

14 July 2014

Disabilities Transport Access Secretariat
Road Safety and Transport Access Branch
Department of Infrastructure and Regional Development
GPO Box 594
Canberra ACT 2601

Dear Secretariat

RE: Draft Report of the Review of the *Disability Standards for Accessible Public Transport 2002*

The Victorian Council of Social Service (VCOSS) welcomes the opportunity to comment on the Draft Report of the Review of the *Disability Standards for Accessible Public Transport 2002* (the Transport Standards).

Overall, we are disappointed with the Draft Report, as it has retreated from the recommendations of the previous review. In particular, the Draft Report has not re-iterated the recommendations of the previous review that:

- The Transport Standards be amended to require new community transport vehicles greater than 12 seat capacity to comply with the Transport Standards commencing in 2017, (with full compliance by 2032)
- Phased application of dedicated school bus services to physical access requirements in the Transport Standards, commencing in 2029 and being fully required by 2044

We consider that the retreat of the Australian Government from these recommendations to expand the coverage of the Transport Standards is a retrograde step, and will mean that students with disabilities and community transport users will continue to be disadvantaged by this omission.

VCOSS re-iterates the positions outlined in its previous submission to the Issues Paper for the review. While we observe that many of the issues we raised in our submission were discussed in the draft report, rarely were any findings made to progress them. We observe that the Draft Report of the review has, for the most part, presented a summary of submissions, but rarely analyses their veracity or recommends means of redressing them.

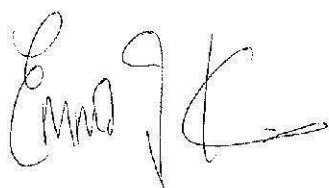
We also observe that the majority of industry submissions are not available to the public, and the Draft Report only occasionally gives any insight into the industry view on the concerns raised by people with disabilities. This omission represents a lost opportunity for dialogue between people with disabilities and transport providers, and is a further impediment to finding sensible ways to remove discrimination against people with disabilities in the provision of public transport.

VCOSS cautiously welcomes the central recommendation from the Draft Report– that the Australian Government 'commence a process for updating and modernising the Transport Standards', with the following additions:

- That the overall effect of any 'modernisation' provides an equal or higher standard of access for people with disabilities
- That the enforcement mechanism for the Standards is strengthened, allowing people with disabilities more certainty that if their rights to equal access are not met, they can have confidence in an effective recourse mechanism.

We look forward to the Final Report of the Review.

Yours sincerely



Emma King
Chief Executive Officer

encl: VCOSS Submission to the Issues Paper of the 2012 Review of the *Disability Standards for Accessible Public Transport 2002*

2012 REVIEW OF THE *DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT 2002*

VCOSS submission to the Issues Paper

25 June 2013

About VCOSS

The Victorian Council of Social Service (VCOSS) is the peak body of the social and community sector in Victoria. VCOSS works to ensure that all Victorians have access to and a fair share of the community's resources and services, through advocating for the development of a sustainable, fair and equitable society. VCOSS members reflect a wide diversity, ranging from large charities, sector peak organisations, small community services, advocacy groups and individuals involved in social policy debates.

Authorised by:

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Summary of Recommendations

1. The Standards should include a requirement to publicly report compliance.
2. Approved procedures for measuring, auditing and reporting compliance should be required.
3. The Schedule 1 targets should specify that they relate to the proportion of services that are *fully* compliant with the standards, not for individual elements.
4. Appropriate measurements and research on accessibility outcomes should be developed.
5. The Australian Human Rights Commission should have additional capacity to take representative cases to the Federal Court.
6. The Australian Government should reduce the circumstances in which costs may be awarded against complainants taking cases to the Federal Court.
7. The Australian Government should legislate that non-compliance with the Standards is an offence with an appropriate penalty, and provide resources to prosecute offences.
8. The Australian Government should share funding responsibility with the States to progress upgrades of legacy infrastructure.
9. School and community buses should be included in the all elements of the Standards, to achieve full compliance by 2032 at the latest.
10. Exemptions from the Standards should be limited to legacy services, conveyances and infrastructure.
11. Only an operator or provider should be able to apply for an exemption, which should only apply to the services, conveyances and infrastructure for which they are directly responsible.
12. Section 33.7 should be amended to clarify that:
 - in cases where the service, conveyance or infrastructure was initiated after the commencement of the Standards – unjustifiable hardship only applies to the costs of complying with the Standards if they had been applied at the time of procurement or design of a public transport service, not the costs of rectifying non-compliance after the fact;
 - unjustifiable hardship is not present merely for the reason that a business wishes to provide a public transport service at a lower cost than its competitors.
13. The application of the Standards should be extended to clarify that they also apply to manufacturers, builders, importers and procurers of public transport services, conveyances and infrastructure.
14. The Standards should not incorporate references to materials not freely available to the public.
15. The Standards should explicitly require audible announcements to be made on board vehicles so passengers know their location.
16. The Standards should explicitly require audible announcements on automated fare-payment systems.
17. The Standards should be developed to incorporate new elements for new

technologies, including information available from websites and mobile devices, and smartcard ticketing systems.

18. The Standards should be amended to stipulate that a single lift is not an acceptable solution for level access at train stations, and that all lifts in train stations should have a back-up source of power in the event of a power failure.
19. The Standards should specify that where a person requires a companion in order to travel, the companion must not be required to pay a fare.
20. The Standards should be amended so that the minimum width between wheel arches on buses is at least 800mm.
21. The Standards should explicitly state that an allocated space cease being used for another purpose if it is required by a person with a mobility aid.
22. The Standards should explicitly state that new rail conveyances and platforms (including for trams) must be built at the same height.
23. The Standards should specify that sufficient information should be provided to ensure that passengers can determine the level of accessibility of a service.
24. The Standards should require that where the public transport service is not compliant, the operator must provide alternative transport at an equivalent fare.

Introduction

VCOSS welcomes this opportunity to contribute to the 2012 Review of the *Disability Standards for Accessible Public Transport* (the Review). VCOSS has had a long history of advocacy for improved public transport in Victoria, including for accessibility improvements to the public transport system.

VCOSS has produced numerous reports on public transport accessibility, including:

- Accessible Public Transport Watch Project¹
- Creating Accessible Journeys²
- The Voices of Taxi Users³
- Better Bus Access: Summary Report of the Bus Access Forum.⁴

VCOSS also currently facilitates the All Aboard Network, a collaborative network of community organisations, individual advocates and local government officers who work and advocate for improvements to public transport access.

Overview: systemic implementation

A key focus of the review is whether the *Disability Standards for Accessible Public Transport 2002* (the Standards) have removed discrimination for people with disabilities. While some improvements have been made in response to the standards, they have been insufficient, uneven, and often not maximised opportunities to improve accessibility.

In particular, VCOSS observes that:

- resources provided by the government agencies and transport operators have been insufficient to meet the Schedule 1 target dates for compliance
- the process for passengers to seek redress for inaccessible public transport remains cumbersome, complicated and is often adversarial
- accountability for and enforcement of the Standards remains weak
- even where compliance is achieved, it often occurs in a piecemeal way, so that compliant infrastructure and vehicles do not 'join-up' to create a continuously accessible journey path, which continues to prevent people using public transport
- while there are notable examples of good practice, public transport agencies, operators and their staff still do not prioritise accessibility to the extent required, and sometimes appear to be unaware of their responsibilities, and
- the failure to progress the recommendations of the 2007 Review of the Standards has contributed a sense that improving access is not a high priority for governments.

¹ Victorian Council of Social Service, *Accessible Public Transport Watch Project: A statewide consultative report of experiences in accessing Victoria's public transport system by people with a disability*, 2007, available at: <http://vcoss.org.au/document/accessible-public-transport-watch-project/>

² Victorian Council of Social Service, *Creating Accessible Journeys*, 2011, available at: <http://vcoss.org.au/document/creating-accessible-journeys/>

³ Victorian Council of Social Service, *The Voices of Taxi Users: Summary Report of the VCOSS Taxi Forum*, 2011, available at: <http://vcoss.org.au/document/the-voices-of-taxi-users/>

⁴ Victorian Council of Social Service, *Better Bus Access: Summary Report of the Bus Access Forum*, 2011, available at <http://vcoss.org.au/document/better-bus-access-summary-report-of-the-bus-access-forum/>

Disclosure

Recommendations

- The Standards should include a requirement to publicly report compliance.
- Approved procedures for measuring, auditing and reporting compliance should be required.
- The Schedule 1 targets should specify that they relate to the proportion of services that are *fully* compliant with the standards, not for individual elements.
- Appropriate measurements and research on accessibility outcomes should be developed.

Requirement to report

A central concern with the Standards is the lack of solid information about the level of compliance of agencies and operators. Compliance statistics remain difficult to locate and are often not disclosed, and when they are available they are often highly aggregated, and are rarely comparable between jurisdictions.

This lack of information impacts upon the capacity of people with disabilities to use the *Disability Discrimination Act 1992* as a mechanism to enforce the Standards. The Standards are often highly technical and in some cases may require a high level of expertise to ascertain whether a particular public transport service is compliant and therefore whether to take action.

Recommendation 1

The Standards should be amended to include a requirement to publicly report compliance.

Measurement, auditing and reporting

Even when statistics are available, it is often unclear what they refer to, or what evidence of compliance they rely upon. For instance, we understand that it is common in Victoria for progress against the standards to be averaged across elements – for instance, if a category of conveyances was 40 per cent compliant for one element, and 80 per cent compliant for another, it would be reported as 60 per cent compliant. This information is misleading, and does not give a fair indication of what proportion would be able to be used by people with disabilities.

Similarly, it is unclear to what extent this information is based on auditing of actual services – rather than simply the belief of an agency or operator about what should be accessible. For instance, a transport agency may require that new bus stops purchased with public funds are DDA compliant, but VCOSS is not aware whether there is any process of checking that the finished product is actually compliant. Similarly, VCOSS observes that the Standards are often inadequately considered during procurement, which are too often accommodated by the requirement (if anything) that the conveyances and infrastructure comply with Standards, but neither contemplate the best means of achieving that, nor whether other requirements potentially conflict with that goal.

The Standards should specify that measuring, auditing and reporting compliance may be required to conform to an approved form. The Australian Government should determine an approved methodology to which these activities must conform.

Recommendation 2

Approved procedures for measuring, auditing and reporting compliance should be required.

Targets should apply to services

The Standards are unclear as to what constitutes a distinct 'public transport service' for the purposes of determining how to apply a proportional target to them. The Standards are ambiguous as to what, exactly, the target should apply. For instance, section 2.3 of Schedule 1 gives the target as 'Compliance with the relevant Standards by 55 per cent of each type of service'. It is unclear how this should be interpreted?

The Victorian Government appears to interpret that the targets apply to each individual element, and separately for vehicles and infrastructure for each mode of transport. This approach is problematic because it does not require the elements to join together to improve access along a person's journey – the compliant elements for train stations, for instance, may not be on the same stations, and may further not be on the trains that serve those stations. This piece-meal, element-by-element approach therefore does not maximise the opportunities to remove discrimination experienced by people with disabilities, which is the object of the DDA.

An alternative approach would be to ensure the accessibility improvements are done together on a particular public transport service, so that they result in access outcomes and the ability for people with disabilities to use the service. Thus, instead of measuring progress towards the targets element by element, they should be measured by the proportion of services that met the Standards in their entirety.

A means of achieving this end might be to re-phrase the requirements in Schedule 1 from

the current phrase:

“Compliance with the relevant Standards by 55% of each type of service in relation to:”

to the alternative:

“55% of services must be fully compliant with all relevant Standards for each type of service in relation to:”

This would mean that for a particular public transport service, the vehicle used for the service and all of the infrastructure accompanying that service must be compliant with the relevant Standards for the service to ‘count’ towards the target.

Recommendation 3

The Schedule 1 targets should specify that they relate to the proportion of services that are *fully* compliant with the standards, not for individual elements.

Accessibility outcomes

Determining the effectiveness of the Standards requires having a reliable measure of the accessibility outcomes – that is, whether compliance with the Standards actually results in people with disabilities being able to use public transport. The 2007 Review recommended that the Australian Bureau of Statistics include questions on public transport usage in their Disability Surveys.

This did occur in the 2009 Survey of Disability, Ageing and Carers. It showed that 2.3 million people with disabilities in Australia do not use public transport, and 1.2 million report difficulty using public transport.⁵ There is also a clear and unsurprising trend showing that the more severe the disability, the greater the proportion of people experience difficulty. However, because no comparable data exist in earlier surveys, there is no baseline to determine whether there has been any improvement over time.

While this data is useful, and will become more useful as it is collected over time, it has its limitations. It will not be able to distinguish why changes have occurred – whether resulting from improvements in compliance with the Standards or for other reasons. It also has limited ability to disaggregate the data, and will unlikely be able to provide data for small geographic units or detail about particular transport modes.

⁵ Australian Bureau of Statistics, *Disability, Australia, 2009: Table 8 – Transport*, 2011, Cat No: 4446.0

Further thought should be given to other mechanisms to collect data about accessibility outcomes that provide more detailed and regular data. For instance, disability items could be included (and reported upon) in state-based travel surveys such as VISTA. In addition, data collected from ticketing systems, travel pass data and administrative data could be made publicly available. For instance, VCOSS understands that Victorian train providers keep data on the number of wheelchair boardings, but do not make this data publicly available. In addition, there may be a role for the Commonwealth Government in conducting greater research into the reasons that people with disabilities do not use public transport, including for reasons other than the design of the transport system. For instance, a prominent reason given in the ABS data for not using public transport is fear and anxiety.⁶

Recommendation 4

Appropriate measurements and research on accessibility outcomes should be developed.

Enforcement

Recommendations

- The Australian Human Rights Commission should have additional capacity to take representative cases to the Federal Court.
- The Australian Government should reduce the circumstances in which costs may be awarded against complainants taking cases to the Federal Court.
- The Australian Government should legislate that non-compliance with the Standards is an offence with an appropriate penalty, and provide resources to prosecute offences.
- The Australian Government should share funding responsibility with the states to progress upgrades of legacy infrastructure.

The enforcement problem

A deep concern with the Standards is that while the problem of inaccessible public transport is systemic and structural, the means of enforcement is individual and case-based. The imbalance of power in this process is striking, pitting often vulnerable individuals who have the least resources and knowledge of the system against large companies and government agencies with extensive resources and understanding. It is of

⁶ Ibid.

little surprise that the enforcement mechanisms for the Standards have had few explicit results.

While the location of the Standards as sub-ordinate legislation under the DDA recognises the importance of removing discrimination in the provision of public transport, the DDA contains limited means of redress, and that which exists is generally geared at resolving individual cases of discrimination, with less capacity to address systemic discrimination. The drawbacks in effectiveness of the Standards thus lies less with their technical specifications and more with the limited capacity for non-compliance to be adequately policed.

A related point is that while the object of the DDA is to remove discrimination, there are broader benefits of improving accessibility of public transport, including for older people, parents with small children, and people travelling with luggage and shopping, as well as greater ease of travel for the general public. While these should not be seen as somehow negating or offsetting the requirements of people with disabilities, nor should accessibility improvements be viewed as serving only a small cohort of people – the benefits, and the value of enforcing them, accrues to the whole community.

Representative complaints

The 2007 Review recommended that the Australian Human Rights Commission (AHRC) be resourced to provide greater support for representative complaints on behalf of people with a disability. As a first step, this approach is welcome, as it strengthens the existing complaints mechanism within the DDA and builds on the existing processes, as well as overcoming the time and monetary costs associated with initiating complaints, and particularly their escalation to the Federal Court.

Recommendation 5

The Australian Human Rights Commission should have additional capacity to take representative cases to the Federal Court.

Awarding of costs

Probably the greatest concern of potential complainants is the fear of 'losing the house' if they find that the Federal Court does not decide in their favour and awards costs against them. This was exemplified in the *King v Jetstar Airways Pty Ltd* judgement, where despite finding that the complainant had indeed suffered discrimination under the DDA, the respondent argued unjustifiable hardship and the case – with (capped) costs – was decided against the complainant. This submission will deal with the issue of unjustifiable hardship below, but it is perplexing that costs could be awarded against a complainant

who was found to have experienced discrimination, in a case that could not in any way be construed as vexatious.

The process of awarding costs in such cases should be more thoroughly examined, particularly given the often meagre resources of complainants. For instance, a statutory limit on costs, or direction not to award costs where discrimination has occurred could reduce the cost burden, and encourage more people to utilise the Court to resolve complaints.

Recommendation 6

The Australian Government should reduce the circumstances in which costs may be awarded against complainants taking cases to the Federal Court where discrimination has been found to have occurred.

An offence of non-compliance

A broader issue is whether a complaint-based enforcement mechanism is sufficient to ensure compliance with the Standards. During consultations undertaken by VCOSS, many participants noted that they do not use complaints-based mechanisms to deal with other transport laws – we do not expect individual motorists to take Court action in order to enforce the road rules. Given 10 years of experience with a complaint-based enforcement mechanism, and noting its limits, it is now time to consider a more forceful regulatory approach, such as making non-compliance an offence and ensuring an appropriate regulator has the powers to enforce the standards, including through prosecution of non-compliance.

VCOSS notes that this would be a significant change in the legislative status of the Standards, and would require some deeper investigation before being progressed. Nonetheless, for serious improvements to be made it is likely that a ‘game-changer’ is required – and using a far more interventionary regulatory approach is the most obvious candidate.

Recommendation 7

The Australian Government should legislate that non-compliance with the Standards is an offence with an appropriate penalty, and provide resources to prosecute offences.

Funding legacy infrastructure upgrades

State and Territory Governments that the Standards are, in effect, an ‘unfunded mandate’ of the Australian Government. VCOSS maintains the view that state and territory governments should improve the accessibility of their public transport systems regardless of

the presence of federal legislation. However VCOSS does not recognise that their claim is not without substance – the Australian Government has initiated much of the action in this area, in part in recognition of its international responsibilities.

It is also true that upgrading infrastructure is an expensive proposition, and that achieving full compliance with the Standards will likely cost hundreds of millions, if not billions of dollars. A large part of this high cost is the fact that much of the public transport infrastructure was designed and constructed long before the DDA and the Standards had even been considered, with some rail systems well over a century old. While VCOSS believes it is not unreasonable to require new infrastructure and conveyances to be compliant with standards, a fair case could be made for the Commonwealth to share some of the costs of progressing the large ‘backlog’ of infrastructure upgrades required for ‘legacy’ assets to meet the Standards.

Recommendation 8

The Australian Government should share funding responsibility with the States to progress upgrades of legacy infrastructure.

Exclusions, exemptions and unjustifiable hardship

Recommendations

- School and community buses should be included in the all elements of the Standards, to achieve full compliance by 2032 at the latest.
- Exemptions from the Standards should be limited to legacy services, conveyances and infrastructure.
- Only an operator or provider should be able to apply for an exemption, which should only apply to the services, conveyances and infrastructure for which they are directly responsible.
- Section 33.7 should be amended to clarify that:
 - in cases where the service, conveyance or infrastructure was initiated after the commencement of the Standards – unjustifiable hardship only applies to the costs of complying with the Standards if they had been applied at the time of procurement or design of a public transport service, not the costs of rectifying non-compliance after the fact
 - unjustifiable hardship is not present merely for the reason that a business wishes to provide a public transport service at a lower cost than its competitors.

School and community buses

The ongoing exclusion of school and community bus services from some elements of the Standards remains a perplexing anomaly. The differentiation of these services is ultimately fictitious – the buses used for these services have the same capabilities as other buses of the same size. Indeed, the same bus might be used by the same operator for school bus services and general services to the public. We also note that, in many jurisdictions, school bus services are used by other passengers, and are often the only transport service operating in a rural or regional area. Excluding these services from some elements of the Standards discriminates not only against students with disabilities wishing to travel to school, but also other passengers who may wish to use the service for other purposes.

The exclusion may actually reduce the availability of conveyances for general public services, as the vehicles used for school bus services are often only used on schools days before and after school hours, and could be otherwise available for other transport services. However, due to the exclusion, operators do not purchase replacement vehicles consistent with the Standards, and thus reduce the proportion of compliant buses in the national fleet and available to provide other services.

A similar logic applies to community bus services. Indeed, the exclusion of these services is

even more counter-intuitive, as often these services are expressly designed to assist members of the community who experience disadvantage, among whom people with disabilities are more frequently represented.

While supporting the general recommendation of the 2007 review that school and community buses be included in the Standards, VCOSS was dismayed at the extraordinarily long timeframe recommended for compliance. We believe full compliance with the Standards should be by 2032 at the latest, consistent with the timeline for full accessibility required for all other public transport services.

VCOSS also notes that many operators appear to be under the false impression that school bus services are exempt from all of the elements in the Standards. This is not the case; currently they only exempted from some elements. Indeed, this misinformation is currently being disseminated on the Attorney-General's Department's website.⁷

Recommendation 9

School and community buses should be included in the all elements of the Standards, to achieve full compliance by 2032 at the latest.

Exemptions limited to legacy assets

VCOSS expresses deep concern that the process for seeking exemptions from the Standards is being used by operators and their representatives to delay implementation of and seek to weaken the Standards. We are concerned that, under cover of an exemption, conveyances and infrastructure are being procured that do not meet the Standards, despite the intention that these will form part of public transport services that will operate well beyond the timeframe of any given exemption.

VCOSS is aware of public transport accessibility guidelines for operators that set benchmarks below the requirements of the standards, and exclude those requirements covered by exemptions. We are also aware of instances where new public transport infrastructure is being procured that we believe does not comply with the Standards (but arguably complies with the exemption).

VCOSS accepts that there are genuine instances of hardship in the ability to retro-fit or upgrade assets that were procured long before the implementation of the Standards. However, the reasoning to exempt new conveyances and infrastructure is less clear – especially since these assets will in most cases operate for many decades in the future, well beyond the target date for full compliance in 2032. Given this aim, there is no

⁷ Attorney-General's Department website, *Disability Standards for Accessible Public Transport*, 2013, URL: <http://www.ag.gov.au/RightsAndProtections/HumanRights/DisabilityStandards/Pages/Disabilitystandardsforaccessiblepublictransport.aspx> (viewed 18 June 2013)

justifiable reason for granting exemptions for procurements since the Standards were commenced.

Recommendation 10

Exemptions from the Standards should be limited to legacy services, conveyances and infrastructure.

Only providers and operators to apply for exemptions

VCOSS is concerned at the practice of awarding exemptions to organisations that do not provide or operate any public transport services, including exempting an entire industry from elements of the Standards, regardless of whether those exemptions are explicitly requested by or even required for every provider or operator of a relevant public transport service. Blanket exemptions reduce the incentive for operators to devise solutions for compliance with the Standards, and instead encourage non-compliance to the extent of the exemption, with no impetus for any action to work out a mechanism to comply in the future.

This process also reduces the accountability of operators for any conditions imposed upon the exemption. For instance, if it is indicated that the exemption is to allow time for continued investment in infrastructure, then only an operator or provider of that infrastructure can be reasonably be held accountable for ensuring it occurs during the exemption period.

VCOSS proposes that only those parties that are operators or providers of public transport services should be able to apply for an exemption, and that exemption should only apply to the services, conveyances and infrastructure for which the applicant is directly responsible. This ensures that there is a direct link between the applicant and the exemption, who can be held accountable for any derogation from the exemption, and for any conditions attached the exemption. It removes the practice of granting exemptions to providers who have not requested them or do not require them for their particular services. It would also ensure that individual operators would need to produce evidence for the exemption explicitly about their particular service, rather than relying on evidence produced by another operator or organisation.

Recommendation 11

Only an operator or provider should be able to apply for an exemption, which should only apply to the services, conveyances and infrastructure for which they are directly responsible.

Unjustifiable hardship

The provision for unjustifiable hardship in the Standards is open to a significant level of interpretation. The concern of VCOSS is that the considerations that determine unjustifiable hardship are so broad that any compliance measure that has a cost impact upon a public transport service might be captured by the clause. In particular, we are concerned that operators might decide to procure infrastructure or conveyances that are non-compliant at only minor cost savings – but then rely on the unjustifiable hardship clause to argue that the more significant cost of rectifying the decision amounts to an unjustifiable hardship. The potential for this situation to arise is a perverse incentive for non-compliance, and the Standards should be modified to clarify that unjustifiable hardship can only be determined on the additional costs of compliance at the time of service design or procurement – not on the cost of rectifying the decision not to comply. Obviously, this should only apply in cases where the decision to design or procure a non-compliant service, conveyance or infrastructure was made after the commencement of the Standards.

A further issue is the question revealed by the *King v Jetstar Airways Pty Ltd* judgement, where Jetstar argued that providing a public transport service to more than two people with disabilities requiring wheelchairs was an unjustifiable hardship on the company, in part due to its business model as a low-cost carrier. The implication of this is somewhat disturbing: that simply by arguing that a business seeks to have low prices is sufficient to create unjustifiable hardship. The Standards (or the DDA) should be amended to clarify this is not the intent of this section.

Recommendation 12

Section 33.7 should be amended to clarify that unjustifiable hardship:

- only applies to the costs of complying with the Standards if they had been applied at the time of procurement or design of a public transport service, not the costs of rectifying non-compliance after the fact – in cases where the service, conveyance or infrastructure was initiated after the commencement of the Standards
- is not present merely for the reason that a business wishes to provide a public transport service at a lower cost than its competitors.

Changes to the Standards

Recommendations

- The application of the Standards should be extended to clarify that they also apply to manufacturers, builders, importers and procurers of public transport services, conveyances and infrastructure.
- The Standards should not incorporate references to materials not freely available to the public.
- The Standards should explicitly require audible announcements to be made on board vehicles so passengers know their location.
- The Standards should explicitly require audible announcements on automated fare-payment systems.
- The Standards should be developed to incorporate new elements for new technologies, including information available from websites and mobile devices, and Smartcard ticketing systems.
- The Standards should be amended to stipulate that a single lift is not an acceptable solution for level access at train stations, and that all lifts in train stations should have a back-up source of power in the event of a power failure.
- The Standards should specify that where a person requires a companion in order to travel, the companion must not be required to pay a fare.
- The Standards should be amended so that the minimum width between wheel arches on buses is at least 800mm.
- The Standards should explicitly state that an allocated space cease being used for another purpose if it is required by a person with a mobility aid.
- The Standards should explicitly state that new rail conveyances and platforms (including for trams) must be built at the same height.
- The Standards should specify that sufficient information should be provided to ensure that passengers can determine the level of accessibility of a service.
- The Standards should require that where the public transport service is not compliant, the operator must provide alternative transport at an equivalent fare.

Standards should apply to manufacturers, etc.

VCOSS is very aware that increasing the accessibility of public transport services is a systemic project – that a change in thinking needs to occur at every point of the long chain of actors involved in producing a public transport service. For this reason, it is important that not only the operators and providers of public transport services are held accountable for implementing the Standards, but also those who build, construct, import and procure the conveyances and infrastructure used for public transport services. By clarifying their accountability and exposing them to enforcement mechanisms, they are

likely to expend more effort in finding appropriate solutions to implement the standards. This should include parties that manufacture or import vehicles for use in public transport services, companies that design and construct public transport infrastructure, and agencies that procure public transport services (other than by paying a fare as a passenger).

Recommendation 13

The application of the Standards should be extended to clarify that they also apply to manufacturers, builders, importers and procurers of public transport services, conveyances and infrastructure.

Ensure all references are freely available

While the issue was raised in the previous review, VCOSS reiterates the difficulty of interpreting the Standards when many elements refer to Australian Standards that are not freely available to the public. It is distinctly problematic, if not undemocratic, for the Australian people to be required to pay to view the laws with which they are required to comply, or to understand the rights they enjoy.

While we understand that some State and National Libraries carry copies of the Standards available to the public, this does not constitute easy access. If elements of the Standards incorporate Australian Standards, the Australian Government should ensure that all members of the public can access the content easily and without payment. This might occur in numerous ways, such as purchasing the copyright and disseminating the Australian Standard, reprinting the Australian Standard as part of the legislation, or by purchasing copies of the Australian Standard upon request for members of the public.

Recommendation 14

The Standards should not incorporate references to materials not freely available to the public.

Require audible announcements on conveyances

Of the many complaints and concerns that VCOSS receives about inaccessible public transport services, one of the most common is that people with vision impairments cannot determine where they are on their journey. While section 24.7 requires that all passengers must be given the same access to information about their whereabouts during a public transport journey, it does not specify how this is to be achieved. While sighted passengers can often use landmarks and street or stop signage to determine their whereabouts, these cues may not be available to passengers with a vision impairment.

VCOSS considers that in order to give full effect to section 24.7, the Standards should be amended to require audible announcements (preferably automated) on all public transport conveyances. This not only meets the needs of people with vision impairment, but also assists the general public with their location, especially at night or during inclement weather when visual cues may be obscured.

Recommendation 15

The Standards should explicitly require audible announcements to be made on board conveyances so passengers know their location.

Voice capability on fare payment systems

The recent Victorian Taxi Industry Inquiry recommended that all taxi meters 'should have the functionality to voice transmit all components of the fare to customers'⁸, which has been accepted by the Victorian Government.⁹ VCOSS recommends that this recommendation should be further incorporated into the Standards, and extended by taxis to all automated fare-payment systems. While existing ticket machines are not voice capable, ticketing systems are regularly recommissioned, and future ticketing systems should be relatively easily equipped with voice capability so that they can be used by people with vision impairment.

Recommendation 16

The Standards should explicitly require audible announcements on automated fare-payment systems.

Standards for new technologies

Passenger have raised with VCOSS increasing concern at the lack of attention paid to ensuring that accessibility is appropriately considered in new technology. For instance, many public transport agencies have begun to develop web-based and 'smartphone' applications to transit information about public transport services, which are often not appropriately designed for use with adaptive technologies (such as screen-readers).

⁸ Victorian Taxi Industry Inquiry, *Final Report: Customers First – Service, Safety, Choice*, 2012, Recommendation 3.8, p.21.

⁹ State of Victoria, *Government Response: Taxi Industry Inquiry Final Recommendations*, 2013, p.14

Similarly, the advent of Smartcard ticketing systems occurred without much guidance on ensuring the technologies are accessible to the widest proportion of the population, necessitating 'work-arounds' such as the Victorian Access Travel Pass in order to cater for people who cannot use a Smartcard system.

Recommendation 17

The Standards should be developed to incorporate new elements for new technologies, including information available from websites and mobile devices, and Smartcard ticketing systems.

Lifts at train stations

In recent years, a great deal of attention has been given to the accessibility of train stations in Victoria and, in particular, where new train stations have been built without ramp access to platforms and with a single lift providing the sole means of access to them. In a number of cases these lifts have broken down, including through vandalism, resulting in passengers requiring level access being unable to use the service, and even be stranded on the platform, unable to leave the station.

While VCOSS supports the current section 14.1 which states that stairs must not be the sole means of access, we believe that this needs to be further elaborated in the case of train stations. A single lift and stairs should also not be considered sufficient access for a train station, as there is no redundancy in case of lift failure. All train station platforms should be reachable by ramp access, or if this is not possible, then by at least two lifts, which have the additional support of back-up power (such as a diesel generator) in the event of a power failure.

Recommendation 18

The Standards should be amended to stipulate that a single lift is not an acceptable solution for level access at train stations, and that all lifts in train stations should have a back-up source of power in the event of a power failure.

Companions not required to pay fare

Some people with disabilities require a companion in order to be able to travel safely. They should not be penalised by being required to purchase an additional ticket for the companion, as this constitutes discrimination by effectively charging a person with a disability a double fare in order to use the service.

Many public transport operators already respect this principle by allowing free travel to

persons recognised with a Companion Card. However, some still do not.

Recommendation 19

The Standards should specify that where a person requires a companion in order to travel, the companion must not be required to pay a fare.

Greater space between bus wheel arches

Section 2.7 of the Standards stipulates that the minimum width of an access path between the front wheel arches of a bus may be reduced to 750mm between the floor level and a height of 300mm. This is inconsistent with the rest of the standards, which generally stipulate widths of 800mm¹⁰ or 850mm.¹¹ It is also inconsistent with the design criteria specified in the *Disability Standards for Accessible Transport Guidelines 2002* (the Guidelines), which stipulate that a mobility aid is assumed (but need not) be less than 800mm in width. The effect of this is that even if a person with a disability goes to every length to ensure that their mobility aid meets the design specifications assumed in the Guidelines, they may still not be able to fit their mobility aid between the wheel arches of a bus. This is obviously a poor outcome, and this anomalous provision should be removed from the Standards.

At a minimum, the Standards should amend s2.7 to ensure the space between the wheel arches on a bus is no less than 800mm. Better, still this and all width specifications of 800mm could be amended to 850mm, ensuring a consistent approach and allowing some 'wiggle room' for larger mobility aids.

Recommendation 20

The Standards should be amended so that the minimum width between wheel arches on buses is at least 800mm.

Allocated space must be available for use

Section 9.9 states that an allocated space may be used for other purposes if it is not required for use by a passenger using a wheelchair or similar mobility aid. This clause implicitly suggests its corollary – that it should not be used for another purpose if it is required for use by a passenger using a wheelchair, but does not explicitly state this. VCOSS has received numerous suggestions that public transport operators routinely do not ensure that this is the case – passengers are frequently told that they may not board a

¹⁰ For instance, s2.6(3); s6.3; s8.3; s9.1

¹¹ For instance, s2.4(2); s2.6(1); s24.1(2)

vehicle because the allocated space is being used by other passengers for other purposes.

While VCOSS believes that the clause should be construed to imply that an allocated space must cease being used for another purpose if it is required by a person using a mobility aid, amending the clause to state this explicitly would ensure that operators and providers were more aware of their responsibilities.

Recommendation 21

The Standards should explicitly state that an allocated space cease being used for another purpose if it is required by a person with a mobility aid.

Same height for rail carriages and platforms

Recent investment in train infrastructure and conveyances in Victoria has produced the result that, despite being brand new, train carriages and the platforms they serve still have large differences in height – necessitating the use of a boarding ramp despite it being feasible to drastically reduce the need for them. While the use of a boarding ramp technically meets the Standards, our hope for the future is a rail system that allows easy roll-on, roll-off accessibility for public transport, available at all entrances to the vehicle. We are deeply concerned that railways planners do not share this vision, and appear to consider that manually-deployed boarding ramps should be used in perpetuity.

One way to begin to ‘future-proof’ our public transport system is to require that new rail infrastructure and conveyances (including trams and light rail) is designed to ensure that both vertical and horizontal gaps in height are minimised, so that ultimately the need for assisted boarding of rail vehicles can be achieved.

Recommendation 22

The Standards should explicitly state that new rail conveyances and platforms (including for trams) must be build at the same height.

Information about accessibility

A frequent complaint by passengers who require accessibility features is that they cannot determine which service or location those features will be available on. For instance, when a bus or tram route uses a mix of low-floor and high-floor vehicles, it is not possible for a passenger to know at which times a low-floor vehicle will operate. Often there are long lags between low-floor services, making the service virtually unusable despite the availability of improve access. Similarly, if making a journey to a novel location, passengers may not be able to determine whether the infrastructure will allow them to

disembark the vehicle or exit the infrastructure, again making the access features unusable even when they are present.

A solution to this problem is to include a requirement in the Standards that operators and providers ensure that sufficient information is available to passengers so they can determine whether the level of access available for a particular is sufficient for them to use it.

Recommendation 23

The Standards should specify that sufficient information should be provided to ensure that passengers can determine the level of accessibility of a service.

Alternative transport to be provided if not compliant

Perhaps the biggest concern of many people with disabilities when attempting to use public transport is what to do if they are unable to use it because the provider is not compliant. While the avenue of lodging a complaint is open to them, usually their more immediate concern is to find a means of making their journey. It is frequently suggested that if the public transport service they would like to use is incapable of doing so, then the operator should arrange a transport alternative, at no additional cost.

Such a requirement on providers and operators would provide an additional impetus to ensure that they are compliant with the Standards. Non-compliance means they not only would face the possibility of a potential complaint or Court appearance, but also mean they would need to find resources to finance the alternative transport options for the people disenfranchised by their non-compliance. VCOSS notes that some providers in Victoria have already adopted this policy, in that if they are unable to provide an accessible service for operational reasons, they will provide an alternative, such as a taxi service.

This should not be construed as proposing that provision of an alternative service would constitute compliance with the Standards, which it clearly does not, but rather that there would be an additional duty to arrange alternative transport where compliance was not achieved.

Recommendation 24

The Standards should require that where the public transport service is not compliant, the operator must provide alternative transport at an equivalent fare.