



**MINISTRY OF SOCIAL  
DEVELOPMENT**  
TE MĀNATŪ WHAKAHIATO ORA

4 August 2023

Tēnā koe

On 7 June 2023, you emailed the Ministry of Social Development (the Ministry) requesting, under the Official Information Act 1982 (the Act), the following information:

- *I would like to request, pursuant to the Official Information Act 1982, all advice provided between November 07, 2022 to May 31, 2023 by the Ministry of Social Development to The Social Services and Community Committee; the Minister for Disability Issues and Whaikaha – Ministry of Disabled People regarding the Accessibility for New Zealanders Bill.*
- *'Advice' refers to all advice and discussion documents relating to the Accessibility for New Zealanders Bill.*

The Ministry contacted you on 15 June 2023 to clarify the definition of 'advice' - you agreed to the clarification:

- *All written advice in the forms of reports, briefings, memos, and aide memoirs."*

The Ministry contacted you on 12 July 2023 stating that we required more time to respond to your request due to consultations necessary to make a decision on your request.

In response to your request, please see in the attached appendices, the following documents:

- REP/23/2/037 - Report - *The future of the Accessibility for New Zealanders Bill and amendments to the New Zealand Sign Language Act 2006*, dated 8 February 2023
- REP/23/02/082 - Report - *Accessibility for New Zealanders Bill – Update and appendices 1-4*, dated 23 February 2023
- REP/23/02/082 - Appendix Five – *A3 Summary of Public Submissions to Select Committee*, dated 23 February 2023

- *REP/23/3/156 - Report - Further advice on the Accessibility for New Zealanders Bill*, dated 10 March 2023
- *REP/23/3/156 - Appendix One - Steps to complete current select committee process*, dated 10 March 2023
- *REP/23/3/156 - Appendix Two - Limits of legislative scope*, dated 10 March 2023
- *REP/23/3/156 - Appendix Three - Draft letter to chairperson*, dated 10 March 2023
- *REP/23/05/362 - Report - Accessibility for New Zealanders Bill - Departmental Report to Select Committee*, dated 2 May 2023
- *REP/23/05/362 - Appendix Two - Accessibility for New Zealanders Bill Departmental Report Presentation*, dated 2 May 2023

Appendix Four to report REP/23/2/037, is refused under section 18(d) of the Act on the basis that the information is publicly available. Please see the following link: [Accessibility for New Zealanders Bill \(bills.parliament.nz\)](https://bills.parliament.nz)

Please note, information regarding some individuals is withheld under section 9(2)(a) of the Act in order to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information.

Some information is withheld under section 9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served.

Information has also been withheld under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. I believe the greater public interest is in the ability of individuals to express opinions in the course of their duty.

The release of the following document is refused in full under section 9(2)(f)(iv) of the Act to maintain the constitutional conventions for the time being which protect the confidentiality of advice tendered by Ministers of the Crown and officials. The release of this information is likely to prejudice the ability of government to consider advice and the wider public interest of effective government would not be served:

- *REP/22/11/1170 - Report - Budget 2023: Accessibility for New Zealanders Bill*, dated 25 November 2022

The release of the following documents is refused in full under section 18(c)(ii) of the Act as the making available of this information would constitute contempt of the House of Representatives:

- REP/23/05/362 – Report - *Comparison of departmental reports*, dated 2 May 2023
- REP/23/05/362 – Report - *Appendix 1: draft departmental report*, dated 2 May 2023
- Briefing – *Initial briefing for Accessibility Bill*, dated 13 April 2023
- Commentary - *DRAFT Commentary Accessibility for New Zealanders Bill*, dated 29 May 2023
- Addendum 12-05-2023 – *Accessibility for New Zealanders Bill Addendum to the Departmental Report*, dated 12 May 2023
- Addendum - *Accessibility for New Zealanders Bill Second Addendum to the Departmental Report*, dated 29 May 2023
- Government Bill - *Accessibility for New Zealanders Bill-v12.4*, dated 26 May 2023
- Addendum - *Accessibility for New Zealanders Bill Second Addendum to the Departmental Report Updated*, dated 29 May 2023

The release of the following documents is refused in full under section 9(2)(g)(i) of the Act to protect the effective conduct of public affairs through the free and frank expression of opinions. I believe the greater public interest is in the ability of individuals to express opinions in the course of their duty:

- *Storyline Framework for Departmental Report*, dated 18 April 2023
- Overview - *Report at a Glance*, dated 18 April 2023
- Report - *DRAFT Departmental report*, dated 24 March 2023

The release of the following documents is refused in full under section 9(2)(a) of the Act to protect the privacy of natural persons. The need to protect the privacy of these individuals outweighs any public interest in this information:

- *Unique Submitters for Accessibility Bill*, dated 25 May 2023

The principles and purposes of the Official Information Act 1982 under which you made your request are:

- to create greater openness and transparency about the plans, work and activities of the Government,
- to increase the ability of the public to participate in the making and administration of our laws and policies and
- to lead to greater accountability in the conduct of public affairs.

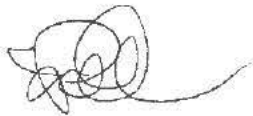


This Ministry fully supports those principles and purposes. The Ministry therefore intends to make the information contained in this letter and any attached documents available to the wider public. The Ministry will do this by publishing this letter and attachments on the Ministry's website. Your personal details will be deleted, and the Ministry will not publish any information that would identify you as the person who requested the information.

If you wish to discuss this response with us, please feel free to contact [OIA\\_Requests@msd.govt.nz](mailto:OIA_Requests@msd.govt.nz).

If you are not satisfied with this response regarding advice provided by the Ministry to the Social Services and Community Committee and the Minister for Disability Issues, you have the right to seek an investigation and review by the Ombudsman. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or 0800 802 602.

Ngā mihi nui

A handwritten signature in black ink, appearing to be 'Sarah Palmer', with a stylized flourish extending to the right.

Sarah Palmer  
**Manager**  
**Disability Policy**





# Report

**Date:** 8 February 2023

**Security  
Level:**

s9(2)(f)(iv)

**To:** Hon Priyanca Radhakrishnan, Minister for Disability Issues

## The future of the Accessibility for New Zealanders Bill and amendments to the New Zealand Sign Language Act 2006

### Purpose of the report

- 1 This report seeks decisions from you on progressing the Accessibility for New Zealanders Bill and the proposed amendments to the New Zealand Sign Language Act 2006.

### Executive summary

- 2 Although the work to introduce the Accessibility for New Zealanders Bill (the Bill) and amend the New Zealand Sign Language Act 2006 (the NZSL Act) falls under the Disability Issues portfolio, the Ministry of Social Development (MSD) continues to lead the work and administers the NZSL Act.

#### *The Accessibility for New Zealanders Bill*

- 3 The Bill was introduced to address systemic accessibility barriers and aims to do so by establishing a Ministerial advisory committee. The Bill has been referred to the Social Services and Community Select Committee (the Committee) for consideration, who have been receiving and hearing submissions on the Bill.

- 4 s9(2)(f)(iv)

- 5 Your decision is required on progressing this work. Your options are to:

- s9(2)(f)(iv)

- s9(2)(f)(iv)

- s9(2)(f)(iv)

- 6 s9(2)(f)(iv) [REDACTED]
- 7 s9(2)(f)(iv) [REDACTED]
- 8 s9(2)(f)(iv) [REDACTED]
- 9 Initial analysis of the submissions received through the Select Committee process indicate that the Bill is not broadly supported in its current form. However, there is public expectation that accessibility legislation will be enacted, and s9(2)(f)(iv) [REDACTED]
- 10 s9(2)(f)(iv) [REDACTED] MSD and Whaikaha officials will provide you with further advice on next steps and we recommend you update Cabinet on this decision.
- 11 s9(2)(f)(iv) [REDACTED]

#### *Amendments to the NZSL Act*

- 12 The NZSL Act aims to promote and maintain the use of NZSL but, despite the Act, the use of NZSL is declining. This represents a significant threat to Deaf people's identity and wellbeing.
- 13 MSD officials have drafted a paper seeking Cabinet's agreement to amend the NZSL Act to strengthen the public mandate and leadership of NZSL. In November 2022, MSD provided the then Minister for Disability Issues' Office with a final draft of a Cabinet paper, with the intention of it being considered by the Social Wellbeing Committee on 14 December 2022. Due to competing priorities, the Prime Minister's Office were unable to provide comments on the Cabinet paper until after the deadline to lodge the paper.
- 14 Your decision is required on progressing this work. Your options are:
- to present a Cabinet paper (attached as Appendix 4) to the Cabinet Social Wellbeing Committee (SWC) on 22 February 2023, with the aim of introducing the NZSL Amendment Bill into the House in June 2023
  - to seek Cabinet's agreement to amend the NZSL Act later in 2023
  - not to progress amendments the NZSL Act at this time.
- 15 We recommend that you present a Cabinet paper to SWC on 22 February 2023 due to its alignment with the previous Minister for Disability Issues' 2023 legislation priorities and community interest.



- 16 Progressing with the proposed amendments at a later date risks that a Bill to amend the NZSL Act would not be introduced into the House before Parliament rises.
- 17 Not progressing the proposals to amend the NZSL Act risks the trust and goodwill established with the Deaf community through consultation, particularly as a previous review of the NZSL Act has resulted in no changes.
- 18 The NZSL Board are supportive of the proposed amendments and there was no support for the status quo (i.e. not amending the NZSL Act) during the consultation period. However, the Disabled Peoples Organisations (DPO) Coalition do not support the proposed amendments as their view is that the scope of the proposed amendments and therefore the engagement was too narrow. The DPO Coalition also believes that there should have been a first principles review for it to have real effect on the Deaf community.
- 19 We recommend that you proceed with the proposed amendments to the NZSL Act. If you choose to delay or stop the work on amending the NZSL Act, further advice will be provided to you on the process and timeframes for transferring the administration of the NZSL Act to Whaikaha.

## Recommended actions

It is recommended that you:

*The Accessibility for New Zealanders Bill (the Bill)*

- 1 **note** that introducing an Accessibility for New Zealanders Act is a 2020 Labour manifesto commitment

2 s9(2)(f)(iv)

3 s9(2)(f)(iv)

4 **agree** to

4.1 s9(2)(f)(iv)

**Agree / Disagree**

or

4.2 s9(2)(f)(iv)

**Agree / Disagree**

or

4.3 s9(2)(f)(iv)

**Agree / Disagree**

- 5 **agree**, if you agree to recommendations 4.2 or 4.3, to inform Cabinet of this decision

**Agree / Disagree**



*Amendments to the New Zealand Sign Language Act 2006 (the NZSL Act)*

7 **note** that MSD received confirmation from Minister Williams's office of the intention to take a Cabinet paper to the Social Wellbeing Committee in February 2023 to progress amendments to the NZSL Act

8 **agree:**

8.1 **(recommended)** to lodge the Cabinet paper on Thursday 16 February 2023 and present it to SWC on Wednesday 22 February 2023

**Agree / Disagree**

or

8.2 to amend the NZSL Act later in 2023

**Agree / Disagree**

or

8.3 (not recommended) not to amend the NZSL Act

**Agree / Disagree**

9 **note** that Cabinet agreement is needed in February for a Bill to be prepared and introduced to the House by July this year

10 **note** that officials will provide you with advice on the process and timeframes for transferring the administration of the NZSL Act to Whaikaha should you choose to delay or stop the work on amending the NZSL Act.

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Julia Bergman  
General Manager  
International, Disability, and Generational  
Policy

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Date

RELEASED UNDER THE  
OFFICIAL INFORMATION ACT



## **MSD is leading work to introduce the Accessibility for New Zealanders Bill and amend the New Zealand Sign Language Act 2006**

- 20 Although the work to introduce the Accessibility for New Zealanders Bill (the Bill) and amend the New Zealand Sign Language Act 2006 (the NZSL Act) falls under the Disability Issues portfolio, MSD leads this work and administers the NZSL Act.
- 21 This decision was made to enable Whaikaha – Ministry of Disabled People (Whaikaha) to achieve greater impact as a newly established Ministry.
- 22 These pieces of legislation will transfer to Whaikaha, but the timing of the transfer will be affected by your prioritisation of the work as discussed below.

*The Accessibility for New Zealanders Bill was introduced to address systemic accessibility barriers*

- 23 Historically, New Zealand's built environments, information platforms, and many other key features of civil society have been developed with little regard for disabled people's access needs or participation in their communities. This has resulted in long standing and systemic accessibility barriers and slow progress to improve them.
- 24 Policy work, including consultation with the disability community, over a number of years considered different options for improving accessibility at a system level. A legislative framework was seen as the best option.
- 25 In 2020, the Labour manifesto committed to "introducing an Accessibility for New Zealanders Act to help New Zealand to become more welcoming and accessible for disabled people and other New Zealanders with accessibility needs".
- 26 In October 2021, Cabinet agreed to introduce a new legislative framework and system that takes a progressive approach to identifying, preventing, and removing barriers to participation for disabled people, tāngata whaikaha Māori and others with accessibility needs via the establishment of a Ministerial advisory committee [SWC/21/MIN/0145 refers].
- 27 In March 2022, Cabinet agreed that Whaikaha will be responsible for accessibility legislation once enacted, and that MSD will continue to lead work on accessibility legislation in the interim [CAB/22/MIN/0104 refers].
- 28 In its current form, the Bill establishes a new ministerial advisory committee (the Accessibility Committee) comprised of six to eight people to provide recommendations to the responsible Minister on how to address accessibility barriers and grow accessibility practices across New Zealand. It also establishes new functions for the Minister and the Chief Executive of the ministry who is responsible for the administration of the Act (intended to be Whaikaha).



- 29 The Bill was introduced to the House on 28 July 2022 and passed its first reading on 2 August 2022. Select Committee is due to report back to the House on the Bill by 16 May 2023. More information is provided on the Bill and submissions in Appendix 1.

*The NZSL Act aims to promote and maintain the use of New Zealand Sign Language (NZSL), but its use is declining*

- 30 The NZSL Act aims to promote and maintain the use of NZSL by:

- making NZSL an official language in New Zealand
- providing for the use of NZSL in legal proceedings
- empowering the making of regulations setting competency standards for the interpretation in legal proceedings of NZSL
- stating principles to guide government departments in the promotion and use of NZSL.

- 31 Despite the NZSL Act, the use of NZSL is declining, which represents a significant threat to Deaf people's identity and wellbeing.

- 32 In December 2020, the Minister for Disability Issues agreed in principle to a review of the NZSL Act, with an initial report back on policy proposals by early 2022 [REP/20/9/1002 refers].

- 33 In April 2022, MSD officials provided the Minister for Disability Issues with initial policy proposals to amend the NZSL Act. The key decisions the Minister made were:

- the approach to amending the NZSL Act would take a partnership approach with the Deaf Community to lead the promotion, maintenance, and acquisition of NZSL
- officials would undertake targeted engagement with Turi Māori to develop an approach to engage with Turi Māori and their whānau on how the NZSL Act could better reflect their aspirations
- to take a Cabinet paper to the Social Wellbeing Cabinet Committee (SWC), that outlines the proposals to amend the NZSL and to consult with the Deaf community on these proposals [REP/22/4/310 refers].

- 34 Following consultation with the Deaf community, MSD has drafted a paper seeking Cabinet's agreement to amend the NZSL Act to:

- establish a statutory Ministerial advisory group with additional functions and powers for the NZSL Board
- recognise Turi Māori identity and leadership over their taonga
- support a framework to monitor government agencies actions relating to the promotion, maintenance, and acquisition of NZSL to improve outcomes for Deaf people.



- 35 More information is provided on the background of the proposed amendments to the NZSL Act in Appendix 2. Additional information on key stakeholders' feedback to the proposed amendments is provided in Appendix 3.

## **Your decisions are required on whether, when and how this work should progress**

*The Accessibility Bill* s9(2)(f)(iv)

- 36 The Bill has been referred to the Social Services and Community Select Committee (the Committee) for consideration, who have been receiving and hearing submissions on the Bill. Over 500 submissions were received between 14 August 2022 and 7 November 2022, which are currently being analysed.
- 37 Officials are preparing a departmental report for the Select Committee. This will include discussion of a range of recommendations that were received as part of the submissions process as well as advice on technical and policy changes to the Bill. Recommendations and any policy changes that require Cabinet agreement will be discussed with you prior to the finalisation of the departmental report (currently due in March). Officials will work with your office to discuss timeframes surrounding the recommendations and draft departmental report.

38 s9(2)(f)(iv)

- s9(2)(f)(iv)

- s9(2)(f)(iv)

39 s9(2)(f)(iv)

40 s9(2)(f)(iv)

- s9(2)(f)(iv)

- s9(2)(f)(iv)

- s9(2)(f)(iv)

41 s9(2)(f)(iv)

*A Cabinet decision is needed to amend the NZSL Act*

- 42 In November 2022, MSD provided Minister Williams' Office with a final draft of a Cabinet paper, with the intention of it being considered by SWC on 14 December 2022. This Cabinet paper is attached as Appendix 4. Departmental and Ministerial consultation have already taken place.

43 In November 2022, the Minister for Disability Issues received advice on her disability portfolio priorities for the 2023 legislative programme. The Bill to amend the NZSL Act was ranked three out of four and given a proposed legislative priority of Category 4 (to be referred to Select Committee in 2023) [REP/22/11/1098 refers].

44 Due to competing priorities, the Prime Minister's Office (PMO) were unable to provide comments on the paper until after the deadline to lodge the paper. However, officials were able to incorporate the feedback from PMO, and received confirmation from Minister Williams' office of the intention to take the paper to SWC in February 2023.

45 Your decisions are required on when, or if, a Cabinet paper should be taken to a SWC meeting in order to progress this work.

s9(2)(f)(iv)

s9(2)(f)(iv)

46 s9(2)(f)(iv)

s9(2)(f)(iv)

47 s9(2)(f)(iv)

48 s9(2)(f)(iv)

49 s9(2)(f)(iv)

s9(2)(f)(iv)

50 s9(2)(f)(iv)



- 51 s9(2)(f)(iv) [REDACTED]
- 52 s9(2)(f)(iv) [REDACTED]
- 53 s9(2)(f)(iv) [REDACTED]
- 54 s9(2)(f)(iv) [REDACTED]
- 55 s9(2)(f)(iv) [REDACTED]
- s9(2)(f)(iv) [REDACTED]
  - s9(2)(f)(iv) [REDACTED]
  - s9(2)(f)(iv) [REDACTED]
- 56 s9(2)(f)(iv) [REDACTED]
- 57 While initial analysis of the submissions received by Select Committee indicates that the Bill is not widely supported in its current state, legislation governing accessibility in general is supported and introducing the Bill would be a significant first step.
- 58 s9(2)(f)(iv) [REDACTED]
- 59 s9(2)(f)(iv) [REDACTED]

s9(2)(f)(iv)

60 s9(2)(f)(iv)

61 s9(2)(f)(iv)

62 s9(2)(f)(iv)

### **There are two options to progress the amendments to the NZSL Act**

63 We recommend you progress amendments the NZSL Act. You have the options of taking a Cabinet paper to SWC in February 2023 or proceeding with the proposals at a later date. Alternatively, you could decide not to amend the NZSL Act at this time.

*The NZSL Board support the proposed amendments, but the Disabled Peoples Organisations (DPO) Coalition<sup>1</sup> does not*

64 The proposed amendments to the NZSL Act were developed in partnership with the NZSL Board and the NZSL team within Whaikaha and consulted on with the Deaf community.

65 The NZSL Board support the proposals, acknowledging that while the amendments cannot address all the issues faced by the Deaf community, they intend to use the feedback heard through consultation to shape their future work programme and conversations with government agencies.

66 The DPO Coalition and Deaf Aotearoa, a member of the DPO Coalition, were engaged with throughout the process of developing the policy options to amend the NZSL Act, the approach for consulting with the wider Deaf community, and on drafts of the final policy proposals.

67 It is important to note that the DPO Coalition do not support the proposed amendments. Their view is that the scope of the amendments and therefore the engagement was too narrow, that there should have been a first principles review, and that the proposed amendments will not address the

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<sup>1</sup> The DPO Coalition is a group of disabled people-led organisations that are mandated under Article 4.3 of the UNCRPD which promotes active involvement by government agencies with representative organisations of disabled people.



significant issues faced by the Deaf community (such as access and the interpreter workforce). More information on this is provided in Appendix 3.

- 68 There was no support for the status quo (ie not amending the NZSL Act) from consultation. There was broad acceptance that the amendments would build on the progress already achieved in the maintenance and promotion of NZSL, even if they fulfil all of the community's aspirations and concerns. Further information about this is provided in Appendix 3.

*We recommend that you present a Cabinet paper to SWC on 15 February 2023.*

- 69 We recommend that you take a Cabinet paper to SWC on 15 February 2023 seeking agreement on the final policy proposals to amend the NZSL Act and inviting you to send drafting instructions to Parliamentary Counsel Office (PCO). This would enable you to introduce an NZSL Amendment Bill into the House in July 2023.

- 70 While the timeframes to achieve this are tight, delaying Cabinet's agreement means that it is unlikely that a Bill to amend the NZSL Act could be introduced to the House before Parliament is dissolved on 8 September 2023.

- 71 Seeking Cabinet's agreement in February 2023 aligns with the previous Minister for Disability Issues' 2023 legislation priorities for the disability portfolio (third priority with a Category 4, to be referred to Select Committee before the 2023 election).

- 72 There is also a significant amount of interest in the review to amend the NZSL Act from the Deaf community, and we have received requests from members of the Deaf community for updates on the work. During the consultation period, the Deaf community were advised of the Minister for Disability Issues' intent of seeking agreement from Cabinet in December 2022.

- 73 The final draft of the Cabinet paper that we recommend you take to SWC on 15 February is attached as Appendix 4. Should you agree to this, officials will provide you with an Aide-Memoire to support your discussion at SWC.

*You may also choose to proceed with the proposals at a later date*

- 74 There is also the option to proceed with the proposed amendments to the NZSL Act later in 2023. However, it is probable that a Bill to amend the NZSL Act would not be introduced into the House before Parliament rises if seeking agreement from SWC is delayed.

- 75 Additionally, this would further delay providing the Deaf community with information about the outcome of the consultation that ended in November 2022, which may negatively impact relationships with the Deaf community.

*You may choose not to progress this work, but this risks the trust of the Deaf community*

- 76 The third option is not to proceed with the proposals to amend the NZSL Act.



- 77 A significant disadvantage of this option is that it could risk the trust and good will built up with the Deaf community. A previous review of the NZSL Act resulted in no changes to the Act. If these amendments are not progressed, this would mean that two separate reviews of the NZSL Act have resulted in no changes being made, despite the Deaf community's desire for change and involvement in consultation.
- 78 If you choose to stop the work on amending the NZSL Act, we will provide you with further advice, particularly in relation to communicating this to the Deaf community.

*Officials will provide you with further advice if you choose to delay or halt progress on the NZSL Act*

- 79 When the NZSL Act came into force in 2006, the Office for Disability Issues (ODI) was part of MSD. ODI are now part of Whaikaha and support the NZSL Board and NZSL work programme, including the NZSL Strategy.
- 80 The final policy proposals to amend the NZSL Act signal the intention to transfer the administration of the NZSL Act to Whaikaha when an amended NZSL Act comes into force.
- 81 If you choose to delay or stop the work on amending the NZSL Act, further advice will be provided to you on the process and timeframes for transferring the administration of the NZSL Act to Whaikaha.

## Next steps

- 82 s9(2)(f)(iv) [REDACTED]
- 83 s9(2)(f)(iv) [REDACTED]
- 84 Should you agree to progress the amendments to the NZSL Act, we recommend you take the Cabinet paper to SWC on 15 February 2023. Officials will provide you with an Aide-Memoire to support you at this discussion.
- 85 Officials are available to meet with you to discuss this advice.

File ref: REP/23/2/037

Author: s9(2)(a) [REDACTED], Policy Analyst, Disability Policy

Responsible manager: Sarah Palmer, Acting Policy Manager, Disability Policy



## Appendix 1 - Information on the Accessibility for New Zealanders Bill (the Bill) and submissions

- 1 At present, efforts to address accessibility barriers are fragmented across the public service and are overly reliant on individual agencies to identify and appropriately prioritise their removal. This issue is driven by a lack of clear government leadership on systemic cross-agency accessibility issues (ie there is no government agency responsible for improving accessibility).
- 2 There is also a lack of awareness of the importance of accessibility across society and limited avenues for disabled people, tāngata whaikaha Māori and their families or whānau, and others with accessibility needs, to shape policy on accessibility issues.
- 3 A legislative framework was seen as the best option to address these barriers after consultation with the disability sector, and in 2020, the Labour manifesto committed to “introducing an Accessibility for New Zealanders Act to help New Zealand to become more welcoming and accessible for disabled people and other New Zealanders with accessibility needs”.
- 4 The disability community and other interested groups of officials that were consulted on the detailed design of the framework said that it needs to take a broad, aspirational view of accessibility and a holistic approach to addressing accessibility barriers.
- 5 To recognise this, the Bill includes an aspirational purpose statement and defines accessibility broadly to recognise that it means different things to different people, depending on their sector and personal experiences.
- 6 It defines accessibility within the context of accessibility barriers (obstacles and circumstances which stop people from living independently and participating equally) and accessibility practices (actions, measures, modifications, or adjustments that enable people to live independently and participate fully on an equal basis with others).

### *The functions of the Bill*

- 7 The Bill establishes a new legislative framework that aims to create a consistent way of addressing systemic accessibility barriers that prevent disabled people, tāngata whaikaha Māori and their families or whānau, and others with accessibility needs from living independently and participating in all areas of life, and to grow accessibility practices across New Zealand.
- 8 To this end, the Bill:
  - establishes a Ministerial Committee known as the ‘Accessibility Committee’ led by disabled people, tāngata whaikaha Māori and their families or whānau to provide independent recommendations to the Minister for Disability Issues on how to address accessibility barriers and grow



accessibility practices across New Zealand in consultation with affected sectors and interested parties

- strengthens government accountability by creating strong, clear responsibilities for the Minister for Disability Issues, Chief Executive of Whaikaha – Ministry of Disabled People (Whaikaha), and the Accessibility Committee
  - builds knowledge and awareness of the importance of addressing accessibility barriers and growing accessibility practices across New Zealand.
- 9 The Bill creates a new leadership structure that carefully balances a level of independence with being able to work constructively with government. It provides independence through the establishment of a ministerial advisory committee (the Accessibility Committee), led by disabled people and tāngata whaikaha Māori and their families or whānau, focused on making recommendations to the Minister for Disability Issues on how to address accessibility barriers and grow accessibility practices.
- 10 This is complemented by responsibilities of the Chief Executive of Whaikaha<sup>2</sup> and the Minister for Disability Issues, whose oversight and support are needed for the framework to succeed. The framework provides for collective co-ordination across government and a clear methodology to ensure accessibility barriers are, over time, systematically identified, removed, and prevented.
- 11 The Bill provides for commencement by Order in Council with a backstop date of 1 July 2024. The flexibility in commencement date is to allow time for Whaikaha to develop a plan to implement the framework the Bill creates.
- 12 The Bill is currently at the Select Committee stage, and over 500 submissions were received between 14 August 2022 and 7 November 2022. Initial analysis of the Select Committee submissions indicates that while accessibility legislation is broadly supported, the Bill in its current form is not, mainly because it does not contain enforceable standards. Officials are preparing a departmental report, including any potential recommended policy changes as a result of the submissions, to be presented to Select Committee. Officials will provide you with a copy of this report and indicate any recommended Cabinet decisions prior to presenting it to Select Committee.

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<sup>2</sup> The current draft of the Bill refers to 'Ministry for Disabled People' as this is the current legal name as set out in the Public Service (Ministry for Disabled People) Order 2022. It will be updated if/when the legal name is updated to reflect the public name of Whaikaha – Ministry of Disabled People.



### *Submissions on the Bill*

13 Over 500 submissions on the Bill were received between 14 August 2022 and 7 November 2022, which are currently being analysed by officials.

14 Initial analysis reveals:

- Most submitters were in favour of legislation that accelerates accessibility.
- Approximately 75% of submitters seek a different framework. Some of the remaining submitters recommend that the bill is withdrawn and redrafted but do not recommend a particular replacement framework.
- Approximately 20% of submissions include recommendations that officials consider to be within scope.
- Officials have categorised recommendations considered to be within scope into eight different themes. These are (in order of frequency):
  - timeframes
  - definitions
  - object and principles
  - powers of the Accessibility Committee,
  - the Minister and the CE
  - composition of the Accessibility Committee and the nomination process
  - Te Tiriti and Māori representation
  - wider government
- the Accessibility Committee's work programme (the submissions include a large number of stories regarding accessibility barriers experienced by the submitter or those close to them).

### *An alternative framework*

15 There are some common themes across the submissions that seek a different model for a legislative framework to accelerate accessibility. There are two broad categories:

- this legislation should contain prescriptive accessibility standards within the Bill
- this legislation should create an appointed and empowered (preferably independent) body that is comprised entirely of the disability community. Options include a disability commission. This body would have legislative powers to create enforceable accessibility standards across any and all domains of life. It would also have quasi-judicial functions:



- to enforce the accessibility standards via directions and penalties, and/or
- to investigate complaints, and/or
- to resolve disputes.

16 These models were considered during policy analysis. The enabling framework was preferred as it is considered to have the best pathway to achieving systemic change within existing government structures, as detailed above.

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## Appendix 2 - History of the New Zealand Sign Language Act 2006 (the NZSL Act)

- 17 Since the NZSL Act was enacted in 2006, there have been significant changes in the Government's approach to the Deaf and disability communities. These include, New Zealand ratifying the United Nations Convention on the Rights of Persons with Disabilities in 2008, the establishment of the New Zealand Sign Language Board (the NZSL Board) in 2015, and the development of the NZSL Strategy 2018-2023 (the NZSL Strategy).
- 18 The NZSL Act does not reflect the Crown's responsibilities as a Te Tiriti o Waitangi / Treaty of Waitangi partner, nor does it reflect the Government's overall direction for disability system transformation.
- 19 In December 2020, the Minister for Disability Issues received a report from the NZSL Board that recommended a review of the NZSL Act. The Minister agreed in principle to a review of the Act with a focus on how it could better align with the NZSL Strategy, with an initial report back on policy proposals by early 2022 [REP/20/9/1002 refers].
- 20 Three proposals to amend the NZSL Act were developed in partnership with the NZSL Board and the NZSL Team within Whaikaha.
- 21 The policy review and subsequent consultation on options for amending the NZSL Act did not take a 'first principles' approach. The mandate for the review was to identify how the NZSL Act could be amended to better reflect changes since 2006, such as the formation of the NZSL and the establishment of the NZSL Strategy.
- 22 In April 2022, MSD officials provided the Minister for Disability Issues with the below initial policy proposals to amend the NZSL Act:
  - the NZSL Board becomes a statutory Ministerial advisory group, with additional functions and powers to provide strategic leadership on matters relating to NZSL
  - the functions of the NZSL statutory Ministerial advisory group, and the principles to guide appointments, includes specific references to support Turi Māori identity and leadership.
- 23 The key decisions the Minister made were:
  - the approach to amending the NZSL Act would take a partnership approach with the Deaf Community to lead the promotion, maintenance, and acquisition of NZSL
  - officials would undertake targeted engagement with Turi Māori to develop an approach to engage with Turi Māori and their whānau on how the NZSL Act could better reflect their aspirations



- to take a Cabinet paper to the Social Wellbeing Cabinet Committee (SWC), that outlines the proposals to amend the NZSL and to consult with the Deaf community on these proposals [REP/22/4/310 refers].
- 24 In August 2022, SWC agreed to consultation with the Deaf community on potential amendments to the NZSL Act and invited the Minister for Disability Issues to report back to Cabinet with final policy proposals in December 2022 [SWC-22-MIN-0158 refers].
- 25 In November 2022, we provided the Minister's Office with a final draft a Cabinet paper, with the intention of it being considered by SWC on 14 December 2022. Departmental and Ministerial consultation took place at this time.
- 26 Due to competing priorities, the Prime Minister's Office (PMO) were unable to provide comments on the paper until after the deadline to lodge the paper. However, we were able to incorporate the feedback from PMO, and received confirmation from Minister Williams' office of the intention to take the paper to SWC in February 2023.

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## Appendix 3 - Key stakeholders' feedback on the proposed amendments to the New Zealand Sign Language Act 2006 (NZSL Act)

- 27 We have engaged with the Disabled Peoples Organisations Coalition (DPO Coalition),<sup>3</sup> and Deaf Aotearoa specifically, throughout the process of developing options for amend the NZSL Act, the approach for consulting with the wider Deaf community and drafts of the final policy proposals.
- 28 Deaf Aotearoa (a member of the DPO Coalition) provided a written submission on the proposals to amend the NZSL Act during the consultation phase. They indicated that they did not support the proposals. With the consent of Deaf Aotearoa, we provided their submission to the Minister for Disability Issues office.
- 29 On 24 November 2022, MSD officials meet with the DPO Coalition to discuss their feedback on a draft Cabinet paper that set out the final proposals to amend the NZSL Act. The DPO Coalition advised that they did not support the proposals.
- 30 The DPO Coalition's main concern was that the review was not a first principles review of possible functions and powers, leading to engagement on a broader range of forms the NZSL Board or a new leadership group could take. Therefore, their position is that the engagement was not genuine as the Deaf community were not provided with enough information on the full range of potential options to have informed opinions about the review.
- 31 The scope of the review that the DPO Coalition is advocating for is significantly broader than the scope that Cabinet agreed to, which focused on updating the Act to better align with the NZSL Strategy.
- 32 The other key issue raised by the DPO Coalition is that the amendments to the NZSL Act will not address the significant issues faced by the Deaf community, such as education, access, and the interpreter workforce (these issues were also raised during consultation).
- 33 MSDs' view is that, while these issues and concerns are outside the scope of this review, as the Minister for Disability Issues you can progress work to address these issues through non-legislative means and by working with other Ministers.
- 34 On 2 December 2022, we provided Minister Williams with advice in response to the DPO Coalition not supporting the proposals [REP/22/12/1213 refers].

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<sup>3</sup> The DPO Coalition is a group of disabled people-led organisations that are mandated under Article 4.3 of the UNCRPD which promotes active involvement by government agencies with representative organisations of disabled people.



- 35 On 8 December 2022, Minister Williams met with the DPO Coalition, as one of her regular meetings with them, and the proposals to amend the NZSL Act was on the agenda. Following this:
- Minister Williams met with officials, and indicated her expectation for us to continue to prepare a Cabinet paper
  - Minister Williams met with the NZSL Board, who fully support the proposals to amend the NZSL Act.
- 36 On 16 December 2022, officials were advised from Minister Williams' office that the intention was to lodge a Cabinet paper to SWC early in 2023.

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# Report



MINISTRY OF SOCIAL  
DEVELOPMENT  
TE MANATŪ WHAKAHIAITO ORA

**Date:** 23 February 2023

**Security Level:** IN CONFIDENCE

**To:** Hon Priyanca Radhakrishnan, Minister for Disability Issues

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## Accessibility for New Zealanders Bill - Update

### Purpose of the report

- 1 Further to the report dated 8 February 2023 [REP/23/2/037] and your meetings with officials on 13 February 2023, this report responds to your request for more information on the Accessibility for New Zealanders Bill (the Bill).

### Executive summary

- 2 MSD has recently provided advice regarding the status of the Accessibility for New Zealanders Bill. A report to you on 8 February 2023 [REP/23/2/037] set out a brief outline of work on the Bill.
- 3 s9(2)(f)(iv) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 4 You requested further advice on the history of the work programme that has led to the Bill. The key reasons chosen for an 'enabling', non-regulatory, progressive framework were:
  - 4.1 The government chose the option for a structure of leadership to lead a consistent methodology to improve current legislative frameworks and make other policy recommendations. A new regulatory system for accessibility would take a long time to produce and will likely lead to duplication with other regulatory systems. Other jurisdictions with this approach have faced challenges with timeliness and managing expectations
  - 4.2 A ministerial advisory committee was chosen rather than an independent commission as it better balanced independence with proximity to government and influence. The ministerial advisory committee is intended to work with the Minister for Disability Issues and Whaikaha's Chief Executive to lead cross-government change



- 4.3 Within the chosen timeframes and system, enforceable standards and stronger obligations on government (for example, targets) were not feasible. However, changes to existing regulations and standards, and recommendations for the establishment of new regulations or standards is within scope of the proposed Bill. This approach can be reassessed after the Bill's first review period.
- 5 The Bill is at the Select Committee stage. The Select Committee is currently hearing oral submissions and is due to report back to the House in May 2023. While most submitters support the introduction of accessibility legislation, there is significant opposition to the framework and level of ambition of the proposed Bill.
- 6 As part of the Select Committee stage, MSD's Departmental Report is currently due on 13 March 2023, <sup>s9(2)(f)(iv)</sup> [REDACTED]
- 7 <sup>s9(2)(f)(iv)</sup> [REDACTED]

## Recommended actions

It is recommended that you:

- 1 **note** that officials await your response on the future of the Accessibility for New Zealanders Bill [REP/23/2/037]
- 2 **note** that MSD is obliged to complete a Departmental Report to the Select Committee before 13 March 2023

- 3 <sup>s9(2)(f)(iv)</sup> [REDACTED]
- 4 <sup>s9(2)(f)(iv)</sup> [REDACTED]

**Agree / Disagree**

- 5 <sup>s9(2)(f)(iv)</sup> [REDACTED]
- Agree / Disagree**

- 6 s9(2)(f)(iv)
- 7 **note,** notwithstanding other decisions, officials will work with your Office on recommendations considered to be within legislative scope and Cabinet’s existing mandate in order to complete the Departmental Report.

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Julia Bergman  
General Manager  
International, Disability, and Generational  
Policy

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Date

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Hon Priyanca Radhakrishnan  
Minister for Disability Issues

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Date



## **MSD has recently provided advice regarding the status of the Accessibility for New Zealanders Bill**

- 8 The Accessibility for New Zealanders Bill (the Bill) was introduced to address systemic accessibility barriers in New Zealand. It aims to do so by establishing a ministerial advisory committee as part of a leadership system to drive change across government and New Zealand.
- 9 The Bill was introduced to the House on 28 July 2022 and passed its first reading on 2 August 2022. It has been referred to the Social Services and Community Select Committee for consideration, who have been receiving and hearing submissions on the Bill.
- 10 A report to you on 8 February 2023 [REP/23/2/037] set out a brief outline of work on the Bill. <sup>s9(2)(f)(iv)</sup>
- 11 <sup>s9(2)(f)(iv)</sup>
- 12 <sup>s9(2)(f)(iv)</sup>
- 13 In the meantime, the Bill is proceeding via Select Committee, which is due to report back to the House on the Bill by 16 May 2023. More details of the Select Committee process are provided below.

## **Further background to the selection of the enabling framework as Cabinet's preferred option to progress accessibility**

- 14 You requested further advice on the history of the work programme that has led to the Bill. A summary table at **Appendix 1** sets out an overview of the key decisions and analysis that led to the current legislative model.

### *Access Alliance / Access Matters*

- 15 Originally referred to as Access Alliance until changing its name in mid-2022, Access Matters began as a collective of 12 disability sector groups. This included Disabled People's Organisations, disability service providers, disability community organisations, and disability advocates. Its primary purpose is to advocate to the government to commit legislation as the first step in the development of new standards and regulations for various domains of life.
- 16 Access Matters has 13 key principles for accessibility legislation. Some, but not all, of these principles are met by the Bill. A table of the 13 key principles is attached as **Appendix 2**.

- 17 Over the last few years, Access Matters' membership has grown to include more than 20,000 individuals and organisations from the disability and neurodiversity sectors. As evidence of its increasing support, on 22 February 2023, Access Matters submitted a petition to Parliament to argue for stronger accessibility legislation. The petition, which garnered more than 14,500 signatures, asks for the Bill to be strengthened to include standards, a regulator, a barrier notification system and a disputes resolution process. The petition is separate to the Select Committee process.

*Cabinet agreed to introduce accessibility legislation following longstanding community advocacy*

- 18 Disability communities in New Zealand have consistently called for accessibility legislation that enables disabled people, tāngata whaikaha, whānau whaikaha Māori, and others with accessibility needs to live independently and participate fully in all aspects of life, on an equal basis with others.
- 19 On 3 December 2018, Cabinet agreed to commence the design of an approach to achieve a fully accessible New Zealand that will include understanding the feasibility of using legislation that provides for standards and codes of accessibility [CAB-18-MIN-0591 refers].
- 20 In February 2019, MSD and Access Alliance formed a partnership to explore how to accelerate progress on accessibility in New Zealand. Access Alliance met with the then Minister for Disability Issues, Hon Carmel Sepuloni, quarterly. Between February and April 2019, MSD facilitated workshops with a range of key stakeholders impacted by the accessibility work programme.
- 21 Following this, officials presented policy advice towards standalone legislation as a framework for the prevention and removal of barriers and accessibility standards [SWC-20-MIN-0074]. MSD officials advised that it was not feasible or practical to set targets or deadlines for accessibility standards in New Zealand due to:
- 21.1 limited data and information on accessibility in New Zealand
  - 21.2 lessons from the experience of Ontario, Canada, which showed that setting legislative targets can create unrealistic expectations that are difficult to meet.
- 22 Officials recommended a more flexible model, as it would:
- 22.1 allow for a progressive approach over time
  - 22.2 enable obligated parties to understand and adopt efficient or innovative approaches to meeting regulatory obligations, and
  - 22.3 have the ability to adapt to changes in society.
- 23 The Access Alliance understood this reasoning but maintained their requirement for enforceable standards, targets, and deadlines. MSD and



Access Alliance found a middle ground, agreeing on periodic reviews for the accessibility framework in legislation.

- 24 Cabinet agreed to a progressive approach and to introduce legislation in June 2020 [SWC-20-MIN-0074 and CAB-20-MIN-0295 refer].

*A central enabling framework was developed for progressively removing systemic accessibility barriers*

- 25 Officials recommended to the then Minister that an enabling framework represented by the current Bill would be most likely to achieve a cohesive structure of leadership to drive change. Rather than creating a new regulatory system, it would provide a cohesive way to improve current legislative frameworks (for example, the Building Act) and avoid the risk of duplicating legislation and regulations.
- 26 Consultation with policy, regulatory, and private sector experts was carried out in 2021 (see **Appendix 4**). This consultation informed the high-level legislative approach, including through the following themes:
- Strong, independent leadership is needed to champion accessibility and drive change. This would need to be balanced with 'influence' – the ability to be 'inside the tent' and affect change
  - A broad range of interventions will be required to remove accessibility barriers, including education and awareness raising
  - Legislation needs to be enabling and future focused
- 27 The leadership structure chosen needed to find this balance between 'independence' and 'influence' and be practical to set up. By contrast, a new crown entity would be costly and time-consuming to establish.
- 28 In October 2021, the then Minister updated Cabinet on her preferred approach [SWC-21-MIN-0145 and CAB-21-MIN-0395 refer]. The model included:
- 28.1 Introducing an independent accessibility board led by disabled people and focussed on providing independent advice and information on the barriers that prevent disabled people from realising their right to full participation in society
  - 28.2 Clear Ministerial responsibility that sets objectives and initiatives, recommends, implements, and promotes accessible policies, programs, and projects
  - 28.3 Designating a chief executive, operating in a similar fashion to a public service functional lead, responsible for accessibility to mobilise resources from across government, raise the profile of accessibility across the public service, and ensure disabled people are involved and leading across the system.

- 29 Cabinet also acknowledged that a Bill will not achieve enduring or significant progress on accessibility alone. It will need to be enacted alongside non-legislative measures, such as raising awareness, education, and training to ensure a holistic approach. In addition, progress on addressing accessibility barriers would require prioritisation and investment by successive Governments.
- 30 The proposed model did not align with all of the Access Alliance's principles (Appendix 2). As such, the formal partnership between the government and the Access Alliance ended, so that the Access Alliance could pursue and advocate for their preferred model.


*The detailed design was informed by community consultation*

- 31 From late 2021 to early 2022, officials met with targeted disability community and interested groups on some aspects of the legislation to inform the detailed design of the accessibility framework (See Appendix 4). Participants were largely positive about the idea of legislation, but a number of groups maintained that the legislation must have "teeth" (i.e., a regulatory framework) for progress to be achieved.
- 32 Other key themes from engagement included the:
- need for the framework to take a broad, aspirational view of accessibility and a holistic approach to addressing barriers
  - importance of having disabled people with a broad range of experiences and skills on the ministerial advisory committee, including, for example, knowledge of government systems, knowledge of tikanga Māori and Te Tiriti o Waitangi, disability research, advocacy and policy experience
  - need for broad representation on the ministerial advisory committee – including disabled people, Māori, Pacific peoples, urban/rural representation, a range of ages, and families and whānau of disabled people
  - importance of disabled people being involved in the nomination and appointment of ministerial advisory committee members
  - need for the ministerial advisory committee to engage with all groups of people impacted by accessibility barriers – for example, disabled people, families and whānau of disabled people, older people, and parents with young children.
- 33 In May 2022, Cabinet agreed to the detailed design of the legislation [SWC-22-MIN-0047 refers] which can be seen in the Bill.
- 34 In July 2022, Cabinet approved the Accessibility for New Zealanders Bill for introduction, subject to support in the House of Representatives [CAB-22-MIN-0040 refers].



- 35 The Bill was introduced to the House on 28 July 2022 and passed its first reading on 2 August 2022. Select Committee is due to report back to the House on the Bill by 16 May 2023.
- 36 Although legislation is not needed to introduce a ministerial advisory committee, it was progressed to ensure accessibility would remain a priority for future governments and progress could be achieved over time. In addition, legislation would represent an important signal to the disabled community and the public, more broadly, that the government recognised broad changes are required to improve accessibility.

### **Overview of Select Committee process**

- 37 The Bill is currently at the Select Committee stage, and over 500 submissions were received between 14 August 2022 and 7 November 2022. The Committee is currently hearing oral submissions and is due to report back to the House in May 2023. Through the process, the Select Committee has asked officials to provide advice on a number of issues raised during submissions.
- 38 Officials are preparing a departmental report (see below). MSD officials understand that the Select Committee process must be completed in order to address submissions, <sup>s9(2)(f)(iv)</sup>
- 

### **The public submissions reveal significant opposition to the chosen framework**

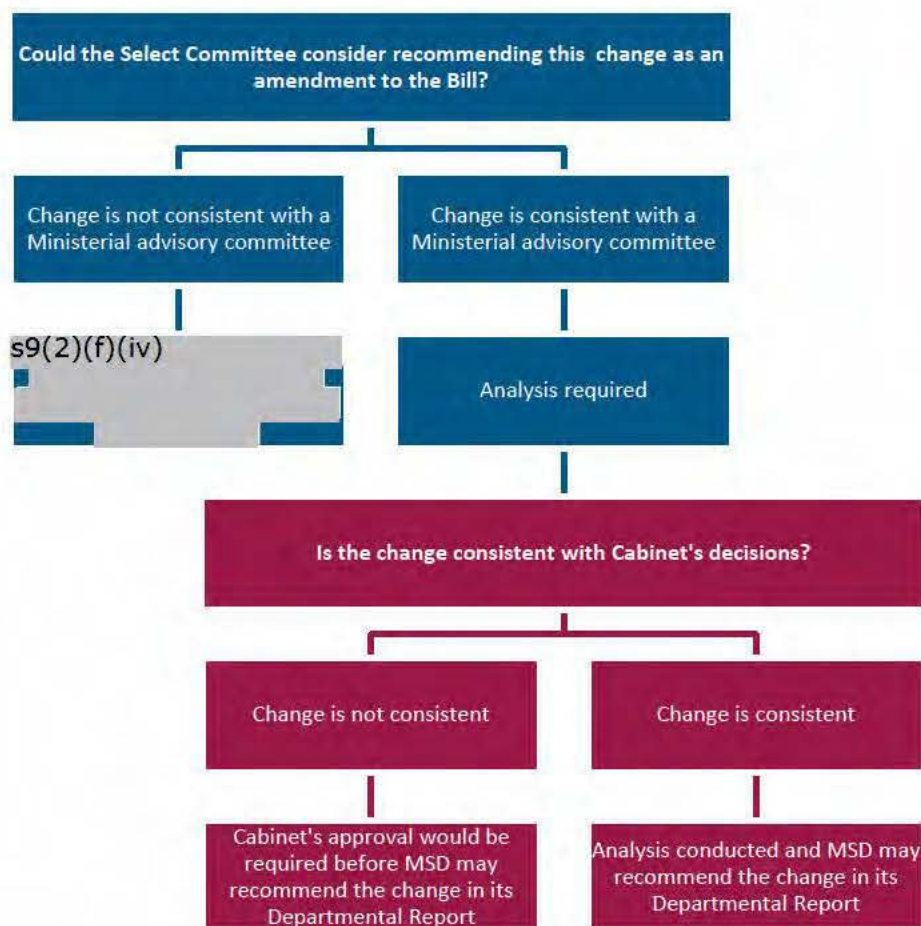
- 39 The A3 (attached as **Appendix 5**) summarises the written public submissions to the Select Committee. 514 unique submissions have been submitted. While a majority of submitters support the intention of the Bill, the majority would like it to include a different model<sup>1</sup>. Of those with a stated position, 91% sought a different framework to advance accessibility, and their proposals (e.g., regulatory regime, co-governance, legislative and enforcement powers for the ministerial advisory committee) would involve a complete redrafting of the Bill.
- 40 In analysing the changes sought within each submission,<sup>2</sup> officials have assessed whether suggested actions are within legislative scope and the enabling framework as agreed to by Cabinet. The diagram below provides an overview of how submissions were assessed and organised.

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<sup>1</sup> Noting 47% of total submitters used the words "I support the Bill" or "I support the Bill in principle."

<sup>2</sup> Noting that submitters are not required to propose changes, and that submitters that chose to do so suggested multiple changes.





- 41 Legislative scope is determined by Standing Order 300(1): the Select Committee may only recommend amendments that are "*consistent with the principles and objects*" of the Bill. In the context of this Bill, the principles and objects are to establish a Ministerial advisory committee. Any amendments that would change the nature of that body, or would be inconsistent with an advisor to the Executive, would go beyond an amendment to the Bill and amount to redrafting it.
- 42 Oral Hearings will continue until 8 March 2023 (subject to delays). It is possible that further changes will be recommended by submitters during the oral hearing processes.
- 43 At the time of this Report, key findings include:
  - 43.1 the changes sought by submitters are largely outside the original legislative scope. The majority of submitters want to see system change across the public and private sectors, and they, therefore, do not believe the Bill goes far enough to address the needs of disabled people, tāngata whaikaha Māori and their families and whānau, and others with access needs.
  - 43.2 Page 3 of Appendix 5 shows the changes sought by submitters that are within legislative scope but would require Cabinet approval prior to MSD



making a recommendation. Issues that would raise questions of constitutionality are identified.

44 Initial analysis has identified te Tiriti o Waitangi issues as a key area. Many submitters expressed support for the provisions relating to te Tiriti. There are, however, some submissions that suggest changes to better observe te Tiriti:

44.1 Co-governance (such as a co-chair Māori, or equal representation between Māori and non-Māori representatives on the Ministerial advisory committee)

44.2 A stronger role for the Māori nominations panel

44.3 Additional monitoring and review requirements to ensure the framework upholds te Tiriti and reflects tikanga, te ao Māori, and the experiences of tāngata whaikaha Māori and their whānau

44.4 Replacing the requirement for the Committee to have “knowledge of” te Tiriti of Waitangi/the Treaty of Waitangi, te ao Māori, and tikanga Māori with “lived experience” instead.

45 s9(2)(f)(iv)

46 Summaries of the submissions received from Access Matters Aotearoa, Disabled Peoples Organisations, and public sector entities are included in **Appendix 3.**

## Departmental Report

47 The Departmental Report is due to Select Committee on 13 March 2023, and s9(2)(f)(iv)

48 s9(2)(f)(iv)

49 As the last date for oral submissions is planned for 8 March, officials are considering seeking an extension to the Departmental Report and will keep your office updated.

50 Analysis of the submissions is continuing while drafting of the Departmental Report is in the early stages. The Report will likely be structured into four sections: the context and background to the bill, quantitative analysis of the submissions, qualitative analysis, and a clause-by-clause analysis including MSD’s recommendations for amendments.

## Next steps

51 Officials await your response on the future of the Accessibility for New Zealanders Bill [REP/23/2/037].

52 s9(2)(f)(iv) [REDACTED]

53 s9(2)(f)(iv) [REDACTED]

54 s9(2)(f)(iv) [REDACTED]

55 Officials continue to support the Bill through the Select Committee and drafting the Departmental Report.

File ref: REP/23/2/082

Authors: s9(2)(a) [REDACTED], Policy Analysts, Disability Policy

Responsible manager: Julia Bergman, General Manager, International, Disability, and Generational Policy

## Attached appendices

- Appendix 1: Timeline of decisions leading to the Bill
- Appendix 2: Access Matters' 13 key principles for accessibility legislation
- Appendix 3: Summaries of Select Committee submissions of particular note
- Appendix 4: Consulted parties 2021-2022
- Appendix 5: Summary of submissions



## Appendix 1: Timeline of Decisions Leading to the Bill

Initial work	August 2018	Office for Disability Issues advises MSD on international approaches to accessibility legislation
	December 2018	Cabinet approves work to “commence the design of an approach to achieve a fully accessible New Zealand”
	February 2019	MSD and Access Alliance form a partnership to explore design options
		Consultation and stakeholder workshops commence
	June 2019	Minister updates Cabinet on consultation and further work
Evaluation of different models	February 2020	<p>MSD presents the Minister with three design options. MSD recommends standalone legislation that acts as a vehicle for progressive realisation of accessibility improvement over time.</p> <p>Key components include:</p> <ul style="list-style-type: none"> <li>• The ability to create standards (where none already exist)</li> <li>• A mandate to progressively review existing standards and recommend amendments to standards and primary legislation</li> <li>• Strong signal that change is needed</li> <li>• Enabling monitoring and enforcement</li> <li>• Durability and flexibility over time</li> <li>• Enabling rather than punitive incentive</li> </ul> <p>The Minister agreed:</p> <ul style="list-style-type: none"> <li>• To focus on disabled people while acknowledging accessibility benefits a range of other groups with unmet access needs (particularly older people)</li> <li>• To specify a few domains at the outset with flexibility to designate and prioritise further domains as progress is made</li> <li>• Functions and powers needed to effectively implement and administer the accessibility framework: <ul style="list-style-type: none"> <li>○ Co-ordination</li> <li>○ Provision of information, education, training, and advice</li> <li>○ Standard development and setting</li> <li>○ Reporting and monitoring</li> <li>○ Compliance and enforcement</li> </ul> </li> </ul>
	June 2020	Cabinet agrees the new framework should set accessibility as a high-level concept (rather than a detailed, prescriptive definition) and agrees to further work on detailed aspects of legislative framework



	October 2020	Labour makes a manifesto commitment to introducing " <i>an Accessibility for New Zealanders Act to help New Zealand to become more welcoming and accessible for disabled people and other New Zealanders with accessibility needs</i> "
Selection and Development of enabling model	February 2021	MSD advises Minister on options for a legislative framework
	April 2021	Minister agrees that current system improvement should form the basis of accessibility legislation
	May 2021	Minister updates Cabinet and explains there is a spectrum of potential types of legislative powers and functions interfacing with potential types of institutional arrangements Cabinet is made aware of the need for careful consideration of directive approach (an entity responsible for creating new accessibility regulations and enforced by an accessibility tribunal) where it may conflict with existing primary legislation
	July 2021	Minister agrees to introduce leadership comprised of: <ul style="list-style-type: none"> <li>• An independent accessibility governance board</li> <li>• Clear Ministerial responsibility</li> <li>• Designating a responsible chief executive</li> </ul> The Minister also agreed to a consistent process for addressing accessibility barriers and shape of legislation The Minister agreed the purpose of legislation is to provide a framework for developing and implementing clear methods to promote the participation of all persons, especially disabled people
	September 2021	Cabinet agrees to establish the Ministry for Disabled People. Any functions from Cabinet decisions relating to accelerating accessibility will be considered as part of decisions on the new Ministry's future work programme The new Ministry will raise the profile of disability issues (including accessibility) across government
	October 2021	MSD advises the Minister on the Independent Legal Research Team's report
		Cabinet agrees to the detail of the enabling model and invites the Minister to issue drafting instructions Cabinet also agrees to support stronger cross-government commitment to accessibility. The Minister for Disability Issues will play a key role in supporting and overseeing work and gaining wider Ministerial support to address accessibility barriers across government
		Access Alliance maintains a regulatory model is required. Partnership between Access Alliance and MSD ends
	February 2022	February 2022: MSD advises Minister of the detail of the legislation
	March 2022	March 2022: Cabinet agrees to the second phase of drafting instructions
	July 2022	Cabinet approves the Bill and it is introduced to the House



## Appendix 2: Access Matters' 13 key principles for accessibility legislation

Access Alliance Principles	Met by government proposal? How?
<p><b>1. The Act applies to all:</b></p> <p>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.</p> <p>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.</p>	<p>Yes.</p> <p>The legislation will apply to everyone in New Zealand.</p> <p>No disabled people will be excluded from participating in the work undertaken to address barriers to participation.</p>
<p><b>2. The Act sets a timeline:</b></p> <p>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.</p>	<p>Not met.</p> <p>The system established will be based on progressive realisation and continual improvement, rather than specifying a date for New Zealand to be fully accessible.</p> <p>The legislation will be reviewed at regular points to assess whether it is working well.</p>
<p><b>3. The Act sets the bar:</b></p> <p>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.</p>	<p>Yes, partially.</p> <p>The legislation enables accessibility to become woven into existing laws, including existing regulatory and enforcement regimes, and supports the development of new policies and approaches.</p> <p>It will complement all other disability and human rights legislation.</p>

<p><b>4. The Act provides accessibility in all areas of life:</b></p> <p>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.)</p>	<p>Yes, over time.</p> <p>The legislation enables progressive review and action across key areas of life to support greater accessibility in New Zealand.</p>
<p><b>5. The Act sets policy:</b></p> <p>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.</p>	<p>Yes.</p> <p>The legislation will directly create a policy work programme focused on addressing and removing barriers to accessibility.</p>
<p><b>6. The Act champions access to all goods, services and facilities:</b></p> <p>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.</p>	<p>Yes, partially.</p> <p>The legislation will directly create a policy work programme focused on addressing and removing barriers to accessibility.</p> <p>Work to ensure services and facilities are fully accessible can be undertaken as part of the enabling framework.</p>
<p><b>7. The act champions accessible workplaces, employment, education, and government agencies:</b></p> <p>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.</p>	<p>Yes, partially.</p> <p>The legislation will directly create a policy work programme focused on addressing and removing barriers to accessibility.</p> <p>Work to ensure employers provide barrier-free workplaces, education providers offer accessible places of study, or ensuring the justice sector removes navigation barriers can be undertaken as part of the enabling framework.</p>



<p><b>8. The Act will charge government with the responsibility to lead, educate, train, inform and review:</b></p> <p>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.</p>	<p>Yes, partially.</p> <p>The accessibility system will increase government responsibility for and leadership of accessibility through increased expectations on Ministers and a designated Chief Executive.</p> <p>The policy work programmes will need to consider the supports required to successfully address and prevent barriers to implementation.</p> <p>The regular review of the proposed Act provides an opportunity to assess our progress to accelerating accessibility.</p>
<p><b>9. The Act is enforceable:</b></p> <p>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.</p>	<p>Not met.</p> <p>The legislation will not have direct enforcement mechanisms but will allow for the creation of enforcement within existing legislative and regulatory regimes as part of the broader accelerating legislative framework. Addressing non-compliance will continue to be the responsibility of the Ministry that administers those legislative and regulatory regimes.</p> <p>The Accelerating Accessibility system will allow for a notifications mechanism.</p>
<p><b>10. The Act is made real through regulations:</b></p> <p>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.</p>	<p>Not met.</p> <p>The legislation will not have direct enforcement mechanisms but will allow for the creation of enforcement within existing legislative and regulatory regimes to achieve accessibility objectives where that is considered appropriate.</p> <p>The legislation will enable and support changes to be made to existing regulations or where none currently exist look to recommend necessary change.</p>

<p><b>11. The Act will ensure public funds are not used to create or perpetuate obstacles to full accessibility in all areas of life:</b></p> <p>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.</p>	<p>Yes, partially.</p> <p>As the legislation sets out an enabling framework, work to ensure public money is not used to create or perpetrate inaccessibility for persons with disabilities can happen under that framework.</p>
<p><b>12. The Act is a lens through which to vet legislation:</b></p> <p>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.</p>	<p>Not met.</p> <p>The legislation will not include a direct mechanism for vetting legislation.</p> <p>However, it can enable reviews of existing legislation with an accessibility lens given it is an enabling framework.</p>
<p><b>13. The Act has real force and real effect:</b></p> <p>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.</p>	<p>Yes, partially.</p> <p>The legislation will set leadership and accountability. It will enable an environment where accessibility is continually prioritised.</p> <p>The system established by the legislation will result in real improvements in accessibility but will not have direct enforcement mechanisms.</p> <p>The legislation will allow for the creation of enforcement <i>within</i> existing legislative and regulatory regimes where that is considered appropriate.</p>



### **Appendix 3: summary of Select Committee submissions of particular note**

#### *The Access Matters Aotearoa submission*

- 56 Access Matters Aotearoa campaigned on submissions to the Bill and created a template builder to help people make submissions. Numerous individuals and groups used the template or raise the same issues.
- 57 Access Matters Aotearoa submits it “*supports this Bill*” but says “*the Bill needs to be modified with the meaningful input of disabled people and people with other access needs*”. Its support is subject to the below changes:
1. An extended scope to include persons conducting a business or undertaking as defined in the Health and Safety at Work Act 2015
  2. Three yearly review of the Act
  3. “Timely accountability” to the House (this relates to the timeframes in which the Minister must table reports from the independent review and from the Ministerial advisory committee)
  4. Enforceable accessibility standards
  5. The establishment of an independent regulator
  6. A barrier notification system
  7. A disputes resolution process
- 58 Of those, “timely accountability” to the House is the only suggested change that could be feasible within legislative scope.

#### *Summary of submissions from Disabled People’s Organisations (DPOs)*

- 59 Four DPOs made submissions: Association of Blind Citizens New Zealand, Deaf Aotearoa, the Disabled Persons Assembly, and the Disabled People’s Organisation Coalition. All express support for legislative change but seek models including an enforceable regulatory framework and a Disability Commission or crown entity.

#### *Summary of the submissions from the public sector*

- 60 The Office of the Ombudsman does not suggest that the Bill be withdrawn but asks the Select Committee to consider how it might be improved to achieve the aspirational purpose and title. Suggestions of changes outside of legislative scope include:
- Imposing statutory obligations on Whaikaha to create, develop and revise accessibility standards on an ongoing basis and empowering Whaikaha to recommend accessibility standards to be made into regulations
  - Reporting requirements on government agencies

- Establishing or empowering an oversight or regulatory body with statutory functions to review compliance
- 61 The Human Rights Commission submits that important aspects of the Bill fall short of giving effect to te Tiriti o Waitangi and giving effect to United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) commitments. It suggests a range of changes, some of which fall outside of legislative scope. These include:
- expanding the scope of the Ministerial advisory committee to the private sector
  - requiring the Minister to set enforceable minimum standards for publicly available goods, services, and facilities through secondary legislation
  - An additional statutory entity with jurisdiction over breaches of minimum accessibility standards
  - A requirement that the Ministerial advisory committee report to and advise a Ministerial leadership group on accessibility, and that a Ministerial leadership group should be obliged to consider and respond to the Ministerial advisory committee's advice
  - A barrier notification system and powers of inquiry
- 62 The Children's Commission supports the Bill and seeks a number of changes, most of which are within legislative scope. The Commission suggests the powers of the Ministerial advisory committee should be strengthened.
- 63 Te Hīringa Mahara – the Mental Health and Wellbeing Commission submits that the Bill should be "*substantially strengthened*" before it is passed.
- 64 Toi Aotearoa – Creative New Zealand supports the intention of the Bill but submits "*greater detail is required*" and that the Bill should be strengthened to comply with UNCRPD obligations. Suggestions that fall outside of legislative scope relate to:
- Enforceable standards for government departments and Crown entities
  - A requirement for government agencies to address accessibility issues in a timely, proactive and measurable manner
- 65 New Zealand Law Society submits that the UNCRPD likely requires mandatory accessibility standards, including enforcement mechanisms and sanctions for non-compliance. It makes a number of further submissions that fall within legislative scope.
- 66 Local government



66.1 Auckland City Council supports the Bill and suggests changes that fall within legislative scope and speak to implementation and broader government priorities.

66.2 Dunedin City Council supports the Bill.

66.3 Hamilton City Council (staff) support the Bill and suggest changes that fall out of legislative scope, including:

- provision for easy-to-understand and enforceable accessibility standards across key areas of life to be developed and implemented
- an enforcement and regulation regime
- a regulator
- a barrier notification system and a disputes resolution process
- guarantee that public money will not create new barriers
- mandatory processes for complaints
- regulated guidelines.

66.4 Queenstown Lakes District Council broadly supports the Bill.

67 Toitu Te Wairoa – Community, Health, Education and Social Services Workforce Development Council submits that the Bill “*is a mere shadow of what was originally intended by advocates*” and suggests four essential elements are required. All four are outside of legislative scope: minimum standards within legislation, an independent regulator, a barrier notification system, and a disputes resolution process.

## Appendix 4: Parties consulted before introduction of the Accessibility for New Zealanders Bill

### Parties who provided feedback during engagement by officials and the Access Alliance before June 2019

#### Business

- 2Degrees
- Access Advisors
- Accessible Properties
- Adecco
- AECOM
- Air New Zealand
- BNZ
- Deloitte
- Direct Impact Group
- EVARO
- Fidelity Life
- Geneva Elevator
- King Tide Asset Management
- Kiwibank
- New Zealand Asian Leaders
- Newton Ross Wealth Management
- NZIER
- Precinct Properties
- ProCARE
- Renaissance Group
- Ricoh
- SKYCITY Entertainment
- Somerset Group
- Sudima Hotels
- SUPERdiverse WOMEN
- The Cookie Project
- Tourism Holdings
- TradeMe
- Vector
- WEL Group
- Westpac
- Woolworths NZ
- WorkBridge

#### Community Groups

- Barrier Free New Zealand
- Brain Injury Association
- Carers Alliance
- Christchurch Youth Council
- English Language Partners
- Epilepsy NZ
- Inclusive NZ
- InsideOUT

#### Central Government

- ACC
- Department of Conservation
- Department of Corrections
- Department of Internal Affairs
- Electoral Commission
- Housing New Zealand
- Kiwibuild
- Ministry for Culture and Heritage
- Ministry for the Environment
- Ministry of Business, Innovation and Employment
- Ministry of Education
- Ministry of Health
- Ministry of Housing and Urban Development
- Ministry of Transport
- Ministry for Pacific Peoples
- Ministry for Primary Industries
- NZ Transport Agency
- Office for Disability Issues
- Office of the Children's Commissioner
- Office of the Privacy Commissioner
- Oranga Tamariki
- Standards New Zealand
- State Services Commission
- Te Puni Kōkiri

#### Local Government

- Auckland Council
- Bay of Plenty Regional Council
- Christchurch City Council
- Environment Canterbury
- Greater Wellington Regional Council
- Hamilton City Council
- Horowhenua District Council
- Kaikōura District Council
- Marlborough District Council
- Nelson City Council



- Interpreting New Zealand
- Wellington City Youth Council

#### Education Sector

- Massey University
- Teaching Council
- Tertiary Education Commission

#### Seniors

- Age Concern
- Alzheimer's Wellington
- Blind Foundation
- CCS Disability Action
- Dementia Wellington
- Kay Jones (Independent activist)
- Office for Seniors
- Pete Matchan (Policy advocate)
- RSA

- Selwyn District Council
- Timaru District Council
- Waikato Regional Council
- Waimakariri District Council
- Wellington City Council
- Whangarei District Council

#### District Health Boards

- Auckland DHB
- Canterbury DHB
- Capital and Coast DHB
- Counties Manukau DHB
- Hutt DHB
- Northland DHB
- Waitemata DHB
- Whanganui DHB

#### Māori

- Ruth Jones (Kāhori ki te Kāhori)
- Poihaere Morris (Board Member, Kāpō Māori)
- Tania Thomas (CEO, Te Rōpu Taurima)

**Note:** in 2020 and 2021 officials worked in partnership with the Access Alliance who consulted with their members throughout the process

#### **Policy and regulatory experts consulted in early 2021**

- Brenda Pilott - National Manager of Social Service Providers Aotearoa, National Secretary, Public Service Association
- Roger Palaret - Chief Legal Counsel, Capital & Coast District Health Board
- Kerry Prendergast - Former Mayor of Wellington
- David Smol - former CE MBIE
- Paula Tesoriero - Human Rights Commissioner
- Professor Dame Cindy Kiro - Chief Executive of the Royal Society
- Phil O'Reilly - Managing Director of Iron Duke Partners
- Professor Mark Hickford - Dean of Law Victoria University of Wellington
- John Whitehead - Former Treasury Secretary
- Geoff Penrose - General Manager Lifemark
- Monique Leith - Kāpiti Coast Chamber of Commerce
- Michael Barnett - Chief Executive Auckland Chamber of Commerce
- Frank McLaughlin - Public Law expert

#### **Targeted groups consulted in 2021-2022**

Officials met with key disabled peoples' organisations and interested groups on detailed design of the legislation. A discussion paper was also sent out to community groups and organisations seeking feedback. Consulted groups included:

- Access Alliance Steering Group
- Auckland Disability Law
- CCS Disability Action
- Disabled Peoples Organisation Coalition
- Faiva Ora Advisory Group
- Human Rights Commission
- Pou Tangata Iwi Chairs
- Kāpō Māori Aotearoa
- MOG Working Group
- National Enabling Good Lives Leadership Group
- ILead
- Age Care Association
- Age Concern NZ
- Alzheimer's NZ
- Arts Access Aotearoa
- Be. Lab
- Blind Citizens New Zealand
- Blind and Low Vision NZ
- Business Community
- Carers NZ
- Disability Leadership Canterbury
- Cerebral Palsy Society
- Complex Care Group
- Deaf Children
- Deaf Aotearoa
- Dementia NZ
- Disabled Person's Assembly
- Dyslexia Foundation NZ
- Grey Power
- IHC Advocacy
- Inclusive New Zealand
- Local Government NZ
- Local Government Policy (DIA)
- The New Zealander Disability Employers' Network
- NZ Disability Support Network
- National Foundation for the Deaf and Hard of Hearing
- NZ Sign Language Board
- Parents of Vision Impaired New Zealanders
- Parent/Whānau Family Network (through ODI)
- People First
- Retirement Villages Association



# Summary of Public Submissions to Select Committee

## The overwhelming message from submitters is:

- They want to see transformative legislation as soon as possible
- They do not support the enabling framework
- They want a system with "more teeth" – standards, regulations and clear objectives

## 514 unique submissions have been received

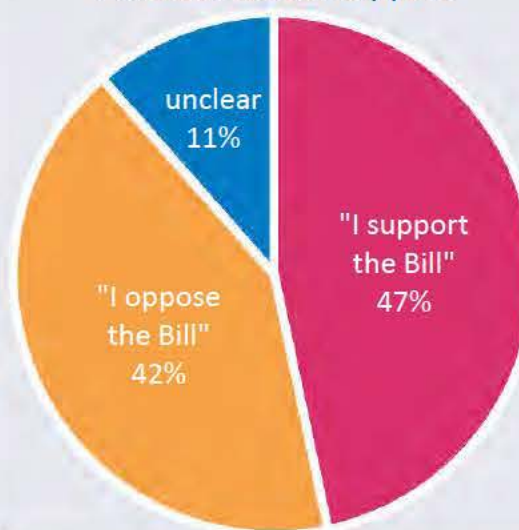
- 405 individuals  
→ 185 self-identified as disabled or referred to an impairment in their submission
- 109 groups  
→ 50 charities  
→ 21 groups (including incorporated societies)  
→ 12 professional bodies (including unions)  
→ 11 public sector bodies  
→ 7 private companies  
→ 3 churches  
→ 4 DPOs  
→ 1 disability enterprise

Submitters are not required to recommend changes to the Bill.

432 submitters chose to do so. The majority of their desired changes are not possible within the chosen enabling framework.

The Select Committee may only make recommendations that are within legislative scope (see next page). 101 submitters sought changes that we predict can be considered by the Select Committee. Some of those suggested changes would require Cabinet approval.

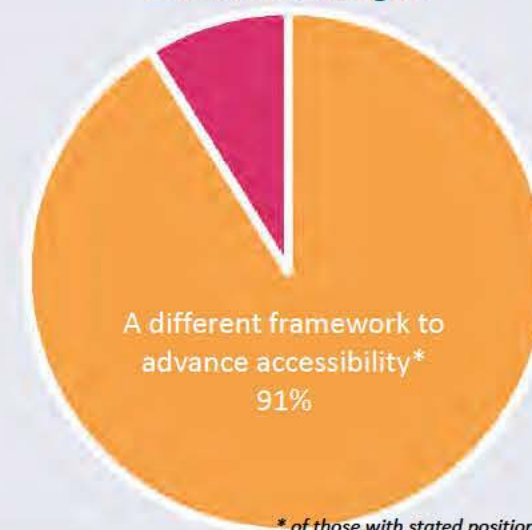
Phrases about support



Submitters' use of the words "I support the Bill" or "I oppose the Bill" must be read in context.

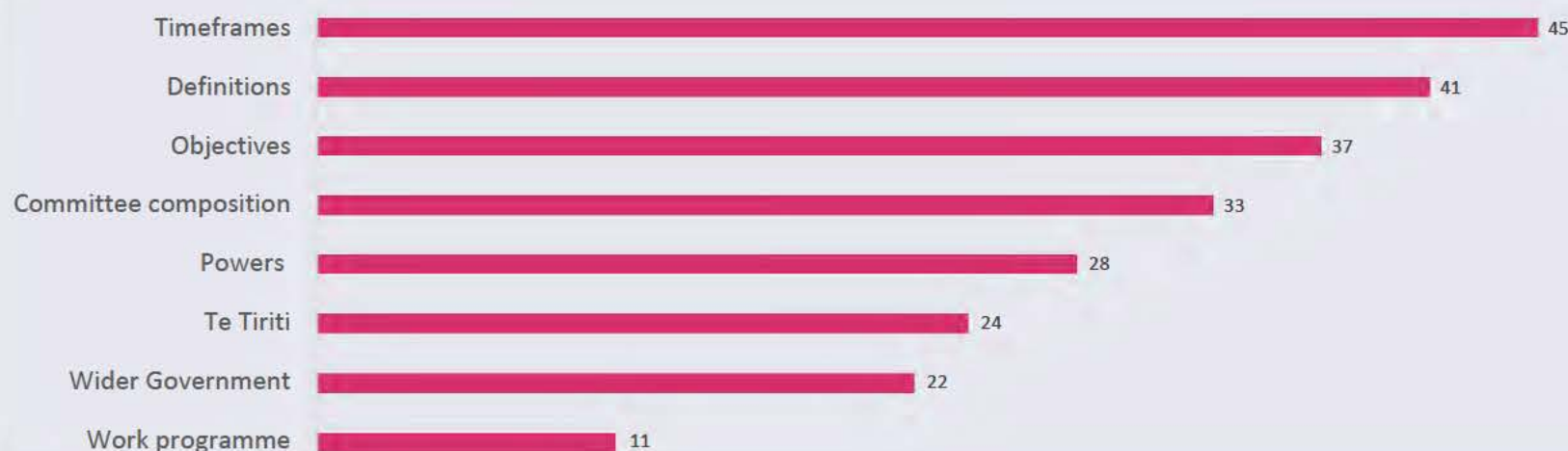
Over 80% of "supporters" suggested amendments be made to the Bill, many of which are not possible within the enabling framework

Outcomes sought



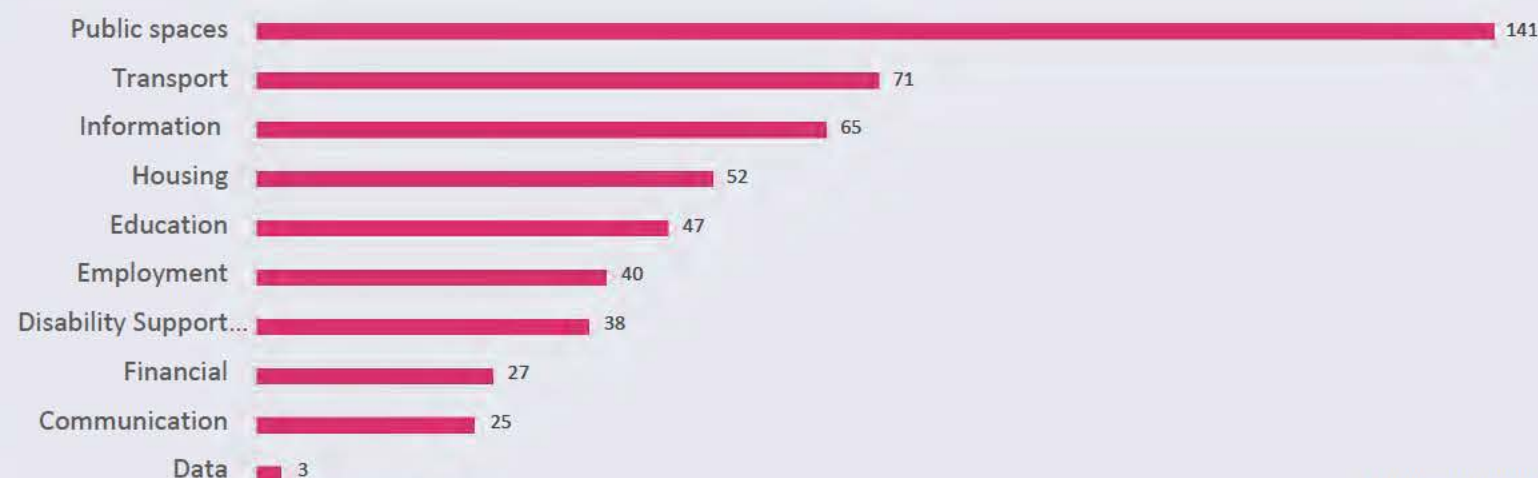
\* of those with stated position

Themes of desired changes that are within legislative scope



\* submitters made multiple recommendations

Some submitters chose to share personal stories of barrier experiences



\* submitters shared multiple stories



# Summary of Public Submissions to Select Committee

## Changes sought by submitters that are not possible within the enabling framework (therefore outside of legislative scope):

Standing Order 300(1): Select Committee may only recommend amendments that are "consistent with the principles and objects of the bill".

## Other notable suggested changes outside of legislative scope

- New duty for the Accessibility Committee or alternative body to educate the public in order to mitigate/remove the accessibility barrier of public stigma
- A forum with the power to issue injunctions to prevent and require the removal of accessibility barriers\*
- Personal liability for those who oversee and enforce increased accessibility measures
- Adoption of a different standard of proof in disputes relating to accessibility such that the burden is on the accused\*
- Recommendations relating to specific accessibility barriers such as accessible toilets in public spaces

\* this language is not used by submitters

## Most popular suggested changes outside of legislative scope

- Extension of the Accessibility Committee's scope to include PCBUs as defined in the Health and Safety at Work Act
- Binding accessibility standards within legislation
- The creation of a body that is empowered to create secondary legislation introducing positive and negative obligations relating to accessibility across all domains and across the public and private sector
- A body that can create future binding and non-binding standards without being subject to Ministerial approval
  - Submitters suggest
    - An independent regulator
    - A new crown entity led by disabled people
    - A commission led by disabled people
- The same body having exclusive jurisdiction over disputes relating to accessibility (including an alternative disputes resolution process)
- A barrier notification system
- A complaints mechanism
- Penalties for non-compliance
- Accessibility defined in the legislation as a human right
- Provision that denial of "reasonable accommodation" is illegal discrimination

## Constitutional concepts that are engaged

- |                                              |                                                 |
|----------------------------------------------|-------------------------------------------------|
| • Separation of powers                       | • Private enforcement of regulations            |
| • Parliamentary sovereignty                  | • Civil legal proceedings against the Crown     |
| • Independence and impartiality of judiciary | • Creation of independent Crown entities        |
| • Natural justice                            | • Jurisdiction of the court and tribunal system |
| • Accountability of unelected officials      | • The presumption against retrospectivity       |



# Summary of Public Submissions to Select Committee

## Changes sought by submitters that are within legislative scope (but require Cabinet's approval):

### Submitters want greater observance of te Tiriti o Waitangi

- The Bill should create co-governance within the Accessibility Committee (i.e., 50% Māori representation)
- The Bill should do more to comply with the provisions of te Tiriti

### Submitters want the Committee to be larger

- Specific impairments should be represented on the Committee
- There should be full representation of disabled people, Māori, and Pasifika

### Timeframes

- The Bill should be independently reviewed every three years (not five)

### Title

- The Bill should be renamed as the content doesn't match the aspirational title

### Definitions

- The Bill should define "disabled people" and "accessibility"

### What submitters say about the purpose of the Bill

- The aspirational purpose of the Bill should have an implementation pathway
- The Accessibility Committee's scope should be extended to the private sector

### Submitters want the Accessibility Committee to have more power

- The Minister should have less power over the work programme
- The Accessibility Committee should make binding recommendations, launch and conduct investigations and have greater powers to request information

### How submitters want Accessibility Committee relates to wider Government

- The Bill should commit every government agency and every public sector entity to remove existing accessibility barriers and prevent future barriers
- The Bill should include new positive obligations on Government
- There should be an additional oversight mechanism to ensure progress
- The Bill should be entrenched
- The Bill should be a filter for future legislation
- The Accessibility Committee should be independent from Whaikaha

### Constitutional concepts

- Parliamentary sovereignty
- Te Tiriti o Waitangi
- Supreme law
- Co-governance

### System implications

- Role of Whaikaha
- Consistency of approach
- Disability Strategy
- Enabling Good Lives
- DSS
- Whole of government responsibility





**Date:** 10 March 2023

IN CONFIDENCE

**To:** Hon Priyanca Radhakrishnan, Minister for Disability Issues

## Purpose of the report

- 1 Further to the reports dated 8 February 2023 [REP/23/2/037] and 23 February 2023 [REP/23/2/082], your office has sought advice on the consequences of seeking an extension to the select committee process for Accessibility for New Zealanders Bill (the Bill). This report provides this advice s9(2)(f)(iv), as the Departmental Report is required by 27 March 2023 and the select committee is expected to report on the Bill to the House on 16 May 2023.

## Executive summary

- 2 The Ministry for Social Development (MSD) has recently provided advice regarding the status of the Accessibility for New Zealanders Bill s9(2)(f)(iv) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] A report to you on 8 February 2023 [REP/23/2/037] set out a brief outline of work on the Bill, and a follow-up report to you 23 February 2023 [REP/23/2/082] responded to your request for more information.

- 3 s9(2)(g)(i) [REDACTED]  
[REDACTED]

[REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED] [REDACTED]  
[REDACTED]

s9(2)(g)(i)

6 Alternatively, you could:

- s9(2)(f)(iv)

7 We do not recommend an extension of nine months as suggested by your office, s9(2)(f)(iv)

We would also recommend you consider informing Cabinet of this decision.

## Recommended actions

It is recommended that you:

- 1 **note** previous advice [REP/23/2/037] that the Accessibility for New Zealanders Bill (the Bill) s9(2)(f)(iv)
- 2 **note** that MSD is currently obliged to provide a Departmental Report to the select committee before 27 March 2023 but will look to seek a short extension due to the extended timeframe of select committee hearings
- 3 **note** s9(2)(f)(iv)  
officials will draft a Departmental Report recommending only minor and technical changes
- 4 **note** s9(2)(f)(iv)
- 5 **agree** to continue to progress the Bill, with only minor and technical amendments, through the select committee process s9(2)(f)(iv)

**Agree / Disagree**

**OR**, if you disagree with Recommendation 5,



6 s9(2)(g)(i)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Agree / Disagree

8

s9(2)(f)(iv)

[REDACTED]

[REDACTED]

[REDACTED]

JP 

Julia Bergman  
General Manager  
International, Disability, and Generational  
Policy

10/03/2023

Date



Hon Priyanca Radhakrishnan  
Minister for Disability Issues

12/03/23

Date

## MSD has recently provided advice regarding the status of the Accessibility for New Zealanders Bill

- 9 A report in November 2022 [REP/22/11/1170] to the then Minister for Disability Issues, Minister Poto Williams discussed s9(2)(f)(iv) [REDACTED]  
[REDACTED]  
[REDACTED]
- 10 When you became the Minister for Disability Issues, a report to you on 8 February 2023 [REP/23/2/037] set out a brief outline of work on the Bill s9(2)(f)(iv) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
- 11 A report to you 23 February 2023 [REP/23/2/082] responded to your request for more information by outlining the history of the work programme that led to the Bill and a summary of submissions in the select committee.
- 12 In essence, MSD continues to recommend Cabinet's agreed model [CAB-22-MIN-0104] in the Bill as the best 'first step' to accelerating accessibility in New Zealand. A ministerial advisory committee working to coordinate accessibility change across government alongside a Chief Executive and Ministerial oversight strikes the right balance between independence and influence. Please refer to the Regulatory Impact Statement for more information<sup>1</sup>.
- 13 s9(2)(g)(i) [REDACTED]  
[REDACTED]  
[REDACTED]

## We recommend continuing with the select committee process with minor recommended changes

- 14 s9(2)(f)(iv) [REDACTED]  
[REDACTED] Officials will continue to draft a Departmental Report responding to submissions and the select committee is due to report back by 16 May 2023. The steps for this option are provided in Appendix A and this is the only option with the potential to be completed before the 2023 election.
- 15 Officials are yet to receive instructions from the select committee for the Departmental Report. Clerks have informed us that it would currently be required by 27 March in order to meet the 27 May select committee report-

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<sup>1</sup> <https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2021/accelerate/regulatory-impact-statement-accelerating-accessibility.pdf>



back deadline. Note that, s9(2)(g)(i), officials are planning to seek an extension for MSD's Departmental Report. The basis for this request is that the oral hearings are still ongoing, MSD has received a significant number of information requests from the select committee, and drafting the report has paused while officials awaited your decisions.

- 16 Regardless of the extension, the Departmental Report under this option will only contain minor and technical changes that fit within the scope of the Bill and the Cabinet-agreed mandate. Possible changes from submissions include but are not limited to:

- tāngata Whaikaha being replaced with tāngata whaikaha Māori
- amending wording to clarify representation on the Accessibility Committee (e.g. changing whānau or carers to whānau and carers)
- amending the definition of accessibility barrier.

- 17 s9(2)(f)(iv)

- 18 Due to opposition in submissions, there is a chance the select committee may not recommend that this Bill progresses if it only receives minor and technical changes and they may note this in their public report. s9(2)(g)(i)

more significant changes to the Bill can be made through Supplementary Order Papers (SOPs) following the second reading.

## **You could ask for an extension, but you do not have control of the Bill's content when it is before the select committee**

- 19 s9(2)(f)(iv)

- 20 The Office of the Clerk has advised that this option would require an extension to the report-back date of the select committee beyond the current deadline of 16 May 2023. This would require you to write a letter to the select committee to request they 'pause' their consideration of the Bill and indicate your endorsement for an extension to the deadline for their report back to the House. Officials understand that your request must state the reason for the "pause" and an explanation of the desired timeframe.

- 21 If the committee agrees, they, with your endorsement, could write to the Business Committee and request an extension for a specified amount of time. The Business Committee could consider the request and a unanimous or near-unanimous vote would be required to grant the extension.

- 22 Ministerial scope as such is limited during a paused select committee process. Changes to the Bill are limited to what will be agreed by Cabinet, the select committee, and the House, and are unlikely to meet the extent of community expectation.
- 23 We understand that your engagement with community stakeholders on the Bill during this process is also limited. Officials, meanwhile, can only consult publicly with the permission of the select committee. Therefore, any changes to the Bill requiring consultation or opportunities to publicly clarify the Bill's impact would be limited.

24 s9(2)(g)(i) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

### **A range of vehicles can be used to make changes to the Bill**

- 25 If you would like the select committee to consider changes that you propose to the Bill, there are a range of corresponding methods and timeframes depending on the nature of the changes sought, as outlined in Appendix 2. The Select committee will then consider the changes and each one may be accepted unanimously, accepted by majority, or disregarded.

#### *Minor to moderate changes could be suggested in the Departmental Report*

- 26 If an extension is granted, MSD would then request an extension to our deadline to provide a Departmental Report, as this would be the main vehicle to suggest changes to the Bill that are within legislative scope. This would allow time for you to seek minor-to moderate changes through Cabinet to the Bill. These include but are not limited to:

- shortening the review period of the Bill from five years to three
- amending the composition of the Accessibility Committee to further reflect Te Tiriti o Waitangi
- amending the Accessibility Committee's functions (noting that this would have to be within the realm of an advisory committee)
- inserting requirement for the responsible Minister to table the government's response to recommendations in the House.

#### *'Significant' changes or changes out of legislative scope can be made through a Supplementary Order Paper*

- 27 We understand that 'significant' changes to the Bill are changes that suggest or go beyond existing content in the Bill. For this Bill, significant changes (from submissions) include but are not limited to:
- a new clause to insert principles to be used in decision-making by government
  - specifying domains that the Accessibility Committee must consider



- inserting requirement for government to respond to recommendations within certain parameters (e.g. accept, accept in part, reject).
- 28 Most of the key changes repeatedly sought through submissions are outside of the Bill's legislative scope, which is limited to the establishment of a Ministerial Advisory Committee. Changes sought through submissions outside of legislative scope include but are not limited to:
- development of enforceable standards in the Bill
  - a new clause to insert powers of investigation (e.g. compel witnesses, require data collection)
  - positive obligation on government to work toward timeframe targets for removal of accessibility barriers
  - provision that denial of "reasonable accommodation" is illegal discrimination and consequent amendments to other relevant legislation.
- 29 For any of these 'significant' or 'outside legislative scope' changes, a SOP would be required via the House along with a motion that the SOP is referred to the select committee for consideration. Any changes that are outside of legislative scope also require an "instruction" from the House to the select committee that it consider the SOP even though the content is out of legislative scope (which would otherwise be a breach of the Standing Orders).
- 30 Approval would be required from the Cabinet Social Wellbeing Committee, Cabinet Legislation Committee and depending on the change, the select committee may require that it goes out for public submissions once again. Many of these changes would require analysis from Whaikaha who, as the implementing agency, would need to advise on feasibility.

s9(2)(f)(iv), s9(2)(g)(i)

- [REDACTED]
- [REDACTED]
- [REDACTED]

34 s9(2)(g)(i) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]



- 42 s9(2)(g)(i) [REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED] [REDACTED]  
[REDACTED]

## Agency responsibility

- 43 MSD has been directed by the Minister for Social Development and Employment to other items on the 2023 work programme that limit staff's capacity to do analysis beyond the current legislative scope. s9(2)(f)(iv)  
[REDACTED]

- [REDACTED] [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

## Appendices

- Appendix One: A3 titled "Steps to complete current select committee process"
- Appendix Two: A3 titled "Limits of legislative scope and the process for different types of changes the Minister may wish to recommend to the select committee"
- Appendix Three: Draft letter to the chairperson of the select committee.

File ref: REP/23/3/156

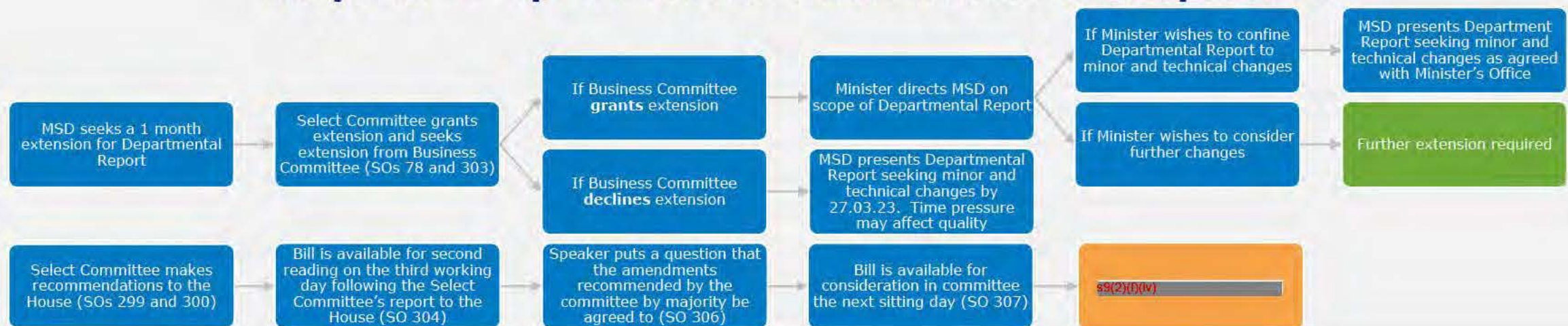
Author: s9(2)(a) [REDACTED], Policy Analyst, Disability Policy)

Responsible manager: (Julia Bergman, General Manager, International, Disability, and Generational Policy)



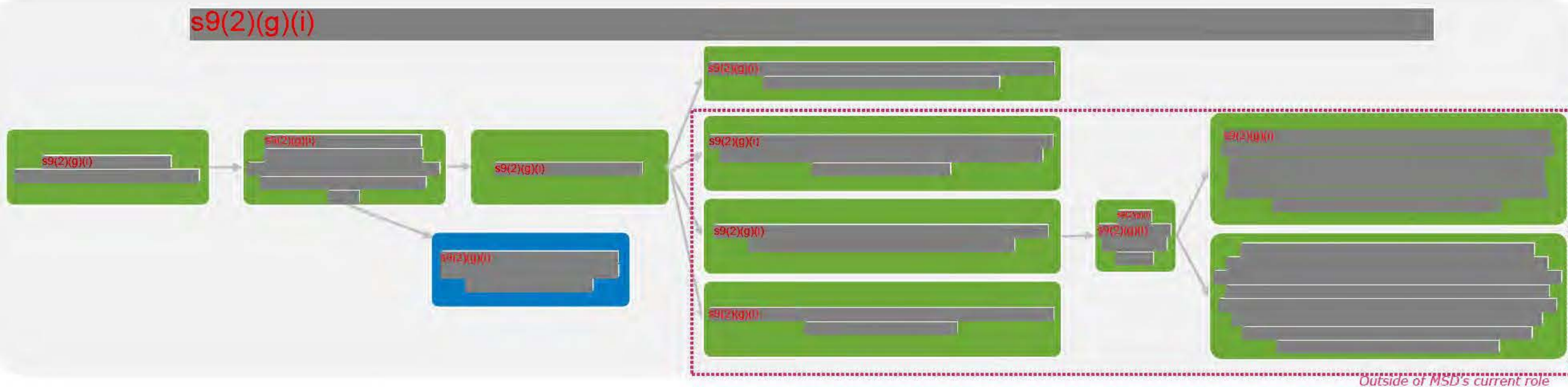


## Steps to complete current Select Committee process



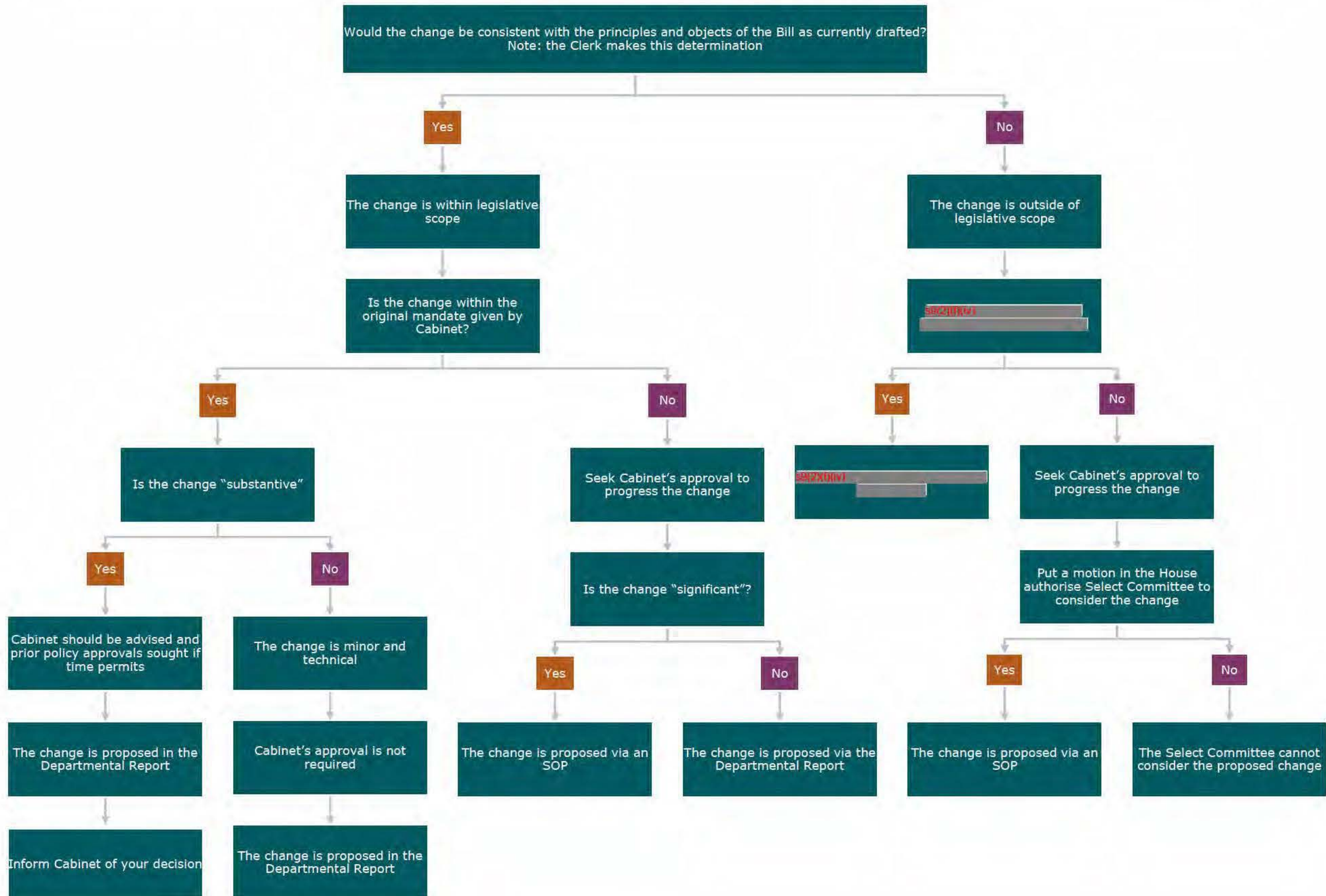
Timeframes relevant to Select Committee process:

- 4 weeks minimum for Select Committee to consider Departmental Report and prepare its own report
- 2 weeks minimum required for PCO to prepare tracked version (timeframe begins after direction from Select Committee). Extensive changes would require a longer timeframe
- 6 weeks required for accessible formats of all documents. Select Committee would like to publish accessible formats at same time as report tabled in the House.





## Limits of legislative scope and the process for different types of changes the Minister may wish to recommend to the Select Committee





[DATE]

Chairperson

Social Services and Community Select Committee

Tēnā koe Ms Warren-Clark

**Accessibility for New Zealanders Bill**

As you are aware, I was appointed Minister for Disability Issues on 2 February 2023. Since then I have taken the time to familiarise myself with the content of the Accessibility for New Zealanders Bill (the Bill) and have taken advice from officials regarding the public submissions on the Bill.

s9(2)(g)(i)

- [REDACTED]
- [REDACTED]
- [REDACTED]

Noting that the Departmental Report is currently due before 27 March 2023, I would be grateful for an urgent response to this letter.

Ngā mihi nui

Hon Priyanca Radhakrishnan  
Minister for Disability Issues

# Report



MINISTRY OF SOCIAL  
DEVELOPMENT  
TE MANATU WHAKAHIA TO ORA

**Date:** 2 May 2023

**Security** IN CONFIDENCE  
**Level:**

**To:** Hon Priyanca Radhakrishnan, Minister for Disability Issues

## Accessibility for New Zealanders Bill – Departmental Report to Select Committee

### Purpose of the report

- 1 This report provides you with context for the draft Departmental Report to the Social Services and Community Select Committee, due 8 May 2023 and to be discussed at the officials meeting on 4 May 2023.

### Executive summary

- 2 MSD is required to provide advice to the Social Services and Community Select Committee regarding public submissions received on the Accessibility for New Zealanders Bill (the Bill) in the form of a Departmental Report. The Departmental Report is due on 8 May 2023 and will be presented on 10 May 2023.
- 3 Consistent with your previous decisions [refer REP/23/3/156], MSD officials have prepared a draft Departmental Report. In that draft Departmental Report, MSD officials:

- §18(c)(ii) [REDACTED]  
[REDACTED]  
[REDACTED]
- [REDACTED]  
[REDACTED]
- [REDACTED]
- [REDACTED]

### Recommended actions

It is recommended that you:

- 1 **note** the draft departmental report as attached at Appendix 1 for submission to the Social Services and Communities Select Committee on 8 May 2023, subject to:



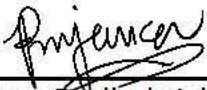
- 1.1 changes discussed with you at the officials meeting on 4 May 2023 and/or discussed via emails with your office prior to 8 May 2023
  - 1.2 minor changes resulting from MSD's quality assurance and final review processes
- 2 **note** that MSD officials will present the Departmental Report to the Select Committee on 10 May 2023
- 3 **note** that the Select Committee is due to report back to the House of Representatives on 22 June 2023.

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Sarah Palmer  
Manager  
Disability Policy

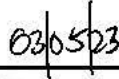
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Date 02/05/2023



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Hon Priyanka Radhakrishnan  
Minister for Disability Issues



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Date

## MSD has previously provided advice regarding the status of the Accessibility for New Zealanders Bill

- 4 Reports REP/23/02/037, REP/23/02/082 and REP/23/3/156 summarise the Bill, the Select Committee process and the public submissions to the Select Committee.

## MSD has taken a Plain English approach to the departmental report

- 5 Traditionally, departmental reports do not expressly speak of the benefits of passing the legislation and instead focus on the key issues in submissions and a clause-by-clause analysis. We have taken a different approach and made some aspects of the departmental report explicit where they might traditionally be implicit.

- 6 Such an approach is appropriate for this departmental report because:

- s9(2)(g)(i) [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]
- the Bill itself has narrow provisions and, other than clause 3(1) which sets the high-level aspiration, only provides for the establishment, duties and functions, monitoring and review of the ministerial advisory committee. The submissions have spoken to broader disability issues and do not necessarily link to the provisions of the Bill as drafted.
- the report is written for two audiences: the Select Committee and the public who will see the report when it is published following the Select Committee's report to the House of Representatives. s9(2)(f)(iv) [redacted]  
[redacted]  
[redacted]
- using Plain English is appropriate when discussing accessibility.

s9(2)(g)(i) [redacted]  
[redacted]


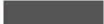
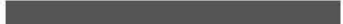



























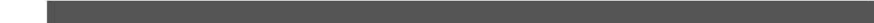

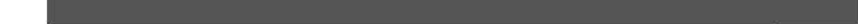
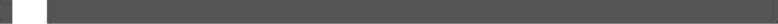














- [redacted]  
[redacted]  
[redacted]  
[redacted]



## MSD is recommending 10 minor amendments to the Bill through the departmental report

8 MSD does not recommend any significant amendments to the Bill and has identified 10 changes that can be made to the Bill to better clarify its provisions and achieve the policy intent. This is consistent with your earlier decision to limit changes to minor and technical matters.

9 These amendments have been discussed with PCO. The amendments are:

		§9(2)(g)(i)

## Agency responsibility

- 10 Whaikaha – Ministry of Disabled People is intended to be the implementing agency. MSD and Whaikaha are considering the appropriate time to transition the work programme. §9(2)(f)(iv)

- 11 Whaikaha have seen and given high-level feedback on the draft report. We have invited Whaikaha to have an official appear at the presentation on 10 May 2023.

## The attached draft departmental report includes changes from the previous version

- 12 We previously provided your office with a copy of the report on Friday 28 April 2023.
- 13 Changes have been made to improve the report. A “compare” version will be emailed to your office so that all differences can be easily identified. We have:
- updated the “report at a glance” visual and corrected the numbers
  - §9(2)(g)(i)
  - made changes following peer review and comments from our legal team. We suggest that the changes of the most interest will be in the introduction section
  - updated formatting, heading levels and paragraph numbering.

## Appendices

- 14 Appendix 1: draft departmental report
- 15 Appendix 2: draft slideshow to be used in the presentation of the departmental report

File ref: REP/23/05/362

Author: §9(2)(a), Policy Analyst, Disability Policy

Responsible manager: Sarah Palmer, Manager, Disability, Policy





MINISTRY OF SOCIAL  
DEVELOPMENT  
TE MANATU WHAKAHIATO ORA

# Accessibility for New Zealanders Bill

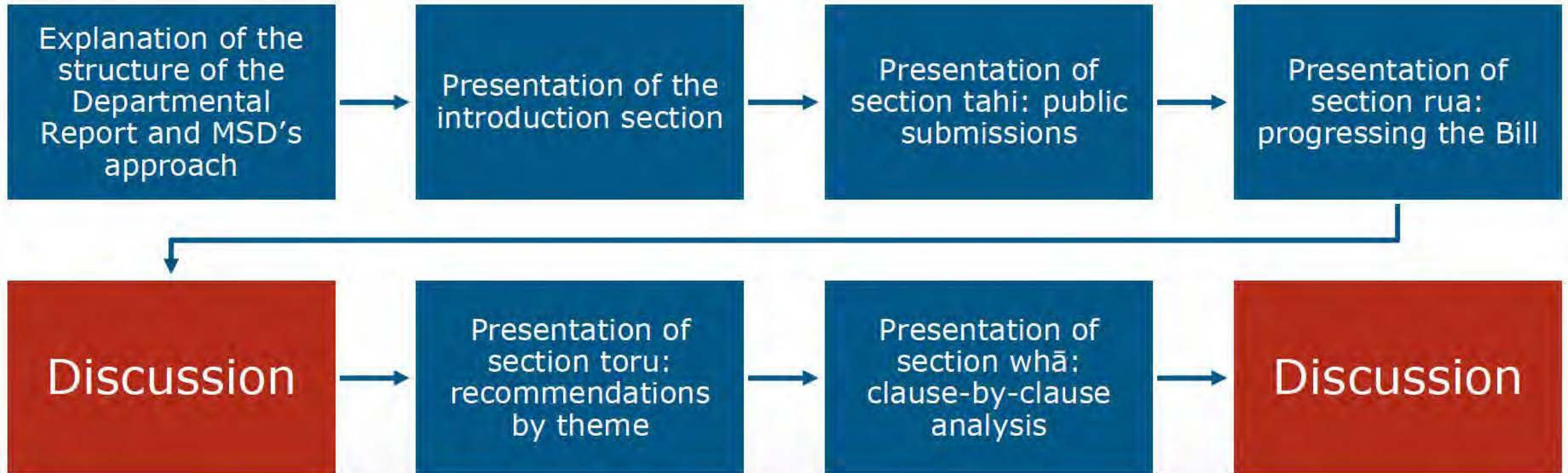
Departmental Report Presentation  
May 2023

# Officials here today from MSD

- Julia Bergman, General Manager: International, Disability, and Generational Policy
- Sarah Palmer, Manager: Disability Policy
- Ben Yung, Principal Policy Analyst
- Tessa Bardsley-Scott, Policy Analyst
- Jo Welson, Policy Analyst
- Nicole Lim-Kwan, Senior Lawyer



# Our proposed approach



# Structure of the Departmental Report

- Introduction
- Tahī: public submissions
- Rua: progressing the Bill
- Toru: recommended changes by theme
- Whā: clause-by-clause analysis



# Introduction

## Action is required to improve accessibility



Disabled people have been long advocating for systemic accessibility improvements.



Current efforts to improve accessibility are fragmented across the public service driven by a lack of clear government leadership on addressing systemic accessibility issues.



There is a lack of awareness of the importance of accessibility across society, and limited avenues for disabled people to shape policy related to accessibility.

As a result, the Government agreed to introduce a legislative framework to improve accessibility, culminating in the Accessibility for New Zealanders Bill introduced into Parliament at the end of July

# Introduction

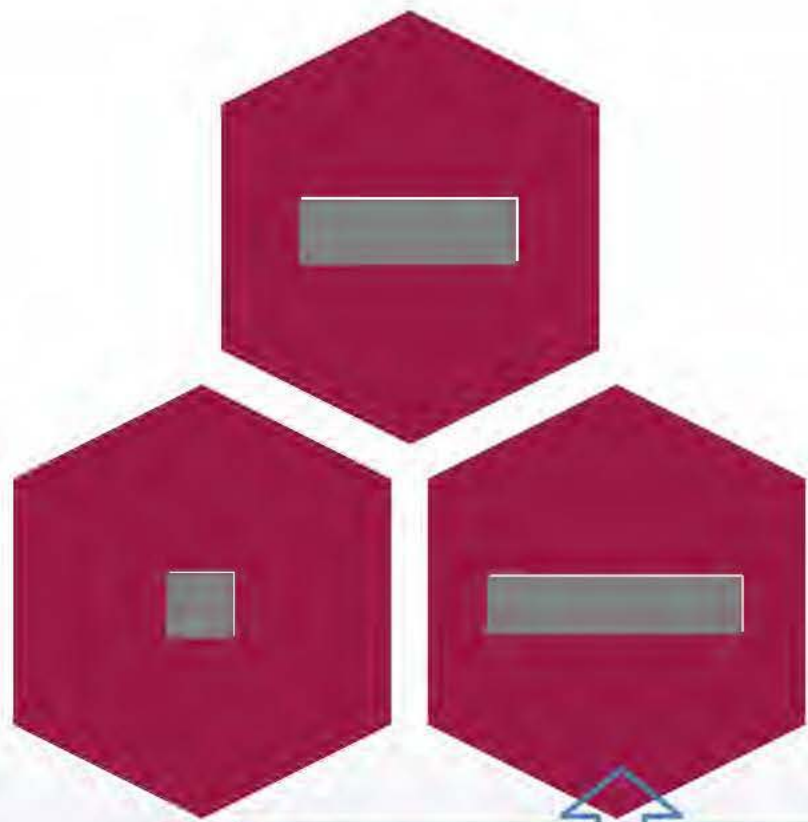
There are many elements to improving accessibility at a system-level



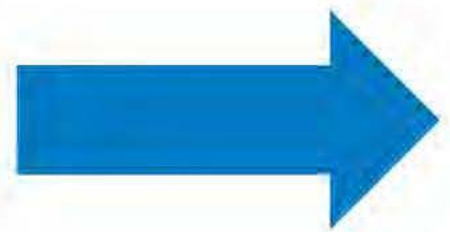


s18(c)(ii)

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- [Redacted list item 1]
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- [Redacted list item 12]

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s18(c)(ii)

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s18(c)(ii)

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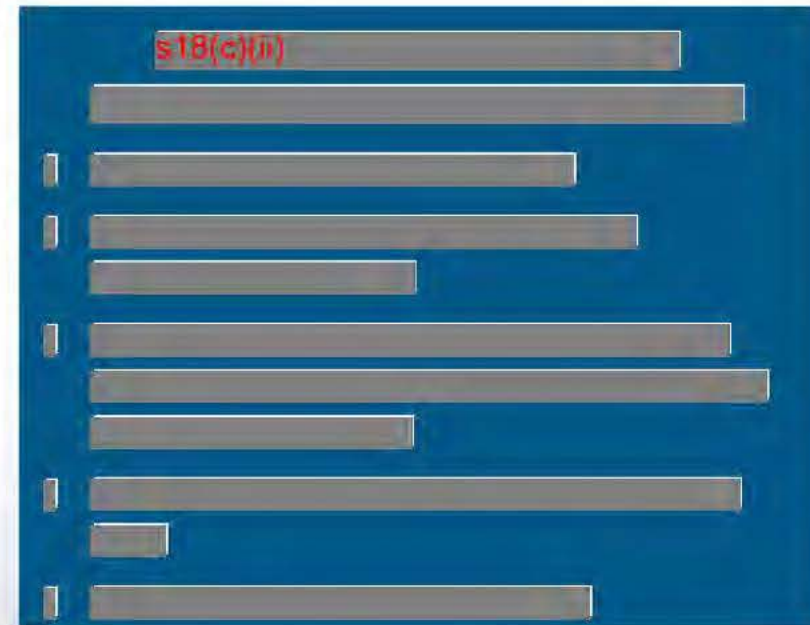
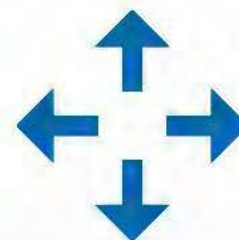
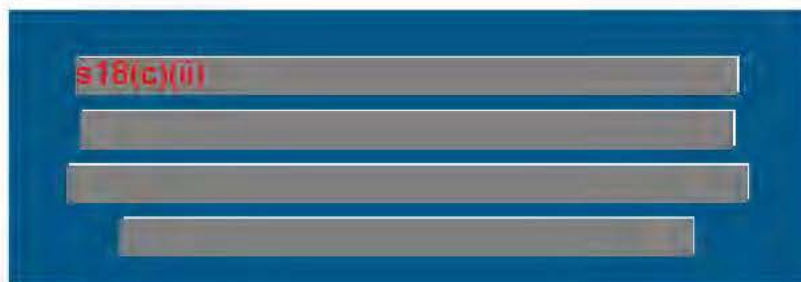
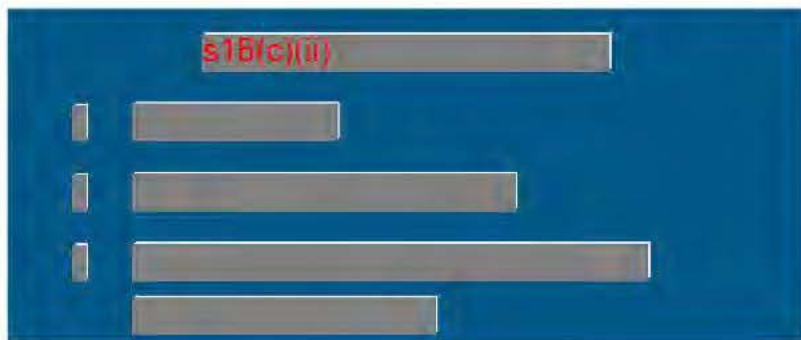
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s18(c)(ii)



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s18(c)(ii)

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s18(c)(ii)

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s18(c)(ii)

[illegible]



**- concluding discussion -**