

# Report

**Date:** 31 August 2018

**Security Level:** IN CONFIDENCE

**To:** Hon Carmel Sepuloni, Minister for Disability Issues

---

## International approaches to accessibility legislation

### Purpose of the report

- 1 The purpose of this report is to inform you about what we have learnt following an analysis of accessibility legislation in jurisdictions internationally, and to present some recommended next steps to pursue accessibility legislation.

### Executive summary

- 2 The Access Alliance has been campaigning for accessibility legislation during the lead up to the 2017 parliamentary election. While they acknowledge that New Zealand has gone some way to improve accessibility, change has been slow and haphazard. The Alliance has suggested that enacting legislation based on the Ontario (Canada) model is the recommended solution.
- 3 After meeting with the Access Alliance and officials on 1 February 2018, you directed officials to:
  - complete a stocktake of current accessibility policy
  - provide a report on a range of international approaches to improving accessibility.
- 4 The Office for Disability Issues will draft a paper for you to present to Cabinet which will include an analysis of the impacts, risks and costs of accessibility legislation as:
  - legislation would provide a strong mandate for a sustained, long-term work programme to improve accessibility
  - legislation would mandate creation of new standards for accessibility and consolidate existing standards and guidance to make it easy for organisations to implement
  - legislation would set a target date for achieving a 100 percent accessible New Zealand, achieving change faster than without legislation
  - legislation would also align with other government priorities such as improving employment outcomes for disabled people
  - legislation would provide positive impacts beyond the disability community.
- 5 There are a number of key elements identified from the international jurisdiction review that should be considered if accessibility legislation is to be introduced in New Zealand:
  - resourcing to implement the legislation
  - the approach to implementation, including:
    - the mechanisms that would need to be set-up, such as a Secretariat, complaints mechanism, compliance mechanism and an evaluation mechanism

- the inclusion of disabled people as co-design partners
- the accessibility domains the standards would cover.

### Recommended actions

It is recommended that you:

- 1 **Note** that accessibility legislation would increase the pace of current accessibility improvements by setting out the requirements for accessibility thus providing the mandate for a long-term work programme with dedicated resourcing.
- 2 **Note** that legislation would align with other government priorities including improving employment outcomes for disabled people.
- 3 **Note** that developing, implementing and ensuring compliance with accessibility standards would require additional dedicated resource within government.
- 4 **Note** that compliance costs may be a potential barrier for some parties, such as smaller organisations, if obligated under the legislation.
- 5 **Note** that we can use learnings from accessibility legislation in other jurisdictions to inform the development of a regime in New Zealand. We can also use existing international and domestic resources and guidance to implement the legislation.
- 6 **Note** that from our analysis of other jurisdictions we would need:
  - a. dedicated resourcing (a Budget Bid would be required)
  - b. mechanisms to implement the legislation set-up, such as a Secretariat, complaints mechanism, compliance mechanism, and an evaluation mechanism.
- 7 **Agree** the Office for Disability Issues will develop a Cabinet paper recommending the development of accessibility legislation which will also map out the legislative process and what will be required to enact legislation.

**Agree/Disagree**

---

Brian Coffey  
Director, Office for Disability Issues

---

Date

---

Hon Carmel Sepuloni  
Minister for Disability Issues

---

Date

## **Accessibility is a precondition for disabled people to participate fully and equally in society and live independently with dignity.**

- 1 Accessibility has to do with our ability to engage with, participate in, and belong to, the world around us. Without access to the physical environment (built environment and public and green spaces), transport, information and communication and services, disabled people do not have equal opportunities for participation in society.
- 2 Access barriers impede disabled New Zealanders from studying, securing employment, getting the services they need and taking part in community and social life.<sup>1</sup>
- 3 The data available points to disabled people's lower levels of participation in society compared to their non-disabled peers.<sup>2</sup>

## **The Access Alliance has proposed new mandatory and enforceable accessibility legislation to enable disabled people's full participation in New Zealand society.**

- 4 The Access Alliance is a group of Disabled People's Organisations, disability service providers, community and disability advocacy organisations. This group has come together to campaign for accessibility legislation ("Accessibility for New Zealanders Act").
- 5 The primary goal of this proposed Act is to make New Zealand 100 percent accessible for everyone, which will enable disabled people to fully participate in New Zealand society.
- 6 The aim is that Government and the Access Alliance will co-design "shell legislation that will support enforceable and mandatory accessibility standards and set a deadline for the removal of access barriers" (Access Alliance briefing to Minister Sepuloni – December 2017). The Access Alliance's goal is for the Act to be enacted by 2020.
- 7 The Access Alliance wants accessibility legislation to be introduced because:
  - New Zealand's current human rights legislation does not provide organisations with clear and specific expectations and guidance as to what they are required to do to become fully accessible as educators, employers, or providers of information or services.
  - There is a lack of specified accessibility standards or requirements for organisations to meet and no penalties for non-compliance.
- 8 The Access Alliance believes that an *Accessibility for New Zealanders Act* would scale up efforts to improve accessibility for all New Zealanders, not just disabled people, as it would put the onus on all obligated parties to become fully accessible.

## **Findings of the Office for Disability Issues international comparison of accessibility legislation identified some key things to consider.**

- 9 The Office for Disability Issues undertook a comparison of accessibility legislation in seven other jurisdictions: Norway, Denmark, United Kingdom, Australia, Ontario (Canada). We also analysed legislation not yet in force in the Canadian Federation and the European Union.

---

<sup>1</sup> Although it is reasonable to argue for a causal link between disabled people's ability to access the built environment, transport, information and services and equal opportunities to participate in society, more robust data is required to substantiate this explanation.

<sup>2</sup> 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.

10 We analysed the legislation in terms of:

- scope
- accessibility domains used
- the body/entity exercising responsibility to develop accessibility standards
- the timeline for implementation of legislation and accessibility standards
- compliance monitoring and impact reporting
- the mechanism(s) for enforcement of accessibility standards.<sup>3</sup>

11 From this analysis we identified key elements that any New Zealand legislation should consider. A lot of this advice is taken from the Ontario model which is in an advanced state and is the model recommended by the Access Alliance.

*Implementation of accessibility legislation requires a dedicated work programme.*

12 A comprehensive work programme for accessibility legislation would:

- be long-term (10 years plus), with a goal to be 100 percent accessible within 10 years
- be allocated dedicated resourcing (staff and funding)
- be informed by comprehensive engagement with stakeholders
- focus on improving accessibility in the public sector first, before requiring accessibility in the private sector.

*Legislation would need to mandate for standards and their timely review.*

13 Rather than standards being "fixed" in accessibility legislation, it is important that the legislation provides flexibility to create new standards and regularly review established standards.

14 We expect that technology will have an impact on accessibility standards for information and communication.

*Legislation will need to specify which accessibility domains require standards to be created.*

15 Each jurisdiction chose different accessibility domains for which guidance is provided.

16 For example, Norway has three accessibility domains:

- the built environment
- transport
- information and communication technologies.

17 The United Kingdom's *Equality Act (2010)* targets:

- the built environment (premises)
- services
- employers
- education
- partnerships.

---

<sup>3</sup> See Appendix 1 for a brief analysis of international approaches to accessibility legislation in the selected jurisdictions.

18 It would be important to agree with the New Zealand disability sector which accessibility domains should be included in the legislation. Legislation can also provide for the creation of other standards as appropriate.

*Accessibility standards should be created through working groups using co-design principles.*

19 Working groups established to create accessibility standards should include:

- disabled people
- technical and legal experts
- government officials
- representatives from the sectors/organisations that would have to meet the standards.

20 Lessons should be taken from the Disability Support System Transformation approach to co-design.

*A way to enforce the legislation needs to be created.*

21 We advise that the legislation can only create systemic social change if there are mechanisms to enforce the standards in situations when compliance is an issue<sup>4</sup>.

22 The compliance process could take the approach of education and encouraging compliance rather than penalisation.

23 There is a need for a compliance process that does not put the burden on the individual making a complaint about non-compliance with accessibility standards.

24 Lessons can be learnt from Ontario where they have focused on creating a strong self-reporting tool to help organisations assess how they are implementing their obligations. They also undertake compliance monitoring on specific industries each year/two years.

25 Legal orders can also be imposed in Ontario on non-compliant bodies/entities. Administrative penalties may be issued by a director or the Licence Appeal Tribunal.

*There needs to be clear and reasonable timeframes to implement accessibility requirements to allow organisations to comply.*

26 Organisations obligated to comply with accessibility standards are likely to be concerned about the cost imposed on them to become accessible. This has been managed in other jurisdictions by providing reasonable timeframes for organisations to achieve compliance with standards once they have been established.

*Raising public awareness about the importance of accessibility is critical to successfully implementing accessibility legislation.*

27 In order to introduce accessibility legislation that would contribute to the removal of the barriers faced by disabled people, it is necessary to promote information about accessibility standards. This could be achieved through a web platform which consolidates all accessibility standards, reporting obligations and guidance to help with compliance. Ontario has a comprehensive web platform which provides this function.

*A dedicated Secretariat with adequate resource would be needed to facilitate the accessibility work, if legislation were enacted.*

28 A Secretariat is necessary to co-ordinate and provide administration for the development of standards, monitor compliance, provide a complaints mechanism and evaluation

---

<sup>4</sup> A place for complaints by members of the public should continue to have a place in a robust standard enforcement legal environment.

mechanism, as well as to provide a web platform to bring together accessibility standards and information.

- 29 Ontario established an Accessibility Directorate to provide this function. Norway's coordinating agency is the Norwegian Ministry of Children, Equality and Social Inclusion.

### **There are many advantages that accessibility legislation would bring.**

*Accessibility legislation would help New Zealand to meet its international and domestic obligations.*

- 30 Accessibility legislation would help New Zealand to proactively implement the Article 9, Accessibility, *United Nations Convention on the Rights of Persons with Disabilities* (CRPD) and Outcome 5: Accessibility, *New Zealand Disability Strategy 2016-2026*.

*Accessibility legislation would lead to sustained social change by mandating a long-term work programme with resourcing for action.*

- 31 Legislation provides a strong mandate for a dedicated work programme. Given the Norwegian and Ontario experience, it is well-established that legislation is an effective way to accelerate culture change because it mandates for work to be done such as the creation of standards.
- 32 A long-term work programme is necessary because accessibility will take a long time to achieve. For example, Ontario and Norway's goal is to be fully accessible (or a universally designed society) by 2025. Even if accessibility is not achieved within a specified timeframe, targets focus efforts on improving accessibility in society.
- 33 We also know that some actions to improve accessibility have been implemented through the *Disability Action Plan 2014-2018* but that legislation would provide a much stronger mandate to progress action.

*Accessibility legislation would help improve many outcomes for disabled people.*

- 34 It is well-established that accessibility is a fundamental enabler contributing to the improvement of economic and social outcomes for disabled people in areas such as education and participation in community and social life.
- 35 Improved access, in particular to buildings, public infrastructure, the digital environment and goods and services, would lead to increased workforce participation for disabled people. This being the case, it is reasonable to argue that the Government's future welfare liability would be reduced<sup>5</sup> and that disabled people's outcomes in employment could be improved by accessibility legislation.

*Accessibility legislation would bring positive outcomes for non-disabled people too.*

- 36 Legislation would have a positive impact beyond the disability community. For example, accessibility barriers affect: older people, people with children in pushchairs, people who have temporary injuries, tourists (domestic and foreign) and people who use English as a second language.
- 37 We also know that disabled people do not exist in isolation. They have families, whānau and friends who will be affected in a positive way as access barriers are removed and more opportunities arise for disabled people.

---

<sup>5</sup> Research carried out by the New Zealand Institute of Economic Research suggests that accessibility legislation would add an estimated \$1.45 billion per year to real gross domestic product and reduce the annual fiscal cost to government of \$270 million. See: <https://nzier.org.nz/publication/valuing-access-to-work>.

## **There are some issues to be aware of in pursuing legislation.**

*There are some drawbacks to legislation. It is costly, can be inflexible, and concerns have been raised by some about effectiveness.*

38 We know that:

- enacting and maintaining legislation is costly (writing legislation and taking it through the parliamentary process will take government resource and implementation will require continuous dedicated government resource)
- legislation itself is inflexible once enforced and amending the law is a slow and complicated process<sup>6</sup>
- legislation's effectiveness is reliant on the buy-in of interested stakeholders, including those who are affected such as business owners and government agencies
- compliance with legislation may be challenging, particularly, if there is a complex regime of accessibility standards and inadequate support for implementation for obligated parties. For example, Ontario's accessibility legislation was considered "lost" among the array of government regulations and activities that businesses already had to comply with.

*Developing and implementing accessibility standards would be resource intensive for government and for small and medium sized enterprises to implement.*

39 There is a need to establish a number of mechanisms to implement accessibility legislation including a Secretariat<sup>7</sup>, working groups to create standards, a complaints mechanism, and a mechanism to evaluate how effective legislation is.

40 Organisations, particularly small and medium sized enterprises (SMEs), may face significant difficulties in finding the resources to fund any new obligations.<sup>8</sup> However, this could be mitigated by legislation not applying to businesses with 1-2 employees. There is also the option to take a staged approach to which organisations are obligated to comply with the standards. For example, it could apply first to Government agencies and then, in a few years' time, to organisations with more than 10 employees.

*There would be challenges in measuring the impact of accessibility legislation.*

41 It would be difficult to assess "real compliance" and ensure that organisations are, in fact, complying with accessibility standards. However, the *New Zealand Disability Strategy 2016-2026: Outcomes Framework* accessibility indicators could be used to measure change.

*Accessibility legislation would not fully address all the disadvantages experienced by disabled people in society*

42 Accessibility legislation would be a catalyst for positive social change leading to improved economic and social outcomes for disabled people. However, we should not rely on accessibility legislation alone to tackle the systemic inequalities that disabled people are subjected to in our society and there is a need for a whole work programme.

---

<sup>6</sup> However, this can be mitigated through future-proofing legislation and providing the detail in standards which can be more easily reviewed and amended.

<sup>7</sup> A Secretariat's role would likely include: coordinating and providing administrative support for five Standards working groups which would meet regularly over the course of 1-2 years (depending on the complexity of the Standard); working with a reference group of disabled people to provide strategic direction over the work, running and maintaining a website and regular communications to provide resources for obligated organisations; and potentially to provide a complaints mechanism and compliance monitoring duties.

<sup>8</sup> The majority of New Zealanders are employed in SMEs.

**The Office for Disability Issues advises that you should present a paper to Cabinet to propose enacting accessibility legislation.**

- 43 We advise that there are many advantages to enacting accessibility legislation, and that legislation would provide a strong mandate for action. Progress through the current *Disability Action Plan 2014-2018* has been haphazard and at differing paces over the past four years due to the level of government commitment and resourcing.
- 44 We suggest that legislation would provide a strong signal to government, the private sector, disabled people and society that disabled people are equal citizens and should be able to participate in society.
- 45 We expect that improvements to accessibility will have a huge impact on improving outcomes for employment, education and overall life satisfaction for disabled people.
- 46 We note that we can use learnings from other jurisdictions, particularly Ontario, to inform the creation of legislation, standards and a framework to enforce the regime. From these learnings, we can mitigate some of the risks and issues that other jurisdictions have already experienced.
- 47 We note that there are existing domestic and international resources, guidance and standards that we could adapt or adopt in implementing the legislation.
- 48 We recommend that the Office for Disability Issues will develop a paper for Cabinet recommending the development of accessibility legislation.

Released under the Official Information Act 1982



## Appendix 1 – Detailed international comparison for jurisdictions with accessibility legislation.

*Scope of accessibility legislation in selected jurisdictions prohibits discrimination on the basis of disability in various sectors of society*

49 The legislation chosen for analysis includes:

- Norway's *Anti-Discrimination and Accessibility Act (2009)*<sup>9</sup>
- Denmark's *Act on Prohibition of Discrimination because of Disability (2018)*<sup>10</sup>
- Denmark's *Executive Order on Building Regulations 2018 (BR18)*<sup>11</sup>
- United Kingdom's *Equality Act (2010)*<sup>12</sup>
- Australia's *Disability Discrimination Act (1992)*<sup>13</sup>
- Ontario's *Accessibility for Ontarians with Disabilities Act (2005)*<sup>14</sup>
- European Union's *Accessibility of Websites and Mobile Applications of Public Sector Bodies (2016)*<sup>15</sup>
- Federal Canada's *Accessible Canada Act* bill (presented to Parliament in June 2018).<sup>16</sup>
- European Union's *European Accessibility Act* (tripartite negotiations regarding enactment are on-going between the European Parliament, Council and Commission).<sup>17</sup>

50 Norway's *Anti-Discrimination and Accessibility Act* aims to ensure equal opportunities and rights to social participation for all disabled people. A distinctive feature of the Norwegian legislation is that inaccessibility is viewed in the context of discrimination, including the obligation to use universal design. The vision underpinning the Norwegian legislation is a universally designed society.

51 Denmark's *Act on Prohibition of Discrimination because of Disability (2018)* prohibits direct and indirect discrimination on the basis of disability in all areas of Danish society, except for areas that are covered by the *Act on Prohibition of Discrimination in the Labour Market*.

---

<sup>9</sup> The legislation can be read in English at: <https://www.legislationline.org/topics/country/11/topic/84>.

<sup>10</sup> See <https://www.equalitylaw.eu/downloads/4623-denmark-adoption-of-a-new-act-on-disability-discrimination-pdf-93-kb>. This new piece of legislation is not available online in English as yet.

<sup>11</sup> [file:///C:/Users/rande016/Downloads/BR18\\_Executive\\_order\\_on\\_building\\_regulations\\_2018.pdf](file:///C:/Users/rande016/Downloads/BR18_Executive_order_on_building_regulations_2018.pdf) / <http://byggningsreglementet.dk/Tekniske-bestemmelser/02/Krav>

<sup>12</sup> <https://www.legislation.gov.uk/ukpga/2010/15/contents>. The Act replaces all previous equality legislation, including the *Disability Discrimination Act 2005*.

<sup>13</sup> <https://www.legislation.gov.au/Details/C2013C00022>. It is important to note that the *Disability Discrimination and Other Human Rights Amendment Act (2009)* made significant changes to federal discrimination law, including the *Disability Discrimination Act (1992)*.

<sup>14</sup> <https://www.ontario.ca/laws/statute/01o32>.

<sup>15</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L\\_.2016.327.01.0001.01.ENG](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2016.327.01.0001.01.ENG).

<sup>16</sup> <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-81/first-reading>.

<sup>17</sup> These tripartite negotiations are known as Trilogue. The European Council, charged with defining the European Union's overall political direction, comprises the heads of state or government of the Member States. The European Commission operates as a cabinet government with 28 members. The Commission is responsible for proposing legislation, implementing decisions, upholding European Union treaties and managing the day-to-day business of the European Union.

However, there is no obligation in the 2018 Act to provide reasonable accommodation and meet accessibility requirements.

- 52 The United Kingdom (UK) does not have one clear piece of accessibility legislation. The *Equality Act (2010)* is the closest the UK has to accessibility legislation, aiming to protect from discrimination people with particular characteristics (known as "protected characteristics"), including disability. The UK legislation includes an explicit positive duty to make "reasonable adjustments" for disabled people.
- 53 Australia's *Disability Discrimination Act (1992)* applies to the Australian Government, the States and Territories and private sector bodies. Similar to the UK, it contains a positive duty to make "reasonable adjustments" for disabled people. In addition, the Australian legislation includes a defence of "unjustifiable hardship" against a claim of discrimination.
- 54 Ontario's *Accessibility for Ontarians with Disabilities Act (2005)* aims to identify, remove and prevent barriers that impede disabled people from participating fully in all sectors of society. It applies to public and private sector organisations (with 1+ employees). Similar to the UK and Australia, the Ontarian legislation also implies a positive duty to achieve accessibility for Ontarians.
- 55 The purpose of Directive 2016/2102 of the European Parliament and Council on the *Accessibility of Websites and Mobile Applications of Public Sector Bodies* is to realise an e-inclusive society in the European Union (EU), where both disabled and non-disabled people have equal opportunities to access and use information and communication technologies.
- 56 The scope of the proposed *European Accessibility Act* is broader in that the objective is to improve the functioning of the EU market for accessible products and services by removing barriers created by divergent legislation.
- 57 The proposed *Accessible Canada Act* aims to "identify, remove and prevent" accessibility barriers in areas that fall under federal jurisdiction.

*The legislation enacted (or in draft form) focuses on the accessibility domains or targets key areas of social life*

58 Norway's *Anti-Discrimination and Accessibility Act* focuses on:

- the built environment
- transport
- information and communication technologies.

59 The Danish *Executive Order on Building Regulations 2018 (BR18)* relates to access to buildings, including provisions on stairs, fencing, hand rails and information about the layout and use of buildings.

60 Given that the UK does not have one clear piece of accessibility legislation, it has a number of laws, regulations and standards which aim to address accessibility in different areas of public life. In particular, the positive duty to make "reasonable adjustments" for disabled people under the *Equality Act* applies to the following areas:

- employers
- education
- premises
- services and public functions
- partnerships.

61 Australia's *Disability Discrimination Act* protects disabled people against discrimination in the following areas of public life:

- employment
- education

- accommodation (for example, renting or buying a house or unit)
- getting or using services (for example, transport or telecommunications services)
- accessible public places (for example, government offices, parks).

62 The focus of Ontario's Act is five accessibility domains:

- Customer service
- Information and communications
- Transportation
- Employment
- Design of public spaces.

63 The EU's *Accessibility of Websites and Mobile Applications of Public Sector Bodies* applies to all public sector websites and mobile applications, with a limited number of exceptions (for example, broadcasters and their subsidiaries, live-streaming). In addition, websites and applications sold to the public sector by private sector organisations are also included.

64 The purpose of the *Accessible Canada Act* bill is to remove accessibility barriers and prevent new barriers in areas within federal legislative jurisdiction, including:

- built environment (buildings and public spaces)
- transport (by air, rail, ferry and bus carriers operating across a provincial or international border)
- information and communication technologies
- delivery of programmes and services
- procurement of goods and services
- employment.

65 Flexibility is built into the Canadian draft legislation in that the bill allows the Government to identify other priorities in the future.

66 The EU's draft *European Accessibility Act* would establish EU-wide functional requirements which would indicate what features of products and services need to be accessible. However, detailed technical solutions (that is, how to make products or services accessible) would not be imposed, allowing for innovation. The built environment is not included in the draft EU legislation. The proposed list of products and services that would need to be accessible include:

- smartphones, tablets and computers
- ticketing and check-in machines
- TVs and TV programmes
- banking and ATMs
- e-books
- e-commerce.

*Various bodies exercise power/responsibility to develop accessibility standards*

67 A robust process for the development of accessibility standards is a proactive means of combating disability discrimination. Such standards specify requirements for the identification, removal and prevention of barriers that impede disabled people from fully participating in and contributing to society. Some jurisdictions have established bodies to create standards, whilst others have developed action plans.

- 68 Universal design is an enforceable legal standard in Norway. For example, Norway amended its *Planning and Building Act (2008)*<sup>18</sup> in 2010 to include universal design.
- 69 Norway's Ministry of Children, Equality and Social Inclusion is the coordinating ministry for *The Government's Action Plan for Universal Design 2015-2019*,<sup>19</sup> with special responsibility for cross-sectoral challenges and measures. The focus of this *Action Plan* is information and communication technology and welfare technology. Ministries are responsible for actions in their areas of responsibility.
- 70 In the UK standards for disability access may arise under the *Equality Act* through the following processes:
- Standards may be created through "reasonable adjustments" which are defined as modifications that must be made, if it is foreseeable that policies, practices or procedures will pose barriers for disabled people. For example, the onus is on service providers to plan and take steps to address barriers that impede disabled people.
  - Standards may be developed through regulations (for example, *Rail Vehicle Accessibility [Non-Interoperable Rail System] Regulations 2010*, *British Standard Institute revised BS 8300:2018 for the Design of an Accessible and Inclusive Built Environment*).
- 71 Australia's *Disability Discrimination Act* enables disability standards to be created under the Act. These standards are legally binding regulations set by the Attorney-General, informed by advice from the government department responsible for administering the particular standard. The Australian Human Rights Commission may also advise the Attorney-General on the development of standards.
- 72 Standards can be created in the areas of employment, education, access to premises, public transport and the administration of Commonwealth laws and programmes. It is necessary to regularly review the standards. The following standards have, so far, been developed:
- Disability Standards for Accessible Public Transport 2002<sup>20</sup>
  - Disability Standards for Education 2005<sup>21</sup>
  - Disability (Access to Premises – Buildings) Standards 2010<sup>22</sup>
  - Digital Services Standard 2016.<sup>23</sup>
- 73 Under the *Accessibility for Ontarians with Disabilities Act*, the relevant Minister sets terms of reference, and with the assistance of the Accessibility Directorate of Ontario establishes Standard Development Committees which develop the standards. In addition, the Accessibility Standards Advisory Council advises the Minister on the process and progress of standard development. So far, five standards have been enacted as regulations:
- Customer service standard
  - This was followed by the Integrated Accessibility Standards Regulations (IASR) in 2011 which initially included three standards:

---

<sup>18</sup> <https://dibk.no/byggereglene/Building-Regulations-in-English/>.

<sup>19</sup> <https://www.regjeringen.no/en/dokumenter/regjeringens-handlingsplan-for-universell-utforming/id2473299/>.

<sup>20</sup> <https://www.legislation.gov.au/Details/F2005B01059>.

<sup>21</sup> <https://docs.education.gov.au/node/16354>.

<sup>22</sup> [https://cdn.ymaws.com/www.nibs.org/resource/resmgr/LVDC/Aus\\_AccessStandards.pdf](https://cdn.ymaws.com/www.nibs.org/resource/resmgr/LVDC/Aus_AccessStandards.pdf).

<sup>23</sup> <https://www.dta.gov.au/standard/>.

- Information and Communications
- Employment
- Transport.
- The Design of Public Spaces (Built Environment) Standard was added to the IASR in 2013.

74 Regarding the EU's Directive on the *Accessibility of Website and Mobile Applications of Public Sector Bodies*, the European Standard EN 301 549V1.1.2 (2015-14) will be considered the minimum principle until a specific harmonised standard is decided upon.

75 The *Accessible Canada Act* bill stipulates that a Canadian Accessibility Standards Development Organisation (comprising a board of directors, the majority of whom would be disabled people) would form technical committees (including disabled people, technical experts and representatives from sectors/organisations that would have to meet the standards) to develop standards.

*A timeline for implementation of accessibility standards is specified in a few jurisdictions*

76 In Norway, the universal design content is determined when detailed requirements regarding access to buildings, means of transport and information and communication technologies are specified. Norway has set the goal of a universally designed society by 2025.

77 In Ontario, there is a phased-in approach to compliance with standards, with deadline dates for each standard, based on organisation type (for example, public or private sector) and size (large or small). The goal is to achieve full accessibility for disabled Ontarians by 2025.

78 Member States of the EU have until 23 September 2018 to transpose the text of the Directive on *Accessibility of Websites and Mobile Applications of Public Sector Bodies (2016)* into their national legislation. The accessibility deadlines are as follows:

- 23 September 2019 – all websites created after 23 September 2018
- 23 September 2020 – existing websites
- 23 June 2021 – all mobile applications.

79 As to the proposed *European Accessibility Act*, the Directive would apply in all Member States six years after its entry into force.

*Monitoring and reporting on compliance with accessibility standards is required in a few jurisdictions*

80 The *Accessibility for Ontarians with Disabilities Act* requires organisations (with 20 or more employees) to file accessibility reports, when directed, confirming compliance with the relevant standards. The review of these reports by a director is the principal means for monitoring compliance.

81 The *Accessible Canada Act* bill proposes that:

- Minister of Sport and Persons with Disabilities would be responsible for periodic independent reviews of the Act, and reporting on those to Parliament.
- Canadian Accessibility Standards Development Organisation would present annual report on its operations to the Minister of Sport and Persons with Disabilities.
- All regulated entities in consultation with disabled people, would have to prepare and publish regular progress reports detailing how they implement their disability plans.

82 The EU Directive on the *Accessibility of Websites and Mobile Applications of Public Sector Bodies* specifies that:

- Member States must monitor compliance using a methodology (ie, a process) to be adopted by the European Commission by 23 December 2018

- By 23 December 2021 and every three years after, Member States will submit a report that presents the results of monitoring.

*Various mechanisms for the enforcement of accessibility standards have been developed*

- 83 Standard-setting legislation can only effect change for disabled people if there is a mechanism to enforce the accessibility standards, when enforcement is necessary. The accessibility legislative models analysed in this report rely on two methods of enforcement:
- an individual faults-based complaints approach
  - legal orders imposed on noncompliant bodies.
- 84 In Norway, the revision of the Act relating to the *Equality and Anti-Discrimination Ombud and the Anti-Discrimination Tribunal (Equality and Anti-Discrimination Ombud Act)* entered into force in January 2018.<sup>24</sup> Individual complaints of discrimination will now be dealt with by the Equality Tribunal. The Equality Tribunal also has powers to award redress/compensation for non-monetary damage, where breach of anti-discrimination legislation is found.
- 85 The Ombud will continue to have legal standing to bring discrimination complaints to court.
- 86 In Denmark, the Board of Equal Treatment deals with individual complaints of discrimination that fall under the *Act on Prohibition of Discrimination because of Disability*. The Board bases its decisions on written information received from the complainant, defendant and the secretariat.
- 87 In the UK, the Equality and Human Rights Commission (EHRC) may assist individuals with disability discrimination claims that fall under the *Equality Act*. The EHRC also provides claimants with information on the Equality Advisory and Support Service.
- 88 In Australia, individuals must bring claims if they believe they have been subjected to disability discrimination, including breach of the Disability Standards.
- 89 The Australian Human Rights Commission has legislative responsibility for inquiring into alleged infringements under the *Disability Discrimination Act*. There is a compulsory conciliation process for the resolution of discrimination complaints. If the complainant is unhappy with the outcome of conciliation, they may commence court or tribunal proceedings.
- 90 The Accessibility Directorate of Ontario (within the Ministry of Economic Development and Growth) is responsible for administering (including compliance and enforcement) the *Accessibility for Ontarians with Disabilities Act*.
- 91 Rather than an individual faults-based complaints process as in Norway, Denmark, the UK and Australia, legal orders are imposed on noncompliant entities in Ontario, Canada. Those responsible for the enforcement of the accessibility standards include:
- director (appointed by the Deputy Minister)
  - inspectors
  - Licence Appeal Tribunal (LAT).
- 92 Administrative penalties may be issued by a director or the LAT for lack of compliance. The order may be enforced through the Supreme Court as a judgement of the court.
- 93 The entity/body subject to compliance may appeal to the LAT.
- 94 As to the EU Directive on *Accessibility of Websites and Mobile Applications of Public Sector Bodies*, the onus is on the Member States to designate a national authority to monitor and

---

<sup>24</sup> <https://lovdata.no/dokument/NLE/lov/2017-06-16-50>.

enforce the regulations. Each national authority will provide a non-judicial avenue to deal with individual complaints.

95 The *Accessible Canada Act* bill states that the Ministry of Transport, the Canadian Transport Agency and the Canadian Radio-Television and Telecommunications would be responsible for the enforcement of accessibility standards in their respective sectors.

96 The Minister of Sport and Persons with Disabilities would implement the *Accessible Canada Act* in all other sectors, including employment and the built environment.

97 An Independent Chief Accessibility Officer would carry out enforcement activities across all sectors, including:

- inspections
- compliance audits
- compliance orders
- notice of violation with warning
- administrative monetary penalties
- compliance agreements.

98 In addition to orders being imposed at the federal level on noncompliant entities (as in Ontario), four bodies would be responsible for dealing with accessibility complaints:

- Canadian Radio-Television and Telecommunications Commission
- Canadian Transport Agency
- Federal Public Sector and Employment Board
- Accessibility Commissioner.

File ref: A10749856 / REP/18/7/1087

Author: Catherine Brennan, Advisor, Office for Disability Issues

Responsible manager: Brian Coffey, Director, Office for Disability Issues