

Departmental Disclosure Statement

Accessibility for New Zealanders Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the Ministry of Social Development.

The Ministry of Social Development certify that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

20/07/2022

Contents

Contents.....	2
Part One: General Policy Statement	3
Part Two: Background Material and Policy Information	5
Part Three: Testing of Legislative Content.....	7
Part Four: Significant Legislative Features	9

Part One: General Policy Statement

The Bill establishes a new legislative framework that aims to provide a consistent methodology to address systemic accessibility barriers that prevent disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs from living independently and participating in all areas of life, and grow accessibility practices across New Zealand. It is aimed at addressing limitations in our current legal and policy framework that have resulted in an insufficient pace and extent of change to ensure disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs can participate in society on an equal basis with others.

Background

Disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs face significant barriers to experiencing positive wellbeing. Improving access to housing, transport, information, communication, technology, public buildings, and spaces is vitally important to enable them to participate in and feel belonging in the world. Improving accessibility is inextricably linked to achieving fundamental human rights and can help us continue to address the long-standing challenges of inequality and disproportionate disadvantage that disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs experience.

At present, efforts to address participation barriers are fragmented across the public service and overly reliant on individual agencies to identify and appropriately prioritise barrier removal. This issue is driven by a lack of clear government leadership on accessibility issues. There is also a lack of awareness of the importance of accessibility across society and limited avenues for disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs to shape policy in these areas. A new and innovative approach is needed to meaningfully improve accessibility in New Zealand, which is the purpose of this Bill.

Objectives of Bill

The Bill's objectives are to—

- provide an enduring, clear, and consistent methodology for addressing systemic accessibility barriers and growing accessibility practices, now and in the future:
- enhance leadership, accountability, and coordination to prevent and remove accessibility barriers and grow accessibility practices:
- build knowledge and awareness about the importance of addressing accessibility barriers:
- represent the voices of disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs:
- be flexible and progressive:
- give effect to the principles of te Tiriti o Waitangi/the Treaty of Waitangi.

Achieving these objectives will allow for barriers to be addressed by relevant entities, enabling disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs to access a wide range of environments, information, and communications with dignity and on an equal basis with non-disabled people, to fully participate in society, and to have more control over matters affecting them. The following criteria was used to compare options for a framework to accelerate accessibility:

- creates a strong, enduring mandate for change, with clear expectations around

the need to identify, prevent and remove accessibility barriers:

- provides leadership, has clear roles and responsibilities, and increases accountability for identifying, preventing, and removing systemic accessibility barriers, with input from disabled people and affected sectors:
- creates enduring and flexible mechanisms to progressively identify, prevent and remove barriers, in a way that is consistent with the United Nation Convention on the Rights of Persons with Disabilities and embeds te Tiriti o Waitangi/ the Treaty of Waitangi.
- the efficiency, feasibility, cost, and timeliness of establishing each option.

Establishing Accessibility Committee

This Bill creates a new leadership structure which 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 and their families or whānau, focused on making recommendations on how to address accessibility barriers to the Minister for Disability Issues. This is complemented by responsibilities on the chief executive of Whaikaha - Ministry of Disabled People and Minister for Disability Issues whose oversight and support is needed for the framework to succeed. The framework provides for collective coordination across government and a clear methodology to ensure accessibility barriers are, over time, systemically identified, removed and prevented. A cycle of monitoring and review will be required, so the Accessibility Committee can regularly assess how well new and existing policies are performing, and the system can grow and develop over time.

This legislative framework does not take a prescriptive approach through regulation. Rather, it establishes a clear process and governance structure to progressively identify, prevent, and remove accessibility barriers and progress and grow accessibility practices across New Zealand. This will promote a fully accessible New Zealand where disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs have an equal opportunity to achieve their goals and aspirations.

Administering department

It is intended that Whaikaha - Ministry of Disabled People will be responsible for administering the Bill once it is enacted. To provide time for the Ministry to develop an implementation plan, the Bill provides for commencement by Order in Council with a backstop date of 1 July 2024.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
Although this report did not directly inform the policy to be given effect by this Bill, it is relevant to the subject matter: Making New Zealand Accessible: A Design for Effective Accessibility Legislation, The New Zealand Law Foundation, 29 September 2021. Can be accessed from https://www.lawfoundation.org.nz/?p=11726	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	YES
The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) was ratified by New Zealand in 2008. Article 9 of the UNCRPD details the Government's obligations to take appropriate measures to ensure disabled people have access on an equal basis with others to the physical environment, to transportation, to information and communications, including information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. By addressing accessibility barriers over time, the accessibility framework enabled by the Bill will progressively realise those rights and may lead to regulatory change in some areas where appropriate at a later point.	

2.2.1. If so, was a National Interest Analysis report prepared to inform a Parliamentary examination of the proposed New Zealand action in relation to the treaty?	NO
A National Interest Analysis was done prior to the UNCRPD being ratified in 2008, so no NIA for this Bill was necessary. This is available at Appendix B here: https://www.parliament.nz/resource/en-NZ/48DBSCH_SCR4163_1/1d054d8f8af3b4ee15ccc245219a6136406a7118	

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
Regulatory Impact Statement: Accelerating Accessibility, Ministry of Social Development, 22 September 2021. This can be accessed from https://msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2021/accelerate/regulatory-impact-statement-accelerating-accessibility.pdf Regulatory Impact Statement – Addendum, Ministry of Social Development, 23 March 2022. This can be accessed from: https://www.msd.govt.nz/documents/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2022/accelerating-accessibility/accelerating-accessibility-ris-addendum.pdf	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	NO
---	-----------

The Regulatory Impact Statement (RIS) identified above did not meet the threshold for receiving an independent opinion on the quality of the RIS from the RIA Team based in the Treasury. No independent opinion from the Treasury was provided for the RIS Addendum. A Quality Assurance Panel from the Ministry of Social Development and the Ministry of Health reviewed the RIS and considered the information and analysis summarised in it meets the quality criteria set out in the RIS framework. The chair of the Panel reviewed the RIS addendum and considered the information and analysis in it meets the quality criteria set out in the RIS framework.

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	YES
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
(a) The potential costs and benefits of this Bill are provided in the Regulatory Impact Statement, which can be accessed from: https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2021/accelerating-accessibility.html	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	NO
(b) the nature and level of regulator effort put into encouraging or securing compliance?	NO
<p>The Committee may make recommendations to introduce accessibility-related standards or obligations to address some accessibility barriers, but the Bill itself does not create such standards or obligations. The success of the framework set out in the Bill in increasing accessibility will rely on accessibility being prioritised by successive Governments.</p> <p>Further information, particularly at paragraphs 98, 104, 105, and 106, can be found in Accelerating Accessibility in New Zealand, Ministry of Social Development, 29 October 2021. This can be accessed from: https://www.msd.govt.nz/about-msd-and-our-work/publications-resources/information-releases/cabinet-papers/2021/accelerating-accessibility.html</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?

The United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) lists accessibility as one of its core principles under Article 3[f], while Article 9 details the Government's obligations in taking appropriate measures to ensure disabled people have access on an equal basis with others to the physical environment, to transportation, to information and communications, including information and communication technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas. By addressing accessibility barriers over time, the framework created by the Bill will progressively realise those rights.

Further, a core principle of the accessibility framework in achieving its purpose is for a person who performs a function or duty or exercises a power under the Act to have regard to the need to respect and uphold the rights of disabled people, tāngata whaikaha and their families or whānau, including the rights that are derived from the UNCRPD, which the Government ratified in 2008, in particular, Article 9.

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?

Since late 2021, officials have been meeting with members of the disability community and interested groups on the legislation to inform advice on the detailed design of the framework.

As part of this process, officials met with groups representing tāngata whaikaha Māori and their whānau, including Kāpō Māori, Whānau Ora Interface Group and Te Ao Marama, to seek feedback on how Te Tiriti should be embedded into the accessibility framework. The Te Tiriti proposals were also tested with Pou Tāngata (National Iwi Chair Forum).

Further analysis of these proposals was done in the Regulatory Impact Statement Addendum which accompanied the Cabinet paper reporting back on the detailed design of the framework.

The Ministry of Social Development incorporated feedback from Te Arawhiti during the Cabinet paper agency consultation process. It also subsequently engaged with the Treaty Provisions Oversight Group on the Te Tiriti provisions during the Bill drafting process.

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?

YES

The Bill has been sent to officials at the Ministry of Justice, who have provided advice to the Attorney-General on if any provisions of this Bill appear to limit the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990.

A Bill of Rights vet has been completed based on a near final version of the Bill and concluded that the Bill appears to be consistent with the Bill of Rights Act 1990. If any substantive amendments to the Bill are required, the Ministry of Justice will be notified and asked to provide further advice.

If the Attorney-General decides to waive legal privilege, the advice will be published at <https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/>

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	NO
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p>External consultation with groups/agencies on the Cabinet paper that outline the policy given effect by this Bill occurred from May 2021, and include:</p> <p>The DPO Coalition, New Zealand Sign Language Committee, National Enabling Good Lives leadership group, Enabling Good Lives Waikato, Tofa Mamao Collective, I-Lead, Pou Tāngata (National Iwi Chair Forum), Enabling Good Lives Governance Group, Establishment Unit Community Steering Group, Te Ao Mārama Disability Advisory Group, Mana Pasifika, the Whānau Ora Interface Group, Access Alliance, Faiva Ora, and experts from the business, legal, and public service sectors.</p> <p>A discussion paper was also sent out to approximately 35 community groups and organisations seeking feedback between mid-December 2021 until the end of January 2022. Feedback was received from over 20 groups.</p> <p>In October 2021, the proposal for an accessibility framework was developed by the Ministry of Social Development in partnership with the Access Alliance, a collective of 12 disability sector groups, Disabled People's Organisations (DPO), disability services providers, disability community organisations and disability advocates.</p> <p>We also consulted a small number of groups on the more detailed provisions earlier this year.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	YES
<p>The Legislation Design and Advisory Committee were engaged with in July 2021. At the time they highlighted some risks with the legislative approach. These risks will be addressed through regular legislative review (within five years of the commencement of the Act and five-yearly intervals after that) and ongoing monitoring and review of progress on addressing accessibility barriers. This has helped to ensure that the provisions of the Bill are workable and complete.</p> <p>Feedback has been sought and incorporated from a wide range of agencies throughout the policy development and legislative drafting process, which has also helped to ensure the workability of the Bill.</p>	

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO
--	-----------

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	NO

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>Some elements of the Bill may need to come into force later than Royal Assent, for example to ensure there is sufficient time to recruit and appoint members of the Committee. This is because Whaikaha - Ministry of Disabled People, which will be responsible for administering the legislation once enacted, needs time to develop an implementation plan. Therefore, the Bill provides for commencement by Order in Council with a backstop date of 1 July 2024.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	YES
<p>It is unusual for this type of entity (the Accessibility Committee) to be established through legislation. However, such an entity is an important element of this enabling legislative framework as it positions disabled people, tāngata whaikaha Māori and their families or whānau as strategic partners with Government.</p> <p>An enabling legislative framework is used because it recognises and can support the disability community's desire for fundamental change, balanced against the Government's priorities and resources, while creating stronger accountability and reporting mechanisms to hold the Government to account. It also lends itself to improved regulatory provisions in future that better recognise the accessibility barriers that disabled people face (should that be required). Achieving these aims is not possible through the other options considered (remaining with the status quo, creating a comprehensive, Cabinet-mandated work programme, creating overarching-omnibus legislation, or a new regulatory regime).</p>	