



**public interest**  
ADVOCACY CENTRE

## **Third Review of the Disability Standards for Accessible Public Transport 2002**

**12 December 2018**

## About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is an independent, non-profit legal centre based in Sydney.

Established in 1982, PIAC tackles barriers to justice and fairness experienced by people who are vulnerable or facing disadvantage. We ensure basic rights are enjoyed across the community through legal assistance and strategic litigation, public policy development, communication and training.

Our work addresses issues such as:

- Reducing homelessness, through the Homeless Persons' Legal Service
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for Aboriginal and Torres Strait Islander people, through our Indigenous Justice Project and Indigenous Child Protection Project
- Access to affordable energy and water (the Energy and Water Consumers Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)
- Transitional justice
- Government accountability.

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Public Interest Advocacy Centre



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The Public Interest Advocacy Centre office is located on the land of the Gadigal of the Eora Nation.

# Recommendations

## ***Recommendation 1 – Publication of provider data on compliance***

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*The Transport Standards should be amended to require public transport operators and providers to make data publicly available that sets out the extent to which they comply with the Transport Standards. Such data should be provided in accessible formats, and should be accompanied by plain English explanations prepared by the transport operator or provider.*

## ***Recommendation 2 – Publication of Action Plans***

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*Transport operators and providers should be required to prepare and publish Action Plans that indicate the steps they will take to ensure they will meet the targets as set out in the Transport Standards.*

## ***Recommendation 3 – Funding for the Australian Human Rights Commission to provide independent oversight***

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*Additional funding should be provided to the Disability Discrimination Commissioner, within the Australian Human Rights Commission, to provide independent oversight of reported compliance and Action Plans of transport operators and providers. This funding should allow for targeted and systemic reviews of this compliance.*

## ***Recommendation 4 – Comprehensive Reporting of National Compliance with the Disability Transport Standards***

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*The Federal Government and/or COAG should establish a process for the collection of current data and evidence on the extent to which people with disabilities are able to access public transport on an equal basis.*

*Data collected should include organisational data, data from complaints and submissions, research, consultation with staff, customers and the Australian Human Rights Commission. The data collected should be compiled into a report that is made publicly available, on either an annual basis, or at a minimum every two years.*

## ***Recommendation 5 – A breach of the Transport Standards should be unlawful***

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*A provision should be added to the Transport Standards to confirm that a breach of the Transport Standards is unlawful. This should include confirmation that a person may lodge a stand-alone complaint alleging breach of the Transport Standards in the Australian Human Rights Commission.*

## ***Recommendation 6 – Standing***

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*The Australian Human Rights Commission Act 1986 (Cth) should be amended to include a provision allowing organisations to bring a complaint in relation to the Standards on behalf of a person to both the Commission and the federal courts. The Act should provide the courts with residual power to refuse to allow standing for an organisation on public interest grounds.*

*The Australian Human Rights Commission Act 1986 (Cth) should provide open standing to allow anyone to bring a complaint to enforce a breach of the Standards.*

*Alternatively, organisations should have standing to bring discrimination complaints in relation to breach of the Standards to the Australian Human Rights Commission and to the*

*federal courts in their own right. In order to satisfy this standing test, an organisation or group would need to show either:*

- that a significant portion of the membership of the organisation or group is affected by the conduct in question; or*
- the alleged discriminatory conduct relates to the objects or purposes of the organisation or group.*

***Recommendation 7 – Litigation costs***

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*A costs provision should be inserted into the Transport Standards in relation to applications that are made to the Federal Courts. This provision should reflect the wording of clause 133 of the Exposure Draft Human Rights and Anti Discrimination Bill 2012. A costs provision inserted into the Transport Standards should also enable courts to make an order as to costs where the complaint is successful and the matter is classed by the court as a public interest matter.*

***Recommendation 8 – Include Uber and ride-sharing services in the Disability Transport Standards***

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*The Disability Transport Standards should be amended to make it clear that Uber and other ride-sharing services are classified as ‘taxis’ for the purposes of the Standards.*

# 1. Introduction

PIAC welcomes the opportunity to provide a submission as part of this review process.

We have a long history of involvement in the area of access to public transport for people with disability, including running litigation on behalf of people with disability,<sup>1</sup> as well as contributing to previous public consultations on these issues.

This includes our submission to the last review of the Disability Transport Standards in 2013, see **Attachment A**.<sup>2</sup>

Unfortunately, the vast majority of the problems identified in that submission, and the recommendations made, remain relevant five years later. This is partly because of a lack of progress with the implementation of the Disability Transport Standards themselves, as well as ongoing short-comings of the individual complaints-based compliance framework for disability discrimination generally.

It is a matter of serious concern that so little progress has been made to implement the Disability Transport Standards given the importance of accessible transport in ensuring the rights of people with disability to participate fully and fairly in society.

In this submission, we reiterate key points from our previous submission, as well as outlining three specific case studies where we believe action is urgently required to improve access for people with disability to transport – and therefore to support their full participation in economic, social and cultural life.

## 2. Transparency

The Disability Transport Standards have been developed to implement the framework outlined in Article 33 of the Convention on the Rights of Persons with Disabilities (CRPD).

As we articulated in our submission to the 2012 Review:<sup>3</sup>

Article 33 of the CRPD, on national implementation and monitoring, creates a positive obligation on national governments to design an effective framework by which they are required to meaningfully implement the Convention into domestic legislation and civil society. Specifically it requires the Australian Government to:

- Develop a framework to promote and monitor implementation;
- Designate one or more focal points within government to manage implementation; and
- Consider establishing a coordination mechanism to facilitate action in different sectors.

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<sup>1</sup> See, for example *Innes v Rail Corporation NSW* [2013] FMC 36; *Haraksin v Murrays Australia Ltd (No 2)* [2013] FCA 217.

<sup>2</sup> PIAC, *Get on Board! 2012 Review of the Disability Standards for Accessible Public Transport*, 31 May 2013, <https://www.piac.asn.au/2013/06/19/get-on-board/>

<sup>3</sup> *Ibid*, p11.

Unfortunately, more than five years later, and 16 years since they were first implemented, there remain serious shortcomings in the reporting and monitoring framework for the Disability Transport Standards. This applies in at least three key areas: self-reporting by transport providers; independent monitoring; and publication of systemic outcomes.

## 2.1 Self-reporting by transport providers

In our 2012 submission, we observed:

There is currently no national reporting framework for transport operators and providers. Operators and providers should be required to make data regarding the extent to which they comply with the Transport Standards publicly available.<sup>4</sup>

A national reporting framework would assist people with disability by providing clear information on what services are (or should be) accessible, helping them with day-to-day travel and use of public transport services.

This reporting should go beyond simple compliance to also require the development and publication of Action Plans that indicate how transport providers intend to meet the targets as set out in the Transport Standards.

In the medium-term, this level of transparency will assist with the implementation of the goals of the Transport Standards, and the independence of people with disability in Australia.

### ***Recommendation 1 – Publication of provider data on compliance***

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*The Transport Standards should be amended to require public transport operators and providers to make data publicly available that sets out the extent to which they comply with the Transport Standards. Such data should be provided in accessible formats, and should be accompanied by plain English explanations prepared by the transport operator or provider.*

### ***Recommendation 2 – Publication of Action Plans***

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*Transport operators and providers should be required to prepare and publish Action Plans that indicate the steps they will take to ensure they will meet the targets as set out in the Transport Standards.*

## 2.2 Independent monitoring by the Australian Human Rights Commission

While self-publication of compliance with the Transport Standards, and associated Action Plans, by transport operators and providers would add to the transparency of disability transport accessibility in Australia, this transparency is inherently limited because it relies on self-reporting.

Therefore, PIAC supports funding an external body to provide independent oversight and monitoring of the information provided by transport operators and providers. This would not necessarily involve comprehensive auditing, but would include targeted and systemic reviews of

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<sup>4</sup> Ibid, p17.

different aspects of reported compliance with the Transport Standards, to assist people with disability to have confidence that such reporting is accurate.

Given the existing functions of the Disability Discrimination Commissioner, and the expertise of the Australian Human Rights Commission more broadly, this funding could be allocated to the Commission.

***Recommendation 3 – Funding for the Australian Human Rights Commission to provide independent oversight***

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*Additional funding should be provided to the Disability Discrimination Commissioner, within the Australian Human Rights Commission, to provide independent oversight of reported compliance and Action Plans of transport operators and providers. This funding should allow for targeted and systemic reviews of this compliance.*

## **2.3 Comprehensive publication of data on accessibility of public transport**

In addition to self-reported data by individual transport operators and providers, and independent monitoring by the Australian Human Rights Commission, PIAC emphasises the need for publication of comprehensive data on compliance with the Standards.

In our 2013 submission we noted:

There is a need for collection of baseline data and evidence on the extent to which people with disabilities are able to access public transport on an equal basis. This includes organisational data, data from complaints and submissions, research, consultation with staff and consultation with customers...

Intrinsic to developing a reliable body of data on the extent to which there has been compliance with the Transport Standards is incorporation of data on compliance that is based on the experiences of people with disabilities. Collection of such data is essential given that the Transport Standards should be classed as beneficial legislation, and the legislative framework is therefore primarily targeted at protecting the rights of passengers with disabilities. Consultation with people with disabilities should be integrated into the design of any data collection process.<sup>5</sup>

The scale of this task means that it would need to be coordinated by either the Commonwealth Department of Infrastructure, Regional Development and Cities, or through a dedicated, representative Council of Australian Governments body.

While in our 2013 submission we called for this to be provided one year prior to each five-year review under the Transport Standards, we do not see any reason why such reporting could not be provided annually (or at a minimum, every two years). Given the lack of progress in implementing the Disability Transport Standards, more regular reporting would seem appropriate.

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<sup>5</sup> Ibid., pp15-16.

## **Recommendation 4 – Comprehensive Reporting of National Compliance with the Disability Transport Standards**

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*The Federal Government and/or COAG should establish a process for the collection of current data and evidence on the extent to which people with disabilities are able to access public transport on an equal basis.*

*Data collected should include organisational data, data from complaints and submissions, research, consultation with staff, customers and the Australian Human Rights Commission. The data collected should be compiled into a report that is made publicly available, on either an annual basis, or at a minimum every two years.*

### **3. Accountability and enforcement**

In addition to short-comings in relation to transparency, PIAC also believes there are significant problems regarding the Transport Standards in terms of accountability, and specifically enforcement.

This includes a lack of clarity around whether a breach of the Standards is unlawful, the limitations of individual complaints, and the deterrent effect of costs orders.

#### **3.1 A breach of the Transport Standards should be unlawful**

This is one area where the policy situation does not appear to have changed since the last Review. In this context, our analysis of this issue remains relevant:

PIAC considers that the Transport Standards should be amended to clearly state that a breach of the Transport Standards is unlawful.

In our view it is clear that the legislature intended that a breach of the Transport Standards would be unlawful. Section 32 of the DDA states that a breach of any disability standards developed under the DDA is unlawful. The Explanatory Memorandum to the DDA confirms that a breach of a disability standard is unlawful. It provides for a person to lodge a complaint to the Australian Human Rights Commission under Section 69 of the DDA where a disability standard is breached.<sup>6</sup> There is no requirement for a complaint regarding a breach of the Transport Standards to be accompanied by a complaint alleging a breach of the DDA. In essence, a breach of the Transport Standards results in a breach of the DDA.

This view is supported by the AHRC publication ‘Federal Discrimination Law’:

It is unlawful for a person to contravene a disability standard. The exemption provisions (Part II Division 5) generally do not apply in relation to a disability standard. However, if a person acts in accordance with a disability standard the unlawful discrimination provisions in Part II do not apply to the person’s act.<sup>7</sup>

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<sup>6</sup> Explanatory Memorandum, *Disability Discrimination Act 1992* (Cth).

<sup>7</sup> Australian Human Rights Commission, *Federal Discrimination Law* (2011), Chapter 5, page 64.



However, the terms of the Transport Standards themselves do not confirm that a breach of the Transport Standards is unlawful. This has created some confusion about whether a breach of the Transport Standards is unlawful in the absence of a breach, or at least a complaint alleging a breach, of the DDA. For example, in *Haraksin v Murrays Australia* [2013] FCA 217, Nicholas J stated that:

Non-compliance with the Standards does not of itself provide a sufficient basis for a person to lodge a complaint under s46P or to commence a proceeding under s46PO(1). This is because non-compliance with the Standards does not of itself constitute unlawful discrimination.<sup>8</sup>

While PIAC respectfully disagrees with this view, for the reasons set out above, it highlights the need for clarity.

The decision in *Haraksin* may result in complainants being required to lodge complaints claiming a breach of both the DDA and the Transport Standards. This will create some practical difficulties for claimants who would otherwise lodge a complaint alleging a breach of the Transport Standards only. This is because the DDA contains legal requirements that do not exist in the Transport Standards. For example, the DDA requires complainants to make an allegation of indirect or direct discrimination, to show that they were treated less favourably because of their disability and grapple with concepts such as reasonable adjustments. By contrast, a complaint alleging a breach of the Transport Standards merely needs to show that the Transport Standards were not complied with. The requirement for complainants to deal with the DDA in addition to the Transport Standards when lodging a complaint to the AHRC would create an added hurdle for complainants who already bear a heavy burden when it comes to taking steps towards enforcing compliance with the Transport Standards.

PIAC recommends that a provision be added to the Transport Standards to confirm that a breach of the Transport Standards is unlawful. PIAC recommends that this provision confirm that a person may lodge a stand-alone complaint alleging a breach of the Transport Standards in the AHRC.<sup>9</sup>

### ***Recommendation 5 – A breach of the Transport Standards should be unlawful***

*A provision should be added to the Transport Standards to confirm that a breach of the Transport Standards is unlawful. This should include confirmation that a person may lodge a stand-alone complaint alleging breach of the Transport Standards in the Australian Human Rights Commission.*

## **3.2 Limitations of an individual complaints-driven process**

Another issue raised in our 2013 submission is the reliance on individual complaints for enforcement of the Transport Standards. While this is a problem with the individual complaint-based system for all discrimination matters, it is particularly relevant to breaches of Standards which are, necessarily, systemic issues that have impact on the rights of people beyond the individual.

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<sup>8</sup> *Haraksin v Murrays Australia* [2013] FCA 217, 86.

<sup>9</sup> PIAC, *Get on Board! 2012 Review of the Disability Standards for Accessible Public Transport*, 31 May 2013, <https://www.piac.asn.au/2013/06/19/get-on-board/> p19-20

We noted:

A fundamental problem with the Transport Standards is the lack of enforcement mechanisms other than through individual complaints. The current individual complaints-based process is not appropriate for adequately and equitably addressing the implementation of Standards. There are a number of limitations on the use of the legal process by individuals to enforce compliance with the Transport Standards.

PIAC's experience in assisting people with disability suggests that individual complaints should not act as a monitoring process to regularly ensure compliance with the Transport Standards, and indeed such an ad hoc process could not possibly achieve effective monitoring in any event. If, however, legal action remains the only mechanism to enforce compliance with the Transport Standards, PIAC submits that amendments should be made to the existing complaints system, and in particular the process for bringing a complaint through the federal courts.

Taking legal action to enforce the Transport Standards involves significant commitment and risk by individual litigants, often for limited personal gain. It is time-consuming, financially risky and can be stressful and embarrassing. If resolved at conciliation, settlements are binding only between the parties to the complaint. Therefore, while a settlement may provide for systemic outcomes, such as training or policy changes, only the complainant who is a party to that settlement agreement can enforce it if the respondent fails to fulfill its obligations.

In addition, conciliated agreements are often resolved on the basis that they be kept confidential. This means that the substance of the improvements that result from the complaint, even if it is merely to enforce the current legal standards, remains confidential and cannot be used by other people as a precedent to seek improvements more generally. If conciliation fails, and the complainant proceeds to a hearing, they face many obstacles. If the complainant succeeds at hearing, the outcome will generally be a declaration of unlawful discrimination and a modest award of compensation. As such, the available remedies are often inadequate in fully eliminating discriminatory practices.<sup>10</sup>

PIAC urges action to resolve these issues, specifically the burdens for individual complainants bringing complaints about breaches of the Transport Standards through the federal courts.

As noted in our earlier submission, 'one possible remedy to reliance on individual complaints based enforcement and the heavy burden of responsibility it places on people with disability is consideration of amendments to the standing provisions under the *Australian Human Rights Commission Act 1986* (Cth), to allow organisations to bring representative complaints to federal courts on behalf of a group of individuals.'<sup>11</sup>

However, 'courts should also have residual power to refuse to allow an organisation to have standing on public interest grounds. In considering whether an organisation should be refused standing, the court should be permitted to take into account the relationship between the individual and the organisation. [Alternatively], PIAC submits that organisation should be able to bring complaints, in their own right, as opposed to on behalf of individual members.'

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<sup>10</sup> Ibid, pp 27-28.

<sup>11</sup> Ibid, p 31.

### ***Recommendation 6 – Standing***

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*The Australian Human Rights Commission Act 1986 (Cth) should be amended to include a provision allowing organisations to bring a complaint in relation to the Standards on behalf of a person to both the Commission and the federal courts. The Act should provide the courts with residual power to refuse to allow standing for an organisation on public interest grounds.*

*The Australian Human Rights Commission Act 1986 (Cth) should provide open standing to allow anyone to bring a complaint to enforce a breach of the Standards.*

*Alternatively, organisations should have standing to bring discrimination complaints in relation to breach of the Standards to the Australian Human Rights Commission and to the federal courts in their own right. In order to satisfy this standing test, an organisation or group would need to show either:*

- *that a significant portion of the membership of the organisation or group is affected by the conduct in question; or*
- *the alleged discriminatory conduct relates to the objects or purposes of the organisation or group.*

### **3.3 Costs**

Another ongoing barrier to enforcement of the Transport Standards, especially through individual complaints, is the disincentive posed by litigation costs. As our previous submission noted:

The current costs regime of the Federal Court and the Federal Circuit Court, where costs follow the event, represents a significant impediment to pursuing discrimination complaints.

PIAC believes that it is a significant injustice that the enforcement of the Transport Standards is reliant on litigation commenced by persons with disability, many of whom are amongst the most economically disadvantaged people in Australia. Claimants can incur significant legal costs, frequently in the tens or hundreds of thousands of dollars, depending on the nature of the matter. It is not unusual for respondents to complaints of discrimination to retain large law firms and senior and junior counsel to represent them, increasing the costs risks.

Due to the risk of an adverse costs order, many strong complaints relating to the Transport Standards do not proceed, or settle. This removes any precedent impact a successful court decision might have.<sup>12</sup>

This issue needs to be resolved, even if the above recommendation (allowing representative complaints) is also adopted.

PIAC supports the approach to costs in anti-discrimination matters that was included in clause 133 of the Exposure Draft Human Rights and Anti-Discrimination Bill 2012, namely that:

- 1) Subject to subsection (2), in proceedings under this Part in the Federal Court or the Federal Magistrates Court, each party is to bear that party's own costs.

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<sup>12</sup> Ibid, p 34.

- 2) If the court concerned considers that there are circumstances that justify it in doing so, the court may make such order as to costs, and security for costs, whether by way of interlocutory order or otherwise, as the court considers just.
- 3) In considering whether there are circumstances justifying the making of an order under subsection (2), the court must have regard to the following matters:
  - (a) the financial circumstances of each of the parties to the proceedings;
  - (b) any party to the proceedings is receiving assistance under section 130, or is receiving assistance by way of legal aid (and, if a party is receiving any such assistance, the nature and terms of that assistance);
  - (c) the conduct of the parties to the proceedings (including any conduct of the parties in dealings with the Commission);
  - (d) whether any party to the proceedings has been wholly unsuccessful in the proceedings;
  - (e) whether any party to the proceedings has made an offer in writing to another party to the proceedings to settle the proceedings and the terms of any such offer;
  - (f) any other matters that the court considers relevant.

In our 2013 submission we argued that such a provision:

should be extended to enable the courts to make an order as to costs where the complaint is successful and the matter is classed by the court as a public interest matter. PIAC supports a mechanism that provides for each party bearing their own costs in relation to a claim for breach of the Transport Standards, as it would enable greater access to justice.<sup>13</sup>

#### ***Recommendation 7 – Litigation costs***

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*A costs provision should be inserted into the Transport Standards in relation to applications that are made to the Federal Courts. This provision should reflect the wording of clause 133 of the Exposure Draft Human Rights and Anti Discrimination Bill 2012. A costs provision inserted into the Transport Standards should also enable courts to make an order as to costs where the complaint is successful and the matter is classed by the court as a public interest matter.*

## **4. Specific Policy Challenges**

The following are three areas where PIAC is aware of specific barriers which impact on equal access for people with disability to transport services.

### **4.1 Uber**

The Transport Standards set out the minimum accessibility requirements that taxi operators must comply with. The Standards themselves do not provide a definition of what constitutes a 'taxi', but make it clear the definition does not include limousines (including chauffeured hire cars) or water taxis, and so preclude the application of the Standards to those services.

Ride sharing services like Uber are increasingly more prominent in Australia, and often provide a cheaper and quicker alternative to ordinary taxi services.

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<sup>13</sup> Ibid, p 35.

PIAC is aware that peak disability bodies have raised a number of concerns about the inaccessibility of Uber, including that:

- UberASSIST aims to provide additional assistance to people who may need it. UberASSIST drivers receive training from the Australian Network on Disability to ensure they have the knowledge and understanding of different needs of people who have disabilities. However, UberASSIST is not available in all locations where Uber operates, and currently it is not mandatory for UberASSIST vehicles to have ramps or lifts for wheelchair access so they are unable to accommodate people in wheelchairs who require the use of a lift;ss so they are unable to accommodate people in wheelchairs who require the use of a lift;
- Individuals are not able to book Uber services via telephone, and therefore must be able to use a computer or smartphone in order to book an Uber service. Blind and vision impaired people have indicated they are concerned about the lack of accessibility of smartphone technology required to use Uber, as well as other app-based taxi services.<sup>14</sup> Vision Australia says Taxi services should continue to ensure their companies are sufficiently resourced for taxis bookings to be made via telephones, as smartphone applications used for taxi bookings are inaccessible to blind and vision impaired people, as well as people with other physical disability.
- Uber drivers are failing to respond to requests and/or refusing to drive people with wheelchairs and guide dogs.

PIAC is of the view that Uber and other ride-sharing services should be considered a taxi service for the purpose of the Transport Standards. However the absence of a definition for ‘taxi’ creates some uncertainty for operator, providers and consumers about the need for ride sharing services to comply with Transport Standards. As such, PIAC recommends that the Transport Standards be amended to make it clear that Uber and other ride-services are classed as a ‘taxi’ for the purpose of the Transport Standards.

Making such an amendment does not impose an immediate onerous obligation on ride-share providers. The unjustifiable hardship provisions of the DDA apply to the Transport Standards, and will provide scope for ride share providers to consider their obligations under the Transport Standards, and develop a plan to implement them within a reasonable time. Further, ride sharing services that have established themselves in Australia in recent years should already be aware of the Transport Standards and have considered their need to comply with them.

### ***Recommendation 8 – Include Uber and ride-sharing services in the Disability Transport Standards***

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*The Disability Transport Standards should be amended to make it clear that Uber and other ride-sharing services are classified as ‘taxis’ for the purposes of the Standards*

## **4.2 Case study: Sydney buses**

Sydney buses do not provide ‘next stop’ announcements for passengers. Many of Sydney’s buses, which have been procured since the commencement of the Transport Standards, are not equipped for audible announcements.

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<sup>14</sup> Vision Australia Submission to NSW Review of Point to Point Transport, 2015

The Federal Circuit Court decision in *Innes v Rail Corporation NSW* [2013] FMC 36 concerned the lack of consistent audible announcements on Sydney trains. Mr Innes alleged Rail Corporation NSW (RailCorp) had discriminated against him because of his disability. He also alleged that RailCorp had breached parts 27.1 and 27.4 of the Transport Standards, which state that:

#### **27.1 Access to information about transport services**

General information about transport services must be accessible to all passengers.

#### **27.4 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.

The Judge found that RailCorp's manual on-train next stop announcements systems were 'reactive and haphazard rather than proactive and planned'<sup>15</sup>. In addition, the Judge said that the requirement to provide information to people in an effective way, was obvious:

It would appear startlingly obvious to the lay observer that passengers travelling upon trains need to know where to get off. It would be equally obvious that this information should be provided in a way that was effective for all passengers<sup>16</sup>.

Parts 27.1 and 27.4 of the Transport Standards also apply to buses. Whilst buses differ from trains to the extent that the driver may be more accessible when needing to ask for assistance, asking for assistance is not equal access and does not absolve the requirement to comply with the Standards. Asking for assistance may not be reliable and could be unsafe. Further, not all people have the ability to verbally ask for assistance.

PIAC is also concerned that Sydney bus systems have begun to introduce GPS apps to be followed, rather than modifying their own infrastructure to ensure audible announcements are made on buses, at the appropriate times.

The lack of audible announcements on buses in Sydney appears to be a breach of the Transport Standards, and is likely to amount to a breach of both the *Disability Discrimination Act 1992* (Cth) and *Anti-Discrimination Act 1977* (NSW). In the absence of consistent and clear reporting on compliance of Sydney buses with the Transport Standards, it is difficult to know the extent to which Sydney buses do not comply with the Transport Standards, as well as what steps have been taken to attempt to meet compliance with the Standards. There are also no effective enforcement mechanisms to encourage greater compliance with the requirement to make audible announcements.

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<sup>15</sup> *Innes v Rail Corporation NSW (No 2)* [2013] FMCA 36, 110

<sup>16</sup> *Ibid*, at 160

### 4.3 Case study: Taxis

By 31 December 2007, Taxi operators and providers were required to ensure that response times for accessible vehicles are the same as for other taxis.

It is well understood that people with disability are highly dependent on traditional taxi services for transportation. While some taxi providers have attempted to improve the accessibility of taxi services, PIAC is aware from its representation of individual clients and discussions with peak disability bodies that taxi services continue to be inaccessible to many people with disability.

Issues that people with disability continue to face in accessing taxis include:

- Long wait times;
- Taxi drivers refusing to provide a service.

As noted above, the Transport Standards required, by 31 December 2007, that response times for accessible vehicles are the same as for other taxis. It is unclear what data exists to demonstrate whether this requirement has been complied with and to what extent, if any, response times for accessible vehicles have improved.

The Transport Standards are silent on other issues relating to long wait times, for example, where a person has disclosed at the time of booking that they have an assistance animal with them. The burden is placed on the person with a disability to make a complaint to the Australian Human Rights Commission under the DDA. It is extremely difficult for a person to prove that the long wait time is due to their disability.

Likewise, a person with disability bears the burden of bringing a claim under the DDA where they have been refused a service on the basis of their disability. Again, the burden is placed on the person with a disability to make a complaint to the AHRC. Complainants are often discouraged by lack of responsiveness to their complaints, by both taxi drivers and taxi operators. Indeed, taxi operators generally consider themselves immune to such complaints, relying on the bailment relationship with taxi drivers under the common law.

As a result, there is little incentive for taxi operators to implement the Transport Standards, or indeed, address systemic non-compliance by their drivers of obligations under the DDA.

## 5. Conclusion

The Third Review of the Disability Standards for Accessible Public Transport 2002 (Transport Standards) is an opportunity for Governments, and transport operators and providers, to take urgent action to improve public transport access for people with disability across Australia.

This includes improving the transparency, accountability and enforcement of the Transport Standards, as well as addressing specific policy challenges including ride-sharing services, audible announcements on buses and accessible taxis. These reforms are necessary because people with disability have the right to full participation in economic, social and cultural life.