

The Disability Standards for Accessible Public Transport 2012 Review Submission

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scia
Spinal Cord Injuries Australia



Disability Standards for Accessible Public Transport 2012 Review Submission

To:

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DSAPT 2012 Review Terms of Reference

Scope

1. As required by Part 34 of the Transport Standards, the 2012 Review will review the efficiency and effectiveness of the Transport Standards and will:
 - assess whether discrimination has been removed, as far as possible, according to the requirements for compliance set out in Schedule 1 of the Transport Standards; and
 - advise on any necessary amendments to the Transport Standards.
2. The Review will focus on:
 - reporting public views of people with disability, and the community generally, on progress towards achievement of targets set out in the Transport Standards;
 - assessing compliance with the requirements set out in Schedule 1 of the Transport Standards, in particular those under Part 2 of Schedule 1;
 - identifying initiatives and actions with respect to removing discrimination from public transport services undertaken by state and territory governments since the 2007 Review; and
 - assessing the progress of the implementation of the response to the 2007 Review.

The Disability Discrimination Act (1992)

SCIA would like to recognise that although the Transport Standards are National, the Australian State and Territory Governments and/or their related transport departments, are responsible for ensuring public transport service providers and operators, including taxis, are compliant with the minimum requirements of the Transport Standards.

The DDA objects are:

- (a) to eliminate, as far as possible, discrimination against persons on the ground of disability in the areas of:
 - (i) work, accommodation, education, access to premises, clubs and sport; and
 - (ii) the provision of goods, facilities, services and land; and
 - (iii) existing laws; and
 - (iv) the administration of Commonwealth laws and programs; and
- (b) to ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law as the rest of the community; and
- (c) to promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community.



Spinal Cord Injuries Australia Background:

Spinal Cord Injuries Australia (SCIA) was formed in 1967 by a group of young men who acquired a spinal cord injury resulting in quadriplegia and who wanted to live in the community and contribute to society. They created their own organisation, formerly known as the Australian Quadriplegic Association, which changed its name to SCIA in 2003.

SCIA's Mission "Life without Barriers" is focused to get people 'back on track' by finding the solutions to address barriers that may arise and to provide support to ensure people with a spinal cord injury and similar conditions remain actively involved in personal, social and vocational activities.

Due to the increasing number of people surviving traumatic injuries, diseases and medical conditions and living with disability, Australia's increasing ageing population, as well as the implementation of the National Disability Insurance Scheme (NDIS), now known as DisabilityCare Australia, many people with disability will have the opportunity to increase their participation in society, and it is extremely important for all modes of transport conveyances, infrastructure and services to provide equitable access.

SCIA has a proud history of successfully advocating for the development, implementation and improvement of the various types of disability, health, community, transport and general support services and programs, and it is anticipated that the Federal Government Department of Infrastructure and the Federal Attorney General will give serious consideration to the content of this submission and positively respond to the issues and recommendations.

Submission:

*The creation of the Transport Standards recognised that access to public transport is vital for people with disability, their families and their carers to fully participate in community life. The Transport Standards were also envisaged to provide benefits not only to people with disability but to 'many older Australians and parents with infants and prams who use public transport services' (Attorney-General's Department, 2006). While providers of public transport had obligations to provide access for people with disability prior to the introduction of the Transport Standards (through their obligations under the DDA), **the purpose of the Transport Standards is to clearly set out how public transport operators and providers can remove discrimination in providing public transport for people with disability, and thus meet their obligations under the DDA.***



Introduction:

This submission to the Disability Standards for Accessible Public Transport 2012 (Transport Standards) Review provides comments and suggestions for some of the Terms of Reference and anticipates this submission will be given serious consideration. SCIA is more than willing to clarify and/or provide further information about the submission if required.

Content:

Issues:

Definition of Transport Operator and Provider

The Transport Standards definition of transport operator and provider currently states:

1.20 Operator

(1) An operator is a person or organisation (including the staff of the organisation) that provides a public transport service to the public or to sections of the public.

(2) A public transport service may have more than one operator.

and;

1.22 Provider

(1) A provider is a person or organisation that is responsible for the supply or maintenance of public transport infrastructure.

(2) A provider need not be an operator.

SCIA believes it is unclear or there is an anomaly with the Transport Standard's definition of transport "operator" and/or transport "provider" in regard to taxi networks as they provide and operate a taxi booking dispatch service through taxi fleets, including wheelchair accessible taxis (WAT). And SCIA is aware that NSW taxis, including wheelchair accessible taxis, are required to have a taxi radio and be connected (contracted) to a taxi "network" (to accept or reject taxi fare bookings and general communication).

The Transport Standards have minimum requirements and milestones for transport operators and transport providers of which must be compliant in relation to access to transport conveyance, infrastructure and service delivery.

Taxi networks not only manage passenger bookings, they have the "authority" to discipline taxi drivers if they do not comply with the taxi company's operational policies and procedures, and if wheelchair accessible taxi drivers do not comply with the taxi licence conditions of giving priority to people with disability.



If people with disability believe they have experienced disability discrimination due to taxis continually being late to arrive for a booking, or if the wheelchair accessible taxi has inadequate room inside the taxi to accommodate the person in a wheelchair or mobility device. If the taxi network is not considered to be the transport provider or transport operator then the person with disability may be required to make a disability discrimination complaint against each individual taxi owner/operator/driver and/or the taxi network.

SCIA strongly recommends that the Transport Standards define a taxi network as a transport operator and transport provider to make taxi networks accountable to ensure they are not only compliant with the taxi fare booking response times, including the milestones, but also the wheelchair accessible taxis the taxi network has contracted must be compliant with the minimum allocated space requirements of Transport Standards Part 9.1, 9.3 and Division 1.2 (1.11).

Definition of minimum allocated space

The Transport Standards minimum allocated space requirements have the purpose to accommodate the 90th percentile of people using wheelchairs and mobility devices of which there are different shapes and sizes.

The Transport Standards (*Division 1.2 - Meaning of Important Terms*) provides the definition of the minimum allocated space states:

1.11 Allocated Space; "An allocated space is a three dimensional space that can accommodate a wheelchair or similar mobility aid".

However, SCIA believes it is important to ensure the Transport Standards definition for the minimum allocated space dimensions are clearly defined to ensure they cater for an "occupied" wheelchair or similar mobility device as people's feet generally protrude beyond the foot plates, people's hands and arms protrude on the outside of the wheelchair (especially when propelling the wheels). And the height and location of a person's head in proximity to the internal body of the conveyance varies greatly depending on the height of the person and size of the wheelchair or mobility device. This is particularly the issue for some specific makes and models of wheelchair accessible taxis.



The minimum allocated spaces are required in transport conveyances e.g. buses, trains, ferries, light rail as well as wheelchair accessible taxis etc, however, SCIA believes it is important that the minimum allocated space dimensions not be interpreted incorrectly to ensure the dimensions meet the aims and/or purpose of the Transport Standards. If not, it can result in the minimum allocated space provided in the transport conveyance impeding or preventing access for people with disability using a wheelchair or similar mobility aid.

To address this issue and to prevent any misinterpretation of the Transport Standards minimum allocated space requirements and dimensions, SCIA strongly recommends that the minimum allocated space definition be 'prescriptive' and state that it is required to be a three-dimensional rectangular prism, with no encroachments. It would also be beneficial if this information included diagrams with the dimensions and measurements.

Although the Transport Standards requires the minimum allocated space to be 1300 mm L x 800 mm W x 1500 mm H, (minimum 1410 mm H up until December 31, 2012) as well as required to be "three-dimensional", a number of vehicle modifiers have designed vehicles to operate as wheelchair accessible taxis (with one wheelchair user capacity), which have inadequate room inside the vehicles due to the rear door and folding attached ramp encroaching into the allocated space when closed/stowed when the passenger using a wheelchair or similar mobility device is inside the taxi.

These wheelchair accessible taxis provide access via the backdoor with a ramp. The ramp is either hinged to the floor at the back of the vehicles, or is a portable ramp. The attached ramp encroaches into the allocated space while the passenger is there and can press against the passenger's head or wheelchair which prevents the taxi rear door closing.

In NSW, all converted vehicles to operate as wheelchair accessible taxis need an engineer to certify that the modified vehicles are compliant with the Australian Design Rules, standards for wheelchair restraints, boarding ramps and the Transport Standard's minimum allocated space before they can be registered and licensed. The NSW Government is considered the public transport provider and transport operator, and its Roads and Traffic Authority (RTA) registers the wheelchair accessible taxis, and the Ministry of Transport allocates the licences for the wheelchair accessible. The RTA also nominates which engineers have the authority to provide certification for the converted vehicles.



Although there are a number of processes in place between the design concept, modification, registration and licensing of the wheelchair accessible taxis, it would be expected that wheelchair accessible taxis be compliant with the Transport Standards. However, a successful disability discrimination complaint was lodged by a person with disability in the Federal Magistrates Court in 2010, of which included that the above-mentioned wheelchair accessible taxis were non-compliant with the Transport Standards minimum allocated space. The NSW Ministry of Transport addressed this issue by implementing the Wheelchair Accessible Taxi Measurement Protocol (Protocol) requiring all new wheelchair accessible taxis entering the service from October 1, 2011 to be compliant with the Protocol.

The Protocol has the minimum dimensions of 1300 mm L x 800 mm W x 1500 mm H, (reflecting the Transport Standards minimum allocated space requirements from January 1, 2013) to be provided as a three-dimensional rectangular prism, with no encroachments. Although this is a positive outcome, as the NSW wheelchair accessible taxi licences an operational life of 10.5 years, existing wheelchair accessible taxis that were licensed prior to October 1, 2011, that are non-compliant with the Transport Standards minimum allocated space, will continue to impede access for many wheelchair users until these taxis reach the end of their operational life.

To address this issue, and in conjunction with SCIA's recommendation for the Transport Standards to provide more information to clarify the definition of the minimum allocated space to avoid any misinterpretation of it, SCIA would like to recommend that vehicle conversion companies be required to submit design plans to the relevant department or authority for any different vehicle makes and models it wants to produce as wheelchair accessible taxis. The design plans would demonstrate how the proposed vehicle is compliant with all relevant standards including the Transport Standards minimum allocated space. The design plans would be submitted to a relevant government authority for approval, similar to the planning approval process required for homes and buildings submitted to local government.



Minimum Number of Allocated Spaces in Public Transport Conveyances

The Transport Standards (Clause 9.4) requires a minimum number of allocated spaces for people using wheelchairs and similar mobility devices which states:

9.4 Number of allocated spaces to be provided — buses

(1) At least 2 allocated spaces must be provided in each bus with more than 32 fixed seats.

(2) At least one allocated space must be provided in each bus with less than 33 fixed seats.

(3) An allocated space is additional to the fixed seating capacity.

For public transport buses with 32+ seats there is a requirement for a minimum of 2 allocated wheelchair spaces. On conveyances such as light rail (trams) and trains, where there is more than one carriage, the Transport Standards requires a minimum of 2 allocated spaces in each carriage, but also provides for the total minimum number of allocated spaces to be consolidated into one carriage.

SCIA is unsure how the minimum 2 allocated space percentage ratio was formulated, however, since the introduction of Transport Standards, public transport providers and operators have introduced articulated buses (aka "bendy-buses") around 2005/2006, and there has been a recent announcement by the NSW Government to start using double-decker buses. These buses have the capacity to transport up to twice as many passengers, however, they are currently only required to provide 2 allocated wheelchair spaces as they have 32+ seats. SCIA understands the articulated buses (Volvo B12BLE) have the capacity to transport approximately 64+ seated passengers and the double-decker buses have a capacity to transport approximately 100 passengers.

As the double-decker and bendy-buses have the capacity to transport many more passengers as standard buses, SCIA strongly recommends the Transport Standard's review consider such new and evolving modes of transport conveyances (that have increased passenger capacity) to ensure they do not reduce the number (or percentage ratio) of allocated spaces for people with disability using wheelchairs or mobility aids across the entire bus fleet.



As the Transport Standards enables conveyances, with more than one carriage, such as trains and light rail (trams), to consolidate all of the allocated spaces into one carriage, it seems appropriate that the Transport Standards would be amended to require these buses with the increased passenger capacity to have a minimum number of 4 allocated wheelchair spaces, to be provided adjacent to, or in the vicinity of, the current allocated spaces as it is impractical to include 2 wheelchair spaces on the upper deck of a double-decker bus, or in the rear portion of the bendy-bus if there are steps to access that section. For Example, the Transport Standards could include:

9.4 Number of allocated spaces to be provided — buses

(1) At least 2 allocated spaces must be provided in each bus with more than 32 fixed seats.

(2) At least 4 allocated spaces must be provided in each bus with more than 60 fixed seats.

(3) At least one allocated space must be provided in each bus with less than 33 fixed Seats.

(4) An allocated space is additional to the fixed seating capacity.

Furthermore, there would be little impact on these buses capacity to transport passengers that do not use a wheelchair or mobility device, as the allocated spaces include 'fold down' passenger seats that can be used when the allocated spaces are unoccupied by a passenger using a wheelchair or mobility device.

Audio and visual announcements in transport conveyances

The Transport Standards includes that all modes of public transport provide audio and visual announcements when approaching destinations e.g. train stations, ferry wharves, light rail (tram) stops and bus stops etc, so instead of leaving the decision for transport providers and operators to consider whether to include this audio/visual technology for new and retrofitting existing conveyances, then leaving it up to people with disability to lodge a disability discrimination complaint if the audio/visual technology is not included, SCIA would like to recommend that the Transport Standards include that transport providers and operators "must" provide audio and visual announcements in all modes of public transport including buses, trains, light rail (trams) and ferries.



Dedicated School Buses

Dedicated school buses are currently exempt from the Transport Standards. This means that there are no specific minimum standards relating to vehicle access, infrastructure and services, and no minimum percentage milestones to comply with, however, people with disability and/or their families still have the option to make a disability discrimination complaint using the Disability Discrimination Act, if they are denied access to these services.

Although major cities and regional towns may provide accessible buses that are used as dedicated school buses, there are many rural, regional and remote towns that have one or more dedicated school buses that are inaccessible for people disability. This can have a major impact on families with one or more children with disability, who live in or on the outskirts of a town where the dedicated school bus service travels past or nearby the family property, but the child or children are unable to access the bus.

The implications are that the family need to find alternative accessible transport, but in the majority of cases, the family has the responsibility and costs associated with transporting their children to and from school. Also children with disability do not have the same experience of travelling to and from school with their peers and often they are excluded from attending external excursions if the dedicated school bus, or other contracted bus or coach, is inaccessible. This may also result in the children with disability and be transported by private vehicle to and from excursion.

SCIA strongly believes that dedicated school buses need to be included in the Transport Standards, or if they are not included in the Transport Standards, SCIA would like to recommend that dedicated school buses be accessible for student with disability with the responsibility and the requirements be included in state and territory government transport regulations and guidelines.

Community Transport

Although the Australian State and Territory Governments, and/or their respective transport departments are responsible for funding and/or providing community transport services, SCIA understands that there is no funding agreement/requirement for the community transport service providers to ensure the community transport vehicles have wheelchair access for people with disability.



Community Transport is an extremely important transport option provided for people with disability and older people. Apart from providing transport to and from shopping, medical appointments, individual and group recreation activities, it helps minimise social isolation and can build friendships amongst commuters. However, as wheelchair users (who are unable to transfer in and out of vehicles) generally have fewer options for access to transport services and facilities, and that community transport is currently excluded from the Transport Standards, wheelchair users are being excluded from community transport, and the benefits they offer, creating discrimination and many missed opportunities.

SCIA understands that if a community transport service provider does not have an accessible vehicle, and a current or prospective client requires a wheelchair accessible vehicle, the community transport service provider has the responsibility to broker an accessible service, either from another transport service provider or hire a wheelchair accessible taxi. However, in many small rural and regional towns, there are no alternative wheelchair accessible transport services, including wheelchair accessible taxis. This can result in people with disability having no option for accessible transport services resulting in being totally isolated if they or their family do not own a private vehicle.

As community transport services are government funded SCIA believes all eligible people with disability should have equal access to public and community transport services, and if there is no government funding agreement/requirement for community transport service providers to provide at least one wheelchair accessible vehicle, SCIA would like to recommend the Transport Standards include community transport services to have at least one wheelchair accessible vehicle, especially if the community transport service only has one vehicle and it is in a rural or regional area.

Transport Standards Direct Assistance Provisions

Although the Transport Standards (32.1 *Effect and application of these Standards*) applies to current or new transport conveyances and infrastructure, the Transport Standards enables transport providers and operators to provide "direct assistance" and "equivalent access":

1.15 Direct assistance

Direct assistance is help given by an operator or provider:

- (a) to make public transport accessible to a person with a disability when premises, infrastructure or conveyances do not fully comply with these Standards; or*
- (b) to provide non -discriminatory access on request*

and;



1.16 Equivalent access

- (1) *Equivalent access is a process, often involving the provision of direct assistance, under which an operator or provider is permitted to vary the equipment or facilities that give access to a public transport service, so long as an equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety is maintained.*
- (2) *Equivalent access does not include a segregated or parallel service.*

SCIA believes people with disability would prefer, where possible, to access transport conveyances and infrastructure independently and without direct assistance, and that when there is a proposal to develop new transport conveyances or infrastructure, or the upgrading (or extension) of existing transport conveyances or infrastructure, SCIA would like to strongly recommend the transport providers and operators be required to submit conveyance and infrastructure design plans to a relevant authority or department to ensure compliance with the Transport Standards. This is to demonstrate how the conveyance and/or infrastructure will provide unassisted access for people with disability and/or provide evidence that such compliance cannot be met, and the need for assisted access.

This is the current situation for the Sydney light rail carriages (trams) that have a carriage door design which, when opening, move out and slide open on the outside of the carriage. This design has resulted in a space between the carriage floor and the platform which requires a portable ramp placed between the carriage floor and the platform. The ramp is required to be placed by the light rail conductor to enable people using wheelchairs and mobility devices to traverse safely. However, there are light rail carriages designed with doors that results in a smaller space between the carriage floor and platform that negates the need for the use of a portable ramp.

The NSW Government is in the process of extending the current light rail service to Dulwich Hill (known as the Inner West light rail extension), as well as currently designing a completely new light rail system/service between the Sydney central business district and Sydney's eastern suburbs of Randwick and Kingsford, but the inner West light rail extension will have a mix of existing and new light rail carriages. Although it is anticipated that new light rail carriages will be incorporated into the existing Inner West light rail service that would provide for independent access by people with disability, the continuous use of existing light rail carriages might influence (and compromise) the design of the new light rail conveyances and require passengers with disability to be provided with direct assistance.



It is also the current situation for the Sydney passenger rail network which requires a portable ramp to be placed between the train carriage floor and the platform to enable people using wheelchairs and mobility devices to traverse. The portable ramps are generally stored on the train platform, and in some circumstances, stored on the train, and the ramps need to be placed between the train carriage and the platform by the train guard or the train driver.

SCIA understands that a number of train station platforms in Victoria are trialling and/or installing raised sections of existing train platforms that will enable people using wheelchairs or mobility devices to enter and exit the train carriages without the use of portable ramps. If this access initiative is successful, SCIA would like to recommend it be implemented in existing and new train stations, to support the aim of unassisted access wherever possible.

Furthermore, when portable ramps need to be deployed at train stations by the train guard, driver or station staff, the accessibility of train services can be impeded and considered inequitable if transport providers or transport operators reduce or remove train service staff who would normally obtain the portable ramp from a locked cabinet on the train platform.

SCIA would like to strongly recommend that the Transport Standards need to include that if assisted access is required, then the transport provider or transport operator must have appropriately trained personnel always available during transport service times. This is also extremely important when the train station's wheelchair accessible toilet facilities are locked by train station staff, which requires staff to manage and provide a key to unlock the accessible toilet facilities when required.

The DDA Complaints Process

Although the Transport Standards do not incorporate the Disability Discrimination Act (DDA) complaint process, SCIA believes it must be highlighted that people with disability, and the disability sector, have great concern about the DDA requirement for people with disability to lodge an individual complaint to try to get disability discrimination addressed. If the AHRC accepts a complaint from an individual, and the complaint is not conciliated, it results in the person with disability having to make a decision to, either drop the complaint and let the discrimination to continue, or decide to pursue the complaint in the Federal Court or the Federal Magistrate's Court.



Because the court process has a costs jurisdiction, with the potential for a person with disability to also be responsible for covering the costs of the respondents legal fees, as well of the court costs, in the event that the discrimination complaint case is lost, it is the greatest barrier for people with disability when trying to get disability discrimination issues raised, addressed and resolved quickly and amicably.

SCIA would like to recommend that an appropriate independent organisation, such as the AHRC, be provided with the appropriate authority, funding and resources to act on behalf of people with disability, both individually and systemically, proactively when disability discrimination occurs, and/or to pursue un-conciliated complaints through the court system.

Furthermore, as transport providers and operators are required to be compliant with specific five yearly milestones in regard to access to transport conveyances, facilities and services such as taxi transport response times, SCIA would like to recommend that an independent body, such as though AHRC, establish and maintain a "monitoring" role to ensure public transport service providers and transport operators, including wheelchair accessible taxis, are compliant with the Transport Standards and the relevant milestones.

Summary

This submission includes comments and recommendations for the Transport Standards 2012 Review but only in relation to some of the Terms of Reference and about specific types of public transport services, facilities and infrastructure.

Spinal Cord Injuries Australia recommends:

- Community transport services to be included in the Transport Standards and a required to have at least one wheelchair accessible vehicle, especially if the service is operating in rural and regional areas where there may not be an alternative accessible public transport service or wheelchair accessible taxi service
- Dedicated school buses to be included in the Transport Standards, particularly for dedicated school buses operating in rural and regional areas where there is little or no other public transport option as children with disability are being denied access to travel to and from school and school-related excursions with their fellow students. And parents are being required to transport their child or children with disability to and from school and school-related excursions.



- The minimum allocated space requirements and definition needs to be prescriptive, and supported with images, to ensure there are no misinterpretation of the minimum requirements.
- That vehicle modifiers, or transport operators or transport providers, be required to submit design plans to an appropriate authority or department to clarify if the public transport conveyance, including wheelchair accessible taxis, are compliant with the standards, particularly the minimum allocated space requirements
- The minimum number of 2 allocated spaces within conveyances with seating for 32+ seats needs to be amended to ensure public transport conveyances, including buses with greater capacity such as the articulated buses (bendy-buses) and double-decker buses, does not diminish the overall percentage ratio of allocated spaces for people using wheelchairs and similar mobility devices, with a minimum of 4 allocated spaces be required on buses with 60+ seats.
- The provision for "assisted access" (when conveyances are non-compliant) be amended to require the transport operator or transport provider that proposes to provide "assisted access" to submit plans for new public transport conveyances and infrastructure to an appropriate authority or department, to clarify why "unassisted access" for people with disability cannot be provided. This recommendation would also apply to existing transport providers or operators that are providing "assisted access" but are planning to undertake an upgrade or extension of existing service.
- The audio and visual displays on transport conveyances being required to be included in the specifications for tenders of new and upgrading of existing transport services such as buses, trains, light rail (trams) and ferries etc.
- That an independent authority, such as the AHRC, be provided with appropriate authority, funding and resources to undertake individual and systemic advocacy for people with disability proactively, or for un-conciliated disability discrimination complaints.

Again, thank you for providing the opportunity to contribute to the Transport Standards 2012 review, and please contact Spinal Cord Injuries Australia if the content requires clarification.

Yours sincerely,

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