

Let's make Aotearoa New Zealand accessible for all

Designing an effective legislative framework for
accessibility

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This document summarises our proposal to make Aotearoa New Zealand accessible

We have written a report that proposes a legal framework to make New Zealand accessible for and remove barriers that create disabling experiences. A quarter of New Zealanders experience disability, and everyone will have an impairment at some point.

This document proposes:

- having disabled people play a key role in identifying and removing barriers
- giving people who may have to remove barriers a chance to comment
- giving disabled people and those who would need to comply with the framework a chance to discuss how the law should work.

We want to get rid of disabling experiences, not get rid of disability. There is nothing wrong with disability or being disabled — disability can be a strong and positive part of someone's identity.

Discuss our proposal with your whānau and friends, and consider if you support it.

We use the term 'disabled people'

After consultation, we have decided to say 'disabled people', rather than 'people with disabilities'. We realise not everyone will agree with our decision, but let's focus on what we are trying to do, rather than the words.

Barriers create disabling experiences — this needs to change

Disabled people must tolerate barriers or fight to have them removed. Barriers can be natural or created. They stop disabled people from enjoying the basic human rights that others enjoy, like movement, association, and expression; and access to information.

New Zealand must remove barriers. For example, the United Nations Convention on the Rights of People with Disabilities states that accessibility is a right, and society must allow disabled people to participate fully in society. New Zealand also has a Disability Strategy and a Disability Action Plan that aim to remove accessibility barriers.

Yet in interviews carried out between 2015 and 2020, disabled people confirmed that barriers are still widespread.

Unfortunately, disabled people in New Zealand often have no effective way to report barriers or get them removed. No one agency identifies and deals with non-compliance.

We propose a legislative framework to remove barriers

To remove accessibility barriers, we propose a legislative framework that includes an Act, a regulator, a tribunal, accessibility standards, and a way to notify the regulator of barriers. The framework would meet New Zealand’s obligations under Te Tiriti o Waitangi and the Convention on the Rights of Persons with Disabilities.

These are some reasons New Zealand needs a legislative framework.

- People must have a chance to speak up, because accessibility standards would limit the rights of citizens and businesses.
- Current accessibility standards are often open to interpretation.
- Existing laws are spread across different legislation and not designed to remove barriers.
- The framework needs to be consistent no matter who is in government.
- New Zealand needs to clearly anticipate the wide legal, economic, and social impacts that accessibility laws could have.

The framework will address barriers and set accessibility standards.

Address barriers

- Identify and record barriers, raise awareness of how barriers create disabling experiences
- Prevent and remove barriers when they have been identified
- Enable justice, choice, and control if people have disabling experiences because of barriers

Set accessibility standards

- Consult on developing standards and tell people of their rights, duties, and responsibilities
 - Develop and implement accessibility standards
 - Clarify how barriers can be removed and by who
 - Normalise accessibility standards in New Zealand
 - Measure how the system is working
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An independent regulator that is responsible for standards

The regulator would develop and monitor standards, and resolve disputes.

We suggest creating a new crown entity or commissioner as the regulator. The regulator would be independent from political and policy matters, similar to WorkSafe and the Health

and Disability Commissioner. The regulator's independence would reassure the public that the strategies are for the long term, and give the private sector confidence to invest in changes.

The regulator would enforce standards in ways such as:
educating the public

- advocating for accessibility
- issuing infringement notices
- resolving cases of non-compliance
- giving grants and subsidies to support compliance
- asking the courts to determine large financial penalties.

A judicial system that enforces standards

If matters could not be resolved through the regulator's dispute resolution process, people who have been told they must meet standards can challenge this. The judicial process would work out if standards have been breached, and resolve issues about the regulator. It would also determine fines when organisations do not make changes to meet the standards.

Standards that are broad, standardised, and considered

Developing standards involves:

- identifying and prioritising which areas to address
- identifying stakeholders
- identifying accessibility barriers
- providing an accessible opportunity for stakeholders to comment and be heard
- agreeing on how to remove barriers
- drafting the standard (including when it comes into force, if it's enforceable, what to do if someone does not comply, and when it will be reviewed)
- considering how to meet the costs of implementation.

Standards may be non-enforceable or enforceable, and changes will be gradual

New Zealand needs to develop and implement accessibility standards in a way that balances the need for laws with the right speed of change. To avoid unnecessary delay, New Zealand could start with non-enforceable standards, which can make a significant difference immediately.

Non-enforceable standards could be applied immediately or gradually. They could become enforceable after consultation, testing, and monitoring. Non-enforceable standards have the following advantages.

They can be implemented quickly.

- They signal intent — those responsible for removing a barrier cannot convincingly argue they did not know what their obligations were.
- They can be monitored systematically. The information collected can be used when the regulator considers making them enforceable.
- They give people an incentive to comply, since people know the standards may become enforceable.

Enforceable standards are more similar to laws because they must be followed. They require significant consultation, which could significantly delay their development, drafting, and implementation.

Mixed standards are standards that are partly enforceable and partly non-enforceable. They could be useful in removing barriers gradually. For example, standards could be enforceable for the government first, then for large private sector organisations, and finally for smaller private sector organisations.

An easy system to notify the regulator of disabling experiences

We propose a notification system to tell the regulator about disabling experiences. This system would let the regulator consider the following.

- What are the barriers?
- Are there already accessibility standards? Are they being complied with?
- Would the disabling experience remain if the standards are complied with?

You would be able to notify the regulator if you have a disabling experience

Anyone would be able to notify the regulator — you would not have to know the standards or whether something meets a standard.

We suggest different ways to notify, for example on social media, by email or phone, or in person.

The notification system is not a complaints system. You would still be able to complain about individual situations when you have experienced discrimination. For example, you could go to the Human Rights Commission.

Our proposal lets you participate in removing barriers

Our proposal offers disabled people many chances to participate. For example:

- speaking up during consultation or review and supporting people involved in making standards
- staffing the regulator's office mostly with people who have experienced disability
- involving disabled people in designing the notification process
- notifying the regulator of disabling experiences.

Stakeholders who have to remove barriers, such as representative business groups and public sector representatives, could contribute during consultation and review.