



Secretariat, Disabilities Transport Access
Department of Infrastructure, Regional Development and Cities
GPO Box 594
CANBERRA ACT 2601 **30 November 2018**

Sent by E-mail: DisabilitiesTransportAccessSecretariat@infrastructure.gov.au

Subject: Submission in relation to the third Review of The Disability Standards for Accessible Public Transport 2002 (Transport Standards)

About us

Disability Justice Australia Inc (DJA) provides Individual, Legal, Family, Citizen, Self and Systemic advocacy services to people with ongoing support needs associated with disability that live in any of the 28 metropolitan municipalities as shown on the map below.



DJA is governed by a 7-member elected Board made up entirely of people with disability. It has been providing advocacy services for over 28 years.

Over 3.4 million people live within this catchment and according to the last Census; approximately 163,000 people with disabilities with high support needs are potential clients. We are funded by the Commonwealth government through the Department of Social Services (DSS).

Access to public transport has been a priority focus for our systemic advocacy campaigns and we have acted on numerous occasions since the last review of the standards on a range of systemic activities and in State and Federal jurisdictions to support people with disabilities with complaints of discrimination involving access to public transport.

This submission will respond to the question of barriers to access in relation to:

New Train stations built under the Level Crossing Removal Project

1. Public Transport Victoria (PTV) is a statutory authority that acts as a system authority for all public transport and an advocate for public transport users.
2. In 2015, the Victorian State government established the Level Crossing Removal Authority (LXRA) to eliminate 50 level crossings across metropolitan Melbourne by 2022, in addition to upgrading or constructing more than 20 train stations.
3. As part of the design, construction and public consultation process for the Mernda Rail Extension Project between 2015 and 2018, PTV and the LXRA decided to exclude ramp access for people with disabilities at two of the three new stations, namely Hawkstone and Mernda
4. They reached this decision and prepared a draft unapproved document which they created called The Vertical Access Requirements and Design Guide. It specifically excluded ramp access at rail station platforms above the height of 6.3 m.
5. When it became aware of this, the Board of Management of DJA came to the belief that this decision was a breach of Section 6 (1) of the Disability Discrimination Act 1992 as such a proposal constituted indirect discrimination. This is because any person/s with disabilities who could only access a station platform using a ramp would not be able to use the station to board a train and access the public transport rail network. This would be a detriment that a person without a disability would not incur.
6. The primary purpose of a rail station is to provide access to the train. If a person with a disability cannot use stairs or lifts which are provided, then they are unable to use this form of public transport without a ramp.

7. However, to compound matters, both the PTV and the LXRA did not disclose their proposal to exclude ramps or the existence of this draft guide at any of the public consultation sessions.

8. In the meantime, on the 07 September 2016 PTV held a forum for invited guests which a Board member attended and obtained a copy of the DRAFT Vertical Access Requirements and Design Guide. **(See Copy attached)**

Table 1: Guidance on level difference and vertical access modes

Level difference	<3.6 m	3.6m – 6.3m	>6.3m
Vertical access minimum requirement	Ramps and stairs	Lifts and stairs with secondary access ramps	Lifts and stairs
Minimum provision for redundancy	The ramp provides the fail-safe option and requires minimal maintenance.	The secondary ramp provides a fail-safe when the lift is non-operational. Lift systems will meet appropriate RAMS targets, acknowledging that an alternative mode of step free vertical access is provided by the ramp.	Minimum 2 No. of lifts between each different level. Lift systems will meet appropriate RAMS targets, acknowledging that an alternative mode of step free vertical access is not provided (e.g. lifts will require alternate power supplies).

9. The Board of Disability Justice Advocacy was so concerned when they learned of the contents that they wrote to the Minister on 10 October 2016 with a request for her intervention to include ramp access to all new or upgraded rail stations as part of the Level Crossing Removal Project. (See copy attached)

10. However, in her reply on 14 December 2016 the Minister indicated she had already approved the Vertical Access Requirements and Design Guide. (See copy attached)

11. The Board of Management subsequently learned that this approval occurred on the 13 November 2016, which was after:

- it had been used to design the stations at Hawkstowe and Mernda without ramp access,
- the designs were presented at public consultation sessions without disclosing the existence of the guide,
- the designs were put out to tender; and
- the successful construction bidder John Holland had been appointed.

12. A further complaint was lodged by the Board of Disability Justice Advocacy with the Victorian Ombudsman on 31 January 2017 with a request for an investigation.

13. On the 16 March 2017 the Victorian Ombudsman's office responded to the complaint and in summary made the following observations:

Charter of Human Rights and Responsibilities Act 2006

The Ombudsman's office could not identify an administrative issue where the PTV and the LXRA were in breach of the Charter.

This was because Section 52 of the Victorian Planning and Environment Act 1987 outlines what is expected in the form of notification of a planning application, including who should be notified and what form such notification should take.

However, Section 52(2)(b) provides PTV and the LXRA with the ability to, in addition to other, proscribed methods, use "*any other way that the responsible authority considers appropriate*" in relation to a public consultation process.

What is absent from this Act is anything that places an expectation as to how such meetings are conducted or what is specifically discussed at them.

14. The Ombudsman subsequently formed the view that although the designs for the stations were compliant with the regulatory guidelines expected at the time of construction, there was no administrative requirement under the Victorian Planning and Environment Act for either PTV and the LXRA to inform the public that:

- they had designed new above ground rail stations to be constructed without ramp access using the Vertical Access Requirements and Design Guide,
- this Guide had not been approved by the Minister for transport
- they had arbitrarily chosen a vertical height of 6.3 metres as the cut off point for the provision of ramp access; and
- that the design of these stations did not comply with their obligations under the Disability Discrimination Act 1992, the Victorian Equal Opportunity Act, the Charter of Human Rights and Responsibilities Act and the Disability Standards for Accessible Public Transport 2002.

15. The Board of Disability Justice Advocacy believes that this highlights a major omission from the DDA in that there is no requirement for statutory authorities, such as PTV or the LXRA to inform the public that they propose to discriminate against people with disabilities or even disclose such intentions at public consultation sessions.

16. Likewise, under section 32 of the DDA it is unlawful for statutory authorities, such as PTV or the LXRA to contravene the Disability Standards for Accessible Public Transport 2002; but there is no requirement or obligation on them to disclose to the community that they intend to do so or have contravened these standards.

17. This indicates that there is no oversight mechanism to ensure compliance other than a person with a disability lodging a complaint of discrimination with the Australian Human Rights Commission or the appropriate State or Territory Equal Opportunity or Human Rights Commission.

18. This prompted a joint letter from Disability Justice Advocacy and the City of Whittlesea to the Victorian Equal Opportunity and Human Rights Commission with a request for an investigation under Section 127 of the Victorian Equal Opportunity Act about Public Transport Victoria (PTV) and the Level Crossing Removal Authority (LXRA).

19. The VEOHRC replied on the 25 May 2017 that the matters raised had the potential to be resolved through the commission through dispute resolution, or by application VCAT and declined to investigate at that time.

20. In March 2017, two clients with combinations of disabilities which meant they were unable to use stairs or lifts at either Hawkstowe or Mernda rail stations sought help from Disability Justice Advocacy to lodge disability discrimination complaints under the Victorian Equal Opportunity Act in relation to the lack of ramp access.

21. Whilst providers and operators of public transport must comply with the minimum accessibility requirements set out in the Transport Standards for vehicles and associated infrastructure there is no obligation on them to tell the public whether or not they are doing so.

22. In the example cited above relating to the Mernda Rail Project, the Board of Management of Disability Justice Advocacy and at least two clients who were affected by the decision not to include ramp access at two of the stations only found out about the intention to discriminate too late to stop the process.

23. However, of even more concern to the Board of Management of Disability Justice Advocacy and the wider disability community who have become aware of this situation is the fact that the Vertical Access Requirements and Design Guide, which now have Ministerial approval have been and will be used in the future to continue to provide above ground new or upgraded rail stations which do not have ramp access which excludes those persons who cannot use stairs or lifts.

In fact, in the last 3 years, 18 train stations have been built as part of the Level Crossing Removal Project; but DJA has been unable to find any reliable source of collated information as to which of these rail platforms are above 6.3m in height and therefore have no ramp access.

Conclusion

1. Neither the Disability Discrimination Act nor the Disability Standards for Accessible Public Transport 2002 have any simple or expedient remedies other than a successful disability discrimination complaint.

2. This process is extremely daunting for many people with disabilities and is often a power imbalance between an individual and a large state public authority or corporation with significant resources to spend on legal advice and representation.

3. The process disenfranchises the individual and discourages many from proceeding any further than Conciliation even if it is not successful because of the fear of costs being awarded against them in the Federal Circuit Court.

4. What is desperately needed are provisions in the Disability Discrimination Act and the Disability Standards for Accessible Public Transport 2002 which compel public authorities or individuals to submit documents such as draft or completed versions of the Vertical Access Requirements and Design Guide or example to the office of the Disability Discrimination Commissioner or the President of the Australian Human Rights Commission in advance for publication on their respective websites for a period of time.

5. This would ensure transparency and accountability and give the general public, people with disabilities, human rights lawyers and the disability systemic advocacy sector an opportunity to provide constructive feedback and, if necessary, take remedial action through the media before utilizing the complaints process as a last resort.

We commend this submission to you.

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Introduction

The [Disability Discrimination Act 1992](#) (DDA) prohibits both direct and indirect discrimination on the grounds of disability, both to the person with a disability as well as family members, carers and friends. The DDA allows disability standards to be formulated in a range of areas. The Disability Standards for Accessible Public Transport 2002 (Transport Standards) were made by the Attorney-General's Department under the DDA and are administered by the Department of Infrastructure, Regional Development and Cities. The purpose of the Transport Standards is to support public transport operators and providers to remove discrimination from public transport services by providing specific details about the standards they need to meet.

Section C: For disability sector and public views: Accessibility of public transport

Questions for people with a disability, their representative organisations and the community generally.

Part 4 Target date — 31 December 2022

4.1 Responsibility

- Operators
- Providers

Requirement

All public transport services are to fully comply with the relevant Standards in relation to all aspects not specified in clause 4.2.

Application

Conveyances

Premises

Infrastructure

except trains and trams

4.2 Responsibility

- Operators
- Providers

Requirement

All public transport services are to fully comply with the relevant Standards in relation to:

- Symbols
- Signs
- Alarms
- Lighting
- Hearing augmentation
- Access paths
- Manoeuvring areas
- Passing areas
- Ramps
- Doorways and doors
- Lifts
- Stairs
- Toilets
- Tactile ground surface indicators
- Controls
- Surfaces
- Handrails and grabrails

Application

Conveyances	Premises	Infrastructure
except trains and trams	except premises to which the premises Standards apply	

Part 5 Target date — 31 December 2032

5.1 Responsibility

- Operators
- Providers

Requirement

All public transport services are to fully comply with the relevant Standards.

Application

Conveyances

Premises

Infrastructure

Trains
Trams
