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BEGIN PRODUCER’S NOTE:

ASSEMBLY of FIRST NATIONS – ASSEMBLÉE des PREMIÈRES NATIONS logo.

END PRODUCER’S NOTE.

**Assembly of First Nations**

**Submission to the Senate Standing Committee on Social Affairs, Science and Technology**

**RE: Bill C-81, *the Accessible Canada Act: An Act to Ensure a Barrier-Free Canada***

**SENT VIA EMAIL:** [SOCI@sen.parl.gc.ca](mailto:SOCI@sen.parl.gc.ca)

**April 30, 2019**

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#### OVERVIEW:

1. The Assembly of First Nations (“AFN”) is pleased to make this written submission on Bill C- 81, to the Senate Standing Committee on Social Affairs, Science and Technology (SOCI).
2. Bill C-81 is proposed federal legislation that is intended to advance disability rights in Canada by enhancing the legal framework for addressing the barriers to inclusion through “progressive realization.” FOOTNOTE 1. If passed, the Bill will require the Government of Canada, as well as all entities within federal jurisdiction, to address barriers to inclusion and the systems that perpetuate these barriers in an effort to promote equality of opportunity.

BEGIN FOOTNOTE 1:

See, Summary and sections 11(1), 18 of Bill C-81.

END FOOTNOTE 1.

1. First Nations possess Aboriginal Treaty and inherent rights, sovereignty and a Nation-to-Nation relationship with Canada. While the federal government has jurisdiction to pass laws pursuant to subsection 91(24) of the *Constitution Act*, 1867 FOOTNOTE 2, parliament must ensure any legislation does not unintentionally adversely impact First Nations rights, jurisdictions and authorities. It is not explicit, nor clear, within the proposed Bill C-81 whether it is intended to apply to First Nations governments. If so, and if passed, Bill C-81 could have significant and wide-ranging effects on First Nations governments and individuals across Canada. Absolute clarity is needed.

BEGIN FOOTNOTE 2:

*Constitution Act*, 1867 (UK), 30 & 31 Vict, c 3, reprinted in RSC 1985, App 11, No 5.

END FOOTNOTE 2.

1. The AFN has serious concerns regarding the current capacity of First Nations governments to implement the accessibility standards and regulations enacted under Bill C-81, as well as the legal liability that First Nations could incur if these accessibility standards are not met in accordance with the Act.

**BACKGROUND**

1. The AFN is the national, political organization of First Nations governments and their citizens, including those living on and off reserve. Every Chief in Canada is entitled to be a member of the Assembly, and the National Chief is elected by the Chiefs in Canada, who in turn are elected by their citizens. The AFN has 634 member Nations within its Assembly. The role and function of the AFN is to serve as a nationally delegated forum for determining and harmonizing effective, collective and co-operative measures on any subject matter that the First Nations delegate for review, study, response or action, and to advance the aspirations of First Nations.
2. The AFN acts as a key institution in supporting First Nations by coordinating, facilitating and advocating for policy change, while the leaders of this change are the First Nations themselves. Chiefs, and the First Nations they represent, must be an integral part of meeting the challenge of sustainable, transformative policy change.

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1. The AFN is mandated by Resolutions: 10/2018, *Resources for Engagement on Distinct First Nations Accessibility Legislation*; 24/2018, *Increased Focus on Disabilities Centered of Human Rights*, and; 38/2018, *Ensuring Accessibility at the Assembly of First Nations,* regarding persons with disabilities to participate in future government discussions on Bill C- 81, or related discussions on federal legislation affecting First Nations persons with disabilities and access. Further, AFN Resolution 55/2016, *First Nation Federal Accessibility Legislation,* calls to support a distinct First Nations engagement process.

#### SUBMISSIONS & RECOMMENDATIONS:

1. As currently drafted, Bill C-81 does not acknowledge the unique situation of First Nations generally, nor the special position that First Nations governments occupy in the Canadian federal system. It appears that Bill C-81 could apply to First Nations governments by virtue of subsection 7(1)(f), which provides that the Bill would apply to “any entity or person […] that acts in the name of, or for the benefit of, any entity or person in the operation of a work or carrying on of an undertaking or business that is within the legislative authority of Parliament.” FOOTNOTE 3

BEGIN FOOTNOTE 3:

Bill C-81 at subsection 7(1)(f).

END FOOTNOTE 3.

1. This is potentially problematic given the special and unique legal and historic relationship between First Nations and the Crown. Moreover, unlike other federally regulated entities, First Nations hold constitutionally-protected Aboriginal and Treaty rights that may be impacted by such federal legislation. As currently drafted, Bill C-81 fails to properly acknowledge and recognize this important order of government in Canada’s federal system. **The AFN recommends that Bill C-81 be amended to be clear that First Nations governments on-reserve are not subject to this legislation.**
2. Bill C-81 represents a significant step forward in Canada’s ongoing implementation of the United Nations Convention on the Rights of People with Disabilities FOOTNOTE 4 (“UNCRPD”) FOOTNOTE 5. However, the UNCRPD is not Canada’s only international obligation.

BEGIN FOOTNOTE 4:

UN General Assembly, *Convention on the Rights of Persons with Disabilities: resolution / adopted by the General Assembly*, 24 January 2007, A/RES/61/106, available at: <http://www.refworld.org/docid/45f973632.html>

END FOOTNOTE 4.

BEGIN FOOTNOTE 5:

Council of Canadians with Disabilities, online: <http://www.ccdonline.ca/en/international/un/canada/crpd-first-report>

END FOOTNOTE 5.

1. Canada has endorsed the United Nations Declaration on the Rights of Indigenous Peoples (the Declaration) in 2016 and Article 21 is particularly relevant:

***Article 21***

* 1. *Indigenous peoples have the right, without discrimination, to the improvement of their economic and social conditions, including, inter alia,*

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## in the areas of education, employment, vocational training and retraining, housing, sanitation, health and social security.

* 1. *States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention shall be paid to the rights and special needs of indigenous elders, women, youth, children and persons with disabilities.*

The Declaration plays an important role in the advancement of First Nations persons with disabilities. Similarly, the United Nations Sustainable Development Goals (SDGs), adopted by Canada in September 2015, should also be observed because they will create positive outcomes for First Nations people and persons with disabilities. **Therefore, the AFN recommends the legislation also reference Canada’s international obligations under the Declaration, and the SDGs.**

1. Bill C-81 provides no funding for First Nations to access, with respect to building more accessible communities. The AFN has noted that research regarding First Nations and accessibility/disability matters is sparse. The proposed new entities within the legislation will have a difficult time developing effective standards if they do not have the necessary information about First Nations persons with disabilities to make informed decisions. **The AFN recommends that this legislation be amended to allow for a fund that can be accessed by entities such as First Nations governments in order to create more accessible communities. The AFN further recommends that funds are made available for research to be conducted by First Nations researchers that focus specifically on accessibility/disability matters related to First Nations.**
2. Further engagement and consultations will require data gathering, measurement and analysis, study, and reporting of results, which will assist Parliament in making any necessary adjustments for the implementation of Bill C-81 in First Nations. First Nations, Regional and Treaty organizations are important sources of knowledge. **The AFN recommends that First Nations, as well as Regional and Treaty organizations, continue to be represented, consulted and engaged in the regulatory process whenever new standards and regulations are contemplated and created under Bill C- 81.**
3. The Canadian Accessibility Standards Development Organization, Accessibility Commissioner and the Chief Accessibility Officer are three new entities proposed under the Bill. These entities will be responsible for developing and enforcing standards, and advising the Minister on accessibility matters. It is essential that these entities have appropriate and ongoing training regarding the unique historical situation of First Nations. Further, it is essential that First Nations have input into the outputs of these new entities. Therefore, **the AFN recommends that the board and staff of the Canadian Accessibility Standards Development Organization, the Accessibility Commissioner, and Chief Accessibility Officer, all be required to take First Nations history, cultural awareness, and**

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#### sensitivity training. The AFN further recommends that First Nations peoples, especially First Nations persons with disabilities, be considered for all of these roles.

1. The use of a “disability lens” is a key aspect of Bill C-81. This approach is likely about empowerment and self-determination for persons with disabilities. However, this approach ought to incorporate, as much as possible, all aspects of disability including those aspects that cross cultural and jurisdictional boundaries by including Indigenous perspectives in its scope. **The AFN recommends that the “disability lens” ought to be expanded to include an intersectional and multi-variable approach that includes First Nations perspectives.**
2. The AFN is concerned that the complaints mechanism may not meet the needs of First Nations. The burden should not be on First Nations or First Nations persons with disabilities to navigate a complicated complaints mechanism. Especially if complaints are multi-faceted in nature. **The AFN recommends that the complaints mechanism consider the unique circumstances of First Nations and ensure that the complaints processes that may be established are user-friendly.**
3. As previously stated, First Nations fall under exclusive federal jurisdiction and thus access to financial resources would be limited to Parliament and its ministries. A failure to properly assist First Nations governments in the implementation of Bill C-81, whether through financial support or otherwise, amounts to potentially setting First Nations governments up to fail in their compliance with the Bill. The unique situation of reserve communities must not be an after-thought in the implementation of Bill C-81 and the overall project of increasing accessibility across Canada. **The AFN recommends that adequate funding be designated and provided to First Nations governments to ensure they are in a position to comply with any and all accessibility standards brought into force through Bill C-81, whether First Nations are subject to the legislation or not.**
4. The AFN continues to coordinate a First Nations-led process on accessibility in First Nations up to March 31, 2019, related to Bill C-81. The unique situations of First Nations must not be an after-thought in the implementation of the *Act.* The consultation process should not end now that Bill C-81 has been drafted, but rather continued engagement must occur if the Bill passes and the Minister begin creating accessibility standards and regulations. Such continued engagement, steeped in the Honour of the Crown, should be prioritized before the coming into force of any regulations, so that Parliament may assist First Nations governments in evaluating the requirements for enhancing their capacity in order to meet the new accessibility standards and regulations. Such assistance could include technical and financial support from the Federal government through various funding arrangements, and other government ministries. **The AFN recommends that First Nations continue to be consulted on the roll out of the *Accessible Canada Act* if passed, especially with the establishment of the new entities, standards, regulations, and enforcement.**

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1. Non-derogation clauses typically serve the purpose of expressing Parliament’s clear intention that a Bill is to be interpreted and implemented consistently with a particular *Act*. For First Nations, non-derogation clauses are typically addressed towards Aboriginal and Treaty rights, which are given constitutional force by virtue of section 35 of the *Constitution Act*, 1982 FOOTNOTE 6. While there are several non-derogation clauses already in Bill C-81 with respect to the territorial governments FOOTNOTE 7, the Canadian Forces FOOTNOTE 8, and the Royal Canadian Mounted Police FOOTNOTE 9, there are no such protections afforded towards constitutionally protected Aboriginal and Treaty rights. **Therefore, the AFN recommends that a non-derogation clause be added to Bill-81 to safeguard First Nations’ constitutionally protected Aboriginal and Treaty rights.**

BEGIN FOOTNOTE 6:

*Constitution Act*, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

END FOOTNOTE 6.

BEGIN FOOTNOTE 7:

See, section 8 of Bill C-81.

END FOOTNOTE 7.

BEGIN FOOTNOTE 8:

See, section 9 of Bill C-81.

END FOOTNOTE 8.

BEGIN FOOTNOTE 9:

See, section 10 of Bill C-81.

END FOOTNOTE 9.

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#### SUMMARY OF RECOMMENDATIONS:

1. In summary, therefore, the AFN recommends that:
2. Bill C-81 be amended to be clear that First Nations governments on-reserve are not subject to this legislation.
3. This legislation be amended to allow for a fund that can be accessed by entities such as First Nations governments in order to create more accessible communities. The AFN further recommends that funds are made available for research to be conducted by First Nations researchers that focus specifically on accessibility/disability matters related to First Nations.
4. First Nations, as well as Regional and Treaty organizations, continue to be represented, consulted and engaged in the regulatory process whenever new standards and regulations are contemplated and created under Bill C-81.
5. The board and staff of the Canadian Accessibility Standards Development Organization, the Accessibility Commissioner and Chief Accessibility Officer all be required to take First Nations history, cultural awareness and sensitivity training. The AFN further recommends that First Nations people, especially First Nations persons with disabilities, be considered for all of these roles.
6. The “disability lens” ought to be expanded to include an intersectional and multi- variable approach that includes First Nations perspectives.
7. The complaints mechanism considers the unique circumstances of First Nations and ensures that the complaints processes that may be established are user-friendly.
8. Adequate funding be designated and provided to First Nations governments to ensure they are in a position to comply with any and all accessibility standards brought into force through Bill C-81, whether First Nations are subject to the legislation or not.
9. First Nations continue to be consulted on the roll out of the *Accessible Canada Act* if passed, especially with the establishment of the new entities, standards, regulations, and enforcement.
10. A non-derogation clause be added to Bill-81 to safeguard First Nations’ constitutionally protected Aboriginal and Treaty rights.

Thank you.

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