

# Regulatory Impact Statement: Accelerating Accessibility

Government has heard from the disabled community that New Zealand is not an accessible society and that disabled people face a number of significant barriers that prevent them from being able to fully participate in society. In 2020, the Labour Government made a manifesto commitment to address this issue and to “introduce an Accessibility for New Zealanders Act to help New Zealand to become more welcoming and accessible for disabled people and other New Zealanders with accessibility needs”.

The Minister for Disability Issues has brought the Accelerating Accessibility in New Zealand paper to Cabinet, accompanied by this Regulatory Impact Statement, to seek her colleagues’ approval to move into the next phase to progressively making New Zealand a more accessible place for disabled people and tāngata whaikaha Māori. This next phase includes introducing a new framework for identifying, preventing and removing barriers that disabled people face; preparing drafting instructions for legislation to support New Zealand to progressively become more accessible; and also to introduce a new Accessibility Governance Board.

## Executive Summary

This impact analysis is aimed at addressing limitations in our current legal and policy framework that mean we are not improving accessibility to the extent or pace needed to ensure disabled people can participate in society on an equal basis with others, as is their right. Current arrangements are falling short in providing the credible policy, system design, and service delivery needed to achieve an accessible society, where disabled people (and others with access needs) can access the places, spaces, goods and services they need, with ease and dignity.

Government intervention is required because the current system is not delivering a desirable level of change. New Zealand does not have a dedicated framework that can systematically identify, prevent and remove accessibility barriers across government portfolios, across the public and private sector, and influence wider societal change.

Despite some positive improvements over the last 20 years, the current system is not addressing systemic accessibility issues in a timely or comprehensive manner. For example, key recommendations for change by the Human Rights Commission have still not been fully implemented,

**1.** and we have not acted upon longstanding calls to reform areas such as building standards (an Independent Monitoring Mechanism recommendation);

**2**. we are still seeing harm caused by a lack of accessibility in:

* disproportionately poorer outcomes for disabled people than non-disabled people, and disabled people having to spend more to achieve the same outcomes as others (persistent gaps can be seen in all outcome areas, including education, employment, income, housing, social participation, and health),
* disabled people being left with the obligation to raise a complaint if discrimination is experienced or what standards we have are not being met – there is no positive duty to provide for reasonable accommodations under the law,
* the Crown failing to meet its obligations under Te Tiriti o Waitangi for tāngata whaikaha,
* examples of missed economic and social opportunities that could be realised from a more accessible New Zealand (e.g. to reduce unemployment for disabled people,
* reduce the cost of unemployment through reduced welfare payments, and lift economic benefit through increased revenue from disabled people and their whānau).

Accessibility by its nature is complex and all-encompassing, with barriers to participation occurring in all key areas of life, such as the built environment, transportation, information, services, education and health. Many of these barriers also cross portfolio areas; for example, accessible transport is required for a disabled person to access their place of work (which in turn must be accessible) but information about that transport also needs to be provided in accessible formats. Improving accessibility requires a holistic approach.

## This RIA is proposing a new framework that can address key limitations in our current settings and provide for enduring change

This RIA is proposing a new legislative framework to systematically identify, prevent and remove accessibility barriers in all areas of life. It is aimed at addressing limitations in our current legal and policy framework that are resulting in an insufficient pace and extent of change to ensure disabled people can participate in society on an equal basis with others.

However, tackling a broad, large-scale problem such as this will require a range of responses to bring about change. The legislative framework proposed by this RIA does not and cannot fix all accessibility problems and should not be seen as a ‘cure all’. Legislation is one response, but it should be seen as sitting alongside complementary measures, such as education, awareness raising, and targeted training, that can together address the broader issues resulting from a lack of accessibility. A legislative framework is a logical first step that will enable a range of other responses in future.

MSD looked at both regulatory and non-regulatory options that could effectively deal with the policy problem and meet the following objectives:

* Represent the voices of disabled people.
* Enhance leadership, accountability and coordination to prevent and remove barriers.
* Provide an enduring, clear and consistent methodology for systematically considering barriers and taking steps to remove them, now and in the future.
* Be flexible and progressive.
* Change attitudes towards accessibility barriers by building knowledge and awareness about accessibility and why it is important.
* Embed Te Tiriti o Waitangi.

## We considered four possible options to address the problem

**Option One - remaining with the status quo** – no dedicated accessibility legislation; instead there is a reliance on rights-based legislation to deal with discrimination, alongside a fragmented landscape of regulatory and non-regulatory measures in certain areas. The current framework lacks coordination, is confusing, inconsistent, and does not encourage good behaviour. All too often it excludes disabled people and there have been longstanding calls for change.

**Option Two - a comprehensive, Cabinet-mandated work programme** – no dedicated accessibility legislation, but increased coordination through a Cabinet mandated work programme. This is a viable option that meets efficiency criteria in that it could be established readily and relatively cheaply. However, this efficiency would come at the expense of having a strong, enduring mandate for change, and appropriate leadership and accountability to hold the Government to account and ensure changes for disabled people, who are unlikely to support it.

**Option Three - an enabling legislative framework** – legislation that sets out leadership, structure and process for change.

It would be built around a clear purpose statement, and set out key principles, functions, roles and accountability mechanisms, to ensure that barriers are progressively identified, prevented and removed over time. **This is our recommended option**.

**Option Four - overarching legislation** – a separate regulatory regime that would have the direct ability to establish secondary legislation for codes, standards, and rules for all sectors as they relate to accessibility. This is a common approach in Canadian jurisdictions and is the preferred option of the Access Alliance.3

## Why enabling legislation is our preference

In assessing these options, we considered a key trade-off is in creating a framework that can endure across Government terms but has sufficient flexibility (which can be lost in an overly prescriptive framework) and mechanisms that can evolve over time.

Our preferred option is Option Three, as it can deal effectively with the problem at hand and meet objectives by creating a system that sets the future direction for accessibility. It will enable the systematic and progressive identification, prevention and removal of barriers preventing disabled people from fully participating in all aspects of their community and society. It also provides a framework for developing and implementing clear approaches to promote the participation of disabled people and others with accessibility needs. Unlike Option Two, it sends a strong signal and mandate for change and can endure across government terms. It provides for appropriate representation and ownership by disabled people, while retaining the connections and accountability within government.

Option Four is the preference of the Access Alliance, however, our view is that a fully regulated approach structured around the development of accessibility standards is not going to be appropriate to address accessibility barriers, as many participation barriers are in areas or portfolios that do not lend themselves well to prescription. This approach has also not been shown to be effective overseas in delivering results.

## An effective leadership model is critical for success

An effective leadership model requires a focus on ensuring the effective, ongoing primacy of voice of disabled people, and their family and whānau, as leaders, advisors, lived experience experts, in formal governance, and in holding government to account. However, this needs to be balanced with the mandate and connections to work constructively across and within the public sector to effectively address accessibility barriers and prevent responsibility becoming siloed in one agency.

A successful leadership model needs the mandate and ability to address intersecting accessibility barriers that cross portfolios, while dealing effectively with a range of stakeholders with competing interests (e.g. state-owned enterprises, local government), and varying levers to create change further the distance from the core public sector.

The approach to leadership will impact where functions and accountability for delivering the system sit. There are four structural options for an effective leadership model . These range from in-government options, to fully independent, as follows:

* Option Three (A): Central government agency.
* Option Three (B): Cabinet-mandated independent governance board
* Option Three (C): Semi-structural integration
* Option Three (D): Independent Crown Entity for Accessibility

We assessed these models against key criteria of whether they can:

* contribute to creating an enduring architecture to accelerate accessibility.
* represent the voices of disabled people.
* hold government to account for progress towards long term objectives.
* help decision makers to fully understand the costs, benefits risks, and trade-offs of policy approaches.
* drive better coordinated action around accessibility, working constructively with Ministers, the public sector and the private sector.

The most effective model is one that shares responsibility between disabled people, the public service and Government

Our preferred model creates a new leadership structure and carefully balances a level of independence with still being able to work constructively with government.

This option provides independence through an independent Governance Board, led by disabled people, and focused on providing independent advice and information on the barriers that prevent disabled people from realising their right to full participation in society.

At the same time, it can ensure government is responsive and connected through a responsible chief executive and Minister. It provides for collective coordination across government and a clear methodology to ensure accessibility barriers are, over time, systemically identified, removed and prevented. A cycle of monitoring and review will be provided for, so the Board can provide feedback on how well new and existing policies are performing, and the system can grow and develop over time.

The legislation framework recommended will not set out what people can and cannot do. Rather, it sets out the government’s goals, policy direction, and expectations for change, with a clear process and governance to make that happen.

## There are costs to improving accessibility

There will be costs, both immediate in establishing a new system, but also flow-on costs over time in particular sectors, as barriers are progressively addressed. It is difficult at present to be clear about all costs, because accessibility in its totality is vast and all-encompassing. However, there will be benefits that accrue over time to a number of parties, including disabled people and whānau, others with access needs, and also, given time, to groups such as businesses that may be better positioned to realise the potential economic benefits of accessible practices. We are assuming that overall benefits outweigh the costs, but this may not be the case for individual organisations within particular sectors. The extent of these costs is unknown and will vary depending on the proposed solution .

Work to address participation barriers will need to be progressively realised and utilise existing tools and levers for assessing benefits, risks, and costs (e.g. business cases, RIAs, CBA, Cabinet decisions, procurement checks). There will be choices to be made by this and future governments on the extent to which costs should be met by government, disabled people, or other parties, noting that disabled people currently receive limited support in meeting the costs involved in reaching the same outcomes as non-disabled.

## Stakeholders have a shared view on the problem, but views are likely to diverge on the solution

Stakeholders have a shared view that there is a problem with the status quo and agree on the underlying causes. However, we are yet to undertake the level of engagement required for a clear view on what different stakeholders, including seniors, carers, Māori and the business community, think of the solution proposed. This is planned as part of the next stage of work that will look at implementation of the system, and will include consultation with tāngata whenua, hapū, iwi and Māori on how to give effect to Te Tiriti o Waitangi (Te Tiriti) in a new system, and where this should be reinforced.

It is likely there will be significant divergence of opinion across the full range of stakeholders involved. For instance, the Access Alliance favours a fully regulated approach structured around the development of accessibility standards in all sectors. On the other hand, there may be some stakeholders in the small business or community

Organisation sectors, that have concerns about the potential for increased regulation and associated compliance costs that would be inherent in any option.

### End of Regulatory Impact Statement: Accelerating Accessibility