

TORONTO TRANSIT COMMISSION REPORT NO.

MEETING DATE: November 17, 2009

SUBJECT: AODA REGULATIONS ON ACCESSIBILITY STANDARDS

ACTION ITEM

RECOMMENDATIONS

It is recommended that the Commission:

1. Request that the Minister of Community and Social Services harmonize the various draft regulations being developed to implement the Accessibility for Ontarians with Disabilities Act, 2005 (AODA), in order to ensure consistency with respect to their content, definitions, and implementation timing, before any additional individual regulations are finalized;
2. Forward this report to the City of Toronto, the Ontario Ministries of Community and Social Services, Transportation, Energy and Infrastructure, the Ontario Human Rights Commission, and Metrolinx, noting that:
 - the TTC highly is supportive of the Accessibility for Ontarians with Disabilities Act, 2005 (AODA) and its goal to have an accessible Ontario by 2025;
 - the TTC has been developing and taking action – as far back as 1983 – to make all of its services, vehicles, and facilities accessible and these plans are consistent with the both the intent of the legislation, and with local accessibility priorities;
 - the status of the TTC's current activities to improve the accessibility of its facilities and services are described in the *TTC Accessible Transit Services Plan - 2008 Status Report* and the accompanying Commission report *which were* forwarded to the Province in February 2009;
 - Provincial AODA regulations regarding customer service have been finalised and must be complied with by public agencies like the TTC as of January 1, 2010. Final regulations regarding accessible standards for transportation, the built environment, employment, and communications are forthcoming;
 - the Province has not made a commitment to assist with any operating and/or capital cost increases which might result from the AODA regulations; and

- as the finalized regulations become available, TTC staff will report on the costs and operational implications of the regulations for the TTC.

FUNDING

This report has no effect on the TTC's approved operating or capital budgets.

BACKGROUND

The TTC is proceeding towards its goal of having all services and facilities accessible and these initiatives will result in all vehicles and stations being accessible in advance of the Provincial mandate of an accessible province by 2025.

The Province of Ontario is developing accessibility standards in the form of regulations related to the Accessibility for Ontarians with Disabilities Act, 2005 (AODA) and TTC staff are providing input to this process through various committees and forums. This report provides a summary of the status of the development of the various accessibility standards and how they could affect the TTC.

DISCUSSION

Current TTC Accessibility Initiatives

Virtually all TTC customers benefit from the accessibility features being implemented on the TTC's services including accessible low-floor vehicles, elevators, escalators, automatic accessible doors, automated stop announcements, and improved customer information systems. For many seniors, and others who have limited agility, strength, and balance, these features are essential. Therefore, while planning for improved accessibility naturally focuses on overcoming impediments to travel by people with disabilities, all TTC customers will be better off with improved system accessibility.

The TTC's plans are to make all of its vehicles and facilities accessible in advance of the 2025 requirement established by the Province of Ontario. The achievement of this goal, however, is dependent on funding being available to implement the plan. The major TTC accessibility initiatives carried out to date include:

- extensive to-the-door and community bus services operated by TTC's Wheel-Trans;
- most conventional transit buses in operation are accessible low-floor or lift-equipped, and all buses will be accessible by 2012;
- 29 of the TTC's 69 subway stations have been equipped with elevators and other accessibility features with additional stations planned for accessibility improvements at the rate of two to four per year;
- implementation of automatic stop and station announcements on all TTC buses, streetcars, and subways;
- awarding a contract to replace the current fleet of non-accessible streetcars with

new, modern low-floor light rail vehicles;

- the TTC's commitment to make all new rapid transit stations and all stations on the *Transit City* light rail lines accessible; and,
- ongoing community consultation regarding accessibility plans and priorities through regular meetings with the TTC's Advisory Committee on Accessible Transportation (ACAT) and an annual public forum on accessibility issues.

Some, or all, of these programs, budgets, and schedules to improve system accessibility may be affected by the forthcoming Provincial regulations on accessibility standards.

AODA and the Development of Accessibility Standards

The Accessibility for Ontarians with Disabilities Act, 2005 (AODA) requires that all public facilities and services be accessible in Ontario by 2025, and provides for the development of accessibility standards to achieve this goal. The TTC strongly supports the principles of the AODA.

The Province of Ontario has enacted an AODA regulation regarding accessibility standards for customer service and is in the process of finalizing similar regulations for four other sectors: transportation, information and communications, employment, and the built environment. These standards apply community-wide, and the TTC has been working with the City of Toronto, and other transit agencies, to provide input on the overall standards and on issues and concerns that are particular to the transit industry and the TTC. The standards will affect the TTC's schedules, priorities, and operating expenses, but the TTC is not yet in a position to assess the impacts because many aspects of the proposed standards and their implementation schedules are not known.

Final Accessibility Standards for Customer Service

The Province enacted an AODA regulation pertaining to accessibility standards for customer service in 2008 (Ontario Regulation 429/07). The TTC, and other public transit service providers, must comply with the regulation by January 1, 2010, while the private sector has another two years to comply with the regulation. Because the TTC already provides a large amount of training for front-line staff and others who provide information and assistance to people with disabilities, it was not anticipated that the new Customer Service Regulation would significantly change TTC policies and practices. However, the Regulation is subject to interpretation, and TTC staff are working to determine if current practices fulfill all its requirements.

Proposed Accessible Transportation Standard

The development of an accessible transportation standard began in 2005. TTC staff have been involved in the Transportation Standards Development Committee. In July 2006 and September 2007, the Commission received reports from staff on the standards development process, and the concerns submitted by staff and ACAT. In November 2008, the committee submitted a Proposed Accessible Transportation Standard to the Minister of

Community and Social Services. However, the various constituencies which constitute the committee could not agree on a number of clauses and implementation schedules in the standards.

The advice put forward by TTC staff and others during the transportation standard development process included the need for harmonizing all standards, in particular, those related to clauses on training and permitting exemptions where they could be justified. The Ministry of Community and Social Services was also requested to standardize the definitions regarding transportable mobility devices, implement a system to identify disabled persons who require a support person or service animal for travel, develop a program to increase public awareness of accessible public transportation, and to train people with disabilities to use all the classes of accessible transportation offered in Ontario. Chair Giambrone reiterated these issues in a March 20, 2009 letter to The Honourable Madeleine Meilleur.

In the summer of 2009, the Ministry of Transportation hosted meetings between Ministry of Community and Social Services representatives and those who represented the transit industry in Ontario. TTC staff participated in these meetings. In addition, the Minister of Community and Social Services conducted a meeting with invited stakeholders (major service providers, members of the disability community, the Association of Ontario Municipalities) on potential changes to the draft standard. TTC Chair Giambrone and Chief General Manager Gary Webster attended the meeting with the Minister.

Cost Implications of Transportation Standards

When TTC staff wrote the 2007 report on the development of the AODA standards, it was anticipated that the transportation standard would increase TTC capital expenses by approximately \$60 million, and increase the TTC's annual operating expenses by approximately \$2 million. Many of the changes considered by the Minister and/or Ministry staff during the recent discussions would further increase TTC costs and affect the operations of TTC's conventional and specialized services. For example, one of the changes related to guaranteed service for to-the-door travel which would add \$500,000 annually to the Wheel-Trans operating budget. However, it is unclear how many changes such as this may be made to the standard before it is finalized. TTC staff remain unable to report on what will ultimately be in the final Accessible Transportation Standard, although it would appear the earlier estimates of total capital and operating costs were conservative. Similarly, how Provincial decisions will affect TTC policies, practices, and procedures cannot be determined at this time.

Proposed Employment Accessibility Standard

Following the release of a draft employment standard in May of this year, TTC staff provided clause-specific comments to the Minister of Community and Social Services on the proposed standard, and repeated many of the overarching concerns with the standards development process raised previously.

The Association of Municipalities of Ontario (AMO) and the transit industry associations took issue with the matter of "essential duties" for all jobs. The provision is seen as being counter-productive in dealing with individual accommodation issues. Other matters drawn to the attention of the Ministry by those in the transit industry included reasonable documentation of return-to-work efforts, requiring suppliers rather than users of hazardous materials to provide information on the materials in alternative formats, and ensuring that the provisions regarding "the duty to accommodate" reflected those set out in the Ontario Human Rights Code.

The Employment Accessibility Standard Development Committee (EA-SDC) voted on a final proposed standard in August 2009, which has been forwarded to the Minister for consideration. It is anticipated the proposed Employment Accessibility Standard will be subject to the same Ministry review as that being completed for the transportation standard.

Proposed Accessible Information and Communication Standard

A final proposed Accessible Information and Communication Standard was forwarded to the Minister in May of 2009. It is anticipated that the proposed standard will be subject to the same Ministry review as that being completed for the transportation standard. Based on the TTC's interpretation of the proposed standard, the required changes to the information technologies will cost in the range of \$60 million (in addition to the costs estimated to implement the transportation standard), and will be difficult to implement within the proposed timeframes. A number of clauses and combinations of clauses in the proposed standard pertaining to the provision of information in alternative formats are considered to be subject to different interpretations with different effects on costs and resources.

Elements of the proposed Accessible Information and Communications Standard may affect the implementation of both the employment and transportation standards, especially those related to customer information, training materials, etc. However, the relationship between the standards and the interpretation of some individual clauses is still unclear.

Initial Proposed Accessible Built Environment Standard

The TTC has a representative on the Accessible Built Environment Standards Development Committee (ABE-SDC) and TTC staff have recently provided comments on the initial proposed Accessible Built Environment Standard to the Ministry of Community and Social Services.

The ABE-SDC did not complete its assessments within the time limits set by the Minister of Community and Social Services. The ABE-SDC requested an extension to the Minister's deadline to permit the committee to develop standards for accessible stations, terminals, bus shelters, bus stops, etc. However, the Minister denied this request, and the initial standard is, therefore, largely deficient with regards to specific requirements for transit facilities.

The Ministry has indicated that the committee will reconvene to consider input that is received during the public review period for the proposed standard and this process may result in changes to the standard before it is finalised. In addition, specific requirements for transit facilities may be introduced at a later date.

Harmonization

The five standards are intended to, collectively, move the Province closer to the 2025 goal of an accessible Ontario. However, the proposed standards were largely developed by committees working in isolation of each other. As a result, the proposed standards have overlapping content, inconsistencies, and contradictions.

The compliance schedules for each of the individual standards were also developed independently. The individual schedules will be exceedingly difficult to achieve, with compliance for the most part occurring within the first five years after adoption of the related regulation. When the schedules are combined, they create an expectation far beyond what can be reasonably accomplished from an implementation timing perspective. This is particularly evident when required compliance schedules in one standard may be dependant upon, or affected by those in another and, as such, will need to be addressed concurrently. In addition, some requirements in the standards, as currently drafted, conflict with, or are affected by other regulations.

The fact that the standards development committees did not give consideration to funding, the resources available to service providers, the state of the economy, on the viability of certain industries results in further questions about the effects which the five different and aggressive implementation schedules will have on the Ontario transportation industry if a reasonable and harmonized approach is not undertaken.

The position stated in TTC submissions is that no further regulations should be finalized or released until all the standards are harmonized. The concerns with the lack of harmonization are also held by others in the transportation industry, as well as the Association of Municipalities of Ontario and others in the public and private sectors.

The Ontario Public Transit Association (OPTA) and the Canadian Urban Transit Association (CUTA) have submitted the attached discussion paper *"An Approach to the Harmonization of the AODA Standards"* to Minister Meilleur in the hope it will generate action by the Province to address the issue before additional issues arise with enactment of the regulations related to the proposed standards.

OPTA and CUTA have suggested municipal organizations and transit service providers request the Province to harmonize the standards.

Status of Funding for Accessibility Initiatives

Funding is key to implementing the planned accessibility initiatives, and this has been acknowledged as a fundamental element of the TTC's Accessibility Plans since 2003. The 2006 report indicated *"Funding support from every level of government will be even more critical in the future than it was in 2003 if accessibility standards are to be implemented without increases in fares and/or service reductions to compensate for added costs which might result from the new Provincial standards"*. This perspective has been reiterated to Provincial staff and politicians numerous times in various forums and communications since that time.

To date, the Minister has indicated the Province of Ontario will not fund the changes that will be required to comply with the five standards.

Summary of Issues Related to the Development of Regulations for AODA

The overarching issues which have been communicated to the Ministry of Community and Social Services are:

- All of the standards currently under development should be harmonized prior to any of them coming into force. The harmonization should include:
 - a document that specifically identifies the overlapping requirements of standards;
 - clarification of the relationship of the standards to all other related existing legislative requirements/standards, e.g. Ontario Building Code, Highway Traffic Act, Ontario Human Rights Code, Labour Relations Act, etc.;
 - an assessment of the cost and operational implications of the collective impact of all of the requirements of the respective standards; and,
 - compliance timeframes for the standards have to be viewed collectively noting, as envisioned by the AODA, that it is not one provision of a standard that supports full accessibility but, rather, the collective effect of all the standards that achieves this goal.
- Consideration should be given to removing all AODA training requirements from individual standards and including them under a single training standard to minimize inconsistencies and duplication, and optimize the use of resources.
- The province should take steps to increase the public's awareness about the AODA and the requirements mandated by the standards. This will better ensure that the communicated message and compliance with the legislated framework is consistent.
- Resolution of funding issues is critical to the achievement of our common goals with respect to achieving accessible transit services.

SUMMARY

The TTC strongly supports the creation of a truly accessible transit system, and has dedicated significant time and resources to achieving this goal. The TTC plans to have all facilities and services accessible in advance of the Provincial goal of 2025. It must be recognized, however, that the provision of adequate funding is a fundamental element in the implementation of these plans.

The standards and regulations being developed by the Ministry of Community and Social Services to implement the AODA could have serious implications for the TTC, both with respect to costs and the implementation of the TTC's accessibility plans. Based on the proposed standards that have been reviewed to date, the implications cannot yet be determined with any certainty. A significant issue for many reviewers of the proposed standards, including the TTC, is the need for harmonization for the five proposed standards in advance of their implementation. This will assist with the effective implementation of the standards and the achievement of provincial accessibility goals in an effective way.

Attachment: "An Approach to the Harmonization of AODA Standards", CUTA/OPTA
September 2009

Date: November 6, 2009

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Regulations on Accessibility Standards - #12920 FINALCR.docc

An Approach to the Harmonization of AODA Standards

*Prepared by London Transit
on behalf of the Ontario Transit Industry*

September 24, 2009



An Approach to Harmonization of AODA Standards

Virtually all stakeholders who have been involved in the AODA standard development process have indicated the need for the standards to be harmonized. This need is predicated on the fact that the four common standards being developed will apply to all sectors of the Ontario economy that is both private and public, impacting all facets of the respective operations, operations that within an organization are linked. As such, it is critical in order to establish an effective and efficient process to deal with AODA requirements, to have all expectations clearly defined, understood and implemented in an effective, efficient and sustainable manner.

The impact on organizations, both private and public, of the respective standards under the AODA is expected to vary significantly given such factors as the nature and size of the organization, the business(es) they are in, their current state of development and/or compliance with respect to the various standard provisions and the impacts of compliance with respect to similar and/or competing legislation. What is evident is that given the number, nature and state of readiness associated with the various core services provided by municipalities across the Province, the AODA will have a significant impact on the municipal sector. Adding to the impact are the requirements of the sector specific Transportation Standard.

The Purpose of the AODA

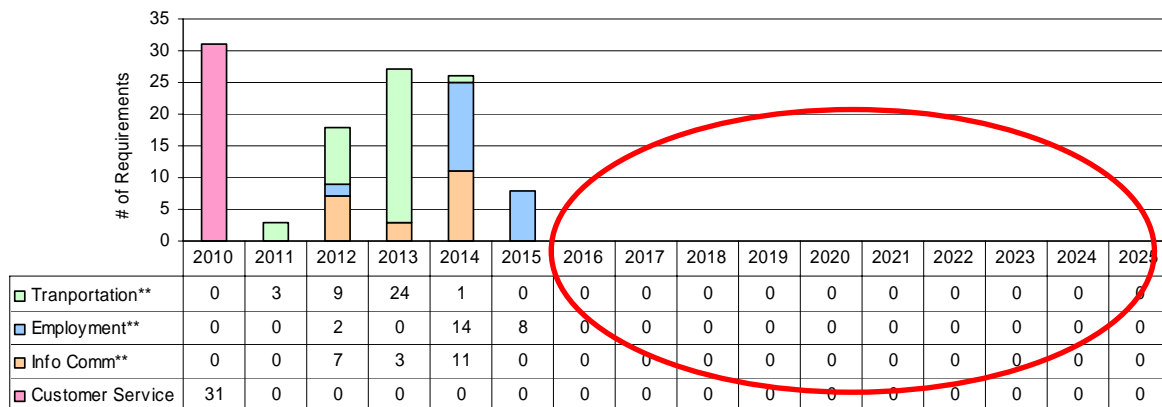
As stated in the *Act* itself:

Recognizing the history of discrimination against persons with disabilities in Ontario, the purpose of this Act is to benefit all Ontarians by,

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

As the graph below illustrates, the timelines for standards that have been developed to date call for the goal set out in item (a) above to be met by 2016 by the public sector, essentially compressing the mammoth task of achieving full accessibility into 8 years, when the *Act* clearly envisioned a much greater timeframe.

Compliance Dates of AODA Standards to Date



Year of Compliance - **assumes 2011 effective date

The Need for Harmonization of AODA Standards

The provision in the *Act* for the establishment of four common standards, as well as the opportunity for sector-specific standards recognizes that there are many aspects and elements of business in the province that would have to be addressed in order to meet the goal of full accessibility by 2025. While the four common standards each focus on different aspects of a business, they are tied to the common goal of full accessibility by 2025 and therefore can only be viewed/treated as a collective. Given that three of the four common standards as well as the Transportation standard were completed concurrently, with each SDC working independently with no appreciation for what was being addressed and/or considered by the other SDC's, the resulting standards in some cases overlap with one another (ie policy requirements) or far more troubling, contradict one another (ie compliance timeframes). Further underscoring the need for harmonization are such factors including:

- current/proposed compliance timeframes for the respective standards are compressed, with compliance for the most part occurring within the first five years after adoption of the related regulation. The current/proposed timeframes create an expectation far beyond what can be reasonably accomplished.
- requirements in one standard may be dependant, or impacted by those in another, and as such, will need to be addressed concurrently
- certain requirements in the standards as drafted conflict with, or are impacted by other regulations, and as such, compliance with one may result in non-compliance with the other
- the lack of available financial resources to support compliance

The process followed to date has left the task of harmonization to the Ministry of Community and Social Services as the overseeing body, a task which must ensure the potential impacts on all organizations in all sectors of the economy will be given due consideration.

Inputs to be Considered with Respect to Harmonization

When assessing options and opportunities for harmonization of the standards, there are a number of issues/inputs that need to be considered, including:

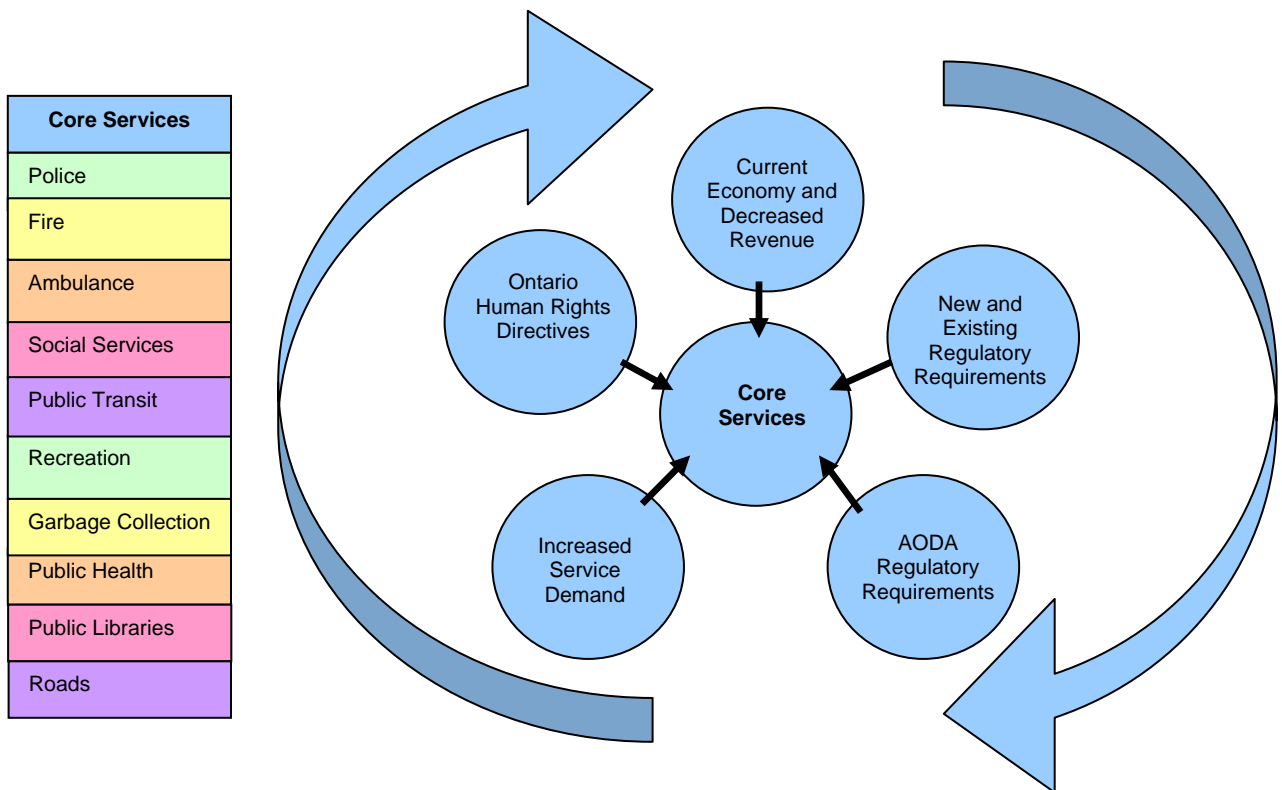
- the Ontario Government's stated "Open for Business" mandate
- Premier McGuinty's statement that "2025 was chosen as the target year by which standards are to be phased in, giving businesses and public organizations sufficient time to spread out their accessibility investments as part of their normal business and capital planning cycles"
- organizations across the province have varying and limited resources and/or capacity to address compliance within the timelines as drafted
- organizations across the province are at various stages of compliance with the standard requirements as currently drafted
- needs and expectations relating to accessibility vary across the province, and as such, local priorities will differ significantly
- both the services offered and the levels of service vary significantly in jurisdictions across the province, and as such, the impacts of compliance will also vary significantly
- compliance with the requirements in the core standards and the transportation standard within the timelines as currently drafted, when viewed as a collective are neither practical nor achievable
- the difference in perspectives, that is the disability community tends to look for compliance timeframes in the near term, noting their desire is to see demonstrated progress toward full accessibility, while organizations advocate for extended time frames noting the complexities involved with compliance as well as the 2025 deadline and the requirement for 5 year reviews
- the standards including compliance timeframes are intended to be minimums, noting organizations have the opportunity to address requirements prior to established deadlines
- the potential to implement "quick wins" in order to demonstrate progress toward the end goal

- recognizing that communities may have different priorities associated with dealing with disability issues
- compliance mechanisms need to be consistent for all standards and communicated at the time the regulation is adopted
- competing demand for resources and competing expectations of other legislative requirements

A Potential Option

Harmonization of all AODA standards is imperative, however, given the issues set out above, accomplishing the task in a manner that achieves reasonable and sustainable standards for all organizations in the province presents a significant challenge. From a Municipal perspective, there are a number of competing objectives that will impact the progress toward compliance. The diagram below provides an overview of the municipal environment.

**The Challenge
Business Continuity and Sustainability in a Municipal Environment**



As depicted in the diagram, each of the core businesses provided by a municipality are subject to a number of sometimes competing objectives, all of which must be balanced in order to ensure business continuity and sustainability. Further complications arise when each of the municipality’s core businesses are forced to compete with one another for support.

Given that the AODA standards will, to varying degrees, impact all areas of the municipality, the most effective and efficient manner in which to address compliance with the AODA requirements is from a holistic perspective that supports:

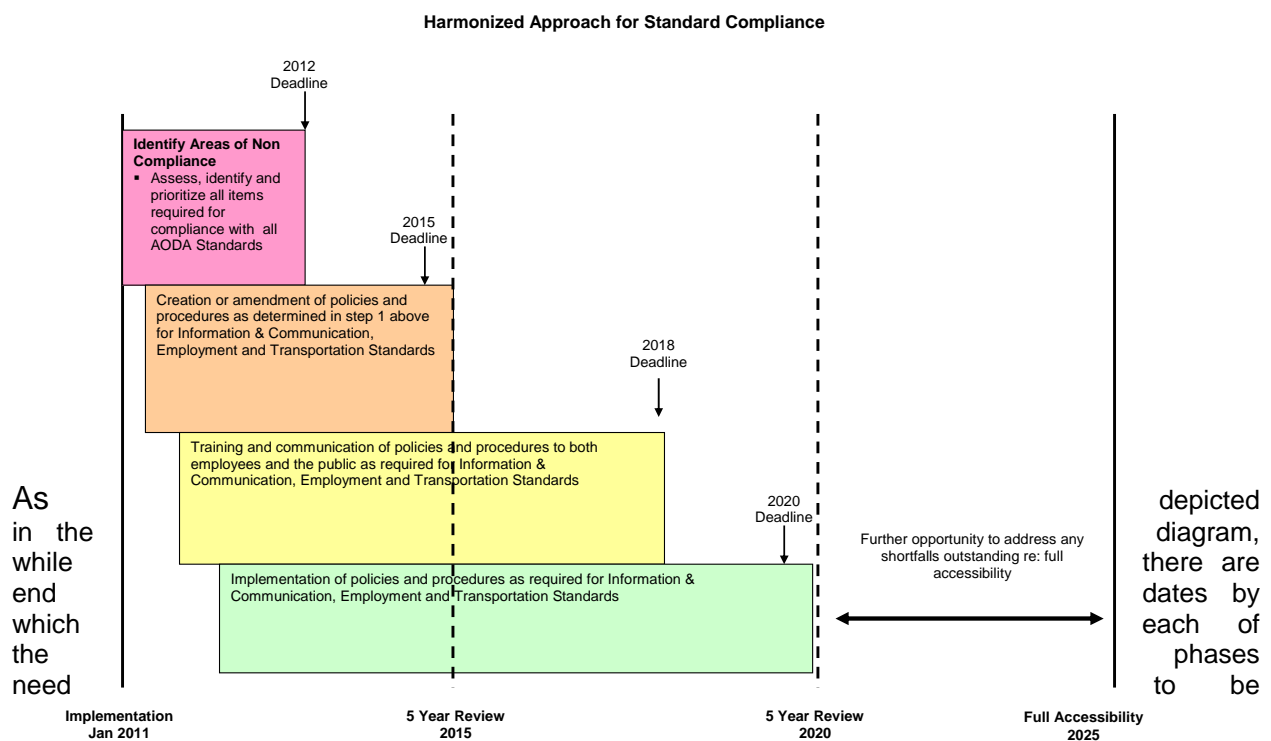
- understanding the current environment as it relates to all aspects of the organization
- considering/assessing all requirements collectively

- developing a logical, supportive, prioritized implementation strategy that is reflective of local priorities and maximizes the use of the 5 year review periods as set out in the AODA legislation
- implementing the strategy consistent with fiscal and operational capacity consistent with Premier McGuinty's statement to the Large Urban Mayors Caucus of Ontario (LUMCO) that "2025 was chosen as the target year by which standards are to be phased in, giving businesses and public organizations sufficient time to spread out their accessibility investments as part of their normal business and capital planning cycles"
- follow up and monitoring, including reporting of results

The attachment labeled Enclosure I provides an overview of the steps an organization would take, in assessing AODA standard requirements and taking the necessary steps to achieve compliance. The approach focuses on process, a process designed to deal with the AODA requirements holistically, recognizing the complexities of organizations as well as one that supports balanced, measured and sustainable progress toward the end goal. This includes identifying resource requirements and arranging for same as part of the business development/planning cycle as intended by the AODA. The process is intended to move from an approach of reacting to a requirement to one of planning for and delivering on the requirement. This process will need to be repeated for each requirement in each of the AODA standards.

Given the wide spectrum of obligated organizations in the province, and the many facets of each that must be examined in order to assess potential impacts, it will be extremely difficult, if not impossible for the Province to complete the harmonization task with resulting standards that will be achievable and sustainable for all obligated organizations. This task is further complicated with the approach of assessing the potential impacts of each of the standards in isolation versus viewing all requirements collectively.

A potential approach has been developed which addresses the issues raised in this paper by revising the approach to compliance timeframes in a manner that will leave an element of the harmonization exercise to the obligated organizations. The illustration below sets out a phased compliance framework which provides the much needed flexibility for organizations to assess the standard requirements, and then prioritize and implement the changes necessary to achieve compliance in a manner that is specific to their business and local priorities and at the same time will be sustainable.



completed, the phases overlap, thus allowing for continued progress toward the end goal of full accessibility. This approach will ensure that progress is demonstrated in all organizations, noting the requirement to assess and identify all requirements, and provide a prioritized plan for implementation will provide the opportunity for the local disability community to participate in prioritizing. The process envisions an annual reporting process, similar to that already required under the ODA, which the province can use to monitor progress. Should the Province decide to prioritize specific items in the standards for early implementation, the process could be modified to provide further guidance to organizations when setting the implementation plans associated with compliance. However, caution should be exercised with this approach noting that local priorities vary significantly across the province and common compliance dates for regulated requirements may result in progress on other local priorities being deferred or cancelled completely.

The process also underscores the importance of the 5 year review requirements as set out in the AODA legislation, providing the opportunity for the Province to review progress and work with stakeholders to add or make any necessary adjustments to requirements and/or compliance timelines.

Finally, the process will meet the goal of the AODA, a fully accessible province by 2025, in a manner that is achievable and sustainable for all obligated organizations, while at the same time providing for local priorities to be considered in the implementation plan.

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An Approach to Compliance

Identify Areas of Non-Compliance

- once the standard is adopted, organizations must identify the areas of non-compliance
 - consultation with staff in all affected areas of the business must take place to accurate assessment
 - create a matrix identifying all areas of non-compliance requiring attention
 - prioritize items giving consideration to establishing a mechanism to identify what standard is to be given priority, how the established priority reconciles with other obligations including legal requirements, resource capacity availability (staff and funding)

Common

Customer Service

31 requirements
2 years to comply

Information & Communications

24 requirements
1-15 years to comply

Employment

19 requirements
1-4 years to comply

Built Environment

? requirements
? years to comply

Transportation

45 requirements
1-6 years to comply

Establish New / Amend Existing Policies & Procedures

- each standard requires the creation and adoption of new policies and procedures
 - consult with staff in all affected areas for input with respect to both content and implementation options
 - consult with customers for input with respect to both content and implementation options
 - development of policies and procedures
 - adoption of policies and procedures by senior level staff

Implement New / Amended Policies and Procedures

- communicate new policies and procedures with staff (training)
 - the magnitude of the change will impact the level of training required
- communicate new policies and procedures with public (various formats as required)
 - the magnitude of the change will influence the nature of communications required and the advance notice period (ie mailout, public meetings etc.)

Assess Effectiveness of New Policies and Procedures

- consultation with affected staff regarding effectiveness of new policies and procedures
- consultation with customers regarding effectiveness of new policies and procedures