

21 July 2022

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Accessibility for New Zealanders Bill

Purpose

1. We have considered whether the Accessibility for New Zealanders Bill (the Bill) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act).
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 22613/9.0). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 19 (freedom from discrimination). Our analysis is set out below.

The Bill

4. Clause 3 of the Bill states that the purpose of the Bill is 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
5. In efforts to fulfil this purpose, clause 3 also establishes an Accessibility Committee (Committee) to:
 - a. Identify accessibility barriers in New Zealand society; and
 - b. Progressively work towards preventing and removing accessibility barriers in New Zealand society; and
 - c. Progressively work towards growing accessibility practices across New Zealand.
6. The Committee will be a ministerial advisory committee focused on making recommendations on how to address accessibility barriers to the Minister for Disability Issues (the Minister).² The Minister will in turn advise the Committee, within a reasonable time, about how the Committee's recommendations have been or will be considered by the Government.³

¹ The Bill, in clause 6, defines *tāngata whaikaha* as disabled people who are Māori.

² The Committee's functions are listed in clause 15.

³ The role of the Minister is outlined in clause 22.

7. The Committee will be made up of 6-8 members, with the option for the Minister to appoint 2 additional members if needed to ensure the Committee collectively has the attributes required by the Bill.⁴

Consistency of the Bill with the Bill of Rights Act

Section 19 – Freedom from discrimination

8. Section 19(1) of the Bill of Rights Act affirms that everyone has the right to freedom from discrimination on the grounds set out in s 21 of the Human Rights Act 1993 (the Human Rights Act). For the purposes of this advice, the relevant prohibited ground of discrimination under s 21 of the Human Rights Act is disability.
9. Disability is defined in the Human Rights Act as:
 - a. physical disability or impairment:
 - b. physical illness:
 - c. psychiatric illness:
 - d. intellectual or psychological disability or impairment:
 - e. any other loss or abnormality of psychological, physiological, or anatomical structure or function:
 - f. reliance on a disability assist dog, wheelchair, or other remedial means:
 - g. the presence in the body of organisms capable of causing illness
10. Two factors must be met for discrimination to be identified under s 19(1) of the Bill of Rights Act:⁵
 - a. there is a differential treatment or effect as between persons or groups in analogous or comparable situations on the basis of a prohibited ground of discrimination; and
 - b. that treatment has a discriminatory impact (i.e. it imposes a material disadvantage on the person or group differentiated against).
11. Clause 11(2)(a) of the Bill states that the Minister must ensure that a majority of the Committee members are disabled. On the face of it, it appears this requirement engages s 19 of the Bill of Rights Act by enabling differential treatment on the basis of disability. However, the requirement guarantees that the Committee will be made up of a majority of people with lived experience relevant to why the Committee will be established.
12. We are of the view this requirement will ensure the perspectives and concerns of the disabled community are at the forefront of advice the Committee provides to address existing inequities. Addressing inequity does not result in a disadvantage to those who are not affected by the existing inequities.

⁴ See clause 10 of the Bill.

⁵ *Ministry of Health v Atkinson* [2012] NZCA 184, [2012] 3 NZLR 456 CA at [55].

13. We therefore consider that this provision does not engage s 19 of the Bill of Rights Act, and even if it did, any limit imposed would be reasonably justified.

Conclusion

14. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.



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