



# Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

*Systems and Legal Advocacy for vulnerable people with Disability*

30 Nov 2018

Disabilities Transport Access Secretariat  
DisabilitiesTransportAccessSecretariat@infrastructure.gov.au

By email.

Dear Sir/Madam

Please accept the following amended submission to the review of the Disability Standards for Accessible Public Transport.

Yours sincerely,

Michelle O'Flynn

Director

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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

# Queensland Advocacy Incorporated

## About QAI

Queensland Advocacy Incorporated (QAI) is a member-driven and non-profit advocacy NGO for people with disability. Our mission is to promote, protect and defend through advocacy, the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland.

Our Human Rights and Mental Health services offer legal advice and representation: the first, on guardianship and administration and the latter on mental health matters. Our Justice Support and NDIS Appeals programs provide non-legal advice and support to people with disability in the criminal justice system and to participants in NDIS Appeals. This individual advocacy informs our campaigns at state and federal levels for changes in attitudes, laws and policies, and it assists us to understand the challenges, needs and concerns of people who are the focus of this submission.

QAI's constitution holds that every person is unique and valuable, and that diversity is intrinsic to community. People with disability comprise the majority of our Board; their wisdom and lived experience of disability is our foundation and guide.

## Acronyms

ADA *Anti-discrimination Act 1992* (Qld) ARG Accessibility Reference Group

DDA *Disability Discrimination Act 1992* (Cth)

DSAPT Disability Standards for Accessible Public Transport

HRC Human Rights Commission

QR Queensland Rail

TMR Department of Transport and Main Roads

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## Recommendations

- Legislative direction and constraints that will guarantee persons with disabilities that they will co-design public transport.
- The DSAPT should require the Commonwealth and Queensland to mandate, through legislation, regulation and policy, mechanisms to ensure the accessibility of public transport from planning to procurement, manufacture and service. 'Accessibility' means compliance with the Disability Discrimination Act 1992 (Cth), the DSAPT and consultation with persons with disabilities throughout the process. In order to ensure that public transport meets everyone's needs, people with disability must co-design the transport hardware, physical infrastructure, communications and staffing arrangements.
- Allocated spaces in conveyance carriages distant from the assisted boarding point are seldom able to be used despite demand for them. Section 9.6(2) should be redrafted to require that allocated spaces are to be consolidated in the cars nearest the designated assisted boarding point.
- Government must invest in research, development and real-world trials that benefit the entire transport network customer base, including people with disabilities, to provide a sound basis for government decision-making.
- The Standards must stipulate that public transport providers must also be information providers. People who are hearing or vision-impaired need access to on-board real-time information about their travel. Providers must be required to develop Apps that connect to GPS and announce current and future locations and scheduled times.
- Jurisdictions must assess their level of compliance against the full DSAPT and realistically budget to meet the requirements of the DSAPT with a decade. The scope and priority of works must be agreed with the representatives of the disability sector.
- AHRC must take a firm approach to Temporary Exemption applications, and not allow them to become semi-permanent.
- Ride-hailing services must be required to make wheelchair-accessible service a growing part of their operations. Government must set quotas to phase-in access, and mandate, for example, that within a year, 5 percent of all ride-share trips dispatched must be in wheelchair-accessible vehicles, and that that portion must rise to 25 percent by 2025.
- Accessible rides should be required regardless of whether they were requested by a person using a wheelchair; this will keep accessible vehicles in operation and improve service for those who need them.

- As use of AVs increases, demand for parking likely will decrease, but demand for curbside standing zones will increase and curbside arrangements will need to be reassigned. When this happens, provision must ensure that wheel-chair users can safely access footpaths.
- To alleviate data cost to passengers some ferries and trains currently provide free Wi-Fi and this should extend to buses, trams and light rail.
- In addition to smartphone apps, operators must incorporate next stop announcement systems into the software of their buses.

## Introduction

The Guardian Online recently reported that in the UK, buses and taxis will lead a self-driving public transport push.<sup>1</sup> All very high-tech but not a word on how people will hail, alight or access these buses and taxis. Direct assistance at boarding / alighting will not be possible unless the units are crewed with a customer service operator -- which begs the question of making them driverless.

Regrettably, these innovations are streaking ahead of the legal framework that requires their accessibility. Innovation brings wonderful benefits to people with and without disabilities alike, but at times the innovators appear to have no clue about accessibility. If there is no regulatory framework the innovators all too often come up with exclusionary designs, and then at great expense have to retrofit those designs for access.

QAI's primary concern about the DSAPT ('the Standards') is that they do not require transport providers to include people with disability in the planning and design process from the beginning. Part of the reason for this lies in the essentially voluntary participation in and compliance with the Standards. There are few repercussions for transport providers that do not comply.

### **Voluntary Compliance and Costly Remedies Weaken the Standards**

Queensland's NGR train fiasco is an example. At \$4.4 billion, the New Generation Rollingstock (NGR) is the largest single public transport investment by the Queensland Government.<sup>2</sup> The government's original expectation was that the trains would be in service by December 2018. Queensland would make staged payments to the consortium over a 30-year concession period, at the expiry of which Queensland would retain ownership of the trains and the maintenance facility.<sup>3</sup>

Queensland's Department of Transport and Main Roads commissioned trains with a flawed design after failing to consult with its own Access Reference Group in the early stages of the project. The TMR Accessibility Reference Group (the ARG) is comprised of people with a range of impairments and an intimate familiarity with the DSAPT. John Macpherson, for example, has made submissions in relation to DSAPT proposals by the Australasian Railways Association.<sup>4</sup>

The ARG became aware of the access problems in 2014 and made their concerns known, but Transport appeared to ignore those concerns. The Transport Minister's proposal to address some of the NGR access challenges closely followed some ARG members' engagement of legal counsel

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<sup>1</sup> <https://www.theguardian.com/technology/2018/nov/22/buses-and-taxis-to-lead-uk-self-driving-public-transport-push>

<sup>2</sup> Urbanalyst. 2014. 'Bombardier NGR Consortium wins \$4.4bn contract for Queensland New Generation Rollingstock Project' . < <http://www.urbanalyst.com/in-the-news/queensland/2293-bombardier-ngr-consortium-wins-44bn-contract-for-queensland-new-generation-rollingstock-project.html>> February 4, 2014

<sup>3</sup> Audited Consolidated Financial Statements 2013–14 – Government of Queensland. 6-46.

<sup>4</sup> John Macpherson. 'Alternate Solutions and Guidelines to the ARA Version of Disability Standards for Accessible Public Transport'  
<[https://www.humanrights.gov.au/sites/default/files/content/disability\\_rights/exemptions/ara/subs/macpherson.pdf](https://www.humanrights.gov.au/sites/default/files/content/disability_rights/exemptions/ara/subs/macpherson.pdf)>

and lodgement on their behalf of Right to Information applications to determine more about TMR's, QR's and Queensland Cabinet's decision-making.

When the non-compliant trains started arriving, Queensland applied to the Australian Human Rights Commission (AHRC) for exemptions from the DSAPT, but the AHRC rightly decided that the exemption provision in the Disability Discrimination Act 1992 (Cth) ('DDA') does not release transport providers from their DSAPT obligations in relation to already existing but non-compliant conveyances. Queensland kept the trains on the tracks anyway, deciding that although the trains are in breach it is in the public interest to run them. This is the crux of the problem: there is no decisive disincentive to operate non-compliant conveyances.

Queensland has begun to retrofit the trains at considerable public expense, but a different administration may have decided to spend the money elsewhere. If they did, there would be little to stop them.

QAI supported an affected person (who uses a wheelchair) to make a complaint under the DDA. After some months, that person's complaint lapsed. Like many other DDA complainants, the cost was just too high. They could not spare the time and the energy needed to wage battle: in this case, a 'David and Goliath' battle; one person against the State of Queensland.

### **'If It's Not in the Standards, We Don't Have to Do It'**

Another key challenge of framing effective Standards is that no matter how specific and detailed they are, they cannot cover every transport contingency. The Standards can be specific about the dimensions of particular public transport conveyances by stipulating that access paths, for example, must be of a minimum width, or that the toilet pan must be placed a certain distance from the wall, and that the bathroom must have certain minimum dimensions to ensure that a wheelchair can move reasonably freely.

The public transport journey, however, does not begin or end at the vehicle. The Standards say little about what happens before the person arrives at their seat or allocated space in the vehicle and after they leave it. There is enormous variability in the built environment and associated infrastructure that is part of the whole journey.

QAI supported another complainant under Queensland's Anti-Discrimination Act 1991 in relation to the same conveyances. This complainant, who is blind, had attempted to use the trains on a number of occasions, but always with a less favourable experience than he had become accustomed to on the older Brisbane suburban trains.

For blind people, public transport is one of the few available options. For good reason, many blind people live in close proximity to railway lines. Of all the forms of public transport, train travel is the most predictable from start to finish: train stations remain in the same spot, usually, for a lifetime; entryways and platforms, generally, remain the same; trains are stable, and their carriage layout is uniform and predictable; and trains run according to a precise timetable.

NGR trains are different to older suburban trains because the NGR do not have an on-board guard who assists with boarding, alighting and provides in-train support. As a blind person, the complainant relies on regularity and predictability in the built environment. Variations in the built environment may not be evident, immediately, to a person who cannot see.



This complainant had established and was accustomed to a particular boarding routine. He would approach the designated boarding point on the platform. A Queensland Rail employee would announce the identity of the approaching train on the public address system. The train, as it arrived at the station, would line up its middle doors with the accessible boarding point. The on-board guard would step out of the train and assist him to a seat.

The configuration and staffing of the NGR changed that routine. The NGR has no on-board guard at the boarding point. It has a guard at the rear of the train, over 70 metres away. Queensland Rail's initial solution was to require the on-board guard at the rear of the train to look out for boarders with mobility impairments, including people with vision impairments, and walk the 70+ metres to the boarding point when needed to provide assistance. That approach did not work for obvious reasons.

First, it takes about one minute to walk 80 metres, according to a standard walking distance measure, and even if the rear guard immediately identifies the person who requires boarding support, it will take two minutes to walk to the boarding point and return to the guard cabin. It then will take anything from a few seconds to a few minutes to assist one or more persons onto the train, taking into account the possibility that the guard may have to withdraw the boarding ramp from its recess, place it for use, assist the boarders, and replace the ramp in the recess.

If the guard moves quickly, the whole process takes between two and about four minutes, sometimes longer. Trains have to keep to a schedule, and this unnecessarily complex procedure would make the schedule more difficult to keep.

Second, it is simply not possible to spot a person who wants boarding support from a distance of 70 metres. A person who is blind, for example, may have a dog, but it may not be visible behind seats, platform fixtures or other passengers. People who have mobility impairments do not have a sign that tells the world that they do.

The Accessibility Reference Group told Queensland Rail that it would have to find another solution, so QR hired new staff specifically to wait on the platform and assist people at the boarding points. Queensland Rail's interim plan to engage extra customer service personnel to assist people when boarding has been an unsatisfactory and needlessly expensive compromise. A dedicated on-platform customer service person is a stop-gap that will cost the government millions, possibly hundreds of millions of dollars over the 35+ year life of the trains.

Now that the NGR are in service a person requiring assistance will have to negotiate two different arrangements - the old one with the guard on the train, and the new one with the platform staff providing assistance. This will lead to confusion and act as a deterrent for persons with disabilities to use train transport in Queensland.

This has knock on effects. In the blind community the unemployment rate is 70%, according to Vision Australia's estimate in 2012. The NDIS will provide people with supports they need to engage with the work and the community. But inaccessible trains will make this more difficult.

### **Has your accessibility to public transport improved?**

As a whole, yes, public transport accessibility has improved in Queensland. With some outstanding exceptions, about which more later, the right to access is being normalised at local level, and,

belatedly, at state. The Brisbane City Council has a population greater than Tasmania, the ACT and the Northern Territory combined, and is a major transport provider. It has included consultation with people with disabilities in the early stages of the 'Brisbane Metro', its most recent large transport project. The Queensland State Government, by contrast, did not include people with disabilities in the planning stages of the New Generation Rollingstock project, with substantial and still unresolved access consequences to people

We add the caveat that the focus tends to be on the access of people who use wheelchairs and who have other non-sensory lined mobility impairments. For people with vision impairments or for people with deaf-blindness, however, improvements have not been so dramatic.

We need further reforms in legislation and policy to get to a point where people with disability and their supporters automatically get a seat at the design table and have ready remedies when transport is not fully accessible.

**How has your accessibility to conveyances changed? (for example, trains, buses and coaches, trams, ferries, wheelchair accessible taxis and aircraft). Can you provide examples?**

Access-wise, the new 75-unit NGR train fleet rolling out in South-East Queensland represents a retrograde step, so far. Like the Kennett-led Victorian government's decision to lay off tram conductors in the 1990s and run Melbourne trams without the wage expense, in 2013 the Queensland cabinet decided to dispense with train guards at the accessible boarding point.

Instead, Queensland Rail has placed them at the end of the new trains, 70+ metres away from the accessible boarding point, where they have few duties. To plug the inevitable customer- service gap, the new Queensland administration has decided to hire, at huge expense, on- platform customer service officers whose duty is to provide the same access assistance as the former on- train guards.

So, access has been retrograde, because the decision to remove from the new NGR the on- train guards who were stationed at the accessible boarding point appears to be part of the state government's misguided long-term cost-saving stratagem to phase-out train guards all together. The guards on the older trains provide boarding, in-train and alighting assistance to people who use wheelchairs, who are blind or vision-impaired, who are deaf-blind, or use mobility aids such as prams or walkers.

The accessibility of much of the rail network depends upon staff rendering direct assistance, and this is particularly important when people board and alight at platforms where there is a substantial grade difference and gap width between carriage floor and platform.

That gap width is more of an access impediment when people board trains operating on 'narrow gauge' systems, and Queensland's system is Australia's narrowest, by far. Some platforms are curved. An express train moving past a curved platform rocks from side to side. A stationary train does not. When designing the trains, the width of the carriage must be calculated to allow for this difference between the sideways-movement of a stationary versus a moving train. To avoid scraping the platform, train width must be determined with a substantial built-in margin of safety, making the narrow-gauge trains narrower still.

Without the deployment of boarding ramps at these platforms, alighting and boarding is impossible for many people who use mobility aids. All operators have procedures in place to ensure that these boarding ramps are ready when needed. Too frequently though, there is a staff failure resulting in people being left on platforms or trains.

Anecdotal reports of staff leaving people on trains who require direct assistance to board or alight abound and sometimes these oversights can be serious. In May 2017 a woman in a wheelchair was left on-board a train which finished service and was stabled at Brisbane's Mayne Junction.<sup>5</sup> Mostly though passengers with disability simply bear with the shoddy service, as complaints are difficult to sustain and see little action other than an apology.<sup>6</sup>

These failures are a disincentive for people who require assistance to travel by rail. There are many theories as to why such failures occur: staff cuts, lack of training, lack of care, over commitment, stupidity, poor communication procedure and equipment, amongst others. Whatever the cause, compliance with the DSAPT is futile if people will not travel or are reluctant to travel by rail due to failures of direct assistance.

### **How has your accessibility to information changed?**

Passengers, particularly those with vision, cognitive and intellectual impairments, frequently have no idea of where they are in their journey or when they are approaching their desired stop.

#### **Recommend:**

- In addition to smartphone apps, operators must incorporate next stop announcement systems into the software of their buses.
- These systems must serve passengers who have vision, intellectual, cognitive and hearing impairments.

The DSAPT requirement for information about location states the following:

#### **Access to information about location**

All passengers must be given the same level of access to information on their whereabouts during a public transport journey.

Providers make no next-stop announcements either audibly or visibly and all passengers receive the same level of service, but this overlooks the ability of sighted passengers facing forward to discern locational cues as they travel. Passengers facing to the rear in allocated spaces and vision impaired passengers will experience diminished ability to use external cues. Passengers with intellectual / cognitive disabilities may see the cues but be unable to interpret them.

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<sup>5</sup> <http://www.dailytelegraph.com.au/news/nsw/sydneys-rail-shame-how-one-wheelchairbound-commuter-spent-a-hellish-day-on-citys-train-network/story-fni0cx12-1226805387359>

<sup>6</sup> <http://www.abc.net.au/news/2017-05-28/woman-karin-swift-wheelchair-stranded-brisbane-train-apology/8566628>

Audio-visual announcement of next stop is the obvious answer, with direct driver assistance on request as the backup. Many providers are falling back on smartphone apps that use the bus's GPS system for destination or next stop announcements. These are not always reliable and often fail in tunnels and when buses are under overhead cover.

This loss of connection may require the system to be reset, unknown to the user, with the risk that a stop is missed. Often, the system resets the journey back to the start, and the result is confusion.

Not all people with disabilities have or can operate smartphones. Ultimately, smartphone apps, even when provided free online, place a cost on the user rather than the service provider. If only one of several options for locational awareness, people may choose to bear this cost. If no alternative exists though, the cost imposition is unreasonable.

To alleviate data cost to passengers some ferries and trains currently provide free Wi-Fi and this should extend to buses, trams and light rail.

### **What do you currently see as the greatest areas of need?**

Failure to meet the Schedule for Compliance is key. Many of those charged with the responsibility of implementing DSAPT have neither scoped the project nor budgeted for it. A number of jurisdictions will fail to meet the Schedule for Compliance, particularly with regard to infrastructure and premises.

Many of those charged with the responsibility of implementing DSAPT over their full jurisdiction have neither scoped the project nor budgeted for it. Several jurisdictions will therefore fail to meet the Schedule for Compliance, particularly with regard to infrastructure and premises.

Since it is unlikely that jurisdictions would readily agree to investigate themselves a way forward that ensures fully accessible public transport within the next decade is required.

Jurisdictions must assess their level of compliance against the full DSAPT and realistically budget to meet the requirements of the DSAPT with a decade. The scope and priority of works must be agreed with the representatives of the disability sector. Failure by jurisdictions to engage with this process must be met with the threat of DDA action.

Granting of endless Temporary Exemptions by the AHRC is another key weakness. Temporary Exemptions are sometimes granted multiple extensions well past the initial termination date, and this results in stasis with regard to the accessibility of the public transport system.

The Australian Human Rights Commission (AHRC) has the power to grant Temporary Exemptions from the Schedule of Compliance and the prescriptive parts of the DSAPT. Temporary Exemptions have a place in the DSAPT. They allow an operator or provider 'breathing space' whilst some point is clarified, or a setback overcome. Brisbane City Council asked for and was granted a Temporary Exemption after extensive damage to its ferry terminals in the 2011 floods. The request was made in good faith and has since lapsed with the Council back on target to meet its ferry terminal DSAPT Schedule for Compliance milestones. This is by no means the only example of proper use of Temporary Exemptions.

But not all Temporary Exemptions reach such a satisfactory conclusion. The Australasian Railways Association (ARA) has managed to roll over many 'Temporary' Exemptions first granted in 2007, adding new Exemptions along the way.

Elements of the 2007 Exemption were extended in 2010, 2012, 2013, 2014 and 2015. Parts of the 2015 Exemption expired in 2017 but the remainder is in effect until 2020. The result has been stasis in compliance with the DSAPT in many areas of the rail environment for at least a decade.

The ARA's members seem unable to resolve their difficulties with some parts of DSAPT and as such are seeking refuge from them. The AHRC must take a firm approach to Temporary Exemption applications, and not allow them to become semi-permanent.

## **New Transport Technologies and their Impact on Public Transport**

### **(Have new ways of providing public transport, such as ride sharing or on-demand bus services affected your ability to access services?)**

The emerging 'Mobility as a Service' business model seeks to reduce barriers between different transport modes by providing consumers with easy and flexible access to the widest possible range of services. If this model matures in Australia, it could provide an incentive for travellers to move away from private vehicle ownership and make increased use of automated vehicles and public transport as part of a new, flexible approach to travel.

It is possible that automated vehicles could compete for trips with existing public transport services, especially because of increased convenience, comfort and privacy. Early modelling (based on data from the Netherlands) suggests that the costs of using shared automated vehicles could be lower than owning a traditional vehicle. These costs may be commensurate with public transport fares,<sup>7</sup> could affect the economics of public transport networks and future investment, and increase congestion on the road network. However, modelling by the International Transport Forum demonstrates that the best outcomes are achieved when automated vehicles are effectively integrated into existing public transport networks.<sup>8</sup>

Over time, it may be necessary for government policy to encourage and to provide an incentive for the efficient integration of public transport and automated vehicles, including, for example, drop-off zones for automated vehicles at rail stations, but this need will be determined by real world experience.

Although future road transport demand is difficult to predict, the use of 'zero occupancy vehicles' for goods delivery and as couriers may lead to increased demand and traffic congestion. This may necessitate regulation and rationing, that prioritizes personal transportation needs over the needs of commerce.

Many AV will require suitable and accessible charging stations as currently this is insufficient.

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<sup>7</sup> For further information, see: <https://www.bcgperspectives.com/content/articles/transportation-travel-tourism-automotive-will-autonomous-vehicles-derail-trains/?chapter=2>

<sup>8</sup> International Transport Forum. (2015b). Urban Mobility System Upgrade - How shared self-driving cars could change city traffic. Retrieved from [http://www.itf-oecd.org/sites/default/files/docs/15cpb\\_self-drivingcars.pdf](http://www.itf-oecd.org/sites/default/files/docs/15cpb_self-drivingcars.pdf)

Whatever new 'Artificial Intelligence' is created for transport purposes that it must be guided by Principles that firstly "do no harm" and secondly "enhance humanity".

As use of AVs increases, demand for parking likely will decrease, but demand for curbside standing zones will increase and curbside arrangements will need to be reassigned. Brisbane taxi users are already familiar with the challenges faced by taxi and in particular, ride-share drivers when looking for a place to pick-up or drop-off passengers around the CBD. These challenges are more acute when the passenger is a person with a mobility impairment who may move more slowly, or rely on a third party to assist with getting in or out of the vehicle.

## **Conclusion**

Australians with disability continue to experience unacceptably high levels of discrimination in their everyday lives. The rights of people with disability are especially vulnerable in relation to employment and the provision of goods and services. Social isolation and low rates of disability employment and community participation are all knock-on effects of this "lesser right" of persons with disabilities to access public transport.<sup>9</sup> People with disability are less likely to share in the recreational and social life of the communities in which they live, and while not the only reason for this trend, the lack of sufficient accessible public transport is a contributing factor.

People with disability are more likely to have to rely extensively on more expensive modes of transport, such as special bus services, taxis and private car travel as a passenger. This reliance is due to people with disability being much less likely to have a driver's licence than people without disability, and difficulties in accessing public transport.<sup>10</sup> A reliance on more expensive modes of transport limits the opportunity to travel — a higher average cost per trip will mean that people with disability will tend to limit themselves to more essential travel.

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<sup>9</sup> Attorney-General's Department, Regulation Impact Statement on Draft Disability Standards for Accessible Public Transport, Canberra, January 1999, p. 11.

<sup>10</sup> Physical Disability Council of Australia Ltd (PDCA). Submission to Review of the Disability Standards for Accessible Public Transport 2002.

# APPENDIX 1

## Briefing

Ride sourcing and transportation for users of wheelchairs and scooters

**Source: Estelle Parker's draft sub to Victorian Inquiry into Ride-sharing, 2015**

## Summary

- The introduction and expansion of ride sourcing apps may reduce access to transportation by people with mobility support needs given the scarcity of accessible vehicles.
- The increase in market share by Uber has led to less competitive ride fees although it has prompted fairer ride fees from the taxi industry, with the option to ask for set fee before accepting a ride from a taxi.
- Around 20 000 Victorians rely on Wheelchair Accessible Taxis (WATs) as their only means of point-to-point transportation and each year 750, 000 WAT trips are taken by people in wheelchair and scooters. Nearly one in 10 taxi fares in Victoria are subsidised by the MPTP program

There is anecdotal evidence that response time for Wheelchair Accessible Taxis (WATs) – already on average 23 minutes compared with an average of 8 minutes for a regular taxi – has increased since the introduction of Uber. This negatively impacts the flexibility of people using wheelchairs and scooters to move around and undermines Australian Governments' commitment, under the national Disability Standards for Accessible Public Transport under the Disability Discrimination Act (DDA), to the target of making WAT response times equal to that of other taxis. There have been concerns that the number of available WATs could decrease.

- Victoria has been a world leader in ensuring access to transportation by people with a disability. The Victorian Government's Multi-Purpose Taxi Program (MPTP) provides an incentive for taxi operators to service people with special needs. It ensures that the transportation of people in wheelchairs and scooters is incorporated into the business model of taxi operators. The MPTP program and other policies implemented by the

Victorian Government in 2010 and 2013 have improved access to taxis and hence transportation for people with a disability. The introduction of Uber and or the response from the taxi industry is eroding these gains.

- Simply allowing privately-owned wheelchair accessible vehicles to operate a ride sourcing service is fraught with risk. The number of private wheelchair vehicles is very small. Issues arise because of a lack of understanding of disability and mobility access requirements, when rider share operators claim to have accessible vehicles and do not meet standards, do not have training or understanding in appropriate securing of mobility devices such as larger wheelchairs and scooters.

- In deciding the appropriate regulatory framework for the operation of ride sourcing and ride sharing apps, governments need to address the negative effect that the increased market share of ride sourcing apps may have on transportation for people with a mobility impairment, yet offer a greater array of choices for some other people with disability. However, ride share businesses are not eligible for the taxi subsidy scheme that exists in Queensland and this could be amended so that people with disability have more opportunities, reduce waiting times and free up accessible vehicles for people using mobility devices.
- A policy response that ensures we continue to respect and facilitate the right of people with a disability to travel around our community will need to include a package of reforms. This could include the following measures:
  - Regulate ride sourcing to provide access to point-to-point transport for people using wheelchairs and scooters;
  - Subsidise the modification of vehicles for drivers utilising ride sourcing technologies;
  - Mandate a certain percentage of wheelchair accessible vehicles as a condition of allowing the legal operation of ride sourcing apps in the market;
  - Implement an innovative, market-based mechanism that utilises new technology and provides incentives for users of ride sourcing technology to acquire wheelchair accessible vehicles and pick-up people in wheelchairs;
  - Establish and subsidise a separate category for ride sourcing to cater for people with a disability;
  - Reduce WAT licence fees to zero, subsidise the cost as well as the modification costs of WATs, and provide additional incentives;
  - Extend a MPTP style subsidy for ride sourcing;
  - Provide an MPTP style lifting fee for ride sourcing;
  - Provide MPTP style training for ride sourcing drivers;
  - Implement standards for ride-sourcing wheelchair accessible transport, including with regard to safety and ability to accommodate large wheelchairs and scooters;
  - Ensure ride sourcing apps collect and make available information about wheelchair and scooter trips and response times.

As we as a community embrace new technologies, we need to ensure that people with disabilities are not left behind.



## Key issues

As 'ride sharing' and 'ride sourcing' operations increase their market share of driver-vehicle point-to-point passenger transportation, people who use wheelchairs and other mobility assistance devices will be increasingly disadvantaged if appropriate regulation and incentives to ensure that such businesses service people with a disability are not implemented.<sup>1112</sup>

### Taxi and hire car regulation

The taxi industry is regulated in Australia at the state level. Each state therefore has its own laws, regulations, safety standards, licencing requirements, guidelines and authorities that regulate the taxi and hire car industry. Different states have different schemes and methods of assistance to support access to taxi services for people with a disability. Taxis are considered 'public transport' under the national Disability Standards for Accessible Public Transport.<sup>13</sup>

#### **'Hire cars' come under different regulation to taxis.**

Hire cars are defined as small commercial passenger vehicles that can be booked for hire or award, but not stand at a rank or be hailed on the street. Unlike taxis, hire cars are not currently considered 'public transport' in Victoria. Before Uber, hire cars serviced only the luxury car travel market in Victoria. Until recent reforms, in order to operate legally, the cost of hire cars needed to exceed the luxury car tax threshold. In mandating that hire cars must be luxury vehicles, the Victorian Government deliberately kept hire cars at the top end of the market.

**The Australian Taxation Office considers ride-sourcing as 'taxi travel'** for taxation purposes because drivers utilising ride sourcing apps are making a car available for public hire and use it to transport passengers for a fare. Drivers utilising ride sourcing technologies to provide these services are required to be registered and pay GST on their turnover.<sup>14</sup>

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<sup>11</sup> Ride sharing' and 'ride sourcing' are defined for the purposes of this briefing as driver-owned and operated vehicles offering one-time rides for a fee at short notice that connect with customers via GPS and smartphone apps such as Uber. Ride sharing is promoted as a way to better utilise the empty seats in most passenger cars and is therefore akin to carpooling. Ride sourcing is the utilisation of apps by commercial operators, similar to a taxi services. Drivers engaging in ride sourcing do not share the same destination as their passengers. The app outsources rides to commercial drivers.

<sup>12</sup> This briefing focuses on people with mobility issues, primarily users of wheelchairs and scooters. The issues raised in this briefing also have consequences for other people with a disability.

<sup>13</sup> Commonwealth of Australia (2002), Disability Standards for Accessible Public Transport 2002, available at Attorney General's Department website ([www.ag.gov.au](http://www.ag.gov.au)). The Disability Standards for Accessible Public Transport 2002 set out the minimum accessibility requirements that providers and operators of public transport must comply with, as well as ensuring that access to transport is consistently improved. The transport standards recognise that access to public transport enables people with disability, their families and their carers to fully participate in community life.

<sup>14</sup> Australian Taxation Office (2015), Providing taxi travel services through ride-sourcing and your tax obligations, ATO website, [www.ato.gov.au](http://www.ato.gov.au), accessed on 28 September 2015

## **Wheelchair accessible point-to-point transportation**

People using mobility assistance devices such as wheelchairs and scooters require access to specialised vehicles. Around 20 000 Victorians rely on Wheelchair Accessible Taxis (WATs) as their only means of point-to-point transportation. Others can access some forms of public transport, but rely on WATs to transport them further on in their journey (for example, from the train station to work). Most users of motorised wheelchairs and scooters rely on WATs when public transport is not available. Each year, in Victoria 750,000 WAT trips are taken by people in wheelchairs or scooters.<sup>15</sup>

The number of privately-owned wheelchair accessible vehicles is extremely low. Those that do exist are usually funded by insurance – mainly TAC or Workcover. Many people relying on wheelchair accessible vehicles are not able to drive themselves, including many private owners of wheelchair accessible vehicles. Other wheelchair accessible vehicles driven by wheelchair users do not have a driver's seat and do not necessarily have space to accommodate a wheelchair other than the driver. Most vehicles do not meet the standards – particularly with regard to space – that allow Wheelchair Accessible Taxis to transport users of larger wheelchairs and scooters. Therefore, potential for these vehicles to be used for ride sharing or ride sourcing is extremely low. Simply allowing privately-owned wheelchair accessible vehicles to operate a ride sourcing service utilising an app such as Uber is not appropriate and is compounded by a lack of understanding and experience regarding access and securing of mobility devices.

There are no wheelchair accessible hire cars.

In 1992 the national Disability Standards for Accessible Public Transport set, under the Disability Discrimination Act (DDA), a target of making WAT response times equal to that of other taxis.<sup>16</sup> This was a response to the long delays that people in wheelchairs had to wait for WATs and a recognition of the importance of transportation to quality of life for people with disabilities and their ability to live in, and be active members of, the community.

## **Multi Purpose Taxi Program**

The Victorian Government's world-leading Multi-Purpose Taxi Program (MPTP) has been operating since 1983 and assists with the travel needs of people with severe and permanent disabilities by offering subsidised taxi fares to members, paying up to \$60.00 per trip. The MPTP program also pays a 'lifting fee' of \$16.00 per ride to taxi drivers for pick up people in wheelchairs or scooters (this fee was doubled in 2008 from \$8.00 and is indexed to the CPI).<sup>17</sup>

MPTP drivers are required to undertake training on the appropriate use of restraints. The MPTP program has offered \$44 000.00 towards the conversion costs of WATs in regional areas. It ensures people with disabilities can move around in our community and are not marginalised or

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<sup>15</sup> Victorian Taxi Services Commission (2015) data

<sup>16</sup> Commonwealth of Australia (2002), Disability Standards for Accessible Public Transport 2002, available at Attorney General's Department website ([www.ag.gov.au](http://www.ag.gov.au)).

<sup>17</sup> Victorian Taxi Services Commission (2015), Multi Purpose Taxi Program, Taxi Services Commission website, [www.taxi.vic.gov.au/passengers/mptp](http://www.taxi.vic.gov.au/passengers/mptp)

disadvantaged due to lack of access to transportation. Total cost of this program is \$50million per year.<sup>18</sup>

Nearly one in 10 taxi fares in Victoria are subsidised by MPTP.

The Victorian Government has gone to some effort to improve access to WAT transport over the past five years. In 2010, the Victorian Government released 330 WAT licences in an attempt to meet a target of having 15 percent taxis wheelchair accessible as recommended by a 2008 review by the Essential Services Commission. In 2013, when it removed its cap on the number of taxi licences, the Victorian Government made wheelchair accessible taxi licences \$4000.00 cheaper per year than conventional taxi licences. There were 565 WAT licences in metropolitan Melbourne following this change.

The best available data suggests that, in metropolitan Melbourne, conventional taxis respond within eight minutes and WAT responses are 23 minutes; wheelchair users still need to wait three times as long as able-bodied people for a taxi.<sup>19</sup> There is anecdotal evidence that response time for WATs is increasing (updated data is not yet available).

Hire cars have been excluded from the MPTP program. This has had the result of stifling any emergence of a wheelchair accessible hire car market.

The Victorian Government's Multipurpose Taxi Program therefore provides an incentive for taxi companies to incorporate transportation for people in wheelchairs into their business model.

### **Uber's effect on WAT transport**

After commencing as a legal hire company in 2008, Uber adopted a business model operating outside of hire car and taxi regulation through services called Uber Black and Uber Taxi respectively. It then introduced a third offering that emulated its illegally-operating competitors, Lyft and Sidecar, whereby unaccredited drivers in unlicensed vehicles can be booked for hire or reward through the UberX app. In doing so, Uber avoids regulations pertaining to hire cars and taxis. The growth of UberX has relied heavily on people's dissatisfaction with conventional taxi services.

Under Section 42 of the Victorian Equal Opportunity Act 1995 and 2010, a proprietor is not allowed to discriminate in the provision of goods and services on the basis of impairment.<sup>20</sup> By not offering any wheelchair accessible taxi services, Uber is currently not acting in accordance with the Victorian Equal Opportunity Act<sup>21</sup>. Governments have not yet addressed in legislation, regulation or policy Uber's argument is that it is not a provider of goods and services – that it is simply a facilitator.

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<sup>18</sup> Victorian Taxi Services Commission (2015) data

<sup>19</sup> Victorian Taxi Services Commission network service data: data provided by 13 Cabs and Silvertop Taxi Service Pty Ltd. This data covers calls that are answered by their call centres.

<sup>20</sup> Equal Opportunity Act 1995, version incorporating amendments as at 28 April 2010, available at [www.legislation.vic.gov.au](http://www.legislation.vic.gov.au)

<sup>21</sup> Other laws that Uber and Uber drivers are breaking are not the focus of this briefing.

In 2014, Uber introduced 'Uber Access', an ill-defined new 'service' that enables people with fold-up wheelchairs to transfer into conventional sedans and put their wheelchair in the boot of an Uber sedan vehicle. This has always been done by people using conventional sedan taxis. The 'Uber Access' initiative does nothing to replace WATs nor provide access to people who use non-folding chairs, motorised wheelchairs or scooters or who are not able to transfer out of their manual fold-up wheelchair into a car seat. This is a significant proportion of people in wheelchairs. Uber announced it would 'look into' getting wheelchair accessible vehicles, but has been slow to respond.

### **Government response to ride sourcing**

State governments are currently assessing how to regulate ride sourcing technologies.

Governments are likely to regulate ride sourcing as hire cars. As noted above, the exclusion of hire cars from the MPTP program has stifled any emergence of a wheelchair accessible hire car market in Victoria. There are no wheelchair accessible hire cars. But because of Uber, hire cars (should they be considered so by regulators) are likely to become the norm.

As above, governments have not yet addressed in legislation, regulation or policy Uber's argument is that it is not a provider of goods and services – that it is simply a facilitator. It will be difficult to transpose exactly the same regulations that currently pertain to the taxi industry on to the ride sourcing sector due to the different business models. But it is probable that a range of regulations covering, for example, standards and safety, will be applied to ride sourcing companies and drivers. As governments in Australia proceed to discuss, devise and implement appropriate policy and regulation around ride sourcing and ride sharing technologies, it will be important to incorporate appropriate access for people with disabilities into these models.

Governments in Australia should ensure that new and emerging industries respect and enhance the rights of people with a disability. Uber, which promotes itself as contemporary, innovative and forward-thinking, is currently having an adverse impact on people who rely on point-to-point commercial passenger vehicles the most.

QAI has no data on the effect of Uber in Queensland. Indeed the only information to hand is from Victoria, but with the most recent experiences to hand it is clear that governments in Australia must respond to the fact that ride sourcing (and ride sharing) had appeared to disrupted and reduce access to transportation afforded to Victorians with disabilities.

Governments in Australia must ensure that ride sourcing apps comply with the Disability Discrimination Act, Disability Standards for Accessible Public Transport and relevant equal opportunity legislation (such as the Victorian Equal Opportunity Act).

The Victorian Government must either mandate that companies operating in the ride sourcing sector provide transportation for people using wheelchairs or provide an incentive for ride sourcing operators to incorporate transportation for people using wheelchairs into their business model.

Information on utilisation of the MPTP program and hence people with disabilities accessing taxi services is extensive. It will be important for the same information to be collected and made available by ride sourcing apps to ensure that policy responses are evidence based.

### **Possible policy responses**

In order to ensure people with disabilities are not disadvantaged by the introduction of ride sourcing technologies, and that we continue to respect and facilitate the rights of people with a disability to travel around our community with some degree of flexibility, the Australian Government must implement a package of reforms. These reforms could include the following mechanisms:

- View ride sourcing as a new industry that should be regulated to provide access to point-to-point transport for people using wheelchairs and scooters;
- Subsidise the modification of vehicles for drivers utilising ride sourcing technologies to ensure an equivalent number of wheelchair accessible vehicles on the road as per the number of WATs following Victorian Government efforts to increase WAT numbers in 2013 (ie. 15 percent);
- Mandate that a certain percentage of drivers using each ride sourcing app are driving a wheelchair accessible vehicle;
- Implement an innovative, market-based mechanism that utilises new technology and provides incentives for users of ride sourcing technology to acquire wheelchair accessible vehicles and pickup people in wheelchairs
  - this would likely require subsidies for vehicle modification
  - this could include a subsidy for qualified wheelchair/scooter users which would 'auction' rides, paying more during peak periods, with funds being transferred electronically in real time utilising a cost-centre arrangement
  - lessons learned from previous attempts to would need to be considered
- Establish and subsidise a separate category for ride sourcing to cater for people with a disability
- ensure, through an incentive program or other mandated services, that response times are the same as those in the taxi industry pre-Uber
- this could be established through a PPP;
- Reduce WAT licence fees to zero, subsidise the cost as well as the modification costs of WATs, and provide additional incentives to ensure WAT numbers increase back to, and remain at, pre-Uber levels

- this would mean that, should ride sourcing continue to increase in popularity, wheelchair and scooter users are being catered for outside of mainstream transportation;
  - Extend the MPTP subsidy to passengers of accredited ride sourcing operators;
  - Provide an MPTP-style lifting fee for drivers of ride sourcing wheelchair accessible vehicles;
  - Provide MPTP-style training for ride sourcing drivers;
  - Implement standards for ride sourcing wheelchair accessible transport, including with regard to safety and ability to accommodate large wheelchairs and scooters;
- Ensure ride sourcing apps collect and make available information about trips and response times, including for people with a disability and trips taken by wheelchair and scooter users
  - the technology is available and relatively inexpensive;
  - this will be important to measure outcomes of whichever approach is implemented and to ensure an evidence-based approach to addressing the negative effect of ride sourcing's popularity on wheelchair and scooter users.

As ride sourcing apps increase in popularity nationally, it will be important to ensure that people with disabilities are not left behind.