

30 June 2023

Director
Disability and Transport Standards
Land Transport Policy
Department of Infrastructure, Transport, Regional Development, Communications and the Arts
GPO Box 594
Canberra ACT 2601

Delivered by email to DisabilityTransport@infrastructure.gov.au

Submission to the Review of the Transport Standards

Dear Director

Thank you for the opportunity to provide this submission to the Australian Government's **2022 Review (Review) of the Disability Standards for Accessible Public Transport 2002 (Transport Standards)**.

People with Disability Australia (PWDA) is a national disability rights and advocacy organisation made up of, and led by, people with disability. We are Australia's national peak disability organisation and a key national cross-disability organisation. We have a vision of a socially just, accessible and inclusive community in which the dignity, rights and freedoms of all people with disability are recognised and respected.

Public transport accessibility remains a critical access, inclusion and human rights issue for people with disability, with only incremental improvement in compliance with Transport Standards and public transport accessibility over the years. People with disability can more fully participate in society and enjoy their right to dignified, equitable and independent access if they can easily use public transport.

Poor transport accessibility and reliability is a barrier for people with disability to access medical and other health services, safe evacuation during disasters, education and employment opportunities, community supports and services, and social interaction with

friends, family and the broader community. Simple measures, like clear and timely announcement of station names and bus stops, can help reduce these barriers.

We note that this Review is occurring concurrently with the Transport Standards Modernisation and the Decision Regulation Impact Statement, and that the recommendations to Infrastructure and Transport Ministers have not been publicly released. Accordingly, this submission is made without knowing the details of the reforms being recommended to State and Territory jurisdictions. We intend to continue our engagement in the Modernisation process.

We also note from the recent Infrastructure and Transport Ministers Meeting (ITMM) communique of 9 June 2023 that on the issue of accessible public transport, “Ministers tasked officials with developing a flexible implementation approach for the reforms that apply to existing assets and infrastructure”. We register our concern that this is contrary to the Government’s commitment to working with state and territory governments on a nationally consistent reporting framework, and provides no assurance that the reforms, as with the Review process, will lead to any tangible outcomes in transport accessibility for people with disability.

PWDA fully endorses the submissions to this review of the Transport Standards provided by the National Inclusive Transport Advocacy Network (NITAN) and the Public Interest Advocacy Centre (PIAC).

PWDA has had extensive involvement in previous reviews of the Transport Standards. In this submission, we focus on three key and cross-cutting issues that require reform including:

1. stronger regulatory frameworks and compliance mechanisms
2. coverage inclusive of rideshare, school bus and air travel services
3. accessible information and communication.

Our experience and expertise

PWDA’s submission is based on the lived experiences of people with disability, and our many years of representing the rights of people with disability to access and use public transport on an equal basis with others.

We also draw upon previous transport surveys conducted across our membership and our submissions, as well as collective input into national policy and legislation, and joint representative advocacy that PWDA undertakes within national and NSW-based transport forums. This includes our role on the National Accessible Public Transport Advisory Committee (NAPTAC) and NITAN.

PWDA, through Disabled People's Organisations (DPO) Australia, was also directly involved in the development of the **Whole Journey Guide**, including co-facilitating the consultations with people with disability during the development of the Guide.

Consultation Response

PWDA has submitted repeated recommendations to the three earlier reviews that have not yet been actioned. Failure to implement recommendations from previous reviews has compromised the effective implementation of the Transport Standards. Positive outcomes for people with disability and others in the community who require accessible transport services cannot be fully realised if recommendations are not actioned and compliance is not monitored and enforced.

Recommendation 1 – Develop an action plan for implementing recommendations from this and earlier reviews. Develop a consolidated implementation plan and governance arrangements to track and report against recommendations from this review, and earlier reviews where recommendations have not yet been actioned, as a matter of priority.

Issue 1: Stronger Regulatory Frameworks and Compliance Mechanisms

Currently, compliance with the Transport Standards is primarily pursued through a complaints process instigated individually by people with disability. The case of *Haraksin vs Murrays Australia Limited*¹ highlighted the issues around accountability for enforcing the Transport Standards when unlawful discrimination occurs. This Review of the Transport Standards is an opportunity to adopt the right legal framework at the outset and prevent similar cases from happening.

¹ *Haraksin v Murrays Australia Limited* (No 2) [2013] FCA 217.

Therefore, we strongly support PIAC's position that a breach of the Transport Standards is unlawful and itself constitutes 'unlawful discrimination' under the *Disability Discrimination Act 1992* (DDA). Underlining this position is the need to shift the onus onto transport providers to provide accessible transport compliant with the Transport Standards and provide valid reasons if compliance with the Standards cannot be met.

We note NITAN's position that the current complaints process, which is mediated by the Australian Human Rights Commission (AHRC), is inherently unfair and exposes an individual with disability to financial and emotional risk. Our position is that stronger regulatory frameworks and reporting and compliance mechanisms will mitigate individual risks by placing the burden of implementation and enforcement on transport providers.

We also fully support PIAC's Recommendation 8 provided in their submission that "the *Australian Human Rights Commission Act 1986 (Cth)* be amended to insert a cost determination model". In this model, genuine applicants will not be liable for adverse costs, while respondents will be liable for adverse costs if they are found to be non-compliant with the Transport Standards or discriminatory in their practices. Removing the cost barriers to seeking legal clarity when needed enables people with disability to enforce the Transport Standards and their right to accessible transport on a non-discriminatory basis.

Additionally, we fully support the compliance mechanisms outlined in PIAC's Recommendations 9 and 10 provided in their submission. That is, for the AHRC to "be funded to provide independent oversight of industry compliance with the Transport Standards", and "be empowered and funded to enforce the Transport Standards".

However, PWDA proposes that funding should also be made available for independent individual advocacy to support the AHRC in providing compliance oversight. This is consistent with earlier NITAN recommendations to previous Reviews calling for the AHRC to be "tasked to provide greater support for representative complaints on behalf of people with disability, reducing the legal cost burden on individuals."

Lastly, to better support implementation and enforcement of the Transport Standards, a nationally consistent compliance reporting framework is needed to identify and address systemic issues. Consistent and publicly available data is crucial for monitoring the efficiency and effectiveness of the Transport Standards. It should support reporting on

outcomes for people with disability, including improvements to the passenger's whole-of-journey experience across the remit of different agencies.

To achieve insightful outcomes reporting, we agree with PIAC that mandatory reporting should go beyond current compliance with the Transport Standards and include the development and publication of Action Plans that indicate how transport providers intend to meet future targets.

As part of the mandatory reporting, the national framework must be supported by the whole-of-journey approach in monitoring the accessibility of public transport at a state and territory level. The **Whole Journey Guide** is a valuable resource co-designed by people with disability, for thinking about how to plan for and create truly accessible public transport journeys. State and territory governments must reaffirm their commitments to the Whole Journey Guide and feed regular reports on their progress up into the national reporting framework.

Recommendation 2 – Make non-compliance with the Transport Standards unlawful.

Transport Standards should be amended to reflect that any non-compliance with the Standards is unlawful. This should be supported with a description of avenues for complaints handling of non-compliance issues.

Recommendation 3 – Fund an independent oversight body, and fund independent individual advocacy to support compliance oversight. The AHRC is an appropriate body to provide independent oversight. Funding should be made available for the AHRC to provide compliance monitoring and enforcement, and for independent individual advocacy to support this work.

Recommendation 4 – Establish a public, accessible and nationally consistent compliance reporting framework. The Department should work with current data custodians across state and territory governments, transport operators and providers, the AHRC, and disability representative organisations to develop a nationally consistent approach to data collection, monitoring and reporting on compliance with the Transport Standards. This reporting framework must be publicly available and fully accessible to people with disability.

Recommendation 5 – Require states and territories to report on progress against their commitments to improving whole-of-journey accessibility, as part of mandatory reporting. At the state and territory level, this would require consultation and

systems for coordination and planning across different government agencies, local governments and councils, transport operators and providers, and people with disability.

Issue 2: Coverage Inclusive of Rideshare, School Buses and Air Travel

Rideshare, school bus and air travel operators provide public transport services and therefore, they need to be held accountable under the Accessible Public Transport Standards. People with disability should have access to the same service standards or redress when rideshare, school bus or airline operators do not comply with the Transport Standards.

We strongly support PIAC's and NITAN's positions and recommendations on air travel provided in their respective submissions. PWDA's position is that the Transport Standards should cover all forms of public transport, including transport provided through private owners and operators of rideshare, school bus and air travel services. The relevant taxi and bus standards should be applied to rideshare and school bus services. To adequately address the unique complexities of air travel, we fully agree with NITAN and PIAC that specific air travel standards should be co-designed and included as a Schedule in the Transport Standards.

The Transport Standards must also be amended to explicitly include the full range of rideshare and airline services, including the availability of accessible vehicles in the fleet, accessibility requirements of the booking platforms and payment methods, and appropriate equipment and facilities for people with disability.

Compliance must also be monitored and enforced, and appropriate training delivered to staff, drivers, operators and booking service providers, for example, to ensure competent loading and unloading of a passenger who uses a wheelchair.

Recommendation 6 – Include ride share, school bus and air travel services in the Transport Standards. Amend the Transport Standards to explicitly include rideshare, school bus and air travel services, and to make rideshare, school bus and airline owners and operators responsible for complying with the Standards. This should be done by defining 'rideshare service' in the Transport Standards as including private entities that are primarily engaged in a business providing point-to-point transport to people and co-designing a Schedule of air travel standards.

Recommendation 7 – Require rideshare, school bus and air travel service providers to meet training and accessibility requirements. Rideshare, school bus and air travel providers must address the full range of access barriers to their services, including ensuring their staff are appropriately trained in communicating with and in providing assistance to, passengers with disability.

Issue 3: Accessible Information and Communication

PWDA supports the NSW Council for Intellectual Disability's (NSWCID) campaign for accessible information in NSW and recommends adopting this nationally.

NSWCID's **Everyday for Everyone** inclusion campaign highlights that people with disability face major barriers to accessible communication with Government agencies, and often rely on others to obtain and interpret information and processes for them. We agree that people with disability must have access to information about public transport routes, timetables, service disruptions, and be able to do everyday things like buy a train ticket.

PWDA's position is that accessible information and communication must be comprehensively covered under the Transport Standards. This is consistent with **Australia's Disability Strategy 2021-2031** (ADS) Policy Priority 6 of the Inclusive Homes and Communities Outcome Area to ensure information and communication systems are accessible, reliable and responsive.

We also support NITAN's finding that the average public transport user lacks knowledge of, and access to the Transport Standards, and the Standards themselves are technical and inaccessible.² If the Standards are to be an effective tool to drive systemic change, they must be provided to people with disability in an accessible and user-friendly format.

Recommendation 8 – Make real-time service information fully accessible. Enable people with disability to access real-time transport information in a way that works for them, especially when there are service disruptions, and in multiple accessible formats.

Recommendation 9 – Provide individual customer service. Require states and territories to have responsive toll-free helplines and face-to-face customer service available for people who need spoken transport information.

² AFDO and NITAN (January 2022), *A Line in the Sand: Institutional Neglect and the Disability Transport Standards*, p. 34.

Recommendation 10 – Make the Transport Standards and complaints information accessible and user-friendly. Provide Easy Read versions of all transport information and documents, including the Transport Standards and complaints information. Make them user-friendly and easy to find on Commonwealth and State/Territory government websites.

If you wish to discuss our submission, please contact PWDA Senior Manager of Policy, Mx Giancarlo de Vera, at giancarlo@pwd.org.au or via telephone on 0413 135 731.

Yours sincerely



Sebastian Zagarella

Chief Executive Officer

People with Disability Australia