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Dear Sir or Madam,

Review of the Disability Standards for Accessible Public Transport : Draft Report

The NSW Disability Discrimination Legal Centre (NSW DDLC) welcomes the opportunity to comment on the Draft Report of the Review of the Disability Standards for Accessible Public Transport. This submission is also endorsed by the Kingsford Legal Centre.

NSW DDLC was established in 1994 to help people with disability understand and protect their rights under disability discrimination law. We do this through the delivery of direct legal services to people with disability, delivery of community legal education and undertaking policy work. NSW DDLC aims for a society where people will be able to participate in all aspects of life through the:

- removal of barriers;
- elimination of discrimination;
- empowerment of people with disabilities;
- promotion of awareness; and
- the ability to exercise rights.

NSW DDLC's objectives are:

- To promote community awareness of the potential to use discrimination laws to advance the rights of people with disabilities;
- To provide legal services for people with disabilities, their associates and representative organisations, who have been discriminated against;
- To ensure the effective participation of people with disabilities in the management and operation of the Centre;
- To reform laws and change policies, practices and community attitudes that discriminate against people with disabilities;
- To develop and be involved in appropriate networks; and
- To maintain the necessary infrastructures and administration systems in order to further the Centre's aims and objectives.

General comments

NSW DDLC provided a detailed submission to the Review of the Disability Standards for Accessible Public Transport 2002 to the Allen Consulting Group on 28 August 2007. The submission advanced nineteen recommendations supported by evidence and case studies. While some of those recommendations are recognised or considered in the Draft Report, the submission was largely ignored.

The general quality of the analysis in the Draft Report is disappointing. NSW DDLC notes a lack of independent evaluation and quantitative analysis throughout the report. It is difficult to ascertain the evidence on which some of the Draft Report's conclusions and recommendations are based. The Draft Report relies on qualitative data for its recommendations rather than objective and independent research. Consequently, many of the concerns experienced by people with disability in relation to access to public transport are not addressed.

One of the reasons for this is that the Draft Report did not appropriately weight comments from peak bodies representing people with disability compared to those from individual stakeholders or public transport providers.

The Draft Report also lacked an assessment of the efficiency of and compliance with the Standards. This is largely due to a lack of available data and the lack of mandatory reporting against the Standards. As the Draft Report states, there is no mechanism for reporting action plans and monitoring compliance against those plans and the Standards.

Monitoring compliance with the Standards

In order to ensure that public transport providers comply with the Standards, NSW DDLC is of the opinion that a monitoring system needs to be implemented. As mentioned above there is currently no mechanism for reporting action plans and monitoring compliance against those plans and the Standards. Enforcement of the Standards at present, relies on people with disability to bring complaints against a particular transport provider in relation to breaches of the Standards.

Paradoxically, under this 'complaints focussed' regime those who are often the most oppressed and least able, bear the burden for implementing the goals and aims of the Standards.

Draft Recommendation 6 provides "*HREOC to be provided with powers to refer cases of breaches of the Transport Standards directly to the Federal Court.*"

The NSW DDLC welcomes these new powers, but believes that this recommendation needs to go further. The Standards should also impose a positive duty upon public transport providers to report on their compliance with the Standards. This should include a mandatory duty to report action plans and compliance against those plans and the Standards to HREOC or another independent body given any issues that may arise by virtue of *Brandy v Human Rights and Equal Opportunity Commission* [1995] HCA 10.

The new consultative framework

Draft Recommendation 9 states “*APTAC and APTJC agree a new consultative framework with additional responsibilities for both committees.*”

The framework suggested by the review is extremely complex and convoluted.

The framework does not simplify the system but rather creates another layer of bureaucracy which may lead to further complications. The Draft Report makes the point that the APTJC has been working on developing a standard reporting mechanism but has to date, been unable to reach agreement about a preferred approach. Without simplification of this process NSW DDLC is concerned that improvements for people with disability may be delayed by complex bureaucratic processes between the committees.

The cost involved in establishing this consultative framework would be more effectively spent on setting up a monitoring and enforcement agency.

Reporting framework and data on patronage

Draft Recommendation 7 states the “*APTJC develop a mandatory reporting framework for Commonwealth, State and Territory governments and implement the framework by end 2008*”

This recommendation relies on APTJC and subcommittees. NSW DDLC has discussed above its concerns with the efficiency of this body.

NSW DDLC believes that option 6B is preferable to the Draft Report’s recommended option, 6E. Option 6B would allow for *HREOC to assume the role of coordinating and approving a standard compliance reporting framework.*

HREOC currently posts action plans voluntarily submitted by service providers on its website. The voluntary nature of this framework results in insufficient information being available to people with disability. For example, to date, airlines have not cooperated with the voluntary arrangement to publish actions on the HREOC website. For this option to be effective, reporting should be mandatory.

The use of Australian Standards

NSW DDLC supports the Draft Report’s finding that the use of Australian Standards as a reference within the Standards makes interpretation of the requirements in the Standards difficult for both providers and people with disability (*Review of the Disability Standards for Accessible Public Transport – Draft Report at 83*).

We agree that the Standards refer to an Australian Standard which is outdated, and appreciate that many of the Australian standards prescribed within the Standards are inappropriate. Access to the most up to date Australian Standards is important, both for people with disability, in order to fully be aware and informed of their rights, and for public transport operators in order to ensure compliance. Unfortunately, access to the most recent Australian Standards on the internet is too expensive for many people with disability.

As the Draft Report states, many of the Australian Standards were designed for use in buildings, also making compliance with the Standards difficult in some instances.

A more flexible, performance based approach should be implemented in order for public transport providers to achieve the required outcomes under the Standards.

For these reasons, NSW DDLC supports the Draft Report's recommended option (1A), which suggests making technical amendments to the Standards. We believe that this option has the potential to provide more consistency in the implementation of the Standards, and minimise incorrect or inappropriate prescription in the Standards.

However, for this option to be effective and appropriate it must involve adequate consumer consultation in relation to the technical amendments. Consumers should also form part of the technical expert group.

Mobility aids

Draft Recommendation 5 provides for *“An APTJC sub-committee to develop a national scheme for labelling mobility aids based on the specifications in the Transport Standards, and establish a clearinghouse of best practice examples of accessible public transport”*.

This is a welcome initiative which NSW DDLC supports. The recommendation may assist public transport providers and operators in understanding their obligations under the Standards.

As the Draft Report states, some public transport operators or providers have difficulty in, or are reluctant to accommodate some forms of disability equipment. This is often due to safety concerns or lack of training for transport operators on providing access to people with disability and the use of disability access equipment.

Draft Recommendation 5 should include a process to meet a requirement to train staff to proficiency in the resolution of competing safety considerations and requirements for accessibility.

However, Draft Recommendation 5 may be insufficient to ensure compliance by public transport providers in accommodating mobility aids especially where the operator is unfamiliar with or insufficiently trained in relation to a particular mobility aid. Where this situation arises, and a public transport provider or operator is reluctant to accommodate a mobility aid, for safety concerns or other reasons, these reasons should be given in writing and the passenger should be able to report this refusal to a monitoring body for investigation.

Air travel accessibility

In relation to air travel accessibility the Draft Report acknowledges that many issues have emerged since the introduction of the Standards. However, the Draft Report has not recommended any strategies to deal with those issues, nor does it recommend any solutions.

NSW DDLC is disappointed that none of the recommendations of the “Flight Closed” report were acted upon. This report was a joint report between the Public Interest Advocacy Centre (PIAC) and NSW DDLC and supported by a coalition of disability service organisations. It was submitted to the review in December 2007.

NSW DDLC notes that despite the joint submission by PIAC and NSW DDLC of the “Flight Closed” report the Draft Report failed to seriously consider compliance with Standards from the perspective of air travel, claiming a lack of information and other data.

Consequently, the recommendations contained in the Draft Report did not adequately address problems with accessibility of air travel or respond to the needs and concerns of people with disability.

This submission has largely focused on issues relating to the enforcement and monitoring of the Standards. The Draft Report claims that a lack of available compliance data made an analysis of the effectiveness of the Standards difficult. It failed to acknowledge however, that the collection of compliance data is difficult because such information is not monitored or enforced.

The review team's Draft Report in relation to air travel supports the assertions made throughout this submission that an enforcement and monitoring agency is vital to ensure compliance with the Standards.

Conclusion

The Draft Report has not provided solutions to effectively monitor and enforce compliance with the Standards. NSW DDLC urges the review team to reassess its Draft Report in light of the comments made in this submission. In particular, compliance with the Standards should not be reliant on individual complaints. Monitoring, reporting and enforcement powers should be granted to HREOC or another independent body in order to improve the lives of people with disability.

If you would like further information regarding these issues please contact either myself or Joanna Shulman, Principal Solicitor on (02) 9310 7722.

Yours faithfully

Geri Kaufman

Policy Officer
NSW Disability Discrimination Legal Centre