



Law Council
OF AUSTRALIA

Office of the President

9 August 2022

██████████
Director, Disability and Transport Standards
Department of Infrastructure, Transport, Regional Development and Communications
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By email: DisabilityTransport@infrastructure.gov.au

Dear ██████████

STAGE 2 REFORM OF THE DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT

1. The Law Council of Australia (**Law Council**) appreciates the opportunity to respond to the Stage 2 Reform of the Disability Standards for Accessible Public Transport (**the Disability Transport Standards Reform**), which is being undertaken by the Australian Government Department of Infrastructure, Transport, Regional Development and Communications in partnership with the Queensland Government.
2. It acknowledges the assistance of the New South Wales Bar Association, New South Wales Law Society and Queensland Law Society, as well as its Equal Opportunity Committee and National Human Rights Committee, in the preparation of this submission.

Introduction

Overview of International Laws and Standards

3. Australia has legally binding obligations arising under the *Convention on the Rights of Persons with Disabilities (CRPD)*, which it ratified on 17 July 2008.¹ This includes general obligations under Article 4, as well as accessibility obligations under Article 9, which requires state parties, among other things, to take appropriate measures to ensure equal access to transportation. Article 31 requires state parties to collect data to enable the implementation of policies giving effect to the CRPD. Article 33 deals with implementation and monitoring and requires that state parties maintain a framework to promote, protect and monitor implementation of the CRPD.
4. The CRPD adopts the social model of disability, which views disability through a social rather than individual lens as arising from a person's interaction with communities and environments that are not inclusive or accessible. Under this model, disability is socially constructed through attitudinal, environmental and structural barriers to the

¹ *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, A/RES/61/106 (entered into force 3 May 2008) < <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html> >.

full enjoyment and participation in society of persons with long-term physical, mental, intellectual or sensory differences. Where a society does not adequately adapt its values, structures and services to be inclusive and equal in opportunity, treatment and outcome for all people, it imposes an unfair burden on persons excluded, or whose access is limited or made more difficult or expensive, by reason of individual characteristics that are or should be protected by law. It also means society does not benefit from the full participation of all persons, incurring the loss of significant national well-being, social and economic benefits that come with equal participation.

5. The Law Council notes that national legislation, policies and strategies are the central mechanism for Australia's implementation of its international obligations to ensure the full realisation of human rights, fundamental freedoms and non-discrimination for persons with disability. Australia's Disability Strategy 2021-2031 (**the Disability Strategy**) is 'based on the social model of disability'² and identifies priority areas, including transport:

Policy Priority 5:

Transport systems are accessible for the whole community

Being able to use public, private and community transport to move around the community underpins all aspects of life for all people. Being able to move around the community has positive impacts on everyone's health, social life, education and employment. For this to occur, transport and its entry points (e.g. stations and platforms) need to be accessible to everyone, including people with disability. Other key factors include access to emerging technology and point-to-point transport (e.g. rideshare), proximity of transport systems, frequency of services, information to support the journey (e.g. hearing loops and alerting devices), and getting to and from the transport (e.g. footpaths and walkways).³

6. Accordingly, Australia's legislative and administrative frameworks should reflect its commitments under the above international framework and the Disability Strategy to protect, promote and fulfill the human rights of people with disability.

Overview of Domestic Legislative Framework

7. The Disability Transport Standards for Accessible Public Transport 2002 (**Disability Transport Standards**) form a binding legislative instrument made by the Minister pursuant to section 31(1) of the *Disability Discrimination Act 1992* (Cth) (**DDA**). Section 31(1) of the DDA provides that the Minister may formulate 'disability standards' in relation to any area in which disability discrimination is unlawful, as identified in Part 2 of the DDA. This includes the area of 'goods, services and facilities',⁴ with 'services' defined as including 'services relating to transport or travel',⁵

² Australian Government, *Australia's Disability Strategy 2021-2031* <<https://www.disabilitygateway.gov.au/document/3106>> 5.

³ *Ibid*, 13.

⁴ *Disability Discrimination Act 1992* (Cth), pt 2, s 24.

⁵ *Ibid*, pt 1, s 4 (definition of 'services'). See also Disability Transport Standards for Accessible Public Transport 2002, s 1.2(1).

as well as the area of 'access to premises',⁶ with 'premises' defined as including 'a structure, building, aircraft, vehicle or vessel', 'a place' or 'a part of premises'.⁷

8. Section 32 of the DDA provides that it is unlawful for a person to contravene a disability standard. While the DDA does not itself expressly define such contravention as disability discrimination, the *Australian Human Rights Commission Act 1986* (Cth) (**AHRCA**) captures all acts, omissions or practices that are unlawful under Part 2 of the DDA within its definition of 'unlawful discrimination' in section 3(1), allowing a path for complaint, conciliation and possible court proceedings under Part IIB of the AHRCA.
9. Section 33 of the DDA provides that where a person acts in accordance with a disability standard, Part 2 of the DDA does not apply to the person's act.

Disability Transport Standards – General Matters

10. The Law Council notes that much of the Consultation Regulation Impact Statement (**RIS**) is directed at persons with lived disability experience in utilising public transport services, or at service providers, and at capturing their views as to the suitability and feasibility of specific practical reforms affecting the detail of the Disability Transport Standards.
11. The Law Council is pleased to provide the input of members of the legal profession directed at this level of detail, which it has received from its state and territory constituent bodies, from paragraph [40] below.
12. Under the following headings, however, the Law Council raises issues of a general matter for consideration within the context of the Disability Transport Standards Reform.

Efficacy and Operation

13. As has been extensively noted in multiple contexts, the current system of anti-discrimination law is reactive rather than proactive in addressing issues. The system relies on individuals being willing and sufficiently resourced to make a complaint in relation to unlawful discrimination, namely through a conciliation at the Australian Human Rights Commission (**AHRC**) and, in certain cases, by commencing proceedings in the Federal Court or the Federal Circuit and Family Court.
14. The enforcement of a right under the DDA can be a difficult and daunting process due to the complexities of the legislation and many individuals lack legal assistance. The broader effect of relying on individual complaints as the only available or effective enforcement mechanism is that systemic problems are not identified or addressed in a whole-of-systems manner. Conciliations at the AHRC are conducted in private, and any agreement reached is often confidential and only binding between the parties to the complaint. Furthermore, the high rate of resolution of matters at the AHRC also means that disability standards are subject to infrequent judicial scrutiny.
15. While complainants can seek systemic outcomes at conciliation, for example improvement to policies that purport to comply with or implement disability standards, in practice such outcomes are hard to achieve. The Law Council has heard from multiple constituent bodies that, in the experience of their members, respondents typically resist such changes on the basis that these are too expensive and amount to unjustifiable hardship.

⁶ *Disability Discrimination Act 1992* (Cth), pt 2, s 23.

⁷ *Ibid*, pt 1, s 4 (definition of 'premises').

16. It is not unlawful to fail to comply with a requirement of the Disability Transport Standards if compliance would impose unjustifiable hardship on any person or organisation.⁸ Under section 33.7(5) of the Disability Transport Standards, 'unjustifiable hardship' is to be interpreted and applied having due regard to the scope and objects of the DDA, in particular the object of removing discrimination as far as possible. However, in determining whether compliance with a standard would involve unjustifiable hardship, section 33.7(3)-(4) sets out an extensive list of factors beyond those listed in the DDA to which a decision-maker must have regard, including: revenue, costs and capital implications; the financial position of a person or organisation required to comply with a standard; exceptional operational, technical or geographic factors; efforts made in good faith towards compliance; likely benefits or detriments of compliance (for example, loss of heritage value, but also in relation to comfort, convenience or price for other passengers); and the nature and results of certain processes of consultation.
17. The Law Council's Policy Statement on the Consolidation of Commonwealth Anti-Discrimination Laws provides a general position in support of promoting substantive equality while maintaining what is reasonable in terms of a regulatory burden on business.⁹
18. Reflecting on the reasonable regulatory burden of the current system, and noting the social model of disability that frames Australia's international obligations, the Law Council highlights comments from the New South Wales Bar Association (**NSW Bar**) that:

Arguments for exceptions to a requirement to provide accessibility on the grounds of hardship or unviability of providing equal access often fail to reflect on where this means the burdens, including financial costs, actually fall. The current system is aspirational but the reality falls short of reliable, usable access for people with a variety of physical, neurological or other differences. There is no impetus in the current standards to view accessibility as an expected cost of doing business or providing transport services that is to be shared by the community as a whole. The aim of standards should be to ensure that a person with difference from the implicit systems norms can use and navigate a given transport system with equal facility and reliability as the theoretical reference person.

19. The Law Council further notes that operation of section 34 of the DDA – in providing that if a person acts in accordance with a disability standard, the prohibition of disability discrimination in Part 2 of the DDA does not apply – means that if the Disability Transport Standards are set too low, the practical effect is that the broader purpose of the legislative framework, in protecting the rights of individuals and ensuring equality, is denied. Members of the Law Council's expert advisory National Human Rights Committee have suggested there are multiple standards that might be considered insufficient in the current scheme, such as section 31.1, which requires

⁸ Disability Standards for Accessible Public Transport 2002, s 33.7(1).

⁹ Law Council of Australia, *Policy Statement on the Consolidation of Commonwealth Anti-Discrimination Laws* (March 2011) <<https://www.lawcouncil.asn.au/publicassets/096c7bd7-e1d6-e611-80d2-005056be66b1/1202-Policy-Statement-Consolidation-of-Commonwealth-Anti-Discrimination-Laws.pdf>>.

only two priority seats for passengers with disabilities on buses, ferries and light rail, no matter how large these conveyances.

20. The Law Council also suggests consideration be given to whether the failure to comply with specific requirements should not only amount to a breach of the Disability Transport Standards (and thus section 32 of the DDA), but also make it easier to prove a breach under section 24 (by reference to sections 5 or 6) of the DDA.
21. For example, a proven breach of section 27.4 of the Disability Transport Standards should be deemed a refusal to provide a service for the purpose of section 24(a) of the DDA, as non-compliance with the standard results in practical refusal to provide a service to those with vision-impairment.
22. A claim in respect of section 27.4 of the Disability Transport Standards – requiring that ‘All passengers must be given the same level of access to information on their whereabouts during a public transport journey’ – can readily be proven by evidence from, for example, a person with vision-impairment that there were failures by a transport provider to announce stops on public transportation. Presently, however, pleading such evidence under section 24(a) of the DDA, concerning refusal to provide a service, gives rise to arguments that such claims are not properly brought under that section as announcements only amount to a small part of the overall transport service, and thus not a refusal overall.
23. Deeming non-compliance with particular Disability Transport Standards a refusal to provide a service for the purpose of section 24(a) would simplify and ensure clarity and consistency of outcomes between the two instruments, create added impetus towards complying with the Disability Transport Standards, and enhance the effectiveness of the Disability Transport Standards generally in contributing to the full operation and purpose of the DDA.

Compliance and Enforcement

24. The Law Council notes the work of the AHRC in *Free and Equal: A Reform Agenda for Federal Discrimination Laws*, which was published in December 2021, as providing a helpful overview of the AHRC’s aspirations as to the role of disability standards as a regulatory tool, versus the current shortcomings in the drafting, operation and effectiveness of the standards in practice.¹⁰
25. The AHRC stated that it is:

*concerned at the current operation of the disability standards due to the lack of appropriate accountability mechanisms for their implementation. Non-compliance is an issue, and is not easy to enforce.*¹¹
26. In relation to the Disability Transport Standards in particular, it emphasised that ‘though compliance targets were set within the standards, individual legal action has been the only way that compliance has been enforced’.¹² The concerns of stakeholders as to ‘slow and inconsistent’ implementation were noted, as well as the Public Interest Advocacy Centre (**PIAC**) position:

PIAC stated that ‘shortcomings’ in the way the standards were drafted, and the lack of sufficient enforcement mechanisms,

¹⁰ Australian Human Rights Commission, *Free and Equal: A Reform Agenda for Federal Discrimination Laws* (December 2021) <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-reform-agenda-federal-discrimination-laws>> 134-142.

¹¹ Ibid, 135.

¹² Ibid, 140.

have meant that there continue to be 'low levels of industry compliance'.

PIAC recommended structural reforms to strengthen enforcement of the Transport Standards, including:

- *a new national reporting and monitoring framework*
- *resourcing an independent monitoring body, such as the [Australian Human Rights] Commission, to oversee enforcement*
- *amending the standards to certify that it is unlawful to breach them*
- *creating a 'standalone complaint process' for individuals and organisations to allege breaches of the Transport Standards, without requiring the breach to amount to unlawful disability discrimination, and*
- *allowing organisations to bring complaints in relation to the Standards.*¹³

27. As it has in other aspects of anti-discrimination law reform,¹⁴ the Law Council supports extending enforcement of the disability standards beyond the existing individual complaints mechanism. The current scheme places the burden and bulk of responsibility for ensuring compliance on individuals who are least powerful and often without adequate resources or support, and the Law Council suggests there is a role for an appropriate, ideally independent, body to proactively monitor, assess and enforce compliance.
28. Should this recommendation be taken forward, the Law Council emphasises that such an independent monitoring body must be adequately resourced. If this function is to be given to the AHRC, the level of funding available to the AHRC must be significantly increased in a sustainable manner, as such monitoring, assessment and enforcement activities will require extensive resourcing.
29. The Law Council emphasises that in its view, new functions ought not to be imposed on the AHRC without the Australian Government reviewing its structuring and funding arrangements to ensure that its resourcing adequately matches the broad range of activities it is tasked with and its profile and importance as a preeminent national institution with an important mandate. Staff wellbeing and retention should be a primary concern in any resourcing calculation.
30. In addition, the Law Council notes the importance of ensuring the appropriate separation, such as through 'information barriers', between this proposed new function of the AHRC and its existing functions, particularly in relation to inquiry and conciliation, in order to ensure ongoing goodwill with stakeholders and faith in its processes and outcomes.
31. Broadly in relation to strengthening enforcement powers, the Law Council suggests that the approach to enforcement can be a graduated one, which begins with a cooperative and coregulatory approach to compliance, and makes use of coercive

¹³ Ibid, 140.

¹⁴ See, eg, Law Council of Australia, Submission to Attorney-General's Department, *Consultation Paper: Respect@Work – Options to progress further legislative recommendations* (23 March 2022) <<https://www.lawcouncil.asn.au/publicassets/056e0327-5cae-ec11-944c-005056be13b5/4193%20-%20Respect%20Work%20Further%20Legislative%20Recommendations.pdf>> 19.

enforcement powers only where necessary such as in instances of repeated non-engagement or non-compliance, as set out in *Free and Equal: A Reform Agenda for Federal Discrimination Laws*.¹⁵ Enhanced enforcement is likely to produce the concomitant result that persons and organisations required to comply will coregulate more effectively. It would better reflect the importance of providing accessible public transport and the requirement that the burden or cost of equal access is appropriately borne across the whole of society, not only by those who are living with disability.

32. The Law Council supports the proposal in the Consultation RIS for mandatory reporting on assets, for example. This is likely to be more effective than the non-regulatory option, namely self-reporting and publishing compliance plans should providers so choose. The introduction of mandatory reporting on assets would mean that providers would have to report on whether an asset is compliant with the Disability Transport Standards and, where this is not the case, identify why unjustifiable hardship, direct assistance or equivalent access applies, or, alternatively, articulating their plan to realise progress towards compliance. The data ought to be publicly available, subject to appropriate privacy safeguards.
33. This would presumably build a far more detailed picture across the transport industry, government and community of compliance, as opposed to infrequent cases brought by affected individuals in the courts. For industry, this would assist in addressing the lack of certainty that currently exists due to the fact that there is no legally certain process to validate, for example, the exception of unjustifiable hardship, unless a final determination is made in the courts. With a more detailed picture, government would be better able to measure compliance, assess efficacy and make informed decisions as to necessary improvements. For the community, mandatory reporting might better assist targeted advocacy, improve accountability of transport providers, and improve competition as between service providers in relation to providing services to people with disability.
34. The Law Council notes that the NSW Bar considers that enhanced enforcement of the Disability Transport Standards ought to be in the form of a pecuniary penalty provision available where a court is satisfied of a breach of section 32 of the DDA. It suggests that section 546 of the *Fair Work Act 2009* (Cth) provides a useful reference, including the ability to direct payment of penalties to the person bringing the action (section 546(3)(c)).
35. In relation to determining the extent of penalties, the NSW Bar suggests that the seriousness of the breach should involve consideration of the extent and/or frequency of non-compliance with the Disability Transport Standards. Further, the concept of 'reasonableness', and in particular the factors set out in section 11 of the DDA (concerning unjustifiable hardship), could be adopted as being matters relevant to a determination of the seriousness of the breach.
36. The regulatory attraction of pecuniary penalty provisions includes increased compliance by reason of the existence of a potential penalty and the ability of the legislature to precisely define the ambit and severity of those provisions. The NSW Bar notes it will also permit a regulator to enforce the Disability Transport Standards via prosecutions for civil penalties and encourage representative actions for compensation, rather than leaving action to individuals.

¹⁵ Australian Human Rights Commission, *Free and Equal: A Reform Agenda for Federal Discrimination Laws* (December 2021) <<https://humanrights.gov.au/our-work/rights-and-freedoms/publications/free-and-equal-reform-agenda-federal-discrimination-laws>>

37. Finally, if such a regime were under consideration, it would also be relevant to consider the time limitation on complaints and the President's discretion to accept claims made more than six months after the alleged breach. The NSW Bar is supportive of amendment to section 46PH(l)(h) of the AHRCA to deem all claims for or involving breach of section 32 of the DDA to involve issues of public interest.
38. The Law Society of New South Wales, while in support of a regulatory approach as the most effective way to hold operators and providers accountable and improve experiences for persons with disability, suggests that, in the first years of operation of such a scheme, it may be that educative measures, rather than civil penalties, would be more likely to bring about willing change from industry.
39. Ultimately, the Law Council suggests that a suite of graduated responses including education should be considered, but that a regulatory approach must form part of this suite. Enforceable standards, and an independent regulator to enforce them, may be an essential means to achieve substantive improvement in accessibility.

Disability Transport Standards – Specific Responses

40. The following is a consolidation of input including from personal experiences, as reported by members of the legal profession and provided to the Law Council through its state and territory constituent bodies, relating to the detail of the Consultation RIS.
41. The Law Council acknowledges in particular the individual members of the NSW Bar and the Diverse Abilities Network (**DAN**) of the Queensland Law Society (**QLS**) who have provided comments and recommendations on the basis of their lived disability experience with utilising public transport services and/or their experience in acting for persons with disability who use public transport services.

Comments on transport (general)

42. The Consultation RIS seeks feedback on the extent of current issues faced by people with disability who use public transport and any situations where discrimination may occur. One member of the DAN has shared their personal story as follows:

[As a blind person] I have a photo ID 'travel pass' which allows me free public transport - I believe it is a QLD transport initiative for blind people. In the early years I tended to mobilise without my cane as I would get angry at the treatment I'd receive with my cane - i.e., people unwilling to get up out of the disability seating sections (mainly school kids), people racing to beat me to a seat etc. But without my cane a bus driver looked at my travel pass and told me I didn't look blind (because I had no cane or glasses or guide dog) and almost refused me transport - I had to argue my legitimacy with the photo ID. This was many years ago so I hope training has improved.

Nowadays I'd say my biggest issue is signage - not being visible enough, especially when there's no person to assist etc.

Flights have generally been good except one airline almost forgot me when I was flying alone even when I booked my ticket asking for boarding assistance - assistance never came - so I refuse to travel with that airline now.

I always use my cane now if I am alone which is more for my safety. In saying that, simply walking down Queen Street mall to the IDPwD event at HSF last year- using my cane I walked down the tactile blind lines of the mall and had a handful of near misses (only because I was quick enough to get out of the way) and one collision with a person - people just don't look where they're going.

... at the anti-discrimination commission I took my husband as a support person - I was a secretary at the time (not studying law) and young, and [my husband] was a lawyer but not representing me - just driving me there & supporting me. The other party brought along the bus driver, the HR manager, and the CEO - they could all speak but the conciliator told my husband he could not because he was a lawyer (despite him being there solely in a support person capacity). It was very intimidating and I think another injustice with the 3:1 ratio of representation.

43. Members of the DAN have commented that bus route numbers are very difficult to see, and buses do not always stop if not hailed in time. Trams and trains are generally easier to navigate for those with partial or full eyesight loss, because routes are fixed and there are verbal announcements as to platform numbers and arrival/departure times. However, DAN members highlight that wheelchair users have different experiences with accessibility in relation to trains, as there are considerable height differences between trains and platforms, and an operator must be alerted for assistance. In this respect, it is noted the trams on the Gold Coast are level with the platform.

Comments on aircraft (general)

44. DAN members report that significant discrimination continues to be experienced by persons with disability, including members themselves, while travelling domestically by plane. While there are complexities with air travel given airlines are private entities, the QLS considers the issue is relevant to the question about possible reforms to federal anti-discrimination laws. The QLS queries in particular whether some aspects of domestic air travel are carried out by public bodies (for example, security checks at airports) and could be captured under further reforms to anti-discrimination laws.
45. One individual member of a Law Council expert advisory committee noted there are significant issues not addressed in the Disability Transport Standards relating to air travel:

for example, Jetstar's 787 aircraft has 335 seats on board yet their policy is to accept no more than 2 wheelchair passengers per flight (there is nothing in the Disability Transport Standards to stop them and they won a court case attempting to require them to change the policy under the DDA).

46. The NSW Bar also makes a number of specific comments for consideration given the particular features of air travel:
- rights and obligations should be provided for the carriage of wheelchairs, mobility aids and other medical and accessibility equipment required by passengers;

- total weight/flight calculations should assume, as standard practice, that a certain proportion of passengers will require wheelchairs and other equipment to be transported;
- airlines should specifically ask passengers to supply information about wheelchairs, mobility aids and other medical and accessibility equipment, including weight of equipment at time of booking and automatically take notice of booking information if flights are rescheduled;
- weight limits that may be applied for individual assistive items should be regulated based on expert advice and monitored to be kept up to date. A consultative approach should be taken in setting the standards involving both airline and passenger representatives with lived experience of using assistive devices to access transport;
- there should not be a charge for carriage of wheelchairs, mobility aids and other medical and accessibility equipment required by passengers;
- loading priority should be given to wheelchairs, mobility aids and other medical and accessibility equipment required by passengers over commercial cargo;
- the Disability Transport Standards require more stringent enforcement with respect to ingress and egress of terminals and other points of access to transport;
- electronic wayfinding services should be provided in and around terminals; and
- specific consideration should be given to particular aspects of support infrastructure at major terminals (e.g., colostomy bag changing and disposal; quiet rooms; charging stations for recharging electronic assistive devices; mobility assistance; direct assistance close to points of access and security clearance).

Mandatory reporting on assets¹⁶

47. The NSW Bar prefers Regulatory Options 2 or 3. Option 1 does not address the difficulty of persons with disabilities having to engage with antiquated transport infrastructure that does not meet disability requirements. Options 2 or 3 would provide government with a broader perspective of the issues confronted by persons with disabilities and would help identify those parts of the transport infrastructure that need to be upgraded. Compliance data on the Disability Transport Standards ought to be public.

Rideshare¹⁷

48. People with disability are not necessarily able to access rideshare on an equal basis if, for example, they have difficulty accessing the relevant application or the ride that arrives cannot accept a required wheelchair or other assistive device. However, while some accessibility requirements may be able to be complied with by individual rideshare drivers, it would be unreasonable to impose all accessibility obligations at that level (e.g., a requirement for individuals to incur costs to modify their vehicle where that vehicle might only be used for ridesharing purposes occasionally).
49. The NSW Bar suggests a regulatory solution might be that the Disability Transport Standards apply to rideshare specifically recognise the unique position of rideshare. For example, rideshare companies (as distinct from their drivers) might be required to

¹⁶ Consultation RIS, 38.

¹⁷ Ibid, 51.

make their ride-finding systems accessible, carry out incentive programs to encourage participation by drivers offering accessibility modifications and clearly advertise available booking of specific accessible services.

*Dedicated school buses*¹⁸

50. The NSW Bar agrees with the identified downside of 'separate but equal' modes of transport (e.g., a child with disability takes disability-specific transport to school camp while everyone else gets to ride the bus together). The NSW Bar supports a regulatory response despite the costs of compliance.

*Communication of accessibility features*¹⁹

51. The NSW Bar considers that a common means of describing and publishing accessibility features is an attractive proposal. This would permit people with disabilities to safely travel to places that they might not be familiar with. This should be formally regulated.

*Timely provision of information*²⁰

52. The difficulty with direct assistance is that it places the burden on a person with disability to ask for help or to identify that they have a difficulty. The NSW Bar suggests a more appropriate response is the provision of information to all people in a way that many people with disability would also be able to access. For example, having both visual and audible identification of upcoming stops on bus services and provision for the use of wayfinding technology.

*Real time communication*²¹

53. The NSW Bar is in favour of amending the Disability Transport Standards to require a means of real time communication between a passenger and the operator of a conveyance. We consider a regulatory approach is preferable and that any means of real-time communication should be 'reasonably' available.

*Passenger location during journey*²²

54. The NSW Bar reiterates the submission under 'Timely provision of information' above – that is, the provision of information should be targeted generally, rather than 'at' passengers with disabilities.
55. The NSW Bar supports sub-option 2: both audio and visual signification of next stops. This would substantively assist persons with disability as well as other passengers on a journey to a new destination. Similarly, the NSW Bar supports Option 2 on p 125 concerning audible wayfinding in lifts.
56. The NSW Bar suggests guidance (whether in the Disability Transport Standards or non-regulatory guidance) should be provided about access to existing visual cues about passenger location during a journey. For example, when a bus or train/tram carriage is wrapped with advertising material, this can reduce or eliminate visual cues (or reduce their utility), particularly for those with visual or cognitive impairment. Options for guidance include:
 - a prohibition on wrapping over windows;

¹⁸ Ibid, 60-61.

¹⁹ Ibid, 68.

²⁰ Ibid, 73.

²¹ Ibid, 77.

²² Ibid, 81.

- limiting the number of windows of a bus or carriage that can be wrapped; or
- requiring that the windows at certain sections of a bus or carriage remain unwrapped (e.g., the windows in any accessible seating area).

*Hearing augmentation on conveyances*²³

57. The NSW Bar prefers Option 1, with the caveat that 100% coverage should be required. If only 80% coverage is required, then some indication should be provided to a passenger who uses a hearing aid regarding where not to sit (i.e. the 'other' 20%).

*Hearing augmentation: infrastructure and premises*²⁴

58. The NSW Bar supports regulatory Option 2. The difficulty with requiring only 80% of the area served by a PA system to be covered by a magnetic induction system is that there is no indication as to which 80% is to be covered.

*Web content*²⁵

59. The NSW Bar supports the introduction of the Web Content Accessibility Guidelines Option 1. Failure to comply ought to be a breach of the Transport Disability Standards. In its members' experience, failure to comply means some individuals with visual impairment are unable to partake in online activities such as online banking and ordering groceries online (crucial services in terms of living independently). The NSW Bar sees no reason why online infrastructure and services should be held to a lesser accessibility standard than physical infrastructure and services.

Contact

60. Please contact [REDACTED] Senior Policy Lawyer, on [REDACTED] or at [REDACTED]@lawcouncil.asn.au, in the first instance, should you require further information or clarification.

Yours sincerely

[REDACTED]

Mr Tass Liveris
President

²³ Ibid, 86.

²⁴ Ibid, 91.

²⁵ Ibid, 140.