

Submission to the Social Services and Community Committee on the:

Disability Support Services Bill

Submitted by the New Zealand Council of Trade Unions Te Kauae Kaimahi

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This submission is made on behalf of the 32 unions affiliated to the New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU). With over 370,000 union members, the NZCTU is one of the largest democratic organisations in New Zealand.

The NZCTU acknowledges Te Tiriti o Waitangi as the founding document of Aotearoa New Zealand and formally acknowledges this through Te Rūnanga o Ngā Kaimahi Māori o Aotearoa (Te Rūnanga), the Māori arm of Te Kauae Kaimahi (NZCTU), which represents approximately 60,000 Māori workers.

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Introduction

1. The NZCTU welcomes the opportunity to submit on the Disability Support Services Bill.
2. We do not support this Bill and recommend that it be withdrawn. While it may be important to have a legal basis for Disability Support Services (DSS) we share concerns that many provisions as drafted will harm the disabled community, including their whānau and family carers.
3. We are concerned with the long-term impacts of these changes by reducing support for the disabled community, the further entrenchment of unpaid labour as underpinning DSS, and for creating future uncertainty regarding services and funding arrangements. This puts more pressure onto families and carers, many already stretched thin physically, emotionally and financially.
4. The primary justification for the introduction of this Bill is seeking to establish a clear and certain legal framework for disability support, and to limit the Crown's fiscal costs for services. However, the impact of the Bill as drafted will make disability care more difficult by weakening support, reducing flexibility and limiting caregiver protections. Important policy settings around DSS should not be directed by costs reduction.
5. DSS should be based in the promotion of human rights, and in upholding the dignity and independence of our disabled communities.

Process issues and lack of consultation

6. We share concerns with other submitters regarding the unsatisfactory engagement with disabled communities and impacted groups in the development of this Bill. And that the rushed process to push through this Bill is at odds with good law-making, and has severely limited meaningful participation by those most impacted by the Bill.
7. This select committee process is the only avenue for impacted communities to have their voices heard, and limits feedback on the proposed framework and amendments to DSS.
8. As ratifiers of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) New Zealand has an obligation to 'closely consult and actively involve' disabled people and their representative organizations in the development of legislation that directly impacts them (article 4.3).
9. We recommend that the Bill is withdrawn so that the Government can engaged properly with communities and groups and to co-design a framework and systems that meets the needs of disabled people, their whānau and carers.

Family carer and employment rights

10. One of our primary concerns with this Bill is the stripping back of employment rights from family carers, and the DSS carve out from other health-based funding systems.
11. This includes:
 - Legislating away the ability to seek wages for hours in excess of funded allocations
 - Stripping employment protections, with no alternatives in place
 - Extinguishing all pending claims
12. The CTU is concerned with the government once again legislating away hard-earned employment rights through the judicial system. On this occasion, the decision in *Fleming v Attorney-General* in which the Supreme Court (through a unanimous decision) found that those parent carers were engaged as home workers by the State and therefore entitled to the rights of employment. It recognised the importance of this work and the balance between family support and paid work.
13. Disability support is intensive, full-time work which the State directly benefits from, and in the absence of this care, the State would need to take responsibility. In light of this, the

Court's decision opened a pathway for family carers to seek employment rights for the disability support work they provide.

14. This Bill shuts that pathway down entirely, including the 40-plus claims currently in progress and any future claims, by legislating that the Crown is not an employer of DSS carers, stripping the protections that employment would offer from those carers. It also removes any right of family carers to seek remedies through the Employment Relations Authority.
15. The Bill removes any carers entitlements to breaks, leave, and rights to safe and healthy workplace. Rights that have been described as administrative burdens for the Government rather than as critical protections for workers.
16. Rather than addressing the key issues facing family carers, the government is legislating to save costs for itself and putting those costs on the disabled community to absorb. This is not acceptable.

Families first principle

17. The CTU is very concerned with the legislative amendment to shift responsibility for DSS away from the government and onto families.
18. This change codifies a long-standing assumption that families will step in where government support falls short.
19. While families play a critical role in supporting disabled people, the Bill has no limits on the extent that families will be required to resource care before being supported by the State. Without clear legislative guidance on the limits of family responsibility, this Bill codifies mechanisms for reducing or denying funding without supporting the family, and assumes all families are in the position to provide this support.
20. Disabled families are already more likely to face poverty. And framing disability support as a 'contribution' from the Government is only likely to make that poverty gap larger. Many families are already facing financial, and wellbeing impacts due to caring requirements. Forcing further costs onto these families is not a sustainable framework for DSS. We note that unpaid work, especially caring, domestic, and household work, as well as community and service work, is also a driver of the gender pay gap.
21. UNCRPD recognises that persons with disabilities and their family members should 'receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities'. The amendment to a family first principle without limits in this Bill is in opposition to this convention.

22. Beyond this, some disabled people do not have safe family homes in the first instance and bills such as this increase this risk, particularly for disabled women¹.
23. Further to this, the bill will reduce disabled people's ability as adults to have autonomy over their own lives.
24. Overall, this bill will compound the disadvantage of women in a system that is already under pressure. As carers, it is mostly women that act in these roles, limiting their ability to seek other employment, or even a break, as their full-time job is caring.

Conclusion

25. The NZCTU opposes core element of this Bill and reiterates our recommendation that it be withdrawn. As drafted, this legislation will cause real and lasting harm to disabled people, their whānau, and the family carers who support them. These are communities already under significant pressure.
26. This Bill prioritises fiscal savings over human rights. Among other concerns, it strips hard-won employment protections from family carers, codifies unlimited family responsibility without adequate State support. It does so without meaningful consultation with those most affected, in breach of New Zealand's obligations under the UNCRPD.
27. Good law-making requires co-design, genuine engagement, and a commitment to the dignity and independence of disabled people.
28. We urge the Select Committee to recommend withdrawal of this Bill, so that a framework can be developed that is co-designed with disabled people, their whānau, and representatives.

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¹ University of Auckland, retrieved from <https://www.auckland.ac.nz/en/news/2021/07/22/abuse-of-disabled-people.html>