



Equal Opportunity Tasmania

Whole of Journey Guide

Submission by the Anti-Discrimination Commissioner (Tas)

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Introduction

Thank you for providing me with the opportunity to comment on the draft *Whole of Journey Guide: A Guide for thinking beyond compliance to create accessible public transport journeys* (the Guide). I note that the Guide has been developed in response to the second review of the *Disability Standards for Accessible Public Transport 2002* (Cth) (the Transport Standards) and I welcome the Australian Government's focus on this matter.

The Guide will, I believe, provide an important adjunct to the Transport Standards and help to focus policy makers and planners on improving accessibility outcomes for people with disability.

There are, however, several important issues that I believe should be taken into account in the further development of the document.

The following provides comments on these issues. Please contact me if you wish to discuss any matters further.



Sarah Bolt
ANTI-DISCRIMINATION COMMISSIONER (TAS)

Policy Context

The provision of adequate, affordable and accessible public transport underpins social inclusion in Australia. It is how people get to work, get to and from community events, get to meetings, go on holidays, go shopping and keep up their contact with friends and family.

Importantly, it is often the primary source of mobility for people with disability and others in the community such as the elderly who for various reasons are unable to drive or cannot afford the cost or upkeep of a private vehicle.

Around 18% (or 4.3 million) Australians have a limitation, restriction or impairment which is likely to last at least six months and restricts their everyday activities.¹ The majority of these (78.5%) have a physical condition. At the same time there are around 3.5 million older Australians (15.1% of the population) and this number is increasing.² Approximately half of Australia's elderly are also living with a disability.³

Rates of disability differ across Australia's states and territories, due in large part to differing age structures. In Tasmania where we have an ageing population we have the highest rates of disability in the country. Over one quarter (25.2%) of the Tasmanian population have a disability.⁴

Of those living with disability, the vast majority reside in households (95.5%) with a smaller proportion living in supported accommodation.⁵ Additionally around 54.3% of people with disability of working age are in the labor force, either working or looking for work.⁶

Access to accessible transport networks is critical. Of people aged over 5 years of age with disability living within households, 40.2% used public transport (1.6 million people) and whilst

¹ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2015* (Cat. No. 4430.0 released 18 October 2016)

² Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2015* (Cat. No. 4430.0 released 18 October 2016)

³ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2015* (Cat. No. 4430.0 released 18 October 2016)

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⁶ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2015* (Cat. No. 4430.0 released 18 October 2016)

many of these can use that transport with little or no difficulty, many rely on transport networks that are able to take account of their particular needs.⁷

As reported by the Australian Bureau of Statistics, of people with disability reporting difficulty in accessing public transport, 39.9% had difficulty accessing transport due to steps; 25.0% had difficulty with stops or stations; 23.3% had difficulty due to fear or anxiety; and 20.7% had difficulty due to a lack of seating or difficulty standing.⁸

All this means that without the provision of accessible public transport, people with disability face particular challenges in travelling independently and participating fully in work, cultural and social life in their communities.

The Tasmania Context

In Tasmania, the situation facing people with disability seeking to travel independently is affected by the lack of alternative modes of transport. Motorised urban travel in this State is largely restricted to private vehicles, public buses or taxi and ride-sharing services. Unlike many other parts of Australia, there are no urban trains or trams and few ferry services.

Additionally a high percentage of the population live outside of urban areas and our relatively small population increases the need for people to travel between urban centres to access key services and participate in work and community activities.⁹

The relatively high levels of disability within the Tasmanian community and the demographic and geographical distribution of our population mean that the Tasmanian government has particular challenges in ensuring equitable access to effective and accessible public transport. With such a small and highly dispersed population, viability is a particular pressure point particular for smaller public transport operators.

⁷ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2015* (Cat. No. 4430.0 released 18 October 2016)

⁸ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2015* (Cat. No. 4430.0 released 18 October 2016)

⁹ According to the Australian Bureau of Statistics, *Regional Population Growth, Australia, 2015-16* (Cat No. 3218.0) released 30 March 2017, Tasmania has a highly regionalised and dispersed population with around 57 per cent of our population living outside the capital city. In addition, over 60% of Tasmania's population live in socially disadvantaged regional areas and approximately one third of Tasmania's population is reliant on government pensions and allowances (Australian Bureau of Statistics, *Government Benefits, Taxes and Household Incomes* (Cat No. 6537.0)).

At the same time, however, it is even more critical that mass public transport networks, such as those operated by Metro Tasmania (our major passenger transport service provider) are accessible and provide the type of integrated service that is capable of servicing the fullest range of consumers.

Unfortunately, however, in some respects this remains far from reality and not only is there a long way to go to ensure that the Transport standards are fully met in this State, there are significant gaps in providing the type of end to end services that would make our public transport system truly accessible to all.

Accessibility of transport services in Tasmania

The following examines issues related to the provision of bus and coach services in Tasmania as this is the major form of mass public transport used in this State.

Issues identified include those raised during public consultations during the public forums held by Equal Opportunity Tasmania in March 2013 which sought the views of people with disability, older Tasmanians and their advocates about accessing public transport services. Those participating in the forums were people who are heavily reliant on bus transport to access work, education and training or to be able to interact with services in their normal day to day lives.

Many of the issues raised by stakeholders are relevant to a whole of journey approach. They relate in part to matters covered by the Transport Standards, but also raise issue related to impediments to making whole journey's accessible.

Metropolitan transport services in Tasmania

Metro Tasmania provides services to urban passengers within Hobart, Launceston and Burnie as well as a range of services to regional areas. Metropolitan services are specified within a contract between Metro and the Tasmanian Transport Commission and regional services are delivered under individual route contracts.

As at July 2016, Metro reported having a fleet of 219 buses, of which 113 (51.6%) are compliant with the Transport Standards requirement for accessible public transport.¹⁰ The company report that this enables them to provide 59% of their services with accessible buses in 2015-16.¹¹

In addition, Metro will receive funding of \$4.5 million per annum over the 2016-17 budget and forward estimates to deliver an accelerated replacement bus fleet. This funding, together with the additional \$13 million received in 2015-16 as an equity contribution will be used to fund Metro's bus replacement program over the next 3-4 years.¹²

Whilst the number of accessible buses available to service general access routes has continued to grow, information provided by stakeholders suggest that there continues to be issues with access to bus services and that the availability of accessible services remains limited even on the most commonly accessed bus routes.

One of the clear messages from stakeholders is that they cannot yet rely on the public bus system as their preferred form of public transport. People requiring physical access report that even where there is an expectation that a service will be accessible, it is can be the case that the

¹⁰ Metro Tasmania, *Annual Report 2015-16* p 8

¹¹ Metro Tasmania, *Annual Report 2015-16* p 8

¹² Metro Tasmania, *Annual Report 2015-16* p 18

bus supplied for the service on that route is not accessible, forcing the user to cancel travel plans, wait for another service or rely on Wheelchair Accessible Taxi services.

The level of concern expressed by stakeholders suggests that progress toward the provision of a truly accessible public transport system has not measured up to expectation. Many of the issues which impede the delivery of services of this kind relate to accessibility issues beyond those covered by the Transport Standards.

What we heard from Tasmanian stakeholders

'If 55% of buses on each route were accessible, it would mean that every second bus would be accessible. I have clients who go to work in wheelchairs and they find that even on the most commonly accessed bus routes not every second bus is accessible. So they can't rely on the public bus system to get to work on time unless they travel an hour or more earlier than they need to and that is not an option if they are reliant on a support worker to get to work on time. As a consequence they are forced into using WATs and this is unsustainable as the customers are often working on productivity based wage rather than even basic wages. They are very committed to getting to work, but the costs become prohibitive.'

'No predictable timetabling that allows people with disability to plan their travel.'

'Three different styles of accessible buses, not sure if they are trying to make up their minds about which buses they like. Been told the buses can't take scooters. I used to catch buses all the time from Claremont to the city. I got pulled off the bus one day and told I had to meet the CEO and was told I couldn't take my scooter on the bus because of safety standards. I transfer off it and they say I can't leave the scooter in the aisle. The driver does have to come down and assist (sometimes they get grumpy). The main reason is they can't provide one standard bus type which can accommodate all users. Some of the ramps do not allow for heavier wheelchairs. Every time they purchase a new style of bus there seems to be a problem. So now I have to ring up and see what type of bus is being used to see if I can get on it.'

'I know a story of two teachers who decided to investigate riding on a bus last week and it was the most nerve wracking experience of their lives. They couldn't understand the timetable even though they had a lesson the day before, they had money but there was no information about how much you had to pay, then there were steps up to the seats and the bus took off before they could sit down... it was like an amusement ride without the amusement.'

Communication of service information

A critical component of ensuring accessibility is access to service information.

There are two ways in which the communication of service information is critical to public bus and coaches services offering equitable services for people with disability:

- the provision of information about services in accessible formats; and
- the provision of the information about services that are accessible for people with mobility disabilities.

Accessible formats

The inability to plan around regular accessible services creates particular problems for people with disability that have work and other commitments

A major problem is the lack of accessible information about timetabling.

The compliance timetable for transport information states that 100 per cent of general transport information was required to be accessible to people with disability by 31 December 2007.

Material available by various bus and coach service providers indicates that compliance with this standard has yet to be achieved in any meaningful way.

The availability of reliable travel information in accessible formats is critical to enabling people with disability to make travel plans and ensure that they are aware of those services that meet their needs. The absence of mechanisms for conveying travel information in accessible formats means that people with vision impairments, for example, have to go to significant additional effort to ascertain what services are available and when.

While apps and others ways of relaying real time information digitally may be one solution to this issue, it is important to recognise that not all transport users will have access to these formats or be confident in their use. Alternative means of accessing reliable and up to date information to enable successful journey planning will also be required.

Information available to transport users should also include information the environment surrounding the public transport infrastructure itself.

What we heard from Tasmanian stakeholders

'I can't access the timetable if it is in print form or PDF. Where service information is provided online, information on timetabling has to be in accessible format.'

Reliance on internet based timetables excludes older people who do not have internet access.

'Changes to timetables and services are not communicated particularly well. Use small text or complex information may make it difficult for some users to know what is happening.'

'Not enough opportunities for pro-active planning in relation to accessible buses. Better to just go to the bus stop and wait.'

Information about accessible services

As well as having access to service information in accessible formats, people with mobility disability have a particular need for up to date and reliable information about which services on a route will be physically accessible.

While some service providers indicate that all services on a particular route are wheelchair accessible, passengers with mobility disability are in many cases required or advised to call in advance of their travel to check.

As a consequence, people requiring accessible metropolitan bus services are required to ring the bus company every time they wish to travel. For some users, phone communication presents its own particular problems (where verbal communication is impaired for example).

The effect of these arrangements is that passengers requiring wheelchair accessible services are required, as a matter of course, to do more than a person not requiring such a service, in that they must call the service operator to determine whether or not the service they wish to travel on will be accessible.

Because of this, many people with disability report that it impossible to plan ahead or to rely on buses as a primary form of transport.

The impacts include that people with disability who want to engage in paid or unpaid work on a regular basis, people needing to make bookings for appointments and people wanting to participate in education or training find that they cannot plan their travel arrangements in advance.

For example, a person may need to make an appointment to see a specialist when they are next in Tasmania, which could be several months hence. They cannot make such an appointment knowing that they can use public transport to get to that appointment in a timely way. When the day of the appointment arrives, they may find that they have to leave home or work hours earlier than they should need to because of when accessible buses are scheduled on the routes they need to travel on. They may even find that they cannot use the local bus service to get to the appointment because there are no accessible services scheduled such that they could be sure of arriving at their appointment in time. This is distinctly different from the experience of people without physical disabilities who can simply review the timetable at the time they are making their appointment and know that they are able to get to the scheduled appointment. Even if there is a change to the timetable in the interim, or a bus breakdown or delay, they will have a range of choices to achieve arrival at their appointment on time.

Similarly, a person who requires physically accessible buses who wants to apply for a job with normal working hours may find it difficult if not impossible to ensure they arrive at work on time each day using bus services. This is likely to result in them having to use wheelchair accessible taxi services to assist them when they find themselves stranded.

What we heard from Tasmanian stakeholders

'I've caught buses for many years and the timetable says the bus will be wheelchair accessible and then the bus that turns up doesn't turn out to be accessible and you have to wait another hour.'

'Is there a subsidy for having to ring up the bus company every time to check that the bus is actually accessible? It is costly for me to do so.'

'Even if there is a wheelchair accessible bus identified on the timetable you can't call and talk to a person because they won't understand me because of my disability. There was a proposal to have a text service to enable me to check but this has fallen by the wayside. I have made a complaint to Metro, but it hasn't been fixed. I didn't have this problem last year because the information was on the timetables, but they have taken the information off the timetables.'

'Sometimes the timetables are too hard to read (too small or not in an accessible format).'

'Some people find it easier to understand stop numbers and would find it useful if that information was on the timetable.'

'Twitter service to note bus is delayed (although sometimes it is after the fact).'

Pre-booking

The requirement to pre-book to ensure that wheelchair accessible vehicles are used is a common requirement with regard to coach services and non-metropolitan general access services in Tasmania. A number of bus operators provide a timetable that indicates that a route will be operated using an accessible vehicle, but require those wishing to use the service to pre-book.

EoT has been advised that in some instances despite the timetable indicating that an accessible bus is being used, in fact the vehicle used is not accessible. This prevents those who use wheelchairs from identifying accessible services by using the timetable alone, and means that people who have mobility disability are required to check for each journey whether the bus is accessible and in many cases book their journey in advance.

Part 27 of the Transport Standards provides that operators will supply all passengers with information necessary to use a transport service. Unless all passengers are required to pre-book a ticket, imposing as a condition of service the requirement that a person with disability must pre-book treats passengers with a disability differently from all other passengers and may amount to unlawful discrimination under both federal and State anti-discrimination law.

It is clearly arguable that the situation whereby passengers who have disability are required to pre-book in advance of other passengers and/or check with operators about the accessibility of

every service disadvantages people with disability more than other people and, as such, is likely to be unlawful.

What we heard from Tasmanian stakeholders

'At least one long-distance coach company says that people who use wheelchairs must book earlier than other travellers.'

In-service notifications

The identification of set-down points is a major problem for passengers with vision impairment. People with vision impairment using bus or coach services will often rely on the driver to inform them when they are at or approaching their stop. Equal Opportunity has received representations suggesting this system does not work consistently and that, on occasion, passengers with vision impairment have had to undertake a repeat circuit of the route because their stop was missed.

Standard 27.4 of the Transport Standards requires that all passengers must be given the same level of access to information on their whereabouts during a public transport journey and standard 27.2 requires that if information cannot be supplied in a passenger's preferred format, equivalent access must be given by direct assistance. The target date for 100% compliance with Part 27 was 31 December 2007 for all conveyances, including buses.

In situations where it is not the usual practice to provide regular information to passengers regarding where they are on a particular journey, such as is the case in relation to bus services that follow a set route, there is a need to identify and implement specific arrangements to assist people with vision impairment. The approach used to making these announcements must be reliable in all circumstances and training of staff should include instructions on how to provide assistance.

What we heard from Tasmanian stakeholders

'Key issue for people who are blind or vision impaired is that when they get on the bus they have to ask the driver to inform them when they are at their stop. We hear stories from people who have had to rely on this process ending up having to do two or three circuits to get to their stop or get off the bus much further along the route. Audio announcement on trains is a problem across Australia. These issues need to be looked at for all forms of transport.'

'As someone who is vision-impaired, it is important that bus drivers announce all stops. This informs blind and vision impaired traveller where they are on the route. Otherwise I don't know how far along the route I am and how far I have to go to get to my stop.'

'Need to look at how technology can assist with ensuring that bus stop announcements are made, possibly via implanting technology into bus stop poles that are triggered when the bus approaches.'

Transport Services

Some people with disability have raised safety issues in relation to wheelchairs being transported by bus or coach.

Part 9 of the Transport Standards covers the allocation of space within accessible vehicles, including standards relating to the restraint of a mobility aid. Standard 9.11 provides that an allocated space must 'contain movement' of a mobility aid towards the front or sides of the vehicle.

The Guidelines make reference to the use of both active and passive restraints.¹³ An active restraint anchors a wheelchair or mobility aid into an allocated space. A passive restraint system relies on a vertical surface, such as the sides of the vehicle, the back of fixed seating or a padded rail, to prevent a wheelchair from rolling or tipping.

The lack of seatbelt, locking device or passive restraint system heightens the risk that a wheelchair user may be thrown or tipped from the chair. Reports received by EoT suggest that people in wheelchairs are sometimes reluctant to travel on buses because of the risk of being thrown out of their wheelchair due to the failure to provide adequate restraining systems.

Wheelchair users are also reluctant to use public transport because the manoeuvring area provided is too tight, making it difficult for them to turn their wheelchair to get in and out of the allocated space and the vehicle.

The Transport Standards require compliance with the relevant standard for manoeuvring areas for 55% of each type of service by the end of 2012.

Standard 3.1 of the Transport Standards provides that circulation spaces are to be in accordance with Australian Standard AS1428.2 (1992) and standard 3.2 requires that passengers in wheelchairs or using mobility aids must be able to enter and exit the vehicle and position their aid in the allocated space. The standard provides that if this is not practicable, operators must provide equivalent access through the provision of direct assistance.

Based on the requirements set out in the Transport Standards, a passenger using a wheelchair or mobility aid on an accessible service should be confident that sufficient space has been allocated

¹³ *Disability Standards for Accessible Public Transport Guidelines 2002 (Cth) Pt 9, Div 9.2.*

to operate the wheelchair or aid independently into and out of the vehicle and the allocated space or that assistance will be made available to allow entry and exit from the vehicle.

What we heard from Tasmanian stakeholders

'People have reported to me that they are really reluctant to use Metro buses because even if the bus is an accessible bus, the manoeuvring space is too tight and it is really difficult to move the wheelchair around on board.'

Allocated space

People who use wheelchairs report that they are often forced to compete for space with other users (such as people with prams¹⁴) and this has resulted in a refusal to allow them to get on the bus due to the available seating already being taken.

The Transport Standards require that 55% of each type of service must be compliant in relation to allocated space by the end of 2012. Standard 9.9 provides that allocated space may be used for other purposes *if it is not required for use* by a passenger in a wheelchair or similar mobility aid. Standard 31.2 stipulates that, in respect of buses, 'operators must inform all relevant passengers ... that they should vacate an ... allocated space if a passenger with a disability requires it'. This is a standard that required 100% compliance by the end of 2007. This means that a person using a wheelchair should not be excluded from getting on a bus because there is already a person, other than a person with disability, using the allocated space.

Customer service

Stakeholders have also reported problems with drivers taking off before they are able to get safely seated and, in some cases, a failure to provide assistance to enter or leave the bus. Reports of drivers who 'act like it's a hassle' remain all too frequent.

There is currently nothing in the Transport Standards about these aspects of service delivery. Part 37 of the Guidelines indicates that the Transport Standards presume that operators will ensure that their staff members are proficient in interacting with passengers in ways that do not discriminate against them on the basis of disability. The Guidelines recommend that staff orientation and awareness programs include education about disability awareness and rights.

¹⁴ I note that I have also had reports from parents with prams that they have been refused carriage in a conventional bus and been told they have to wait for an 'wheelchair bus'.

What we heard from Tasmanian stakeholders

'Some drivers act like it is a hassle to get the ramp out for wheelchair access.'

'Drivers take off too quickly before passengers have had a chance to be safe in their seats.'

'Attributes of a good bus driver: friendly, kind, good manners, safe and a good driver.'

'You can get on a bus and sometimes the bus driver will just be off—whoosh—and it might mean that you fall over because you haven't got to your seat.'

'Drivers on the Metro buses don't help you. If you ask for help, the drivers just grumble.'

Alterations to services

Stakeholders also report that alterations to bus routes (particularly as a result of government or operator fiscal restraint) can result in the nearest bus stop being a large distance away from where the person with disability lives. In situations where movement is restricted, a change of routes can mean that either the option of bus travel is ruled out or it is necessary to use WAT services to provide transport to the nearest bus stop.

What we heard from Tasmanian stakeholders

'Bus routes have changed to remove back-street routes that were more available for people with disability. People have often made decisions about where they buy their home based on the closeness to a bus stop. The route changes and this means that a person has to walk a lot further or use a WAT to get to the bus stop and taxis won't pick up short jobs, this means that people are excluded.'

Bus stops and surrounding infrastructure

Accessibility of transport infrastructure such as bus stops continues to be an issue raised by people with disability.

The timetable contained in the Transport Standards requires that 90% of bus stops be compliant with the relevant standards by the end of 2017 and that 100% compliance is achieved by the end of 2022.

However, there continues to be only a limited number of accessible bus stops in the Launceston area, a city with over 64,000 residents. Similarly, in Hobart there are still many bus stops that remain non-compliant with the standards.

Concerns have also been expressed about access to the bus stops themselves: for example, the path of travel to bus stops being inaccessible because of the placement of poles or other infrastructure. Similarly the footpaths on the way to bus stops may not be suitable for people with mobility or vision impairment. Concern has also been raised about the lack of information identifying accessible bus stops.

The experience of users suggests that the provision of accessible infrastructure needs to be considered in the context of the whole built environment in which people with disability live.

On a positive note, the Tasmanian Government has recently introduced a Rural Bus Stop Upgrade Program to improve bus stops in rural areas and have committed to ensuring that all bus stops along major transport corridors will be compliant with the requirements of the Transport Standards and that surrounding infrastructure will also facilitate access. It is hoped that this initiative will result in the introduction of increased number of accessible bus stops and a broader focus on the areas surrounding these stops.

What we heard from Tasmanian stakeholders

'Bus stops near retirement and aged care homes are not sufficient. Often they will have a seat on one side of the street but not on the other. There is a need to ensure safe pedestrian access to bus stops.'

'Lots of clients have bus stops that are not accessible in any way and so even if there is an accessible bus, they can't use it. In the Clarence area, for example, there are some accessible public housing units (fabulous new housing, nearly all residents are in wheelchairs). But the footpath from that facility to the nearest bus stop is blocked by two poles: one an Aurora power pole and the other a light pole. I have had discussions with Council. They say they can't do anything about the power pole. Need to look at where the bus stops are. Consider the whole of the built environment, not just the immediate infrastructure. Public authorities need to cooperate to ensure that services are fully accessible.'

'There needs to be information at bus stops that indicate whether the bus stop is for all people (including in accessible formats).'

'As far as I know there is only one accessible bus stop in Invermay. There is also one in John Street. Who is responsible for making sure the bus stop is accessible: in some places it is the local Council, some places it is the State government and in other places it is the transport service operator.'

Interchanges

Whilst Tasmania's public transport services are relatively limited, there are several major interchange stations where passengers transit to other services or routes.

As outlined in the draft Guide there are a number of particular considerations in these areas, including the need for clear wayfinding aids, the appropriate layout and design of set off and boarding points and signage and related information available in a variety of formats.

Issues have been raised by stakeholders about the availability of services in these centres.

What we heard from Tasmanian stakeholders

Publicly accessible toilets at bus transit areas are useless to a lot of people with disability in wheelchairs because they cannot lock and unlock the door. It is embarrassing, lack of privacy.

Discrimination Law Obligations

Since the introduction of the federal *Disability Discrimination Act 1992* (Cth) (DDA) and the Tasmanian *Anti-Discrimination Act 1998* (Tas) (ADA) it has been unlawful for transport and related service providers to discriminate against people with disability by failing to make their services accessible.

Notwithstanding the scope of the Transport Standards, all transport service providers are required to meet legal obligations under national and State discrimination law. That is, if the Transport Standards do not deal with an issue, the requirements of the DDA and relevant State law such as the ADA continue to apply.

It is important that the terms of these Acts are clearly understood as they place obligations on the providers of transport and related services beyond those captured by the Transport Standards. This is particularly important in relation to services and facilities used at the beginning and end of transport journeys.

Disability Discrimination Act

The DDA makes it unlawful for the providers of goods, services or facilities to discriminate on the basis of his or her disability unless it would create unjustifiable hardship to do so. In effect this means that a provider of those goods, services and facilities cannot refuse to provide those services or make them available on less favourable terms. It is also unlawful to provide goods, services and facilities in an unfair manner.

Discrimination can either be direct or indirect. Direct discrimination occurs in circumstances where a person with disability is treated less favourably than a person without that disability in the same or similar circumstances. The failure to install kerb ramps for example, may directly discriminate against those people using wheelchairs or other mobility devices who wish to cross a street to access a bus stop or train station.

Indirect discrimination refers to circumstances where conditions or requirements are put in place that appear to treat everyone the same but have the effect of disadvantaging a person or group of people because of their disability. For example, requiring those who wish to make a claim under the transport assistance scheme to fill out a form in writing may amount to indirect discrimination if no suitable alternative is made available for those who are vision impaired or are unable to complete the form themselves.

The DDA also requires that service providers make reasonable adjustments to enable a person with a disability to access goods, services and facilities unless it can be demonstrated that making the required adjustments would cause 'unjustifiable hardship'. Responsibility for demonstrating that the adjustment would cause 'unjustifiable hardship' rests with the service provider.

Anti-Discrimination Act

The ADA prohibits discrimination on the grounds of a range of attributes or characteristics including disability, age and race. The Act applies to a broad range of public activities, including the provision of facilities, goods and services. This includes transport services.

The ADA also prohibits a person from engaging in any conduct which offends, humiliates, insults or ridicules a person on the basis of a range of attributes including race, age, sexual orientation, gender or disability.¹⁵ It also prohibits inciting hatred towards, serious contempt for, or severe ridicule of a person or group of persons on the grounds of a range of attributes including race, disability or sexual orientation.¹⁶

Disability includes physical limitations and disfigurement, sensory impairments such as sight or hearing loss, neurological conditions such as multiple sclerosis and motor neurone disease, psychological and psychiatric illnesses, learning and intellectual impairments, injury and illness. It does not matter how severe the disability is or for how long it lasts.

Protections against discrimination provided under the ADA apply to any conduct that occurs in Tasmania and protection is not limited to Tasmanians, but applies to any person who is discriminated against in Tasmania or by a person or organisation in Tasmania. So, for example, a person visiting Tasmania from interstate has the same protection against discrimination as a Tasmanian resident.

To be against the law discrimination must be related to a specified area of activity, such as employment; education and training; provision of facilities, goods and services; accommodation; membership and activity of clubs; administration of any law of the State or any State program; and/or awards, enterprise agreements or industrial agreements.¹⁷ The term 'services' is given a wide meaning and includes services connected with transportation or travel.

Discrimination prohibited under the Act includes both 'direct' and 'indirect' discrimination.¹⁸ Section 14 provides that:

- (2) Direct discrimination takes place if a person treats another person on the basis of any prescribed attribute, imputed prescribed attribute or a characteristic imputed to that attribute less favourably than a person without that attribute or characteristic.
- (3) For direct discrimination to take place, it is not necessary –

¹⁵ *Anti-Discrimination Act 1998* (Tas) s 17(1)

¹⁶ *Anti-Discrimination Act 1998* (Tas) s 19(b).

¹⁷ *Anti-Discrimination Act 1998* (Tas) s 22.

¹⁸ *Anti-Discrimination Act 1998* (Tas) s 14(1).

- (a) that the prescribed attribute be the sole or dominant ground for the unfavourable treatment; or
- (b) that the person who discriminates regards the treatment as unfavourable; or
- (c) that the person who discriminates has any particular motive in discriminating.

Indirect discrimination is defined in section 15:

- (1) Indirect discrimination takes place if a person imposes a condition, requirement or practice which is unreasonable in the circumstances and has the effect of disadvantaging a member of a group of people who –
 - (a) share, or are believed to share, a prescribed attribute; or
 - (b) share, or are believed to share, any of the characteristics imputed to that attribute –more than a person who is not a member of that group.
- (2) For indirect discrimination to take place, it is not necessary that the person who discriminates is aware that the condition, requirement or practice disadvantages the group of people.

Under the Tasmanian Act, an exception applies where a respondent can demonstrate that the discrimination was 'reasonably necessary' to comply with 'any law of this State or the Commonwealth'.¹⁹ Section 48(b) also provides an exception to the provision of goods and services, if that would cause unjustifiable hardship.²⁰ Those wishing to take advantage of the exceptions provided in the Act are responsible for making the case that the exception applies.

¹⁹ *Anti-Discrimination Act 1998* (Tas) s 24.

²⁰ *Anti-Discrimination Act 1998* (Tas) s 48(b).

Whole of Journey Approach

The key benefit of a whole of journey approach is to put the public transport user at the centre of transport system design.

To be successful it requires a focus beyond the individual compliance requirements contained in the Transport Standards to look at the way in which the transport system as a whole meets the needs of clients, including those with disability or other impairment.

Draft Guide

The examples and possible approaches to creating accessible public transport journeys in the draft Whole of Journey Guide provide a sound overview of the different aspects of transport system that must be accessible to enable a successful journey for all users.

It is unlikely, however, that every contingency will or could be identified. This is in large part due to varying circumstances facing individuals who use the system, the nature of the transport system itself and the particular characteristic of the area in which those services are supplied.

This is one reason why it critical that individual plans are developed by each jurisdiction and that transport systems remain flexible to adapt to varying needs as they arise.

This is in line with an approach that EoT is promoting in Tasmania across all sectors which emphasises the need for mainstream services to be both ready and responsive to the needs of people with disability.

The idea of ready and responsive services encompasses three key aspects:

1. The pro-active identification and removal of potential barriers facing people with disability accessing the services and having equality of opportunity in that access.
2. The development of knowledge and skills to be able to respond appropriately and inclusively when a person or groups of people with disability seeks further adjustments.
3. Awareness of procedures and a culture of service flexibility embedded in the organisation.

Ready and responsive service delivery models require a mix of approaches. The first is to identify and address major and predictable barriers to accessing services and the development of a planned approach to removing those barriers. Planning to remove those barriers should include a mechanism for consulting with different disability groups and involving them in identifying priority actions to optimise accessibility.

In addition, the system needs to be flexible and responsive so that it can adapt as needs change or in circumstances where people with disability require individualised responses to experience barrier-free access to services. To achieve this requires a culture of adaptability and a willingness to be flexible and responsive where required.

This is consistent with the proposed focus on a human-centred design approach referred to in the Guide.

It is important, however, that human centred design approaches are not seen as a substitute for the requirement to comply with baseline Transport Standards. Rather, they require added attention to the way in which those Standards are achieved and how responsibility for one aspect of a journey interacts with other parts of the system.

The adoption of a whole of journey approach will, in some instances, highlight issues that fall outside the scope of the Transport Standards. Failure to address these broader barriers to accessible public transport may constitute unlawful discrimination if left unattended.

What is required to make the shift?

Section 4 of the draft Guide suggests that all parties have a role to play in creating accessible public transport journeys.

What the Guide fails to do, however, is set out how this shift will occur.

I note in this context that the final report of the 2012 Review of the Disability Standards for Accessible Public Transport found that progress against the Standards is occurring at an uneven rate and the deficiencies continue to exist in the accessibility of conveyances and infrastructure.²¹ The Review also found that for 2017 targets to be met significant additional resources would be required.²²

Progress in implementing both existing Transport Standards and the additional effort required to adopt a whole of journey approach is unlikely to be achieved on the basis of the goodwill of parties alone.

What is required is a strong and enforceable commitment to developing a plan of action that takes into account the sort of planning and adjustment required to implement a whole of journey approach.

EoT strongly supports the approach suggested by the Victorian Equal Opportunity and Human Rights Commission as outlined in its response to the draft Report of the 2012 review of the Transport Standards. VEOHRC submitted as follows.²³

²¹ Department of Infrastructure and Regional Development, *Review of the Disability Standards for Accessible Public Transport 2002: Final Report* (Commonwealth of Australia, 2015) p 10.

²² Department of Infrastructure and Regional Development, *Review of the Disability Standards for Accessible Public Transport 2002: Final Report* (Commonwealth of Australia, 2015) p 10.

²³ Victorian Equal Opportunity and Human Rights Commission, *Submission on the draft report for the 2012 review of the Disability Standards for Accessible Public Transport 2002* (Submission No. 93, 11 July 2014) p 8.

Incorporating the whole-of-journey accessibility guidelines into state and territory governments' public transport action plans, accompanied by implementation plans, is one way of ensuring that these guidelines achieve real change. (footnote omitted) The Commission also considers that to achieve these outcomes, the whole-of journey accessibility guidelines should have the same status as the (Victorian) Disability Standards for Accessible Public Transport Guidelines 2004 (No 3) - that is, that passengers, operators and providers should be required to consult the accessibility guidelines when interpreting the Transport Standards. (footnote omitted)

Careful consideration will need to be given to how whole-of-journey accessibility will be defined, measured and reported. Consultation with people with disabilities, the disability sector and state and territory anti-discrimination bodies as well as state, territory and local governments, will be essential to this development.

Victoria's *Accessible Public Transport in Victoria Action Plan 2013-2017* incorporates a whole of journey approach. Importantly, the Action Plan prioritises access outcomes and an integrated approach to service delivery.²⁴ Actions identified in the Plan are combined with the Government's commitment to compliance with the Transport Standards. These actions are embedded in the function of Victoria's transport agency and provision is made for progress toward implementation to be regularly reviewed and reported on publicly.

Unless commitments of this nature are made by all relevant jurisdictions, it is unlikely that whole of journey approaches will be adopted or the relevant adjustments required to make journeys fully accessible put in place.

National Disability Services, for example, in its submission to the 2012 Review of the Transport Standards called for the development of a national plan for the delivery of accessible transport. Such an approach would 'help all stakeholders, including government agencies, service providers and individuals see the bigger picture and how accessibility can be achieved through collective effort.'²⁵ In NDS' view the plan should require 'regular reporting on progress which could feed into future reviews of the Standards'.

It is also important that jurisdictions acknowledge that the 2017 Transport Standards compliance targets are stringent – meeting them will require almost complete compliance with the Standards (90%). Slow roll-out of accessible infrastructure means that in many cases the overall timetable for the compliance with the Transport Standards cannot be met unless a more coordinated approach is adopted.

Agreed and enforceable commitments under a whole of journey approach developed with the involvement of all relevant stakeholders would assist in clearly establishing responsibility for

²⁴ State Government of Victoria, *Accessible Public Transport in Victoria Action Plan 2013-2017* (Department of Transport, Planning and Local Infrastructure, 2013)

²⁵ National Disability Services, *Submission to the 2012 Review of the Disability Standards for Accessible Public Transport 2002* (Submission No. 48 of 22 May 2013)

funding and future maintenance, particularly of those aspects of the journey that are not strictly related to the responsibility of transport operators.

Whole of journey accessibility approaches are being adopted in some jurisdictions, but the coverage is not universal. They rely heavily on transport industry partnerships and integrated planning approaches which, as indicated in the discussion paper, rest on bringing together a significant range of stakeholders. However there are significant challenges in getting all parties together and getting interpretations of standards and funding priorities aligned.

If there is no requirement to comply with the guidelines, then encouraging relevant stakeholders to participate may be difficult.

Integrated Transport Planning in Tasmania

Some small steps have been taken toward a more integrated approach to transport planning in Tasmania.

In June 2016, the Tasmanian Department of State Growth released a draft *Transport Access Strategy* for public consultation.²⁶ The aim of the Strategy is to better integrate planning and transport services, particularly for disadvantaged Tasmanians who find it difficult to access transport to work, education, or services. The draft Strategy acknowledges that whilst regular bus services form the 'spine' of transport services in Tasmania, the bus network alone cannot effectively meet the needs of all Tasmanians. In doing so, however, the Strategy focuses on filling transport gaps particularly in rural and regional areas rather than making existing services fully accessible.

The Transport Access Strategy is also linked to two major transport corridor plans. The draft Main Road Transit Corridor Plan²⁷ and the draft Greater Launceston Metropolitan Passenger Transport Plan²⁸ include more focussed attention on ensuring that major transport routes are more accessible.

These plans include commitments to improve bus stop infrastructure; address issues associated with pedestrian connections to major some major bus stops; and improve passenger service information.

As outlined in Metro Tasmania's submission on the 2012 Review, one of the main impediments to meeting the targets set out in the Transport Standards for bus stops is uncertainty about which

²⁶ Tasmanian Government, *Draft Transport Access Strategy* (Department of State Growth, 2015)

²⁷ Tasmanian Government, *Transit Corridor Plan: Main Road from Glenorchy to the Hobart CBD: Draft for public consultation* (Department of Infrastructure, Energy and Resources, June 2013)

²⁸ Tasmanian Government, *Public Consultation: Greater Launceston Metropolitan Passenger Transport Plan* (Department of State Growth)

entity has ultimate responsibility for funding upgrades.²⁹ At the same time Metro raised concern that many of the bus stops lack suitable access paths, appropriate kerb and guttering and suitable waiting areas. A whole of journey approach would represent a significant adjunct to the investment transport service providers have made in the provision of accessible vehicles. After all there is little point in investing in accessible vehicles if gaps are evident in the system as a result of inaccessible infrastructure which may require the driver, for example, to help people with disability get on and off the bus.

Clearly there remains a need to integrate the needs of people with disability into public transport planning in a holistic way and at a whole-of-State level starting with a comprehensive audit to determine where there is a need for improvements to achieve an accessible journey. This must of necessity involve seeking the views of people with accessibility needs who wish to use the system.

²⁹ Metro Tasmania, *Submission to the 2012 Review of the Disability Standards for Accessible Public Transport 2002* (Submission No. 15 of 8 April 2013)

