

Contents

Introduction2
Background2
New Zealand Public Health and Disability Amendment Bill (No 2).....3
The Bill and Human Rights4
Conclusion4

Introduction

1. CCS Disability Action welcomes the opportunity to contribute to the Universal Periodic Review.
2. CCS Disability Action is one of New Zealand's largest disability support service providers. We work within a human rights framework and the Convention on the Rights of Persons with Disabilities is one of our key documents.¹
3. People with disabilities occupy leadership roles within our organisation and we strongly promote social inclusion.

Contact Person: Jonathan Tautari
Policy and Information Leader
CCS Disability Action

Phone: +64 021 411 805
Email: jonathan.tautari@ccsdisabilityaction.org.nz

Postal address: CCS Disability Action
PO Box 6349
Wellington 6141
New Zealand

Website: www.ccsdisabilityaction.org.nz

Background

4. We are aware that the New Zealand Disabled Person Assembly is coordinating a detailed submission to the Universal Periodic Review based on the Convention on the Rights of Person with Disabilities monitoring reports. Their submission will provide a detailed overview of the human rights situation in New Zealand from the perspective of disabled people.
5. Our submission is focused on a single point of concern we have about the human rights of disabled people in New Zealand. That concern is the recent New Zealand Public Health and Disability Amendment Bill (No 2).
6. We want to bring our concerns to the attention of the Human Rights Council. Our submission is based both on conversations within our organisation and with the wider disability community. In preparing the submission, we have talked to disability organisations, including disabled person organisations, disabled people, people involved in the court cases, parliamentary staffers and taken into account the views of constitutional law experts.

¹ The other key documents are the New Zealand Disability Strategy and Te Tiriti o Waitangi (Treaty of Waitangi)

New Zealand Public Health and Disability Amendment Bill (No 2)

7. This Bill is the result of a long court battle between a group of parents and the Government over the payment of family carers. The court process has involved the High Court, the Court of Appeal, and the Human Rights Tribunal.
8. Finally after an appeal to the High Court by the government was denied, the government agreed to develop a new policy to allow the payment of family carers. Unfortunately, in addition to altering their policy, the government decided to pass a new law (Bill). This Bill was passed on 16 May 2013. You can access [a copy of the Bill here](#). There is also [a parliamentary summary here](#).
9. This Bill was passed under urgency during the budget process. The Bill was passed in a single day. This meant there was no chance for consultation with the public or disabled people, despite the policies not coming into effect until five months later. You can read [local news reporting on the Bill here](#).
10. Several parts of the regulatory impact statement about the Bill were blanked out. The stated reason was that this advice was legally privileged. A highly unusual practice, especially for non-security related bills. Opposition Members of Parliament were outraged at being asked to vote on a bill when large amounts of advice on its impact were not available. [You can read comments from an opposition member of parliament here](#). [You can also read the full regulatory impact statement here](#).
11. The Bill bans the payment of family carers, except when a payment is permitted by an applicable family care policy; or expressly authorised by or under an enactment.
12. The Bill gives the Ministry of Health and District Health Boards the right to change or cancel family care policies at will. Family care policies have the status of law, but they will not be published, will not be subject to the normal processes of Parliamentary scrutiny and they may not even be written. We are deeply concerned about the lack of transparency in process that affects disabled people and their families.
13. The Bill also states that if the Ministry of Health and District Health Boards chose not to pay family carers that this is not unlawful discrimination under the Human Rights Act 1993 or the New Zealand Bill of Rights Act 1990.
14. The Bill has a wide definition of family, including:
 - spouse, civil union partner, or de facto partner;
 - or parent, step-parent, or grandparent; or
 - child, stepchild, or grandchild; or sister, half-sister, stepsister, brother, half-brother, or stepbrother; or
 - aunt or uncle; or

- nephew or niece; or
- first cousin

The Bill and Human Rights

15. Of the most concern, the Bill bans the Human Rights Commission, the Human Rights Review Tribunal or the New Zealand Courts from hearing complaints about the government's new family care policies based on marital status, disability, age, and family status.

16. This sets a dangerous precedent that the government can, at will, ban the Human Rights Commission, the Human Rights Review Tribunal and the Courts from examining certain government policies that may breach human rights.

17. This precedent appears inconsistent with the Convention on the Rights of Persons with Disabilities. Article 5, point 2 of the Convention on the Rights of Persons with Disabilities states:

“States Parties shall prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.”

New Zealand has ratified the the Convention on the Rights of Persons with Disabilities.

18. As well Article 2, point 3 of International Covenant on Civil and Political Rights states that people need to have a legal remedy if their rights are violated.

19. The justification for New Zealand not signing the Optional Protocol to the Convention on the Rights of Persons with Disabilities was that we had good internal agencies (The Human Rights Commission, the Human Rights Review Tribunal and the Courts) that looked into discrimination on the basis of disability. The Bill raises serious questions about the independence and effectiveness of these agencies.

20. Chief Human Rights Commissioner, David Rutherford, Said that the Bill:

“sends a chilling message to anyone seeing litigation as a road to solving issues relating to the protection of their economic and social rights,”.

[You can read his comments here.](#)

Conclusion

21. This Bill directly impacts the ability of disabled people and their carers to seek legal redress for human right breaches. Worse it sets a

dangerous precedent that erodes the independence and effectiveness of New Zealand's official human right guardians.

22. The Bill is also unnecessary. There are ways to develop sustainable family care policies in an open transparent process than enhance rather than restrict people's rights. After all, everyone has an interest in ensuring family care policies are sustainable.
23. We encourage the Human Rights Council to raise the Bill and the human right implications with the New Zealand Government. It is our view that the Bill should be replaced with new legislation that is compatible with human rights.