



Submission
of
National Disabled Students’
Association
on
Accessibility for New Zealanders Bill

Contact
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To	Social Services and Community Select Committee
From	NDSA Charitable Trust
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Subject	Accessibility for New Zealanders Bill

1. Introduction

1.1 The National Disabled Students' Association (NDSA) is pleased to make a submission on this important kaupapa. Our organisation supports the legislative action to address the accessibility barriers that prevent disabled people, tāngata whaikaha, their whānau, and others with accessibility needs from self-determining. Self-determination is close to NDSA's kaupapa towards equitable education, and to this end, the ambition to grow accessibility practices in New Zealand is crucial.

1.2 NDSA believes that New Zealand should be a place where every person, of every ability, and identity is able to fully participate in a society that recognises and provides for everyone's access needs. We believe it is not only possible but essential that New Zealand is fully accessible by 2035, and we welcome the introduction of a legislative framework to enable this. While we are generally supportive of the Bill, we outline amendments that are required if the Bill is to make Aotearoa New Zealand progressively realise full accessibility.

1.3 For the purpose of this submission ‘barriers’ will be defined as per the Government’s Regulatory Impact Statement (RIS) on accessibility, in relating to “all key areas of life, such as the built environment, transportation, information, services, education and health.”¹ NDSA stresses that this scope was defined based on the likely jurisdiction of accessibility legislation. This description is not comprehensive of all barriers experienced by disabled people and is opted for the purpose of this submission and not with the intention of minimising barriers beyond definition.

1.4 NDSA as a “diverse and complex phenomenon, which reflects the interaction between an individual’s impairment and the barriers of their environment. This definition includes, but is not limited to, physical impairment, mental health and psychological conditions, learning and/or sensory forms of impairment, neurodiversity, chronic illness, individuals within the Deaf community, etc”.

1.5 The breadth of this definition encapsulates NDSA’s diverse membership. While not specific to disabled students, we know that disabled students are impacted disproportionately by the inequities that arise as a result of inaccessibility, alongside students belonging to other minority groups such as Māori, Pasifika, Refugees and members of the rainbow community.

1.6 This submission should also be read with an intersectional lens. NDSA knows that the accessibility issues facing disabled students are felt even more strongly by tāngata whaikaha, and Pasifika disabled students, as well as disabled refugees and members of the rainbow

¹ Ministry of Social Development, *Regulatory Impact Statement: Accelerating Accessibility (RIS)*, 3.

community. We know that the mentioned groups experience poorer outcomes as both disabled and of minority group identity.²

1.7 Given the cross-cutting and compounding nature of accessibility issues our, organisation supports and tautoko the submissions made by other community organisations.

1.8 Past this consultation process, NDSA is interested in being involved in further consultation and work to realise an accessible Aotearoa New Zealand 2035.

1.9 NDSA do not believe it necessary to be heard by the Committee on this submission. We are able to facilitate this in person or via video conference and ask that the Social Services and Community Select Committee contact us to arrange this.

2. Background

2.1. The National Disabled Students' Association is the representative body for disabled taurira in Aotearoa. We were established in 2021 in response to the poor outcomes disabled people face in tertiary education, exacerbated by COVID19. As a nonpartisan national body, we aim to challenge the collective barriers facing taurira within the tertiary space.

2.2. NDSA is still building its membership. While we build our local members, we aim to diligently represent the disabled student population to the best of our ability. We do this

² CCS Disability Action, State of wellbeing and equality for disabled people and whanau 2021; King, Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology, 69–70.

through discussion with disabled learners, disabled persons' organizations, and other national student associations. Our current standing members are:

- Victoria University Disabled Students' Association (VDSA)
- Otago University Disabled Students' Association (ODSA)
- Disability Union at AUT
- Waikato University Disabled Students' Association (UoWDSA)
- Weltec/Whitireia Disability Rep
- University of Canterbury Disabled Students' Association (UCDSA)

2.2. In addition to our formal members, we have connections with informal disabled learner community groups and networks such as at Massey University, Auckland University, and throughout the Te Pūkenga network.

2.3. This submission is primarily based on our own expertise. It is also informed by the voices of our members as well as the voices of disabled learners from TEOs without disabled learner organizations.

3. *Submission guide*

This submission will proceed as follows:

3.1 Firstly, we will illustrate the necessity for robust accessibility legislation on account of stories told in NDSA's campaign for accessible education: "Why I skipped class".

3.2 Subsequently, our organisation outlines the areas of the Bill that we support. This pertains to approval of:

- a) The breadth of the framework's approach on entities
- b) The introduction of an Accessibility Committee
- c) The role of te Tiriti o Waitangi in the Bill
- d) The role of review regarding the necessity for accountability.

3.2 Finally, NDSA has identified areas of the legislation that need to be improved if an accessible and inclusive Aotearoa is to be realised. These recommendations take the following structure:

- a) Preliminary recommendations on the breadth framework's approach on entities and review frequency
- b) Accessibility standards and the powers required by the committee;
- c) The establishment of a crown regulator to monitor the compliance of specific entities;
- d) A barrier notification system;
- e) A dispute resolution process so that accessibility can be investigated and enforced

4. NDSA's *why I missed class* campaign

4.1 Libby's story



"I miss class because I have a connective tissue disorder called Hypermobile Ehlers Danlos Syndrome. I also have Endometriosis, POTS (with correlating fatigue), and chronic pain. To top it off, I work part-time to support myself as I cannot afford healthcare and my support dog without it. Without lecture recordings I would be lost, and University would simply not be an option for me."

– Libby

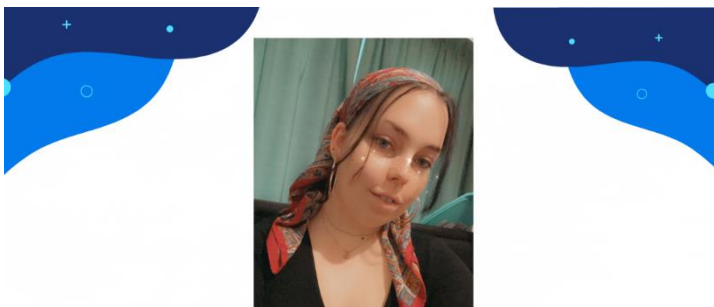
#whyImissedclass



Guarantee students universal access to lecture recordings.



4.2 Nikki's story



"Due to being chronically ill, I end up in the hospital quite regularly, and that impacts my ability to attend lectures in person. Furthermore, I am an individual that uses a wheelchair, and many of my lectures are in buildings that are not accessible to me. I tend to only be able to watch content that has been recorded."

– Nikki

#whyImissedclass



Guarantee students universal access to lecture recordings.



4.3 Alice's story



"...Lecture recordings have increased my freedom, and put me at the same level as my peers."

– Alice



4.4 Accessibility is crucial for the disabled students we represent to live independent lives. This is exemplified by the stories of Libby, Nikki and Alice. These three students missed class because of inaccessible information, inaccessible urban form and an inaccessible New Zealand. As Copresident of our association, Alice, asserts accessibility enables disabled students to live the lives they want.

5. Areas of Support

5.1 NDSA believes that a broader scope for removing accessibility barriers will result in barrier removal with higher efficacy. For this reason, we are in support of the Bill's scope framing application to the Crown, Government departments, departmental agencies, statutory entities, Veteran's Affairs and local authorities.

5.2 NDSA welcomes the creation of an Accessibility Committee (Committee). This position is found on the Committee's mandate to provide advice and recommendations to the designated Minister (Minister) on accessibility barriers and practices and the prevention or removal of those barriers by specified entities, and to assess and report on progress made by specified entities in implementing the Committee's recommendations. We support providing the Committee the power to request relevant information from specified entities in order to assess and report on progress.

5.3 We support legislative and policy change that recognises the role of te Tiriti o Waitangi and the importance of striving towards equitable outcomes for tāngata whaikaha and their whānau. The insight of scholar Merata Kawharu pertaining to the importance of clear duties on the crown to uphold te Tiriti o Waitangi, underline the importance of this policy position.³ Accordingly, We welcome the inclusion of clause 5, providing for te Tiriti, the creation of a Māori nominations panel in clause 13, and the duty on the Committee in clause 16(1)(a) to give effect to the principles of te Tiriti and consider tikanga and te ao Maori in exercising its functions.

5.4 NDSA believes that effective development and implementation of public policy is essential for enhancing and improving access to goods, services and programmes not

³ Kawharu, Kaitiakitanga, a Maori Anthropological Perspective of the Maori Socio-environmental Ethic of Resource Management, 349-370.

available to those with disabilities, and supports the ability of the Committee to influence those through the powers above.

5.5 We applaud this framework for recognising that the environment in which accessibility barriers and obstacles exist is constantly evolving. Further, NDSA approve of the addressal given to the legislative framework requiring a review of the Act under clause 25. These considerations will ensure that the legislature evolves with the evolution of barriers and obstacles.

5.6 Meaningful change for disabled people, tāngata whaikaha and their whānau will not occur without effective legislative and Government measures that provide for this. NDSA supports a Bill that provides accountability to specified entities to enable this.

6. *Preliminary Recommendations*

6.1 Further to our submission above concerning efficacy and breadth, NDSA would like to caveat to say that the Bill as proposed only applies to specified entities. These include Government departments, departmental agencies, statutory entities and local authorities. NDSA believes that comprehensive accessibility barrier removal requires the scope of the Bill to be extended to persons conducting a business or undertaking (**PCBUs**) as defined under the Health and Safety at Work Act 2015. The necessity for comprehensive scope is found on Government commenting that the current system is “fragmented, slow, hard to

measure, and hasn't led to the credible policy, system design and service delivery needed to achieve an accessible society.”⁴

6.2 As discussed above, we support mandatory review of the Act. However, we believe that a three-year review of the act will allow for more responsive change than the current five-year period. This position is in line with the recommendations of Regulatory Impact Statement (RIS).⁵

6.3 To ensure timely accountability to Parliament, we recommend amending clauses 17(3) and 25(4) to provide that the Minister present the annual monitoring report and report on the review of the Act to the House of Representatives as soon as is practicable “and no later than 20 working days after receiving the report.”

6.4 NDSA also notes that the Committee's functions and duties, as outlined in subpart 2 of the Bill are extensive and may be onerous given that Committee members will likely be part of other groups or organisations with additional commitments. We note that support and adequate resourcing of the Committee will be essential to ensure the Bill achieves its objectives, as Olivia Kelly of Auckland Disability law stresses.⁶

⁴ Cabinet Paper. Accelerating Accessibility in New Zealand (29 September 2021) at 1

⁵ Ministry of Social Development, Regulatory Impact Statement: Accelerating Accessibility, 42; Cabinet Paper (n 4) at 11.

⁶ Olivia Kelly. Aotearoa New Zealand's Proposed Accessibility Legislation: An Initial Critique, 9.

6.5 NDSA suggests that the definition of “disabled” in clause 11(2)(a) of the Bill should be expanded to include all individuals with access needs. Accessibility issues are not confined to the experience of physical disability as the legislature currently frames. While a conservative estimate of disabled New Zealanders is at a quarter of the population, individuals in the deaf and neurodivergent community, for example, experience accessibility barriers but may not identify with disability.⁷ Furthermore, mothers with prams, delivery drivers and older generations all encounter accessibility issues. Poignantly, 16% of New Zealanders are over the age of 65 as part of New Zealand’s ageing population, demonstrating the growing necessity for robust accessibility legislation.⁸

6.6 The New Zealand Institute of Economic Research (NZIER) highlights the potential for robust accessibility legislation to enliven the independence of New Zealanders of all access needs. The Institute modelled the impacts of a change in labour force participation rates where unemployment rates of disabled people and non-disabled people populations are equalized—an ambition that can be realised under robust accessibility legislature.⁹ The modelling shows a transfer of 14,000 people from Supported Living and Job Seeker payments into the workforce, with an annual gross fiscal saving to the Government of \$270 million and a reduction in future welfare liability over 10 years of approximately \$3 billion.¹⁰ The independence of all New Zealanders benefits from this emerging market along with the independence of newly employed individuals with access needs.

⁷ Kermit, Deaf or deaf? Questioning alleged antinomies in the bioethical discourses on cochlear implantation and suggesting an alternative approach to d/Deafness, 159 – 174; Moloney, How can a chord be weird if it expresses your soul, 135 – 148; Wheeler, Syndrome or difference: a critical review of medical conceptualisations of Asperger’s syndrome, 839 – 851; Stats NZ, 2013 Disability Survey, table 5.01.

⁸ IBID.,

⁹ NZIER “Valuing Access to Work” 2017.

¹⁰ IBID.,

7. Accessibility Standards

7.1 NDSA supports the creation of meaningful accessibility standards that pursues an environment that is accessible for all New Zealanders, promotes awareness, and ensures that services meet the needs of disabled people and treat individuals with respect and independence. We agree with the Legislation Drafting Advisory Committee that laws should set out what people can and cannot do rather than merely setting out aspirational goals.¹¹

7.2 We recommend granting the Committee the power to develop both binding and non-binding standards for identified domains (physical and digital environments). The creation of standards should be subject to a consultative process prescribed by the Bill, which should include consultation with Māori, relevant organisations representing disabled people, tāngata whaikaha and their whānau, specified entities and any other stakeholders the Committee considers relevant. The standards may then be established via regulations made under the Act, with failure to comply with binding standards constituting an offence. NDSA recognises that not all sectors are amenable to binding standards, and believes that allowing for the Committee to develop standards for phased implementation via regulation will allow for a robust process of developing, testing, learning and adjusting, which will ensure standards are not onerously imposed. Though NDSA stresses that standards are crucial. Government reflect that “Compared to nondisabled people, disabled people face disproportionately greater barriers to accessing products, devices, services, or environments. There continues to be major areas of inaccessibility and uneven compliance with voluntary accessibility

¹¹ Ministry of Social Development, Regulatory Impact Statement: Accelerating Accessibility, 6.

standards.”¹² Therefore, standards are paramount if a fully accessible, inclusive Aotearoa is to be realised.

7.3 Further, NDSA recommends that the Committee be empowered to make binding recommendations to specified entities as part of its progress assessment process. We also recommend that the Minister be statutorily required to take into account the Committee’s recommendations when directing the Ministry of Disabled People or otherwise undertaking policy decisions. The framework presently envisages that only ‘recommendations’ for solutions be made to decision makers.¹³ Therefore, the accessibility and inclusivity of Aotearoa are contingent on the goodwill of entities responding to recommendations. This omission highlights the necessity for the Committee to be vested with the ability to set standards and timelines if decision-makers are to take accessibility seriously.

7.4 Currently, the Bill does not provide any obligations on specified entities (including on PCBU’s). NDSA recommends that, in addition to standards and recommendations, specific statutory obligations be imposed, including a duty to identify barriers, a requirement to keep records, and to provide accessibility plans.

¹² Olivia Kelly. Aotearoa New Zealand’s Proposed Accessibility Legislation: An Initial Critique, 9.

¹³ NZDSN (n 25) at 3.

8. Establishment of a Regulator

8.1 NDSA supports Cabinet’s decision in 2020 that accessibility legislation sit alongside regulatory systems, and the Minister for Disability Issues’ acknowledgement that officials should develop a legislative approach to enforceable standards to be incorporated into the legislative regime.¹⁴

8.2 To give effect to this, we recommend establishing a regulator to monitor the compliance of specified entities. This regulator should be a Crown entity with powers of investigation and enforcement, including the ability to accept enforceable undertakings.¹⁵ The significance of a Crown regulator is the entity’s partisan independence. This non-partisan autonomy ensures that accessibility and inclusivity are assured as a long-term pursuit of New Zealand, giving confidence for private sector investment as Warren Forster and colleagues of the ” New Zealand Law Foundation emphasize.¹⁶

8.3 Concerning powers of investigation NDSA recommends that this regulator should hold powers similar to the Health and Disability Commissioner and the Privacy Commissioner Health and Disability Commissioner. The mentioned commissioners elucidate an investigatory approach on systemic issues working in practice.¹⁷

¹⁴ Ministry of Social Development, Regulatory Impact Statement: Accelerating Accessibility, 30; Access Alliance (n 11)

¹⁵ IBID.,

¹⁶ Forster et al., Let’s make Aotearoa New Zealand Accessible for all Designing an effective legislative framework for accessibility, 1-160.

¹⁷ Act 1994, s 14(1)(e) and Privacy Act 2020, s 17(1)(i)

8.4 We note that the Human Rights Act 1993 (HRA), which prohibits discrimination on the basis of disability, does little to practically address discrimination. Further, it is a complicated and costly process to address discrimination through the Human Rights Commission with its tendency towards confidential settlement of disputes. Presently the HRA settlement process misplaces the burden on the individual, and where the HRA addresses issues of discrimination, the legislation fails to create systemic change, dealing with the symptoms and not the cause.¹⁸ We recommend that the Bill provide the regulator to bring an action for infringement against an infringing entity. We note that the power to issue fines is typically reserved for the courts. NDSA recommend this provision to reflect New Zealand's duty to remove barriers under the United Nations Convention on the Rights of Persons with Disabilities.¹⁹

8.5 Where initial enforcement processes are ineffective at remedying the infringement, the Bill should provide the regulator with the ability to bring an action against the infringing entity to the District Court or High Court, similar to the enforcement mechanisms under Part 6 of the Commerce Act 1986.²⁰

¹⁸ Olivia Kelly. Aotearoa New Zealand's Proposed Accessibility Legislation: An Initial Critique, 6.

¹⁹ Convention of the Rights of Persons with Disabilities (CRPD), article 9

²⁰ Commerce Act 1986 Part 6

9. Barrier Notification System

9.1 To ensure that Aotearoa New Zealand is barrier-free by 1 January 2035, it is paramount the Bill provides for a barrier notification system. This system will enable the regulator to set processes, plans and systems to adequately record barriers identified through notification.²¹

9.2 This notification system should require the regulator to provide an anonymous mechanism through which an individual can notify the regulator of a disabling experience, that it can then investigate. Further, there should also be a duty on specified entities to keep a record of each disabling experience for at least five years.

9.3 This system must also include a duty on specified entities to notify and remove barriers under their control.

10. Dispute Resolution Process

10.1 Given the Bill, as currently drafted, does not provide for any dispute resolution or enforcement, we advocate for a regulator to bring an action against a specified entity (as the Commerce Commission is able). This recommendation aligns with Access Alliance's position that for accessibility legislation to create meaningful change, the legislature must be, "underpinned by effective enforcement mechanisms."²²

²¹ Olivia Kelly. Aotearoa New Zealand's Proposed Accessibility Legislation: An Initial Critique, 10.

²² Access Alliance (n 11)

10.2 The Bill should create a dispute resolution scheme providing for an individual to file a complaint with the regulator, which the regulator may investigate at its discretion (in line with guiding principles in the Bill). Following the conclusion of this investigation, the regulator should have the power to order the regulated entity to take corrective measures or pay compensation.

10.3 To the same end, the Bill could alternatively provide for a free-to-consumer dispute resolution process that specified entities must be part of (similar to the Financial Service Providers (Registration and Dispute Resolution) Act 2008).

10.4 Where a specified entity or individual has a dispute with the regulator regarding the result of an investigation, the Bill should provide for a process of mediation to resolve the dispute.

11. Conclusion

11.1 NDSA is dedicated to shaping equitable outcomes for disabled learners. Today accessibility barriers prevent New Zealanders across the motu from accessing education. The ambition to grow accessibility practice in New Zealand is essential, and its success is dependent on enacting a robust framework for access and inclusion to flourish in New Zealand.

11. 2 This legislative framework must:

- extend its scope to include PCBUs;
- have a three-yearly review of the Act;
- Ensure timely accountability to the House of Representatives;
- Include accessibility standards;
- establish a regulator;
- Include a barrier notification system; and
- A dispute resolution process.

11.3 NDSA would like to thank you for reading this submission and invite you to reach out to us for further kōrero on this pivotal legislation.

Nāku noa, nā,
Sean Prenter

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References

- Access Alliance (n 11)
- Cabinet Paper. Accelerating Accessibility in New Zealand (29 September 2021) at 1
- Cabinet Paper (n 4) at 11
- CCS. Disability Action. “State of wellbeing and equality for disabled people and whānau 2021.” Accessed October 26, 2022.
<https://www.ccsdisabilityaction.org.nz/assets/resourcefiles/State-of-wellbeing-and-equality-for-disabled-people-their-families-and-whānau2021.pdf>.
- Forster, W., Barraclough, T., Barnes, C. “Let’s make Aotearoa New Zealand Accessible for all Designing an effective legislative framework for accessibility” New Zealand Law Foundation 2021. (2021):1-160.
- Kawharu M Kaitiakitanga: a Maori Anthropological Perspective of the Maori Socio-environmental Ethic of Resource Management The Journal Of The Polynesian Society [Internet]. 2000 [cited 2021 February 08]; 109(4):349-370. Available from <https://api.digitalnz.org/records/30021220/source>.
- Kermit, Patrick. “Deaf or deaf? Questioning alleged antinomies in the bioethical discourses on cochlear implantation and suggesting an alternative approach to d/Deafness.” Scandinavian Journal of Disability Research 11, no. 2 (2009): 159-174..
- King, Deborah K. “Multiple Jeopardy, Multiple Consciousness: The Context of a Black Feminist Ideology”. Signs. Vol 14, No 1 (1988): 69–70, 51.
- Ministry of Social Development “Regulatory Impact Statement: Accelerating Accessibility” (23 September 2021) at 3, 6, 30, 42.
- Moloney, Paul. “How can a chord be weird if it expresses your soul?” Some critical reflections on the diagnosis of Aspergers syndrome.” Disability & Society 25, no. 2 (2010): 135-148.
- NZDSN (n 25) at 3
- NZIER “Valuing Access to Work” 2017
- Olivia Kelly. “Aotearoa New Zealand’s Proposed Accessibility Legislation: An Initial Critique” Auckland Disability Law (2022):9.
- Stats NZ. “2013 Disability Survey” (2013) table 5.01. Accessed October 26, 2022.
<https://www.stats.govt.nz/information-releases/disability-survey-2013>