

Accessibility for New Zealanders Act

Valuing the Access to Work

Position Paper

The Access Alliance

February 2017

**THE ACCESS
ALLIANCE**

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It's Time for the Accessibility for New Zealanders Act

The Access Alliance for the Accessibility for New Zealanders Act Position

Purpose

1. The Access Alliance, a group of disabled person's organisations and service providers is seeking to work with all the Parliamentary Parties to make New Zealand 100 per cent accessible for everyone. Collectively, the group assists over 156,000 New Zealanders.
2. The Access Alliance believes it's time to introduce accessibility legislation in New Zealand. We think it the fair thing to do, the smart thing to do and the right time to do it. Our proposal is presented and the supporting research is provided. Additional supporting papers are available on request.

Executive Summary

3. The Access Alliance for the Accessibility for New Zealanders Act (ANZA) is campaigning for new enforceable and mandatory accessibility legislation.¹ The ANZA Act will scale up our efforts to improve accessibility for all New Zealanders. Accessibility means that people with disabilities of all kinds will be able to make full use of the built environment, public infrastructure, workplaces, all goods and services and the digital environment.
4. Our current human rights legislation does not give organisations clear and specific expectations and guidance on what they must do to become fully accessible as employers and service providers.
5. Existing laws on "discrimination," "equality before law," and "reasonable accommodation" do not provide sufficient guidance to public and private sector organisations on how to design a website, or provide employment or deliver goods and services, to enable people with disabilities to fully benefit from, or participate on the same basis, as everyone else.
6. The Access Alliance proposes that the New Zealand Government introduce legislation (referred to here as the Accessibility for New Zealanders Act), to ensure people with disabilities fully participate in their communities.

¹ The Access Alliance members are:

- Auckland Disability Law
- Blind Foundation
- CCS Disability Action
- Deaf Aotearoa
- Disabled Person's Assembly
- Parents of Vision Impaired New Zealanders
- Inclusive New Zealand

Collectively, these organisations assist 156,000 disabled New Zealanders

7. The legislation would establish minimum, industry-specific national standards for the accessibility for New Zealanders with disabilities. These minimum standards will apply to all areas of New Zealand life and the economy. It will set compliance standards and administrative requirements to enable national standards to be developed, implemented and enforced. The 13 principles underlying the legislation are attached (Appendix 1).

Introduction

Prevalence of Disability

8. The 2013 Disability Survey² estimated there were 1.1 million disabled New Zealanders, almost one in four of the population. Out of this number, an estimated:
 - 632,000 people had a physical impairment (14% of the total population)
 - 484,000 people had a sensory impairment (11% of the total population)
 - 89,000 people had a learning disability (2% of the total population).
9. All impairment types can create access needs; it is also important to note that 53% of disabled people have more than one impairment type (Statistics New Zealand, 2014³).
10. Our population is ageing and this will increase the number of people with impairments. The over-65 age group is projected to comprise over 20% of New Zealand's population from late 2031, compared with 13% in 2011 (Statistics New Zealand, 2012). In the 2013 Disability Survey, people over 65 had a disability rate of 59%, compared to 21% of people aged 15 to 64 (Statistics New Zealand, 2014, p. 3).

Life Outcomes and Measures of Inclusion

11. The three key enablers to a good life are education, employment and income. These are tangible and can be measured over time. The Blind Foundation and the Work Research Unit of Auckland University of Technology completed a longitudinal study of the employment, education and income of people with disabilities from 2001 to 2013 using New Zealand Statistics census data and the Disability Household Survey. This was done to assess what changes had occurred over the last 13 years.
12. The results show that some disability groups have made gains and achieved better educational achievements, employment and income rates. However, in almost all cases, the gap between people without disabilities (PwoD) and people with disabilities (PwD) remained much the same in 2013 as it was in 2001. Any

² For all NZ Statistics references, see PDF and Excel tables at:

http://www.stats.govt.nz/browse_for_stats/health/disabilities/DisabilitySurvey_HOTP2013.aspx

³ Almost one in four New Zealanders have a disability of some form – physical, sensory or learning, with just over half having more than one type of impairment. Together with the increase in the proportion of our population who are over 65 (projected to increase to over 20% from 2013), it means the number of people with disabilities will significantly increase in decades to come. This data confirms the urgency of addressing accessibility in New Zealand

gain PwoD made is also a gain for PwD. This suggests the policy and economic changes had an equally proportionate effect on both groups.

13. Affirmative/inclusive policies for disability groups were shown not to have influenced the results or were too small to be measured. The discussion paper “Making a World of Difference: Whakanui Oranga” (Office of Disability Issues 2000) that introduced the New Zealand Disability Strategy (NZDS) in 2001, said the Strategy could be judged a success when gaps in education, employment and income were eliminated.
14. Considerable effort and time has gone into programmes and initiatives directed at increasing the educational uptake and improvements to labour force participation. Because of this, it might be expected that proportionately more PwD would be in the workforce. But this is not the case.
15. The results of this study demonstrate that whatever the benefits, when judged against these outcome figures, the current programmes, policy settings, new initiatives and the current legislation, are not collectively sufficient to achieve the outcomes people with disabilities expect.

New Zealand’s Disability Policy

16. New Zealand's disability policy enables communities to be inclusive of people with disabilities, and for discrepancies between people with disabilities and those without to be minimised wherever possible⁴. This principle was established with the NZ Disability Strategy in 2000 and has continued since in the most recent strategy refresh and the Disability Action Plans.⁵
17. Signatories to the UNCRPD must “ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.” UNCRPD rights requires New Zealand to “adopt all appropriate legislative, administrative and other measures” for implementing, “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities.” Under the Convention, New Zealand must “take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes,” to ensure that public authorities and institutions act in conformity with the UNCRPD, and “take all appropriate measures” to eliminate disability discrimination in private sector organisations.⁶
18. The UNCRPD requires New Zealand to take “appropriate measures” to “develop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public.” New Zealand must “ensure that private entities that offer facilities and services which

⁴ Cab Paper 2000 ODI NZ Disability Strategy "The goal is the elimination of education, employment and income gaps between PwD and PwoD"

⁵ Ref NZDS 2000 and NZDS 2016 and Disability Action Plan 2015 to 2018

⁶ UNCRPD Article 4 General Obligations

are open or provided to the public take into account all aspects of accessibility for persons with disabilities.”⁷

Policy Alternatives

19. New Zealand’s approach to disability discrimination and accessibility standards falls within the mainstream for OECD countries but with some clear differences in the legislative framework. Over the last two decades (since the New Zealand Human Rights Act 1993), a general trend observed within disability policy has been a shift away from the financial compensation of PwD (including easily accessed benefits, employment subsidisation etc.) to policies that encourage PwD to integrate into mainstream education and employment.
20. New Zealand has initiated policies within the latter approach but has relied on social marketing techniques and voluntary compliance with standards. This differs significantly from other OECD jurisdictions where compliance legislation is used to underpin disability policy that integrates and includes PwD.
21. The New Zealand Human Rights Act (HRA) outlaws disability discrimination and refers to accessibility issues. The HRA requires employers to provide reasonable accommodation for disabled workers.
 - a. The caveat is that the employer/other duty holder can claim an exemption to this provision on the grounds of unreasonable hardship – and in this case “unreasonable hardship” often has a very low threshold.
22. Our human rights system is designed to achieve a mediated or conciliated solution for complaints; in most cases resolutions do not constitute a precedent for like cases. In our view, the nature of a complaints-based system is a barrier to a person with a disability to achieve a resolution and to achieve systemic improvements.
23. New Zealand law primarily relies on conciliated processes. Compared to other similar jurisdictions (Australia, Canada, the US, the UK and the European Union), it is less detailed, has lower compliance thresholds and is not effectively enforced. For this reason, we believe it is more practical to seek independent accessibility legislation to complement the existing laws including the Human Rights Act.
24. Effective enforcement of strong accessibility legislation is needed to convince organisations to resist the powerful impulse to keep doing business exactly as they always have. On its own, education on the benefits of accessibility is not enough to incentivise compliance. The experience of Ontario, Canada has shown that this approach was unsuccessful and it is why they chose to enact independent accessibility legislation alongside their existing framework.

Problem

25. The prevalence of disability is increasing as the population ages, and the overall numbers of people with disabilities will grow significantly over the next three decades.

⁷ UNCRPD Article 9 Accessibility

26. Educational attainment, workforce participation and income outcomes for people with disabilities are consistently less than for people without disabilities.
27. Those measured discrepancies have remained largely unchanged since 2001.
28. People with disabilities continue to report major areas of continued inaccessibility and uneven compliance with voluntary accessibility standards.
29. New Zealand law on accessibility is substantially less detailed, less prescriptive than most other OECD countries, and not as comprehensive in its cover, and is not effectively enforced.
30. The Access Alliance can demonstrate that New Zealand's current laws on disability and accessibility need to be scaled up to meet the UNCRPD requirements and bring to life existing strategies and action plans.
31. A better understanding of the economic cost of exclusion resulted in a shift away from financial compensation policies to legislatively driven inclusion results.
32. Many people with disabilities want to work, they are both underemployed and are unable to access the labour market.
33. The Blind Foundation's experience, as a supported employment provider, is that many people with sight disabilities, when given the right support and provided with reasonable accommodation in workplaces and employment conditions, can successfully enter the workforce. This is broadly the case with other disability types.

Solution

34. Organisations will be more likely to act on accessibility if the law specifies what they must do, and by when. The current human rights legislation does not give organisations clear and specific directions on what they must do to be fully accessible employers and businesses.
35. Current laws around "discrimination," "equality before law," and "reasonable accommodation" do not instruct public and private sector organisations on how to:
 - a. provide accessible public information and communications, including accessible web pages and mobile applications
 - b. create accessible workplaces and employment
 - c. offer accessible goods and services
 - d. ensure accessible transport
 - e. provide accessible customer service
36. Improved access to workplaces, the built environment, all goods and services, public infrastructure, and the digital environment will lead to increased workforce participation for people with disabilities.
37. Increasing workforce participation will reduce the government's future welfare liability and other positive economic benefits. This adds an estimated **\$1.45 billion** per year to real gross domestic product and reduces the annual fiscal cost to government of **\$270 million**.
38. Improved accessibility law will ensure New Zealand's compliance with the United Nations Convention on the Rights of Persons with Disabilities.

39. It will cost the government an estimated to **\$4.9m** per year (2017 dollars) to administer the proposed ANZA⁸.
40. The ANZA will not replace the Human Rights Act (HRA). It will require amendments to the HRA sections dealing with accessibility and related measures (Sec 44 and others).
41. Introducing ANZA as a separate law will address the complexities that are inherent in tackling accessibility and disability issues.
42. Separating out the specifics of disability law from the generic human rights issues will ensure improved definitions of “reasonable accommodation” and “undue hardship”. These can be improved in separate accessibility and disability laws.
43. Other legislation that will be impacted is the Building Act and Building Code, the Land Transport Act and the Land Transport Management Act and related regulations.
44. The Blind Foundation commissioned a study for The Access Alliance from the New Zealand Institute of Economic Research (NZIER) which modelled the impacts of a change in labour force participation rates, where unemployment rates of PwD and PwoD populations are equal. This modelled an approximate 30% increase in PwD employment. Similar studies have been done in Australia and Canada. The New Zealand modelling showed that:
 - a. an annual gross fiscal saving to the government of **\$270 million** would be gained by enabling 14,000 people receiving Supported Living and Job Seeker payments to join the workforce,
 - b. decreased future welfare liability over 10 years would equate to approximately **\$3 billion in savings**.
 - c. equalising the unemployment rate for PWD to the national rate would add **\$1.45 billion** annually to real gross domestic product.
45. The underlying labour market assumptions are that projected job growth will absorb the transition and that those making the transition do so of their own volition and within the limits of their impairment.
46. Most economic benefits stem from labour market participation but the full impact of improved accessibility is much more pervasive and will positively impact the uptake of health, disability and other government services across all age ranges.
47. The potential economic impacts of having more people with disabilities in the productive workforce are significant. This is consistent with the government's social investment policy.
48. It will enable the government to comply with the UNCRPD and to regain New Zealand's position at the forefront of disability rights internationally.

⁸ The cost based the Ontario Government budget estimates for 2017 for the Accessibility Directorate for the AODA is \$CA15,071,800. (\$NZ15,976,108). The population of Ontario is 13.98 million. The cost of administering AODA is \$1.073 per person per year

Recommendations to the Parliamentary Parties

1. That Parties take up The Access Alliance's invitation to briefings about the accessibility legislation
2. That Parties commit to introduce the proposed ANZA Act, understanding that it will:
 - a. Consolidate the existing standards;
 - b. Develop new standards where required and specify their comprehensive application and enforcement;
 - c. Align with existing human rights legislation and government policies; and
 - d. Set a timeline for implementation.

For more information about the proposal please contact: Dianne Rogers, Project Manager for The Access Alliance at drogers@blindfoundation.org.nz

Appendix 1

Proposed principles for the Accessibility for New Zealanders Act (ANZA)

1) The Act applies to all:

a) The Act will cover all persons with disabilities, whether their disability is considered physical, sensory, cognitive, communication or mental health related and will include visible, invisible, permanent or episodic conditions. The definition used will be the same definition as the United Nations Convention on the Rights of Persons with Disabilities.

b) The Act will apply to all government departments, crown corporations, companies, organisations and any other entity that is regulated by statute. The Act will apply also to key private and corporately owned organisations operating in New Zealand. These principles will refer to affected organisations as obligated parties.

2) The Act sets a timeline:

The goal of the Accessibility for New Zealanders Act is to greatly improve the accessibility of New Zealand within a specific and clearly defined deadline set by the legislation. This timeline will begin immediately upon the Act passing into law and will include checkpoints at regular intervals until existing and on-going access barriers are removed.

3) The Act sets the bar:

The Accessibility for New Zealanders Act will build on all other disability and human rights legislation, regulations or policies which provide lesser protections or entitlements, and will protect any rights which persons with disabilities have already earned and currently enjoy.

4) The Act provides accessibility in all areas of life:

The Act will require all obligated parties to become fully accessible to all persons with disabilities by providing accessibility in all areas of life and ensuring the removal of existing obstacles and preventing the creation of new obstacles. These obstacles may include, but are not limited to, physical, legal, information, communication, attitudinal, technological or other barriers. (Note: standards will provide for compliance thresholds.)

5) The Act sets policy:

The Accessibility for New Zealanders Act will influence and affect the development and implementation of public accessibility policy, thereby enhancing and improving access to a full range of goods, services and programmes not currently available to persons with disabilities in New Zealand.

6) The Act champions access to all goods, services and facilities:

The Act will require all obligated parties to ensure that their services and facilities are fully accessible by persons with disabilities, based on principles of universal design and the provision of reasonable accommodations. Obligated parties will be required to

develop and implement detailed plans to ensure accessibility within their organisations. Accessibility will be part of a 'business as usual' approach.

7) The act champions accessible workplaces, employment and education:

The Act will require organisations to take proactive steps to provide obstacle-free workplaces and provide changes that will accommodate people in their employment, including for job opportunities. Employers will be required to develop and implement plans to remove existing workplace and employment obstacles and to prevent new ones from being put in place. Education providers will ensure that places of study and all study resources are fully accessible.

8) The Act will charge government with the responsibility to lead, educate, train, inform and review:

The Act will require government to lead the country toward achieving the goals of the Act and fulfilling its mandate. The Act will require government to provide education, information and resources to assist regulated businesses and organisations to comply with the access requirements. The government will be required to appoint an independent person to periodically review and publicly report (at regular intervals) on progress towards the goal of full accessibility.

9) The Act is enforceable:

The Act will provide for a prompt, independent and effective process for enforcement. This will include a comprehensive and clearly defined avenue for persons with disabilities who encounter obstacles which are in violation of the legislation to raise and submit complaints to enforcement officials.

10) The Act is made real through regulations:

The government will be required to make regulations that clearly define the steps needed for full compliance under the Act, and it will be independently reviewed at a minimum of every four years. It will be open to recommendations made on an industry-by-industry or sector-by-sector basis. This will include a requirement that input be obtained from persons with disabilities and disability-related organisations as part of these reviews.

11) The Act will ensure public funds are not used to create or perpetuate obstacles to full accessibility in all areas of life:

The Act will require that the government ensures that no public money is used to create or perpetuate inaccessibility for persons with disabilities. Government departments, agencies, and crown corporations should be required to make it a strict condition of funding and finance for programmes, transfer payments, subsidies, loans, grants, capital or infrastructure projects that no such funds may be used to create or perpetuate access obstacles. There should also be a requirement that procurement of goods, services or facilities be fully accessible to and usable by persons with disabilities. The government should be required to monitor and enforce these requirements and to periodically report to the public on compliance with them.

12) The Act is a lens through which to vet legislation:

The Act will require the government to review existing legislation and regulations identifying possible accessibility obstacles, and develop timelines to address the shortcomings. The government will review all future proposed legislation and regulations before they are enacted to ensure accessibility obstacles are not about to be created.

13) The Act has real force and real effect:

The Act must be more than mere window dressing. It should contribute meaningfully to the improvement of the position of persons with disabilities in New Zealand, enabling them to fully participate and to enjoy community life. It must be underpinned by effective enforcement mechanisms which lead to real effect

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