



6 September 2022

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Disability and Transport Standards
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By email: [REDACTED]@infrastructure.gov.au

Dear [REDACTED]

Disability Standards for Accessible Public Transport 2002 – Stage 2 Consultation Regulatory Impact Statement

Thank you for allowing the Australian Human Rights Commission (Commission) to provide feedback on the Reforms of the Disability Standards for Accessible Public Transport 2002 – Stage 2 Consultation Regulation Impact Statement – March 2022 (Consultation RIS).

In this letter I will raise a concern regarding the Commission's role in reforming the DSAPT, relevant complaint statistics concerning disability discrimination and transport, and some general comments regarding Parts 1 and 6 of the Consultation RIS.

Lack of resources of the Commission

Due to unexpected and significant resource constraints in the Disability Rights Team at the Commission, the comments provided are high level in nature. Although the Disability Discrimination Commissioner sits upon the Disability Standards for Accessible Public Transportation Steering Committee (Steering Committee), there is a substantial difference between comments given in a committee, which may or may not be accepted, and the detailed analysis of the whole Consultation RIS.

This is unfortunate as under ss 67 (1)(d) and (e) of the *Disability Discrimination Act 1992* (Cth) (Disability Discrimination Act) the Commission has a role to: “report to the Minister on matters relating to the development of disability standards” and “to monitor the operation of such standards and report to the Minister the results of such monitoring”. The Disability Standards for Accessible Public Transportation (DSAPT) are standards made under s 31 of the Disability Discrimination Act.

The limited resourcing of the Commission has correspondingly limited its ability to discharge its statutory functions. The Commission has not been funded in any material way to participate in the National Accessible Transport Taskforce or the Steering Committee despite requests having been made for funding. This is unfortunate as the Commission, as the National Human Rights Institution, can provide significant independent analysis to any consideration of reform of the DSAPT.

The lack of meaningful involvement of the Commission is particularly concerning given the recommendation of the United Nations (UN) Committee on the Rights of Persons with Disabilities in its 2019 concluding observations that Australia (paragraph [18(a)]):

Establish and enact a national framework for mandatory compliance reporting of the Disability Standards for Accessible Public Transport, the Disability (Access to Premises-Buildings) Standards; and the National Standards for Disability Services.

While there have been differences of opinion about the applicability of the recommendations of the UN Committee on the Rights of Persons with Disabilities, it is clear that there are significant issues with compliance with the DSAPT. There are also material and significant differences in resources of public transport operators and providers and people with disability.

The Commission wishes to provide some data on complaints received by its Investigation and Conciliation Service and make some general comments and comment upon Parts 1 and 6 of the Consultation RIS.

Complaint statistics

The Commission’s National Information Service provides information and referrals for individuals, organisations and employers about a range of human

rights and discrimination issues. The Commission also investigates and conciliates complaints about discrimination and breaches of human rights.

The following is an overview of the number of enquiries and complaints received by the Commission for the 2021-2022 reporting year:

- 23,200 enquiries were received through the National Information Service, of which 14 per cent related to disability discrimination and 25 per cent related to COVID-19 enquiries of which disability may be a factor.
- 3,736 complaints were made, of which 52 per cent were lodged under the Disability Discrimination Act.
- Conciliation was attempted and resolution was achieved for 62 per cent of all complaints. This represents successful dispute resolution for more than 2,200 people and organisations involved in complaints before the Commission.
- Information on the outcomes of conciliated complaints indicates that 24 per cent of outcomes included terms which have benefits for people beyond the individual complainant (for example, development and review of policies, delivery of staff training, and modifications to buildings or services).

Of the 1,960 complaints that were lodged under the Disability Discrimination Act, approximately 40 complaints alleged discrimination in public transport, in addition to alleged contravention of the DSAPT. The single most raised issue was assistance animal discrimination by airlines and ride share providers. Additional concerns involved wheelchair requirements on flights, accessible taxis not being available or exceptional wait times, and COVID-19 mask wearing requirements.

The above data should not be taken as an accurate illustration of the full extent of the issue, as it does not include the complaints made directly to transport agencies, such as airlines, and does not account for the issues faced by people who have not made a complaint.

In the 2020-21 reporting year, the Commission received a 35% increase in complaints, when compared to the previous year. As demonstrated by the above statistics, the majority of complaints received by the Commission relate to disability discrimination. In the absence of increased funding and resourcing, the surge in enquiries and complaints has meant longer timeframes for dealing with complaints; in 2021-22, the average time from lodgement to finalisation of a complaint was six months, with 27% of complaints finalised within three months.

General Comments on the Consultation RIS

The effort to put together the Consultation RIS is acknowledged and appreciated, with the Consultation RIS covering in depth many areas of the DSAPT that need review. There has been a significant effort to undertake consultation and a considerable attempt to seek feedback from the disability community. This approach is welcomed.

However, there are significant difficulties with reviewing the Cost Benefit modelling as Appendix 2 of the Consultation RIS refers to the process and data inputs and these figures have not been made publicly available. Furthermore, the expectation that people with disability and their representative organisations would be able to analyse and critique the approach taken is unrealistic.

In addition, the Consultation RIS does not consider airlines and the airline industry in depth, which is a significant area of concern for people with disability.

It is important that the submissions of people with disability and their representative organisations be closely considered throughout the DSAPT reform process.

Part 1 of the Consultation RIS

Part 1 of the Consultation RIS considers Reporting, Equivalent Access, Rideshare and Dedicated School buses. The Commission wishes to comment upon the first three of these issues.

The Commission supports compliance data being collected on mandatory basis on all assets covered by the DSAPT. Given the long-standing operation of the DSAPT, operators and providers should be aware of their level of compliance. All data collected should be publicly available and reported upon periodically.

The Commission also supports amending the equivalent access defence to provide greater certainty to all stakeholders but is concerned that privately engaged consultants may act as de facto decision-makers with little oversight. Particularly where a decision may have implications for a transport network, it is important there are strict safeguards in place. Any consultation mechanism should also expressly consider traditionally unrepresented groups, such as individuals with an intellectual disability.

Finally, the DSAPT should apply to rideshare services, and operators and providers should be required to provide their services to the fullest extent possible to people with disability. Maximising the transport options for people with disability promotes their long-term social and economic participation in society.

Part 6 of the Consultation RIS

The Commission is particularly concerned about the retrospective operation of any amendment to the DSAPT that would mean previously existing obligations under the DSAPT are lessened. The DSAPT has been in operation for twenty years and stakeholders have been aware of actual or potential obligations for this time period. Defences to claims for breach of the DSAPT do exist, including for unjustifiable hardship. A choice has often been made not to rectify certain accessibility issues. Where this is because of cost, a provider or operator can rely upon a defence. However, importantly, the provider or operator must provide evidence under oath to a court.

The present use of target dates for compliance with the DSAPT have not worked. This has been noted in the Third Review of the DSAPT where it is noted compliance with the mandated timeframes in the DSAPT will not be achieved. It is perhaps obvious that a better enforcement method is needed.

All options suggested in the Consultation RIS have a potentially retrospective operation that lessens the extent of accessibility provided by the DSAPT. This reduces the efficacy of the DSAPT in the long-term and undermines the human rights of people with disability. As a consequence, each option suggested in Part 6 of the Consultation RIS is deeply concerning to the Commission.

Yours sincerely



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Disability Discrimination Commissioner

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