

DEPARTMENT OF INFRASTRUCTURE,
ENERGY AND RESOURCES SUBMISSION

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

Introduction

The Australian Government's *Disability Discrimination Act 1992* (DDA) is intended to allow the Government to make standards to provide information about what needs to be done to ensure that people with disability are not discriminated against. In the case of the *Disability Standards for Accessible Public Transport 2002* (Transport Standards), the intention is to facilitate the provision of accessible public transport services.

The Tasmanian Government entirely supports the intent and principles of the DDA and Standards. Accordingly, the State has invested significant funds to improve access to public transport. Of particular note is the investment in accessible buses serving both urban and urban fringe areas. Tasmania has also opened up access to accessible taxi licences beyond the level of any other Australian jurisdiction giving rise to very positive responses from wheelchair-reliant passengers.

This submission addresses Tasmania's progression toward increasing accessibility for people with disabilities and provides answers to the Review's specific questions on land based public transport.

Tasmania's Progress

As noted above, Tasmania has made significant progress in meeting the requirements of the Transport Standards regarding land-based passenger transport. This has been achieved through a range of measures including direct funding assistance, legislative reforms, concession schemes and incentive payments.

For example, through direct funding assistance and contract payments which encourage operators to upgrade to accessible vehicles, a sufficient portion of the bus fleet is now accessible which has resulted in the percentage of accessible services exceeding the current threshold requirement in the Standards. Further, as a result of making wheelchair-accessible taxi licences available for free in unlimited number, some 11.4 per cent of the Tasmanian taxi fleet is now accessible.

However, the scale of the challenge for a state such as Tasmania to continue to meet each of the targets contained in the Transport Standards is enormous. Tasmania's original endorsement of the Standards in April 1999 was conditional on the Australian Government funding the implementation. Despite a request for funding of \$10 million in 2005, no assistance has yet been forthcoming.

Further progress will be difficult as the benefit of non-financial measures which have contributed significantly to achieving targets to date, are not likely to deliver further major advances in compliance. For example, while Government has made legislation to make wheelchair-accessible taxi licences available without restriction, take up of licences is a matter for members of the industry, both existing and new entrants. The State cannot require participation in the market place. The taxi industry is already heavily regulated compared to many others. There is little scope for further intervention in the market while continuing to observe National Competition Policy principles.

Whilst all jurisdictions face significant obstacles in achieving compliance, Tasmania's position is particularly adverse because capital expenditure on land-based public transport infrastructure by State and Local Government is constrained by the need to distribute scarce resources to reach a highly dispersed population with a relatively large number of small communities compounded by a small budget due to the overall low population.

As the threshold compliance levels progressively increase, operators and providers face increasing difficulty, both in meeting the capital expenditure required, and in determining how best to deploy that capital for purchase of assets and installation of infrastructure.

This challenge must be managed in the face of rising public expectations which are often in excess of what can reasonably be achieved at the current compliance threshold (55 per cent). A passenger expects to be able to board a bus at their desired origin and disembark at their intended destination. For the given journey, the passenger requires only two bus stops to be accessible within the network which on the face of it is not unreasonable. However, effectively, this is an expectation that compliance should be at or near 100 per cent to facilitate any potential journey any individual may care to make. Even where the current compliance threshold is met, there is still significant scope for an intending passenger to find accessibility issues extremely frustrating and this will increase as expectations increase.

Given that the method of enforcement of the Transport Standards remains complaints based, there is risk of fostering a culture of complaint among users and this has the potential to impact on operators and providers' willingness to conduct themselves within the spirit of the Standards given the level of ambiguity and uncertainty they face. The likely outcome is operators and providers withdrawing or minimising facilities rather than endeavouring to ensure compliance. For example, not installing shelters or seating at bus stops and removing stops with low usage rather than risk a complaint that an upgrade or installation may be found to be non-compliant.

Review Specific Questions

Section A – For operators and providers

- 1. Have you been able to meet the 2007 Transport Standards legislated targets? If not, can you elaborate on the reasons for not being able to meet these targets?**

In order to assess compliance it is necessary to have objective measures and a clear understanding of what amounts to compliance either directly or by alternative means such as 'equivalent access'. This issue was raised in the 2007 Review of the Transport Standards.

The State, along with other jurisdictions expressed concerns about determining exactly what might be considered to constitute a compliant bus stop, as significant local interpretation was required. This included such fundamental questions as:

- What constitutes a bus stop?
- Where should bus stops be located?
- Which “elements” need to be provided for local conditions?
- What are the “mandatory elements” vis-à-vis a “common sense” approach as to what travellers would expect to be provided at bus stops?

Transport providers and operators were left to determine which elements of the Standards were relevant to local infrastructure. Transport providers and operators were also left to determine “equivalent access” standards for local conditions and still meet the requirements of the Act and Regulations. Much of the issue arose from the absence of definitions of terms such as ‘access path’, ‘manoeuvring area’, ‘passing area’ and ‘waiting area’.

Other concerns were expressed regarding the failure of the Standards to take into account local pavement and footpath slopes (both longitudinal and cross-section) when specifying the requirements for access paths, boarding points and ramps (for example, ramps are required where there is a vertical rise of more than 5mm in order to ensure a continuous accessible path of travel).

A Guideline to aid in the development of compliant bus stop infrastructure was issued by the Australian Human Rights Commission (AHRC) in December 2010 to assist providers and operators with some of these issues. While the Guideline has been helpful in identifying what constitutes a bus stop, it is noted that AHRC has made it clear that the Guideline cannot alter or expand on the Transport Standards. Accordingly, any deficiencies in the Standards must be addressed through a legislative process.

Further, even though the Guideline notes that in some instances compliance may not be possible due to topography or other factors, providers should “do as much as possible” to make a bus stop compliant, but there is “no way of determining with certainty” that the provider will be entitled to rely on a defence of unjustifiable hardship.

Where upgrade of bus stops to compliant status is to be attempted, the Guideline places an additional requirement on providers to direct activities to locations most likely to be utilised by persons with a disability. However, the list of routes and locations which are identified for targeting is so extensive as to incorporate almost the entire bus network for the 2012 compliance date, both inbound and outbound.

- 2. Have you been able to meet the 2012 Transport Standards legislated targets? If not, can you elaborate on the reasons for not being able to meet these targets?**

In order to assess compliance it is necessary to have objective measures and a clear understanding of what amounts to compliance either directly or by alternative means such as 'equivalent access'. It is noted that the Guideline states that it is not practical to address all possible permutations of additional facilities which may be provided at a bus stop, such as shelters or seating. Given the individual nature of bus stops in their local context, the absence of definitive guidance makes assessing compliance impractical.

- 3. Are there requirements that have proven to be impractical or difficult to implement? If so, please specify.**

Challenging topography, including areas of hilly terrain and streetscapes that retain certain qualities of heritage, including narrow streets, and footpaths render technical aspects the Transport Standards, such as access paths (AS1428.2) impossible to implement in all locations. This was raised as an issue in the 2007 Review and remains a concern despite the issuance of the Guideline.

As was acknowledged in the Australian Government's response to the 2007 Review, the cost of bus stop upgrades is a significant barrier for providers.

- 4. Can you provide detail on any initiatives and actions you have undertaken, not currently detailed under the Transport Standards or other legislative requirements, in relation to removing discrimination against people with disabilities?**

The Department of Infrastructure, Energy and Resources (DIER) has an operational policy for the management of public transport facilities in the context of delivery and maintenance of the State's road network. This policy was updated in 2010 to ensure incorporation of the Transport Standards and to make positive provision for upgrade of ground-level infrastructure in the process of any road works where the location is suitable and safe.

Section B – For State and Territory Governments

1. Has the accessibility of public transport within your jurisdiction improved since 2007?

Yes, the mandatory nature of the Standards has created the impetus for improved accessibility of public transport for people with disabilities. Organisations that provide public transport and associated infrastructure appreciate the intent of the DDA and are generally committed to progressing access.

- **How has accessibility to conveyances (e.g. trains, buses and coaches, trams, ferries, wheelchair accessible taxis and aircraft) changed? Have compliance targets been met? Can you provide examples? If compliance targets have not been met, can you elaborate on the reasons for not being able to meet these targets?**

Since 2007, there has been a significant increase in the proportion of the bus and taxi fleet that is accessible. For example, the number of wheelchair-accessible taxis operating in Tasmania since the 2007 Review has more than doubled.

Since 1 January 2013, DIER has sent out advisories to the taxi industry of the new requirement for 1500mm minimum head room and vertical door opening in wheelchair-accessible taxis for any new or replacement vehicles. All relevant materials provided to intending licence applicants have been altered to reflect the change.

Accessibility of urban bus services provided by Metro Tasmania, has improved such that in excess of 55 per cent of (non-school) services are delivered using accessible vehicles. Urban fringe services delivered by

both public and private providers has also improved. More than 60 per cent of the urban fringe fleet is accessible.

- **How has accessibility of information (e.g. maps, timetables, announcements, etc) changed? Can you provide examples?**

Metro Tasmania Pty Ltd, Tasmanian's major urban bus operator and the largest provider of bus services in the State has an ongoing program to ensure all bus route information is provided in a format which is compliant with the Standards and available through a variety of channels. Aspects of this program have already been achieved with the company website conforming to World Wide W3C accessibility requirements.

Metro Tasmania updated its Disability Action Plan in 2011 outlining the steps being undertaken to meet the requirements for information provision.

- **How has accessibility of infrastructure (e.g. any structure or facility that is used by passengers in conjunction with travelling on a public transport service) changed? Can you provide examples?**

The State Government has provided Metro Tasmania with additional funding each year since 2009/10 for a range of purposes including to facilitate the upgrade of urban bus stops. From this funding, Metro has upgraded over 600 bus stops state-wide in its urban network.

In 2010/11 and 2011/12, the State Government entered into funding agreements with a number of local government bodies to support the upgrade of key bus stops in urban fringe and regional communities to complement operator investment in accessible vehicles servicing those locations.

The provision of funding for these initiatives is challenging in a jurisdiction such as Tasmania which has over 3 300 bus stops, not including dedicated school bus stops. Further, there remain sufficient uncertainties over what constitutes a compliant bus stop that there are serious concerns that a complaint may still be successful despite the best endeavours of both the State Government and the provider.

The State Government provision of funding to local government is in line with Recommendation 7 of the 2007 Review. It is noted that Australian Government has indicated that it will give consideration to the eligibility criteria for existing regional and rural transport and infrastructure programs. However, this is not the same as a funding commitment as was recommended.

Significant concerns remain about the ability to meet future compliance targets with regard to bus stops. This was acknowledged as an issue in the 2007 Review for all jurisdictions. In endeavouring to upgrade targeted urban fringe stops in cooperation with local government, provision of support to meet the capital cost of infrastructure upgrades has been shown to only be part of the equation. Councils have also identified concerns about meeting ongoing maintenance costs and the risks and liabilities which may be associated with any ground surface works.

This assumes that works can reasonably be undertaken to upgrade bus stops to a compliant standard. However, in urban areas, many footpaths are so narrow that provision of a suitable access path is impossible. In other cases, the level of incline is so great as to preclude a bus driver from deploying the ramp. In many urban fringe areas there are no footpaths at all, only gravel road shoulder. Pursuing 100 percent compliance in such areas could only reasonably be achieved by complete removal of the bus stop, the effect of which is to reduce amenity for all passengers.

It is suggested that the compliance thresholds for 2017 and 2022 should be qualified so as to exclude those locations where compliant bus stop infrastructure cannot be achieved due to practical considerations or where the cost will far exceed the benefit. Such a change would need to be communicated clearly to ensure there are not excessive expectations within the community for accessibility in all circumstances regardless of need or cost.

- **Have you been able to improve the collection and reporting of reliable, current data on public transport accessibility within your jurisdiction?**

In order to improve reporting, the measurable aspects of the Standards need to be cemented. That is, measures of compliance are required. Further, there needs to be an agreement between all parties concerned as to what constitutes absolute compliance, and who can indisputably substantiate that compliance has been achieved.

In some instances, the Standards presume that jurisdictions regulate aspects of transport provision in a consistent manner. However, this is not necessarily the case. One particular area of difference is in regards to taxi networks. In Tasmania, regulation focuses on taxi operators and drivers rather than networks. Accordingly, powers to gather information are limited to licence holders and operators. This is likely to preclude gathering information in comparable format. In the case of smaller concerns which have manual booking systems, it is unlikely that response time information could be ascertained.

The Department is currently undertaking a review of taxi licensing arrangements and has included the issue of performance measures and the means of data collection in the scope of that work for further consideration.

- 2. Are there any other initiatives and actions in relation to removing discrimination from public transport services, that do not come under the above, for which you can provide details.**

Taxis

Some of the most effective access provided to people with disabilities has been via Tasmanian Government 'equivalent access' policies, especially in the area of wheelchair-accessible taxis (WATs).

The Tasmanian Government introduced incentives for operators to invest in WATs. Initial limited licence releases occurred in 2004, 2005 and 2006 which saw 36 licences operating across the four metropolitan centres at the time of

the last Transport Standards Review. Subsequent opening up of the licensing regime has resulting in 65 WAT licences now operating.

To ensure that networks were provided adequate means to meet their ongoing compliance obligations, new legislation was passed in 2008 to provide for unlimited numbers of WAT licences to be available at any time. This applies to all Tasmanian taxi areas. WAT licences are available at no capital cost subject to the operator having a suitable vehicle.

Suitability is determined according to the Transport Standards and jurisdiction-specific taxi vehicle requirements. To assist operators in some of Tasmania's more remote taxi areas, the jurisdiction-specific taxi vehicle requirements were relaxed to address the high capital cost of entry. This has led to the issue of one WAT licence for the Huon Valley. There are now 65 WAT licences operating across Hobart, Launceston, Devonport and Dover.

Demand for WAT services has been strong. In 2011-12, Transport Access Scheme (TAS) members undertook almost 82,000 individual journeys in WATs. Wheelchair dependent travellers accounted for 65,000 of these trips. Government subsidies to WAT operators in the year to 30 June 2012 totalled more than \$1.6 million, about one third of the total subsidy provided for taxi services.

The improved access and mobility provided to wheelchair-dependent travellers by the WAT service represents a major milestone in our efforts to improve Tasmania's passenger transport system.

Bus services

Where the State Government through the Transport Commission, a statutory office, contracts for public transport services, those contracts reflect the need for the operator to comply with any obligations under the Transport Standards. Further, contract payments to operators are structured to reflect the requirement to invest in compliant buses.

Follow up to the 2007 Review

Following the 2007 Review, DIER remains concerned over a range of issues raised through that process. The 2007 Review has not yet generated significant movement, largely as a result of the Australian Government's formal response being delayed until June 2011. Many of the recommendations required the identified issues to be referred to specific committees. While some of these committees have now largely concluded their work, in the case of the more challenging subjects (school buses, community transport, taxi response times) the task appears to be some way from resolution.

This overall situation tends to suggest that any significant work to address issues with the Transport Standards will not come soon enough to provide the level of information and support that operators, providers and jurisdictions are likely to need to meet the significantly increased targets currently in place by December 2017. Where significant capital expenditure is required, this could mean large amounts of investment in infrastructure which may subsequently prove to be non-compliant. Further, in the case of regional bus and taxi operations it causes a great deal of uncertainty for enterprises that are, in many cases family-run micro businesses.

Appropriateness of measures

Recommendations from the 2007 Review included referral of a number of technical matters to the Accessible Public Transport Jurisdictional Committee (APTJC) for consideration. Included among these is the use of equivalent response time as the relevant standard for delivery of accessible taxi services.

Tasmania, along with other jurisdictions, continues to hold serious reservations about equivalent response time as an appropriate, meaningful and realistic measure of accessibility.

The members of the National Taxi Regulators' Group (NTRG) have provided input to APTJC suggesting that another measure of accessibility would be preferred. A number of jurisdictions have proposed requiring a minimum percentage of the taxi fleet to be accessible. However, discussion to date by the NTRG indicates that this alternative is not uniformly accepted by jurisdictions and has its own issues as a practical and enforceable measure.

While appealingly simple and objective, the measure cannot be meaningfully applied to operators, many of whom run a single taxi. If applied to networks, jurisdictions which do not require compulsory membership (such as Tasmania) will continue to face measurement issues, with the probable outcome that unaffiliated taxi operators will have no certainty regarding their obligations.

Conclusion

The Tasmanian Government continues to support the aims and objectives of the Transport Standards and the progressive approach to implementation which will allow these goals to be achieved by government and private sector providers and ensure the removal of discrimination from public transport.

However, in committing to this process, support from the Australian Government was anticipated and, in the absence of such support, the process of meeting the progressive milestones is proving to be a significant burden on operators, providers and the State, given its role as the primary funding source for most public transport in Tasmania. This is exacerbated by the continual need for significant, costly interpretation in order to design compliant infrastructure and services. Nevertheless, the Tasmanian Government has continued to provide additional capital investment where possible to meet the progressive access thresholds without certainty that the works will be adequate.

These issues were raised in Tasmania's submission to the 2007 Review, but as yet no resolution has yet been achieved. The Australian Government did not release its response to the final report of that Review until 2011. Many recommendations were referred to committees for further work, and a number of specific and contentious issues remain unresolved. In order to move forward to the 2017 milestones with confidence, progress on these matters will be required.