February 2023

To Justice Committee

Please find below DPA’s submission on the Legal Services Amendment Bill

For any further inquiries, please contact:

Prudence Walker

Chief Executive

021 546 006

policy@dpa.org.nz

# Introducing Disabled Persons Assembly NZ

**We work on systemic change for the equity of disabled people**

Disabled Persons Assembly NZ (DPA) is a not-for-profit pan-impairment Disabled People’s Organisation run by and for disabled people.

**We recognise:**

* Māori as Tangata Whenua and [Te Tiriti o Waitangi](https://www.archives.govt.nz/discover-our-stories/the-treaty-of-waitangi) as the founding document of Aotearoa New Zealand;
* disabled people as experts on their own lives;
* the [Social Model of Disability](https://www.odi.govt.nz/guidance-and-resources/guidance-for-policy-makes/) as the guiding principle for interpreting disability and impairment;
* the [United Nations Convention on the Rights of Persons with Disabilities](https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html) as the basis for disabled people’s relationship with the State;
* the [New Zealand Disability Strategy](https://www.odi.govt.nz/nz-disability-strategy/) as Government agencies’ guide on disability issues; and
* the [Enabling Good Lives Principles](https://www.enablinggoodlives.co.nz/about-egl/egl-approach/principles/), [Whāia Te Ao Mārama: Māori Disability Action Plan](https://www.health.govt.nz/publication/whaia-te-ao-marama-2018-2022-maori-disability-action-plan), and [Faiva Ora: National Pasifika Disability Plan](https://www.moh.govt.nz/notebook/nbbooks.nsf/0/5E544A3A23BEAECDCC2580FE007F7518/%24file/faiva-ora-2016-2021-national-pasifika-disability-plan-feb17.pdf) as avenues to disabled people gaining greater choice and control over their lives and supports.

**We drive systemic change through:**

* **Leadership:** reflecting the collective voice of disabled people, locally, nationally and internationally.
* **Information and advice:** informing and advising on policies impacting on the lives of disabled people.
* **Advocacy:** supporting disabled people to have a voice, including a collective voice, in society.
* **Monitoring:** monitoring and giving feedback on existing laws, policies and practices about and relevant to disabled people.

## Acknowledgements

DPA wishes to thank Auckland Disability Law for its assistance with this submission.

## United Nations Convention on the Rights of Persons with Disabilities

DPA was influential in creating the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD),[[1]](#footnote-2) a foundational document for disabled people which New Zealand has signed and ratified, confirming that disabled people must have the same human rights as everyone else. All state bodies in New Zealand, including local and regional government, have a responsibility to uphold the principles and articles of this convention. There are a number of UNCRPD articles particularly relevant to this submission, including:

* **Article 4.3 (General Obligations):** The implementation of the UNCRPD depends on a partnership between DPOs and the Government. This 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.
* **Article 13 (Access to Justice).**

## New Zealand Disability Strategy 2016-2026

Since ratifying the UNCRPD, the New Zealand Government has established a Disability Strategy[[2]](#footnote-3) to guide the work of government agencies on disability issues. The vision is that New Zealand be a non-disabling society, where disabled people have equal opportunity to achieve their goals and aspirations, and that all of New Zealand works together to make this happen. It identifies eight outcome areas contributing to achieving this vision. There are a number of Strategy outcomes particularly relevant to this submission, including:

* **Outcome 4 – Rights Protection and Justice.**

# The Submission

DPA strongly supports the Bill’s intention of improving access to legal aid services for people on low incomes by removing the user charge payment and interest charged on unpaid legal aid debt.

## Disabled Community’s Need for More Accessible Legal Aid Services

In 2013, one in four people in Aotearoa were identified as disabled, and this proportion is likely to have increased due to our aging population.

We know that there are substantial legal problems each year in Aotearoa.[[3]](#footnote-4) These problems have a severe to moderate impact on people’s lives, including loss of income, poverty, homelessness, social exclusion, family breakdown and illness. The situation is confronting in the case of people experiencing socioeconomic disadvantage. Research from Australia shows the most disadvantaged people, just 9% of the population, account for 65% of legal problems (or a whopping 770,000 substantial legal problems.[[4]](#footnote-5) It is likely that a similar proportion is affected in Aotearoa NZ .

Yet the resources available to meet these needs are grossly inadequate.

The disabled community experiences the brunt of this problem. Research shows that disabled people ‘constitute the most socially excluded of all disadvantaged groups. They experience systemic barriers to the legal system and experience cumulative disadvantage. Disabled people experience multiple or aggravated forms of discrimination (for example, on the basis of race, colour, sex, language, indigenous or social origin, and age), and other forms of socioeconomic disadvantage.

By dropping the user charge and penalty interest requirements, the Crown does lose some revenue. It's not much, in the bigger scheme of things, to the Crown, but it's a lot to the estimated 7,500 people on low incomes who will benefit each year.

For this reason, the changes brought about by the Legal Services Amendment Bill will help disabled people in accessing legal aid.

## Further Issues with Legal Aid for Disabled People

Greater change than is brought about by this Bill is needed. The amount lawyers are paid for legal aid work now means that very few lawyers are prepared to do legal aid work because it is so poorly paid.

When working with disabled people it often takes lawyers more time that they may not be financially covered for as they receive limited funding from legal aid work. For example, lawyers may need to:

* Spend more time in client meetings and providing advice. That extra time is spent unpacking disabled people’s legal problems and explaining the legal process. For people with learning disabilities, cognitive impairments or brain injuries, they need time to understand the legal process.
* Providing information in the best format.
* For Deaf people, having access to New Zealand Sign Language interpreters is essential.
* Communication assistants are important for some people with learning disabilities or cognitive impairments.
* Not having the right support person, whether they’re professional or a whanau member, can present a real barrier to a disabled person accessing legal services and ultimately, justice.
* Lawyers may have to meet disabled clients away from their offices as many are not accessible to people with mobility impairments. This means additional travel time is needed.

Legal aid needs to be free. It needs to be far more accessible. Lawyers need to be able to bill the time that they spend, rather than be incentivised to spend less time on cases with caps on legal aid, or not want to take cases involving disabled people because they won’t be reimbursed for the extra time involved.

Lawyers in many cases must act pro bono to be able to give enough time to disabled clients, as the cost of the additional work they are required to do may not be covered by legal aid.

The outcome for many groups and individuals within the disabled community is that they are disadvantaged and they have real problems accessing justice.

# Conclusion

DPA strongly supports the removal of the user payment for legal aid services and the interest charged on legal aid debt.

While the removal of such charges will improve access to legal services for disabled people, there is much more that needs to be done to ensure disabled people have the equitable access to justice.

1. United Nations. (2006). *United Nations Convention on the Rights of People with Disabilities.* Retrieved from: <https://www.un.org/disabilities/documents/convention/convoptprot-e.pdf> [↑](#footnote-ref-2)
2. Office for Disability Issues. (2016). *New Zealand Disability Strategy.* Retrieved from: https://www.odi.govt.nz/nz-disability-strategy/ [↑](#footnote-ref-3)
3. [↑](#footnote-ref-4)
4. See Coumarelos, Christine, *Access to Justice and Legal Needs - Legal Australia-Wide Survey: Legal Need in Australia,* (Volume 7, Law and Justice Foundation of New South Wales, August 2012), page 14 [↑](#footnote-ref-5)