

Regulatory Impact Statement: Accelerating Accessibility

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Coversheet

Purpose of Document	
Decision sought:	<i>Agreement on the form and features of a new framework to progressively identify, prevent and remove accessibility barriers</i>
Advising agencies:	<i>Ministry of Social Development</i>
Proposing Ministers:	<i>Minister for Disability Issues</i>
Date finalised:	<i>22 September 2021</i>
Problem Definition	
<p>New Zealand's current legal and policy framework for accessibility is not fit for purpose and falls short of ensuring that everyone is able to participate in society on an equal basis with others. It fails to provide a stable and credible policy environment for systematically identifying, preventing and removing barriers to participation by disabled people.</p>	
Executive Summary	
<p>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.</p> <p>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.</p> <p>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:</p> <ul style="list-style-type: none">• 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,	

¹ E.g. HRC recommended in 2005 (see *The Accessible Journey*) that the Local Government Act be amended to include the definition of disabled contained in the HRA, so as to ensure disabled people can contribute to decision-making processes for council planning purposes.

² *Making Disability Rights Real 2014 – 2019*, page 59 and IMM comment on the realisation of Article 9 in New Zealand (*Making Disability Rights Real*, June 2020).

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.

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The Access Alliance is a collective of 12 disability sector groups, Disabled People's Organisations (DPO), disability services providers, disability community organisations and disability advocates. They are mandated to advocate for new accessibility legislation that implements enforceable regulatory standards. They are also guided by 13 principles, which they believe should form the core of legislation (see **Appendix A**).

- 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.

Limitations and Constraints on Analysis

Introducing Accelerating Accessibility legislation is a manifesto commitment

Introducing standalone accessibility legislation is a Labour 2020 manifesto commitment. The commitment is to introduce an Accessibility for New Zealanders Act, to “help New Zealand become more welcoming and accessible for disabled people and other New Zealanders with accessibility needs”.

Ministers have made some previous decisions about a new system to accelerate accessibility which influence options

Cabinet made some decisions in 2020 on what a new system should look like (following a decision in 2018 to commence the design of an approach to achieve a fully accessible New Zealand). Cabinet agreed that any new framework should set accessibility as a high-level concept about preventing and removing barriers. Cabinet also noted that:

- a legislative framework would be progressed
- legislation would sit alongside awareness raising, education and training, and provide mechanisms for a policy work programme, regulatory systems, advisory councils, institutional arrangements, reporting and monitoring
- the focus of a new accessibility framework will be on disabled people, acknowledging the benefits to others, including older people, carers and Māori
- the approach provides flexibility to implement a progressive approach over time, so governments can set priorities to resource accessibility measures, and obligated parties have time to develop, understand and adopt efficient or innovative approaches to meeting regulatory requirements.

Cabinet also noted that accelerating accessibility can support an inclusive economic recovery (which is an outcome of the system change) [CAB-20-MIN-0295 refers].

In June 2021 the Minister for Disability Issues noted that a new accessibility system will require a broad range of powers and functions to create change. The Minister also agreed that officials should develop a legislative approach to developing enforceable standards, that would enable them to be incorporated into existing legislative and regulatory regimes. This will be part of a wider accelerating accessibility legislative framework.

These decisions have not limited the scope of our focus to regulatory-only options, or to options that only involve existing regulatory systems to develop enforceable standards.

However, it has meant we have looked in more detail at how any option to accelerate accessibility might achieve the elements agreed to by Cabinet (i.e. provide mechanisms for a policy work programme, regulatory systems, advisory councils, institutional arrangements, reporting and monitoring). It has also meant a slight narrowing of the scope of options, in that each would include a component of awareness raising, education and training. We have not examined a regulatory-only approach.

Legislation to progress accessibility is in place in several overseas countries but New Zealand is constrained in using these approaches

There is increasing implementation of legal frameworks to progress accessibility jurisdictions similar to ours. Some of these frameworks take a human rights-based approach, where people are protected against discrimination on the basis of disability across a range of areas, using a dedicated disability statute (as in the United Kingdom and Australia). Other countries use a ‘systems approach’, where stand-alone accessibility legislation creates a system-wide approach to ensure individual rights to accessibility

across key life areas. This is the approach in the United States of America (USA), Federal Canada, and a range of Canadian provinces (e.g. Ontario, Manitoba and Nova Scotia).

New Zealand is constrained in taking a 'rights-based approach' to accessibility because we already have existing consolidated rights legislation (the Human Rights Act 1993), that protects people from discrimination on the basis of disability, as well as other grounds (e.g. race, gender). This Act does not explicitly deal with accessibility. We understand the Human Rights Act is unlikely to be amended for reasons of complexity, both in terms of the scale of work required to amend the Act, and the interactions that would need to be established between human rights legislation and other legislation.

Therefore, progressing the commitment to standalone accessibility legislation has necessitated taking a system-wide approach.

Full public consultation has not yet been undertaken, meaning analysis of the impact of the proposed changes on Māori and other groups has been constrained

This proposal was developed in partnership with the Access Alliance. The Access Alliance is a collective of 12 disability sector groups, Disabled People's Organisations (DPO), disability services providers, disability community organisations and disability advocates. They are mandated to advocate for new accessibility legislation that implements enforceable regulatory standards. They are guided by 13 principles, which they believe should form the core of any potential accessibility legislation (see **Appendix A**).

This proposal has been informed by, and tested through, targeted discussions with policy, regulatory, advocacy and business expertise.

Engagement with other key stakeholders, such as seniors, carers, Māori and the business community has so far been limited. Improving accessibility is likely to also benefit other population groups, however, more widespread engagement would provide a better overall picture of the impact of individual options on those groups, in particular, the impact on Māori, business and the community.

The key to the success of any approach is that it is both led and backed by tāngata whenua and tāngata whaikaha, disabled people and their whānau and community, and the broader disability sector. We are therefore planning comprehensive engagement with a wider range of stakeholders for the coming months, as part of a further phase of work that will look at implementation of the system, including 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. This wider consultation will include disabled rangatahi and tamariki, tāngata whaikaha Māori, and others with a lived experience of a disability.

Assumptions underpinning the analysis

This impact analysis is underpinned by the following assumptions.

- Not improving accessibility will have a long lasting, harmful impact on disabled people
- Reducing accessibility barriers will improve human rights and have a positive impact on the wellbeing of a wide range of disabled people, improving their ability to participate fully and effectively in society.
- Benefits that will accrue to disabled people will also positively benefit others, in particular, groups with a high rate of disability (such as older people, carers).
- Legislative change will provide the framework for developing and implementing clear, effective approaches to promote the participation of disabled people, that will ultimately lead to the desired behaviour changes in workplaces and other environments.
- Encouraging people to change their behaviour will eventually change most people's underlying attitudes.
- Tensions between different actors in the system can be resolved or mitigated.

- There will be downstream trade-off between the benefits derived from improving accessibility for disabled people, and the costs to organisations of making associated changes, but the overall benefits outweigh the costs.

Data and evidence quality

There are limitations on the reliability of data and evidence, as follows.

- There is a lack of reliable data around the scale of a lack of accessibility in New Zealand. However, there is strong anecdotal evidence from disabled people of problems with access in all areas of life. There have also been a number of subject-specific reports and recommendations from organisations such as the Human Rights Commission and Independent Monitoring Mechanism (IMM).
- Accessibility is all-encompassing, covering all areas of life and intersecting with a wide variety of individual access needs making it difficult to be clear about costs.
- There is limited evidence around the success of standalone legislation for accessibility in overseas jurisdictions. For example, Canadian legislation has struggled to make a meaningful impact, although it is structured around the development of standards and has a high degree of prescription compared with the model we are proposing.⁴
- There is a lack of certainty about the time and costs that will be involved in establishing any of the options, and how effective each option might be once established.

Disability System Transformation work

The Accelerating Accessibility work programme sits alongside wider Disability System Transformation (DST) work. Decisions on DST are due to be made by Cabinet in October and include machinery of government changes and scaling up the Enabling Good Lives (EGL) approach nationally. Some decisions on the Accelerating Accessibility system, such as where it is housed, have been deferred until after Cabinet has made decisions on DST.

Overall impact of limitations and constraints

While there are constraints, MSD has taken care to examine both regulatory and non-regulatory options. These options are limited to focusing on a system-wide approach, given our broad human rights legislation that protects against discrimination. We have focused on options for a leadership framework and system that, combined with awareness raising and educational activity, can provide an enduring, credible policy environment that systemically identifies, prevents and removes accessibility barriers.

We are aware that further engagement is needed to give us a clearer picture of the impact in individual sectors, however, further consultation is planned for the near future as part of the next stage of work on the more detailed design.

Responsible Manager(s) (completed by relevant manager)

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22 September 2021

⁴ For example, the third independent review of accessibility legislation in Ontario, Canada describes “painfully slow” progress. Source: *Listening to Ontarians with Disabilities*, Report of the Third Review of the Accessibility for Ontarians with Disabilities Act 2005 (David C Onley, 2019)

Quality Assurance (completed by QA panel)

Reviewing Agency:	The Quality Assurance reviewers at Ministry of Social Development and Ministry of Health have reviewed the <i>Accelerating Accessibility</i> RIS and considers that the information and analysis summarised in it partially meets the quality criteria of the Regulatory Impact Statement framework.
Panel Assessment & Comment:	<p>It partially meets the quality criteria for the following reasons:</p> <ul style="list-style-type: none"> • Clarity and conciseness (partially meets): This especially applies to the context and problem definition (see specific comments below). There is also a lack of clarity about the outcomes sought. • Completeness (meets): the RIS has all of the sections and is in this respect complete. • Convincing (partially meets): There is not a compelling case put forward that the preferred options will likely result in meaningful change and meet the desired outcomes. The lack of data on the scale and scope of the accessibility problem is problematic. The case for change is not clear and concise (see above). • Consultation (partially meets): Whaikaha Māori seem to be notably absent from the list of organisations consulted. Māori may have a different understanding of what constitutes to disability and accessibility and what the solutions to related problems would look like. If there are gaps in who was consulted, then we suggest being clear about exactly who is and is not supportive, and where we do not know the views (and perhaps setting out an intention to consult with a wider group for the actual development process?). <p>The panel is of the view that the RIS would not be able to fully meet the criteria in the timeframe. However, the panel have a number of suggestions for improvement which could still be adopted.</p> <ul style="list-style-type: none"> • The “context” section would benefit from a hard edit to make it clearer and more concise. In particular we consider the key contextual information should be about 1) what accessibility is and 2) what we know about NZ’s disabled population and their accessibility needs. The contents of the headings “The current regulatory framework is fragmented and insufficient for meaningful progress”, “legislation alone is unlikely...” and “we have no reason to think...” should either be moved to other sections (e.g. the problems or objectives sections) or cut out as repetitive. • We suggest a tight “storylining” approach to the “what is the policy problem or opportunity?” section – this is one of the most important sections of the RIS. For example, a storyline might be as follows: <ul style="list-style-type: none"> - Accessibility is critical to the quality of life of disabled new Zealanders and NZ society (including fulfilling our Treaty of Waitangi obligations) - Accessibility is complex and crosscutting and requires all-of-system responses

- Meaningful participation by disabled people is critical to address accessibility (including whaikaha Māori)
- The current framework has failed to sufficiently address accessibility in some crucial instances (eg building accessibility, stats on disability etc) and this is contributing to poor life outcomes for disabled people. It would be helpful to be clear about whose behaviour needs to change to improve accessibility. This will be important for the next step when detailing the expected behavioural responses will be required.
- The “four underlying causes” could then be moved to the “objectives” section and naturally lead in to/mesh with the objectives that are currently set out.
- Somewhere in the “objectives” section, we suggest an explicit description of the “onus” of this work – that is that this RIS is about creating an enabling framework to meet changing accessibility needs over time, rather than outright addressing accessibility. This is discussed in more depth under section 2, but I think could usefully form part of the “objectives” discussion.
- Who are disabled people? This gets muddled in places. On pg 6, for example it is stated that the framework will focus on disabled people but will also benefit older people, carers and Māori. It may be more useful to say that the framework will focus on disabled people (including disabled older people and whaikaha Māori) but will also benefit family and whānau caring for disabled people.
- Under Section 2’s “criteria” section, we suggest an explicit call back to the “objectives” section above – the criteria should presumably capture all the elements of the objectives.
- The analysis of options section is solid. We suggest the analysis of the “status quo” option should just be a summary of the case for change material presented in earlier sections.
- Each of the options would benefit from a Treaty of Waitangi analysis.
- The argument for enabling legislation (your preferred approach) could be strengthened by stating this option would better support the inclusion of the Treaty of Waitangi. Prescriptive legislation will be less amenable to incorporating and giving effect to a Te Ao Māori perspective on disability and accessibility, especially where this perspective is different from other groups. Moreover, as with other groups understanding of disability and accessible a Te Ao Māori perspective on disability and accessibility will evolve over time. The legislation will be more resilient if it can encompass this evolution.
- Distributional impacts of poor accessibility: it is useful that the RIS includes data on who is disabled. However, the RIS could go a step further and discuss how different groups experience of disability and accessibility. For example:
 - Māori have a greater incidence of health conditions and impairments. Poor socio-economic status is a significant contributing factor to the creation of poor health and impairment. This also compounds the access barriers.

How Māori experience accessibility and disability will be impacted by their multiple identifies (e.g.as Māori, as a disabled person etc).⁵

- While the incidence of disability may be similar for men and women, gender has an impact on how this is experienced⁶. Disabled women are more likely to be unemployed and where working earn less than disabled men⁷. Disabled women are more likely to experience family violence⁸
- Many disabled peoples have low incomes. Income is a key social determinant for health and wellbeing. Low income is associated with worse health and a higher incidence of disability. Low income compounds accessibility barriers. Disabled people are more likely to experience difficulties accessing health services due to cost.
- Psychological impairments are very common but the examples on page 15 refer to physical access barriers. Perhaps consider including some examples of how accessibility relates to people with psychological impairments e.g. there are numerous examples of children not being able to attend school because they insufficient support to assist their behavioural challenges.
- Care needs to be taken about how people reliant on welfare a talked about. The welfare system is available to support those who do not have employment or sufficient earned income. A narrative that states people receiving SLP or JS-HCD are a drain on the economy risks reinforcing prejudices against people reliant on welfare. We suggest reframing this by stating that making workplaces more accessible/ inclusive will enable more disabled to obtain and retain employment. Not all people in receipt of health and disability benefits will be able to find or sustain employment so we also need a welfare system that is accessible and supports those who need it.
- Evaluation and monitoring – given that the preferred approach is enabling legislation allowing for regular review (this could be built in) and redesign as needed will be crucial. While the evaluation and monitoring system is yet to be determined this point is worth making. The panel recommend consideration be given to how the voices of disabled people, including whaikaha Māori, are incorporated into the evaluation and monitoring system to help guide any future redesigns.

⁵ Hickey, H. (2017) Whānau Hauā: Reframing Disability From an Indigenous Perspective. MAI Journal 2017: Volume 6 Issue 1
Donna Cormack, Ricci Harris & James Stanley (2020) Māori experiences of multiple forms of discrimination: findings from *Te Kupenga 2013*, Kōtuitui: New Zealand Journal of Social Sciences Online, 15:1, 106-122, DOI: [10.1080/1177083X.2019.1657472](https://doi.org/10.1080/1177083X.2019.1657472)

⁶ Quinlan, L. 2018 Accessibility and Disability for Indigenous Women, Girls, and Gender Diverse People. [Accessibility-Final-Report_1.pdf \(nwac.ca\)](#)

⁷ <https://women.govt.nz/gpg/disability>

⁸ (2021) Lifetime Prevalence of Intimate Partner Violence and Disability: Results From a Population-Based Study in New Zealand [https://www.ajpmonline.org/article/S0749-3797\(21\)00191-4/fulltext](https://www.ajpmonline.org/article/S0749-3797(21)00191-4/fulltext)

Section 1: Diagnosing the policy problem

What is the context behind the policy problem and how is the status quo expected to develop?

What we mean by accessibility and why it matters

Accessibility means the degree to which a product, device, service, or environment works well for all people, whether disabled or not.⁹ However, accessibility is a complex concept and means different things to different individuals. Māori, for instance, have a holistic, relational and collective world view on health and disability (as opposed to the more individualised approach)¹⁰ and experience accessibility differently to other groups.

Accessibility matters because a precondition to realising human rights and being able to participate fully in society on an equal basis with others, whether in education, employment, getting services, or taking part in community and social life. Environments with features that exclude those with impairments are a barrier to full participation. Something experienced as accessible by disabled people is also likely to be seen as accessible by others as well.

Accessibility in the context of New Zealand's response to disability issues

Over time, there has been greater recognition world-wide of the rights of disabled people to have equal opportunities to achieve their goals and aspirations in life, and to be fully involved in decisions that impact them.

New Zealand is a signatory to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), an international human rights convention setting out what is required to implement existing human rights as they relate to disabled people.

The UNCRPD uses a social model to define disability, recognising that “disability is an evolving concept” and makes the role of barriers clear: “persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments **which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others**”.¹¹ Disabilities and barriers can also change over time, so accessibility needs can change over the course of a person's life (such as with ageing). The UNCRPD describes life areas or domains of accessibility where barriers may occur as the physical environment,¹² transport, information and communications, and services.

Accessibility is one of eight guiding principles underpinning the UNCRPD. Article 9 sets out state parties' specific accessibility obligations and is clear that parties must not only ensure disabled people's equal access to all key life areas, but also identify and eliminate obstacles and barriers to accessibility. It also points out that Government obligations do not end at publicly-owned facilities and services, but extend to the private sector.

We also have the New Zealand Disability Strategy (since 2001), with the aim of guiding Government action to promote a more inclusive society. From the outset, the Strategy noted that “many New Zealanders are unable to reach their potential or participate fully in the

⁹ Accessibility is not the same as universal design as it is not intended to accommodate everyone. Universal design means usable by all people, to the greatest extent possible, without the need for adaptation or specialised design.

¹⁰ Huhana Hickey and Denise Wilson, *Whānau haua, Reframing disability from an Indigenous Perspective*, Mai Journal 2017, Volume 6, issue 1.

¹¹ *Convention on the Rights of Persons with Disabilities and Optional Protocol*, UNCRPD (2006).

¹² Includes housing, publicly accessible buildings, and public and green spaces. A common example is a building with stairs up to its entrance preventing a person with mobility impairment from entering the building. It is the building's poor design rather than the person's mobility impairment that is the issue.

community because of barriers they face ... these range from the purely physical, such as access to facilities, to the attitudinal, due to poor awareness of disability issues”.

Accessibility is one of eight priority action areas under the Strategy, which guides the implementation of obligations under the UNCRPD. Accelerate Accessibility (including the role of legislation) was identified as the action needed under the Disability Action Plan 2019 – 2023, which is the main vehicle for the public services implementation of the Strategy.

New Zealand’s implementation of the UNCRPD is monitored by an Independent Monitoring Mechanism (IMM) comprised of the Human Rights Commission (HRC), the Ombudsman and the Disabled People’s Organisation (DPO) Coalition. Accessibility was a key theme in the IMM’s most recent report on New Zealand’s performance, with recommendations for improving accessibility across a range of domains, including new housing, public spaces, transportation, shared-use spaces, and technologies and communications. Recommendations also included developing a comprehensive range of accessibility standards, with systems to ensure their regular monitoring.

There have been increasing calls for change to improve accessibility in all life areas

Twenty years on from the Strategy commencing, the same barriers that were highlighted at that time still remain with disabled people continuing to demand improvement to accessibility. There has been repeated criticism from the disability community that current policy and legislative settings are not sufficient to deliver accessibility.¹³

Many countries are using legislation to ensure a positive duty to achieve accessibility. While change has been slow, there is increasing implementation of accessibility legal frameworks world-wide, including in similar overseas jurisdictions to ours, such as Canada. Most countries with accessibility legislation have proceeded on the basis that implementing accessibility legislation was “the right thing to do”.

In recent times, the Access Alliance has called for accessibility legislation. In the period leading up to the 2017 election, the Access Alliance began campaigning for political parties to enact mandatory enforceable accessibility legislation based on the practice in Ontario, Canada. It is supported in this mahi by the Parliamentary Champions for Accessibility Legislation (PCAL), a cross-party group of parliamentarians committed to ensuring New Zealand has fit-for-purpose accessibility legislation. MSD has worked in partnership with the Access Alliance in developing the proposal recommended in this analysis.

What accessibility looks like in Aotearoa New Zealand

Compared to non-disabled people, disabled people face disproportionately greater barriers to accessing products, devices, services, or environments. There continues to be major areas of inaccessibility and uneven compliance with voluntary accessibility standards.¹⁴ A lack of accessibility affects not only disabled people, but also a broad range of others including seniors, carers, Māori and non-English speakers.

Information from the 2013 Disability Survey reveals the following characteristics about disabled people in New Zealand:

- **Total population:** 24% of the population identified as disabled (1.1 million people). Just over half of all disabled people (53%) had more than one type of impairment.

¹³ For example, accessibility received the second highest number of responses during consultation by ODI on the Disability Action Plan for 2019 – 2023. Two key sub-themes included physical accessibility (built environment and transport) and societal accessibility (services, information and communication technologies).

¹⁴ For example, many instances were described by people interviewed for the report “Participation and Poverty”, published by the Article 33 New Zealand Convention Coalition Monitoring Group in 2015.

- **Gender:** There is little difference between the rates of disability in men and women (aged 15 years and over). Women were more likely than men to experience physical disability (20% compared with 15%).
- **Carers:** About one in 10 New Zealanders are caring for someone close to them with a disability, health condition, illness or injury. Carers are nearly twice as likely to be female and about one in five live rurally. Carers can have difficulty accessing support, including financial support, and clear, relevant information in accessible formats (e.g. alternate languages). The demands of care often mean carers have fewer opportunities to participate in education, paid work and social and community activities. Over time this can negatively impact their wellbeing, ability to continue to provide care, and can have wider impacts on their (and their family's) finances and social connectedness.
- **Māori** have a higher rate of disability than non-Māori and are more likely to face intersectional disadvantage, i.e. they are more likely to have disability compounded by other forms of disadvantage.
 - 26% of the Māori population (176,000 people) were identified as disabled (an increase from 20% in 2001).
 - An estimated 12% of all Māori had mobility impairments, while eight percent had hearing impairments, and similar proportions had impairments relating to agility, learning, and psychiatric or psychological conditions (7 percent each)
 - psychiatric or psychological impairments and learning impairments were more common in the Māori population than in the total population.
- **Age:** People aged 65 or over were much more likely to be disabled (59%) than younger populations and are disproportionately impacted by lack of accessibility. This disproportionate impact will increase as the population ages.
 - Disabled people make up 21% of the working age population (15 to 64 years).
 - For adults, physical limitations were the most common type of impairment. 18% of people aged 15 or over, and 64% of disabled adults, were physically impaired.
 - For children, learning difficulty was the most common impairment type. Six percent of children, and 52% of disabled children, had difficulty learning.
 - The most common cause of disability for adults was disease or illness (42%). For children, the most common cause was a condition that existed at birth (49%).
- **Income:** Disabled people earned a median \$901 a week from wages or salaries, \$98 less than non-disabled workers.
- **Employment:** The underutilisation rate was 27.2% for disabled people, compared with 11.7% of non-disabled people.¹⁵

Barriers to accessibility can be complex and occur in and across all life areas

Barriers to participation can be complex, relate to people's experiences and interactions with their environments, sit across several areas of life and can be compounded by other forms of disadvantage. For example, while a disabled person may be able to get on an accessible bus to their place of work (which in turn needs to be accessible), if the timetable or other information provided is inaccessible, then they are prevented from being able to participate on an equal basis with others.

Barriers to participation in all these areas need to be addressed. Information and communications, for example, are not always easy for people to access in formats and languages that are right for them. Public transport can be inaccessible not only in a physical

¹⁵ Source: [The disability gap 2018 | Statistics New Zealand](#)

sense,¹⁶ but because information about it is not provided in an accessible format. Documents such as leases and mortgages are difficult to understand for those with learning disabilities (because they are not in plain English).

Some other examples of barriers to accessibility for disabled people are:

- 11% of disabled people found it difficult to access a doctor or medical centre, compared with 3.6% of non-disabled people.
- one in four disabled Māori report having insufficient income to meet their daily needs¹⁷ and experience inequities in accessing funding for equipment and care. 23% of disabled Māori have a very high level of support needs, but only 16% access Ministry of Health-funded disability support¹⁸
- 6.6% of disabled people found it difficult to access a supermarket or dairy, compared with 2.1% of non-disabled people.
- 4.5% of disabled people found it difficult to access a public park or green space, compared with 0.8% of non-disabled people.
- 25.8% of disabled people found it difficult to access public transport, compared with 21.5% of disabled people.¹⁹
- 14% of disabled people report having good access to housing suitable for accessibility needs,²⁰ with 31% needing to move for suitability reasons.²¹

The current legal and policy framework is fragmented and insufficient

A coherent and comprehensive regulatory framework is more likely to be effective at bringing about the desired change. New Zealand is a UNCRPD signatory but does not have a system in place that deals explicitly with accessibility. Instead, we rely on rights-based legislation to deal with disability discrimination, alongside a patchwork landscape of regulatory and non-regulatory measures across certain life areas. Relevant government settings include:

- the New Zealand Disability Strategy (the Strategy) and Disability Action Plan (DAP) which aim, among other things, to progress accessibility.
- the Office for Disability Issues (ODI) monitors progress against each of the Strategy's outcome areas, including accessibility, to track progress for the disabled sector. This progress is reported to the UNCRPD via the IMM.
- Governance of disability issues by the Ministerial Committee on Disability Issues, who set priorities and review progress, and the Chief Executives' Group on Disability Issues and Disabled People's Organisations, who jointly oversee the DAP.
- consolidated human rights law (the Bill of Rights Act 1990 and Human Rights Act 1993), and statutory 'watchdogs' such as the Health and Disability Commissioner, and Human Rights Commission, provide individual support through considering complaints.
 - human rights law is not specific to disability discrimination but provides a principles-based framework with broadly worded obligations about not discriminating, and no clear positive duty to make reasonable adjustments for people with a disability. The system is reactive and puts the onus (unfairly) on disabled people and whānau to complain about discrimination.

16 For example, because of a gap between the pavement and the entrance to a bus, train or taxi.

17 Statistics New Zealand, 2015

18 Ministry of Health, 2012

19 Source [The disability gap 2018 | Statistics New Zealand](#)

20 Source: BeLab Access 2020 report

21 Source: General Social Survey (Statistics New Zealand, 2018)

- the complaints process under the Human Rights Act is based on mediation as the preferred approach to achieve individual solutions. The nature of the complaints process limits its ability to facilitate systemic improvements over time and limits its educative and deterrent effect. Sanctions are limited to individual compensation, and there is no ability to make preventative or corrective orders.
- an assortment of primary and secondary legislation, applied in policy instruments, also deals with accessibility, to some extent, across different life areas (such as the built environment or transportation). There is a patchwork landscape of voluntary and non-enforceable standards, enforceable standards that are seldom enforced, or policy guides that are not specific enough to be enforced by individuals or easily complied with.

This system is largely not fit for purpose, with change not occurring at the pace or scale that is needed. This is because:

- there is a lack of overall coordination – no single agency is responsible for accessibility, whether in relation to a particular sector, or more broadly. This means there is no system oversight or coordination of regulatory activity across different sectors
- there are inconsistent approaches to addressing barriers
- a lack of incentives or compulsion in the system means individuals and organisations can opt out or not prioritise accessibility²²
- compliance mechanisms are based on individual experience and do not help to identify what is happening at a system level.

Legislation alone is unlikely to be effective in bringing about change

A consistent theme from early engagement with stakeholders was that legislation alone is unlikely to be effective in bringing about the broader cultural change required across society to lift accessibility. As such, the legislative change proposed is part of a wider drive to improve the system for disabled people. Evidence supports this, with overseas analysis demonstrating that policy interventions need to be supported by awareness and training programmes, and cooperation across government and community levels.²³

We have no reason to think that accessibility will improve under the status quo

New Zealand is achieving some positive results. One example is the Accessibility Charter, which commits public service to providing accessible information and conforming to web accessibility standards. Another is the Tertiary Education Commission's Kia Ōrite (New Zealand Code of Practice for an Inclusive Tertiary Education Environment for Students with Impairments). There are also some actions underway, such as the DST work and the Health and Disability System Review, that may help to take more of a system-wide view.

However, despite these significant efforts, there has not been sufficient change. New Zealand still has accessibility barriers, and overall progress to date has been inconsistent and slow. Recommendations for change (e.g. from the Human Rights Commission²⁴ and

²² For example, the Building (Earthquake-prone Buildings) Amendment Act 2016 allows territorial authorities to issue building consents for earthquake strengthening work without provision for disabled people's access if it would be "unduly onerous". A December 2013 report by the Human Rights Commission monitoring human rights in the Canterbury Earthquake Recovery noted that "a number of new and repaired buildings do not comply with minimum accessibility standards". This also illustrates a missed opportunity - there was no mandate to push new builds meeting certain standards to the top of the queue.

²³ Fisher, K.R. and Purcal, C., 2017. *Policies to change attitudes to people with disabilities*. Scandinavian Journal of Disability Research, 19(2), pp.161–174.

²⁴ E.g. The Land Transport Management Act 2003 still does not contain the HRA definition of disability (recommended by the HRA in 2005) and instead relies on regional councils to decide individually who is included among the "transport disadvantaged".

CRPD Disability Committee²⁵) have only been partially implemented, and none of the reforms underway have a systemic focus on accelerating accessibility.

There is no reason to believe that greater progress in improving accessibility will occur without action. Existing limited leadership and coordination across the public sector means there is no accountability for addressing barriers, particularly those that sit across portfolios. With no clear responsibility for the wider issues relating to access, and a lack of coordination, key opportunities to improve accessibility have been missed, such as ensuring:

- alignment between the Building Code and NZS 4121²⁶
- disabled people have a seat at the table during government consultation processes.

There is duplication across the system; and ongoing inefficiencies driven by a lack of awareness, understanding and knowledge. This has also contributed to a widespread lack of data on disability and accessibility, which in turn minimises the need to address accessibility.

There has been criticism from the disability community that current policy and legislative settings are insufficient to deliver accessibility, and that the voices of those with experience are not being heard. If we continue on this path, there will be slow progress and limited systemic change. We will not be showing meaningful commitment to our national and international obligations.

Accelerating accessibility has interdependencies with other work and there is a wider ambition to transform the system for disabled people

This work programme sits alongside DST, which aims to transform the wider system for disabled people, based on EGL. This will ensure that disabled people have greater choice and control over their individual supports. However, to see transformative outcomes we also need wider system change to ensure that environments are accessible.

Accelerating accessibility aligns with the Government's Employment Strategy, which focuses on supporting a more inclusive labour market, and strongly aligns with the principles and key action areas in Better Later Life He Oranga Kaumatua 2019 to 2034. The accessibility work programme is also consistent with cross-government work programmes such as the Learning Support Action Plan 2019–2025 and Mahi Aroha – Carers' Strategy Action Plan 2019–2023.

The Waitangi Tribunal's consideration of stage two of the Health Services and Outcomes Kaupapa Inquiry (WAI 2575) will include a specific focus on the Crown's Treaty obligations. This inquiry is focusing on the experience of Māori whānau living with disability. For these whānau, barriers to access are another barrier to full participation in society.

What is the policy problem or opportunity?

The problem this RIA is addressing is the lack of a fit for purpose legal and policy framework that can identify, prevent and remove systemic accessibility barriers for disabled people.

The current framework for accessibility falls short of ensuring that every person is able to participate in society on an equal basis with others. It fails to provide a stable and credible policy environment for systematically identifying, preventing and removing barriers to participation. Lack of accessibility is contributing to social inequality between disabled and non-disabled people, irrespective of the nature of their disability. It is also leading to a range of inefficiencies, due to a significant proportion of the population not having their needs met, and is leading to missed opportunities, including possible economic gains.

²⁵ E.g. the Government's 2019 Response to the CRPD Disability Committee's List of Issues said there are currently no plans to implement change to the Building Act and Code which exempts premises employing fewer than 10 people from accessibility measures.

²⁶ The New Zealand design standard for access and mobility.

Poor accessibility causes harm and there are opportunities for improvement

Not catering for the needs of a significant proportion of the population, and their whānau, is sub-optimal, non-competitive (not meeting accessibility needs means losing market share) and leaves some people behind. Resulting social inequities can be seen in:

- **disabled people experiencing disproportionately poorer life outcomes** than non-disabled people in all key outcome areas and a lower standard of living. Education, employment, income, housing, social participation, and health outcomes for disabled people are all consistently lower than for non-disabled people, irrespective of the nature of their disability. This has not shifted significantly since 2001²⁷
- **there are distributional impacts within the disabled population** and intersecting disadvantage – i.e. disability can be compounded by and compound other forms of disadvantage, including age, gender, ethnicity, sexuality, low-income, and family breakdown.
- **disabled people and their whānau face greater costs to get the same outcomes** as non-disabled people. For example, a lack of accessible housing limits where a disabled person can live and increases their travel costs. If the supply of accessible housing does not meet demand it will also be more expensive, meaning disabled people will require more resources to rent or buy than a non-disabled person.²⁸
- **the principles of Te Tiriti are not being met for Māori with disabilities** (whānau haua) who experience even greater inequalities than disabled non-Māori. Disability policy, support and services are failing to meet the needs of Māori disabled people and whānau, and not incorporating Te Ao Māori approaches or fulfilling the principles of Te Tiriti.²⁹ The WAI 2575 Inquiry has found four emergent themes in this regard:
 - Te Ao Māori – existing health and disability systems do not (or do not adequately) acknowledge te ao Māori
 - incorporating Te Tiriti – there are issues with the way the Crown and its employees design services and frameworks for Māori disabled, and fail to understand and comply with Te Tiriti in a fundamental way
 - representation and inclusion in decision making – the Crown is failing to work in partnership with Māori to ensure Māori are adequately represented in decision making roles
 - consultation – there are issues with consultation processes, including a general lack of consultation with tāngata whaikaha.

Inequality is a drag on GDP, due to inefficiencies in the economy. Making improvements may help increase GDP; for example, making workplaces more accessible and inclusive will enable more disabled people to obtain and retain employment. Examples of missed opportunities can be found in:

- **Labour participation and employment:** Unemployment for disabled people is 50% higher than for non-disabled, with less than 23% of working age disabled employed. At

²⁷ A longitudinal study undertaken by the Blind Foundation and the Work Research Unit of the Auckland University of Technology found that the gap between people without disabilities and disabled people has remained much the same in 2013, as it was in 2001.

²⁸ Disability, the Living Standards Framework and Wellbeing in New Zealand (Murray and Loveless, Policy Quarterly – Volume 17, Issue 1 – February 2021).

²⁹ Māori with Disabilities (Part Two), Report Commissioned by the Waitangi Tribunal for the Wai 2575 Inquiry (Allport and Kaiwai, 2019)

the same time, employers face significant labour supply shortages and find these vacancies difficult to fill.³⁰

- **Cost of unemployment:** Over 94,000 working age people receive the Supported Living Payment (SLP) with the estimated spend in 2020/21 being \$419m, and 236,000 people receive the Disability Allowance (estimated 2020/21 spend was \$1.807m).³¹ An NZIER study estimated that a transfer of 14,000 people from SLP and Jobseeker payments into the workforce could produce an annual gross fiscal saving to the Government of \$270m and a reduction in future welfare payments over 10 years of approximately \$3b.³²
- **Transport:** There is the potential lost opportunity of expenditure in domestic travel by people with a disability. \$4b per annum is spent on domestic travel currently. A United Kingdom study found that people with disabilities (24% of the population) are three times (on average) less likely to travel or use public transport than non-disabled. Yet transport is key to access employment and social participation opportunities.
- **Untapped economic benefit:** More than half of all disabled people are unable to participate in a range of public activities and events, including shopping, visiting museums and galleries, and attending theatre and sports events.³³ Inaccessible businesses miss out on revenue from disabled people (e.g. hospitality, tourism). Research shows that companies who recognise the needs of diverse populations through accessible and universal design outperform their competitors³⁴.

There are four underlying causes of the problem

There are four systemic issues that have hindered removing participation barriers:

1. *There are limited avenues for the voice and expertise of disabled people to lead and shape policy*

There has been repeated criticism from the disability community that current policy and legislative settings are not sufficient to deliver accessibility.³⁵ The voices of those with expertise, including disabled people, older people, family, whānau, Māori, carers and representatives need to be involved in the making decisions on the identification and removal of accessibility barriers, to ensure that changes are relevant and meaningful to people who experience those barriers. Policies, systems, and services need to be designed around the lived experience of those who face barriers to participation. Without this, critical barriers will not be addressed.

However, it can be difficult for disabled people and others with access needs to have their voice heard.³⁶ Not all policies and approaches to accessibility have been designed around the lived experience of those who face barriers to participation. For example, the IMM's report on the Government's response to the COVID-19 emergency found that disabled

³⁰ In 2018/19 sixty percent of 188,000 employers had vacancies, with two thirds finding them difficult to fill. Source: National Survey of Employers 2018/19 (MBIE, October 2019).

³¹ Benefit Fact Sheet. Snapshot. (MSD, September 2020).

³² NZIER Valuing Access to Work. Feb 2017: change in labour force participation rates if unemployment rates of disabled and non-disabled population were equalised.

³³ Access 2020 Survey, Be.Lab. [Be.Lab's Access 2020 Survey](#)

³⁴ Ibid.

³⁵ For example, accessibility received the second highest number of responses during consultation by ODI on the Disability Action Plan for 2019 – 2023. Two sub-themes included physical accessibility (built environment and transport) and societal accessibility (services, information and communication technologies).

³⁶ For example, the National Local Authority Survey on Accessibility (2019) had just over 30 percent of councils reporting that “disabled people are ‘at the table’ when significant decisions are made. Almost 40 percent of councils reported that they do not have any form of accessibility or older people’s advisory group.

people and their organisations were not involved in decisions that affected disabled people.³⁷ A greater degree of participation could have helped guide public sector on the best methods to disseminate key pandemic-related information at pace.

2. Limited coordination, fragmented leadership and lack of accountability

Limited coordination means there is little leadership or accountability for addressing barriers, making it challenging to understand who is responsible for identifying, preventing, and removing barriers, particularly ones that sit across portfolios and areas of life.³⁸ For example, improving access to events involves working with those in the arts, culture, and sporting sectors. A disabled person may also interact with a website when finding out about the event, and then access transport for getting to and from the event. To make the experience of attending an event accessible, all these barriers need to be addressed.

It is up to individual public sector, businesses, and individuals to put accessibility into practice. A key finding of the 2019 National Local Authority Accessibility Survey was that clear guidance from central government would assist councils in progressing work on accessibility in their communities. As accessibility sits across all society, it is difficult to be clear on the scope and extent of coordination across both the public and private sectors.

3. There are inconsistent approaches to addressing accessibility barriers

Where accessibility has been considered, it has been approached in a varied and inconsistent way.³⁹ This lack of consistency is driven by a lack of clear and consistent objectives and processes to establish what accessibility should look like across different areas of life. In MSD's expert meeting with Lifemark, who assist home designers and builders to meet global standards of universal design, they pointed to the need for consistent minimum standards for new builds to be accessible. They advised that, in their experience, local councils have used different initiatives to get private developments built to universal design standards through incentive schemes. However, progress will continue to be sporadic and uneven without appropriate standards set out in the Building Code.

Without a shared understanding of what accessibility means in different settings (and that it is likely to change over time), developed through clear and consistent processes, there will continue to be an uneven approach to removing barriers to participation. It will also remain challenging to understand how well existing policies to advance accessibility are operating. Developing a shared understanding will not be easy, given that what good practice in accessibility looks like to one person can look quite different to someone else.

4. There is a lack of awareness of the importance of accessibility across society

Inaccessibility is caused by a lack of understanding of accessibility is important; a lack of awareness (both economic and social) of good accessible practice; and limited awareness of the increased benefits of accessibility. This can be seen in the limited training and knowledge of universal design, and how to make places, spaces, services and goods accessible.

³⁷ <https://www.ombudsman.parliament.nz/sites/default/files/2021-01/Making%20disability%20rights%20real%20in%20a%20pandemic%202020.pdf>

³⁸ For example, in the transport sector some measures have been made to ensure that journey, travel or timetable information is accessible (e.g. providing audio and braille signage on request), however, there is no co-ordinated approach. Source: 2019 Government response to the UNCRPD Committee List of Issues.

³⁹ For example, a 2014 review of access into buildings for disabled people (the Malatest Report) found inconsistencies between the Building Code and NZ Standard 4121 (the design standard for access and mobility). It also found inconsistent application between consenting authorities (territorial authorities) and gaps related to the lack of inclusion of the needs of people with impairments.

Cultural and attitudinal factors also play a part, as people with different minds or bodies are evidentially less accepted by society. Discrimination and negative attitudes, often due to a lack of awareness, create barriers to accessibility through:

- symbols and language that reinforce disabling stereotypes (e.g. in the media)
- a lack of understanding of people's accessibility needs
- disabled people being unable to participate in processes to improve accessibility
- social exclusion of disabled people reinforcing negative public attitudes.

Stakeholders have a shared view on the problem

There is a range of stakeholders with an interest in the proposal and their interests and views vary (see **Appendix A**). Key stakeholders that the new framework needs to serve include disabled and older people, and whānau and representative organisations of both groups; iwi, hapū and Māori, carers; business (including small business) and the public sector. Other important groupings include non-English speakers, and representatives of the community and voluntary sector.

MSD has worked in partnership with the Access Alliance over the last few years on a proposal to accelerate accessibility and has regular joint meetings and workshops to discuss progress. Between them, MSD and the Access Alliance have hosted discussions on accessibility with a number of key stakeholders. In 2020 the Access Alliance held further discussions with business leaders, and MSD recently consulted a broad range of experts with experience across the business, legal and the public sectors (see below).

Additional consultation is planned as part of a further phase of work, with a particular emphasis on iwi, hapū and whānau Māori, and with the business sector.

Disability community⁴⁰

There is no support among the disability community for staying with the status quo. There have been criticisms that change is too slow, that the current legislative and regulatory framework is not sufficient to deliver true accessibility, and that government is not showing a commitment to meeting disabled people's human right to accessible environments. This community has a desire for fundamental change that can endure across political cycles.

The Access Alliance is mandated to advocate for new accessibility legislation that creates a framework to develop and implement enforceable regulatory standards of accessibility. They are also guided by 13 principles, which they believe should form the core of any potential accessibility legislation (see **Appendix B**).

Local government

In late 2019 ODI surveyed local councils in the National Local Authority Accessibility Survey. 48% reported that progress on accessibility is not yet a priority for managers and other employees, with 44% stating it wasn't yet a priority activity for elected officials, pointing to fragmented leadership and lack of accountability. Just over 30% of respondents reported that "disabled people are 'at the table' when significant decisions are made" demonstrating limited avenues for disabled people to shape policy and a lack of awareness of accessibility.

Business community

Feedback from the business community during consultation in 2019 and 2020 was widely supportive of the need for accelerate accessibility. Business representatives told the Access

⁴⁰ Referring here to disabled people, their whānau and representative organisations (including the Disabled People's Organisations (DPO) Coalition, National EGL Leadership Group, Disabled Persons Assembly, and the Access Alliance).

Alliance that “it’s about creating an environment to progress the organisations in the right direction. New Zealand isn’t quite inclusive for all communities yet.”

Notably, business stakeholders advised that a lack of accessibility is usually due to a lack of awareness about accessibility issues, best practice, or possible economic advantages. They said that increasing awareness of accessibility and how to improve practices is likely to improve accessibility both in terms of services and employment of disabled people.

A lack of awareness of accessibility needs and the many forms they can take was also a strong message from other stakeholders, and is reinforced by Be.Accessible’s 2020 Access Survey results, which noted that “welcoming customer service” is as important to accessibility as physical infrastructure improvements.

Independent experts

MSD officials and the Access Alliance also engaged with a broad range of experts with policy and regulatory experience, including in business, legal, and the public sector. The following themes emerged from these discussions (See **Appendix C**):

- leaders and champions for accessibility are vital to encouraging change
- changing behaviour requires a strong focus on education and awareness raising
- a broad range of interventions will be required, including funding, guidance on best practice, and in some cases enforceable standards
- any system to accelerate accessibility would need to balance independence and working constructively with Government to drive effective change
- there will be substantial costs to removing some barriers and decisions will be needed on whether costs are borne by Government or wider society
- further legislative and regulatory changes may be needed in future.

What objectives are sought in relation to the policy problem?

Any new policy and legal framework is needed to systematically identify, prevent and remove accessibility barriers rather than outright address accessibility. This can be done by creating a framework that has the following objectives:

- Represents the voices of disabled people (whose international catch-cry has long been ‘nothing about us without us’) across the whole system
- Enhances leadership, accountability and coordination
- Provides 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.

There is potential tension between the objective of a framework that represents the voices of disabled people (providing independent oversight), and a framework that enhances leadership and accountability within the public service. There may also be conflict between providing a clear and consistent methodology in considering barriers, and taking a flexible and progressive approach, that can adapt to address a range of barriers (from complex to straightforward) and take advantage of future enablers of accessibility.

Section 2: Deciding upon an option to address the policy problem

What criteria will be used to compare options to the status quo?

We used the following criteria to compare options for a framework to accelerate accessibility:

- Creates a strong, enduring mandate for change, with clear expectations around the need to identify, prevent and remove participation barriers.
- Provides leadership, has clear roles and responsibilities, and increases accountability for identifying, preventing, and removing systemic accessibility barriers (decisions will be needed on what barrier is addressed when, with strong disability sector inputs).
- Creates enduring and flexible mechanisms to progressively identify, prevent and remove barriers, in a way that is consistent with the UNCRPD and embeds Te Tiriti o Waitangi.
- Meets the above objectives.
- Efficiency – feasibility,⁴¹ cost and timeliness of establishing each option.

None of the criteria are mutually exclusive, but there will need to be an appropriate balance between them. For example, effective leadership will mean having a focus on ensuring disabled people are represented and can provide an independent voice for change, alongside the mandate and ability to work constructively across and within government, so barriers are effectively addressed.

What scope will options be considered within?

Factors that have narrowed/limited the scope

We cannot address all barriers to participation and improve accessibility at once. Accelerating accessibility is a significant, complex, and costly task that needs to be progressively realised. Accessibility barriers can also change over time, therefore a new system needs to be equipped well to flex and deal with these challenges.

As such, we need to address participation barriers in a staged way, over time:

Initial: agreement to establish a framework that provides for new functions and powers (either in a new entity or through enhancing the functions and powers of an existing entity) to address accessibility barriers. This is a first step and the subject matter of this RIA.

Establishment: designing and building the system, putting our proposed methodology into practice by trialling and piloting aspects of the proposal ahead of legislation.

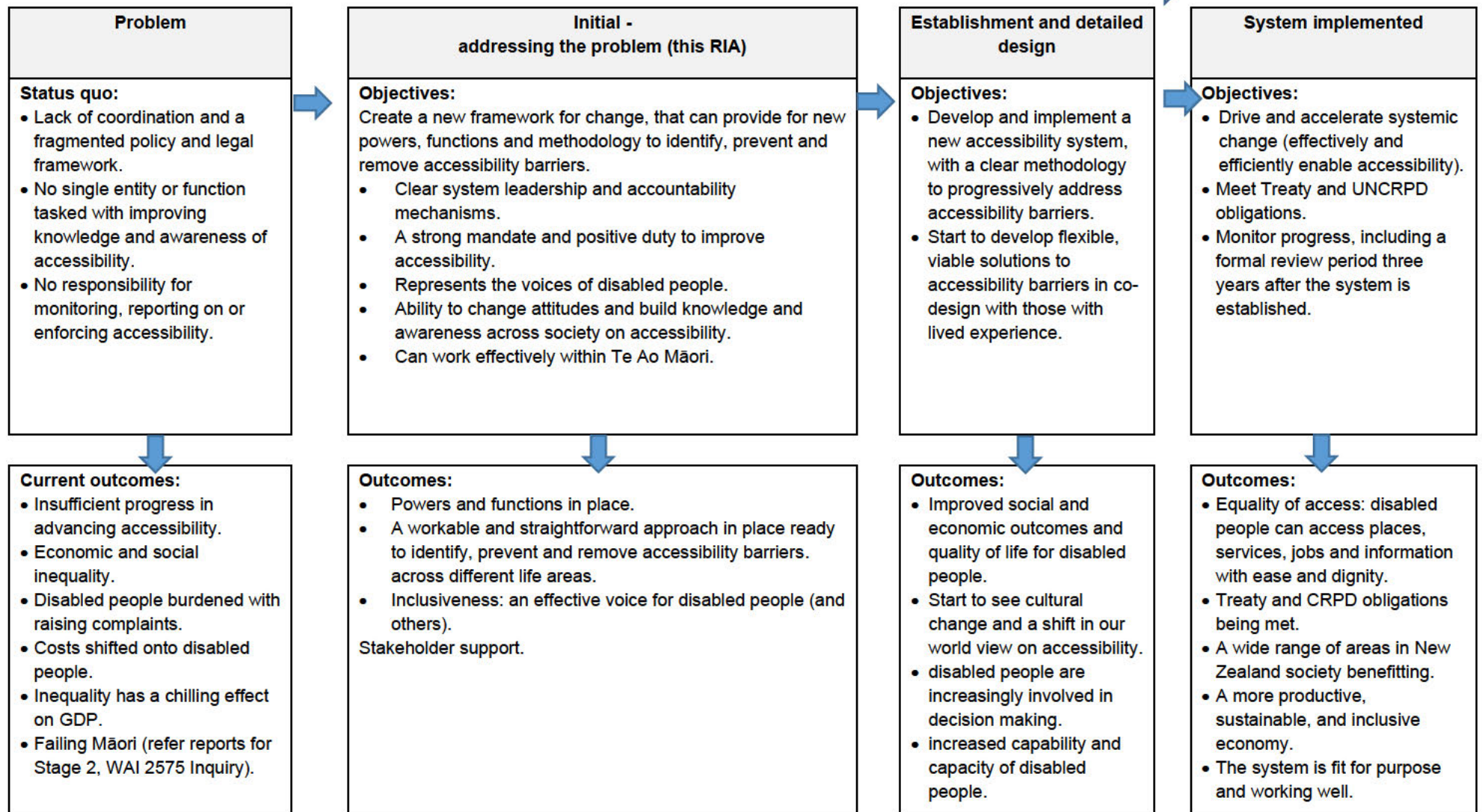
Implementation and review: system established and focused on progressively identifying and removing accessibility (including by amending regulation, where required), with regular reviews to monitor progress and effectiveness of the system.

This is illustrated in **Figure 1** below.

⁴¹ Feasible meaning viable in how it improves accessibility, builds stakeholder buy-in, distributes costs, develops knowledge, and builds on what already exists.

Progression of a System to Realise Accessibility

Figure 1



Disability System Transformation influences the scope of options proposed

Work on accelerating accessibility is being undertaken in the midst of a lot of other change may limit options for change. DST decisions include the preferred machinery of government option and a national implementation plan for scaling up the EGL. The two initiatives are complementary and have the following commonalities to consider.

- Both DST and accelerating accessibility have the potential to transform the lives of disabled people, family, and whānau.
- DST provides the opportunity to transform support services to better meet the needs of individuals who need ongoing support, while accelerating accessibility can complement this work by removing barriers that prevent disabled people from fully participating in society. Officials are working to ensure that both systems are designed to complement and work with each other.

Decisions on DST (September/October 2021) will shape decisions on the location and shape of the accessibility system. This means any feasible option for accelerating accessibility needs to sit well alongside DST proposals.

Options that have been ruled out

We have ruled out using rights-based legislation. We already have a strong human rights framework, and there is risk in a new accessibility system that takes an individualised approach. The HRA is also unlikely to be amended for reasons of complexity, both in terms of the wide scope of work required to carry this out, and the interactions that would need to be established between human rights legislation and other legislation. However, rights-based legislation and new dedicated accessibility legislation can play complementary roles.

What options are being considered?

Option One – Status Quo

Key features

New Zealand does not have dedicated accessibility legislation but relies instead on rights-based legislation to deal with discrimination (a person-centred approach), complemented by a landscape of separate regulatory and non-regulatory measures in certain areas (e.g. building and transport standards, web standards). There is a series of voluntary and non-enforceable standards (e.g. web standards or public transport standards), enforceable standards that are seldom or inconsistently enforced,⁴² and policy guides that are not specific enough to be enforced by individuals or easily complied with.⁴³

Other Government settings include the Strategy and DAP, ODI, and independent 'watch dogs' such as the Human Rights Commission, and Health and Disability Commissioner.

Responsibility and accountability is spread across sectors, leading to inconsistent approaches both within and across organisations. There is no central leadership of accessibility and little awareness and understanding of accessibility across society – of why accessibility is important, what good practice looks like, and how to get there.

Analysis

Some progress is being made under the DAP. However, progress is slow and outcome gaps between disabled and non-disabled people are not shifting significantly. New Zealand's lack

42 E.g. in relation to new or altered buildings that fail to comply, or changes to building access after consenting. See 'Access to Buildings for People with Disabilities' (Malatest International, June 2014).

43 E.g. the disability sector has said that the status of NZTA guidelines on the accessibility of public transport services and facilities as non-legal requirements means they are not filtering down into actual improvements.

of progress in certain areas has been criticised by the IMM (e.g. in housing, public spaces, transportation, shared-use spaces, and technologies and communications).

There are inconsistent approaches both within sectors and across society more widely. It is difficult to address systemic accessibility barriers that cross over government portfolios or different departments. Current regulation is not fit for purpose and struggles to address accessibility issues in a comprehensive or timely manner. A lack of incentives or compulsion means individuals and organisations opt out and fail to prioritise accessibility.

In addition

- disabled people are critical of the status quo and would not support its continuation
- we are not meeting Treaty obligations – the system is failing Māori disabled in particular
- the approach does not demonstrate meaningful commitment to our national and international obligations
- there is universal agreement among stakeholders consulted that the status quo is inadequate and needs to change.

Outlook

The status quo is achieving some results; however, progress will continue to be ad hoc and slow, especially given the number of actors and the lack of overall direction. This option does not meet the stated objectives, and we have no confidence that existing mechanisms will lead to the system change required.

Option Two – Comprehensive Cabinet-mandated work programme

Key features

This option is also a non-regulatory approach – where Cabinet mandates a comprehensive work programme to identify, prevent and remove accessibility barriers, across different portfolios and existing regulatory settings. Cabinet could for example:

- establish a working group (e.g. cross-agency or independent) or other structure, with agreed leadership and work programme, to progressively review barriers in priority areas, and agree on solutions. It could work with responsible chief executives to strengthen and amend existing systems and processes, and potentially include a committee(s) to review existing standards in various areas of life (e.g. transport, building).
- strengthen and provide new powers to an existing body, such as the Ministerial Leadership Group on Disability Issues, Chief Executives Leadership Group on Disability Issues, or ODI. Machinery of government issues would need to be considered.

While this approach would make use of existing frameworks and levers, it could potentially improve on these by adding some new measures, such as:

- additional direction setting (e.g. chief executives directed in Ministerial Letters of Expectation to consider accessibility in their regulatory stewardship work programmes)
- process changes (e.g. changing Cabinet manual to direct Select Committees to consider accessibility issues when scrutinising bills), consultation and oversight.

Analysis

This is a viable option and could achieve some objectives, depending on the extent of measures taken and the structural arrangements chosen. For example, it could set a clear methodology, enable flexible solutions, and enhance existing leadership and coordination. It could also work to build knowledge and awareness to change attitudes, be stood up relatively quickly, and is likely to be a cheaper option, as some costs could be absorbed within agency baselines as part of their BAU. It would provide more consistency and enable greater Ministerial oversight of prioritisation of accessibility.

However, this option does not meet other key objectives:

- It may not adequately reflect the voices of disabled people and may be less effective, given that reporting requirements and deadlines can be shifted by Cabinet.
- It would not create an enduring framework, as it could be vulnerable to shifting political and agency priorities (including associated funding).
- It does not create a sufficiently strong mandate for change, that can drive the behavioural and cultural changes required across society and does not have strong accountability mechanisms. We know, for instance, that while New Zealand Government Web Standards (for accessibility and usability) have applied to the public sector by Cabinet mandate since 2003, compliance with the standards is low, with the public service achieving a level of 65% (on average) self-assessed compliance. This has not changed significantly over time. As it is voluntary, there is no effective enforcement mechanism for non-compliance.

While this option is efficient, that efficiency would come at the expense of having an enduring mandate for change, and appropriate leadership and accountability.

Disabled people are not likely to support this option, as it won't be seen as a clear enough signal for change. The Access Alliance has also indicated they do not support this option (they are guided by 13 principles, which they believe should form the core of any potential accessibility legislation and measure all options against these principles. See **Appendix B**).

A mandated work programme could have little impact on the overall regulatory system. For this and all options, the majority of impacts are likely to be indirect (i.e. resulting from consequent changes made under a new system).

Relative to the status quo, the disability community and other groups such as seniors, carers and Māori will indirectly benefit. Other stakeholders such as the business community may face flow-on costs that could be ongoing, such as increased compliance, but it is difficult to estimate the extent of these as they will be different in each sector. They may also receive indirect benefits (e.g. increased economic benefit). It is also important to note that a progressive roll out of change means these impacts can be managed.

Option Three – Enabling legislation

Key features

An enabling legislative framework can create a leadership model, structure and process for change. It would be built around a clear purpose statement, and set out key principles, functions, roles and accountability mechanisms, as well as a clear methodology, to ensure that barriers are progressively identified, prevented and removed over time (including increased reporting requirements and regular review). This is the MSD's preferred approach.

Legislation will set out clear roles and responsibilities

Identifying, preventing, and removing barriers would be overseen by a governance structure that provides for clear leadership and coordination of functions, and ensures disabled people play a key role in the system. Legislation would provide for an independent Accessibility Governance Board,⁴⁴ primarily made up of disabled people, focused on providing independent voice to the Minister for Disability Issues on the barriers that prevent disabled people from realising their right to full participation in society.

It would also set out clear Ministerial responsibility (the authorising environment) and designate a chief executive responsible for mobilising resources from across the public

⁴⁴ Name to be confirmed.

service. (While a functional lead would be a good fit compared to the status quo, decisions on this will need to be made following decisions on DST.)

These roles are described more fully in the discussion of structural options for implementing the recommended approach (see **Structural options within Option Three for implementing the recommended approach** Option Three (C): and at **Appendix D**).

While enabling legislation will not directly create regulations or standards, it does enable the public service to take a holistic approach to accessibility barriers, and amend existing regulations, where this is necessary, using the most relevant enforcement and compliance mechanisms within those regimes.

The intent of the legislation will be to set out a flexible (rather than prescriptive) framework focused on finding solutions to accessibility barriers. As such, it will be a learning system that can evolve over time and represents a hybrid approach that balances independent leadership with the mandate to engage and work constructively with government and existing regulatory structures.

This option will address barriers through a consistent methodology

Enabling legislation will focus on removing accessibility barriers, through a clear and consistent methodology. This will be designed to be iterative and progressive, with the ability to prioritise and focus on any type of existing or emerging accessibility barrier in any area of life, and to canvas the full range of policy options for preventing or removing that barrier.

Wherever possible, the methodology would involve and be led by disabled people. This ensures disabled people, their family and whānau are recognised and have their voices heard as experts on accessibility from a lived experience perspective and as advisors that can hold government to account for progress. Both the barriers identified, and the solutions developed to prevent and remove barriers, need to be based on people's lived experience of that access barrier.

Analysis:

This option is the Ministry's preferred approach. It sends a strong signal that change is needed and is likely to be the most effective in addressing the problem this RIA has discussed. It can sit well alongside and build on, existing good work already underway, supports the system to be flexible, and recognises that accessibility is the responsibility of everyone (in the public sector, government and wider society).

While much of this enabling framework can be established through Cabinet mandate rather than legislation (e.g. establishment of structural arrangements), this option offers some distinct advantages, as it:

- recognises and can support the disability community's desire for fundamental change
- ensures work to improve accessibility continues through Government terms, as legislation provides a more enduring framework for accessibility
- creates stronger accountability and reporting mechanisms to hold the Government to account, e.g. reporting and publishing obligations, information-sharing powers (for example, a power to require information would set out strong incentives for providing information on accessibility and support monitoring, evaluation and reporting requirements on how the system is performing)
- retains a level of flexibility to be built on over time, should strong regulatory systems be identified and required.

An enabling approach therefore requires the right leadership model to ensure the purpose and principles of the legislation are achieved. Within this option, there are several possibilities or sub options, for a model that could achieve this approach. These are discussed in the analysis of structural options.

The proposed system (see **Option Three (C)** set out below) will introduce a leadership model with the independence to set the strategic direction, that has clear responsibility and accountability to remove accessibility barriers, but still retains a level of oversight so that actions are feasible and considered against existing priorities or resource constraints.

This system strikes the right balance between mandated Government leadership through Ministerial and chief executive responsibility, and independence through the Accessibility Governance Board and clear expectations that disabled people will be involved in all aspects of decision making. It is our recommended approach.

Stakeholder support:

Access Alliance

The Access Alliance does not support this option as it is not consistent with their mandate to advocate for accessibility legislation that creates a framework to develop and implement enforceable regulatory standards of accessibility, that could be developed over time, (and in parallel with education and capacity building) by a new body to benefit all New Zealanders.

Disabled People's Organisations (DPO) Coalition

The DPO Coalition have been consulted and were keen to hear further detail on how the proposed system can make a difference to disabled people. Key takeaways included:

- a strong desire to ensure disabled people have a voice in the solution, monitoring, and in holding to account
- differing perspectives on enforcement, and the effectiveness of enforcement in the Canadian model
- support for dedicated resources to be put in place to address systemic barriers
- wanting to see a commitment to use all of its levers for change, e.g. through regulations, in primary legislation, and through funding and purchasing strategies
- the importance of navigate community expectations – if disabled people can't see themselves in this system, being a driver of change, then the community will not believe the system will deliver.

The DPO Coalition also had the following questions about the policy proposal:

- What is the mandate for Government agencies to prioritise accessibility?
- What is the 'power' or 'teeth' within this model?
- How do we ensure the appropriate level of accountability?
- What power will disabled people have within each system they interact with?
- How will this policy proposal work in practice?
- How can we ensure that disabled people have genuine influence?

Other stakeholders

Public agencies are generally supportive of the proposal in principle, including the Human Rights Commission, Kāinga Ora and Ministry for Business, Innovation and Employment.

While we don't yet know the views of a number of other stakeholders about accessibility legislation, including community organisations, carers, seniors and whānau, hapū and iwi Māori, these views will be sought as we undertake detailed design and implementation work following Cabinet's agreement to accelerate accessibility through enabling legislation.

We expect there may be some concerns (e.g. in some sectors of business) about the potential for increased regulation and associated compliance costs that would be inherent in

this option.⁴⁵ However, there may be ways of mitigating this, in particular, through an inclusive and staged approach to implementing a new system

The Legislative Design and Advisory Committee (LDAC) has highlighted the risks involved in establishing aspirational legislation. In their view, laws should set out what people can and cannot do rather than setting out aspirational goals.

We note there have been a number of laws passed recently with aspirational goals – such as the Zero Carbon Act 2019 and Child Poverty Reduction Act 2018. While the legislative approach we are proposing will not have the targeted approach of these laws, it will provide for robust accountability and monitoring mechanisms. As accessibility barriers are identified and considered progressively, targets can be set in areas where this is appropriate.

Option Four – Overarching accessibility legislation

A final option is to build a new and separate accessibility regulatory regime, that would establish secondary legislation for codes, standards, and rules for all sectors.

Under this model, the legislation would be ‘overarching’, able to create new enforceable accessibility standards and processes in a range of areas (such as building, education, employment, environment) and house these under one Act. This model is similar to that of other jurisdictions, including Federal Canada and many of its provinces, and the USA.

Compared to the recommended approach (focused on improving current regulations), this approach would require the creation of a new accessibility regulator and a tribunal to fulfil a judicial function, with new resources to carry out inspections, provide mediation services, serve infringement notices, and set and enforce penalties for non-compliance.

Analysis

There are benefits to this approach – it circumvents the need to amend other legislation and reduces duplication of having accessibility dealt with across multiple areas of legislation. However, there are also risks that would limit the effectiveness of building a separate regulatory regime here. This includes:

- **being a highly complex system to build into one Act.** Given the number of interactions that the new system would have with a wide range of primary and secondary legislation, it risks duplicating functions that already exist across Government and creating confusion on what policies or standards people would be expected to meet.
- **being a predominantly regulatory-focused model when there are areas of life that will not benefit from regulation.** While some policy areas lend themselves well to a prescriptive approach, such as health and safety, the built environment and potentially transport, other areas such as employment or education do not.
- requiring a significant amount of funding and resources to establish.
- **the risk that standards quickly become outdated in the face of technological and societal progress.** Overseas jurisdictions have placed a heavy emphasis on prescriptive standards to removing accessibility barriers. These have often taken

⁴⁵ An NZIER report to Employers and Manufacturers Association (June 2019) notes that while businesses understand and support effective regulation, the amount of time dealing with compliance has been steadily increasing, leading to increasing non-quantifiable compliance costs such as lost productivity, workarounds and lost leadership time. It notes that regulatory change needs to be signalled over a long timeframe to business to avoid business uncertainty.

significant time to design or have quickly become outdated as they are unable to keep pace with technological and societal change.⁴⁶

- **a focus on compliance rather than changing behaviours.** One criticism of the approach in Ontario, Canada, has been that the focus on standards, compliance and costs, has led to the credibility of the regulatory regime being thrown into question.⁴⁷
- **accessibility targets that are not particularly flexible and have proven difficult to meet.** An NZIER study found that the Ontario, Canada, deadline for accessibility (2025) resulted in a pressure to develop and implement standards quickly, undermining the ability of regulators to meaningfully consider and adapt the regulatory approach, or respond to changing circumstances or new information on the system's performance.⁴⁸

This option could meet most of the objectives. However, it is unlikely to provide the level of flexibility that enabling legislative (Option Three) could provide, and will not have universal stakeholder support, especially given the limited evidence of effectiveness.

We therefore do not recommend establishing a separate regulatory regime.

Stakeholder views

Access Alliance

This option is the preference of the Access Alliance – legislation that sets out, mandates and brings about fundamental change to support disabled people in fully realising their rights.

Business

As with Option Three, we expect there may be some concerns from business stakeholders (e.g. small business) about the potential for increased regulation and associated compliance costs that would be inherent in this option.

Independent Legal Researchers

There is a report being prepared by a group of independent legal researchers on how to accelerate accessibility. The report has a strong focus on accelerating accessibility through the creation of a separate regulatory regime for accessibility, including a brand-new enforcement and compliance regime, arbitrated by a standalone Tribunal. The draft report also proposes that the primary function of accessibility legislation would be to create a system that structures the development of accessibility standards. This is different from the goals of accelerating accessibility by supporting the system through enabling legislation.

⁴⁶ 'Disability and legislation outcomes. A review of the social and economic impact of disability and accessibility legislation in New Zealand and selected jurisdictions'. NZIER report to the Blind Foundation of New Zealand, December 2017.

⁴⁷ *ibid*

⁴⁸ *ibid*

How do the options compare to the status quo/counterfactual?

	Option One – Status quo	Option Two – Comprehensive Cabinet-mandated work programme	Option Three – Enabling Legislation	Option Four – Overarching accessibility legislation
Creates a strong, enduring mandate for change	0	✓ Creates a mandate for change, but not a strong one.	✓✓ Responsive, credible and sends a strong signal for change.	✓✓ This form of legislation would send a very strong signal
Provides leadership and accountability	0	✓ Uses existing levers to ensure greater leadership and priority to address accessibility barriers but lacks sufficient accountability.	✓✓ Ensures clear roles and responsibilities; balances independence with accountability	✓ Creates a clear, accountable leadership system but may duplicate existing functions across government
Creates flexible mechanisms	0	✓ Can enable flexible solutions	✓✓ Creates enduring and flexible mechanisms to identify, prevent and remove barriers	✓ Structured around the development of accessibility standards, so less flexible
Efficiency: • Feasibility • Cost • Timeliness	0	✓✓ Viable, not costly and can be established readily.	✓ Will take time to get established and involve some cost, but viable in improving accessibility and leverages what is already there.	✗ A complex, costly system taking substantial time to establish and may not succeed in delivering the desired outcomes.
Overall assessment	0	✓	✓✓	✓

Key

- ✓✓ much better than doing nothing/the status quo/counterfactual
- ✓ better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- ✗ worse than doing nothing/the status quo/counterfactual
- ✗✗ much worse than doing nothing/the status quo/counterfactual

What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

MSD's preferred option for accelerating accessibility is Option Three, as it provides for new roles, functions, and accountability mechanisms to allow a range of solutions to different participation barriers to be developed, and for the system to evolve over time as we learn more about participation barriers. It strikes the right balance between creating an enduring mandate and ensuring flexibility because it can:

- effectively deal with the problem at hand – a legal and policy framework that is not fit for purpose and failing to ensure a significant proportion of the population can participate in society on an equal basis with others.
- create a system that sets the future direction for accessibility, by progressively identifying, preventing, and removing the barriers stopping every New Zealander from fully participating in all aspects of their community and society.
- provide a framework for developing and implementing clear approaches to promote the participation of all persons, especially disabled people.

While Option Two could achieve most of the objectives, unlike Option Three it would not reflect disabled people's expectations that Government is serious about making change or equip them with the same ability to hold government to account. We also do not consider a Cabinet-mandated approach alone provides the level of enduring mandate or accountability for change that a legislative option would provide.

A new legislated framework sends a strong signal for change and provides greater credibility to stakeholders whose support and lived experience will be vital to ensure success.

While Option Four is the preference of the Access Alliance, a fully regulated approach (as seen in countries with overarching legislation) structured around enforceable accessibility standards is not appropriate to address all accessibility barriers. Some areas do not lend themselves well to prescription (e.g. education, employment) and it may duplicate existing functions across government. There is also insufficient evidence that such an approach actually works and would require a significant lead-in time to develop and build.

The enabling approach set out in Option Three, on the other hand, strikes the right balance between flexibility to utilise a range of different regulatory and non-regulatory solutions and sends a strong signal to disabled people and wider society on accessibility through monitoring, reporting, and holding the system to account.

There will be costs involved in establishing the structure and mechanics to deliver Option Three, although substantially less than Option Four. However, we expect benefits to accrue over time to a number of parties, including disabled people and whānau, and others with access needs. Given time, groups such as businesses may be better positioned to realise the economic benefits of accessibility. Disabled people at present receive limited support in meeting the current costs involved in reaching the same outcomes as their non-disabled peers. As such, there will be choices to be made by this and future Governments on the extent to which costs should continue to be met by disabled people, or be met by government or businesses.

Structural options within Option Three for implementing the recommended approach

Effective system leadership is needed to create and drive change

Enabling legislation needs to provide for clear leadership and coordination for it to be successful. Leadership how we will create clear responsibility and accountability to remove accessibility barriers and establish and progress work programmes. The approach to

leadership will impact where functions and accountability for delivering the system sit – “form is based on governance of functions and powers”.⁴⁹

Leadership for accelerating accessibility needs to be clear, recognised, and respected. A successful leadership model needs the mandate and ability to address intersecting accessibility barriers that cross portfolios (while the public sector remains responsible for delivery of change). It will need the skills and agility to be able to navigate complex relationships with:

- the public service, as policy makers, regulators, and entities that will need to remove barriers to accessibility themselves
- Ministers, who have a range of portfolios, priorities, and funding envelopes
- the disabled community and others with access needs (e.g. seniors, carers)
- wider society, who need to be taken on the accessibility journey (e.g. business, employers and community organisations).

Successful leadership will therefore ensure that:

- Ministers prioritise accessibility (improving the authorising environment)
- the public service works cohesively across agency boundaries, to ensure that accessibility issues across key areas of life are considered holistically
- the disability community has assurance that the leadership will represent their views and focus on the accessibility barriers that matter most, through an independent Board
- we take a progressive realisation approach to accessibility.

There are three possible approaches to how the public service can organise itself to better deliver and lead on accessibility

Disabled people experience accessibility barriers across all parts of society. These can be complex, occurring in a range of environments, and often overlap. Leading work to address accessibility barriers needs to be the collective responsibility of the public sector (rather than the sole responsibility of just one organisation) to improve on the current fragmented and incremental approach. Large-scale, effective change will require progressive action and commitment across the public sector, Ministers, and alongside disabled people and experts.

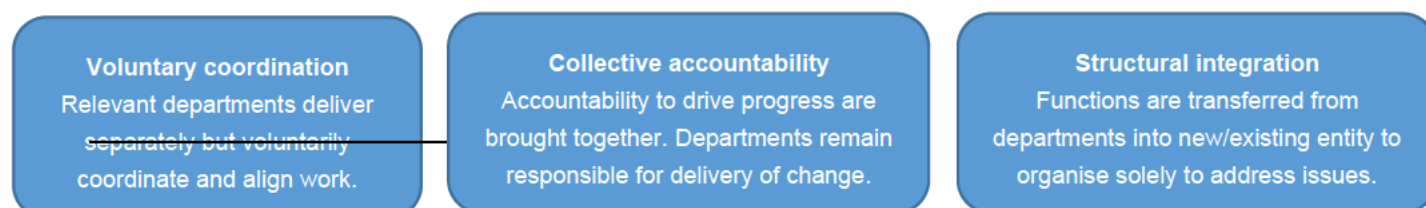
There are three broad approaches available for identifying, preventing, and removing accessibility barriers:⁵⁰

- voluntary cooperation,
- collective accountability, or
- organisational structural change that places the issue with one agency and make them accountable for addressing it.

These are illustrated in

Figure 2 below:

Figure 2



⁴⁹ Public Service Commission Guidance on Machinery of Government changes - [Reviewing the Machinery of Government | Te Kawa Mataaho Public Service Commission](#)

⁵⁰ <https://www.publicservice.govt.nz/assets/Legacy/resources/sdt-details.pdf>

A shared responsibility and collective accountability approach is best in addressing societal accessibility barriers

We consider a shared responsibility and collective coordination approach is best to use to address accessibility barriers, which because of their wide-spread nature, require cross-agency responsibility to address.

Voluntary coordination of individual agency actions across different sectors (e.g. building, employment, education) is the status quo, but has proven to be limited and has fallen short in effectiveness, and a stronger, more coordinated approach is needed. A structural integration approach for accessibility, at the other end of the spectrum, is more closely aligned to Option Four and is likely to be costly with a long lead-in time, and limited evidence of effectiveness. It is not likely to meet with public or private sector support.

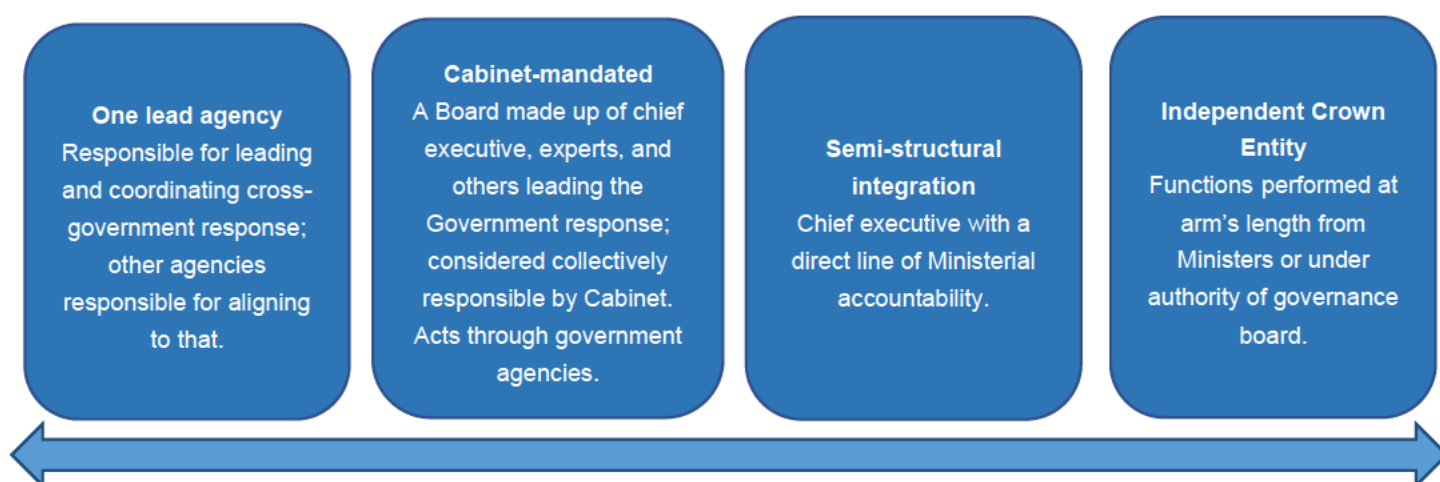
A collective coordination approach, with appropriate system oversight through the authorising environment balanced with independence to lead change, but the public sector remains responsible and accountable for the delivery of that change, is the right way forward at this time. It also means we can grow and strengthen the new approach over time, which the legislation will enable by setting out a three-yearly review and a monitoring framework.

DST is a key limitation on this analysis, primarily the decision to be made on establishing a Ministry for Disabled People. As such, the analysis here focuses on the form and system design at a high level, based on current system settings.

How shared responsibility and collective coordination can work in practice

There are four options for what shared responsibility and collective coordination could look like for enabling accessibility legislation ranging from in-government options to fully independent. This scale is illustrated in **Figure 3** below.

Figure 3



Criteria used to compare structural options

We identified the following criteria for use in assessing available structural options for new leadership approaches that can deliver the desired approach:

- Contributes to creating an enduring architecture to accelerate accessibility.
- Represents the voices of disabled people.
- Holds government to account for progress towards long term objectives, through using credible and transparent processes.

- Helps decision makers to fully understand the costs, benefits, risks, and trade-offs of policy approaches.
- Drives better coordinated action around accessibility, working constructively with ministers and government across portfolios.

Option Three (A) – Central government agency

One structural option examined was whether a central government agency might be appropriate to take responsibility for leading and coordinating the cross-government response to accessibility barriers. Public service includes departments, departmental agencies, and interdepartmental executive boards.

Under this option, a central agency would be responsible for accessibility, functioning separately from the other agencies (as most currently do). There are several benefits to this:

- One clear lead agency.
- Can act as a role model to the public sector.
- Can utilise existing mechanisms and levers for change across the public service.
- Opportunity to evolve over time to take on other functions.

However, there are also some clear limitations:

- Increased risk that knowledge and experience becomes limited to one agency and knowledge not being shared effectively across government.
- Accessibility problems sit across all portfolios rather than in the remit of one agency.
- Continues to be limited opportunity for disabled people to influence policy and there is a risk that the community voice is lost.

Overall, we consider one agency on its own could not deliver the right balance of clear leadership and shared responsibility for change alongside independent oversight required under Option Three, as it would be too similar in approach to the status quo. It would be difficult for any current entity to navigate the complex relationships required to identify and remove accessibility barriers. It risks continuing the existing siloed approach that does not provide collective responsibility for change and lacks sufficient independence to hold government to account, adequately represent the voices of disabled people, and would be vulnerable to policy and political pressures meaning it is less likely to be enduring in nature.

Option Three (B) – Interdepartmental governance board

We considered whether an **Interdepartmental Venture** could effectively lead the accessibility system. This would be a Cabinet-mandated board set up under the Public Service Act 2020 to support the removal of barriers through the enabling legislation.

An interdepartmental venture is a distinct leadership mechanism within the public service, much like a department, but rather than a chief executive at its head, it is a board of chief executives. Ventures are used to bring resources together to contribute to specific cross-portfolio activities.⁵¹ This would place a strong emphasis on government leadership and coordination.

Having multiple chief executives on board who would be collectively responsible would be good to share insights and share the workload. On the other hand, multiple chief executives could lead to dilution of overall responsibility and accountability for accessibility. It can also

⁵¹ [Guidance-Interdepartmental-Joint-Venture.pdf \(publicservice.govt.nz\)](#)

take time from setting up an Interdepartmental Venture for it to achieve transformational change.⁵²

Another risk involved with this approach is that an interdepartmental venture may not have the level of involvement or assurance from the disability community, that efforts are focused on in removing the barriers that will make the biggest difference.

Option Three (C): Semi-structural integration

Our preferred model creates a new leadership structure across three tiers, that carefully balances a level of independence with still being able to work constructively with government. It would be a model where leadership is shared by disabled people, the public service, and government as follows.

- **An independent Accessibility Governance Board** – a ministerially-appointed advisory board acting as a strategic partner with government on accessibility. They would be responsible to the Minister and provide an independent voice on participation barriers and solutions to those barriers. Membership expectations of this leadership group and related expertise will be critical.
- **Minister** – improving the authorising environment through the Minister responsible for addressing accessibility barriers. The Minister will support the work of the Board by providing oversight of their work and taking issues raised by the Board to Cabinet. They will also convene Ministerial working groups to provide oversight on cross-portfolio barriers, as well as advisory committees to support the Chief Executive.
- **Responsible Chief Executive** – day-to-day responsibility for the mechanics supporting the system, such as secretariat and other functions needed to support the Minister and Board. They will lead and coordinate work to increase participation across the public service and other key stakeholders (e.g. businesses, local government, and non-governmental organisations).

A full description of roles and functions under the proposed model is set out in **Appendix D**.

Our view is that this sub option best balances independence while creating strong leadership commitment across Government through the responsible Chief Executive.

Option Three (D) – Independent Crown Entity for Accessibility

At the other end of the leadership spectrum, there is a case to be made to consider a new Independent Crown Entity. Independent Crown Entities are normally established where the decision maker should be independent from Ministerial influence.⁵³ Examples include: the independent Climate Change Commission, Law Commission, Commerce Commission, and Human Rights Commission.

There are good reasons for considering an Independent Crown Entity for accessibility:

- Independence will increase public confidence in its long-term strategic signals. It can be held accountable through its statement of intent, and annual reporting.
- Leadership is normally in the form of a Board, which could embrace diverse leadership including disabled people and Māori.

There are, however, risks in establishing this type of entity. As Independent Crown Entities operate outside of the influence of Ministers they rely heavily on influence to make change, which can be marginalised. There would not be a strong mandate for government and Ministers to respond to recommendations made by this entity (once again siloed in one

⁵² <https://oag.parliament.nz/2021/joint-venture/overview.htm>

⁵³ [Machinery of government supplementary guidance: Main organisational design choices \(publicservice.govt.nz\)](#)

entity). An Independent Crown Entity also risks being too far away from the public service (i.e. departments) to be effective.

It is also likely to take time and a high level of resource to create.

Strengths and weaknesses of the options

Both the central agency lead and independent governance board (inter-departmental venture) options could create the cross-government response needed to support the new accessibility system to identify and remove accessibility barriers.

However, a legislative model (board established through the new enabling legislation) would be the strongest option to support cross-agency work, raise the profile of accessibility, and share responsibility for leadership across government, the public sector and the community. This approach achieves the key criteria while remaining sufficiently flexible for individual government agencies to be responsible for delivering accessibility changes.

While a legislative model is considered the best option, elements of the Cabinet-mandated model would be more suited to addressing accessibility barriers. In particular, having a single chief executive responsible for the new system creates a single point of leadership and responsibility across government agencies, which helps keep clear the role of the system and where accountability sits. This can then be enhanced through an independent governance board that has members with competencies (e.g. leadership, professional, sector-specific skills, lived experience) that helps them to articulate and direct where the work needs to be focussed.

The legislative model provides a strong, clear legislative foundation to accelerate accessibility. A Cabinet mandate, on the other hand, would not be as enduring or futureproof accessibility as a priority, given that Cabinet can shift to other priorities.

The ways of working and the behaviours to support a cross-agency approach will be important. Participants being clear about their roles and responsibilities in the disability system will help drive the change that accelerating accessibility aims to achieve.

How do each of the structural options compare with the status quo, using identified criteria?

	Option Three (A) Central government agency	Option Three (B) Interdepartmental venture)	Option Three (C) Semi-structural integration	Option Three (D) Independent Crown Entity for Accessibility
Helps create an enduring architecture	0 Vulnerable to policy and political pressures so less likely to be enduring	✓ Under legislation this could provide a more enduring commitment towards accessibility	✓✓ Strong clear mandate under legislation, more likely to endure across political cycles	✓ Independence could help ensure public confidence in its long term influence
Represents the voices of disabled people	0 Can commission expertise but not likely to be led by those with lived experience	0 May not have the level of community involvement required	✓✓ Structure ensures disabled people play a key role	✓ Board-type model can embrace diversity
Holds government to account for progress	0 Insufficient independence	0 Potentially insufficient independence	✓ Board provides a level of independence and can monitor progress, but Ministerial support will be vital	✓ Independence enables this
Helps decision makers fully understand costs, benefits, trade offs	✓ Good connections to government	✓ Multiple CEs can offer strong collective insights	✓✓ Responsible Minister can take issues to Cabinet and convene Ministerial committees	0 Operates outside influence of Ministers so could be marginalised
Drives better coordinated action around accessibility	✗ No current entity could navigate the complex relationships required. Risk that accessibility becomes one agency's responsibility	✓ A strong emphasis on better cross-government coordination, however, overall responsibility could be diluted	✓✓ Creates a strong leadership commitment across government through the responsible Chief Executive	0 Too far away from key agencies to be effective
Overall assessment	0	✓	✓✓	✓

Key

- √√ much better than doing nothing/the status quo/counterfactual
- √ better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- × worse than doing nothing/the status quo/counterfactual

What structural option will best address the problem, meet the policy objectives, and deliver the highest net benefits?

Having considered several possibilities for delivering a future framework and system for accessibility under enabling legislation, we recommend **Option Three (C)** – an Independent Board paired with an improved authorising environment through Government leadership.

Option Three (C) is the most likely option to meet objectives – it is a bespoke solution designed to ensure authentic representation, leadership and lived experience from disabled people across all levels of the system; good collective coordination across government; and through a strong legislative mandate can provide the enduring nature needed to lead, model and enable real change across government and wider society, including cultural change. There will be a clear, workable governance and methodology in place to ensure accessibility barriers are, over time, systemically identified, removed and prevented.

We believe the key trade-off involved in selecting the right leadership model for Option Three is between having the independence to be an effective advocate and hold government to account, and having the mandate, respect and ability to drive coordinated action across agencies and address intersecting barriers.

This option, through the leadership and accountability, finds the right balance between independence and clear mandate. It provides a good level of independence, through having 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 the leadership of a responsible chief executive and Minister. It can call on expert advice and advisory committees (including technical advisory committees) as and when required. 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 legislation will provide for a three-yearly review.

Over the long term, we expect benefits will outweigh costs, in particular for disabled people, their whānau, and others with access needs. We acknowledge there will be costs, both immediate in establishing a new system, but also flow-on costs over time in particular sectors. This applies to any of the structural options. It is difficult to anticipate or quantify these costs with any level of certainty, given the very wide-ranging nature of accessibility and accessibility barriers (which may change over time). However, government has a good system of checks and balances in place (e.g. better business cases, cost benefit analysis, procurement and RIA processes) to ensure it is positioned to make the right calls on prioritisation and spending at the appropriate time. It is also important to recognise that the new system to be created will not happen overnight – it will be a progressive process, that will be iterative and designed to have the flexibility to ‘learn as we go’ and enable inclusive solutions to be developed with impacted stakeholders.

What are the marginal costs and benefits of the recommended option?

Affected groups	Comment <i>nature of cost or benefit (e.g. ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
Additional costs of the preferred option compared to taking no action			
Chief executive responsible for the legislation	Costs relate to new leadership powers and functions, covering one-off establishment, then ongoing support costs for the Accessibility Governance Board, any advisory committees required, consultation, engagement and communication costs, and secretariat support. Other funding may also be needed to support awareness raising, co-design with disabled people, and monitoring of the system. s9(2)(f)(iv)	Medium establishment and transition costs (e.g. \$2M-\$3M using Criminal Cases Review Commission). Medium ongoing operating expenditure costs estimated at around \$4M per annum (e.g. Law Commission, Criminal Cases Review Commission).	High Based on previous public sector examples
Regulators (agencies and local regulators i.e. councils)	Direct costs to agencies limited to partnering and engaging with the new leadership structure during establishment and transition. Potential for indirect costs in the medium to long term (Phase 2) resulting from required changes in policy/practice and implementation.	Direct costs absorbed within baselines or additional funding sought at the time. Indirect costs will be the subject of future RIAs covering individual priority areas.	High
Regulated parties	No direct costs. Potential for flow-on compliance costs (one-off or ongoing) to individuals and groups (e.g. employers) in the long term. These would occur as barriers are prioritised and addressed during Phase 2, and the extent will depend on the sector, the nature of changes required (e.g. building alterations), and decisions made at that time on how to meet those costs (e.g. by Cabinet, s9(2)(f)(iv)).	Low to medium Long term flow-on costs would not occur until phase 2 and are difficult to quantify as vary from sector to sector.	High (direct costs) Low (flow-on costs) – no available data/studies to provide a proxy value.
Disabled people and other groups (e.g. community)	Some individuals may incur opportunity costs arising from engagement in this system depending on the level of involvement and reward and recognition offered.	Low-Medium (although this will vary a lot among individuals)	High
Total monetised costs		Medium	High (direct costs) Low (flow-on costs)
Non-monetised costs		Low to Medium	

Additional benefits of the preferred option compared to taking no action			
Administering agency	Direct benefits arise from implementation. Changes are likely that lift best practice in accessibility as the agency upskills and role models good behaviour	Medium	Low (no direct comparator)
Regulators	No immediate benefits, however, increased awareness of good practice and government expectations as they engage with the new structure over time will have indirect later benefits at the organisational level (e.g. increased customer satisfaction levels, higher performing organisations).	Low (direct additional benefit) Medium (long term benefits)	Medium
Regulated groups	No immediate benefits, however, long-term flow-on benefits may be substantial depending on the sector.	Low (direct benefit) Medium-High (estimated) in long term	Low Low – but will be subject to future CBA and RIA
Disabled people and other groups	Direct benefits may arise from increased awareness and signalling to wider society that change is happening (resulting in pre-emptive service and practice changes) Long term benefits are likely to be substantial. E.g. it has been estimated families of children with disabilities in Canada could face 50% less out of pocket additional expenses (e.g. in medication, equipment healthcare, social services, transport and housework) in the absence of barriers to inclusion. ⁵⁴	Low (direct benefit) High – long term effects	Low High – but will be subject to future CBA and RIA
Other parties	Direct benefits from readiness to implement could arise from pre-emptive changes (i.e. rethinking policies, practices and service offerings). Long term benefits may also be substantial, depending on the sector and level of change required (e.g. the business sector could benefit in providing increased accessibility and thereby gaining a larger customer base). ⁵⁵ They would also be better equipped to compete in markets defined by accessibility requirements. Government more generally could benefit from reduced welfare payments if barriers to employment were removed. ⁵⁶		

⁵⁴ Tompa, E., Mofidi, A., Jetha, A., Lahey, P. and Buettgen, A. (2021), "Development and implementation of a framework for estimating the economic benefits of an accessible and inclusive society", *Equality, Diversity and Inclusion*, <https://doi.org/10.1108/EDI-07-2020-0186>

⁵⁵ For example, CQ Hotels in Wellington found that turnover increased by 20% between 2012 and 2015 when it adopted accessibility improvements.

⁵⁶ NZIER Valuing Access to Work. Feb 2017: change in labour force participation rates if unemployment rates of disabled and non-disabled population were equalised.

Total monetised benefits	A recent study estimated total future monetised benefit, if Canada were made fully accessible, of \$337B (range of \$252.8–\$422.7B) or 17.6% of GDP in 2017. This study cited previous research that estimated the costs of exclusion as ranging from 15 to 40% of GDP across 207 different countries. ⁵⁷	Medium-High	Low-Medium (good proxy, however, not directly comparable with New Zealand situation)
Non-monetised benefits	A range of benefits can accrue to both disabled and non-disabled people from a more inclusive society. These are often intangible and difficult to quantify e.g. greater independence, improved wellbeing and social integration; less time caregiving, longer life expectancy, time savings and reduced anxiety.	High	Low-Medium (no New Zealand study)

Additional comment

The total long-term benefits arising from removing barriers to disabled people's full participation in society are likely to be a net gain. While many benefits are intangible and hard to put a price on (e.g. as increased life satisfaction and increased connections with society), there are clear economic gains to be made that will increase productivity and assist in competing in a global market. It should be noted however that cost benefit analysis is not well suited to assessing equity (fairness) issues and the impacts on social infrastructure.

In addition:

- Accelerating accessibility is an aspirational goal, and change needs to occur progressively, given the extent and reach of the problem and the time it will take to effect change in people's behaviours and practices across all of society.
- The whole of life value is difficult to estimate, as identifying, removing and preventing barriers will extend beyond 10 years and impacts will differ from sector to sector. This in turn means it is difficult to determine when costs will fall, and on who. However, a progressive and inclusive approach means those impacts can be managed.
- Excluding immediate establishment costs of a new system, the phasing of expenditure is also difficult to estimate for the reasons stated above. It is likely there will need to be sub-projects covering particular barriers (e.g. identifying priority barriers and developing solutions within the domain of transport). There are checks and balances that have to be followed before costs are paid (e.g. RIA, CBA, Better Business Cases, procurement processes, s9(2)(f)(iv), Cabinet agreements).
- There is a broader opportunity cost to Government – there are finite resources available within the public sector and decisions will be needed on whether to spend those resources supporting this system and addressing participation barriers or on achieving other priorities.

However, the importance of keeping disabled people's rights to live in a barrier-free society front and centre should not be overlooked. This proposal is about supporting New Zealand to become more equitable and welcoming to disabled people, which will have positive flow-on impacts across New Zealand.

57 Tompa, Mofidi, Jetha, A et al (2021), "Development and implementation of a framework for estimating the economic benefits of an accessible and inclusive society", [Equality, Diversity and Inclusion](https://doi.org/10.1108/EDI-07-2020-0186), <https://doi.org/10.1108/EDI-07-2020-0186>

Section 3: Delivering an option

How will the new arrangements be implemented?

s9(2)(f)(iv)

s 9(2)(f)(iv)

- s 9(2)(f)(iv)

- s 9(2)(f)(iv)

- s 9(2)(f)(iv)

- s 9(2)(f)(iv)

- s 9(2)(f)(iv)

- s 9(2)(f)(iv)

Across all these elements it will be critical that the accessibility system reflects Te ao Maori, incorporates Te Tiriti o Waitangi, and ensures representation, inclusion, and consultation across everything the system does to identify, prevent, and remove barriers to participation.

Implementation decisions will be considered alongside work on DST, to ensure the systems work together, including whether they should be housed together.

There are options regarding where the accelerating accessibility system sits

There are options on where the new system can be housed, as long as it can access the core functions needed to service the system (e.g. secretariat, policy, research, engagement and communications, and corporate services) and strikes the right balance between independence and the ability to work constructively within existing policy and regulations.

It could be housed within an existing department, or alongside disability support services once decisions on DST are made. However, this will need to be carefully thought through given the different timeframes (i.e. needing to pass legislation to fully stand up the system).

Some parts of the system can be phased in ahead of legislation passing

There is value in a phased implementation, with some parts of the system established ahead of the legislation being passed (e.g. an interim Governance Board). This would allow us to test and iterate the detailed design as the system is being implemented and start to build the capacity and capability of disabled people to engage meaningfully within the system. It would also raise the profile of accessibility ahead of the legislation passing and allow the accelerating accessibility system to support the Government's broader work programme.

However, a phased implementation would need to be balanced against other Government priorities and the need for both earlier funding and potentially more funding. s9(2)(f)(iv)

How will the new arrangements be monitored, evaluated, and reviewed?

The legislation would set out how data will be obtained to monitor and report on the effectiveness of the accessibility system. A monitoring and evaluation framework will be built into the new system as a key component of its implementation. Embedding a monitoring and evaluation framework from the beginning will provide the data to ensure we are achieving the expected and desired pace towards an accessible New Zealand.

The Accessibility Governance Board and Chief Executive have pivotal roles to play in monitoring how well the system is operating to identify, prevent and remove barriers. The Board will need to agree on the metrics to track individual increased participation plans against and ensure that these can feasibly be monitored and measured. As such, the system will need to enable agencies to easily share reporting and data on accessibility.

The Chief Executive will also provide the Responsible Minister with regular progress reports. These would provide information on the effectiveness of the implementation of plans to achieve accessibility objectives.

Further work is required on a monitor to assess the impact that this system is having on consequent outcomes for disabled people. Currently this is through the IMM, which independently monitors the Government performance on implementing the UNCRPD. We would expect the IMM to continue in this role, however, we will provide advice to the Minister for Disability Issues on whether the IMM needs to be strengthened to monitor the proposed accessibility system.

Accessibility is a priority action of the New Zealand Disability Action Plan (2019-2023). As such, the host agency will have six-monthly reporting responsibilities against this action. This will provide another mechanism to monitor the new system.

Finally, the legislation will provide for a three-yearly review, with the intended purpose of being a check to ensure we are on track in making change.

Appendix A – Key stakeholder groups and the nature of their interest

Key group	Nature of their interest
Disability Community – includes the DPO Coalition, National EGL Leadership Group, Disabled Persons Assembly, Access Alliance	Represent key disabled communities. DPO has oversight of delivering on the DAP; the Accelerating Accessibility work programme is one of the items. Access Alliance works in partnership with MSD on the accessibility work programme, and promotes accessibility legislation.
Family, whānau, carers – Parent2Parent, Carers Alliance, Carers NZ	Key allies and supporters of disabled people
Māori groups and organisations – Whānau Ora interface group, Te Ao Mārama, Whānau Ora commissioning agencies, Iwi Chairs Forum, Iwi providers, Māori businesses	Te Tiriti obligations; improving outcomes for iwi, hapū and whānau; Whānau Ora approach and principles; the Māori disability action plan
Pacific Peoples - Faiva Ora Leadership Group, Pacific health providers	Increasing the participation and inclusion of Pacific disabled people in the community
Seniors - Age Concern New Zealand, Grey Power, Alzheimers New Zealand, Aged Care Association, Dementia New Zealand	Seniors have a higher proportion of access needs compared to the younger population, as they are more likely to be living with a long-term health condition or disability.
Business community	Includes large and small business, and their representative groups. Likely to be impacted over time by any changes in regulation.
Government agencies – Ministry of Business, Innovation and Employment, Department of Internal Affairs, Ministry of Justice, Ministry for Culture and Heritage, HRC, Waka Kotahi (not exhaustive)	Administer and advise on a range of relevant legislation that may be affected, e.g. the Land Transport Management Act 2003, Local Government Act 2002. Government agencies are likely to be first to lead (and role model) change.
Local government – individual local authorities; Local Government New Zealand; Society for Local Government Managers	Local authorities are independent entities, but act as regulator for central government in many legislated areas (e.g. building control, food safety) and are responsible for policy implementation at the local level. Likely to be impacted by any changes in regulation, and at an earlier stage than business. LGNZ and SOLGM represent elected local authority members; and non-elected officials.
District Health Boards	Responsible for providing or funding health services in individual districts (disability support services, however, are funded nationally by the Ministry of Health). Policies, funding and practice can vary between districts.
Community and voluntary sector organisations	Volunteering and not for profit organisations delivering services in the community. Likely to be impacted in a similar way to small business by any regulatory changes.

Appendix B: The Access Alliance's 13 principles

1) The Act applies to all:

a) The Act will cover all persons with disabilities, whether their disability is considered physical, sensory, cognitive, communication or mental health related and will include visible, invisible, permanent or episodic conditions. The definition used will be the same definition as the United Nations Convention on the Rights of Persons with Disabilities.

b) The Act will apply to all government departments, crown corporations, companies, organisations and any other entity that is regulated by statute. The Act will apply also to key private and corporately owned organisations operating in New Zealand. These principles will refer to affected organisations as obligated parties.

2) The Act sets a timeline:

The goal of the Accessibility for New Zealanders Act is to greatly improve the accessibility of New Zealand within a specific and clearly defined deadline set by the legislation. This timeline will begin immediately upon the Act passing into law and will include checkpoints at regular intervals until existing and on-going access barriers are removed. This is the principle of progressive realisation.

3) The Act sets the bar:

The Accessibility for New Zealanders Act will build on all other disability and human rights legislation, regulations or policies which provide lesser protections or entitlements to those with a temporary or permanent impairment. It will protect and build rights that have already been earned.

4) The Act provides accessibility in all areas of life:

The Act will require all obligated parties to become fully accessible over time. This means providing accessibility in all areas where impairment intersects with the organisation. It means removing existing obstacles and preventing the creation of new obstacles. These obstacles may include, but are not limited to, physical, legal, information, communication, attitudinal, technological or other barriers. (Note: standards will provide for compliance thresholds.)

5) The Act sets policy:

The Accessibility for New Zealanders Act will influence and affect the development and implementation of public accessibility policy, thereby enhancing and improving access to a full range of goods, services and programmes not currently available to persons with temporary or permanent impairment, difference, or disability in New Zealand.

6) The Act champions access to all goods, services and facilities:

The Act will require all obligated parties to ensure that their services and facilities are fully accessible by persons with disabilities, based on principles of universal design and the provision of reasonable accommodations. Obligated parties will be required to develop and implement detailed plans to ensure accessibility within their organisations. Accessibility will be part of a 'business as usual' approach.

7) The act champions accessible workplaces, employment, education, and government agencies:

The Act will require organisations to take proactive steps to provide obstacle-free workplaces and provide changes that will accommodate people in their employment, including for job opportunities. Employers will be required to develop and implement plans to remove existing workplace and employment obstacles and to prevent new ones from being put in place. Education providers will ensure that places of study and all study resources are fully accessible. The same will apply to the Justice sector where accessibility is often a barrier to

successfully navigating, and where neurodiversity is not often visible and therefore not taken into account.

8) The Act will charge government with the responsibility to lead, educate, train, inform and review:

The Act will require government to lead the country toward achieving the goals of the Act and fulfilling its mandate. The Act will require government to provide education, information and resources to assist regulated businesses and organisations to comply with the access requirements. The government will be required to appoint an independent person to periodically review and publicly report (at regular intervals) on progress towards the goal of full accessibility.

9) The Act is enforceable:

The Act will provide for a prompt, independent and effective process for enforcement. This will include a comprehensive and clearly defined avenue for persons with disabilities who encounter obstacles which are in violation of the legislation to raise and submit complaints to enforcement officials.

10) The Act is made real through regulations:

The government will be required to make regulations that clearly define the steps needed for full compliance under the Act, and it will be independently reviewed at a minimum of every four years. It will be open to recommendations made on an industry-by-industry or sector-by-sector basis. This will include a requirement that input be obtained from persons with disabilities and impairment, and the organisations supporting them as part of these reviews.

11) The Act will ensure public funds are not used to create or perpetuate obstacles to full accessibility in all areas of life:

The Act will require that the government ensures that no public money is used to create or perpetuate inaccessibility for persons with disabilities. Government departments, agencies, and crown corporations should be required to make it a strict condition of funding and finance for programmes, transfer payments, subsidies, loans, grants, capital or infrastructure projects that no such funds may be used to create or perpetuate access obstacles. There should also be a requirement that procurement of goods, services or facilities be fully accessible to and usable by persons with disabilities. The government should be required to monitor and enforce these requirements and to periodically report to the public on compliance with them.

12) The Act is a lens through which to vet legislation:

The Act will require the government to review existing legislation and regulations identifying possible accessibility obstacles and develop timelines to address the shortcomings. The government will review all future proposed legislation and regulations before they are enacted to ensure accessibility obstacles are not about to be created.

13) The Act has real force and real effect:

The Act must be more than mere window dressing. It's all about contributing meaningfully to the improvement of the position of persons with temporary or permanent impairment, difference, or disability in New Zealand, enabling them to fully participate and to enjoy community life. It must be underpinned by effective enforcement mechanisms which lead to real effect.

Appendix C: Key themes from discussions with policy and regulatory experts

Experts consulted

- s9(2)(a) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

Key themes

Importance of leaders and champions for accessibility

- Important to have leadership who are prepared to live and walk the changes. E.g. Tony Abbott and David Cameron. Building leadership at the senior Ministerial level will be critical to ensuring accessibility can cut across portfolio lines. Likewise, the importance of buy in from Chief Executives across the Public Service.
- Government needs to demonstrate commitment like that which was shown in the earthquake strengthening work.
- Ensure seniority on joint work programmes and minimise delegating.
- Overrepresented groups (e.g. Māori/Pasifika) need to be highly involved

Education, awareness raising and changing attitudes

- Suggest we focus more on 'soft levers' rather than enforcing regulations initially.
- Standards don't always work, can change behaviour but not attitudes.
- People consulted need to understand the trade-offs/costs.
- Focus on timing and sequencing, e.g. public awareness campaign to get people on board before anti-smacking legislation.
- When issues are front of mind in the community, they pick up speed with businesses.
- Consider role of legislation in education and awareness building, e.g. responsibilities of OT Chief Executive about public awareness raising. Legislation helps prioritisation.
- Build a 'cultural element' across organisations. E.g. get them to have an accessibility strategy, report on it, and examine it. But not 'tick box' or forced. Ensure they can draw on expertise without having to design it themselves.
- Pull international convention 'levers' and focus on rights language.

Broad range of interventions will be required to remove accessibility barriers

- There is no magic formula. The combination of several levers will be needed. E.g. working with reporting bodies (e.g. audit NZ) so that organisations that know they have to report publicly on accessibility issues will give them focus.
- Certain areas such as the built environment and design of websites will lend themselves well to developing clear standards and rules, whereas other areas such as education and employment will not.

Independence vs ability to influence change

- Independent entities can be marginalised and lack buy-in/traction with Ministers.
- On the other end of the spectrum, if an entity is an operating arm of a ministry, then it would be subject to Ministerial control and organisational changes.
- A degree of separation from Ministers is needed for effective advocacy.
- An independent voice that is connected to the system is achievable, e.g. PM Chief Science Advisor.
- Example of getting different government departments to work together: Social Wellbeing Board - group of key Ministers and decisions going to this group, beginning to build influence and make decisions.

Costs and challenges to retrofitting

- Changing building standards can be tricky. Different types of disability can have different requirements, and current understanding of this is limited and inconsistent.
- When bringing in new standards and regulations it would be a much more affordable option to apply these to new initiatives, rather than retrofitting.
- This is particularly the case with heritage buildings which have different rules. If you are making changes, give a timeframe for people to plan and to factor this in.
- If changing standards: we need to be able to enforce, monitor and ensure compliance.
- Consistency of standards is a difficult issue. There could be national standards with local adjustments to local conditions.

Legislative approach

- A purely legislative approach to addressing accessibility that directly creates new accessibility regulations would require extensive Order in Council mechanisms set out in the primary legislation. These would need to be tightly prescribed in order to ensure appropriate limits on regulatory making power.
- From a regulation perspective, it will be important to be future focused rather than regulating change for what is already in existence. Regulating change around existing buildings for instance will require plenty of notice and could require compensation.

Appendix D – Leadership functions under the recommended model

Leadership	Function
Accessibility Governance Board	<ul style="list-style-type: none"> • Provide independent advice to the Minister on the accessibility system's strategic direction • Identify the systemic or complex barriers that prevent disabled people from realising their right to full participation in society • Work with the Minister on enabling the progressive realisation of those rights • Continually review and monitor progress towards accessibility • Guided by a Terms of Reference and strategic intent.
Responsible Minister	<ul style="list-style-type: none"> • Meet regularly with the Board to discuss the accessibility system's strategic direction • Agree to draft policy statements on how the Government will achieve, including consulting and seeking Cabinet's agreement where needed • Report regularly to Cabinet on the strategic direction • Initiate, recommend, implement, and promote policies, programs, and projects that relate to the progressive realisation of disabled people's right to full participation in society • Convene Ministerial Groups as needed to support work to address accessibility barriers that sit across portfolios.
Chief Executive	<ul style="list-style-type: none"> • Lead work, with relevant Chief Executives across the Public Service to address the systemic or complex barriers that prevent disabled people from realising their right to full participation in society • Lead and coordinate work on addressing participation barriers, ensuring these are co-designed with disabled people wherever possible • Support work underway across Government to improve accessibility • Provide secretariat support to the Board • Provide the Minister with a progress report on work underway to address barriers to participation • Support the Public Service to demonstrate best practice in accessibility, and in delivering accessible services and raise the profile of accessibility issues across the Public Service and other key stakeholders (e.g. business, local government, and non-governmental organisations).