
Accessibility for New Zealanders Bill

7/11/2022

Accessibility for New Zealanders Bill 2022

1 Introduction

- 1.1 The New Zealand Law Society | Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Accessibility for New Zealanders Bill (**Bill**).
- 1.2 The Law Society commends the objective of the Bill to “accelerate progress towards a fully accessible New Zealand where disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs have an equal opportunity to achieve their goals and aspirations”.¹
- 1.3 This submission has been prepared with input from the Law Society’s Human Rights & Privacy Committee, and Public & Administrative Law Committee,² and makes a number of recommendations to improve the Bill and ensure it better achieves its purpose.
- 1.4 The Law Society does not wish to be heard in relation to this submission.

2 Overarching principles (clause 4)

- 2.1 The intent of the Bill is (in part) to give effect to New Zealand’s obligations under the United Nations Convention on the Rights of Persons with Disabilities (**UNCRPD**).³ This intent is recognised in clause 4, which sets out an overarching principle to respect and uphold the rights of disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs, including rights derived from the UNCRPD. However, the Bill does not envisage that the Committee will set binding standards for accessibility nor does it provide for means of enforcement of any recommendations. We note for the select committee’s information that the UNCRPD likely requires the mandatory application of accessibility standards, including enforcement mechanisms and sanctions for non-compliance.⁴

3 Appointments to the community nominations panel (clauses 12 & 13)

- 3.1 Clauses 12 and 13 provide for the membership and criteria for appointments to the community nominations panel and the Māori nominations panel, respectively. While clause 13(4) requires the Minister to consult specific groups and individuals regarding appointments to the Māori nominations panel, there is no equivalent consultation requirement in clause 12 in relation to appointments to the community nominations panel.
- 3.2 We recognise that clause 13 reflects the Crown’s obligations of partnership under te Tiriti o Waitangi. In addition to this, we recommend the select committee also consider whether a similar consultation requirement would be appropriate in relation to the community nominations panel. Such a requirement would be consistent with Article 4.3 of the UNCRPD, which requires close consultation and the active involvement of disabled people.

¹ Accessibility for New Zealanders Bill, clause 3.

² See the Law Society’s website for more information about these Committees:
<https://www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/>.

³ Departmental Disclosure Statement at 5 and 7.

⁴ Convention on the Rights of Persons with Disabilities, art 33(2) and Committee on the Rights of Persons with Disabilities *General comment No. 2 CRPD/C/GC/2* (22 May 2014) at [28]-[30], [33] and [48].

4 Functions of the Accessibility Committee (clause 15)

- 4.1 Clause 15(1)(b) provides that one of the functions of the Accessibility Committee (**Committee**) is to develop a work programme. It is subsequently apparent from clause 22(a) that the Committee's work programme is subject to approval and, if necessary, amendment by the Minister. It would be clearer if these steps are also reflected in clause 15(2) (for example, by including a cross reference to clause 22(a)).

5 Duties of the Committee (clause 16)

- 5.1 Clause 16 sets out the duties of the Committee. These duties overlap with – but presumably do not replace – the general duties set out in clauses 4 and 5 (which also apply to those who perform functions or duties under the Bill). There is merit in explicitly providing that the duties in clause 16 apply in addition to the duties set out in clauses 4 and 5, so that the relationship between the three provisions is clear. To avoid the potential for confusion, we also suggest deleting the part of clause 16(1)(a) which duplicates the duty set out in clause 5.

6 Restriction on requests for information under the Privacy Act 2020 (clause 19)

- 6.1 Clause 19 of the Bill would prohibit the Committee from requesting personal information as defined by the Privacy Act 2020. Given the expansive definition of personal information, this restriction is unreasonably broad. It may prevent the Committee from seeking (for example) the name of a chief executive of a government department or their contact details, where such information is necessary to fulfil the Committee's functions. It would also require specified entities to take a much more cautious approach to fulfilling requests from the Committee than is required under the Privacy Act, because the mere fact that information is personal information is not a ground for withholding under that Act. That is likely to have a significant stifling effect on the work of the Committee and the specified entities responding to it.
- 6.2 We therefore recommend deleting clause 19(a). A specified entity may still refuse to disclose personal information where a proper reason for refusal exists under the Privacy Act (for example, where disclosure would involve the unwarranted disclosure of the affairs of another individual⁵). Specified entities are much more likely to have familiarity with the withholding grounds in the Privacy Act than the process envisaged by clause 19(a).

7 Grounds for refusing to supply requested information (clause 20)

- 7.1 The Bill empowers the Committee to request from a specified entity any information the Committee considers to be necessary or desirable for the purpose of performing its functions.⁶ The Bill also contains provisions which would prevent the Committee from requesting, publishing and disclosing information provided by specified entities.⁷
- 7.2 Clause 20 of the Bill provides that specified entities can refuse to supply information on various grounds, including the grounds for withholding information under the Official

⁵ Privacy Act 2020, section 53(b).

⁶ Clause 18.

⁷ Clauses 19 and 21.

Information Act 1982 (**OIA**). This clause is unreasonably broad and undermines the purpose of the Bill for the following reasons:

- (a) First, there is no principled basis for providing that an information request can be refused simply because that information can be withheld under the OIA. The withholding grounds in the OIA seek to balance the need to make official information more freely available *to the public*, against the public interest in protecting official information and preserving personal privacy.⁸ These competing interests are largely irrelevant in the context of this Bill and the functions and status of the Committee, which is an independent ministerial advisory committee. Further, the Bill confines ‘specified entities’ to the public sector, does not allow the Committee to request personal information, and explicitly prohibits the Committee from publishing and disclosing information provided by specified entities.⁹
- (b) Second, the broad scope of this clause will stifle the Committee’s ability to perform its functions, namely, to hold departments accountable to our obligations to respect and uphold the rights of disabled people, tāngata whaikaha and their families or whānau . It is unclear how the Committee is expected to perform its functions under clause 15, in particular to provide advice and make recommendations to the Minister, without the ability to obtain the information required to ensure such advice and recommendations are credible. An unreasonably broad provision, which limits the information that can be obtained by the Committee, therefore undermines both the Committee’s ability to perform its functions, and the purpose of the Bill.

7.3 Therefore, we recommend replacing this clause with a narrower and more targeted set of exclusions, which seek to only address any practical difficulties in providing information to the Committee (including, for example, the fact that the information requested does not exist or, despite reasonable efforts to locate it, cannot be found).

8 The role of the chief executive (clause 23)

8.1 Clause 23(a) provides that the role of the chief executive includes assisting the Committee to develop its recommendations to the Minister. It is unclear whether this clause is intended to cover any duties beyond providing administrative and analytical support to the Committee (noting this is already included in the chief executive’s role, under clause 23(d)).

8.2 We suggest amending this clause to specify any additional duties or functions which should be performed by the chief executive when assisting the Committee in developing its recommendations. If the chief executive is only expected to provide administrative and analytical support to the Committee, we suggest deleting clause 23(a), as this is already provided for in clause 23(d).

9 Removal of Committee members from office (clause 2 of Schedule 2)

9.1 Clause 2 of Schedule 2 provides that the Minister may remove a Committee member from office if there is ‘just cause’ to do so. Clause 2(5) states that ‘just cause’ includes misconduct,

⁸ Official Information Act 1982, section 4(c).

⁹ Clauses 19 and 21.

an inability to perform the functions of office, neglect of duty, and breach of any of the collective duties of Committee members.

- 9.2 Clause 2(1)(b) requires the Minister to provide ‘reasonable accommodations’ to a Committee member before they are removed from office. This clause appears to be unique when compared to other provisions relating to the removal of members of Ministerially-appointed boards and committees.
- 9.3 The Law Society supports the inclusion of a requirement to ensure that Committee members with disabilities have been provided with “reasonable accommodations” to enable them to properly perform their functions on the Committee. This is appropriate and consistent with the objectives of the UNCRPD. However, as drafted clause 2(1)(b) is likely to have a wider application. For example, it would require that “reasonable accommodations” be provided prior to removing a member for misconduct or breach of their duties. This would make it more difficult to remove Committee members where there is “just cause”, which would have significant implications for the Committee’s ability to work together effectively and achieve the purposes of the Bill.
- 9.4 In addition, it is not clear what is meant by “reasonable accommodation”. While this term is defined in the UNCRPD,¹⁰ it is uncertain whether this same definition is intended to be carried over to the Bill. The Law Society recommends that clause 2(2) be amended to include a definition of “reasonable accommodation”, drawing on the definition used in the UNCRPD. We also invite the select committee to clarify whether the protection afforded by clause 2 is intended to assist people with disabilities, as recommended by the UNCRPD.



Ataga’i Esera
Vice-President

¹⁰ Under Article 2 of the UNCRPD, “Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.