

4 November 2022

Committee Secretariat
Social Services and Community Committee
Parliament Buildings
Wellington

via online form

Tēnā koutou,

Auckland Disability Law Submission On Accessibility for New Zealanders Bill

- 1) Please find below the submission of Auckland Disability Law on the Accessibility for New Zealanders Bill (the Bill).

Introduction

- 2) Auckland Disability Law supports the purpose of the Accessibility for New Zealanders Bill to accelerate progress towards a fully accessible New Zealand where Disabled People, tāngata whaikaha, their families or whānau, and others with accessibility needs have an equal opportunity to achieve their goals and aspirations. However, as the Bill stands, it lacks real force and real effect. The positive changes that should flow from it for the benefit of society, and in particular for Disabled and Deaf People, are not going to eventuate. For this reason, Auckland Disability Law calls for the Bill to be rewritten.
- 3) Auckland Disability Law is a community law centre. We are the only community law centre in Aotearoa New Zealand which solely provides legal services and activities to Disabled and Deaf People around their disability-related legal issues. This includes client casework, legal education, and law reform work. We have experience in advising and assisting Disabled People, for whom the current accessibility system often fails to protect and provide access to justice.



- 4) This submission addresses the issues with the current Bill. It recommends changes to the Bill that would better protect Disabled and Deaf People's right, and better align the proposed Act with both New Zealand human rights law and the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).¹
- 5) We support the submission made by the Disabled Persons Assembly NZ (DPA) and add to their submission.

We support the intent of the Bill and its objectives of:

- Growing knowledge and awareness about the importance of addressing accessibility.
- Providing a clear, consistent and enduring methodology for addressing systemic accessibility barriers whilst growing accessibility practices for the future.
- Enhancing leadership, accountability and co-ordination to prevent and remove accessibility barriers.
- Representing the voices of disabled people, tāngata whaikaha, their families or whānau, and others with accessibility needs.
- Being flexible and progressive.
- Giving effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

We ask for the Bill to be rewritten, to better protect Disabled and Deaf People

6. The New Zealand Government ratified the UNCRPD in September 2008, without reservations.² We submit that the Bill needs to be rewritten through a genuine process of co-design with disabled people and their representative organisations, to meet Aotearoa New Zealand's UNCRPD obligations. In the Concluding Observations on the Combined Second and Third Periodic Reports of New Zealand, the UNCRPD Committee on the Rights of Persons with Disabilities states, in relation to Accessibility (Article 9), that:³

“15. The Committee is concerned about:

¹ United Nations Convention on the Rights of Persons with Disabilities 2515 UNTS 3 (signed 30 March 2007, entered into force 3 May 2008).

² Ministry of Justice “Convention on the Rights of Persons with Disabilities” <www.justice.govt.nz>.

³ *United Nations Convention on the Rights of Persons with Disabilities Concluding Observations on the Combined Second and Third Periodic Reports of New Zealand* UN Doc CRPD/C/NZL/CO/2-3 (9 September 2022) at 15-16.



...

(d) Reports from organisations of persons with disabilities that the Accessibility for New Zealanders Bill, currently before Parliament does not contain enforcement mechanisms, may not cover private entities or local government, lacks standard-setting and decision-making bodies, and lacks obligations to make tangible changes within fixed time frames.

16. Recalling its [general comment No. 2 \(2014\) on accessibility](#), the Committee recommends that the State party:

...

(d) Establish a co-design and co-production process with organisations of persons with disabilities to address concerns about the Accessibility for New Zealanders Bill, following release of the Select Committee's report."

- 7) Whilst the Bill provides a framework and leadership structure for the identification and removal of barriers, the framework needs to be more robust and the Accessibility Committee more effective in order for the Government to meet its UNCRPD obligations to take appropriate measures to ensure Disabled People have equal access to all areas of life.
- 8) Whilst Auckland Disability Law supports the establishment of the Accessibility Committee, we recommend it should not just be a component of the leadership decision-making process, but a senior partner with additional powers. As the Accessibility Committee will be led and operated by Disabled People, it is the appropriate body to hold these functions.
- 9) Through our experience and direct communications with our disabled community, we consider that efforts to address various barriers are unfortunately fragmented. There has been a heavy reliance on individual agencies such as Auckland Disability Law to identify such barriers and look to avenues for their removal.
- 10) The Accessibility Committee that is being established through the Bill has its chief function of being an advisory committee to the Disability Issues Minister, and is also meant to provide a report on an annual basis. Even though it is positive that the Committee will have its members from the disability community, recommendations to the Minister may not suffice.



- 11) With the introduction of the Accessibility Committee, we are worried that the disabled community may get caught up in bureaucratic and ineffective processes. Our core concern is that the Accessibility Committee would not have the powers that it needs to be actually successful.
- 12) It is submitted that there is an absence of an independent body set up for bringing up and looking into complaints. This is something that the disabled community has been waiting such a long time for. In addition, the absence of enforcement mechanisms in the Bill demonstrates that matters and complaints which merit enforcement will not be able to be addressed with the appropriate level of seriousness.

13) Auckland Disability Law recommends powers of investigation

The Government considers that within the framework, part of the role of the Accessibility Committee is to assist with the identification of systemic barriers. At this stage the extent of the Accessibility Committee's power to identify and investigate barriers is unclear. It seems, however, that in order to undertake this effectively, a proactive power of investigation is required.

The ability to investigate is central to many agencies in existing law. The Accessibility Committee could be given the ability to undertake its own investigations into systems and domains. These investigations could be conducted on its own initiative, similar to the powers held by the Health and Disability Commissioner and the Privacy Commissioner.

Investigations could also be commenced as a result of notifications. The Accessibility Committee would need to be appropriately resourced and authorised to undertake investigations. Although unlikely to be required in most circumstances, this may require specific powers to request information. Again, this is similar to powers held by the existing Commissioners. Information-sharing abilities across the public service may also be required.

14) Auckland Disability Law recommends wide-ranging and more clearly-defined powers to request information

The success of investigations carried out by the Accessibility Committee will depend on whether the Committee holds effective powers to request information. Auckland Disability Law supports the proposed introduction of powers to request information, but considers that there is room to improve clauses 18-21 of the Bill.



Clause 18(1) empowers the Accessibility Committee to make requests to specified entities for the supply of “any information that the Committee considers necessary or desirable for the purpose of enabling it to perform its functions under section 15(1)(c) and (d)”. However, the Bill does not include a definition of “information” (except to exclude certain types of information). Clauses 20 and 21 of the Bill respectively refer to the Official Information Act 1982 as one of several grounds for refusing to supply information or for publishing or disclosing information. This indicates that the meaning of “information” is intended to be wider than the definition of “official information” in the Official Information Act. How much wider is unclear.

Auckland Disability Law is concerned that latent ambiguity in the meaning of “information” could result in specified entities refusing to supply material which is not regarded as “information”. For example, where a specified entity holds raw data which is relevant to an information request, it is unclear whether the specified entity would be under an obligation to supply that raw data. Powers to request the supply of raw data would enhance the ability of the Accessibility Committee to understand the root causes of accessibility barriers and better perform its functions.

Where information requested by the Accessibility Committee does not exist, it is unclear whether the Committee would have powers to require the specified entity to proceed to collect that information. Auckland Disability Law expects that many specified entities do not currently collect comprehensive information on accessibility barriers relevant to their functions. Powers to require the reasonable collection of information will likely be necessary for the Accessibility Committee to comprehensively identify the accessibility barriers which exist in the first place.

While Auckland Disability Law suggests that the powers to request information could be more clearly-worded, it is crucial that these powers are not diluted from their current form. Any amendments to the Bill should maintain the wide powers to request the supply of information.

15) Auckland Disability Law recommends notification

Investigations could also be undertaken as a result of individual complaints and notifications. Although the Government envisages the removal of systemic barriers, it is nonetheless important that individuals can alert the Accessibility Committee to barriers through a formal notification process. There would need to be a robust analysis method to allow for identification of systemic issues from individual notifications. Notifications could



be accepted throughout the framework process, from initial identification of barriers through to the final monitoring of outcomes.

16) Auckland Disability Law recommends standard setting

The Bill is lacking in mandates and clear standards around accessibility. A clear power for the Accessibility Committee to develop standards could be incorporated in a way that would address Government concerns about prescription. Standards would not have to be the default option within a domain but could be simply one of the available tools. Standards would not be an appropriate option for every domain.

The Accessibility Committee could be given the power to carry out robust investigation and consultation processes that lead to development of standards, depending on the specific requirements of the domain in which the barrier exists. Standards could be one of a suite of measures to address barriers, and could be non-enforceable, enforceable, or mixed. Non-enforceable standards could become enforceable over a period of time, allowing the entities subject to the standards sufficient time to prepare.

Standards as an option may encourage entities to engage with the framework in a way that other options may not. With the ability to set standards and timelines for enforceability built into the framework, decision makers may take recommendations more seriously.

The power to develop standards could sit with the Accessibility Committee, but the final decision over timeframes and enforceability could reside with the Disability Issues Minister. Standards – even as one possible tool - would ensure that the framework has a measure of regulation.

17) Auckland Disability Law recommends an expanded definition of “specified entity”

Auckland Disability Law regards the definition of “specified entity” as too narrow. The definition as it stands undermines the statutory purpose of the Bill, in progressing towards a fully accessible New Zealand. Auckland Disability Law considers that the definition of “specified entity” should extend to any entity where there is a legitimate public interest in the removal of accessibility barriers.



As a starting point, Auckland Disability Law recommends that the definition of “specified entity” should extend to:

- a) council-controlled organisations and council organisations as defined in s 6 of the Local Government Act 2002;
- b) crown entity companies as listed at Schedule 2 of the Crown Entities Act 2004;
- c) school boards as defined in s 7(1)(e) of the Crown Entities Act 2004; and
- d) tertiary education institutions as defined in s 7(1)(e) of the Crown Entities Act 2004.

18) Auckland Disability Law recommends a complaint mechanism and dispute resolution process

The Bill in its current form reveals insufficiencies with regard to complaints and related processes. Essentially, Disabled People will have no recourse under this Bill for the laying of complaints. No independent body is being set up to provide an avenue for complaints.

It follows that due to this apparent lack of complaint mechanisms, there would be no alternative dispute resolution process or remedies available under this Bill. The introduction of a dispute resolution process could also bring about actual accountability.

The complaints mechanisms under the Human Rights Act 1993 will remain available for individual complainants. These mechanisms allow complaints about disability discrimination and reasonable accommodation in a specified range of contexts. Any dispute resolution process under the new legislation would need to complement this existing human rights process.

Receipt of complaints about systemic barriers and non-adherence to barrier removal could be incorporated into the role of the Accessibility Committee. Dispute resolution of these complaints could be a further power for the Accessibility Committee.

The legislation could allow the Accessibility Committee to deal with and resolve disputes in a variety of ways. Existing legislation provides examples of both a referral system for complaints and a settlement function. Complaints and dispute resolution options would also act as notifications, providing valuable information to contribute to the framework. There could be a ‘stop’ function on a complaint until it was dealt with by the framework system.



Careful consideration would have to be given to next steps if the outcome from the Accessibility Committee dispute resolution process was unsuccessful. If recourse to the Human Rights Review Tribunal was made available, for example, remedies would have to be designed to ensure that the work under the framework was not constrained by Tribunal orders. This mechanism would encourage resolution of complaints at a relatively low level. It would begin to address the current gap in resolution of complaints about systemic barriers and would feed into the framework process. Over time, as the envisaged framework addresses barriers, the complaints mechanism and dispute resolution service may be utilised less often.

19) Auckland Disability Law recommends the use of monitoring and system learning processes, with the publication of Accessibility Committee recommendations

The current framework appears to incorporate a monitoring process, feeding into a system learning function. As with the investigatory role of the Accessibility Committee, both elements would be assisted by a wide-ranging and more clearly-defined power to request information.

The Bill states that the Chief Executive must publish the Government's response to the Committee's recommendations on an Internet site maintained by or on behalf of the Ministry of Disabled People. Auckland Disability Law submits that in addition to this, all of the Accessibility Committee's recommendations should be published on this same Internet site at the time of recommendation. While the Government's response to the recommendations is public, this additional transparency is needed to identify whether the system is working.

20) Auckland Disability Law recommends a shorter period for review

As the Bill stands, Auckland Disability Law submits a five-year review process is too long. The Bill does not go far enough to bring about the changes needed to comply with the UNCRPD. We submit it should be a three-year independent review process. There is the real risk that this Bill as it currently stands could make the situation worse for Disabled People. There may be bottlenecks caused by agencies referring matters on to the Accessibility Committee that they would have previously resolved themselves. The sheer numbers referred on, plus the fact that the Accessibility Committee has no powers to resolve these referrals, may result in matters taking much longer to be progressed.

If the Bill is adopted in its current form, then the review process must be a detailed report into whether the rights of Disabled People are being improved through the operation and



effectiveness of the Act. This report needs to provide a detailed assessment of how well it is tracking towards achieving its outcomes, with a clear pathway to resolve any issues.

21) **Auckland Disability Law recommends enforcement**

Many agencies do not have a mandate to enforce accessibility. As above, a power to design standards may be required. If made mandatory, standards would require enforcement functions to be built into the system. Breaches could follow the Accessibility Committee's complaint and dispute resolution process. Lack of resolution via this process could open access to the judicial system.

The Accessibility Committee process could act as a 'gateway' for enforcement action in the courts, similar to the Privacy Commissioner and Health and Disability Commissioner systems. These systems also incorporate the use of an independent Director's office to take cases to tribunals. A similar office could undertake the same function in this system, ensuring the Accessibility Committee remained at arm's length from direct enforcement action.

Conclusion

22) At Auckland Disability Law we look forward to the rewriting of this Bill in co-design with disabled people, which is a step toward greater accessibility, providing a framework and leadership structure for the identification and removal of barriers. Making the framework more robust and the Accessibility Committee more effective would further the Government meeting its UNCRPD obligations to take 'appropriate measures' to ensure Disabled People have equal access to all areas of life.

23) Thank you for taking the time to read through this submission.

24) We wish to speak to our submission. We look forward to hearing from you in order to set down a date and time for this to take place.

