Submission

To The Clerk,
Select Committee
Parliament Buildings
Wellington.

Social Security (Benefit Categories and Work Focus) Amendment Bill

From
DPA (NZ) Inc.
(The national assembly of people with disabilities)

On the
Welfare Reform Job Seeker and Supported Living Payment

About DPA (New Zealand) Inc.

DPA is the national assembly of people with disabilities. It is an umbrella organisation for the full range of people with disabilities in New Zealand. DPA has some 1,200 individual members who either have disabilities themselves, or are the parent, or guardian of a person with a disability and some 300 corporate members who represent or deliver services to people with disabilities. DPA advocates across the range of age and impairment at a societal level and this issue-level advocacy is grounded in human rights.
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We wish to appear before the committee to speak to our submission

1. Introductory/General Comments

DPA (NZ) Inc. submits this paper in response to the Social Security (Benefit Categories and Work Focus) Amendment Bill. It is important these proposed changes do not breach New Zealand’s international responsibilities under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) (Articles 21 and 22) or domestic requirements to comply with the Bill of Rights Act 1990, the Human Rights Act 1993 and the Treaty of Waitangi.

2. Specific Issues

DPA is a non-profit organisation representing all disabled people regardless of their type of impairment. We are set up to address and provide advice on issues related to disabled persons and whānau haua. We address the unmet issues of advocacy for disabled persons, to conduct workshops, do research, and research in the area of disability. This submission has been developed as part of our on-going commitment to provide a voice within both the disability and the whanau hauaa community. Many disabled people within New Zealand have expressed to us their desire to ensure representation of disabled whanau who often do not have the ability to articulate their voices themselves.
We do have a number of comments we would like to make based on the document sent to us for feedback to the Ministry on the 1 October 2012.

We acknowledge the need to address the unacceptably high unemployment rate among disabled persons in New Zealand.

Our focus will Centre on the jobseeker support and the newly named supported living payment which will replace the current sickness and Invalids benefit. We make the following comments with regards to the impact on disabled persons. We also acknowledge the need to address the unacceptably high unemployment rate among disabled persons in New Zealand.

We are however concerned at the pressure to work for disabled who need supports and accommodations for working and therefore make the following submission.

3. Relevant International Conventions

Whilst receiving a pension from Work and Income, we raise the following relevant Articles under the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD):

**Article 9 - Accessibility**

1. To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:

- Buildings, roads, transportation and other indoor and outdoor facilities, including schools, housing, medical facilities and workplaces;
- Information, communications and other services, including
2. State Parties shall also take appropriate measures to:

- Develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public;
- Ensure that private entities that offer facilities and services which are open or provided to the public take into account all aspects of accessibility for persons with disabilities;
- Provide training for stakeholders on accessibility issues facing persons with disabilities;
- Provide in buildings and other facilities open to the public signage in Braille and in easy to read and understand forms;
- Provide forms of live assistance and intermediaries, including guides, readers and professional sign language interpreters, to facilitate accessibility to buildings and other facilities open to the public;
- Promote other appropriate forms of assistance and support to persons with disabilities to ensure their access to information;
- Promote access for persons with disabilities to new information and communications technologies and systems, including the Internet;
- Promote the design, development, production and distribution of accessible information and communications technologies and systems at an early stage, so that these technologies and systems become accessible at minimum cost.

**Article 21 - Freedom of expression and opinion, and access to information**

- States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice, as defined in article 2 of the present Convention, including by:
- Providing information intended for the general public to persons with disabilities in accessible formats and technologies appropriate
to different kinds of disabilities in a timely manner and without additional cost;

- Accepting and facilitating the use of sign languages, Braille, augmentative and alternative communication, and all other accessible means, modes and formats of communication of their choice by persons with disabilities in official interactions;
- Urging private entities that provide services to the general public, including through the Internet, to provide information and services in accessible and usable formats for persons with disabilities;
- Encouraging the mass media, including providers of information through the Internet, to make their services accessible to persons with disabilities;
- Recognizing and promoting the use of sign languages.

**Article 22 - Respect for privacy**

- A client has the right to expect privacy and no arbitrary or unlawful interference with his or her privacy. Point two rules that States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.

We expect that any welfare reform will ensure Article 22 of the UNCRPD is protected.

**Article 23 - Respect for home and the family**

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:

- 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 recognized;
• 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 recognized, and the means necessary to enable them to exercise these rights are provided;

• Persons with disabilities, including children, retain their fertility on an equal basis with others.

2. States Parties shall ensure the rights and responsibilities of persons with disabilities, with regard to guardianship, ward ship, 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.

3. States Parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realizing these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, States Parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.

4. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. 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.

5. States Parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.

NB: it is important to note here in relation to partners/spouses, disabled parents and disabled children, there needs to be accommodations relating to requirements to work and support them at the same time.
Article 26 - Habilitation and rehabilitation highlights that the State shall:

1. States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:

   (a) Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;

   (b) Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities, including in rural areas.

2. States Parties shall promote the development of initial and continuing training for professionals and staff working in habilitation and rehabilitation services.

3. States Parties shall promote the availability, knowledge and use of assistive devices and technologies, designed for persons with disabilities, as they relate to habilitation and rehabilitation.

Disabled persons want to work and have never stated otherwise, the reality is however more complex with attitudes of employers, a lack of appropriate accommodations available for many, a lack of recognition of the right to employment for disabled persons, the high rate of unemployment and the penalties from the State placed on an individual should their impairment prove to be a barrier to retaining any employment.

Given the current climate, it seems disabled people are being asked to compete with the non disability community for the few jobs available without any regard to the difficulties and barriers for the disabled person.
High expectations could lead to unfair pressures. This in turn leading to secondary problems for the individuals with long term unemployment and an exacerbation of their condition and mental health well-being is compromise. Whilst disabled persons are seeking the right to employment, there needs to be flexibility and recognition of the need for an open, inclusive and accessible work environment.

Article 27 - Work and employment states:

1. States Parties recognize the right of persons with disabilities to work, on an equal basis with others; this includes the right to the opportunity to gain a living by work freely chosen or accepted in a labour market and work environment that is open, inclusive and accessible to persons with disabilities. States Parties shall safeguard and promote the realization of the right to work, including for those who acquire a disability during the course of employment, by taking appropriate steps, including through legislation, to, inter alia:

(a) Prohibit discrimination on the basis of disability with regard to all matters concerning all forms of employment, including conditions of recruitment, hiring and employment, continuance of employment, career advancement and safe and healthy working conditions;

(b) Protect the rights of persons with disabilities, on an equal basis with others, to just and favourable conditions of work, including equal opportunities and equal remuneration for work of equal value, safe and healthy working conditions, including protection from harassment, and the redress of grievances;

(c) Ensure that disabled people are able to exercise their labour and trade union rights on an equal basis with others;

(d) Enable disabled people to have effective access to general technical and vocational guidance programmes, placement services and vocational and continuing training;

(e) Promote employment opportunities and career advancement for disabled people in the labour market, as well as assistance in
finding, obtaining, maintaining and returning to employment;

(f) Promote opportunities for self-employment, entrepreneurship, the development of cooperatives and starting one’s own business;

(g) Employ disabled people in the public sector;

(h) Promote the employment of disabled people in the private sector through appropriate policies and measures, which may include affirmative action programmes, incentives and other measures;

(i) Ensure that reasonable accommodation is provided to disabled people in the workplace;

(j) Promote the acquisition by disabled people of work experience in the open labour market;

(k) Promote vocational and professional rehabilitation, job retention and return-to-work programmes for disabled people.

2. Parties shall ensure that persons with disabilities are not held in slavery or in servitude, and are protected, on an equal basis with others, from forced or compulsory labour.

With all the modifications to benefits and requiring those who can to work and those who cannot remain on a benefit, it is prudent to remember:

**Article 28 - Adequate standard of living and social protection which provides for the right to a good standard of living for disabled persons.**

**This article states:**

States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.
States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:

(a) To ensure equal access by persons with disabilities to clean water services, and to ensure access to appropriate and affordable services, devices and other assistance for disability-related needs;

(b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;

(c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability-related expenses, including adequate training, counselling, financial assistance and respite care;

(d) To ensure access by people with disabilities to public housing programmes;

(e) To ensure equal access by persons with disabilities to retirement benefits and programmes

Other International and Domestic Conventions and policies include:

- Bill of Rights Act 1990
- Human Rights Act 1993
- International Labour Conventions recognising equity of pay regardless of age, gender, ethnicity and ability or disability

4. Pre-Benefit Activities – (The issues for disabled)

People applying for jobseeker support, sole parent support or an emergency benefit, and the spouse or partner of a person applying for jobseeker support of a supported living payment or an emergency benefit may be expected to undertake pre-benefit activities (voluntary and community work does not qualify as a pre-benefit activity). If the required activities are not completed within 20 days, the application for the benefit lapses and the client has to start
all over again without the benefit being backdated to the first application. If the disabled client does complete them but the partner does not, then the disabled client faces sanctions.

5. Job Seeker Support

It is suggested that the sickness benefit be removed and all those on the sickness benefit will now receive the job seeker benefit. A large number of people with hidden impairments, in particular mental health conditions, are currently on the sickness benefit with the proposed reformed sickness beneficiaries will automatically be deemed ready for employment which will prove problematic. For example, the person will be ordered to go to a WINZ preferred doctor who has no idea about that person or their condition whereas their own doctor is more likely to understand who they are, their condition and how to manage it. An unfamiliar doctor may not have the insight needed for that particular individual and may incorrectly deem them fit for work when in fact they may be unable to attain a job.

Equally important, it is a considered opinion that the majority of those with mental health conditions will be emotionally affected by this change and it will be difficult to maintain such a constant need for medical certificates, the pressure on our public health system if a specialist is required for the diagnosis and rehabilitation of the individual will be unrealistic as it is already stretched. If someone becomes mentally unwell and cannot work yet is forced into work by WINZ they will be penalised by lowering their job seeker benefit for thirteen weeks. This will be a harsh penalty for someone who becomes so unwell and finds they cannot deal with the requirements of WINZ. Some flexibility is needed where the condition fluctuates and may lead to unintended miscommunication with WINZ because of relapses.

Whilst the intention to have disabled as part of the workforce is encouraging, from a disability perspective the job seeker support benefit seems fraught with complications with the lack of adequate support for disabled who may fluctuate between the ability to work and the inability not to work.

- It is recommended that some work be done with the disability community to ascertain a safer and more balanced approach to ensuring disabled enter the workforce without penalties placed on
them which will lead to greater poverty experienced for disabled, an issue they are already facing daily

- Also, the disability community has not been consulted on this matter and as it has a greater affect on them than any other group (removing the sickness benefit) it makes sense more consultation needs to take place before changes are made. It would be better to get this right, not make more mistakes making it unworkable.

- Spouses are often required to assist their partner and therefore have difficulty being job seeker available if the partner is also being forced into work where they require a lot of support and it is not available.

6. Supported Living Payment

Even though it is great news to know the Invalids benefit is to be renamed as the Supported Living Payment it was a name that needed to be changed many years ago. It seems also the new name is for those who are currently on the DPB and caring for disabled persons. However, it does not seem to include spouses/partners of disabled persons who take care of the support for the individual and receive a job seeker benefit despite assisting them in their care. The term supported living payment is also a term used in other areas, we therefore strongly urge the Government to support the 15 DPO's recommendations that the name be changed simply to 'living payment'.

7. General Comments

There needs to be more consultation on exactly what the work ability assessment entails and just exactly what qualifies one to be either on the supported living payment or the job seeker benefit. Many disabled are capable of working a small amount such as two to ten hours a week and if this is taken from them where they are forced onto a job seeker benefit without the ability to work regularly or even consistently. The question remaining is whether this would still qualify for the individual to remain on the support living allowance or whether it will forces them onto the job seeker benefit which
leads to greater penalties. Not enough work has been done in consultation with the disability community of New Zealand to date that warrant any changes that will lead to penalties for disabled persons.

Dedicated WINZ doctors are a problem for those individuals who have complex disability histories; they need to consult regularly with their own GP and their own specialists who know their history intimately and who can give a realistic and true assessment of the ability for the individual to work, how often, how much and how long.

8. Disability Allowance

One issue that has come through from the disability is the difficulties dedicated purchasers as proposed on the bill will cause. This might be because of difficulties with location, inaccessibility (physical, sensory or even ignorance of mental health or learning disabilities) of the preferred service. In the case of preferred taxi providers, some may have a regular company or driver they are safe with and to change this can cause major upheavals especially for those with cognitive and behavioral impairments. Another example is where service/guide dogs and their costs are expensive and a preferred purchaser by Work and Income can cause problems for some where they have a specific health need of their animal and prefer the right to choice. Removing these choices removes the autonomy of the disabled individual and compromises their rights under the UNCRPD.

9. Penalties and Poverty

Penalties for disabled persons can only perpetrate the existing poverty many disabled and mental health individuals exist within. It may be a time not only to change the name of the benefit but also to explore the real cost of living for disabled persons which statically is higher than non-disabled which leads to the disparities they experience as they cannot work or hope to work enough to make the changes in their lives to break out of poverty.

As previously mentioned some flexibility is required by the State as per the UNCRPD Article 28 which talks about the State providing an adequate standard of living for all disabled persons. If there is no cost of living of
disability implemented for disabled working or not, then it is hard to see how any change to the benefit will assist and improve the well being of disabled.

Drawing back to the UNCRPD Article 27 on employment, it provides for some strong guidelines on how to support disabled into employment. These would be ideal to incorporate into any employment policy for disabled remembering that New Zealand has signed and ratified the UNCRPD and are therefore required to implement the articles into any law and policy changes taking place. Disabled persons require that if they are deemed able to work and enter into the workforce that they receive an equal rate of pay as to any non-disabled person undertaking the same employment there should be no exceptions to this as that is a breach of the UNCRPD.

Finally, section 60GAG is also an issue, in that many disabled may not be able to comply with the CEO orders to attend whatever he or she requires them to do. This is a concern in that if the CEO is not qualified in understanding fully the issue of disabilities and all the issues they entail then how are they qualified to order somebody to do something they may not be capable of doing? It should not be up to anyone other than that individual’s personal GL and/or specialists.

10. Summary

The concept of having the right to work sit within the United Nation Convention on the Rights of Persons with Disabilities whereas disabled persons want to have that right to work, yet changing the Sickness benefit and Invalid benefit to a jobseekers benefit will force disabled previously on that particular benefit into work that may not work well for them because of fluctuating illness leading to inconsistencies of work capabilities and ongoing pressure to work when they may need the time to recover well enough to possibly seek part-time or partial work opportunities. Seeking constant medical certificates from WINZ designated doctor’s is also problematic in that that they will not know the individual they are assessing and therefore may make them work capable when their own GP and Specialists will know their individual and complex identity whereas they may know and pick up on things that WINZ designated GP may not.

The lack of consultation with the disability community is a concern as the
disability community wants to work yet they do not want to have their existing sickness and invalids benefit compromised where they may be forced to work in ways they will suffer serious consequences, financially and psychologically. The renaming of the Invalids benefit to a supported living payment is a positive change, it is the criteria for that and the jobseeker benefit that remains a concern.

We strongly recommend that the committee reconsiders the time-frame for the implementation of these changes until such time as comprehensive and extensive consultation has take place with the disability and whānau hauā community to ensure these changes comply with the UNCRPD articles cited in the submission. There is no denying that employment is a good thing that is when work is freely available. However, as suitable work is not currently attainable for non-disabled, it is suggested there is time prior to implementing these changes to consult and request the opportunity for this to be done.