Good practice for providing disabled people with reasonable access to the built environment

A comparative study of legislative provision

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Abstract

Purpose – By comparing the legislative regimes in different states, this paper aims to provide a platform upon which an agenda of "good practice" can be formulated and initiated in relation to the provision of access to the built environment for disabled people.

Design/methodology/approach – The paper utilizes a desktop approach to examine the various regimes. Particular focus is placed upon the regimes in the European Union States of the UK, Malta, Ireland and France and these are contrasted with those in the non-European states of Australia and the USA.

Findings – The paper shows how the UK, Malta and possibly Ireland have attempted to take a path of amicable cooperation and negotiation to establish the principle of "reasonable" adjustments to improve access to new and old buildings, whereas France and the USA have tended to adopt a prescriptive course of technical detail and legal compliance to enhance access. The paper also reveals how Australia follows an intermediate route of cooperation and human rights legislation to achieve the same goals.

Practical implications – The paper places new insights into the public domain through the evaluation of the strengths and weakness of each approach.

Originality/value – This paper uniquely recognizes a number of mistakes that have to be avoided in future legislation and makes tangible recommendations on how to make further progress in the quest to make the built environment more accessible to disabled people.

Keywords Buildings, Legislation, Disabled people, European Union, Australia, United States of America

Paper type Research paper

Introduction

By comparing the legislation, policy implementations and recommendations of three established EU States (the UK, Ireland, and France) with those from Malta, one of the new member states, and the non-member countries of the USA and Australia, this paper attempts to provide a platform upon which an agenda of "good practice" in relation to access to the built environment can be formulated and initiated. Primarily, the objective of the paper is to define the parameters of what can be seen as

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"reasonable" in terms of accessibility for disabled people and what enforcement procedures ought to be set in place to attain this objective.

Owing to the complexity of all the related issues, the term "disability" has been confined to issues relating to physical or visual impairment. By contrast, the choice of states is designed to encompass a broad spectrum of democracies. On one side of the coin, there are the left-of-centre democracies represented by the more socially minded nations of France and, arguably, Australia. On the other side, are the free-market, right-of-centre countries such as the USA and, to a lesser extent, the UK. The inclusion of Ireland, however, is intended to give an illustration of an EU Member State that has received substantial structural support. Finally, Malta has been chosen as an exemplar of the newer EU Member States while Australia and the USA have also been selected because of their more advanced approaches toward access.

Crucially, the main perspective adopted throughout this comparative evaluation is that of the social model of disability. In its purest form, the social model of disability expresses the conviction that:

> [...] the problem is *not* located in the individual, but in a society (economy, culture) that fails to meet the needs of people with impairments. *Impairment* is the term used for an individual's condition (physical, sensory, intellectual, behavioural). *Disability*, in complete contrast, is social disadvantage and discrimination. The social model message is simple and strong: if you want to make a difference to the lives of disabled people, you must change society and the way society treats people who have impairments [...] [through] a commitment to removing *disabling barriers* that prevent disabled people's participation in society (Stone, 1999, pp. 2-3).

Under these terms, "impairment" is the "condition" whereas "disability" is the social consequence of living with a perceived impairment in a disabling society (Barnes, 1991; Clark and Marsh, 2002). Ultimately, it is this definition and the belief that society (in the guise of the built environment) discriminates that will provide the framework by which the ensuing sections of this paper can judge the efficacy of the initiatives undertaken by the individual countries selected.

"Flexibility" and the UK

A key piece of legislation in the UK is the Disability Discrimination Act (DDA) 1995. With effect from 2 December 1996, the DDA initially made it unlawful for an employer of 15 or more staff to treat someone with a disability less favourably than someone else because of their disability. Indeed, the 15 or more stipulation was subsequently rescinded to include all employers, except for those on a special exemption list such as the Ministry of Defence. Moreover, from 1 October 1999, "service providers have had to make reasonable adjustments for disabled people in the way they provide services" (Disability Rights Commission – DRC, 2003a, p. 5). Since 1 October 2004, however, employers have also been legally compelled by the DDA to make reasonable adjustments to existing physical features of their premises with the aim of overcoming barriers to access (DRC, 2003b). As a consequence, employers in the UK today are bound by the DDA to make reasonable adjustments to both working conditions and/or to the physical environment where such adjustments would overcome the practical effects of a disability.

Taken in this context, anticipating adjustments and building this into planning is deemed to be an act of good practice since potential difficulties are due to physical features and not due to the impairment of the individual. In this respect, physical features are defined under the DDA as:

> [...] anything on the premises arising from a building's design or constructions or the approach to, exit from or access to such a building; fixtures, fittings, furnishings, equipment or materials and any other physical element or quality of land in the premises [...] whether temporary or permanent (DDA, 1995 cited by the DRC, 2003a, p. 6).

Yet, when directly addressing service providers, the Department for Work and Pensions (DWP) recommend that a common sense approach should be taken since:

> [...] different people have different needs and some organizations can afford to do more than others [...] It's all about doing what is practical in your individual situation and making use of what resources you have. You [the service provider] will not be required to make changes that are impractical or beyond your financial means (16 March 2005).

As the DRC pointed out, the issue of "reasonableness" is critical in determining how far businesses are required to go in altering their premises. Indeed, the issue of "reasonableness" is still pertinent today even though the role of DRC has now been taken over by the Equality and Human Rights Commission which was established under the Equality Act of 2006. As a consequence, the criteria for making the requisite changes depend upon how effective such changes will be in overcoming the difficulties posed or the extent to which they may be realistically possible. Similarly, financial costs of making adjustments and the extent of any disruption caused have to be considered. So too, has the extent of the financial resources of a business let alone the amount that may have already been spent. Finally, the availability of financial or other assistance has to be included in the discussion as to what is reasonable or not (DRC, 2004). As a consequence, examples of reasonable change may relate to:

- providing space for wheelchair users to pull up alongside companions seated within flexible chairs with and without armrests;
- installing a permanent or temporary ramp (alongside steps) or providing an alternative entrance accessible for all users;
- lowering the counter height for wheelchair users or provide a lap tray or clipboard if a lower counter section is not available; and
- using alternative, accessible locations either through appointment or perhaps on a regular basis (DRC, 2003a; DWP, 2005a).

Such provisions, provisos and adjustment are, of course, mainly applicable to existing buildings. When it comes to new buildings or the building of extensions, the situation is different again. In general, Part M in the requirements of The Building Regulations (2000) apply if a non-domestic building or a dwelling is newly erected; if an existing non-domestic building is extended or undergoes a material alteration; or if an existing building or part of an existing building undergoes a material change of use to a hotel or boarding house, institution, public building or shop. In particular, Section M1 of Part M stipulates that "reasonable" provision has to be made for people to gain access to, or use, a new building and its facilities unless it is an extension of or material alteration of a dwelling. Similarly this stipulation does not apply to any part of a building which is used solely to enable the building or any service or fitting in the building to be inspected, repaired or maintained. With regard to access to extensions to buildings other than dwellings, Section M2 states that suitable independent access has to be provided to the extension where "reasonably practicable". This requirement, though, does not apply

where suitable access to the extension is provided through the building that is extended (Office of the Deputy Prime Minister, 2004).

In relation to sanitary conveniences in these extensions, Section M3 notes that if sanitary conveniences are to be provided in any building which is to be extended, "reasonable" provision has to be made within the extension for sanitary conveniences. Yet, this 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 (Office of the Deputy Prime Minister, 2004, p. 5).

As before, it is noticeable the issue of what constitutes "reasonable provision" tends to dominate the discussion despite the comprehensive statements describing the stance of the UK in its attempt to widen and improve a disabled person's access to the built environment. Indeed, the use of the provisos "reasonable", "practical" and "impractical" throughout the majority of UK legislation serves to dilute the true extent of the requirements laid down by the DDA. Numerous permutations merge together so that businesses are relieved of the obligation to make substantial improvements to both their services and their properties. Alterations may be deemed to be ineffective, too costly or too disruptive. Similarly, modifications may be seen as unfeasible and unnecessarily add to the amount already spent on improving access. To compound issues, this dilution of the DDA is reinforced by the DWPs (2005b) assertion that there is no specific "rulebook" to relate to. Effectively, this negates the possibilities of a consistent implementation of a policy agenda aimed at significantly improving access to the built environment.

To make matters worse, the reference in DWP literature makes to the availability of financial or other assistance is primarily limited to more favourable tax treatment rather than full financial assistance. For example, the Inland Revenue (HM Revenue and Customs, 2005) argues that the cost of building or installing a permanent ramp to facilitate access would not normally be allowable for tax relief. However, relief would be forthcoming for the expenditure at the rate of 4 per cent a year under the industrial buildings allowance (IBA) or the agricultural buildings allowance (ABA) if the work is carried out on an industrial or agricultural building or a "qualifying hotel" (which, characteristically, has to be in a building of a permanent nature, open for at least four months in the season running from the beginning of April to the end of October, have at least ten letting bedrooms that comprise of the majority of sleeping accommodation and, finally, the services provided for guests must normally include the provision of breakfast and an evening meal, the making of beds and the cleaning of rooms).

When it comes to adjustment of toilets and washing facilities, a similar situation arises. For instance, the costs of making building alterations to commercial properties to widen a doorway for wheelchair access would not normally be allowable for tax purposes. But in the case of an industrial or agricultural building or qualifying hotel, the alteration costs would qualify for IBA or ABA capital allowances at 4 per cent a year. Even so, minor adjustments, such as changing doors on cubicles from opening inwards to opening outwards, would normally be wholly deductible for tax purposes as revenue expenditure. In addition, the cost of any new sanitary ware would qualify for "plant and machinery capital allowances" (PMA) and the costs of altering the premises, which are "incidental" to the installation of that sanitary ware, would also

qualify for allowances at the plant and machinery rate of 40 per cent of the up-front cost of the items in the year when the expenditure is incurred. Likewise, the costs of permanent signs in toilets and elsewhere, replacement handrails and the installation of new, or the replacement of old, lifts would also qualify for PMAs (HM Revenue and Customs, 2005).

Set against this background, favourable tax incentives may not provide enough incentive for some employers to make alterations. With the possible exception of the DRC, matters are made worse by the lack of an officially recognised regulatory body in the UK responsible for overseeing such decisions. Instead, the test for "reasonableness" is operated by the service provider and can be challenged by building users on an individual basis through appeals to the DRC or through the law courts.

Irish struggles over a "top down" approach

Owing to the close proximity and shared, but not always harmonious, history of the two countries, it is hardly surprising that the situation in Ireland is not entirely dissimilar to that of the UK. Ireland has taken numerous steps to introduce an equality framework aimed at promoting social inclusion. Essential elements of which are:

- the Employment Equality Act 1998;
- the Equal Status Act 2000;
- the Equality Act 2004; and
- the Education for Persons with Special Educational Needs Act 2004 (Department of Justice, Equality and Law Reform, 2005).

Two pieces of legislation contained within this framework are of particular relevance. To begin with, the Equal Status Act (2000) forbids discrimination in the disposal of goods and delivery of services, thus making it illegal for people to discriminate against disabled people when providing goods or services to the public. Similarly, the Employment Equality Act (1998) prohibits discriminatory practices against disabled people in relation to and within employment (O'Herlihy and Winters, 2005). Together, the two acts seek to cleanse decision-making processes of bias against disabled people. In themselves, though, they do not achieve substantive equality in that they do not accord specific rights to services for disabled people. In a similar vein, the Disability Bill of 2001 had to be withdrawn – as a result of pressure from disability rights movements – because it too set out "service provision *goals* rather than enshrining rights in the fields of transport, health, advocacy and so on" (de Wispelaere and Walsh, 2005, p. 5).

Worse still, the Comhairle (Amendment) Bill (Houses of the Oireachtas, 2004, pp. 14-18) merely defined "disability" as relating to:

> [...] a substantial restriction in the capacity of a person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment.

At first glance, this appears to go against the social model of disability in that a perceived impairment appears to be the cause of an individual's inability to take part in the general socio-economic activities of the state. Such fears and accusations, however, have been partially allayed by the fact that these legal developments were not solely considered and enacted from above. Alongside the legislative process, an official consultative process to

discern the views and needs of disabled people was set in motion during the year 2003. As a result, the Disability Legislation Consultation Group (DLCG) added shape and form to the final draft of the Disability Bill of 2004. As part of the process, the DLCG (2003) report, *Equal Citizens: Proposals for Core Elements of Disability Legislation* reinforced the belief that society disables by focusing on the issue of access to the built environment. It recommended that physical access to public and private services should be legislatively guaranteed. Furthermore, the report insisted all public and private bodies that come into contact with the public had to be covered.

As a consequence, the Disability Bill of 2004 proposed that access to public buildings must be compliant with Part M of the Building Regulations by 2015 and that heritage sites should be made accessible to all. Indeed, Parts M1-M3 of the Building Regulations (Amendment) Regulations (Minister for the Environment and Local Government, 2000) specify that "adequate provision" has to be made to enable disabled people independent access to a building; to "adequately" provide sanitary conveniences for disabled people; and, last but not least, to provide disabled people with "adequate" seating arrangements at entertainment and sporting venues (Minister for the Environment and Local Government, 2000). Finally, the Bill also required the creation of a Centre for Excellence in Universal Design. Ultimately, the role of the centre would be to ensure that universal design plays a key role in a number of key areas including standards development, education, training and professional development. The centre would also engage in practical and theoretical work in respect of matters relating to universal design (National Disability Authority – NDA, 2005b).

Taken as a whole, the framework for establishing equality for disabled people in Ireland consists of six draft Sectoral Plans to address the issue of accessibility to the built environment. Not only do these measures cover all transport providers who will be charged with providing the highest possible degree of accessibility, but they also address the provision of access to appropriate health and personal social services for disabled people. More to the point, the plan of the Department of the Environment, Heritage and Local Government, if or when it is fully implemented, will also have an impact on access to the built environment (NDA, 2005b). Fundamental to the plan are substantive proposals:

> [...] to promote universal access to public spaces, buildings and services owned and operated by local authorities; to review and update the standards set out in Part M; promote universal access to heritage sites and make improvements to facilitate greater access to the built environment (O'Herlihy and Winters, 2005, p. 5).

Yet, despite this drive towards equality, Irish legislation still carries a loose proviso that a Minister may exclude a public building from the scope of the requirements of Part M if he or she is 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
- would not justify refurbishment on cost grounds because of its infrequency of use by disabled people (Department of Justice, Equality and Law Reform, 2005).

As with the UK, alternative interpretations are possible. More questions than answers stand out. How long is temporary? What constitutes frequent or infrequent use? Clearly, the answers are open to individual interpretation as opposed to objective fact.

Regardless of the introduction of Part M of the Building Regulations in Ireland – and regardless of the revisions made to the regulation – the effectiveness of Part M in improving access has still met with strong criticisms from disabled people in Ireland. The NDA, for instance, commissioned independent research into the effectiveness of Part M. Preliminary findings not only revealed a lack of rigour behind the monitoring process, but also, for many disabled people Part M failed to improve their access to the built environment (NDA, 2005a).

That said, significant progress has been made in other areas. The NDA, for instance, has been charged with improving accessibility to public buildings while the proposed introduction of a Disability Access Certificate (which is intended to promote the consideration of access in the design stage) represents another initiative of the Irish Government's attempts to realise their accessibility goal. There is also some evidence of the government putting into practice the "Commission on the status of people with disabilities" 1996 recommendation that universal access becomes a key guiding principle in all relevant legislation, policy and practice. Indeed, "the recently published National Play Policy recognises universal design principles as a key element in ensuring that all new local play facilities cater for children with disabilities and their families" (O'Herlihy and Winters, 2005, p. 3).

In terms of enforcement, equality legislation in Ireland also provides a disabled person with a system of redress if he/she is discriminated against in respect of access to the built environment. With this in mind, compulsory provision has been made for public bodies to appoint "inquiry officers" to process complaints about any failure by a public body to provide access as stipulated in Sections 23-28 of the 2004 Disability Bill. Furthermore, each of the six Sectoral Plans, must establish a complaints mechanism for individuals unable to access a service specified. Any person who is not satisfied with the outcome of a complaint, has the final option of appealing to the ombudsman. Under the proposed legislation:

> [...] the Ombudsman will be given new powers to investigate any failure by a public body to comply with the access requirements of Part 3 [...] [of the Disability Bill, 2004] or any commitment made in a Sectoral Plan (Department of Justice, Equality and Law Reform, 2005, p. 9).

In the final analysis, equality legislation in Ireland still tends to be beset with problems: not least by the fact that much of the legislation contains the caveat that service providers need only make "adequate" accommodation for disabled people.

Conciliation and cooperation: the Maltese example

On the 17 January 2000, the Parliament of Malta passed the Equal Opportunities (Persons with Disability) Act (EOA). With the EOA, Malta took the first steps to end the forms of discrimination that disabled people have been confronted with every day. Taken in this context, the EOA focussed upon the key areas of:

- employment;
- education;
- goods and services;

- accommodation;
- access; and
- insurance (National Commission (for) Persons with Disability (KNPD, 2001, 2005c)).

With specific reference to the issue of access, Title 3 of the Act stipulates that it shall be illegal for any person to discriminate against a disabled person (or any of their family members) by:

- refusing to allow access to, or the use of any premises, or of any facilities within such premises, that the public is entitled or allowed to enter or use;
- insisting on different terms and conditions upon which access or usage is granted; and
- requiring an individual to leave a premises or cease to use the said facilities or to unjustifiably restrict its use in any way.

Similarly, Title 3 states that discrimination can also be unlawful in relation to the provision of the means of access to public premises (Government of Malta, 2000). Nevertheless, the EOA makes a distinction between discrimination that can be avoided and discrimination that, for some valid reason, cannot be avoided (KNPD, 2005c). In sub-article (2) of Title 3, the distinction is made where:

- such premises or facilities are designed or constructed in such a way as to render them inaccessible to a disabled person; and
- any alteration of a premises or facility would impose unjustifiable hardship on whoever is required to provide such an access (Government of Malta, 2000).

The legislation thus allows for extenuating circumstances in that the terms "unjustifiable" and "hardship" are prominently inserted. As with the UK, the use of these terms is entirely subjective and naturally open to individual interpretation and contestation. More controversially, though, the reference to the "design" of a building is seen as a mitigating factor rather than being problematic. It appears that a building has a built in immunity from the EOA simply because the architect has designed the building in a particular way. Furthermore, under Part IV of the Act, the test for what is seen to be "reasonable" or not extends to:

- the nature and cost of the actions in question;
- the overall financial resources of the person, body, authority or institution concerned and the impact of such actions upon the operations of the aforementioned person, body, authority or institution; and
- the availability of grants from public funds to defray the expense of the said actions (Government of Malta, 2000; KNPD, 2005c).

Here again, the notion of "reasonableness" is subjective (KNPD, 2005e) and, as such, is laid open to controversy and debate. As a partial solution to the problem, Article 21 of the EOA has granted legal status to the KNPD. In general, terms, the overarching aim of the KNPD is to work towards the elimination of discrimination against disabled people. In this respect, the function of the KNPD is to identify, establish and update all

national policies that directly or indirectly relate to disability issues. To achieve these objectives, the KNPD has been officially assigned the tasks of:

- monitoring the provision of services offered by the government and its agencies;
- carrying out general investigations with a view to determining whether the provisions of the Act are being adhered to; and
- investigating complaints made against any failure to adhere to the act and, where necessary, acting in a conciliatory role in relation to these complaints (Government of Malta, 2000; KNPD, 2001, 2005d).

Undoubtedly, conciliation is the key role that the KNPD has to play. On the technical side of the equation, however, there is little detail in the EOA to help establish what is actually required to make a building fully accessible. Poignantly, the KNPD is officially required to "work towards the elimination of discrimination against people with disabilities" (Government of Malta, 2000, p. 13). Accordingly, the KNPD has produced detailed guidelines on what is required to achieve equal access to the built environment. With regard to entrances for buildings, for example, the KNPD advise that an approach should preferable be level but where this is not possible the slope should not be steeper than 1:10 if the ramp is less than 500 mm vertical height or 1:10 if less than 100 mm. Likewise, the horizontal length of a ramp should be restricted to 12 m and longer ramps should have intermediate landings. Width-wise, ramps should have flights of at least 1,200 mm and unobstructed widths at least 1,000 mm (KNPD, 2005b).

Overwhelmingly, the guidelines issued by the KNPD comprehensively set out exactly what employers and businesses alike should do. Nevertheless, these are only guidelines and are not legally binding in themselves. Conversely, it is important to note that the KNPD has also been charged with the responsibility to provide, where appropriate, legal and financial assistance to disabled people in enforcing their rights under the EOA.

To conclude, it is fair to say that the KNPD has made significant steps forward in its attempt to gain equal access for disabled people. Firstly, the KNPD has reached an agreement with the Malta Development Corporation (MDC) whereby all new industrial developments, including extensions and modifications, shall conform to KNDP "Access for All" guidelines subject to the proviso of "reasonable provision" (KNPD, 2005a). Indeed, the notion of "reasonable provision" was defined and agreed upon by the KNPD and MDC on the 15 June 2001. In the main, their agreement states that industrial development of new large premises (approximately $>300\,m^2$) have to be fully accessible for all whereas the industrial development of new small premises (approximately $>300\,m^2$) must:

- have the ground floor fully accessible to all;
- have a lift shaft (in accordance with the *Access for All* guidelines) ready for the future installation if the building extends to a second level only; and
- be fully accessible to all if the building extends to more than two levels.

With applications for extensions or modifications of existing industrial premises, the agreement goes on to emphasise that the alteration shall:

- have the ground floor fully accessible to all;
- be exempted from having a lift shaft or a lift if the building extends to a second level only;

- have a lift shaft (in accordance with the *Access for All* guidelines) ready for the future installation if the building extends to a third level only; and
- be accessible to all if the building extends to more than three levels (KNPD, 2005a).

Clearly, Malta offers widespread guidance as to what is required by the EOA. Commendably, the agreement between the KNPD and the MDC has enabled a coordinated and consistent approach to the issues of access: a point that is amply demonstrated by the fact that the Malta Planning Authority (1999, 2001, 2002) has openly advertised and adopted the KNPD/MDC agreement in its Circulars PA 3/99, PA 4/01 and PA 2/02.

Despite the agreement, it is still evident that the *Access for All* guidelines are not legally binding in the strictest sense. This, of course, could be highly problematic, yet it appears that the KNVP are successfully overcoming such an obstacle. After the first year of the EOA, for example, the KNPD reported that it had received 92 (48 related to access) complaints about discrimination of which 36 cases (ten related to access) were already closed and 56 (38 on access) were still pending. Of the closed cases (26 per cent of the total received), it was established that a little over a third of these (14) were the result of discriminatory practices. In all of these 36 closed cases, "reasonable" solutions acceptable to the complainant, the subject of the complaint and the Commission itself have been found (KNPD, 2001).

By the end of the fourth year of the EOA, the work of the KNPD again looks impressive. During this year, the KNPD worked on 49 cases which were still pending from the three previous years and started to investigate 59 new cases. So far, 58 (52 per cent) of these cases have been settled, 9 (8 per cent) have come to a temporary agreement while 40 (36 per cent) are still being discussed (KNPD, 2005e). On the reverse side of the coin, 4 (4 per cent) of the cases investigated by the KNPD have not been resolved and, as a consequence, the complainants and/or the KNPD have taken the final option of going to court. All-in-all, however, it is apparent that substantial progress is being made in improving access to the built environment in Malta and the final recourse to civil courts only helps to substantiate the efforts of the KNPD and the Maltese Government even further.

France and the constitutional approach

The French Constitution states that any citizen has to be equally treated by the law regardless of their origin, race or religion. With regard to disabled people and the issue of discrimination, Laws 75-534 and 91-663 published in *Le Journal Officiel de la République Française* (*JO*) theoretically introduced essential legislation designed to prevent the denial of access to the built environment (Legifrance, 2005). To achieve this, Article R.111-19 of the Code of Construction and Dwelling has been significantly modified under Article R.111-18-4 (Sub section 2) to encompass:

- all buildings, locales and enclosures in which people are admitted freely or paying a fee or in which meetings are held which are open to all or those with an invitation whether paying or not;
- scholarly "locales", universities and training centres; and

- apparatus (referred to as "installations") open to the public, public or private spaces which serve establishments receiving the public or which are converted to be used by the public (i.e. the installation of street furniture) (CETE, 2004; Legifrance, 2005).

In addition, Article R. 111-19-1 stipulates that all establishments and installations covered by Article R.111.19 must be freely accessible to disabled people while the recently implemented Law 2005-102 (2005) has imposed an obligation to render establishments open to the public fully accessible within ten years. In this respect, establishments and installations can only be deemed to be accessible to disabled people when they provide the opportunity to freely enter, get around, exit and equally benefit from all services offered to the public.

Through a joint decree of the minister for construction, the minister for the handicapped and, if need be, of interested ministers, architectural regulations and the amendments assuring the accessibility of these establishments or installations for disabled people have to satisfy specific obligations relating to negotiable routes, lifts, stairs, car parks, lavatories and telephones.

With respect to the demand for negotiable routes, it is decreed that access must be provided through the usual or at least one of the usual routes into the establishment concerned. In case of a significant incline, the route must lead as directly as possible to the principal or one of the principal entrances. The floor must be non-moving, non-slippery and without obstacles to a wheel. It is preferred that routes should be horizontal and without ledges. If a slope is inevitable, any gradient must be covered by a sloping surface if there is no lift and it should not exceed a gradient 2 per cent across the width and 5 per cent in the direction of the route (CERTU, 2003). Moreover, rest landings at the front of all doors and outside of the clearance of these doors are a necessary provision. Likewise, landings have to be established above and below each slope (or every 10 m in ramps that are between 4 and 5 per cent above and below each sloping surface) and at the interior of any airlock (CETE, 2004; CERTU, 2003; Legifrance, 2005).

A lift, on the other hand, is regarded as negotiable for disabled people when its general characteristics permit access and use by, for instance, a wheelchair user. Current legislation fixes the minimum size of door entry, interior dimensions and accessibility of control panels. Additionally, the length of time the doors remain open must allow for the passage of a wheelchair while sliding doors are considered to be obligatory. Generally, the provision of a lift is decreed to be compulsory if:

- the establishment or installation can receive 50 people in a basement or on a floor; and
- the establishment or installation receives less than 50 people (or 100 in scholarly establishments) where certain services are not offered on the ground floor (CETE, 2004; Legifrance, 2005).

Where toilets are set aside for public use, French legislation is insistent that each accessible level must carry at least one toilet adapted for disabled people getting around in a wheelchair. Adapted toilets must be installed in the same place as other toilets if these are grouped together. Cubicles are required to provide an accessible space (of 1.30 × 0.80 m) away from the swing of the door and free from any fixed or mobile obstacles yet still be situated at the side of the lavatory bowl. A lateral support

bar must also be installed to facilitate transfer onto the toilet (CETE, 2004; Legifrance, 2005). If, however, there are separate lavatories for each sex, then a separate accessible toilet must be adapted for each sex. In all cases, sinks or at least one sink per group must be accessible to disabled people. Correspondingly, all of the related sanitary apparatus such as the mirror, soap distributor and hand dryer have to be easily accessible as well (Legifrance, 2005).

In relation to hotel accommodation, all establishments have to contain adapted and accessible rooms. Bedrooms are only considered to be adapted and accessible if the room allows a disabled person to freely circulate around the room and gain access to equipment and furniture without obstruction. To achieve this, it is recommended that facilities within the room are at least 0.90 m in width away from any possible obstacles. By the same token, it is also necessary to provide an area (approximately 1.50 inches diameter) that allows for the rotation of a wheelchair unhindered by the bedroom furniture (CETE, 2004).

Where a bedroom has an *en suite* bathroom, the bathroom must respond to the same characteristics as the bedroom. If, however, there is only one bathroom per floor, it too must be adapted and be accessible from the bedroom by a negotiable route. Furthermore, if a single floor has one or several adapted and accessible bedrooms without an accessible toilet, it is imperative that an independent accessible toilet is adapted for use on this floor. In the final analysis, at least one accessible bedroom has to be provided by an establishment that has 20 bedrooms or less. If the establishment has no more than 50 bedrooms, two accessible bedrooms have to be available. In establishments with over 50 bedrooms, one extra adapted room per 50 or fraction of 50 has to be provided (CETE, 2004; Legifrance, 2005).

From all of this, it is evident that legislation in France is fairly advanced and comprehensive. As with the UK, however, there are provisos and caveats that serve to obfuscate application. For example, the use of the phrase "negotiable" in the context of accessible routes could allow for ambiguity and give room for alternative interpretations as to what is and what is not accessible. That said, it is also true that the Local Advisory Commissions of Civil Protection, Safety and Accessibility (which are specifically convened to give an opinion to the mayor on relevant building permits) are comprised of individuals from a variety of backgrounds and different impairment groups. Nonetheless, the opinion of these Commissions is not binding upon the mayor in question. Consequently, differences of interpretation and application – albeit at the behest of the mayor – can still persist.

To add insult to injury, enforcement in France tends to be complicated and scarcely free from confusion and misinterpretation. In all circumstances, set procedures have to be followed before a building or alteration project can be undertaken. If, in the first instance, the proposed works are not subject to the granting of a local building permit, then Article R.111-19-4 of the "Code for Construction and Dwelling" decrees that the authorisation to commence cannot be given unless the projected works conform to the guidelines discussed earlier. To establish this, Art R.111-19-5 of the same Code stipulates that the request for authorisation must be supported by the necessary plans and documents so that the competent authority may be assured that the project of work respects the given rules of accessibility (Legifrance, 2005). For works specifically concerning accessibility to public buildings and, of course, new buildings designed for public use, the submitted plans and documents have to be accompanied with a request

for a building permit provided for under Article L.111-8-1 of the "Code for Construction and for Habitation". Furthermore, Decrees 94-55 and 95-260 (*JO*) insist that specially convened Local Advisory Commissions such as the Commission of Security of Paris, the Hauts-de-Seine, the Seine-Saint-Denis and the Val-de-Marne thoroughly review all applications and technical details before authorisation for construction can begin and, indeed, before such establishments can open their doors to the public upon completion.

By and large, French legislation is attempting to overcome discrimination by the denial of access through mandatory alterations to existing building regulations. Even so, there is still scope for confusion and obfuscation within the French system. Besides, the aforementioned confusion that surrounds the use of the term "negotiable", Article R.111-19-3 states that in cases of severe "material difficulty", or with regard to existing buildings by reason of difficulties linked to their characteristics or to the nature of the work carried out, there is the facility to award some dispensation to the guidelines after consultation with the relevant commissions concerned. As with the discussion of "reasonable" in the UK, "material difficulty" is somewhat elusive and subjective. What, for instance, is the exact definition of "difficulty"? How can it be realistically measured? There appears to be more questions than answers attached to such a definition.

In a possible move to counter the excuse that building adjustment may cause "material difficulty" to owners and businesses, there is a funding envelope known as Fonds d'Intervention pour la Sauvegarde Commerce et de l'Artisanat (FISAC) which can be used for accessibility adjustments in France. For employers, there is also financial support (administered by the agency l'Agefiph) to improve the working environment. Primarily, though, FISAC is the primary source of funding. In the main, FISAC is an investment fund for commercial and craft-ware businesses. Part of its funds can be utilised for retrofitting works and study towards accessibility improvement. In the city of Grenoble, for instance, FISAC provided €20,000 over a three-year period for such endeavours. The city itself also contributed. Even so, the amount is still miniscule and represents only a fraction of the total costs that would be involved if access throughout the city were to be improved.

On the other side of the coin, the penal code of France includes Articles 225-1 and 225-2 which specifically declare that discrimination is prohibited on grounds of "deficiencies", physical appearance and "handicap". The penalties for discrimination can amount to a ceiling of €45,000. By law, an individual can sue an owner or manager under this legislation. In a recent example SNCF, the French railway operator, was fined €2,000 for not offering a suitable seat to an individual needing respiratory assistance with a plug-in facility (Cour d'appel de Paris, 14 March 2005). Although not directly related to access to the built environment, this example is useful in that it demonstrates the possibility that individuals and disability organisations (Article 7, Law 91-663) can go to the courts to pursue claims of discrimination. That said, there have been few cases relating to accessibility to public buildings even though legislation actually extends the possibility for disability associations to sue by law.

USA and technical enforcement

With regard to the USA, a plethora of policies aimed at overcoming discrimination against disabled people has emerged despite differing State legislatures. In the eyes of many, the policies of the USA represent a vanguard of reform that other countries need to follow. Of pivotal importance, is the Americans with Disabilities Act (ADA) which was

signed into law by President George Bush on 26 July 1990 (Consumer Law Page, 2005b). Significantly, the ADA is a Federal Act and, as a direct consequence, should apply equally to all of the States within the USA. Primarily, the ADA accords civil rights protections to disabled people similar to those accorded to Americans on the basis of race, colour, sex, national origin, age, and religion. In short, the ADA guarantees equal opportunity for disabled people in public accommodations, employment, transportation, state and local government services, and telecommunications (Consumer Law Page, 2005a).

With respect to the term "public accommodation", Title III of the Act prohibits discrimination by private entities and not-for-profit service providers operating public accommodations. This includes private entities that offer licences and exams; private schools or colleges; banks; restaurants; theatres; hotels; private transportation; supermarkets and shopping malls; museums; health clubs, recreational facilities and sports arenas; doctor, lawyer and insurance offices and other commercial facilities. Only private clubs and religious organisations are exempt (Reasonable Accommodations, 2005).

In its purest form, Title III stipulates that public accommodations must not exclude, segregate or treat disabled people unequally. All new construction and modifications must be accessible to disabled people. For existing facilities, barriers to services have to be removed if this is readily achievable (Job Accommodation Network, 2005). To realise this objective, the ADA purports a whole raft of detailed specifications similar to those discussed in France and, less bindingly, to those discussed in Malta. In Appendix A of Title III, it specifies that ramps, for instance, should have a maximum slope of 1:12 while the maximum rise for any run shall be 30 inches (760 mm). Correspondingly, the minimum clear width of a ramp should be 36 inches (915 mm), whereas landings (which must be placed at the bottom and top of every ramp) must:

- be at least as wide as the ramp run leading to it;
- have a minimum length of 60 inches (1,525 mm) clear;
- have a minimum size of 60 × 60 inches (1,525 × 1,525 mm) where a ramp changes direction; and
- have a minimum manoeuvring space of at least 60 inches (1,525 mm) to the front of the door and a minimum of 18 inches (455 mm) to the opposite side of the door should the landing is located at a doorway and the door opens onto the landing (US Department of Justice, 2005).

Where, of course, the door opens inside and not onto the landing the approach has to have minimum clearance of 48 inches (1,220 mm) to the front door (US Department of Justice, 2005). Similar specifications are also laid down for side approaches to the door and for approaches to sliding doors and so forth.

Without doubt, the ADA provides a whole gamut of technical details for new buildings, extensions or alterations to existing buildings that are designed to improve access for disabled people. The scope of such legislative detail is so broad and extensive that the legislation even extends to the position of mirrors in lavatories which should be mounted with the bottom edge of the reflecting surface no higher than 40 inches (1,015 mm) above the floor (US Department of Justice, 2005). Nonetheless, there are exceptions built into the US legislation. One such exception relates to

historical buildings. Under Part 4.1.7 of Title III, exemption is given to buildings and facilities listed or eligible for listing in the National Register for Historic Places if the required alterations would threaten or destroy the historic significance of the building or facility (US Department of Justice, 2005). Clearly, such an exemption is open to interpretation as to what this historical significance actually constitutes.

Other exemptions also contain similarly subjective elements. Generally, for example, Title III states that:

> An alteration that affects or could affect the usability of or access to an area of a facility that contains a primary function shall be made so as to ensure that, to the maximum extent feasible, the path of travel to the altered area [. . .] [is] readily accessible to and usable by [. . .] [disabled people] unless the cost and scope of such alterations is disproportionate to the cost of the overall alteration (US Department of Justice, 2005: Section 36.403).

As with the earlier discussions in this paper, the language of these proclamations leaves the ADA open to controversy and debate. The use of the phrases "maximum extent feasible" and unless the "cost and scope [. . .] is disproportionate" does not exclude the US model from a loss of focus experienced in other countries exemplified by similar phrases such as "unjustifiable hardship" (Australia, Ireland and Malta), "material difficulty" (France), "reasonable" or "reasonableness" (Malta and the UK) and "practical/ impractical" (UK). As with the other countries mentioned, this inevitably leads to problems of enforcement.

On this score, the Civil Rights Division of the US Department of Justice is the main body responsible for the enforcement of public accommodations covered by Title III of the ADA. Any individual who believes that he or she has been subjected to discrimination prohibited by the Act may request the Department of Justice to institute an investigation (US Department of Justice, 2005). Complaints must be filed within 180 days of the date of the discrimination (Reasonable Accommodations, 2005). Where the Attorney General has reason to believe that there may be a violation, he or she may initiate a compliance review. Following a compliance review, the Attorney General may commence a civil action in any appropriate US district court should the Attorney General believe that:

- any person or group of persons is engaged in a pattern or practice of discrimination in violation of the act; or
- any person or group of persons has been discriminated against in violation of Act and the discrimination raises an issue of general public importance (US Department of Justice, 2005).

In a civil action, the court may grant any equitable relief that the court considers to be appropriate. Accordingly, the court may:

- grant temporary, preliminary or permanent relief;
- provide auxiliary aid of service, modification of policy, practice or procedure or method;
- make facilities readily accessible to and usable by disabled people;
- award other relief as the court considers to be appropriate, including monetary damages to persons aggrieved; and

- vindicate public interest and assess a civil penalty in an amount not exceeding $50,000 for a first violation and not exceeding $100,000 for any subsequent violation (US Department of Justice, 2005).

Finally, as an alternative, private lawsuits may also be brought to Federal court without a "right to sue" letter (Reasonable Accommodations, 2005). Upon timely application, the court may, in its discretion, permit the Attorney General to intervene if the Attorney General certifies that the case is of public importance. In so doing, the aggrieved party is thus relieved of the burden of court costs should the case be lost.

When considered as a whole, these measures set out in the ADA have, after ten years of progress, profoundly changed how US society views and accommodates disabled people (Center for an Accessible Society, 2005, pp. 1-2). This is not, however, to suggest, that the US model is without its problems. Far from it, if the National Council on Disability (NCD) is to be believed. The NCD (2005, p. 6) argues that:

> Enforcement efforts are largely shaped by a case-by-case approach based on individual complaints rather than an approach based on compliance monitoring and a cohesive, proactive enforcement [...] Critically, many of the shortcomings of federal enforcement of the ADA [...] are inexorably tied to chronic underfunding and understaffing of the responsible agencies. These factors, combined with undue caution and a lack of coherent strategy, have undermined the federal enforcement of ADA in its first decade.

From this perspective, it is obvious that improvements can still be made to the American model yet, as with many of the other countries examined, there are pertinent lessons that can be taken on board.

The contrasting attitude of Australia

The final case study in this paper is that of Australia. Certainly, 1993 was a significant year for people in Australia (Small, 2000). Prominently in March of that year, for example, the Disability Discrimination Act of Australia (DDAA) came into force. Under the Act, it became unlawful for public places to be inaccessible to disabled people. Places used by the public range from public paths, parks, pedestrian malls and walkways to educational facilities, libraries dentists sports clubs, hospitals and so on. The list is extensive and applies to existing places as well as places under construction (Human Rights and Equal Opportunity Commission, HREOC, 2005).

While it was widely recognised that changes would not occur over night, the act emphasised that a disabled person had every right to complain to the Australian HREOC if they are discriminated against when a place used by the public is inaccessible. Furthermore, Section 15 (Employment) of the DDAA stipulated that building access in non-public spaces could also be the subject of complaints if their inaccessibility results in discrimination against an employee. In general, though, possible areas of discrimination that could result in a complaint include failure to:

- provide equitable physical access to a building or the different levels of a building;
- ensure facilities such as vending machines or counters within buildings are accessible or usable by disabled people; and

- provide suitable parking facilities for vehicles used by disabled people requiring a disabled person to gain access through a distant side entrance (HREOC, 1998).

Nevertheless, the DDAA recognised that, in certain circumstances, providing equitable access for disabled people could cause major difficulties or excessive costs to a person or organisation. Consequently, the DDAA recognised that access need not be provided to the premises if it would impose "unjustifiable hardship" on those who would have normally been required to provide that access (Australian Government Productivity Commission, 2004a). In this instance, circumstances relevant to unjustifiable hardship may incorporate technical limits; topographical restrictions; safety design; cost; construction issues or even delivery access (HREOC, 1998).

In order to arrive at a satisfactory agreement to disputed claims over "unjustifiable hardship", HREOC considers all the circumstances of each claim, on a case by case basis. Integral to this process is the Commission's investigation into the benefits and detriments adjustment or non-adjustment would have on all the parties concerned. Not only do the effects of the relevant impairment have to be taken into account, but so too do the financial circumstances and any action plan given to HREOC by the organisation or individual affected by the demands for adjustment (Women with Disabilities Australia, 2005). Crucially, if adjustments do cause hardship it is up to the organisation or person affected to demonstrate that they are unjustified (HREOC, 2005). Yet, because each scenario is different there are no hard and fast criteria to determining unjustifiable hardship. It is a case of having to evaluate each instance in its entirety (Women with Disabilities Australia, 2005).

Set against this backdrop, no-one could really say with any degree of surety what a developer must do technically in order to comply with anti-discrimination law. Certainly, since the DDAA came into force, complaints to HREOC "have shown significant inconsistencies between anti-discrimination law and current building law in Australia" (Small, 2003, p. 25). Inevitably, these inconsistencies have related to both the quality of access provided (in terms of the location of accessible doorways) and the quality of facilities provided such as the site and situation of accessible toilets for both sexes (Small, 2003, 2005).

To address these inconsistencies, progressive changes since 1995 have allowed for the development of "Disability Standards for Access to Premises" (Premises Standard). So much so that by the end of the year 2000, the Australian Government had effectively amended the DDAA to allow for the development of prescribed national minimum standards (Australian Building Codes Board – ABCB, 2004) contained within the Premises Standard itself. In so doing, the amendment provided a basis upon which clarification can be given to accessibility requirements under the DDAA. Moreover, these requirements have the potential to provide a degree of certainty for both disabled people and organisations (Australian Government Productivity Commission, 2004a). Eventually, though, it is hoped that the Premises Standard will help construct the access provisions contained within a revised Building Code of Australia (BCA) (Ozdowski, 2003). Theoretically, this should be sufficient to close any potential "loopholes" and ensure further compliance with the DDAA.

Significantly, the BCA is produced and maintained by the ABCB (2004) on behalf of the Australian Government and the various state and territory governments. Each has a statutory responsibility for building control and regulation within their jurisdiction.

In sum, the BCA is a uniform set of performance and technical requirements for the design and construction of buildings and other related structures throughout Australia (ABCB, 2004). For all intent and purpose, the aim of the BCA is to provide a national code of practice which can be adopted into regional building regulations and subsequently "administered at a State and Territory level" (Small, 2003, p. 26).

For the most part, the objective of the BCA is to maintain acceptable standards of building construction by promoting a performance-based code that details mandatory "performance requirements" and technical specifications (Deemed-to-Satisfy Provisions) to which buildings and other structures within Australia must meet (ABCB, 2004). Indeed, Performance Requirements must be satisfied by the design and construction of the building and this could vary depending on the building classification. There may, for instance, be different requirements depending on whether the building is a theatre, an office building or a hospital (Small, 2005).

Intrinsically, the "Deemed-to-Satisfy Provisions" are but one of two ways in which "building solutions" can meet Performance Requirements. In their simplest form, Deemed-to-Satisfy provisions are detailed prescriptive technical requirements of how a building is to be constructed and equipped within the terms of the BCA (Australian Government Productivity Commission, 2004a). The second way of meeting Performance Requirements is through the imaginatively termed "Alternative Solution". Although self-explanatory, the purpose of an Alternative Solution is to allow for the introduction of new ways of achieving the required levels of performance. That said, the onus still rests firmly "on the building applicant to show that the Alternative Solution complies with the Performance Requirements" (Small, 2003, p. 26).

In an attempt to provide another avenue of flexibility, the BCA itself is amended each May to reflect changes in building practices, usage and technology. Through its Building Codes Committee, the ABCB drafts a Regulation Document and a Regulatory Impact Statement (RIS) to look at "the benefits and costs associated with the proposed changes and, like the proposals themselves, will be available for a period of public comment before finalisation" (Ozdowski, 2003, p. 2). Taken in this context, a RIS is an obligatory requirement for any new regulation or when change to an existing regulation occurs. Principally, however, the main purpose of a RIS is to assess proposed regulations to ensure they achieve meet the DDAA performance requirement of equal access without causing unjustifiable hardship (Australian Government Productivity Commission, 2004b).

Taken as a whole, this embryonic development of disability standards for access in Australia is intended to leave owners and developers of buildings used by the public with no alternative but to meet the objectives of the DDAA as they apply to buildings. In attempting to fulfil the requirements set out in the Premises Standard, it is believed that owners and developers will be compelled to achieve the standards and goals laid down in the BCA and the DDAA. By virtue of the fact the Premises Standard, the BCA and the DDAA are all calling for identical action and adjustment, consistency is – in effect – secured across the board. Conversely, had the Premises Standard not been developed – nor subsequently subject to a review every May – the continued absence of uniform regulations would, inevitably, have left disabled people, owners and developers entirely reliant on the individual complaints mechanism of the DDAA to define compliance (Small, 2005).

In the final analysis, there are pertinent courses of action that can be taken from the Australian approach. Compliance can be achieved through conformity between building standards and anti-discrimination legislation. At least, in this way anti-discrimination legislation relating to access can be enforced through the daily activities of building surveyors (whether they are employed by local government or operate as a private concern) who are initially responsible for the issue of "Building Approval" to allow building to commence and, on completion of a building, to issue "Occupation Certificates" as an endorsement of quality. In each case, adherence to the BCA is a prerequisite for approval.

Correspondingly, there are the added facilities of individual action through the law courts or appeal to HREOC should discrimination still be found to exist. With regard to HREOC, every single complaint initiates a standard process. On receipt of a complaint, HREOC assesses the validity of the objection on the basis of whether:

(1) there is evidence of the complainant themselves being covered by the relevant legislation on offer;

(2) the issue of alleged discrimination is in itself covered by legislation; and

(3) there is real evidence of detriment to the complainant (or to the client an advocacy group is acting on behalf of).

Once these three criteria have been satisfied, HREOC will proceed to write to the body or bodies complained against and seek a response to clarify the situation. If a complaint is still seen to be legitimate once a response has been received and evaluated, HREOC will proceed to seek conciliation in an attempt to rectify the area of concern. In the event of satisfactory conciliation, confidentiality will be kept on all sides. Conversely, if the complaint is found to have no substance at all, the president of HREOC will terminate the complaints procedure.

Should no conciliation be achieved, then the president will not only terminate the procedure but also advise the complainant of their right to level a complaint in the Federal Court of Australia. However, the Federal Court is a "cost jurisdiction" which means that a complainant could have legal costs awarded against them should they lose their case. To counter this, it is usual for the complainant to either represent themselves or, alternatively, recruit the services of a *pro bono* lawyer or barrister acting on behalf of a specialist network on discrimination. Whichever way, legal costs are minimised for the complainant and, in practice, tend to be rarely imposed. As a result, legal action is thus encouraged and the process of seeking redress significantly enhanced.

By and large, it is clear that Australia is making a concerted effort to prevent discrimination arising out of a lack of access to the built environment. Having said this, the problem of what is or is not "reasonable" still persists: albeit under the new title of "unjustifiable hardship". Moreover, the situation is made worse by the lack of any real financial support for owners and business to make adjustments to improve access to existing buildings. At best, employers (and only employers) could merely hope to obtain a maximum of $5,000 (Australian) from regional funds for adaptation. Being realistic, this is barely adequate to alter a new building let alone older buildings. To compound issues, Australia – as in any other country – is confronted with the inescapable fact that there are good, efficient surveyors and surveyors that are a little less diligent in their application. Consistency of application is not, therefore, always guaranteed.

Lessons to be learnt: examples of good practice

The purpose of this paper has been to help inform and implement a strategy to provide equal access for disabled people to the built environment. Even with this concise examination of the selected countries, several important lessons have come to the fore. A welcome example of good practice is for legislation to provide direction and clarity to rules, enterprises and agencies subject or dedicated to the implementation or enforcement of anti-discriminatory practices along the lines of the DDA (UK), EOA (Malta), DDAA (Australia) and the ADA (USA).

One significant challenge emerging from this approach is, however, how to reconcile prescription with flexibility. Legislation of this kind would not be enough without specific technical detail being written into the law. Ireland and the UK, for example, have tended to loosely associate legislation with the Part M of the Building Regulations applicable to each country. Enforcement and compliance is, therefore, left to building inspectors and consultants which, in turn, leaves questions of rigour and consistency open to debate. On the plus side, the UK Government and the DRC do – in all sincerity – believe that these arrangements allow for flexibility and give organisations or businesses the room to anticipate for adjustments according to individual need. Nevertheless, this is left to subjectivity which, unfortunately, relies heavily on trust and benignly assumes that employers, businesses and builders will (and are able to) comply with exactly what is required of them.

More progressively, Malta has taken significant steps by officially empowering the KNPD to proactively identify, establish and update all national policies that directly or indirectly relate to disability issues. In terms of access to the built environment, this has meant that the KNPD have promoted an abundance of technical and detailed – but not legally binding – guidelines to inform businesses and employers of the necessary changes and adjustments required. In addition, the KNPD have managed to reach an agreement with the Development Corporation of Malta where all new industrial developments shall conform to KNPD's own *Access for All* recommendations on a more voluntary basis.

Although conciliation and guidance is a major task, it is still vital to note that the KNPD also has the power to enforce. Indeed, their guidelines are reinforced by their other remit to provide legal and financial assistance to disabled people so that their rights under the EOA are respected to the fullest extent. In a similar vein, Australia has empowered HREOC to safeguard the rights and opportunities of disabled people. Moreover, Australia appears to have taken a step further forward than Malta in that HREOC are beginning to achieve consistency and legal status between the DDAA and the BCA which is applicable throughout the Australian Commonwealth. Crucially, the implementation of a Premises Standard has introduced mandatory Performance Requirements. As a consequence, Australia is now on the verge of creating a national code of practice that can be adopted and enforced by regional policies, practices and agencies.

Nonetheless, Australia's *pro bono* system of legal support has been stretched to its limits through a lack of resources (in terms of donated time) and by HREOC's commendable willingness to initiate a review process for every single complaint received. To compound issues, the use of ambiguous language throughout the countries examined does not help enforcement. Typically, phrases such as "reasonable adjustment", "practical" and an emphasis on "reasonableness" are bandied about

in the UK. In Malta, we get "unjustifiable hardship" and "reasonable provision". The terms "obviously unreasonable" and "easily amended obstacles" are common to Australia whereas the onus centres on what is "justifiable" or "unjustifiable". All help to confuse and conceal the true meaning and direction of disability legislation.

With regard to France and the USA, we also encounter vague, indefinite terminology. In France, talk is of what is "negotiable" and "material difficulty" in relation to the costs of alterations. The USA follows a familiar path with the introduction of the caveats pertaining to "cost and scope". To a larger degree than in the other countries studied, however, France and the USA have tried to minimise such confusion. They have done so by giving clear and explicit technical detail as to what has to be done to comply with their anti-discriminatory legislation. Both the ADA and the French Constitution include detailed diagrammatic examples of what is acceptable and what is not acceptable. In so doing, requirements on employers, businesses and organisations are plainly evident. Avenues for non-compliance are severely restricted as a result.

Naturally, financial costs on employers, businesses and organisations have to be considered. And here, we can learn from the limited practices of our sample of relatively wealthy countries. The UK's limited use of tax relief is not an adequate incentive for employers and businesses to make extensive alterations to their premises. So too is France's funding envelope of FISAC. More money has to be made available to enable responsible employers to achieve the required objectives. Certainly, centrally administered, accessible and more adequate funds for improvement/adjustment would resolve many of the problems faced by each individual nation. Indeed, a direct consequence of readily available funding would be to make enforcement of regulations and requirements much easier as it would only be the irresponsible who would avoid making the necessary alterations. The excuse of "affordability" would have been removed altogether.

One final lesson can also be learnt from our sample. In particular, the withdrawal of the Irish Disability Bill of 2001 has important ramifications for future legislation introduced by individual nations. The Irish Disability Bill only dealt with eliminating discriminatory decision making from above. Regrettably, a rights-based approach to disability (Barnes and Oliver, 1995) had been ruthlessly discarded. To avoid this happening again, it is important that the claims of disabled people become enshrined in the legal system so disabled service-users can seek legal redress. In the final analysis, this is the only way in which disabled people can be guaranteed they will receive the services or regulatory provision they are entitled to (de Wispelaere and Walsh, 2005, p. 5). Only then, can disabled people empower themselves and strive for full equity of access as a right and not a benevolent afterthought as is so often the case.

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