



The New Zealand Sign Language Bill (A)

In June 2003 in Wellington, Samantha Wilson, an Office of Disability Issues policy analyst, reflected on consultations with 27 government departments on draft provisions for a New Zealand Sign Language (NZSL) Bill. She knew that the Deaf¹ community sought a spectrum of enforceable “language rights”. Yet, every department said the proposals went “too far” to be implemented. Samantha needed to recast the Bill’s objectives in a way that would be acceptable to both government and the Deaf community.

Background

New Zealand Sign Language (NZSL) is the unique visual language of Deaf New Zealanders. It has its own grammatical structure different from either English or Māori. It is not a collection of mimed gestures, and can communicate a complete range of concepts. NZSL is unique to New Zealand, and includes signs that express Māori concepts. In New Zealand there are about 28,000 (deaf and hearing) people who can use NZSL and an estimated 7,000 of these people are Deaf.

The Deaf Association of New Zealand was formed in 1977. The New Zealand Deaf community has been seeking recognition of their language for over 20 years. Historically in New Zealand, sign language was actively prohibited in the mistaken

This case was written by Dr Amanda Wolf, Victoria University of Wellington. It has been prepared as a basis for class discussion rather than to illustrate either effective or ineffective handling of a managerial situation. Some names have been changed to protect privacy. The assistance of Kayt Robinson and members of the Deaf community is gratefully acknowledged

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¹ The capitalised “D” is used to denote a distinct cultural group of people who are deaf, use NZSL as their first or preferred language, and identify with the Deaf community and culture. Like all cultures, Deaf culture incorporates a rich body of distinct customs, mannerisms, art, humour, and history.

view that the language was inferior to spoken languages and deaf people would be better off learning to speak and lip-read English. The first dictionary of NZSL was published only in 1998.

New Zealand currently has two official languages, English and Māori (te reo Māori). Māori began pushing for official recognition of their language in the 1970s. In the 1986 Te Reo Māori Report the Waitangi Tribunal² determined that the Māori language was a taonga and therefore had protection under the terms of the Treaty of Waitangi. This, in turn, led in August 1987 to the Māori Language Act, which declared Māori an official language of New Zealand. The same Act established the Māori Language Commission (Te Taura Whiri i te Reo Māori). Faced with a diminishing pool of native speakers, the Commission was charged with “promoting Māori language as a living language and as an ordinary means of communication”. Since 1987, government agencies, local bodies, and private sector organisations have adopted policies for bilingualism. This is evident in the proliferation of Māori names for public service agencies, and high-profile media campaigns using Māori language and icons.

Rights and obligations

Considered in broad historical sweep, the prospect of extending language rights to Deaf people is a recent manifestation of an ever-growing elaboration of human rights. In the case of languages, the right is associated with participation, inclusiveness, and belonging.

Arguments for - and against – any extension of rights are complex and contested. Some say many claims for “rights” are masked claims for self-interested special treatment, and are divisive. Others maintain that some rights are basic rights that every society must guarantee to all, while other rights are subject to trade-offs with other public goods and competing social values. Rights and obligations do not flow automatically from the “official recognition” of a language, leading some observers to dismiss language recognition as “merely symbolic”.

The New Zealand Disability Strategy

As many as one in five New Zealanders have been identified as having a permanent impairment, and suffer the consequence of the majority’s benign ignorance or outright discrimination. In 1996 the Labour Party manifesto promised to create a ministerial portfolio for disability services, based in part on a shift in thinking occurring internationally. No longer was disability held to be a phenomenon of individuals, but it was to be seen as a feature of a society that failed to promote and support the independence and social participation of people with impairments such as deafness or blindness.

By 1999, the manifesto included the aim to officially recognise NZSL (see *Exhibit 1*). In lobbying for this provision, Deaf people had claimed that the lack of legal protection of their language resulted in poor educational achievement, and lack of access to justice, among other harms.

² The Waitangi Tribunal was established in 1975 to hear claims made under the Treaty of Waitangi, New Zealand’s founding document, signed between Maori and the British Crown in 1840. Article 2 of the Treaty includes reference to taonga (things which are highly treasured).

The New Zealand Disability Strategy was published in 2001 (see *Exhibit 2*). Its focus was the removal of barriers that are created by non-impaired people. For example, society creates barriers when it is built in a way that assumes everyone can see signs, or hear announcements. The Disability Strategy includes objectives to provide the best education for disabled people, and promote opportunities in employment and economic development for disabled people.

Developing the New Zealand Sign Language Bill

The Office of Disability Issues (ODI) was formed in July 2002 to develop policy and provide a disability perspective to policies led by other government departments, and to implement and monitor the New Zealand Disability Strategy. In September 2002, Samantha Wilson, a Deaf policy analyst, began working at ODI and took on the work of developing the NZSL Bill later that year. Following through on the 1999 Labour Party manifesto, the Hon Ruth Dyson, Minister of Disability Issues, got Cabinet agreement to include the Bill in the 2003 legislative programme.

To start scoping the Bill, ODI set up a Deaf Advisory Group, made up of people from the Deaf community and people who work within the community. With this Group's advice, Samantha, along with one other ODI policy analyst, travelled to the main centres in New Zealand, including Auckland, Palmerston North, Wellington, and Christchurch, to consult with the Deaf community and organisations regarding the content of the proposed Bill. "We asked the community, 'why do you want Sign Language recognised?' and we asked them 'what has the result of not having Sign Language recognised been for you?'"

ODI analysts met with over 250 people. From these meetings three main themes emerged: the low awareness about Deaf people within the State Sector and the wider society, poor access to government services, and inadequate funding and development of sign language interpreter services.

On the basis of these consultations, the Office of Disability Issues crafted some ideas for a New Zealand Sign Language Bill. The initial ideas for the Bill, which were not written formally, responded to the Deaf community's claims for "language rights", including official recognition of NZSL, and rights to access services and information in NZSL.

Revised New Zealand Sign Language Bill

In June 2003, ODI analysts met with 27 government agencies regarding these initial ideas. It quickly became apparent that the agencies could not implement a Bill that moved very far from the status quo, because of resource limitations.

The consultation with government agencies also highlighted difficulties in specifying enforceable rights or obligations with enough clarity to enable government agencies to apply these in the myriad of circumstances in which they operated. The government agencies believed they could accept only the proposal to make NZSL the country's third official language (after English and Maori), and the proposal to create the right to use Sign Language interpreters in the justice system. Sign Language interpretation was already provided in this sector, so this second proposal legitimated existing practice, but did not impose an additional cost.

Conclusion

The Hon Ruth Dyson gave Samantha and her fellow policy analysts until 30 July 2003 to prepare a Cabinet paper suggesting a new way forward with the Bill.

Samantha set about reviewing the persuasiveness of the various reasons offered for and against enforceable language rights, and sought a new expression of the Bill's purposes, which would be more acceptable to government agencies than enforceable rights, and still acceptable to the Deaf community.

Exhibit 1

From the New Zealand Labour Party manifesto, 1999

- *Labour recognises that communication is one of the fundamental factors in access to participation. Two communities in New Zealand, deaf people and blind people, face communication barriers, which need to be addressed. The recognition of New Zealand Sign Language as an official language would be a significant step towards addressing the communication barriers for deaf, as would the availability of information in new technology formats for deaf and blind people. Labour supports this access to service and information and acknowledges that it will empower deaf and blind people to have greater participation in our society.*

Exhibit 2

From The New Zealand Disability Strategy

(downloaded from <http://www.odi.govt.nz> on 24 June 2005)

Summary

The New Zealand Disability Strategy presents a long-term plan for changing New Zealand from a disabling to an inclusive society. It has been developed in consultation with disabled people and the wider disability sector, and reflects many individuals' experiences of disability.

Disability is not something individuals have. What individuals have are impairments. They may be physical, sensory, neurological, psychiatric, intellectual or other impairments. Disability is the process which happens when one group of people create barriers by designing a world only for their way of living, taking no account of the impairments other people have.

Along with other New Zealanders, disabled people aspire to a good life. However, they also face huge barriers to achieving the life that so many take for granted. These barriers are created when we build a society that takes no account of the impairments other people have. Our society is built in a way that assumes we can all see signs, read directions, hear announcements, reach buttons, have the strength to open heavy doors and have stable moods and perceptions.

Underpinning the New Zealand Disability Strategy is a vision of a fully inclusive society. New Zealand will be inclusive when people with impairments can say they live in:

'A society that highly values our lives and continually enhances our full participation.'

Achieving this vision will involve ensuring that disabled people have a meaningful partnership with Government, communities and support agencies, based on respect and equality. Disabled people will be integrated into community life on their own terms, their abilities will be valued, their diversity and interdependence will be recognised, and their human rights will be protected. Achieving this vision will also involve recognising the principles of the Treaty of Waitangi.

To advance New Zealand towards a fully inclusive society, the Strategy includes fifteen Objectives, underpinned by detailed Actions. The Objectives are to:

1. encourage and educate for a non-disabling society
2. ensure rights for disabled people
3. provide the best education for disabled people
4. provide opportunities in employment and economic development for disabled people
5. foster leadership by disabled people
6. foster an aware and responsive public service

7. create long-term support systems centred on the individual
8. support quality living in the community for disabled people
9. support lifestyle choices, recreation and culture for disabled people
10. collect and use relevant information about disabled people and disability issues
11. promote participation of disabled Māori
12. promote participation of disabled Pacific peoples
13. enable disabled children and youth to lead full and active lives
14. promote participation of disabled women in order to improve their quality of life
15. value families, whānau and people providing ongoing support.

Key government departments will produce an implementation work plan for the 2001/02 year showing what they are doing towards implementation of the Strategy. This annual planning process will then be rolled out to other departments in 2002/03. The Minister for Disability Issues will report to Parliament annually on progress in implementing the Strategy and full reviews of progress will be conducted after five and ten years.

Introduction

‘Disability is in society, not in me.’

‘I have the right to dignity, to develop my potential, to use my qualities and skills.’

– Consultation comments

We live in a disabling society. The New Zealand Disability Strategy presents a plan for changing this.

Disability is not something individuals have. What individuals have are impairments. They may be physical, sensory, neurological, psychiatric, intellectual or other impairments.

Disability is the process which happens when one group of people create barriers by designing a world only for their way of living, taking no account of the impairments other people have. Our society is built in a way that assumes that we can all move quickly from one side of the road to the other; that we can all see signs, read directions, hear announcements, reach buttons, have the strength to open heavy doors and have stable moods and perceptions.

Although New Zealand has standards for accessibility, schools, workplaces, supermarkets, banks, movie theatres, marae, churches and houses are, in the main, designed and built by non-disabled people for non-disabled users. This is our history of disability in New Zealand.

Disability relates to the interaction between the person with the impairment and the environment. It has a lot to do with discrimination, and has a lot in common with other attitudes and behaviours such as racism and sexism that are not acceptable in our society.

People and groups of people should not be judged by one particular aspect of their lives – whether it's their race, gender, age or impairment. Individual beliefs and assumptions, as well as the practices of institutions, mean that many disabled people are not able to access things that many non-disabled people take for granted.

The desire to break down the barriers that cause disability is also closely linked to ideas about the human rights of people with impairments. Without human rights we cannot live as full human beings.

Human rights include political, civil, social, cultural and economic rights. Human rights are described by international instruments – such as the Universal Declaration on Human Rights and core treaties such as the International Covenant on Civil and Political Rights, Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Rights of the Child (UNCROC). In New Zealand we have legislation such as the Bill of Rights Act, the Human Rights Act and the Privacy Act.

In the New Zealand Disability Strategy discussion document, the term 'people experiencing disability' was used throughout the document. There was a mixed reaction to this term – some people liked it and thought it was a good way of expressing that disability is something that happens to people who have impairments. Other people thought it was over-complicated.

The New Zealand Disability Strategy sector reference group has recommended that this final Strategy should use the term 'disabled people' to refer to the people at the heart of this Strategy.

Vision of a non-disabling society

Along with other New Zealanders, disabled people aspire to a good life.

The vision of this Strategy is a fully inclusive society. New Zealand will be inclusive when people with impairments can say they live in:

'A society that highly values our lives and continually enhances our full participation.'

This will happen in a country where:

- disabled people have a meaningful partnership with Government, communities and support agencies, based on respect and equality
- we have moved forward from exclusion, tolerance and accommodation of disabled people to a fully inclusive and mutually supportive society
- disabled people are integrated into community life on their own terms. This means that equal opportunities are assured but individual choices are available and respected
- the abilities of disabled people are valued and not questioned
- interdependence is recognised and valued, especially the important relationships between disabled people and their families, friends, whānau and other people who provide support
- human rights are protected as a fundamental cornerstone of government policy and practice
- the diversity of disabled people, including their cultural backgrounds, is recognised, and there is flexibility to support their differing aspirations and goals
- disabled people are treated equitably, regardless of gender, age, cultural background, type of impairment or when and how the impairment was acquired
- community-based services ensure that disabled people are supported to live in their own communities, and institutionalisation is eliminated
- the idea that society imposes many of the disabling barriers faced by people with impairments is widely understood and, therefore, legislation, policy and other activities enhance rather than disable the lives of people with impairments
- the principles of the Treaty of Waitangi are recognised.

Barriers

'More often than not, barriers are made out of peoples' ignorance towards something different.'

– Consultation comment

One in five people in New Zealand reports having a long-term impairment. Because everyone comes from different backgrounds, holds different beliefs and has different needs, there is a great diversity of people who have impairments.

The key common factor among people with impairments is that they face many lifelong barriers to their full participation in New Zealand society.

Attitudes have been identified, through consultation, as the major barrier that operates at all levels of daily life in the general population. Attitudes and ignorance make their presence felt as stigma, prejudice and discrimination. In the year to June 1999, disability discrimination was the largest category of complaints to the Human Rights Commission.

Stigma, prejudice and discrimination affect our behaviours. Sometimes the combination of attitudes and behaviours can seem to create almost insurmountable barriers, for example, whole systems or organisations can become a barrier much in the way that institutionalised racism operates.

When I'm a child ...

- For disabled children, it is hard to get the best start to their life ahead. Children's needs can put big demands, including financial pressure, on their families and whānau.

When I'm a youth ...

- Disabled people are much less likely to have educational qualifications than non-disabled people.

When I'm an adult ...

- Disabled people are much less likely to be employed. For instance, the unemployment rate for people with ongoing mental illness is very high. Half of recent complaints to the Human Rights Commission in regard to disability related to employment.
- The public service employs a far lower proportion of disabled people than exist in the general working age population, despite equal employment opportunity policies.
- Disabled people often have reduced housing options through poverty or factors such as discrimination when neighbours object to supported houses being established in their area.

When I'm older ...

- Older people experience difficulties when their problems are seen as an inevitable part of ageing. Faced with this attitude, they may miss the opportunity to remain able and independent through rehabilitation, correction of health problems or provision of support services.
- For older disabled people, one of the biggest problems can be being denied the opportunity to remain in their familiar surroundings and 'age in place'. Even in their own homes, some can feel isolated and insecure if they have limited contact with families, friends and their community.

My whole life ...

- Despite New Zealand having strong standards for physical accessibility, access to public facilities and other buildings such as marae is poor. On top of that, most public transport is not independently accessible, and car modifications are expensive.
- People in higher socio-economic areas are more likely to access and receive support services than people in low socio-economic areas. Reflecting this situation, Māori as well as Pacific peoples are typically low users of support services.
- Forty-four percent of Māori with a long-term impairment report that they have an unmet need for some kind of service or assistance. Twenty-nine percent of non-Māori with a long-term impairment report an unmet need. The majority of support for everyday activities comes from families.
- Poor literacy is a problem for many and is a cause of communication barriers. This problem extends to Braille and sign language literacy.
- Disabled people, especially those with psychiatric or intellectual impairments, are often shut out of social networks and full participation in community activities, because people are ignorant or fearful of behaviour they perceive as different.
- As a group, disabled people are likely to have lower incomes and fewer financial and family resources than the general population. This economic disadvantage is compounded by the financial cost of disability. The earning potential of families with disabled children can be curtailed by their need to provide support for their children or live and work in areas where they can access family or professional support.
- Disabled women are more likely to have low incomes than men or non-disabled women. Seventy-one percent of women with long-term impairments report an annual personal income of less than \$15,000.
- Disabled people are almost three times as likely to get income from a government benefit than non-disabled people (excluding superannuation from this calculation).

Although the Government provides a range of services, the experience of accessing these services can be very disabling because sometimes they are not flexible enough to meet individual needs. To get a benefit, a piece of equipment, or maybe some help at home you might have to tell your story to

three or four different people — just to get what you need at that particular time. Next year those three or four people may have moved on, with a new lot of assessors in their place.

These kind of arrangements and turnover of staff are disabling because the person, their families and whānau spend a lot of time fighting the system, in order to get access to the same opportunities other New Zealanders have.

The Government needs to help open the way into community life for disabled people — by removing the barriers to their participation.

Delivering the Strategy

Under the New Zealand Public Health and Disability Act 2000, the Minister for Disability Issues is required to have a New Zealand Disability Strategy. The Government recognises that a lot of work is required to remove the barriers to participation faced by disabled people and create a fully inclusive society. As part of the New Zealand Disability Strategy, 15 Objectives and detailed Actions to achieve this have been developed.

Government departments are expected to develop annual New Zealand Disability Strategy implementation work plans that spell out what work they are doing to implement the Strategy. Key departments will develop their initial implementation work plans for the period 1 July 2001 to 30 June 2002. This annual planning process will then be rolled out to other departments in 2002/03.

Government initiatives that will benefit disabled people, such as the New Zealand Positive Ageing Strategy, the New Zealand Health Strategy, the Māori Health Strategy and the Pacific Health and Disability Action Plan, will complement the New Zealand Disability Strategy.