

Accessibility for Ontarians with Disabilities Act Alliance

United for a Barrier-Free Society for All People with Disabilities

Web: [REDACTED]

Email: [REDACTED]

Twitter: [REDACTED]

Facebook: [REDACTED]

Social Services and Community Select Committee

Parliament Buildings

Wellington

Accessibility for Ontarians with Disabilities Act Alliance Submission on the Accessibility for New Zealanders Bill

The [AODA Alliance](#) welcomes the opportunity to submit on the Accessibility for New Zealanders Bill.

Who Are We?

The AODA Alliance has extensive experience with the design, implementation and enforcement of accessibility legislation in Canada. Founded in 2005, we are a voluntary, non-partisan grassroots coalition of individuals and community organizations. Our mission is:

"To contribute to the achievement of a barrier-free Ontario for all persons with disabilities, by promoting and supporting the timely, effective, and comprehensive implementation of the Accessibility for Ontarians with Disabilities Act."

To learn about us, visit our open filing cabinet at <http://www.aodaalliance.org>.

Our coalition is the successor to the non-partisan grassroots Ontarians with Disabilities Act Committee. The ODA Committee advocated for more than ten years, from 1994 to 2005, for the enactment of strong, effective disability accessibility legislation. Our coalition builds on the ODA Committee's work. To learn about the ODA Committee's history, visit: <http://www.odacommittee.net>.

Beyond our years of work at the provincial level in Ontario, over the past seven years, the AODA Alliance has also been active, advocating for strong and effective national accessibility legislation for Canada, and assisting the New Zealand Access Matters campaign for strong and effective accessibility legislation.

Canada's Federal Government and some federal opposition parties consulted the AODA Alliance on this issue. In 2016, AODA Alliance chair David Lepofsky published a public Discussion Paper on what federal accessibility legislation should include. That widely-read Discussion Paper is now published in the National Journal of Constitutional Law at (2018) NJCL 169-207. Its contents can provide a great deal of guidance to New Zealand, even though it was written to address Canada's federal legislative sphere. You can download our Discussion Paper on what the promised national accessibility law should include by visiting <https://www.aodaalliance.org/whats-new/click-here-to-download-the-discussion-paper-on-what-canadas-promised-accessibility-legislation-should-include-as-published-last-year-in-the-national-journal-of-constitutional-law/>

We made formal presentations on Bill C-81, the proposed Accessible Canada Act, to both Canada's House of Commons and Senate. Our recommendations helped lead to improvements to the Accessible Canada Act. Both the Government of Canada and opposition parties referred to the AODA Alliance and its proposals during parliamentary debates over that legislation.

The AODA Alliance has spoken to or been consulted by disability organizations, individuals, and governments from various parts of Canada on the topic of designing and implementing provincial accessibility legislation. For example, we have been consulted by the Government of Manitoba and by Barrier-Free Manitoba (a leading grassroots accessibility advocacy coalition in Manitoba) in the design and implementation of the Accessibility for Manitobans Act 2013. We twice made deputations to a Committee of the Manitoba Legislature on the design of that legislation. We have been consulted by the British Columbia Government on whether to create a BC Disabilities Act, and by Barrier-Free BC in its grassroots advocacy for that legislation. AODA Alliance Chair David Lepofsky was the keynote speaker at the October 28, 2015 meeting in Vancouver where Barrier-Free BC was established and the organized movement for BC's accessibility legislation was born.

We have been consulted outside Canada on this topic, most particularly, in Israel and New Zealand. In addition, in June 2016, we presented on this topic at the UN annual international conference of state parties to the Convention on the Rights of Persons with Disabilities.

Executive Summary

The AODA Alliance supports the need for strong legislation to address the accessibility barriers that prevent people with disabilities, tāngata whaikaha and their whānau, and

others with accessibility needs from living independently, and which aims to grow accessibility practices in New Zealand.

The AODA Alliance believes that New Zealand should be a place where every person, regardless of their disability, should be able to fully participate in a society that recognizes and provides for their access needs. We believe it is not only possible, but essential, that New Zealand is fully accessible by 2035, and welcome the introduction of legislation to enable this. However, this bill needs to be substantially strengthened to be effective.

The AODA Alliance would like to be heard by the Committee on this submission. We are able to facilitate this in-person. We ask that the Social Services and Community Select Committee contact [REDACTED] on [REDACTED] or [REDACTED]. Ms. Zidov will liaise with AODA Alliance chair David Lepofsky. Mr. Lepofsky requires enough notice to be able to travel from Canada to New Zealand to make his oral submission to the Select Committee.

We congratulate Access Matters Aotearoa's for their impressive and tireless grassroots efforts over the last five years that have led to this important development. The AODA Alliance is proud to have played a small part in the launch of the grassroots movement that has brought New Zealand to this point. AODA Alliance Chair David Lepofsky had the privilege of travelling to New Zealand a month before the 2017 General Election to be a keynote speaker at a meeting of grass roots advocates in Auckland, and at other events around the country. He visited again in 2018 to support campaign efforts, including meeting with the minister responsible for this issue.

Areas of Support

We heartily commend the New Zealand Government for committing to bringing forward a national disability accessibility law. However, this submission shows that the New Zealand bill is missing essential ingredients. Unless very substantially strengthened in accordance with our recommendations, it will run into serious problems. It is far, far weaker than accessibility laws passed in several Canadian provinces and at the federal level. New Zealand's bill is far weaker than those laws.

Below we propose practical suggestions to make the New Zealand bill effective. What is needed is both clear and readily doable. We want to help New Zealand learn from the accomplishments and the problems experienced with Canadian legislation. New Zealand has the chance to lead Canada by coming up with the best accessibility law developed to date. The Appendix at the end of this submission lists our recommendations in one place.

In addition to the specific recommendations below, we ask the New Zealand Government to read the AODA Alliance's September 27, 2018 brief to Parliament on Bill C-81, the proposed Accessible Canada Act. It is among the most extensive analysis of that bill at First Reading. Some of our recommendations were eventually incorporated

into the Accessible Canada Act. They were also incorporated into amendments which the opposition federal NDP and Conservatives tried to get the Federal Government to agree to as amendments to the bill. However, the analysis is almost entirely applicable to the context that the New Zealand Government will be addressing. You can download the September 27, 2018 AODA Alliance brief to Parliament on Bill C-81 by visiting <https://www.aodaalliance.org/whats-new/click-here-to-download-in-ms-word-format-the-aoda-alliances-finalized-september-27-2018-brief-to-the-parliament-of-canada-requesting-amendments-to-bill-c-81-the-proposed-bill-c-81/>

Our Recommendations

Purpose of the New Zealand Legislation

The bill sets out this purpose:

“3 Purpose

5 (1)

The purpose of this Act is to accelerate progress towards a fully accessible New Zealand where disabled people, tāngata whaikaha and their families or whānau, and others with accessibility needs have an equal opportunity to achieve their goals and aspirations.”

This is far too weak. Merely accelerating progress is achieved if progress goes from extremely slow to just a tiny bit faster. People with disabilities in New Zealand deserve better.

It is very important to substantially strengthen the proposed purposes for the New Zealand disabilities legislation. We have learned that the goal must be the achievement of an accessible or barrier-free society, or both, pure and simple. Nothing short of that will do.

We have also learned that an end date must be set in the legislation. Ontario's AODA has both the goal of accessibility and nothing less, and an end date. These are real strengths in that legislation. The Accessible Canada Act has both the goal of a barrier-free Canada and an end date. We and others fought long and hard to get this goal enshrined in the Accessible Canada Act. The Senate added the end date of 2040 to Bill C-81 in May of 2019. At the last minute, when Bill C-81 came back to the House of Commons in June 2019, on the eve of its rising for the 2019 federal election, the Federal Government finally withdrew its objection to enshrining an end date for accessibility in the bill.

We therefore recommend that:

#1. The New Zealand accessibility law should have the purpose of achieving a barrier-free and accessible New Zealand by an end date to be set in the legislation, using the definitions of "disability" and "barrier" proposed in the AODA Alliance's Discussion Paper on national accessibility legislation.

Bill Only Mandates the Creation of an Advisory Committee with No Binding Powers

This bill only requires that the Government create an advisory committee. This advisory committee would only make recommendations and offer reports on progress regarding accessibility. This is among the weakest examples of disability legislation we have ever seen. We recommend that it be substantially strengthened. The bill does not require any disability barrier anywhere in the country to ever be removed or prevented, no matter how easy it is to do and how little it costs to do it. Moreover, legislation is not needed to create an advisory committee. The Government could have appointed one years ago.

Making this worse, the bill provides that it might not come in force for another year and a half. That means that the mere appointment of an advisory committee could be pushed back that long.

We therefore recommend that:

#2. The bill be amended to require the prevention of new disability barriers and the removal of existing barriers along reasonable timelines, with a comprehensive regime being established to ensure effective implementation and compliance.

Nothing in the Bill Should Ever Reduce the Rights of People with Disabilities

It is important that nothing be done under the New Zealand accessibility law that reduces the rights or opportunities of people with disabilities. We have feared that some have used the Accessible Canada Act to cut back on our rights.

We therefore recommend that:

#3. The bill should be amended to provide that nothing in the New Zealand disability accessibility law, or in its regulations or in any actions taken under it should be able to reduce in any way any rights which people with disabilities enjoy under law.

Several laws address aspects of human rights for people with disabilities. A New Zealand accessibility law and regulations enacted under it are needed to proactively remove barriers and reduce disabling experiences.

There is no assurance that this law will remove barriers and reduce disabling experiences. The New Zealand accessibility law should ensure that the law which provides the greatest amount of accessibility should always prevail. Section 38 of the AODA is instructive. It commendably provides:

" 38. If a provision of this Act, of an accessibility standard or of any other regulation conflicts with a provision of any other Act or regulation, the provision that provides the highest level of accessibility for persons with disabilities with respect to goods, services, facilities, employment, accommodation, buildings, structures or premises shall prevail."

We therefore recommend that:

#4. If a provision of the New Zealand accessibility law or of a regulation enacted under it conflicts with or sets a different accessibility standard than a provision of any other Act or regulation, the provision that provides the highest level of accessibility for persons with disabilities with respect to goods, services, facilities, employment, accommodation, buildings, structures or premises should prevail.

Setting Mandatory Timelines for Enacting Accessibility Regulations

The legislation should require the government to enact mandatory enforceable accessibility standards. These would specify in detail what obligated organizations must do to become accessible to people with disabilities.

It is essential that the law impose a clear and strong duty on the Government to create standards, and for it to set enforceable timelines for creating these standards. Otherwise, they may never be created, or they may take excessive amounts of time to be created.

Extensive experience shows that is insufficient to merely give a Government the power to enact accessibility standards or regulations, without requiring that Government to ever do so and without setting deadlines. We know from experience under Ontario's accessibility legislation, the Accessibility for Ontarians with Disabilities Act, that this can take a long time just to get started.

The Ontarians with Disabilities Act 2001 permitted the Ontario Government to enact accessibility standards, but that Government never enacted any under that legislation. That in part is why Ontario later enacted the stronger AODA.

One of the major criticisms of the Accessible Canada Act is that it gives the Federal Government a number of helpful powers, such as the power to enact accessibility regulations, but for the most part does not require that these powers be used. It also does not for the most part set timelines for their deployment. That is why we and so many others said that the Accessible Canada Act is strong on good intentions but weak on implementation.

We therefore recommend that:

#5. The New Zealand accessibility law should require the Government to create all the accessibility standards as enforceable regulations that are needed to achieve the law's goal, and should set timelines for enacting these regulations.

Governance, Compliance and Enforcement

New Zealand should adopt the recommendations for governance, compliance and enforcement that are set out in our published Discussion Paper on what a national accessibility law should include, and our September 27, 2018 brief to Parliament on Bill C-81, both referred to above.

The New Zealand Framework for its accessibility strategy considers as a possible feature of its implementation/enforcement regime the following:

"Reduced reporting requirements for individuals and organizations that show accessibility leadership."

We disagree. It is of course commendable for an obligated organization to show leadership on accessibility. However, that should not lead to any reduction in that organization's reporting obligations. Just because an organization has done well on accessibility in the past does not mean that it will continue to do so in the future and need only have reduced accountability. Reporting requirements are always needed to help monitor and drive compliance.

We therefore recommend that:

#6. The New Zealand accessibility law should include the compliance, monitoring and enforcement features recommended in the AODA Alliance Discussion Paper on national accessibility legislation, and in its September 27, 2018 brief to Parliament on Bill C-81.

#7. The New Zealand accessibility law should not provide for reduced reporting requirements for an obligated organization that has shown leadership on accessibility.

How Often Should There Be an Independent Review of New Zealand's Accessibility Law's Implementation?

It is good that the New Zealand bill requires a periodic Independent Review of the bill. However, the timelines are too long. The bill delays the first Independent Review until five years after that part of the bill comes into force. Subsequent Independent Reviews are to be held on five-year intervals.

These Independent Reviews have been very important in Ontario. The Accessibility for Ontarians with Disabilities Act required the first Independent Review to begin three years after the AODA was passed. It requires each successive Independent Review to be appointed four years after the previous one was completed. Each Independent Review takes one year to conduct, once appointed. Nothing shorter would be appropriate.

The recommendations from each of the three AODA Independent Reviews came at important times. It would have been harmful to Ontarians with disabilities had they been delayed any longer. We only regret that the Ontario Government has not acted promptly on those reports' helpful findings and recommendations.

In contrast, Canada's Federal Government set too long a period in the Accessible Canada Act, over our strong objection. The first Independent Review won't begin under federal legislation until almost twice as long a period as was the case in Ontario. That will work to the substantial disadvantage of people with disabilities across Canada. This is especially troubling since under the Accessible Canada Act, the Federal Government need not create any enforceable accessibility standard regulations in that period.

We therefore recommend that:

#8. The New Zealand accessibility law should require the first Independent Review of that legislation to be appointed within three years after that law goes into effect, and thereafter, every four years after the previous Independent Review delivered its report.

Key Features Needed in the New Zealand Accessibility Law that the New Zealand Bill Does Not Identify

There are additional features that are very important for an accessibility law to be strong and effective. They are discussed in greater length in our Discussion Paper on national accessibility legislation, and in our September 27, 2018 brief to Parliament on Bill C-81.

We therefore recommend that:

#9. The New Zealand accessibility law should

a) Specify that the New Zealand Government as a whole is responsible for leading New Zealand to the goal of accessibility.

b) Impose specific duties and implementation timelines on the New Zealand Government, and on specified public officials and agencies, regarding their roles to implement and enforce the law.

c) Require the New Zealand Government to review all its statutes and regulations for accessibility barriers.

- d) Enforceably require that no public money can be used to create or perpetuate barriers against people with disabilities, e.g. money spent on procurement, infrastructure, grants, loans or transfer payments.
- e) Require the New Zealand Government to use all other readily-available levers of power to advance the goal of accessibility.
- f) Require that whenever a New Zealand statute or regulation confers a discretionary power on any federal public official, department or agency, that decision-maker shall take into account, in its exercise, its impact on accessibility for people with disabilities.
- g) Require the New Zealand Government to ensure that national and municipal elections become barrier-free for voters and candidates with disabilities.
- h) Include effective measures to ensure that the New Zealand Government becomes a model accessible workplace and service-provider.
- i) Require the New Zealand Government to develop and implement a plan to ensure that all courts and regulatory tribunals become accessible.

We especially focus on one of these needed additions. The New Zealand Government can bring about significant progress towards accessibility by making sure that no one uses public money to create, perpetuate or exacerbate disability barriers. Many in society want to receive public money, as vendors, infrastructure builders, businesses, colleges, universities, hospitals, and governmental transfer partners. The law should attach clear monitored, enforced and mandatory accessibility strings to that money. Anyone accepting those funds should be bound by the strings attached.

Central and Local Government spending should be subject to this requirement, for example:

- a) spending on procuring goods, services and facilities, for use by the New Zealand Public Service and the public.
- b) New Zealand spending on capital and infrastructure projects, including projects built by the New Zealand Government or others.
- c) New Zealand spending on business development grants and loans, and on research grants for universities and other organizations.
- d) New Zealand transfer payments to transfer agencies for programs, like health care.
- e) Any other New Zealand Government contract.

This spending would give the New Zealand Government substantial leverage to promote accessibility. Widely-viewed AODA Alliance online videos have demonstrated

that new construction, including construction on infrastructure using public money, have included serious accessibility problems. These videos secured significant media coverage. See:

The AODA Alliance's [May 2018 video](#) showing serious accessibility problems at new and recently renovated Toronto area public transit stations.

The AODA Alliance's [October 2017 video](#) showing serious accessibility problems at the new Ryerson University Student Learning Centre.

The AODA Alliance's [November 2016 video](#), showing serious accessibility problems at the new Centennial College Culinary arts Centre.

The Ontario experience shows that this must be specifically legislated, monitored and enforced. The Ontario Government has missed out on huge opportunities to generate greater accessibility.

Canada's Federal Government has similarly missed out on a huge opportunity here. It declined to include the needed measures to address this in the Accessible Canada Act. The Accessible Canada Act allows the Government to make accessibility standards in the area of procurement, but does not require these to be made. It does not mandate standards regarding accessibility of publicly-funded infrastructure.

In 2019, Canada's Senate made a formal "observation" on Bill C-81 when it passed other amendments to strengthen the bill. It called for federal action to ensure that federal public money is not used to create disability barriers.

Don't Make the Same Mistakes in the Accessibility for New Zealanders Bill

We commended the New Zealand Government for committing to national accessibility legislation. Learn from Canada's successes and our mistakes. We welcome the opportunity to help New Zealand get it right.

Appendix – List of Recommendations

#1. The New Zealand accessibility law should have the purpose of achieving a barrier-free and accessible New Zealand by an end date to be set in the legislation, using the definitions of "disability" and "barrier" proposed in the AODA Alliance's Discussion Paper on national accessibility legislation.

#2. The bill be amended to require the prevention of new disability barriers and the removal of existing barriers along reasonable time lines, with a comprehensive regime being established to ensure effective implementation and compliance.

#3. The bill should be amended to provide that nothing in the New Zealand disability accessibility law, or in its regulations or in any actions taken under it should be able to reduce in any way any rights which people with disabilities enjoy under law.

#4. If a provision of the New Zealand accessibility law or of a regulation enacted under it conflicts with or sets a different accessibility standard than a provision of any other Act or regulation, the provision that provides the highest level of accessibility for persons with disabilities with respect to goods, services, facilities, employment, accommodation, buildings, structures or premises should prevail.

#5. The New Zealand accessibility law should require the Government to create all the accessibility standards as enforceable regulations that are needed to achieve the law's goal, and should set timelines for enacting these regulations.

#6. The New Zealand accessibility law should include the compliance, monitoring and enforcement features recommended in the AODA Alliance Discussion Paper on national accessibility legislation, and in its September 27, 2018 brief to Parliament on Bill C-81.

#7. The New Zealand accessibility law should not provide for reduced reporting requirements for an obligated organization that has shown leadership on accessibility.

#8. The New Zealand accessibility law should require the first Independent Review of that legislation to be appointed within three years after that law goes into effect, and thereafter, every four years after the previous Independent Review delivered its report.

#9. The New Zealand accessibility law should

a) Specify that the New Zealand Government as a whole is responsible for leading New Zealand to the goal of accessibility.

b) Impose specific duties and implementation timelines on the New Zealand Government, and on specified public officials and agencies, regarding their roles to implement and enforce the law.

c) Require the New Zealand Government to review all its statutes and regulations for accessibility barriers.

d) Enforceably require that no public money can be used to create or perpetuate barriers against people with disabilities, e.g. money spent on procurement, infrastructure, grants, loans or transfer payments.

e) Require the New Zealand Government to use all other readily-available levers of power to advance the goal of accessibility.

- f) Require that whenever a New Zealand statute or regulation confers a discretionary power on any federal public official, department or agency, that decision-maker shall take into account, in its exercise, its impact on accessibility for people with disabilities.
- g) Require the New Zealand Government to ensure that national and municipal elections become barrier-free for voters and candidates with disabilities.
- h) Include effective measures to ensure that the New Zealand Government becomes a model accessible workplace and service-provider.
- i) Require the New Zealand Government to develop and implement a plan to ensure that all courts and regulatory tribunals become accessible.