



# Algorithmic Risk and Neuroinclusion: AI, Psychosocial Safety, and the Rights of Neurodivergent Workers in Aotearoa New Zealand

Author: Nicola Knobel

Email: [nicolaknobel@icloud.com](mailto:nicolaknobel@icloud.com)

ORCID: <https://orcid.org/0009-0004-9717-0213>

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## Abstract

Artificial intelligence (AI) is increasingly embedded in workplace management systems, reshaping how performance is measured, risk is assessed, and psychological safety is governed. For neurodivergent workers, including those with autism spectrum conditions and attention deficit hyperactivity disorder (ADHD), these developments present both significant risks and genuine opportunities. AI systems calibrated to neurotypical norms can intensify workplace surveillance, encode cognitive bias, and erode the reasonable accommodation obligations that underpin inclusive employment. Reasonable accommodation refers to workplace adjustments that allow a person with a disability to perform their role effectively. At the same time, well-designed assistive AI tools hold real potential to support communication, workload regulation, and early identification of psychosocial harm at an organisational level. This paper examines both dimensions and argues that Aotearoa New Zealand's current regulatory framework is structurally unfit to govern either equitably. The Responsible AI Guidance for the Public Service (Department of Internal Affairs, 2022) remains non-binding and neurotypically framed. The Health and Safety at Work Act 2015 imposes no AI-specific psychosocial duties. International instruments, including the United Nations Convention on the Rights of Persons with Disabilities and the European Union AI Act (2024), offer stronger benchmarks that New Zealand has not translated into enforceable domestic protections. Te Tiriti o Waitangi obligations apply across this space but are absent from every current instrument examined. The paper proposes reforms to align AI governance with neuroinclusion principles, psychosocial safety law, and Te Tiriti-based obligations.

**Keywords:** neurodivergence; artificial intelligence; psychosocial safety; neuroinclusion; workplace health and safety; algorithmic bias; Te Tiriti o Waitangi; ADHD; autism spectrum

## 1.0 Introduction

Workplaces are becoming data-rich environments. AI-driven tools now monitor productivity, flag behavioural differences, score performance, and increasingly inform decisions about employment, promotion, and disciplinary action. These developments coincide with growing recognition of neurodivergence in the workforce. Neurodivergence refers to neurological and cognitive profiles that differ from what is statistically or socially constructed as typical, including autism spectrum conditions, ADHD, dyslexia, dyspraxia, and related profiles (Linnett et al., 2026). Global estimates suggest that between 15% and 20% of the population is neurodivergent (Eccles et al., 2026). In Aotearoa New Zealand, the 2023 Household Disability Survey identified approximately 24% of the working-age population as having a disability or long-term health condition, with psychosocial and cognitive conditions forming a significant and growing proportion (Stats NZ, 2023).

Neurodivergent workers bring demonstrable strengths to organisations: pattern recognition, creative problem-solving, sustained focus on areas of interest, and lateral thinking are frequently associated with autistic and ADHD profiles (Alemseged, 2026; Kirkwood et al., 2025). Yet these same workers remain disproportionately underemployed, report higher rates of workplace stress, and are less likely to disclose their neurodivergent identity for fear of stigma or career disadvantage (van Rijswijk & Curşeu, 2026; Moradi & Rootivand Ghiasvand, 2025). Into this already uneven landscape, AI is being deployed without adequate governance.

This paper investigates the dual risk and opportunity that AI presents for neurodivergent workers in Aotearoa, and argues that the current regulatory framework is not equipped to navigate either dimension equitably. A regulatory gap analysis is used as the central analytical tool, mapping where the Health and Safety at Work Act 2015 (HSWA), ISO 45003:2021 (the international standard for psychological health and safety at work), the Responsible AI Guidance, the United Nations

Convention on the Rights of Persons with Disabilities (CRPD), and Te Tiriti o Waitangi either support, conflict with, or leave neurodivergent workers unprotected when AI enters the employment relationship.

Throughout this paper, identity-first language (for example, 'autistic workers') is used where it reflects the preferences of the communities discussed, consistent with current evidence on language preferences among autistic adults (Schuck et al., 2025). The term neurodivergent is used as an umbrella term throughout.

Te Tiriti o Waitangi (the Treaty of Waitangi, 1840) is Aotearoa's founding constitutional document. It establishes obligations for the Crown to protect Māori rights and wellbeing and to act in genuine partnership with Māori. These obligations apply across all areas of public policy, including workplace safety regulation and AI governance, and are treated in this paper as active, enforceable duties rather than symbolic commitments.

## **2.0 Neurodivergence in the workforce**

### **2.1 Definitions and prevalence**

This paper focuses primarily on autism spectrum conditions and ADHD as the most extensively researched neurodivergent profiles in workplace contexts, while acknowledging the broader neurodivergent umbrella. Autism spectrum conditions encompass a wide range of profiles characterised by differences in social communication, sensory processing, and information processing. ADHD is characterised by differences in attention regulation, impulse management, and executive function, meaning the cognitive processes that support planning, task initiation, and self-monitoring. Both conditions are significantly more prevalent in the adult population than historical estimates suggested, partly because women and adults from non-European backgrounds have historically been underdiagnosed (Eccles et al., 2026; Krebs & Donnellan-Fernandez, 2025).

The rise in diagnosis rates for autism and ADHD does not represent an epidemic. It reflects the surfacing of a historically invisible population. For employers and regulators, the practical implication is that the neurodivergent workforce is larger, more visible, and more vocal about its needs than at any prior point.

### **2.2 Workplace experience and psychosocial risk**

Despite growing visibility, neurodivergent workers continue to experience significant barriers to equitable employment. Research consistently identifies higher rates of workplace stress, burnout, and psychological harm among neurodivergent employees compared to neurotypical peers (van Rijswijk & Curşeu, 2026). These harms are not intrinsic to neurodivergent profiles. They emerge from the interaction between those profiles and workplaces designed around neurotypical norms: open-plan environments, rigid communication protocols, implicit social expectations, and performance metrics that privilege speed and consistency over depth or creativity (Lauder et al., 2022; Kirkwood et al., 2025).

ADHD is associated with elevated work-related stress, variable attention, and challenges in managing the social dynamics of professional settings (Marineau, 2026). These characteristics are frequently misread by managers and algorithmic systems alike as disengagement or poor performance, rather than recognised as neurodivergent traits that may require adapted support. For autistic workers, sensory processing differences, communication preferences, and a need for environmental predictability are similarly misaligned with mainstream workplace norms, generating psychosocial harm that the HSWA's general duty of care is in principle required to address but in practice rarely does with sufficient specificity (WorkSafe New Zealand, 2023).

Disclosure, meaning the decision to tell an employer about a neurodivergent identity, remains a critical and poorly governed area. Workers must weigh the potential benefit of receiving reasonable accommodations against the risk of stigma, changed relationships, and career disadvantage (Moradi & Rootivand Ghiasvand, 2025). Where AI systems are introduced into performance monitoring without transparency, neurodivergent workers face an additional layer of risk: their non-disclosure means the system has no basis on which to adapt, while their divergent profile may still trigger algorithmic flags calibrated to neurotypical baselines.

### **3.0 Psychosocial safety as a legal category in Aotearoa**

Psychosocial safety refers to the policies, practices, and conditions that protect workers' psychological health by preventing harm arising from job design, organisational culture, interpersonal relationships, and management practices (Dollard & Bakker, 2010). In Aotearoa, psychosocial risk falls within the primary duty of care under HSWA s 36. This requires persons conducting a business or undertaking to eliminate or minimise risks to the health of workers, including their psychological health, so far as is reasonably practicable. WorkSafe NZ's 2023 psychosocial guidance names workload, job demands, lack of role clarity, low workplace support, and poor relationships as psychosocial hazards requiring active management (WorkSafe New Zealand, 2023).

ISO 45003:2021 provides the most comprehensive framework currently available for managing psychosocial risk at work. It addresses hazard identification, risk assessment, control measures, and the role of organisational culture in either generating or protecting against psychosocial harm. However, ISO 45003 is a voluntary standard. Adoption in Aotearoa is uneven and is not required by the HSWA or WorkSafe NZ. Critically, it contains no guidance on AI-generated psychosocial risk, a gap that is increasingly significant as automated performance management becomes embedded in employment relationships.

Neither the HSWA nor WorkSafe NZ's psychosocial guidance refers to neurodivergence. This means that psychosocial risk assessment tools and workplace interventions are designed around a neurotypical worker model. The psychosocial hazards most acute for neurodivergent workers, including unpredictable environments, opaque performance expectations, sensory overload, and rigid protocol enforcement, are systematically absent from the risk frameworks organisations are guided to apply.

#### **3.1 Disclosure, reasonable accommodation, and the rights of neurodivergent workers in Aotearoa**

There is no legal obligation on a worker in New Zealand to disclose a disability, health condition, or neurodivergent identity to their employer, either before or during employment. The Privacy Act 2020 protects personal information, including health and disability information, and limits what employers can lawfully collect, use, or share. An employer cannot require a worker to disclose a neurodivergent diagnosis as a condition of employment unless it is genuinely and demonstrably relevant to the inherent requirements of the role (Office of the Privacy Commissioner, 2020).

Protection from discrimination in employment is provided primarily through the Human Rights Act 1993 (HRA). Section 21 of the HRA defines disability broadly, covering physical, psychiatric, psychological, sensory, and neurological conditions. Autism spectrum conditions and ADHD fall within this definition (Human Rights Commission, 2023). Discrimination is prohibited across the full employment cycle, including recruitment, selection, terms and conditions of employment, training, promotion, and dismissal. The Employment Relations Act 2000 reinforces these protections through its good faith obligations, which require employers to act honestly, transparently, and in ways that are not unjustifiably detrimental to workers (Employment Relations Act 2000, s 4).

Reasonable accommodation refers to adjustments made by an employer to enable a person with a disability to perform their role effectively or to participate equitably in the workplace. The obligation to provide reasonable accommodation in New Zealand arises primarily through the HRA. Refusing to accommodate a disabled worker, where accommodation is reasonable and practicable, can constitute unlawful discrimination (Human Rights Commission, 2023). There is no single statutory definition of what constitutes reasonable accommodation in New Zealand law, unlike the more prescriptive frameworks in jurisdictions such as the United States and the United Kingdom. Assessment is made on a case-by-case basis, weighing the nature and cost of the adjustment against the size and resources of the employer and the benefit to the worker (Human Rights Commission, 2023). For neurodivergent workers, relevant adjustments may include flexible working arrangements, modified communication methods, adjusted performance review processes, reduced sensory stimulation in the work environment, and the provision of assistive technology (Lauder et al., 2022).

A significant practical tension exists within this framework. Accommodation can only be meaningfully requested once a worker has disclosed, at least in part, that they have a condition or need. Yet disclosure carries documented risks of stigma, changed working relationships, and career disadvantage (Moradi & Rootivand Ghiasvand, 2025; van Rijswijk & Curşeu, 2026). New Zealand law does not currently resolve this tension with any specific framework for neurodivergent workers. The result is that workers who most need accommodation are often those least able to safely request it.

A worker who believes they have experienced discrimination on the grounds of disability, or who has been refused reasonable accommodation without justification, may bring a complaint to the Human Rights Commission. The Commission offers a free mediation process. Unresolved complaints may be referred to the Human Rights Review Tribunal, which has the power to award remedies including compensation and declarations of breach (Human Rights Act 1993, s 92B). Workers may also raise personal grievances through the Employment Relations Authority under the Employment Relations Act 2000 where discrimination constitutes an unjustified disadvantage or contributes to a constructive dismissal.

None of these instruments specifically address the situation where discrimination or a failure to accommodate arises through an AI system rather than a human decision-maker. The Human Rights Commission has issued no guidance on how reasonable accommodation obligations apply when recruitment or performance management is automated, and there is no requirement for employers to audit AI systems for disparate impact on disabled workers (Brownlie, 2020). This gap is especially consequential for neurodivergent workers, who may be disadvantaged by AI systems without any human decision-maker ever being aware that discrimination has occurred, removing the very trigger that would ordinarily prompt a complaint or an accommodation conversation.

## **4.0 AI as risk: surveillance, bias, and neurotypical norms**

### **4.1 Algorithmic performance management**

Algorithmic performance management refers to the use of automated systems to monitor, measure, and respond to worker behaviour in real time. These systems track metrics such as task completion rates, response times, communication patterns, and movement, and are present across office, service, logistics, and care environments (Kritikos, 2023). For neurotypical workers, such systems raise concerns about surveillance and loss of autonomy. For neurodivergent workers, the risks are more specific.

ADHD is characterised by variable attention, non-linear task engagement, and periods of intense concentration known as hyperfocus, which can produce highly focused, high-quality output interspersed with difficulty sustaining routine tasks (Pyszkowska et al., 2026). Algorithmic systems calibrated to measure consistent output over time will systematically misread this pattern as underperformance. Autistic workers may similarly be flagged for deviations from expected communication norms, response patterns, or social interaction frequency, none of which indicate poor performance but all of which may trigger automated review or disciplinary processes.

A companion paper in this journal (Knobel, 2026) examined the 2024 Woolworths warehouse strike in Australia, in which an AI-powered productivity framework generated widespread harm by treating safety-conscious behaviour as non-compliance. For neurodivergent workers, whose natural working patterns may diverge more substantially from algorithmic baselines, the risk of harmful misclassification is correspondingly higher. The Australian Senate Select Committee on AI (2024) specifically warned that AI systems trained on historical workforce data are likely to reproduce existing patterns of disadvantage, which is a foreseeable concern given the longstanding underemployment and marginalisation of neurodivergent workers.

### **4.2 AI in recruitment and promotion**

AI tools are now widely used in recruitment: screening applications, conducting automated video interviews, scoring psychometric assessments, and ranking candidates. Research has identified consistent concerns about bias in these systems against candidates whose communication style, facial expressiveness, speech patterns, or written style diverges from the neurotypical norm embedded in the system's training data (Wiessner, 2024). Autistic candidates in particular may be disadvantaged by AI interview scoring systems that treat eye contact, vocal modulation, and conversational reciprocity as proxies for suitability, when these are neurologically variable characteristics, not indicators of capability.

Under the Human Rights Act 1993, disability is a prohibited ground of discrimination in employment in Aotearoa. Where an AI system operates as a proxy discriminator, applying criteria that disproportionately screen out disabled candidates without objective justification, the legal liability rests with the employer. The Responsible AI Guidance does not address this dynamic. It contains no requirement for employers or public agencies to audit AI recruitment tools for disability-based disparate impact, and no guidance on how reasonable accommodation obligations apply when initial candidate filtering is carried out by an automated system.

### **4.3 Psychosocial harm through opacity**

A distinct psychosocial risk specific to AI deployment is the harm generated by not knowing how one is being assessed. When workers do not know the criteria, data sources, or logic used to evaluate them, the resulting uncertainty generates anxiety, hypervigilance, and reduced autonomy, all of which are recognised psychosocial hazards under ISO 45003:2021. For neurodivergent workers with ADHD profiles that are sensitive to unpredictable feedback and unclear expectations, algorithmic opacity is a specific and foreseeable psychosocial harm (van Rijswijk & Curşeu, 2026).

New Zealand's current AI governance framework contains no statutory right to explanation, challenge, or transparency in relation to AI-informed employment decisions. A worker who is performance-managed or passed over for promotion by an AI system has no right to know the basis of that outcome, no avenue to identify whether the system has misclassified their neurodivergent profile as a risk factor, and no regulatory mechanism to compel the employer to demonstrate the system does not discriminate. This is inconsistent with natural justice obligations under the New Zealand Bill of Rights Act 1990 (s 27) and with the CRPD's requirements for transparent and supported decision-making (Brownlie, 2020).

## **5.0 AI as opportunity: neuroinclusion and psychosocial support**

### **5.1 Assistive AI and reasonable accommodation**

The same AI capabilities that generate risk when used for surveillance can, under different design principles, create genuine support for neurodivergent workers. Assistive AI tools, including communication aids, text-to-speech and speech-to-text systems, intelligent scheduling and workload management tools, and natural language processing supports for written communication, can reduce the friction between neurodivergent working styles and neurotypically structured environments (Fiegler-Rudol et al., 2025). For autistic workers, AI-generated meeting summaries, clear task structuring tools, and sensory environment management systems can meaningfully reduce cognitive load. For workers with ADHD, AI-powered reminders, task prioritisation, and workload visualisation tools can support the executive function demands of complex roles (Lauder et al., 2022).

These tools are increasingly available and affordable. The barrier to equitable deployment is not primarily technological but organisational and regulatory. Employers are not required to consider assistive AI as a reasonable accommodation option. No guidance exists on what good practice looks like, and the cost-benefit analysis that drives most accommodation decisions does not capture the productivity return from genuinely inclusive design, which research suggests is substantial (Alemseged, 2026; Kirkwood et al., 2025).

### **5.2 AI for early identification of psychosocial risk**

At the organisational level, AI tools hold genuine potential for the early identification of psychosocial harm across workforces. Aggregated and de-identified analysis of engagement data, absence patterns, team communication dynamics, and workload distribution can surface emerging psychosocial risk before it reaches the level of individual harm. This is consistent with ISO 45003:2021's emphasis on proactive, organisation-level hazard identification rather than reactive individual case management.

The critical design distinction is between AI that monitors individuals to enforce compliance and AI that analyses systems to identify structural risk. The former intensifies surveillance and amplifies psychosocial harm for neurodivergent workers. The latter aligns with the preventive philosophy of the HSWA and, if designed with appropriate protections, could improve safety outcomes for all workers, including those whose psychosocial risk is shaped by neurodivergent experience.

Realising this opportunity requires regulatory clarity that does not currently exist. Without guidance distinguishing surveillance AI from safety-supportive AI, and without binding obligations on how such tools must be designed and governed, there is no mechanism to ensure employers choose the latter or deploy it ethically.

## **6.0 Regulatory gap analysis**

Table 1 maps the key regulatory instruments relevant to neurodivergent workers and AI in Aotearoa across three dimensions: their psychosocial safety provisions, their coverage of neurodivergence, and their AI governance gaps. The analysis reveals a consistent pattern: each instrument addresses part

of the problem but none addresses all three dimensions, and no instrument connects AI governance to neurodivergent worker protection in an enforceable way.

**Table 1. Regulatory gap analysis: psychosocial safety, neurodivergence, and AI governance in Aotearoa New Zealand**

Instrument	Psychosocial safety provisions	Neurodivergence coverage	AI governance gap
HSWA 2015 (NZ)	Primary duty of care (s 36) requires elimination or minimisation of psychosocial risks. WorkSafe NZ psychosocial guidance (2023) names workload, poor relationships, and low support as hazards.	No mention of neurodivergence. Reasonable accommodation implied through general duty but not specified.	No reference to AI-generated psychosocial risk. Algorithmic performance management falls outside current enforcement scope.
Responsible AI Guidance (DIA, 2022)	Fairness and human-centredness principle references individual rights but is non-binding and left to agency discretion.	No reference to neurodivergence, cognitive diversity, or disability. Neurotypical norms are the implicit design baseline.	Non-binding. No enforcement mechanism. No requirement to assess psychosocial impact of AI deployment on disabled workers.
ISO 45003:2021	Comprehensive psychosocial risk management framework: hazard identification, risk assessment, control measures, and culture.	Voluntary standard. Does not specifically address neurodivergent workers. Cognitive and sensory risk dimensions are implicit only.	No AI-specific guidance. Does not identify algorithmic management or automated performance systems as psychosocial hazards.
UN CRPD (ratified NZ 2008)	Article 27 requires reasonable accommodation in employment. Article 4 obligates legislative and policy measures to realise rights.	Explicitly covers all disabilities including psychosocial and cognitive. Requires supported decision-making and accessibility.	No AI-specific provisions. General obligations apply but no guidance on algorithmic systems as barriers to workplace participation.
EU AI Act (2024)	Not applicable in NZ. Classifies AI in employment, worker management, and access to self-employment as high-risk (Annex III).	High-risk classification covers performance monitoring, promotion decisions, and terms and conditions affecting workers.	Strongest international benchmark: requires impact assessment, transparency, human oversight, and right to explanation.
Te Tiriti o Waitangi / Public Service Act 2020	Crown obligation to actively protect Maori wellbeing (Article II). Public Service Act 2020 requires partnership with Maori in service design.	No AI-specific Maori neurodivergence provisions. Maori conceptions of cognitive and relational difference are absent from all current instruments.	No Maori-led mechanism to assess whether AI psychosocial tools align with Te Tiriti obligations or tikanga Maori values.

*Note.* DIA = Department of Internal Affairs; CRPD = United Nations Convention on the Rights of Persons with Disabilities; EU AI Act = Artificial Intelligence Act, Regulation (EU) 2024/1258; HSWA = Health and Safety at Work Act 2015.

Several findings from Table 1 warrant further comment. First, no instrument currently in force in Aotearoa classifies AI in workplace monitoring or performance management as a high-risk application requiring specific oversight. The EU AI Act (2024) provides the strongest international benchmark, explicitly classifying employment-related AI as high-risk and requiring conformity assessments,

transparency obligations, and a right to explanation before affected workers. New Zealand has no equivalent. Second, the CRPD, which New Zealand ratified in 2008, provides the strongest domestic legal hook for neurodivergent worker protections, but its Article 27 employment obligations have not been translated into AI-specific regulation or guidance. Third, Te Tiriti o Waitangi is entirely absent from the AI governance conversation as it relates to neurodivergent workers.

This last point requires elaboration. Māori conceptions of cognitive and relational difference are shaped by tikanga Māori (Māori values and customs) and te ao Māori (the Māori worldview), frameworks that are entirely absent from any current AI governance instrument in Aotearoa. The Crown's obligation to actively protect Māori wellbeing under Te Tiriti requires that this absence be addressed.

## **7.0 Te Tiriti o Waitangi and neurodivergent workers**

Te Tiriti o Waitangi imposes three broadly recognised obligations on the Crown: partnership (working together in good faith), protection (actively safeguarding Māori rights and wellbeing), and participation (ensuring Māori are active participants in decisions that affect them). All three apply to the governance of AI in workplaces.

The partnership obligation requires that Māori be involved in the design and governance of AI systems used in employment contexts, not merely consulted after decisions have been made. Te ao Māori encompasses frameworks for understanding human variation and relational wellbeing, including concepts such as hauora (holistic wellbeing encompassing physical, mental, social, and spiritual dimensions) and whanaungatanga (the centrality of relationships and connection). These frameworks offer meaningful contributions to the design of inclusive AI systems that current Western-normed approaches do not provide.

The protection obligation is directly engaged by the psychosocial risks that AI poses for neurodivergent workers. Where algorithmic systems are likely to disproportionately harm Māori workers, whether through biased recruitment screening, opaque performance management, or the encoding of deficit narratives from historical data, the Crown has an active duty to intervene. The current soft-law approach to AI governance does not satisfy this duty.

The participation obligation requires more than token representation. Māori Data Sovereignty, meaning the right of Māori to govern data about themselves in accordance with tikanga Māori, is directly relevant where AI systems collect and process data about Māori workers' performance, health, or behaviour. The principles of Te Mana Raraunga (the Māori Data Sovereignty Network) provide a framework for this governance that has not yet been incorporated into any employment-related AI guidance in Aotearoa (Te Mana Raraunga, 2018).

## **8.0 Proposed reforms**

### **8.1 Classify employment AI as high-risk in legislation**

Aotearoa should legislate to classify AI systems used in employment contexts, including recruitment, performance management, disciplinary processes, and psychosocial risk assessment, as high-risk applications requiring specific oversight. This classification should be incorporated into the HSWA or new AI-specific legislation, drawing on the EU AI Act as a benchmark. High-risk classification should trigger mandatory algorithmic impact assessments before deployment, transparency requirements for workers subject to AI-informed decisions, independent audit, and a statutory right to explanation and challenge.

### **8.2 Require neurodivergence-specific consideration in AI deployment**

Any regulatory framework governing AI in employment must explicitly address neurodivergent workers. This should include a requirement that AI systems used in performance monitoring, recruitment, and psychosocial risk assessment be assessed for disparate impact on neurodivergent workers before deployment and at regular intervals thereafter. WorkSafe NZ's psychosocial guidance should be updated to name algorithmic management as a potential psychosocial hazard and to provide specific guidance on managing psychosocial risk for neurodivergent workers. The Human Rights Commission should issue guidance clarifying that reasonable accommodation obligations under the Human Rights Act 1993 apply to the design and use of AI systems in employment.

### **8.3 Mandate assistive AI as a reasonable accommodation option**

New Zealand's reasonable accommodation framework should be updated to explicitly recognise assistive AI tools as a category of accommodation that employers must consider. This does not require all employers to deploy specific technologies, but it does require that the option be assessed and documented in the same way as other accommodation measures. WorkSafe NZ and the Human Rights Commission should jointly develop guidance on the range of assistive AI tools available, their demonstrated benefits for neurodivergent workers, and how employers can evaluate and implement them proportionately.

### **8.4 Embed Te Tiriti obligations in AI and psychosocial safety governance**

The Crown must take active steps to embed Te Tiriti obligations in AI governance as it affects the workplace. This requires Māori co-governance in the development of AI standards and psychosocial safety guidance, adoption of Māori Data Sovereignty principles for any AI system processing data about Māori workers, and incorporation of hauora and other Māori wellbeing frameworks into psychosocial risk assessment tools. Māori disability advocacy groups should be resourced to participate meaningfully in these processes. The Public Service Act 2020 (ss 14 and 16) provides an existing legislative pathway for embedding Māori governance requirements into public sector AI decision-making.

### **8.5 Translate CRPD obligations into domestic AI regulation**

New Zealand ratified the CRPD in 2008 but has not translated its Article 27 employment obligations into AI-specific legislation or guidance. A first step would be to commission a formal assessment of how current and planned AI use in employment aligns with CRPD obligations, led by the Office for Disability Issues in partnership with Māori disability communities. The findings should inform binding regulatory standards rather than further voluntary guidance.

## **9.0 Conclusion**

AI is transforming the experience of work. For neurodivergent workers, this transformation carries both significant promise and significant risk, and Aotearoa New Zealand's regulatory framework is not currently equipped to govern either adequately. The HSWA addresses psychosocial safety in general terms but does not name neurodivergent workers or AI as specific considerations. The Responsible AI Guidance is non-binding and neurotypically framed. The CRPD provides strong legal obligations that have not been translated into practice. And Te Tiriti o Waitangi, which imposes active duties of partnership, protection, and participation, is entirely absent from the current AI governance landscape as it applies to workers.

This is not an abstract concern. Algorithmic performance management systems are already present in New Zealand workplaces. Neurodivergent workers, whose natural working patterns may diverge from the neurotypical baselines embedded in these systems, are already at risk of harm. Assistive AI tools that could meaningfully support neuroinclusion are available but are not required to be considered as reasonable accommodations.

The reforms proposed in this paper do not require Aotearoa New Zealand to wait for a crisis before acting. They require the Crown to do what Te Tiriti and the CRPD already oblige it to do: actively protect the rights of all workers, including those whose cognitive profiles differ from the norm, and ensure that the technologies reshaping work are governed in ways that promote equity rather than entrench it. AI has the potential to make workplaces more inclusive and psychologically safer for neurodivergent workers. Realising that potential requires deliberate regulatory choices, Māori co-governance, and a commitment to designing systems that support people rather than surveilling them.

### ***Submission declarations***

This article has not been published elsewhere and will not be published elsewhere in the same or any other form in English or another language without the written consent of the New Zealand Journal of Health and Safety Practice.

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