



Submission to the Social Services and Community Committee on the
Accessibility for New Zealanders Bill

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Thank you for the opportunity to make a submission on the Accessibility for New Zealanders Bill. The New Zealand Disability Support Network (NZDSN) supports the objective of the Bill to remove barriers and improve accessibility for disabled New Zealanders. However, we believe the Bill in its current form does not go far enough. Without major revisions the Bill falls short of recognising the rights of disabled people and ensuring that New Zealand Government meets its commitment to and obligations under UNCRPD. This submission will start with an introduction about the New Zealand Disability Support Network (NZDSN) and before addressing various issues and aspects of the proposed Bill.

About NZDSN

NZDSN is the national peak body that represents over 160 organisations that provide support services to disabled people, mainly through contracts with government. As a membership-based organisation, we lead and influence changes required to support an inclusive life for disabled people in Aotearoa New Zealand. We represent the Disability Support providers in discussions with various government Ministries and Agencies. We also represent/advocate for Disability Support providers in pay equity negotiations and other relevant issues. Due to our close connection with our members, we have a unique understanding of the issues that the disability community faces.

Background – accessibility legislation is long overdue

According to the most recent New Zealand Disability Survey in 2013, 24% of New Zealanders reported having one or more impairments¹. Hence, one in every four New Zealanders face barriers that affect many aspects of their everyday life. In a society that is not set up for people with impairments, there are numerous barriers that create disabling experiences for people with impairments. If these barriers are not removed, disabled people will be excluded from aspects of society that others enjoy freely. It should be noted that accessibility is beyond the physical environment, and existing legislation (such as Human Rights Act 1993, and Building Act 2004) is not sufficient and effective to remove barriers and discrimination against disabled people in New Zealand.

Currently, there are no enforceable legislation, standards, and guidance that guarantee the removal of barriers and provision of reasonable accommodation for disabled people. Hence, the disability community has been asking for accessibility legislation that ensures the rights of disabled people are realised and disabled people can participate in all aspects of social life on an equal basis, according to the New Zealand's commitment to UNCRPD.

¹ Statistics New Zealand. Disability Survey 2013.

The Proposed Bill - a paper tiger with no real teeth

Over 1.1 million disabled New Zealanders have been eagerly waiting for a meaningful and entrenched accessibility legislation that finally addresses the social barriers and accessibility issues once for all. However, the proposed Accessibility for New Zealanders Bill – in its current form – is far from what the disability community believes to be a comprehensive legislation and framework capable of bringing about real and long-standing social change in favour of disabled people.

While the Bill's purpose is "to accelerate progress towards a fully accessible New Zealand where disabled people have an equal opportunity to achieve their goals and aspirations", it is not clear *how* this will be achieved, who is responsible to make this happen, who can be taken accountable for this, or what will the required legal and policy frameworks be. The Bill, unfortunately, seems to be establishing a committee just for the sake of having an Accessibility Committee.

The Accessibility for New Zealanders Bill requires the Minister to report to Parliament the progress on accessibility issues identified by the Committee. This mechanism is similar to the current practice whereby the Minister reports to Parliament on the Disability Strategy. The proposed Bill does not have any provisions for the role of disabled people in addressing the reported issues, nor does it establish any requirements for a binding agreement between disabled people and the Minister about how accessibility issues will be addressed.

Therefore, in line with concerns raised by the disability community, NZDSN believes the proposed Bill is not capable of establishing the legal framework that is required to remove barriers and address accessibility issues in New Zealand. The Bill only requires recommendations to be made to decision makers; it does not require, for instance, the creation of enforceable standards, or any enforcement mechanisms in case recommendations are not implemented. We have summarised our views on specific aspects of the proposed Bill, alongside our recommendations in the next few sections.

The Accessibility Committee

The proposed Bill is primarily focused on establishing a committee. The Bill does not empower the proposed Committee to force widespread change or enhance accountability. For instance, according to the Bill, if the proposed Committee identifies an accessibility issue, it will report it to the Minister for Disability Issues. However, no mechanism is proposed in the Bill to follow up on these "accessibility issues" and making sure they are adequately addressed.

Similarly, the proposed committee is tasked with a range of functions and duties that can be summarised as "providing advice, making recommendations, and reporting".

The committee – according to the proposed Bill – does not seem to have any obligation toward accessibility issues or any power to implement or influence any accessibility practices. In other words, a lot of accessibility issues will be funneled to the proposed Committee for no tangible benefit to disabled people, something that could actually slow down the progress in removing barriers.

Recommendation: The Bill should be expanded to empower the committee with a range of powers that are required to remove barriers and improve accessibility.

Lack of enforcement capacity

The most significant weakness of the proposed Bill is arguably the lack of any provisions for enforceable standards, mandates, or any other regulatory body or function. The framework predicted in the current Bill only allows for recommendations to decision makers, without anything to enforce, any enforcement mechanism, or an enforcement agency. Hence, the Bill is unable to seriously begin the eradication of ableism and disablist practices in Aotearoa.

Without an enforcement capacity, the Bill relies on political will for any progress, and for disability issues to be on the Government's work programme. With a lack of representation at the Parliament, the Cabinet room, or even the caucus room, disabled people seriously doubt the current Bill's capacity to influence barriers and accessibility matters².

Recommendation: The Bill should be revised to include standard-setting, enforcement capacity, and any other regulatory requirements to ensure barriers are removed and accessibility is increased.

Lack of monitoring capacity

Despite intending to remove barriers and increase accessibility, the Bill is silent about any deadline or process for progress towards removal of barriers and increased accessibility³. In other words, there is no clarity in the Bill about how to make progress, and more importantly, how to monitor or and measure progress. As a signatory to the UNCPRD, New Zealand is required to adopt accessibility standards, to adhere to the principles of Universal Design, and to progressively remove barriers and improve the accessibility. This, in turn, requires the creation of enforceable standards, and to

² Janathan Masen (2022). Transformational change. Let's pull the Accessibility for New Zealanders Bill and go for a disability rights act instead. <https://mosen.org/nzdisabilityrights/>

³ Olivia Kelly. (2022). Auckland Disability Law. <http://aucklanddisabilitylaw.org.nz/wp-content/uploads/2022/06/Accessibility-Legislation-An-Initial-Critique-Auckland-Disability-Law.pdf>

measure progress towards implementation of those standards. The proposed Bill, unfortunately, falls short of this.

Recommendation: The Bill should be revised to incorporate monitoring capacity in order to ensure the progress is being made in removing barriers and improving accessibility according to the Government's commitment and obligations under the UNCRPD.

Lack of a comprehensive approach to accessibility

Removing barriers and increasing accessibility is far beyond the built environment. Disabled people face a broad range of obstacles such as physical, legal, information, communication, attitudinal, technological or other barriers⁴. However, the Bill does not show any interest in establishing firm mechanisms to remove barriers and improve accessibility in the areas of housing, transport, information, communications, and public building accessibility. In addition, the Bill is silent about ensuring services and facilities are fully accessible for disabled people, based on principles of Universal Design and the provision of reasonable accommodation. Therefore, the Bill will inevitably fail in providing accessibility in all aspects of social life for disabled New Zealanders.

Recommendation: The Bill should be expanded to include the missing elements of a barrier free and accessible society that allows for participation of disabled people. Some of the critical missing elements include employment, housing, education, wellbeing, buildings and places, information, technology, facilities, services, and transport.

Recommendation: The Bill should require all obligated parties to remove existing barriers, not to create new barriers, and become fully accessible to all disabled people by providing accessibility in all areas of life.

Lack of dispute resolution

The Bill does not have any provisions for complaints and dispute resolution functions. This is in spite of the Government's acknowledgment of the fact that the existing complaints mechanism under the Human Rights Act 1993 are "unlikely to lead to systemic change⁵" when it comes to disability discrimination and reasonable accommodation. Accordingly, the proposed accessibility framework does not have the ability to receive and address complaints about barriers, discrimination, or breaches

⁴ Access Matters. Principles for accessibility legislation https://www.accessmatters.org.nz/the_accessibility_act

⁵ Cabinet Paper. Accelerating Accessibility in New Zealand (29 September 2021)

of the legislation. Hence, the proposed Bill does not provide for addressing the current gap in resolution of complaints about systemic barriers.

Recommendation: NZDSN recommends the Bill be underpinned by effective complaint and disputes resolution mechanisms that allow receiving and addressing complaints about systemic barriers and breaches of the legislation.

Lack of reference to Enabling Good Lives (EGL)

The United Nations CRPD Committee very recently praised New Zealand for the national rollout of Enabling Good Lives principles. EGL shares the same purpose with the proposed Bill: removing barriers that prevent disabled people from enjoying a good life on an equal basis with others. EGL is about giving disabled people choice and control over their lives and supporting them in living the lives they aspire. With this new approach to disability as well as the undergoing transformation of disability support services, the disability community rightfully expected to see EGL principles incorporated in the proposed accessibility Bill. However, there are no references to EGL in the Bill.

Recommendation: NZDSN recommends that the Bill acknowledges EGL principles, incorporates EGL in its provisions, and provides for the role of EGL in the proposed accessibility framework.

Conclusion and overall recommendations

The proposed Bill falls significantly short when compared to similar legislations from other countries, for instance, the Americans with Disabilities Act (ADA), which was enacted in 1990. While there is still a long way to go, attitudes towards, and expectations of disabled people have advanced markedly in over the past three decades. Aotearoa's disability community rightfully expects an accessibility legislation in 2022 to go far beyond what ADA has achieved with its successful advocacy for disabled Americans. Unfortunately, there are serious doubts in the ability of the proposed Bill to do so.

NZDSN believes the proposed Bill is not capable of removing barriers and improving accessibility for disabled New Zealanders. Should the government decide to continue their current approach with the accessibility legislation, the Bill needs major revisions. For instance, the Committee needs to be invested with powers of standard-setting, investigation, enforcement, monitoring, and complaint and dispute resolution mechanisms. To do so, the proposed structure of the Committee – advisory board – would not be appropriate. An independent Crown Entity – or a similar structure – would be a better option for a committee that has the required power to implement change.

NZDSN believes that in order to remove barriers and address accessibility issues, we need an Act based on quality rights-based legislation that recognises the UNCRPD. A rights-based approach is necessary as it allows the inclusion of factors that are difficult to incorporate into other approaches to accessibility; for instance, rights of disabled people to migrate to New Zealand without being subjected to discriminatory immigration policies based on having an impairment.

Furthermore, any proposed accessibility Act and accessibility framework should reflect Te Tiriti o Waitangi, and the Crown's obligations⁶. Not only the final products should uphold Te Tiriti, but also the engagement and co-design processes must be reflective of the Māori experiences and Māori leadership practices.

⁶ Warren Forster. Making New Zealand Accessible. <https://forster.co.nz/accessibility-report>