

Briefing

Date:	7 August 2024
For:	Hon Louise Upston, Minister for Disability Issues
File reference:	REP/WHK/24/8/127
Security level:	In Confidence and Legally privileged

Legislation Bids from the Disability Issues Portfolio for the 2024 Legislation Programme

Purpose

This paper:

- a. Seeks your agreement to the reassessment of the following bids for the 2024 Legislation Programme:
 - i. **Out of Scope** [redacted]; and
 - ii. The Accessibility for New Zealanders Bill;
- b. Attaches, at **Appendix One**, a letter for you to send to the Secretary of the Cabinet providing an update on the status of these bids;
- c. Attaches, at **Appendix Two**, a letter for you to send to the Clerk of the House confirming the discharge of the Accessibility for New Zealanders Bill; and
- d. Seeks confirmation from you that administration of the New Zealand Sign Language Act 2006 should transfer from the Ministry of Social Development to the Ministry of Disabled People – Whaikaha (the Ministry).

Executive summary

- 1 There are 2 legislative bids from the Disability Issues portfolio in the 2024 Legislation Programme:
 - 1.1 **Out of Scope** [redacted]
[redacted] and
 - 1.2 The Accessibility Bill – with a priority category of 8 – on hold.

- 2 9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED].
- 3 9(2)(g)(i) [REDACTED]
[REDACTED]
[REDACTED]
- 4 The two bids for the Disability Issues portfolio therefore fall outside the scope of this reassessment. However, recent decisions have had an impact on the progress of both Bills, and we consider it would be prudent for you to write to the Cabinet Legislation Coordinator to provide an update on them.
- 5 We have prepared a letter to the Cabinet Legislation Coordinator setting out the following updates on the two bids:
- 5.1 Out of Scope [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
- 5.2 **The Accessibility for New Zealanders Bill (the Accessibility Bill):** which will introduce a framework for identifying, preventing, and removing barriers to participation for disabled people, tāngata whaikaha Māori and others with accessibility needs. The Bill is currently awaiting its second reading. You have decided that you intend to discharge the Accessibility Bill and focus instead on a non-legislative work programme to improve accessibility. As this bill has already been drafted and has been introduced, there is no need to assign a priority category to it. To discharge the Bill, per standing order 74(1), we propose that you write to the Clerk of the House to confirm your wish to discharge the Bill from the order paper.
- 6 We have prepared a letter for you to send to the Cabinet Legislation Coordinator providing an update on these bids and a letter for you to send to the Clerk of the House to formally discharge the Accessibility Bill from the order paper.
- 7 Out of Scope [REDACTED]
[REDACTED]
[REDACTED].

Recommendations

It is recommended that you:

- 1 **agree** to the following updated priority categories for the two bids under the Disability Issues portfolio:

Proposed bill	Proposed ranking in portfolio	Proposed legislative priority
Out of Scope [Redacted]	1	Out of Scope [Redacted]
Accessibility for New Zealanders Bill	2	Category 9 – to be withdrawn

- 2 **note** that reassessment information is not required for either of these bids but that it would be prudent for you to provide an update to Cabinet Office of your intended changes to their priority categories;
- 3 **sign** the letter attached at Appendix One, setting out an update on the priority categories for the two bids, to the Cabinet Legislation Coordinator;
- 4 **note** that the letter containing your update on the bids must be provided to the Cabinet Legislation Coordinator by 12pm on Thursday 15 August;
- 5 **sign** the letter attached at Appendix Two to the Office of the Clerk to discharge the Accessibility for New Zealanders Bill;
- 6 Out of Scope
[Redacted]

Helen Walter

Helen Walter
Group Manager, Policy
Policy, Strategy and Partnerships

7 August 2024

Hon Louise Upston
Minister for Disability Issues

Date

The 2024 Legislation Programme

- On 19 July 2024, the Cabinet Office requested that Ministers reassess legislative bids for their portfolios to support the planning of House time for the remainder of 2024. Guidance provided by the Cabinet Office asked Ministers and agencies to consider foreseeable legislative priorities for the full term of the 54th Parliament, from 2024 to 2026.

There are two legislative bids for the Disability Issues Portfolio

- The previous minister had submitted the following bids for the Disability Issues Portfolio:

Proposed bill	Proposed ranking in portfolio	Proposed legislative priority
Out of Scope [redacted]	1	Out of Scope [redacted]
Accessibility for New Zealanders Bill	2	Category 8 – on hold

Advice on the updated status of bids

- Neither of these bids falls within the scope of the current reassessment call from Cabinet Office as reassessment information is not required in relation to any bills that have a priority of 1, or bills that have a priority of 6, 7, 8, or 9, unless it is now intended that the bill be introduced or enacted this year.
- Since these bids were submitted, decisions have been made which have impacted both Bills. We therefore consider it would be prudent for you to provide an update on these bids to Cabinet Office.

Out of Scope [redacted]

[redacted]

[redacted]

Out of Scope
[Redacted text block]

[Redacted text block]

[Redacted text block]

9. Out of Scope [Redacted text]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

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[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

10. Out of Scope [Redacted text]

[Redacted text block]

[Redacted text block]

Out of Scope [Redacted text]

[Redacted text block]

[Redacted text block]

[Redacted text block]

[Redacted text block]

13. **Out of Scope**

Bid Two: The Accessibility for New Zealanders Bill

16. The Accessibility Bill aims to address accessibility barriers by creating an enabling framework that takes a progressive approach to identifying, preventing, and removing barriers to participation for disabled people, tāngata whaikaha Māori, whānau and others with accessibility needs.
17. In particular, it would establish an Accessibility Committee which would identify, assess, and make recommendations to remedy accessibility barriers in New Zealand. The Committee would publish an annual report on progress with implementation of these recommendations.
18. The Bill was introduced on 28 July 2022 and had its first reading on 2 August 2022. The Bill was considered by the Social Services and Community Select Committee and was reported back on 22 June 2023.
19. Almost all submitters at the Select Committee stage supported accessibility legislation in principle. However, most opposed the Bill in its current form and expressed a desire for the Bill to be strengthened and to adopt a more regulatory approach.
20. We recently provided you with more detailed advice on this bill as part of our advice on a proposed accessibility work programme [REP/WHK/24/7/095].

Status of this Bill and reassessed priority category

21. You have indicated that you view the Accessibility Bill as fundamentally flawed and instead want to focus on making concrete, tangible improvements to accessibility within the current regulatory environment.
22. We propose that you formalise your decision not to proceed with the Accessibility Bill by writing to the Clerk of the House confirming your decision to discharge the bill under Standing Order 74(1). A draft letter is attached as Appendix two.
23. The relevant priority category for the Bill is 9 – to be withdrawn. However, this category is for bills which have not yet been drafted or introduced. As the Bill has

already been introduced, there is no need to assign a priority category for it in the legislation programme.

24. It is important to note that the withdrawal of the Bill will be public, and we recommend informing key disability community groups of your decision in advance of this announcement. We can work with your Office to prepare communications materials to support an announcement.

Out of Scope

Next Steps

29. 9(2)(f)(iv)
30. **We recommend** you sign the attached letter to the Clerk of the House informing him that you wish to discharge the Accessibility Bill from the order paper.
31. Out of Scope

¹ Cabinet Office. (2023). Cabinet Manual 2023. *Principles of Cabinet decision-making* (79). <https://www.dpmc.govt.nz/sites/default/files/2023-06/cabinet-manual-2023-v2.pdf>

End

Author: 9(2)(a) [REDACTED], Senior Policy Analyst, Policy, Strategy and Partnerships

Responsible Manager: Sohini Smith, Policy Manager, Policy, Strategy and Partnerships

Appendix One: Letter to the Secretary of the Cabinet and two bids for the Legislation Programme 2024

Rachel Hayward
Secretary of the Cabinet
Cabinet Office
Parliament Buildings

Attn: Sam Moffett
Legislation Coordinator

Dear Rachel,

Response to request for reassessment of Bills for the 2024 Legislation Programme

In February 2024, 2 bids were submitted from the Disability Issues portfolio. I have considered each of these bids in light of the Government’s current priorities and my own. Both bids fall outside the scope of this reassessment as they had priority categories of 6 and 8. However, I wanted to take the opportunity to provide an update on these bids which is set out below.

Out of Scope [Redacted]

Out of Scope [Redacted]

[Redacted]

The Accessibility for New Zealanders Bill

This Accessibility for New Zealanders Bill is awaiting its second reading and a bid was submitted for it seeking a priority category of 8 – on hold, to provide time to consider the future of the Bill.

I have decided to discharge the Bill. This reflects the government and community view that the Bill is not fit for purpose. I intend to focus instead on the development of an accessibility work programme to make concrete, tangible improvements to accessibility in New Zealand.

As per Standing Order 74(1) I am writing to the Clerk of the House to discharge this Bill from the Order Paper.

Yours sincerely,

Hon Louse Upston
Minister for Disability Issues

Appendix Two – Letter to the Clerk of the House

David Wilson
Clerk of the House of Representatives
Office of the Clerk
Parliament Buildings

Dear David,

I am writing to inform you of my decision to discharge the Accessibility for New Zealanders Bill and request that it be removed from the order paper as per Standing Order 74(1).

While most submitters expressed that they wanted accessibility legislation during the Select Committee process, they didn't see this Bill as being fit for purpose.

While legislation may be an enabling factor, I consider that the most effective interventions to improve accessibility are likely to be non-legislative. I intend therefore to focus on progressing an accessibility work programme to make concrete, tangible improvements to accessibility in New Zealand within the current regulatory framework.

Yours sincerely,

Hon Louse Upston
Minister for Disability Issues

Annex One - Summary of priority categories

Category 1 – must be passed in 2024 as a matter of law

- This category is reserved for legally mandated legislation, such as appropriation bills, or secondary legislation confirmation bills.

Category 2 – must be passed by the end of 2024

- This category is for legislation that must be passed in 2024, due to either a Government commitment or other deadline.

Category 3 – a priority to be passed by the end of 2024

- This category is for legislation for which passage in 2024 is a Government priority, but there is no mandatory deadline.

Category 4 – to be passed by the end of 2024 if possible

- This category is for legislation which is able to be passed within 2024, but which does not fit into either of the above categories.

Category 5 – to proceed to select committee by the end of 2024

- This category is for legislation which, for reasons of size, complexity, timing, or priority, is intended to be referred to a select committee in 2024, but not be enacted within the year.

Category 6 – drafting instructions to be issued by the end of 2024

- This category is for legislation for which drafting instructions will be issued to PCO within the year, but the legislation is not expected to be ready for introduction.

Category 7 – policy development to continue in or beyond 2024

- This category is for legislation for which policy development is either ongoing, or expected to commence, in or beyond 2024, but no drafting instructions are expected to be issued by the end of 2024.

Category 8 – on hold

- This category is for legislation which is at any stage in the legislative or policy development process, but is currently paused and not expected to advance within 2024.

Category 9 – to be withdrawn

- This category is for legislation which has not yet been fully drafted or introduced, and is no longer going to proceed.

Comparing accessibility legislation across jurisdictions

Introduction

Purpose

This paper analyses accessibility and disability-specific legislation in jurisdictions outside of New Zealand. The report discusses the strengths and weaknesses of approaches taken in other countries. It also examines accessibility-related outcomes across jurisdictions.

Methodology

This paper first examines countries with comparable regulatory and constitutional settings to New Zealand: Australia, Canada, and the United Kingdom.

It also considers legislation in the United States, Bangladesh, and Brazil. These countries have different regulatory frameworks to New Zealand, but nonetheless have accessibility and disability-specific legislation that is worth examining. It should be noted that the latter two countries also have different socio-economic contexts to New Zealand which may affect accessibility outcomes.

Sources

Analysis was undertaken using a range of sources including:

- The relevant pieces of legislation.
- Domestic reviews of and reports on the progress under the relevant legislation, including by disabled persons.
- United Nations (UN) reporting on progress towards realising commitments under the United Nations Convention on the Rights of Persons with Disabilities (UNCPRD) where relevant.¹
- Independent research articles.

Background: The New Zealand regulatory context

Accessibility barriers contribute to poorer outcomes for disabled people

There are an estimated 1.1 million disabled people in New Zealand, many of whom face accessibility barriers that obstruct their attempts to work, study, find accommodation and live their lives with dignity.²

Poor accessibility contributes to social inequities such as:

- Disabled people experiencing poorer life outcomes than non-disabled people in all key outcome areas such as education, income, housing, social participation, and health.

¹ Note that at the time of writing, the United States has not ratified the UNCPRD and is therefore not subject to UN reporting.

² See: [One in four New Zealanders identified as disabled | Stats NZ.](#)

- Disabled people and their whānau facing greater costs to get the same outcomes - for example, a lack of accessible housing limits where a disabled person can live and can increase their travel costs.

Greater accessibility improves outcomes for individuals and society

Disability communities in New Zealand have consistently called for improvements in accessibility, including through legislation that enables disabled people, tāngata whaikaha Māori³, participate fully in all aspects of life on an equal basis with others.

Greater access to core aspects of life such as health services, education and employment would improve outcomes for individuals and New Zealand society as a whole and contribute to greater economic prosperity. It would, however, require investment from government and in some cases impose costs on private businesses.

New Zealand takes a consolidated rights-based approach to discrimination. That is, disability discrimination is addressed through a combination of two rights-based pieces of legislation: the New Zealand Bill of Rights Act 1990 (NZBORA)⁴, and the Human Rights Act 1993 (HRA).⁵

The NZBORA stipulates that “everyone has the right to freedom from discrimination on the grounds of discrimination in the Human Rights Act 1993.”⁶ The HRA includes and defines disability under ‘prohibited grounds of discrimination’.⁷ As such, the two Acts work in tandem to prohibit discrimination on the grounds of disability.

People who believe they have been discriminated against can make complaints to the NZ Human Rights Commission (HRC). Any unresolved complaints can then be taken to the Human Rights Review Tribunal. The enforcement of the HRA primarily relies on the mediation of individual complaints.

Discrimination is defined in each area of life rather than in an overarching definition. However, discrimination is generally described in terms of ‘less favourable treatment’.⁸ The HRA does not include a positive duty (taking action to realise a right) to provide reasonable accommodations for disabled people. However, in previous case law, the Court of Appeal has found that the HRA implies a positive duty to accommodate disabled persons.⁹

³ Māori who identify as disabled.

⁴ Available: [New Zealand Bill of Rights Act 1990 No 109 \(as at 30 August 2022\), Public Act Contents – New Zealand Legislation.](#)

⁵ Available: [Human Rights Act 1993 No 82 \(as at 01 December 2022\), Public Act Contents – New Zealand Legislation.](#)

⁶ Section 19 (1) of the NZ Bill of Rights Act 1990, available: [New Zealand Bill of Rights Act 1990 No 109 \(as at 30 August 2022\), Public Act – New Zealand Legislation.](#)

⁷ Section 21 (1)(h) of the Human Rights Act 1993, available: [Human Rights Act 1993 No 82 \(as at 01 December 2022\), Public Act – New Zealand Legislation.](#)

⁸ NZIER, Disability legislation and outcomes, December 2017, p. 51.

⁹ NZIER, Disability legislation and outcomes, December 2017, p. 52; Smith vs. Air New Zealand Ltd, [2011] NZCA 20, February 2011.

The HRA includes specific exceptions related to specific aspects of life. As relating to disability, these include: employment¹⁰; partnerships¹¹; access by the public to places, vehicles and facilities¹²; the provision of goods and services¹³; land, housing and other accommodation¹⁴; and education establishments¹⁵. Exceptions are usually made on the grounds of what is ‘not reasonable’. As NZIER noted, this threshold of ‘reasonableness’ for permissible discrimination is generally lower than thresholds in other countries such as Australia and Canada which have more clearly defined thresholds of ‘unjustifiable hardship’ and ‘undue hardship’ respectively.¹⁶

The UN Committee on the Rights of Persons with Disabilities (the UN Committee) noted their concern that the HRA does not contain a separate definition of reasonable accommodation which results in a lack of clarity.¹⁷ However, they did not comment on the exceptions made on the grounds of what is not reasonable, nor on whether the standards for exemption were too low.

The Accessibility for New Zealanders Bill

It was in this context of a lack of accessibility-specific legislation that the Accessibility for New Zealanders Bill was developed. It aims to address accessibility barriers by creating an enabling framework that takes a progressive approach to identifying, preventing, and removing barriers to participation for disabled people, tāngata whaikaha Māori, whānau and others with accessibility needs. The Bill is currently paused [LEG-24-MIN-0045 and CAB-24-MIN-0099 refer].

Key regulatory frameworks in other jurisdictions

Australia

Current legislative framework

At a federal level, Australia has the Disability Discrimination Act 1992 (DDA).¹⁸ The DDA has three primary aims:

¹⁰ For example, section 29 of the HRA states that different treatment is permitted where a person could perform the duties of a job only with the aid of special services or facilities that could not be reasonably provided by the employer.

¹¹ Excludes people whose disability would result in an unreasonable risk of harm to that person or others.

¹² For example, section 43 does not require people to provide special services or facilities to enable disabled people to gain access to or use any place or vehicle where it would not be reasonable to do so.

¹³ Section 52 of the HRA specifies that persons supplying facilities or services may refuse to provide them to people whose disability requires those facilities or services to be provided in “a special manner.”

¹⁴ For example, section 56 of the HRA stipulates it is not unlawful to not provide “services or facilities designed to make accommodation suitable for occupation by a person with a disability, if those special services or facilities cannot reasonably be provided in the circumstances.”

¹⁵ Section 60 notes that special services or facilities required to enable the disabled person to participate in an educational programme are not required if they cannot reasonably be made available.

¹⁶ NZIER, Disability legislation and outcomes, December 2017, p. 69.

¹⁷ United Nations Committee on the Rights of Persons with Disabilities, ‘Concluding observations on the combined second and third periodic reports of New Zealand’, CRPD/C/NZL/CO/2-3, p. 2.

¹⁸ Available: [Federal Register of Legislation - Disability Discrimination Act 1992](#).

- a) to eliminate, “as far as possible”, discrimination against disabled people in certain areas of life, including: accommodation; education; access to premises; clubs and sports; the provision of goods, facilities, services and land; existing laws; and the administration of Commonwealth laws and programmes;
- b) to ensure, “as far as practicable”, that disabled people have the same rights to equality before the law as the rest of the community; and
- c) to promote recognition and acceptance within the community of the principle that disabled people have equal rights.

The DDA defines disability and both describes and prohibits direct and indirect disability discrimination. It defines disability broadly, including sensory, physical and intellectual disabilities as well as mental illnesses, covering conditions which are “actual and imputed, temporary and permanent, past, present, and future.”¹⁹

Direct disability discrimination occurs when a disabled person is treated less favourably than a person without that disability in the same or similar circumstances. Indirect discrimination occurs when employers or service providers put in place conditions, requirements, or practices that appear to treat everyone equally, but which in fact disadvantage some people because of their disability.²⁰ Both are defined within the Act. The DDA also makes it illegal to discriminate against someone because of their association with a disabled person. This applies to the spouses, other people living together on a genuine domestic basis, relatives, and carers of disabled people.²¹ The DDA does not exclude or limit the operation of State or Territory laws that can operate concurrently with it.

Disability discrimination is lawful in some instances, for example:

- If a person or organisation would experience “unjustifiable hardship” in avoiding the discrimination.²² Several circumstances must be taken into account in deciding whether something would impose an unjustifiable hardship.²³
- By employers if a person is unable to carry out the inherent requirements of a role even with the provision of reasonable adjustments.
- If avoiding discrimination would impose unjustifiable hardship on an employer.

¹⁹ Belinda Smith, ‘Australian Anti-Discrimination Laws – Framework, Developments and Issues’, *The University of Sydney, Sydney Law School*, March 2008, p. 4, available: [Australian Anti-Discrimination Laws: Framework, Developments and Issues by Belinda Smith :: SSRN](#).

²⁰ See: [Disability discrimination \(humanrights.gov.au\)](#).

²¹ See sections 4 and 7 of the DDA, available: [Federal Register of Legislation - Disability Discrimination Act 1992](#).

²² See: [2. Disability Discrimination Complaints in the Australian Human Rights Commission - Canberra Community Law](#).

²³ Relevant circumstances in the DDA, section 11, include:

- (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
- (b) the effect of the disability of any person concerned;
- (c) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;
- (d) the availability of financial and other assistance to the first person;
- (e) any relevant action plans given to the Commission under section 64

See: [Federal Register of Legislation - Disability Discrimination Act 1992](#)

In all cases, discrimination must first be established to have occurred. If discrimination has been shown to have occurred in employment claims, the burden of proof of showing that an employee could not carry out the inherent requirements of a job rests with the employer. The burden of proving that unjustifiable hardship would occur in avoiding discrimination rests first with the person claiming the hardship would occur.

The DDA was amended in 2009

The Disability Discrimination and Other Human Rights Legislation Amendment Act²⁴ was introduced in 2009 following a range of recommendations made in a 2004 review of the DDA undertaken by the Australian Productivity Commission.²⁵

The changes were introduced to improve the operation of the DDA. They include²⁶:

- Recognition of the UNCRPD. The changes included inserting an explicit reference to the UNCRPD and stipulating that certain provisions²⁷ of the DDA have effect to the extent that they give effect to the Convention. However, there are no specific penalties or sanctions within the Act for breaching the UNCRPD.
- Broadening the definition of disability to include a genetic predisposition to a disability, and behaviour that is a symptom or manifestation of the disability.
- Amending the definition of indirect discrimination, including extending it to include proposed acts of indirect discrimination. Other changes included clarifying and softening a previous requirement to instead require applicants to prove that a requirement or condition 'has or is likely to have the effect of disadvantaging persons with the disability'. It also shifted the burden of proving the 'reasonableness' of a requirement or condition to the alleged discriminator rather than the applicant.
- Introducing a positive duty to make reasonable adjustments, making it discriminatory not to do so. Reasonable adjustments include all adjustments that do not impose an unjustifiable hardship on the person making the adjustment(s). Both the definitions of direct and indirect discrimination include a duty to make reasonable adjustments. Reasonable adjustments appear similar to the concept of reasonable accommodations in New Zealand.
- Making the 'inherent requirements' defence available to employers in a wider range of circumstances. Also, making the defence of unjustifiable hardship available in all areas of public life covered by the DDA.

Standards & guidelines

The DDA enables the creation of disability standards in relation to the areas of life in the Act in which discrimination is prohibited. Standards provide further detail on rights and responsibilities and are legally binding. Standards are informed by advice from responsible government departments and the Australian

²⁴ Available: [Federal Register of Legislation - Disability Discrimination and Other Human Rights Legislation Amendment Act 2009](#).

²⁵ See: [Review of the Disability Discrimination Act 1992 - Public inquiry - Productivity Commission \(pc.gov.au\)](#).

²⁶ Australian Human Rights Commission, *Improved rights protection for people with disability*, August 2009, available: [Year \(humanrights.gov.au\)](#).

²⁷ Meaning the 'limited application provisions' - the provisions of Divisions 1 (discrimination in work), 2 (discrimination in other areas), 2A (disability standards) and 3 (discrimination involving harassment) of Part 2 other than sections 20, 29 and 30.

Human Rights Commission (AHRC). The AHRC can also issue guidelines and advisory notes to aid understanding and compliance with the DDA and standards.

Relevant standards override the more general provisions and exemptions relating to direct and indirect discrimination in the DDA. The standards published are lengthy, detailed, and prescriptive. They also take a considerable amount of time to be developed. Researcher Belinda Smith (Smith) noted:

It took a decade of consultation and negotiation before the first standards were introduced (public transport), another few years to see Disability Education Standards, and there is general acknowledgment that employment standards will never be finalised.²⁸

To date, standards have been issued relating to access to premises, education, and public transport. Guidelines and advisory notes have been issued relating to world wide web access and insurance.²⁹

For example, the Disability Standards for Education 2005 specify how education and training are to be made accessible to disabled students.³⁰ They require education providers to consult with students (or associates of the student) and provide 'reasonable adjustments' to enable equal participation.

Action plans

Under the DDA, both government and private organisations may create action plans to achieve the goals of the Act. If organisations choose to develop action plans, these must conform to specific requirements, including provisions on communicating policies and programmes to relevant persons, reviewing practices to identify discriminatory practices, setting goals and targets, evaluating policies and programmes, and the appointment of persons to implement the above provisions.³¹ If complaints against an organisation are made, the AHRC must take their action plan into consideration.

Implementation and enforcement

Standards made under the DDA are enforced through an individual complaints process. Through a combination of the Australian Human Rights Commission Act 1986 and the DDA, the AHRC can investigate disability discrimination complaints and recommend how to resolve the issue. The AHRC may terminate the complaint if the action complained about is not unlawful, more than one year old, trivial or lacking in substance, already dealt with, there is a more appropriate remedy elsewhere, or if there is no reasonable prospect of conciliation.³² If a complaint is terminated (usually the Commission must have issued a Notice of Termination) and with the leave of the court, the complainant may apply to the Federal Court to make a decision.³³

²⁸ Belinda Smith, 'Australian Anti-Discrimination Laws – Framework, Developments and Issues', *The University of Sydney, Sydney Law School*, March 2008, p. 21, available: [Australian Anti-Discrimination Laws: Framework, Developments and Issues by Belinda Smith :: SSRN](#).

²⁹ See: [Disability Standards | Australian Human Rights Commission](#).

³⁰ See: [Federal Register of Legislation - Disability Standards for Education 2005](#).

³¹ See: [Federal Register of Legislation - Disability Discrimination Act 1992](#), section 61.

³² Review of the Disability Discrimination Act 1992, Productivity Commission Inquiry Report, Volume 1: Chapters, Report No. 30, 30 April 2004, p. 56.

³³ See: [Guide to human rights cases - steps in commencing a proceeding in the Federal Court \(fedcourt.gov.au\)](#)

The AHRC does not have the power to decide if unlawful discrimination has occurred. It also cannot take complaints to court or help the complainant in court.

Benefits of the DDA model

Regular reviews of disability standards show some gains in accessibility. The 2020 review of Education Standards found "significant improvement in accessibility and use of the Standards since 2010", despite further efforts being needed.³⁴ In the 2021 review of the Access to Premises Standards, disabled people reported finding it easier to access premises that were built after the Standards were introduced in 2010.³⁵ A 2022 review of the Disability Standards for Accessible Public Transport, noted that many disabled people felt that discrimination on public transport had reduced in the five years preceding the report, with measures such as more inclusive infrastructure, increased consultation, and increased availability of journey planning.³⁶

Action Plans have been taken up by many organisations, with over 700 plans listed on the AHRC website spanning areas such as banking, public transport, arts and entertainment, universities, healthcare, local government and more.³⁷ Smith noted that the legislation may "be indirectly promoting [the development of action plans] by creating a public expectation that companies take action (or at least must be seen to be taking action) to promote participation and equality for workers with disability."³⁸ Similarly, NZIER noted that while the plans may not necessarily improve understanding of the range and impact of disability or cost-effective workplace adjustments, they can raise public expectations and provide and promote positive role-models.³⁹

The DDA model is also adaptable to changing circumstances. The standards provide for innovation and flexibility in allowing organisations to develop alternative ways of meeting standards, if the intended outcomes are met. The model offers a variety of solutions to achieve accessibility goals, such as non-regulatory approaches in the creation of voluntary action plans. Regular reviews of standards also allow for their evolution in response to changing circumstances. Evidence also suggests that certain domains, such as transport and the built environment, may lend themselves towards greater prescription, where others may benefit from more outcomes-based approaches.

Finally, the DDA has clear objectives, seeks to achieve outcomes in a least cost way through the progressive development of standards and widespread consultation, and allows for standards which are flexible enough to allow for ongoing adaptation to attitudes and needs.⁴⁰

³⁴ Final Report of the 2020 Review of the Disability Standards for Education 2005, p. 12, available: [Final Report - 2020 Review of the Disability Standards for Education 2005](#).

³⁵ See: [Review at a glance | Premises Standards Review 2021 | Department of Industry Science and Resources](#).

³⁶ Summary report: Public consultations—2022 Review of the Disability Standards for Accessible Public Transport 2002, p. 3, available: [Summary report: Public consultations—2022 Review of the Disability Standards for Accessible Public Transport 2002—PDF](#).

³⁷ See: [Register of Disability Discrimination Act Action Plans | Australian Human Rights Commission](#).

³⁸ Belinda Smith, 'Australian Anti-Discrimination Laws – Framework, Developments and Issues', *The University of Sydney, Sydney Law School*, March 2008, p. 22, available: [Australian Anti-Discrimination Laws: Framework, Developments and Issues by Belinda Smith :: SSRN](#).

³⁹ NZIER, Disability legislation and outcomes, December 2017, p. 68.

⁴⁰ NZIER, Disability legislation and outcomes, December 2017, p. 24.

The DDA model has several drawbacks

Standards introduced under the DDA are required to be reviewed every five years. These reviews, alongside the 2019 concluding observations of the UN Committee highlight several areas of ongoing shortcomings.

Timeframes for developing standards

There is a significant consultation and negotiation period to introduce standards. The AHRC noted that the process of introducing Standards to Parliament is lengthy and contains many obstacles.⁴¹ Such obstacles result in standards being resource and time-intensive to create. This means that disabled people and their whānau may wait long periods before accessibility improvements are made in a particular domain of life.

Unsatisfactory enforcement and complaints approach

NZIER noted that the enforcement approach under the DDA has been found to be unsatisfactory.⁴² As they described, the only method of enforcing the DDA standards is through the individual complaints mechanism. Few claims proceed beyond conciliation, and outcomes are generally kept out of the public view. As Smith noted, characterising discrimination primarily as a private dispute between individuals does little to enable systemic or structural change or prevent discrimination and promote equality more generally.⁴³

The 2015 Transport Standards review also noted concerns with the existing complaint process posing a “difficult and unfair barrier” to addressing public transport concerns.⁴⁴ Concerns were raised regarding the time-consuming, difficult, exhausting and financially burdensome complaints process. The most recent 2022 review too noted key issues for disabled people in the complaints process such as limited awareness of how to make a complaint, an overly complicated process, and the lack of clear or satisfactory outcomes after making a complaint.⁴⁵ Likewise, the 2021 Access to Premises Standards review noted that complainants were unsure where to lodge complaints, and the process needed to be made clearer, simpler and less burdensome.⁴⁶ Many also felt that they did not receive a satisfactory outcome following a complaint. The UN Committee noted that the complaints mechanisms available under the DDA were inaccessible to disabled persons.⁴⁷

⁴¹ Australian Human Rights Commission, *Free & Equal, A reform agenda for federal discrimination laws*, December 2021, p. 135.

⁴² NZIER, *Disability legislation and outcomes*, December 2017, p. 15.

⁴³ Belinda Smith, ‘Australian Anti-Discrimination Laws – Framework, Developments and Issues’, *The University of Sydney, Sydney Law School*, March 2008, p. 2, available: [Australian Anti-Discrimination Laws: Framework, Developments and Issues by Belinda Smith :: SSRN](#).

⁴⁴ Australian Department of Infrastructure and Transport, *Review of the Disability Standards for Accessible Public Transport 2002 Final Report*, July 2015, p. 115.

⁴⁵ Summary report: Public consultations—2022 Review of the Disability Standards for Accessible Public Transport 2002, p. 6, available: [Summary report: Public consultations—2022 Review of the Disability Standards for Accessible Public Transport 2002—PDF](#).

⁴⁶ See: [Key themes emerging from the review | Premises Standards Review 2021 | Department of Industry Science and Resources](#).

⁴⁷ Concluding observations on the combined second and third periodic reports of Australia, 15 October 2019, CRPD/C/AUS/CO/2-3, p. 3.

The 2020 review of the Education Standards review described the onus being placed on students, parents and carers to advocate for their rights with the complaints system failing to drive systemic change. Furthermore, there is a power imbalance between disabled people, parents and carers and education providers. People are reluctant to complain to education providers for fear of adverse consequences.⁴⁸

Compliance issues

The AHRC stated it is concerned at the current operation of the Disability Standards due to the lack of appropriate accountability mechanisms for their implementation. Non-compliance is an issue and compliance is not easy to enforce.⁴⁹ They also noted that standards can limit compliance to minimum standards rather than encouraging best practice.⁵⁰

The UN Committee noted concern at the lack of a national framework for compliance reporting with Standards made under the DDA.⁵¹ The 2015 Transport Standards review noted that implementing requirements under the Standards requires significant capital investment, and future compliance milestones may be problematic in the absence of significant resourcing.⁵²

A submission from The Australian Federation of Disability Organisations and the National Inclusive Transport Advocacy Network to the 2022 review of the Transport Standards stated that “compliance to the standards continues to be poor, with minimal evidence of progress and few consequences for failure to adhere.”⁵³ The 2021 review of the Access to Premises Standards noted the need for greater guidance on the requirements of the standards would aid in improving compliance issues.⁵⁴ The review noted that disabled people said the DDA did not provide the tools necessary to resolve access issues, with compliance, enforcement and penalty regimes being insufficient to deter non-compliance.

The 2020 Education Standards review found that many educators are unaware of their responsibilities under the Standards and there was a lack information to implement them. Improvements are needed in accountability to make sure the Standards are followed.⁵⁵

⁴⁸ Final Report of the 2020 Review of the Disability Standards for Education 2005, available: [Final Report - 2020 Review of the Disability Standards for Education 2005.](#); Summary of the 2020 Review of the Disability Standards for Education 2005, available: [Summary Document - 2020 Review of the Disability Standards for Education 2005 - Department of Education, Australian Government.](#)

⁴⁹ Australian Human Rights Commission, *Free & Equal, A reform agenda for federal discrimination laws*, December 2021, p. 135.

⁵⁰ Julian Gardner, *An Equality Act for a Fairer Victoria*, June 2008, p. 122, cited in Australian Human Rights Commission, *Free & Equal, A reform agenda for federal discrimination laws*, December 2021, p. 135.

⁵¹ Concluding observations on the combined second and third periodic reports of Australia, 15 October 2019, CRPD/C/AUS/CO/2-3, p. 5.

⁵² Australian Department of Infrastructure and Transport, *Review of the Disability Standards for Accessible Public Transport 2002* Final Report, July 2015, p. 102.

⁵³ 2022 Review of the Transport Standards, Submission by AFDO and NITAN, June 2023, p. 10, available: [Joint-Submission-AFDO-and-NITAN-Review-of-the-Transport-Standards-June-2023.pdf.](#)

⁵⁴ See: [Key themes emerging from the review | Premises Standards Review 2021 | Department of Industry Science and Resources.](#)

⁵⁵ Final Report of the 2020 Review of the Disability Standards for Education 2005, available: [Final Report - 2020 Review of the Disability Standards for Education 2005.](#); Summary of the 2020 Review of the Disability Standards for Education 2005, available: [Summary Document - 2020 Review of the Disability Standards for Education 2005 - Department of Education, Australian Government.](#)

Ongoing inaccessibility

A 2015 review of the Transport Standards noted that while progress had been made, many submissions noted ongoing shortcomings in areas such as in the physical accessibility of public transport and infrastructure, the quality of public transport information, and the engagement of public transport staff.⁵⁶

The UN Committee noted the “significant proportion of the existing built environment which is inaccessible, and the lack of mandated national access requirements for housing in the National Construction Code.”⁵⁷ They also remarked on the lack of comprehensive and effective measures to implement the full range of accessibility obligations under the UNCRPD and the lack of appropriate, affordable and accessible social housing.⁵⁸

The above issues suggest that there are areas which could be improved in both the DDA and the Standards under it, with ongoing areas of unevenness in accessibility outcomes.

Canada (federal)

Current legislative framework

Canada has accessibility legislation at the federal level in the Accessible Canada Act 2019 (the ACA). The ACA aims to identify and remove accessibility barriers on or before 1 January 2040, particularly in the areas of employment; the built environment; information and communication technologies; other communication; the procurement of goods; services and facilities; the design and delivery of programmes and services; transportation; and areas designated under regulations.⁵⁹

The ACA applies to the federal public sector, Crown corporations, all federally regulated organisations and some private organisations. Private organisations include banks, broadcasting organisations (like radio and TV stations), telecommunications organisations (like internet and phone companies), water transport of goods across borders, and land transport of passengers or goods across borders by road or rail.

The ACA does not apply to provincial and territorial governments, or to private organisations regulated by provinces and territories. For example, schools, universities, colleges; hospitals, medical clinics and long-term care homes; businesses like stores, restaurants and gyms; and the police forces (aside from the Royal Canadian Mounted Police) are not covered by the ACA.

The ACA establishes principles under which actions must be carried out, such as that all persons must be treated with dignity regardless of their disabilities. The ACA also created a departmental corporation - Accessibility Standards Canada - with a range of roles, including to develop and revise national

⁵⁶ Australian Department of Infrastructure and Transport, Review of the Disability Standards for Accessible Public Transport 2002 Final Report, July 2015, p. 10.

⁵⁷ Concluding observations on the combined second and third periodic reports of Australia, 15 October 2019, CRPD/C/AUS/CO/2-3, p. 5.

⁵⁸ Concluding observations on the combined second and third periodic reports of Australia, 15 October 2019, CRPD/C/AUS/CO/2-3, pp. 5, 10.

⁵⁹ See: [Accessible Canada Act \(justice.gc.ca\)](https://www.justice.gc.ca/accessible-canada-act).

accessibility standards and recommend whether they ought to be turned into regulations. Standards are voluntary until they are adopted into regulations. The departmental corporation also supports research into and shares public information on promoting accessibility.

Organisations covered by the ACA must:

- Consult with disabled persons.
- Publish accessibility plans on how they are finding, removing, and preventing barriers.
- Establish mechanisms to receive and respond to feedback on accessibility.
- Publish progress reports about how they are following their accessibility plans.

Complaints and enforcement

The ACA created an Accessibility Commissioner as part of the Accessibility Unit in the Canadian Human Rights Commission. The Accessibility Unit administers and enforces the ACA. The Unit monitors compliance and takes enforcement action if necessary. It has a range of tools, including inspections; production, compliance and inspection orders; notices of violation (with warnings or administrative monetary penalties); compliance agreements; and corrective action plans.⁶⁰ The Accessibility Commissioner reports to the Minister, conducts investigations, and has the authority to issue warnings and/or penalties (including fines) for failures to meet reporting requirements under the ACA.

People (or those acting on their behalf with consent) can file a complaint to the Accessibility Commissioner if they feel that an organisation has not met the requirements of the ACA regulations. The organisation must be covered by the ACA. Other federal agencies deal with accessibility complaints in certain areas, including the Federal Public Sector Labour Relations and Employment Board in addressing accessibility complaints from federal public servants and parliamentary employees, the Canadian Transportation Agency in dealing with complaints related to accessibility in the federal transportation network, and the Canadian Radio-television and Telecommunications Commission in dealing with complaints related to accessibility in broadcasting and telecommunications.⁶¹

There is a remedies process available by which individuals may file complaints with the Accessibility Commissioner. The Commissioner can then launch an investigation and order remedies. The Accessibility Commissioner has powers to both proactively ensure and verify compliance, as well as deal with complaints.

Strengths of the ACA approach

The ACA is framed in broad terms around accessibility which implies that it will benefit the general population. The principles of the Act also move towards the social model of disability and acknowledge the intersectionality of disability.

The ACA has the flexibility to allow the Government to identify domains which ought to be prioritised in future. It also allows for regular reviews of established standards. This approach avoids domains and standards being 'fixed' in accessibility legislation. For example, ongoing innovations and updates in

⁶⁰ See: [Compliance \(accessibilitychrc.ca\)](https://www.accessibilitychrc.ca/compliance).

⁶¹ See: [Complaints to other agencies \(accessibilitychrc.ca\)](https://www.accessibilitychrc.ca/complaints).

technology will affect accessibility standards in information and communication. As will be discussed, the more fixed and inflexible nature of standards in Ontario mean that they are ineffective in keeping up with rapid changes in technology.

The most recent review of the Accessibility for Ontarians with Disabilities Act 2005 (the AODA – discussed below) noted that the ACA has far more robust reporting requirements and enforcement mechanisms than the AODA, making it a more useful regulatory platform.⁶²

Drawbacks of the ACA approach

An annotated version of the ACA discusses some of its weaknesses.⁶³ For example, the definition of 'barrier' – a central feature of the Act – is broad and could be open to interpretation. The Act does not clearly define what barriers are and how they hinder full and equal participation. Such areas of ambiguity could create opportunities for litigation. Since the ACA says the Accessibility Commissioner 'may' conduct an investigation into a complaint, there could be opportunities for litigation regarding when the Commissioner is able, or ought to, decline to conduct an investigation. Litigation may also arise regarding whether actions taken by the Commissioner to conduct an investigation were necessary or reasonable in the circumstances.

There is also no mechanism within the ACA for enforcement agencies to ensure the sufficiency of the feedback processes on Accessibility Plans required by organisations. Poor feedback processes could affect the identification of barriers and plans for their removal.

An open letter from 34 Disabled People's Organisations (DPOs) raised several concerns.⁶⁴ These included wanting a shift from the use of 'may' to 'shall', imposing a duty on the Government to use the powers imparted by the Act. They also noted a lack of oversight in Accessibility Plans, and a lack of a requirement to implement those plans. The group felt that the Act wrongly splintered the enforcement powers and the power to make standards across numerous federal agencies, weakening implementation and enforcement. They also argued there were too many exemption powers, and a lack of independent oversight.

Ontario, Canada

Current legislative framework

Alongside federal legislation, Canadian provinces may also have their own legislation specific to their contexts. Ontario introduced the Accessibility for Ontarians with Disabilities Act 2005 (AODA) to develop, implement and enforce accessibility standards to achieve accessibility for Ontarians with disabilities on

⁶² Rich Donovan, Independent 4th Review of the Accessibility for Ontarians with Disabilities Act (AODA), Final Report, June 5 2023, p. 20.

⁶³ Laverne Jacobs, Martin Anderson, Rachel Rohr and Tom Perry, *The Annotated Accessible Canada Act*, University of Windsor, Faculty of Law, 2021, available: [The Law, Disability & Social Change Project | The Annotated Accessible Canada Act | CanLII](#).

⁶⁴ See: [In a powerful Open Letter sent to the Federal Government, An Extraordinary Lineup of Thirty-four Disability Organizations Unite to Press for Key Amendments to Bill C-81, the Proposed Accessible Canada Act – AODA Alliance](#).

or before 1 January 2025.⁶⁵ It also seeks to involve civil society, including disabled people, in the development of accessibility standards.

The AODA applies to all groups (in both the public and private sector and not-for-profits) with one or more employees. The AODA applies to over 400,000 organisations, with differing requirements depending on the number of employees an organisation has. The government is responsible for creating accessibility standards in consultation with disabled persons and industry representatives.

The AODA does not supersede, but is designed to complement, accessibility and accommodation requirements made under the Ontario Human Rights Code. The Ontario Human Rights Code prohibits actions that discriminate against people based on a protected ground, including disability, in protected social areas.⁶⁶

Standards

The AODA provides for the creation of accessibility standards in the form of regulations. It also includes timeframes and required review periods for standards. The AODA stipulates that standards shall:

- a) Set out measures, policies, practices or other requirements for the identification, removal, and prevention of barriers with respect to goods, services, facilities, accommodation, employment, buildings, structures, premises or other prescribed areas.
- b) Require the persons or organisations named or described in the standard to implement those measures, policies, practices or other requirements within the time periods specified.

Five standards have been created to date, in the following areas:

- **Customer Service** – requires the development, implementation, and maintenance of policies for serving disabled people that are consistent with various principles.
- **Information and Communication** – requires organisations to provide accessible formats and communication supports on request.
- **Employment** – supports accessibility throughout employment relationships.
- **Transportation** – includes requirements to prevent and remove barriers in conventional public passenger services and specialised transportation services for disabled persons.
- **Design of Public Spaces (Built Environment)** – applies to newly constructed or redeveloped public-use areas.

The above standards are part of the Integrated Accessibility Standards Regulation (IASR). The IASR includes general requirements, including:

- Providing training to staff and volunteers.
- Developing an accessibility policy.
- Creating a multi-year accessibility plan and updating it every five years.

⁶⁵ Available: [Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005, c. 11 \(ontario.ca\)](#).

⁶⁶ See: [The Ontario Human Rights Code | Ontario Human Rights Commission \(ohrc.on.ca\)](#). Protected social areas include: accommodation (housing); contracts; employment; goods, services and facilities; membership in unions, trade or professional associations.

- Considering accessibility in procurement and when designing or purchasing self-service kiosks.

Small organisations (of fewer than 20 people) are exempt from certain requirements, such as filing accessibility compliance reports. Other exemptions include the exclusion of product and product labels from the Information and Communications Standard and exemptions for organisations (except the provincial government) from website provisions on live captioning and pre-recorded audio descriptions, among others.

The AODA established an Accessibility Standards Advisory Council (ASAC) consisting of a majority of disabled persons. The Council advises the Minister on the process of developing accessibility standards, the progress of standards development committees⁶⁷, accessibility reports prepared under the Act, public information programmes related to the AODA and any other related matters.

Implementation and enforcement

The Accessibility Directorate of Ontario (ADO) acts as the enforcement agency of the AODA and supports and consults with ASAC. The ADO sits within the Ministry of Economic Development and Growth and is responsible for administering the AODA. It also educates the public about the purpose and goals of the AODA.

The Ontario Government releases an annual report on progress and future strategic directions. It also releases an annual accessibility compliance report.

There is a progressive enforcement regime which escalates from self-reporting, to inspections (including powers of entry and search warrants), orders, administrative penalties and appeals, before prosecutions and fines.

Organisations are required to ‘self-report’ in filing accessibility reports confirming their compliance with accessibility standards. Reviews of reports constitute the main mechanism for monitoring compliance with the Act. Accessibility reports are reviewed by directors of the AODA, who are appointed by Deputy Minister.⁶⁸

The ADO holds the initial burden of establishing a failure to comply with the Act. The burden then shifts to the person or organisation responding to demonstrate compliance or that they are subject to an exemption.

Maximum penalties for those convicted of an offence under the Act include \$100,000 (CAD) per day for corporations and organisations, and \$50,000 (CAD) per day for directors and officers of a corporation or organisation.⁶⁹ If an organisation is found to be in breach of the AODA, they are given time to implement measures to comply. If they repeatedly breach the Act, monetary penalties may be issued.

⁶⁷ AODA Standards development committees are responsible for creating and maintaining standards, see: [AODA Standards Development Committees](#).

⁶⁸ See: [Directors of the AODA](#).

⁶⁹ See: <https://accessibilitycanada.ca/legislation/aoda/#aoda-standards>.

Strengths of the AODA approach

The AODA undergoes regular reviews, with the two most recent reviews undertaken by disabled persons. The Lieutenant Governor in Council appoints a person to conduct the review. The person undertaking the review must consult with the public, particularly people with disabilities. The reviewer reports the finding and recommendations to the Minister.⁷⁰ As NZIER noted, having different requirements for small and large organisations shows an attempt to make the AODA and its standards proportionate, equitable and fair in the way it treats regulated parties.⁷¹ Standards Development Committees established under the Act are also required to include a range of individuals, including disabled people, representatives of industries and sectors, and classes of organisations to which standards would apply.

It has been difficult to find reports of the positives and strengths of the AODA. This does not necessarily suggest the AODA lacks strengths, merely that there is a lack of evidence. The most recent review highlighted that the Ontario Government is spending \$160 million on remediation of the Ontario Government buildings – a positive and necessary step.⁷² It notes however that this amount is unlikely to cover the full remediation needs of the province.

Drawbacks of the AODA approach

Observed over several review cycles, it is clear that the AODA is far from reaching its planned 2025 deadline for full accessibility. The most recent review of the AODA (June 2023) noted that there had been “minimal change in accessibility.”⁷³ The reviewer noted five key themes from consultation feedback on the AODA⁷⁴:

- **Outcomes are poor** - the functional needs of disabled people are not considered, and they continue to have worse experiences than non-disabled persons. Senior business and government leaders report that changing behaviours to incorporate disability is not a priority.
- **There is insufficient enforcement** - there is no meaningful enforcement of the AODA, and enforcement faces significant logistical constraints. The reviewer pointed out that the entire Compliance and Enforcement Branch of the AODA consists of around 25 staff, with the AODA pertaining to around 412,000 private sector organisations. Ontario lacks resources to properly enforce the AODA.
- **There is a lack of meaningful data** - a lack of data remained a barrier to improving the experiences of disabled people. The reviewer considered the lack of data “to be the biggest single missed opportunity over the 17 years of the AODA.”
- **Nobody owns outcomes and there is no accountability** - Stakeholders indicated there was a lack of accountability for the implementation of the AODA in both the public and private sectors.

⁷⁰ See: [Guide to the Act \(aoda.ca\)](https://aoda.ca).

⁷¹ NZIER, Disability legislation and outcomes, December 2017, p. 38.

⁷² Rich Donovan, Independent 4th Review of the Accessibility for Ontarians with Disabilities Act (AODA), Final Report, June 5 2023, p. 11.

⁷³ Rich Donovan, Independent 4th Review of the Accessibility for Ontarians with Disabilities Act (AODA), Final Report, June 5 2023, p. 3.

⁷⁴ Summary of Interim Report: the state of accessibility in Ontario, available: [2023 Legislative Review of the Accessibility for Ontarians with Disabilities Act, 2005 | ontario.ca](https://www.ontario.ca/government/2023-legislative-review-of-the-accessibility-for-ontarians-with-disabilities-act-2005).

The lack of accountability is compounded by a lack of public knowledge, making it difficult to hold organisations accountable.

- **Basic leadership does not exist** - Stakeholders observed a lack of urgency for getting accessibility right within the Ontario government, which was exacerbated by legislative and senior staff turnover.

A 2014 review attributed the poor implementation of the AODA at least in part to the required pace of standards development and reviews, resulting in implementation, training, and review fatigue.⁷⁵ The review noted the complexity of the AODA and lack of support for implementation as contributing to implementation shortcomings.

While the AODA provides for administering fines, between 2015 to 2017, just five fines were issued.⁷⁶ This raises questions regarding the effectiveness of this enforcement mechanism. Furthermore, data shows that more than half of businesses and non-profits do not file the required compliance reports despite those reports being the main mechanism for monitoring compliance.⁷⁷

The 2019 review of the AODA noted that confusion persists on the relationship between Ontario's Human Rights Code (the Code) and the AODA.⁷⁸ Organisations may be complying with standards under the AODA, but nonetheless fall short of the requirement under the Code to accommodate the needs of people with disabilities to the point of undue hardship.

The 2019 review also urged the prioritisation of practical-non-regulatory initiatives to improve accessibility that could be introduced before standards are developed and implemented.⁷⁹ The review noted that such measures could include initiatives such as best practice and education programmes.

Furthermore, as NZIER noted, the AODA's focus on compliance processes and deadlines with numerous detailed standards means that regulated parties remain unclear about what they need to do in a practical sense to improve accessibility.⁸⁰ They also noted that the extensive bureaucracy and significant compliance costs associated with the AODA mean it does not achieve its objectives in a least cost way. In addition, the AODA does not allow for flexibility and legal obligations are not easy to find and understand.

UN reporting also noted concern regarding barriers to accessibility, "in particular persisting barriers to access to transport, in particular in rural areas and to aircraft, and the lack of accessibility of information and communication for persons with psychosocial and/or intellectual disabilities."⁸¹

⁷⁵ Mayo Moran, Second Legislative Review of the Accessibility for Ontarians with Disabilities Act 2005, November 2014, p. 27.

⁷⁶ See: [Ontario's accessibility legislation is failing. Advocates say lack of enforcement, complaints process to blame | CBC News.](#)

⁷⁷ David C. Onley, Listening to Ontarians with Disabilities, Report of the Third Review of the Accessibility for Ontarians with Disabilities Act 2005, January 2019, p. 50.

⁷⁸ David C. Onley, Listening to Ontarians with Disabilities, Report of the Third Review of the Accessibility for Ontarians with Disabilities Act 2005, January 2019, pp. 16, 24-5.

⁷⁹ David C. Onley, Listening to Ontarians with Disabilities, Report of the Third Review of the Accessibility for Ontarians with Disabilities Act 2005, January 2019, p. 68.

⁸⁰ NZIER, Disability legislation and outcomes, December 2017, p. 38.

⁸¹ Concluding observations on the initial report of Canada, 8 May 2017, CRPD/C/CAN/CO/1, p. 5.

Overall, the highly prescriptive and inflexible nature of the AODA has not yielded its desired results. In the absence of a realistic means of achieving accessibility outcomes by the required deadlines, organisations appear instead to forgo compliance.

United Kingdom (UK)

Current legislative framework

Like New Zealand, the United Kingdom (UK) does not have disability or accessibility-specific legislation. It too takes a consolidated rights-based approach, protecting against discrimination through the Equality Act 2010. The Equality Act 2006 served as a precursor to the later Act and established the Commission for Equality and Human Rights.⁸² The Commission is able to issue a code of practice in connection with any matter addressed by the Equality Act 2010. The 2010 Act prohibits discrimination on a range of grounds, including disability, in domains such as employment; education; access to goods, services and facilities; and buying and renting land or property.⁸³ It seeks to bring discrimination law into alignment within a single Act, and to strengthen legal support for progressing equality. It applies to all organisations that provide a service to the public (or a section of the public), and anyone who sells goods or provides facilities.⁸⁴

The Equality Act defines disability discrimination as treating a person unfavourably because of something arising from that person's disability. The Act permits disability discrimination if it is a "proportionate means of achieving a legitimate aim."⁸⁵ There are particular exceptions included in areas such as employment.

The Act includes a positive duty to make reasonable adjustments for disabled persons. This duty applies to services and public functions,⁸⁶ premises,⁸⁷ work,⁸⁸ partnerships,⁸⁹ education⁹⁰ and supplementary areas.⁹¹ The duty contains three requirements (all with the stipulation of 'as reasonable' and as compared to non-disabled people):

- To take steps to avoid putting a disabled person at a substantial disadvantage in relation to relevant matters.
- To take steps to avoid substantial disadvantages to disabled persons arising from physical features. This includes removing the physical feature in question, altering it, or providing a reasonable means of avoiding it.

⁸² Available: [Equality Act 2006 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2006/106/section/1).

⁸³ Available: [Equality Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2010/15/section/1).

⁸⁴ 'Equality Act 2010: What do I need to know? A summary guide for public sector organisations', *Government Equalities Office*, p. 6.

⁸⁵ See: [Equality Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2010/15/section/15), section 15 (1)(b).

⁸⁶ See schedule 2 of Equality Act 2010: [Equality Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2010/15/schedule/2).

⁸⁷ See schedule 4 of Equality Act: [Equality Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2010/15/schedule/4).

⁸⁸ See schedule 8 of Equality Act 2010: [Equality Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2010/15/schedule/8).

⁸⁹ See schedule 13 of Equality Act 2010: [Equality Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2010/15/schedule/13).

⁹⁰ See schedule 15 of Equality Act 2010: [Equality Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2010/15/schedule/15).

⁹¹ See schedule 21 of Equality Act 2010: [Equality Act 2010 \(legislation.gov.uk\)](https://legislation.gov.uk/ukpga/2010/15/schedule/21).

- To take steps to provide auxiliary aids which, in their absence, would place disabled people at a substantial disadvantage.

It also stipulates that where the first and third requirements relate to the provision of information, reasonable steps must be taken to provide that information in accessible formats. Under the Act regulations may be made which prescribe and make provisions for matters relating to adjustments.

The Act also contains a ‘public sector equality duty’ - a positive duty requiring public authorities to have “due regard to” three aims when exercising their powers.⁹² These include, broadly: eliminating unlawful discrimination, harassment, victimisation and other prohibited conduct; advancing equality of opportunity; and fostering good relations between those who share a protected characteristic and those who do not.

Enforcement

The Equality Act is enforced by the independent Equality and Human Rights Commission (EHRC). The EHRC has a range of enforcement powers, including⁹³:

- **Investigations:** The EHRC can carry out investigations if it suspects an organisation has committed an unlawful act.
- **Public sector duty assessments and compliance notices:** the EHRC can assess the extent to or the manner in which a public authority has complied with the public sector equality duty outlined in the Act. It can also issue notices which require the entity to provide evidence and order compliance.
- **Ability to issue unlawful act notices:** If an investigation finds an unlawful act has occurred, the EHRC can issue a notice requiring the organisation to prepare a draft action plan. Action plans must set out how an organisation will remedy its continuing breach of the law and prevent future breaches. The EHRC may approve an action plan or not and make recommendations about its revised contents.
- **Agreements:** If the EHRC believes an organisation has breached the Equality Act, they may offer the opportunity to enter into an agreement whereby the organisation voluntarily undertakes to comply with the relevant legal provision. Their compliance will then be monitored.
- **Injunctions/interdicts:** if the EHRC believes an organisation is likely to commit an unlawful act or it does not comply with an agreement, they can order that they restrain from committing the unlawful act or require the organisation to comply.
- The EHRC also has litigation powers, including providing legal assistance for claims of discrimination made under the Act, bringing about legal proceedings relevant to its function, and intervening in legal proceedings brought by others.⁹⁴ It may also issue Codes of Practice which cover what the Act means in precise and technical terms to assist those interpreting and applying the law.

⁹² See section 149 of the Equality Act 2010, available: [Equality Act 2010 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/2010/10/section/149).

⁹³ See: [Our enforcement powers | EHRC \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/our-enforcement-powers).

⁹⁴ See: [Our litigation powers: taking cases to court | EHRC \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/our-litigation-powers-taking-cases-to-court).

If a person alleges discrimination under the Equality Act, the burden of proving their case begins with the person making the claim. If there are both sufficient facts and the absence of alternative explanations which point to a breach of the Act having occurred, the burden shifts to the respondent to prove that a breach did not occur.

Strengths of the EHRC enforcement powers

As NZIER noted, providing the EHRC with enforcement powers has the potential to produce predictable and consistent outcomes across time and place for those who are subject to the Act.⁹⁵ When compared to an individual faults-based complaints approach, providing the Commission with enforcement powers could offer a more systemic way of addressing disability accessibility. A systemic approach may provide more proportionate, fair, and equitable treatment of regulated parties.

A House of Lords Select Committee noted that some remarked on general changes in the social environment and access, for example in designated wheelchair spaces on trains that did not exist previously.⁹⁶

The Select Committee also found that specific duties introduced by the Scottish and Welsh Governments brought about benefits, in contrast to those introduced in England. The Equality Act enables the creation of regulations which impose further 'specific duties' on public authorities. The Scottish and Welsh specific duties require public authorities to: set equality objectives and review them at least every four years; collect relevant compliance information; involve and engage with people with protected characteristics (or those who represent them); consider whether to include award criteria⁹⁷ and conditions relating to equality when engaging in public procurement; and reporting and publishing information about compliance, including in accessible formats.⁹⁸ Some felt that the standards provided greater clarity in the work of public authorities and led to better consultation and engagement work. But the Salvation Army felt the difference in approach confusing and problematic in its inconsistency. However, the suggestion was made that the English specific duties be brought into line with those in Scotland and Wales.

Drawbacks of the Equality Act

The Equality Act has issues related to implementation and enforcement. A 2021 report examining the implementation of the Act noted parts of the Act, at that time over 10 years old, were still not in force.⁹⁹ The Committee responsible for the report criticised public sector organisations' application of the public sector equality duty.

⁹⁵ NZIER, Disability legislation and outcomes, December 2017, p. 48.

⁹⁶ The Equality Act 2010: the impact on disabled people, *House of Lords, Select Committee on the Equality Act 2010 and Disability, Report of Session 2015-16*, 24 March 2016, p. 82.

⁹⁷ Criteria used in procurement processes to determine which bidder is best placed to deliver on and ought to be awarded a contract.

⁹⁸ The Equality Act 2010: the impact on disabled people, *House of Lords, Select Committee on the Equality Act 2010 and Disability, Report of Session 2015-16*, 24 March 2016, p. 102.

⁹⁹ The Equality Act 2010: the impact on disabled people, Follow-up report, *House of Lords, Liaison Committee, 2nd Report of Session 2021-22*, 9 September 2021, p. 28.

The UN undertook an investigation into the UK's implementation of the UNCRPD following a complaint of serious violations of the Convention. The UN Committee found evidence of "grave or systemic violations" of the rights of disabled people.¹⁰⁰ The Committee indicated significant concerns at the implementation of UK anti-discrimination legislation.¹⁰¹ It also expressed concern at the "insufficient scope, content and number of obligatory and implemented accessible standards" relating to different areas of life.¹⁰²

NZIER noted research which found that "protection available to disabled people has been lowered by [the Equality Act]."¹⁰³ They wrote that people responding to claims of discrimination can successfully rely on the defence of pursuing 'legitimate aims', such as in minimising disruption in the workplace, over accommodating disabled employees. This is demonstrated in the relevant case law.

Similarly, the House of Lords Select Committee found that "combining disability with the other protected characteristics in one Act did not in practice benefit disabled people", with disabled people's rights being better protected under the previous legislation (the Disability Discrimination Act 1995).¹⁰⁴ The then Government disputed the Committee's findings.

The independent Disabled Persons Transport Advisory Committee noted too that many felt that the Equality Act 2010 had been a "backward step", with public transport showing "little effort going into making sure that accessibility features are consistently in place and working."¹⁰⁵

The UN Committee noted several areas of concern relating to poor outcomes for disabled people in the UK, including in accessibility. These include:

- A lack of support services and accessible public facilities, including assistance for disabled persons to live independently and be included in the community.
- The limited provision of accessible information from public services and authorities and insufficient standards for making websites accessible.
- Insufficient resourcing for the education and training of sign language interpreters and access to interpreters.
- The persistent employment and pay gaps for disabled people. Also, insufficient affirmative action measures and the provision of reasonable accommodations to redress such gaps.

¹⁰⁰ See: [A Fairer Scotland for Disabled People: progress report 2019 - gov.scot \(www.gov.scot\)](#).

¹⁰¹ Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, 3 October 2017, CRPD/C/GBR/CO/1.

¹⁰² Concluding observations on the initial report of the United Kingdom of Great Britain and Northern Ireland, 3 October 2017, CRPD/C/GBR/CO/1, p. 5.

¹⁰³ Chris Moses, 'How Equal is the Equality Act 2010? A critical assessment of the effects of harmonisation of discrimination law with regard to age and disability claims', *University of Leicester School of Law Research Paper No. 17-01*, 2017, p. 1.

¹⁰⁴ See: [The Equality Act 2010: Impact on disabled people - House of Lords Library \(parliament.uk\)](#) and *The Equality Act 2010: the impact on disabled people, House of Lords, Select Committee on the Equality Act 2010 and Disability, Report of Session 2015-16*, 24 March 2016, p. 23.

¹⁰⁵ *The Equality Act 2010: the impact on disabled people, House of Lords, Select Committee on the Equality Act 2010 and Disability, Report of Session 2015-16*, 24 March 2016, pp. 80-1.

- The severe impacts on disabled people resulting from austerity measures and reductions in social security. The UN finding of likely grave and systemic violations of the rights of disabled persons were largely in relation to welfare reforms.

Finally, as noted by NZIER, the Equality Act does not seek to achieve its objectives in a least-cost way. The legislation is inflexible with limited scope to evolve over time, is not well-aligned with existing regulatory requirements, is not compliant with international obligations, and it does not set out legal obligations in a way that is easy to find and understand.¹⁰⁶

United States of America (US)

Current legislative framework

The Americans with Disabilities Act 1990 (ADA) is a federal law that prohibits discrimination on the basis of disability.¹⁰⁷ Its overall purpose is to make American society more accessible to people with disabilities. The ADA is split into five sections¹⁰⁸:

- **Employment** – requires employers covered by the Act to provide reasonable accommodations for applicants and employees with disabilities and prohibits discrimination based on disability in all aspects of employment. These provisions apply to employers of fifteen employees or more.
- **Public Services** – prohibits public services (such as state and local government agencies) from denying services or participation in programmes or activities¹⁰⁹ to disabled people. Public transportation systems must also be accessible to disabled persons.
- **Public Accommodations** – requires that all new construction and modification of public accommodations (after 1992) must be accessible to individuals with disabilities. Barriers to services in existing facilities must be removed if readily achievable. Public accommodations include facilities such as restaurants, hotels, grocery stores, retail stores, privately owned transportation systems and so on. These provisions apply to all sizes of businesses regardless of the number of employees.
- **Telecommunications** – requires telecommunications companies to have a telephone relay service.
- **Miscellaneous provisions** – prohibits coercing, threatening and retaliating against disabled individuals or those attempting to aid them in asserting their rights under the ADA.

The ADA does not cover religious institutions except where they are employers.

An Access Board was created in 1973 as an independent federal agency that promotes equality for disabled persons.¹¹⁰ It provides technical assistance and training on design criteria and accessible design.

¹⁰⁶ NZIER, Disability legislation and outcomes, December 2017, p. 48.

¹⁰⁷ Available: [Americans with Disabilities Act of 1990, As Amended | ADA.gov](#).

¹⁰⁸ See: [The Americans with Disabilities Act: A Brief Overview \(askjan.org\)](#).

¹⁰⁹ Which are available to people without disabilities.

¹¹⁰ See: [About the U.S. Access Board \(access-board.gov\)](#).

Accessibility standards are issued under the ADA and are mostly in relation to the built environment. The standards are based on minimum guidelines set by the Access Board, constituting design and construction requirements issued under civil rights law. The Access Board is also responsible for providing technical assistance and training on the standards.

Complaints, enforcement and reporting

Many federal agencies are responsible for enforcing the ADA, such as the US Department of Justice in enforcing the Public Accommodations section, and the Federal Communications Commission in enforcing the Telecommunications section. More than one agency can be responsible for enforcing different parts of a single section.

The requirements of the ADA, including accessibility standards, are enforced through investigations or complaints filed with the relevant federal agency, or through litigation brought about by private individuals or the federal government.

The Access Board enforces accessibility standards that apply to federally funded facilities under the Architectural Barriers Act 1968. It does so through investigating complaints made under this Act. The Access Board also serves as a coordinating body among federal agencies and represents the public – particularly disabled persons.

Benefits of the ADA

One of the key benefits of the ADA has been a societal one, with gains in attitudes towards and understanding of disabled persons.¹¹¹ It has also increased awareness of disability etiquette.¹¹² One study noted that non-discrimination laws or policies can be a key element in reducing stigmatising attitudes as well as behaviours.¹¹³

Fifty-seven percent of respondents to a 2015 survey agreed that the greatest impact of the ADA has been improvements to public accommodations, particularly public transportation.¹¹⁴ For example, almost 100% of fixed-route buses operated by public transit agencies are now accessible – a marked improvement.¹¹⁵ Issues remain in the accessibility of trains and subways.

¹¹¹ Georgina Peacock, Lisa Iezzoni and Thomas R. Harkin, 'Health Care for Americans with Disabilities – 25 Years after the ADA', *National Library of Medicine*, 30 July 2015, available: [Health Care for Americans with Disabilities — 25 Years after the ADA - PMC \(nih.gov\)](https://pubmed.ncbi.nlm.nih.gov/25781111/).

¹¹² Lex Frieden, 'The Impact of the ADA in American Communities', *The University of Texas Health Science Center at Houston*, 23 July 2015, p. 6.

¹¹³ Felix Wu, Christine Nittrouer, Vinh Nguyen, Mikki Hebl, Frederick Oswald, Lex Frieden, 'Now protected or still stigmatised? A 25-year outlook on the impact of the Americans with Disabilities Act', 22 March 2021.

¹¹⁴ Lex Frieden, 'The Impact of the ADA in American Communities', *The University of Texas Health Science Center at Houston*, 23 July 2015, p. 5.

¹¹⁵ Marilyn Golden and the Disability Rights Education & Defence Fund, 'Accessible Transit Services for All', *Federal Transit Administration*, December 2014, p. 1.

While somewhat dated – being written in 2000 – the US Commission on Civil Rights noted that people with disabilities agree that life has improved since the passage of the ADA, prompting better access to buildings, transportation, and fuller inclusion in the community.¹¹⁶

Limitations of the ADA model

A 2015 report from a survey of disabled people noted that, while the ADA has improved their general quality of life, persistent difficulties in obtaining employment and continually increasing expenses have inhibited increases in the standard of living for disabled people.¹¹⁷ Respondents also reported limited impacts of the ADA on healthcare, housing, and recreational facilities.

There are also issues with taking an individualised, litigation-based approach to enforcing accessibility. Such an approach can lead to inconsistency in outcomes and favouring those who are able to pursue legal remedies. As one disabled American noted, the relatively weak and fragmented enforcement of accessibility standards means that lawsuits can often seem like the only effective option to achieving outcomes.¹¹⁸

A publication hosted by The University of Pennsylvania Law School noted: “The enforcement of the ADA’s accessibility mandates has been left to individual litigants...”¹¹⁹ Courts have also been left to wrestle with the meaning of key terms such as “reasonable accommodation.” Courts continue to make a range of rulings on different issues, reducing the consistency of the outcomes and enforcement of the ADA. Courts also often dismiss ADA claims because they find the plaintiff has an impairment that is not substantially limiting – they are “not disabled enough.”¹²⁰

Addressing accessibility barriers through lawsuits can also see settlements reached without the access issue being addressed. The primacy of lawsuits as a path for redress also raises questions about equity in who can afford – the time, effort and money – to pursue legal action. There is a broader question of who benefits the most from such legal action – disabled people, or lawyers. Empirical evidence suggests that ADA plaintiffs rarely succeed in litigated cases.¹²¹ It is suggested that one reason for this low success rate - and thus the inhibition of the effectiveness of the ADA - is the narrow interpretation of the definition of disability.¹²² There is also a general sense that the judiciary is often hostile towards the ADA.¹²³

¹¹⁶ US Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?*, available: [Chapter 2 \(usccr.gov\)](https://www.usccr.gov/Chapter2).

¹¹⁷ Lex Frieden, ‘The Impact of the ADA in American Communities’, *The University of Texas Health Science Center at Houston*, 23 July 2015, p. 7.

¹¹⁸ Andrew Pulrang, ‘31 Years Later, 31 Things About The Americans With Disabilities Act’, *Forbes*, 31 July 2021, available: [31 Years Later, 31 Things About The Americans With Disabilities Act \(forbes.com\)](https://www.forbes.com/31-years-later-31-things-about-the-americans-with-disabilities-act/).

¹¹⁹ Doron Dorfman and Thomas F. Burke, ‘Thirty Years Later, Still Fighting Over the ADA’, *The Regulatory Review*, available: [Thirty Years Later, Still Fighting Over the ADA | The Regulatory Review \(theregview.org\)](https://www.theregview.org/thirty-years-later-still-fighting-over-the-ada/).

¹²⁰ Stacy A. Hickox, ‘The Underwhelming Impact of the Americans with Disabilities Act Amendments Act’, *University of Baltimore Law Review*, vol. 40, iss. 3, Spring 2011, p. 426.

¹²¹ Stacy A. Hickox, ‘The Underwhelming Impact of the Americans with Disabilities Act Amendments Act’, *University of Baltimore Law Review*, vol. 40, iss. 3, Spring 2011, p. 424.

¹²² Michael Waterstone, ‘The Untold Story of the Rest of the Americans with Disabilities Act’, *Vanderbilt Law Review*, vol. 58, iss. 6, November 2005, p. 1815.

¹²³ Michael Waterstone, ‘The Untold Story of the Rest of the Americans with Disabilities Act’, *Vanderbilt Law Review*, vol. 58, iss. 6, November 2005, p. 1815.

There are significant differences between the American and New Zealand legal systems. New Zealand's legal framework, unlike the US, does not include a written constitution. Furthermore, unlike in the US, the New Zealand Supreme Court does not have the power to strike down legislation made by Parliament if it is inconsistent with human rights legislation/the constitution. Perhaps most importantly, New Zealand has a vastly different ethos to the American approach to legal action. Legal action in the form of lawsuits is much less commonplace in New Zealand than in the US, with damages also being more limited in scope than those typically awarded in the US.

Bangladesh

Current legislative framework

Bangladesh introduced disability-specific legislation in 2013 with the Rights and Protection of Persons with Disability Act.¹²⁴ The Act repealed an earlier piece of legislation with a welfare-based approach, with the 2013 Act shifting to a more rights-based approach.

The Act outlines the rights of disabled persons and mandates the creation of committees at both the regional and national levels to protect those rights.¹²⁵ It also outlines measures to be undertaken to protect the rights of disabled people. Some of these measures include:

- Pledging access for disabled people to the highest possible standard of healthcare.
- Mandating reserved seats for disabled persons in public transport and subsidising public transport for disabled people.
- Provisions which seek to provide individualised and appropriate services to disabled persons, taking into consideration their needs.

The Ministry of Social Welfare is responsible for coordinating and implementing the Act. There are also five committees at various administrative levels which aid in coordinating disability initiatives, providing advice, implementing decisions, and monitoring and overseeing various activities and programmes. These include¹²⁶:

- The National Coordination Committee chaired by the Minister of Social Welfare. This group is responsible for coordinating all governmental disability initiatives and advising on harmonising national laws with the UNCRPD.
- The National Executive Committee is led by the Secretary of the Ministry of Social Welfare. They are responsible for implementing the decisions adopted by the above committee.
- The District Committees, chaired by Deputy Commissioners, are responsible for implementing the initiatives of both the above Coordination and Executive committees and coordinating and monitoring the activities of the Upazilla (sub-district) and Town Committees described below.

¹²⁴ Available (in Bengali): [BGD95795 Ban.pdf \(ilo.org\)](#).

¹²⁵ Reshma Nuri, Heather Aldersey, Setareh Ghahari, Ahmed Huque and Jahan Shabnam, 'The Bangladeshi Rights and Protection of Persons with Disability Act of 2013: A Policy Analysis', *Journal of Disability Policy Studies*, vol. 33, iss. 3, 2022, p. 180.

¹²⁶ Reshma Nuri, Heather Aldersey, Setareh Ghahari, Ahmed Huque and Jahan Shabnam, 'The Bangladeshi Rights and Protection of Persons with Disability Act of 2013: A Policy Analysis', *Journal of Disability Policy Studies*, vol. 33, iss. 3, 2022, p. 180.

- The Upazilla Committees are responsible for implementing and monitoring government disability programmes throughout the Upazilla.
- The Town Committees are responsible for overseeing government disability-related programmes in their respective areas.

Strengths of the Act

The introduction of the Act was welcomed by the UN Committee as a legislative and policy measure to promote the rights of disabled persons.¹²⁷

Researchers have also noted that the Act, for the most part, is congruent with some key concepts in disability policy, such as providing individualised and appropriate services, integration, professional and system capacity-building, antidiscrimination and accountability.¹²⁸ The Act has many provisions which seek to provide individualised and appropriate services that cater to different needs and capacities, such as mandating access to inclusive and special education for disabled children. The Act also emphasises the right to accessibility for disabled people on an equal basis with others in both the built environment and services. The Act outlines different actions to develop capacities in the establishment of new rehabilitation institutions, the modification of existing institutions and developing disability training in the health sector workforce. It also sets out steps to establish awareness programmes and campaigns to disseminate information relating to the capacity and contributions of disabled persons. Finally, the Act offers avenues for accountability in outlining complaint processes for instances of discrimination.

There are some gaps in the current legislation

Research shows a gap between the intent of the Act and its implementation. One article noted that “changes are required in the real world to translate the policy from aspiration to action.”¹²⁹ While the Act emphasises the importance of an accessible public built environment, evidence suggests that roads, schools and public transportation are “mostly inaccessible.”¹³⁰

Changes suggested include introducing both a robust accountability mechanism and budgetary allocation to support more accessible public environments. Other suggestions include establishing an independent monitoring agency to monitor implementation of the Act, collecting disability disaggregated data, and greater commitment and collaboration across relevant agencies.

The UN Committee also noted several areas of concern in their 2022 report of concluding observations on Bangladesh.¹³¹ They noted concern that the Act does not provide adequate protection for disabled

¹²⁷ Concluding observations on the initial report of Bangladesh, 11 October 2022, CRPD/C/BDG/CO/1, p. 1.

¹²⁸ Reshma Nuri, Heather Aldersey, Setareh Ghahari, Ahmed Huque and Jahan Shabnam, 'The Bangladeshi Rights and Protection of Persons with Disability Act of 2013: A Policy Analysis', *Journal of Disability Policy Studies*, vol. 33, iss. 3, 2022, p. 181.

¹²⁹ Reshma Nuri, Heather Aldersey, Setareh Ghahari, Ahmed Huque and Jahan Shabnam, 'The Bangladeshi Rights and Protection of Persons with Disability Act of 2013: A Policy Analysis', *Journal of Disability Policy Studies*, vol. 33, iss. 3, 2022, p. 183.

¹³⁰ Reshma Nuri, Heather Aldersey, Setareh Ghahari, Ahmed Huque and Jahan Shabnam, 'The Bangladeshi Rights and Protection of Persons with Disability Act of 2013: A Policy Analysis', *Journal of Disability Policy Studies*, vol. 33, iss. 3, 2022, p. 183.

¹³¹ Concluding observations on the initial report of Bangladesh, 11 October 2022, CRPD/C/BDG/CO/1.

persons, and there is a lack of explicit prohibition of discrimination on the basis of disability. The Committee also noted areas of concern relating to accessibility. These include:

- A lack of a specific implementation strategy to further accessibility guidelines on different areas of life.
- The lack of inclusion of representative organisations of disabled people in the design, implementation and monitoring of accessibility standards in relation to different areas.
- The lack of financial resources, accessible physical infrastructure, and adequate support services to promote independent living and enable disabled persons to choose where and with whom they live.
- The absence of information in accessible formats, particularly in rural and remote areas.
- A lack of accessibility in hospitals, health centres, education settings, polling centres, and cultural and recreational centres and activities.
- Discrimination in employment and the high proportion of disabled persons living in extreme poverty.

There are limits of the applicability of a legislative framework from Bangladesh in New Zealand due to both countries having different political, social, and economic contexts.

Brazil

Current legislative framework

Brazil introduced the Law for the Inclusion of Persons with Disabilities (also called the Statute for People with Disabilities) in 2015.¹³² It aims to ensure and promote the exercise of fundamental rights and freedoms by disabled people, with a view to supporting legislation which takes a human rights approach and aims to bring domestic legislation in line with the UNCPRD. It contains many different rights, such as the right to education (which stipulates the right to an inclusive educational system). It also includes rights to accessibility, such as:

- The right to live independently and exercise rights of citizenship and social participation.
- Defining which areas are subject to compliance.
- Defining areas which must comply with the principles of universal design.
- The construction of or changes to public (or private buildings for collective use) must be carried out in such a way that they are accessible.
- Existing buildings must be accessible to disabled people.
- Regulations on the precepts of accessibility of the design and construction of buildings for private multifamily use.
- Interventions on roads and public spaces must guarantee the free movement and accessibility of people.
- Basic premises which must be met for the creation, implementation, and maintenance of accessibility actions.

¹³² Available (in Portuguese): [L13146\(planalto.gov.br\)](https://www.planalto.gov.br/l13146).

- Bills, receipts of bills, and tax collection must be in an accessible format.

The legislation also contains various rights on access to information and communication, such as mandatory accessible websites and broadcasting. Other various measures include¹³³:

- Establishing a penalty of one to three years in prison for people who discriminate against disabled persons.
- Prescribing priority care in public agencies for disabled persons, for example in the provision of accessible communication resources.
- Creating an allowance to be paid to some disabled people who enter the labour market.
- Creating an inclusion database for collecting, processing, organising and disseminating geo-referenced information to enable the identification and characterisation of disabled persons and the barriers that prevent the enforcement of their rights.

The National Human Rights Ombudsman in the Department of the Ministry of Women, Family and Human Rights receives, examines, and forwards complaints under the legislation. It can also act to resolve social tensions and conflicts that involve human rights violations, and works in conjunction with public bodies and civil society organisations.

The legislation also includes quotas, such as 3% of public or publicly subsidised housing being made available for disabled persons, and 10% of taxis being accessible.

Brazil also has a Human Rights helpline to receive concerns and complaints from the public regarding places that are not accessible, internet crimes, and infringements related to other vulnerable populations.¹³⁴ This service is maintained by the Ministry of Human Rights and Citizenship which receives, analyses and forwards complaints to protection and accountability agencies.¹³⁵

Decree no. 5296 (the National Accessibility Law)

In addition to the above legislation, Brazil passed Decree no. 5296 in 2004.¹³⁶ Considered the National Accessibility Law, the Decree includes chapters which cover specific sectors, such as the Accessibility of Architectural and Urban Implementation, and the Accessibility of the Public Transport Services. The Decree was introduced to regulate and refine existing laws. It contains a number of provisions, including:

- That public bodies and financial institutions should give priority care to disabled persons or persons with reduced mobility.
- General conditions which must be considered for accessibility purposes.
- Specifications for architectural and urban accessibility (including universal design). This includes accessibility in social housing.
- Various stipulations in the accessibility of public transport services.
- Provisions on technical aids (including guide dogs).

¹³³ See: [Brazil: Senate Passes New Law Regulating Inclusion of Persons with Disabilities | Library of Congress \(loc.gov\)](#).

¹³⁴ See: [Unicef - Proteja Brasil](#).

¹³⁵ See (in Portuguese): [Reporting human rights violations \(www.gov.br\)](#).

¹³⁶ Available (in Portuguese): [D5296 \(planalto.gov.br\)](#).

- Actions which must be made under the National Accessibility Program, including such things as the monitoring and improvement of accessibility legislation, and disseminating public information on accessibility.

The National Council for Disabled Persons (CONDAE) monitors compliance with the Decree. CONDAE is composed of members drawn from both government and civil society. It has an advisory capacity under the National Secretariat for the Rights of Persons with Disabilities. It discusses guidelines on the rights of disabled people in light of the UNCRPD.

Strengths of the Brazilian regulatory model

The UN Committee concluding observations praised the appointment of a permanent commission on the rights of disabled persons in 2015, and the adoption of a national plan for the rights of disabled persons. It also noted the establishment of councils on the rights of persons with disabilities at both municipal and state levels. It praised measures to improve accessibility such as a campaign to facilitate access to assistive technology, and the establishment of the Ministerial Committee of Technical Aid.

The Committee also praised legal provisions to implement accessibility to government websites, radio and television, and the provision of cash benefits to disabled persons by the social security system.

Drawbacks of the Brazilian regulatory model

The UN Committee on the Rights of Persons with Disabilities noted several areas of concern in their concluding observations made in September 2015.¹³⁷ Despite having specific accessibility legislation, the UN observed remaining issues with implementation:

- The built environment, transportation infrastructure and information and communications services open to the public not being fully accessible to disabled persons, especially in remote and rural areas of Brazil.
- The inaccessibility of judicial facilities and procedural accommodations.
- Reports of the arbitrary deprivation of liberty and involuntary treatment of disabled persons on the basis of impairment, including situations where it is assumed that disabled persons are dangerous to themselves or others on the basis of a diagnosis of impairment.
- The situation of disabled persons deprived of their liberty in prisons and other places of detention, which are severely overcrowded and where mental and psychological ill-treatment of inmates becomes a norm.
- A lack of access to support services and allowances, especially personal assistance services, aimed at enabling disabled persons to live independently and be included in the community.
- The lack of a comprehensive strategy to replace institutionalisation with community-based living for disabled persons.

¹³⁷ United Nations Committee on the Rights of Persons with Disabilities, 'Concluding observations on the initial report of Brazil', CRPD/C/BRA/CO/1.

- Information intended for the general public, including official pronouncements and political campaigns, not being fully available in accessible formats (such as Braille, sign language and easy-read).
- Disabled children being refused admission to schools or being charged extra fees. Also, a lack of reasonable accommodation and accessible school environments in the mainstream education system.
- Mainstream health services not being accessible to disabled persons.
- Discrimination against disabled persons, particularly women, in employment. Also, low levels of compliance with the quota system applying to private businesses with 100 or more employees.
- The inaccessibility of polling places to disabled persons, and voting information not being provided in accessible formats.
- Tourist areas and facilities not being accessible to disabled persons.

While it has disability-specific legislation, Brazil faces accusations of human rights abuses against disabled persons. A 2018 report by the Human Rights Watch found that many who entered institutions as children remained there for life – violating Brazilian law which stipulates a legal limit for stays of 18 months.¹³⁸ Furthermore, there are breaches of international law since many adults are placed in institutions by guardians without their consent and lack the right to contest their institutionalisation. Most such institutions do not provide for basic needs such as food, hygiene and contact with the community and feature various other inhumane conditions.

There is a link between institutions and accessibility. The report noted that in Brazil, institutions are often the only long-term housing options for many disabled persons. There are insufficient alternative independent living arrangements and community-based support services to ensure disabled adults can live on their own in the community with support as necessary. Institution managers, disability rights advocates and parents told the Human Rights Watch that for some families of disabled children, there is a lack of sufficient government support and accessible services for parents to raise their children at home. This influenced decisions to place children in institutions.

Again, it is important to note that there are limits to the applicability of a legislative framework from Brazil in New Zealand due to the different political, social and economic contexts.

Outcomes across jurisdictions

The bullet points below summarise outcomes for disabled people across comparable jurisdictions. For reasons outlined above in the sections relating to Bangladesh and Brazil, we have not included these jurisdictions in this summary.

While statistics consistently show poorer outcomes for disabled people compared to non-disabled people in each of these jurisdictions, there do not appear to be very different outcomes across

¹³⁸ 'They Stay until They Die', *Human Rights Watch*, 23 May 2018, available: ["They Stay until They Die": A Lifetime of Isolation and Neglect in Institutions for People with Disabilities in Brazil | HRW](#).

comparable jurisdictions. One exception is that the income gap between disabled and non-disabled people in the US is greater than in the other countries considered.

When reviewing the outcomes below, it is important not to infer a direct causal link between individual pieces of legislation and statistical outcomes for disabled people. There are a range of factors which affect outcomes – one of which is legislation – but there are also economic factors, social attitudes, and discrimination among many others. It is also important to highlight that while sharing some similarities, there are key differences in legal and regulatory system, socio-economic and constitutional contexts between countries. These differences not only influence outcomes, but also the feasibility of importing legislation from other countries.

	New Zealand	Australia	Canada	United Kingdom	United States
Employment	The unemployment rate for disabled people aged 15-64 is 10.7% compared to 3.5% for non-disabled people in the same age group. ¹³⁹ (June 2023)	The unemployment rate among working-aged people is 10% for disabled people compared to 4.6% for non-disabled people. ¹⁴⁰ (2018)	The unemployment rate for disabled people aged 16-64 is 6.9% compared to 3.8% for non-disabled people in the same age group. ¹⁴¹ (2022)	The unemployment rate for disabled people is 5.6% compared to 3.6% for non-disabled people. ¹⁴² (2023)	The unemployment rate for disabled people is 7.2% compared to 3.5% for non-disabled people. ¹⁴³ (2023)
Employment difference (ratio)	Disabled people are 3 times more likely to be unemployed as people without disabilities	2.2	1.8	1.6	2.1
Income	Disabled people aged 15-64 have, on average, a weekly income from wages and salaries of \$1055 (NZD) , compared to \$1280 (NZD) for non-disabled people in the same age group. ¹⁴⁴	Disabled people have an average weekly income of \$813 (AUD) compared to \$1036 (AUD) for non-disabled people. ¹⁴⁵ (Disabled income is 78.4% of non-disabled income). (2020)	The median weekly income for disabled people is \$632 (CAD) compared to \$759 (CAD) for non-disabled people. ¹⁴⁶ (Disabled income is 83% of non-disabled income). (2022)	The pay gap between disabled and non-disabled workers is 13.8% , with disabled workers earning a median of £12.10 (GBP) per hour compared to £14.03 (GBP) for non-disabled workers. ¹⁴⁷	The median weekly income for disabled people is \$594 (USD) compared to \$844 (USD) for non-disabled people. ¹⁴⁸ (Disabled income is 70.3% of non-disabled income). (2022)

¹³⁹ See: [Labour market statistics \(disability\): June 2023 quarter | Stats NZ](#).

¹⁴⁰ See: [People with disability in Australia, Unemployment - Australian Institute of Health and Welfare \(aihw.gov.au\)](#).

¹⁴¹ See: [The Daily — Labour market characteristics of persons with and without disabilities in 2022: Results from the Labour Force Survey \(statcan.gc.ca\)](#).

¹⁴² See: [Disabled people in employment - House of Commons Library \(parliament.uk\)](#).

¹⁴³ See: [Persons with a Disability: Labor Force Characteristics Summary - 2023 A01 Results \(bls.gov\)](#).

¹⁴⁴ See: [Labour market statistics \(disability\): June 2023 quarter | Stats NZ](#).

¹⁴⁵ See: [The costs of disability in Australia: a hybrid panel-data examination | Health Economics Review | Full Text \(biomedcentral.com\)](#).

¹⁴⁶ See: [The Daily — Canadian Survey on Disability, 2017 to 2022 \(statcan.gc.ca\)](#).

¹⁴⁷ See: [Disability pay gaps in the UK - Office for National Statistics \(ons.gov.uk\)](#).

¹⁴⁸ See: [S1811: Selected Economic ... - Census Bureau Table](#).

	(Disabled income is 80.4% of non-disabled income). (2023)			(Disabled <i>employed</i> income is therefore 86.2% of non-disabled employed income). (2021)	
Income difference (ratio)	For every dollar of received by a person without a disability, 0.8 is received by a person with a disability	0.78	0.83	0.86	0.70
Education	School attendance rates among 12–19-year-olds was 82% for disabled youth and 86% for non-disabled youth. ¹⁴⁹ (2019/20) 7% of disabled people have a <i>post-graduate</i> qualification compared to 21% of non-disabled people. ¹⁵⁰ (2021)	21% of people aged 14-64 who acquired disability before age 15 left school before age 16, compared to 8.9% without disability. ¹⁵¹ (2019) 17% of disabled people have a bachelor's degree or higher compared to 35% of non-disabled people. ¹⁵² (2019)	20% of disabled persons had less than a high school diploma, compared to 11% of non-disabled persons. ¹⁵³ (2012) 14% of disabled people had a university certificate, degree or diploma at Bachelor's level or higher, compared to 27% of non-disabled people. ¹⁵⁴ (2012)	16.1% of disabled people have no formal qualifications compared to 6% of non-disabled people. 21.8% of disabled people have a degree of any kind compared with 38% of non-disabled people. ¹⁵⁵ (2019)	17% of disabled people leave high school before graduating compared to 8.8% of non-disabled people. 21% of disabled people have a bachelor's degree or higher compared to 39.1% of non-disabled people. ¹⁵⁶ (2022)
Education difference (ratio)	Disabled people are 3 times less likely to have a postgrad qualification	2.1	1.9	1.7	1.9
Disability discrimination	In the past 12 months, 40% of disabled people report experiencing discrimination	In a year, 22% of disabled people aged 15-64 experienced discrimination compared with 15% of	At work, 16.1% of disabled workers faced discrimination or unfair treatment	9% of disabled people agree or strongly agree that disabled people	

¹⁴⁹ See: Youth 2000 surveys, 2019/20, available in [Data on education - Office for Disability Issues \(odi.govt.nz\)](#).

¹⁵⁰ See: Household Labour force Survey, 2016-2021, available in [Data on education - Office for Disability Issues \(odi.govt.nz\)](#).

¹⁵¹ See: [People with disability in Australia, Educational attainment - Australian Institute of Health and Welfare \(aihw.gov.au\)](#).

¹⁵² See: [People with disability in Australia, Educational attainment - Australian Institute of Health and Welfare \(aihw.gov.au\)](#)

¹⁵³ See: [A profile of persons with disabilities among Canadians aged 15 years or older, 2012 \(statcan.gc.ca\)](#). Note this information is from 2012 and is therefore somewhat dated.

¹⁵⁴ See: [A profile of persons with disabilities among Canadians aged 15 years or older, 2012 \(statcan.gc.ca\)](#). Note this information is from 2012 and is therefore somewhat dated.

¹⁵⁵ See: [Disability and education, UK - Office for National Statistics \(ons.gov.uk\)](#).

¹⁵⁶ See: [S1811: Selected Economic ... - Census Bureau Table](#).

	<p>compared to 19% of non-disabled people.¹⁵⁷ (December 2020)</p>	<p>non-disabled people.¹⁵⁸ (2019)</p> <p>42% of complaints to the AHRC¹⁵⁹ are about disability discrimination – the highest of all forms of discrimination.¹⁶⁰ (2019)</p>	<p>compared with 6.9% of non-disabled workers.¹⁶¹ (2016)</p>	<p>are generally treated fairly.¹⁶² (2021)</p>	
Accessibility	<p>58% of disabled people reported it being easy or very easy to use public transport, compared to 68% of non-disabled people.¹⁶³ (2018)</p> <p>From a survey on accessibility run by Be Lab :</p> <ul style="list-style-type: none"> • 13% of respondents reported having accessible employment opportunities. • 52% reported they are unable to participate in all the activities and events of public life they'd like to due to inaccessibility.¹⁶⁴ (2020) 	<p>From a survey of disabled people aged 15-64 living in households:</p> <ul style="list-style-type: none"> • 30% of those who had challenges with mobility or communication had difficulty accessing buildings or facilities. • 16% of those who leave home had difficulty using public transport, with 11% being unable to use public transport at all.¹⁶⁵ (2018) 	<p>6 in 10 disabled persons experienced barriers accessing indoor and outdoor public spaces.¹⁶⁶ Among disabled Canadians 15 and older who considered themselves housebound, 17.8% said it was due to the unavailability of specialised transportation.¹⁶⁷ (2017)</p>	<p>31% of disabled people reported having difficulty using public spaces 'all the time' or 'often'. 28% had difficulty accessing public buildings 'all the time' or 'often'.¹⁶⁸ (2021)</p>	

¹⁵⁷ See: [Disabled people still faring worse than non-disabled people | Stats NZ.](#)

¹⁵⁸ See: [Disability statistics - Australian Disability Network.](#)

¹⁵⁹ Australian Human Rights Commission.

¹⁶⁰ See: [People with disability in Australia 2019: in brief, How many experience discrimination? - Australian Institute of Health and Welfare \(aihw.gov.au\).](#)

¹⁶¹ See: [Discrimination at work, 2016 \(statcan.gc.ca\).](#)

¹⁶² See: [UK Disability Survey research report, June 2021 - GOV.UK \(www.gov.uk\).](#)

¹⁶³ See: [The General Social Survey 2018, available in Outcome 5 - Accessibility - Office for Disability Issues \(odi.govt.nz\).](#)

¹⁶⁴ See: [Access 2020 Report: Accessibility in New Zealand today \(belab.co.nz\).](#)

¹⁶⁵ See: [Disability statistics - Australian Disability Network.](#)

¹⁶⁶ See: [The Daily — Canadian Survey on Disability, 2017 to 2022 \(statcan.gc.ca\).](#)

¹⁶⁷ See: [Accessibility Findings from the Canadian Survey on Disability, 2017 \(statcan.gc.ca\).](#)

¹⁶⁸ See: [UK Disability Survey research report, June 2021 - GOV.UK \(www.gov.uk\).](#)

Lessons for New Zealand

There are several lessons New Zealand can draw from the approaches taken by other jurisdictions to accessibility legislation. This section discusses the mechanisms that we can see have or have not worked in other jurisdictions. The following analysis has been undertaken in consideration of the NZ government expectations for good regulatory practice.¹⁶⁹

Implementation

The experience of other jurisdictions consistently demonstrates that introducing legislation and standards without corresponding plans and measures to ensure their implementation leads to a gap between what is prescribed in law and what occurs on the ground. There are also pervasive issues in enforcement across the jurisdictions examined. NZIER noted that Ontario and the UK appear to have ‘overreached’ in their legislation to the point that there is an “implementation credibility gap.”¹⁷⁰

Issues arise when prescriptive standards are introduced in the absence of sufficient resourcing to implement and enforce those standards. For example, if New Zealand introduced a cross-cutting standard today to make all public broadcasts or information available in alternate formats, including NZSL, implementation issues would arise. NZSL interpreters are in high demand, with a particular shortage of qualified interpreters outside of main centres.¹⁷¹ If standards were introduced now, individuals and organisations could not be reasonably expected to comply with them given current workforce shortages in this space.

That is not to say that standards cannot ever be introduced. Enabling legislation does not prohibit standards being introduced later. Consideration should also be given to additional, potentially non-legislative measures, to support accessibility. For example, in our NZSL interpreter scenario, measures could be taken to address some of the issues identified by the NZSL Board, such as the limited pathways to becoming an NZSL interpreter and the difficulties of earning a living from fulltime interpreting work.¹⁷²

The author of the most recent review of the AODA chose to move away from the approach taken in the past of focussing on creating or expanding accessibility standards, and complying with and enforcing those standards.¹⁷³ Among the reasons for this approach, he noted that disabled persons “do not demand standards or definitions, they demand positive experiences similar to that of the rest of the population.”¹⁷⁴ Other countries demonstrate that pinning all hope for improved accessibility on a single solution – such as legal standards – almost inevitably does not lead to the desired outcomes.

¹⁶⁹ Available: [Government Expectations for Good Regulatory Practice \(treasury.govt.nz\)](https://www.treasury.govt.nz/government/expectations-for-good-regulatory-practice).

¹⁷⁰ NZIER, Disability legislation and outcomes, December 2017, p. 71.

¹⁷¹ Laura James, ‘Very frustrating – Sign language interpreters in short supply outside NZ’s main centres’, *1 News*, 12 May 2021, available: [‘Very frustrating’ — Sign language interpreters in short supply outside NZ’s main centres \(1news.co.nz\)](https://www.1news.co.nz/very-frustrating-sign-language-interpreters-in-short-supply-outside-nz-s-main-centres/).

¹⁷² See: [Interpreter Standards for New Zealand Sign Language \(NZSL\) Interpreters - Office for Disability Issues \(odi.govt.nz\)](https://www.odl.govt.nz/interpreters).

¹⁷³ Rich Donovan, Independent 4th Review of the Accessibility for Ontarians with Disabilities Act (AODA), Final Report, June 5 2023, p. 8.

¹⁷⁴ Rich Donovan, Independent 4th Review of the Accessibility for Ontarians with Disabilities Act (AODA), Final Report, June 5 2023, p. 8.

As will be discussed in the next section, countries such as Australia demonstrate that greater flexibility can allow for better implementation of accessibility legislation and standards. Some advancements in Australia and the US suggest that greater prescriptiveness in certain areas – such as transport – can result in improvements. Furthermore, as demonstrated in Australia, offering a range of solutions can result in better implementation. For example, the high uptake of voluntary action plans suggests that legislation can play a role in setting public expectations and priorities, and in promoting positive role models.

Creating fair policies for tāngata whaikaha Māori

Legislation in jurisdictions with significant populations of Indigenous people (Australia, Canada including Ontario, and the US) does not refer to nor include provisions specifically relating to Indigenous disabled peoples. One exception is that the Accessible Canada Act recognises Indigenous sign languages.

In a submission responding to the development of an education accessibility standard in Ontario, one group noted that the narrow medical view of accessibility within the Accessibility for Ontarians with Disabilities Act 2005 “fails to connect the high prevalence of disabilities within Indigenous communities to the unique historical, socio-economic, and cultural barriers that underpin and exacerbate the disabilities of many urban Indigenous community members.”¹⁷⁵

A 2003 submission from the Aboriginal and Torres Strait Islander Commission (ATSIC) under the Disability Discrimination Act (DDA) inquiry in Australia proposed that the DDA should include the specific aim of ensuring that Indigenous people with disabilities are fully able to exercise their rights.¹⁷⁶ They also recommended that the DDA should stipulate that those exercising functions under the Act, such as the Minister and service providers, should do all things necessary to protect the rights of Indigenous people with disabilities. ATSIC also called for a requirement to publicly consult on the creation of disability standards, and that Indigenous people could play a role in monitoring the impact of disability standards. The group also noted the lack of provisions for complaint procedures to reflect the needs of Indigenous people with disabilities. These recommendations have not been incorporated and to date, the DDA makes no specific references to Aboriginal or Torres Strait Islander peoples.

New Zealand has a unique constitutional context and the Crown has obligations under Te Tiriti o Waitangi to support equitable outcomes for Māori, including tāngata whaikaha Māori (disabled Māori) and to ensure that Māori are able to exercise tino rangatiratanga over their resources and culture. Many tāngata whaikaha Māori identify first as Māori and then as disabled, and as discussed earlier, tāngata whaikaha Māori face additional barriers in the intersection of disability discrimination and systemic racism. It would therefore be inappropriate for accessibility legislation not to take into account such factors.

Given our context, any legislation or other levers introduced in New Zealand ought to avoid similar omissions to Australia and Canada and make specific reference to the perspectives and needs of tāngata whaikaha Māori and whānau.

¹⁷⁵ Ontario Federation of Indigenous Friendship Centres, 'Response to the Development of an Accessibility Standard for Education, July 2017, pp. 2-3.

¹⁷⁶ Aboriginal and Torres Strait Islander Commission (ATSIC), Submission to the Productivity Commission on the Disability Discrimination Act Inquiry, April 2003.

Flexibility

Other countries demonstrate that a flexible approach to legislation leads to better outcomes. NZIER praised the more flexible approach in Australia of allowing for more prescriptive – e.g. transport – or more outcomes-based – e.g. education – standards depending on the particular area being regulated.¹⁷⁷ They also note that its more participatory and progressive approach to developing, implementing and reviewing standards could provide an approach that is applicable in New Zealand. The USA too demonstrates that introducing standards in areas such as public transport can lead to better outcomes.

Both Ontario and the UK demonstrate that frameworks that are inflexible do not provide scope to evolve in response to changing circumstances or performance monitoring. This does not easily allow for the development or adoption of efficient and innovative practices.

Achieving flexibility in the UK Equality Act requires either not commencing with provisions or amending the Act. The first proposal goes against the intent of the legislation, and the second is time and resource intensive.

In Ontario, the imposed deadline for achieving accessibility means that standards have been developed and implemented at pace. This fast pace undermines the ability to adapt the standards in light of changing circumstances or evaluations of how well they are performing. A defined deadline also risks the intended outcomes not being achieved within the legislated timeframe – as is projected to occur in Ontario. Not only does this contravene the statutory deadline, but it also risks people losing faith in the system. More broadly, it could create doubt about the feasibility of improving accessibility.

On the other hand, the progressive approach to standards taken in Australia offers greater flexibility. It allows for the content of standards to vary depending on the area of life that is being addressed. It also allows organisations to develop different ways of meeting standards, provided that the desired outcomes are achieved. The high uptake of voluntary action plans by organisations also supports the incentive provided by public recognition of diversity efforts and helps to set the expectation that companies take action. This further supports the notion that a range of tools in the toolbox can help in addressing accessibility.

Compliance

Ontario and Canada (federal) take a different approach to others in having created compliance and enforcement bodies with various powers including launching investigations, ordering compliance, and issuing penalties. However, these appear not to have translated into action with regulated parties remaining unclear on what they need to do and achieve in a practical sense. This suggests that any standards and regulations introduced must be set out in a way that makes it easy for regulated parties to understand their roles, rights and responsibilities. It also suggests that the introduction of standards, or legislation in general, should be accompanied by comprehensive educative and awareness campaigns.

Criticisms of DDA compliance in Australia too demonstrate the importance of both compliance reporting and support in interpreting and complying with standards. In other words, the focus should not only be on

¹⁷⁷ NZIER, Disability legislation and outcomes, December 2017, p. 68.

penalties for non-compliance. Rather, there should be a – potentially greater – focus on supporting regulated parties to comply with any legislation introduced.

Another missed opportunity in overseas legislation appears to be the collection of data relating to disability, and specifically accessibility. Other countries appear not to collect sufficient data and there is poor compliance with self-reporting mechanisms, leading to a lack of oversight. The approach taken in Scotland and Wales points to one possible mechanism in duties that require the collection, reporting and publication of relevant information relating to compliance. However, shortcomings in Ontario also demonstrate that parties must also be motivated to engage in compliance reporting with the necessary support and clarity regarding their obligations. In addition, data would still be needed on actual accessibility outcomes. Any measures introduced in New Zealand should consider the metrics against which they are measured, including robust data.

Complaints mechanisms

Complaints processes are important in providing opportunities for redress and facilitating wider change. In New Zealand, issues have been raised regarding the high number of complaints made to the Human Rights Commission regarding discrimination on the ground of disability, the long time to resolve those complaints, and the onus being unfairly placed on disabled people and whānau to complain.

Individual faults-based complaints systems, such as the litigation approach included in the ADA legislation in the US, also face greater difficulty in producing predictable and consistent outcomes and engendering broader systemic change. It also reduces the educative impact of complaints. In the UK, the EHRC can conduct inquiries and investigations, issue unlawful act notices and enter into binding agreements with organisations. As discussed earlier in the examination of the UK, providing the Human Rights Commission with greater enforcement powers offers a more systematic way of addressing disability accessibility than individual approaches which can bring about fairer outcomes.

Drawing lessons from other countries, consideration could be given in New Zealand to developing an adequate mechanism for receiving complaints and monitoring compliance. One possibility suggested by NZIER is a “logical extension” of the Human Rights Commission’s current functions and powers.¹⁷⁸

Utilising a range of mechanisms and levers

Analysis of legislation in other jurisdictions raises a common theme: legislation alone, no matter how prescriptive, is unlikely to improve accessibility for disabled people. Researchers noted that policies can be effective in changing attitudes when used together, including: policies that involve direct contact with disabled people; information and awareness campaigns; education and training about disability; and antidiscrimination enforcement.¹⁷⁹

¹⁷⁸ NZIER, Disability legislation and outcomes, December 2017, p. 71.

¹⁷⁹ Karen R. Fisher and Christiane Purcal, ‘Policies to change attitudes to people with disabilities’, *Scandinavian Journal of Disability Research*, vol. 19, no. 2, 2017, p. 161.

Briefing

Date:	7 March 2024
For:	Hon. Penny Simmonds, Minister for Disability Issues
File reference:	REP/WHK/24/3/027
Security level:	In confidence

Draft Cabinet paper: Confirming the status of the Accessibility for New Zealanders Bill

Purpose

1. This paper attaches a draft paper for consideration by Cabinet Legislation Committee (LEG), setting out a brief outline of the Accessibility for New Zealanders Bill (the Bill), for Ministerial and government consultation.

Background

2. On 26 February 2024, the Leader of the House wrote to Ministers regarding House business, including all Government Bills, from the previous Parliament which had been reinstated by Cabinet on 4 December 2023. This letter is attached at Appendix One.
3. The Accessibility Bill was reinstated and is awaiting its second reading. The Leader of the House has invited you to submit a short paper to LEG for consideration at its 21 March meeting, with an outline of the Accessibility Bill. This paper will need to be submitted by 10am, Thursday 16th March.
4. The letter invites Ministers to consult with each of the Government parties and all interested Ministers, confirming whether the Government wishes to proceed with each Bill. It asks that the paper to LEG include the outcomes of ministerial and government consultation.
5. The draft Cabinet paper attached at Appendix Two provides a brief outline of the Bill, the issues raised by the community during the select committee process, and your decision to pause the Bill's progress in the House while further work is done on legislation in other jurisdictions and potential gaps in the current Bill.

Recommendations

It is recommended that you:

note the draft Cabinet paper, attached at Appendix Two, provides a brief outline of the Accessibility for New Zealanders Bill and is ready for Ministerial and Government consultation.

Note that, following consultation, the finalised paper will need to be submitted to Cabinet Office no later than 10am, Thursday 16th March.



7 March 2024

Helen Walter
Group Manager
Policy, Strategy and Partnerships

Date

Hon Penny Simmonds
Minister for Disability Issues

Date

End

Author: 9(2)(a) [REDACTED], Senior Policy Analysts, Policy, Strategy & Partnerships

Responsible manager: Sohini Smith, Policy Manager, Policy, Strategy & Partnerships

Appendix

1. Letter from the Leader of the House, dated 26 February 2024: Confirming the status of legislation reinstated in the 54th Parliament.
2. Draft Cabinet Paper: Confirming the status of the Accessibility for New Zealanders Bill.

Hon Penny Simmonds
Minister for Disability Issues
Parliament Buildings
WELLINGTON

26 February 2023

Dear Penny,

Confirming the status of legislation reinstated in the 54th Parliament

On 4 December 2023, Cabinet agreed to reinstate all House business from the previous Parliament, including all Government bills, and authorised me as the Leader of the House to make decisions by the end of 2023 on whether to discharge any reinstated legislation, in consultation with the relevant portfolio Minister.

Now that the Government has had time to further consider its position on all reinstated legislation, I am writing to Ministers with responsibility for such legislation to confirm that they, and the Government, still wish for such legislation to proceed.

As Minister for Disability Issues, you are responsible for the Accessibility for New Zealanders Bill.

I invite you to submit a short paper to the LEG committee in relation to each of these bills, in consultation with each of the Government parties and all interested Ministers, confirming whether the Government wishes to proceed with each bill. Each paper should include a very brief outline of the content of each bill, information on the ministerial and party consultation that has occurred on each bill, and the outcomes of that consultation. I ask that these papers be submitted for consideration at the LEG meeting scheduled for 21 March 2024.

If I, my office, or the LEG committee secretariat can be of assistance to you in preparing these papers, please let me know.

Yours sincerely,



Hon Chris Bishop
Leader of the House

IN CONFIDENCE**In Confidence**

Office of the Minister for Disability Issues

Cabinet Legislative Committee

Confirming the status of the Accessibility for New Zealanders Bill**Proposal**

- 1 This paper provides a short summary of the Accessibility for New Zealanders Bill (the Bill) to inform the Cabinet Legislative Committee's consideration of the Government's legislative programme.

Executive Summary

- 2 Accessibility barriers contribute to poor outcomes for disabled people. The Bill was introduced by the previous government to accelerate progress towards a fully accessible New Zealand where disabled people, tāngata whaikaha Māori¹, their families and whānau, and others with accessibility needs have equal opportunities to achieve their goals and aspirations.
- 3 The Bill would support improvements to accessibility through the establishment of a Ministerial Advisory Committee that would identify accessibility barriers and make recommendations to the Minister for Disability Issues on how to address these barriers. The Bill contains provisions for how the Committee members will be appointed, how its work programme will be set, and arrangements for the provision of information needed by the Committee, and other matters related to the operation of the Committee.
- 4 The Social Services and Communities Committee reported back on the Bill in June 2023. Almost all submitters to the Committee supported legislation to improve accessibility, but most opposed the Bill in its current form. They proposed a more regulatory and prescriptive approach to improving accessibility. There are a range of fiscal and implementation challenges associated with such an approach.
- 5 I consider that accessibility legislation is important and acknowledge that there is more work to do to better understand the disability community's concerns about the Bill. I therefore seek Cabinet agreement to confirm the Bill on the government's legislation programme.
- 6 I have submitted a legislation bid for this Bill, with a proposed priority category of 8 – on hold, for the 2024 legislation programme. This will allow time for officials to undertake further research into accessibility

¹ This is a term used to describe Māori with lived experience of disability.

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legislation in other jurisdictions, consider fiscal and implementation implications, and re-engage with the disability community. This work will inform policy decisions on the future of the Bill.

Background

Accessibility barriers contribute to poorer outcomes for disabled people.

- 7 There are currently an estimated 1.1 million disabled New Zealanders, many of whom face accessibility barriers to work, education, accommodation, and quality of life.
- 8 Poor accessibility contributes to:
- a. Worse outcomes for disabled people in education, income, housing, social participation, and health, among other areas.
 - b. Greater costs for disabled people and their whānau - for example, a lack of accessible housing limits where a disabled person can live and can increase their travel costs.
- 9 Disability communities in New Zealand have consistently called for accessibility legislation that enables disabled people, tāngata whaikaha Māori, and others who experience accessibility difficulties to live independently and participate fully in all aspects of life, on an equal basis with others.
- 10 New Zealand does not have a system in place that explicitly addresses accessibility. The lack of a co-ordinated approach to accessibility has meant progress to improve accessibility has been slow and inconsistent.

The Accessibility for New Zealanders Bill

- 11 The core feature of the Bill is the establishment of an Accessibility Committee as a Ministerial Advisory Group which would:
- a. have up to 10 members, the majority of whom would be disabled people;
 - b. develop a work programme that sets out the accessibility barriers and practices the Committee intends to provide advice about;
 - c. make recommendations to the Minister of Disability Issues to improve accessibility;
 - d. assess and report to the Minister on the progress of improving accessibility;
 - e. receive and consider the views of disabled people, tāngata whaikaha Māori, and their families whānau, and others in a way that is accessible;

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- 12 The Bill also sets out responsibilities of the Minister, the Chief Executive of Whaikaha, and the Accessibility Committee in relation to the work of the Committee.
- 13 The Bill requires the Minister of Disability Issues to present the Accessibility Committee's report to the House of Representatives and to advise the Accessibility Committee, after collaborating with relevant Ministers, about how the Committee's recommendations have been or will be considered by the Government.

Why this Bill is important

- 14 The Bill responds to the call from disabled New Zealanders, older New Zealanders and others who experience accessibility issues that prevent them from living independently and participating in society. These barriers can be about the built environment, accessing information and services, transport, accessing and navigating public spaces, and being able to take part in cultural and sporting events.
- 15 All New Zealanders benefit when disabled New Zealanders have better access to education, employment, housing, the health system, and public services. This Bill takes an important step towards developing a regulatory framework to support greater and more consistent accessibility improvements in New Zealand.

Progress on this Bill so far

- 16 The Bill was introduced on 28 July 2022, and passed its First Reading on 2 August 2022.
- 17 The Social Services and Community Select Committee considered the Bill and reported back to the House in June 2023. The Committee recommended by majority that it should be passed (with minor amendments).
- 18 I have submitted a legislation bid for this bill, with a proposed priority category of 8 – on hold, for the 2024 legislation programme. This will allow time for further policy work to be done to understand the issues raised in submissions to the Select Committee, as detailed below.

More work is required before returning the Bill to the House

- 19 The select committee process highlighted a number of issues with this Bill which I consider require further consideration.
- 20 The Bill is currently drafted to set up enabling mechanisms to address accessibility challenges. Many submitters from the disability community are concerned that the Bill does not introduce regulations, standards and enforcement and compliance measures to address accessibility. There is a campaign by members of the disability community to have the Bill reworked to adopt a more regulatory and prescriptive approach, similar to models in some other jurisdictions.

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- 21 While regulations and enforcement could be effective for some accessibility issues, there are also a range of challenges with this approach, including that it could increase compliance costs, and that standards and regulations that cut across different sectors could become administratively burdensome and inefficient to manage.
- 22 For these reasons I have decided to pause the Bill. I have asked officials for advice on:
- a. the effectiveness of accessibility legislation in other countries; and
 - b. gaps in our domestic accessibility legislation.
- 23 I expect advice on this work by the end of 2024 and will then decide on next steps for this Bill. I have submitted a bid for this Bill in the 2024 Legislation Programme, with a priority category of 8 – on hold, to allow time for this further policy work.

Cost-of-living implications

- 24 There are no cost-of-living implications for this Bill. Any cost-of-living implications related to recommendations of the Committee will be considered at the time those recommendations are considered.
- 25 Efforts to improve accessibility are likely to require sustained investment over time, but strategic investments into improving accessibility can also generate cost savings and productivity gains, such as enabling more disabled people to work.

Legislative Implications

- 26 This Bill would enact primary legislation to establish an enabling framework for addressing accessibility issues.

Impact Analysis**Regulatory Impact Statement**

- 27 The Ministry of Social Development completed two regulatory impact statement exercises in relation to the Accessibility Bill, one for the general shape of the Bill and another specifically targeted towards implications for Māori. More details on the impact of the Bill will be provided once the future of the Bill has been confirmed.

Climate Implications of Policy Assessment

- 28 There are no substantial climate implications to this decision. Detail on any future climate implications will be provided once the future direction of the Bill is confirmed.

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Population Implications

- 29 Disabled people exist within all populations and require access to all the things other New Zealanders do. As such, the population implications of improving accessibility are significant and cut across a broad range of populations and strategic areas. Key populations impacted by this Bill include older people, rural people, Māori and Pacific peoples.
- 30 It is important to note that disabled people in some population groups face compounding and intersecting barriers to full participation in all areas of life, for example poverty, and language and cultural barriers.

Human Rights

- 31 Improvements in accessibility will enable more effective realisation of the human rights of disabled people.

Consultation

[Placeholder for government consultation].

Communications

- 32 I have publicly expressed my intention to pause the Bill for a year, to conduct a review of legislation in other jurisdictions and make decisions about the Bill's future early next year.
- 33 Whaikaha – the Ministry of Disabled People will undertake targeted engagement with the disability community as they conduct the review.

Proactive Release

- 34 I intend to proactively release this Cabinet paper, subject to redactions as appropriate under the Official Information Act 1982, once the Government's legislation programme has been confirmed for 2024.

Recommendations

- 35 The Minister of Disability Issues recommends that the Committee:
- a. **note** that the Accessibility for New Zealanders Bill aims to establish an enabling framework for addressing accessibility issues; and
 - b. **confirm** that the Accessibility for New Zealanders Bill will be progressed and included in the Government Legislation Programme for 2024, with a priority category of 8 – on hold, to allow time for further policy decisions.

Authorised for lodgement
Hon Penny Simmonds
Minister for Disability Issues

Briefing

Date:	15 December 2023
For:	Hon Penny Simmonds, Minister for Disability Issues
CC:	
File reference:	REP/WHK/23/12/014
Security level:	In confidence

Advice on the Future of the Accessibility for New Zealanders Bill

Purpose

1. This paper provides advice on whether to progress the Accessibility for New Zealanders Bill (the Accessibility Bill).

Executive summary

2. The Leader of the House has sought advice from Ministers regarding what legislation currently before the House they do and do not wish to progress in the 2024 Parliamentary calendar. As the Accessibility Bill was due for its second reading when Parliament lapsed, you must decide on its future.
3. The Accessibility Bill adopts an enabling approach to improving accessibility in Aotearoa New Zealand through establishing a disabled person-led Accessibility Committee (the Committee) that can make recommendations directly to the Minister for Disability Issues.
4. Most submitters at the Select Committee stage opposed the Accessibility Bill in its current form and expressed a desire for the Bill to be strengthened and to adopt a more regulatory approach. Conversely, almost all submitters supported the passing of Accessibility legislation in principle.
5. Most submitters used a template developed by Access Matters Aotearoa (AMA). A former iteration of AMA was involved in the early development of the Bill and is leading a campaign seeking significant changes to the Bill. These changes include:
 - a. empowering the committee to make recommendations which bind government

- b. empowering the committee to set cross-cutting accessibility standards which are legally binding
 - c. establishment of a dedicated regulator to police these standards
 - d. creation of a barrier notification system; and
 - e. empowering the accessibility regulator to oversee a disputes resolution process.
6. The approach suggested by AMA would likely:
- a. produce excessive administrative burden
 - b. impose significant costs on government and businesses; and
 - c. not be flexible enough to address the diverse range of issues that generate accessibility barriers.
7. There are three key options for the future of the Bill:
- a. Progress the Accessibility Bill through its remaining stages and into law with some strengthening amendments. This would require funding to implement and is unlikely to be possible within a constrained fiscal environment, but it is the only viable way to pass accessibility legislation in the short term.
 - b. withdraw the Accessibility Bill and revisit the issue of accessibility legislation later in the Parliamentary term if current fiscal constraints ease. This would recognise that progressing accessibility legislation is not possible without new funding; or
 - c. pause the Accessibility Bill by leaving it as a low priority on the order paper. This option leaves the door open to progressing the Accessibility Bill but does not commit you to doing so. This pause could be an opportunity to engage with the disability community about next steps on accessibility legislation.
8. Given the fiscal environment and opposition to the current Bill, Whaikaha recommends that you indicate that you do not wish to progress the Accessibility Bill at this time by withdrawing it from the order paper (Option b).
9. Almost all submitters to the select committee wanted to see accessibility legislation passed into law, and we therefore recommend that you engage with the disability community about your decision. We are happy to support you to do this.

Recommendations

It is recommended that you:

- a) **Note** that implementing accessibility legislation would require new funding, so a future Bill could only be progressed once current fiscal constraints have eased

EITHER:

b) **Agree** to progress the Accessibility Bill through its remaining stages and into law with some strengthening amendments

OR

c) **Agree** that you do not want to progress the Accessibility Bill and withdraw it from the order paper (**recommended option**).

OR

d) **Agree** to pause the Accessibility Bill by leaving it as a low priority on the order paper

e) **Note** that Whaikaha recommends you engage with the disability community about your decision regarding accessibility legislation.



Hon Penny Simmonds

Minister for Disability Issues

Date 18/12/23

Helen Walter

Helen Walter

Group Manager, Policy

Policy, Strategy, and Partnerships

15 December 2023

Actions for private secretaries:

Background

10. There are currently an estimated 1.1 million disabled New Zealanders, many of whom face accessibility barriers that obstruct their attempts to work, study, find accommodation and live their lives with dignity.
11. Poor accessibility contributes to social inequities such as:
- a. Disabled people experiencing poorer life outcomes than non-disabled people in all key outcome areas such as education, income, housing, social participation, and health.
 - b. Disabled people and their whānau facing greater costs to get the same outcomes - for example, a lack of accessible housing limits where a disabled person can live and can increase their travel costs.
12. Improving access to core elements of life, such as health, education and employment can improve outcomes, reduce avoidable spending and contribute positively to economic prosperity¹. It would however require investment from government and in some cases impose costs on private businesses.
13. Aotearoa New Zealand does not have a system in place that deals explicitly with accessibility. The lack of a co-ordinated approach to accessibility has meant progress to improve this important issue has been slow.
14. The Accessibility Bill was developed by the previous government to embed a commitment to, and spur co-ordinated action on, accessibility in Aotearoa.
15. The Accessibility Bill was paused following a recommendation by the Social Services and Community Select Committee that the Bill be passed. The Bill lapsed alongside all business in the House prior to the 2023 election.
16. The Leader of the House has sought a formal decision from ministers on what legislation they wish to progress in the 2024 parliamentary term.

The Accessibility Bill

17. The Accessibility Bill aims to address accessibility barriers by creating an enabling framework that takes a progressive approach to identifying, preventing, and removing barriers to participation for disabled people, tāngata whaikaha Māori, whānau and others with accessibility needs.
18. The Bill does the following:

¹ For example, research carried out by the New Zealand Institute of Economic Research in 2017 found that a transfer of 14,000 disabled people from Supported Living and JobSeeker payments into the workforce could produce an annual gross fiscal saving to the Government of \$270M and a reduction in future welfare payments over 10 years of approximately \$3B. The study also showed an additional \$1.45B a year, could be added to real gross domestic product.

- a. establishes a new legislative framework to create a consistent way of addressing barriers and growing accessibility practices across Aotearoa New Zealand over successive governments.
- b. creates an Accessibility Committee (the Committee) which will:
 - i. identify accessibility barriers;
 - ii. make recommendations on the removal of those barriers;
 - iii. monitor progress towards removing barriers by responsible agencies;
 - iv. progressively work towards growing accessibility practices in Aotearoa New Zealand;
 - v. ensure the majority of the Committee members are disabled, are nominated by their communities, and can represent disabled people, tāngata whaikaha Māori, and their whānau;
 - vi. requires the Minister for Disability Issues to table the Committee's recommendations in the House as soon as practicable after they are made;
 - vii. provides for accountability for the Government's response to the Committee's recommendations through the publication of an annual State of Accessibility Report; and
 - viii. sets a clear intent the government will progressively realise the vision of a fully accessible Aotearoa as enshrined in the New Zealand Disability Strategy 2016-2026.

Issues raised in the Select Committee Process

19. The disability community raised several concerns about the Accessibility Bill - in particular, the enabling model that it is centred around.
20. The Access Alliance (now known as AMA) has been championing the issue of accessibility for many years. Theirs was the most prominent voice opposing the Accessibility Bill in its current form. A significant portion of the submissions to the Select Committee copied, or were strongly inspired by, AMA framing of the Accessibility Bill as not having enough 'teeth'.
21. AMA supports the introduction of accessibility legislation and the creation of an Accessibility Committee, but also recommends a suite of changes to the Accessibility Bill which they believe will strengthen it. The key areas include:
 - a. That the Committee should be able to make recommendations binding on Government.
 - b. That there should be a process for empowering the Committee to create cross-cutting accessibility standards, and that failure to comply with standards should constitute a legal offence.

- c. The establishment of a regulator in the form of a Crown Entity that has powers to monitor, investigate and enforce accessibility standards set by the Committee.
- d. A barrier notification system to enable anonymous communication of access barriers by individuals to the accessibility regulator and an obligation on entities, with responsibility for domains containing barriers, to remove them.
- e. A disputes resolution process where the accessibility regulator investigates a complaint and then oversees a process where the responsible entity either remedies the access barrier or pays compensation.

22. There are a range of challenges with these proposals, but at a high level:

- a. the creation of cross-cutting standards could create tensions with other statutory frameworks. As such, implementing standards could create confusion and require ongoing legislative amendments which would be administratively burdensome and inefficient;
- b. the upfront costs of complying with cross-cutting standards is unknown, but is likely to be significant when costs to both government and businesses are considered;² and
- c. evidence abroad suggests that the Ontario model, and other similar models which have inspired the AMA approach, have not achieved the outcomes disabled people wanted and have driven efforts towards avoiding compliance costs rather than improving accessibility.³ This undermines the purpose of such reforms.

² Importantly, investment in accessibility will also generate significant benefits not only for disabled people but also for government and society as a whole. The challenge here is not that investing in accessibility is a bad idea, but rather that establishing such standards at a time of fiscal restraint would be extremely challenging.

³ A report by the New Zealand Institute of Economic Research titled "*Disability legislation and Outcomes*" found that while New Zealand does not have an express positive duty on accessibility enshrined in legislation like other countries, several countries have 'overreached', struggle to ensure compliance with standards set, and there is evidence that efforts have been redirected away from addressing accessibility challenges and towards avoiding compliance costs. This is in direct conflict with the purpose of this reform. A more flexible approach to setting standards, with agencies responsible for specific sectors, was identified as a more fruitful and effective path forward. The full report can be found at <https://www.lawfoundation.org.nz/?p=8763>. This report was commissioned by the Blind Foundation, as a member of the then Access Alliance (now the AMA). The Bill enshrines a process for identifying and recommending solutions to accessibility challenges with responsible agencies clearly identified. Recommendations from the Committee may include setting standards.

23. Whaikaha understands that AMA intends to continue to campaign for their vision of accessibility legislation, have started an online petition to gather support and plan to organize a march to Parliament in March 2024⁴.

Our advice on the regulatory framework in the Bill

24. While some amendments to strengthen the regulatory framework in the Bill would be beneficial, Whaikaha considers that the overall approach in the Bill represents the best path for promoting accessibility in Aotearoa within existing constitutional, practical, and financial constraints⁵.

25. The four key reasons for this advice are:

- a. The causes of and obstacles to addressing accessibility challenges are diverse, and a lack of standards and enforcement are often not the key issue. A flexible approach is most likely to identify and recommend solutions to the right problems in the correct context;
- b. The approach taken in the Accessibility Bill enables the government of the day to be sensitive to fiscal and practical constraints;
- c. The alternative proposed by AMA, which focuses on standards and enforcement, presents significant constitutional, financial and practical issues in the New Zealand context, and evidence from overseas suggests it would not have the significant beneficial impact disabled people seek;
- d. The Bill empowers disabled people and tāngata whaikaha Māori, through the Committee, to identify access barriers and to recommend solutions directly to Ministers, who must table them in the House. We believe this is a good way to embed independent, transparent commentary on the state of accessibility in Aotearoa New Zealand and what the government can do about it.

26. Where standards or enforcement are key issues, the Committee would recommend new standards are introduced. Progressing this Bill does not take new standards off the table, rather it sets up a process for disabled leaders, through the Committee, to make the detailed case for new standards on a sector-by-sector basis.

⁴ AMA organized a similar petition with over 15,000 signatures and delivered it to parliament in February 2023.

⁵ The previous Minister for Disability Issues met with the Disabled Persons Organizations Coalition (DPO Coalition) about the Bill shortly before the election. Whaikaha worked up some potential amendments to strengthen the Bill in response to their feedback and these are included in **Appendix A**.

27. The Accessibility Bill also includes a clause requiring it to be reviewed at least every 5 years. If it did not produce the desired results, the Bill could be amended as a result of these reviews.

Options Analysis

28. There are three key options for progressing the Bill:

- a. Progress the Accessibility Bill through its remaining stages and into law with some strengthening amendments. This would require funding to implement and is unlikely to be possible within a constrained fiscal environment, but it is the only viable way to pass accessibility legislation in the short term.
- b. withdraw the Accessibility Bill and revisit the issue of accessibility legislation later in the Parliamentary term if current fiscal constraints ease. This would recognise that progressing accessibility legislation is not possible without new funding; or
- c. pause the Accessibility Bill by leaving it as a low priority on the order paper. This option leaves the door open to progressing the Accessibility Bill but does not commit you to doing so. This pause could be an opportunity to engage with the disability community about next steps on accessibility legislation.

29. On balance we recommend withdrawing the Bill and committing to revisiting accessibility legislation once current fiscal constraints ease. This is our recommended option for the following reasons:

- a. The disability community does not support the current Bill, and amending it to respond to their concerns is not possible within the Bill's current scope;
- b. The current fiscal environment means that funding to implement accessibility legislation is not available and is unlikely to be possible until fiscal constraints ease.

30. Whaikaha also recommends that you engage with the disability community about your proposed direction on the Accessibility Bill regardless of what option you choose.

31. Whaikaha can support you with the development of communication materials and advice for those engagements.

End

Author **9(2)(a)** Senior Policy Analyst, Policy, Strategy, and Partnerships

Appendix A – Possible Changes in Response to DPO Coalition Concerns

Issue raised by the DPO Coalition	What the Bill currently says	Possible changes and our advice
<p>How the committee will be identified and appointed – noting the need for transparency</p>	<p>The Bill requires the Minister to establish a community nominations panel and a Māori nominations panel. The panels will consist of a chairperson and up to four other members.</p> <p>The Minister must appoint people to the community panel people who, in the Minister's opinion, have the relevant skills or experience to identify suitably qualified candidates . . . having regard to (a) networks of importance to disabled people and tāngata whaikaha Māori, and their families or whānau; and (b) individuals or groups whose specific perspectives are required for the purposes of the Committee's functions or duties; and (c) individuals who hold key roles in the disability sector.</p> <p>In appointing persons to the Māori nominations panel, the Minister must consult:</p> <ol style="list-style-type: none"> a. tāngata whaikaha Māori and their whānau; and b. networks of importance to tāngata whaikaha Māori and their whānau; and c. any other Māori groups that the Minister considers appropriate. <p>The Minister may appoint a person as a committee member if the person has been nominated by one of those two panels, AND the Minister has had regard to the matters set out in subsection 2, which relates to the knowledge, skills and attributes that must be reflected on the Committee as a whole.</p>	<p>The Bill contains a clear and transparent process for nominations for the Committee to be made by community and Māori panels with strong connections to the disability community and tāngata whaikaha Māori. The Minister can only appoint people nominated by one of these panels.</p> <p>To add to the transparency, we could add details to the bill about the process the panels would need to follow – for example, a provision that reasonable “recruitment” style practices will be adopted. This would be in scope of the Bill.</p> <p>We recommend keeping any such change high level and not overly prescriptive, to avoid placing an unreasonably higher responsibility on the committee which may not always be able to be met.</p>

<p>The need to identify some of the big accessibility domains that are likely to be a priority for the committee e.g., transport, education, housing</p>	<p>Currently, the Bill says that one of the Committee’s functions is to develop a work programme that sets out the accessibility barriers and practices that the Committee intends to provide advice to the Minister about. The Minister of Disability Issues must approve this work programme.</p> <p>The Select Committee has recommended adding a new function of receiving and considering the views and experiences of disabled people, tāngata whaikaha Māori and their families or whānau, and this information would be likely to also be factored into the Committee’s development of a work programme.</p> <p>The work programme must be updated at least annually and published on a website maintained by Whaikaha.</p>	<p>There is a trade-off between giving the Committee absolute autonomy to develop its work programme and having Parliament or the Minister dictate priorities to the Committee about its work programme.</p> <p>The way the Bill is currently drafted gives the Committee more autonomy and gives more influence to the views of disabled people and tāngata whaikaha Māori. Having the Minister dictate priorities could have the effect of reducing the influence of disabled people on the work programme, the opposite to what the DPO coalition is seeking, if the Minister of the day were to have a different view of priorities. The concern with having priorities set in legislation is that if these get out of date, there needs to be a legislative process to change them.</p> <p>An alternative option would be to link the work programme to objective, independent reviews – for example, the Independent Monitoring Mechanism’s (IMM) report, or the UN Committee’s recommendations.</p> <p>If we were to make such a change, we would recommend wording along the lines that the Committee needs to “consider” or “have regard to” the relevant reports.</p> <p>A change like this would be in scope of the Bill.</p>
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<p>That legislation, regulations, and standards alongside education and guidance are all approaches that may be applied in the Accessibility Bill but that the legislation, regulations etc will be within the most appropriate Minister's portfolio, not necessarily the Minister for Disability Issues' portfolio.</p>	<p>Currently, the Committee's function is to make recommendations to the Minister for Disability Issues.</p> <p>The State of Accessibility report recommended by the Select Committee would also identify the specified entity in charge of improving the relevant area, and any legal or statutory obligations the specified entity has to comply with, related to the barriers and the progress being made in preventing or removing the barriers. The Select Committee's view was that this would help to hold specified entities to account for reducing or removing barriers.</p>	<p>It may be possible to add wording so that the Committee's function is to make recommendations to any relevant portfolio Minister/s as well as the Minister for Disability Issues. For example, the Committee would be addressing its recommendations about accessibility of transport to the Minister for Disability Issues and the Minister of Transport.</p>
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Aide-mémoire

Date:	1 March 2024
For:	Hon. Penny Simmonds, Minister for Disability Issues
File reference:	REP/WHK/24/3/020
Security level:	In confidence

Access Matters Aotearoa March to Parliament

Details

1pm, 7 March 2024, Parliament Grounds

Purpose

1. Access Matters Aotearoa (AMA) has organised a march to Parliament to encourage the Government to listen to disabled voices when reviewing the Accessibility for New Zealanders Bill (the Bill).
2. You have asked for an update on the work currently underway on the Bill. We have provided this as talking points, should you wish to address the march or meet with AMA on the day.

Talking points

Background:

- I know that disabled people have argued for many years for action to address accessibility issues in New Zealand, including for legislation.
- The Accessibility for New Zealanders Bill was drafted under the previous Government.
- The Bill aims to address systemic accessibility barriers by establishing a Ministerial advisory committee, with the resources and mandate to investigate accessibility challenges and make recommendations for change.
- The Bill has been considered by Select Committee and is currently awaiting its second reading.
- However, it is clear that many in the disability community consider that the Bill as currently drafted will not achieve the results the community seeks in terms of increasing accessibility for disabled people across New Zealand.
- I am keen to better understand the issues raised by the community about this Bill, and I want to take some time to get our next steps right.

- I have asked Whaikaha officials to provide further advice to me by the end of this year, on how other jurisdictions are addressing accessibility issues, and on potential gaps in the Bill for our New Zealand context.
- I have given Whaikaha a year to complete this work so that they can discuss their findings with the community as the work progresses.
- I have asked for a progress update by the end of June.
- Following the work and discussion over the remainder of this year, I will decide on the next steps for this Bill.

What Whaikaha is doing:

- Whaikaha – the Ministry of Disabled People is now undertaking research and will test its findings with interested groups in the disability community, including Access Matters.
- Officials are examining accessibility legislation in a range of jurisdictions, including Canada, Australia, the United Kingdom, the United States, Brazil and Bangladesh. These are all countries that have introduced accessibility or disability-specific legislation.
- The research includes a description of the relevant legislation and regulatory mechanisms used in each jurisdiction, and any information available about the strengths and weaknesses of each approach.
- Whaikaha is seeking to understand the accessibility outcomes in these countries using UN reporting, alongside any other research or information available.
- After completing the initial research phase, Whaikaha will develop a research report and test the analysis with the community.

End

Author: 9(2)(a) , Policy Analyst, Policy, Strategy & Partnerships

Responsible manager: Sohini Smith, Policy Manager, Policy, Strategy & Partnerships

Briefing

Date:	10 August 2023
For:	Hon Priyanca Radhakrishnan
File reference:	REP/23/8/749
Security level:	In confidence

Accessibility Bill – Advice on Next Steps

Purpose

You have requested advice on:

- Whaikaha’s position on the Accessibility for New Zealanders Bill (the Bill)
- potential amendments that could be made to the Bill to respond to concerns raised in your meetings with key community groups
- what options there are to reshape the Bill, and
- processes for delaying the Second Reading of the Bill.

Executive summary

Whaikaha considers that the Bill represents the best path for promoting accessibility in Aotearoa within existing constitutional, practical, and financial constraints.

A table setting out options for amending the Bill to respond to concerns raised by the Disabled Persons Organisations Coalition (DPO Coalition) is provided in **Appendix A**. Whaikaha considers that these changes are within scope of the Bill.

Any more significant change to the Bill would require Cabinet policy approval, the Bill to be withdrawn, new advice sought, and a new bill to be drafted. Whaikaha does not consider that advice from officials would differ significantly if we were to undertake this process.

While Whaikaha can advise on appropriate timing for a Second Reading from a policy perspective, the coordination of timing will be between your Office and Cabinet Office in response to Business Committee and Government priorities.

When the Minister for Disability Issues considers that the Bill is ready for its Second Reading, the Minister may ask the Leader of the House to lift the Bill's position on the order paper.

Recommendations

It is recommended that you:

- a) **Note** that Whaikaha's position on the Bill is that it represents the best path for promoting accessibility in Aotearoa within constitutional, practical, and financial constraints.
- b) **Indicate** whether you would like to make the following changes to the Bill in response to the issues raised with you by the DPO Coalition:

- i. insert additional clauses requiring the nominations panels to align with best recruitment practices including seeking expressions of interest from communities

agree/disagree

- ii. insert a new clause requiring the Accessibility Committee (the Committee) to 'have regard to' named objective, independent reports, for example UNCRPD recommendations or Independent Monitoring Mechanism (IMM) recommendations

agree/disagree

- iii. amend the Bill so that the Committee's function is to make recommendations to any relevant portfolio Minister/s as well as the Minister for Disability Issues (the Minister). Ministers whose agencies are responsible for barriers identified in recommendations must receive and respond to issues alongside the Minister for Disability Issues.

agree/disagree

- c) **Note** that the process for delaying second reading is to leave it low on the order paper.



Hon Priyanca Radhakrishnan

Minister for Disability Issues

Date 14/8/23



Helen Walter

Group Manager, Policy, Strategy, and Partnerships

10 August 2023

Background

1. You met with the DPO Coalition on 20 July, with some of the discussion about the Bill.
2. Regarding the Accessibility Committee in the Bill, the DPO Coalition asked:
 - a. how the Committee would be appointed, noting the need for transparency
 - b. how the Committee's work programme would be determined, noting existing work being progressed by the IMM
3. The Coalition also highlighted a lack of clarity around whether ministers beyond the Disability Issues portfolio would have responsibility for responding to recommendations.

Whaikaha's position on the Bill

4. Whaikaha considers that the Bill represents the best path for promoting accessibility in Aotearoa within existing constitutional, practical, and financial constraints.
5. The three key reasons for this advice are:
 - a. The causes of and obstacles to addressing accessibility challenges are diverse, and a lack of standards and enforcement are often not the key issue. A flexible approach is most likely to identify and recommend solutions to the right problems in the right context
 - b. The alternative proposed by Access Matters, which focuses on standards and enforcement, presents significant constitutional, financial and practical issues in the New Zealand context, and evidence from overseas suggests it would not have the significant impact disabled people seek¹
 - c. The Bill empowers disabled people and tāngata whaikaha Māori, through the Committee, to identify access barriers and to recommend solutions directly to Ministers, who must table them in the House. We believe this is a good way to embed independent,

¹ A report by the New Zealand Institute of Economic Research titled "*Disability legislation and Outcomes*" found that while New Zealand does not have an express positive duty on accessibility enshrined in legislation like other countries, several countries have 'overreached', struggle to ensure compliance with standards set and there is evidence that efforts have been redirected away from addressing accessibility challenges and towards avoiding compliance costs. A flexible approach to setting standards with agencies responsible for specific sectors was identified as a fruitful path forward. The full report can be found [here](#). This report was commissioned by the Blind Foundation, as a member of the Access Alliance. The Bill enshrines a process for identifying and recommending solutions to accessibility challenges with responsible agencies clearly identified. Recommendations from the Committee may include setting standards.

transparent commentary on the state of accessibility in Aotearoa and what government can and is doing about it.

6. Whaikaha does not believe that withdrawing the Bill and undertaking further policy work would lead to substantially different advice. We recommend the Bill is progressed with amendments (outlined in Appendix A) that align with the current scope of the Bill.
7. Where standards or enforcement are key issues, the Committee will likely recommend new standards are introduced. Progressing this Bill does not take new standards off the table, but rather sets up a process for disabled leaders, through the Committee, to make the detailed case for new standards on a sector-by-sector basis directly to the Minister.
8. This would enable more detailed analysis of costs and practical challenges and would ensure that where standards and enforcement are put in place, those sectors have the tools to respond meaningfully to those standards.

Potential amendments to strengthen the Bill in line with DPO Coalition concerns

9. In your recent discussion with the DPO Coalition on the Bill they raised concerns about the transparency of appointments to the Committee, how the Committee's work programme would be determined, and the responsibility of ministers. Some potential amendments to respond to these concerns are:
 - a. A provision could be included in the Bill to require the Committee to ensure reasonable recruitment practices are adopted. We recommend this is worded in a high-level manner to avoid placing unrealistic expectations on the Committee
 - b. A clause could be added to the Bill requiring the Committee to 'have regard to' key reports, such as those produced by the IMM. This would promote alignment between the work programme of the Committee and the stated priorities of disabled people, and
 - c. The Bill could be amended so that the Committee's function is to make recommendations to any relevant portfolio Minister/s as well as the Minister for Disability Issues (the Minister). Ministers whose agencies are responsible for barriers identified in recommendations would be expected to receive and respond to issues alongside the Minister for Disability Issues.
10. A table summarizing these options can be found in **Appendix A**.

Options for reshaping the Bill

11. Cabinet has made several policy decisions which fed into the Bill. Deviating from these decisions would require Cabinet policy approval or that the Bill be withdrawn, and a new bill drafted.

Process for Delaying the Second Reading

12. As of 3 August 2023, the Accessibility for New Zealanders Bill is sitting at number 18 on the Government Orders of the Day (the Order Paper).
13. The Business Committee determines the order of items in the Order Paper but, more specifically, the Government determines the order of Government Orders of the Day. This can be subject to any requirements in the Standing Orders that a particular debate be taken ahead of other Government Orders of the Day.
14. The process for delaying the Second Reading of a Bill is not formalised and largely depends on Ministerial priorities and House business.
15. While Whaikaha can advise on appropriate timing for a Second Reading in line with work needed to make any further amendments to the Bill, planning for House time should occur between your Office and Cabinet Office in response to Business Committee and Government priorities.

End

Author: 9(2)(a) [REDACTED], Senior Policy Analyst, Policy, Strategy, and Partnerships

Appendix A – Possible Changes in Response to DPO Coalition Concerns

Issue raised by the DPO Coalition	What the Bill currently says	Possible changes and our advice
<p>How the committee will be identified and appointed – noting the need for transparency</p>	<p>The Bill requires the Minister to establish a community nominations panel and a Māori nominations panel. The panels will consist of a chairperson and up to four other members.</p> <p>The Minister must appoint people to the community panel people who, in the Minister’s opinion, have the relevant skills or experience to identify suitably qualified candidates . . . having regard to (a) networks of importance to disabled people and tāngata whaikaha Māori, and their families or whānau; and (b) individuals or groups whose specific perspectives are required for the purposes of the Committee’s functions or duties; and (c) individuals who hold key roles in the disability sector.</p> <p>In appointing persons to the Māori nominations panel, the Minister must consult:</p> <ul style="list-style-type: none"> a. tāngata whaikaha Māori and their whānau; and b. networks of importance to tāngata whaikaha Māori and their whānau; and c. any other Māori groups that the Minister considers appropriate. <p>The Minister may appoint a person as a committee member if the person has been nominated by one of those two panels, AND the Minister has had regard to the matters set out in subsection 2, which relates to the knowledge, skills and attributes that must be reflected on the Committee as a whole.</p>	<p>The Bill contains a clear and transparent process for nominations for the Committee to be made by community and Māori panels with strong connections to the disability community and tāngata whaikaha Māori. The Minister can only appoint people nominated by one of these panels.</p> <p>To add to the transparency, we could add details to the bill about the process the panels would need to follow – for example, a provision that reasonable “recruitment” style practices will be adopted. This would be in scope of the Bill.</p> <p>We recommend keeping any such change high level and not overly prescriptive, to avoid placing an unreasonably higher responsibility on the committee which may not always be able to be met.</p>

The need to identify some of the big accessibility domains that are likely to be a priority for the committee e.g. transport, education, housing

Currently, the Bill says that one of the Committee's functions is to develop a work programme that sets out the accessibility barriers and practices that the Committee intends to provide advice to the Minister about. The Minister of Disability Issues must approve this work programme.

The Select Committee has recommended adding a new function of receiving and considering the views and experiences of disabled people, tāngata whaikaha Māori and their families or whānau, and this information would be likely to also be factored into the Committee's development of a work programme.

The work programme must be updated at least annually and published on a website maintained by Whaikaha.

There is a trade-off between giving the Committee absolute autonomy to develop its work programme and having Parliament or the Minister dictate priorities to the Committee about its work programme.

The way the Bill is currently drafted gives the Committee more autonomy and gives more influence to the views of disabled people and tāngata whaikaha Māori. Having the Minister dictate priorities could have the effect of reducing the influence of disabled people on the work programme, the opposite to what the DPO coalition is seeking, if the Minister of the day were to have a different view of priorities. The concern with having priorities set in legislation is that if these get out of date, there needs to be a legislative process to change them.

An alternative option would be to link the work programme to objective, independent reviews – for example, the Independent Monitoring Mechanism's (IMM) report, or the UN Committee's recommendations.

If we were to make such a change, we would recommend wording along the lines that the Committee needs to "consider" or "have regard to" the relevant reports.

A change like this would be in scope of the Bill.

That legislation, regulations, and standards alongside education and guidance are all approaches that may be applied in the Accessibility Bill but that the legislation, regulations etc will be within the most appropriate Minister's portfolio, not necessarily the Minister for Disability Issues' portfolio.

Currently, the Committee's function is to make recommendations to the Minister for Disability Issues.

The State of Accessibility report recommended by the Select Committee would also identify the specified entity in charge of improving the relevant area, and any legal or statutory obligations the specified entity has to comply with, related to the barriers and the progress being made in preventing or removing the barriers. The Select Committee's view was that this would help to hold specified entities to account for reducing or removing barriers.

It may be possible to add wording so that the Committee's function is to make recommendations to any relevant portfolio Minister/s as well as the Minister for Disability Issues. For example, the Committee would be addressing its recommendations about accessibility of transport to the Minister for Disability Issues and the Minister of Transport.

Briefing

Date: 3 August 2023

For: Hon Priyanca Radhakrishnan

CC:

File reference: REP/23/8/739

Security level: In confidence

Accessibility Bill - Engagement Materials

Purpose

You requested additional communications material to support your engagement with disability groups on the Accessibility for New Zealanders Bill (the Bill) following your recent meeting with the Disabled Persons Organizations (DPO) Coalition.

Executive summary

This briefing provides background on the Bill and how it will work in practice. Additional question and answers are included in Appendix One and three examples of how the Accessibility Committee (the Committee) process could work to address accessibility barriers are included in Appendix Two.

Recommendations

It is recommended that you:

- a) **Note** the Bill's background and the Committee's role, function, purpose and the intended manner of working;
- b) **Note** Whaikaha officials are currently drafting advice on potential amendments to the Bill; and
- c) **Note** the questions and answers, and examples of how the Committee could identify and provide recommendations to address accessibility barriers

Hon Priyanca Radhakrishnan

Minister for Disability Issues

Date

Helen Walter

Helen Walter

Group Manager, Policy

Policy, Strategy, and Partnerships

3 August 2023

Actions for private secretaries:

Background

1. You met with the DPO Coalition on 20 July, and some of the discussion was about the Bill.
2. The DPOs raised questions about the Bill, particularly about how the Committee would be appointed, how its work programme would be determined, how it would operate and what, if any, opportunities there would be for enactment of legislation or setting of standards.
3. This briefing provides you with material to respond to these points. It also provides questions and answers (Appendix One) and examples of different aspects of life the Committee could explore, with various potential recommendations to address accessibility challenges as a result (Appendix Two).

The Purpose, Role and Function of the Committee

4. The Bill establishes a new legislative framework to create a consistent way of addressing accessibility barriers and growing accessibility practices across New Zealand over successive governments.
5. The new legislative framework establishes an Accessibility Committee (the Committee). The role of the Committee will be to consider accessibility barriers and provide recommendations to the Minister for Disability Issues on how to improve accessibility within Aotearoa.
6. The Bill requires the majority of Committee members to be disabled. The Committee will represent disabled people, tāngata whaikaha Māori, and their families or whānau.
7. Therefore, the Committee will be well positioned to convey a strong disabled voice and lived experience of accessibility barriers in the review of accessibility across Government, and through recommendations on how to remove barriers and improve accessibility.

Appointments and Transparency

8. The Bill stipulates that the Minister will establish a community nominations panel and a Māori nominations panel, each consisting of a chairperson and up to four other members.
9. The Minister must appoint people to the panels who, in the Minister's opinion, have the relevant skills or experience to identify suitably qualified candidates for appointment to the Accessibility Committee.
10. To ensure transparency, the Bill sets out measures for the community nominations panel and the Māori nominations panel. In addition to having relevant skills or experience, in the appointment of community panel members, the Minister must consider:

- a. networks of importance to disabled people and tāngata whaikaha Māori, and their families or whānau; and
 - b. individuals or groups whose specific perspectives are required for the purposes of the Committee's functions or duties; and
 - c. individuals who hold key roles in the disability sector.
11. In appointing persons to the Māori nominations panel, the Minister must, as far as is reasonably practicable, consult:
- a. tāngata whaikaha Māori and their whānau; and
 - b. networks of importance to tāngata whaikaha Māori and their whānau; and
 - c. any other Māori groups that the Minister considers appropriate.
12. Once a person has been nominated by one of those two panels, and the Minister has had regard to the measures set out above in relation to their knowledge, skills and attributes, the Minister may then appoint them as a committee member.

Key Accessibility Domains

13. The Committee's work programme, approved by the Minister for Disability Issues, is expected to include key aspects of life that present accessibility barriers for disabled people. We anticipate that the domains of transport, education, and housing are likely to be a priority for the Committee, given that these areas have been highlighted in the reports of the Independent Monitoring Mechanism, the United Nations Committee to review New Zealand's progress in the UNCRPD, and other reports and reviews. Ultimately, however, the Bill leaves the Committee the autonomy to develop its work programme, with the Minister approving that work programme.
14. The Committee will develop recommendations for the Minister for Disability Issues on how accessibility barriers identified in its work should be addressed. These recommendations could include new laws, regulations, or standards, increased training and education, increased funding for services, and information provision.
15. The Minister for Disability Issues must table these recommendations in the House, and the Committee will subsequently monitor progress on these recommendations through its annual monitoring report (as required in the Bill)

How the Committee Works

16. Once established, the Committee will develop a work programme to set out the accessibility barriers and practices it intends to make recommendations on, for approval by the Minister for Disability Issues.
17. Once the work programme is finalised, the Committee will work to investigate the items in the programme and create recommendations on how the

Government should address the identified accessibility barrier or barriers or improve an accessibility practice or practices.

18. Whaikaha will provide administrative and analytical support to the Committee as it develops its recommendations. Where necessary, Technical Advisory Groups will be established to provide technical expertise on particular barriers or aspects of life.
19. Once it has finalised its recommendations, the Committee will present them to the Minister for Disability Issues for their consideration. The Minister will then table the Committee's recommendations in the House, following which the Government will be required to consider and respond to them, including taking proposals to Cabinet where required, and publish its response.
20. For key examples of how the Committee might assess an aspect of life both with and without recommending new standards or regulations, see **Appendix Two**.

Alignment With Whaikaha Workstreams

21. Up until recently, efforts to improve accessibility were fragmented across the public service. There has been a lack of clear leadership on accessibility issues, accompanied by a lack of awareness of the importance of accessibility across society.
22. In addition, there were no practical avenues for disabled people to shape policy related to accessibility. To address these issues, the Government established Whaikaha, and introduced a legislative framework to improve accessibility through the Accessibility for New Zealanders Bill.
23. The Bill aligns with Whaikaha's Cabinet-mandated role to act as a cross-government steward for disability policy in partnership with disabled people and tāngata whaikaha Māori. This role includes promoting accessibility practices across government.
24. The Accessibility Committee has a mandate to report on specific accessibility barriers and practices and supporting relevant government agencies to address or resolve those barriers. Whaikaha will support the Accessibility Committee in performing its functions and, where appropriate, align its strategic policy stewardship role with the role of the Committee.

End

Author: 9(2)(a) , Policy Analyst, Policy, Strategy, and Partnerships

Appendix One – Question and Answer Materials

What is the connection between the Bill and the UNCRPD?

- Article 9 of the UNCRPD commits state parties to ensure disabled people and tāngata whaikaha Māori are able to access communications, services and products they need to *"live independently and participate fully in all aspects of life"*.
- Accessibility is also a cross-cutting concept that connects directly to the majority of the articles included in the UNCRPD. For example, progressing accessibility in health settings progresses Article 25, which focuses on ensuring *"the highest attainable standard of health without discrimination on the basis of disability"*.
- The establishment of an Accessibility Committee made up of a majority of disabled people, with strong links to the disability community and supported by a Ministry which works in partnership with those communities, aligns well with Article 4.3, which commits state parties to *"closely consult with and actively involve"* disabled people in the development of government policy.

What is the connection between the Bill, the United Nations Declaration on the Rights of Indigenous People (UNDRIP) and Te Tiriti o Waitangi?

- Accessibility barriers not only hinder access to core public services, public spaces, and everyday activities, but can also act as a barrier to tāngata whaikaha Māori participating in Te Ao Māori.
- Addressing accessibility barriers therefore aligns with New Zealand's commitment to uphold the UNDRIP and is consistent with the Crown's obligations under Te Tiriti o Waitangi.
- The requirement in the Bill for the Accessibility Committee to include knowledge of Te Tiriti o Waitangi, tikanga Māori and te Ao Māori, and to work to remedy accessibility barriers for tāngata whaikaha Māori and their whānau, speak to the government's commitment to progress in this space.

Why didn't Cabinet take the approach promoted by Access Matters?

- Access Matters supports a model that includes:
 - An Accessibility Committee that can make recommendations that are binding on Government
 - Cross-cutting and legally binding accessibility standards
 - The establishment of a regulator that would have powers to monitor, investigate and enforce accessibility standards set by the Committee
 - A barrier notification system which would enable the anonymous communication of access barriers by individuals to the accessibility regulator and an obligation on entities with responsibility for domains containing barriers to remove them
 - A disputes resolution process where the accessibility regulator would investigate complaints and the responsible entity would be required to either remedy the access barrier or pay compensation.

- The key reasons for not adopting this approach are:
 - the approach favoured by Access Matters would be far more costly and not as effective
 - a regulatory approach would be too inflexible as practices evolve over time. It would require frequent legislative updates, and create excessive administrative burden.
 - cross-cutting standards could duplicate existing standards and create confusion. Setting cross-cutting standards that are not sensitive to context is risky and could promote adverse behaviours
 - the creation of a committee with binding powers undermines the roles and responsibilities of elected representatives to make decisions about laws and where to spend public money.
- The model proposed in the Bill bypasses these issues by:
 - adopting a less cumbersome approach that avoids excessive administrative burden and focuses attention and resources squarely on identifying and addressing accessibility challenges, rather than focusing on enforcement alone
 - enabling the development of a process led by disabled people, supported by Whaikaha, to select and address key accessibility challenges in a way that speaks to the rights of disabled people in everyday contexts
 - leaving the door open for the introduction of regulations or standards in relation to specific accessibility challenges
 - enabling the Committee to make recommendations directly to the Minister for Disability Issues
- The government recognises and acknowledges the hard work that went into the Access Matters campaign and proposal, but considers that this approach would not achieve the aspirations of the disability community.
- The Accessibility Bill sets the Government on a more sustainable long-term path led by the Accessibility Committee, and supported by Whaikaha.

What are some existing accessibility initiatives?

- This government takes accessibility seriously and is already progressing a number of projects to promote accessibility.
- Some promising projects in this space include:
 - **review of the Building Act** being conducted by the Ministry of Business, Innovation and Employment
 - **review of the Total Mobility Scheme** being conducted by Waka Kotahi – New Zealand Transport Agency, which aims to ensure consistent and equitable access to accessible transport options
 - **refresh of the NZSL Strategy**, which aims to better reflect the needs and aspirations of tāngata turi
 - **review of the NZSL Act**, which will raise the national profile of NZSL as an official language including promoting equity of access in key sectors

- **Electoral Access Fund**, to reduce cost barriers faced by disabled people running for office by covering disability-related costs which non-disabled candidates do not face
-
- These examples illustrate that there is important progress being made on accessibility across Government that the Accessibility Committee could be commenting on and shaping.

What is Whaikaha's role in improving accessibility?

- Whaikaha has a Cabinet-mandated role to act as a cross-government steward for disability policy in partnership with disabled people. This role includes promoting accessibility practices across government.
- Whaikaha anticipates supporting the Accessibility Committee in a range of ways including:
 - supporting the Committee in its work to address accessibility challenges across many aspects of life
 - contributing to **education and training practices** to integrate better practices into government services, businesses, and other spaces
 - supporting the creation or improvement of **accessibility standards** to set clear expectations and standards for accessibility progressively, sector by sector, in a way that is sensitive to the practical realities in each context
 - gathering and analysing accessibility **data and insights** to understand the degree to which standards are or are not being met, the impacts accessibility interventions have on outcomes for disabled communities, and alignment with the UNCRPD.

Why aren't you including a definition of disability, disabled people or accessibility in the Bill?

- Defining disability and disabled people in New Zealand law is an important task we do not take lightly.
- Disability is already defined in various acts in New Zealand, including the Human Rights Act, The Building Act and the District Courts Act.
- These definitions do not align cleanly with one another and are now viewed by many as out of date and no longer fit for purpose.
- If we were to define disability in legislation again, we would want to ensure we progress that work in partnership with disabled people, develop a more enduring definition, and place it in appropriate legislation
- The Accessibility Bill was not seen as the right legislative vehicle for the development of a new definition of disability.
- The decision to not include a definition of accessibility in the Bill was because of concerns that any definition of accessibility included in legislation would not remain relevant and might result in unintended rigidity in government systems.
- Instead, the Bill establishes a mechanism to address actual accessibility barriers and practices, as these are more consistent with the Social Model

of Disability and would be more likely to work with any evolving conception or definition of accessibility adopted by communities.

Why aren't you including a human right to reasonable accommodations?

- Codifying a right to reasonable accommodations would sit better in the Human Rights Act, alongside other human rights, rather than a bill focused on system-level approaches to improving accessibility.
- Amending the Human Rights Act needs to be done carefully, as small changes can have very large impacts across Aotearoa. These impacts are not always positive and care must be taken to ensure any process like this is completed in partnership with disabled people, properly researched and given the necessary time to be effective and minimise harm.

How will this Bill help disabled people with the barriers they face every day?

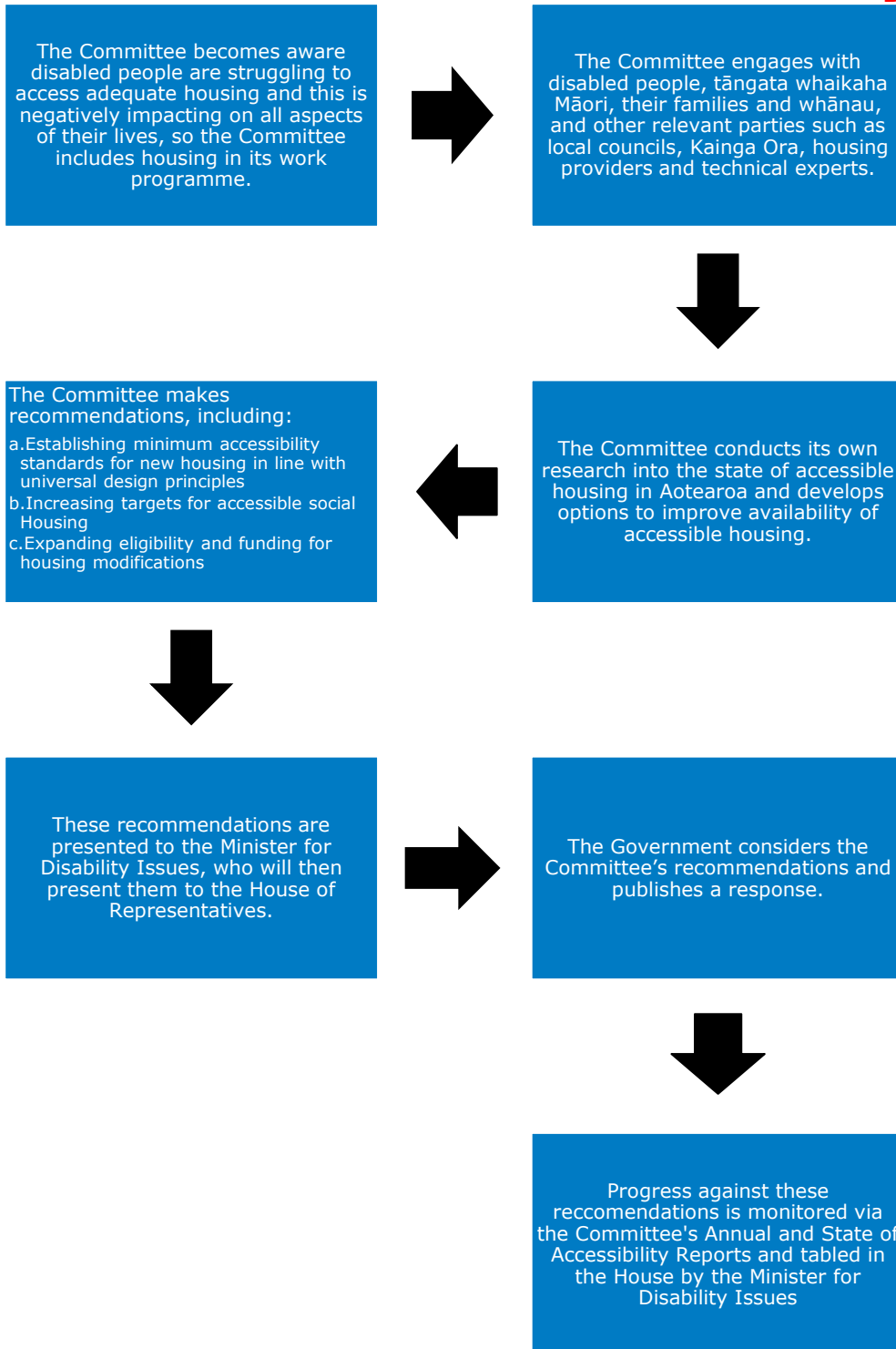
- The Accessibility Committee will have a mandate to report on specific accessibility barriers and practices. This raises awareness of those barriers and will support active consideration by the responsible part of government about how to address or resolve those barriers.
- Armed with this information, the Minister and the Government of the day will be able to more effectively ensure the overall government system is more accessible, joined up, and responsive to the needs of disabled people.
- An example of this dynamic in action is included as **Appendix Two**.

Appendix B – Key Examples of Committee Processes

Example with Standards

1. While the Bill does not set standards itself, the Committee will have the ability to recommend creation of new legislation, regulation, standards, or enforcement mechanisms where appropriate.
2. In many sectors standards already exist, but the committee may recommend changes to them. For example, they could recommend standards are made more prescriptive, or are amended to better reflect the needs of disabled people and tāngata whaikaha Māori.
3. This approach allows the Committee to recommend an approach based on their judgement and analysis, and assessment of the whole picture around an accessibility issue, rather than focusing on standards and enforcement alone.
4. In making its recommendations the Committee is likely, but not limited, to consider:
 - a. The views and experiences of disabled people and tāngata whaikaha Māori
 - b. Existing analysis and reporting on the aspect of life in question, including United Nations and Waitangi Tribunal Reports
 - c. Research and Analysis the Committee commissions to support its decision
 - d. Any advice provided by Whaikaha, other government departments or any technical advisory groups supporting their work.
5. An illustrative example of a review resulting in the Committee recommending new standards is below¹.

¹ Details included in this example have been drawn from previous recommendations made or commissioned by disabled people's organizations. In this case, the Donald Beasley Institute's report titled "[My Experiences, My Rights - A Monitoring Report on Disabled Person's Experience of Housing in Aotearoa New Zealand](#)" and the 2022 International Monitoring Mechanism's report titled "[Disability Rights: How is New Zealand Doing?](#)".

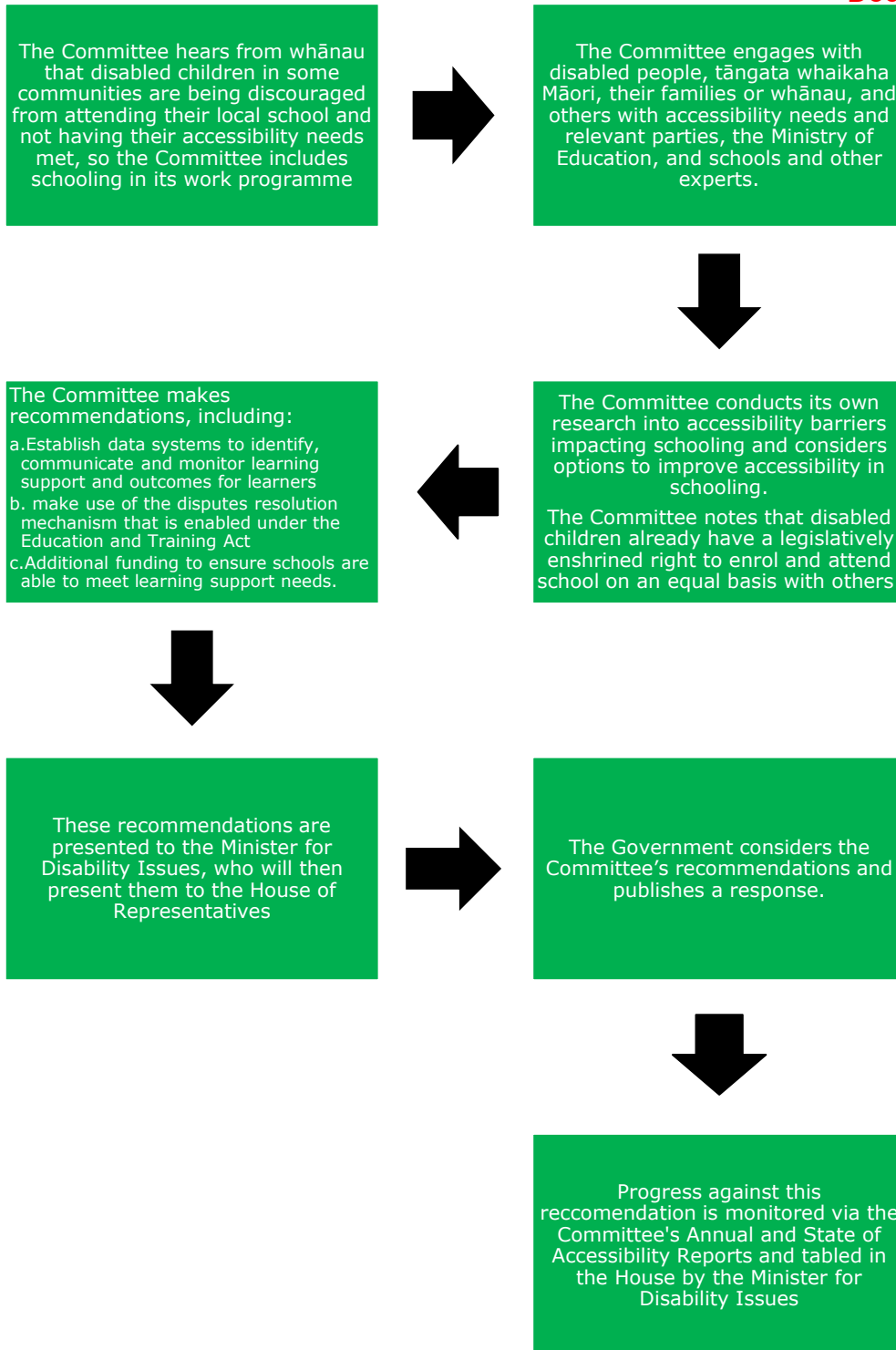


Example Without Standards

6. While the Committee can recommend new legislation, regulation, or standards to promote accessibility, many sectors already have these mechanisms in place.
7. Most people strive to meet these standards, but many struggle to do so consistently due to a variety of factors, including:
 - a. Insufficient training in, and knowledge of, disability
 - b. No practical guidance available on providing specific reasonable accommodations in specific contexts
 - c. Insufficient data to understand and monitor outcomes for disabled people and tāngata whaikaha Māori
 - d. Lack of understanding of the intersection between disability and Te Ao Māori²
 - e. Having no systems in place to alert staff to individual access requirements, so they can be anticipated and met consistently
 - f. Insufficient funding to meet additional costs associated with providing reasonable accommodations.
8. The Committee can also recommend enforcement measures, but these too may be ineffective if the right supportive measures are not in place to enable people to meet the standards in practice. Enforcement measures can also lead to perverse outcomes in some situations, particularly where people do not have the capability or capacity to meet the standards.
9. For example, strictly enforcing an accessibility standard that is unable to be met in practice could drive service providers out of business or open them up to sanctions beyond their control to avoid.
10. To maintain their viability, these people or businesses may attempt to minimize exposure to these costs by excluding disabled people and tāngata whaikaha Māori from their services. This has been observed both within New Zealand and Internationally.
11. In situations where standards exist but supportive measures are not in place to enable actors to comply with those standards effectively and consistently, the Committee may recommend those supportive measures are developed alongside instead of focusing on standards and enforcement alone.
12. An illustrative example of a review resulting in recommendations of supportive measures, rather than standards, is below³.

² In certain situations, the support tāngata whaikaha Māori require will differ from that of disabled people in general. For example, the provision of NZSL interpreters who are able to translate Te Ao Māori concepts for tāngata turi. In these situations like this, it may be necessary to clarify that accommodations provided must be culturally appropriate.

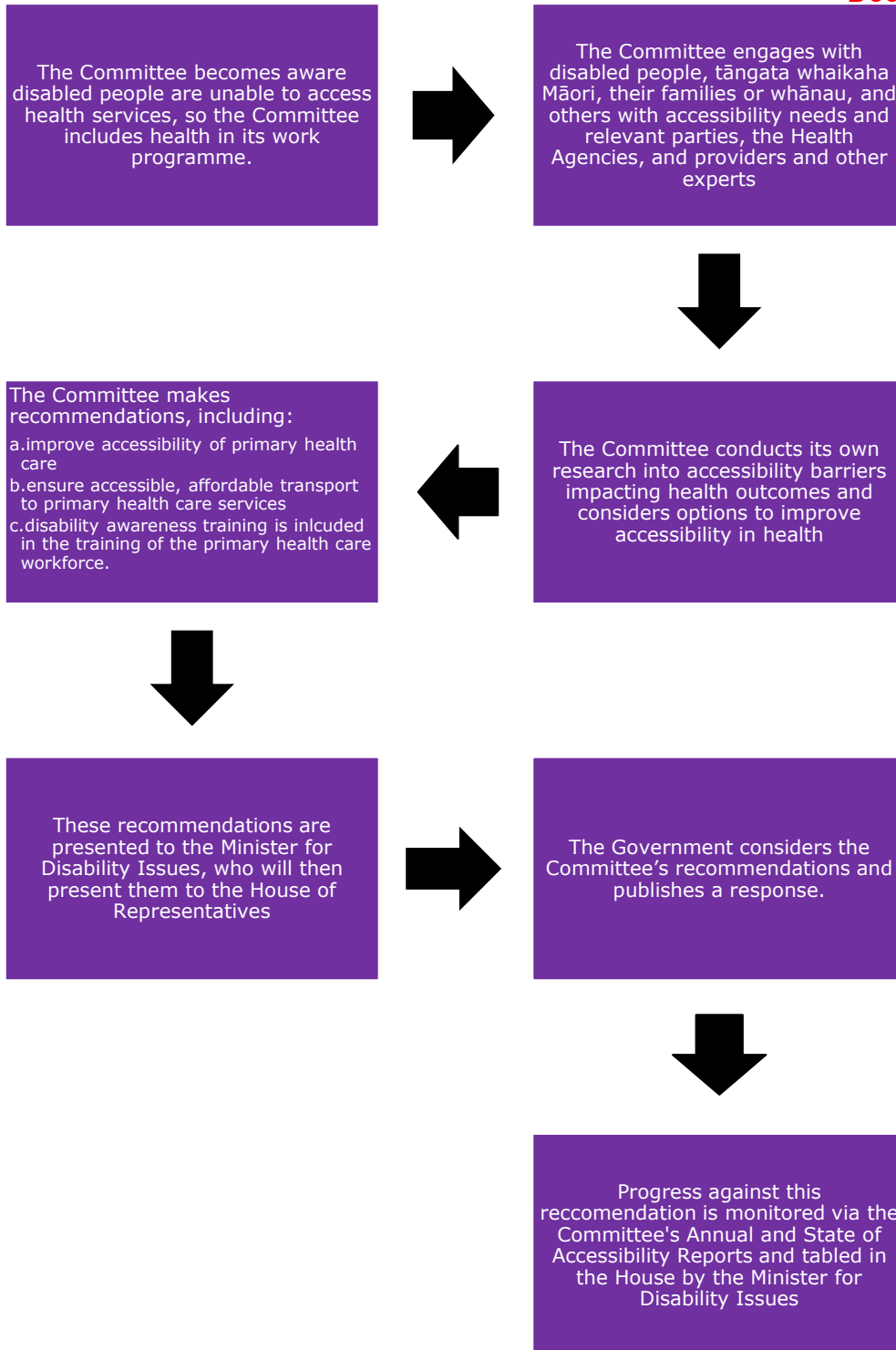
³ Details included in this example have been drawn from the Education Review Office's 2022 Report titled "[Thriving at School? Education for Disabled Learners in Schools](#)". This report found that "expectations set in legislation are robust", but a lack of data on disabled learners and confidence amongst teachers in teaching disabled learners were key issues. Commenting on funding was out of scope of this review, but it was noted that funding was a key concern raised by schools.



Cross-Agency Example

13. For many aspects of life, the accessibility challenges experienced by disabled people and tāngata whaikaha Māori are not contained to a single agency. Improving outcomes in these areas requires joined-up action across multiple government agencies.
14. The Committee is not limited to recommending changes to one agency at a time and can recommend agencies work together to address accessibility challenges across the aspect of life they are making recommendations on.
15. An illustrative example of a review resulting in recommendations spanning across several agencies is below⁴.

⁴ Details included in this example have been drawn from previous recommendations made or commissioned by disabled people's organizations. In this case, the Donald Beasley Institute's report titled "[My Experiences, My Rights: A Monitoring Report on Disabled People's Experiences of Health and Wellbeing in Aotearoa New Zealand](#)" and the 2022 International Monitoring Mechanism's report titled "[Disability Rights: How is New Zealand Doing?](#)".



Briefing

Date:	1 June 2023
For:	Hon Priyanca Radhakrishnan
File reference:	REP/23/5/494
Security level:	In confidence

Advice on Potential Stakeholder Engagement on the Accessibility Bill

Purpose

This briefing responds to a request from your office for advice on key stakeholders, their known opinions on the Accessibility for New Zealanders Bill, and advice from Whaikaha regarding engagement with them once the Bill is reported back.

Executive summary

The Accessibility for New Zealanders Bill (the Bill) aims to create an accessibility framework that takes a progressive approach to identifying, preventing, and removing barriers to participation for disabled people, tāngata whaikaha Māori and their families and whānau and others with accessibility needs in New Zealand.

The Bill is currently being supported by the Ministry of Social Development (MSD). MSD recently provided the Social Services and Community Select Committee (the Select Committee) a Departmental Report summarising public submissions on the Bill. The Select Committee is due to report back to the House on 22 June 2023. The intention is for Whaikaha to take over the lead role in supporting the Bill once the Select Committee reports back.

There are two clear messages from the public submissions on the Bill:

- There is a desire to see swift progress to improve accessibility in Aotearoa, and
- Submitters expressed a strong preference for a regulatory approach, rather than the enabling model currently agreed by Cabinet.

The disability and tāngata whaikaha Māori communities have strong views and aspirations for the Bill. While many of these views reflect disagreement with the approach taken in the Bill, there is also some misunderstanding about:

- the scope and purpose of the Bill,
- the rationale for Cabinet's decision to support enabling legislation rather than a regulatory approach, and
- the government constraints and context within which the Bill is being progressed.

We understand that you want to engage with key groups of disabled people and tāngata whaikaha Māori, after the Select Committee reports back to the House, to promote understanding of and support for the enabling model contained within the Bill.

We recommend you engage with the following groups:

- Access Matters Aotearoa (AMA)
- Disabled People's Organisations Coalition (DPO Coalition)
- Te Ao Mārama Aotearoa (TAMA)
- Te Roopu Waiora (TRW)
- Kāpō Māori Aotearoa (KMA)
- Tū Tāngata Turi (TT)
- Mana Pasefika (MP)
- Faiva Ora Leadership Group (FOLG)
- National I.Lead Committee (I.Lead), and
- Ngā Tāngata Tuatahi – People First New Zealand (People First).

We can provide an aide memoire with talking points to support your discussions with stakeholders.

We also recommend providing a background document on the Bill to support successful engagement, as several groups did not submit on the Bill and may not have all the relevant information. We will include this with the aide memoire.

We will also be providing you with options for progressing the Bill in the coming weeks, including how far the Bill could be progressed before the House rises in August. This will include analysis of any potential timeline for passing the Bill.

If you decide to pause the progression of the Bill once the Select Committee reports back to the House, then we recommend you inform Cabinet of your intent to do this and plans to engage with key community groups.

31. The DPO Coalition both submitted on, and gave a verbal submission, to the Select Committee on the Bill. They do not support the Bill in its current form and believe the Bill should be rewritten and a regulatory model adopted. Their chief concerns in their words are that the Bill:

- will make no change to improve the ability of individuals to resolve their access barriers
- creates no enforcement regime, either to lead to an action to support disabled people, or to require that regulations be developed by other authorities
- does not cover private enterprise or local government
- does not set any standards, although it may seek for those standards to be created
- does not create a decision-making body that will decide if a situation is discriminatory against disabled people
- does not create any obligations on anyone to make tangible changes within firm time frames
- that a ministerial advisory committee does not require legislation
- relies heavily on having a Minister who is supportive and progressive if it is to have any impact at all.

32. They also note that:

- A significant number of the complaints received by the Human Rights Commission are disability related and the current mechanism is not a viable way to resolve barriers
- At the recent examination of New Zealand's compliance with the UNCRPD, the UNCRPD Committee expressed that it is concerned about *"Reports from organisations of persons with disabilities on the Accessibility for New Zealanders Bill"* and recommends that New Zealand *"establish a co-design and co-production process with organisations of persons with disabilities to address concerns about the Accessibility for New Zealanders Bill, following release of the Select Committee's report."*

33. These concerns, read together, amount to a fundamental disagreement with the enabling model and a strong preference for a more regulatory approach.

Recommendations

It is recommended that you:

Note that a wide range of community groups oppose the enabling approach in the accessibility Bill and prefer a regulatory one. *Noted*

Note that views on the Bill frequently contain misunderstandings of the proposed approach, the mechanics of government and the context within which key decisions have been made. *Noted*

Note that Whaikaha recommends you engage with:

- Access Matters Aotearoa
- Disabled People's Organisations Coalition
- Te Ao Mārama Aotearoa
- Te Roopu Waiora
- Kāpō Māori Aotearoa
- Tāngata Turi
- Mana Pasefika
- Faiva Ora Leadership Group
- National I. Lead Committee, and
- Ngā Tāngata tuatahi – People First New Zealand. *Noted*

Note the above groups represent a broad range of perspectives from across the disability and tāngata whaikaha Māori communities that are not well represented in the current process and include voices who both are and are not engaged on the Bill. *Noted*

Agree that you will undertake targeted engagements with key disability and tāngata whaikaha Māori groups after the Select Committee report is presented to the House. *Noted*



Hon Priyanca Radhakrishnan

Minister for Disability Issues

Date *4/6/23*



Ben O'Meara

Deputy Chief Executive, Policy, Strategy, and Partnerships

Date 1 June 2023

Scope of the Current Bill

1. In 2021, Cabinet agreed that the Bill will centre around an enabling model paired with the establishment of an Accessibility Committee (the Committee) led by disability community representatives. The Committee will:
 - Identify accessibility barriers
 - Make recommendations on the removal of those barriers
 - Progressively work towards growing accessibility practices in Aotearoa.
2. During Select Committee submissions we heard that a large portion of the submitters opposed the enabling model and are advocating for a more regulatory approach.

Advice on Engaging with Key Groups

3. While most disabled people, tāngata whaikaha Māori, and their representative organisations would prefer a regulatory model, there is also a significant degree of misunderstanding regarding the enabling model, the purpose of the Bill and the implications of suggested changes.
4. Key examples of common misunderstandings include:
 - the stability and degree of commitment created by accessibility legislation instead of a simple Ministerial Advisory Committee, which would be much simpler to disestablish or ignore
 - the intent that the advice of the Committee will lead to amendments to existing regulations and standards as the Committee progresses its work on a sector by sector basis
 - the inclusion of a review of the Bill within five years, which could prompt changes if the approach is not working, and
 - the risks of codifying accessibility standards in primary legislation when accessibility practices are fluid, contextual and evolving.
5. Many of these elements are highly technical and implications of changing their structure not obvious. Further detail on these issues will be included in our suggested talking points to support discussions following the reporting back of the Bill.
6. Several common suggestions in submissions also indicate misunderstanding of key government constraints and context. For example, the desire of some community advocates for the Committee to be empowered to make binding recommendations.
7. In practice, this would mean that a non-elected body would have the power to force decisions that require the appropriation of public money and

amending of primary legislation. This would effectively undermine the role of elected leaders to make decisions on behalf of their constituents, to allocate public money and pursue the priorities they were elected on.

Advice on post report-back engagement

8. Whaikaha recommends that your engagements following the reporting back of the Bill are targeted to key groups of disabled people and tāngata whaikaha Māori rather than large public meetings because:
 - Public discussions may be attended by groups not representing the interests of disabled people, such as businesses.
 - Large and diverse public meetings are likely to make managing accessibility needs more complex.
 - A more targeted approach enables you to hear a wider range of views from key disability leaders representing key populations who both are and are not currently engaged on the Bill
 - More focused meetings enable better quality discussion and dialogue than larger meetings, especial on complex topics.
9. Whaikaha therefore recommends that you engage with key community groups to discuss the Bill. We recommend that engagement include:
 - Providing background information well in advance to support the discussion
 - Seeking from the groups a considered opinion in writing following the engagement.
10. Whaikaha can support you with talking points to ensure all parties are equipped to participate fully.
11. A supported approach will ensure a shared foundational understanding of the complexities of the current situation prior to engagement, so that both community leaders and you get the most out of any engagements.
12. Below is a summary of key groups we recommend you engage with including:
 - Background information
 - Views on the Bill
 - Advice for engagement.
13. These groups reflect a broad range of voices from across the disability community who both have and have not been strongly engaged on the Bill to date. Several groups also include voices from communities where disability

issues intersect with other equity issues and are not often heard on an equal basis with others.

Access Matters Aotearoa

14. AMA is a collective movement of organisations and individuals campaigning for the passing of accessibility legislation centred around a regulatory model that aligns with the group's 13 principles¹.

15. This group was previously known as the Access Alliance but has since undergone a change in leadership and rebrand.

Background

16. AMA is made up of a broad cross-section of disabled people's organisations², disability-related groups and other supporting parties from across Aotearoa.

17. There are concerns from some sectors of the disability community that AMA does not sufficiently include disabled people in its leadership. This reflects a broader concern amongst disabled people about organisations speaking for disabled people, rather than enabling them to speak for themselves.

18. AMA worked closely with MSD on the initial policy work to develop the Bill and met with then Minister of Disability Issues, Carmel Sepuloni, on a regular basis during this time.

19. Following that process, AMA and MSD came to differing views about what the Bill should contain. AMA wanted a regulatory model that aligned with their principles, MSD recommended an enabling model. Cabinet was presented with a choice between these two options and chose to progress the enabling model.

20. Since then, AMA has campaigned for a change in model to align with their preferred approach, including presenting a petition to parliament on 22 February 2023. This campaign continues and has fed into the current Select Committee process.

View on the Accessibility Bill

21. While AMA supports, at a high-level, the introduction of accessibility legislation and the creation of an Accessibility Committee described in the Bill,

¹ For more information on these principles, see [here](#).

² A 'disabled people's organisation' is an organisation made up of and run by disabled people, as defined in General Comment 7 of the United Nations Convention on the Rights of Peoples with Disabilities. This is distinct from groups with a strong interest in the disability space, but don't represent the direct 'voice' of disabled people.

they also recommend a suite of changes. The key areas AMA want to see change in are:

- a. The Accessibility Committee:** to be able to make binding recommendations to Government. AMA has concerns about the workload on disabled leaders, who are likely to have significant commitments beyond the committee that are currently under-supported.
- b. Accessibility standards:** a process for empowering the Accessibility Committee to create binding accessibility standards and that failure to comply with standards should constitute a legal offense.
- c. The establishment of a regulator:** a crown entity that has powers to monitor, investigate and enforce accessibility standards set by the Committee.
- d. A barrier notification system:** which enables the anonymous communication of access barriers by individuals to the accessibility regulator and an obligation on entities with responsibility for domains containing barriers to remove them.
- e. A disputes resolution process:** where the accessibility regulator investigates a complaint and then oversees a process where the responsible entity either remedies the access barrier or pays compensation.

22. While elements of these concerns could be addressed while remaining consistent with an enabling model, such as some form of barrier notification system, most cannot be accommodated without a fundamental shift towards a more regulatory approach.

23. There are also broader concerns with many of the more regulatory suggestions, as they could empower a non-elected entity to promote changes to legislation, impose significant costs on governments, and these kinds of approaches overseas have led to an overemphasis on enforcement without addressing accessibility barriers³.

³ A focus on enforcement without sufficient supports to meet standards is also likely to promote adverse behaviours. For example, imposing a standard to ensure accessible doctors visits without actually supporting and remunerating practices for providing supports could cause disabled patients to be considered a net drain on a practice's finances and lead to disabled people not being taken on as new patients. A similar dynamic has already been observed in education settings following the introduction of a non-discrimination clause within the Education and Training Act 2020.

24. These elements are core to the campaign being progressed by AMA, and are also the central themes echoed by a wide range of other groups, including several discussed here.

25. A recent change in leadership within AMA appears to have softened the organisations position on the Bill. This was reflected in their recent verbal submission to the Select Committee, which suggested that while AMA prefers a regulatory approach the group can see merit in the current Bill as a necessary first step.

Advice on Engagement

26. AMA have participated in every stage of the Bill's progression to date, including working alongside MSD on policy development, actively campaigning over years for a regulatory approach, and engaging with the Select Committee.

27. While support from officials may aid a conversation with AMA, it is likely that any information will already be familiar to AMA's leadership. We recommend a direct conversation with AMA's leadership on the Bill.

Disabled People's Organisations Coalition

28. The DPO Coalition is a coalition of six disabled-led organisations which hold a gazetted relationship with Government that stems from New Zealand's obligations to uphold the United Nations Convention on the Rights of Peoples with Disabilities (UNCRPD).

Background

29. The DPO Coalition is made up of:

- Association of Blind Citizens of New Zealand
- Balance Aotearoa
- Deaf Aotearoa
- Disabled Persons Assembly New Zealand
- Muscular Dystrophy Association of New Zealand
- People First New Zealand Inc. - Ngā Tāngata Tuatahi.

30. The DPO Coalition has a long history of advocating for the rights and interests of disabled people in a range of contexts including directly with ministers and government departments. They also serve as the community component of the Independent Monitoring Mechanism (IMM) of the UNCRPD.

View on the Bill

Advice on Engagement

34. It is important that engagement with the DPO Coalition on this issue lines up with the government's formal response to the IMM recommendations. We can provide advice on this in the talking points for the meeting.

Groups Representing Tāngata Whaikaha Māori

35. We recommend engaging with a range of groups representing tāngata whaikaha Māori as this community is both under-represented in discussions on the Bill and hold a diverse range of views and perspectives:

- Te Ao Marama Aotearoa Trust (TAMA) is an independent tāngata whaikaha Māori-led entity that aims to represent the interests of and promote better outcomes for tāngata whaikaha Māori and their whānau by engaging with the Crown.
- Te Roopu Waiora (TRW) is a kaupapa Māori organization founded and government by tāngata whaikaha Māori.
- Kāpō Māori Aotearoa (KMA) is a member-based society providing support and advice for kāpō (blind, vision impaired and deafblind) Maori and their whanau.
- Tū Tāngata Turi (TT) is a tāngata turi (Māori Deaf) collective who work and advocate to promote better outcomes for tāngata tūri and their whānau.

Background

36. TAMA started as the Te Ao Mārama Disability Advisory Group, which held a tāngata whaikaha Māori advisory relationship with the Ministry of Health prior to the Health and Disability System Reforms in 2021. TAMA has now established itself as a trust and has relationships with both the Ministry of Health and Whaikaha.

37. TRW was established in 2001, is based in South Auckland and provide career development, alternate formats and mentoring services for tāngata whaikaha Māori.

38. KMA has a long history of advocating for Kāpō Māori both individually and as a part of the DPO Coalition. Kāpō Māori recently ceased its participation in the DPO Coalition. KMA have also been heavily involved in the work of AMA to advance the campaign for a regulatory model.

39. TT also have a long history of advocacy on behalf of tāngata tūri and are currently advancing a Waitangi Tribunal claim on the rights of this community.

Views on the Accessibility Bill

40. TAMA and TT did not make submissions on the Bill, so their views on it are not known.
41. TRW did make a submission on the Bill, which supported the regulatory approach championed by other groups and added concerns relating to the rights for tāngata whaikaha Māori.
42. KMA did not make a separate submission on the Bill but were involved in progressing the AMA campaign.

Advice on Engagement

43. Engagement with tāngata whaikaha Māori groups is likely to focus around tāngata whaikaha Māori interests in the Bill and how the Bill aligns with the Crown's obligations under Te Tiriti o Waitangi.

Groups Representing the Voices of Disabled Pasifika People

44. Mana Pasefika (MP) and Faiva Ora Leadership Group (FOLG) are made up of Pasifika disabled people and aim to enable them to advance and champion Pasifika disability issues by having their views represented at the highest levels in New Zealand.

Background

45. MP holds a relationship with Whaikaha and see themselves as a Pasifika disabled person-led organisation. MP helps represent the voices of disabled Pasifika peoples to inform our work.
46. FOLG has a relationship with Whaikaha that stems from previous shared work on the Faiva Ora National Pasifika Disability Action Plan within the Disability Directorate.

Views on the Accessibility Bill

47. MP and FOLG did not make submissions on the Bill, so we cannot be certain what their position is.

Engagement

48. Engagement with MP and FOLG will include a focus on ensuring the interests of Pasifika people are prioritized in terms of accessibility.

National I.Lead Committee

49.I.Lead is a disabled youth movement led by youth, for youth, that aims to amplify the voices of disabled children and young people on any platform, at any table.

50.The National I.Lead Committee are a group of disabled young people who engage with government on issues relating to disabled children and young people.

Background

51.I.lead was formed following the first Youth with Disabilities Conference in 2019. Since then, the broader organisation has held another conference in 2022 and offers a range of services tailored to the needs of disabled young people.

View on the Accessibility Bill

52.I.lead did not make a submission on the Bill, and we cannot be certain what their position is.

53.Officials think that I.lead will share many of the concerns raised by other groups, with a particular focus on intersectional equity issues and contexts of most interest to children and young people. For example, accessibility of transport and education sectors.

Advice on Engagement

54.Engagements with children and young people are most successful when they take place within a particular structure which includes at least:

- a. Being engaged as a group
- b. Acknowledgement from leaders, so they feel valued
- c. Having time to discuss issues amongst themselves and provide feedback as a group after meetings.

55.Officials can work with your office on an engagement with I.Lead that supports their participation as disabled young people.

People First

56. People First is an organisation which aims to empower and assist people with learning disabilities to be strong and valued individuals in New Zealand⁴.

Background

57. People First are a member of the DPO Coalition and run local groups across Aotearoa where members learn about self-advocacy, have opportunities to speak up and network with the national-level organisation.

58. People First also support their members to advise government on issues and potential interventions to improve outcomes for people with learning disabilities.

View on the Accessibility Bill

59. People First submitted on the Bill as a part of the DPO Coalition.

60. People First's local Ashburton group also made a separate submission which commented on the importance of improving accessibility for people with learning and other disabilities.

Advice on Engagement

61. Successful engagement with people with learning disability requires additional supports, especially when content is as complex as the Bill. These supports include:

- Meetings being planned well ahead of time
- Information being provided in Easy Read
- Support people being available who have experience working with people with learning disabilities and preferably an existing relationship with each representative
- Longer meeting times so that information can be explained, repeated, and to ensure time for any questions
- Opportunities for members to discuss and provide feedback on issues after the meeting.

62. It is also recommended that People First members be compensated for their time as meetings and advising on issues frequently take up significant amounts of time and it is important that their contributions are recognized.

⁴ Learning disability is also commonly known as intellectual disability. Learning disability is the preferred term of People First members.

Implications, Risks, and Issues

63. The key risk from this engagement is raising expectations that the Government may shift from the current approach to the Bill towards the regulatory model preferred by community groups. This could result in strengthening opposition to the current Bill, rather than support for it.

64. If the engagement is well structured, and discussions remain within the scope of previous Cabinet decisions this risk is relatively low.

Next Steps

65. Whaikaha will:

- Support your office to organize meetings.
- Provide you with advice on options for progressing the Bill in the coming weeks
- Provide you with talking points to support this engagement.

End

Author: 9(2)(a) [REDACTED], Senior Policy Analyst, Policy, Strategy, and Partnerships

Responsible manager: Helen Walter, General Manager, Policy, Strategy, and Partnerships

Briefing

Date: 27 July 2023

For: Hon Priyanca Radhakrishnan

File reference: REP/23/7/696

Security level: In confidence

Accessibility Bill - Advice on Select Committee Report Recommendations

Purpose

The purpose of this briefing is to advise you on potential changes to the Accessibility for New Zealanders Bill (the Bill) following the Social Services and Community Select Committee (Select Committee) report back to the House.

Executive summary

The Select Committee recommended by majority that the Bill be passed with several minor changes. We recommend most of the proposed changes be accepted as written, but also recommend three additional changes are made:

- Adding a new clause that sets an expectation for specified entities to work with the Committee to avoid rejecting requests for information, if possible
- Amending the term 'in an accessible manner' to 'in line with best government accessibility practices'
- Pushing back the commencement date to 1 July 2025, to ensure that Whaikaha has sufficient time to secure budget and comply with its new responsibilities contained in the Bill.

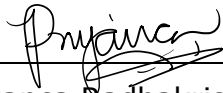
This report sets out these additional changes and summarises the changes recommended by the Select Committee in **Appendix One**.

Any proposed changes will need to be presented to the Cabinet Legislative Committee (LEG) after the Bill passes its Second Reading.

Recommendations

It is recommended that you:

- a) **Agree** to insert a new information sharing clause along the following lines:
If a request is likely to be refused under subsections 17A or 17B, the entity must, before that request is refused, consider whether consulting with the Committee would assist the Committee to make the request in a form that would remove the reason for the refusal
- b) **Agree** to amend the term 'in an accessible manner' to 'in line with best government accessibility practices' and apply this expectation to all reports from the Committee
- c) **Agree** to amend the commencement date of the proposed Act to 1 July 2025
- d) **Agree** to accept the other changes made by the Social Services and Community Select Committee as written
- e) **Note** that any changes to the Bill will need to be approved by the Cabinet Legislation Committee after the Bill passes its Second Reading.



Hon Priyanca Radhakrishnan

Minister for Disability Issues

Date 30/7/23



Helen Walter

Group Manager - Policy

27 July 2023

Accessibility Bill - Advice on Select Committee Report Recommendations

Background

- 1 The Bill was reported back by the Select Committee on 22 June 2023.
- 2 Whaikaha understands that you intend the Second Reading of the Bill to take place once the House resumes after the election.

Powers to Seek Information

- 3 Clauses 17, 18 and 20 in the Bill enable the Accessibility Committee to request information from government agencies.
- 4 Concerns were raised that these powers would be more limited than the standard Official Information Act process and that requests would in practice require support from Whaikaha, which is not clear in the wording of the Bill.
- 5 The Select Committee has recommended amending these clauses to:
 - 5.1 Remove reference to information request functions that overlap with the existing Official Information Act process
 - 5.2 Require specified agencies to provide information to the Committee
 - 5.3 Clarify that Whaikaha will assist the Committee in accessing information
 - 5.4 Establish some privacy safeguards for this process.
- 6 Whaikaha agrees with these changes and suggests an additional clause along the following lines:
 - 6.1 If a request is likely to be refused under subsections 17A or 17B, the entity must, before that request is refused, consider whether consulting with the Committee would assist the Committee to make the request in a form that would remove the reason for the refusal.
- 7 This clause would establish an expectation that specified agencies will work with the Committee to provide the information sought and not deny requests on technical grounds, over avoidable scope issues, or over misunderstandings.
- 8 This clause mirrors a clause in the New Zealand Infrastructure Commission/Te Waihanganga Act 2019.

Clarifying Accessibility Expectations

- 9 Clause 16A(5) of the Bill includes a requirement that the Accessibility Committee's State of Accessibility Report is published 'in a way that is accessible'.
- 10 We recommend rephrasing this to 'in line with best government accessibility practices' would be better because:
 - 10.1 It retains the expectation that the report is held to a high standard of accessibility
 - 10.2 It reflects the fact that it may not be possible or reasonable for the report to be fully accessible for everyone
 - 10.3 It enables the Accessibility Committee to work with responsible agencies to propose improved government accessibility standards and embed an expectation that the Committee and Whaikaha will model best practice of those standards.
- 11 We also recommend this standard is applied to all publications from the Committee, not just the State of Accessibility Report.

Commencement Date

- 12 The Bill currently proposes a commencement date for the Act of 1 July 2024 and was intended to be passed by July 2023. On current timelines the Bill is now unlikely to be passed in 2023.
- 13 As the Ministry of Social Development (MSD) has previously advised you, Whaikaha will need both budget and time to prepare itself to implement the Bill.
- 14 The earliest that funding could be obtained for Whaikaha to do this work would be 1 July 2024, as part of the Budget 2024 process.
- 15 We recommend pushing back the commencement date to 1 July 2025, to allow a one-year window for Whaikaha to obtain funding and do the preparatory work to implement the Bill.
- 16 We have consulted with the Department of Prime Minister and Cabinet and the Parliamentary Council Office who have advised that the changes suggested in this paper, including the backstop date, will need to go through LEG committee but will not require Cabinet approval.

Implications, risks, and issues

- 17 Pushing back the date of commencement may not be well-received and could add to the perception that the Government is not treating accessibility as an urgent issue.
- 18 However, not adjusting the date of commencement would place Whaikaha in a position where we are unable to fulfil our new obligations.
- 19 We recommend that we develop communications material that explains the need to push back the implementation date of the Bill, due to the fact that the Bill will now be passed much later than originally expected.

Next steps

- 20 Officials will prepare a Supplementary Order Paper incorporating the agreed changes and prepare the Bill for its Second Reading.
- 21 We will ensure this updated advice is reflected in any engagement materials you request from us.

End

Author: 9(2)(a) , Senior Policy Analyst, Policy, Strategy, and Partnerships
Responsible manager: Helen Walter, Group Manager, Policy

Appendix One: Other Select Committee Recommendations

In addition to the recommendations discussed in the report above, the Select Committee also recommended:

- Changing the term 'tāngata whaikaha' to 'tāngata whaikaha Māori' throughout the Bill. This change aligns the language in the Bill with correct use of the term tāngata whaikaha Māori which refers to disabled Māori, rather than disabled people in general
- Amending the language on the composition of the Committee to be inclusive of other gender identities
- Including 'family' within the proposed composition of the Committee alongside whānau and carers
- Amending the scope of Committee recommendations from 'domains' to 'aspects of life', which better reflects the language used in the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)
- A new section requiring the Committee to hear from, consider and report annually on disabled people experiencing accessibility barriers via a State of Accessibility Report
 - There is significant overlap between this proposed report and the Annual Report the Committee is already required to produce monitoring progress with its recommendations
 - In practice, it is likely these reports will be completed in tandem and complement each other and avoid duplication
 - Implementing this change will require additional funding to secure more administrative support for the Committee to receive and consider the views of individual disabled people and translate the report into accessible formats.
- Clarifying that the Minister for Disability Issues must present reports from the Committee to the House as soon as practicable.
- Including a new clause defining the term 'reasonable accommodations', clarifying that it holds the same meaning as the concept used in the UNCRPD and inserting a new clause clarifying that the chairperson of the Committee has a responsibility to provide reasonable accommodations for Committee members.

Hon Louise Upston

Minister for the Community and Voluntary Sector
Minister for Disability Issues
Minister for Social Development and Employment
Minister for Child Poverty Reduction



14 AUG 2024

David Wilson
Clerk of the House of Representatives
Office of the Clerk
Parliament Buildings

Dear David

I am writing to inform you of my decision to discharge the Accessibility for New Zealanders Bill and request that it be removed from the order paper as per Standing Order 74(1).

While most submitters expressed that they wanted accessibility legislation during the Select Committee process, they didn't see this Bill as being fit for purpose.

While legislation may be an enabling factor, I consider that the most effective interventions to improve accessibility are likely to be non-legislative. I intend therefore to focus on progressing an accessibility work programme to make concrete, tangible improvements to accessibility in New Zealand within the current regulatory framework.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Louise Upston'.

Hon Louise Upston
Minister for Disability Issues



11 AUG 2024

Rachel Hayward
Secretary of the Cabinet
Cabinet Office
Parliament Buildings

Attn: Sam Moffett
Legislation Coordinator

Dear Rachel

Response to request for reassessment of Bills for the 2024 Legislation Programme

In February 2024, 2 bids were submitted from the Disability Issues portfolio. I have considered each of these bids in light of the Government's current priorities and my own. Both bids fall outside the scope of this reassessment as they had priority categories of 6 and 8. However, I wanted to take the opportunity to provide an update on these bids which is set out below.

Out of Scope

Out of Scope

The Accessibility for New Zealanders Bill

This Accessibility for New Zealanders Bill is awaiting its second reading and a bid was submitted for it seeking a priority category of 8 – on hold, to provide time to consider the future of the Bill.

I have decided to discharge the Bill. This reflects the government and community view that the Bill is not fit for purpose. I intend to focus instead on

the development of an accessibility work programme to make concrete, tangible improvements to accessibility in New Zealand.

As per Standing Order 74(1) I am writing to the Clerk of the House to discharge this Bill from the Order Paper.

Yours sincerely



Hon Louse Upston

Minister for Disability Issues