

Social Services and Community Select Committee  
Parliament Buildings  
Wellington



4 November 2022

### **Submission on the Accessibility for New Zealanders Bill**

Dear Committee,

Multiple Sclerosis NZ (MSNZ) welcomes the opportunity to submit on the Accessibility for New Zealanders Bill (Bill). At MSNZ we are passionate about supporting over 4130 New Zealanders and their loved ones, nationwide, to have access to the best information, services, treatments and supports they need to live well with their diagnosis, maintaining and improving their life-long brain health. Since 1967, we have supported our members, 18 independent Regional Societies, to meet the needs of people with MS, their families and carers through national leadership, advocacy, communication, and national and international collaboration.

#### **Our position**

MSNZ supports legislative action being taken to address the accessibility barriers that prevent disabled people, tāngata whaikaha and their whānau, and others with accessibility needs from living independently, and which aims to grow accessibility practices in New Zealand.

We believe that New Zealand should be a place where every person, regardless of their disability, should be able to fully participate in a society that recognises and provides for their access needs. We believe it is not only possible, but essential, that New Zealand is fully accessible by 2035, and welcome the introduction of a legislative framework to enable this. While we are generally supportive of the Bill, we suggest that additional amendments are required.

We support the work being done by collective organisations, namely Access Matters Aotearoa and as such do not believe it necessary to be heard by the Committee on this submission. We urge the Government to engage more effectively with Access Matters Aotearoa who represent the interests and needs of the wider disability community.

MSNZ supports the intention of the Bill however feel it's current offering will provide ineffective legislation which will do little to effectively address the needs of the disability community, including those impacted by multiple sclerosis.

We suggest several amendments that would strengthen the Bill and further provide for its purposes.

#### **Terminology**

Many people with a chronic neurological health condition, such as MS, do not consider themselves disabled or have unseen symptoms. We suggest that the definition of "disabled" in clause 11(2)(a) of the Bill should be expanded to include all individuals with access needs.

### **An extended scope to include PCBUs**

We support that the specified entities, being the Crown, Government departments, departmental agencies, statutory entities, Veteran's Affairs and local authorities sit within the scope of the Bill. However, MSNZ believes that widening the scope of removing accessibility barriers will result in faster and more effective change. As such, the Bill should be extended to persons conducting a business or undertaking (PCBUs) as defined under the Health and Safety at Work Act 2015. Changes at Government level, while admirable, will have limited impact on the daily lives of people living with disabilities.

### **A three-yearly review of the Act**

We recognise that the environment in which accessibility barriers and obstacles exist is evolving, and that the legislative framework will need regular review to ensure it can respond to this evolution. For this reason, we support the requirement for a review of the Act in clause 25. However, as recommended in the Regulatory Impact Statement, a three, rather than five year review of the Act will ensure responsiveness.

### **Timely accountability to the House of Representatives**

To ensure timely accountability to Parliament, we recommend that clauses 17(3) and 25(4) be amended 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."

We note that the Committee's functions and duties, as outlined in subpart 2 of the Bill, are extensive, and may be onerous given 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.

### **Further clarity on how patient advocacy groups will have the opportunity to engage**

The primary function of many organisations such as MSNZ, is to advocate for the needs of our member organisations and the people within their specific community. We often have established lines of communication for input and feedback and are able to bring together the multitude of needs of those impacted by a condition. In the case of MS, it is well accepted, that no person with MS experiences the condition in the same way. We would like to see greater consideration included in how patient organisations, such as ourselves, are included in the discussion process.

### **Accessibility standards**

We support the creation of meaningful accessibility standards that (among other things) endeavour to design and build an environment that is accessible for all New Zealanders, promote awareness, and ensure that services meet the needs of disabled people and treat them 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.

We recommend the Committee be granted 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 Maori, 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. We recognise that not all sectors are amenable to binding standards and believe 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.

Further, we recommend 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.

As mentioned earlier in this submission, the current Bill does not provide any obligations on specified entities (including on PCBUs). We recommend 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.

### **Establishment of a Regulator**

We support 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.

To give effect to this, we recommend that a regulator be established 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.

We note that the Human Rights Act 1993, 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, and its tendency towards confidential settlement of disputes means there is little system learning. 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.

Where initial enforcement processes are ineffective at remedying the infringement, the Bill should provide the regulator 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.

### **Barrier Notification System**

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

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

Further to a barrier notification system, public transparency regarding the outcome of the investigation is a vital step to ensuring barriers are effectively being addressed.

### **Disputes Resolution Process**

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 (eg. Commerce Commission).

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. Alternatively, the Bill could 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).

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

### **Closing Remarks**

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

Effective development and implementation of public policy is essential for enhancing and improving access to goods, services and programmes not available to those with disabilities, and supports the ability of the Committee to influence those through the powers above.

We believe that wider scope of removing accessibility barriers will result in faster and more effective removal of barriers. Due to the extent of the changes recommended, the Committee should consider whether this legislation can be effectively corrected or re-written in its entirety with greater consultation with the disability community.

Attached to this submission is an Appendix for more specific information about MS and barriers to access that impact our community.

Yours sincerely,



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Multiple Sclerosis New Zealand