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Committee Secretariat  
Social Services and Community Select Committee  
Parliament Buildings  
Wellington  
By email: [ssc@parliament.govt.nz](mailto:ssc@parliament.govt.nz)

## **SUBMISSION ON THE ACCESSIBILITY FOR NEW ZEALANDERS BILL**

This submission is from Dyslexia Foundation of New Zealand (DFNZ). We wish to appear before the committee to speak to our submission. DFNZ Chair of Trustees, Guy Pope-Mayell, can be contacted as below.

Kind regards



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# DYSLEXIA FOUNDATION OF NEW ZEALAND SUBMISSION

## INTRODUCTION

In principle, the Dyslexia Foundation of New Zealand (DFNZ) fully supports the introduction of the Accessibility for New Zealanders Bill in order to create a legislative framework to identify and remove access barriers that a broad cross-section of society face on an everyday basis. This legislation has the potential to become a ground-breaking Act that transforms the lives of millions of New Zealanders with some form of 'disability' – whether physical, mental, permanent, temporary, visible or 'invisible/hidden'.

**In order to achieve this, DFNZ contends that the Accessibility for New Zealanders Bill needs to be strengthened to provide for:**

- **an inclusive definition of disability**
- **an extended scope to include persons conducting a business or undertaking (PCBUs)**
- **greater Committee powers**
- **a three-yearly review and timely accountability to the House of Representatives,**
- **accessibility standards,**
- **a regulator,**
- **a barrier notification system and**
- **a dispute resolution process to remove access barriers.**

**Traditional definitions and common understandings of disability are too narrow.**

Creating a truly accessible New Zealand doesn't only impact the blind or those in a wheelchair... it impacts us all as we get older, it impacts us when we have an accident, it impacts those with neurodiversity, or those with dementia. It impacts young parents who can't get the pram through a doorway, or people with English as a second language.

Most New Zealanders will at some stage during their lifetime face disabilities and temporary injuries that limit their access to areas of life. For example, have you ever:

- Broken a leg, or sprained an ankle, making it harder to get around?
- Had difficulty reading a menu in a dimly lit restaurant?
- Struggled to navigate a website that is important to you?
- Found it difficult to get about with young children or a disabled relative or friend?

If so, you have experienced an accessibility need – in not being able to fully engage with, use, participate in, and belong to, the world around us.

**New accessibility legislation is essential, as current legislation, for example, the Human Rights Act 1993, is inadequate.** The Human Rights Act does not sufficiently enable people with disabilities to engage fully in society or reach their full potential. While it prohibits discrimination on the basis of disability, it does little to practically address discrimination. It does not set clear and specific expectations for organisations or businesses on becoming fully accessible as employers and service providers. There are no standards and no penalties. Existing laws on 'discrimination', 'equality before law', and 'reasonable accommodation' do not provide sufficient guidance to ensure accessibility across all societal domains, from providing employment, or delivering goods and services which enable people with disabilities to fully benefit.

In short, the Human Rights Act lacks specifics and it lacks teeth. Unfortunately, the Accessibility for New Zealanders Bill as drafted has the same issues. It is not strong enough, does not go far enough and will not fill the gaps left open by the Human Rights Act.

**The elephant in the room for any accessibility discussion is discrimination.**

Discrimination is the inverse of accessibility, and occurs every time a person cannot access the physical environment, transportation, and facilities and services open or provided to the public. Accessibility also applies to products, services, information and communications, including technology and systems right down to being able to shop online or navigate a website.

**Discrimination is a broad, and costly, societal issue.** From the early school years, discrimination can cause disengagement and disenfranchisement – leading to alienation, mental health issues, acting out, truancy and crime. Recent media stories are a potent proof point for this. And this carries through into costs across a broad spectrum of services, from the health to the prison sector. On the flipside, accessibility gathers the disengaged and disenfranchised into the community, and provides a path for people to feel valued and make meaningful contributions to society.

**Greater accessibility is a powerful business opportunity.** In challenging times, when businesses are looking for a loyal customer base and labour force, accessibility can help convert sunk cost into opportunity.

International business experience has shown an uplift of 20-30% after tapping into the accessibility market. Conversely, [UK Research](https://wearepurple.org.uk/the-purple-pound-infographic/) (<https://wearepurple.org.uk/the-purple-pound-infographic/>) has shown how various sectors lose money each month by not being accessible. The 'Purple Pound' refers to the spending power of disabled households, being a household in which at least one of the members has a disability. UK businesses are missing out on business due to poor accessibility (both physical and digital) and by not being disability-confident in their customer services approach. The breakdown of business sector losses is:

- High Street Retail – £267 million
- Restaurants, Pubs and Clubs – £163 million
- Supermarkets – £501 million
- Energy Companies – £44 million
- Phone and Internet Providers – £49 million
- Transport Providers – £42 million
- Banks and Building Societies – £935 million

In New Zealand, there is not yet conclusive data on the opportunity cost of not factoring in the access market, however the UK experience shows this is undoubtedly huge.

DFNZ is a member of Access Matters and supports the comments made by Access Matters regarding the Accessibility for New Zealanders Bill. This DFNZ submission focuses more fully on issues experienced by DFNZ's constituency. Whilst DFNZ was initially formed to represent dyslexic New Zealanders, it has found that challenges for those with dyslexia are often similar to those for other neurodiversities, including but not limited to dyspraxia, dyscalculia, dysgraphia, autism spectrum and attention deficit hyperactivity. For a number of years, therefore, DFNZ has included other neurodiversities within the scope of its work.

## **DISCRIMINATION STARTS AT AN EARLY AGE**

The intent of the Accessibility for New Zealanders Bill must be to manifest access and equity for the benefit of all. Included in this must be protection for our most vulnerable – the young. Whilst they are just one cohort facing discrimination – and neurodiversity is just one type of difference where discrimination occurs – it is worth highlighting, given the long-lasting effects that lack of accessibility in the formative years can have.

**In terms of neurodiversity, discrimination starts very early when children are denied equal access to education.** People often equate accessibility with making adjustments for physical impairment. But equally barriers exist in the classroom for a great range of neurodiversities.

Official Information Act data shows that, in the five years to 2021, more than 50 complaints of alleged unlawful discrimination where children have been removed from school were received by the Human Rights Commission. In the same period, some 38 complaints related to ADHD, dyslexia, or a combination of both. Themes from the complaints data included neurodiverse children who couldn't remain in education due to the failure of schools to make reasonable accommodations, who were excluded or stood down based on behavioural challenges.

Given that the Human Rights Act lacks specifics and teeth, and that a great amount of time, effort and cost is required to make a Human Rights Commission complaint, these figures are clearly only the tip of the iceberg.

Neurodiversities such as dyslexia and autism spectrum impact upwards of 20% of the population – and neurodiverse tendencies such as being uncomfortable with eye contact, hypersensitive in stressful situations and difficulties processing information can often be misunderstood as 'behaving badly'. In that situation, excluding a student because a teacher jumped to the wrong conclusion, misunderstood their behaviour or couldn't be bothered to find the underlying cause amounts to discrimination.

Teachers often have insufficient training to recognise the sensory, emotional and behavioural tendencies of neurodiverse children, and insufficient resources to deal with them. Failure to recognise and properly support neurodiverse students with interventions from structured literacy programmes through to adjustments in teaching style and classroom layout can lead to disengagement and exclusion, or self-exclusion in the form of truancy.

**With youth crime so much in the spotlight, keeping students in school is critical.** It is imperative we take every measure available to ensure education is accessible – the Accessibility for New Zealanders Bill has the potential to achieve this IF it is strengthened to identify and remove accessibility barriers. And provides an effective disputes resolution process if barriers remain.

## **ACCESSIBILITY FOR NEW ZEALANDER'S BILL – KEY RECOMMENDATIONS**

**DFNZ wishes to make the following points with regards to strengthening the Bill.**

### **DEFINITION OF DISABILITY**

DFNZ notes that 'disability' is a somewhat problematic word in being most often associated with physical impairment. In terms of neurodiversity, we prefer to talk about 'difference' as disability does not capture the positive strengths that neurodiversity can bring.

Having said that, of course 'disability' needs to be defined for legislation purposes. DFNZ considers that the current definition of 'disability' under the Human Rights Act 1993 (section 21(1)(h)) is inadequate and not inclusive of neurodiversities, which relate to neurodevelopment rather than intellectual disability or impairment.

**DFNZ therefore recommends that the definition of 'disability' in clause 11(2)(a) of the Bill be expanded to include all individuals with access needs, including invisible/hidden disabilities such as neurodiversity.**

**We further recommend that this updated definition then replaces the existing definition in the Human Rights Act and any other applicable legislation.**

### **ACCESSIBILITY COMMITTEE SCOPE, POWERS & REPRESENTATION**

DFNZ supports that the Bill applies to the Crown, Government departments, departmental agencies, statutory entities, Veteran's Affairs and local authorities (specified entities). However, the more entities that are accountable, the faster and more effective improvements will be.

**DFNZ therefore recommends that the definition of specified entities be expanded to include persons conducting a business or undertaking (PCBUs) as defined under the Health and Safety at Work Act 2015.**

DFNZ supports the creation of an Accessibility Committee (Committee), to provide advice and recommendations to the designated Minister (Minister) on accessibility barriers and practices and the prevention or removal of those barriers, and to assess and report on progress made by specified entities in implementing the Committee's recommendations.

**We recommend however that the Committee be granted greater statutory powers than to make 'recommendations' as these by definition can be ignored or only partly implemented.**

We support the Committee being provided the power to request relevant information from specified entities in order to assess and report on progress.

**However we are concerned that there is not enough rigorous data available to provide for meaningful assessment. This is particularly true in respect of the discrimination that neurodiverse children face in the education sector. As noted earlier, Human Rights Commission records only show the tip of the iceberg. We**

**therefore recommend that the Committee have the power to request that detailed data records be maintained.**

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 whanau. 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.

**However we note that the Committee's functions and duties, per subpart 2 of the Bill, are extensive. Adequate resourcing and funding for the Committee will be essential.**

**In addition, we recommend that there be a specific representative on the Committee who has expertise in neurodiversity and breaking down barriers in this area. We suggest that DFNZ be engaged as either a formal Committee member and/or as part of a technical advisory group that can provide insights on neurodiversity as an 'invisible/hidden' disability.**

As part of the above representation, DFNZ believes further consultation must be held on key priorities for the Committee. As noted previously in this submission, education is one of the earliest barriers for neurodiverse individuals and discrimination can cause lifelong issues. Addressing barriers and discrimination in the education system should be a top priority for the Committee.

## **REVIEW PERIOD**

DFNZ supports mandatory review of the Accessibility for New Zealanders Act (once passed) set out in clause 25. **However, DFNZ recommends that a three-year review period, as recommended in the Social Development Ministry Regulatory Impact Statement (RIS, September 2021), as this would allow for more responsive change than the current five-year period.**

**We also 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'.**

## **ACCESSIBILITY STANDARDS**

DFNZ supports 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.

**DFNZ recommends the Committee be granted the power to develop both binding and non-binding standards for identified domains (both physical and digital environments). And that the Committee be empowered to make binding recommendations to specified entities as part of its progress assessment process.** 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 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. DFNZ recognises that not all sectors are amenable to binding standards, so would support a phased implementation process to ensure standards are not onerously imposed.

**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. And that, in addition to standards, specific statutory obligations be imposed, including a duty to identify barriers, a requirement to keep records, and to provide accessibility plans.**

## **REGULATOR**

**In order to give effect to standards, 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.

**DFNZ recommends that the Bill provide the regulator with a range of enforcement measures for specified entities that do not comply with the Bill or binding accessibility standards, or breach their enforceable undertakings. The Bill should specify infringement offences, and provide the regulator's officers the ability to issue improvement notices, and, where notices are not complied with, fines.**

**Where initial enforcement processes are ineffective at remedying the infringement, we recommend that the Bill 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**

DFNZ believes that a barrier notification system is crucial to support the move to New Zealand being barrier free by 1 January 2035.

**DFNZ recommends a barrier notification system be established to enable the regulator to set processes, plans and systems to adequately record barriers identified through notification.** This should include an anonymous notification mechanism through which an individual can notify the regulator of a disabling experience. Further, DFNZ believes there should also be a duty on specified entities to keep a record of each disabling experience for at least five years. And that the system must include a duty on specified entities to notify and remove barriers under their control.

## **DISPUTE RESOLUTION PROCESS**

A dispute resolution process is the final piece of the puzzle in creating meaningful and effective accessibility legislation.

**Accordingly, DFNZ recommends that the Bill establish a dispute resolution scheme** providing for an individual to file a complaint with the regulator, which the regulator may investigate at its discretion. Following the conclusion of this investigation, the regulator should have the power to order the regulated entity to take corrective measures or pay compensation. Where a specified entity or individual has a dispute with the regulator in regard to the result of an investigation, the legislation should provide for a process of mediation to resolve the dispute.

## **CONCLUSION**

DFNZ supports the intent and broad thrust of the Accessibility for New Zealanders Bill. But believes it needs strengthening to effect real change, in particular with regards to discrimination against neurodiverse individuals whose 'disability' is 'hidden/invisible'.

**As set out above, DFNZ recommends it be amended to provide for:**

- **an inclusive definition of disability**
- **an extended scope to include persons conducting a business or undertaking (PCBUs)**
- **greater Committee powers**
- **a three-yearly review and timely accountability to the House of Representatives,**
- **accessibility standards,**
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- **a dispute resolution process to remove access barriers.**

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## **APPENDIX**

### **ABOUT DFNZ**

Since inception in November 2006, DFNZ has built its reputation on successful advocacy and action and has become the foremost lobby group in this area. From lobbying the Government for dyslexia to be officially recognised, achieved in 2007, through to working closely with the Government on the inclusive education agenda and raising the Youth Court age, the landscape for neurodiversities has been fundamentally changed.

Following successful dyslexia advocacy/action weeks in 2007, 2008 and 2009, as well as development of a 4D programme for schools, DFNZ continued its education work behind the scenes with Ministry of Education and NZQA. It ran a further Dyslexia Action Week in 2014, focused on learning rights for students in the classroom. DFNZ has also been active in monitoring NZQA Special Assessment Conditions (SAC) results. A joint MoE/NZQA review of SACs in 2014 highlighted inequities between low and high decile schools accessing SACs, a specific focus for DFNZ concern.

In 2015, DFNZ broadened its focus to include youth justice – with education a key factor in preventing alienation that leads to negative social and criminal consequences. A 2015 action week showcased this twin focus on getting it right in the classroom and the courts. Also in 2015, DFNZ made submissions to the Fifth Periodic Report by the Government of New Zealand under the United Nations Convention on the Rights of the Child (UNCROC), and was



instrumental in initiation of the Parliamentary Select Committee inquiry into the learning needs of students with dyslexia, autism spectrum and dyspraxia.

In 2016, DFNZ convened a landmark Neurodisabilities Forum to explore how neurodisabilities create vulnerability in the justice system. Following this DFNZ and a wide range of sector groups continued to advocate for an increase in the Youth Court age; with the Government announcing an increase to age 18 in December 2016.

Since 2016, DFNZ has worked closely with the Ministry of Education in a number of spheres, including scrutinising the output of the Learning Support Action Plan released in 2020. Also in 2020, DFNZ turned its attention to the workplace, hosting a Neurodiversity Leadership Forum in Wellington to look at opportunities associated with recognising the strengths of diverse brains in the workplace, and dispel myths associated with neurodiversity. And in 2021, DFNZ activated a further piece of the advocacy landscape – wellbeing, with the family journey at the heart of this.

## **ABOUT NEURODIVERSITY**

Neurodiversity spans a spectrum, the result of brains that are wired differently. This includes dyslexia, dyspraxia, dyscalculia, dysgraphia, autism spectrum and attention deficit hyperactivity.

In the case of dyslexia, for example, brain research shows that whilst most people use the 'verbal' left side of the brain to process information, making them neuro-typical word-based thinkers, dyslexic individuals use the 'visual' right side of the brain. In short, they tend to turn words into pictures to understand them, and then have to turn the picture back into words to respond – a process that requires extra effort and time if they are required to present something in words.

The effects of neurodiversity range from mild to intense. On one end of the spectrum, individuals may be high functioning performers who appear to easily engage with their neuro-typical colleagues. At the other, individuals may experience one or more of a range of challenges: anxiety and nervousness, decreased spatial awareness, slower cognitive processing speeds and comprehension, impaired or heightened auditory and visual perception, high sensitivity to light and sounds and sensory overload, poor short-term memory and variable concentration, reduced ability to understand procedures and follow instructions, inability to comprehend cause and effect and/or consequences, difficulty making eye contact, easily distracted, poor time management/timekeeping and so on.

Some of these may be misunderstood as uncooperative or anti-social behaviour. For example, lack of eye contact is a common characteristic. Eye contact can be unpleasant and very confronting at a deep level, creating anxiety, nervousness, and overwhelm. There are also cultural considerations in that while eye contact is considered important in Western culture; for many others – including Māori, Pasifika, Asian, Middle Eastern and Latin American cultures – significant eye contact can be seen as inappropriate, be subject to gender rules and in some cases be considered intensely disrespectful.

Fidgeting or tapping are another common characteristic of neurodiversities. Whilst this is indicative of anxiety or nervousness in the individual, it can be misinterpreted as guilt, disinterest or belligerence. In reality, fidgeting and tapping can be a calming repetitive action that aids focus and concentration.

Sensory overload can come from too much sensory input, whether visual, auditory or olfactory, ie bright long run/fluorescent lights, loud noises, small spaces, strong smells (including food or perfume). And answering 'yes' quickly and frequently to questions, whether they are understood or not, is a typical well practised coping strategy to bring an uncomfortable situation to an end.

DFNZ advocates 'notice and adjust' as the first strategy for managing neurodiversity. Examples of simple changes include not forcing eye contact, not reacting negatively to fidgeting and tapping, breaking information down into bite-size chunks or (where appropriate) presenting it in visual formats, referring to key events chronologically rather than jumping backwards and forwards, and reducing noise and distractions. Adjusting instructional or managerial techniques to put more focus on verbal interactions, or drawing a diagram or picture to explain a page full of words are also helpful. Simple changes like these are 20% of the solution.

The other 80%, which is where the real change lies, involves positive psychology and empowerment. Engineering the environment to enable neurodiverse individuals to bring the best version of themselves and their highest creativity and critical thinking to the table. As an example, this is the thinking behind the workplaces of many Silicon Valley and creative companies – the ubiquitous nap rooms, quiet/low sensory rooms, games tables, bean bags, ice-cream machines and so on.

**ends**