



HUMAN RIGHTS
COMMISSION

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To The Allen Consulting Group

Submission for the review of the *Disability Transport Standards for Accessible Public Transport 2002*

Thank you for the opportunity to lodge a submission to the review of the *Disability Transport Standards for Accessible Public Transport 2002* (Transport Standards). This submission details the Commission's views on the importance of accessible public transport in light of international, national and ACT human rights standards. It also includes the Commission's comments on most of the key review issues identified in the Issues Paper.

The provision of accessible public transport is important for two reasons: it protects people with disability from discrimination in the provision of services; and it protects and promotes other human rights that are linked to the provision of accessible public transport. In order to ensure that the Commission's comments reflect the reality of life for people with disabilities, we consulted a number of individuals and agencies that work with them. The submission highlights some practical problems that people with disabilities currently face in relation to public transport in the ACT. Drawing attention to the problems may assist to identify gaps in the Transport Standards and areas that may require amendment. Persistent problems reinforce the need for the Transport Standards to be promoted and in some areas, strengthened. This submission incorporates several recommendations for achieving these goals.

Role of the Human Rights Commission

The Human Rights Commission is established pursuant to the *Human Rights Commission Act 2005* (the HRC Act). One of the objects of the HRC Act is to promote the human rights and welfare of people living in the ACT by making recommendations to government and non-government agencies on legislation, policies, practices and services that affect vulnerable groups in the community.¹ This includes people with disability. The objects of the HRC Act also include promotion of the rights of users of disability services and improvements in the provision of disability services.² The Commission must encourage and assist users and providers of disability services to make improvements in the provision of services, particularly by encouraging them to contribute to the review of and improvement of service quality.³

¹ s.6(a)(iii) of the HRC Act.

² ss.6(b) - (d) of the HRC Act.

³ s.14(1)(b) of the HRC Act.

The ACT has its own human rights legal framework – comprising the *Human Rights Act 2004* and the *Discrimination Act 1991*. The framework reinforces that human rights belong to all people without discrimination and makes discrimination in the provision of services on the grounds of disability, among other grounds, unlawful.

The Human Rights Commission has a different structure to the Federal Human Rights and Equal Opportunity Commission (HREOC). In the ACT, there are three Commissioners with separate mandates, two of which are described in detail below. At HREOC the President heads the complaints handling area, whereas in the ACT all three Commissioners handle complaints in their respective areas. The Federal Human Rights Commissioner is also the Commissioner responsible for Disability Discrimination, and there are further Commissioners for Sex and Race Discrimination. In the ACT the Human Rights and Discrimination Commissioner performs all these functions, ie human rights, disability, sex and race (as well as other enumerated grounds of) discrimination.

The Human Rights and Discrimination Commissioner's mandate is to promote human rights in the ACT by administering the *Discrimination Act 1991* and the *Human Rights Act 2004*. The Commissioner's role is to: deal with complaints of discrimination (for example on grounds of disability); provide community education on discrimination and human rights; advise the Attorney-General on the operation of the Human Rights Act 2004; and review the effect of Territory laws on human rights and report in writing to the Attorney-General.

The Disability and Community Services and Children and Young People Commissioner's mandate is to deal with complaints about the provision of disability services and services for children and young people. The Commissioner's role is also to promote: improvements in the provision of disability services and services for children and young people; the rights of users of disability services and services for children and young people; and an awareness of the rights and responsibilities of users and providers of disability services and services for children and young people.

The ACT Government has set a disability framework for 2004-2008 and has also developed a ten-year vision for disability in the ACT.⁴ Both policies seek to promote the rights of people with disabilities to self-determination, respect, dignity and participation at all levels in the community. This is to be achieved by promoting an inclusive society, strengthening the capacity of people with disability to maximise control over their lives and also by developing a sustainable service sector. Any diminution of the Transport Standards would be contrary to both existing legislation and policy.

The practical importance of accessible public transport

The Human Rights Commission emphasises the need to promote the full and effective participation in society of people with disabilities on an equal basis with others. On a practical level, many people with disabilities are unable to drive, and are therefore often heavily reliant on public transport. As recognised in the Issues Paper, access to public transport provides an essential means to participate in the community. Accessible public transport allows many people with disability to access goods and services; attend medical

⁴ See *Future Directions: A Framework for the ACT 2004-2008; and Challenge 2014: A Ten Year Vision for Disability in the ACT*, available at <http://www.dhcs.act.gov.au/DisabilityACT/Future/FutureDirections.htm>.

appointments; visit friends or family and attend social, cultural and sporting events. Public transport plays a particularly important role in allowing people with disabilities to sustain employment. A lack of accessible public transport options and the high costs of alternative means of transport often outweigh the benefits of paid work.⁵

The Human Rights Commission of New Zealand published a report in October 2005 entitled “*The Accessible Journey: Report of the Inquiry into Accessible Public Land Transport*”, noting that the need for accessible public transport will only increase as the population ages. The Report found that:

*Many disabled people without accessible public transport are trapped in a lifetime sentence of poverty, marginalisation and dependency. They face enormous difficulties just getting to work, seeing the doctor, buying groceries and even meeting friends – all things that non-disabled people take for granted.*⁶

Structural mechanisms may be necessary to address systemic inequality. For example, in the United Kingdom, the Department for Transport has a ‘Mobility and Inclusion Unit’, the aim of which is “*to make policies and provision for public transport users, pedestrians and motorists that are acceptable, accessible, available, affordable and safe, and to promote diversity in transport policy development.*”

Improvements to public transport services benefit not only people with disability, but also improve accessibility for other members of society such as people with prams, young children and the elderly. As recognised in the *Human Rights Act 2004*, respecting, protecting and promoting the rights of individuals improves the welfare of the whole community.⁷ A national ABS *Survey of Disability, Ageing and Caring* suggests that governments should predict and provide for an increased reliance on accessible transport services.⁸ In relation to the ACT, the ABS forecasts a significant percentage increase in the number of people living in Canberra aged 65 and over, and an increase in the prevalence of disabilities across all age groups. The level of accessibility to public transport should accommodate this predicted increase.

International Standards

The provision and accessibility of transport services relates not only to discrimination: it is also vital to enable the realisation of other internationally recognised human rights. The World Programme of Action Concerning Disabled Persons emphasises the need to approach disability from a human rights perspective.⁹ Fundamentally, all international human rights derive from the inherent dignity of the human person, and apply without discrimination. The human rights to which accessible public transport relate are predominantly contained in the *International Covenant on Economic, Social and Cultural*

⁵ See Women with Disabilities ACT’s Submission to the ACT Legislative Assembly’s Standing Committee on Planning and Environment in relation to the Committee’s inquiry into ACTION bus services and the ACT Government’s *Sustainable Transport Plan*, May 2007, p 1, available at <http://www.parliament.act.gov.au/downloads/submissions/52%20ACTION%20Ryan.pdf>.

⁶ <http://www.hrc.co.nz/home/hrc/newsandissues/barrierstopublictransportdenyaccesstoopportunities.php>

⁷ Preamble to the *Human Rights Act 2004* s2.

⁸ *Survey of Disability, Ageing and Caring* ABS Cat No 4430.0, 2003.

⁹ Adopted by the UN General Assembly in December 1982, General Assembly Resolution 37/52, available at <http://www.un.org/esa/socdev/enable/diswpa00.htm>

Rights (ICESCR) and include the rights to work,¹⁰ education,¹¹ participate in cultural life¹² and the highest attainable standard of physical and mental health.¹³ Further, the *UN Convention on the Rights of Persons With Disabilities* (UNCROPD) also recognises the rights of people with disabilities to participate in recreation, leisure and sport,¹⁴ to live independently and enjoy full inclusion and participation in the community.¹⁵ Without access to public transport, people with disability can be limited in their capacity to exercise these rights.

Pursuant to the ICESCR, to which Australia is a signatory, each State Party undertakes to take steps to the maximum of its available resources, with a view to achieving progressively the full realisation of the rights contained in the Covenant by all appropriate means, including particularly the adoption of legislative measures.¹⁶ The Committee on Economic, Social and Cultural Rights (CESCR) makes clear that this phrase ‘imposes an obligation to move as expeditiously and effectively as possible.’¹⁷ Relevant to people with disability, the CESCR states “*even in times of severe resource constraints... the vulnerable members of society can and indeed must be protected.*”¹⁸ Australia is an affluent, developed, industrial country that ought to be moving quickly to achieve the full realisation rights for all Australians, and especially to remove barriers that prevent the full participation in society of people with disability.¹⁹

In relation to discrimination, the CESCR acknowledges that it may be difficult to combat discrimination in the exercise of economic, social and cultural rights effectively in the absence of a sound legislative foundation.²⁰ Further, whilst the ICESCR provides for progressive realisation of rights, the CESCR makes clear that the obligation to guarantee that rights contained in the Covenant will be exercised without discrimination, is of immediate effect.²¹ The Transport Standards, which seek to eliminate discrimination on the grounds of disability in the provision of public transport services, therefore constitute an important means of combating discrimination in the exercise of the rights of people with disability such as the right to employment, education and participation in cultural life.

The Commonwealth signed the UNCROPD on 30 March 2007. The combined effect of sections 7, 30 and 31 of the *Human Rights Act 2004* is that an interpretation of Territory laws, which is consistent with international instruments, is to be preferred. So, although Australia has not yet ratified this Convention, it provides a framework for statutory interpretation and application in the ACT. The definition of ‘international law’ includes not only treaties that Australia is a party to, but also relevant standards adopted by the UN

¹⁰ *International Covenant on Economic, Social and Cultural Rights*, Article 6; *Convention on the Rights of Persons with Disabilities*, Article 27.

¹¹ *International Covenant on Economic, Social and Cultural Rights*, Article 13.

¹² *International Covenant on Economic, Social and Cultural Rights*, Article 15(1)(a).

¹³ *International Covenant on Economic, Social and Cultural Rights*, Article 12.

¹⁴ *Convention on the Rights of Persons with Disabilities*, Article 30.

¹⁵ *UN Convention on the Rights of Persons with Disabilities*, Article 19.

¹⁶ *International Covenant on Economic, Social and Cultural Rights*, entered into force 3 January 1976, Article 2(1).

¹⁷ General Comment by CESCR 03 (1990) para.9.

¹⁸ General Comment by CESCR 03 (1990) para.12.

¹⁹ See ‘Review of the *Disability Discrimination Act 1992*,’ Productivity Commission Inquiry Report, No. 30, 30 April 2004.

²⁰ General Comment by CESCR 03 (1990) para.3.

²¹ General Comment by CESCR 03 (1990) para.1.

General Assembly. Article 9 of the UNCROPD relates to accessibility, and provides that '*States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to... transportation...*'²² Relevant measures include the identification and elimination of obstacles and barriers to accessibility. States Parties are also required to take appropriate measures to '*[d]evelop, promulgate and monitor the implementation of minimum standards and guidelines for the accessibility of facilities and services open or provided to the public.*'²³

In our view, Australia is under an international obligation to achieve full realisation of the ICESCR and UNCROPD rights as quickly as practicable. Compliance with the Transport Standards should, therefore, be required within the tightest possible timeframe.

National Standards

The objects of the *Disability Discrimination Act 1992(Cth)* (DDA) are to eliminate discrimination on the ground of disability, ensure equality before the law of people with disability and promote recognition and acceptance within the community of the rights of people with disability.²⁴ The DDA makes it unlawful to discriminate against a person in the provision of services on the grounds of disability.²⁵ However, if an action complies with the Transport Standards, it is precluded from being unlawful under the DDA.²⁶ In order to protect people with disability from discrimination and strive to achieve the objects of the DDA, it is therefore imperative that the Transport Standards are set to the highest possible standard, and that compliance is required within the tightest practicable timeframe.

Practical problems

The following section identifies some of the main problems we are aware of faced by people with disability in relation to public transport in the ACT. This information is primarily drawn from the Commission's consultations with individuals as well as with representatives from organisations.²⁷ The Commission also analysed issues raised in various discrimination complaints we handled and examined submissions made to a Legislative Assembly Committee inquiry into the provider of bus services in the ACT, ACTION buses.²⁸ Consistent with the primary purpose of the Transport Standards, the main focus of this section is accessibility.

ACCESSIBILITY TO CONVEYANCES

Accessible buses

²² Article 9(1).

²³ Article 9(2)(a).

²⁴ *Disability Discrimination Act 1992* s3.

²⁵ *Disability Discrimination Act 1992* s24(1).

²⁶ *Disability Discrimination Act 1992* s34.

²⁷ The Commission consulted with four organisations that provide services to or represent people with disabilities and 10 individuals with disabilities.

²⁸ ACT Legislative Assembly Standing Committee on Planning and Environment Inquiry into ACTION bus services and the ACT Government's *Sustainable Transport Plan*. Submissions available at <http://www.parliament.act.gov.au/committees/index1.asp?committee=55&inquiry=712&category=14>.

On a positive note, the increased number of wheelchair accessible buses has improved access for some people with reduced physical mobility.

However, several practical problems remain. People with vision impairment have encountered particular problems with the lowering of accessible buses. First, accessible buses aren't always lowered (for example, it appears that they cannot be lowered when the bus is on a slope). Secondly, people with vision impairments have no way of knowing whether a bus has been lowered, and some report having tripped when boarding and/or leaving accessible buses. A simple solution would be the introduction of an auditory signal to indicate that the bus is being lowered.

The absence of an anchoring device that can fasten a wheelchair to prevent it from sliding during travel can present a safety problem for wheelchair users on accessible buses. The Commission notes that the standards require grab rails in allocated spaces, (Part 11.5 – 11.7) but emphasises that this does not meet the safety and security needs of all wheelchair users, such as those who lack upper body mobility or strength. Further, the floor of buses can become slippery (especially when wet) posing another safety risk for wheelchair users. Suggestions have been made for the installation of dimpled floor surfaces in the front area of buses and in the wheelchair bay and the installation of some mechanism to better secure wheelchairs. The Commission recognises that the use of a device to 'anchor' or secure a wheelchair may require additional assistance. If the person with a disability requires a carer in order to travel independently then this carer may assist and should be permitted to access the conveyance free of charge. Any anchoring device should be as easy to operate as possible, to reduce the need for assistance.

Although most feedback about the way in which bus drivers treat passengers in wheelchairs has been positive, some people identified a need for disability awareness training for bus drivers. Some expressed concern as to whether drivers receive any training, let alone training of an adequate standard. One person pointed out, for example, that not all bus drivers know which way people in wheelchairs should face while the bus is moving. The Commission notes that pursuant to Article 9(c) of the UNCROPD, States Parties undertake to '*[p]rovide training for stakeholders on accessibility issues facing persons with disabilities.*' It is essential that bus drivers be adequately trained to improve passenger safety and confidence, and the Commission recommends that this be a compulsory requirement.

Only a limited number of bus routes are designated as being specifically accessible. This does not improve access for people needing to travel on routes other than main routes. Further, complaints have been made that accessible buses are not always used as advertised on accessible routes. Whilst the ACT Government is on target in relation to the number of accessible buses required to be in place, the Commission notes that having a number of accessible buses is only the first step in improving accessibility. The Transport Standards include no provisions relating to required proportions of bus routes for accessible buses. The Commission has previously noted that '*[t]he failure to provide accessible buses on sufficient scheduled routes meaning that a person using a wheelchair has to wait longer or travel a longer and/or less convenient route may ... ground a complaint of disability*

*discrimination, [under ACT legislation].*²⁹ This is an important issue, which should be addressed by an amendment to the Transport Standards.

Recommendations

Include new parts in the Transport Standards requiring:

1. A minimum proportion of bus routes to be designated as accessible, and accessible buses to travel on accessible bus routes with adequate frequency.
2. An auditory signal to sound when accessible buses are lowering.
3. A device to be installed in allocated spaces to safely secure wheelchairs during travel, operated with assistance if necessary.
4. If a device were to be installed then it would be necessary to ensure that a pictorial card was available in every accessible bus to demonstrate how to correctly secure wheelchairs.
5. Dimpled floor surfaces to be installed in allocated spaces on accessible buses (Part 10).
6. Drivers of accessible buses to undertake disability awareness training, including practical demonstrations on safety and assistance issues.

Standard buses

The main complaint about ACT bus services is the low frequency of services during off-peak times, especially early in the mornings, later in the evenings and on weekends. This poses a particular problem for people with disability in relation to work, as it limits their opportunities to work casual hours or night shifts. Whilst this may not constitute a suitable matter for a standard, the Commission believes that this is a significant barrier to accessibility that should be addressed, perhaps in the ‘Purpose’ section of the Transport Standards.

On many stops in the ACT, bus users are required to ‘flag down’ buses. This causes particular difficulties for people with vision impairment who may not be able to see bus numbers from a distance (or at all). The only way for them to ensure they catch their bus is to flag down every bus. Some users reported that that practice irritated some drivers because of the delays it causes. When more than one bus is approaching, it can be hard for a person with vision impairment to see beyond the first bus, and have the opportunity to hail the second bus. Also, the Commission heard of situations in which bus drivers have failed to stop or have driven off too soon even once the driver has seen that the passenger intending to board the bus uses a guide dog for mobility.

The current ticketing system for ACTION buses is also a major concern. Purchasing and/or validating a ticket on a bus can be challenging for a person with physical impairments or intellectual disabilities. The significance of accessible ticketing systems was highlighted in one of the leading anti-discrimination cases, *Waters v Public Transport Corporation*³⁰. In that case, the High Court found in favour of the complainants who argued (after the removal of conductors from trams in Victoria) the introduction of a

²⁹ See Human Rights Commission’s Submission to the ACT Legislative Assembly’s Standing Committee on Planning and Environment in relation to the Committee’s inquiry into ACTION bus services and the ACT Government’s *Sustainable Transport Plan*, 25 July 2007, p 6.

³⁰ [1991] HCA 49.

scratch ticket system indirectly discriminated against them on the ground of disability by imposing a condition or requirement that disadvantaged them. Whilst the Transport Standards include provisions for fare payment and ticket validation systems,³¹ the Commission is concerned that it appears that ‘Payment of Fares’ is not listed in the compliance timetable.

Another problem for people with vision impairment is the proximity of priority seating: the seats in buses that are labelled ‘disabled’ often face one another and rarely allow enough space for a guide dog, especially if there are people occupying both seats.

Recommendations

7. Introduce a standard requiring buses to stop if it appears that a person waiting at a bus stop has vision impairment indicated by the use of a cane or guide dog.
8. Modify the standard relating to priority seating (Part 31) to include more detail about minimum spacing for priority seating.
9. Incorporate into the ‘Purpose’ section of the Transport Standards recognition of the need to be mindful of people with disabilities in the planning and provision of services. Compliance with the Transport Standards will not guarantee adequate public transport services for people with disabilities: their needs must also be taken into account in planning timetables, accessible routes and fare structures.
10. 100% compliance should be required by the next target date for standards relating to the payment of fares. This is essential for public transport users who have disabilities, and is not an overly onerous request to make of providers and operators.
11. Introduce a standard requiring the drivers of all buses to undertake disability awareness training.

Wheelchair Accessible Taxis (WATs)

Despite the requirement in Part 1.2 of Schedule 1 of the Transport Standards that response times for accessible vehicles are to be the same as for other taxis by 31 December 2007, the main issue that the Commission has identified in relation to Wheelchair Accessible Taxis (WATs) relates to the timeliness and reliability of WAT services. Consultations revealed that WATs are often late, and although booked in advance, sometimes fail to turn up. This is supported by the findings of a community consultation conducted in late 2006 by the Public Transport Regulation Unit (within the ACT Department of Territory and Municipal Services), which identified that the main issue relating to WATs is the unreliability of the current networking system. One wheelchair user told the Commission that she believes that WAT services have become worse over the past five years and no improvement that might be expected as a compliance date approaches, is apparent.

Inadequate WAT services can adversely affect a range of human rights, including the right to the highest attainable standard of health, as people with disabilities cannot rely on pre-booked taxis to deliver them on time to medical and related appointments. The Commission suggests that an additional means of promoting compliance with the response times requirement would be for providers and operators to improve their complaints procedures. This may result in holding individual drivers accountable for failures to provide a person with disability with the same service provided to people without

³¹ See Transport Standards, Part 25.2.

disability. It should be noted that under the *ACT Discrimination Act* there is no “comparator” test that applies to all other Australian jurisdictions – there is only a requirement that a person has been treated unfavourably.

Delays in response time also appear to be linked to there being an insufficient number of WATs. The Commission is concerned that the Transport Standards do not appear to require a certain percentage of *all* taxis to be compliant with relevant standards by a certain date. For example, whilst the Transport Standards require 25% of all buses to comply with the allocated space provision by 31 December 2007, they only require 25% of all *accessible* taxis to comply with the allocated space provision, rather than 25% of a taxi fleet.

Other complaints identified include the cleanliness of WATs, the low standard of WAT vehicles and equipment, the cost of WATs and problems with WAT subsidy vouchers. Some people have also complained that several WAT drivers treat their passengers badly, which dissuades them from wanting to travel in WATs.

Recommendations

The Transport Standards should be amended to provide for:

12. The provisions relating to accessible taxis to be amended so that allocated spaces are specified as applying to ‘taxis’ not just ‘accessible taxis,’ so that a percentage of *all* taxis must comply by the target date.
13. A standard requiring the drivers of all WATs to undertake disability awareness training.
14. A pictorial instruction card that is available in every WAT at all times, to assist the driver when securing a wheelchair.

Taxis

People with vision impairments reported particular problems with standard taxi services, due primarily to poor driver attitudes. It is generally impossible for people with vision impairments to direct a driver to a destination when they cannot see where they are going themselves. The problem can be intensified when drivers are not familiar with the area and/or do not speak English fluently. The Commission heard reports of drivers becoming angry with passengers, dropping them off at the wrong destination, causing them to become lost, or returning them to where they started. People with vision impairments also reported concerns about overcharging, as they cannot see the meter. It has been alleged that drivers have sometimes taken a longer route or kept the meter running while they read a street directory. Of course passengers without disabilities also make such complaints. However, the impact on people with disabilities is much greater. Finally, the drivers of some booked services have reportedly driven away and logged the job as a ‘no job’ once they have seen that the passenger has vision impairment, especially if accompanied by a guide dog.

Many people reported dissatisfaction with the taxi subsidy scheme, citing particular problems with the eligibility requirements, alleged exploitation by drivers, the limitation on the amount of vouchers permitted per person, and the fact that the level of subsidy no longer accurately reflects the cost of an average journey as the subsidy has not increased for some years notwithstanding increases to taxi charges.

It was reported that private vehicles often stop in some taxi ranks in the Canberra city area whilst waiting to pick someone up. People with vision impairments have reported getting into private vehicles inadvertently. This situation causes embarrassment and is potentially dangerous. The Commission notes that the Transport Standards require raised taxi registration numbers to be placed on every taxi on the exterior of passenger doors forward of the handle (Part 17.7), and that this standard is to be fully complied with by 31 December 2007. It appears that few ACT taxis, if indeed any, comply with the standard currently.

The Commission understands that the relevant ACT Government Department already issues regular reminders of compliance obligations. Waiting until the last moment to comply with a standard would not sit comfortably with the purpose of the standards.

Recommendations

The Transport Standards should be amended to provide for:

15. Require drivers of all taxis to undertake disability awareness training, perhaps as a condition of licensing.
16. Increased funding should be provided for taxi subsidies.
17. Ensure that providers and operators (of all types of conveyance) alerted or reminded several months before each target date of their obligations for compliance, and be required to report on progress towards compliance.

Airlines

Comments about airline service varied with some users speaking very positively of the helpfulness of airline staff. Others reported that service and assistance to people with mobility impairments on airlines has decreased in the past few years. Specific problems include inconsistent use of lifting devices and damage caused to expensive wheelchairs due to poor handling and storage. Also, some people claimed that airline staff are not well trained in dealing with people with disabilities, especially those who require assistance to transfer from a wheelchair onto an aircraft seat. Other people reported that guide dogs were not allocated a seat even when booked and were forced to squeeze into the very small area of foot space, or even sit in the aisle. This is contrary to Part 28.3 of the Transport Standards, compliance with which is required by 31 December 2007.

Recommendation

18. Introduce a standard requiring all airline staff to undertake disability awareness training.

ACCESSIBILITY OF INFORMATION

Buses

People reported general satisfaction with the ACTION bus phone service and with the helpful attitude of ACTION staff. However, many people expressed frustration at not being informed of changes to timetables and bus routes, which happened several times in

early 2007 in Canberra. People have also reported that information regarding accessible buses is insufficient, and that it can be difficult to work out when accessible buses are available.

People with vision impairment raised concerns about accessibility of websites for both buses and taxis, as some can be difficult to navigate with speech based screen readers.

Concerns have also been raised about information at bus stops. Whilst it is acknowledged that information regarding stoppages or significant delays is often posted on notices and announced over the speaker at bus interchanges, this information is rarely available at bus stops outside of interchanges. The lack of information at bus stops can result in people with a vision impairment waiting unnecessarily long periods if they do not have a mobile phone to call ACTION directly. Likewise, if there is no written information at bus stops, people with hearing impairment or those who are Deaf may be left unaware that there has been a change to the service.

We understand that a program of upgrades to bus stops is currently underway in the ACT and that accessibility of all new bus stops is a contractual requirement. Accessibility for people with vision and hearing impairments could be greatly enhanced if public announcement systems are used regularly to announce the arrival and imminent departure of buses as well as stoppages or significant delays and real time displays are available.

Airlines

The new system of using a touch screen to retrieve a boarding pass is not appropriate for people with vision impairments, and timely assistance is not always forthcoming particularly in peak travel times. It was also reported that flight safety procedure cards are rarely offered in Braille.

Taxis

Feedback indicates that the voice operated system used by the major provider in the ACT for booking taxis, while improved, remains frustrating and/or difficult to use for some people with disabilities. It is very difficult for people with vision impairments to get transferred to a human operator to inform them that they have an impairment because the system automatically loops callers back to the automated system if there is a queue of people waiting to speak to a consultant. This system can also be difficult for people with hearing impairments or speech impediments.

One taxi service has recently introduced an E-mail booking system. This was welcomed as an alternative to the voice operated system but could be improved by inclusion of a field to allow identification of special needs.

ACCESSIBILITY OF INFRASTRUCTURE

Bus Stops

During consultations, the Commission received feedback regarding the layout of bus interchanges. People with vision impairments explained that there is little consistency in the physical design or layout of bus interchanges across Canberra, which makes it difficult

to navigate independently. Frustration was expressed about the placement of Tactile Ground Surface Indicators (TGSI) at some bus interchanges. We were told that some lead to useless destinations, including into brick walls (e.g. at the Tuggeranong interchange). A suggestion was made that a tactile number should be placed on a pole at the same place at each platform, so that people with vision impairment can identify the correct platform. While the Commission recognises that there are individual standards that relate to bus stops covering matters such as TGSI, there is no standard regarding the overall layout of interchanges.

People also reported that toilets at some bus interchanges are not clean and/or are located in unsafe areas. The public toilets at Woden Interchange, for example, are located in an isolated place some distance from the Interchange. This can be discomforting and potentially dangerous, and reduces the accessibility of these facilities.

Recommendations

19. Consider introducing standards specific to interchanges that require consistency in layout. Consider requiring a tighter timeframe for compliance with all standards for main interchanges.
20. Consider a standard requiring poles with tactile numbers to be placed at each platform at interchanges.
21. Require regular audits to ensure that TGSI are correctly placed and that any upgrading or maintenance work that is carried out does not interfere with TGSI pathways.

Airlines

One person reported positively on Canberra airports has improvement to ramps and air bridges, which increases accessibility for people with mobility impairments.

CLARIFICATION OF RIGHTS AND OBLIGATIONS

The vast majority of people the Commission spoke to were not aware of the existence of the Transport Standards or Guidelines. Those who are aware have not necessarily read them. The Commission is concerned that the Transport Standards, especially the compliance timetable, are not well promoted and may be difficult to understand. Knowledge of the standards and compliance dates is essential to ensure the Standards are as accessible as possible both for operators who need to ensure compliance and service users whose experiences provide the litmus test of whether the Standards achieve their aim.

The Commission has been unable to access sections of the Australian Standards that are referred to in the Transport Standards. As far as the Commission is aware, these Standards are not accessible free of charge: in fact, access is quite expensive. Whilst operators and providers no doubt have access to these Standards, most transport users would not. Therefore, some of the rights of users and the obligations of operators and providers are unclear and inaccessible.

Recommendation

22. The existence of the Disability Transport Standards should be more publicly and effectively promoted and the public should be easily able to access information about accountability mechanisms.

CERTAINTY OF PROCESS

Results of the Commission's consultations reveal that people with disabilities are generally not aware of how to make complaints that might be related to non-compliance with the Transport Standards. In relation to the process of making a complaint to a particular transport service provider, a general concern was raised that there are no key performance indicators. It appears that complainants are not provided with information indicating how long they should expect to wait for a response, how their complaint will be dealt with and where they can go for additional assistance if they are not satisfied with the outcome of the complaint resolution process.

Another issue of concern to the Commission in relation to certainty of process, is the impact that the Transport Standards have on State and Territory law. The Transport Standards purport to be national, but the way in which they interact with State and Territory law is not settled. As far as we are aware, there are no decisions of courts or tribunals that consider the impact of the Transport Standards on State or Territory law. In the Human Rights Commission's view, compliance with the Transport Standards would not constitute a complete defence against a discrimination complaint under the *Discrimination Act 1991 (ACT)*. The Commission has received legal advice which confirms that compliance with the Transport Standards does not, of itself, exempt a provider or operator from liability for a complaint under the *Discrimination Act 1991 (ACT)*, although it might be relevant to considering the unjustifiable hardship test. Yet the Commission emphasises that seeing that the purpose of the Transport Standards is to achieve certainty and consistency, it is important that their interaction with State and Territory law is further clarified. Consistency is of particular importance in the ACT, due to the high rate of people commuting between the ACT and NSW. It is also important for service providers, to ensure that they understand their obligations.

COMPLIANCE TIMETABLE

Several of the people with whom the Commission consulted expressed concern about the length of the compliance timetable, and many of them believed that the overall timeframe should be reduced to 10-15 years.

In relation to bus accessibility, the timetable allows the full 20 years for all buses to be accessible. The Commission believes that in light of Australia's relative affluence and the need to promote the realisation of the rights of people with disabilities, this time frame is too long. A partially accessible fleet does not automatically translate into the same level of improved accessibility for people who can only travel on accessible buses. People are still constrained by having to plan to use buses, and their plans are further restricted by the limited amount of accessible routes.

One stakeholder drew the Commission's attention to the lack of Commonwealth funding to States and Territories to promote the Standards, to meet the target dates and to ensure compliance. Pursuant to the ICESCR, to which Australia is a signatory, each State Party undertakes to take steps to the maximum of its available resources, with a view to

achieving progressively the full realisation of the rights contained in the Covenant by all appropriate means.³² The CESCR explains that measures which may be considered appropriate include financial measures.³³ Arguably, the Commonwealth ought to provide additional funding to States and Territories to expedite compliance with the Transport Standards in order to ensure that the rights of people with disabilities are enhanced and that compliance with the provisions of the new UNCROPD is assured.

POSITIVE DUTY TO PROMOTE EQUALITY

In the Commission's submission to the recent ACT Legislative Assembly Inquiry into ACTION Buses, we made the following comments in relation to the need for a positive duty to promote equality:

The Human Rights and Discrimination Commissioner has already proposed that the ACT Government should consider amending the Discrimination Act to include a requirement that public bodies actively promote equality... This would be consistent with emerging international trends and would give better effect to the guarantees in existing treaties... as well as the new Convention on the Rights of People with Disabilities. There is a trend internationally towards a more pro-active model of eliminating discrimination, and it would be consistent with the human rights framework in the ACT to adopt such a model. ...In Dublin, Ireland, where public bodies have a duty to promote equality, Dublin Buses surveyed users and non-users to identify unmet needs and as a result extended existing bus routes, provided cheaper multi-trip fares, and targeted women and elderly people. There was excellent take-up of the new routes and an increase in city centre economic activity as a result.

...In the absence of this or other positive measures designed to achieve systemic change it is left to individuals to challenge discrimination on a case-by-case basis, which is more onerous, less effective and less strategic. A statutory duty to promote equality would put the onus on ... service providers to be more proactive in carrying out their functions in a non-discriminatory way. It would require that organisations take steps to address barriers to equality and ensure that their policies, practices and services do not have an adverse impact on women, disabled people or other disadvantaged groups. It would embed equality performance measures in service/agency planning, evaluation and accountability frameworks. The steps involved for an agency in fulfilling a public duty include:

- *Collect baseline evidence on discrimination and equality across its functions. This would include agency data, material from complaints and submissions, research, consultations with staff and service users.*
- *Ensure data is disaggregated by 'protected attribute' – eg sex, age, race, and disability.*
- *Analyse the causes of inequalities identified or barriers to equality.*
- *Consult and involve employees and service users in the analysis and in developing solutions.*
- *Develop an action plan setting out the steps to be taken, and build it into the agency core business plan.*
- *Assess the potential impact of new policies/measures on disadvantaged groups.*
- *Monitor and report on progress.*

³² International Covenant on Economic, Social and Cultural Rights, entered into force 3 January 1976, art 2(1).

³³ General Comment by CESCR 03 (1990) para.7.

The Inquiry adopted the Commission's recommendations in relation to the need for a positive duty to promote equality in the *Discrimination Act 1991 (ACT)* as well as to have human rights at the centre of transport service delivery.³⁴

Conclusion

The Commission welcomes this review of the Transport Standards, and hopes that it will lead to a strengthening of the Standards and an increase in the speed and effectiveness with which they are implemented. The elimination of discrimination in the provision of public transport services is of fundamental importance to both people with disabilities and the society in which we all live. Public transport provides people with disabilities with a means to access and participate in their communities, and also serves to promote full realisation of other related human rights.

The Commission reiterates that one of the objects of the *Disability Discrimination Act 1992* is 'to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.'³⁵ Further, in one of the leading High Court discrimination cases, Brennan J said that '*a measure of the civilisation of a society is the extent to which it provides for the needs of the disabled (and of other minorities) and protects them from unjust discrimination which offends their human dignity.*'³⁶ Australia is an affluent country that must do its utmost to promote and protect the rights of people with disability, and to embrace what they have to offer to the communities in which they live.

Yours sincerely

Linda Crebbin
Children and Young People Commissioner
Disability and Community Services Commissioner

Dr Helen Watchirs
Human Rights and Discrimination Commissioner

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³⁴ The Committee's report is available at <http://www.parliament.act.gov.au/committees/index1.asp?committee=55&inquiry=712>

³⁵ s. 3(c).

³⁶ *Waters v Public Transport Corporation* [1991] HCA 49, per Brennan J, para 2.