



Review of the Disability Standards for Accessible Public Transport 2002 (Transport Standards)

Submission of the Anti-Discrimination Commissioner
of Tasmania on the Draft Report

July 2014

Office of the Anti-Discrimination Commissioner

Celebrating Difference, Embracing Equality

Level 1, 54 Victoria Street, Hobart • GPO Box 197, Hobart, Tasmania, Australia, 7001
Telephone: [03] 6233 4841 • Statewide: 1300 305 062 • Facsimile: [03] 6233 5333
E-mail: antidiscrimination@justice.tas.gov.au • Website: www.antidiscrimination.tas.gov.au

Contents

1.	INTRODUCTION	1
	Table 1: Extent to which 2007 Review Recommendations are addressed in proposed 2012 Review Recommendations	2
2.	NATIONAL REPORTING FRAMEWORK	7
3.	AMENDING OR UPDATING THE TRANSPORT STANDARDS	8
4.	COMPLAINTS PROCESSES	10
5.	WHOLE-OF-JOURNEY ACCESSIBILITY	11
6.	MOBILITY AID LABELLING SCHEME	12
7.	WHEELCHAIR -ACCESSIBLE TAXIS	13
8.	DISABILITY ACCESS FACILITATION PLANS.....	15

I. Introduction

Thank you for the opportunity to make a submission on the draft Report of the 2012 Review of the *Disability Standards for Accessible Public Transport 2002* (the Transport Standards) and related recommendations (the draft Report).

These comments on the recommendations contained within the draft Report are in addition to the submission made in May 2013 on the second five-year statutory review Issues Paper released in November 2012.

As noted in the May 2013 submission, the high rates of disability within the general Tasmanian population and the lack of alternative transport modes in Tasmania has a particular effect on people with disability in this State and leads to a situation where the accessibility of available forms of transport is critical.

The lack of progress with addressing recommendations arising from previous reviews and the relative priority these matters have been accorded within the national transport reform agenda remain of significant concern. The failure to address recommendations has provided a great deal of uncertainty to operators and regulators and to people with disability seeking a reliably accessible service. It has resulted in less than optimum progress toward implementation of the Transport Standards. Importantly it has significantly and negatively impacted on people with disability who require accessible services.

In order to ensure that the current review is effective, it is important that implementation of recommendations are progressed as a matter of priority.

Whilst on the whole I am supportive of the approach outlined in the draft Report, I remained concerned that unless the central issue of ways to improve compliance with the Transport Standards are addressed then little progress is likely to be made prior to the next scheduled review. A core recommendation arising from the 2007 review was the need to develop mode-specific guidelines, including a clear outline of regulatory responsibilities at both state and federal level. It is very concerning that this approach has not been carried over to the recommendations contained within the draft Report.

The draft Report suggests the development of national reporting framework and the commencement of a process to review and amend the Transport Standards, together with a recommendation that accessibility guidelines for a whole-of-

journey approach are developed. At no point, however, does the Report make recommendations in relation to strategies to improve **compliance** with the Transport Standards across all levels of government and in relation to private contractors or owner/operators. Unfortunately, until this matter is addressed, I do not believe we are likely to see real and lasting progress on these matters, despite overwhelming calls for in both the 2007 and 2012 review for this matter to be addressed as a core issue.

I note in this regard that several industry sector groups including the Australasian Railway Association and the Bus Industry Confederation have approached the Accessible Public Transport Jurisdictional Committee (APTJC) seeking approval for binding codes of practice for the provision of accessible services within their respective sectors. These actions were motivated in large part because of the costs and uncertainty surrounding the obligations of transport providers in relation to meeting the Transport Standards. I note with concern that the APTJC has, in relation to these approaches, and with many other matters related to implementation of the Transport Standards, made little or no progress to codify obligations under the Standards.

Nor does the draft Report address the question of governance arrangements to establish accountability for progressing Transport Standards, including the recommendations arising from the 2007 review (see Recommendation 9 of the 2007 review).

I note the comment on page 9 of the draft Report that it is proposed that the recommendations arising from the 2012 review replace the recommendations of the 2007 review, thereby enabling parties responsible for implementation of the recommendations to ‘focus on the most relevant and up-to-date concerns with the Transport Standards’. I am not supportive of this approach.

Table 1 compares the 2007 and 2014 review recommendations. It is apparent that there are a number of matters that are not reflected in the current recommendations, yet are not matters that have been resolved.

In the absence of any new recommendations on compliance or future governance arrangements it is my view that the recommendations arising from the 2007 review should be carried over and incorporated into the recommendations arising from the current review.

Table 1: Extent to which 2007 Review Recommendations are addressed in proposed 2012 Review Recommendations

2007 Review Recommendations		Proposed 2014 Review Recommendations	
1	Establish a national framework for Action Plan reporting and require annual reporting by each State and Territory Government	1	That the Australian Government, jointly with state and territory governments, establish a national framework for reporting compliance by 30 June 2016.

2007 Review Recommendations		Proposed 2014 Review Recommendations	
2:	Request the ABS to include questions on public transport patronage in their Disability surveys		Completed. No new recommendation required.
3	A technical experts group be convened, with Standards Australia, to develop technical standards specifically suited to public transport conveyances and infrastructure. Once developed, these Standards should be referenced to the Transport Standards and made available for public use.		Not addressed. Proposed recommendation 3 suggests review or amendment to some of the Transport Standards, but only suggest clarification in relation to bus stops.
4	Mode specific guidelines be developed by modal sub-committees. These guidelines would be a recognised authoritative source for providers, which can be used during a complaints process.		Not addressed.
5	A mobility labelling scheme be developed which identifies the weight of the aid and whether its dimensions fit within the dimensions for allocated spaces, boarding devices, access paths and manoeuvring areas on conveyances, as specified in the Transport Standards.	5	That the Australian Government in collaboration with state and territory governments develop and implement a national motorised mobility aid labelling scheme.
6	A best practice clearinghouse be established in a government agency or research body to collect and disseminate best practice solutions and ideas relating to accessible transport.		Not addressed.
7	Commonwealth, State and Territory governments provide funding for projects in regional and rural regions where local government are unable to resource upgrades of public transport infrastructure.		Not addressed.
8	The Australian Human Rights Commission be tasked to provide greater support for representative complaints on behalf of people with disability, reducing the legal cost burden on individuals.	3	The Australian Government considers the concerns raised about the complaints process. (addressed in part)
9	New governance arrangements be implemented to establish accountability for progressing recommendations from the five-year review. APTJC should have coordinating responsibility for new initiatives (including modal committees and the technical experts group) in partnership with APTNAC.		Not addressed.

2007 Review Recommendations		Proposed 2014 Review Recommendations	
10	The 2017 compliance milestone for tram conveyances and infrastructure be reduced from 90 per cent to 80 per cent to better reflect vehicle replacement cycles.	2	That the Australian Government, jointly with state and territory governments, commence a process for updating and modernising the Transport Standards. This work should be undertaken in close consultation with local government, industry and the disability sector, and include research on the technical issues raised in this review, the development of options, and assessment of the impact of any proposed changes to the standards, with this work to be completed by 30 June 2016.
11	The taxi modal sub-committee be tasked with developing a staged implementation timeframe similar to that for other modes of transport, and an appropriate performance measure, to replace the 2007 milestone for WAT compliance.	6	That the Australian Government jointly with industry, state and territory governments, develop consistent national compliance milestones and response times for wheelchair accessible taxis by 30 June 2016.
12	Government commission research into the safety of passengers travelling in conveyances whilst seated in mobility aids (including scooters). This research should make recommendations around whether there is a need for an Australian Standard addressing this aspect of safety for mobility aids.		Not addressed.
13	The Transport Standards be amended to require new community transport vehicles greater than 12 seat capacity to comply with the Transport Standards commencing in 2017 (with full compliance by 2032).		Not addressed.
14	Phased application of dedicated school bus services to physical access requirements in the Transport Standards, commencing in 2029 and being fully required by 2044.		Not addressed.
15	Air travel modal sub-committee (the Aviation Access Working Group) be tasked to develop guidance on the carriage of mobility aids on aircraft.		Two-wheelchair policy currently subject to separate review. No consistent standards adopted.

As outlined in my earlier submission, the 2007 Review report identified several reasons why progress in implementing the Transport Standards had been poor:

- The lack of a detailed and comparable reporting framework, including data shortcoming and uniform monitoring and reporting requirements.
- The lack of transparency in the standards, particularly with regard to specific transport modes.
- Exclusion of critical transport modes, such as school buses.

- The lack of transparent and accessible complaints procedures specific to complaints arising from the implementation of the standards.
- The lack of mechanisms to enable operators to confirm that actions, including equivalent access provisions, are compliant with the standards.
- The use of exclusions to prevent or limit improved accessibility of services.
- Shortcomings in governance and oversight of the implementation of the standards at a national level.

These findings remain relevant in 2014 and urgent action is required to address these matters in conjunction with the outcomes of the current review process.

Several factors have contributed to this situation. In addition to the difficulties associated with the way in which the original standards were cast, it is apparent that the Transport and Infrastructure Council (TIC) have accorded little priority to progressing actions arising from the first review. It is important that this is not the case with the outcomes of the current review.

The development of a comprehensive compliance system is critical to addressing these shortcomings, including clear guidance on Ministerial oversight and responsibility for implementation of the Transport Standards. The TIC must now ensure that issues arising from the implementation of the Transport Standards, including driving nationally consistent regulatory and operational approaches to road, rail and intermodal transport are fully integrated into the national transport reform agenda.

As discussed in the previous submission, it is my view that consideration should be given to the development of an intergovernmental agreement or similar endorsed at COAG level to provide a clear articulation of the way in which the nationally consistent approach to reform is designed to operate and to establish a single national regulator to oversee the implementation of the Transport Standards.

The intergovernmental agreement should include clear guidelines on mechanisms to enable the federal Disability Discrimination Commissioner and Australian Human Rights Commission to have standing under the new arrangements and to ensure that State and Territory anti-discrimination bodies are consulted where appropriate.

Ensuring responsibility for the implementation of the Transport Standards is brought together under a single national umbrella would provide a more efficient and cost-effective approach to the development of integrated solutions to address the challenges arising from the implementation of the standards..

It is acknowledged that there is likely to be resourcing implications arising from the implementation of a more robust compliance framework and that this may create difficulties in a climate of fiscal restraint. It is important to understand, however, that the failure to address the implementation of the Transport Standards in a fully coordinated manner has resulted in additional costs to

operators/providers and relies on shifting the burden of compliance to those that can least afford it – users.

A failure to ensure implementation of the Transport Standards also has significant implications in relation to achieving the objectives of the *National Disability Strategy* and fulfilling Australian obligations under the UN *Convention on the Rights of Persons with Disabilities*.

2. National reporting framework

Recommendation 1: That the Australian Government, jointly with the state and territory governments, establish a national framework for reporting on compliance by 30 June 2016.

The recommendation to establish a national framework for reporting on compliance is consistent with recommendations arising from the 2007 review of the transport standards.

A national framework for reporting on compliance with the transport standards will provide improved monitoring of implementation and enable greater transparency surrounding the level of compliance with the standards.

My concern remains, however, that unless binding mode-specific guidelines or standards are also developed, the level of complexity associated with the Transport Standards will not be reduced.

As outlined in the draft Report, the complexity of the transport industry and the requirement that all levels of government are involved in implementation of the Transport Standards along with private transport owners and operators has impeded progress with implementation of the Transport Standards. At the same time, the Transport Standards themselves and the way in which they are written has given rise to a lack of certainty regarding action that is required to ensure services are compliant.

In the previous submission, for example, I raised issues regarding the inherent difficulties of interpreting what a 'service' is in the context of the Transport Standards. The lack of mode-specific guidance has given rise to various interpretations of what is required to ensure compliance with the Transport Standards in individual transport sectors and the lack of agreed and fully transparent guidelines has created considerably difficulty both for those responsible for implementing the standards and for service users.

3. Amending or updating the Transport Standards

Recommendation 2: That the Australian Government, jointly with state and territory governments, commence a process for updating and modernising the Transport Standards. This work should be undertaken in close consultation with local government, industry and the disability sector, and include research on the technical issues raised in this review, the development of options, and assessment of the impact of any proposed changes to the standards, with this work to be completed by 30 June 2016.

It is my view that action to review, clarify and/or modernise existing Transport Standards involve very different issues and should be the subject of separate recommendations.

Recommendation 2 refers to both modernising and updating the Transport Standards across a range of transport sectors. It is my view that the proposals outlined at pages 124–126 of the draft Report raise very separate issues and should be the subject of separate recommendations. Amending the Transport Standards for rail services, for example, is very different from providing more definitive guidance on accessible bus stop design, not least because amendment of the Transport Standards may entail reduced compliance obligations.

Clarification is also required to determine the exact composition of the committees identified in the draft report and the governance arrangements as they relate to the Transport and Infrastructure Council.

As currently drafted the draft Report proposes the establishment of a technical committee and a consultative committee. However the draft Report then talks about a sub-committee comprised of representatives from the Australian Government, the state and territory governments, public transport providers and operators and disability peak bodies and further talks about a main committee that reports to the Transport and Infrastructure Council.

Further, it would appear that work program identified in recommendation 2 contains both a technical and policy component.

Amendment to existing Transport Standards has a large technical component; however issues regarding the coverage of the Transport Standards to charter services, for example, are a policy issue, as are issues regarding the application of the Transport Standards to school bus services and community transport.

Given the difficulties in achieving progress with the recommendations from the 2007 review, I consider the recommendations should provide greater clarity regarding the intention in this area.

4. Complaints processes

Recommendation 3: That the Australian Government considers the concerns raised about the complaints process.

Reliance on individual complaints lodged with the Australian Human Rights Commission (AHRC) as the primary mechanism for driving compliance and addressing non-compliance with the Transport Standards has been a source of concern for some time.

As regulations developed under the *Disability Discrimination Act 1992 (Cth)*, the primary form of redress for those who consider an operator has not complied with the Transport Standards the only avenue for redress lies in making a complaint of discrimination to the Australian Human Rights Commission or related State bodies such as my own.

The approach provides limited capacity to monitor compliance with the Transport Standards and forces unrealistic expectations on individuals who wish to use the service.

This capacity of the AHRC to provide greater support for representative complaints was a matter being considered as part of the development of consolidated federal anti-discrimination legislation, which was subsequently withdrawn by, then Attorney-General, Mark Dreyfus QC.

Without further guidance from the current Australian Government on their intention with regard to the development of consolidated legislation, it is my view that the final review Report should make a more specific recommendation than that proposed above.

In particular I consider that the final Report should recommend the development of a complaints procedure specific to complaints arising from the implementation of the Transport Standards.

5. Whole-of-journey accessibility

Recommendation 4: That the Australian Government, jointly with state, territory and local governments, develop accessibility guidelines for a whole-of-journey approach to public transport planning by 31 December 2015.

I am strongly supportive of the development of accessibility guidelines for a whole-of-journey approach to public transport planning.

As outlined in my previous submissions, it is not uncommon for people with disability to report an inability to, for example, use public bus services because the footpaths and approaches to the bus stops provided are inaccessible. Similarly, I have reported on the difficulties with obtaining information on accessible services for people with disability. The term ‘islands of accessibility’ used in the draft Report is highly appropriate in this regard.

A whole-of-journey approach to accessibility will, in my view, highlight a number of gaps in the existing Transport Standards and identify a broad range of stakeholders, including Local Government authorities, with responsibilities relevant to the development of accessible transport services. Improved coordination will promote greater use of accessible services and provide a clearer understanding of compliance requirements.

As outlined in response to Recommendation 1, however, it is my view that until each transport sector has a clear understanding of what is required to meet the Transport Standards, through the establishment of mode-specific guidelines, there is little possibility of developing whole-of-journey accessibility guidelines that are genuinely capable of being implemented in a timely manner.

6. Mobility aid labelling scheme

Recommendation 5: That the Australian Government in collaboration with state and territory governments develop and implement a national motorised mobility aid labelling scheme.

I am strongly supportive of the introduction of a national motorised mobility aid labelling scheme.

The safe and efficient carriage of mobility aids across all major transport sectors is critical to the implementation of the Transport Standards and the lack of progress in developing a nationally recognised labelling scheme has limited the availability of information to people with disability when considering the purchase or upgrade of a mobility aid.

I note the work that is currently underway by the Ausroads Registration and Licencing Taskforce, including the intention to develop a labelling scheme to indicate what mobility devices meet the parameters used to developed the Transport Standards.

It is critical that the work of the Ausroads Taskforce is completed as a matter of priority and for that reason it is my view that this recommendation should be strengthened to include a completion date no later than 31 December 2015.

I note in this context that a new Australian Wheelchair Standard AS/NZS3695.2.2013 was finalised in September 2013 and consider that the development of any new labelling scheme should be co-ordinated with the labelling requirements arising from the implementation of that Standard.

In addition to the establishment of a national mobility aid labelling scheme, issues were also raised as part of the review in relation to mobility aid restraining systems. I consider that these matters also warrant ongoing attention.

7. Wheelchair -accessible taxis

Recommendation 6: That the Australian Government, jointly with industry, state and territory governments, develop consistent national compliance milestones and response times for wheelchair accessible taxis by 30 June 2016.

The provision of improved taxi services for people with disability who use wheelchairs is of critical importance, especially in areas where regular public transport services are limited.

Nevertheless the failure to address a range of challenges, arising in large part from the structure of the taxi industry, has led to slow progress in meeting the requirements of the Transport Standards.

As identified in the previous submission, the failure to improve the range and availability of accessible taxi services is limited less by the availability of taxi licenses than the structure of the industry itself and the failure of all jurisdictions to introduce measures to improve service levels.

Since 2008, the Tasmanian Government has provided for unlimited numbers of wheelchair-accessible taxi (WAT) licences. Despite this the take up of WAT licences has been low, particularly outside major metropolitan areas, and the failure to mandate minimum service standards has contributed to ongoing concerns about service levels.

Without addressing these matters it is unlikely that the Transport Standards compliance requirements will be met.

The 2007 review recommended the development of a staged implementation model together with appropriate performance measures to achieve improvements in accessibility. As noted in the draft Report, however, little progress has been achieved in relation to this matter.

It is now recommended that national, state and territory governments together with industry develop consistent national compliance milestones and response times for WATs.

Whilst I am not opposed to such an approach, my view is that unless national agreement is reached across all jurisdictions about the need to ensure that Transport Standards are reflected in licence conditions and other regulations, service levels are unlikely to significantly improve.

Issuing WAT licences alone is unlikely to address the concerns raised by people with disability who use wheelchairs. Various approaches have been adopted across jurisdictions to promote improved service levels and response times. These range from additional payment incentives to centralised booking systems.

Without the introduction of more targeted incentives and/or binding service obligations, those getting the benefit of a free WAT licence may not necessarily be adding to the availability of transport for wheelchair users.

For this reason I consider that any new national compliance framework should include mandatory minimum service-level requirements linked to the ongoing provision of the WAT licence. This could include the requirement to establish centralised booking arrangements and/or improved targeting of existing trip subsidies to improve incentives to drivers.

8. Disability Access Facilitation Plans

Recommendation7: That the Department of Infrastructure and Regional Development, in close consultation with the Aviation Access Forum, undertake a review of the Disability Access Facilitation Plan initiative by 30 June 2015, with the aim of improving the overall effectiveness and accessibility of the plans.

Requirements under the Transport Standards are intended to ensure that both aircraft and supporting infrastructure, including airports, are accessible to people with disability.

The Transport Standards apply to all aircraft that have a seat capacity of 30 or more.

Airline Disability Access Facilitation Plans have assisted the development of disability access arrangements by airlines, however the degree to which air services (including services associated with airports) provide access varies considerably and significant challenges remain for people with disability who wish to travel by air.

It is clear that there remains considerable divergence across airlines, promoted in part by the way in which the Transport Standards are cast, which has led to different interpretations of legal requirements. This is complicated by the way in which airline bookings are managed and the apparent failure of major airlines to ensure that staff members are appropriately trained in the correct procedures for assisting people with disability and to understand the obligations to provide accessible services to people with disability.

Access to air terminals also raises particular difficulties for people with disability.

These are all matters that I consider require attention in order for the Transport Standards to be fully implemented.

The Disability Access Facilitation Plans are currently developed by individual operators and are not legally binding. It is my view, however, that certain minimum standards must be set within the Transport Standards and drawn

down into individual plans. This is the approach taken in other international jurisdictions and one that I believe must be taken in Australia to ensure that air service providers meet their accessibility obligations.

As with the current review of the Airline two-wheelchair policy, I would expect that the review proposed in Recommendation 7 would be conducted publicly.