

3 July 2014



Disabilities Transport Access Secretariat
Road Safety and Transport Access Branch
Department of Infrastructure and Regional Development
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Dear Secretariat members

Review of the Disability Standards for Accessible Public Transport

On behalf of the Public Interest Advocacy Centre (PIAC), we congratulate the Department of Infrastructure and Regional Development (the Department) for releasing the Draft Report on the 2012 Review of the *Disability Standards for Accessible Public Transport 2002* (Cth) (Draft Report) and thank the Department for the opportunity to make further submissions.

PIAC has based this response to the Draft Report on its extensive casework and other experience working with people with disability who have claimed discrimination in accessing transport services. PIAC has not relied on any funding from the Australian Government.

In summary, PIAC supports the recommendations made in the Draft Report. The report recognises that the effectiveness and efficiency of the *Disability Standards for Accessible Public Transport 2002* (Cth) (Transport Standards) are vital for people with disability to engage and participate in the community, and promotes the benefits of accessible public transport to the broader community, including by way of contribution to the labour-force and planning for Australia's aging population. PIAC endorses the recommendation that the Australian Government, jointly with state and territory governments, establish a national framework for reporting on compliance by 30 June 2016.

We propose that the Final Report should make two specific recommendations regarding legislative amendments that are critical for modernisation of the Transport Standards.

Dedicated school buses and community transport vehicles

PIAC is concerned about the absence of a specific recommendation in the Draft Report regarding the inclusion of accessibility requirements for major modes of transport that are currently not included in the Transport Standards. These modes are school buses, community transport, charter boats and limousines.

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Adding these modes of transport to the Transport Standards would address one of the unresolved issues from the 2007 Review of the Transport Standards (2007 Review). As the Department would be aware, the 2007 Review made the following recommendations for dedicated school buses and community transport vehicles to be included in the Transport Standards:

Recommendation 13

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).

Recommendation 14

Phased application of dedicated school bus services to physical access requirements in the Transport Standards, commencing in 2029 and being fully required by 2044.

PIAC considers that the absence of specific recommendations in the Draft Report, to the effect that each of the above modes of transport should be included in the Transport Standards, is a significant setback to any process of modernising the Transport Standards.

The Draft Report found that more detailed research and analysis need to be conducted to develop a thorough understanding of the community transport sector nationwide before any decisions can be made regarding inclusion in the Transport Standards. The Draft Report states that government submissions to the review took the position that the exclusions need to stay as inclusion may adversely impact current levels of service delivery and many services are already accessible.

As PIAC noted in our submission to the 2012 Review, operators and providers of modes of transport that are not currently covered by the Transport Standards have been required to comply with the *Disability Discrimination Act 1992* (Cth) (DDA) since it was introduced in 1992. This means that for 20 years, it has been unlawful for those operators and providers to discriminate against persons because of their disability in the provision of transport, unless they are able to prove that they would suffer an unjustifiable hardship. If these modes of transport are included in the Transport Standards, the relevant operators and providers will still be able to rely on the defence of unjustifiable hardship if, for example, they do not have the financial means to comply with the Transport Standards.

Operators of the excluded modes of transport would also be able to apply for an exemption to the Transport Standards if they have taken all reasonable steps to comply with the Transport Standards, but there are cogent reasons, such as lack of resources, why they cannot. By way of example, the ability to apply for an exemption is likely to assist transport operators and providers who operate small-scale services in rural and regional areas.

The 2007 Report recommended that new community transport vehicles and dedicated school buses be provided with a longer timeframe to meet the requirements of Schedule 1 of the Transport Standards than modes of transport currently included in the Standards. PIAC considers that, given the defences available to all operators and providers set out above, such an extended time frame is not necessary and is contrary to the objectives of the DDA.

We submit that Recommendation 2 of the Draft Report, which calls on the Australian Government and state and territory governments to modernise the Transport Standards, should be amended specifically to incorporate school buses, community transport, charter boats and

limousines into the Transport Standards without further delay. We refer the Committee to Recommendation 7 of our submission to the 2012 Review, which addresses this issue.

A breach of the Transport Standards should be unlawful

PIAC further submits that the Final Report should include a specific recommendation to amend the Transport Standards to clarify that a breach of the Transport Standards is unlawful. This further recommendation could also be incorporated into Recommendation 2 of the Draft Report concerning modernisation of the Transport Standards. We refer the Department to paragraphs 5.2 and Recommendations 8 and 9 of PIAC's submission to the 2012 Review, which addresses this issue.

As we note in our submission, we consider that a specific recommendation on this issue is required following the decision of the Federal Court of Australia in *Haraksin v Murray's Australia* [2013] FCA 214, which has created confusion regarding whether a breach of the Transport Standards is unlawful in the absence of a breach, or at least a complaint alleging a breach, of the DDA. In the absence of legislative clarification that a breach of the Transport Standards is unlawful, there could be some practical difficulties for claimants who allege a breach of the Transport Standards only. The requirement for complainants to deal with the DDA in addition to the Transport Standards when lodging a complaint to the AHRC may diminish the impact of the Transport Standards. It may also create an additional hurdle for complainants who already bear a heavy burden when it comes to enforcing compliance with the Transport Standards.

If you would like to discuss any issues raised in this correspondence further, please contact myself or Alexis Goodstone, Principal Solicitor, on 8898 6500 or at agoodstone@piac.asn.au.

Yours faithfully



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