**NEW ZEALAND DISABILITY STRATEGY REVIEW – DFNZ SUBMISSION**

**22 May 2016**

**If you are filling in the survey on behalf of an organisation, please let us know which organisation you are from**

Dyslexia Foundation of New Zealand. Contact Guy Pope-Mayell, Chair of Trustees, guy@dfnz.org.nz. 0275 449 496.

**Tell us about what the term disability means to your organisation.**

One in four New Zealanders is limited by a physical, sensory, learning, mental health or other impairment, according to the 2013 Disability Survey, conducted by Statistics New Zealand following the 2013 Census.

The 2001 New Zealand Disability Strategy, which is the subject of this submission, is designed to guide Government action to promote a more inclusive society. It notes that many New Zealanders who have a long-term impairment are ‘unable to reach their potential or fully participate fully in the community because of barriers they face doing things that most New Zealanders take for granted. The barriers range from the purely physical, such as access to facilities, to the attitudinal, due to poor awareness of disability issues’.

The Strategy defines disability as follows:

*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.*

Dyslexia Foundation of New Zealand (DFNZ) supports this definition of disability as being a process which happens when barriers are created that prevent an individual reaching their full potential. In broad terms, dyslexia falls under the umbrella of neurodisabilities. Often invisible at first glance, neurodisabilities range from learning differences such as dyslexia and communication disorders through to intellectual disabilities, attention deficit hyperactive disorder, autism spectrum disorders, traumatic brain injury, epilepsy and foetal alcohol syndrome. These neurodisabilities intersect the justice, health, education, social development and disability sectors and have wide-ranging social and fiscal impacts.

Dyslexia is often misunderstood as just a problem with reading and writing. However, it can affect a spectrum of skills including motor skills, cognitive processing speeds and comprehension, auditory and visual perception, planning and organising, and short-term memory and concentration. Dyslexic individuals tend to think in pictures (and often 3D and video) rather than words, receiving and retrieving information in a different part of the brain to neurotypical, word-based thinkers. Put simply, translating these ‘pictures’ back into words, whether spoken or written, takes extra time and considerable effort.

If addressed and supported, dyslexia brings creative strengths – many dyslexics excel in the arts, design, leadership, entrepreneurship, engineering, sciences and technology. But support must start from day one in the classroom, where simple changes such as personalised learning, multi-sensory techniques in replace of a word-based bias, chunking of tasks and instructions, acceptance of alternative evidence of achievement, accommodations and extra time can make a big difference to engagement and achievement. Importantly, what is true for dyslexia is true for other neurodisabilities, in that the personalised learning and classroom adjustments and interventions that benefit dyslexic students can also produce constructive benefits for students with a range of neurodisabilities.

Dyslexia’s greatest issue is self-esteem, which suffers when the individual struggles to comprehend and engage. This turns to disability when perceived barriers to engagement produce disruptive classroom behaviour, alienation, anti-social behaviour, truancy, depression, suicide, drug use and crime. Thus dyslexia becomes disabling when not properly addressed and supported. Dyslexia is often co-morbid with other neurodisabilities, and the same disabling effects can be seen in the outcomes for many individual with neurodisabilities who struggle at school. Youth offending is the dark side of neurodisabilities, the outcome of low self-esteem and behaviours fuelled by perceived failure to achieve or disengagement from the education system. The impacts on society are enormous, with flow on costs across the justice, health, education, social development and disability sectors.

**Tell us about some of the things that happen for your organisation in representing or supporting disabled people. Is there anything your organisation wants to see changed?**

**DFNZ SEES A NEED FOR URGENT ACTION TO ADDRESS AND SUPPORT NEURODISABILITIES IN TWO KEY AREAS – EDUCATION AND JUSTICE.**

Since inception in November 2006, DFNZ has built its reputation on successful advocacy and action, becoming the country’s foremost lobby group for dyslexia. DFNZ works alongside schools, Ministry of Education and NZQA, as well as social support agencies and information and resource providers, to improve the dyslexic student’s experience and achievements by ensuring that legal rights to inclusive learning and accommodations are delivered on.

Despite progress in recent years, the New Zealand education system still has a long way to go before it can claim to be truly inclusive and responsive to individual learning needs. There is still a significant equity issue with students in lower decile schools, Maori, and Pacifica - all statistically disadvantaged. Students with neurodisabilities are still not getting support they need:

* Too many children wait too long for appropriate intervention
* Early identification within schools is not sufficiently emphasised, prioritised and resourced
* Children are progressing through the education system with unmet needs which often create long-term negative effects
* There are poor transitions through school years, with minimal to no forward planning for learning outcomes
* Access to services and decision-making is unnecessarily complex, for example, there are currently 10 ways for a child to access funding for a teacher aide
* Decision-making is highly compartmentalised; we currently have good coverage but not a good system to deliver services
* There is a lack of transparency and certainty of services, and therefore a constant threat that support can be lost, for example once an intervention is complete, often no further support is mapped out
* Too many Principals, teachers and support staff are not sufficiently trained or knowledgeable on learning differences.

Fundamental to achievement for students with neurodisabilities is early identification and intervention, with appropriate personalised learning and classroom adjustments. These include the provision of NCEA Special Assessment Conditions (SACs), such as reader or writer assistance, computer use, and/or extra time, for students with learning differences sitting NCEA level exams; and the provision of similar classroom accommodations for those in the earlier, formative years as they move through the education system. At a holistic level, getting it right starts at year one, where accommodations such as reader or writer assistance, computer use, or extra time align to the SACs model to provide seamless progress towards NCEA exams.

SACs are a system wide lever of change for the Government’s Inclusive Education *(link* [*http://inclusive.tki.org.nz/*](http://inclusive.tki.org.nz/)*)* agenda and school performance objectives. SACs are core to the role and responsibilities of boards of trustees and principals, and SAC support and activation is now part of RTLB contracts and funding criteria. Importantly, there is a direct correlation between provision of SACs and NCEA success.

In 2014, SACs came under the spotlight with the release of the NZQA and Ministry of Education review of SACs which found huge disparity and inequity in accessing SACs across schools in New Zealand. Outcomes of the report included targeting 250 of the country’s 518 secondary and composite schools to ensure eligible students applied for SACs, and turning the focus for schools onto the alternative evidence pathway, using teacher observation and assessment information to provide school based evidence rather than an independent expert report. The review also noted 71% of SAC applications were for specific learning differences. Despite the positive measures instigated from the review, final 2014 SAC figures showed only 17 students across decile one schools received SACs for external NCEA exams, just 10 more than the previous year. At the other end of the scale, schools with high numbers of SACs are evidencing clear benefits in terms of NCEA results and student engagement.

In 2015, DFNZ activated a second focus area of youth justice, backing proposals to raise the Youth Court age from its current level of 16 years. In advocating for dyslexia in both the education and justice systems, DFNZ has confirmed that what applies for dyslexia often equally applies in respect of other neurodisabilities.

On 12 May 2016, DFNZ hosted the 2016 Neurodisabilities Forum in Wellington, convened to explore how neurodisabilities create vulnerability when they come into contact with the justice system. The Forum was opened by Hon Nicky Wagner, Minister for Disabilities, and keynote addresses were delivered by Principal Youth Court Judge Andrew Becroft and Chair of the NZ Institute for Educational and Developmental Psychologists Rose Blackett. Other speakers included Dr Ian Lambie, Associate Professor, Auckland University, Dr Katie Bruce of JustSpeak, Phil Dinham of CYF Youth Justice Support, Dr Nessa Lynch from Victoria University Faculty of Law, FASD-CAN’s Eleanor Bensemann, Sally Kedge from Talking Trouble, and Sonia Thursby from YES Disability.

The need for urgent action to address neurodisabilities in both the education and justice systems stems from the cause and effect paradigm arising from the disabling effects of neurodisabilities, where disengagement from education is a key marker for youth offending. If youth offending is the dis-ease, education is the best preventative. Principal Youth Court Judge Andrew Becroft has on numerous occasions cited education as a protective factor against youth offending and has in recent years highlighted increasing concerns as to the number of young offenders who have slipped through the educational net because of undiagnosed neurodisabilities. Neurodisabilities create vulnerability when they come into contact with the justice system. This is evidenced by the significant over-representation of individuals with neurodisabilities in both the adult and youth justice systems. At the level of the statistics, for example, there is a gross disconnect when a population incidence of 10% converts to around half of offenders in youth justice and prison populations – which is the case with dyslexia.

Research evidence from the United Kingdom has shown a significant over-representation of neurodisability amongst young persons in custody. In October 2012, the Children’s Commissioner for England published a ground-breaking report – “Nobody Made the Connection: The prevalence of neurodisability in young people who offend”. This reported the prevalence of neurodisabilities amongst young people in custody versus prevalence rates of neurodisabilities amongst young people in the general population, as follows:

* Learning disabilities: Reported prevalence rates amongst young people in custody, 23-32%; reported prevalence rates amongst young people in the general population 2-4%
* Dyslexia: Young people in custody prevalence rates 43-57%; young people in general population prevalence 10%
* Communication disorders: Young people in custody prevalence rates 60-90%; young people in general population prevalence 5-7%
* Attention deficit hyperactive disorder: Young people in custody prevalence rates 12%; young people in general population prevalence 1.7-9%
* Autism spectrum disorder: Young people in custody prevalence rates 15%; young people in general population prevalence 0.6-1.2%
* Traumatic brain injury: Young people in custody prevalence 65.1%-72.1%; young people in general population prevalence 24-31.6%
* Epilepsy: Young people in custody prevalence 0.7-0.8%; young people in general population prevalence 0.45-1%
* Foetal alcohol syndrome: Young people in custody prevalence 10.9-11.7%; young people in general population prevalence 0.1-5%

New Zealand practitioners report it is likely that similar rates are present in New Zealand. The small number of local studies that have been done to date support this.

Speaking at the 2016 Neurodisabilities Forum, Judge Becroft said neurodisabilities had been ‘largely invisible’ in the Youth Court for the last 25 years, and their prevalence and implications for the youth justice sector were only now just beginning to be understood. “Every one of these disorders has sky high disproportionate prevalence in the New Zealand youth justice system,” Judge Becroft said. In respect of FASD, only about one in 300 youth offenders each year that were likely to have FASD would have been diagnosed as such.

The vulnerability of individuals with neurodisabilities in the justice system is due to a number of factors. These can include different degrees of comprehension and social (dis)comfort due to low reading age, low literacy, slower cognitive processing speeds and comprehension, impaired auditory and visual perception, poor short-term memory and concentration, reduced ability to understand procedures and follow instructions, inability to comprehend cause and effect and/or consequences. As well as behavioural propensities that can be mistakenly interpreted as hostility, acting out or evidence of guilt.

Importantly, neurodisabilities do not discriminate – they cross over socio-economic, ethnic, and cultural boundaries. It is estimated that up to 80% of young people in the Youth Court have at some point been subject to a CYF notification. It is likely that, in many of these cases, family circumstances are underpinned or compounded by neurodisabilities. FASD, for example, can be intergenerational. This is also the case with a range of other neurodisabilities.

Co-morbidity is also common. Dyslexia, for example, can be co-morbid with autism, attention deficit hyperactivity disorder (ADHD), dyspraxia, dysgraphia and other disorders. Some neurodisabilities, ADHD for example, reduce an individual’s ability to assess risk and make them more prone to behaviours that may result in traumatic brain injury, which research has shown can be a marker for propensity to offend.

Due to these factors, over-representation of individuals with neurodisabilities in the justice system could also be seen to represent the criminalisation of mental health issues. With our prisons acting as quasi mental health institutions. It must be acknowledged that where young persons with neurodisabilities commit criminal offences, they have caused harm to victims and society and need to be held accountable, but this must be done in a manner which they understand, and where appropriate rehabilitation/reintegration can be ensured.

There are some marked commonalities in how individuals with neurodisabilities may present in the justice context. These create vulnerability and often give rise to misunderstandings in terms of what these characteristics and behaviours mean. In the justice system, where all procedures are essentially word-based, a person’s inability to quickly process information and comprehend leaves them open to manipulation and entrapment. Propensities to take statements literally, to become confused by information and sensory overload, to act impulsively and to speak before thinking make it difficult to navigate the complexities and nuances of the legal process.

As noted above, common to a range of neurodisabilities are different degrees of comprehension and (dis)comfort in social situations, along with behaviours that might be perceived as hostility, acting out or evidence of guilt. In reality, these are often coping mechanisms for the individual with neurodisabilities and have no pejorative meaning. For example, young people with neurodisabilities are highly prone to false or exaggerated confessions due to propensity to say yes in order to bring an uncomfortable situation to an end. Lack of eye contact is another common characteristic of neurodisabilities. While this is indicative of anxiety or nervousness in the individual, it can be misinterpreted as guilt, disinterest or belligerence.

In general, police and court processes are designed to deliver a specific result – a guilty plea and a conviction. These are key performance indicators of the judicial system. When this KPI meets neurodisabilities, the results are often unjust. New Zealand’s youth justice system is regarded internationally and by experts as providing an evidence-based and tolerant approach. Many jurisdictions have adopted and adapted elements of the legislation and policy as best practice. Currently Cabinet is considering proposals to raise the age of penal majority to 18. The present exclusion of 17 year olds from the Youth Court jurisdiction is a major element of the legislative structure which has been described by Principal Youth Court Judge Andrew Becroft, speaking at the 2016 Neurodisabilities Forum, as an ‘enduring stain on New Zealand’s otherwise good youth justice record”.

The Government-appointed Expert Panel has also recommended the change, as well as consideration of a ‘halfway-house’ jurisdiction for vulnerable 18/19 year olds:

 *“The Panel recommends moving the upper age setting for the youth justice system from age 16 to 17, so that only those 18 years of age and above would be considered adults for justice purposes and become part of the adult justice system. In addition, where a person aged 18 or 19 is charged with an offence, a court would have the power to transfer the case to the Youth Court, if the court considers it is in the interests of justice to do so, taking into account the age and maturity of the alleged offender, the nature of the offence and the person’s previous offending.*

The Expert Panel recommendation carries a critical truth in recognising that in some cases individuals older than 17 may also require the type of nuanced response to offending that is a key strength of New Zealand’s internationally recognised, highly regarded, restorative youth justice system. Some of the cited advantages of the youth justice system include a real awareness of and focus on neurodisability; high levels of non-charging interventions with good community based programmes, taking neurodisability into account; only the most serious of offenders come to the Youth Court, where there is a multi-disciplinary approach with Health, Education, CYF and Police working collaboratively; Family group conference plans can be tailored to an individual’s needs; and in the Youth Court effective accountability and a completed response can result in a clean record.

New Zealand has generally been considered to be a world leader in youth justice policy. Initiatives such as the family group conference, Police Alternative Action and the Rangatahi Courts have involved bold, innovative and brave thinking. And the recent Expert Panel Report on the modernisation of Child, Youth and Family has made revolutionary recommendations to raise the maximum age at which the state is required to provide care for abused and neglected children and young persons, and to reconceptualise the relationship between such children, parents, whanau and the state.

New Zealand currently has a historic opportunity to make further bold and innovative changes; to raise the age of penal majority to 18 years and introduce a mechanism for 18 and 19 year olds to be referred down to the Youth Court (as further recommended by the Expert Panel), and to use the latest evidence on neurodisability to inform practice and procedure across the youth justice system. This would be a powerful, simple step to address vulnerability of individuals with neurodisabilities. An equally bold and innovative change, if the age of penal majority is not raised, would be to introduce a ‘refer down’ mechanism to allow case-by-case consideration, care and protection for people with neurodisabilities who are vulnerable in the justice system to be transferred to the Youth Court. These are not ‘soft on crime’ options, but rather recognition of the vulnerability of these individuals and the need to mitigate further criminalisation of mental health issues.

**ACTION IN EDUCATION**

It is noted that the annual report, dated December 2014, from the Minister for Disability Issues on the implementation of the New Zealand Disability Strategy states that learning, psychological/psychiatric and speaking difficulties are the three most common impairments for New Zealand children. This is a major red flag for children at risk for disengagement from education and ultimate consequences in youth offending.

The New Zealand Disability Strategy itself contains a number of objectives with specific relevance to education. In particular, Objective 3 is to provide the best education for disabled people – improving education so that all children, youth and adult learners will have equal opportunities to learn and develop in their local, regular educational centres. Objective 3 has eight specific actions:

3.1 Ensure that no child is denied access to their local, regular school because of their impairment.

3.2 Support the development of effective communication by providing access to education in New Zealand Sign Language, communication technologies and human aids.

3.3 Ensure that teachers and other educators understand the learning needs of disabled people.

3.4 Ensure that disabled students, families, teachers and other educators have equitable access to the resources available to meet their needs.

3.5 Facilitate opportunities for disabled students to make contact with their disabled peers in other schools.

3.6 Improve schools’ responsiveness to and accountability for the needs of disabled students.

3.7 Promote appropriate and effective inclusive educational settings that will meet individual educational needs.

3.8 Improve post-compulsory education options for disabled people, including: promoting best practice, providing career guidance, increasing lifelong opportunities for learning and better aligning financial support with educational opportunities.

**DFNZ SEES FULL IMPLEMENTATION OF THE ACTIONS OF OBJECTIVE 3** as remaining an important focus for a revised Disability Strategy, crucial in creating a framework for successful school engagement and averting the social and fiscal costs of disengagement.

In addition, the Disability Action Plan 2014-2018 identified a series of actions committed for implementation. The two top priorities, with Ministry of Education slated to take the lead on both, were to 1: Increase the educational achievement of disabled children and adults by building the capacity for inclusive education; and 2: Increase the number of disabled people who transition from school and tertiary education into employment. Again DFNZ sees both these priorities as crucial in addressing the education/youth offending cause and effect paradigm.

**OTHER STATED OBJECTIVES OF THE DISABILITY STRATEGY WHICH DFNZ REGARDS AS CRITICAL FOCAL POINTS IN AN UPDATED DISABILITY STRATEGY ARE OBJECTIVES 7, 13 AND 15**. Objective 7 and its eight actions relate to creating long-term support systems centred on the individual – with a quality assessment and service delivery system that has invisible borders and is easy to access. Key actions include that government agencies, publicly funded services and publicly accountable bodies co-operate to ensure that the disabled person is at the centre of service delivery, and that a holistic approach be developed across agencies and funding services.

The Disability Strategy notes that ‘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 whanau spend a lot of time fighting the system, in order to get access to the same opportunities other New Zealanders have’.

**THE IMPORTANCE OF ACCESS AND CONTINUITY OF SERVICE IS REINFORCED IN THE DISABILITY ACTION PLAN 2014-2018** which cites transformation of the disability support system as an action committed for implementation, in order to ensure ‘effective engagement with disabled people and coordination across sectors and across agencies to focus on outcomes and maximum progress from available resources’.

This holistic approach would seem to be in line with the Government’s recent changes to the Child Youth & Family operating model designed to provide a single point of accountability for the long-term wellbeing of vulnerable children, with inter-agency co-operation so that funding follows the child.

It is equally an important need in the education system, where access to services and decision-making is unnecessarily complex and there is little continuity of service. Schools that are succeeding in addressing and supporting neurodisabilities have one thing in common – a clear and transparent educational pathway to create successful learning outcomes. This pathway reflects and facilitates strong leadership, provides students, parents and teachers’ with confidence, provides access and continuity of services and allows difference to manifest into success.

As set out in DFNZ’s Submission on the Inquiry into the Identification and Support for Students with Dyslexia, Dyspraxia and Autism Spectrum Disorders in Primary and Secondary Schools (October 2015), **DFNZ SEES AN URGENT NEED FOR THIS TYPE OF BEST PRACTICE TO BE INTEGRATED AT A NATIONAL LEVEL THROUGH CREATION OF A CLEAR AND TRANSPARENT EDUCATIONAL PATHWAY FOR SUCCESSFUL LEARNING OUTCOMES FROM YEAR 1 THOUGH TO YEAR 13**; one which all education stakeholders understand and are accountable to**.** And that this pathway draws on learnings from the ‘route to success’ epitomized by SACs at NCEA level, and be based on best practice principles of early identification of learning difference, a ‘notice and adjust’ approach to teaching and learning, and further specific evidence based interventions where required – in order to deliver individualised, personalised learning.

Creation of such a pathway is in line with recommendations from the 2014 NZQA and Ministry of Education review of SACs. This review signalled the widening of the SACs model to earlier years, with MoE saying it will work with RTLBs, NZQA, and schools to make better use of the National Standards achievement data to identify students who may require SACs in the future, transferring information about students as they move through school and particularly as they leave year 8 and transition to secondary school. Widening the model in this way would help address current poor transitions through school years, with minimal to no planning for learning outcomes. More detail on DFNZ’s recommendations in terms of the education system can be found in the DFNZ Submission on the Inquiry into the Identification and Support for Students with Dyslexia, Dyspraxia and Autism Spectrum Disorders in Primary and Secondary Schools (October 2015), available upon request.

**DFNZ CONSIDERS OBJECTIVE 13 OF THE DISABILITY STRATEGY TO REMAIN A VITAL POINT OF INCLUSION FOR AN UPDATED DISABILITY STRATEGY**. Objective 13 sets out that disabled children and youth should enjoy full and active lives in conditions that prepare them for adulthood. Of particular note is action 13.1 which is to ensure that all agencies that support children, youth and families work collaboratively to ensure that their services are accessible, appropriate and welcoming to disabled children, youth and their families.

**FINALLY, OBJECTIVE 15 REMAINS AN IMPORTANT CONSIDERATION IN UPDATING THE DISABILITY STRATEGY** – providing for acknowledgement and support in respect of the roles, responsibilities and issues facing family, whanau and those who support disabled people. Actions of particular importance include ensuing that assessment processes are holistic and take account of the needs of families/whanau as well as the disabled person; providing education and information in this area; ensuring where appropriate the family/whanau have input into decisions affected their disabled family member; and ensuing that family/whanau can be involved in policy and service development and delivery, and in monitoring and evaluation processes where appropriate.

**ACTION IN JUSTICE**

Equally relevant to justice as it is to education, **DFNZ REGARDS OBJECTIVE 7 OF THE DISABILITY STRATEGY TO BE A CRITICAL FOCAL POINT FOR AN UPDATED DISABILITY STRATEGY**.

As noted above, Objective 7 and its eight actions relate to creating long-term support systems centred on the individual – with a quality assessment and service delivery system that has invisible borders and is easy to access. Key actions include that government agencies, publicly funded services and publicly accountable bodies co-operate to ensure that the disabled person is at the centre of service delivery, and that a holistic approach be developed across agencies and funding services.

The importance of access and continuity of service is reinforced in the Disability Action Plan 2014-2018 which cites transformation of the disability support system as an action committed for implementation, in order to ensure ‘effective engagement with disabled people and coordination across sectors and across agencies to focus on outcomes and maximum progress from available resources’.

This holistic approach would seem to be in line with the Government’s recent changes to the Child Youth & Family operating model designed to provide a single point of accountability for the long-term wellbeing of vulnerable children, with inter-agency co-operation so that funding follows the child.

This intersection with CYFs and the need for engagement across sectors and agencies is of particular importance in the justice sector, where it is estimated that up to 80% of young people in the Youth Court have at some point been subject to a CYF notification. It is likely that, in many of these cases, family circumstances are underpinned or compounded by neurodisabilities. FASD, for example, can be intergenerational. This is also the case with a range of other neurodisabilities.

**DFNZ ALSO REGARDS OBJECTIVE 10 OF THE DISABILITY STRATEGY AS A VITAL ONGOING FOCUS FOR AN UPDATED DISABILITY STRATEGY**. Objective 10 relates to the collection and use of relevant information about disabled people and disability issues in order to improve the quality of data collected, analysed and used. The annual report, dated December 2014, from the Minister for Disability Issues on the implementation of the New Zealand Disability Strategy Disability Strategy states that good quality decisions come from good quality data and evidence and having the right people available to provide input. And that undertaking more research (including the collection and analysis of both quantitative and qualitative data) is essential for increasing public understanding about disability issues and the experiences of disabled New Zealanders. It also poses the question ‘what are the high priority areas for more/better data and evidence?’

In response, **DFNZ CONTENDS THAT** **AN UNDOUBTED PRIORITY AND URGENT IMPERATIVE IS THAT NEW ZEALAND RESEARCH BE CONDUCTED ON THE PREVALENCE OF NEURODISABILITY IN THE NEW ZEALAND JUSTICE SYSTEM, AND THE SYSTEM’S RESPONSE TO SUCH INDIVIDUALS**. This was one of the key recommendations from the 2016 Neurodisabilities Forum. Principal Youth Court Judge Andrew Becroft has for several years advocated the need for such research.

Despite the lack of comprehensive New Zealand research, anecdotal evidence is that neurodisabilities are significantly over-represented in the youth justice system; in line with United Kingdom research it is estimated communication disorders alone, for example, could affect 60-90% of youth offenders.

The UK research comes from the October 2012 Children’s Commissioner for England report – “Nobody Made the Connection: The prevalence of neurodisability in young people who offend”. This reported the prevalence of neurodisabilities amongst young people in custody versus prevalence rates of neurodisabilities amongst young people in the general population, as follows:

* Learning disabilities: Reported prevalence rates amongst young people in custody, 23-32%; reported prevalence rates amongst young people in the general population 2-4%
* Dyslexia: Young people in custody prevalence rates 43-57%; young people in general population prevalence 10%
* Communication disorders: Young people in custody prevalence rates 60-90%; young people in general population prevalence 5-7%
* Attention deficit hyperactive disorder: Young people in custody prevalence rates 12%; young people in general population prevalence 1.7-9%
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* Traumatic brain injury: Young people in custody prevalence 65.1%-72.1%; young people in general population prevalence 24-31.6%
* Epilepsy: Young people in custody prevalence 0.7-0.8%; young people in general population prevalence 0.45-1%
* Foetal alcohol syndrome: Young people in custody prevalence 10.9-11.7%; young people in general population prevalence 0.1-5%

As noted earlier, Principal Youth Court Judge Andrew Becroft told the 2016 Neurodisabilities Forum that neurodisabilities have been ‘largely invisible’ in the Youth Court for the last 25 years, and their prevalence and implications for the youth justice sector were only now just beginning to be understood. “Every one of these disorders has sky high disproportionate prevalence in the New Zealand youth justice system”. In respect of FASD, only about one in 300 youth offenders each year that were likely to have FASD would have been diagnosed as such.

There is also some local data that highlights some aspects of neurodisability prevalence:

* (1) From a study of 1709 adolescent fire-setters, 29.1 % had learning problems, 15.6% had ADHD. 15.2% had a head injury. Those with a head injury were 2.17 times more likely to commit an offence post-intervention than those who did not have a head injury
* (2) In a study of 1205 young persons who engage in sexually harmful behaviour, 54.3%% had learning/developmental problems and 25.4%)had ADHD, 6.3% had a head injury
* (3) From an audit of the files of 184 female youth offenders from the Auckland Regional Forensic Service client register, 29% had ADHD and 15% had low intellect/cognitive impairment
* (4)Results from a Ministry of Education screening tool trialed in 2008 on 197 prison inmates showed that 90% were not functionally literate and 80% were not functionally numerate.

*Sources:*

1. *Lambie, I. D., Randell, I., Krynen, A., & Ioane, J. (2014). Risk factors and offending behaviours among children and adolescents who deliberately light fires. Commissioning body: New Zealand Fire Service Commission.*
2. *Lambie, I. D., Krynen, A., & Ioane, J. (2014). Recidivism and risk factors in adolescents with Harmful Sexual Behaviours. Commissioning body: SAFE, STOP Trust, WELLSTOP Trust; Auckland, Christchurch and Wellington.*
3. *Lim, S. (2014). Violent Female Youth Offenders: An Exploration of the Correlates of Violence Motivation, Victim Type and Ethnicity. Unpublished Doctor of Clinical Psychology at the University of Auckland.’*
4. *Reported by Radio New Zealand, 28 November 2008, referenced in a media statement from Roger Brooking, an accredited alcohol and drug clinician to the Department of Justice, 29 August 2011.*

In addition it is understood that the Ministry of Justice is currently doing research to determine the number of young people in the justice system with mental health needs.

In 2014, Kate Peirse-O’Byrne, now Research Counsel to the Principal Youth Court Judge, completed a dissertation on identifying and responding to neurodisability in the youth justice system, noting that neurodisabilities may result in reduced capacity to comprehend the criminal process, and that without adjusted processes and special explanations, the young offender may disengage from the process.

**ALSO OF RELEVANCE IN THE JUSTICE SECTOR, DFNZ CONSIDERS OBJECTIVE 13 OF THE DISABILITY STRATEGY TO REMAIN A VITAL POINT OF INCLUSION FOR AN UPDATED DISABILITY STRATEGY**. Objective 13 sets out that disabled children and youth should enjoy full and active lives in conditions that prepare them for adulthood. Of particular note is action 13.1 which is to ensure that all agencies that support children, youth and families work collaboratively to ensure that their services are accessible, appropriate and welcoming to disabled children, youth and their families.

**IN ADDITION, DFNZ REGARDS THE FOLLOWING AS URGENT ACTIONS IN THE JUSTICE SECTOR. THESE COMPRISE THE KEY RECOMMENDATIONS FROM THE 2016 NEURODISABILITIES FORUM.** A copy of the report is available upon request.

**OF UTMOST IMPORTANCE IS AN INCREASE IN THE AGE OF PENAL MAJORITY AND INTRODUCTION OF A MECHANISM FOR OLDER YOUTH TO BE REFERRED DOWN TO THE YOUTH COURT. OR, IF THE AGE IS NOT RAISED, A ‘REFER DOWN’ MECHANISM BE INSTITUTED FOR VULNERABLE PEOPLE WITH NEURODISABILITIES.**

**THE FULL SET OF RECOMMENDATIONS ARE THAT**:

1. The Government recognise and acknowledge that young people with neurodisabilities are highly vulnerable in the current justice system. And that urgent action is required to address this.
2. The Government accept the recommendation of the Expert Panel on the Modernisation of CYF that the age of penal majority is raised to 18 and the Panel’s additional recommendation that a mechanism introduced for 18 and 19 year olds to be referred down to the Youth Court. OR introduce an alternate ‘refer down’ mechanism by which vulnerable individuals with neurodisabilities can be dealt with in Youth Court.
3. Urgent funding be made available for a specific study on the prevalence of neurodisability in the New Zealand justice system, and the system’s response to such individuals.
4. In the youth justice system, a mandatory educational psychologist’s report be required to discern and make transparent material information on neurodisabilities. Although a mechanism to report school background currently exists, it relies on the young person’s school data having identified these issues. In low decile schools particularly, this is most often not the case. Making an educational psychologist’s report a compulsory requirement would alert all parties to the increased vulnerability of specific individuals when it comes to comprehending court process and discerning the consequences.
5. In the adult justice system, a similar mandatory report be ordered by the court for all serious offenders, unless explicitly waived by the defence. This would be a fundamental change in the system which would further illuminate prevalence and impacts of neurodisabilities.
6. Front line police and other justice practitioners are armed with better knowledge as to neurodisabilities present and how best to manage this. Keeping questions short and simple; addressing one issue at a time; and making sure a support person is always present are simple changes that can make a big difference.
7. Appropriate funding is made available for screening and diagnosis of neurodisability across the justice system.
8. All information given to young persons in the justice system be audited for comprehensibility.

**What ideas does your organisation have that would enable disabled people to participate more in the community?**

This submission highlights the numerous ways that neurodisabilities create vulnerabilities, with specific reference to the cause and effect paradigm arising from the disabling effects of neurodisabilities, where disengagement from education is a key marker for youth offending.

**ADDRESSING THESE TWO AREAS – EDUCATION AND JUSTICE – WOULD HAVE A FUNDAMENTAL BENEFIT IN IMPROVING THE LIVES OF THOSE WITH NEURODISABILITIES AND REDUCING THE FLOW ON COSTS ACROSS THE JUSTICE, HEALTH, EDUCATION, SOCIAL DEVELOPMENT AND DISABILITY SECTORS**.

**IN THE EDUCATION SYSTEM**, early identification of neurodisabilities and early intervention to provide appropriate personalised learning and classroom adjustments is vital. These include the provision of NCEA Special Assessment Conditions (SACs), such as reader or writer assistance, computer use, and/or extra time, for students with learning differences sitting NCEA level exams; and the provision of similar classroom accommodations for those in the earlier, formative years as they move through the education system. At a holistic level, getting it right starts at year one, where accommodations such as reader or writer assistance, computer use, or extra time align to the SACs model to provide seamless progress towards NCEA exams.

**IN THE JUSTICE SYSTEM**, change is essential to recognise the vulnerability of individuals with neurodisabilities and mitigate further criminalisation of mental health issues. This echoes comments made by Justice Minister Amy Adams to Radio NZ on 3 May 2016 in which she was reported as saying ‘her ministry was picking up the pieces and she wanted the health sector to take more responsibility’ and to ‘take a more holistic approach and consider the benefits across the entire system, not just the health sector’:

“The justice system is picking up where the health system hasn't really addressed some of these issues, and I need them to change their thinking in the same way we have to change ours. They need to be assessing the cost benefit analysis, if you want to put it in fiscal terms, right across the whole of the sector," she said.

The previous section of this submission sets out the detail of what DFNZ sees as key actions that would enable individuals with neurodisabilities to participate more in the community.

**What ideas does your organisation have that would enable disabled people to feel more valued?**

Enabling individuals with neurodisabilities to feel more valued starts with greater recognition and understanding of the nature of neurodisabilities and how these impact the way an individual may behave. Neurodisabilities are often invisible at first glance. And in many cases, the comprehension issues, (dis)comfort in social situations and behavioural issues associated with neurodisabilities can be misinterpreted as the individual being hostile, acting out, or guilty of a criminal offence. In reality, these are often coping mechanisms for the individual with neurodisabilities and have no pejorative meaning. For example, young people with neurodisabilities are highly prone to false or exaggerated confessions due to propensity to say yes in order to bring an uncomfortable situation to an end. Lack of eye contact is another common characteristic of neurodisabilities. While this is indicative of anxiety or nervousness in the individual, it can be misinterpreted as guilt, disinterest or belligerence.

With greater recognition and understanding, empathy is possible and accommodations and adjustments can be implemented that allow an individual to reach their full potential. In particular, development of a holistic model that allows funding to follow the individual, with access and continuity of services and inter-agency co-operation would be of enormous benefit. Specific actions that would markedly improve the lives of individuals with neurodisabilities, and facilitate greater engagement and enable these individuals to feel more valued are outlined earlier in this submission.

**In ten years' time, what would an ideal future look like for the disabled people your organisation represents or supports? What would this mean for your organisation?**

DFNZ is committed to continuing to advocate for individuals with neurodisabilities, in particular dyslexia. In ten years time, DFNZ would want to see a more inclusive approach to neurodisabilities, with greater recognition, understanding and support available to allow each individual to reach their potential. Again specific actions that will help deliver this outcome are outlined earlier in this submission.

**Think about disabled children in the future. What sort of world would your organisation like to see them to grow up in?**

An inclusive world, which celebrates neurodiversity and recognizes that individuals with neurodisabilities have much value to offer including strengths – such as creative thinking in the case of dyslexia – that can provide significant and invaluable contributions to society. And a world that facilitates and supports the ability for self advocacy by the individual with neurodisability, and that listens and accommodates this advocacy such that both the individual and society benefit.

Famous individuals with neurodisabilities who have unlocked their potential include historical figures as diverse as Leonardo Da Vinci, Agatha Christie and John Lennon. And international celebrities such as actors Tom Cruise; Robin Williams; Keira Knightley; Whoopi Goldberg, entrepreneur Richard Branson; supermodel Jerry Hall and celebrity chef Jamie Oliver. InNew Zealand, they include Weta Workshop founder Richard Taylor; late maverick motorcycle engineer John Britten; boxing coach and motivational speaker Billy Graham; ‘Mad Butcher’ Peter Leitch; tenor and motivational speaker Geoff Knight; NZ Body Art Awards creator Mem Bourke; life coach and TV presenter Sian Jaquet and Davis Dyslexia programme facilitator and former international model Kirsteen Britten.

**How has the current Disability Strategy (developed in 2001) influenced your organisation?**

The 2001 Disability Strategy sets out an important framework for developing a more inclusive society and breaking down the barriers that turn impairment into disability. We appreciate the opportunity to make this submission and look forward to the upcoming update of this Strategy.

**Is there anything else you want to add?**

This submission has detailed DFNZ’s key points in respect of urgent changes required in the education and justice systems in relation to individuals with neurodisabilities. We have nothing further to add at this point.