

Disability Support Services Bill

Submissions on behalf of The Law Association of New Zealand by the
Mental Health and Disability Law Committee

12 June 2026

INTRODUCTION

The Law Association of New Zealand (The Law Association) is an independent membership organisation for the New Zealand legal profession with more than 10,000 members. The Law Association maintains expert law committees that support legal review and policy advocacy on important issues. The Mental Health and Disability Law Committee (“the Committee”) appreciates the opportunity to submit on the Disability Support Services Bill (“the Bill”).

EXECUTIVE SUMMARY

The Committee supports providing legislative clarity on important issues affecting disabled people. However, we have concerns about the way the Bill is currently drafted and how it may operate in practice. Family carers play a pivotal role in supporting their disabled family members to live their best lives and deserve to be fairly and adequately compensated and recognised for the meaningful work they do. We have identified several issues with how the Bill currently operates that we believe warrants careful consideration to ensure that it does not discriminate against disabled people and their family carers. These are:

- the lack of meaningful consultation with the disabled community in developing this Bill;
- enshrining in legislation a standard that unjustifiably tips the responsibility for the care of disabled people towards family carers and away from the state, without providing for the corresponding clear, adequate financial and social recognition;
- the use of secondary legislation, which unjustifiably concentrates decision-making power with the Minister and offers few meaningful checks and balances available to the disabled community;
- the inconsistency with human and disability rights law, including the New Zealand Bill of Rights Act, the United Nations Convention on the Rights of Disabled People, and the Human Rights Act; and
- the conflict of many provisions regarding disabled people acting as employers for family carers with the Protection of Personal and Property Rights Act (PPPR)

The Committee has also considered and endorses the submission made by Aotearoa Disability Law.

SUBMISSIONS

1. Consultation

- 1.1. The Committee has concerns about the lack of dedicated consultation with the disabled community before the introduction of this Bill. The disabled community

was not meaningfully consulted on the specific contents of this Bill before it was introduced to the House.

- 1.2. In the Departmental Disclosure Statement (DDS), it was stated that there was “no external consultation on the Bill.”¹ Instead, the Government considered feedback from previous community consultations in 2024 and 2025. These consultations were prompted by, and largely based around, the Government’s sudden changes to what disabled people could purchase with their government funding in early 2024.²
- 1.3. While such consultation feedback could help inform the Bill, its core is vastly different from what this Bill sets out to achieve. Restrictions on what disabled people can spend their funding on and legislation about payments for family carers of disabled people are two separate matters, and one cannot be used to solely inform lawmaking on the other. The DDS concedes that this lack of consultation is inconsistent with New Zealand’s obligations under the Convention on the Rights of Persons with Disabilities (UNCPRD).³ The UNCPRD will be discussed further in Part 4 of this submission below.
- 1.4. The DDS states that while the disabled community was not consulted on the Bill, “the select committee process allows for disabled persons and their representatives to provide their views on the Bill.”⁴ The select committee process is not a substitute for meaningful consultation on developing Bills before they are introduced to the House.
- 1.5. Moreover, this select committee process is short. The typical time period for public submissions on a Bill is four to six weeks.⁵ The webpage for this Bill was opened on Friday 22 May 2026 and allowed an approximate length of between two to three weeks for consultation which is shorter than what is recommended. This is concerning for two main reasons:
 - (a) First, a Bill that affects the disabled community so acutely should warrant a longer-than-average select committee process, not shorter. A longer select committee process would help ensure that the diverse and unique communication needs of disabled people and the adaptations they require to participate fully and effectively are adequately provided for. The Government has acknowledged that this is the only dedicated consultation period that the disabled community will get for this Bill.⁶

¹ Ministry of Social Development *Departmental Disclosure Statement: Disability Support Services Bill* (14 May 2026) at 3.6.

² Isaac Davison “Disability sector appalled by sudden restrictions on support funding: ‘It makes my blood boil’” (19 March 2024) *New Zealand Herald* <www.nzherald.co.nz>.

³ *Departmental Disclosure Statement*, above n 1, at 3.1.

⁴ At 3.1.

⁵ Mary Harris and David Wilson (eds) *McGee Parliamentary Practice in New Zealand* (4th ed, Oratia Books, Auckland, 2017) at 320.

⁶ *Departmental Disclosure Statement*, above n 1, at 3.1.

(b) Secondly, there have been very few accommodations and support made available to disabled submitters on the Bill. On the ‘Make a submission’ webpage, there is ‘A guide for Deaf, disabled, and neurodivergent submitters’.⁷ However, upon opening, the document is entitled “Attending a select committee: An accessibility guide for Deaf, disabled, and neurodivergent submitters”. This document solely focuses on providing advice for those making oral submissions in person and some brief information for those making oral submissions on Zoom. To make an oral submission, you must have first made a written submission. There is no advice provided specifically for Deaf, disabled, and neurodivergent people on making written submissions. Notably, the guide is not provided in New Zealand Sign Language (NZSL), nor is it provided in an easy-read format, meaning a number of people in its target audience may not be able to read the document.

- 1.6. There is an easy-read guide entitled “How to make a submission to a select committee”.⁸ This is promising to see and includes information on how to make a written submission. However, there is no information about the Bill available in easy-read format. So, while a disabled person who requires information in an easy-read format will be able to learn how to make a written submission, they do not have an easy-read document available to inform them of what the Bill is about, and consequently may struggle to understand the information required to inform their submission. This means that, if they are able to submit, they would have to rely on friends, family and whānau – possibly family carers – to explain what can be complex and lengthy information.
- 1.7. The “How to make a submission to a select committee” document is not available in NZSL. None of the information documents about the Bill are available in NZSL, either.
- 1.8. This contradicts the standards promoted by Whaikaha - Ministry of Disabled People, which promotes the use of options - NZSL, Easy Read, Braille and beyond. The Minister herself has acknowledged that particularly NZSL users struggle to access public services.⁹ Government agencies are expected to provide information in alternate formats to ensure participation by disabled people. Information on requesting alternative formats is available on the Whaikaha - Ministry of Disabled People’s website.¹⁰
- 1.9. Given the very short consultation timeframe and the lack of accessible formats, it is difficult to see how Deaf communities, including NZSL users, and many in the wider disabled community could reasonably engage with or respond to the Bill. This

⁷ Select Committee Services “Attending a select committee: An accessibility guide for Deaf, disabled, and neurodivergent submitters” (28 May 2026) New Zealand Parliament <www3.parliament.nz>.

⁸ People First New Zealand Inc “How to make a submission to a select committee” (28 May 2026) New Zealand Parliament <www3.parliament.nz>.

⁹ Hon Louise Upston “Supporting New Zealand Sign Language” (22 April 2025) New Zealand Government <www.beehive.govt.nz>.

¹⁰ Whaikaha Ministry of Disabled People “Requesting alternate formats” <www.whaikaha.govt.nz>.

raises further concerns about whether the consultation process meets expectations under accessibility and participation principles, including those reflected in the UNCRPD.

- 1.10. The overall select committee process beyond public submissions is similarly short. The typical time period for select committees to report on bills is six months.¹¹ The Social Services and Community Select Committee is due to report back on this Bill by 13 August 2026, a period of two months.¹² The Government has not publicly provided a reason as to why they have chosen to shorten this process.
- 1.11. A useful comparison can be found in the *Fleming* litigation, the line of case law that this Bill seeks to overturn. This took place across a period of five years, with the case first being heard in the Employment Court in late 2020,¹³ and the Supreme Court issuing its final judgment at the end of 2025.¹⁴ While it is acknowledged that taking a case through the higher courts takes longer than the typical legislative process, it nonetheless makes it clear that this is not a matter to be unnecessarily shortened.
- 1.12. The Committee considers that the lack of consultation may amount to a breach of Te Tiriti o Waitangi. Under Te Tiriti, Tāngata whaikaha Māori, or Māori disabled people, have the right to partnership, participation, sovereignty, autonomy, and equality.¹⁵ Tāngata whaikaha Māori make up 34 per cent of the disabled population in Aotearoa.¹⁶ This is despite Māori making up 17.5 per cent of the general population.¹⁷ The continued overrepresentation of Māori in the disabled community is a significant issue in Aotearoa New Zealand, and it follows that any law affecting disabled people must address it as such.
- 1.13. Despite this, the DDS considered that the Bill is consistent with the principles of the Treaty of Waitangi and did not consider any reference to the Treaty necessary.¹⁸ The Committee is concerned by this assessment. Any legislative system that concerns tāngata whaikaha Māori and their whānau carers must be culturally responsive and explicitly provide for them and their views.

2. Expectation of responsibility for care of disabled family members

- 2.1. The Committee is concerned that the Bill seeks to enshrine in legislation a requirement for families to have responsibility for the care of disabled family members in the first instance. This fails to heed lessons learned from the *Fleming*

¹¹ Harris and Wilson, above n 5, at 418.

¹² New Zealand Parliament, above n 7.

¹³ *Fleming v Attorney-General (sued on behalf of the Honourable Carmel Sepuloni (in her capacity as the Minister of Social Development and Minister for Disability))* [2021] NZEmpC 77, (2021) 18 NZELR 67 (Chief Judge Inglis) [EC judgment, Ms Fleming].

¹⁴ *Fleming v Attorney-General* [2025] NZSC 188.

¹⁵ Hector Kaiwai and Dr Tanya Allport *Māori with Disabilities (Part Two): Report Commissioned by the Waitangi Tribunal for the Health Services and Outcomes Inquiry* (Wai 2575, 2019) at 75.

¹⁶ Whaikaha Ministry of Disabled People “Our year in numbers” (2024) <www.whaikaha.govt.nz>.

¹⁷ Stats NZ “Māori population estimates: At 30 June 2025” (18 November 2025) <www.stats.govt.nz>.

¹⁸ *Departmental Disclosure Statement*, above n 1, at 2.2.

litigation and ignores the balance struck between familial and state responsibility for the care of disabled people set out by the Supreme Court.

- 2.2. The Court acknowledged that while many family carers provide 24/7 care for their disabled family member, it was untenable for carers to be paid for a 24/7 work week (nor was this the request of family carers).¹⁹ Instead, it found that payment for a standard 40-hour work week would strike the right balance. As currently drafted, the Bill disregards this position and tips the balance to the detriment of family carers and to the benefit of the state.
- 2.3. It has been estimated in the DDS that if even half of family carers in the same position as the litigants in *Fleming* made claims against the Crown, “one-off wage liability” begins at \$600 million.²⁰ While this number is being used to demonstrate the unacceptable fiscal risk to the Crown that would come from the precedent set by *Fleming*, we believe it can also be used to demonstrate just how much fiscal benefit family carers are providing the Government.
- 2.4. We urge the Government to carefully consider and scrutinise this number in reforming this Bill, and to consider it in terms of the clear fiscal benefit family carers are already providing the Crown, rather than focusing on the fiscal risk they are alleged to pose to the Crown.
- 2.5. The 2018 Census estimated that family carers contribute an estimated \$17.6 billion annually to the economy, accounting for 5.4 per cent of GDP.²¹ The same Census estimated there were 432,000 unpaid carers in Aotearoa, with the actual number potentially being up to 50 per cent higher.²² This would amount to 9.6 unpaid family carers for every working professional.²³ Carers lose approximately \$1.536 million in employment revenue each year, including from a loss of employer and Government KiwiSaver contributions.²⁴ Two-thirds of this lost income is lost by female carers.²⁵ This is despite carers having similar qualification levels to the general adult population.²⁶ These carers lose out on hundreds of thousands, to even millions of dollars of total revenue across their time as a family carer.²⁷ In addition to added financial strain, family carers are more likely to experience poor health than the general population.²⁸

¹⁹ *Fleming*, above n 16, at [164]-[165].

²⁰ *Departmental Disclosure Statement*, above n 1, at 2.5

²¹ Infometrics New Zealand “The Economic Contribution & Sacrifices of Family, Whānau and Aiga Carers in New Zealand: Infometrics Report Data Summary” (March 2023) Carers New Zealand <www.cdn.alzheimers.org.nz>.

²² Parent to Parent “A Rough Guide to the Disability Sector” (31 July 2025) <www.parent2parent.org.nz>.

²³ Above n 29.

²⁴ Infometrics, above n 28.

²⁵ Above n 28.

²⁶ Above n 28.

²⁷ Above n 28.

²⁸ Mary Louisa Simpson and others “Māori elders’ perspectives of end-of-life family care: whānau carers as knowledge holders, weavers, and navigators” (2022) 16 *Palliative Care and Social Practice* 1 at 1.

- 2.6. The available data suggests that, contrary to the Bill’s explanatory note, creating jobs for family carers has the potential to boost the economy, not undermine it. In the World Economic Forum’s 2024 report, “The Future of the Care Economy”, it estimated that a \$1.3 trillion investment in social jobs (which includes the ‘care economy’, of which family carers are included under) would result in a GDP return of \$3.1 trillion.²⁹ It cited the United States as an example, estimating that a similar investment could create more than 10 million jobs there.³⁰
- 2.7. The Committee acknowledges the Government’s position that it never intended to be the employer of family carers and understands the belief that being an employee of the Crown comes with additional burdens and obligations that would not proportionately benefit family carers. However, there are far more options for fairly recognising and compensating family carers that this Bill fails to explore. It takes a narrow view of the role that family carers currently play, and could play, in our wider society and economy, ultimately doing a disservice to the Bill’s objective of managing fiscal risks.
- 2.8. Following the Abuse in Care enquiry, The Royal Commission found that “the lack of alternative supports for the parents and caregivers of disabled people was another pathway into care settings.”³¹ For Māori and Pacific families, this was “exacerbated by the lack of culturally appropriate supports in general.”³² A core recommendation made by the Royal Commission was that any care arrangements should keep vulnerable people, including disabled people, as close to family and whānau as possible, and to promote and support maintaining connections and attachments to family and whānau wherever possible.³³
- 2.9. By enshrining in legislation that family carers bear the primary responsibility for care of disabled family members, the Bill risks ignoring the evidence of what may happen again if family carers are not adequately supported, both financially and culturally.

3. Use of secondary legislation

- 3.1. The Committee sees issues with the use of secondary legislation to establish a funding scheme for family carers. The Bill enables the Minister to create a funding scheme through “ministerial programmes” and “ministerial directions”³⁴ which are forms of secondary legislation. We believe that this approach may vest a significant amount of power and discretion in the Minister and avoid direct accountability to disabled people and family carers who are impacted by the scheme. The

²⁹ Centre for the New Economy and Society “The Future of the Care Economy: White Paper” (March 2024) World Economic Forum <www3.weforum.org>.

³⁰ Above n 36.

³¹ Abuse in Care – Royal Commission of Inquiry “Disabled survivors’ experiences of abuse and neglect in care: Chapter 4: Circumstances that led disabled people entering care” (2024) <www.abuseincare.org.nz>.

³² Above n 38.

³³ Abuse in Care – Royal Commission of Inquiry “Recommendations” (2024) at 80 www.abuseincare.org.nz>.

³⁴ Disability Support Services Bill, above n 27, (explanatory note) at 2.

Committee is concerned by the use of secondary legislation for such an important and complex issue.

- 3.2. For legislative clarity, the Bill should explicitly state in the interpretation section who it is referring to when it says “Ministry” and “Minister”. Currently, in the explanatory note, it says that the DSS is administered by the Ministry of Social Development (MSD).³⁵ However, it does not include a definition for Ministry or Minister in the interpretation section. Parliamentary press releases for the Bill are tagged under “Disability Issues” and are credited to Hon Louise Upston in her capacity as the Minister of Disability Issues.³⁶ This could create unnecessary confusion. This is concerning, given both the significant amount of authority this Bill vests in the Minister through secondary legislation and the Bill’s goal of providing “certainty” to the disabled community.³⁷
- 3.3. The Bill says that the benefits of using ministerial programmes are providing “flexibility to tailor support for specific groups, address technical matters, respond quickly to emerging issues, and trial new approaches.”³⁸ We agree that flexibility is sometimes needed and can be beneficial to ensure the diverse spectrum of needs that exist within the disabled community are all adequately catered to. The disabled community also expressed a desire for a flexible funding system and trust in how they spend their funding.³⁹ However, this must not come at the cost of proper public scrutiny.
- 3.4. The Government has said that these ministerial programmes and directions will be subject to accountability through requiring “consistency accountability statement[s]” under the Regulatory Standards Act 2025.⁴⁰ It says that these must be published and that the ministerial programmes and directions can be reviewed and disallowed by Parliament.⁴¹ Under the Regulatory Standards Act, a consistency accountability statement confirms that the relevant agency responsible for secondary legislation has reviewed the secondary legislation for consistency with the principles of responsible regulation and summarises any inconsistency with the principles identified.⁴² Any inconsistency needs to briefly explain the maker’s reasons for said inconsistency.⁴³ The responsible agency must develop plans to regularly review and publish reports on the performance of the secondary legislation.⁴⁴

³⁵ At 1.

³⁶ Hon Louise Upston “Bill to strengthen disability support” (18 May 2026) New Zealand Government <www.beehive.govt.nz>.

³⁷ (21 May 2026) NZPD at 15:47.

³⁸ At 2.

³⁹ Julia Gabel “Government taken to court over ‘tectonic’ changes to disability funding” (18 February 2026) New Zealand Herald <www.nzherald.co.nz>.

⁴⁰ Disability Support Services Bill, above n 27, at 2.

⁴¹ At 2.

⁴² Regulatory Standards Act, s 5.

⁴³ Section 5.

⁴⁴ Sections 17 and 18(1).

- 3.5. The Committee does not believe that publishing the reasons for inconsistency is sufficient. For example, some of the principles in the Regulatory Standards Act include that issues of legal right and liability should be resolved by the application of law rather than the exercise of administrative discretion, and the importance of consulting those directly and materially affected by the legislation.⁴⁵ We do not believe that the Bill in its current form, particularly its use of secondary legislation, abides by these principles. Yet, the Minister would be able to publish a statement admitting as much, and the law would not change.
- 3.6. It is true that Parliament could review and disallow the ministerial programmes and directions.⁴⁶ All secondary legislation is examined by the Regulations Review Committee.⁴⁷ This includes considering whether it should be brought to the special attention of the House based on a series of grounds set out in the Standing Orders. This includes if it trespasses unduly on personal rights and liberties, unduly makes the rights and liberties of persons dependent upon administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal, or any other reason concerning its form.⁴⁸
- 3.7. We believe that the secondary legislation provisions in their current form would satisfy the above grounds. Passing a resolution in the House to disallow or amend a ministerial programme triggers a referral to the most relevant select committee for consideration. That committee then examines the motion and may determine whether to recommend the resolution's passage or not.⁴⁹ This is then considered in the next general debate and must be passed by the House to have effect.⁵⁰ This, presumably, requires a majority of the House. So, this is an established form of holding secondary legislation accountable. Yet, given that a majority of the House voted for this Bill in its first reading, it is difficult to imagine a majority of the current House to vote against secondary legislation in this context.
- 3.8. The Committee notes that input from the disabled community is being called for now, alongside, but separate to, the select committee process.⁵¹ This consultation is taking place from 8 June to 31 July 2026, and is asking for feedback on how the Government can “further improve key service areas so they’re more effective and responsive to the needs of disabled people and those who support them.”⁵² It states that “the feedback on respite options for carers will help shape a new support package for family carers.”⁵³ It does not explicitly mention the Bill, or that secondary legislation will be used to ultimately create this. Instead, it states that it “could include a carer payment, improved respite options, and other practical

⁴⁵ Section 9(v) and (i).

⁴⁶ Legislation Act 2019, ss 115-116.

⁴⁷ Standing Orders of the House of Representatives 2023, SO326(1).

⁴⁸ SO327(2)(a), (b), (h), (i).

⁴⁹ SO331.

⁵⁰ SO330.

⁵¹ Hon Louise Upston “Improving services for disabled people and carers” (2 June 2026) New Zealand Government <www.beehive.govt.nz>.

⁵² Above n 64.

⁵³ Above n 64.

support.”⁵⁴ We do not believe that this is strong enough language to achieve the Bill’s aims of providing certainty, clarity, and transparency around payments for family carers.

4. Inconsistency with human rights legislation

- 4.1. This Bill, in its current form, is inconsistent with multiple provisions of the Bill of Rights Act 1990 (BORA) and the UNCRPD. Formal assessment of the Bill’s consistency with BORA is said to be currently in progress, and the Attorney-General’s section 7 report is expected to become available in due course.⁵⁵ However, the DDS states that the Bill “engages” the right to freedom from discrimination (section 19) and the right to justice (section 27).⁵⁶ It says that this arises in relation to how disability support funding is targeted, how paid family care arrangements are treated for employment law purposes, and how the current legal uncertainty is addressed, including through placing limits on litigation and validating existing employment and agent arrangements.⁵⁷ It is important that any Carer Support Package consultation is compliant with the UNCRPD .
- 4.2. In its current form, the Bill violates section 19 by reserving the power to have funding decisions remain with the Crown,⁵⁸ and clarifying that family carers are not employees of the Crown.⁵⁹ It violates section 27 by extinguishing the right of family carers to initiate litigation against the Crown in the Employment Relations Authority and Employment Court, barring certain unlawful discrimination complaints in the Human Rights Commission and to the Health and Disability Commissioner, and barring unlawful and potentially unlawful discrimination proceedings against the Crown or a contracted provider.⁶⁰ It claims that such violations are justified by “significant public interests.”⁶¹ This includes ensuring the Government “does not incur unmanageable fiscal costs” and that “decisions about how limited resources are allocated sit with the Crown”, and are not decided “through fragmented litigation.”⁶² It also justifies the litigation bar and the extinguishing of existing employment claims by stating that “it was never intended for the Crown to be the employer of family carers.” The Committee is concerned that these reasons are not significant enough to justify those violations of the rights under the BORA.
- 4.3. Another reason this litigation bar is concerning is that it specifically bars the use of the Minimum Wage Act 1983 by a court to require payment to family carers that is not consistent with DSS funding policy, including ministerial programmes and directions.⁶³ We believe this risks breaching the right to be paid the minimum wage.

⁵⁴ Above n 64.

⁵⁵ *Departmental Disclosure Statement*, above n 1, at 3.3.

⁵⁶ At 4.3.

⁵⁷ At 4.3.

⁵⁸ Disability Support Services Bill, above n 27, at 4.

⁵⁹ At 3.

⁶⁰ Clauses 10-16.

⁶¹ *Departmental Disclosure Statement*, above n 1, at 4.3.

⁶² At 4.3.

⁶³ Disability Support Services Bill, above n 27, at 3.

Additionally, it dilutes the true value that family carers are providing to New Zealand's wider economy. We do not believe that this breach is sufficiently justified.

- 4.4. The Committee also believes it is potentially discrimination on the basis of a protected category of family status under the Human Rights Act 1993. Family status is a prohibited ground of discrimination under section 21 of the Human Rights Act.⁶⁴ This is defined as “having the responsibility for part-time care or full-time care of children or other dependants”, as well as “being a relative of a particular person”.⁶⁵ We believe that enshrining in legislation that a family relative of a disabled person cannot be paid as a non-relative, employed carer of the same disabled person would represent a breach of this protected category. We understand that section 73(2) of the same Act states that the Crown is not limited by the above category in its power to establish “work or training schemes or employment assistance measures” that a person may be eligible for based on their family status.⁶⁶ However, if this Bill overrides the decision in *Fleming* to classify family carers as “homeworkers” under the Employment Relations Act, we do not believe that a ministerial programme established to provide payments for family carers can reasonably be interpreted to be included as a Crown “work scheme” or “employment assistance measure”.
- 4.5. The Committee considers that the Bill must be carefully amended to ensure that any legislation the Government puts forward about disabled people only serves to enhance and give effect to their rights, not to risk violating them.

5. Protection of Personal and Property Rights Act Issues

- 5.1. The Committee also has concerns about the implications of the Bill on the Protection of Personal and Property Rights Act 1988 (PPPR Act). The Bill seeks to validate existing employment arrangements between disabled people and their carers for a period of three years, regardless of whether or not the disabled person has capacity.⁶⁷ It would also retrospectively validate agent arrangements, “as temporary representatives who are persons acting on behalf of a disabled person but where there is no order under the [PPPR Act].”⁶⁸ Clause 2 states that employment agreements entered into before the Bill's commencement date between a paid family carer and a disabled person who is their family member are not invalid just because the disabled person did not have the requisite capacity.⁶⁹ During the three-year period, a person regarded by the Ministry or a contracted provider as acting on behalf of the disabled person for the purpose of making decisions about disability support services for the disabled person, but the

⁶⁴ Human Rights Act, s 21(1)(l).

⁶⁵ Section 21(1)(l)(i), (iv).

⁶⁶ Section 73(2)(a).

⁶⁷ Disability Support Services Bill, above n 27, cl 3(b)(iii).

⁶⁸ Explanatory note, at 2.

⁶⁹ Clause 2(1)-(2).

disabled person did not have the capacity to make such decisions, and did not have anyone acting as an attorney, welfare guardian, or manager for them.⁷⁰

- 5.2. First, we wish to comment that adult decision-making law in New Zealand is currently under review. Therefore, in our view, it is difficult to justify introducing this initiative while broader reforms are underway.
- 5.3. Secondly, we wish to provide an overview of relevant parts of the PPPR Act before providing comment on specific parts of the Bill. The primary objective of the PPPR Act is to make the least restrictive intervention possible in the lives of those it affects having regard to the degree of their incapacity while respecting their rights and freedoms. Furthermore, the PPPR Act seeks to enable and encourage individuals to exercise and develop whatever capacity they have to manage their own affairs to the greatest extent possible.
- 5.4. The PPPR Act also provides safeguards to prevent abuse and ensure accountability from those granted powers to make decisions on behalf of others who lack capacity to make decisions for themselves. Importantly, the welfare guardian and property manager's powers derive from the court order. The court order specifies the scope of their authority based on the individual circumstances. The proposed appointee must be capable of carrying out the role responsibly, act in the individual's best interests, avoid conflicts of interest, and consent to the appointment. The court must also be satisfied that a welfare guardian or property manager are capable of carrying out their role.
- 5.5. In respect of a property manager's appointment:
 - (a) The primary consideration of a property manager is to manage the property to promote and protect the best interests of the person subject to the property order. At the same time, the manager must encourage the subject person to use and develop their competence to manage their own property as much as possible and where practicable.
 - (b) The property manager is generally required to consult, as far as practicable, with the person subject to the property order, their welfare guardian (if one is appointed), and other individuals with an interest in the person's welfare. This aims to ensure coordination and the best possible decisions concerning property management.
 - (c) Schedule 1 of the PPPR Act outlines the specific powers that the Court can confer on the property manager in the court order appointing them. The powers outlined in Schedule 1 include, but are not limited to, taking possession of the protected person's property, managing it, and dealing with third parties who hold it. This includes powers such as handling legal actions about property on

⁷⁰ Clause 6(1)(b).

behalf of the protected person, settling claims or demands involving the property, and applying funds for the benefit of the subject person.⁷¹

(d) Property managers are required to act with reasonable care and must operate within the powers granted to them by their court orders, as their actions are subject to review. Additionally, property managers must submit management statements annually when acting as managers.⁷² A property manager may also be held liable if it is shown they acted in bad faith or without proper care. Section 49(1) of the PPPR Act stipulates that no action shall lie against a property manager for anything done or omitted in the exercise of their duties, unless it can be shown that the manager acted in bad faith or without reasonable care.⁷³

5.6. The Committee now wishes to comment on specific parts of the Bill that relate to the PPPR Act.

5.7. On section 6(1)(a):

(a) We wish to clarify what the requirements are for the Ministry or a contracted provider to have “regarded” Person A as acting on behalf of a disabled person (B) in relation to the making of decisions about disability support services for B? Would this be a completed MSD Appointment of an Agent Form on file?⁷⁴

(b) We also wish to ask if there are proposed guidelines to clearly identify and document Person A for the duration of the Transitional period.

5.8. On section 6(2):

Under the PPPR Act, property manager/welfare guardians:

(a) Must act in the best interests of the subject person. This is a paramount consideration.

(b) Are required to seek the views of the individual they represent, referred to as the “subject person,” to the extent practicable.

5.9. Property managers are required, under section 43 of the PPPR Act, to consult “as far as it may be practicable” with the person for whom they are acting, especially in the management of the subject person's property.⁷⁵ This requirement aligns with the overarching obligation under the PPPR Act for those acting in a protective role

⁷¹ Protection of Personal and Property Rights 1988, sch 1.

⁷² Section 45.

⁷³ Section 49(1).

⁷⁴ Ministry of Social Development “Appointment of an agent form” (November 2025) Work and Income <www.workandincome.govt.nz>.

⁷⁵ Protection of Property and Personal Rights Act, above n 86, s 43(1).

to promote the best interests of the individual and to support them in developing the competence to manage their own affairs to the greatest extent possible.

- 5.10. Section 18(3) of the PPPR Act outlining the powers and duties of a welfare guardian specifies that their primary consideration is the promotion and protection of the welfare and best interests of the person for whom they act.⁷⁶ In doing so, they must always encourage the person to develop and exercise their capacity to understand, make, and communicate decisions relating to their personal care and welfare. Section 18(4) further specifies that welfare guardians must consult the subject person, as far as practicable, on decisions related to their welfare and personal care. This consultation is intended to promote the subject person's self-determination and integration into the community where possible.
- 5.11. The use of the words “as if”, in our view, are not strong enough. As the provision of section 6 allows Person A to make decisions on behalf of a disabled person lacking capacity to make their own decisions about DSS (essentially the role of welfare guardian/property manager/attorney) during the transition period, the requirements in Person A acting should align with the PPPR Act in this regard. This may require section 6(2) being amended to (a) and (b) being “must” requirements, and (c) “as if”.
- 5.12. Additionally, these provisions in the Bill in no way take into account supported decision-making. That is, people who may have limited capacity in one domain may be capable of entering into a safe employment arrangement, with support. We are of the view that this would require significant workforce development and monitoring.
- 5.13. The Committee is also concerned as to who might be doing these “capacity assessments”. We query who will be responsible for paying these qualified clinicians – medical practitioners, psychiatrists, and psychologists – to conduct such assessments. We also have concerns around who will monitor this capacity assessment exercise to ensure that the many disabled people who are capable of making the employment decision are not ignored. The reverse also applies. The Bill must also clarify how the presumption of capacity will be safeguarded so that disabled people are supported to employ their carers under the *Fleming* framework.

CONCLUSION

The Committee has concerns about aspects of the Bill in its current form. We invite the select committee to carefully consider the Bill as a whole and to only advance it in a form that actively enhances and supports the basic rights of disabled people and their family carers.

Legislation affecting disabled people and family carers must be rights-enhancing. The Committee

⁷⁶ Section 43(1).

believes that any legislation impacting the disabled community warrants extended and dedicated consultation. Fragmented consultation across multiple forums at opposing timelines is unnecessarily confusing and distracting.

Payment schemes and employment arrangements for family carers must account for the current economic climate and be sustainable in the long run. However, this must not tip the balance too far to the detriment of family carers and, to the potential detriment of our wider economy.

Secondary legislation has a place in lawmaking in New Zealand, but it is not the appropriate form to employ here. It concentrates a significant amount of power with a single Minister, with few meaningful checks and balances and consultation methods available to disabled people and their family carers.

Any conflict with the PPPR Act must be carefully considered and justified so that the decision-making capacity of all disabled people and anyone empowered to do so on their behalf is respected and protected.

Thank you for the opportunity to make submissions in respect of the Disability Support Services Bill. We are available to discuss our submissions, if required. Should clarification be required with regards to any matters raised, please contact Daniel Conway, Head of Legal at The Law Association, Daniel.Conway@tlanz.nz.

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Ngā mihi



Kate Diesfeld

Convenor

The Law Association Mental Health and Disability Law Committee

The views represented in this submission are not necessarily representative of the views of all The Law Association members but are those of individual The Law Association members or The Law Association committees who have responded to the consultation.