

Regulatory Impact Statement – Addendum

Accelerating Accessibility

Agency disclosure statement

This regulatory impact statement is an addendum to the Regulatory Impact Statement (RIS) *Accelerating Accessibility* released in October 2021.

This addendum should be read in conjunction with that RIS. In particular, it compares the likely outcomes, costs, benefits and risks of options to embed Te Tiriti o Waitangi into the framework to accelerate accessibility in New Zealand.

The RIS advised MSD would provide further proposals for how to give effect to Te Tiriti o Waitangi and where this should be reinforced (for example, through legislative provisions, **s 9(2)(f)(iv)**).

This addendum examines five proposals developed following targeted engagement with groups representing Māori disability communities.

Each of these proposals and their alternate options is assessed against criteria based on Te Tiriti o Waitangi, the Committee's advice working towards improved outcomes for tāngata whaikaha and whānau whaikaha Māori, practicality and how the options reflect engagement feedback.

Constraints on analysis of options include:

- the need to work within decisions already made by the Minister and Cabinet about the form and features of the framework, namely that it is an enabling, high-level framework that allows for progressive removal of accessibility barriers; and that Te Tiriti o Waitangi will be embedded in the framework;
- a lack of sufficient time to fully analyse the refined proposals against a range of options, and to carry out a detailed assessment of the impact of the proposals on disabled people; and
- consultation on options being targeted due to short timeframes to ensure introduction of the legislation by July this year.

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Introduction

In October 2021, Cabinet agreed [SWC-21-MIN-0145 refers] to introduce and implement a new approach to identifying, preventing, and removing barriers to participation for disabled people, Māori disabled people and their whānau (tāngata whaikaha and whānau whaikaha Māori) and others with accessibility needs. Accessibility legislation will be developed as an enabling framework for strong, clear leadership to progressively identify and address accessibility barriers.

The RIS that accompanied that paper advised that officials would provide further proposals on how to give effect to Te Tiriti o Waitangi (Te Tiriti) and where this should be reinforced (for example, through legislative provisions, [s 9\(2\)\(f\)\(iv\)](#)).

Currently, while there is no cohesive cross-government framework to improve accessibility in New Zealand, there is also no coordinated approach to address the harm being caused by a lack of accessibility for Māori. Tāngata whaikaha and whānau whaikaha Māori experience even greater inequities than disabled non-Māori (see page 18 of RIA for issues raised in the WAI 2575 Inquiry).

Initial framing of this work was based on analysis in late 2020 of four Claims relating to 'Māori with Disabilities,' with a focus on the parts of each claim that directly related to accessibility that fall under Wai 2575 Health Services and Outcomes Kaupapa Inquiry¹. Through this, four themes were identified that demonstrate why we need to embed Te Tiriti in the accessibility legislation:

- *Te ao Māori*: The claims outlined that te ao Māori is not adequately acknowledged in the health and disability systems.
- *Incorporating Te Tiriti*: The claims identify issues associated with the Crown providing and designing services and frameworks for Māori disabled, not complying with Te Tiriti.
- *Representation and inclusion in decision making*: The claims outline that the Crown is failing to work in good faith and partnership with Māori to ensure that Māori are adequately represented in decision making roles.
- *Consultation*: The claims identify issues with consultation processes. This includes what is being asked, how it is being asked and who is asked. The claims also outline a lack of consultation with tāngata whaikaha Māori in general.

Following a targeted consultation process with groups representing disability communities, including some tāngata whaikaha and whānau whaikaha Māori, additional proposals were developed to embed Te Tiriti in the framework – both in legislation and through operational processes. Officials then discussed these specific proposals with Kāpō Māori, Te Ao Mārama Disability Advisory Group and the Whānau Ora Interface Group as key representative groups of tāngata whaikaha and whānau whaikaha Māori.

Two key themes emerged:

- the need to ensure equitable outcomes for Māori (note this may require equitable opportunities for input by Māori); and
- the need to make space for different worldviews of disability and accessibility – namely that many Māori do not see disability on an individual level; rather, they consider accessibility barriers affect their whole whanau.

¹ <https://www.health.govt.nz/our-work/populations/maori-health/wai-2575-health-services-and-outcomes-kaupapa-inquiry>.

With these themes in mind, the proposed objectives of embedding Te Tiriti throughout the accessibility framework are to address inequities through:

- enabling Māori to have choice in what role they have in designing and implementing solutions to accessibility barriers;
- ensuring people working to address accessibility barriers have a good understanding of tikanga and kawa, particularly as they relate to tāngata whaikaha and whānau whaikaha Māori;
- ensuring people administering the legislation are able to adequately assess the impacts on tāngata whaikaha and whānau whaikaha Māori in a way that aligns with Te Tiriti and reflects te ao Māori; and
- supporting the Māori-Crown relationship as systemic accessibility barriers for tāngata whaikaha and whānau whaikaha Māori are progressively addressed.

Proposal

The overall approach for embedding Te Tiriti in the system is to:

- include a general treaty clause in the legislation's purpose and principles section, requiring those making decisions under the legislation to honour Te Tiriti in the process of removing barriers to participation (alongside the United Nations Convention on the Rights of People with Disabilities - UNCRPD). This will lay the foundation for more specific guidance and policies under the legislation; and
- reinforce this by specifying the interaction of the Committee with Te Tiriti throughout the legislation.

Officials consider the most effective ways to specify the interaction of the Committee with Te Tiriti are:

- ensuring demonstrated knowledge of Te Tiriti, te ao Māori and tikanga Māori is a key consideration for Ministerial Advisory Committee (Committee) appointments as a collective, with an ongoing obligation on all members to continue to develop knowledge of Te Tiriti;
- specifying that at least a half of the Committee's membership must be Māori;
- specifying that, as part of its strategic leadership role, the Committee:
 - complete and report on an analysis of Te Tiriti and Māori interests in all more-than-minor decisions made with regard to the accessibility barriers that it seeks to address (including those that relate to Increased Participation Plans), recognising it also has a general duty to honour Te Tiriti in how it operates;
 - ensure Māori inclusion and participation in its work to address barriers in a way that is empowering for Māori;
 - report on how the accessibility framework has honoured Te Tiriti through annual reports;
 - ensure its work reflects tikanga Māori and te ao Māori, the experiences of tāngata whaikaha and whānau whaikaha Māori and te ao Māori; and
 - use kaupapa Māori approaches as part of its assessments of the Government's progress in implementing Increase Participation Plans in its annual report.

While most of these elements will be legislated, some will sit outside of the legislation, §
9(2)

Options Analysis

Each element of the proposal is assessed against the following criteria, to the extent to which the proposal:

- gives effect to the Crown's Tiriti responsibilities by filling current gaps in our legislation and practice;
- will contribute to the Committee providing advice towards achieving equitable outcomes for tāngata whaikaha and whānau whaikaha Māori;²
- is practicable to implement; and
- reflects community representatives' feedback.

Options analysis is provided in the following tables.

² The Committee will provide advice to the Minister, who will then table it in the House and, in collaboration with relevant Ministers, respond in due course – including taking it to Cabinet on a case-by-case basis. This means actual outcomes for tāngata whaikaha and whānau whaikaha Māori will be dependent on machinery of government mechanisms and subsequent decisions.

Embedding Te Tiriti through a purpose and principle statement

Options	<p>Officials identified three options for how Te Tiriti could be embedded into the legislation:</p> <ul style="list-style-type: none"> include a general Treaty clause in the legislation, stating that one of the purposes and principles of the Act is to honour Te Tiriti, which would require those making decisions under the Act to act in accordance with Te Tiriti; and specify the interaction of the Committee with Te Tiriti throughout the legislation (proposed) No general treaty clause, but references to Te Tiriti throughout, specifying how Te Tiriti will be honoured through aspects of the Act Status Quo: no mention of Te Tiriti
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Assessment criteria	<i>Status Quo: no Treaty Clause, no mention</i>	<i>Alternate Option: No Treaty Clause, Te Tiriti mentioned throughout Act</i>	<i>Proposal: Combination approach</i>
Gives effect to the Crown's Tiriti responsibilities	- Could be seen as contrary to general Tiriti jurisprudence, for not expressly recognising Te Tiriti and Māori interests in legislation.	0 While the references go some way in honouring Te Tiriti (see tables below), not all responsibilities can be covered through requirements on the Committee.	++ Specifically references the Crown's Tiriti responsibilities and reinforces this through specific requirements on the Committee. A general treaty clause will require those making decisions under the Act (including the Committee giving advice, and CE and Minister overseeing the framework in collaboration with other CEs/Ministers) to honour Te Tiriti (alongside the UNCRPD) in the process of removing barriers.
The Committee's advice works towards improved outcomes for tāngata whaikaha and whānau whaikaha Māori	- No mention of Te Tiriti may have detrimental impacts as it could further widen disparities between Māori and non-Māori, to the extent that the Committee's advice is expected to have positive impact.	+ The operational requirements on the Committee include a requirement to analyse how their proposed solutions to accessibility barriers affect Māori and uphold Te Tiriti, including ensuring equitable outcomes.	+ The operational requirements on the Committee include a requirement to analyse how their proposed solutions to accessibility barriers affect Māori and uphold Te Tiriti, including ensuring equitable outcomes. A general treaty clause will also ensure Te Tiriti is honoured by those making decisions under the legislation, which includes ensuring equitable outcomes.
Practicable to implement	0 No impact	++ Gives clear requirements to the Committee on how to uphold Te Tiriti	+ Gives clear requirements to the Committee on how to honour Te Tiriti, with a level of flexibility in how it's applied to different accessibility barriers.
Reflects community representatives' feedback	- Contrary to community representatives' feedback	+ Community representatives were clear that it is important to reflect Te Tiriti in the accessibility framework in multiple ways, including committing to genuine partnership with tāngata whaikaha and whānau whaikaha Māori throughout the framework.	++ Groups were generally supportive of this approach. It reflects Te Tiriti in the accessibility framework in multiple ways, including committing to genuine partnership with tāngata whaikaha and whānau whaikaha Māori throughout the framework, as well as requiring all those making decisions under the Act to act in accordance with Te Tiriti o Waitangi.
Overall assessment	-3	4	6

Conclusion	<p>As advocated by community representatives, officials propose that Te Tiriti be embedded in the framework in multiple ways. In the legislation, we propose that a core principle of the accessibility framework in achieving its purpose be to honour and realise the rights of disabled people, tāngata whaikaha and whānau whaikaha Māori, and others with accessibility needs as detailed in Te Tiriti, alongside the UNCRPD and other domestic and international instruments as relevant.</p> <p>This approach can be strengthened and made practicable by specifying requirements on the Committee to uphold Te Tiriti, as detailed in further sections.</p>
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Ensuring knowledge of Te Tiriti, te ao Māori and tikanga Māori in leadership

Options	<p>Officials identified three options for ensuring knowledge of Te Tiriti, te ao Māori and tikanga Māori on the Ministerial Advisory Committee (the Committee):</p> <ul style="list-style-type: none"> Ensuring there is one-two people on the Committee with demonstrated knowledge of Te Tiriti, te ao Māori and tikanga Māori; Ensuring demonstrated knowledge of Te Tiriti, te ao Māori and tikanga Māori is a key <i>consideration</i> for Committee appointments as a <i>collective</i>, with an <i>ongoing obligation on all members to continue to develop knowledge of Te Tiriti</i> (proposed); Status quo: no requirement.
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Assessment criteria	<i>Status Quo: no requirement</i>	<i>Alternate Option: One-two Committee positions for knowledge</i>	<i>Proposal: Collective consideration, requirement for ongoing training</i>
Gives effect to the Crown's Tiriti responsibilities	- Could be seen as contrary to general treaty jurisprudence, for not ensuring decisions are made with Te Tiriti, te ao Māori and tikanga Māori in mind and the negative effects this will have on Māori.	+ Gives an assurance that Te Tiriti matters will be raised and considered at Committee meetings.	++ Gives an assurance that Te Tiriti matters will be raised and considered at Committee meetings. Improves the chances that non-Māori members will seek and understand Tiriti consistent decisions.
The Committee's advice works towards improved outcomes for tāngata whaikaha and whānau whaikaha Māori	- No requirement may have detrimental impacts as it could further widen disparities between Māori and non-Māori, to the extent that the Committee's advice is expected to have positive impact.	+ Gives an assurance that improved outcomes for Tāngata whaikaha and whānau whaikaha Māori will be raised and considered at Committee meetings. However, this approach is likely to place a burden on Māori members of the Committee to uphold and be the experts on Te Tiriti and Māori knowledge and practice, as well as represent their demographic.	+ Comprehensive knowledge of Te Tiriti, te ao Māori and tikanga Māori on the Committee will help ensure impacts on Tāngata whaikaha and whānau whaikaha Māori will be discussed and Tiriti-consistent solutions sought and agreed at Committee meetings. ³ Annual training will better support members to improve their knowledge of Te Tiriti both individually and as a collective and over time gain an effective understanding of how to apply it to their advice.
Practicable to implement	0 No impact.	0 It may be difficult to find and retain one-two people with sufficient knowledge and authority to be able to inform the Committee's decisions.	0 There is concern over the capability to recruit this particular skillset for members individually. This will be mitigated by considering the requirement for comprehensive knowledge of Te Tiriti, tikanga Maori and te ao Maori as a collective in recruitment processes, and requiring members to undertake annual training, which will increase their knowledge over time – both individually and collectively.
Reflects community representatives' feedback	- Contrary to community representatives' feedback.	- Community representatives raised that responsibility to uphold Te Tiriti should sit on the Committee as a whole, and shouldn't be the burden of one or a few members.	+ Addresses community representatives' concern about the pressure and the burden on other Māori members to have to be the "one stop culture shop" for governance bodies.
Overall assessment	-3	1	4

Conclusion	Ensuring knowledge of Te Tiriti, te ao Māori and tikanga Māori in leadership is key to making sure people administering the legislation are able to adequately assess impacts on Māori in a way that aligns with Te Tiriti. We propose that demonstrated knowledge of Te Tiriti, te ao Māori and tikanga Māori is a key consideration for Committee appointments as a collective, to reinforce that upholding Te Tiriti is the responsibility of the whole board, not the burden of a few. Annual training will help ensure members improve their knowledge of Te Tiriti both individually and as a collective and over time.
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³ Knowledge alone will not ensure that the Committee will progress recommendations that work towards improved outcomes for tāngata whaikaha and whānau whaikaha Māori. However, each of the proposals in this paper, working together, will create a strong likelihood that this will be reflected in the Committee's recommendations. Further, non-legislative elements (such as through s 9(2)(f)(iv) position descriptions) will impose further requirements on the Committee to honour Te Tiriti and take account of tāngata whaikaha and whānau whaikaha Māori in their advice.

Ensuring Māori membership on the Committee	
Options	<p>Officials identified four options for how to ensure Māori membership on the Committee:</p> <ul style="list-style-type: none"> • Specifying in the Act that at least one of the Committee's membership must be Māori; • Specifying in the Act that at least a third of the Committee's membership must be Māori; • Specifying in the Act that at least a half of the Committee's membership must be Māori (proposed); • Status quo: no minimum number of the Committee's membership must be Māori.

Assessment criteria	Status Quo: no requirement	Alternate Option 1: one guaranteed position	Alternate Option 2: at least a third	Proposal: at least a half
Gives effect to the Crown's Tiriti responsibilities	- Could be seen as failing to give effect to the principle of partnership.	- Having only one guaranteed voice amongst many means this Māori voice can easily be disregarded. This is a risk, especially in a system with existing cultural disparities. This option does not provide enough of a guarantee that the Māori voice will be heard, contrary to "honouring Te Tiriti o Waitangi".	0 Although it allows for participation, on the surface it does not meet the standard of genuine partnership as it fails to meet equality in ensuring the Māori perspective is protected and developed.	++ Most appropriate expression of partnership as it guarantees equal representation at a decision-making level. This option guarantees Māori perspective and allows the Māori nominators to choose the make-up of Tāngata Whaikaha Māori and non-disabled Māori.
The Committee's advice works towards improved outcomes for tāngata whaikaha and whānau whaikaha Māori	- No requirement may have detrimental impacts as it could further widen disparities between Māori and non-Māori, to the extent that the Committee's advice is expected to have positive impact.	0 This option does not provide enough of a guarantee that sufficient Māori voice will be sought to understand how outcomes can be improved for Tāngata whaikaha and whānau whaikaha Māori.	0 While this option may guarantee that Māori voices will input into in how outcomes can be improved for Tāngata whaikaha and whānau whaikaha Māori, it maintains a perception that Māori voices are not equal and could result in Māori views being over-ruled by the majority.	+ This option provides the most guarantee that Māori voices will lead conversations in how outcomes can be improved for Tāngata whaikaha and whānau whaikaha Māori. Strong, holistic Māori perspectives and solutions across the board may have benefits for all disabled people.
Practicable to implement	0 No impact.	+ No foreseen issues for implementation.	+ No foreseen issues for implementation.	- This make up is not typical for Ministerial Advisory Committees and may open the structure up to criticism. Capacity building may be required to ensure the Committee members have sufficient knowledge of disability.
Reflects community representatives' feedback	- Contrary to community representatives' feedback.	- This option was generally not preferred by community representatives.	+ This option reflects feedback from some community representatives, that there should be strong representation of Māori on the Committee.	++ This option reflects feedback from community representatives, that there should be equal representation of Māori on the Committee. Specifying 'Māori', rather than 'Tāngata Whaikaha Māori', also reflects feedback from some community representatives that representation should be viewed holistically.
Overall assessment	-3	-1	2	4

Conclusion	<p>To honour Te Tiriti, a strong partnership approach can be expressed through equal membership on the Committee. Further reasons for equal membership of governance arrangements (across government) include:</p> <ul style="list-style-type: none"> • to acknowledge that past and existing governance and management structures have historically failed to serve Māori and have not resulted in equitable outcomes, particularly for tāngata whaikaha Māori; • to re-establish, maintain and/or strengthen the relationship between Māori, hapū and iwi and the Crown; • to protect Māori voices from being "balanced out" in decision-making. <p>We have not specified that Māori members have to be tāngata whaikaha. Community representatives spoke of the need to take a collective view, including involving whānau whaikaha in all decisions that affect tāngata whaikaha.</p>
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Representatives also acknowledged that the Committee requires a range of expertise that may sit outside those groups.

Nominations process for Māori members of the Committee

Options	<p>Officials identified two options for how Māori members of the Committee should be nominated:</p> <ul style="list-style-type: none"> • Māori members nominated by the general nominating panel; • An empowering, self-determinative and parallel nominations process be used for appointing Māori members, using existing mechanisms valued and determined by tāngata whaikaha Māori. For example, working with the National Iwi Chairs Forum to determine the most suitable process.
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Assessment criteria	<i>Alternate Option: General nominating panel</i>	<i>Proposal: Parallel nominating panel</i>
Gives effect to the Crown's Tiriti responsibilities	- Could be seen as failing to give effect to tino rangatiratanga.	+ This option allows Māori to exercise rangatiratanga over the appointment process. Although the Minister will have final say as to the selection of the Committee, this option will ensure Māori maintain a degree of control and authority over the appointment process, which in turn will give them the power to recommend people they have trust and confidence in through networks they value.
The Committee's advice works towards improved outcomes for tāngata whaikaha and whānau whaikaha Māori	- Having no requirement may have detrimental impacts as it could further widen disparities between Māori and non-Māori, to the extent that the Committee's advice is expected to have positive impact.	+ Ensuring Tāngata whaikaha and whānau whaikaha Māori have a say in membership of the Committee will give them more assurance that their interests will be reflected in the advice of the Committee.
Practicable to implement	0 No impact.	- This will require more time and support from the Ministry to implement. Appropriate groups will need to be identified and agreed and this option relies on those groups having the capacity to nominate members.
Reflects community representatives' feedback	- Contrary to community representatives' feedback.	++ This option most closely reflects strong feedback from community representatives, that Māori should elect the Māori members of the Committee, and that this nominating process should be decided by Māori, for Māori, separate to the process for non-Māori.
Overall assessment	-3	4

Conclusion	<p>One of the strongest messages we heard through engagement was that Māori should determine the process for Māori Committee nominations, and that Māori should nominate Māori Committee members. While the Minister will have final say as to the selection of the Committee, nominations process for appointing Māori members, using existing mechanisms chosen by Māori, will ensure Māori maintain a degree of control, authority and rangatiratanga over membership on the Committee and how Māori will be represented on it.</p>
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Requirements on the Committee's analysis and reporting

Options

Officials identified two options for requirements on the Committee's analysis and reporting:

- Specifying that, as part of its strategic leadership role, the Committee:
 - complete and report on an analysis of Te Tiriti and Māori interests in all more-than-minor decisions made with regard to the accessibility barriers that it seeks to address (including those that relate to Increased Participation Plans), recognising it also has a general duty to honour Te Tiriti in how it operates;
 - ensure Māori inclusion and participation in its work to address barriers in a way that is empowering for Māori;
 - report on how it has honoured Te Tiriti through annual reports;
 - ensure its work reflects tikanga Māori and te ao Māori, the experiences of Tāngata whaikaha and whānau whaikaha Māori and te ao Māori;
 - use kaupapa Māori approaches as part of its assessments of the Government's progress in implementing Increase Participation Plans in its annual report.
- Status quo: no requirements.

Assessment criteria	<i>Status Quo: no requirement</i>	<i>Proposal: requirements for the Committee to analyse Te Tiriti impacts on decisions, ensure Māori participation and report on Te Tiriti obligations and reflect tikanga Māori, te ao Māori and the experiences of Māori</i>
Gives effect to the Crown's Tiriti responsibilities	- Could be seen as not ensuring Te Tiriti is considered in decision-making.	++ This gives a level of certainty that Te Tiriti obligations will be realised and reported on at a decision-making level.
The Committee's advice works towards improved outcomes for tāngata whaikaha and whānau whaikaha Māori	0 No impact.	++ This option ensures an analysis of Māori interests is carried for all decisions that may have impacts on tāngata whaikaha and whānau whaikaha Māori. It also ensures reporting on Te Tiriti obligations, which includes reporting on improved outcomes for tāngata whaikaha and whānau whaikaha Māori.
Practicable to implement	0 No impact.	0 This option involves resources including: <ul style="list-style-type: none"> • capacity-building so Committee members can complete Te Tiriti analyses • resource to engage with tāngata whaikaha and whānau whaikaha Māori • research FTE and resource • developing, adopting and implementing a Te Tiriti analysis framework specific to the disability community.
Reflects community representatives' feedback	- Contrary to community representatives' feedback.	++ This option reflects feedback, especially that: <ul style="list-style-type: none"> • Māori are included in the Committee's work to address barriers in a way that is empowering. • Kaupapa Māori approaches should be used to assess progress.
Overall assessment	-2	6

Conclusion

The proposed requirements on the Committee will help ensure:

- Te Tiriti obligations will be realised and reported on at a decision-making level
- there are participation mechanisms that allow Māori to have choice in what role they have in designing and implementing solutions to accessibility barriers
- the framework supports the Māori-Crown relationship as systemic accessibility barriers are progressively identified, prevented, and removed.

Note – as well as these reporting and assessing requirements, each of the legislative elements in this addendum will be reviewed as part of the proposed five-yearly periodic review of the accessibility legislation.