

This briefing paper has been prepared to support our discussion scheduled for Thursday 29th September 2022.

The New Zealand Disability Support Network represents just under 200 providers of disability support services, including major corporate providers, individual providers, charities, incorporated societies, and private companies. These providers offer the full range of support services including residential care, independent living, supported living, activity centres, employment support, religious-based, culturally specific and more. Our members cover the spectrum of disability types, including sensory, intellectual, physical, and those with combined disability and mental health impairments.

Staffing issues, critical shortage impacting on service provision

Minister, as you know, our sector employs approximately 19,000 support workers, supported by an additional number of supervisors, administrators, and managers. In recent years this workforce has become increasingly diminished, with an estimated 13% vacancy rate identified in one recent NZDSN member survey. That's an estimated 2,500 Support Worker positions that are not filled currently.

Efforts to fill these vacancies has been fraught. In part because the role is not well-paid and in part because of the impact of COVID-19. We now have situations where disabled people are seeing some support services trimmed back, because our members do not have the staff to maintain them. We see and hear of examples of support workers working extraordinary hours to cover for vacancies, and unable to take a break or holiday.

We have tried in vain to work with Immigration New Zealand to recognise the pressures this workforce shortage brings, but the recent changes to visa rules act against small-to-medium providers and do not resolve the staff shortage in mid-to long-term.

We have more recently begun to work on a small number of pragmatic initiatives with the Ministry of Social Development and their employment service arm, Work and Income. We remain hopeful that these initiatives, albeit small, result in some of the more critical vacancies around the country being filled.

Minister, we understand there is no silver bullet to this workforce shortage, but we do experience some frustration when we see significant effort put into the health sector to recruit staff to address shortages, but no recognition of the similar issues facing the disability sector.

NZDSN will continue to work closely with MSD on the delivery of initiatives designed to connect unemployed people with support worker vacancies in our most critically impacted services. We would also like to engage directly with Whaikaha on any additional initiatives we could jointly undertake.

Pay Equity – capacity of the sector to respond to multiple claims

In 2017 a pay equity case ended up before the courts. This led to a landmark decision that increased the funding for disability support services so that their support workers could be paid on a par with DHB Care Assistants. This parity was meant to be sustained over time with regular top-ups to funding, which did not occur. The settlement agreement relating to this 2017 case was enshrined in legislation that expired on 30th June this year. Efforts to engage with the Ministry of Health were thwarted until just weeks before the expiry date.

Your colleague, the Minister of Health Hon Andrew Little, participated in a virtual video call to the interested parties to advise them that the government would apply an interim wage rate adjustment of 3%. Inflation for the past 12 months has been at 6.9%. The Minister advised that any remaining (unresolved) issue should be the focus of a new pay equity claim. The combined unions (PSA, E tu and NZNO) took up the invitation and launched a new pay equity claim for support workers on 1st July with 15 employers. The Minister further stated he looked forward to the pay equity claim being progressed within a 12-to-18-month window, in contrast to a process that can take upwards of three years.

The employer parties to the claim and their peak bodies, together with the combined unions have compiled a resource claim for consideration by the government. This was presented 29th July and remains unresolved at this time. In addition, the combined unions have lodged a further pay equity claim against six employers, with the promise of a further two or three more to come. It is for these reasons that the proposed timetable of 12-to-18-months must be under serious threat.

Both the unions and the employers want to pay their workers what they are worth. But to do so, disability support providers must receive full funding. Anything less means the benefits sought through the pay equity process will be undone.

NZDSN would welcome from the Minister any effort to support the call from employers for resourcing to undertake and complete the Care and Support Worker Pay Equity Claim, noting the requested resource support was submitted to MoH on 29th July 2022

Funding and pricing issues, impacting on equity across providers and sustainability of service provision

We have raised concerns for some years about both equity and sustainability issues facing the pricing of disability support services. We have worked closely with the Ministry of Health over this time to address inequity issues, particularly in disability residential care. This relates to different pricing structures for essentially the same service around the country and reflects historic pricing practices, particularly through NASC services. The work on equitable residential services pricing needs to be completed and a roadmap established toward implementation. The sector seeks confidence and transparency that the pricing framework for residential and other disability support services is fair, equitable and robust.

The second dimension of funding is sustainability. Funding should be based on the actual costs of operating a disability support service which may inform future government funding strategies and decisions. During the recent revision to the 2017 pay equity settlement, our sector calculated a 23% funding gap over recent years reflecting the lack of investment in disability support.

Disability support services in New Zealand are reliant on government funding to meet their costs, including wages. As mentioned above, low paid workers in our sector are in this position largely because of historic underfunding.

NZDSN is seeking a structured approach to the work on funding (equity and sustainability) going forward, with a commitment to resolving these matters within a defined timeframe, noting that the outcome of this work may still need to fit within and be subject to the government's Budget framework.

Demand for services not being met

A significant gap has existed between the demand for disability support services and the annual government's funding. To manage this gap, a rationing mechanism has inevitably been used to restrict access to services and support; for instance, through waiting lists, lack

of information, making the system over-complex, and maintaining or reducing existing support despite increased or sustained needs of disabled people and their families.

Many of our members are particularly concerned about large waiting lists for support services that they cannot hope to respond to. Besides the lack of funding, and inequitable levels of funding, the service demand gap has been exacerbated due to the staffing shortage.

Whaikaha needs to complete an audit on the extent to which disabled people are awaiting assessments and/or the provision of support services that reflect their choice and need. NZDSN can help with this.

Importance of provider voice being part of the solution

In light of the disability support system transformation, the establishment of the Whaikaha, and the national rollout of the Enabling Good Lives (EGL) principles, service providers want to take an active role in the early discussions and actively contribute to the solutions. A successful system transformation, we believe, requires a partnership between the new Ministry – and relevant government agencies – and the disability community, including service providers.

We invite Whaikaha to ensure the disability support service provider voice is included in forums and advisory groups to ensure advice is pragmatic, workable and deliverable.

Paid family carers – a longer-term solution

Allowing people to pay their family members to provide support services is a policy issue with a long history in the health and disability sectors. There has been legal action, national and international criticism, and changes to legislation and policy.

Before 2012, the Ministry of Health and District Health Boards (DHBs) did not allow parents, spouses, and resident family members to be paid to provide support services for a family member. Cabinet agreed on a limited family care policy that allowed some family members of people with high or very high support needs to be paid to provide Home and Community Support Services only. This was followed in 2013 by the introduction of Part 4A (family care policies) of the New Zealand Public Health and Disability Act 2000 to protect the Ministry and DHBs from further litigation. In 2020 the current Government repealed Part 4A and agreed to eligibility changes. It was recognised at the time that further policy amendments would be required to remove remaining discrimination.

Budget 2022 included additional funding of \$111 million (over four years) for paid family support, with \$39 million for the new Ministry to deliver paid family support (as well as \$72 million for delivery by Health NZ). This will, in turn, result in more disabled people employing their family members as carers.

There are a variety of options to pay a family member to provide disability support services when a disabled person manages their own budget, also known as Individualised Funding (through the EGL approach), including employing a family member themselves or asking a nominated person to manage the employment process and budget, or payment to a family member as a contractor/self-employed.

However, a disabled person who employs a family member to provide their support but lacks the capacity to fulfil the formal role of an employer, presents employment, legal and human rights challenges.

Recent Employment Court rulings have found the Ministry of Health (sic. Whaikaha) as the “employer” of a family member carer. The Ministry is appealing the decision. While we do not wish to interfere with the legal processes underway, we propose a focus on preserving the benefit of service flexibility to disabled people. Furthermore, this is a complicated issue with significant implications for all stakeholders. Hence, we believe a solution needs to be worked

out by considering various inter-playing factors such as the new health and disability support system, Individualised Funding (IF) and personal budget arrangements, national rollout of EGL, and pay equity settlements.

We note with concern the threats to the continuation of the recognition of the role of family members and the potential impact these threats pose on the further expansion of Individualised Funding packages and EGL, amongst other policies. NZDSN is keen to engage with Whaikaha and others, without interfering with current legal action, to explore a more sustainable approach to this service provision element moving forward.

Recommendations from Warren Forster Report – Recommended Reading

Warren Forster has recently published a report (Removing Disabling Experiences: a vision for the future of our people) that outlines a roadmap to establishing a new support system (transcending current functions of ACC) to provide support for all people experiencing disabling impairments, regardless of the cause of that impairment. The new system is a social insurance scheme that provides four types of support for accidents and illnesses: social support, income support, habilitation, and healthcare.

One aspect of the proposed system is related to disability support service providers: service delivery for disabled people. The report does not provide any details about the future service delivery model. It says the current EGL model can be expanded to provide support, or a model similar to the current ACC model to provide income support, or a completely new model can be developed for providing various supports.

If the new Ministry (or relevant government bodies) decide to take on some of the report's recommendations, careful considerations are required for then you service delivery model, the role of service providers, and choice and control for disabled people. In any case, disability support service providers need to be actively engaged from the early stages of discussions.

We cannot forget the outgoing comments of the previous Labour Government ACC Minister, Iain Lees-Galloway, who felt the ACC legislation was discriminatory for people who acquired their disability through birth and not accident. We acknowledge this view has been held for some years as the two systems rely on different funding approaches and different service provision models. The need to explore these differences and the impacts they have on the lives of disabled people and the services that support them would seem a reasonable step toward identifying and resolving these differences. NZDSN is keen to engage with Whaikaha in this work if it leads to improving the lives of disabled people into the future.

Impact on disability support services from the UN Convention review

The United Nations Committee on the Rights of Persons with Disabilities (the Committee) has reviewed New Zealand's second and third periodic reports and published a range of concluding observations around the implementation of the UNCRPD in New Zealand. While the Committee has welcomed the establishment of Whaikaha and the national rollout of Enabling Good Lives, it has raised a number of concerns and provided recommendations accordingly. Some of the Committee's concerns and recommendations are particularly focused on disability support service providers; for instance, the Committee asks the Government to develop partnerships with disabled people's organisations and to ensure these organisations are appropriately resourced to participate in partnership across government portfolio areas.

Of particular interest to both disability support providers and the many disabled people and their families/whānau, is the UN recommendation to "a comprehensive deinstitutionalisation strategy to close all residential institutions, including group homes and residential specialist schools, and the lack of choice and control over living arrangements." It is evident from the

UN recommendation that the days of a NASC assessment driving a decision for residential placement over the informed choices of a disabled person, regulating their access to their own finances and limiting their own decision-making on matters impacting on their lives, are numbered. This presents an opportunity for service providers to be involved in the planning for those changes.

At NZDSN, we welcome the opportunity to work alongside the Government and relevant agencies in order to facilitate the implementation of the Convention and utilise the experiences and the expertise of disabled people and their support organisations in creating better outcomes for the disability community. We have begun that and other discussions about the changes that may be in store and how we work collaboratively to ensure pragmatic, well-defined, and appropriately funded services continue to support disabled people into the future. We would welcome the opportunity to formalise that work in collaboration with Whaikaha in order to fit in with the Ministry's wider thinking.