

JOINT INDUSTRY RESPONSE TO THE REVIEW OF THE DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT 2002

The submission detailed below has been prepared by the following (peak) PTSPo organisations represented on the Australian Passenger Transport National Advisory Committee (APTNAc):

- The Australasian Railways Association (ARA);
- The Bus Industry Confederation of Australia (BIC);
- The Australian Taxi Industry Association (ATIA); and
- International Association of Public transport (UITP).

This submission addresses high level aspects of the Disability Standards that have a multi-modal impact on the provision of public transport services. It is intended that issues or viewpoints specific to a particular mode / industry will be addressed by separate submissions from the industry affected. This submission therefore serves to complement, but not replace, individual submissions to the review from the above nominated PTSPo organisations or their affiliates. Attached also is a copy of the Presentation made by UITP to the Hearing held in Canberra earlier this year.

Members of UITP (Australia/New Zealand) will be making detailed individual submissions to the Review.

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Introduction

The 5-year review of the Disability Standards for Accessible Public Transport 2002 (Disability Standards) provides an important opportunity to check that these standards are –

1. efficient and effective at removing discrimination against persons on the grounds of disability; and
1. not creating unforeseen or unintended safety, operational or practical problems for disabled persons, public transport passengers in general, and the staff (including contractors) of Public Transport Service Providers and Operators (PTSPOs).

The review also affords an opportunity for stakeholders to propose amendments to the Disability Standards.

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1. Equal Access Versus Removing Discrimination

All PTSPs that are party to this submission support the spirit and intent of the Disability Standards and the Disability Discrimination Act 1992 (DDA).

However, it is matter of significant concern to PTSPOs generally that the legislation has progressively begun to be interpreted much more literally than was intended or envisaged. Worryingly, provisions and targets in the Disability Standards are being interpreted by many members of the Disability Community, and sector advocates, as a blunt instrument to remove discrimination no matter what the cost. Applying the Disability Standards in a literal sense without consideration of reasonable practicability can work counterproductively, especially when compliance becomes physically, technologically or economically impossible for PTSPOs. This submission contends that such an approach is at odds with the intent of the legislation, namely, to increase accessibility to, and by, public transport services.

As a case in point, compliant access paths on rail platforms may on many occasions only be achieved through the resumption of surrounding property and complete reconstruction of the rail station. While the work is technically feasible, the huge cost to the public purse, the lengthy administrative process involved in resuming property, and the disruption to existing services can effectively be prohibitive.

Pleasingly, many PTSPOs have developed a very strong and detailed understanding of the Disability Standards and their application by working with them on a day to day basis. We have sought to apply the Standards in the many and varied situations that characterise the broad nature and scope of the public transport sector in Australia.

As a result of this experience, and participation in forums such as APTNAC, the PTSPOs that are party to this submission believe that Industry is uniquely positioned to articulate opportunities to improve the Disability Standards. It is our view that a process should be established for industries, through their national peak bodies, to develop co-regulatory arrangements for the application and amendment of the Disability Standards as they apply to their respective sector.

As a further case in point, the Rail Industry has gone to great lengths to itemise significant and specific impracticalities of the Disability Standards, and has applied to the Human Rights and Equal Opportunity Commission (HREOC) for a range of exemptions for the purpose of providing clarity and certainty of obligations for both operators and passengers. Due recognition of these difficulties is evidenced by the granting of a number of temporary exemptions to the requirements of the Disability Standards by HREOC. In its own submission, the ARA will be recommending that these temporary exemptions be made permanent through specific amendments to the Disability Standards. These exemptions are currently being incorporated into a Rail Industry Code of Practice (Disability Code) by the Rail Industry Safety and Standards Board (RISSB) – which is itself soon to be accredited by Standards Australia.

From an industry perspective this rail Disability Code will provide practical advice and guidance to operators with a national approach on how to meet the requirements of the Disability Standards, and provide guidance on appropriate equivalent access provisions. A further benefit of the Code will be an increase in the consistency of approach being adopted by operators across Australia, thus providing people with disabilities with greater confidence and certainty on the layout and operation of public transport services nationwide.

RECOMMENDATION:

Properly developed and consulted industry based codes of practice should be established by the respective national PTSPo peak body, working in cooperation with HREOC, to –

- a. remove the need for complex and lengthy exemptions applications in the future;*
- b. generate approved and consulted equivalent access provisions; and*
- c. offer better guidance on where a case of unjustifiable hardship can be claimed.*

1. Conflict with Safety Standards

There is concern that requirements of the Disability Standards can at times conflict with workplace health and safety standards, as well as other legislative and regulatory requirements, that PTSPOs are obligated to meet.

Compliance with the Disability Standards has led to many instances where passenger safety, vehicle standards, occupational health and safety, and workplace practices have been compromised. As a consequence, industrial injuries have been sustained, passengers have been subjected to additional risk, and PTSPOs exposed to new legal liabilities.

For example, providing direct assistance to a wheelchair user boarding via a 1:4 ramp, considered accessible with assistance in Part 6.4(c), is deemed unsafe for staff under State / Territory based Health and Safety regulations. However, longer ramps are not practical in many circumstances because of restricted platform widths.

Another example would be the provisions for the gap to rail vehicles where there is a safety requirement to keep vehicles away from platforms and structures (i.e. operation standards require a minimum separation), whereas the Disability Standards' requirements specify a maximum gap. These two standards are in direct conflict.

As a final example, larger mobility aids such as motorised scooters pose restraint difficulties in taxis (as established by the Scooters in Taxis Sub-committee of APTNAC) and manoeuvrability problems in buses and rail cars due to maximum allowable vehicle design widths. Currently, there is no system in place for crash testing and certifying scooters or wheelchairs to assure PTSPOs, and their insurers, that these devices are safe for travel in the passenger compartments of taxis, buses, trams or trains.

In the view of the PTSPOs that are party to this submission, it is grossly unfair for any service provider, yet alone those operating small to medium sized passenger transport businesses, to be placed in a position where they are expected to make critical judgements that potentially trade off safety and compliance with requirements of the Disability Standards.

RECOMMENDATION

The Disability Standards require amendment to –

- a. remove uncertainty and ambiguity of obligation for PTSPOs;*
- b. establish a workable mechanism for resolving all potential areas of conflict, so that to the greatest extent possible, safety is not compromised as discrimination is minimised.*

1. Unrealistic Compliance Timeframe

When the Disability Standards' compliance timetable was originally designed, it would not have been reasonable to expect it to fully anticipate -

- a. the realities of future passenger transport demand by people with disabilities (i.e. as venues become increasingly accessible there has been consequent surge in the demand for accessible transport);

- b. the increased demand for public passenger transport services more broadly driven partly by escalating world oil prices, higher density urban planning, as well as community concerns about the environment;
- c. levels of state and federal government funding directed to accessible passenger transport services; or
- d. whether all of the requirements mandated were workable or achievable within the design and maintenance life of passenger vehicles operating in Australia.

Many PTSPs have struggled to keep pace with the rapid growth in demand for their services yet alone improve the relative quantity and quality of the accessibility of their services to levels compliant with the Disability Standards.

It is the view of the PTSPs that are party to this submission that it is both necessary and reasonable to reconsider the Disability Standards' timetable, and as necessary, reprioritise certain elements and their associated target dates. In the absence of unlimited resources, it is absolutely essential that PTSPs in partnership with Government(s) and the Disability Community pursue the elimination of discrimination in a structured manner that realistically seeks to deliver achievable outcomes in a sequence or order designed to promote the greatest benefit

For example lighting must be fully compliant by 2007, but hazard warning indicator tactiles need only be fully compliant by 2012. The costs of upgrading lighting are significant, but provide little benefit to the visually impaired, whereas tactiles on rail platforms and bus stops bring an immediate safety benefit to the visually impaired at considerably lower cost.

RECOMMENDATION:

Target dates in the Disability Standards be reviewed and amended for the purpose of achieving a better balance of achievable beneficial outcomes against those outcomes that are likely to take longer to achieve with potentially less benefit.

1. APTNAC – APTJC Effectiveness

The PTSPs that are party to this submission are members of APTNAC.

Notwithstanding our support of and participation in APTNAC, we hold concerns about the effectiveness of the APTNAC and the APTJC Committees in their dealings with issues that arose in the first 5 years of operation of the Disability Standards.

The structure and functionality of both these committees has been inadequate to progress a number of issues to a satisfactory resolution. This could have grave implications in the event of an incident or accident in the delivery of a passenger transport service where serious injury or death result. It is to be noted that APTNAC is merely an advisory committee, and the merit of maintaining APTJC as a separate committee is unclear.

As a case in point, the Scooters in Taxis sub-committee of APTNAC has identified that it may be unsafe to transport many of the motorised scooters and wheelchairs currently carried in the passenger compartments of taxis. Clearly, this is a matter requiring urgent further study, firstly to identify whether the problem extends to rail and bus applications, and secondly to develop and implement a solution such as a certification system differentiating mobility aids that are safe to transport from those that are unsafe. Disappointingly for Industry and the Disability Community, there is currently no further action being undertaken regarding this issue.

RECOMMENDATION

The Attorney General's Department should play a greater leadership role in the workings of APTNAC. The Commonwealth and State / Territory governments need to ensure that APTNAC is adequately funded and resourced.

1. Human Rights and Equal Opportunity Commission (HREOC)

HREOC has played a key role in keeping an even-handed approach to the implementation of the Disability Standards and in addressing exemption issues as they have arisen.

However, there is a concern amongst PTSPOs that discretion exists with complainants as to where they direct their complaints about disability discrimination in a public transport context. Presently, complaints can be directed to HREOC or to a respective State / Territory based Anti Discrimination Commission, Tribunal or Board. There appears to be no mechanism in place to ensure congruency of decision making between these entities, especially in terms of penalties, sanctions or remedies, and accordingly the potential exists for markedly different outcomes to spring from what are otherwise similar circumstances. This lack of national consistency creates uncertainty for PTSPOs.

RECOMMENDATION

HREOC should be appointed as the single body to deal with all complaints or other matters arising, in relation to both the Disability Standards and disability discrimination in a public transport context. HREOC's purview should be confirmed by intergovernmental agreement or other appropriate mechanism(s). All complaints dealing with disability discrimination in a public transport context presented to State or Territory Anti Discrimination Commissions, Tribunals, Boards, or Ombudsmen should necessarily be redirected to HREOC for its actioning.

1. Local Government

Part of the objectives of the Disability Standards was to ensure that the "whole of trip" eliminates as far as possible, discrimination for those with a disability.

While it is generally true for each of the different transport modes that PTSPOs have used their best endeavours to meet, or progress toward meeting, the Disability Standards, unfortunately, the same cannot be said for some local government authorities, in relation to the provision of infrastructure, access to services, bus stops, buildings and so on.

As a result, inaccessible surrounds in some local government areas effectively isolate fully compliant rail stations, bus stops and taxi ranks. Furthermore, bus stops in outer urban areas might not only lack concrete footpath access but not even have kerb and channel associated with them.

It is the view of the PTSPOs that are party to this submission that the levels of funding required by the Local Government sector to achieve outcomes compliant with the Disability Standards' timetable have not been made available. Accordingly, special State and Commonwealth assistance is urgently required and so is an extension of the compliance timeframe.

RECOMMENDATION

Alternative options should be developed to encourage the take-up of "accessible transport corridors" as a way of prioritising the creation of practical end-to-end travel solutions. Importantly, the option development process must involve all stakeholders to ensure that genuine practical outcomes are achieved, in priority order.