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To the Health Committee

Please find below DPA’s submission on the Improving Arrangements for Surrogacy Bill.

## Disabled Persons Assembly NZ

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# Introducing Disabled Persons Assembly NZ

The Disabled Persons Assembly NZ (DPA) is a pan-impairment disabled person’s organisation that works to realise an equitable society, where all disabled people (of all impairment types and including women, Māori, Pasifika, young people) are able to direct their own lives. DPA works to improve social indicators for disabled people and for disabled people be recognised as valued members of society. DPA and its members work with the wider disability community, other disabled people’s organisations (DPOs), government agencies, service providers, international disability organisations, and the public by:

* telling our stories and identifying systemic barriers
* developing and advocating for solutions
* celebrating innovation and good practice

# United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

## **Government obligations:**

The UNCRPD[[1]](#endnote-1) places an obligation on Government to ensure and promote the full realisation of all human rights and fundamental freedoms for all disabled people without discrimination of any kind on the basis of disability.

## **UNCRPD is the minimum standard:**

DPA upholds the UNCRPD as the minimum standard for our participation in society.

## **Partnership with DPOs (Article 4.3):**

The implementation of the UNCRPD depends on a partnership between DPOs and the Government. This is highlighted in Article 4.3 which says governments shall consult closely with and actively involve disabled people, including disabled children, through their representative organisations. This partnership goes beyond just consulting with disabled people. It mandates governments to actively involve disabled people and our organisations in everything that affects us.

Other key Articles of the UNCRPD relevant to this submission are:

## **Article 3 - General Principles**

## **Article 5 - Equality and Non-Discrimination**

## **Article 7 - Children with Disabilities**

## **Article 12 - Equal Recognition Before the Law**

## **Article 13 - Access to Justice**

## **Article 23 - Respect for Home and the Family**

**In particular:**

1. States Parties shall take effective and appropriate measures to eliminate discrimination against persons with disabilities in all matters relating to marriage, family, parenthood and relationships, on an equal basis with others, so as to ensure that:
   1. The right of all persons with disabilities who are of marriageable age to marry and to found a family on the basis of free and full consent of the intending spouses is recognised;
   2. The rights of persons with disabilities to decide freely and responsibly on the number and spacing of their children and to have access to age-appropriate information, reproductive and family planning education are recognised, and the means necessary to enable them to exercise these rights are provided;
2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, wardship, trusteeship, adoption of children or similar institutions, where these concepts exist in national legislation; in all cases the best interests of the child shall be paramount. States Parties shall render appropriate assistance to persons with disabilities in the performance of their child-rearing responsibilities.

4) In no case shall a child be separated from parents on the basis of a disability of

either the child or one or both of the parents.

# Other Relevant Treaties and Policy

## **United Nations Convention on the Rights of the Child (UNCRC)[[2]](#endnote-2)**

## **United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP)[[3]](#endnote-3)**

## **New Zealand Disability Strategy (2016 – 2026)[[4]](#endnote-4)**

### Outcome 4 – Rights Protection and Justice

### Outcome 7 – Choice and Control

# The Submission

DPA is pleased that Parliament is adopting new legislation on surrogacy to simplify the process, ensure the completeness of birth certificate information and provide a mechanism for enforcing surrogacy.

We are generally supportive of what is in the draft Bill, but are concerned that the draft Bill makes no mention of disabled people, children or parents. We are particularly pleased to see that the draft Bill has provisions to ensure that agreed surrogacy arrangements are complied with once a child is born.

# Disabled Parents and Surrogacy

Disabled people may embark on the journey of creating a child and may choose another person to carry and birth that child because of impairment-related issues they would face in doing so themselves.

Societal stereotypes, discrimination and negativity towards disabled people being parents are well documented. Indeed NZ’s current adoption legislation has clauses that allow children to be removed from disabled parents wholly on the grounds of the parents impairments.

DPA believes that the Bill needs to provide rights for disabled parents who have become parents through surrogacy.

# Parents Not Wanting a Disabled Child

There have been numerous stories in the press of parents not taking their disabled child from its surrogate birth parents because the child is disabled.

This is unacceptable and any new legislation on surrogacy needs to prevent this from happening under surrogacy orders or other formal arrangements.

# Overseas and Intercountry Surrogacy

In order to protect the rights of disabled children born through surrogacy internationally, DPA strongly supports a process that upholds the Hague Convention level of safeguarding for adopted children.

We further believe that tamariki of NZ parents, born through international surrogacy, should receive NZ citizenship regardless of where their birth certificate is issued. This would provide certainty that disabled children born through international surrogacy would be accorded the full rights and entitlements of New Zealand citizens.

# Surrogacy Registrar

DPA believes that the Surrogacy Registrar should be given additional functions in regard to any disability issues, as allowed for under new section 66A (B) of the draft Bill

prescribe the functions of the Surrogacy Registrar that are in addition to the functions specified in **section 66B**:

this would mean that such functions would be reported on and monitored as allowed for in new Section 66A (C)

prescribe any reporting requirements, accountability measures, or other terms or conditions that the Surrogacy Registrar must comply with.

1. <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> [↑](#endnote-ref-1)
2. <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child> [↑](#endnote-ref-2)
3. <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html> [↑](#endnote-ref-3)
4. <https://www.odi.govt.nz/nz-disability-strategy/#main-content-lin> [↑](#endnote-ref-4)