

[Security classification – In Confidence]

Office of the Minister for Disability Issues

Cabinet Business Committee

Accessibility for New Zealanders Bill: Approval for Introduction

Proposal

- 1 This paper seeks Cabinet agreement to introduce the Accessibility for New Zealanders Bill (the Bill).
- 2 The Bill will create an accessibility framework that takes a progressive approach to identifying, preventing, and removing barriers to participation for disabled people, tāngata whaikaha and whānau whaikaha Māori and others with accessibility needs in New Zealand.

Relation to Government priorities

- 3 The Bill will fulfil our manifesto commitment to introduce an Accessibility for New Zealanders Act to help New Zealand to become more welcoming and accessible for disabled people and other New Zealanders with accessibility needs.

Policy

- 4 Disability communities in New Zealand have consistently called for accessibility legislation that enables disabled people, tāngata whaikaha and whānau whaikaha Māori and others with accessibility needs to live independently and participate fully in all aspects of life, on an equal basis with others.
- 5 In December 2018, Cabinet agreed to commence a design process to achieve a fully accessible New Zealand, in collaboration with key stakeholders [CAB-18-MIN-0591 refers]. In July 2019, Cabinet noted the Minister for Disability Issues' oral report back, which indicated support from stakeholders for a legislative mechanism to achieve this change [CAB-19-MIN-0329].
- 6 In June 2020, Cabinet [CAB-20-MIN-0295] noted the Minister for Disability Issues' intention to accelerate accessibility through a new legislative framework that would sit alongside awareness raising, education, and training, and agreed that any new framework should set accessibility as a high-level concept rather than a detailed, prescriptive definition.
- 7 In October 2021, Cabinet agreed to the proposal [CAB-21-MIN-0395] to introduce and implement a new approach to identifying, preventing, and removing barriers to participation for disabled people, tāngata whaikaha and

I N C O N F I D E N C E

whānau whaikaha Māori and others with accessibility needs. This would introduce strong, clear leadership for accessibility by:

- 7.1 establishing a new Accessibility Governance Board (name to be confirmed);
 - 7.2 supporting a stronger Government commitment to accessibility; and
 - 7.3 ensuring that a public sector Chief Executive is responsible for co-ordinating and overseeing accessibility measures across the public service.
- 8 Cabinet also authorised the Minister for Disability Issues to approve technical elements of the framework within the policy parameters during the development of the Bill.
- 9 In April 2022, Cabinet agreed to and noted specific policy elements of the legislative proposal [CAB-22-MIN-0204]. Cabinet noted that the purpose of the legislation would include working towards a fully accessible New Zealand where disabled people, tāngata whaikaha and whānau whaikaha Māori, and others with accessibility needs have an equal opportunity to achieve their goals and aspirations by progressively addressing accessibility barriers and progressing and growing current practices to accessibility.
- 10 Cabinet also noted the principles of the legislation, the skills and capabilities required of committee members, the proposed process for removing barriers, and the roles of the Minister for Disability Issues and the Chief Executive of the new Ministry for Disabled People (name of the Ministry to be confirmed).
- 11 Cabinet agreed for:
- 11.1 the Board to be a Ministerial Advisory Committee (Committee) comprising 6-8 members with a diversity of skills, including a majority of disabled people;
 - 11.2 the role of the Committee to be to provide independent advice on addressing accessibility issues to the Minister for Disability Issues;
 - 11.3 the Committee's advice to be tabled in the House of Representatives (the House), alongside a commitment by the Minister to respond in a reasonable timeframe with a response that demonstrates how the Committee's advice has been considered;
 - 11.4 Te Tiriti o Waitangi to be embedded in the legislation through:
 - 11.4.1 requiring those making decisions under the legislation to honour Te Tiriti o Waitangi in the purpose section of the legislation; and
 - 11.4.2 reinforcing this through how the Committee operates, including ensuring that comprehensive knowledge of Te Tiriti o Waitangi, te ao Māori, and tikanga Māori is a key

I N C O N F I D E N C E

IN CONFIDENCE

consideration for Committee appointments as a collective and that at least half of the Committee's members are Māori;

11.5 a monitoring and evaluation framework to be established that includes an annual oversight report from the Committee, information sharing provisions, and five-yearly legislative reviews.

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s 9(2)(h)

I recommend a change to how Te Tiriti o Waitangi obligations are referenced in the purpose to bring the proposal more into line with Te Tiriti obligations in existing statutes. This would amend references to an obligation to "honour" Te Tiriti to an obligation "to give effect to" te Tiriti and references to "Te Tiriti/the Treaty" directly to "the principles of Te Tiriti/the Treaty".

13 In light of TPOG's comments and further policy work by MSD officials, I am also recommending that the requirement for at least half the members of the Committee to be Māori is qualified to be "as far as reasonably practicable" to ensure that there is more flexibility in Committee appointment processes.

The legislative approach

14 The policy decisions have translated into a Bill in two parts:

14.1 "Preliminary provisions", which covers the Bill's purpose, principles, interpretation, transitional, savings and related provisions, and that the Act binds the Crown.

14.2 "Accessibility Committee", which covers the establishment of the Committee, its functions and duties, its membership and nominations panels, the role of the Minister and chief executive, the review of the Act, and other matters and amendments.

15 There are some policy elements that are not covered in the Bill, for example detailed monitoring and evaluation mechanisms and how Committee members should act. These elements will be covered in the Committee Terms of Reference and other associated documents.

16 The new Act will be administered by the Ministry for Disabled People. As well as responding to long-standing calls for change from disability communities, the Bill will contribute to the realisation of the vision of the new Ministry for Disabled People by driving better outcomes for disabled people through reducing barriers to participation in all aspects of life. The Accessibility framework will be a key part of the Ministry for Disabled People's stewardship of a system that is transforming from a medical to a social model of disability.

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s (9)(2)(g)(i)

IN CONFIDENCE

s (9)(2)(g)(i)

- 18 At the same time, some concerns may be raised about the lack of clarity that this Bill provides on impacts for agencies, industries, businesses, and individuals. It is intended that the Bill will enable a process by which accessibility barriers can be progressively removed, through consultation with affected sectors and interested parties (for example, the public sector, local government, businesses, educational and health institutions, transport operators and NGOs). Taking a flexible approach will give parties affected by the Committee's recommendations time to understand and adopt efficient or innovative approaches to meeting regulatory obligations and to participate in the process of finding accessibility solutions.
- 19 In July 2021, Officials tested the legislative approach with the Legislation Design and Advisory Committee (LDAC), who highlighted some risks, as aspirational legislation with limited legal effect may have unintended consequences. They also advised that many of the Bill's objectives can be implemented through non-legislative mechanisms.
- 20 However, as Cabinet have noted, legislation is needed to act as an enduring vehicle for progressive implementation of accessibility. A Bill is required because transformative change to address historic participation barriers and prevent future accessibility issues will take time and ongoing commitment. This Bill will signal that we want New Zealand to become more welcoming and accessible for disabled people, tāngata whaikaha and whānau whaikaha Māori, and others with accessibility needs. It will provide a strong framework to enable accessibility barriers to be addressed, including through the non-legislative mechanisms noted by the LDAC, and ensure that we are taking a progressive approach to improving participation that embeds Te Tiriti o Waitangi and Te Ao Māori.
- 21 The legislation is required to be independently reviewed no later than five years after commencement to ensure that it is fit-for-purpose and is addressing accessibility barriers as intended.

Implementation

- 22 The Bill will not achieve enduring or significant progress on accessibility alone. It will need to be enacted alongside non-legislative measures such as awareness raising, education, and training to ensure a holistic approach.
- 23 s 9(2)(f)(iv) Progress on addressing accessibility barriers itself will require prioritisation and investment by successive Governments to respond to the accessibility needs of disabled people, tāngata whaikaha and whānau whaikaha Māori, and others with accessibility needs. The processes established in the Bill may lead to improved regulatory provisions in future that

IN CONFIDENCE

better recognise the accessibility barriers that disabled people face (should that be required). These would need to be progressed by the Government of the day in accordance with its priorities.

- 24 I will report back to Cabinet closer to commencement of the Bill with greater detail on how the legislation will be supported by implementation.

Impact analysis

- 25 A Regulatory Impact Assessment (RIA) was prepared in accordance with the necessary requirements and submitted in October 2021 at the time that Cabinet approved the Minister for Disability Issues' proposal [CAB-21-MIN-0395] to introduce the accessibility framework.
- 26 A Quality Assurance Panel from the Ministry of Social Development and the Ministry of Health reviewed the Accelerating Accessibility RIA and considered that the information and analysis summarised in it partially meets the quality criteria set out in the RIA framework (clarity and conciseness, completeness, convincing, and consultation). The panel advised that more work needed to be done to analyse the treaty provisions and carry out community engagement on the policies. These actions have been taken since the review.
- 27 A subsequent addendum to the RIA was submitted in April 2022 that assessed the options to give effect to Te Tiriti o Waitangi in the proposal. It compared the likely outcomes, costs, benefits, and risks of options to embed Te Tiriti o Waitangi into the framework to accelerate accessibility in New Zealand. This was assessed as meeting the RIA criteria by the Chair of the same panel.

Compliance

- 28 The Bill complies with each of the following:
- 28.1 The principles of the Treaty of Waitangi – Te Tiriti o Waitangi.
 - 28.2 The rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.
 - 28.3 The disclosure statement requirements (draft attached).
 - 28.4 The principles and guidelines set out in the Privacy Act 2020.
 - 28.5 Relevant international standards and obligations, specifically it responds to Article 9 of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD).
- 29 In July 2021, the Legislation Design and Advisory Committee highlighted some risks with the approach to legislation, as aspirational legislation with limited legal effect may have unintended consequences. These risks will be addressed through:

IN CONFIDENCE

- 29.1 regular legislative review (within 5 years after the commencement of this Act and at 5-yearly intervals after that)
- 29.2 ongoing monitoring and review of progress on addressing accessibility barriers
- 29.3 the Committee's work programme being approved by the Minister for Disability Issues and Cabinet needing to agree to take forward the Committee's recommendations.

Consultation

- 30 The October 2021 proposal for an accessibility system was developed at the time by the Ministry of Social Development in partnership with the Access Alliance, a collective of 12 disability sector groups, Disabled People's Organisations, disability services providers, disability community organisations, and disability advocates. The policy has been influenced by some of the Alliance's 13 principles and its mandate to advocate for new accessibility legislation, however it does not create the formal regulatory framework that the Alliance has been advocating for.
- 31 Consultation with policy, regulatory, and private sector experts was carried out prior to the Minister for Disability Issues' October 2021 report to Cabinet. This consultation informed the high-level legislative approach, including through the following themes:
 - 31.1 Strong leadership is needed to champion accessibility.
 - 31.2 Independent leadership is needed that can also drive change.
 - 31.3 A broad range of interventions will be required to remove accessibility barriers including education and awareness raising.
 - 31.4 Legislation needs to be enabling and future focused.
- 32 From late 2021 to early 2022, officials met with targeted disability community and interested groups on some aspects of the legislation to inform the detailed design of the accessibility framework. A discussion paper was also sent out to approximately 35 community groups and organisations seeking feedback between mid-December 2021 and the end of January 2022. Feedback was received from over 20 groups.
- 33 Officials sought feedback on the objectives of the accessibility framework, the name, function, and powers of the Committee, and how the voices of disabled people and communities can be reflected.
- 34 Participants were largely positive about the introduction of legislation but a number of groups still maintain that for the legislation to have "teeth", it needs to include a regulatory framework. While the legislation does not directly introduce regulations, it creates a process by which a broad range of

I N C O N F I D E N C E

accessibility solutions can be proposed to remove barriers, including regulatory change where it is considered appropriate.

- 35 Other key themes from engagement included the:
- 35.1 need for the framework to take a broad, aspirational view of accessibility and a holistic approach to addressing barriers;
 - 35.2 importance of having disabled people with a broad range of experiences and skills on the Committee, including for example, knowledge of government systems, knowledge of tikanga Māori and Te Tiriti o Waitangi, disability research, advocacy and policy experience;
 - 35.3 need for broad representation on the Committee – including disabled people, Māori, Pacific peoples, urban/rural representation, a range of ages, and families and whānau of disabled people;
 - 35.4 importance of disabled people being involved in the nomination and appointment of Committee members;
 - 35.5 need for the Committee to engage with all groups of people impacted by accessibility barriers – for example, disabled people, families and whānau of disabled people, older people, and parents with young children.
- 36 Government departments and other public bodies consulted on the policy proposals include Local Government New Zealand, Department of Corrections, Ministry of Housing and Urban Development, Office of the Ombudsman, Office for Seniors, Sport New Zealand, Tertiary Education Commission, Ministry for the Environment, Kāinga Ora, the Human Rights Commission, Ministry of Business, Innovation and Employment, Ministry for Pacific Peoples, Oranga Tamariki – Ministry for Children, Manatū Wāhine – Ministry for Women, Accident Compensation Corporation, Ministry of Health, Public Service Commission, Ministry for Primary Industries, Department of Internal Affairs, Waka Kotahi, Ministry of Education, the Treasury, Te Arawhiti, Te Puni Kōkiri, Ministry for Culture and Heritage, and the Department of the Prime Minister and Cabinet, Ministry of Justice, Veterans' Affairs New Zealand.
- 37 The draft Bill has also been reviewed by the Treaty Provisions Oversight Group with the following feedback:
- 37.1 They noted it was unclear whether an obligation to 'honour' Te Tiriti was stronger than the standard wording of an obligation to 'give effect' to Te Tiriti, and this may set an unintended precedent for future legislation.
 - 37.2 TPOG sought to understand the reasons behind the proposed membership requirements, given the Accessibility Committee is not established specifically for the management of a taonga.

I N C O N F I D E N C E

- 38 I have made amendments to these provisions as outlined in paragraphs 12 and 13.

Binding on the Crown

- 39 I propose that the legislation will be binding on the Crown.

Allocation of decision-making powers

- 40 The Bill does not involve the allocation of decision-making powers between the Executive, the Courts and Tribunals.

Secondary Legislation

- 41 The Bill provides for commencement by Order in Council with a backstop date of 1 July 2024. The Order in Council will be secondary legislation for the purposes of the Legislation Act 2019.

Definition of Minister/department

- 42 The Bill defines the 'Minister' as the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the administration of this Act. This is expected to be the Minister for Disability Issues at the time of introduction.
- 43 The Bill defines the 'Ministry' as the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act. This is expected to be the Ministry for Disabled People at the time of introduction.
- 44 The Bill defines the 'Chief Executive' as the Chief Executive of the Ministry (as defined in Part 1, clause 6 of the Bill). This is expected to be the chief executive of the Ministry for Disabled People at the time of introduction.

Commencement of legislation

- 45 The Bill holds a category 4 priority on the 2022 Legislation Programme, meaning that it is intended for introduction and referral to a select committee in the current calendar year.
- 46 Some elements of the Bill may need to come into force later than Royal Assent, for example to ensure there is sufficient time to recruit and appoint members of the Committee. This is because the Ministry for Disabled People, who will be responsible for administering the legislation once enacted, needs time to develop an implementation plan, s 9(2)(f)(iv)
[REDACTED]
- 47 Therefore, the Bill provides for commencement by Order in Council with a backstop date of 1 July 2024. The reasons for this are set out in the explanatory note to the Bill.

Parliamentary stages

- 48 In October last year, the Minister for Disability Issues announced that the Bill would be introduced in July 2022. The Bill should be introduced by 31 July 2022 and referred to the Social Services and Community committee for consideration. As there is a two-week recess before introduction, I propose that the Parliamentary Counsel Office can continue to make minor and technical drafting changes to the Bill prior to its introduction.
- 49 This Bill will be of significant interest amongst disability communities and there is likely to be a substantial number of written, oral and New Zealand Sign Language (NZSL) submissions made to select committee. With the usual six month select committee process, committees normally open for submissions for six weeks. It is unlikely that six weeks for submissions will allow enough time for disabled people and others with accessibility needs to fully participate and contribute to the process. An extended select committee submissions period will provide greater opportunities for disabled people, tāngata whaikaha Māori and others with accessibility needs to be included in this crucial stage.
- 50 While it will be up to the Committee to decide how they use the time, including the length of submissions, a longer report back date will provide the Committee with more flexibility and time to hear submissions. Therefore, I intend to make a motion in the House during the Bill's first reading to extend the report back date from the standard six months to nine months, requiring the Committee to report back in May 2023. Providing more time demonstrates this government's commitment to disabled people and supports them and others with accessibility needs to participate and contribute to the process. The extended report-back period should not affect the commencement date.
- 51 I will ensure my officials are available to assist the committee and its secretariat to ensure the process is as inclusive and accessible.

Proactive Release

- 52 I intend to proactively release this paper within 30 working days as required by CO (18)(4), subject to the Official Information Act 1982. The Bill and Disclosure Statement (or summaries of these documents) will be available in alternate formats upon introduction to the House.

Recommendations

The Minister for Disability Issues recommends that the Committee:

- 1 **note** the *Accessibility for New Zealanders Bill* holds a category 4 priority on the 2022 Legislation Programme, meaning that it is intended for introduction and referral to a select committee in the current calendar year
- 2 **note** the Bill's purpose includes to work towards a fully accessible New Zealand where disabled people, tāngata whaikaha and whānau whaikaha Māori, and others with accessibility needs have an equal opportunity to

IN CONFIDENCE

achieve their goals and aspirations by progressively addressing accessibility barriers and progressing and growing current practices to accessibility

3 s 9(2)(f)(iv) [REDACTED]

4 **agree** to change the requirements for a person who performs a function or duty under the Act from:

4.1 an obligation to “honour” Te Tiriti/the Treaty to instead be an obligation “to give effect to” te Tiriti/the Treaty, and

4.2 referencing “Te Tiriti/the Treaty” directly to instead “the principles of Te Tiriti/the Treaty”

5 **note** these changes have been reflected in the draft Bill

6 **note** extending the Bill’s submissions process, and subsequently the full select committee period, will help ensure disabled people, tāngata whaikaha Māori and others with accessibility needs can participate in the process

7 **note** the Minister for Disability Issues intends to make a motion in the House during the Bill’s first reading to extend the report back date to 9 months, requiring the Committee to report back in May 2023

8 **agree** that the Parliamentary Counsel Office can continue to make minor and technical drafting changes to the Bill prior to its introduction

9 **approve** the *Accessibility for New Zealanders Bill* for introduction, subject to the final approval of the government caucus and sufficient support in the House of Representatives

10 **agree** the Bill, once enacted, will bind the Crown

11 **agree** for the Bill to be introduced by 31 July 2022

12 **agree** the government propose for the Bill to be:

12.1 referred to the Social Services and Community committee for consideration;

12.2 commenced by Order in Council with a backstop date of 1 July 2024.

Authorised for lodgement

Hon Poto Williams
Minister for Disability Issues

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