



Paper Two: Accelerating accessibility – problem, objectives and system framework

Date: 28 February 2020

Report no: REP/20/2/053

Security level: In Confidence

Priority: High

Action Sought

Hon Carmel Sepuloni

Note and Indicate Preferred Option

Contact for telephone discussion

Name	Position	Telephone	1st Contact
Shaun McMaster	Policy Manager	s9(2)(a)	1 st Contact

Report prepared Jacqueline MacKenzie, Senior Policy Analyst

Minister's office comments

- Noted
- Seen
- Approved
- Needs change
- Withdrawn
- Not seen by Minister
- Overtaken by events
- Referred to (specify)

Comments

Agreed to rec 3.3
Disagreed to recs 3.1 and 3.2.

Date received from MSD

28 FEB 2020

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02 MAR 2020



Report

Date: 28 February 2020

Security Level: IN CONFIDENCE

To: Hon Carmel Sepuloni, Minister for Disability Issues

Paper Two: Accelerating accessibility – problem, objectives and system framework

Purpose of the report

- 1 This report, the second of four reports you are receiving on accelerating accessibility:
 - discusses the nature of the policy problem preventing faster progress in achieving accessibility in Aotearoa New Zealand
 - discusses core components, guiding principles and criteria for a workable policy framework that can address the problem and drive change
 - sets out three options for you to consider that cover a new, system-wide approach to accelerate progress in accessibility.

Executive summary

- 2 This report discusses, first, the nature of the policy problem that is limiting progress in achieving accessibility in Aotearoa. Barriers to accessibility that limit and compromise outcomes for disabled people (and others, such as seniors, carers and Māori) exist due to a range of reasons, but can be distilled down to these key underlying factors:
 - a lack of knowledge and awareness, alongside cultural and attitudinal factors
 - a fragmented system with an insufficient regulatory framework, including a lack of leadership and coordination; no clear positive duty to make reasonable accommodation; standards that are limited in reach and enforceability; and compliance challenges
 - other systemic factors, e.g. lack of data and good practice not being extended.
- 3 The report then considers what is needed for a workable framework to address the issues and accelerate progress in accessibility. It outlines core components of a new framework - overall structure and system; education and awareness raising; and institutional arrangements. Our thinking on what a successful framework would look like was informed by lessons learned from comparable international jurisdictions. Ontario legislation, for example, is sometimes given as an example of an 'off the shelf' solution that New Zealand could follow. However, we are aware of difficulties identified in reviews of that legislation (and other countries), such as being too prescriptive in standard setting, not being clear on expectations, and setting unrealistic targets for "full accessibility" to be realised.
- 4 This international experience helped us identify key principles that guided our thinking on what a successful framework should look like. These principles are: progressive realisation; flexibility and future-proofing; universality; inclusiveness; consistency; and ease of use.

- 5 Keeping these principles in mind, we think there are three feasible policy options:
- *Option A* – Cabinet-mandated work programme
 - *Option B* – Amendments to existing legislation that touches on accessibility
 - *Option C* – New standalone legislation, that acts as a vehicle for progressive realisation of a new system over time (and can incorporate elements of Options A and B).
- 6 Each option has possible variations on what it might look like in practice (see **Table 1**) and all involve subsequent decisions relating to implementation. These decisions include: how domains and standards of accessibility should be approached; institutional arrangements under a new system; and whether to set a timeframe for achieving accessibility.
- 7 We evaluated the advantages and disadvantages of the three main policy options (see **Appendix 1**) using key success criteria: timeliness; cost; effectiveness; stakeholder support; and flexibility and responsiveness. **Based on assessment against these criteria, on balance we recommend Option C** (new standalone legislation).
- 8 We see this option as the most effective, as it is the option most likely to change behaviour and address the problems discussed (using both regulatory and non-regulatory means). It would meet expectations for good regulatory practice and provide clear statutory guidance, as well as 'lift the bar' on minimum standards across the public and private sector. It can be implemented progressively so is also the most responsive option over time. This option does carry a risk of lack of support from business stakeholders due to increased compliance requirements, but there are ways of mitigating this.
- 9 Depending on policy decisions on institutional arrangements, it could be introduced to the House this calendar year, meeting your timeframe expectations. However, there are risks with that approach, as discussed in paper one.

Recommended actions

It is recommended that you:

- 1 **Note** that officials have identified that factors behind barriers to accessibility in Aotearoa include widespread lack of knowledge and awareness; a fragmented system with insufficient regulatory framework; and broader systemic factors
- 2 **Note** that we have identified three feasible options for a workable framework that addresses the problems and accelerates progress in accessibility:
 - 2.1 *Option A* – Cabinet-mandated work programme
 - 2.2 *Option B* – Amendments to existing legislation which relate to accessibility
 - 2.3 *Option C* – New standalone legislation, to act as a vehicle for progressive implementation of a new system over time.
- 3 **Indicate** your preferred option for a workable policy framework to accelerate accessibility, either:
 - 3.1 *Option A*: Cabinet-mandated work programme

Or:

- 3.2 *Option B*: Amendments to existing legislation that touches on accessibility

Agree / Disagree

Agree / Disagree

Or:

3.3 *Option C* (recommended): New standalone legislation, to act as a vehicle for progressive implementation of a new system over time

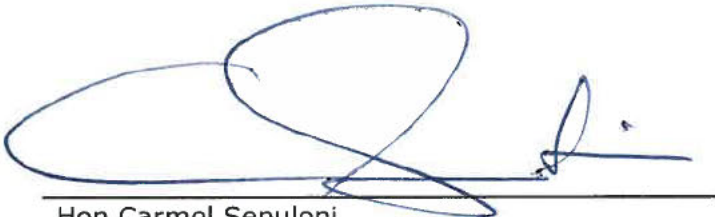
Agree / Disagree



Julia Bergman
General Manager
Disability, Seniors and International Policy

28/02/2020

Date



Hon Carmel Sepuloni
Minister for Disability Issues

02/03/2020

Date

Released under the Official Information Act 1982

Barriers to accessibility affect a wide range of New Zealanders, but especially disabled people

- 10 Accessibility is important because it is a precondition to human rights and full participation in society. Any barriers to accessibility can compromise other outcomes. Barriers to accessibility primarily affect disabled people, who make up around one quarter of New Zealanders and still experience consistently poor outcomes compared with their non-disabled peers¹. In 2018/19, disability was the most common grounds for complaint to the Human Rights Commission (29 percent of all complaints).
- 11 Accessibility is becoming increasingly important as New Zealand society changes. As the population ages, a growing number of people are experiencing access barriers (around 60 percent of people over 65 years of age are disabled), alongside other groups including carers, Māori and speakers of English as a second language.

The reasons behind a lack of accessibility are often inter-related but can be distilled down to several key factors

- 12 While there has been some progress in accessibility, improvements have been slow and fragmented, with progress hard to measure. Disabled people continue to describe major areas of non-accessibility and non-compliance with voluntary standards². The reasons behind a lack of accessibility vary and are often interrelated, but can be distilled down to three key factors:
 - cultural and attitudinal factors often due to a lack of awareness, but also involving discrimination and negative attitudes - a substantial shift is needed in public perceptions
 - problems with the regulatory framework, including the lack of an explicit positive duty to make reasonable accommodations; a fragmented system that lacks leadership and direction; and inadequate monitoring and enforcement of the standards we do have
 - other systemic factors, including a shortage of meaningful data analysis, inadequate training, and pockets of good practice not being extended nationwide.
- 13 These reasons are discussed further below.

There is an underlying lack of knowledge and awareness about accessibility

- 14 The causes of inaccessibility include a lack of shared understanding of accessibility and why it is important to change (e.g. because current practices may be unintentionally excluding a number of people). Reasons for this are driven by:
 - variable understandings of disability and disabled people's needs
 - a lack of awareness about what accessibility looks like (good practice) and how to get there (where and how to get support), including a lack of training and knowledge of universal design, and how to build accessible services in a culturally appropriate way

¹ The four national disability surveys undertaken by Statistics New Zealand since 1996, and the Household Labour Force Survey (June quarter 2017, 2018) - show that educational outcomes, workforce participation and income outcomes for disabled people are consistently lower than for non-disabled people.

² For example, many instances were described by people interviewed for the report "Participation and Poverty", published by the Article 33 New Zealand Convention Coalition Monitoring Group in 2015.

- lack of awareness of the benefits (both economic and social) of increasing accessibility e.g. potentially greater retention of skilled staff, or the potential of an untapped customer market³
 - misperceptions about accessibility being too costly, whether in time, money or effort, as long-term benefits of investing in accessibility can outweigh initial costs, e.g. organisations that plan for accessibility at the outset save over time by not having to retrofit, and gain economic advantage
 - no common understanding of key concepts around accessibility and disability, including what 'reasonable accommodation' means, who it is for, and what people are gaining access to, which can result in:
 - service providers that struggle to understand their responsibilities
 - understandings of disability remaining grounded in the medical, rather than social, model of disability.
- 15 The importance of having a shared understanding of the concept of accessibility is discussed in full in paper one.

Cultural and attitudinal factors also play a part

- 16 Discrimination and negative attitudes also create barriers to accessibility, seen in:
- symbols and language that reinforce disabling stereotypes (e.g. in the media)
 - a lack of understanding of disabled people's accessibility needs
 - disabled people not being empowered to raise accessibility concerns in many spaces (e.g. with employers, services) - this marginalisation can also apply to other groups
 - disabled people hindered from participating in processes to improve accessibility (e.g. lack of accessible information on processes)
 - social exclusion of disabled people reinforcing negative public attitudes (e.g. a lack of contact can foster ignorance, discomfort, distrust and fear).
- 17 While there is a range of information and guidance available towards increasing accessibility in particular sectors (e.g. building-related, or online), there are few services/initiatives that aim to change public attitudes.

A fragmented system that is insufficient for meaningful progress

Our rights-based system has weaknesses, including no explicit positive duty to make reasonable accommodation

- 18 New Zealand chiefly relies on a combination of the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993 (HRA) to deal with disability discrimination. Both laws are considered to be consolidated rights legislation, where disability is combined with other forms of discrimination. They provide a principles-based framework with broadly-worded obligations about not discriminating, and only an implied⁴ (rather than explicit) positive duty for employers and providers of services and facilities to make reasonable adjustments for individuals with a disability. The complaints system is reactive and puts the onus on disabled people to come forward with claims of discrimination.
- 19 The Human Rights Commission's (HRC) advocacy role is limited in its impact. The complaints process under the HRA is based on mediation as the preferred approach

³ For example, CQ Hotels in Wellington found that turnover increased by 20% between 2012 and 2015 when it adopted accessibility improvements.

⁴ Smith v Air New Zealand (2011) referenced in NZIER report on Disability legislation and outcomes (NZIER, 2017)

to achieve individual solutions. While most complainants are satisfied with the outcome, mediated cases are subject to confidentiality so do not generate publicity and, unless appealed higher, do not create precedents. Sanctions are limited to individual compensation, and there is no ability to make preventative or correction orders.

- 20 The nature of the complaints process under the HRA therefore limits its ability to facilitate systemic improvements over time, and limits its educative and deterrent effect. While the HRC's 2018/19 annual report states that its dispute-resolution service enables systemic change, we are not clear how many cases actually achieve this. We do know, by comparison, that 31 percent of settlement outcomes from the Australian Human Rights Commission's conciliation process in 2016/17 brought about wider or systemic benefits⁵.
- 21 Another weakness of the rights-based approach in driving systemic change that the discrimination provisions in the HRA are subject to broad 'reasonableness' exceptions in each area of life, which have proved difficult to test in practice and are assessed on a case by case basis. This has meant varying interpretations and consequent uncertainty about what is required to meet the exception threshold. It is left to people and organisations to balance individual rights to reasonable accommodation with limited funds.
- 22 It may be desirable to clarify obligations under the HRA, especially in relation to what is 'reasonable'. However, amendment of this legislation requires discussion and agreement with the Minister of Justice, who is responsible for the HRA. In any case, amending the HRA is not likely to address the systemic accessibility issues discussed earlier.

Other important legislation that impacts on accessibility is not working as it should

- 23 A range of other primary and secondary legislation impacts on accessibility to some extent. This includes the Building Act 2004 and associated Building Code, the Land Transport Management Act 2003 and the Local Government Act 2002. There have been criticisms from the disability sector that change is too slow, and that the current legislative and regulatory framework, particularly in relation to the built environment, is not sufficient to deliver true accessibility⁶.
- 24 The Building Act is a good illustration of the nature of legislative limitations. The Act and associated Building Code are limited, with accessibility requirements only applying to new buildings, or existing buildings being altered, where the public can visit or work. It therefore does not include private housing (a problem because it excludes disabled people and their families, as well as making it harder for disabled people to maintain social connections through visiting the homes of family and friends.) There are also a range of exemptions under the Act and Code, e.g. for industrial buildings employing less than 10 people. There is currently no intention to review the latter exemption, as noted in the Government's 2019 Response to the UNCRPD Committee's List of Issues.
- 25 The Building Code sits alongside NZ Standard 4121 (the design standard for access and mobility). Compliance with the Building Code is set out in both the Acceptable Solutions published by MBIE and in NZS4121. Because NZS 4121 is only an

⁵ <https://www.humanrights.gov.au/about/news/opinions/25-years-disability-discrimination-act>

⁶ For example, accessibility received the second highest number of responses during consultation by the Office for Disability Issues on the Disability Action Plan for 2019 – 2023. Two key sub-themes included physical accessibility (built environment and transport) and societal accessibility (services, information and communication technologies).

Acceptable Solution and it is not mandatory to follow these, it is not a mandatory requirement for buildings in New Zealand⁷.

- 26 A 2014 review of access into buildings for disabled people (the Malatest Report) found inconsistencies between the Code and Standard; inconsistent application between consenting authorities (territorial authorities); and gaps related to the lack of inclusion of the needs of people with some impairments. The review also found that current regulations are not aspirational, and only set minimum standards - a problem because they do not start with best practice, and varying understanding in the sector means there is potential for buildings to be built that are technically compliant but still not accessible⁸. The standards also need to be updated to consider technological advances.
- 27 In 2012 the HRC recommended that NZS 4121 be reviewed and extended to residential housing. MBIE's view is that NZS 4121 is not suitable for housing and that a separate standard should be developed for residential buildings, due to the nature and scale of housing⁹. HRC also recommended that NZS 4121 include stronger specifications for those with hearing or sight impairments, and incorporate other existing guidelines, such as the RTS14 Guidelines for facilities for blind and vision-impaired pedestrians. However, these recommendations have not been prioritised (e.g. we understand there are no current plans to review NZS 4121 before 2021). This example illustrates the current complexity and lack of clarity. It shows there is a strong reason for preferring a policy approach that provides a clear mandate and direction for these changes to occur.

Most standards we do have are voluntary and limited in their reach and enforceability

- 28 Most of our existing standards or guidance relating to accessibility are non-mandatory. If a standard is not mandatory, compliance is usually lower as it does not have the status of law and there is no meaningful enforcement (compared with legislative compliance mechanisms). In addition, some standards such as NZS 4121 have not been updated for a long time, and there is inconsistent interpretation and advice on their provisions.
- 29 Other areas, such as accessible information and communication, are not covered by legislation. New Zealand Government Web Standards (for accessibility and usability) have applied to the public sector since 2003, and regular reporting on compliance is required. However, compliance with the standards is low with agencies achieving a level of 65 percent (on average) self-assessed compliance and this has not changed significantly over time. There is no enforcement mechanism for non-compliance, and there is no provision for any sanctions applying to non-compliance. Further, it is not mandatory for the private sector, meaning a large amount of web content is not captured.
- 30 Captioning and audio description (CAD) of film and television content is also unregulated. New Zealand has low levels of accessibility to CAD compared to many other countries. However, we understand broadcasters and producers have indicated they will not voluntarily agree to increase CAD levels via an industry code, and the

⁷ Consultation Report: Access to Buildings for People with Disabilities (Malatest, 2014). Commissioned by the Office for Disability Issues and the Ministry of Business, Innovation and Employment (MBIE).

⁸ For example, Schedule 1, clause D1.3.2 of the Building Regulations 1992 provides that an access route shall enable disabled people to approach from either a street boundary or car park, meaning that access to the main entrance to a building may not be available for those not arriving by car.

⁹ For example, the number of people admitted to public buildings vs a house, and the scale of equipment such as wheelchairs that people use outside vs inside a house.

only increases in recent years have come about through additional government funding.

- 31 There are no mandatory accessibility standards for land transport. The New Zealand Transport Agency (NZTA) administers a range of voluntary standards, including requirements for urban buses, road traffic standards (RTS 14) and the Pedestrian planning and design guidance. Nevertheless, Disabled People's Organisations attending a workshop run by the NZTA and Ministry of Transport in 2015 expressed frustration regarding NZTA guidelines, with a clear view that their status as non-legal requirements meant they were not filtering down into actual improvements on the ground. We note NZTA has committed to a number of actions to improve disabled people's access to transport as part of the Disability Action Plan 2019-2023.

There are challenges to compliance, with loopholes, exemptions and gaps common

- 32 Another problem with the way legislation performs is the extent to which compliance is a challenge. Common compliance challenges relate to exemptions and gaps in the law, as well as loopholes used by different actors, and inconsistent interpretation of how regulation should apply. Returning to the building sector as an example, territorial authorities (TAs) across the country are responsible for ensuring compliance with building regulations, however, other actors have key roles, including building owners and designers. Building owners note their dependence on designers to provide them with accessible buildings, however, their level of understanding of the principles underpinning universal access varies.
- 33 Meanwhile TAs must be adequately trained and have the necessary tools. The 2014 Malatest Report noted that many respondents feel there are significant gaps and loopholes, especially in the interpretation of regulations to alter existing buildings. We note that the Building (Earthquake-prone Buildings) Amendment Act 2016 now allows TAs to issue building consents for earthquake strengthening work without provision for disabled people's access if it would be "unduly onerous". The HRC has also noted that TAs are already permitted to exempt alterations from Building Code requirements in relation to means of escape from fire and provisions of access and facilities for disabled people, with exemption grounds being that requirements be "overly burdensome". A December 2013 report by the HRC notes that "a number of new and repaired buildings do not comply with minimum accessibility standards"¹⁰.
- 34 Deliberate non-compliance with building regulations by using loopholes to avoid compliance was also noted in the Malatest Report. For example, changing the intended use of a building after consent was provided, or designing buildings to avoid having to meet access requirements.

A lack of leadership and coordination is hindering progress

- 35 At present no single agency is responsible for accessibility, whether in relation to a particular sector, or more broadly. For example, in the transport sector some measures have been taken by government and operators to ensure that journey, travel or timetable information is accessible (e.g. providing audio and braille signage on request), however, there is no co-ordinated approach¹¹.
- 36 Because accessibility is an issue that permeates all areas of society, it is difficult to be clear on the scope and extent of coordination across both the public and private sector, and across New Zealand legislation. A lack of leadership and coordination means a loss of accountability and difficulties with consistency across agencies (e.g. no shared understanding of accessibility, and difficulties in obtaining a clear picture of what is happening and what progress is being made). The Malatest report notes that there is "no clear responsibility for providing knowledge about the wider issues

¹⁰ "Monitoring Human Rights in the Canterbury Earthquake Recovery", page 87 (HRC, 2013).

¹¹ 2019 Government response to the UNCRPD Committee List of Issues

relating to access” and that a lack of leadership and coordination from a single agency has contributed to “missed opportunities, duplication of efforts and inefficiencies, and gaps in knowledge”¹². A key finding of the recent National Local Authority Accessibility Survey was that clear guidance from central government would assist councils in progressing work on accessibility in their communities¹³.

- 37 Some key recommendations for change that have been made in relation to accessibility, for example by the HRC, have not yet been taken up. The Land Transport Management Act 2003 still does not contain the HRA definition of disability, and instead relies on regional councils to decide individually who is included among the “transport disadvantaged”.
- 38 The New Zealand Law Foundation funded Independent Research team has noted that the Local Government Act 2002 (LGA) has a focus on “four well-beings¹⁴” and is grounded in consultation, however, disabled people are not specifically referred to in the LGA’s decision making and consultation provisions¹⁵. The HRC recommended in 2005¹⁶ that the LGA be amended to include the definition of disabled contained in the HRA (at present there is no definition in the LGA), and ensure disabled people can contribute to decision-making processes for council planning purposes. The fact such amendments have still not been made is a reason to favour a more coordinated approach that can provide momentum, and a legislative option would send a strong signal for change.

Inconsistent advice

- 39 Compounding the challenge of variable levels of awareness, is a lack of expertise and input from those with lived experience of accessibility needs in how to meet those needs¹⁷ (and systems-level change is needed to avoid institutional knowledge being lost). Organisations often have to outsource accessibility training to professional organisations, instead of having the tools, means and confidence to do this themselves. We note there are several organisations offering guidance and advice on how to be accessible and/or meet accessibility standards. For example, the Barrier Free Trust provides advice on universal design and accessible building, as does BRANZ, Be.Lab, Lifemark, and other access advisors (e.g. from Blind & Low Vision NZ).
- 40 While it is positive that there is a range of assistance available, on the other hand there is no one authoritative source of advice, making it difficult to achieve a shared understanding of what accessibility means, what good practice looks like, and what a desirable standard to aspire to is. The experience in Ontario suggests clarity on these matters would help an accessibility framework to achieve its aims.

¹² Malatest Report, pp 7-8.

¹³ Refer REP/20/1/009.

¹⁴ Section 11 of the Local Government Act 2002 provides that the purpose of local government is to “..promote the social, economic, environmental, and cultural well-being of communities..”

¹⁵ Section 82 of the Local Government Act provides that a local authority must consult with persons “who will or may be affected by, or have an interest in” a particular matter. While Māori are specifically referred to in decision making and consultation provisions, there are no references to disabled people.

¹⁶ “The Accessible Journey” (HRC, 2005). This is a report into accessible public land transport.

¹⁷ For example, a literature review on universal design by AUT (NZ) found that while people have valuable experiential knowledge, this knowledge is frequently overlooked by professionals (E. Copeland, Auckland University of Technology, 2014)

Systemic factors also contribute to the problem

- 41 The following additional challenges can hinder people's and organisations' ability to build self-sufficiency for enduring change, even where knowledge and awareness is good:
- There is a shortage of meaningful data, particularly on disability, to underpin investment decisions and direct investment in accessibility,¹⁸ and cost can be a factor in decision making
 - Pockets of good practice are not being expanded nationwide. Good practices tend not to be sustainable and are vulnerable to a changing political landscape and shifting organisational priorities
 - Difference in local circumstance can also be seen in disconnects in local practice from area to area. For example, district health boards spread across a wide geographic region can have a lack of connection, and local councils vary in how standards are applied, and definitions interpreted. It is likely that there is a divide between the level of accessibility that well-resourced urban councils can provide, compared to rural councils with weaker social infrastructure (due to underlying systemic factors). Cost can also be a factor in decision making.

Addressing the problem means agreeing on a workable framework that can accelerate accessibility

A workable framework is guided by underlying principles, includes certain core elements, and meets key success criteria

- 42 A workable framework that accelerates progress in achieving accessibility needs to be able to address the problems outlined above, and:
- help New Zealand meet its national and international obligations (including the CRPD, New Zealand Disability Strategy, Te Tiriti, and the United Nations Declaration on the Rights of Indigenous Peoples)
 - lift economic and social outcomes, especially for disabled people
 - benefit a wide range of other New Zealanders, including seniors, carers, Māori, people with temporary injuries, and those with English as a second language.
- 43 The framework needs to be guided by underlying principles, include certain core elements, and be measured against key criteria. In developing the principles, components and criteria we were influenced by stakeholder feedback and learnings from comparable international jurisdictions (Australia, Canada and the United Kingdom (UK), as well as what we know and can learn about tikanga and mātauranga Māori). These help inform the creation of an accessibility regime, and how the risks and issues can be managed.
- 44 We understand that the Access Alliance would like the framework to protect the progress that has been made since New Zealand ratified the CRPD. However, in our view the framework would sit in the context of existing disability-related legislation, so an accessibility framework is likely to 'lift the bar' and accelerate progress on disability rights.

Guiding principles and assumptions

- 45 The following principles and assumptions have guided our thinking on the components and criteria of a successful framework:

¹⁸ For example, the NZIER report "Valuing access to work" (2017) states "evidence that quantifies the impact of assistive technology and increased [disabled persons'] productivity is scarce".

- a. **Progressive realisation** (development and implementation over time). A staged approach is more likely to build stakeholder buy-in, distribute costs, develop knowledge, and achieve a system that organisations can implement and comply with. It also avoids the difficulty of going “too far, too quickly” which has been a key criticism of the approach in the UK and Ontario, where standards found in legislation are very prescriptive and numerous, stretching beyond the ability of business to implement and comply¹⁹.
- b. **Flexibility and future proofing** - important so that a new system can adapt to future change (in society and technology), enable innovation and allow regulated parties to meet their obligations over time. Australia takes a more flexible approach to the development of standards, with a more participatory approach to their development.
- c. **Universality** – applicable to both public and private sector, so consistent outcomes are achieved, and disabled people gain access to all areas of society over time.
- d. **Inclusiveness and capacity-building** – involvement of people with lived experience in all aspects of decision making, so the system is robust and follows best practice (meets CRPD requirements).
- e. **Transparency, consistency and equity** – so that there are predictable and consistent outcomes for regulated parties, regardless of location, over time. This includes consistency with Treaty of Waitangi Principles, and we expect that improvements in accessibility would also support self-determination for Māori disabled (tāngata whaikaha)
- f. **Ease of use** – a new system needs to be user friendly: easy to navigate and understand. It should enable and encourage good accessibility behaviour.

Core components of a new policy framework

46 A new framework needs to include the following elements:

- a. **An overall structure and system** to drive change and provide clarity on what is expected and enable the making of standards e.g. legislative vehicle, working group, standard setting committee.
- b. **Education and awareness raising**, as initiatives that aim to change attitudes and practices to remove barriers to accessibility play a valuable supporting role alongside regulatory change. Clear guidance and advice, for example, can ensure that:
 - people and organisations have improved understanding of their responsibilities
 - professionals have the required set of skills
 - it is easy for people to comply (any new system must be enabling rather than punitive in approach).
- c. **Institutional arrangements** that can support and implement the functions of a new system such as monitoring, education, enforcement, system leadership and coordination, and dealing with complaints.

Reaching our desired future state means deciding on a policy option and key elements relating to implementation

47 There are three main options that we see as feasible for a policy framework. Each includes a component of education, awareness raising and support for people and

¹⁹ “Disability legislation and outcomes”, NZIER, 2017.

organisations to become accessible. Possibilities for a new system can involve variations on each of these options, depending on your preference.

48 The main options (with examples) are described in **Table 1** below.

Table 1

Option	Description	Examples
Option A	Cabinet-mandated work programme	Options that use Ministerial and Cabinet authority, for example: <ol style="list-style-type: none"> a. Establish a working group, with agreed work programme, which could look at strengthening and streamlining existing systems and processes, and a standards committee(s) to review existing standards in various domains (e.g. transport, building) and potentially create new voluntary standards. b. Strengthen and provide new powers to an existing body, such as the Ministerial Leadership Group on Disability Issues, Chief Executives Leadership Group on Disability Issues, or the Office for Disability Issues (ODI). Machinery of government issues will need to be considered.
Option B	Amend existing accessibility-related legislation (a question to resolve is whether or not this should include amendments to the HRA, seen as desirable but not essential)	Amend existing legislation that relates to accessibility to ensure standards are mandatory, for example: <ol style="list-style-type: none"> a. Amend the HRA only (noting this is the responsibility of the Minister of Justice) b. Amend only other legislation, e.g. Building Act 2004, Local Government Act 2002, Land Transport Act 2003. This can include aspects of Option A, i.e. can be driven by working groups. These are also the responsibility of other Ministers. c. Amend the HRA and other legislation.
Option C	New standalone legislation that provides a framework and vehicle for progressive implementation over time.	<ol style="list-style-type: none"> a. Legislation that does not enable the making of separate standards, but legislates a policy approach to review existing legislation (and associated standards). It does not necessarily include the HRA. b. Legislation that enables the making of new standards and the review of existing standards. <p>Both examples raise implementation issues that would need to be decided, such as governance, type, role, functions and powers. These are discussed in paper four: Institutional arrangements.</p>

We have evaluated the options against key criteria and recommend Option C

49 Keeping in mind guiding principles and required components for any new framework, we developed the following key criteria to measure the success of different policy options:

- a. **Timeliness** – how long it will take to implement a new framework
- b. **Cost** – the potential financial impact on all parties
- c. **Effectiveness**: the extent to which an option can address the problems, and drive and accelerate systemic change:

- achieves behaviour change – e.g. changes attitudes, regulatory compliance
 - builds capacity
 - reduces system fragmentation
 - is inclusive
 - is transparent, fair and equitable - e.g. meets Treaty obligations, allows consistent, predictable outcomes for all parties
- d. **Stakeholder support:** e.g. from business, the disability community, Māori
- e. **Flexibility** to allow progressive realisation and respond to change over time.
- 50 We then evaluated the three main policy options for an overall system framework against key criteria (see **Appendix 1**). This included considering the implementation aspects discussed above, alongside:
- how to complement and build on existing work
 - what potential amendments should be made to the HRA, and other legislation that touches on accessibility
 - meeting Government Expectations for Good Regulatory Practice
 - a Māori and Treaty of Waitangi perspective on the accessibility work programme.
- 51 While all the options are viable, on balance our recommended option is **Option C** – new standalone legislation that provides a framework for progressive implementation of accessibility over time.
- 52 We believe the most feasible variation of Option C is new legislation that has the ability to create standards (where none already exist), alongside a mandate to progressively review existing standards and recommend amendments (including to their empowering legislation if need be). This option sends a strong signal that change is needed, and is likely to be the most effective. It is the most likely to change behaviour and address the problems this report has outlined, because it provides clear statutory guidance; 'lifts the bar' on minimum standards expected; enables new standards to be set where necessary; as well as enabling monitoring and enforcement. It is also likely to be the most durable and flexible over time. It can sit well alongside existing good work underway, and is enabling rather than punitive. It does carry a risk of lack of support from business stakeholders due to increased compliance, but there are ways of mitigating this, in particular through an inclusive and staged approach to implementing the new system. It is potentially the costliest option because it is likely to drive the most change, but the extent depends on decisions taken around implementation.
- 53 Within Option C, we considered the possibility of creating legislation that would require compliance with existing standards under other legislation (i.e. make all existing standards mandatory) and bring all existing legislation within scope. A similar sub-option would not create any new standards, but still bring accessibility-related legislation within scope. We discounted these two possibilities as overly complex, as bringing aspects of legislation such as the Building Act into new accessibility legislation would be a lengthy and difficult process (especially if there is a viable alternative of amending the Building Act itself).
- 54 The Access Alliance has signalled that they are generally supportive of our proposed Option C. They have indicated that they would prefer that the legislation has a mechanism that provides the ability to 'vet' other legislation for consistency with accessibility legislation (similar to the Bill of Rights Act 1990). Our advice is that the Cabinet process would provide the appropriate way to raise any issues of lack of alignment with the accessibility framework. Accordingly, we have not including a vetting power in this proposal.
- 55 **Option A** (use of existing powers) has an advantage in that it can be done quickly. It is also likely to be the cheapest option. However, unlike Option C it could not create new mandatory standards (though it could create voluntary standards and suggest changes to existing standards). It also would be less effective at addressing enforcement or systemic issues. It is not likely to be seen as a clear enough signal for change, and therefore not likely to be supported by key stakeholders, including

disabled people and their representatives. Like Option B, it may also be vulnerable to changing agency priorities over time.

- 56 **Option B** (amendments to existing legislation) is likely to be a lengthy process that could potentially stall in future before any real progress is made. It is similar in effectiveness to Option A, however, does carry the advantage of more "teeth", in that amendments to existing legislation, depending on the option variation chosen, would strengthen existing accessibility requirements (e.g. under the Building Act), once passed into law.

Regardless of which option is chosen, some key decisions will need to be made that relate to implementation

Domains and standards

- 57 The CRPD provides for the identification, prevention and removal of barriers in key life areas. These can be consolidated into the following domains: the physical environment; transportation; information; and public services and facilities. Overseas countries have either focused on specific domains of accessibility in accessibility legislation, or provided for the prevention of discrimination in key life areas.
- 58 The CRPD calls for minimum enforceable standards for accessibility and notes the importance of incorporating these into regulatory systems. However, voluntary standards, guidelines and action plans still have a place in a viable accessibility system (e.g. the voluntary organisation action plans provided for in Australia). There are a number of advantages to having defined standards, e.g. they give tangible effect to the accessibility system, so organisations can be clear on what they need to do to become accessible, and individuals have clarity on what to expect.
- 59 Decisions will be needed on whether and how to deal with domains in legislation, and how standards should apply in the New Zealand context. These issues are discussed in paper three: Domains and Standards.

Institutional arrangements to implement the new system

- 60 To give effect to the new system, institutional arrangements will need to cover aspects such as coordination and leadership, standard development and setting and compliance and enforcement.
- 61 As form follows function, institutional arrangements could, for example:
- use existing arrangements
 - establish a dedicated accessibility entity
 - use a combination of the above.
- 62 These issues and key features we should aim for, drawing on learnings from comparable international jurisdictions, are discussed in paper four: Institutional Arrangements.

Next steps

- 63 We welcome your feedback on this report and the associated reports.
- 64 The next milestone in the accessibility work programme is preparation of a draft Cabinet paper and Regulatory Impact Analysis (if required), that supports your April 2020 report back to the Cabinet Social Wellbeing Committee.

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Advantages and disadvantages of the main options

Key:

- ++** much better than doing nothing/the status quo
- +** better than doing nothing/the status quo
- 0** about the same as doing nothing/the status quo
- worse than doing nothing/the status quo
- much worse than doing nothing/the status quo

	Timeliness	Cost*	Effectiveness**	Stakeholder support	Flexibility and responsiveness to change over time
Option A Cabinet-mandated work programme	++ Could potentially be done quickly	- Least costly of the 3 options, but will have an impact on agencies	+ Easier to implement, but lacks sufficient 'teeth' so limited in accelerating progress.	0 Some stakeholders won't support (disability community)	+ Good flexibility and responsiveness
Option B Amendments to existing legislation	+ Speed of progress would depend on the support of other agencies, so could be vulnerable to shifting priorities Amending the HRA while desirable would be very challenging.	- More expensive than Option A, but potentially less than Option C. Main cost impact would be agencies.	+ Similar to A, but has more 'teeth'. Limited ability to create systemic change over time.	0 May lack stakeholder support	+ The time and process required means flexibility issues can be carefully explored, but depends on continued overall leadership to avoid consistency and coherence being eroded.

	Timeliness	Cost*	Effectiveness**	Stakeholder support	Flexibility and responsiveness to change over time
Option C New standalone accessibility legislation	++ May take time, but faster than Option B.	Most costly option, depending on decisions around implementation.	++ Sends a strong signal for change. Raises the bar for what is expected. Clear statutory guidance would address uncertainty. Most likely to change behaviour. Less vulnerable to changing agency priorities. Would address lack of leadership, coordination.	+ Support from disability community and other stakeholders, but potential backlash from business.	++ Purpose-built vehicle, so future proofing will be considered

* Cost means the relative cost between options, as we haven't been able to prepare detailed costs at this stage, and only have limited information from other jurisdictions.

** Effectiveness means the extent to which it addresses identified problems and accelerates accessibility:

- achieves behaviour change – e.g. changes attitudes, regulatory compliance
- builds capacity
- reduces fragmentation
- is inclusive
- is transparent, fair and equitable (e.g. meets Treaty obligations).