



8 March 2024

Tēnā koe

Official Information Act request

Thank you for your email of 7 February 2024, requesting written advice provided by the Ministry of Social Development (the Ministry) and Whaikaha - Ministry of Disabled People (Whaikaha), to the Minister for Disability Issues, prior to her decision not to proceed with amendments to the NZSL Act.

Please note that in the interests of providing a useful and coherent response I consulted with the Office of the Minister for Disability Issues, and with Whaikaha. The following response provides information that has been deemed to be in scope by the Ministry, Whaikaha, and by the Minister's Office. Each piece of information has been assessed by the respective owners under the Official Information Act 1982 (the Act). Please find the response set out below.

Any advice given to the Minister by MSD and Whaikaha for the Minister of Disability Issues consideration before meeting with the appropriate officials from MSD and Whaikaha prior to her decision not to proceed with the NZSL Act amendments?

I refer you to **Appendix one** which provides the following Ministry report:

- *Progressing the New Zealand Sign Language Amendment Bill*, 15 December 2023.

You will note that some information has been withheld under section 9(2)(h) of the Act to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

In addition, and in accordance with section 16(1)(e) of the Act which allows for information contained within a document to be provided as an excerpt, please see **Appendix two** which provides paragraphs 55-66 from the following Whaikaha report:

- *Disability Issues Legislation Work Programme*, 30 November 2023, REP/WHK/23/11/004

This excerpt provides information in scope of your request. Please note that some information in the report has been withheld under section 9(2)(h) of the Act to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

What MSD/ Whaikaha discussed with the Minister for Disability Issues in regards to providing advice to the Minister of Disability Issues about the NZSL Act amendments? Refinement: Discussion refers to written documents/ advice that were used to facilitate the discussion between officials and the Minister.

In response to this request I refer you to the documents listed above and provided as **Appendix one**.

Any meeting notes/minutes of the meeting/discussion with the Minister and officials from MSD & Whaikaha

I refer you to **Appendix three** which provides notes made by a Private Secretary during a meeting between the Minister and Officials from the Ministry and Whaikaha on 24 January 2024, regarding the NZSL Amendment Bill. Please note that the Minister had already signalled her intention to halt work on the NZSL Amendment Bill on 16 January 2024, by selecting it as an option in the MSD briefing paper REP 12-23-927 (provided as **Appendix one**).

You will note that some information provided in **Appendix three** has been redacted under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. I believe the greater public interest is in the ability of individuals to express opinions in the course of their duty.

I can also advise with reference to the above-mentioned meeting, and in accordance with s16(1)(e) of the Act in which information can be made available as a summary, that the only meeting note made by a Ministry official in scope of your request were the words: 'not this bill'.

Was there any consideration given for/by the Minister of Disability Issues and officials from MSD for the Minister to meet with the NZSL Board prior to making a decision about the NZSL Act amendments? You have confirmed that you are requesting written advice.

This request is refused under section 18(e) of the Act as this document does not exist. You will note with reference to **Appendix one** that the advice provided to the Minister by MSD and Whaikaha did not include a recommendation that she meet with the NZSL Board prior to making a decision about whether to proceed with the NZSL Act amendment.

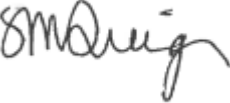
I can however advise that in a subsequent report that is out of scope of this request, the Minister indicated that she would like to meet with the NZSL Board Chair and Deputy in the first half of 2024.

I will be publishing this decision letter, with your personal details deleted, on the Ministry's website in due course.

If you wish to discuss this response with us, please feel free to contact OIA_Requests@msd.govt.nz.

If you are not satisfied with my decision on your request, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at www.ombudsman.parliament.nz or 0800 802 602.

Yours sincerely

pp. 

Magnus O'Neill
General Manager
Ministerial and Executive Services

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OFFICIAL INFORMATION ACT

Report



MINISTRY OF SOCIAL
DEVELOPMENT
TE MANATŪ WHAKAHIATO ORA

Date: 15 December 2023

**Security
Level:**

IN-CONFIDENCE

To: Hon Penny Simmonds, Minister for Disability Issues

Progressing the New Zealand Sign Language Amendment Bill

Purpose of the report

- 1 This report provides further advice on the development of the New Zealand Sign Language Amendment Bill (NZSL Amendment Bill), as referenced in the legislation work programme briefing from Whaikaha - Ministry of Disabled People (Whaikaha).
- 2 This report also seeks direction on your preferred option for progressing work to amend the New Zealand Sign Language Act 2006 (the Act) ahead of the 2024 legislative programme being decided and notes the Ministry of Social Development (MSD) intends to transfer the stewardship to Whaikaha in due course.

Executive summary

- 3 The Act supports the promotion and maintenance of New Zealand Sign Language (NZSL). Since 2006, there has been a significant shift in how New Zealand addresses disability issues. The NZSL Amendment Bill gives the opportunity to reflect these changes.
- 4 Work to amend the Act started in 2019, when the New Zealand Sign Language Board (NZSL Board) proposed a review of the Act. In 2020, the NZSL Board presented the findings of the review to the Minister for Disability Issues, following which MSD and the Office for Disability Issues (ODI) commenced work on initial policy proposals. In September 2022, MSD and ODI engaged with the Deaf and disabled communities on potential amendments to the Act. The Deaf community expressed support for:
 - strengthening strategic leadership by Deaf people on matters relating to NZSL

- recognising Tāngata Turi Māori identity and leadership by embedding the Treaty of Waitangi in the Act, and
 - monitoring government agencies' actions to support the purpose of the Act.
- 5 There were no expressions of support for the status quo – that is, not amending the Act.¹
- 6 In March 2023, Cabinet invited the Minister for Disability Issues to issue drafting instructions for MSD to lead the amendment of the Act. Officials collaborated with the Parliamentary Counsel Office (PCO) to draft the NZSL Amendment Bill, which proposes to amend the Act by:
- establishing the existing NZSL Board as a statutory Ministerial advisory group
 - providing greater recognition to the identity and leadership of Tāngata Turi Māori
 - expanding the definition of government agencies who should be guided by the Act, and
 - reviewing operations and effectiveness of the proposed amendments five years after enactment.

7 s9(2)(h)



Recommended actions

It is recommended that you:

1 **indicate** your preferred option:

option 1 - proceed with the NZSL Amendment Bill in its current form and prepare it for introduction

AGREE / DISAGREE

option 2 - proceed with the NZSL Amendment Bill, making changes to the NZSL Amendment Bill before introduction

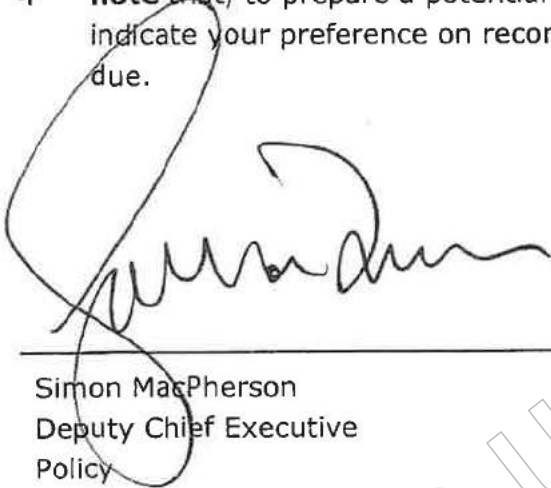
AGREE / DISAGREE

¹ Act Consultation 2022 - <https://www.odi.govt.nz/nzsl/nzsl-act-consultation-2022>

option 3 – halt all work on the NZSL Amendment Bill

AGREE/DISAGREE

- 2 **note** MSD is currently responsible for administering the Act
- 3 **note** we will confirm with you the appropriate timing to transfer the Act and/or the NZSL Amendment Bill to Whaikaha
- 4 **note** that, to prepare a potential legislative bid, MSD officials require you to indicate your preference on recommendation 1 before legislative bids are due.



Simon MacPherson
Deputy Chief Executive
Policy

15/12/23

Date



Hon Penny Simmonds
Minister for Disability Issues

16/1/24

Date

Background

- 8 Approximately 4,600 Deaf people use NZSL as their primary form of communication, with 23,000 total users in New Zealand. This includes family and carers who use NZSL to communicate with their Deaf children. Tāngata Turi Māori² have higher rates of hearing loss than other ethnic groups.³ NZSL is a unique language which continues to evolve and is fundamental for Deaf people to communicate and fully participate in society.⁴
- 9 In 2006, the Act was established to promote and maintain the use of NZSL. The Act declared NZSL an official language of New Zealand, enabled the use of NZSL in legal proceedings, empowered the creation of regulations to set standards for the interpretation of NZSL in legal proceedings and set principles to guide government departments on the use of NZSL.
- 10 MSD has held responsibility for administering the Act. As the Minister for Disability Issues, you are the Minister responsible for the Act.⁵
- 11 Since the Act's introduction, New Zealand has made progress towards implementing a social model of disability. Notable progress includes ratifying of the United Nations Convention on the Rights of Persons with Disabilities in 2008 and establishing the NZSL Board in 2014 to address barriers experienced by Deaf people.
- 12 However, the 2013 review of the Act by the Human Rights Commission⁶ and the 2019 review by the NZSL Board found that the Deaf community continue to experience barriers that persisted before the implementation of the Act. Research also shows the overall use of NZSL has declined over time, giving NZSL a threatened language status.⁷ This decline poses a significant threat to the overall identity and wellbeing of Deaf people in New Zealand.

Work to consider amending the Act started under the previous government

- 13 In 2019, the Minister for Disability Issues asked the NZSL Board to provide advice on how the Act could be amended to better align with the NZSL

² Tāngata Turi Māori are Māori who are Deaf, or hard of hearing and identify with the Deaf community.

³ Greville, K. A. (2001) Hearing impaired and deaf people in New Zealand; population numbers and characteristics.

⁴ Dugdale, P. (2002). *Aspects of being Deaf in New Zealand*.

⁵ At the time the Act was passed, MSD was the lead agency on disability issues, and ODI was part of MSD. ODI has now been integrated into Whaikaha.

⁶ A New Era in the Right to Sign. (2013). *Human Rights Commission*.

⁷ McKee, R. L. (2017). "Assessing the vitality of New Zealand Sign Language." *Sign Language Studies*, 17(3), 322-362.

Strategy, including to achieve the promotion, maintenance and acquisition of NZSL as an official language.⁸

- 14 The review focused on options which would strengthen the mandate for public leadership of the Deaf community, create a mechanism to monitor the implementation of the Act and better reflect the Treaty of Waitangi. These areas are of particular focus for the NZSL Strategy but are not reflected in the current Act [CAB-22-MIN-0353 refers]. Following this, the Minister directed officials to develop initial policy proposals considering the amendment of the NZSL Act. The Minister did not direct officials to undertake a first principles review of the NZSL Act.
- 15 In 2022, the Social Wellbeing Committee invited the Minister for Disability Issues to consult with the Deaf community on suggested amendments to the Act [CAB-22-MIN-0353 and SWC-22-MIN-0158 refer].
- 16 Officials consulted with the Deaf community on potential amendments between September to November 2022. The Deaf community expressed support for:
 - strengthening strategic leadership by Deaf people on matters relating to NZSL
 - recognising Tāngata Turi Māori identity and leadership by embedding the Treaty of Waitangi, and
 - monitoring government agencies' actions to support the purpose of the Act.
- 17 There were no expressions of support for the status quo – that is, not amending the Act.
- 18 There was strong, but not universal, support for increasing the status and influence of the Deaf community's leadership of NZSL, and for the roles, functions and powers of a leadership group to be set out in legislation.
- 19 Many in the community wanted the review of the Act to go beyond Cabinet's mandate and be a first principles review, which allows for a broader review of the NZSL Board's functions, power and engagement.
- 20 Some submitters felt that the amendments to the Act would not address the significant issues faced by the Deaf community, such as access to education and the need to support the NZSL interpreter workforce.

Cabinet agreed to amend the Act in March 2023

- 21 Following consultation with Tāngata Turi Māori, the NZSL, Deaf, and disabled communities, in March 2023, Cabinet invited the Minister for Disability Issues

⁸ Act Consultation 2022- <https://www.odi.govt.nz/nzsl/nzsl-act-consultation-2022>

to issue drafting instructions to support the vitality of NZSL as an official but threatened language [CAB-23-MIN-1017 and SWC-23-MIN-0022 refer].

- 22 When Cabinet agreed to amend the Act, Whaikaha was in its establishment phase. Cabinet noted MSD was better placed to work with PCO to draft and progress the NZSL Amendment Bill through the House. Administrative responsibility for the Act was agreed to be transferred to Whaikaha after enactment. [CAB-23-MIN-1017 and SWC-23-MIN-0022 refer].

The NZSL Amendment Bill is near complete and could be introduced to Parliament when you choose

s9(2)(h)

- 24 Appendix 1 provides the draft NZSL Amendment Bill.

s9(2)(h)

- 26 The NZSL Amendment Bill presents an opportunity to address the declining use of NZSL and preserve the vitality of the language which can support the wellbeing of Deaf and disabled people.

- 27 The NZSL Amendment Bill is near complete and could be introduced before the end of 2024. Appendix 3 contains a timeline of completed and remaining legislative steps ahead of introduction.

s9(2)(h)

s9(2)(h)

- 30 You may want to consider this provision alongside your government's priorities for the Treaty of Waitangi. We will engage with the relevant officials on this as the work progresses.

We seek an indication on how you would like to proceed

- 31 Officials have identified three options for you to consider. The future direction of the NZSL Amendment Bill could take one of the following:
- option 1 - proceed with the NZSL Amendment Bill in its current form and prepare it for introduction
 - option 2 - proceed with the NZSL Amendment Bill, making changes to the proposals in the amendment before introduction, or
 - option 3 - halt all work on the NZSL Amendment Bill.

Option 1: proceed with the NZSL Amendment Bill in its current form and prepare it for introduction

- 32 Should you agree to proceed with the NZSL Amendment Bill in its current form, MSD will complete all remaining legislative steps and support you to introduce the NZSL Amendment Bill. Specifically, MSD officials, in partnership with Whaikaha, will:
- submit a legislative bid when it is called by PCO
 - complete the New Zealand Bill of Rights Act 1990 vetting ahead of seeking the Cabinet Legislative Committee's agreement to introduce the NZSL Amendment Bill, and
 - provide policy advice to you, including on the timing of the NZSL Amendment Bill's introduction, your first reading speech and any other advice you request.
- 33 If you choose this option, the NZSL Board will be required to update their terms of reference to reflect changes to the Act. Following this, you may want to review how the NZSL Board is funded (e.g., frequency of meetings) to ensure they are meeting their legislative obligations.

Option 2: proceed with the NZSL Amendment Bill, making changes to the proposals in the amendment before introduction

- 34 Should you choose to make amendments to the proposals before proceeding with the NZSL Amendment Bill, officials will be available to meet with you to understand the changes you would like to make.
- 35 If you would like to make additional changes to the Bill that fall within the scope of Cabinet's current mandate, we can provide you advice on how to achieve that.

- 36 However, if you choose to make changes to the Bill which fall out of Cabinet's scope, you will need to seek Cabinet's agreement to make those changes.
- 37 Making substantial changes may impact the upcoming 2024 Disability Legislative Bid and the priority rating of this Bill. Major changes will also be resource intensive for PCO and may mean that the introduction of the Bill is deferred to 2025.
- 38 If the introduction of the Bill is deferred to 2025 or substantial changes are made to it, officials may need to re-engage Tāngata Turi Māori, the NZSL, Deaf, and disabled communities to advise of these changes, as they currently expect the Bill to be introduced in 2024.

Option 3: halt all work on the NZSL Amendment Bill

- 39 Should you choose to halt all work on the NZSL Amendment Bill, officials will be available to discuss potential next steps with you.
- 40 You could consider non-legislative means of supporting the Deaf community and NZSL users, for example, through the creation of a monitoring and reporting framework. However, this would need to be resourced and considered alongside Whaikaha's broader work programme.
- 41 Under this option, we will provide you with advice on informing the Deaf and disabled communities that the NZSL Amendment Bill will not be progressing at this stage. This may be received negatively by some parts of the community as changes to the Act have long been called for. However, other parts may support this move and choose to advocate for a first principles review.

Next steps

- 42 The 2024 legislative work programme is due to be announced shortly. To prepare a potential bid for you to introduce disability related legislation which includes NZSL, MSD officials require you to indicate your preference.
- 43 Officials are available to discuss this report, and/or provide you with further advice on these options.
- 44 MSD and Whaikaha will continue working on the appropriate timing of the stewardship transfer of the Act and/or NZSL amendment Bill.

File ref: REP/23/12/927

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Responsible manager: Sarah Palmer, Manager, Disability Policy

This appendix (14pp) has been withheld under section 9(2)(h) of the Act in order to maintain legal professional privilege. The greater public interest is in ensuring that government agencies can continue to obtain confidential legal advice.

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Appendix two - Effects of the NZSL Bill proposals

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Appendix 3:

Policy to Enactment: revised timeline to introduce the NZSL Amendment Bill in 2024				
Timeline	Legislative step	Key deliverables for MSD	Date due	Notes
May 2023 June 2023 July 2023 August 2023	PCO drafts the Bill	MSD send first set of drafting instructions sent and responds to draft Bills	3/5/23	
		MSD engages with Public Service Commission on definition of govt agencies	11/7/23	
September 2023	Engage on exposure draft	MSD re-engages with Treaty Provisions Oversight Group	13/9/23	We advised that based on their initial feedback and our ongoing consultation with Rōpū and NZSL Board, the Te Tiriti o Waitangi could be embedded via the Board's functions rather than explicit clause. Therefore, the Bill proposes an enabling provision.
		MSD meets with the NZSL Board to discuss their feedback on the exposure draft of the Bill	21/9/23	
		MSD meets with te Rōpū Kaitiaki	29/9/23	MSD could not meet with te Rōpū Kaitiaki due to scheduling conflicts. The NZSL Board has agreed to inform te Rōpū Kaitiaki of the Bill's proposals. While MSD has informed te Rōpū Kaitiaki that we remain open to meeting them to discuss the Bill, however, we cannot accept any advice after the exposure draft process ends. We have also reassured te Rōpū Kaitiaki that they can provide feedback during the Select Committee stage.
October 2023		MSD meets with DPO Coalition to discuss their feedback on the exposure draft of the Bill	5/10/23	
November 2023	General policy and disclosure statements are drafted	Disclosure and general policy statement is started	1/11/23	
December 2023		Seek Minister of Disability Issues agreement to proceed with the Bill	15/12/23	
2024		MSD notifies govt agencies newly in scope of principles under S9 of NZSL Act if the Minister of Disability Issues agrees to proceed with the Bill		



2024	BORA vetting started	MSD completes BORA vetting stage		
2024	Cabinet Legislation Committee approves Bill for introduction	Prepare Cabinet paper for introduction		
2024	First reading	MSD prepares the Minister for Disability Issues first reading speech.		
		Stewardship of NZSL is transferred to Whaikaha		
2024	Select Committee (aim for 6 months)	Whaikaha provides all advice		We recommend the Minister seek 6 month Select Committee review to allow for Tāngata Turi Māori, the NZSL, Deaf, and disabled communities to provide their feedback in accessible form. Advice on timing is subject to the outcome of the Report seeking the Minister's direction to proceed with the Bill
2024	Second reading			
2024	Third reading			
	Royal assent			

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Appendix two – excerpts from Disability Issues Legislation Work Programme, 30 November 2023 [REP/WHK/23/11/004]

New Zealand Sign Language Amendment Bill

- 58 There are approximately 23,000 NZSL users of whom it is estimated 4,500 are Deaf.¹ Research has confirmed that while NZSL is now more recognised and accepted by society, a decreasing percentage of the Deaf population are learning and using the language. The findings mean that, in line with language endangerment and vitality frameworks, NZSL can be considered a threatened language.
- 59 In 2006, the NZSL Act came into force making NZSL an official language of New Zealand. This was an important milestone, however, in the last 16 years there have been significant changes to how we think about Deaf people and the Deaf community, and what is needed to better support Deaf people. The Minister for Disability Issues is responsible for the NZSL Act, which is currently administered by MSD.
- 60 In 2018, the NZSL Strategy was launched. It identified five language learning priorities and guides the work of the NZSL Board.² In 2019, the Minister for Disability Issues asked the NZSL Board to provide advice on how the NZSL Act could be amended to better align with the NZSL Strategy, including to achieve the promotion, maintenance, and acquisition of NZSL as an official language.
- 61 The review focused on options to strengthen the mandate for public leadership of the Deaf community, create a mechanism to monitor the implementation of the NZSL Act, and better reflect Te Tiriti o Waitangi.
- 62 Officials from MSD, including the NZSL Office which is now a part of Whaikaha - Ministry of Disabled People, worked in partnership with the NZSL Board to develop suggested amendments within the scope of the review.
- 63 On 2 September 2022, Cabinet agreed to consult with the Deaf Community on suggested amendments to the NZSL Act which align with the 2020 report back to the Minister. After completing community consultation, MSD has been working with the Parliamentary Counsel Office to prepare the

¹ Census 2018 data, Statistics New Zealand.

² Acquisition and use/access are the two key language priorities within the Strategy due to the importance of Deaf and other NZSL users being able to fully learn and use NZSL in all domains of society. The remaining three language priorities: attitude, documentation and status play essential supporting roles to the achievement of NZSL acquisition and use/access.
<https://www.odi.govt.nz/nzsl/nzsl-strategy-2018-2023/>

NZSL Amendment Bill, incorporating feedback from the consultation process.

To create a strong partnership with the Deaf community and support the promotion, maintenance, and acquisition of NZSL as an official language, in March 2023 Cabinet agreed to:

- Appoint the NZSL Board as a Statutory Ministerial Advisory group with additional functions,
- give greater recognition to the identity and leadership of Tāngata Turi Māori and embed Te Tiriti o Waitangi in the Act,
- expand the definition of government agencies who should be guided by the principles of the NZSL Act, and
- review the amended NZSL Act five years after enactment.

Risks and implications

64 Overall, the NZSL Bill is relatively straight forward and desired by the members of the Deaf community that MSD and the NZSL Office have engaged with. However, aspects of the NZSL Bill may be contentious, given some of the feedback received from the Deaf and disabled community on the development of policy proposals.

65 In particular, the DPO Coalition and Deaf Aotearoa advised MSD officials that they do not support these proposals. They noted that the review of the NZSL Act was not a first principles review of possible functions and powers, leading to engagement on a broader range of forms the NZSL Board or a new leadership group could take. Therefore, their position is that the engagement was not genuine as the Deaf community were not provided with enough information on the full range of potential options to have informed opinions about the review.

66 The DPO Coalition also raised that the amendments to the NZSL Act will not address the significant issues faced by the Deaf community, such as education, access, and the interpreter workforce.

Appendix three - meeting notes

Private Secretary Notes

Meeting between Minister and Officials (MSD & Whaikaha)

NZSL Amendment Bill

Date: 24 January 2024

s9(2)(g)(i)



Out of scope



- MSD to start the process of shifting the NZSL legislation over to Whaikaha.

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