduct disorder, post-traumatic stress disorder (PTSD), ODD and substance use disorder”.³³⁹ Bartels also cites other research in a NSW prison which found that all of those with ADHD had at least one co-occurring condition.³⁴⁰

³³² Landsell et al., [Young people with acquired brain injury: Preventing entrenchment in the criminal justice system](#) at 6.

³³³ Ibid at 11.

³³⁴ Cunial, K.J., Casey, L.M., Bell, C. & Kebbell, M.R. (2020). [Investigative interviewing of youth with ADHD – recommendations for detective training](#). *Psychiatry, Psychology and Law*, 27(5), 797-814 at 798.

³³⁵ Ibid.

³³⁶ Ibid.

³³⁷ Ibid at 800.

³³⁸ Bartels, L. (2022). Paying Attention to Attention Deficit Hyperactivity Disorder: An Examination of Cases in an Australian Supreme Court. *Criminal Law Journal*. 46(4), 245-268. See 247-251 for the methodology.

³³⁹ Bartels, Paying Attention to Attention Deficit Hyperactivity Disorder: An Examination of Cases in an Australian Supreme Court at 251.

³⁴⁰ Moore, E., Sunjic, S., Kaye, S., Archer, V., & Indig, D. (2016). Adult ADHD Among NSW Prisoners: Prevalence and Psychiatric Comorbidity. *Journal of Attention Disorders*, 20(11), 958–967 cited in Bartels,

- Substance use – only three of the thirty two cases involved people who did not have substance use issues.³⁴¹ Again, Bartels cites research in relation to the well-established connection between ADHD and substance use.
- Medication – several cases referred to the fact that the defendant was not medicated for ADHD including cases where there was evidence that the defendant had previously taken medication for ADHD but had discontinued doing so.³⁴²
- Education – several cases examined referred to past issues with educational engagement relating to their diagnosis of or suspected ADHD.³⁴³
- Family violence – eight cases referred to the defendant's involvement in involved in domestic or family violence.³⁴⁴

Autism

The United Kingdom National Autistic Society recently published a paper which summarises the research in relation to the experiences of autistic young people in the criminal justice system.³⁴⁵ The early concerns that can arise in relation to them being at risk of committing a crime include “being easily led or influenced by others, violence and/or aggression towards others, damaging property and being excluded from school.”³⁴⁶ The National Autistic Society also note that “social situations and sensory differences can make autistic people feel stressed and anxious. Some autistic people might also use, or even become reliant on, alcohol or drugs to mask their autistic characteristics, to ‘fit in’”.³⁴⁷

Then, once autistic people come into contact with the criminal justice system they often have poor experiences for a range of reasons including “poor understanding of autism among professionals as well as challenges with getting adjustments they need to engage in processes. This lack of understanding can cause staff to misinterpret autistic people’s behaviour, resulting in further offences at worst and missed opportunities to divert them from the criminal and youth justice systems.”³⁴⁸

Paying Attention to Attention Deficit Hyperactivity Disorder: An Examination of Cases in an Australian Supreme Court at 251.

³⁴¹ Bartels, Paying Attention to Attention Deficit Hyperactivity Disorder: An Examination of Cases in an Australian Supreme Court at 254.

³⁴² Ibid at 257-258.

³⁴³ Ibid at 262-263.

³⁴⁴ Ibid at 264-265.

³⁴⁵ National Autistic Society, [*“My life could be so different” Experiences of autistic young people in the youth justice system.*](#)

³⁴⁶ Ibid at 7.

³⁴⁷ Ibid.

³⁴⁸ Ibid at 8.

Possible solutions

Introduction

In this section I discuss some possible solutions or ways of addressing some of the barriers to access raised in the research and literature from Aotearoa New Zealand and overseas. It is not a complete analysis, nor an attempt to identify all possible ways to resolve the access to justice challenges experienced by disabled and neurodiverse children and young people. It should be read together with working papers 11-17 which discuss possible ways of increasing access to justice for children and young people more generally.³⁴⁹

A combined approach

A key theme in the research and literature is the importance of both tailored, specialist services and increasing the accessibility of mainstream services and systems. For example, a recent report by the New Zealand Human Rights Commission in relation to violence and abuse of disabled people followed the approach of the NZ Disability strategy by recommending a twin-track approach where “[t]win track one requires mainstream prevention initiatives, services and processes to be accessible” and “[t]win track two requires the availability of specialist prevention initiatives, services and processes needed to meet the intersecting needs of disabled/abused people, including people disabled by violence”.³⁵⁰

The HRC’s twin track one appears to draw on the principle of universal design. Universal design is a human rights principles arising out of the United Nations Convention on the Rights of People with Disabilities which means: “that the built environment, systems, programs and services should be designed so that all people, regardless of capability, background, and age can make use of them, without the need for additional support, expensive add-ons or adjustments.”³⁵¹ The argument is that universal design results in systems, programmes and services being more accessible for the benefit of all people e.g. using plain language assists people with cognitive impairment but also helps those with low literacy or whose first language isn’t English.³⁵²

However, some people also need additional or more tailored support. Writing in the context of neurodiverse young adults in the courtroom, Clasby et al. identify three tiers of support:

- Tier one: individualised support in cases where there is additional complexity e.g. referrals to healthcare or substance abuse specialists if a young person is known to use alcohol or other drugs to self-medicate;³⁵³
- Tier two: targeted support which would be beneficial for some young people with this support driven by any strengths or challenges identified during screening e.g. where a young person is identified as experiencing high sensory reactivity and anxiety;³⁵⁴ and

³⁴⁹ Working papers 11-17 discuss Strategic litigation; Legal service delivery, non-lawyer services, and integrated services; Data, evidence and measuring change; Technology; Training for professionals; Legal education and continuing professional development for lawyers and judges; and Law-related education for children and young people.

³⁵⁰ New Zealand Human Rights Commission, [Whakamahia te tūkinō kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 12.

³⁵¹ Centre for Innovative Justice & Jesuit Social Services, [Recognition, respect and support: Enabling justice for people with an Acquired Brain Injury](#) at 7.

³⁵² Ibid at 7.

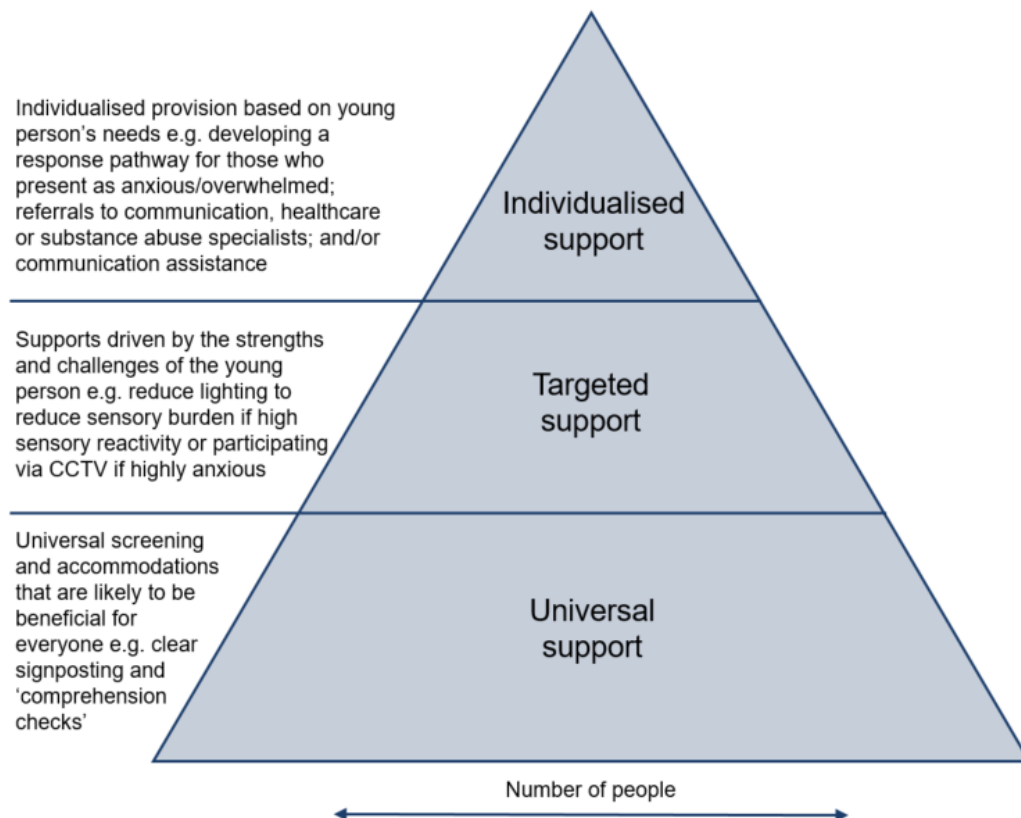
³⁵³ Clasby, B., Mirfin-Veitch, B., Blackett, R., Kedge, S., & Whitehead, E. (2022). Responding to neurodiversity in the courtroom: A brief evaluation of environmental accommodations to increase procedural fairness. *Criminal Behaviour & Mental Health*, 32(3), 197–211 at 208.

³⁵⁴ Ibid.

- Tier three: universal support e.g. systematic neurodiversity screening and training for staff³⁵⁵ or other accommodations that are likely to be universally beneficial for all those involved in the criminal justice system such as “clear signposting and ‘comprehension checks’ throughout court discussions.”³⁵⁶

Clasby et al. visualise these tiers in diagrammatic form,³⁵⁷ an adapted version of this diagram is on the following page as **Figure 1**.

Figure 1: Tiered support model for accommodations provision in the criminal justice system for neurodiverse young adults



In my view, this approach has considerable merit and well aligned with the person-centred and therapeutic philosophy behind the District Court’s Te Ao Marama model.³⁵⁸ That is, I would see Te Ao Marama as being a form of universal support providing a more accessible court for all participants. However, like Chief District Court Judge Taumaunu has said in relation to specialist courts, we must both support specialist provision and improve mainstream practice taking the lessons learnt in specialist provision.³⁵⁹

³⁵⁵ Ibid.

³⁵⁶ Ibid at 200.

³⁵⁷ Ibid at 208.

³⁵⁸ McManus, J. (2021). Chief DC Judge reveals next steps for reform. *ADLS LawNews*. 16, 1-2; Taumanu, H. (2020). *Norris Ward McKinnon Annual Lecture 2020*. Ministry of Justice; Walters, L. (2022, May 14) Young Adult List court programme leading the way in justice system transformation. *Stuff*. <https://www.stuff.co.nz/national/crime/128604099/young-adult-list-court-programme-leading-the-way-in-justice-system-transformation>; Sharma, A. (2022, May 10) ‘Life-changing and brave’ Young Adult List Court for Tairāwhiti hailed as way forward. *Gisborne Herald*. <https://static.ew.ghe.navigacloud.com/wp-content/uploads/sites/2/2022/05/06122554/220506GH.pdf>

³⁵⁹ Taumanu, *Norris Ward McKinnon Annual Lecture 2020* at 23-24.

Specialist courts have their place as centres for excellence for best practice. They will continue to be supported and, where appropriate, they will continue to be developed and extended. However, it has become increasingly clear that the way ahead is to look to build the Te Ao Mārama model on the foundation provided by specialist courts. This will allow us to integrate, comprehensively throughout the District Court, the lessons and skills specialist courts have taught us. I see it as a common-sense next step and indeed a natural extension of the work that has already been developed by the specialist courts of the District Court.

Legal services

Making generalist services more accessible

Victoria Legal Aid's Guide for lawyers representing children in child protection proceedings contains a section in relation to representation of disabled children and young people much of which is also of general relevance.³⁶⁰ The Guide recommends that as a first step, "lawyers should seek to understand as much as possible about the nature of the disability (or disabilities) before meeting the child, to help inform their approach".³⁶¹ Other actions will depend on the nature of the disability but may include:³⁶²

- *arranging meetings in locations that are accessible and comfortable for the child*
- *identifying goals, a clear outline on what needs to be discussed, and an appropriate sequence to deliver the information ahead of each meeting or discussion*
- *modifying language and communication style for the child, and using repetition as a tool to maximise capacity*
- *presenting information in a range of formats (e.g. verbal, written, visual) to meet diverse learning needs*
- *taking regular breaks (if required) when explaining abstract concepts, and increasing the difficulty of the concepts over time*
- *keeping distractions and transitions to a minimum.*
- *The lawyer should be mindful to reflect the language a child uses to describe any condition they have, as referring to a disability or a particular diagnosis may be confusing or upsetting for them.*

Research by Mirfin-Veitch et al. with intellectually disabled people in the justice system found disabled participants "identified four key elements integral to quality legal representation: communication (I am able to understand my lawyer); relationship (I get on with my lawyer); trust (I believe my lawyer is there for me); and openness (the lawyer listens to my story)."³⁶³ Mirfin-Veitch et al. concluded:³⁶⁴

³⁶⁰ Victoria Legal Aid. (2019). [Representing children in child protection proceedings: A guide for direct instructions and best interests lawyers](#) at 32.

³⁶¹ Ibid.

³⁶² Ibid.

³⁶³ Mirfin-Veitch et al., [Developing a more responsive legal system for people with intellectual disability in New Zealand](#) at vi-vii.

³⁶⁴ Ibid at vii.

People with intellectual disability contended that more responsive legal practice would be achieved when lawyers and judges placed more emphasis on the importance of understanding the context of their lives, and the link this had to the delivery of quality legal representation and decision making. Developing strategies for ensuring that lawyers and judges had the skills to communicate effectively with people with intellectual disability was also perceived to be critical to achieving equal recognition before the law and access to justice.

The intersection of disability and other aspects of children and young people's identities can also be important when considering appropriate representation. For example, the Law Council of Australia argues that the Government and the "broader justice sector should work together to address the intersectional needs of Aboriginal and Torres Strait Islander people experiencing disability by developing informed and culturally competent responses throughout the criminal justice system" including developing strategies to better identify disability and increasing access to disability support services.³⁶⁵

Specialist or tailored services

Lawyer participants in Mirfin Veitch et al.'s research also expressed strong support for the development of specialisation in intellectual disability law at all levels of the legal system as well as a specialist disability court.³⁶⁶ Similar recommendations have also been made in the past including developing a list of approved counsel for intended care recipients under the IDCCR Act with suggested skills criteria including "[u]nderstanding mental health and disability in general and effectively communicating with disabled people".³⁶⁷

In 2006 Diesfeld et al developed a service delivery proposal for a specialist disability law service informed by the specialist disability services in other jurisdictions.³⁶⁸ They anticipated a range of benefits for both the wider legal sector and the disability community:³⁶⁹

A disability law project will provide community law centres (CLCs) and other legal services with:

- *support, knowledge and a robust referral process for disability law issues*
- *advice regarding access, including language/interpretation*
- *relevant networks of expertise in disability and legal services*
- *a repository of expertise in an over-taxed community law system*
- *resource to build capacity in a little-known area of law*
- *opportunity to share legal reform strategies*
- *expansion of a model of law based on a community of interest.*

It will also provide the disabled community with:

- *a clearinghouse of disability law information and resources*
- *a source of legal expertise for community development-based organisations, support groups and disabled person-led organisations*

³⁶⁵ Law Council of Australia. (2018). *Recommendations and Group Priorities* at 17.

³⁶⁶ Mirfin-Veitch et al., *Developing a more responsive legal system for people with intellectual disability in New Zealand* at ix.

³⁶⁷ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1* at 14.

³⁶⁸ Diesfeld, K., Patston, P., McLean, M., Miller-Burgering, W., Vickery, R. & Phelan, T. (2006) *Service delivery proposal 2006/2007, Disability Law Project, Report No. 2*. Legal Services Agency.

³⁶⁹ *Ibid* at 17.

- *collaboration on class action or other socio-political activities*
- *a growing culture of disability law expertise.*

The Auckland Disability Law (ADL) was formally launched in 2008.³⁷⁰ ADL is the only specialist disability law centre in Aotearoa New Zealand and provides free legal services to disabled people in relation to their disability related legal issues, legal education on disability law in the community and within disability and legal organisations, and works with the Disability and Deaf communities on community engagement and law reform.³⁷¹ In 2018 ADL undertook community consultation with disability community members, disability organisations and community law centres on a national service.³⁷² Following this consultation, ADL produced a proposal for a National Disability Legal Service and sought funding to establish the service. Subject to any announcements in relation to Budget 2023, that funding has not yet been provided.

In other countries there are more extensive disability legal services. For example, in Australia there are disability legal services in all States although in some cases these services are provided within a generalist community law centre.³⁷³ For example, the Australian Centre for Disability Law provides legal advice, selected casework, assists with referrals, delivers Community Legal Education, and law reform and projects in New South Wales.³⁷⁴ This includes developing a toolkit for students with disability and their families in NSW and providing training online and face to face.³⁷⁵ In Victoria, the Disability Discrimination Legal Service is a state-wide service that provides information, referral, advice, casework assistance, community legal education, and policy and law reform in relation to disability discrimination legal matters.³⁷⁶ Villamanta Disability Rights Legal Service also provides free legal services in Victoria relating to disability-related legal and justice issues including financial abuse, guardianship, disability accommodation, issues with support staff, the National Disability Insurance Scheme, and the Disability Royal Commission.³⁷⁷ The Intellectual Disability Rights Service (IDRS) provides services in two areas:³⁷⁸

- The Ability Rights Centre provides help with legal problems, advocacy, support to appeal decisions of the National Disability Insurance Agency, rights education for people with cognitive impairment, assistance for parents with intellectual disability at risk of losing care of their children, and support for people with cognitive impairment to tell their story to the Disability Royal Commission.³⁷⁹
- Justice Advocacy Service (JAS) provides support for young people and adults with cognitive impairment in contact with the NSW criminal justice system, including as

³⁷⁰ Auckland Disability Law. (n.d.). *Auckland Disability Law (ADL) Timeline of Achievements and Activities*. <http://aucklanddisabilitylaw.org.nz/adl-timeline-of-achievements/>

³⁷¹ Auckland Disability Law. (n.d.). *Welcome to Auckland Disability Law*. <http://aucklanddisabilitylaw.org.nz/>

³⁷² Auckland Disability Law. (n.d.). *Auckland Disability Law (ADL) Timeline of Achievements and Activities*. <http://aucklanddisabilitylaw.org.nz/adl-timeline-of-achievements/>

³⁷³ Australian Human Rights Commission. (n.d.). *Disability Rights: disability legal services*. <https://humanrights.gov.au/our-work/disability-rights/disability-rights-disability-legal-services>

³⁷⁴ Australian Centre for Disability Law. (n.d.). *Services*. <https://disabilitylaw.org.au/services/>

³⁷⁵ Australian Centre for Disability Law. (n.d.). *Learning Together*. <https://disabilitylaw.org.au/projects/education/>

³⁷⁶ Disability Discrimination Legal Service Inc. (n.d.). *Disability Discrimination Legal Service*. <http://www.ddls.org.au/>

³⁷⁷ Villamanta Disability Rights Legal Service. (2020). *About us*. https://villamanta.org.au/about_villamanta/

³⁷⁸ Intellectual Disability Rights Service (IDRS). (n.d.). *Home*. <https://idrs.org.au/>

³⁷⁹ Intellectual Disability Rights Service (IDRS). (n.d.). *Ability Rights Centre ARC*. <https://idrs.org.au/what-we-do/>

victims, witnesses and suspects/defendants to exercise their rights and fully participate in the process.³⁸⁰

A full list of the disability legal services in Australia is available on the Australian Human Rights Commission website.³⁸¹ Specialist community legal services for disabled people are also available in Canada³⁸² and the United Kingdom.³⁸³

Information and education

One of the three essential activities in the specialist service proposal developed by Diesfeld et al. was education of disabled people and the legal community or more specifically, education on legal rights for disabled people, and disability education and responsiveness training for legal professionals.³⁸⁴ ADL now provide legal education on disability law in the community and within disability and legal organisations for example, a series of three sessions will take place in May on discrimination, cyber-bullying, and supported decision-making.³⁸⁵

The Law Council of Australia's Justice Project report noted that stakeholders emphasised the importance of legal information and education being designed using elements of "co-design and co-delivery between people with disability (including the intended beneficiaries), health and community professionals and legal professionals" in order to ensure that "strategies are designed to meet the specific needs of people with disability and build on relationships of trust already established with carers, community workers and health care professionals."³⁸⁶ Another aspect of tailoring is in relation to how information is provided to children and young people. For example, the use of Easy Read information to ensure that people with learning (intellectual) disability can understand information about justice processes.³⁸⁷

Screening & diagnosis

As set out above, a key barrier for neurodiverse and disabled children and young people is a not being diagnosed whether this is due to no one identifying that someone may have an impairment, fragmented diagnostic services and/or limited capacity. Improvements in training may increase the likelihood that professionals will identify possible impairments, but in some contexts, particularly in the youth justice system, there are arguments that all young people should be screened for neurodiversity or disability. For example, Gibbs argues that "[b]eing truly FASD-informed ensures that youth are screened for neurodisability".³⁸⁸ Bower et al. make a similar argument, commenting on the significant need for improved diagnosis of young people in detention.³⁸⁹

³⁸⁰ Intellectual Disability Rights Service (IDRS). (n.d.). *Justice Advocacy Service (JAS)* <https://idrs.org.au/jas/>

³⁸¹ Australian Human Rights Commission. (n.d.). *Disability Rights: disability legal services.* <https://humanrights.gov.au/our-work/disability-rights/disability-rights-disability-legal-services>

³⁸² ARCH Disability Law Centre. (2022). *About Us.* <https://archdisabilitylaw.ca/about/> [

³⁸³ Disability Law Service. (2020). *About Us.* <https://dls.org.uk/>

³⁸⁴ Diesfeld et al., *Service delivery proposal 2006/2007, Disability Law Project, Report No. 2* at 17.

³⁸⁵ Auckland Disability Law. (n.d.). *Auckland Disability Law Events Page.* <http://aucklanddisabilitylaw.org.nz/auckland-disability-law-events/>

³⁸⁶ Law Council of Australia. (2018). *The Justice Project: Final Report Part 2 People: Building Legal Capability and Awareness* at 22.

³⁸⁷ People First New Zealand. (2017). *Make it Clear: A guide to making Easy Read information* at 3.

³⁸⁸ Gibbs, *Best practices for justice: Practitioner views on understanding and helping youth living with fetal alcohol spectrum disorder (FASD)* at 7.

³⁸⁹ Bower et al., *Fetal alcohol spectrum disorder and youth justice: A prevalence study among young people sentenced to detention in Western Australia* at 1.

Communication assistance

Communication assistance is broadly defined in Section 4 of the Evidence Act as:³⁹⁰

[A]ny assistance (for example, oral or written interpretation of a language, written assistance, or technological assistance) that enables or facilitates communication with a person who for any reason (for example, insufficient proficiency in the English language, age, or a disability) requires assistance to—

(a) understand court proceedings; or

(b) give evidence

Section 4 read together with sections 80 and 81 of the Act govern eligibility for communication assistance.³⁹¹ Communication assistance does not need to be provided to a defendant in a criminal proceeding if the Judge considers that the defendant can sufficiently understand the proceeding and, if the defendant elects to give evidence, can sufficiently understand questions put orally and can adequately respond to them.³⁹² Communication assistance does not need to be provided to a witness in a civil or a criminal proceeding if the Judge considers that the witness can sufficiently understand questions put orally and can adequately respond to them.³⁹³ The Judge has the discretion to determine what amounts to sufficient ability to give evidence and/or understand proceedings based on the circumstances of the particular case.³⁹⁴

Communication assistants (also known as witness intermediaries or communication intermediaries in some other countries³⁹⁵) provide “specialist support for an identified young person who had particular communication needs and who would otherwise struggle to participate” which enables “the identified young person to understand and express themselves”.³⁹⁶ Communication assistance “breaks down complex information into something simple and easy to follow. This is often done with the use of visual aids such as diagrams, pictures or maps.”³⁹⁷

Research in New Zealand with young people, their families and professionals who had experienced communication assistance in youth justice processes found that:³⁹⁸

Rangatahi and whānau spoke of communication assistance being a transformative and empowering experience that enabled them to participate meaningfully in youth justice processes. Professionals were also overwhelmingly in support of this relatively new role which they considered put young people at the centre of youth justice and upheld fair trial rights. The findings overall suggest that communication assistance has a valuable and ongoing role to play in the NZ youth justice system

³⁹⁰ [Evidence Act 2006, s4.](#)

³⁹¹ Evidence Act 2006, [ss80](#) & [81](#).

³⁹² [Evidence Act 2006, s81\(1\).](#)

³⁹³ [Evidence Act 2006, s81\(2\).](#)

³⁹⁴ Howard, K., McCann, C. & Dudley, M. (2020). What is communication assistance? Describing a new and emerging profession in the New Zealand youth justice system. *Psychiatry, Psychology, and Law*, 27(2), 300-314 at 301-302.

³⁹⁵ See Law Council of Australia. (2018). [The Justice Project: Final Report Part 2 Critical Support Services](#) at 50.

³⁹⁶ Howard et al., What is communication assistance? Describing a new and emerging profession in the New Zealand youth justice system at 305.

³⁹⁷ Ibid at 304-305.

³⁹⁸ Howard, K., McCann, C., & Dudley, M. (2020). "It was like more easier": Rangatahi (young people) and their whānau (family) talk about communication assistance in the New Zealand youth justice system. *Youth Justice*. 21(2), 210-229 at 213.

and may be one means of addressing the participation rights and needs of those with communication difficulties.

The use of communication assistance in courts is governed by the Communication Assistance Quality Assurance Framework.³⁹⁹ However, the Framework does not apply to the use of communication assistants by Oranga Tamariki or the Police.⁴⁰⁰

While the use of communication assistants in Court is positive, research in New Zealand and overseas has also identified the need for these services to be more widely available. For example, research suggests that early intervention for children with identified development language disorder could reduce later involvement with police⁴⁰¹ Other research argues that speech-language therapists should be involved at all stages on the notional 'school-to-prison pipeline' including "at schools, in child and welfare agencies, in child and adolescent mental health care settings, at police stations, in court, and in youth justice facilities".⁴⁰²

In addition to the provision of communication assistance to those who need it, there is also a need to make processes more accessible as one of the professionals interviewed by Howard et al. explained:⁴⁰³

[T]here's probably a relatively small number at the very top end who require the involvement of a communication assistant in the courtroom. The top of the pyramid would be a relatively small number needing that level of involvement, but there's quite a large number impaired but nowhere near to that extent who would be able to participate properly if the process was made accessible enough.

Howard et al. identify broader communication friendly changes that could be made to the justice system including training other professionals on communication strategies as well as by making changes to written materials and the general layout and environment of the court.⁴⁰⁴

Other support and advocacy

Lawyers participating in Mirfin-Veitch et al's research in relation to developing a more responsive legal system for intellectually disabled people valued the support provided by intellectual disability service staff particularly when they were giving legal information to clients.⁴⁰⁵

³⁹⁹ Ministry of Justice. (2021). [Communication Assistance Quality Framework](#) at 6-7. Other background information about communication assistance including a New Zealand Law Society Forum is available here: Ministry of Justice. (n.d.). *Communication Assistance*. <https://www.justice.govt.nz/about/lawyers-and-service-providers/service-providers/communication-assistance/>

⁴⁰⁰ Ministry of Justice, [Communication Assistance Quality Framework](#) at 4.

⁴⁰¹ Howard et al., "It was like more easier": Rangatahi (young people) and their whānau (family) talk about communication assistance in the New Zealand youth justice system at 224 citing Winstanley, M., Webb, R.T. & Conti-Ramsden, G. (2018). More or less likely to offend? Young adults with a history of identified developmental language disorders. *International Journal of Language and Communication Disorders*, 53(2), 256–270.

⁴⁰² Ibid at 224-225 citing Snow, P.C. (2019). Speech-language pathology and the youth offender: Epidemiological overview and roadmap for future speech-language pathology research and scope of practice. *Language, Speech, and Hearing Services in Schools*, 50, 324–339.

⁴⁰³ Howard, K., McCann, C., & Dudley, M. (2020). 'I was flying blind a wee bit': Professionals' perspectives on challenges facing communication assistance in the New Zealand youth justice system. *The International Journal of Evidence & Proof*, 24(2), 104–120 at 110.

⁴⁰⁴ Howard et al., "It was like more easier": Rangatahi (young people) and their whānau (family) talk about communication assistance in the New Zealand youth justice system at 214-215.

⁴⁰⁵ Mirfin-Veitch et al., [Developing a more responsive legal system for people with intellectual disability in New Zealand](#) at 32.

Lawyers were aware that sometimes important elements were lost in translation due to the person's difficulty in recalling, and retelling, information. Support staff had the potential to facilitate effective communication between lawyers and their clients with intellectual disability both by educating the lawyer about how to be responsive to a person's communication needs, and by retelling and reinforcing legal information.

Lawyers also explained that support staff was even more valuable in some circumstances such as where support staff had a relationship of trust with the person they were supporting and could therefore facilitate the relationship between the lawyer and the client⁴⁰⁶ as well as where the knowledge and experience to be able to provide additional or new information at critical times, which enabled the lawyer to represent their client more effectively.⁴⁰⁷

Training and education

Research and literature identifies the need for training and education in relation to both the nature and impacts of different forms of disability and neurodiversity, as well as in relation to the specific legal rights of disabled and neurodiverse people. For example, the New Zealand Human Rights Commission report in relation to violence and abuse of disabled people made a series of recommendations for mandatory training of all “people working across the violence prevention and response sector, including police, lawyers and judges; researchers who want to research disabled people’s circumstances; the disability sector; the wider health sector; and social services”.⁴⁰⁸ This training should include “the gendered dynamics of violence and violence against tāngata whaikaha Māori and disabled adults and children” and be “embedded in all tertiary education” and “initial and ongoing professional development training”.⁴⁰⁹

Social work academic and FASD researcher Dr Anita Gibbs also emphasises the importance of training explaining “[p]rofessionals working in care, justice and education also needed to understand, in depth, what was going on for children in trouble and getting good training was a key part of this”.⁴¹⁰ This requires “baseline FASD training at both introductory and specialist levels.”⁴¹¹

Diesfeld et al.’s literature review in relation to the legal needs of disabled people pointed to the need “the need for people working within the legal system to be educated about disability issues and disabled peoples’ needs” with “[d]isability awareness training and protocols for working with interpreters for personnel in courts and police services” being particularly important.⁴¹² Other research overseas also emphasises the need for training to be improved “to support frontline workers to respond most effectively to neurodiverse people’s needs”.⁴¹³

More generally, as discussed above, one of the most significant barriers to accessing justice for disabled and neurodiverse people is the attitudes of those involved in the administration of justice. For this reason, the Mental Disability Advocacy Center recommends training of

⁴⁰⁶ Ibid at 33.

⁴⁰⁷ Ibid.

⁴⁰⁸ New Zealand Human Rights Commission, [Whakamahia te tūkinō kore ināianeī, ā muri ake nei: Acting now for a violence and abuse free future](#) at 55.

⁴⁰⁹ Ibid.

⁴¹⁰ Gibbs, [Best practices for justice: Practitioner views on understanding and helping youth living with fetal alcohol spectrum disorder \(FASD\)](#) at 11.

⁴¹¹ Ibid at 15.

⁴¹² Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1.* at 13.

⁴¹³ Revolving Doors, [Exploring the links between neurodiversity and the revolving door of crisis and crime: Policy briefing](#) at 10.

“professionals working in justice systems to ensure that people with disabilities can access justice on an equal basis with others (Article 13(2))”.⁴¹⁴

Teachers

The research and literature also identifies the need for teachers to receive better training. In particular, recent research by McMenamin found “that the current system of learning support and teacher training are not simply inadequate—they are barriers to equal education”.⁴¹⁵ She argued that both parents and educators would benefit from further guidance and training in relation to the practical requirements of reasonable accommodation and that teachers “must be trained and supported to meet the needs of all learners in their class”.⁴¹⁶

The Education Review Office also identified a need for better training and education of teachers both as part of initial teacher training, as well as refreshing and retraining for older school staff, many of whom had been trained when expectations for inclusive education were quite different to today.⁴¹⁷ They recommended that guidance around professional standards be amended to encourage the take-up of disability specific training.⁴¹⁸

Police

A recent report prepared for the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability involving a literature review, desktop review of current police policy and practice, case studies and consultations with disability advocates, support and police persons highlighted the need to improve police awareness of disability related issues including through training.⁴¹⁹

Given the high rates of victimisation and unresolved trauma experienced by people with disability who come into contact with the police, improving police awareness and responses to victim/survivors with disability, understanding of the intersection between disability and sexual violence and addressing stereotypes about women with disability are recognised priorities for police training.²²⁷ Others include that police training pay attention to unconscious biases²²⁸ and to the significance of cultural constructions of ability, gender and sexuality.²²⁹ Further suggested inclusions in police training are understanding the many issues confronting victim/survivors with disability, the difficulties they may have in communicating what has happened, and the additional power imbalance that is present when a perpetrator is in a ‘caring’ role.²³⁰

Dowse et al identify three key principles that must underlie efforts to improve police disability awareness training: the inclusion of people with lived experience of disability and, where possible, experience of contact with the police; training should focus on “problem-based and experiential learning approach to promote longer-lasting effects”; and training should cover a wide range of disabilities including acquired brain injury, fetal alcohol spectrum disorder, autism spectrum disorder, and hearing impairments as well as addressing the intersection with culture

⁴¹⁴ Mental Disability Advocacy Center. (2015). [Access to Justice for Children with Mental Disabilities: International Standards and Findings from Ten EU Member States](#) at 8.

⁴¹⁵ McMenamin, [Reasonable Accommodation: Equal Education for Learners with Disabilities](#) at 28.

⁴¹⁶ Ibid.

⁴¹⁷ Te Ihu Waka Education Evaluation Centre, [Thriving at School? Education for Disabled Learners in Schools](#) at 115.

⁴¹⁸ Ibid at 134.

⁴¹⁹ Dowse et al, [Police responses to people with disability](#) at 29.

and the experience of trauma.⁴²⁰ They also set out what advocates consider should be included in disability-specific training for police.⁴²¹

- The principles of trauma-informed care and the re-traumatisation during arrest;
- Identifying disability and understanding the impact of impairments;
- How to communicate effectively and respectfully with people with disability;
- Developing an understanding of the lived experiences / life stories of people with disability;
- The use of police discretion not to charge;
- The difference between mental health problems and cognitive disability;
- Reframing police questioning styles from 'do you understand?' to 'what is your understanding of that?'
- De-escalation skills and techniques; and
- Using 'universal precautions' i.e. assuming that the majority of people police interact with are experiencing some kind of disability, trauma or crisis and using simple, non-inflammatory language.

However, much as Dowse et al. argue that training is important and necessary, they also describe the consensus that training is not enough on its own because the "problem is rooted in the deeper function and purpose of policing and the issue of values" noting that they were unable to locate any studies that show a connection between "police disability awareness training and improved knowledge, skills and attitudes of police officers toward people with disabilities" or any "impact on reducing the frequency of police brutality and violence against members of this group".⁴²²

Research by Cunial et al. focusses specifically on training for police interviewing young people with ADHD. They make a series of recommendations which are potentially relevant to other areas of training:⁴²³

[M]aking training cost effective; building in 'coaching' methods; utilizing university research on evidence-based practice; drawing on real-life experiences; incorporating practical problem-solving learning exercises; teaching proactive strategies; adopting meaningful and clearly defined learning objectives; considering contextual factors; utilizing a buddy system with self-monitoring and evaluation as well as peer supervision, support and feedback/review; spacing training sessions over time in order to augment recency and primacy effects; shifting the way police view their role in the system and the value of psychological contributions to the field; and creating a learning environment that is mutually supportive of multiple stakeholders' viewpoints

Cunial et al. also advocate for any training programme developed using their recommendations to be subject to research and validation to ensure that there is empirical evidence to support clinical recommendations.⁴²⁴

⁴²⁰ Ibid at 29.

⁴²¹ Ibid at 94.

⁴²² Dowse et al, [Police responses to people with disability](#) at 28.

⁴²³ Cunial, K.J., Casey, L.M., Bell, C. & Kebell, M.R. (2020). Investigative interviewing of youth with ADHD – recommendations for detective training. *Psychiatry, Psychology and Law*, 27(5), 797-814 at 799.

⁴²⁴ Cunial et al., Investigative interviewing of youth with ADHD – recommendations for detective training at 806.

Lawyers

Legal education

As Larson argues, “[t]raining advocates to provide services to a population that may have significantly different needs even within that population may be a more efficient and effective way to improve access to justice than by attempting to draft laws and regulations that somehow address all possible circumstances.”⁴²⁵ Although this is not a focus in New Zealand law schools as far as I am aware, in other jurisdictions many law schools offer learning opportunities relating to representing disabled people, advocate for policy change, the development of resources for disabled people including through clinical programmes.⁴²⁶ For example, the National University of Ireland, Galway has an LL.M program in International and Comparative Disability Law and Policy, hosts the Centre for Disability Law and Policy and the International Disability Summer School, as well as providing a range of accommodations for disabled people.⁴²⁷ Larson suggests that the Universities approach demonstrates that “[i]t is important not only to teach advocates about the regulatory context and unique problems that may be faced by persons with disabilities, it also is important to provide guidance concerning how to interact effectively with persons with disabilities”.⁴²⁸

The Coelho Center at Loyola Law School in Los Angeles is “a scholarly community dedicated to the study of disability studies, fosters students and practitioners interested in working with the disability community” it also focusses on increasing the pipeline of lawyers with disabilities including through bringing “attention and solutions to the barriers that exist for people with disabilities interested in entering the legal field, becoming public policy experts, and holding political office”.⁴²⁹ The Coelho Center offers a range of programmes including a fellowship programme for disabled college students interested in going to law school involving mentoring from disabled law students and lawyers as well as a series of internships for disabled law students.⁴³⁰

Continuing professional development

Studies in both New Zealand and Australia have discussed the need for lawyers to be able to identify when their clients may have a disability in order to ensure that their needs are assessed and any necessary accommodations are made. However, in both jurisdictions concerns have also been raised that lawyers receive very little training to do this.

Diesfeld et al’s literature review in relation to the legal needs of disabled people identified the need for lawyers to understand the needs of people with intellectual disabilities and the impact of disability on the people they represent which requires them to be properly trained.⁴³¹ Lawyer participants in Mirfin Veitch et al.’s research recommended mandatory training for lawyers

⁴²⁵ Larson, D.A. (2014). Access to Justice for Persons with Disabilities: An Emerging Strategy. *Laws*, 3(2), 220-238 at 221.

⁴²⁶ *Ibid* at 229.

⁴²⁷ *Ibid* at 229-230.

⁴²⁸ *Ibid* at 229-230.

⁴²⁹ Loyola Law School. (n.d.). *The Coelho Center: Our Mission and Guiding Principles*. <https://www.lls.edu/coelhocenter/ourmissionandguidingprinciples/missionandareasoffocus/>

⁴³⁰ Loyola Law School. (n.d.). *The Coelho Center: Pipeline for Students with Disabilities*. <https://www.lls.edu/coelhocenter/pipelineforstudentswithdisabilities/>

⁴³¹ Diesfeld et al., *Literature Review: Unmet Legal Needs of People with Disabilities in the Auckland Region Report No. 1*. at 13.

wishing to work with clients with intellectual disability and in the area of the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003.⁴³²

The Law Council of Australia also concluded that tools and training for lawyers in identifying and responding to people with disability is crucial to ensure that their needs are correctly assessed and reasonable accommodations are made.⁴³³ Submitters to the Justice Project also emphasises the need for resources to help legal assistance services to become more disability responsive and the importance of the role of disability advocates in ensuring that legal services were disability-responsive.⁴³⁴

In New Zealand the Public Defence Service and NZLS CLE (with funding from the Ministry of Justice) provided two CPD sessions:

- Public Defence Service: FASD training for lawyers in April 2022;⁴³⁵
- Communication Assistance Forum in April 2022;⁴³⁶

However, these CPD sessions were focussed on the criminal law and particular forms of disability or neurodiversity. I am also aware of Auckland Disability Law offering training to other legal professionals, in particular, those at other community law centres having personally undertaken their training when I worked at YouthLaw Aotearoa.

In my view, disability training should be available for lawyers practicing in all areas of the law but particularly in those areas of the law that are particularly likely to impact on disabled and neurodiverse children and young people including education law, welfare and benefits, victimisation, Oranga Tamariki, and the criminal justice system.

⁴³² Mirfin-Veitch et al., [Developing a more responsive legal system for people with intellectual disability in New Zealand](#) at ix.

⁴³³ Law Council of Australia, [The Justice Project: Final Report Part 2 Legal Services](#) at 43.

⁴³⁴ Ibid.

⁴³⁵ FASD-CAN. (2022). *Public Defence Service: FASD training for lawyers*. <https://www.fasd-can.org.nz/public-defence-service-rolls-out-fasd-training-for-lawyers>

⁴³⁶ NZLS CLE Limited. (2022). *Communication Assistance Forum*. <https://www.lawyerseducation.co.nz/shop/Archives/2022+Archive/Forums2022/22CAF.html>

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