



Submission to Social Services Select Committee

Accessibility for New Zealanders Bill

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Message from the Children's Commissioner

Like most New Zealanders, I want every child to grow up knowing they belong with a whānau that has what they need to live a good life and knowing that they are loved and nurtured.

The OCC represents 1.2 million mokopuna* in Aotearoa New Zealand under the age of 18, who make up 23 per cent of the total population.

My role is to advocate for their interests, ensure their rights are upheld, monitor places where mokopuna are detained, ensure their voices are heard, and help government agencies to listen to and act on, the voices of mokopuna.

My commitment is to advocate for positive change so all mokopuna in Aotearoa have the best opportunity to be safe, loved and to lead fulfilling lives with the support of their whānau and communities

All mokopuna need to know:

“He kākano ahau i ruia mai i Rangīātea” – I am a seed which was sown in the heavens of Rangīātea.

Judge Frances Eivers

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Accessibility for New Zealanders Bill

Introduction

This submission is made in support of the Bill, and in support of submissions on it from the disabled community themselves. The OCC wishes to express gratitude to the disabled mokopuna¹, their whānau and to the wider disabled community for their views and insights which have been used to inform this submission. The OCC would also like to acknowledge the Social Services Select Committee for bringing the Accessibility for New Zealanders Bill (Accessibility Bill) before parliament.

Key recommendations

1. This submission makes a number of recommendations, these are:
 - Seek the opinions of disabled mokopuna on this Bill and review this Bill with the rights and interests of disabled mokopuna as a priority within the Bill
 - Name the Children's Convention as a rights instrument of relevance (*clause 4*)
 - Elevate the position of Te Tiriti o Waitangi as a rights instrument and ensure it underpins the Committee at all levels (*clause 5*)
 - Ensure the intent of the Bill is responsive to the diverse realities of disabled mokopuna (*clause 6*)
 - Insert an obligation to ensure whakapapa Māori representation within the Committee (*clause 11*)
 - Insert measures to ensure mokopuna and youth representation within the Committee (*clause 12*)
 - Strengthen the powers of the committee (*clause 15*)
 - Recognise that existing disability data gaps may limit the Committee's ability to make well-informed recommendations (*clause 16*)

¹ During our discussions with the disabled community, we heard that diversity in disability is something that should be celebrated. We heard that different terminology suited different groups. The OCC has used disabled mokopuna in this paper but acknowledges the range of terminology used, including children and young people with disabilities and tangata whaikaha. The use of the word 'mokopuna' recognises that children and young people must be viewed as an inseparable part of their wider whānau / familial groups. The OCC uses it as a term to refer to all children and young people of all backgrounds.

The perspectives of disabled mokopuna should be at the centre of any decisions about them

"Can you please come to my school and help me? I want to go to school and just be like everyone else. This is making me feel depressed and angry. Sometimes it makes me feel like I shouldn't exist²."

2. This submission acknowledges that this Bill is about establishing a legislative framework to address accessibility-related matters. However, it also wishes to encourage the Committee to seek the perspectives of disabled mokopuna.
3. Recent engagement with disabled mokopuna and their siblings³ at the Halberg Games, provided many valuable insights which inform this submission and speak to the richness that mokopuna provide to decision-making, when they are afforded the opportunity to exercise their rights
4. The key insights we gained from the disabled mokopuna at the Halberg Games were:
 - i. We need more than just the basics
 - ii. Whānau and community are important
 - iii. Listen to us
 - iv. We are unique
 - v. We need systems and spaces that work for us.
5. The Office of the Children's Commissioner has also heard from disabled mokopuna through previous engagements and has used these to further inform this submission. In 2021 the *'What Makes a Good Life for Disabled Children and Young People'*⁴ summary shared the insights of disabled mokopuna engaged through the *What Makes a Good Life?*⁵ series. This summary report highlighted that for disabled mokopuna, living a good life meant feeling included and supported.

I feel like the best life for young people is to have the opportunity to do what you love and to follow the things that inspire you and interest you⁶

² 2021. Radio New Zealand. Boy with autism asks Children's Commissioner: 'Can you please come to my school and help me?' | RNZ News

³ In October 2022, the OCC undertook a series of engagements at the Halberg Foundations' Halberg Games events. The OCC provided a space for the community to relax and created an opportunity for them to contribute their thoughts on the Accessibility Bill and issues impacting mokopuna with disabilities. Two questions were explored: 1) How should our country do better to support disabled mokopuna to live their best lives? and 2) What do you think of the Accessibility Bill?

⁴ <https://www.occ.org.nz/publications/reports/disabled-children-young-people-summary-report/>

⁵ <https://www.occ.org.nz/publications/reports/what-makes-a-good-life/>

⁶ Disabled young person – ibid (p.29)

6. The need for mokopuna to have their voices heard is a right which transcends intersectionality to be present within several prominent human rights instruments. Article 12 of the Children’s Convention⁷, article 4(3) of the Disabilities Convention⁸ and article 18 of the Indigenous Declaration⁹ all speak to the right for disabled mokopuna to have the right to participate in decision-making and to have their voices heard.

Part 1 – Preliminary Provisions

Clause 4 - Principles

7. The OCC supports the principles within section 4(b) of the Bill which seeks to have regard to the rights of all disabled peoples. The Bill could strengthen this commitment by naming the Children’s Convention as an additional named rights instrument of relevance alongside the Disability Convention.

Clause 5 – Te Tiriti o Waitangi / Treaty of Waitangi

8. The OCC supports the explicit reference to te Tiriti within this Bill and proposes additional reference to strengthen this commitment.
9. While the preceding clause recognises various rights derived from international rights instruments, there is no current mention of the rights of tangata whaikaha which derive from te Tiriti. It is encouraging to see that those performing functions or duties under this Bill must have regard to the principles of te Tiriti, however it must go further in its’ recognition of the rights of tangata whaikaha enshrined within te Tiriti.

Clause 6 – Interpretation

Participating in all areas of life

Eligibility criteria for funding is hard to access. My son was declined twice for power assist wheelchair because some days he can walk without wheelchair. Having the power assist would help him be more independent which is what the accessible bill is all about¹⁰

10. We celebrate the aspiration of supporting all people with disabilities to participate in all areas of life but wish to recognise that accessibility barriers come in many different forms.
11. In the delivery of our monitoring function¹¹ the OCC frequently engages with mokopuna who are deprived of their liberty¹². Disabled mokopuna are

⁷ United Nations Convention on the Rights of the Child (1989)

⁸ United Nations Convention on the Rights of Persons with Disabilities (2007)

⁹ United Nations Declaration on the Rights of Indigenous Peoples (2007)

¹⁰ Whānau member of a disabled mokopuna – Halberg Games

¹¹ As a National Preventative Mechanism under the Convention Against Torture,

¹² Ministry of Health. (2015). Taking Action on Fetal Alcohol Spectrum Disorder (FASD): A discussion document. Wellington

disproportionately represented¹³ in these settings and across the wider state care system. We wish to bring attention to these mokopuna and any others whose diverse circumstances may mean they do not fit into normative understandings of what may constitute 'participating in all areas of life'.

Living independently

We deserve to live an independent life like everyone else. Accessibility and access into buildings, stops us from doing this¹⁴

12. Drawing upon the OCC's *What Makes a Good Life?* report and the insights gathered from the Halberg Games, the idea of living independently and what that means for disabled mokopuna is critical. Some disabled mokopuna have told us that for them, living independently includes having whānau support. They want their families to be supported, so that in turn, they can best be supported by them¹⁵.

Growing Accessibility Practices

Kids with disabilities should be included in ALL of the stuff at school. Kids with disabilities can do amazing things – but if nobody helps them try, no one will see it¹⁶.

13. In their accounts of what would allow them to live their 'best life' in Aotearoa, the disabled Mokopuna and their whānau at the Halberg Games told us they wanted changes to cover more than just the basics. They talked about their experiences in education and other settings typically associated with accessibility practices, but in addition were recreational needs like being able to join in on sporting events and extracurricular activities. Mokopuna have a right to participate freely in play opportunities¹⁷.

Part 2 – Accessibility Committee

Clause 11 – Process for Appointing Committee Members

Regarding the appointment of Committee members s11(2)(b) outlines core competencies which must be held by all committee members.

14. We note that s11(2)(b)(i) refers to the need for the Minister to ensure the committee; 'has knowledge and understanding of te Tiriti of Waitangi/Treaty of

¹³ While the true number is not known, estimates suggest that the numbers of disabled mokopuna in state care, particularly youth justice residences are grossly disproportionate to the general population. See: Lambie, I. (2020). What were they thinking? A discussion paper on brain and behaviour in relation to the justice system in New Zealand.

¹⁴ Disabled mokopuna

¹⁵ <https://www.occ.org.nz/publications/reports/disabled-children-young-people-summary-report/> (p.4)

¹⁶ Disabled Mokopuna – Halberg games

¹⁷ Children's Convention: Article 31 - 1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts. 2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity

Waitangi, te ao Māori, and tikanga Māori.’ This submission encourages the insertion of an additional provision for a set number of Committee members have whakapapa Māori.

15. The OCC Report to the Committee on the Rights of the Child¹⁸ recognises that disabled mokopuna Māori and disabled Pacific mokopuna¹⁹ continue to be over-represented in statistics concerning discrimination against those living with disabilities.
16. Article 22 of the Indigenous Declaration guarantees that particular attention should be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration. Ensuring some Committee members whakapapa Māori will increase the likelihood that those recommendations impacting mokopuna Māori are culturally responsive and in-keeping with our obligations under Te Tiriti, the Indigenous Declaration, and other international rights instruments.

Clause 12 – Nomination Panels

17. One of the questions the OCC asked during recent engagements was “what do you think of the Accessibility Bill?”. The specificity of this question created a pathway for those already engaged in advocacy efforts within the disability community to have their voices heard. One mokopuna with disabilities we spoke with told us that:

There needs to be youth representation on the Committee (under 28) that are a part of the disability community²⁰.

18. Inserting an obligation to consult with mokopuna, or having a youth representative with strong connections to the disability community on the Committee, will serve to address the observation made by the Committee on the Rights of Disabled People that Aotearoa New Zealand must resolve:

The lack of measures and standing mechanisms to ensure that children with disabilities, including Māori children with disabilities, are able to express their views in legislative and policy development and decision-making processes²¹.

Clause 15 – Functions of Committee

The committee established by this bill should have more power to make changes than non legally binding recommendations²².

19. The OCC supports the advocacy efforts of the wider disabled community and their calls that the powers of the Committee be strengthened.

¹⁸ <https://www.occ.org.nz/publications/reports/nz-childrens-commissioners-report-to-the-un-committee-on-the-rights-of-the-child-2022/>

¹⁹ *Ibid* (p.38)

²¹ CRPD/C/NZL/2-3: Recommendation11(a)

²² Youth with disabilities – Halberg Games North

Clause 16 – Duties of Committee

20. The OCC supports section 16 and its identified need for the Committee to give effect to the principles of te Tiriti, consider tikanga and te ao Māori. The OCC also supports its recognition of the need to ensure that disabled people and their whānau have their experiences incorporated into the Committee's work.
21. Section 16(2) could be further strengthened. In this section, the Committee is charged with consulting with groups who will be affected by the Committee's recommendations. The Bill could incorporate Children's Impact Assessments (CIA) into the duties of the Committee to ensure mokopuna remain aware of all matters which may concern them, have their voices heard, and their best interests considered²³.

Clause 18 – Power of Committee to Request Information

22. The OCC supports the intention of this clause and the allocation of powers to the Committee to request information. However, we note that by itself, this power may not be sufficient. Concerns were raised by the Committee on Disabled Persons within their Concluding Observations to New Zealand²⁴ regarding the current availability of disaggregated disability data. Recommendation 11(b) from the Committee encourages New Zealand to address:

The lack of disaggregated data collected on children with disabilities, including by the Ministry of Education and Oranga Tamariki (Ministry for Children), to inform implementation of national frameworks on children, such as the child and youth well-being strategy²⁵.

23. While the Disability Survey 2023 is set to provide a raft of new data and may address some of these concerns, there is a long way to go before existing gaps in Aotearoa New Zealand's disability data are addressed across all areas.
24. For further details please refer to our report to the United Nations Committee on the Rights of the Child²⁶.

Conclusion

25. The OCC wishes to recognise that our ability to speak into this space is enabled only by our engagement with disabled mokopuna and their whānau and our amplification of their voices.
26. As the advocate for the rights and interests of the mokopuna of Aotearoa New Zealand, the OCC is committed to ensuring decision-makers consider mokopuna in all matters which concern them. We have sought to demonstrate this by

²³ Children's Convention Article 12(1) - States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child

²⁴ CRPD/C/NZL/2-3

²⁵ CRPD/C/NZL/2-3: Recommendation 11(b)

²⁶ <https://www.occ.org.nz/publications/reports/nz-childrens-commissioners-report-to-the-un-committee-on-the-rights-of-the-child-2022/>

engaging with disabled mokopuna and their whānau in the preparatory phase of this submission and drawing upon previous engagements to ensure the voices of the disabled community remain at the centre.

27. After reviewing the Bill in its' current form, we found it difficult to determine whether consultation with Disabled mokopuna had occurred to a meaningful degree. Our submission sought to highlight the value of engaging with mokopuna and to encourage the Social Services Select Committee to draw upon relevant human rights jurisprudence relating to other rights instruments.
28. It is our hope that the insights we have received from disabled mokopuna, and a greater awareness of their unique needs will be celebrated and elevated within this important piece of legislation.

Recommendations

29. Our recommendations are as follows:

- Seek the opinions of disabled mokopuna on this Bill and review this Bill with the rights and interests of disabled mokopuna as a priority within the Bill
- Name the Children's Convention as a rights instrument of relevance (*clause 4*)
- Elevate the position of Te Tiriti o Waitangi as a rights instrument and ensure it underpins the Committee at all levels (*clause 5*)
- Ensure the intent of the Bill is responsive to the diverse realities of disabled mokopuna (*clause 6*)
- Insert an obligation to ensure whakapapa Māori representation within the Committee (*clause 11*)
- Insert safeguards to ensure mokopuna and youth representation within the Committee (*clause 12*)
- Strengthen the powers of the committee (*clause 15*)
- Recognise that existing disability data gaps may limit the Committee's ability to make well-informed recommendations (*clause 16*)