



## The Winston Churchill Memorial Trust

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**Ensuring the best possible access for people  
with disability to existing buildings that are  
being upgraded or extended**

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# The Winston Churchill Memorial Trust

Report by Michael Small – 2016 Churchill Fellow

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Dated 19 June 2018

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## Executive summary

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Australia has similar human rights and building regulation frameworks to those of the four countries visited: Canada, the USA, Ireland and the UK.

Discrimination (or civil rights) laws protect people with disability from being treated differently because of their disability in most areas of life, including access to and use of buildings. While there are differences in the degree to which people responsible for buildings must pro-actively address access barriers in the four countries visited, in general these rights are upheld through complaints arising from discrimination experienced by people with disability following the construction of a building. Throughout the design and construction of a building in the four countries visited, however, there are no inspectors or certifiers to monitor or enforce non-discrimination obligations under discrimination law.

Building laws and regulations establish the minimum requirements for the design and construction of buildings to ensure the health, safety and amenity (including access) of building occupants. Compliance with building law is mandatory, and all those involved in a building development have a responsibility to ensure that the building complies with relevant requirements, including those aimed at ensuring access. All the countries visited have monitoring and compliance-enforcement mechanisms in place in the form of building and occupation permit procedures.

In each of the countries visited, while compliance with building law is mandatory, compliance with the access provisions of those laws would not protect a building owner or operator from a successful complaint of discrimination if a person experienced an access barrier.

Australia is unique in having adopted an approach that establishes a closer link between building law and discrimination law in relation to the design and construction of buildings.

Australia has done this by developing a regulation, the *Disability (Access to Premises – Buildings) Standards 2010* (Cth) (the Premises Standards), under discrimination law that defines the minimum level of accessibility required in new buildings (and new work on existing buildings), and by improving building law and regulations to require the same level of accessibility. As a result, a designer, builder or developer can be confident that if a building complies with building law it also complies with discrimination law in relation to those matters covered by the Premises Standards.

For the development and building sector, the benefit of this approach is clarity and certainty. For people with disability and the broader community, the benefit is significantly better access to buildings, and the availability of a monitoring and enforcement mechanism through the state and territory building approval processes.

The cost for people with disability, however, is that compliance with the relevant parts of the Premises Standards (and building law) would be a complete defence to a complaint of discrimination. Even if the level of accessibility defined in the Premises Standards were not sufficient to meet the needs of any particular individual, that individual could not be successful in a discrimination complaint.

There is broad agreement that the Premises Standards are delivering benefits to all stakeholders when applied to new buildings, but there is less confidence about fully achieving the benefits envisaged when it comes to modifications and extensions to existing buildings.

For the potential benefits to people with disability and the broader community to be realised, particularly with respect to existing buildings undergoing modification or extension, a number of elements need to be in place, including the following:

- Building professionals, such as designers, builders, certifiers and consultants, with the skills to interpret and apply access requirements.
- A building approval process that is rigorous and independent.
- A flexible, but transparent process for exercising discretion in relation to access requirements for existing buildings undergoing modification or extension.
- Resources for building professionals and community advocates to assist with understanding and applying access requirements.
- Efficient, timely and transparent appeals mechanisms to deal with special cases.
- Effective auditing of compliance by regulatory bodies.
- A governance structure that includes regulators, the building and design sectors, the disability and aged sectors, human rights agencies, access experts and government to ensure timely improvements and maintain the integrity of the Premises Standards.

While all the above elements are important, the final one, governance, is particularly so.

The Premises Standards are a direct expression of the human right of people with disability to participate in the community as full citizens. They were developed through a partnership process involving negotiation and conciliation between all stakeholders, with strong representation from the disability community and from human rights agencies through the Australian Human Rights Commission (the AHRC).

Unfortunately, the Disability Discrimination Commissioner no longer has the resources to continue to play a leadership role in this area, and the AHRC more broadly appears to be

reluctant to allocate the resources needed to exercise its legal functions in relation to reporting on and monitoring the Premises Standards.<sup>1</sup>

With cuts in funding and an understandable focus on the National Disability Insurance Scheme (NDIS), disability rights organisations have reduced capacity to engage in this area of advocacy.

As a result, there is a danger that the future of the Premises Standards will rest primarily with industry, regulators and public sector officials. It is particularly important, therefore, that Australia look to other jurisdictions to identify mechanisms and approaches that may help us to protect the integrity of the standards, and assist us to realise the benefits envisaged when they were adopted.

Following my Fellowship, I have concluded that there are several positive features of Australia's approach and practice in building accessibility, including that:

- The development of the Premises Standards, rather than fragmented and less progressive changes to building law, gave rights advocates the leverage to ensure significant improvements in accessibility.
- The building approval and permit process under state and territory building law, when properly applied, effectively ensures compliance with the Premises Standards.
- Industry has greater clarity and certainty as to its obligations under all relevant laws.
- A consistent level of accessibility is applied across Australia.
- A partnership approach to developing the Premises Standards safeguarded their integrity.

Australia also benefits from having a national access consultant accreditation body, the Association of Consultants in Access Australia (ACAA). The ACAA stands out as being the most developed and active access consultant organisation in any of the countries visited.

There were several areas, however, in which, in my view, Australia is not performing well, including the following:

- The limited availability of information and resources to both building professionals and people with disability to assist with understanding and applying the standards.
- Insufficient recognition of the need for flexibility in relation to changes to existing buildings.
- Little work being done on addressing access issues outside the basic building structure.

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<sup>1</sup> Section 67 of the *Disability Discrimination Act 1992* states:  
Functions of the Commission

- (1) The following functions are conferred on the Commission:
- (d) to report to the Minister on matters relating to the development of disability standards;
  - (e) to monitor the operation of such standards and report to the Minister the results of such monitoring;

- Lack of timely, low cost, expert-driven decisions on appeals or requests for dispensations.
- Insufficient attention being paid to establishing mechanisms for improved compliance, monitoring and auditing.
- Insufficient focus on ensuring that access issues are addressed at the earliest stages of projects.

While none of the four counties visited performed perfectly in all these areas, each had some interesting and valuable approaches and initiatives.

For example, in all four countries there was greater recognition of the difficulties associated with applying access requirements for new buildings to upgrades or extensions to existing buildings. That recognition takes the form of:

- A wide range of exceptions written into codes or guidelines (USA and Canada).
- The creation of separate codes or sections of codes/guidelines covering changes to existing buildings (USA and Ireland).
- The application of measures of disproportionality (USA).
- The availability of compliance alternatives and triggers for the scope of compliance (Canada).
- An emphasis on practicability and reasonably achievable compliance (USA, UK and Ireland).
- A focus on the accessibility of service delivery (UK).

Other examples of initiatives that warrant further consideration include the funding of organisations focussing on accessibility and resource development, closer links between planning and building approval processes, and extending the scope of standards to include fitout and the broader built environment.

This report and its recommendations will be made available to the Premises Standards Review Team in the Department of Industry, Innovation and Science, and other stakeholders, and will hopefully contribute to ongoing discussions taking place throughout 2018 and 2019.

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# Keywords

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Accessibility

Building access

Building regulation

Disability discrimination

Equality

Premises Standards

## Acknowledgements

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I thank the Winston Churchill Memorial Trust and the estate of Rodney Warmington for the opportunity to travel on this fellowship and benefit from the high esteem in which the organisation and its Fellows are held throughout the world. Everywhere I went, doors opened for me and people welcomed my intrusion on their time.

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I am extremely grateful for the time given to me by everyone I interviewed, but must single out Marsha Mazz from the Access Board in the USA and David Trevanion in the UK, who paved the way for my visits to those countries.

Finally, I give my thanks and love to Robin Banks who carried my bags (metaphorically), found me when I was lost (literally), and added great value to the many fora and discussions she participated in.

# Recommendations

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The Premises Standards must be reviewed every five years. The first review took place in 2016, with the review report and Government response released in 2017.<sup>2</sup> While some of the review recommendations are already being actioned, the major work on a range of recommendations is yet to be completed.

This report (including my recommendations) will be provided to politicians, the Review Team, disabled people's organisations (DPOs), human rights agencies, regulators and building professionals in the hope that they may influence discussions during the review over the next year, and beyond.

## **Recommendation 1: Increase the availability of information, training and resources to assist with understanding and applying the standards**

Initiatives that could be considered:

- Make referenced technical standards available without cost, as is the case in the countries visited.
- Adopt a structure and style for codes and guidance material like that in Mississauga in Canada, *Technical Guidance Document M – Access and Use* (TGD M)<sup>3</sup> in Ireland or Approved Document M (AD M) in the UK.<sup>4</sup> While this approach may be resisted in the *National Construction Code* (NCC), because it would be inconsistent with the rest of the NCC, it may be possible to make these changes with the Premises Standards, or at least with a revised *Guideline on the application of the Premises Standards*.
- Establish a centre for accessibility along the lines of the National Disability Authority in Ireland or the US Access Board to progress Australia's obligations under the UN *Convention on the Rights of Persons with Disabilities* (CRPD)<sup>5</sup> to pursue and promote a universal design approach.

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<sup>2</sup> Department of Innovation, Industry and Science (Commonwealth), *Review of the Disability (Access to Premises – Buildings) Standards 2010* (2016), available at: <<https://industry.gov.au/industry/IndustrySectors/buildingandconstruction/Pages/PremisesStandardsReview.aspx>>.

<sup>3</sup> *Technical Document - Access and Use* (2010) Department of Housing, Planning and Local Government (Republic of Ireland) <<http://www.housing.gov.ie/housing/building-standards/tgd-part-m-access-and-use/technical-guidance-document-m-access-and-use>>.

<sup>4</sup> *Access to and use of buildings: Approved Document M; Access to and use of buildings, volume 2: buildings other than dwellings* [2015] Gov.UK <<https://www.gov.uk/government/publications/access-to-and-use-of-buildings-approved-document-m>>.

<sup>5</sup> Australia is a party to this Convention, having ratified it on 17 July 2008. The text of the Convention is available at <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&clang=en)>.

- Develop a range of online resources such as those developed by the US Access Board and the National Disability Authority in Ireland. These could include a webinar program focusing on interpretation and application issues, or animated films to show the application of accessibility requirements focussing on understanding the functionality of required design features.
- Increase training opportunities for building professionals and disability advocates on implementation and monitoring of compliance.

## **Recommendation 2: Address the need for more flexibility in relation to upgrades and extensions to existing buildings while retaining the integrity of the Premises Standards**

Initiatives that could be considered:

- Assess the advantages and disadvantages of introducing a wider range of exceptions written into codes or guidelines (USA and Canada).
- Assess the advantages and disadvantages of creating a separate code or sections of codes/guidelines covering changes to existing buildings: USA and Ireland.
- Assess the advantages and disadvantages of the application of measures of disproportionality (the '20% rule') (USA).
- Assess the advantages and disadvantages of providing compliance alternatives and limited triggers for the scope of compliance (Canada).
- Assess the advantages and disadvantages of focussing on practicability and reasonably achievable compliance (USA, UK and Ireland).
- Assess the advantages and disadvantages of focussing on the accessibility of service delivery rather than building accessibility only (UK).
- Clarify the provisions in Part 4.1(4) of the Premises Standards concerning the meaning of 'substantially equal access' and, in particular, whether equitable service delivery, as distinct from building accessibility, can be considered when there are substantial questions of unjustifiable hardship (UK).
- Clarify the triggers for the application of the Premises Standards where alterations or upgrades of existing buildings are taking place. In particular, clarify the application of the affected part provisions where the new work is exempt from building approval, is simply repair work or is replacing like with like.
- Consider establishing a more formal role for ACAA-accredited members in relation to assessing plans for upgrades or extensions to existing buildings.
- Develop resources to assist in identifying appropriate Performance Solution approaches to upgrades and extensions to existing buildings, including making case examples available online.

### **Recommendation 3: Extend the scope of Disability Standards to ensure a more holistic approach to the built environment, employment and service delivery**

Initiatives that could be considered:

- Develop accessibility standards in the areas of fixtures and fittings, customer service, information and communication, employment and public space to supplement the Premises, Transport and Education Standards (USA, Canada, Ireland and UK).
- Develop a pro-active obligation on public bodies to upgrade premises and deliver accessible services (Ireland).

### **Recommendation 4: Provide a timely, low-cost, expert-driven appeals process in relation to substantial questions of unjustifiable hardship and appropriate Performance Solutions**

Initiatives that could be considered:

- Establish consistent state and territory mechanisms for responding to appeals on the full application of access requirements of the NCC in relation to alterations and extensions of existing buildings and changes-in-use of buildings (Massachusetts, USA).
- Strengthen the link between decisions of state and territory Access Panels (or equivalent) and certainty afforded under the unjustifiable hardship provisions of the Premises Standards to give greater confidence to those responsible for projects and their approval.
- Make appeal decisions available online (UK and Massachusetts, USA).

### **Recommendation 5: Establish better compliance monitoring, enforcement and auditing systems**

Initiatives that could be considered:

- Appoint inspectors to audit compliance: *Accessibility for Ontarians with Disabilities Act*.
- Establish an audit system that focusses on improving knowledge and compliance through the development of practice notes and educational material rather than punishing those involved in non-compliant projects.
- Provide the Australian Human Rights Commission with authority to be a complainant and negotiate agreements (Department of Justice, USA, Ombudsman, Ireland).

## **Recommendation 6: Ensure access issues are integrated into the earliest stages of a project**

Initiatives that could be considered:

- Improve connectedness between planning approval and building permit processes similar to the UK Design and Access Statement requirements, whereby at the planning stage a change-in-use application can be refused if it would be impossible to provide equitable access at the later building approval phase (UK).
- Develop training and resources for planners to provide them with the skills to identify possible future accessibility problems associated with a project.
- Consider mandatory requirement for an Access Strategy for major public developments (UK).
- Encourage local authorities to develop inclusive design guidelines/codes for their own properties and facilities (Canada).
- Adopt a requirement that new buildings and certain existing buildings undergoing extension or upgrades must have a Disability Access Certificate (Ireland).
- Adopt an Inclusion Lens that establishes a policy and procedure for ensuring access is addressed early on in a project and involves consultation between planners, project managers and community reference groups.<sup>6</sup>

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<sup>6</sup> I am currently working on a project aiming to achieve this with a local government authority in Tasmania.

# Introduction

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In 2010, the Federal Government tabled the *Disability (Access to Premises – Buildings) Standards 2010*<sup>7</sup> (Premises Standards). The Premises Standards are a regulation under the federal *Disability Discrimination Act 1992* (Cth) (the DDA),<sup>8</sup> and aim to clarify how buildings are to be designed and constructed to avoid discrimination against people with disability in terms of accessibility.

The Premises Standards set out the scope and application of accessible features in new buildings, as well as in existing buildings that are being modified or extended. They also reference technical documents that provide detailed specifications for features such as ramps, doorways, signage, accessible toilets and accessible lifts.<sup>9</sup>

When the Premises Standards were adopted in 2011, the then Disability Discrimination Commissioner, Graeme Innes said:

We're here to celebrate the commencement of the most significant changes to the way we design and construct buildings to improve accessibility Australia has ever introduced.<sup>10</sup>

An accessible built environment is central to Australia progressively meeting:

- Its state, federal and international commitments to non-discrimination;
- Its commitment to a national approach to promoting inclusion of and participation in the community by people with disability (the National Disability Strategy); and
- The goals of the National Disability Insurance Scheme (NDIS).

One of the primary objectives in developing the Premises Standards was to address inconsistencies between building law and discrimination law in Australia. Before the introduction of the Premises Standards, the owner or operator of a building that complied with the relevant

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<sup>7</sup> *Disability (Access to Premises – Buildings) Standards 2010* (Cth) available at <<https://www.legislation.gov.au/Details/F2010L00668>>.

<sup>8</sup> *Disability Discrimination Act 1992* (Cth) available at <<https://www.legislation.gov.au/Details/C2018C00125>>.

<sup>9</sup> These are technical documents developed by Standards Australia, the main one of which is AS 1428.1 *Design for access and mobility*

<sup>10</sup> Graeme Innes, 'Celebration of the Commencement of the Premises Standards' (Speech, Sydney, 2 May 2011), available at <<https://www.humanrights.gov.au/news/speeches/celebration-commencement-premises-standards-2011>>.

state or territory building law could still be subject to a successful complaint of discrimination under the DDA as established by several important discrimination complaints in the 1990s.<sup>11</sup>

The aim was to develop the Premises Standards as a practical expression of rights under discrimination law, and, when completed, to change the model building code, the National Construction Code (NCC), to reflect the content of the Premises Standards and, as a result, achieve greater consistency and certainty.

If the design and construction of a building complies with the Premises Standards an owner or operator fulfils their obligations under the DDA, and would have a complete defence against a successful complaint of discrimination.<sup>12</sup>

Pursuing this aim meant the scope of the Premises Standards was limited to the scope of the NCC. The NCC has historically been limited in its scope to the basic construction of a building, excluding elements such as fixtures and fittings, building management and outside public space, all of which affect access to and use of a building.

It took ten years to negotiate the Premises Standards, partly because of the very complex task of trying to marry state and territory building laws, which are about bricks, glass and steel, with federal discrimination laws, which are about human rights.

Finding a way to give certainty to the building industry while protecting the human rights of people with disability was perhaps the most difficult challenge faced in developing the Premises Standards.<sup>13</sup>

To my knowledge, no other country has sought to address building accessibility in this way, where compliance with the Premises Standards ensures compliance with the NCC and vice versa, and where compliance with the Premises Standards provides a defence against successful complaints under the DDA.

In other countries, as used to be the case in Australia, building and discrimination (or civil rights) laws operate separately, meaning that buildings that are compliant with building law can still be subject to successful discrimination complaints.

There are clear advantages and disadvantages to the approach taken by Australia.

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<sup>11</sup> See for example *Cocks v State of Queensland* [1994] QADT 3 (2 September 1994), available at: <<http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/qld/QADT/1994/3.html?stem=0&synonyms=0&query=kevin%20cocks>>.

<sup>12</sup> This protection is limited to those features of the building covered by the Premises Standards.

<sup>13</sup> During the whole period of the development of the Premises Standards, I represented the Australian Human Rights Commission in negotiations, and sat on both the policy and technical committees responsible for drafting.

The Australian approach has obvious advantages:

- The Premises Standards provide a consistent set of minimum requirements to ensure access in new building work throughout Australia.
- Designers and developers have clear rules about the minimum levels of access required to meet legal obligations under discrimination law on any project, anywhere in Australia.
- Negotiating a building compliance regulation as an expression of human rights, rather than just making progressive changes to building law, allowed advocates to push for significant changes to the levels of accessibility required for new buildings.
- By clarifying obligations under discrimination law and making obligations under building law the same, compliance with the Premises Standards is effectively achieved through the existing building approval and certification process.
- People with disability are assured of a minimum level of accessibility in relation to new buildings without the need to pursue their rights through discrimination complaints building by building.

And disadvantages:

- Because compliance with the Premises Standards provides a complete defence to complaints under the DDA, people with disability have lost their right to successfully pursue a complaint of discrimination through the Federal Court if the Premises Standards requirements do not meet their individual needs.
- The minimum requirements of the Premises Standards may become the maximum, irrespective of the function of a building or its likely occupants or use.
- Deemed-to-Satisfy (DTS) provisions may become the de facto compliance standards, as opposed to the mandatory Performance Requirements, and as a result Performance Solutions could be misused as a mechanism for dealing with situations where compliance with the DTS can't readily be achieved, i.e. a sort of unjustifiable hardship 'back door' option.
- Fixing minimum requirements in a regulation, as one mechanism for achieving compliance with human rights obligations, can make it difficult to innovate or to respond to changing community needs and expectations in a timely way.
- The Premises Standards have some flexibility in exceptional circumstances, particularly in relation to changes to existing buildings, but building regulation is less flexible. This causes some tensions between the two.<sup>14</sup>
- In the pursuit of consistency, the scope of the Premises Standards is limited to the scope of the NCC, and as a result important issues such as fixtures and fittings, building management and public space outside buildings are not covered by the Premises Standards.

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<sup>14</sup> The Premises Standards include a provision that allows a defence of unjustifiable hardship in exceptional circumstances where fully compliant access cannot be achieved.

## The proposed study

After seven years of operation of the Premises Standards, the consensus is that there are few if any real difficulties in complying with the Premises Standards for new buildings. A new building built to the Premises Standards will have significantly improved access to entrances, toilets, signage, meeting rooms and offices, in all buildings used by the public, including schools, workplaces, theatres, hotels, cafés, swimming pools, libraries and restaurants.

As a result, Australia can expect a steady increase in the opportunities for people with disability to equitably engage in the social, cultural, political and economic life of the community.

The difficulties that have arisen are largely to do with existing buildings that are undergoing modification or extension, such as where new work is being done on heritage buildings, and where an existing building is subject to a change-in-use from, for example, a house to a restaurant or an office.

How these difficulties have been dealt with in other countries is the focus of my study.

The Premises Standards are currently under review, and submissions have shown that:

- Building professionals and the disability community do not have sufficient understanding of the Premises Standards to effectively apply and monitor them, particularly in relation to changes to existing buildings;
- The mechanisms within the Premises Standards to allow for alternative approaches and flexibility are often not being effectively applied due to a lack of knowledge and confidence on the part of designers and building certifiers; and
- The appeals mechanisms the states and territories were encouraged to establish to address exceptional circumstances (unjustifiable hardship) either have not been established or are ineffective.

The potential consequences of this are that developers and building professionals are vulnerable to complaints, that people with disability are missing out on opportunities for improved access, and that important upgrades to our public and private buildings are in danger of not proceeding because of a perceived lack of flexibility of the requirements and how they are to be applied.

My concern is that a failure to get to grips with these issues will result in a push to water down the Premises Standards because it is all 'just too hard'.

My Churchill Fellowship study focused on how other countries with similar human rights and building regulation frameworks to Australia ensure the best possible access to buildings, particularly to existing buildings that are being modified or extended. The countries I visited were Canada, the USA, Ireland and the UK.

I aimed to look at what resources and training are available to building professionals; how compliance is assessed, monitored and enforced, what appeal mechanisms exist to permit variations from full compliance in exceptional circumstances, and how building professionals exercise their judgment in situations where an alternative, or performance, approach (rather than meeting a technical standard) to access is proposed.

My aim was to bring back to Australia ideas, resources and strategies to ensure that any changes to address application difficulties experienced by building professionals and owners do not undermine the integrity of the Premises Standards as a tool to protect the human right of people with disability to fully participate in our community.

In June 2018 while finalising this report I was invited to be a member of an Expert Advisory Group established to provide advice to the Government on recommendations for changes to the Premises Standards and the establishment of a date framework to assess the effect of the Premises Standards and future regulatory impact assessment.

## Program and methodology

In preparation for the Fellowship, I reviewed documents available on the internet and identified specific organisations and individuals in the regulation, design, and certification fields, as well as in disability rights advocacy. I then organised interviews with these individuals and with representatives of organisations. Most of these interviews included an informal presentation on the regulatory framework in Australia, followed by a discussion of similarities to and differences from local frameworks.

On several occasions, I made more formal presentations to small groups of people representative of particular sectors, such as designers, certifiers or disability groups. In the USA, I moderated a full-day workshop hosted by the US Access Board, details of which are attached as Appendix 1.

A copy of the draft report on each country was sent to several interviewees for comment before finalising this report.

## Meetings

### Canada

- Royal Architects Institute of Canada: Don Ardiel, Director, Practice Support; Brynne Campbell
- Betty Dion Enterprises: Betty Dion, Principal
- Canadian Human Rights Commission: Ian Fine, Director General; Natalie Dagenais Director, Policy, Research and International Division; Christine Short, Senior Policy Advisor; Fiona Keith, Legal Counsel; Harvey Goldberg, Consultant
- City of Ottawa: Douglas Durham, Program Manager, Building Code Services
- Canadian Council on Disability: Bob Brown, Chair, Transportation Committee; Barry McMahon, Member; James Hicks, National Co-ordinator
- National Capital Commission: Mona Lamontagne, Architect
- Morrison Hershfield: Dana Scherf, Principal, Senior Code Consultant
- Employment and Social Development Canada, Accessibility Secretariat: James van Raalte, Director; Collinda Joseph, Senior Policy Analyst; Michelle Demery; Rosemary Baldwin, Senior Policy Advisor; Ryan Kelly
- DesignABLE Environments Inc: Bob Topping, Architect (Chair Accessibility Task Group, National Building Code of Canada and Member of technical committee CSA B651, National Research Centre); and Thea Kurdi, Accessibility Specialist
- Accessibility for Ontarians with Disability Act Alliance: David Lepofsky, Disability Rights Advocate
- Canadian Standards Association: Jeffrey Kraegal, CSA Project Manager Health Care
- BakerLaw: David Baker, Principal, and various staff

## United States of America

- US Access Board: David Capozzi, Executive Director; Marsha Mazz; and other staff
- Access Board workshop panellists: Deborah Ryan, Chair US Access Board; Rebecca Bond, Deputy Assistant Attorney General for Civil Rights, US Department of Justice; Ronald Clements Jr, Chesterfield County, Virginia Department of Building Inspection; Ann Cody, US Department of State; David Collins, American Institute of Architects; Allan Frasier, National Fire Protection Association; David Insinga, US General Services Administration; Dominic Marinelli, United Spinal Association; Kimberly Paarlberg, Senior Staff Architect, International Code Council; Kenneth Shiotani, Senior Staff Attorney, National Disability Rights Network; James Terry, CEO, Evan Terry Associates
- World Bank: Charlotte McClain-Nhlapo, Global Disability Advisor
- National Disability Rights Network (Kenneth Shiotani, Senior Staff Attorney)
- Montgomery County, Maryland, Department of Permitting Services: Robert Kelly, Manager
- Michael Graves Architecture: Robert Blaser, AIA Associate Principal

## Ireland

- Royal Institute for Architecture Ireland: Angela Rolfe, Chair, Universal Design Task Force, Brian O'Connell; Michael Mohan; Isoilde Dillon; Gabriela Navas, Mark Costello; Helge Koester; Caitriona Shaffrey; Fionnuala Rogerson
- Irish Wheelchair Association: Delores Murphy, John Graham, Rosarie Davey, Bridget Boyle
- Department of Housing, Planning and Local Government: John Wickham, Building Control section; Veronica Healy
- Dublin City Council: Pat Nestor, Senior Building Surveyor, Head of Building Control, Access Officer
- National Disability Authority: Gerald Craddock, Chief Officer; Shane Hogan, Senior ICT Advisor; Neil Murphy; Ruth O'Reilly

## United Kingdom

- Centre for Accessible Environments: Teresa Rumble; Linda Dean
- Department Housing, Communities and Local Government: Luke Turner, Principal Architect – Approved Documents K and M; Ian Drummond
- All Clear Designs: James Holmes-Siedle
- Access & Building Consultancy: Martin Burgess, Director
- City of London: Mark Pundsack, Assistant District Surveyor; Gordon Roy
- Access Association: Rachel Smalley
- Norfolk Association of Architects: Jerene Irwin, Architect
- MLM Building Control: Peter Duffy, Technical Director
- Build Insight: Alan Osbourne
- University of East Anglia: Professor Tom Shakespeare, Professor of Disability Research, Norwich Medical School; Helen Murdoch, Head of Equity and Diversity

- Norwich Access Group: Martin Symonds; George Sanders; Dr Katherine Deane; Malcolm Sinclair; Councillor Julie Brociek-Coulton; Edward Bates
- Equal Lives: Mark Harrison
- Access and Museum Design: Cassie Herschel-Shorland
- John Goddard Associates: Ross Jones

# Main report

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For a joint scientific and geographical piece of organisation, give me Scott; for a winter journey, give me Wilson; for a dash to the Pole and nothing else, Amundsen; and if I am in the devil of a hole and want to get out of it, give me Shackleton every time.

Antarctic explorer Apsley Cherry-Garrard

For technical rigour and resources, give me the USA; for a holistic approach, give me Canada; for linking planning and building processes, give me the UK; for certainty, give me Australia; but when you are looking for a bit of inspiration on the path towards universal design, give me Ireland every time.

Antarctic tragic Michael Small

## Canada

Canada is a confederation of provinces and territories. It is established under a formal written constitution, and celebrated its 150<sup>th</sup> anniversary in 2017.

Under the Canadian Constitution, the Federal Government has clearly defined and limited powers, including with regard to building law.

Each of the provinces has its own legislature, with authority to make laws in respect of non-federal matters, including buildings and accessibility of buildings (other than federally regulated buildings).

The third level of government is municipal, which is the equivalent of local government in Australia.

### Relevant building law, regulations and standards

The *National Building Code of Canada* (NBCC)<sup>15</sup> is a model building code developed by the National Research Council Canada (NRCC) in consultation with Provincial regulators and other stakeholders.

It sets out scoping, application and technical provisions for the design and construction of new buildings, and for the alteration, change-of-use and demolition of existing buildings.

While there is a model NBCC, because of the structure of the Canadian Confederation, this does not apply automatically to provinces. The provinces can, and several do, adopt the NBCC

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<sup>15</sup> *National Building Code of Canada 2015* (Can) available at <[https://www.nrc-nrc.gc.ca/eng/publications/codes\\_centre/2015\\_national\\_building\\_code.html](https://www.nrc-nrc.gc.ca/eng/publications/codes_centre/2015_national_building_code.html)>.

under provincial building law; for example, Alberta bases its building code on the NBCC. Most, however, including Ontario, have developed their own building code.

Municipalities may also develop their own building accessibility requirements in addition to those applied at the provincial level, but these would only apply to municipally owned and operated buildings. Examples include (in the province of Ontario) Toronto,<sup>16</sup> London,<sup>17</sup> and Mississauga,<sup>18</sup> which have design standards applied to property that municipalities own, lease or operate.

In addition to several building codes, the Canadian Standards Association, which is a technical standards development body like Standards Australia, publishes *CSA B651 Accessible Design for the Built Environment*.

CSA B651 is limited to technical specifications, and does not include scope or application provisions as building codes do. However, it is considered the most progressive set of technical requirements, and its updated specifications are often replicated in other codes.

While the building codes mainly apply to new buildings, most also include provisions for upgrades and alterations to existing buildings, and for changes-of-use. Adding to the complexity, each of the building codes can include different concessions and exceptions relevant to existing buildings.

As a result, there is the potential for variations in technical requirements and in the scope of application for new and existing buildings across Canada.

### ***The NBCC and accessibility***

Federal buildings and buildings operated by federally regulated bodies, such as banking, broadcasting and cross-provincial transportation bodies, generally apply the NBCC and its technical provisions. The 2015 edition of the NBCC states, however, that compliance may be achieved either through application of the technical compliance provisions in the NBCC or by using the technical provisions in CSA B651.<sup>19</sup>

Section 3.8 of the NBCC provides details on the scope and application of the code in terms of what buildings or portions of buildings must be accessible to people with disability and how

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<sup>16</sup> City of Toronto, *Accessibility Standards & Legislation* [1998–2018] available at <<https://www.toronto.ca/services-payments/streets-parking-transportation/walking-in-toronto/accessible-streets/accessibility-standards-legislation/>>.

<sup>17</sup> City of London, *2007 Facility Accessibility Design Standards* [2007] <[https://www.london.ca/city-hall/accessibility/Documents/FADS\\_2007\\_final.pdf](https://www.london.ca/city-hall/accessibility/Documents/FADS_2007_final.pdf)>

<sup>18</sup> City of Mississauga, *Facility Accessibility Design Standards* [1995–2018] available at <<http://www.mississauga.ca/portal/residents/accessibilitystandards>>.

<sup>19</sup> A 2006 Canadian Treasury policy, *Accessibility standards for real property*, specifically states that 'departments shall apply the technical standard found in' CSA B651(section 5.2 <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=12044>).

accessible they must be. Section 3.8 also contains most of the technical details on minimum requirements for building accessibility, referred to as 'acceptable solutions'.<sup>20</sup>

The NBCC allows the use of alternative solutions provided it can be demonstrated that they achieve at least the minimum level of performance required by the objectives and functional statements of the code.<sup>21</sup>

During my study tour work was underway on the development of a Federal Accessibility and Inclusion Bill that was likely to provide a mechanism for the adoption of technical compliance standards in a number of areas, including, potentially, buildings.

Disability rights groups are advocating strongly for separate accessibility standards enforced by an independent authority, but it was not clear at the time whether the proposed legislation would result in the development of separate accessibility standards in the area of the built environment, or in the adoption of updated existing codes or standards.

The proposed Act would only apply to federal government buildings and facilities, and to federally regulated entities, such as banking, broadcasting and cross-provincial transportation bodies.

In June 2018 while finalising this report the Canadian Government presented the Accessible Canada Bill.<sup>22</sup>

The scope of the Accessible Canada Bill is limited in its coverage to federally regulated entities, such as the federal government itself, and businesses operating across provincial boundaries such as banking, broadcasting and cross-provincial transportation bodies

The proposed Act would:

- Establish the Canadian Accessibility Standards Organisation – responsible for developing accessibility standards in the areas of the built environment, employment, information and communication, procurement of goods and services, delivery of programs and transportation.
- Establish an Accessibility Commissioner – to be based in the Canadian Human Rights Commission responsible for reporting to the Minister on accessibility issues with inspection and compliance order powers
- Establish a duty to prepare and implement accessibility plans on covered entities.
- Establish a complaints process with compensation powers.
- Establish a Chief Accessibility Officer as an advisor to the Minister on emerging and systemic accessibility issues.

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<sup>20</sup> In Australia, these would be referred to as 'Deemed-to-Satisfy' solutions.

<sup>21</sup> I could not identify who is responsible for issuing building permits or certifying compliance for federally regulated buildings. In some instances, it may be the authority for the municipality in which the building is located, and in other instances self-certification seems to be the norm.

<sup>22</sup> <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-81/first-reading>

- Establish a national AccessAbility Week starting on the last Sunday in May each year.

While welcoming the Bill disability advocates are concerned the legislation has no timeframe attached to it and note that the Government is not legally obliged to develop accessibility standards but 'may'.

## **Federal human rights law**

The *Canadian Human Rights Act 1985 (Can)* (CHRA), a multi-attribute discrimination law, is limited in its coverage to federally regulated entities, such as the federal government itself, and businesses operating across provincial boundaries.

The Act is a complaints-based law that protects people in Canada from discrimination when they are employed by or receive services from the federal government, First Nations governments, or private companies that are regulated by the federal government, such as banking, broadcasting and cross-provincial transportation bodies.

Complaints are lodged with the Canadian Human Rights Commission (CHRC), which investigates and then attempts to facilitate a settlement between the parties through conciliation.

Compliance with the NBCC does not replace legal obligations under the general non-discrimination provisions of the CHRA, and organisations must comply with both pieces of legislation.

Because of this, a complaint under the CHRA may result in a requirement for levels of access different from those required by the NBCC, as was the case in Australia before the introduction of the Premises Standards.

While the CHRC has the authority to develop guidelines to clarify what, in its view, constitutes non-discrimination in areas such as building access, it has not issued any guidelines of this kind.<sup>23</sup> The CHRC also has a promotion mandate that covers a range of activities, from conducting research and developing information programs to foster understanding of the CHRA, to submitting special reports to the Canadian federal parliament on a given issue. While these activities may not lead to binding obligations on employers and service providers, they can be part of the tool box that supports the goal of accessibility.

The CHRC has been involved in discussions on the proposed Federal Accessibility and Inclusion Bill with interested stakeholders, and has an interest in identifying effective compliance mechanisms.

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<sup>23</sup> Section 27(2) of the Act states: 'The Commission may, on application or on its own initiative, by order, issue a guideline setting out the extent to which and the manner in which, in the opinion of the Commission, any provision of this Act applies in a class of cases described in the guideline.'

## Provincial laws, codes and guidelines – Ontario

In Ontario, the *Ontario Building Code Act* sets out the regulatory administration framework, and the *Ontario Building Code (OBC)*,<sup>24</sup> developed by the Ontario Ministry for Municipal Affairs and Housing, sets out the scope, application and technical requirements for all new buildings, and for new building work on existing buildings.

Like in Australia, the OBC sets out performance requirements, called ‘objectives’, as well as the scope of application—for example, the number and location of accessible toilet facilities, entrances, and car parking spaces.

Unlike in Australia, all technical detail, referred to as ‘acceptable solutions’, setting out minimum requirements for compliance with the objectives, is found within the OBC (in Section 3.8 Barrier-free-Design), ensuring that all compliance requirements are available to the public at no cost.

The OBC also allows for the use of ‘alternative solutions’ to meet the objectives, and sets out guidance on the documentation that must be provided to the municipal chief building official for consideration.

The municipal authority (Building Department) is responsible for assessing plans and issuing building permits. Some of the people interviewed expressed concern, however, that recent changes aimed at speeding up permit processes had resulted in a degree of ‘self-certification’ by designers and engineers, and that this had led to a reduction in the rigor of accessibility compliance assessments.

The municipal authority also has the power to consider a proposed alternative solution. If such a solution is rejected by the municipality, an appeal can be made to the Ontario Building Code Commission (BCC).<sup>25</sup>

### **Changes to existing buildings**

The accessibility requirements for renovations, extensions and changes-of-use for existing buildings are set out mainly in section 11 of the OBC, and appear to be extremely complex, open to differing interpretation and subject to negotiation between designers, developers and municipal authorities.

Section 11 of the OBC refers variously to ‘extensions’, ‘material alterations and repair’, ‘basic renovations’, ‘extensive renovations’ and ‘change-of-use’. Opinion varied considerably among the people interviewed as to what constituted a material alteration, the difference between a basic and extensive renovation, and the scope of accessibility upgrades required in each circumstance.

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<sup>24</sup> O Reg 332/12: *Building Code* (Ont, CA) available at <<https://www.ontario.ca/laws/regulation/120332>>.

<sup>25</sup> *Building Code Commission* [2016] Ontario Ministry of Municipal Affairs, Ministry of Housing <<http://www.mah.gov.on.ca/Page7394.aspx>>.

For example, the OBC states that the code only applies to the design and construction of any extension and to those parts of the building that are subject to a material alteration or repair. While there was general agreement among the interviewees that an extension to an existing building must comply with the relevant accessibility requirements of the OBC, there were differing views on whether an accessible path of travel to the extension from the entrance to the building must be provided.<sup>26</sup>

Similarly, while there was general agreement that where an existing building is materially altered or repaired, the level of existing access cannot be reduced, there was little consensus on what ‘material alteration’ means, and on what, if any, improvements in access are required when a material alteration takes place.

Even more complex was the distinction between basic and extensive renovation, and the effect of differing interpretation of these categories on accessibility requirements.

Basic renovations are essentially replacing ‘like with like’ to maintain the existing character, heritage value or aesthetic character of all or part of a building, and do not appear to trigger any accessibility requirements or improvements.

Extensive renovation—which might involve removal of walls, ceilings, floors or roof assemblies—triggers an obligation to fully comply with the accessibility requirements of section 3.8 in the renovated area, but only where a suite (a single room or series of rooms of complementary use) has an area of more than 300 square metres, and the difference in level, for example a step, between the adjacent ground level and the floor level at which the suite is located is not more than 200 millimetres.

If the difference in height between the adjacent ground level and the floor level at which the suite is located is greater than 200 millimetres, the accessibility requirements in the renovated area are severely restricted to a select number of provisions under section 3.8 (these are spelt out in section 11.3.3.2). These limited provisions cover elements that do not rely on the provision of an accessible path of travel for people who use wheelchairs.

The thinking behind this difference appears to be that a change in level (step) of up to 200 millimetres at the front of a building or space is likely to be removed at some point in the future, and that applying all relevant section 3.8 access requirements to the extended part of the building is a way of ‘future proofing’ the building. Changes in level (steps) greater than 200 millimetres, however, may be considered less likely to be easily addressed in the future, and therefore it is deemed to be less likely that people with significant mobility disability will be able to enter such a building or space, justifying lower mobility access requirements in the renovated part of the building.

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<sup>26</sup> The British Columbia Code requires an accessible path of travel to an addition (extension) to a building either directly or via an existing accessible entrance, however, where alterations, renovations or change of occupancy occur, accessibility is only required if people with disability could reasonably be expected to be employed in or use the building, and if the provision of access is ‘practical’.

As well as the above limitations, section 11 sets out 'Compliance Alternatives' that may be substituted for the requirements of section 3.8 where the chief building official is satisfied that compliance with the requirement is 'impracticable' because of structural or construction difficulties, or would be considered detrimental to preservation of a heritage building (section 11.5.1.1). 'Impracticable' is not defined, and a decision on what is impracticable relies on the skill, level of knowledge and personal views of chief building officials and their staff.

In both renovation circumstances, it appears that the OBC does not require the difference in level at the entrance to the building or part of the building to be addressed. This is unlike the situation in Australia, where the 'affected part' provisions require an accessible path of travel to be achieved from the main entrance to the area of any new work (subject to the lessee concession and unjustifiable hardship).

An interesting initiative has evolved in response to the issue of single steps into small retail shops. StopGap, an accessibility advocacy group, is promoting the use of temporary wooden ramps.<sup>27</sup> While this initiative clearly adds to the accessibility of local shopping areas for some, the ramps could be unsafe or a trip hazard, and they do not provide a long-term solution to inaccessibility.



Figure 1. Temporary StopGap.CA ramps outside shops on a public footpath.

A number of interviewees expressed concern about the level of accessibility being applied to existing buildings undergoing new work, change-in-use or extension because of the complexity of code requirements, over-reliance on the skill, attitude and robustness of the individual municipal officers, and the lack of transparency in decisions made about access requirements for changes to existing buildings.<sup>28</sup>

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<sup>27</sup> StopGap.ca [2018] <<http://stopgap.ca>>.

<sup>28</sup> This situation reminds me of a favourite quote from Justice Blow of the Supreme Court of Tasmania:

While in the view of some interviewees the system provides welcome flexibility, it has also resulted in inconsistency and in compromised decision making on accessibility.

### ***Accessibility for Ontarians with disabilities legislation***

Ontario also has the *Accessibility for Ontarians with Disabilities Act 2005* (AODA), which sets out a process for developing five standards to be phased in over 20 years with the goal of making Ontario accessible to people with disability by 2025 by identifying and removing barriers to accessibility.<sup>29</sup>

The AODA requires the development of standards for accessibility in five key areas of daily living: customer service, information and communications, employment, transportation and the built environment.

The standards apply to public, private and not-for-profit organisations that provide goods, services or facilities directly to the public, have at least one employee in Ontario, and are provincially regulated.

The *Accessibility Standard for Customer Service* was the first to become law in 2007.<sup>30</sup> The standard requires organisations to develop policies, practices and procedures in relation to the provision of goods and services to people with disability, and to undertake staff training. The standard requires organisations to make ‘reasonable efforts’ to ensure dignified, independent access to goods and services.

The next four standards—dealing with information and communications, employment, transportation and design of public spaces (built environment)—have been combined under one regulation, the *Integrated Accessibility Standards Regulation* (IASR), adopted in 2011.<sup>31</sup>

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The (planning) scheme is very complex, and exceedingly and unnecessarily difficult to comprehend or interpret. Most ordinary people would not have a chance. Most sensible people, or people with a life, would not attempt the task unless they had absolutely no choice. In order to understand the scheme it is practically essential to have a law degree, decades of experience in interpreting legal documents, a talent for understanding gobbledygook and misused words, a lot of time, and a very strong capacity for perseverance.

<sup>29</sup> *Accessibility for Ontarians with Disabilities Act 2005* (Ont) available at <<https://www.ontario.ca/laws/statute/05a11>>.

<sup>30</sup> *Accessibility Standards for Customer Service 2007* (Ont, Reg 429/07) available at <<https://www.ontario.ca/laws/regulation/070429>>. This regulation was revoked in 2016 by the *Integrated Accessibility Standards Regulation* of that year, which amended the IASR to (among other things) include Part IV.2 ‘Customer Services Standards’.

<sup>31</sup> The 2011 version of the IASR can be found at <<https://www.ontario.ca/laws/regulation/110191>> and a useful guide to the IASR at <<https://dr6j45jk9xcmk.cloudfront.net/documents/4845/guidelines-to-iasr-english.pdf>>.

The IASR was amended in 2016 to, among other things, incorporate the customer service standards.<sup>32</sup>

The IASR requires organisations to develop policies and plans aimed at achieving accessibility according to a timetable for compliance. In the areas of transport and public spaces, the compliance requirements apply to new or upgraded features on a ‘go forward’ basis.

While a draft built environment standard that covered both buildings and public space was developed, the Ontario Government decided to continue to regulate buildings through the Ontario Building Code (OBC), limiting the scope of the IASR to outdoor spaces, such as pedestrian footpaths and roads, trails, beaches, parks, play areas and public parking.

A small number of elements inside buildings that are not covered by the OBC, such as service counters, fixed queuing systems and waiting areas with fixed seating, are covered by the IASR.

While technically there is a compliance monitoring and enforcement mechanism within the AODA—in the form of inspectors to be appointed by the Deputy Minister—a number of people interviewed claimed that it was ineffective, and that inspectors had not been appointed to assess and enforce compliance.

The disability advocacy group, Accessibility for Ontarians with Disabilities Act Alliance,<sup>33</sup> has been and continues to be an effective group, focusing on full implementation of the AODA and on vigorous compliance monitoring.

### ***Ontario human rights law***

While organisations are obliged to comply with the AODA and with the standards, they also have ongoing obligations under the Ontario *Human Rights Code* (OHRC)<sup>34</sup> with respect to non-discrimination. The OHRC, like the Australian DDA, is an individual complaints-based law that seeks to address discrimination.

The IASR does not replace existing legal obligations under the OHRC, and organisations must comply with both pieces of legislation.

This means that the OHRC may require additional accessibility measures that go beyond or are different from the standards established by the regulations of the AODA. This is different from the situation in Australia, where, at a federal level, compliance with the Premises Standards fulfils obligations under the DDA.

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<sup>32</sup> *Integrated Accessibility Standards 2016* (Ont, Reg 165/16) is available at <<https://www.ontario.ca/laws/regulation/r16165>> and needs to be read in conjunction with the 2011 IASR.

<sup>33</sup> *Accessibility for Ontarians with Disabilities Act Alliance* [undated] <<https://www.aodaalliance.org>>.

<sup>34</sup> *Human Rights Code 1990* (Ont) <<https://www.ontario.ca/laws/statute/90h19>>.

## Access consultants

While there are access consultancies throughout Canada, there is no national body of accessibility consultants like the Association of Consultants in Access Australia.

The Accessibility Consultants Association of Ontario (ACAO) has a membership of consultants who have operated on a fee-for-service basis for at least two years. Their website<sup>35</sup> provides information and contacts for members, and operates a members-only online forum.

While the Ontario Association lists about 15 companies providing access consultancy services, it appears to play a limited role with regard to education, advocacy and influence compared to the Association of Consultants in Access Australia. Further, there is no formal accreditation process for people describing themselves as access consultants.

While a number of people offer access consultancy services, the use of access consultants is neither mandatory nor frequent. Private 'building code consultants' would offer advice in relation to, among other things, accessibility, but would not necessarily identify as specialist access consultants.

While their use is not mandated, large government projects, such as the Ottawa light rail project, would often engage an access consultant as part of the project team.

Many of the access consultants interviewed provided examples of non-compliance due to lack of understanding of accessibility requirements, and commented on the frustration of not being involved in projects from the earliest design stages.

## Comment

Canada has a similar building regulation and human rights framework to Australia. There are, however, a number of important differences.

Firstly, while there is a model national building code, there is no agreement that all provinces will broadly adopt it in provincial building law. In addition, numerous other codes have been adopted by some municipalities, as have good practice technical standards, such as CSA B651, leading to more complex and potentially inconsistent accessibility outcomes.

Second, there is a clearer delineation between the application of federal and provincial discrimination laws, with federal laws only applying to federal government and federally regulated bodies. This means that unless a strong political will develops it would be impossible for a national accessibility standard to be developed under federal discrimination law as has occurred in Australia. The view of many interviewees was that there was indeed no political will to push for an improved NBCC to be universally adopted.

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<sup>35</sup> ACAOntario [undated] <<http://www.acaontario.ca/index.php>>.

Third, at both the federal and provincial levels, building law and discrimination law operate separately, so that compliance with building law is no defence against a discrimination complaint. This allows for a more flexible approach to dealing with access improvements to existing buildings, as municipal authorities and design professionals can engage more readily in conversations about alternative solutions, and about whether achieving certain access requirements is impractical.

It does mean, however, that owners and developers do not have the certainty we have in Australia. It may also mean that the access requirements of codes in Canada are less progressive in terms of achieving barrier-free access than those in Australia, where we have sought to address human rights obligations through the development of Premises Standards and corresponding changes to building law.

This also means that people with disability in Canada are more reliant on discrimination laws to push for better access than is now the case in Australia.

The extent to which existing buildings that are being modified are required to comply with access requirements is complex, and my meetings indicated that there is a wide diversity of views as to when compliance is triggered, and about the level of compliance required.

The *Ontario Building Code* includes some interesting features relevant to changes to existing buildings, including triggers that determine the scope of access required and a number of ‘Compliance alternatives’ that could be implemented by the developer if they could show the building control officer that this was justified.

At least one province, Ontario, has a much more progressive regulatory framework for creating change through the development of accessibility standards similar to disability standards under the DDA. While the DDA allows for the development of a wide range of disability standards, only three have been developed (in the areas of transport, education and buildings).

The *Accessibility for Ontarians with Disabilities Act* (AODA), however, sets out more thoroughly a process, timetable and compliance/enforcement mechanism for standards by committing to:

... developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025.

The Integrated Accessibility Standards set out both performance and technical requirements for identifying and removing access barriers, as well as timetables for implementing specific actions.

While it appears that the compliance monitoring mechanism under the AODA—in the form of inspectors—is not currently effective, it could, nonetheless, be a valuable provision if fully implemented.

While Australia's disability standards established under the DDA are an important part of the landscape, they do not address accessibility in a holistic way, as the AODA seeks to do, linking buildings, public space, customer service, employment, transport and community participation.

The Accessibility for Ontarians with Disabilities Act Alliance has played an invaluable advocacy role in relation to advancing the rights of people with disability through effective accessibility standards development. Unfortunately, while there are many passionate individual disability advocates in Australia concerned with access to the built environment, there is no alliance or single organisation in the disability sector that exerts the same level of influence as the Ontarian Alliance.

A number of Canadian municipalities, such as the City of London and Mississauga, Ontario, have developed their own accessibility requirements for property and public spaces that they own, lease or operate, and this provides an opportunity for local authorities to show leadership in relation to more inclusive design.

There is nothing to stop local authorities in Australia from showing such leadership, although it is possible that political pressure might be brought to bear on local authorities that do, as it could be seen as being in conflict with the desire of federal or state/territory governments to pursue building code consistency across Australia. The significant advantage, however, would be the possibility it presented to develop a more holistic, universal design approach to properties and public spaces under local government control.

One aspect of these local guidelines or standards that is particularly useful is their style and structure, which makes them more accessible than their Australian equivalents. Each section includes a rationale that explains the reason for the requirement, and provides ideas and comments on good practice, a description of the application of the requirement, and of the technical design requirements themselves.

This style would be difficult to adopt in Australia because the Premises Standards are 'locked in' to the style and structure of the NCC, however, it may be possible to adopt the style and structure in a revised *Guideline on the application of the Premises Standards*, and in local government requirements for their own developments.

# The United States of America

The USA is a constitutional republic, with governing entities at federal, state and local levels, counties, townships and municipalities. The state governments tend to have the greatest influence over the daily lives of most Americans, and each state has its own constitution, government and law codes.

While in the USA, I was privileged to have an opportunity to moderate a full-day workshop titled 'Achieving access for people with disability in the built environment: An international comparison'. This workshop was organised and hosted by the US Access Board<sup>36</sup> and brought together experts from around the USA to share information and experiences. The workshop was open to the public, and was streamed online for anyone interested.<sup>37</sup>



Figure 2. The Panel members at the Access Board workshop

## Relevant building law, regulations and standards

The International Code Council (ICC) was established in 1994 as a non-profit organisation focused on developing national model construction codes.

The ICC develops the International Building Code (IBC), which deals with scope and application in areas such as fire safety and accessibility for new buildings.

This IBC can be adopted in its entirety by governments, as a number have done, but many have developed their own codes based on the IBC.

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<sup>36</sup> My special thanks go to Marsha Mazz, Director of the US Access Board's Office of Technical and Information Services, who made the workshop happen.

<sup>37</sup> I co-presented the workshop with Robin Banks, a human rights lawyer and the former Anti-Discrimination Commissioner of Tasmania. A brief report on the workshop has been posted on the Access Board website <<https://www.access-board.gov/news/1907-access-board-hosts-dialogue-on-accessibility-with-australian-experts>>.

Local governments, municipalities and cities may also develop additional accessibility guidelines covering matters within their jurisdiction, including buildings and assets they own. While every effort is made to promote consistent code development, it is possible for requirements to vary across and between jurisdictions. If there is a difference in requirements, the higher standard generally applies.

In addition, those responsible for buildings have obligations under civil rights laws, and particularly under the accessibility requirements of the *Americans with Disabilities Act 1990*.

The IBC or state building codes are enforced by state or local building authorities through building permit approval processes administered by staff. The process is similar in Australia and in other countries visited:

- Step 1: development or planning approval
- Step 2: building approval based on submitted detailed plans and specifications
- Step 3: inspections during and at the end of works
- Step 4: occupation certificate issued where building complies with the building approval

Generally, it is the local government, municipality or city authority that acts as the building permit authority responsible for ensuring compliance with relevant building codes, and while there is scope for them to engage a third-party permit authority, I understand this is rarely done.

Part 11 of the IBC deals with accessibility requirements for new buildings, and refers to the American National Standards Institute (ANSI) standard *A117.1 Accessible and Useable Buildings and Facilities*<sup>38</sup> for technical compliance matters.

Similar to the development of AS 1428.1 in Australia, A117.1 is developed through a consensus process, and the committee responsible for its development includes representatives from a range of interest groups, including designers, building professionals, disability organisations, fire authorities, federal and state code developers, building owners, and the US Access Board.

A117.1 includes technical specifications for both internal facilities, such as washing machines, telephones and ATMs, and external areas, including kerb cuts, and facilities such as play areas, fishing piers and amusement rides.

A117.1 provides technical criteria for making sites, building and elements accessible, however, like AS 1428.1, it does not scope out its application. So, for example, it will provide information on how to design an accessible toilet, but does not specify how many accessible toilets a building must have, or where they should be located.

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<sup>38</sup> An updated A117.1 was released in 2017 and can be purchased at [https://www.techstreet.com/standards/icc-a117-1-2017?product\\_id=1989020](https://www.techstreet.com/standards/icc-a117-1-2017?product_id=1989020).

It does, however, include an extensive range of concessions in relation to existing buildings. For example, there are different minimum requirements for clearance widths for a 90 degree turn along a corridor for new and existing buildings.

While the IBC states that it applies to ‘the construction, alteration, relocation, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure’ in relation to existing buildings, it states:

The provisions of the International Existing Building Code shall apply to matters governing the repair, alteration, change of occupancy, addition to and relocation of existing buildings.<sup>39</sup>

### ***International Existing Building Code***

The *International Existing Building Code* (IEBC) was first introduced in 2003, the intention being to provide flexibility to permit the use of alternative approaches to achieve compliance with minimum requirements to safeguard the public health, safety and amenity of a building.

The IEBC includes a number of triggers, concessions and limitations to the degree of accessibility required in existing buildings when they are undergoing repair, alteration, change of occupancy, addition or relocation.

Section 305.4 deals with change of occupancy (equivalent to change-of-use or classification in Australia) and distinguishes between partial and complete changes of occupancy. A complete change in occupancy triggers a requirement for a number of accessibility improvements, including at least one accessible entrance, accessible parking, and accessible routes to the ‘primary function’ areas of the building.

Section 305.5 deals with additions (extensions) to buildings, and requires that additions comply with the requirements for new buildings set out in section 11 of the IBC.

Section 305.6 deals with alterations, and requires that facility alterations comply with Chapter 11 of the IBC unless ‘technically infeasible’, in which case the alteration ‘shall provide access to the maximum extent possible.’ This section also includes an exception: when alterations take place, there is no requirement for an accessible path of travel to the altered part, unless the altered part is a ‘primary function’ area (see below).

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<sup>39</sup> *International Building Code 2017 (USA)* s 101.4.7.

Technically infeasible is defined in Chapter 2 as:

... an alteration of a facility that has little likelihood of being accomplished because the existing structural conditions require the removal or alteration of a load-bearing member that is an essential part of the structural frame or because other existing physical or site constraints prohibit modification or addition of elements, spaces or features which are in full and in strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

Section 305.7 deals with alterations affecting a primary function area or accessibility to a primary function area. It requires the route to that primary function area to be accessible, and appears to require an accessible path of travel to toilet facilities and drinking fountains serving the area of primary function.

Primary function is defined in Chapter 2:

A primary function is a major activity for which the facility is intended. Areas that contain a primary function include but are not limited to the customer service lobby of a bank, the dining area of a cafeteria, the meeting rooms in a conference centre, as well as offices and other work areas in which the activities of the public accommodation or other private entity using the facility are carried out.

The requirements in relation to accessible paths of travel to primary function areas are subject to an interesting exception in section 305.7 (exception 1). This exception limits the maximum additional cost of providing the accessible route to 20 per cent of the costs of the alteration works being done to the primary function area (this works out to be approximately 17 per cent of the total works cost).

There are also exceptions for certain types of work: windows, hardware, operating controls, electrical outlets, signs, mechanical systems, fire protection systems, and hazardous materials (exceptions 2 and 3).

Finally, if the work is being done to increase accessibility (either to a primary function area or any other area), the additional 20 per cent expenditure is not required (exception 4 to 305.7).

As is the case in Canada, many people interviewed stated that the complexity of the application of building law, local variations and requirements, and the overarching requirements of the *Americans with Disabilities Act 1990* (the ADA) can lead to inconsistent interpretation and application.

## Civil rights law

While various civil rights and discrimination laws affect the rights of people with disability in the USA, the most important is perhaps the *Americans with Disabilities Act 1990* (the ADA).<sup>40</sup>

The ADA is one of the country's most comprehensive pieces of civil rights legislation. It prohibits discrimination and requires that people with disability be afforded the same opportunities as everyone else, including in employment, the purchase of goods and services, access to facilities, and in participation in federal, state and local government programs and services.

The ADA National Network<sup>41</sup> provides information, guidance and training on how to implement the ADA in order to 'assure equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.' Funded by the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR),<sup>42</sup> the ADA National Network consists of ten Regional ADA Centers located throughout the United States.

Like the DDA, the ADA sets out general non-discrimination obligations but does not provide any detail on how to avoid discriminating in areas such as transport or building access.

Interestingly, there is a more strongly pro-active provision in the ADA relating to businesses that provide goods or services to the public ('public accommodations') than exists in the DDA.

ADA section 12182. *Prohibition of discrimination by public accommodations* specifically states that discrimination includes:

- (iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable; and
- (v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages, or accommodations available through alternative methods if such methods are readily achievable.

I was not able to ascertain the degree to which this provision had resulted in any significant, pro-active accessibility improvements to existing buildings.

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<sup>40</sup> *Americans with Disabilities Act 1990* (USA) <<https://www.ada.gov/pubs/adastatute08.htm>>.

<sup>41</sup> *ADA National Network* [undated] <<https://adata.org>>.

<sup>42</sup> *About the National Institute on Disability, Independent Living, and Rehabilitation Research (NIDILRR)* [2018] Administration for Community Living <<https://www.acl.gov/about-acl/about-national-institute-disability-independent-living-and-rehabilitation-research>>.

'Readily achievable' is defined as:

... easily accomplishable and able to be carried out without much difficulty or expense. In determining whether an action is readily achievable, factors to be considered include:

- (A) the nature and cost of the action needed under this chapter;
- (B) the overall financial resources of the facility or facilities involved in the action; the number of persons employed at such facility; the effect on expenses and resources, or the impact otherwise of such action upon the operation of the facility;
- (C) the overall financial resources of the covered entity; the overall size of the business of a covered entity with respect to the number of its employees; the number, type, and location of its facilities; and
- (D) the type of operation or operations of the covered entity, including the composition, structure, and functions of the workforce of such entity; the geographic separateness, administrative or fiscal relationship of the facility or facilities in question to the covered entity.

While 'readily achievable' looks to be somewhat similar to the unjustifiable hardship provision of the DDA, it does not appear to set as high a threshold, as it refers to 'being carried out without **much** difficulty or expense' (**emphasis** added).

The ADA also allows for the development of standards, and a number have indeed been developed, including in the areas of public transport and buildings. These standards are based on guidelines developed by the US Access Board.<sup>43</sup>

The Access Board is a federal agency that promotes equality for people with disability in the areas of the built environment, transportation, communication, medical diagnostic equipment, and information technology.

The Access Board is responsible for developing design guidelines known as the ADA Accessibility Guidelines (ADAAG). These guidelines are used by the US Department of Justice and the US Department of Transportation in setting enforceable standards that private and public bodies must follow (ADA Standards).

The ADA Standards<sup>44</sup> apply nationally, in addition to any applicable state or local access requirements or building codes.

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<sup>43</sup> *United States Access Board: Advancing Full Access and Inclusion for All* [undated] <<https://www.access-board.gov>>.

<sup>44</sup> *ADA Standards* [undated] United States Access Board <<https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards>>.

The ADA Standards apply to state, county and local government for new construction, additions, and alterations. All types of public facility are covered, including schools, transport facilities, hospitals, public housing, courthouses, and prisons. Federal buildings are not covered by the ADA, but by an earlier law, the *Architectural Barriers Act 1968* (ABA). The Access Board is responsible for developing and enforcing the ABA Standards<sup>45</sup> under the ABA, which are very similar to the ADA Standards.

The ADA Standards also apply to places of public accommodation, and to commercial facilities in the private sector. Places of public accommodation are basically places or facilities used by the public or that affect commerce, and include stores and shops, restaurants and bars, sales or rental establishments, service establishments, theatres, places of lodging, recreation facilities, assembly areas, private museums, places of education, office buildings and factories.

The ADA Standards, however, are not a building code, and are not enforced as a building code. The ADA Standards are enforced through investigations of complaints filed with federal agencies, such as the Department of Justice, or through litigation brought by private individuals or the federal government itself.

The Department of Justice, for example, can take action against public and private bodies where discrimination has been identified, and can negotiate agreements with bodies to eliminate discrimination over time. The authority to negotiate these agreements is an extremely important power that we do not have in Australia, and the agreements that have been made because of it reveal how important it is in promoting compliance.<sup>46</sup>

While considerable work has been done to harmonise the ADA Standards with the IBC and state codes, some differences remain, including in scope. The ADA Standards cover in-built elements, such as workbenches, dining surfaces and check-out isles, and recreational facilities, such as amusement rides, golf facilities, fishing piers and play areas, as well as the basic building structure.

An occupancy permit issued by a local government building authority does not ensure ADA Standards compliance. Compliance with the ADA Standards is the remit of the people responsible for the building, and although local building authorities can sometimes waive local building code requirements, any waiver does not affect the obligation to comply with the ADA Standards.

### ***Existing buildings under the ADA Standards***

The ADA Standards treat changes in use, additions and alterations almost identically to the way the IBC treats them. The ADA Standards also include reference to primary function areas, technical feasibility, and disproportionality (the '20% rule').

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<sup>45</sup> *About the ABA Standards* [undated] United States Access Board <<https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-aba-standards>>.

<sup>46</sup> *ADA Enforcement* [undated] ADA.gov: Information and Technical Assistance on the Americans with Disabilities Act, United States Department of Justice, Civil Rights Division <[https://www.ada.gov/enforce\\_current.htm](https://www.ada.gov/enforce_current.htm)>.

Throughout the ADA Standards there are a range of exceptions relevant to changes to existing buildings. For example, section 206.4 covers entrances to a building, and includes the following exception:

Where an alteration includes alterations to an entrance, and the building or facility has another entrance complying with 404 that is on an accessible route, the altered entrance shall not be required to comply with 206.4 unless required by 202.4.

### *Additions*

Building projects that increase, expand, or extend the gross floor area or height of a building are considered additions, and thus must comply with the requirements of the Standards applicable to new construction.

### *Alterations*

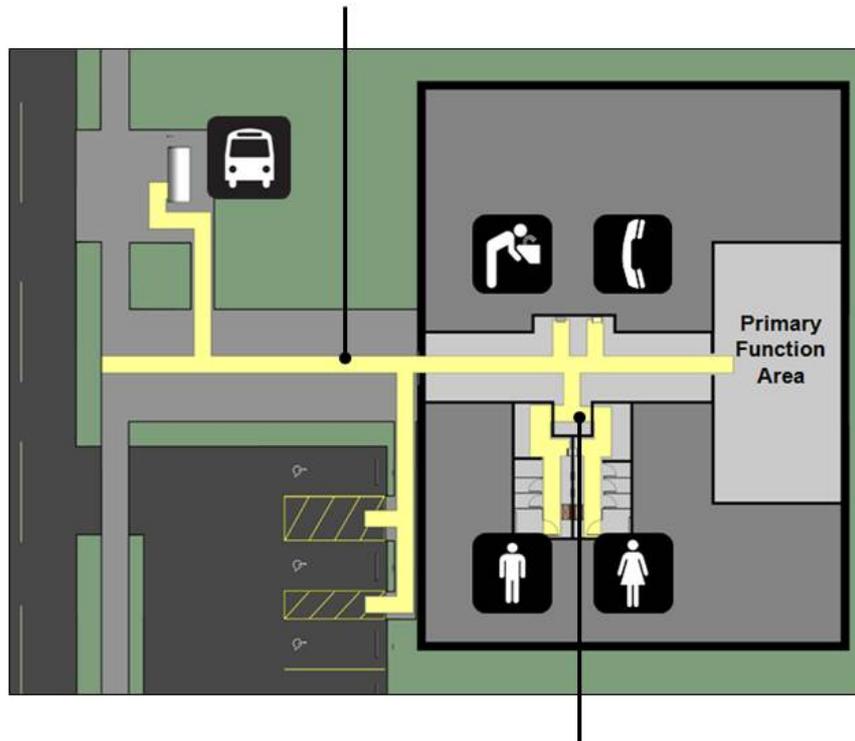
When alterations are made to a primary function area, an accessible path of travel to the area must be provided. The accessible path of travel must extend from the altered primary function area to site arrival points, including public footpaths and parking, and to passenger loading zones provided on the site. The equivalent to this requirement in Australia is the 'affected part', though the affected part does not extend to the allotment boundary, to car parking areas, or to passenger loading zones.

The required accessible path of travel also extends to restrooms, telephones and drinking fountains, where these are provided to serve the primary function area.

In leased facilities, alterations made by a tenant to primary function areas that only the tenant occupies do not trigger a path of travel obligation for the landlord with respect to areas of the facility under the landlord's authority if those areas are not otherwise being altered. This is similar to the lessee concession in the Premises Standards.

As is the case with the IBC, compliance in an alteration is not required where it is technically infeasible.

*The accessible path of travel extends from the altered primary function area to site arrival points (public sidewalks, parking, passenger loading zones, public transit stops located on the site).*



*The path of travel also includes an accessible restroom (for each sex unless only unisex restrooms are provided), telephone, and drinking fountain serving the primary function area, where such elements are provided.*

Figure 3. The extent of the accessible path of travel when there are alterations to a primary function area

### *Disproportionality (the 20% rule)*

The accessible path of travel is required to the extent that it is not 'disproportionate' to the total cost of a project. Regulations implementing the standards define 'disproportionate' as exceeding 20 per cent of the total cost of alterations (including the cost of implementing the accessible path of travel) to the primary function area. The 20 per cent cap applies only to costs associated with the accessible path of travel, including an accessible route to the primary function area from site arrival points, entrances, and retrofits to restrooms, telephones and drinking fountains.

Compliance is required up to the point at which the 20 per cent cost cap is reached, even where this expenditure does not result in a fully accessible path of travel. Where costs exceed this cap, the ADA Standards state that compliance should be prioritised in this order:

1. An accessible entrance.
2. An accessible route to the primary function area.
3. Toilet facilities access.
4. An accessible telephone (where provided).
5. An accessible drinking fountain (where provided).
6. Access to other elements such as parking and storage.

### *Equivalent facilitation*

The ADA Standards allow alternatives to specified requirements that provide substantially equivalent or greater accessibility and usability as an 'equivalent facilitation'. This is essentially the same concept as the Performance Solution approach in Australia.<sup>47</sup>

There is no process for approving or certifying equivalent facilitation alternatives to the requirements of the ADA Standards, and the responsibility for demonstrating equivalent facilitation in the event of a legal challenge or complaint rests with the building owner/operator.

In an attempt to clarify what appears to be a very complex set of requirements in relation to existing buildings, one interviewee said:

The idea is that whatever you touch, you fix. Full compliance. And since you're in there already, what can you give me to improve the services to get me to that space? So the route, parking, front door, elevator, bathroom, and I don't want to break the project because I don't want empty buildings, so where can I be reasonable. And the 20 per cent is the cut-off that they had where I'm asking you to give me something outside of your project so that, over time, your building will become fully accessible. Not day one, but we're going to work on it.

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<sup>47</sup> Compliance with the mandatory provisions (Performance Requirements) of the NCC and Premises Standards can be achieved by using a Deemed-to-Satisfy approach, which follows technical specifications as a measure of compliance, or by using a Performance Solution approach, which meets the Performance Requirements but in a different way.

## United States Access Board

The US Access Board was established in 1973 to ensure access to federally funded facilities, and now plays an invaluable leadership role in the area of information, training and guideline development.

I have been a long-time admirer of the Access Board and its mandate, and it was particularly exciting to spend time with the staff and some of the Board members. The skill, passion and inventiveness of the staff can be seen in both their guideline development activities, and in the wide array of valuable resources and publications they produce.

Of particular interest are the following resources developed by the US Access Board:

- **Webinars:** a free monthly webinar series on a range of issues, including access guidelines and standards, and accessible design. Recent and upcoming webinars include: accessible alterations, accessible shared spaces, and accessible airport terminals.<sup>48</sup>
- **Accessibility animations:** a series of animated films (with captions) showing the application of design standards to particular features, such as door manoeuvring areas, accessible toilets, accessible parking, and protruding objects.<sup>49</sup>
- **Guide to the ADA Standards:** a guide providing easy-to-read guidance on the technical requirements of the ADA Standards. It includes clear descriptions of the intent of the Standards, and provides pictures and plans to assist in interpretation. It also provides links to the Standards themselves, and to other resources (this is an excellent model for the *Guideline on the application of the Premises Standards*).<sup>50, 51</sup>
- **YouTube channel:** which provides direct access to the animations mentioned above, and to other material.<sup>52</sup>

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<sup>48</sup> *Webinars* [undated] United States Access Board <<https://www.access-board.gov/training/webinars>>.

<sup>49</sup> *Animations* [undated] United States Access Board <<https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards/animations>>.

<sup>50</sup> I wrote this Guideline (and updated it in 2013), but it is limited in its usefulness and requires a thorough overhaul <<https://www.humanrights.gov.au/guidelines-application-premises-standards>>.

<sup>51</sup> *Guide to the ADA Standards* [undated] United States Access Board <<https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/guide-to-the-ada-standards>>.

<sup>52</sup> *US Access Board* [undated] United States Access Board <<https://www.youtube.com/channel/UC5tRWTtV5eSw68N3tSpmYWw>>.

## Massachusetts Architectural Access Board

The State of Massachusetts has an interesting mechanism in place for responding to requests for variations from compliance with its building accessibility regulations.

The Architectural Access Board (AAB) develops and enforces regulations aimed at making public buildings accessible for people with disability.<sup>53</sup> The relevant regulation is 521 CMR,<sup>54</sup> which is currently under review.

The AAB can hear complaints of non-compliance with 521 CMR, and applications for variations from compliance.

The AAB meets weekly to consider complaints and variances, and all decisions are made available on a webpage hosted by the State Library of Massachusetts, making the process very transparent.<sup>55</sup>

The cost of filing for a variance is US\$50, and, at a minimum, it is necessary to submit a letter describing what is being requested and the reason that strict compliance with 521 CMR is not feasible, as well as written estimates of how much strict compliance would cost, building and/or site plans, and, if applicable, photographs depicting existing conditions in the specific areas of the building in respect of which a request for variance is being made.

Once the AAB receives the application for variance, the variance process begins. Generally, the AAB will decide at the review to: grant the variance (sometimes with conditions); deny the variance; request further materials from the variance applicant; or schedule the application for a full hearing. The AAB tries to respond to requests within 2 weeks.

Under the Massachusetts code, a requirement would be impracticable if:

- (a) compliance with 521 CMR would be technologically unfeasible; or
- (b) compliance with 521 CMR would result in excessive and unreasonable costs without any substantial benefit to persons with disabilities.

While the AAB cannot authorise variations from the ADA Standards, the process is likely to result in an outcome consistent with the ADA Standards provisions for technical infeasibility and disproportionality.

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<sup>53</sup> *Architectural Access Board (AAB)* [2018] Mass.gov <<https://www.mass.gov/orgs/architectural-access-board>>.

<sup>54</sup> A copy of the draft can be found at <<https://www.mass.gov/news/proposed-update-to-521-cmr>>.

<sup>55</sup> *Variance Decision* [2015] State Library of Massachusetts <<http://archives.lib.state.ma.us/handle/2452/734986>>.

## Access consultants

While there is no national access consultant body, there are many businesses offering consultancy services, and a number of state initiatives aimed at ensuring quality access specialist services.

For example, California has a voluntary Certified Access Specialist program (CAsp),<sup>56</sup> which was created by Senate Bill 262 (Chapter 872, 2003) and is designed to meet the public's need for experienced, trained, and tested individuals who can inspect buildings and sites for compliance with applicable state and federal construction-related accessibility standards.

A CAsp is a professional who has passed an examination and has been certified by the State of California to have specialised knowledge of the applicability of state and federal construction-related accessibility standards. Training and accreditation of CAsps is provided by the Certified Access Specialists Institute.<sup>57</sup> A business or organisation that has their building assessed by a CAsp has what is referred to as 'qualified defendant' status in the event of an access-related complaint.

The 'qualified defendant' benefits include:

- Reduced statutory damages;
- A 90-day stay of court proceedings; and
- An early evaluation conference.

Additionally, an inspection by a CAsp, and following any plan for improvements, demonstrates intent to be in compliance.

Similarly, Texas has registered accessibility specialists, and an association<sup>58</sup> that provides continuing education on accessibility standards and member accreditation.

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<sup>56</sup> *Access Compliance* [2017] Division of the State Architect, California Department of General Services <<http://www.dgs.ca.gov/dsa/Programs/progAccess.aspx>>.

<sup>57</sup> *Certified Access Specialist Institute* [2015] <<https://casinstitute.org/>>.

<sup>58</sup> *Accessibility Professionals Association* [2018] <[http://accessibilityprofessionals.org/content.aspx?page\\_id=0&club\\_id=903704](http://accessibilityprofessionals.org/content.aspx?page_id=0&club_id=903704)>.

## Comment

The International Existing Building Code provides a wide range of alternative compliance options for changes to existing buildings aimed at ensuring flexibility.

The idea of establishing a percentage-based 'disproportionate' cost limit for new building work on existing buildings was discussed at length in the development of the Premises Standards. It was not pursued in part because of strong advocacy from the disability sector, which was concerned about the potential to manipulate budgets to avoid obligations, and because the adoption of an 'across the board' percentage did not take account of the differing capacity of one building owner over another to meet the costs of improving access.

While these two points remain valid, there could be some advantages to this approach, as owners and operators would be obliged to spend 20 per cent of their budget on improving access generally, even if access to the building for people using wheelchairs were not achieved through this expenditure. This could benefit a range of people with mobility disability who do not use wheelchairs, or people with sensory disability, and potentially reduce the cost of achieving access for people who use wheelchairs at a later time.

Building plans are not assessed for compliance with the ADA Standards, and building authorities are not authorised to enforce them. It is up to the person responsible for a building to ensure compliance.

This is similar to the situation in Australia where, although building certifiers, designers and developers are identified as being responsible for ensuring the Premises Standards are complied with, there is no certification process. The difference from Australia is that because the Premises Standards reflect the content of the NCC, state and territory building certification processes effectively ensure compliance with the Premises Standards.

The fact that the US federal government, through the Department of Justice, can bring complaints is particularly important, and very different from Australia. While the Department can bring complaints, it also provides a mediation service and a technical assistance service to assist organisations to meet their obligations.<sup>59</sup>

One particularly interesting aspect of the US Department of Justice's work is its role in negotiating agreements with organisations that have been identified as being in breach of the ADA. Rather than pursue complaints through the court system, the Department is able to reach agreements with organisations that can result in important systemic changes.

California's CASp is also an interesting initiative. The program encourages building owners to have a qualified access specialist undertake an access assessment, which results in a report on access barriers and, presumably, in a proposed plan for addressing those barriers. The

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<sup>59</sup> The ADA website provides information on technical assistance material and enforcement. It is also possible through this page to register to receive updates. See <<https://www.ada.gov>>.

benefit for the building owner is some protection from discrimination complaints and reduced damages if a complaint is upheld.

In some ways, this is similar to the protections offered in the Premises Standards to a building owner who submits a Disability Action Plan or building upgrade plan under the unjustifiable hardship provision in section 4. The difference is that there is an explicit legal link between accredited access specialists and the benefits of the CASp.

The US Access Board has a major influence on accessibility in the built environment, and its resources and Webinar capacity provide opportunities for continuing education and awareness-raising among building professionals and interested community members. Access advocates in Australia have long argued for a similar body to be established to drive innovation and compliance—especially since the Australian Human Rights Commission has had its capacity to engage in this area reduced.

The Massachusetts mechanism for responding to requests for variations from full application of 521 CMR is a model that was proposed in Australia through the establishment of Access Panels in states and territories. The Massachusetts model appears to be timely, low cost, practical and transparent—everything the Australian model was supposed to be.

# Ireland

Ireland is a parliamentary democracy with a central government. The National Parliament (Oireachtas) consists of the President and two Houses: the House of Representatives (Dáil Éireann) and the Senate (Seanad Éireann), the functions and powers of which come from the Constitution of Ireland.

Along with the central institutions of the Oireachtas, the political system in Ireland also extends to 31 local-level authorities that are responsible for planning and building approval processes.

## Relevant building law, regulations and standards

The *Building Control Act 1990*<sup>60</sup> allows the relevant Minister to develop regulations in relation to matters covered in the Act. Accessibility issues are addressed in *Regulation M – Access and Use*.<sup>61</sup>

Guidance on compliance with the various Parts of the Building Regulations is given in the relevant Technical Guidance Documents. Where works are carried out in accordance with this guidance, this will, prima facie, indicate compliance with the Regulations. The primary responsibility for compliance with the requirements of the Building Regulations rests with the designers, builders and owners of buildings.

Interpretation of the legislation is, ultimately, a matter for the Courts, and implementation of the Building Control system is a matter for the local Building Control Authority.

Compliance with Part M is mandatory, but the key provision is a very broad performance statement:

M1 Adequate provision shall be made for people to access and use a building, its facilities and its environs.

M2 Adequate provision shall be made for people to approach and access an extension to a building.

M3 If sanitary facilities are provided in a building that is to be extended, adequate sanitary facilities shall be provided for people within the extension.

M4 Part M does not apply to works in connection with extensions to and material alterations of existing dwellings, provided that such works do not create a new dwelling.<sup>62</sup>

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<sup>60</sup> *Building Control Act 1990* (Ir) <<http://www.irishstatutebook.ie/eli/1990/act/3/enacted/en/html>>.

<sup>61</sup> While the regulation is prescriptive, it is written as a performance-based document <<http://www.irishstatutebook.ie/eli/2010/si/513/made/en/print>>.

<sup>62</sup> *Building Regulations (Part M Amendment) Regulations 2010* (Ir, S I No 513/2010) s 5.

Part M1 also applies, in some circumstances, to existing buildings where there is an extension to an existing building, a 'material alteration' or a 'material change-in-use'.

### *Extension*

Part M1 applies to an extension to a building, and M2 requires that access be provided to the extension, either directly or via an existing entrance and approach where practicable.

M3 also specifically addresses sanitary facilities in the extension. This may be achieved by providing accessible sanitary facilities in the extension or, alternatively, the facilities in the existing building being made accessible by modification.

### *Material alteration*

A 'material alteration' means an alteration where the work or part of the work carried out by itself would be the subject of a requirement of Part A (Structure), B (Fire Safety) or M (Access and Use). I understand this to mean that if you alter a part of the building that would normally be subject to Part M, such as a doorway, a lift, toilet facilities, etc., then the altered part must comply with M1.

Part M1 only applies where a material alteration involves a building element that is subject to part M, such as an entrance or toilet facility, and then only to that part that is altered. The building as a whole, including the approach from the site boundary and from on-site car parking, where provided, must be no less compliant with M1 than it was following a material alteration to the building. However, this does not mean it is necessary to upgrade the existing access to the building entrance, such as by getting rid of a step at the entrance, for example, unless the entrance itself is subject to a material alteration.

### *Material change in use*

An existing building must be upgraded to comply with Part M1 where there is a material change in use. A 'material change-in use' is essentially equivalent to a change in classification in Australia. However, this obligation only applies if the change-in-use is to a specified type of building, including a day centre, hotel, hostel, institutional building, place of assembly, shop (where the shop is the main purpose of the building), or shopping centre. In this case, consideration would need to be given to addressing all aspects of the building, including accessible paths of travel to the building and the entrance.

In summary:

- New buildings must comply with M1.
- Under M2, an accessible path of travel must be provided to an extension to an existing building (either directly or through the existing building).
- A change-in-use triggers the need to upgrade the building to meet M1, but only for buildings used for a specified purpose.

- Where a building is being extended, M3 may require either new accessible toilets in the extended part, or access to compliant accessible toilets in the original part of the building.
- In any existing building where material alterations take place, the part being altered must meet M1, but there is no requirement to provide a continuous accessible path of travel from the main entrance to the area where the alteration has taken place, unlike in Australia, where the 'affected part' provisions would apply (subject to the unjustifiable hardship and lessee concession provisions).

In order to assist in interpretation of what Part M means for design and construction, the Irish Minister for the Environment, Heritage and Local Government issued *Technical Guidance Document M – Access and Use* (TGD M):<sup>63</sup>

Where works are carried out in accordance with the guidance in this document, this will, prima facie, indicate compliance with Part M of the Second Schedule to the Building Regulations (as amended). However, the adoption of an approach other than that outlined in the guidance is not precluded provided that the relevant requirements of the Regulations are complied with.

For all practical purposes, TDG M is equivalent to the Australian Deemed-to-Satisfy provisions of the NCC (and Premises Standards), in that following its minimum technical provisions assures compliance with Part M. However, as TDG M goes on to state:

This document, Technical Guidance Document M (TGD M) sets out guidance on the minimum level of provision to meet requirements M1–M4. However, those involved in the design and construction of buildings should also have regard to the design philosophy of Universal Design and consider making additional provisions where practicable and appropriate. For this purpose, a list of useful references, advocating greater accessibility, is given at the end of this document. Further advice and guidance can be found at the Centre for Excellence in Universal Design, [www.universaldesign.ie](http://www.universaldesign.ie) and in the publication 'Building for Everyone'.

While TDG M includes reference to universal design, and encourages designers/developers to adopt a universal design approach, most interviewees were of the view that the minimum technical and scoping requirements in TDG M were usually followed.

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<sup>63</sup> <http://www.housing.gov.ie/housing/building-standards/tgd-part-m-access-and-use/technical-guidance-document-m-access-and-use>

## ***Scope and structure of TGD M***

TDG M consists of three sections. Section 1 provides scoping information and minimum technical compliance details for elements such as ramps, entrances, stairways and toilet facilities for new buildings.

The structure of section 1 is clear, and follows a logical sequence. For example: getting to a building, getting into a building, circulating within a building, sanitary facilities, other facilities in a building, and aids to communication, including signage, contrast, audible aids and lighting.

Each sub-section states a clear objective, then gives an introduction that scopes out the application, followed by technical information on minimum compliance. For example, the objective of section 1.2 'Access to buildings' 'is to provide entrances to buildings that are independently accessible and to avoid segregation based on a person's level of ability.'

The sub-section introduction scopes out which entrances must be accessible, and then goes on to detail the specifications for an accessible entrance. This approach is repeated in other areas, such as the provision of accessible toilets.

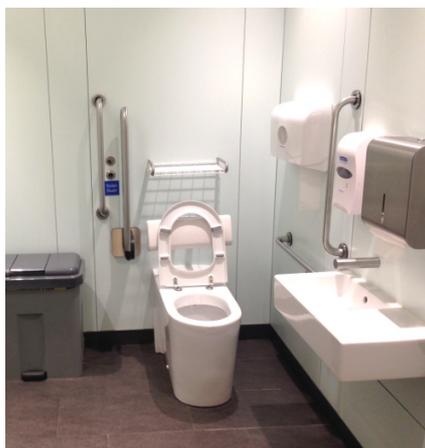


Figure 4. The internal fitout of an accessible toilet in Ireland, which is very different from the fitout of an Australian accessible unisex toilet

Section 2 covers access to and use of existing buildings where extensions, material change-of-use or material alterations take place. The introduction to section 2 states:

Works to existing buildings can present many design challenges because of the individual character, appearance and environs of existing buildings. Each existing building and site will present its own unique access opportunities and constraints, which are likely to result in different ways of addressing accessibility. However, the fundamental priorities of accessibility should be the same as those set out in M1, i.e. accessing and using a building, its facilities and environs.

Section 2 includes a wide range of alternative requirements to those applied to new buildings where achieving section 1 requirements is 'impractical'.

Section 3 deals with dwellings and is thus beyond the scope of this report.

TDG M provides guidance on how to determine if something is practicable in section 7:

In the determination of 'practicability' with respect to works to an existing building, its facilities or its environs the following non-exhaustive list of circumstances should be considered.

- (i) Where the works would have a significant adverse effect on the historical significance of the existing building, facility or environs, e.g. works to a Protected Structure;
- (ii) Where the existing structural conditions would require moving or altering a load bearing member which is an essential part of the overall structural stability of the building;
- (iii) Where other existing physical or site constraints would prohibit modification of an existing feature;
- (iv) Where the works would need to be carried out on part of a building, its facilities or its environs that are not under the same control/ownership, e.g. in the case of a sub-leaseholder in a multi-occupancy building;
- (v) Where specific alternative guidance to Section 1 is provided in Section 2 and an existing feature or facility satisfies that guidance;
- (vi) Where a specific planning condition prohibits modification of an identified existing feature.

Part 2 essentially provides for concessions where a designer or developer can show the building control authority that a particular access provision would be impractical to implement in an existing building.

The expectation is that Part 1 would be applied, but if that were not practicable then Part 2 could be considered.

Part 2 also allows for a service delivery or management approach to accessibility when a building cannot be made accessible due to impracticability. For example, in relation to vertical access, section 2.3.4.1 states:

The guidance in 1.3.4.1 should be followed except where it is not practicable to provide a passenger lift in an existing building, an enclosed vertical lifting platform should be provided in accordance with 2.3.4.1.1. Alternatively, the same range of services/facilities that are available on the other levels should be made available on the entry or accessible level(s).

Clearly this leaves accessibility questions open to different interpretations as to what is practicable, and relies on a robust and knowledgeable building control authority to get the best results.

## **Disability Access Certificate**

Despite many years of addressing the obligations under Part M, interviewees noted that it was widely understood that compliance was inconsistent and understanding of the obligations was limited. As a result, on 1 January 2010, the *Building Control Regulations* were amended to introduce a requirement for specified buildings that they could not be occupied unless a Disability Access Certificate (DAC)<sup>64</sup> had been issued by a building control authority certifying that the design of certain works—for example, new buildings, some extensions to, and some material alterations to existing buildings—complies with the requirements of Part M.

A DAC is required for any new building (other than a dwelling) that requires a Fire Safety Certificate. A DAC is also required for any:

- Extension to a building of more than 25 square metres;
- Material alteration of:
  - Day centres;
  - Buildings containing flats;
  - Hotels, hostels or guest buildings;
  - Institutional buildings;
  - Places of assembly;
  - Shopping centres;
  - Shops, offices or industrial buildings where additional floor area is provided within an existing building or a building is being sub-divided; and
- Material change-of-use of a building to use as one of the above.

Guidance documents are available to assist designers and developers to develop a DAC,<sup>65</sup> and typically an application would:

1. Clearly identify and describe the building or works;
2. Show how the building or works comply with disability access requirements in part M by providing adequate provision for people with disability, including:
  - Approach to a building
  - Access to a building
  - Circulation within a building, and
  - Use of facilities within a building;
3. Include two copies of:
  - Drawings to scale, with site or layout plan, floor plans, elevations and sections all clearly marked, and
  - A detailed compliance report; and
4. Pay a fee of €800 per building.

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<sup>64</sup> *Building Control (Amendment) Regulations 2009* (Ir, S I No 351/2009) <<http://www.irishstatutebook.ie/eli/2009/si/351/made/en/print>>.

<sup>65</sup> *A Sample Based Approach to Applying for a Disability Access Certificate* [2012] Local Government Management Agency <<http://www.lgma.ie/en/sample-based-approach-applying-disability-access-certificate>>.

Although a DAC is only legally required prior to occupation, to provide an incentive for applications for a DAC to be made as early as possible in a project, a reduced fee of €500 applies where the application is made before commencement of works and coincides with an application for a fire safety certificate.

The building control authority assesses an application and issues a certificate if convinced that compliance will be achieved according to the plans. During this process, alternative solution approaches could be discussed and resolved, and there is provision for an application for 'dispensation' of access requirements in some situations<sup>66</sup> under section 4 of the *Building Control Act*:

#### **Dispensation or relaxation of building regulations.**

4.(1) Subject to the provisions of this section, a building control authority may, if it considers it reasonable having regard to all the circumstances of the case, grant a dispensation from, or a relaxation of, any requirement of building regulations in respect of buildings or works which are situated within the functional area of the building control authority.

This is an important provision as it allows for up-front approval to proceed with a project where circumstances mean it is not possible to fully meet the requirements of Part M.

I understand that if the designer or developer can show the building control authority that something is not practical there is rarely a need to go on to apply for a formal dispensation.

### ***Disability Act 2005* and National Disability Authority**

The *Disability Act 2005*<sup>67</sup> establishes the National Disability Authority (NDA) and the Centre for Excellence in Universal Design (CEUD), which sits within the NDA.

The Act includes a pro-active obligation on public bodies—such as government departments, local authorities, the Health Service Executive, semi-state bodies, etc.—to make their public buildings, as far as practicable, compliant with Part M 2000 by 2015. It also requires that these public buildings be brought into compliance with amendments to Part M not later than 10 years after the commencement of the amendment. As a result, public bodies have until 2020 to address the amendments to Part M brought into force in 2010.

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<sup>66</sup> In Australia, a similar authority exists in some states/situations. For example, in Tasmania, building certifiers have some discretion as to the full application of the NCC in relation to heritage buildings, and upgrades to and change-in-use of a building.

<sup>67</sup> *Disability Act 2005* (Ir) <<http://www.irishstatutebook.ie/eli/2005/act/14/enacted/en/html>>.

Apart from the general limit on improving access implied by ‘as far as practicable’, the relevant Minister may exclude a public building from the requirements if satisfied that the building:

- Is being used as a public building on a temporary basis;
- Will no longer be used as a public building after three years; or
- Does not justify refurbishment on cost grounds, having regard to the use of the building.

The Act also gives the Ombudsman<sup>68</sup> powers to investigate complaints about compliance in relation to accessibility of buildings, services and information provided by public bodies for failure to meet their obligations under the Act. While this is an important complaint mechanism, a review of the Ombudsman annual reports shows it has rarely been used—much to the Ombudsman’s disappointment.<sup>69</sup>

The NDA is the independent body providing expert advice on disability policy and practice to the government and the public sector, and promoting universal design in Ireland.

While Part M remains the source of mandatory minimum requirements for building design, the NDA and CEUD conduct research and develop design recommendations for use by building professionals.<sup>70</sup>

The NDA is a valuable and motivating organisation that has played an important role in developing resources, ideas and initiatives across a broad range of design and service delivery areas.

Of particular interest are:

- A group of publications under the title *Building for everyone* that promote a universal design approach to the built environment rather than simply a compliance approach;<sup>71</sup>
- *Universal Design Guidelines for Homes in Ireland*;<sup>72</sup>
- *Dementia Friendly Dwellings for People with Dementia, their Families and Carers*;<sup>73</sup>
- *Customer Communications Toolkit for the Public Service – A Universal Design Approach*.<sup>74</sup>

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<sup>68</sup> *Accessibility* [undated] Ombudsman <<https://www.ombudsman.ie/accessibility/>>.

<sup>69</sup> Ombudsman, Ireland, *Annual Report 2016 (2017)* 14 <<https://www.ombudsman.ie/publications/annual-reports/>>.

<sup>70</sup> *Built Environment* [2014] Centre for Excellence in Universal Design, National Disability Authority <<http://universaldesign.ie/Built-Environment/>>.

<sup>71</sup> *Building for Everyone* [2014] Centre for Excellence in Universal Design, National Disability Authority <<http://universaldesign.ie/Built-Environment/Building-for-Everyone/>>.

<sup>72</sup> *Universal Design Guidelines for Homes in Ireland* [2015] Centre for Excellence in Universal Design, National Disability Authority <<http://universaldesign.ie/Built-Environment/Housing/>>.

<sup>73</sup> *Dementia Friendly Dwellings for People with Dementia, their Families and Carers* [2015] Centre for Excellence in Universal Design, National Disability Authority <<http://universaldesign.ie/Built-Environment/Housing/Dementia-Friendly-Dwellings/>>.

## Discrimination laws

Ireland has a number of relevant human rights and discriminations laws, including the *Equal Status Act 2000*,<sup>75</sup> which allows individuals to make complaints about discrimination to the Irish Human Rights and Equality Commission.

Because discrimination law operates separately from building law, technically someone could make a complaint in relation to a building that complies with building law.

Discrimination law could also be used to complain about existing buildings that have a step at the entrance, for example, however, this means that inaccessible buildings need to be addressed building by building, as is the case in Australia for existing buildings that are not undergoing upgrades or extension.

## Access consultants

While there are a number of access consultancy businesses in Ireland, there is no national body providing accreditation, training or lobbying support for the sector.

Access consultants contacted during my study tour expressed similar concerns to those in Australia about the difficulties faced when trying to engage in projects early in the planning and design phase, and frustrations over being engaged only when difficulties arise due to lack of understanding of accessibility requirements.

The Irish Wheelchair Association (IWA) is a very active advocacy organisation closely involved in improving access in the built environment. The IWA and its members played an important role in introducing access requirements into Irish building regulation, and continue to 'push the envelope' by producing a best practice access guideline<sup>76</sup> that seeks to influence improvements in relation to TDG M.

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<sup>74</sup> *Customer Communications Toolkit for the Public Service – A Universal Design Approach* [undated] Centre for Excellence in Universal Design, National Disability Authority  
<<http://universaldesign.ie/Products-Services/Customer-Communications-Toolkit-for-the-Public-Service-A-Universal-Design-Approach/>>.

<sup>75</sup> *Equal Status Act 2000* (Ir) <<http://www.irishstatutebook.ie/eli/2000/act/8/enacted/en/html>>.

<sup>76</sup> *IWA Access Guidelines* [2018] Irish Wheelchair Association  
<<https://www.iwa.ie/component/zoo/item/iwa-access-guidelines>>.

## Comment

The Irish building regulation Part M primarily consists of a very simple mandatory requirement:

Adequate provision shall be made for people to access and use a building, its facilities and its environs.

Notably this does not refer to people with disability, but simply to people. This emphasises the approach taken in Ireland: inclusive design.

While guidance is given on what minimum levels of accessibility should be provided through the technical guideline TDG M, there is a strong emphasis on designers adopting a universal design approach rather than simply a technical compliance approach.

To support that, the Irish Government has established the National Disability Authority and Centre for Excellence in Universal Design, which play an important leadership, training, information and guideline development role. The NDA also plays a critical role in extending the concept of accessibility well beyond the limited concept embedded in building law to include public space, service delivery, customer communication and building management.

Despite this, many interviewees were of the view that design professionals and developers still pursued a minimum compliance approach to their projects. In my interviews, I heard a broad range of interpretations of key triggers and requirements due to the complexity of the regulations.

TDG M includes, in section 2, a wide range of concessions in relation to existing building compliance because of impracticality, and it is the building control authority that has the discretion to make decisions about what would be impractical on a case-by-case basis.

If the designer or developer can convince the building control authority that complying fully with Part M would be impractical, they can take advantage of the concessions in Part 2 of TDG M. This contrasts with Australia, where there are very few concessions in relation to existing buildings, and projects must rely on either a Performance Solution justification or, where they exist, an appeal to a body that considers questions of unjustifiable hardship.

The requirement for a Disability Access Certificate (DAC) before a building can be occupied is a very valuable mechanism for ensuring, at least on paper, that compliance with access requirements will be achieved. Those involved in the design and completion of a building project have a statutory responsibility to certify compliance through the DAC.

While building certifiers in Australia technically should not be issuing building permits unless there is full compliance with the access provisions of the NCC, this DAC mechanism ensures a sharper focus on accessibility at the earliest stages of a project. It was brought in because it was recognised that compliance levels were inconsistent, and that there needed to be a stronger emphasis on access compliance.

The *Building Control Act* also provides opportunities for an application for dispensation from the full application of accessibility requirements. This is effectively similar to the provision for unjustifiable hardship under the Premises Standards.

In both instances (using the impractical concessions and seeking a dispensation) it is the building control authority that exercises discretion in relation to building regulations and broader issues, such as economic factors. While the exercise of this discretion allows for some flexibility, ensuring effective outcomes for people with disability is reliant on the building control authority being experienced and knowledgeable in the area of accessibility.

The structure and style adopted in TGD M, where each section includes an objective, an introduction that scopes out the application, and then technical information on minimum compliance, is clear, and far more accessible than the NCC or Premises Standards.

The objectives of TGD M establish the overall principle of equality and inclusion, the introductions provide clear application information and a rationale for the requirements (which assists designers and building control authorities to appreciate the reasoning behind them), and the technical material is easy to understand. This style would be welcomed by many in Australia.

# The United Kingdom

The UK is a constitutional monarchy with three levels of government: central, regional and local.

Local government is complex, with ‘principal councils’ encompassing a range of authorities, including county councils, unitary authorities, metropolitan boroughs and London boroughs.

## Relevant building law, regulations and standards

The *Building Act 1984* empowers the Secretary of State to make regulations for ‘securing the health, safety, welfare and convenience of persons in or about buildings and of others who may be affected by buildings or matters connected with buildings.’

*The Building Regulations 2010* set out the mandatory obligations relating to access under Part M of Schedule 1.<sup>77</sup>

Part M consists of a very broad performance requirement concerning access to and use of buildings in M1, and two other requirements (in M2 and M3) specific to paths of travel and access to toilet facilities in extensions to existing buildings.

Table 1. Limits of Application of Part M Access to and Use of Buildings other than Dwellings

Requirement	Limits of application
<b>PART M ACCESS TO AND USE OF BUILDINGS</b>	
<b>Access to and use of buildings other than dwellings</b>	
M1. Reasonable provision must be made for people to— (a) gain access to; and (b) use, the building and its facilities.	Requirement M1 does not apply to any part of a building that is used solely to enable the building or any service or fitting in the building to be inspected, repaired or maintained.
<b>Access to extensions to buildings other than dwellings</b>	
M2. Suitable independent access must be provided to the extension where reasonably practicable.	Requirement M2 does not apply where suitable access to the extension is provided through the building that is extended.
<b>Sanitary conveniences in extensions to buildings other than dwellings</b>	
M3. If sanitary conveniences are provided in any building that is to be extended, reasonable provision shall be made within the extension for sanitary conveniences.	Requirement M3 does not apply where there is reasonable provision for sanitary conveniences elsewhere in the building, such that people occupied in, or otherwise having occasion to enter the extension, can gain access to and use those sanitary conveniences

<sup>77</sup> *The Building Regulations 2010* (UK) <<http://www.legislation.gov.uk/uksi/2010/2214/contents/made>>.

As in Ireland, the Secretary of State has issued ‘approved documents’ clarifying the application of Part M. These approved documents are not legally binding, but rather they represent the expectation of the Secretary of State concerning the minimum appropriate standards for access required for compliance with the Building Regulations Part M.

*Approved Document M Volume 2 – Buildings other than dwellings* sets out in more detail the minimum performance and technical standards deemed to satisfy the requirements of Part M. Again, similarly to Ireland, *Approved Document M (AD M)* is available free online, and contains application and technical requirements.<sup>78</sup>

AD M applies to new buildings, existing buildings undergoing extension or material alteration, and existing buildings undergoing a material change-of-use.<sup>79</sup>

### **Scope and structure of AD M**

AD M has six sections, covering general guidance and application, access to buildings and into buildings, horizontal and vertical circulation, and facilities in special buildings, such as auditorium and sanitary facilities.

Each section includes objectives, notes on design considerations, and provisions.

For example, section 3 ‘Horizontal and vertical circulation’ states:

The objective is for all people to travel vertically and horizontally within buildings conveniently and without discomfort in order to make use of all relevant facilities. This objective relates in the main, but not exclusively, to the provision of sufficient space for wheelchair manoeuvre and design features that make it possible for people to travel independently within buildings.

The design considerations aspect of each section provides ideas on ways in which design can improve occupants’ experience of the building, and also provides reasons as to why the Provisions are important. Lastly, the provisions provide technical information on minimum compliance.

Like the Irish TGD M, this guidance material is easy to comprehend and is more accessible than the Australian codes and standards.

Unlike the Irish TGD M, there is no section dealing specifically with existing buildings, though the General Guidance provides information on extensions, material alterations and material changes in use of existing buildings.

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<sup>78</sup> *Approved Document M; Access to and use of buildings, volume 2: buildings other than dwellings* [2016] Gov.UK <<https://www.gov.uk/government/publications/access-to-and-use-of-buildings-approved-document-m>>.

<sup>79</sup> Regulation 5 of *The Building Regulations* defines a ‘material change of use’ in which a building or part of a building that was previously used for one purpose will be used for another. *The Building Regulations* set out requirements that must be met before a building can be used for a new purpose. To meet the requirements, the building may need to be upgraded in some way consistent with Part M.

## *Extension*

An extension to a building is required to comply with Part M, but Part M2 also states that an extension triggers a requirement to ensure an accessible path of travel to that new work (the extension) where 'reasonably practicable'. The limitation to Part M2 indicates that this can be achieved either by a direct accessible path of travel into the extension, or by an accessible path through the existing building from an accessible entrance.

Interestingly, some interviewees interpreted Part M2's limitation on application to mean that if an existing building was being extended and it did not have any access in the first place then no access would be required to or in the extension.

Similarly, under Part M3, 'reasonable' provision must be made within the extension for toilet facilities, however, the limitation to Part M3 states that this would not apply if there is reasonable provision for people using the extension to access toilets in the existing building.<sup>80</sup>

## *Material alteration*

A material alteration is work that is subject to building regulations that affects the structure, means of escape and fire spread, firefighting access and access to and use of the building.

In the context of access, any new building work in the building that is covered by Part M should be compliant with Part M. So, for example, if new building work is being undertaken on toilet facilities they should comply with Part M requirements, however, if work was being undertaken on the roof or air conditioning system they are not covered by Part M so there would be no access upgrade requirements.

A material alteration would not trigger a requirement to upgrade building features other than in relation to the part being altered. Neither would it trigger a requirement to establish an accessible path of travel from the entrance to the new work, as is the case in Australia in most situations under the 'affected part' provisions of the Premises Standards.

The only requirement is that the building as a whole must not be less compliant with Part M than it was before the material alteration was carried out, including access from the site boundary or from on-site car parking.

A number of interviewees noted that while it is not necessary to upgrade access to the building entrance from the site boundary or from the on-site car parking, the requirements of the UK *Equality Act* still apply, and often access advocates would encourage owners to address access barriers such as a step at the building entrance while undertaking the material alteration.

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<sup>80</sup> There is an interesting provision in AD M relating to travel distances. Provision 5.10 states that: 'Wheelchair accessible unisex toilets will satisfy Requirement M1 or M3 if (h) any wheelchair user does not have to travel (i) more than 40 m on the same floor, unless a greater distance can be agreed with the building control body on the grounds that the circulation route is unobstructed, e.g. by the installation of doors with hold open devices.'

## *Material change in use*

When there is a material change in use, from a warehouse to a fitness centre, for example, planning approval is required. In theory, if the planning authority identifies that the access improvements required as a result of the change in use cannot be readily achieved, planning approval could be refused at the application stage.<sup>81</sup> Such a refusal could be appealed.

A number of interviewees stated that while some councils have refused planning applications because of the difficulty in meeting access requirements, use of this power appears to be piecemeal, and is reliant on the council in question acting in a robust manner. However, it provides the planning authority with the discretion to refuse a change in use at the planning application stage because of the likelihood of not being able to meet Part M requirements. This authority does not exist in Australia, where the planning and building approval stages are very separate, and where access issues are rarely considered until the building approval stage.

Where there is a material change in use, Part M would apply to the whole building, including access to and into the building where practicable, but only if the building is being turned into a hotel, boarding house, institution, public building or shop when previously it was not.<sup>82</sup>

One interviewee, however, suggested that if no new building work were being undertaken in relation to a material change in use there would be no requirement to upgrade the building or part of the building to comply with Part M.

## ***Building approval***

Local government Building Control Officers are responsible for building approval, including the issuing of a completion certificate, however, it is also possible for a development to be assessed by a private 'approved inspector'.

Approved inspectors can be individuals or organisations, and must be registered with the Construction Industry Council (CIC), which provides a list of approved inspectors (numbering approximately one hundred in the UK).

A local authority, acting as a building control authority, may refuse an application to relax or dispense with one or more requirements of the building regulations. If this happens, the entity carrying out the building works may appeal against the local authority's decision to the Secretary of State for Housing, Communities and Local Government. Decisions of the Secretary are publicly available, and provide important interpretation guidance.<sup>83</sup>

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<sup>81</sup> For example, the City of London has an 'access team' that provides advice to the planning team during the planning application phase.

<sup>82</sup> An 'institution' is a hospital, home, school or other similar establishment used as living accommodation for, or for the treatment, care or maintenance of, persons with disability. A 'shop' includes cafés and restaurants.

<sup>83</sup> The appeals mechanism sits within the Department of Housing, Communities & Local Government, and is effectively an appeal to the Secretary of State. Appeals decisions can be found at <https://www.gov.uk/guidance/building-regulations-appeals--6#m1-access-and-use>.

Before going down that appeal path, attempts are generally made to negotiate a solution between the local authority and developer.

If an approved inspector does not believe a project meets the building regulations, they will not issue a certificate of completion, and if a solution cannot be found in discussions between the inspector and developer, responsibility for verifying compliance is likely to revert to the local authority.

A number of interviewees expressed concern about private approval inspectors, noting the potential for conflicts of interest where private inspectors might be unduly pressured to approve non-compliant developments. There was widespread surprise that Australia has a largely private building certification system.

There was also concern that cuts to local government spending and staffing were resulting in less rigorous assessment of compliance matters such as accessibility.

### *Reasonable and reasonably practicable*

It appears to be the responsibility of the Building Control Officer to make decisions about whether a particular requirement is reasonable or reasonably practicable.

Unlike the Irish TGD M, the UK approved document does not provide any guidance on questions of reasonableness other than in paragraph 0.7, which relates to whether it is reasonably practicable to provide an accessible path of travel to an extension. This paragraph states that 'practical constraints and cost considerations will be relevant', and refers to the paragraphs discussing the development of an Access Strategy to be discussed with the building control body where there is a question about whether or not something was reasonable or reasonably practicable (see the section on Access Strategy, below).

Several interviewees expressed concern about the level of understanding of Building Control Officers of access issues, and about their ability to exercise their authority effectively on questions of reasonableness. Others noted the lack of independent expertise involved in decision making.

## **BS 8300**

The British Standards Institution (BSI) is an independent body similar to Standards Australia. It develops BS 8300, a technical document providing recommendations on designing buildings to accommodate users with the widest range of characteristics and capabilities.<sup>84</sup>

The 2018 edition of BS 8300 was divided into two parts: *BS 8300-1:2018 Design of an accessible and inclusive built environment – External environment*, and *BS 8300-2:2018 Design of an accessible and inclusive built environment – Buildings*.

Like the Australian technical standards, BS 8300 has to be purchased, and while it is referenced in AD M, the common view is that it represents best practice and plays an important role in driving changes to the Part M approved document. Compliance with BS 8300, however, does not necessarily mean compliance with AD M, as there are some differences between the two.

### ***Design and Access Statement***

In 2006, the UK introduced a requirement that planning applications must be accompanied by a Design and Access Statement (DAS).<sup>85</sup> This requirement was introduced to help ensure that both design quality and inclusive access are given sufficient consideration in the planning approval process.

A DAS is a written report that accompanies a planning application and explains how the applicant has analysed the site and its setting and, as a result of this assessment, has formulated and applied design principles to achieve a good, inclusive design for buildings and public spaces. It should also explain how the developer or designer has consulted or will consult on the project.<sup>86</sup>

The access component of the report should cover two aspects:

- **Vehicular and Transport Links:** including why the access points and routes have been chosen, how the site responds to road layout and public transport provision, and how users will be able to gain access to the development from the existing transport network.
- **Inclusive Access:** including how everyone can get to and move through the building or place on equal terms, regardless of age, disability, ethnicity or social group.

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<sup>84</sup> *BS 8300: Design of buildings and their approaches to meet the needs of disabled people. Code of practice* <<https://shop.bsigroup.com/ProductDetail/?pid=000000000030217421&t=r>>.

<sup>85</sup> One example of the many guidelines on developing a DAS can be found at <<https://www.designcouncil.org.uk/resources/guide/design-and-access-statements-how-write-read-and-use-them>>.

<sup>86</sup> An example of a basic template can be found at <<https://www.rbkc.gov.uk/planning-and-building-control/planning-applications/design-and-access-statements/design-and-access>>.

A number of interviewees expressed a view that DASs were introduced in part because of low levels of compliance with even the minimum requirements of AD M, and were concerned that over time the access aspect of DASs was not getting the attention required.<sup>87</sup>

Nonetheless, this requirement forces designers and developers to seriously consider inclusive design at the earliest stages of a project. Some interviewees also felt that, particularly with larger developments, the requirement to develop a DAS opened up opportunities to consider a universal design approach to a project, rather than a minimum compliance approach.

### **Access Strategy**

The development of an Access Strategy is not compulsory, but paragraphs 0.20 to 0.25 of AD M encourage designers and developers to prepare one, especially where an alternative solution approach to the guidance in AD M is proposed.

The advice in AD M suggests that an Access Strategy should focus on those areas where it is proposed to diverge from AD M, and that it should provide research or evidence to support the proposed approach. The guidance in AD M in effect sets out a less formal approach to the development of what, in Australia, we would refer to as a Performance Solution report.

Several interviewees also said that an Access Strategy is an opportunity for the designer or developer to put forward a case to a Building Control Officer concerning what is reasonable or reasonably practicable.

A number of interviewees expressed concern that the development of an Access Strategy was not mandatory, and that there was no requirement for an independent third party to comment on or assess a proposal to diverge from the guidance in AD M, or to assess the validity of claims that something was not reasonable or reasonably practicable.

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<sup>87</sup> From 25 June 2013, DASs are only required for buildings of more than 1,000 square metres, housing developments of ten dwellings or more, and for developments requiring what is referred to as 'listed building consent'. In conservation areas, DASs are required for single dwellings or buildings of more than 100 square metres. Requirements for DASs must also be proportionate to the scale of the proposed development, and any information requests must be necessary to validate the application. Applicants are permitted to challenge demands that they think are unnecessary, and local authorities must either justify the demand or waive it.

## ***Equality Act 2010***

The *Equality Act 2010*<sup>88</sup> has limited provisions specifically relating to building access (other than to some aspects of the disposal and management of premises used for private accommodation). Its focus is on accessible services, education and employment.

Section 20<sup>89</sup> imposes a *Duty to make adjustments* on service providers and includes the requirement that:

... where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, [...] such steps [be taken] as it is reasonable to have to take to avoid the disadvantage.

Section 20 goes on to state that avoiding a substantial disadvantage could involve:

- (a) removing the physical feature in question,
- (b) altering it, or
- (c) providing a reasonable means of avoiding it.

This means that although improving building accessibility may be one solution to delivering accessible services, it is not the only way, as accessible services could be delivered by other means.

In terms of what access is sufficient to meet obligations under the Act, the *Equality Act (Disability) Regulations 2010*,<sup>90</sup> in Regulation 9 and the attached Schedule, indicates that the reasonable design standards to be used are those found in AD M (or BS 8300).

This appears to mean that if a building is designed and constructed to meet AD M, it would satisfy the reasonableness standard under the *Equality Act*—which in some ways is very similar to the relationship between the NCC and the Premises Standards in Australia.

I am not aware of any legal case that has resulted in a complaint under the *Equality Act* being dismissed on the basis that the building complied with AD M, but if my understanding is correct this could well be an outcome. Because the obligations under the *Equality Act* focus on delivering accessible services, it may be that compliance with the AD M protects owners/operators from having to make physical changes to a building, but that the obligation to take action to deliver accessible services remains.

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<sup>88</sup> *Equality Act 2010* (UK) <<https://www.legislation.gov.uk/ukpga/2010/15/contents>>.

<sup>89</sup> *Equality Act 2010* (UK) s 20 <<https://www.legislation.gov.uk/ukpga/2010/15/section/20>>.

<sup>90</sup> *The Equality Act 2010 (Disability) Regulations 2010* (UK) <<http://www.legislation.gov.uk/uksi/2010/2128/contents/made>>.

## **Ten-Year Exemption**

The *Equality Act (Disability) Regulations 2010* also includes an exemption in the Schedule that effectively means that if a particular feature of a building complies with the standards laid down in AD M, then it is exempt for the next ten years from the requirement under the reasonable adjustment duties to remove or alter that physical feature.

This protection prevents a successful claim of discrimination in relation to a building feature that complied at the time the building plans were approved. However, this would only apply to physical features covered by AD M. Once that ten-year period has expired, then the particular feature loses that exemption and the *Equality Act* would then apply with respect to best practice (i.e., any updated guidance).

Interestingly, I discovered that I had a very different interpretation of this provision in the *Equality Act* from some of the interviewees, who suggested that it meant that if a building was more than ten years old it would automatically be unreasonable to expect the owner to remove or alter a physical feature.

## **Planning and equality duty**

The UK has a National Planning Policy Framework which aims to make the planning system less complex and easier to understand.<sup>91</sup> The Framework includes the statement:

It is important to plan positively for the achievement of high quality and inclusive design for all development, including individual buildings, public and private spaces and wider area development schemes.

Local authorities should apply the Framework through local planning schemes, and they are also subject to the equality duty in the *Equality Act*. The general equality duty requires local governments to consider how they could positively contribute to the advancement of equality and good relations. It requires equality considerations to be reflected in the design of policies and the delivery of services, including internal policies, and for these issues to be kept under review.

A number of interviewees expressed concern that local authorities pay insufficient regard to ensuring that local planning schemes reflect the need for inclusive design, and thus risk a breach of their public sector equality duty. The Equality and Human Rights Commission has the power to investigate possible breaches of this duty, but I am not aware of any such actions having been taken.

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<sup>91</sup> *National Planning Policy Framework* [2012] Gov.UK  
<<https://www.gov.uk/government/publications/national-planning-policy-framework--2>>.

## Access consultants

The National Register of Access Consultants (NRAC)<sup>92</sup> accredits access consultants, maintains a register of members, and arranges an annual access conference.

Originally hosted by the Centre for Accessible Environments, in 2017 the NRAC moved to the Construction Industry Council (CIC), which is the representative forum for the professional bodies, research organisations and specialist business associations in the construction industry.

NRAC members are subject to a two-part assessment, including a professional interview to prove their competence in relation to legislation, including the *Equality Act 2010*, technical standards, and user needs applicable to disability access and inclusive design. Annual membership renewal is dependent on evidence of having completed a minimum of 15 hours' continuing professional development (CPD).

The NRAC has approximately 140 members, and publishes a Code of Practice, as well as model Terms and Conditions and a Client Guide.<sup>93</sup>

While similar to the Association of Consultants in Access Australia (ACAA), the NRAC appears to be primarily a 'register' of consultants, and plays less of an advocacy and lobbying role than the ACAA.

The UK also has an Access Association,<sup>94</sup> which originally focused on local government accessibility officers, but which now includes membership from the design, access consultant and equality sectors. The Association operates on a regional basis, and offers peer support and CPD-related activities, as well as seeking to influence developments pertaining to access.

Access consultants in the UK share the same frustrations as we do in Australia at not being recognised as important team members. A number of submissions to the 2017 House of Commons Women and Equalities Committee inquiry, *Building for equality: Disability and the Built Environment*,<sup>95</sup> drew attention to this:

... on most medium to large projects, there will be a budget, a Quantity Surveyor is appointed to advise on the budget implications of the design, perform checks at regular intervals and generally monitor the budget as the design develops. Within a Project Team there are many professionals who each 'own' different agendas, for example the Principal Designer having responsibility for safety matters, sustainability consultants looking at the sustainability agenda, ecologists

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<sup>92</sup> *About NRAC* [2018] National Register of Access Consultants <<http://www.nrac.org.uk/>>.

<sup>93</sup> *Why use NRAC* [2018] National Register of Access Consultants <<http://www.nrac.org.uk/why-nrac>>.

<sup>94</sup> *The Access Association* [2013] <<https://www.accessassociation.co.uk/>>.

<sup>95</sup> Women and Equalities Committee, UK House of Commons, *Building for equality: Disability and the Built Environment* (2017) <<https://www.parliament.uk/business/committees/committees-a-z/commons-select/women-and-equalities-committee/inquiries/parliament-2015/disability-and-the-built-environment-16-17/>>.

and acousticians. The reality on most construction projects is that they proceed without any clear ownership of the accessibility and inclusive design agenda, failing to set clear objectives and usually without the level of specialist knowledge necessary to ensure a project delivers an appropriate standard in terms of inclusive design and access.

## Comment

The requirement for developments over 1,000 square metres to prepare a design and access statement (DAS) at the planning approval stage of a development offers a unique opportunity to put access at the forefront of a project, and to ensure a much better link between planning and building approval processes.

This is particularly so when access consultants are part of the project planning team, making it more likely that the DAS will make comprehensive commitments to inclusive and accessible design. A number of access consultants noted that as a result of the requirement for a DAS, they were being brought onto projects much earlier than before, although they also often recognised that very few projects employ access consultants.

Similarly, the provisions in AD M for the development of an Access Strategy opens up an opportunity to consider ways in which a development might deliver better, or different, access to the minimum requirements, particularly with respect to major public developments.

There is an interesting focus in the *Equality Act* on service delivery, which provides opportunities to take a management approach to the delivery of accessible services rather than necessarily a structural approach to making significant changes to existing buildings.

This, combined with the discretion under building regulations for the building control authority to vary requirements to comply with AD M where it is considered to be not reasonable or reasonably practicable, means that there is probably more flexibility for upgrades of existing buildings in the UK approach than in Australia.

While this flexibility is welcomed by many building professionals and regulators, it is less welcomed by advocates and access consultants, many of whom have expressed concerns about the lack of transparency in decision making, and about the often limited understanding of local government decision makers of what is and isn't practicable.

One of the possible reasons that Building Control Officers may be more willing to adopt a flexible approach is that in the UK they do not hold personal liability for decisions, unlike in Australia where private certifiers are individually liable.

I was informed that in the UK there is no requirement for individuals to be accredited to work in either the public or private sector building control field.

In Australia, all building certifiers who make key decisions on building work have to be accredited with the local state or territory building 'Board', for example, in New South Wales by

the Building Practitioners Board. A complaint to their state/territory board could mean the loss of their licence. As a result, certifiers in Australia may be less flexible in accepting a variance from the NCC due to concerns about possible repercussions.

One interviewee noted that, in Australia, not meeting the Deemed-to-Satisfy requirements of the NCC, or indeed the Premises Standards, would force the developer down the path of seeking independent evidence of a Performance Solution approach, which might also include elements of a management approach.

Of the four countries visited, the UK has the most formal national accreditation and professional quality mechanism for access consultants, though many of the consultants I interviewed expressed the same concerns as Australian consultants do about the difficulty in getting recognised as an important member of a project team.

Where developers believe a requirement of AD M is not reasonable or reasonably practicable and cannot get the support of the Building Control Officer, they may appeal to the Secretary of State. Decisions on appeals to the Secretary of State are publicly available, and assist with interpretation of the regulations.

The structure and style of AD M is far more accessible and useful than the equivalent Australian regulations and standards. The sections of AD M provide an explanation of the reason for technical requirements which could assist designers and builders to better understand the importance of good design and construction.

As is the case in Australia, I found considerable variation among building professionals, including access consultants and compliance bodies, concerning the interpretation and application of access requirements.

## Disability rights advocates

In each of the countries visited, I met with a number of individuals and organisations involved in advocating for and representing the interests of people with disability in the area of accessibility.

In Australia, representatives of people with disability were closely involved as partners in the development of the draft Premises Standards, and made extensive contributions during the two nationwide consultation processes between 2000 and 2007. Representatives of people with disability also sat on the final negotiating group convened to try and work through outstanding issues in 2009.

A number of people with disability also sit on technical committees responsible for drafting and revising the Australian Standards.

The next phase of the Premises Standards review will establish an Expert Advisory Group to consider a limited number of actions arising from the first review, and it is expected that people with disability will participate in that Group.

People with disability, however, have no role in the governance structure overseeing future changes to the Premises Standards, and have no seat at the table of the Australian Building Codes Board.<sup>96</sup>

While historically people with disability have been closely involved in the development of the Premises Standards, there are significant and highly valid concerns in the disability rights sector that the partnership role of the past will be reduced to a narrow and superficial commentary role in the future.

In my discussions with disability advocates in the countries visited, I identified some common concerns:

- Limited access to resource material to assist in identifying non-compliant developments;
- Difficulty in developing the skills to understand the technical requirements and language used in the building and design sectors;
- Dissatisfaction with the level of engagement and participation of the disability community in the development of major projects, particularly publicly funded projects;
- A lack of transparency in relation to project approvals and discretionary decision making by building control authorities, and the limited involvement of third party independent assessors; and
- A lack of confidence in the monitoring and enforcement of accessibility requirements, particularly in relation to existing buildings.

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<sup>96</sup> The Association of Consultants in Access Australia has recently been invited to participate in the Australian Building Codes Board (ABCB) Subject Matter Expert Network, which aims to provide advice and support on the best practice application of Performance Solutions

Disability rights advocates in Australia would recognise these concerns and would support actions to address them.

# Glossary

<b>Term</b>	<b>Meaning</b>	<b>Jurisdiction</b>
A1171.1	ANSI Standard <i>A117.1 Accessible and Useable Buildings and Facilities</i>	United States of America
AAB	Architectural Access Board	Massachusetts, United States of America
ABA	<i>Architectural Barriers Act 1968 (USA)</i>	United States of America
ABCB	Australian Building Codes Board	Australia
ACAA	Association of Consultants in Access Australia	Australia
ACAO	Accessibility Consultants Association of Ontario	Ontario, Canada
Access Board	US Access Board	United States of America
AD M	<i>Approved Document M Volume 2 – Buildings other than dwellings</i>	United Kingdom
ADA	<i>Americans with Disabilities Act 1990 (USA)</i>	United States of America
ADAAG	ADA Accessibility Guidelines	United States of America
AHRC	Australian Human Rights Commission	Australia
ANSI	American National Standards Institute	United States of America
AODA	<i>Accessibility for Ontarions with Disability Act 2005 (Ont)</i>	Ontario, Canada
AS 1428.1	<i>AS 1428.1 Design for access and mobility</i>	Australia
BCC	Building Code Commission	Ontario, Canada
BS 8300	Design of buildings and their approaches to meet the needs of disabled people. Code of practice	United Kingdom
BSI	British Standards Institution	United Kingdom
CASp	Certified Access Specialist program	California, United States of America
CEUD	Centre for Excellence in Universal Design	Ireland
CHRA	<i>Canadian Human Rights Act 1985 (Can)</i>	Canada
CHRC	Canadian Human Rights Commission	Canada
CIC	Construction Industry Council	United Kingdom
CRPD	<i>Convention on the Rights of Persons with Disabilities</i>	International
CSA B651	<i>CSA B651 Accessible Design for the Built Environment</i>	Canada
DAC	Disability Access Certificate	Ireland
DAS	Design and Access Statement	United Kingdom
DDA	<i>Disability Discrimination Act 1992</i>	Australia
DPO	Disabled Persons' Organisation	International

IASR	<i>Integrated Accessibility Standards Regulation</i>	Ontario, Canada
IBC	International Building Code	United States of America
ICC	International Code Council	United States of America
IEBC	<i>International Existing Building Code</i>	United States of America
IWA	Irish Wheelchair Association	Ireland
NBCC	<i>National Building Code of Canada 2015 (Can)</i>	Canada
NCC	<i>National Construction Code</i>	Australia
NDA	National Disability Authority	Ireland
NDIS	National Disability Insurance Scheme	Australia
NIDILRR	National Institute on Disability, Independent Living, and Rehabilitation Research	United States of America
NRAC	National Register of Access Consultants	United Kingdom
NRCC	National Research Council Canada	Canada
OBC	<i>Ontario Building Code</i>	Ontario, Canada
OHRC	<i>Human Rights Code 1990 (Ont)</i>	Ontario, Canada
Premises Standards	<i>Disability (Access to Premises – Buildings) Standards 2010 (Cth)</i>	Australia
TGD M	<i>Technical Guidance Document M – Access and Use</i>	Republic of Ireland

# Resources

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Premises Standards <https://www.legislation.gov.au/Details/F2010L00668>

The Canadian National Building Code (NBC) [https://www.nrc-cnrc.gc.ca/eng/publications/codes\\_centre/2015\\_national\\_building\\_code.html](https://www.nrc-cnrc.gc.ca/eng/publications/codes_centre/2015_national_building_code.html)

Ontario Building Code <https://www.ontario.ca/laws/regulation/120332>

Ontario Human Rights Code <https://www.ontario.ca/laws/statute/90h19>

Three examples of other codes adopted by specific cities are:

<https://www.toronto.ca/services-payments/streets-parking-transportation/walking-in-toronto/accessible-streets/accessibility-standards-legislation/>

[https://www.london.ca/city-hall/accessibility/Documents/FADS\\_2007\\_final.pdf](https://www.london.ca/city-hall/accessibility/Documents/FADS_2007_final.pdf)

<http://www.mississauga.ca/portal/residents/accessibilitystandards>

*Accessibility for Ontarians with Disabilities Act 2005* <https://www.ontario.ca/laws/statute/05a11>

Integrated Accessibility Standards <https://www.ontario.ca/laws/regulation/110191> and a guide to the standards <https://dr6j45jk9xcmk.cloudfront.net/documents/4845/guidelines-to-iasr-english.pdf>

*Clearing our path* – Canadian Institute for the Blind guideline on designing accessible environments for people with vision loss [http://www.clearingourpath.ca/8.0.0-design-needs\\_e.php](http://www.clearingourpath.ca/8.0.0-design-needs_e.php)

Americans with Disabilities Act <https://www.ada.gov/pubs/adastatute08.htm>

ADA Standards <https://www.access-board.gov/guidelines-and-standards/buildings-and-sites/about-the-ada-standards/ada-standards>

US Access Board to access webinars, information and resources such as animations <https://www.access-board.gov>

A group of publications under the title *Building for everyone* that promote a universal design approach to the built environment rather than simply a compliance approach <http://universaldesign.ie/Built-Environment/Building-for-Everyone/>.

Universal Design Guidelines for Homes in Ireland <http://universaldesign.ie/Built-Environment/Housing/>.

Dementia Friendly Dwellings for People with Dementia, their Families and Carers <http://universaldesign.ie/Built-Environment/Housing/Dementia-Friendly-Dwellings/>.

Customer Communications Toolkit for the Public Service – A Universal Design Approach  
<http://universaldesign.ie/Products-Services/Customer-Communications-Toolkit-for-the-Public-Service-A-Universal-Design-Approach/>

UK Approved Document M <https://www.gov.uk/government/publications/access-to-and-use-of-buildings-approved-document-m>

UK Design and Access Statement example template <https://www.rbkc.gov.uk/planning-and-building-control/planning-applications/design-and-access-statements/design-and-access>

UK Appeals decisions <https://www.gov.uk/guidance/building-regulations-appeals--6#m1-access-and-use>

UK Equality Act (Disability) Regulations  
<http://www.legislation.gov.uk/uksi/2010/2128/contents/made>