

Disability Discrimination Legal Centre (NSW)

**Submission: Review of the Disability Standards for
Accessible Public Transport 2002**

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1 Introduction

The *New South Wales Disability Discrimination Legal Centre (“DDLCC”) welcomes the opportunity to contribute to the Australian Government’s first five-year review of the Disability Standards for Accessible Public Transport 2002 (“STANDARDS”), made under section 31 of the Disability Discrimination Act 1992 (Cth) (“DDA”). This submission will focus on the effectiveness of the Standards in meeting their stated purpose, which is “to enable public transport operators and providers to remove discrimination from public transport services”. This submission will focus primarily on question 23 in the Issues Paper dated May 2007 prepared by the Allen Consulting Group, which asks:*

To what extent do the requirements in the Transport Standards address all of the accessibility requirements for people with disability? Are there gaps in the coverage of requirements?

DDLCC considers that this review must also include the Disability Standards for Accessible Public Transport Guidelines 2004 (No.3) (“GUIDELINES”) which accompany the Standards.

DDLCC’s recommendations are summarised in Part 3 of this submission. Many of these recommend amendments to the Standards which DDLCC considers necessary (which must be part of this Review). Part 4 explains DDLCC’s method in preparing this

submission, which was based on the collection of case studies from people with disability. Part 5 sets out what DDLC wants from the Standards.

Part 6 deals with the broad questions of the approach to regulation embodied by the Standards and recommends the incorporation of principles which will encourage operators to understand the values behind the Standards. Part 7 points out the Standards' focus on prescription and measurement to the exclusion of behavioural matters and Part 8 goes on to make recommendations to address this deficiency in the area of staff training. Part 9 explains the need to clarify the extent of protection provided to operators by the Standards, given the capacity for operators to attempt to rely on the Standards as a blanket defence to complaints of discrimination. Part 10 explores some of the problems arising from the interaction between infrastructure to which the Standards apply and infrastructure not covered by the Standards. Part 11 makes recommendations to address deficiencies in systems and procedures and Part 12 sets out recommendations for improvements to the technical aspects of the Standards as currently formulated.

2 About DDLC

The NSW DDLC was set up in 1994 to help people with disability to use disability discrimination laws. Our role is to provide accurate and easy to comprehend advice to people with disability in NSW who want to make a complaint of disability discrimination. We give free legal advice, run disability discrimination cases and represent people with cases of disability discrimination.

The NSW DDLC aims for a society where people will be able to participate in all aspects of life through the:

*removal of barriers;
elimination of discrimination;
empowerment of people with disabilities;
promotion of awareness; and
ability to exercise rights.*

DDLC's objectives are:

To promote community awareness of the potential to use discrimination laws to advance the rights of people with disabilities;

To provide legal services for people with disabilities, their associates and representative organisations, who have been discriminated against;

To ensure the effective participation of people with disabilities in the management and operation of the Centre;

To reform laws and change policies, practices and community attitudes that discriminate against people with disabilities;

To develop and be involved in appropriate networks; and

To maintain the necessary infrastructures and administration systems in order to further the Centre's aims and objectives.

3 Summary of recommendations

Recommendation 1: *Statements of the values embodied by the Standards, and the objectives sought to be achieved, should be included in the Standards. These statements of principle should be developed through consultation with relevant stakeholders.*

Recommendation 2: *The Standards should be amended to include an obligation on operators to ensure that all staff are trained to proficiency in disability awareness, the operation of equipment and facilities and the treatment of people with disability with courtesy and respect.*

Recommendation 3: *The obligation to train staff to proficiency (see recommendation 2) should include an obligation to train staff in the resolution of competing safety considerations and requirements for accessibility, so as to maximise accessibility as far as possible without creating unacceptable risks to passenger safety.*

Recommendation 4: *The obligation to train staff to proficiency (see recommendation 2) should include an obligation to train staff in the requirements of the DDA in relation to assistance animals.*

Recommendation 5: *The Standards should be amended to make clear that, where a matter is not dealt with by the Standards, any act in relation to that matter is subject to the unlawful discrimination provisions of the DDA.*

Recommendation 6: *The interaction between the Standards and the Standards for Access to Premises should be considered. In particular, consideration should be given as to how an accessible link is to be provided between premises and associated transport infrastructure.*

Recommendation 7: *Investigations should be undertaken into options for establishing a formal arrangement between operators and the entities which operate and maintain the infrastructure which supports public transport.*

Recommendation 8: *The Standards should be amended to include a requirement that conveyances be permitted to stand at boarding points and waiting areas for a sufficient length of time to permit all disabled passengers to board and/or disembark.*

Recommendation 9: *The Standards should be amended to include a requirement that conveyances attend all waiting areas adjacent to boarding points, except where this is not reasonably practicable.*

Recommendation 10: *Guideline 1.24 should be amended to clarify that a service animal is not subject to a fare or to any other charge,*

and that a person who uses a service animal is not subject to any fee or charge additional to that which would be charged to a person who does not use a service animal.

Recommendation 11: The Guidelines should be amended to include a statement encouraging operators to waive charges for assistance with boarding, carrying luggage, additional phone calls etc. Further research and cost-based analysis should be undertaken into whether and which additional services should be provided at no cost or at a reduced fee to people with disability.

Recommendation 12: The Standards should be amended to include a requirement that operators ensure that persons with an intellectual disability who either do not comprehend their obligation to pay fares, or are incapable of complying with that obligation (“an exempt person”), are not subject to financial penalties for fare evasion while travelling on their conveyances. This may be achieved by:

Ensuring all persons charged with the administration and enforcement of fines are trained such that fines and charges are not issued to exempt persons;

Ensuring that, where such a person is fined, that fine is waived upon evidence that they are an exempt person; and

Creating standard procedures for the issue of long-term tickets which may be arranged by a carer, including tickets which need not be presented to fare infringement officers but can be checked against a database upon presentation of the person’s details.

Recommendation 13: The Standards should be amended to include a requirement that, in emergency situations such as an evacuation, operators must take all steps reasonably practicable to minimise risk to people with disability and, in an evacuation, to evacuate people with disability as soon as possible.

Recommendation 14:

Standard 8.2 should be amended to require operators to take measures to address the barrier to access posed by boarding gaps by:

(a) Deleting the reference to “accessible” entrance in Standard 8.2 and

(b) Requiring that within six months of the relevant amendment, where there is a horizontal gap or vertical rise in excess of those specified in Standard 8.2, all conveyances must provide a boarding device at a minimum of one entrance per conveyance.

Recommendation 15: Guideline 15.1 should be amended to state that the intent of the Standards is that all people with disability should

have access to accessible toilets.

Recommendation 16: The Standards should be amended to provide that where accessible toilets are provided, they must be unlocked unless there are security and safety reasons which make locking necessary; and that if toilets are locked, a member of staff must at all times be available to unlock them upon the request of any person (with no requirement to prove that the person has a disability).

Recommendation 17: The Standards should be amended to include a requirement that all information about service changes be provided in accessible formats as far as reasonably practicable.

Recommendation 18: The Standards should be amended to impose a requirement that operators carry the wheelchair or similar mobility aid of any passenger which fits within the minimum allocated space set down by Standard 9.1.

Recommendation 19: The Standards should be amended to require operators to permit people with disability to opt to use their own equipment where this achieves the same objective as the equipment provided by the operator.

4 Method

This submission is based largely on anecdotal case studies collected by DDLIC with the assistance of the People with Disability Australia Inc (“PWD”), a national peak disability rights and advocacy organisation. Case studies were called for by way of an email to the membership of PWD requesting that members telephone, email or mail DDLIC about their experience of using public transport. Eight submissions were received. DDLIC then prepared anonymous “case studies” based on those submissions (attached at APPENDIX 1 to this submission). DDLIC’s analysis of the Standards has also drawn on the files of past and current clients. A selection of case studies based on the files of DDLIC clients is attached at APPENDIX 2.

5 What we want from Transport Standards

While the Standards are an important advance towards achieving accessible public transport, people with disability continue to experience extreme difficulty using public transport in Australia. The importance of access to public transport to people with disability cannot be overstated. Accessible public transport is essential to the ability of people with disability to participate in community life and to pursue opportunities for employment and recreation. Without the mobility provided by accessible public transport, people with disability may face isolation and reduced economic and social opportunity.

Broadly speaking, we want Standards which constitute fulfilment of the obligations in relation to transport imposed on Australia as a signatory to the UN Convention on the Rights of Persons with

Disabilities by Article 9 - Accessibility, which provides:

1. ***To enable persons with disabilities to live independently and participate fully in all aspects of life, States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, ... and to other facilities and services open or provided to the public, both in urban and in rural areas. These measures, which shall include the identification and elimination of obstacles and barriers to accessibility, shall apply to, inter alia:***
 - (a) ***transportation”***

In particular, we want Standards which achieve the following :

A concrete progression towards a transport system which is free from discrimination against people with disability;

Impose a clear responsibility on public transport operators to include people with disability as members of society, and to facilitate their exercise of their right to the mobility which is necessary for economic, social and political participation in their communities;

Embody a recognition that the responsibility of providing mobility for people with disability should not rest solely, or primarily, on the families and carers of people with disability; and

Include a recognition not just of the technical aspects of accessible public transport but of the need for staff to be trained to proficiency and for people with disability to be treated with respect and to be accorded dignity when using public transport.

6 Approaches to regulation

The DDLc anticipates some debate during the course of the review as to the approach to regulation to be reflected in the Standards. Currently the Standards set out in a detailed fashion the technical outcomes to be achieved, while allowing for some flexibility in the manner in which operators achieve compliance. The Standards do not currently embody a principles-based approach to regulation in that their focus is on detailed requirements rather than on broad, general rules. Nor do they fulfil one of the key aims of principles-based regulation, that is, to encourage organisations to “understand the values behind the law and change their behaviour accordingly; not because they might get caught out by a regulator but because they understand why the law is there and what its objectives are.”

The DDA itself sets out a high level statement of principle: that is, that discrimination on the grounds of disability is unlawful in a number of areas such as access to premises, employment and education. However, the next tier of regulation, the Disability

Standards, jumps into a prescriptive listing of detailed accessibility requirements. There is currently a void where a more detailed statement of the values and outcomes sought to be achieved should be made more explicit.

DDLC's view is that the Standards should incorporate statements of principle which make explicit the values sought to be upheld by the Standards. This will permit the flexible application of principles to new situations as they arise and will encourage organisations to understand the objectives of the Standards. Statements of the values underlying the Standards are currently lacking, being dealt with in a limited fashion only in the non-binding Guidelines. For example, Guideline 1.16 provides that:

The Disability Standards assume that operators and providers will use their best endeavours to respect and promote the dignity and independence of all passengers.

These matters should be given greater force through incorporation in the Standards rather than the Guidelines. The Productivity Commission notes that the main advantage of guidelines over standards is their flexibility as they are easily updated. DDLC submits that guidelines are not the place for setting out fundamental rights and responsibilities which are not susceptible to change over time. (DDLC also notes that matters such as the treatment of people with disability in a respectful manner which accords them dignity should be expressed as a fundamental goal of the Standards and not simply as an "assumption".)

DDLC recognises that the Standards aim to provide certainty and submits that high-level statements of principle are consistent with this aim. When statements of principles are combined with a detailed description of what will amount to compliance, operators will be able to attain both certainty in relation to compliance and a better grasp of the intent and objects of the Standards.

However, DDLC does not suggest that principles can replace the prescriptive elements of the Standards, as broad-brush principles without more detailed rules and legal obligations may well be ignored by operators and will not provide sufficient certainty.

Recommendation 1: Statements of the values embodied by the Standards, and the objectives sought to be achieved, should be included in the Standards. These statements of principle should be developed through consultation with relevant stakeholders.

7 The lack of a human dimension

The Standard-making power in section 31 of the DDA relates to "the provision of public transportation services and facilities". There is clearly a potential for the Standards to address the way in which public transport services are delivered, including the systems and

staff practices which underpin that service delivery. However, the Standards have an almost exclusively technical focus, dealing primarily with physical infrastructure and conveyances. They do not deal with behaviour and with the disabling effect of the attitudes and practices of transport operators and their staff. In short, they fail entirely to address what this submission will call “the human dimension”. For example, the Standards do not deal with staff training. They do not address how operators should deal with people with an intellectual disability who do not pay their fares. They do not address the practices which operators should follow to remove people with disability from conveyances in emergency situations.

DDLC’s view is that the Standards’ focus on technical details and measurement is unduly narrow and fails to address the experience of people with disability. The total failure to address the human dimension of public transport is a deficiency in the Standards which seriously hinders their ability to achieve their purpose of removing discrimination from public transport services.

8 Staff

8.1 Staff training: general

It is clear that well-trained staff are essential in ensuring that accessible infrastructure and vehicles actually result in the delivery of a good transport service to people with disability. This view is shared by the United States Department of Transportation and the New Zealand Human Rights Commission. A repeated theme of reports from people with disability about their experience on public transport is a feeling of humiliation and embarrassment at the way they are treated by staff. A small sample of some of the experiences of people with disability includes the following:

rudeness from staff when people with disability communicate their need for assistance;
challenges to the existence of disabilities which are “invisible”;
inflexible application of operators’ policies by staff, without consideration of the circumstances of the individual;
embarrassment at being made to board a conveyance last and at personal questions about toileting being asked in full view and hearing of other passengers; and
impatience and rudeness when persons with intellectual disability/ memory impairment are slow, inefficient or forgetful.

We note that there is no mention of staff training or attitudes in the Standards themselves. The only provisions addressing this issue are found in Part 37 of the non-binding Guidelines. Section 37.1 sets out an assumption that operators will ensure staff are proficient in interacting with passengers in ways that do not discriminate against people with disabilities. It also recommends that staff orientation programs include components on disability rights and awareness.

DDLC considers that Part 37 of the Guidelines provides little

protection against discrimination for people with disability in an area that is cited by as one in which they experience discrimination most acutely. While many operators already conduct training, DDLIC submits that the provision of training should not be optional: there should be a clear and positive obligation on operators to provide it. Training should be provided both to front line staff (drivers, station managers, ticket sellers and customer service staff) and to all levels of organisations which provide public transport, so that those who set the direction and agenda of public transport operators are aware of disability issues. The content of this obligation should be to ensure that all staff are proficient in providing service to people with disability, rather than a mere statement of assumption that this will happen and a recommendation for training. Organisations which provide disability awareness training include People with Disability and the Australian Employers Network on Disability.

DDLIC notes that the US model may provide a useful guide. The United States Code of Federal Regulations, in implementing the transport provisions of the Americans With Disabilities Act 1990, includes a requirement that operators:

“shall ensure that personnel are trained to proficiency, as appropriate to their duties, so that they operate vehicles and equipment safely and properly assist and treat individuals with disabilities who use the service in a respectful and courteous way, with appropriate attention to the difference among individuals with disabilities.”

The US model does not require any particular course of training, but rather, an obligation to ensure that at any given time, employees are trained to proficiency both in technical tasks and in the human dimension of providing services to people with disability, understanding the need to treat people with disability courteously and respectfully.

A requirement for such training would obviously impose additional costs on operators. It is beyond the scope of this submission to quantify this cost, however DDLIC’s view is that the resulting benefits would be significant, given the importance of attitudinal factors in creating a less favourable experience on public transport for people with disability. DDLIC does not suggest that courtesy and respect are a substitute for technical compliance, however, one benefit for operators is that, if a person with disability feels that they have been treated with respect and accorded dignity, the incidence of complaints may be reduced

Recommendation 2: The Standards should be amended to include an obligation on operators to ensure that all staff are trained to proficiency in disability awareness, the operation of equipment and facilities and the treatment of people with disability with courtesy

and respect.

8.2 Staff training: safety considerations

One specific concern that commonly arises in relation to staff behaviour is that the safety considerations are often treated as automatically competing with, and are privileged over, the provision of effective access and assistance to people with disability. DDLC accepts that in some circumstances safety considerations will compete with the provision of access, but considers that safety is raised as an excuse for inaccessibility in more circumstances than are warranted.

It is beyond the scope of this submission to examine in detail the regulatory regimes which impose safety requirements on operators. However, DDLC submits that operators should develop training programs which provide guidance to staff in how to resolve tensions between safety requirements and accessibility requirements. Such resolution should maximise access as far as possible without creating unacceptable risks to passenger safety.

***Recommendation 3:** The obligation to train staff to proficiency (see recommendation 2) should include an obligation to train staff in the resolution of competing safety considerations and requirements for accessibility, so as to maximise accessibility as far as possible without creating unacceptable risks to passenger safety.*

8.3 Staff training: assistance animals

DDLC notes an ongoing problem where staffs of public transport operators refuse to permit assistance animals to travel on conveyances. Protection in this respect is already provided by the provisions of the DDA which deal with guide dogs and disability discrimination in the provision of services. The deficiency remains one of staff awareness and compliance with their legal obligations. DDLC submits that the Standards should place an onus on operators to ensure that all staff are familiar with these provisions and act in accordance with them.

***Recommendation 4:** The obligation to train staff to proficiency (see recommendation 2) should include an obligation to train staff in the requirements of the DDA in relation to assistance animals.*

9 The need to clarify the extent of protection provided by compliance with the Standards

Section 34 of the DDA states that if a person acts in accordance with a disability standard then the existing unlawful discrimination provisions do not apply to the person's act. The DDLC is concerned that operators are relying on section 34 in combination with the Standards to excuse a broader range of conduct than was intended. DDLC's experience has been that some operators are invoking their compliance with those matters addressed in the Standards in order to

claim that they need not avoid discrimination in areas not dealt with by the Standards. DDLC submits that the operation of the Standards must be clarified in this respect.

Two examples illustrate the problem. First, take the example where a bus is fully compliant with the Standards in relation to access paths, boarding points and so on. A driver refuses to let a person board because they use a wheelchair. The operator might then point to the Standards and claim that because, in the act of providing a transport service, it had achieved compliance with the Standards, the unlawful discrimination provisions of the DDA did not apply, so that the driver is acting lawfully in refusing to let a wheelchair-user board. This clearly cannot be the case. A second example is drawn from a current DDLC file where a conveyance provides baggage racks which are inaccessible. Baggage racks are not a matter dealt with in the Standards. The operator relies on its compliance with the matters which are dealt with in Standards and section 34 of the DDA to argue that the unlawful discrimination provisions of the DDA do not apply to the provision of baggage racks.

While the DDLC accepts that disability standards can make some things lawful which would otherwise have been unlawful, it cannot be the case that compliance with the Standards is an answer to all claims of discrimination, even in relation to matters which are not addressed by the Standards. We note in particular that Guideline 1.8 provides that “[i]f the Disability Standards do not deal with an issue in relation to public transport, the requirements of the Disability Discrimination Act 1992 apply in relation to the issue”. DDLC’s view is that Guideline 1.8 must mean that it was the intention of the drafters of the Standards that, because things like baggage racks and driver behaviour are not matters “dealt with” in the Standards, then the unlawful discrimination provisions of the DDA would apply to those matters.

DDLC submits that a proper construction of section 34 is that it provides protection only in relation to an act which is “in accordance with a disability standard”. Thus, it is necessary to identify the act to which protection is granted. An act which is not related to a matter dealt with in the Standards is, in DDLC’s submission, not an act in accordance with the Standards and as such is not protected by section 34. So, for example, the act of providing inaccessible baggage racks would not receive protection because it is not an act in accordance with a disability standard, since no disability standard addresses this question.

DDLC submits that this position should be made clear, ideally in the DDA itself, but at least in the Standards. Currently, explicit reference to this problem is made only by the non-binding Guidelines. If the Standards were amended to make the position clear, DDLC submits that this would not alter in a fundamental way the scope of the DDA but merely clarify how the Standards are to operate in line with a

proper construction of section 34. That is, the overarching importance of the unlawful discrimination provisions should be made clear, and it should be made clear that operators cannot discriminate without consequence in areas not addressed by the Standards.

Recommendation 5: *The Standards should be amended to make clear that, where a matter is not dealt with by the Standards, any act in relation to that matter is subject to the unlawful discrimination provisions of the DDA.*

10 Infrastructure not covered by the Standards

10.1 Links between operators' premises and other premises & infrastructure

The experience of people with disability is that their access to public transport is often limited by infrastructure which is inaccessible but which is not dealt with by the Standards. The Standards isolate conveyances themselves, and the infrastructure immediately associated with the boarding of those conveyances, in imposing requirements for accessibility. For example, the Standards provide for unhindered access paths on walkways and ramps in rail stations and deal with seats at bus stops. However, the definition of infrastructure is limited so that it does not apply to "any area beyond immediate boarding points". The DDLC wishes to highlight the need to consider the effects of this limited approach.

One concern arises from the interaction between the requirements for accessible public transport and the requirements for accessible premises. One example is the case where a transport operator's premises provide access to a location which is privately owned, such as a bus stop located below a shopping centre. The Standards will apply only to the bus stop itself. They impose no requirement for an accessible link between the operator's premises and the private premises. While the separate requirements for accessible premises may require that each premises be accessible, DDLC is concerned that there may be no requirement for an accessible link between the premises. That is, in the example given above, there would be no requirement for an accessible link between the bus stop and the shopping centre. Thus, a person with disability may be able to catch the bus to the bus stop below the shopping centre but then be unable to then access any of the shops. While this may be a matter best dealt with in the Draft Disability Standards for Access to Premises, DDLC wishes to note the problems arising from treating public transport and conveyances as an isolated component of the experience of catching public transport.

Recommendation 6: *The interaction between the Standards and the Standards for Access to Premises should be considered. In particular, consideration should be given as to how an accessible link is to be provided between premises and associated transport infrastructure.*

10.2 The role of supporting infrastructure including accessible parking

A related issue is that of infrastructure which supports public transport. This includes kerbs, footpaths, crossings and accessible parking. DDLG is not aware of any formal arrangement to facilitate cooperation between the entities which operate conveyances and those which control the infrastructure which supports their operation, and submits that such an arrangement is crucial to the provision of accessible public transport.

The crucial role of supporting infrastructure is illustrated by the role of accessible parking. The provision of accessible parking has a crucial effect on the capacity of a person with disability to use transport premises. For a person with disability who does not live near a bus route and is dependent on a car to get to a bus or train station, an accessible station is of no use if the person cannot park there. However, there is apparently a lack of coordination between those who operate train stations and those responsible for the provision of accessible parking. One person consulted reported that eight accessible parking spots have recently been removed from around Parramatta Station in Sydney. The question of parking is not addressed in the Standards. DDLG understands that accessible parking is currently the joint responsibility of local councils and the RTA

It is beyond the scope of this submission to propose a solution to this problem. The example given above suggests, at least, a need for cooperation at least between transport operators and the authorities responsible for accessible parking and other infrastructure which supports public transport.

Recommendation 7: Investigations should be undertaken into options for establishing a formal arrangement between operators and the entities which operate and maintain the infrastructure which supports public transport.

11 Systems & procedures

11.1 Allowing conveyances to stand at boarding points for a sufficient length of time

DDLG is concerned that the owners of infrastructure to which the Standards apply are not currently required to permit conveyances to stand at boarding points and/or waiting areas for a sufficient amount of time to permit people with disability to board and disembark. One case study has revealed the potential for the owners of infrastructure to impose limited standing times (in this case, in the name of safety considerations). This creates a barrier to accessibility which the Standards should prevent as a rule, with exceptions possible through the unjustifiable hardship provisions.

Recommendation 8: The Standards should be amended to include a requirement that conveyances be permitted to stand at boarding points and waiting areas for a sufficient length of time to permit all

disabled passengers to board and/or disembark.

11.2 Requirement that conveyances attend waiting areas

DDLCC is concerned that, where a waiting area is provided, there is currently no requirement that conveyances actually attend the boarding point closest to that area. One case study has revealed, for example, that an airport might refuse permission for a public transport conveyance to attend a boarding point close to a waiting area due to security considerations. In such circumstances, people with disability face the prospect either of waiting for long periods in areas with no seating, or of travelling relatively long distances between waiting areas and boarding points.

The provision of a waiting area with seating and shelter can significantly enhance the accessibility of public transport. For example, if there is no seating provided near a boarding point, a person with a mobility disability (other than a wheelchair user) will find it more difficult to wait for a conveyance than a person without that disability.

The Standards do not currently impose any requirement that a waiting area be provided, although if a waiting area is provided, there is a requirement that a certain number of seats be identified as available for passengers with disabilities. DDLCC does not believe that the Standards should impose a requirement that waiting areas should be provided at all public transport infrastructure. However, DDLCC does submit that where a waiting area is available, conveyances should be required to attend waiting areas which are located adjacent to boarding points, unless this is not reasonably practicable (for example, where the relevant area is flooded or subject to construction work). While there may be valid security or safety concerns to justify a blanket departure from such a requirement, this could be dealt with by way of an exemption under the “unjustifiable hardship” provisions of the Standards.

Recommendation 9: The Standards should be amended to include a requirement that conveyances attend all waiting areas adjacent to boarding points, except where this is not reasonably practicable.

11.3 Fares for assistance animals

Guideline 1.24 provides that service animals are not required to pay a fare. The DDLCC notes however that some operators are attempting to impose other financial penalties. For example, one case study involved an attempt by a train operator to charge a person with vision impairment for the occupancy of two berths in a sleeper carriage instead of one, due to his use of a guide dog. The stated reason was that the operator was unable to place another passenger in the berth with a guide dog, and thus a bed would remain vacant. DDLCC's view is that this is an unacceptable shifting of costs onto a person with disability.

Recommendation 10: Guideline 1.24 should be amended to clarify

that a service animal is not subject to a fare or to any other charge, and that a person who uses a service animal is not subject to any fee or charge additional to that which would be charged to a person who does not use a service animal.

11.4 Fees for additional services provided/assistance given
An important question not dealt with by the Standards is the charging by operators for extra services provided to people with disability. On one view, this is a matter best left to the legislative protection provided by anti-discrimination legislation. However, the DDLC submits that, as there is some uncertainty in this area and some inconsistency in the practices of operators, the Standards should provide clarification in this respect.

One example of extra charges is that taxi drivers often begin to run the meter while assisting a wheelchair user to board a taxi and to stow their wheelchair, while they often do not run the meter when assisting a person without disability to load their luggage. Another example is that a person with memory impairment may be charged multiple times for telephone calls to a service centre to confirm a booking the details of which they have forgotten. A person with a stammer may be charged for a longer phone call. So, where extra services are provided in order to provide accessibility for a person with disability, should operators be free to charge for those services? Affordability is a key factor in the accessibility of public transport. As noted in the Issues Paper, "a higher average cost per trip will mean that people with disability will tend to limit themselves to essential travel".

In relation to taxi services, the US model is an example of one approach to this question. As the US Department of Transport notes, "[t]he fact that it may take somewhat more time and effort to serve a person with a disability than another passenger does not justify discriminatory conduct with respect to passengers with disabilities". The relevant provision of the US Code of Federal Regulations provides that "[p]rivate entities providing taxi service shall not discriminate against individuals with disabilities by actions including...charging higher fares or fees for carrying individuals with disabilities and their equipment than are charged to other persons."

At a minimum, DDLC recommends that the Guidelines be amended to include a statement that providing a service to people with disability may take more time and encouraging operators to waive charges for assistance with boarding, carrying luggage, additional phone calls etc.

Recommendation 11: The Guidelines should be amended to include a statement encouraging operators to waive charges for assistance with boarding, carrying luggage, additional phone calls etc. Further research and cost-based analysis should be undertaken into whether and which additional services should be provided at no cost or at a

reduced fee to people with disability.

11.5 Ticketing and fines for people with an intellectual disability
People with an intellectual disability, due to their disability, often fail to purchase and use tickets as required by operators. There is a recurrent problem with operators' inappropriate responses to this situation, as revealed by one of DDLC's case studies and by recent media reports.

Currently, Guideline 1.17 provides that all passengers must be prepared to pay fares although concessions may be made and anyone who has problems with standard fare payment systems may expect special arrangements to be made. DDLC's view is that stronger protection is necessary for people with intellectual disability. More detailed Standards are needed in this respect and they must apply both to operators and to any person charged with the administration and enforcement of fines for fare evasion on public transport. In this regard, DDLC recommends an outcome-based Standard requiring operators to ensure that people with an intellectual disability are not subject to financial penalties for fare evasion. DDLC accepts that this may need to be limited to persons whose disability is such that they do not comprehend their obligation to pay fares, or such that they are incapable of complying with that obligation.

Recommendation 12: *The Standards should be amended to include a requirement that operators ensure that persons with an intellectual disability who either do not comprehend their obligation to pay fares, or are incapable of complying with that obligation ("an exempt person"), are not subject to financial penalties for fare evasion while travelling on their conveyances. This may be achieved by:*

Ensuring all persons charged with the administration and enforcement of fines are trained such that fines and charges are not issued to exempt persons;

Ensuring that, where such a person is fined, that fine is waived upon evidence that they are an exempt person; and

Creating standard procedures for the issue of long-term tickets which may be arranged by a carer, including tickets which need not be presented to fare infringement officers but can be checked against a database upon presentation of the person's details.

11.6 Emergency procedures
DDLC is concerned about the Standards' lack of provision for assistance to people with disability in emergency situations. We note that this issue is recognised as important by the UN Convention on the Rights of Persons with Disabilities, Article 11 imposing an obligation on states which are party to the Convention to "take all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk".

Currently, Guideline 33.8(2) provides that in emergency situations

such as an evacuation an operator is permitted to give direct assistance. However this appears to be redundant as an operator needs only the consent of the person with disability, not the sanction of the Guidelines, to provide such assistance. DDLIC submits firstly that the appropriate place for provisions regarding responses to emergencies is the Standards rather than the Guidelines and secondly that an obligation should be imposed on operators to provided direct assistance to persons with disability in situations where they are at risk.

In one case study collected by DDLIC, a wheelchair user was left stranded on a train for several hours after all other commuters had been evacuated, without access to his medication. The operator in question refused to employ several reasonably practicable options to remove him, including carrying him up stairs and the use of a forklift. This illustrates a common problem: what is an “emergency” for a person with disability may differ from what is an “emergency” for an able bodied person. For example, if a person with disability is left on a train for several hours, their medication needs may go unmet, with potentially serious health consequences.

Recommendation 13: The Standards should be amended to include a requirement that, in emergency situations such as an evacuation, operators must take all steps reasonably practicable to minimise risk to people with disability and, in an evacuation, to evacuate people with disability as soon as possible.

12 Technical aspects of the Standards

12.1 Boarding: horizontal gap and vertical rise

Consultations have revealed that people with disability are facing problems with the horizontal gap and vertical rise between boarding points and conveyances. Standard 8.2 provides that a boarding device “must be available at any accessible entrance to a conveyance” that exceeds a specified vertical rise or horizontal gap.

We query why Standard 8.2 should apply only to “accessible entrances”. An “accessible entrance” is apparently one which provides a continuous and unhindered passage and meets the width requirements for accessibility in Standard 2.6. This means that for an entrance to a conveyance which has not yet attained compliance with Standard 2.6, the question of the horizontal gap or vertical rise encountered by a disabled person during boarding is not addressed by the Standards. This may make sense for wheelchair-users, since there is no point in having a boarding device for use in a door which is not of sufficient width for a wheelchair. However, for other persons with a mobility disability, there is no reason why the provision of a boarding device should be limited only to entrances of a specified width. In this respect, the Standards appear to reflect a narrow focus on entry/exit assistance for wheelchair users to the exclusion of assistance to persons with disability who do not use wheelchairs.

DDLc submits that the question of a gap between a conveyance and boarding location should be addressed independently from the question of whether the entrance is otherwise accessible. Further, there should be an amendment for the existing timetable to require short-term steps to be taken to address this problem.

Recommendation 14:

Standard 8.2 should be amended to require operators to take measures to address the barrier to access posed by boarding gaps by:

- (a) Deleting the reference to “accessible” entrance in Standard 8.2 and***
- (b) Requiring that within six months of the relevant amendment, where there is a horizontal gap or vertical rise in excess of those specified in Standard 8.2, all conveyances must provide a boarding device at a minimum of one entrance per conveyance.***

12.2 Accessible toilets

Standard 15.1 requires the provision of at least one unisex accessible toilet which complies with the relevant Australian Standard, where toilets are provided. Guideline 15.1 provides that “the intent of the Disability Standards is that there will be sufficient clear space in an accessible toilet to allow a person using a mobility aid to move between the various fixtures and to exit ... in a forward direction”. Guideline 15.1 thus focuses on people with mobility or ambulatory problems. One operator known to a DDLc client has claimed that, on the basis of Guideline 15.1, it need only provide accessible toilets for persons using a mobility aid (as opposed to, for example, persons with an intellectual disability).

DDLc notes that people with other types of disability also need to use accessible toilets. For example, a person with an intellectual disability might require quick access to a toilet with sufficient room for a carer to assist them. Accessible toilets are more likely to be vacant, and to provide room for carer assistance. Further, a unisex toilet permits a carer of one gender to assist a person of another gender.

DDLc submits that, as currently framed, Guideline 15.1 is flawed in that it constrains the intent of Standard 15.1 in a manner which is unwarranted and does not recognise that people with various types of disability, not just wheelchair users, may require accessible toilets.

Recommendation 15: That Guideline 15.1 be amended to state that the intent of the Standards is that all people with disability should

have access to accessible toilets.

DDLC also notes one case study in which a person with an intellectual disability required quick access to a toilet in which there was room for a carer to assist him. The accessible toilets were locked, an initial request that they be unlocked was met with refusal on the basis that the person did not use a mobility aid.

Recommendation 16: That the Standards be amended to provide that where accessible toilets are provided, they must be unlocked unless there are security and safety reasons which make locking necessary; and that if toilets are locked, a member of staff must at all times be available to unlock them upon the request of any person (with no requirement to prove that the person has a disability).

12.3 Information & signage

Part 27 of the Standards provides that general information about transport services must be accessible to all passengers and that if it cannot be given in the passenger's preferred format then equivalent access must be provided through direct assistance. DDLC notes that service changes, lateness and cancellations all constitute information which is crucial for a person with disability if they are to experience equivalent access on public transport. DDLC submits that the Standards require amendment to ensure effective communication of service changes, as explained below.

The Standards do not address the case where, for example, a person with hearing loss is attempting to catch a train and there is a service change but no means to communicate this visually. A person with hearing loss will not be aware of their need for direct assistance in this case and the conditions will therefore not arise in which direct assistance can be provided. Likewise, a vision-impaired person will not be aware of their need for direct assistance if an electronic sign silently changes. The solution is a requirement for both visual and aural means of communicating service changes as far as reasonably practicable.

The problem with the Standards is that they are currently framed so as to permit an operator to opt between the provision of information in accessible formats and the provision of direct assistance according to that operator's preference. DDLC submits that the Standards should make clear that operators must make every effort to provide information in accessible formats, and only if this is not reasonably practicable should they attempt to achieve compliance through equivalent access by way of direct assistance.

Recommendation 17: That the Standards be amended to include a requirement that all information about service changes be provided in accessible formats as far as reasonably practicable.

12.4 Carrying mobility equipment

One case study involves the refusal by an airline to carry a

wheelchair in its cargo hold. The Standards currently impose no obligation on operators to carry a wheelchair. DDLC submits that operators should be required to carry any wheelchair or similar mobility aid which fits within the minimum allocated space of 800 mm by 1300 mm set down by Standard 9.1.

Recommendation 18: That the Standards be amended to impose a requirement that operators carry the wheelchair or similar mobility aid of any passenger which fits within the minimum allocated space set down by Standard 9.1.

12.5 Electric wheelchairs & scooters on buses

Currently, it is clear that wheelchairs, manual and electric, are to be permitted to board wheelchair accessible conveyances (provided they fit within the allocated spaces and can manoeuvre within the area provided, etcetera). However, there is apparently some uncertainty regarding electric scooters and whether they should be permitted to occupy wheelchair accessible spaces.

12.6 Restraints, harnesses and other equipment

Guideline 9.6(2) operators of conveyances on which safety belts are mandatory must provide restraints for use by people with disability. However, the Standards do not currently provide for people with disability to opt to use their own restraints or harnesses rather than those provided by the operator. For example, one airline has told a disabled child that, due to safety considerations, he cannot fly unless he can use their adult-sized harness. The airline will not permit him to use his own tailor-made seat. DDLC submits that the Standards should be amended to require operators to permit people with disability to opt to use their own equipment where this achieves the same objective as the equipment provided by the operator.

Recommendation 19: That the Standards should be amended to require operators to permit people with disability to opt to use their own equipment where this achieves the same objective as the equipment provided by the operator.

13 References

FORMAL INSTRUMENTS

UN Convention on the Rights of Persons with Disabilities

Disability Discrimination Act 1992

Disability Standards for Accessible Public Transport 2002, compilation prepared 11 May 2005.

Disability Standards for Accessible Public Transport Guidelines 2004 (No.3).

United States Code of Federal Regulations, Title 49 - Transportation; Part 37 - Transportation Services for Individuals with Disabilities

(ADA) and Part 38 - Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles.

REPORTS AND STUDIES

Review of the Disability Standards for Accessible Public Transport 2002: Issues Paper, Allen Consulting Group, May 2007.

Review of the Disability Discrimination Act 1992; Productivity Commission Inquiry, Report No. 30, 30 April 2004.

Regulation Impact Statement on Draft Disability Standards for Accessible Public Transport, Attorney-General's Department, January 1999.

The Accessible Journey: Report of the Inquiry into Accessible Public Land Transport, New Zealand Human Rights Commission, September 2005.

PAPERS & ARTICLES

Heath Aston & Andrew Chesterton, 'CityRail hits a horrid new low - Disabled 'boy' bullied over fines', Daily Telegraph, 15 May 2007, p7.

K Curtis, Reducing Overlap, Duplication and Inconsistency (Paper presented at Australian Regulatory Reform Evolution 2006, Canberra, 24 October 2006).Appendix 1

CASE STUDY 1- YVETTE

Yvette has some hearing loss and cannot hear announcements made on ferries, which are most often shouted from the lower deck. She finds that when something is amiss, for example, a ferry is running late or has been cancelled, she has to ask other passengers to explain to her what is happening. She has tried asking ferry staff for information but has found them mostly to be unhelpful and rude. Nor can she lip read what is said by staff in the ticket booths as it is difficult to see them through security screens. She considers this to be an issue of safety as well as equal access. She would like to see off conveyances equipped with electronic signs to convey important information, particularly changes to regular services.

CASE STUDY 2 – MARIA

Maria uses an electric wheelchair. She was excited about using it to get to the doctor and to go shopping, but was very disappointed when she attempted to board a wheelchair accessible bus and the driver told her that he did not take electric wheelchairs. She has since discovered that this is not the bus company's policy and that the driver should have let her on.

CASE STUDY 3 - LYNN

Lynn's 13 year old son has a brain injury and uses a wheelchair. She and her husband have set up a wheelchair accessible taxi business in regional NSW, taking up the offer of free licences for taxi operators in rural areas, to address the lack of taxi services for people with disability in her area. She says there were no taxis at all until 2 years ago. Lynn and her husband charge subsidised rates for clients who are part of the Australian Government's Home and Community Care program, due to a government grant, as well as providing transport for the whole community, in particular the elderly. Lynn and her husband take children with disabilities to school every day, travelling a total of 1,300 km on this one job alone. They have also started a wheelchair accessible winery tour business.

CASE STUDY 4 - MATTHEW

Matthew has quadriplegia and is confined to a wheelchair. At 5.25 pm one afternoon he was making his usual trip from St Leonards to Town Hall station. Due to a problem at Milson's Point the train was delayed indefinitely. It proceeded to North Sydney where there are no lifts. All passengers left the train but Matthew was told to stay put as there was no lift and thus no way to get him off the station.

He requested that the staff carry him up the stairs but this request was refused. The train then began travelling to Waverton, where there is a lift, but on the way lost all power. Matthew remained stuck on the train. A guard informed Cityrail of Matthew's presence but no action was taken. At 7.15 pm Matthew rang Cityrail to find out what was happening. He was told he could make a complaint which would be dealt with in 3-5 days. He then rang a police officer who contacted Cityrail on his behalf. A Cityrail operations officer rang Matthew back. Matthew explained that he needed to get off the train, that he needed medication and was in discomfort. The officer asked in response "What is your emergency?" She also said she had no record of the train being stranded. At 9.00 pm transit officers came to release Matthew from the train, along with some contractors working at North Sydney station who used a forklift to remove him. Matthew arrived home just before 10.00 pm.

CASE STUDY 5 - JENNY

Jenny, who has slight cerebral palsy, recently travelled with a national airline and was very concerned about the lack of assistance provided by staff. Jenny feels that she should be able to travel alone but has found that it is virtually impossible for her to travel without a carer. She feels that staff should assist her in wheeling her chair to and from the aircraft, collecting her luggage from the carousel and carrying her luggage out for her. None of these matters are set out as things that a disabled person must be able to do for themselves in

order to meet the independent travel criteria.

CASE STUDY 6 – ANNE

Anne uses a wheelchair and can only walk short distances. She travelled from the Central Coast to Sydney airport using a shuttle bus service. The shuttle bus does not stop close to the airport terminal and Anne had to walk a long distance between the drop-off point and the airport terminal. The shuttle bus service have advised her that airport authorities will not allow the bus to stand outside the terminal, for security and safety reasons.

CASE STUDY 7 – PAUL

Paul uses a wheelchair. He and his carer booked a flight to travel to Adelaide. Following purchase, Paul rang the airline to discuss his special needs and was declined travel on the basis that his wheelchair was 14cm too tall to fit in the cargo. Paul and his carer were initially told that no refund of their fare would be granted and that they could only receive a credit. However, after pointing out that Paul would never be able to use the credit, the airline consented to granting a refund. Having been denied air travel, Paul and his carer travelled by car to Adelaide - this took a long time and incurred great expense.

CASE STUDY 8 – SARAH

Sarah's 4 year old son Lee has a motor dysfunction. Lee cannot sit unsupported on a plane seat. Until recently, Sarah has paid for a seat for him but has him sit on her lap when they fly. As Lee grows older and bigger, airlines are starting to refuse to let him sit on Sarah's lap. They require either that he sits unsupported or uses their equipment. Most airlines provide harnesses but these are adult size and do not support Lee. Sarah would like to bring her own special "moulded" seat which she could strap him into to provide support, but flight attendants will not permit her to do this.

Sarah has also raised the difficulties of changing Lee's nappies on a flight (as the existing facilities cater only for little babies). Further, Lee is now fed with an electric pump and she is concerned that if the battery fails there will be no means of powering it. Lee also requires a special diet and airlines will not heat food for him.

Appendix 2

CASE STUDY 9 – LISA

Lisa is visually impaired and uses a guide dog. She hailed a taxi in the Sydney CBD and got into the taxi with her dog. The driver said “I’m not allowed to take dogs in my cab”. Lisa told him he was obliged by law to do so, as the dog was a guide dog. The driver then got angry and again said that he could not take guide dogs and asked Lisa to get out. Lisa asked the driver to write his number down. The driver said it was against his religion to take dogs in the taxi, refused to give his number and said that Lisa had no right to bring the dog into his cab.

CASE STUDY 10 – TOM

Tom is visually impaired and has a guide dog to assist him. He tried to buy a train ticket from Sydney to Lismore and was informed that because of his guide dog he would have to be the sole occupier of his compartment and that this meant he would have to pay for both berths in his compartment. The train operator, in a letter to Tom, maintained their policy that travellers with a guide dog must pay for sole occupancy of the compartment. They clarified that while such customers must pay for both berths, they are not required to pay for two rail tickets as other travellers with pets would.

CASE STUDY 11 – RUBY

Ruby’s disability, arthritis, is invisible. She has problems with her legs and with walking. She has a lot of trouble catching buses. For example, a bus driver did not pull in as close to the kerb as she needed. She complained about this and in response the driver abused her and called the police.

CASE STUDY 12 – NORMA

Norma is a pensioner living in a retirement village. She shops at Edgecliff shopping centre, however the shopping centre is on a different level to the buses and there is no lift or escalator to access the level from which buses leave. This makes it very difficult for Norma to shop there.

CASE STUDY 13 – JOHN

John suffers from tunnel vision and panic attacks. He uses a guide dog. Some bus drivers let his dog on the bus and others do not. Sometimes he has to pay for a taxi because drivers won’t let him on the bus with his dog. John has experienced problems with transit officers on trains wanting to see certification for this dog. On one occasion he had lost his certification and was unable to produce it. He became distressed, swore at the officers and put his fingers in his ears. The officers forced him to leave the train and he tripped while disembarking.

CASE STUDY 15 – JAMES

James has short-term memory loss. He made a telephone booking for a train ticket to regional NSW from Central. Five minutes later, he could not remember if he had rebooked. He rang the call centre and explained that because of his disability, he could not remember if he had rebooked his train. Countrylink said that this call was a new inquiry and charged him a second rebooking fee. James felt very angry about this and says that as a matter of principle he should not have been charged for the call.

CASE STUDY 16 – MICHAEL

Michael has an intellectual disability. While on a group excursion with a group of people with disability and his carer, he attended Penrith Station. The accessible toilet on the station was locked. Upon being asked to unlock the toilet, a station officer told Michael and his carer to “go around the back”. Michael and his carer did so only to find that “around the back” was not an entrance to the accessible toilets but to other public toilets which were locked. They returned to the accessible toilet and the station officer then unlocked it. However, by this time Michael had soiled his pants and was embarrassed and upset.

The operator did not accept that the event had occurred and said at any rate that it had complied with Standard 1.5 and AS 1428.1 and that accessible toilets were focused on persons using wheelchairs or mobility aids.

CASE STUDY 17 – GARRY

As a result of his intellectual disability, Garry frequently forgets to buy a ticket, loses the ticket he has bought and also loses his proof of identity. He thus regularly acquires fare evasion infringement notices. Garry’s mother frequently has to attend train stations late at night when Garry has been apprehended and explain that because of his disability, Garry is not aware he is doing anything wrong.

Garry’s mother made arrangements with the train operators for the issue of a long-term concession travel ticket; for Garry’s details to be retained on a confidential file in order to quickly deal with any fare evasion notices; and for a special procedure for replacing tickets once lost (eg waiver of replacement fee).

However, subsequently Garry also received a fine from an infringement board which also had the power to issue fines and was a different entity to the train operator. Garry was told he would have to come to a similar, independent arrangement with the Board.

CASE STUDY 18 – TIM

Tim has a neurological disability and uses a wheelchair. He has travelled many times alone from Sydney to Brisbane to visit his family. Last December he travelled unaccompanied from Sydney to Brisbane. When he went to Brisbane airport some weeks later to catch his flight home, he was told that he could not travel without a carer. As there was no other option, Tim's mother had to fly to Sydney with him. Tim has now been advised that he will not be able to travel alone on Virgin Blue in the future; the reasons given are that he may not be able to use the toilet alone or to access an oxygen mask in case of emergency. Tim was not given any warning of a change in policy in between the two legs of this trip. He found this experience very upsetting.

CASE STUDY 19 – DEB

Deb has paraplegia and uses a wheelchair. She constantly experiences very long waiting times when she books a taxi. An example of her experience is as follows. Deb works in Ashfield. One morning she booked a taxi for 8.30 am which did not arrive until 9.45 am. Deb had an appointment with a client that morning, and other staff at her workplace had to rearrange their priorities to attend to her client. One night, she had booked a taxi at 5.30 pm but none arrived until 7.55 pm; a colleague of hers had to stay back with her in order to lock up, and had to cancel a social engagement. When she finally arrived home, her home care assistant had not been able to provide her with dinner as she had had to leave to attend another job.

Deb finds that service delays regularly cause significant disruption to her social and work life. Because she finds it difficult to catch public transport and cannot drive, she feels she is dependent on taxis.

Deb also finds taxi travel very expensive. One thing she finds particularly hard to take is that taxi drivers start running the meter from the moment they pull up, rather than from the time the journey starts. She points out that a passenger at the airport with a lot of luggage to be loaded does not have to pay for the time taken.