



Australian
Human Rights
Commission

Review of the Disability Standards for Accessible Public Transport 2002

Australian Human Rights Commission

Submission to the Department of Infrastructure, Transport,
Regional Development, Communications and the Arts

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1 Introduction

The Australian Human Rights Commission (Commission) welcomes the opportunity to provide a written submission to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Department) regarding the 2022 Review of the *Disability Standards for Accessible Public Transport 2002* (Cth). The Commission notes that this is the third periodic review of the Transport Standards, and the next review will not be for another 10 years.

The Disability Standards for Accessible Public Transport (Transport Standards) are made under section 31 of the *Disability Discrimination Act 1992* (Cth).¹ The intended purpose of the Transport Standards is to remove discrimination against people with disability on public transport. Any review to the Transport Standards should seek to advance this objective, which will have broader social and economic benefits for all Australians.

The lack of accessibility in Australia has profound flow-on effects for the inclusivity, efficacy and cost of numerous policy domains, such as aged care, the National Disability Insurance Scheme (NDIS), education and the employment of people with disability. The importance of safe and accessible public transport options to facilitate community and employment access is highlighted in the Commission's IncludeAbility Employment Pilots, where employers paid significant attention to the implications of inaccessible transport in enabling employees to participate in employment. It remains a primary concern that must be addressed.

The recent report by Taylor Fry and the Centre for International Economics, *Economic cost of violence, abuse, neglect, and exploitation of people with disability*, identifies transport inaccessibility as a systemic maltreatment and failure towards people with disability, at an estimated economic cost of \$200 million per year.² This figure should, however, be taken as a conservative estimate based on a lack of robust and consistent national data about accessibility. The consequences for the inclusion of people with disability in the community are significant.

The Commission is concerned with the lack of timely progress on the reforms stemming from the 2017 review, alongside the absence of full compliance with the legislative targets set 20 years ago. This means that people with disability in Australia continue to face discrimination in the provision of public transport services. Given there has been no change to the Transport Standards since the previous review, the feedback provided in 2017 is likely to be relatively similar regarding the effectiveness of the Transport Standards and necessary reform. The Commission refers the Department to its submission to the 2017 Review,³

developed in consultation with people with disability and disability organisations via an Accessible Transport Forum. The themes raised in the 2018 submission remain relevant today and the Department is encouraged to read these submissions in conjunction with one another.

It is critical that the 2022 review addresses, and seeks to remedy, the key concerns of the disability community and their representatives to avoid repetitive consultation processes and stakeholder fatigue. People with disability, Disability Representative Organisations and Disabled Peoples' Organisations continue to be required to make themselves available for significant amounts of consultations and for submissions to numerous enquiries, including previous reviews and reforms of the Transport Standards. Combined with the effect of the global pandemic and other concurrent significant inquiries relating to disability policy, this has meant that already resource-constrained individuals and organisations face a significant workload.

Given that the next review of the Transport Standards is scheduled in 10 years, it is important that the current review results in efficient and timely outcomes – to avoid another decade of inaccessible transport and non-compliance with the Transport Standards.

Notwithstanding the above concerns, the 2022 Review provides an opportunity to focus on assessing the broader governance, compliance, enforcement, and policy mechanisms within the legislative framework in a more targeted way, whilst the reforms from the previous review are being implemented.

The Review should also take into account any findings and recommendations of the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Disability Royal Commission) and the NDIS Review in relation to transport, due later this year. Both the Disability Royal Commission and the NDIS review are inquiring into the role and effectiveness of mainstream services across various policy settings in relation to people with disability in Australia.

1.1 Functions of the Commission relating to the Transport Standards

The Commission is Australia's National Human Rights Institution, established on a permanent footing by the *Australian Human Rights Commission Act 1986* (Cth) (Australian Human Rights Commission Act),⁴ with recognised independent status and roles in United Nations human rights fora. The Commission's operations are determined independently of the government through the President and Commissioners.

The Commission's purpose is to provide independent and impartial services to promote and protect human rights and fundamental freedoms in Australia. The Commission undertakes a range of policy development and research tasks that aim to promote compliance with Australia's human rights obligations, while also investigating and conciliating complaints of unlawful discrimination and breaches of human rights. The Commission also has a role in promoting an understanding and acceptance of human rights in Australia.⁵

Under subsections 67 (1)(d) and (e) of the *Disability Discrimination Act 1992* (Cth) (Disability Discrimination Act), the Commission has statutory functions to: 'report to the Minister on matters relating to the development of disability standards' and 'to monitor the operation of such standards and report to the Minister the results of such monitoring'.

1.2 Purpose of the Submission

This submission lays out the international human rights and domestic anti-discrimination law relevant to the Transport Standards and outlines the Commission's observations and analysis regarding:

- complaints received by the Commission under the Transport Standards and Disability Discrimination Act, and requests for exemptions made by providers under the Transport Standards
- the effectiveness of the Transport Standards to remove discrimination
- analysis of the legal framework and policy mechanisms, including enforcement, compliance, and reporting
- the capacity of the Commission to conduct ongoing monitoring of the operation of the Transport Standards
- the inclusion of people with disability in relation to transport policy
- the need to support people with disability and the transport sector to better understand rights, accessibility, and discrimination, and to promote the Transport Standards
- recommendations to improve the efficiency and effectiveness of the Transport Standards, and to realise the rights of people with disability.

Key considerations for the Commission regarding the Review of the Transport Standards and subsequent reforms are whether:

- the Transport Standards are being reviewed in a way that seeks to advance their intent and purpose to remove discrimination and improve access to public transport and inclusion in the community for people with disability
- the legislative framework, governance, and underlying principles are effective in enabling this
- the voice of people with disability in the reforms, review, and engagement with transport providers are given significant weight to decisions
- appropriate measures exist to evaluate the effectiveness of the Transport Standards, including outcomes and benefits analysis beyond compliance towards enhanced accessibility.

2 Recommendations

The Commission recommends:

Recommendation 1: The Australian Government should remove the exemption for dedicated school buses to ensure all children have access to transport for educational purposes.

Recommendation 2: An independent review of the Transport Standards should be conducted to consider their effectiveness in addressing unlawful discrimination, as well as the effectiveness of the current legislative, governance, policy, and practice arrangements in place to implement and achieve compliance with the Transport Standards. An independent review should also consider appropriate monitoring, regulatory and complaint processes.

Recommendation 3: Australian Governments should prioritise an independent audit of public transport conveyances against Schedule 1 of the Transport Standards to establish an accurate assessment of compliance to support the Review. This will create a baseline for future reviews and support enforcement. Findings of this audit should be made public.

- a) **The Commission, by way of its independence and functions under the Transport Standards, could be well placed to undertake this audit, provided it is resourced to do so.**

Recommendation 4: The Australian Government should establish and enact a national framework for mandatory compliance reporting, as per the

recommendation made by the UN Committee on the Rights of Persons with Disabilities. Compliance data should be collected on a mandatory basis on all assets covered by the Transport Standards. All data collected should be done so at regular intervals, made publicly available and reported upon periodically.

Recommendation 5: A mandatory reporting and compliance framework should:

- a) be aligned to the mandatory provisions under the Transport Standards, whilst including equivalent access considerations to allow for flexibility.**
- b) set the minimum acceptable standard of public transport accessibility whilst encouraging innovative solutions and design beyond compliance to consider accessibility.**
- c) Include additional use elements, in particular the reporting of complaints made to an organisation.**

Recommendation 6: The Department should prioritise consultation and co-design with the disability community in the development of a national reporting framework.

Recommendation 7: Operators and Providers of public transport should commit to developing Disability Action Plans, as per the provisions under section 61 of the Disability Discrimination Act. These plans should include actions to achieve compliance with the Transport Standards based on accessibility audits and strategies towards enhanced accessibility and should be publicly reported against.

Recommendation 8: The Australian Government should introduce a positive duty with procedural duties to either the Disability Discrimination Act or the Transport Standards, in line with the recommendations made in the Commission's Free and Equal Position Paper.

Positive duties should consider certain factors to determine whether a measure is reasonable and proportionate such as: the industry, size and nature of the organisation, resources of the organisation, practicality and cost, and other relevant facts or circumstances.

Recommendation 9: Any positive duty should also be accompanied by significant education and other outreach, as well as support for the Commission, legal assistance providers and business peak bodies, to be able to provide clear and accessible guidance about the positive duty.

Recommendation 10: The Australian Government Minister for Infrastructure, Transport, Regional Development and Local Government should write to:

- a) all Transport Ministers and state auditor-generals to recommend inclusion of at least one performance audit related to implementation of the Transport Standards in the auditor-general's work programs from 2025 to inform future reviews of the Transport Standards. This could be through consideration of the implementation of the Transport Standards where relevant to an aspect of an existing planned performance audit.**
- b) All Transport Ministers, and other relevant Ministers, asking them to ensure any arrangements within their portfolio for Transport have appropriate regard to the requirements of, and compliance with, the Transport Standards.**

Recommendation 11: State and Territory governments should align the procurement and contractual arrangements with transport operators and providers to the Transport Standards as a mechanism to enforce compliance.

Recommendation 12: State and Territory Governments should review relevant legislation to ensure it is aligned with the Transport Standards.

Recommendation 13: The Australian Government should provide sufficient funding to the Australian Human Rights Commission to undertake the statutory functions conferred to the Commission under section 67 of the Disability Discrimination Act, which would increase the Commissions capacity to undertake the following functions:

- monitoring and reporting on the operation of disability standards**
- promoting an understanding and acceptance of, and compliance with the Disability Discrimination and Transport Standards.**
- undertaking research, educational and other programs for the purpose of promoting the Disability Discrimination Act and Transport Standards.**
- Development of guidelines for the avoidance of disability discrimination.**

Recommendation 14: The Australian Government should invest in research to establish an evidence base for the economic benefits of accessibility and

inclusion, with the view to establish a consistent national framework for the appraisal of public transport investment.

Recommendation 15: The Australian Government should review the Transport Standards in the context of Universal Design Principles to ensure the minimum standards maximise accessibility, use and benefit.

Recommendation 16: The Australian Government should consider creating an Accessibility Targeted Action Plan under Australia's Disability Strategy, with specific actions related to improving transport accessibility and compliance to the minimum standards set out in the Transport Standards.

Recommendation 17: The Department should seek legal advice about the correctness of the decision in *Haraksin v Murrays Australia Limited (No 2)* as it relates to whether a breach of the Transport Standards can constitute 'unlawful discrimination' for the purposes of bringing a complaint under the Australian Human Rights Commission Act.

Recommendation 18: If the Department receives advice that it is reasonably arguable that a breach of the Transport Standards does not constitute 'unlawful discrimination' for the purposes of bringing a complaint under the Australian Human Rights Commission Act, then the Commission recommends making any necessary amendments to the Disability Discrimination Act, the Transport Standards and the Australian Human Rights Commission Act to ensure that a breach of the Transport Standards provides a standalone mechanism for lodging a complaint of unlawful discrimination under the Australian Human Rights Commission Act.

Recommendation 19: Australian Governments, operators and providers of public transport should prioritise the inclusion of people with disability in the following ways:

- a) Genuine consultation and co-design of services, policies, practices, and public transport developments.**
- b) Prioritise the employment of people with disability in their organisations.**
- c) Developing, publishing, and reporting against Disability Action Plans.**

Recommendation 20: The Australian Government should consider international examples of best practice in the context of the review.

3 Human rights framework

Australian Governments are obligated under international law and have a statutory requirement under domestic anti-discrimination legislation to ensure transport is accessible for people with disability.

3.1 The United Nations Convention on the Rights of Persons with Disabilities

Australia is obligated by international human rights law, and as a signatory to the United Nations *Convention on the Rights of Persons with Disabilities* (CRPD), to ensure that the fundamental human rights and freedoms of all people with disability are promoted, upheld and protected.⁶ This includes through effective legislative, administrative, or other measures, as outlined in article 4 of the CRPD (general obligations).⁷ These obligations lay out a roadmap towards the progressive realisation of the CRPD in domestic law and policy.

The obligations under the CRPD apply to all levels of government in Australia (i.e. Australian, State, Territory and Local governments).⁸

Accessibility is a core principle⁹ and human right under the CRPD, with specific provisions relating to accessibility outlined in Article 9.¹⁰ Article 31 of the CRPD states the requirement to collect appropriate information, including statistical and research data, to enable the formulation and implementation of policies that give effect to the obligations under the CRPD.¹¹

Because the initial development of the Transport Standards pre-dated the establishment of the CRPD and Australia's ratification, the Transport Standards were not written with the CRPD in mind. The Commission considers that disability standards made under the Disability Discrimination Act should be domestic legal instruments that, to as great a degree as possible, reflect the rights enshrined in the CRPD.

There is no designated independent national monitoring mechanism for the implementation of the CRPD in Australia, as is required under article 33(2).¹² The establishment of such a mechanism would mean that the monitoring of important policy initiatives, such as the Transport Standards, would be explicitly viewed within the context of the CRPD. Improving data and reporting would further enable comprehensive monitoring.

When Australia was periodically reviewed in 2019 on its implementation of the CRPD by the United Nations (UN) Committee on the Rights of Persons with Disabilities, it was recommended that Australia

Establish and enact a national framework for mandatory compliance reporting of the Disability Standards for Accessible Public Transport, the Disability (Access to Premises-Buildings) Standards, and the National Standards for Disability Services.¹³

This recommendation has not been implemented.

Accessible transport is fundamentally connected to the rights to individual autonomy and independence, personal mobility, non-discrimination, community inclusion and participation for people with disabilities. It is therefore critical that the review consider the Transport Standards in the broader context of the CRPD.

The Review should address, and seek to implement, the recommendation made by the UN Committee on the Rights of Persons with Disabilities.

Recommendations are made in this submission (particularly recommendations 4-6) for how the Australian Government should respond to this and fulfill its international human rights obligations to improve public transport accessibility and enhance the inclusion of people with disability.

3.2 Disability Discrimination Act 1992 (Cth)

The Disability Discrimination Act provides protection for everyone in Australia against discrimination on the basis of disability. It is unlawful to discriminate against a person in defined areas of public life, including employment, education, accessing public places and access to goods and services. The Disability Discrimination Act defines 'services' to include services relating to transport or travel.¹⁴

The Disability Discrimination Act defines discrimination on the grounds of disability as being either:

- 'direct discrimination' in which a person with disability is treated less favourably than a person without disability in circumstances which are 'not materially different'¹⁵
- 'indirect discrimination' in which a condition or requirement that is the same for everyone disadvantages and a person with disability, and is not reasonable in the circumstances.¹⁶

Duty holders may avoid discrimination on the grounds of disability if they provide reasonable adjustments which facilitate equal access and opportunity in a way that is proportionate to the circumstances.¹⁷ Failure to do so may constitute unlawful discrimination, unless providing the reasonable adjustment would cause unjustifiable hardship.¹⁸

Section 31 of the Disability Discrimination Act provides for disability standards to be formulated in relation to any area in which it is unlawful for a person to discriminate against another person on the grounds of a disability.¹⁹ Disability standards, such as the Transport Standards, outline explicit measures to remove discrimination in specific areas of public life, providing greater detail and certainty than the Disability Discrimination Act. Disability standards provide clarity around the provision of things such as reasonable adjustment, strategies, and programs to prevent harassment or victimisation of people with a disability, and unjustifiable hardship.²⁰ Compliance with a disability standard provides legal protection against claims of unlawful discrimination.²¹

As subordinate legislation, disability standards cannot be divorced from the provisions of the Disability Discrimination Act, and section 32 of the Disability Discrimination Act makes it unlawful to contravene a disability standard. Non-compliance with a disability standard may result in claims or complaints alleging unlawful discrimination.

There are also state and territory anti-discrimination laws that prohibit disability discrimination and provide mechanisms to bring complaints to state and territory anti-discrimination authorities.²²

3.3 Australia's Disability Strategy 2021–2031

Australia's Disability Strategy 2021–2031 (Australia's Disability Strategy) is the national disability policy framework to improve outcomes for people with disability in Australia across a range of life domains.²³ The Strategy sets out policy priorities identified and committed to by all levels of government, to drive national leadership towards a more inclusive service system and society.

Ensuring 'transport systems are accessible for the whole community' is a policy priority under the 'Inclusive Homes and Communities' outcome area of the Strategy. Ensuring the effectiveness of the Transport Standards is a critical component to achieving the vision of a more inclusive Australia. The Transport Standards act as a central mechanism through which to achieve this objective and measure progress. Compliance with the Transport Standards is a key system measure under the Australia's Disability Strategy Outcomes Framework.²⁴ The Transport Standards therefore need to be met with genuine commitment and funding to do so and should be reviewed through this lens.

4 Reform Agenda for Federal Discrimination Laws

In December 2021, the Commission published the first Position Paper as part of Free and Equal: A national conversation on human rights – *A Reform Agenda for Federal Discrimination Laws* (Position Paper).²⁵ The Position Paper was informed by extensive research and consultation and identifies necessary actions for Governments to meet their obligations to respect, protect and fulfil human rights in relation to Federal discrimination laws.

Through this work the Commission found that:

- The existing system of Federal discrimination law is primarily geared towards the remedial aspects of the obligation to respect and protect and falls short of realising effective remediation for discrimination.
- There are gaps in the protection offered by these laws, and significant questions as to how accessible the discrimination law system is – particularly for marginalised or disadvantaged groups.
- There is a need to shift the focus to a more preventative approach and towards actions that better supports the fulfilment of rights.

The Commission's reform agenda includes: building a preventative culture through mechanisms such as the introduction of a positive duty; modernising the regulatory framework; enhancing access to justice; and improving the practical operation of the laws.

In this Position Paper, the Commission notes that

Enhanced monitoring and review processes, combined with greater engagement and awareness raising, are required to ensure [disability] standards can have a positive systemic impact.²⁶ Stakeholders agreed that robust review processes should be in place to ascertain the effectiveness of the standards and assess the level of compliance.²⁷

The Commission encourages the Department to consider the Review of the Transport Standards in the context of the need for broader reform to discrimination law in Australia, giving particular regard to chapter five, section one which discusses the disability standards in relation to addressing non-compliance.

5 Complaints and Exemptions

Complaints Process

The Commission's National Information Service provides information and referrals for individuals, organisations and employers about a range of human rights and discrimination issues. The Commission also investigates and conciliates complaints about discrimination and breaches of human rights.²⁸

The Commission's complaints process remains the primary mechanism to address breaches of compliance under the Transport Standards. The conciliation process has been raised as a 'significant area of concern' for people with disability due to the power imbalances that exist between complainants and the transport industry.²⁹ This also places an undue burden on people with disability to hold transport providers responsible for non-compliance, requiring a level of understanding and self-identification of breaches to the Transport Standards which are highly technical.

The Disability Discrimination Act receives the highest number of complaints compared to other Discrimination Acts. In the 2021–2022 reporting year, for example, 52% of all complaints received were lodged under the Disability Discrimination Act.³⁰

In the first six months of the 2022–2023 reporting year, there were approximately 41 complaints alleging discrimination against public transport providers lodged under the Disability Discrimination Act. Over half of these (58%) have been made in relation to airlines or air travel, with the remainder including bus, train, tram, taxi and ride-share.

However, there are few complaints that specifically refer to the Transport Standards. In the 2022–2023 reporting year, eight complaints were made under the Transport Standards. Of these, six were associated with air travel, the remaining two were train and tram complaints.³¹

In the six years since the 2017–2018 reporting year, there have been a total of 86 complaints made under the Transport Standards, accounting for 10% of total disability standards complaints, and 1% of all complaints made under the Disability Discrimination Act.³²

The commonest themes raised in complaints concern assistance animals, inaccessible platforms and stations, and inaccessible vehicles. The Commission is aware that assistance animal refusal by taxis and rideshare services is an ongoing and pervasive issue for people with disability that is highlighted later in this submission.

The Commission's complaints data should not be taken as an accurate illustration of the full extent of non-compliance with the Transport Standards or discrimination, as it does not include the complaints made directly to transport agencies such as airlines, or state and territory complaint mechanisms such as an Ombudsman, and does not account for the issues faced by people who have not made a complaint.

Complaint processes are not a sufficient or effective mechanism to monitor and enforce the Transport Standards. Without comprehensive compliance data and additional enforcement mechanisms, it is difficult to ensure that rights are being upheld with respect to transport accessibility.

Exemptions

The Commission may grant exemptions under the Disability Discrimination Act, Transport Standards, or *Disability (Access to Premises – Buildings) Standards 2010* (Cth) (**Premises Standards**),³³ which can be subject to terms and conditions and only apply to specific activities. The person/s granted the exemption, including persons in employment of, or under the directive of the person granted the exemption, do not contravene the Standards if failure to comply is in accordance with the exemption granted. Importantly, exemptions cannot be granted for a period of more than five years, however applications for extensions to exemptions are possible.³⁴

In granting an exemption, the Commission consults appropriate parties to inform its decision. This requires a formal legal process, including the provision of necessary information from the person/s seeking the exemption to support the request, which may include data on compliance, costs and any attempts made to comply with the Standards. The Commission understands that these requirements may deter operators and providers from seeking an exemption.

Since 2018, four exemptions have been brought for consideration by the Commission; two were granted, one was granted in part, and one was not granted.³⁵

At present, a temporary exemption has been granted to the Australasian Railway Association (ARA) concerning five standards in the Transport Standards and one standard in the Premises Standards.³⁶ In 2021, the City of Ryde Council applied to be exempted from the requirements of the Transport Standards relating to 723 bus stops within its jurisdiction.³⁷ The Commission decided not to grant this exemption.³⁸

6 Observations and recommendations to improve the efficiency and effectiveness of the Transport Standards

6.1 Assessing whether discrimination has been removed

The purpose of the Transport Standards is to 'enable public transport operators and providers to remove discrimination from public transport services'³⁹ with the goal to systemically improve the accessibility of public transport for people with disability through compliance with a minimum set of standards.

Since the establishment of the Transport Standards in 2002, public transport operators and providers have had 20 years to ensure their conveyances and infrastructure (such as stops or stations) are compliant with the Transport Standards and accessible for people with disability. The Transport Standards set the following target dates for compliance:

- 90% compliance by 2017 (except busses which were required to be 80% compliant).
- 100% compliance by 2022 (except trains and trams).
- 100% compliance by 2032 for trains and trams.⁴⁰

The 2022 compliance targets have not been met and although there is a lack of robust compliance data to assess the current state accurately, available information highlights significant delays.

On 15 October 2020, the Victorian Auditor-General filed a report, *Accessibility of Tram Services October 2020*, which found that only 27% of tram stops were level access and 38% of trams were low floor trams.⁴¹ An audit conducted on behalf of Transport New South Wales found that over a third of train stations were either inaccessible or not independently accessible, and similarly, a third of ferry wharves were inaccessible.⁴²

Many providers and operators fail to comply with the Standards, suggesting that:

- Transport operators and providers are not motivated to comply given the likelihood of legal consequences associated with non-compliance is low. This is likely due to the ineffectiveness of current enforcement mechanisms balanced in their favour.
- Transport operators and providers may prefer to wait for a complaint to be made and rely on unjustifiable hardship provisions instead.

The Commission acknowledges the work of the Australian, state and territory governments and private providers to improve transport accessibility since the introduction of the Transport Standards, and the extent to which this has removed discrimination. However, lack of full compliance with the Transport Standards means that they have not yet achieved their intended purpose to remove discrimination or the object of the Disability Discrimination Act to eliminate discrimination 'as far as possible'.⁴³ The widespread lack of compliance with the Transport Standards results in ongoing inaccessibility of public transport services for people with disability.

The following case examples demonstrate the significant lack of progress to achieve compliance and the impact this has on the lives of people with disability.

Train and Tram Networks

The issue with compliance is not merely a legal matter, it has real life impacts on the lives of many people with disability in Australia. Media attention has often been the only avenue for people with disability to raise these issues and to demonstrate the extent of inaccessible public transport networks.

In June 2023, The Age reported that there have been no accessibility upgrades to tram stops across Melbourne in the previous 12 months, and only four upgrades have been delivered in the last three years.⁴⁴ The article highlights that almost 1200 tram stops are non-compliant with the Transport Standards, and that the Victorian Government's 2023–2024 budget does not mention tram stop upgrades, despite commitments in the previous budget that were not completed. The lack of accessible tram stops means that many people are 'locked out of the public transport network' in Melbourne.

In January 2023, ABC News reported similar concerns with train and tram networks across New South Wales and Victoria and lack of compliance with the Transport Standards, resulting in 'isolating' experiences, and reduced job access and independence for many.⁴⁵

Understanding the lived experience of people with disability is essential to the conversation around transport inaccessibility. Christian Astourian told The Age that station closures due to level crossing removals will mean that he will be without public transport access due to a lack of accessible tram stops within 5.5km along Sydney Road. Sarah-Jane Staszak expressed to ABC News that train station upgrades in her local community, while beneficial in the long run, have meant that she no longer has access to the station due to access ramps being blocked off, and no alternative accessibility arrangements provided to access the station. Ms Staszak describes the process of having to research

transport accessibility, and inconsistent levels of accessibility as 'exhausting' – things that people without disability do not have to think twice about.

People with disability continue to face ongoing barriers to public transport and given there have been no material changes to the Transport Standards since the last review this remains an ongoing concern.

Of the 4.1 million people over 5 years old with disability:

- under half used public transport (40.9%)
- almost a quarter (24.6%) of people avoided public transport due to their disability
- 30% had difficulty or inability to use some or all forms of public transport
- 14.3% could not use any forms of public transport
- for those with profound or severe disability (5.7% of the total population), 47% could not use public transport at all.⁴⁶

People with disability and their carers who reported difficulty or inability to use public transport, indicated that the most common reasons for this were:

- issues getting in or out of the vehicle because of steps (42.4%)
- getting to stops or stations (30.6%)
- fear or anxiety (23.0%)
- lack of seating or difficulty standing (21.3%).⁴⁷

It is impossible to make an accurate assumption that non-compliance with Transport Standards contributes wholly to these issues, however it is likely that greater compliance would reduce some, or all, of these barriers.

The following examples go beyond the application of the Transport Standards to demonstrate the extent of widespread inaccessibility and speak to the Disability Discrimination Act more broadly:

Examples of ongoing discrimination in public transport

1. Air Travel

The Commission acknowledges the work of the Department to consult on and deliver the Aviation White Paper which will set the policy framework for growth and innovation in the aviation sector to 2050.⁴⁸

As per the Commission's submission to the Aviation White Paper Terms of Reference, greater attention needs to be given to the ongoing discrimination against people with disability in air travel.⁴⁹ The negative experiences of people with disability at airports and in airlines have been well reported in the media in recent years.⁵⁰ Mounting public concern exists around issues ranging from damage of personal mobility equipment, limits placed on access to aircrafts or types of ticket purchase (Jetstar, for example, only allows two wheelchair users per flight),⁵¹ absence or insufficiency of equipment to assist people to board flights or move between their seat and amenities, refusal of travel due to assistance animals, and discriminatory and humiliating treatment at airport security, to name a few examples.

Greater enforcement of compliance with the Transport Standards, and specific consideration of air travel in the review and future reforms is required to improve the disparate accessibility, policies and procedures across the air travel sector to ensure a more dignified and equitable air travel experience for people with disability.

The Commission is hopeful that these issues will be picked up in the context of the Aviation White Paper.

2. Dedicated School Busses

Currently, dedicated school buses are exempt from certain physical access requirements in the Transport Standards.⁵² This means that school buses only have to provide a small degree of accessibility and are not required to be accessible to all students with a disability, particularly those with mobility impairments. School buses that are not accessible, or do not provide services to children with disability, create further disadvantage and barriers to education, particularly access to mainstream education. People with disability, like all Australians, require various forms of transport to move around their community, and all transport providers should be held to the same universal standard.

State and Territories offer specialist school transport services for eligible children with disabilities and schools (generally specialist education).⁵³ This can limit choices in education and place of residence, particularly in regional or remote areas.

The exemptions result in there being no requirement to provide accessible transport for students with disability to travel to and from school. Removing or amending the exemptions would ensure that the Transport Standards are consistent with their objective to remove discrimination. It is worth noting that a staged removal of exemptions was recommended to the Australian Government through a regulatory impact statement analysis in 2009 following the 2007 Review.⁵⁴ No such amendment has been made.

A lack of accessible school transport, and refusal to transport children with disabilities to education and related activities, also impacts on the availability of wheelchair accessible taxis during peak school pick up and drop off times,⁵⁵ as families must rely on taxis instead.⁵⁶ This also has implications on the funding of policies such as the NDIS and state and territory taxi subsidy schemes.

3. Taxis and rideshare

In the absence of available and/or accessible public transport across the whole of journey, many people with disabilities have limited transport choices and must travel in taxis, which is generally more costly to the individual. The Commission is aware of significant issues regarding the accessibility of taxis and rideshare services for many people with disability in Australia. These issues include:

- limited availability of wheelchair accessible taxis (WAT), unreliability of WAT and significant wait times causing a lack of control over a person's own time⁵⁷
- refusal of service due to assistance animals,⁵⁸ or taxi vouchers⁵⁹
- poor regulation of rideshare services under the Transport Standards
- inconsistencies within the Transport Standards concerning taxis
- inconsistencies with federal and state and territory discrimination legislation and transport service regulation.

Regarding the refusal of assistance animals, Dog Guide Handlers Australia (DGHA) have captured instances of service refusal due to a person's Dog Guide. Of the instances reported, almost 70% of refusals were by taxi and rideshare drivers, with reports of drivers locking doors and driving away as someone is grabbing the door handle.⁶⁰ It is unlawful under the Disability Discrimination Act to discriminate against someone due to them having an

accredited and or trained assistant animal.⁶¹ Despite this, DGHA report cases of service providers denying or disregarding discrimination and access laws. Assistance animals are considered in some minimum standards under the Transport Standards; however, this issue extends to discrimination under the Disability Discrimination Act more broadly and indicates that accessibility and disability discrimination training may be required across taxi and rideshare industries to ensure both the Disability Discrimination Act and the Transport Standards operate effectively together.

Recommendation 1: The Australian Government should remove the exemption for dedicated school buses to ensure all children have access to transport for educational purposes.

Without consistent and robust data on compliance and the reality of experiences of discrimination of people with disability in accessing public transport on both a local and national basis, it is difficult to assess actual progress and compliance of the Transport Standards in relation to achieving the targets and removing discrimination.

This alone raises concerns about the effectiveness of previous reviews to address issues with uneven compliance, lack of data, and the enforcement of the Transport Standards, which have been raised in all prior review reports.⁶² It is very concerning that despite repeated recommendations and the preference of the disability community for a stronger regulatory approach with greater transparency, there has been little progress toward any national reporting framework.

Recommendation 2: An independent review of the Transport Standards should be conducted to consider their effectiveness in addressing unlawful discrimination, as well as the effectiveness of the current legislative, governance, policy, and practice arrangements in place to implement and achieve compliance with the Transport Standards. An independent review should also consider appropriate monitoring, regulatory and complaint processes.

(a) Issues with assessing compliance

Currently, there is limited publicly available information on compliance with the Transport Standards, as well as the general accessibility of transport services across Australia. All three reviews of the Transport Standards identified a lack of a national compliance reporting framework as a major issue impacting the effectiveness and efficiency of the Transport Standards.⁶³

The need for a mandatory national reporting framework to assess and monitor compliance, and to improve the effectiveness of the Transport Standards, has been raised repeatedly by the Commission and other stakeholders.⁶⁴

Given the long-standing operation of the Transport Standards, operators and providers have had the opportunity to report their compliance voluntarily for years and should be aware of their level of compliance. The dearth of robust and reliable compliance data demonstrates that the current approach is ineffective and that there is low motivation for transport providers to voluntarily report on compliance under a non-regulatory model. The Commission is unaware of where a voluntary reporting model for transport accessibility has worked anywhere in the world.

Compliance with the Transport Standards remains a requirement under the Disability Discrimination Act,⁶⁵ even in the absence of mandatory reporting mechanisms or a regulatory framework. Operators and providers of public transport services therefore have a duty to measure, identify and rectify compliance issues as part of their usual business.

A duty of any director of a corporation or senior official within a public organisation is to seek to know whether their corporation or organisation is compliant with the law (in this case, the Transport Standards). It is difficult to see how a lack of data would or should exist. The introduction of a positive duty to report compliance against the Transport Standards may ensure proactive engagement with legal obligations. This is explored further in the following section, 'issues with enforcement'.

Compliance and broader accessibility considerations should be factored into jurisdictional transport and infrastructure budgets, including auditing and reporting. Arguments about resourcing constraints to ensure compliance with the Transport Standards need to be seen in the context of the transport budgets of the relevant stakeholders. For example, the NSW Transport Budget for 2022–23 is \$39.8 billion.⁶⁶ Given the inconsistencies in compliance, investment and support across jurisdictions should be targeted towards areas of highest need – such as regional, rural and remote areas.

Recommendation 3: Australian Governments should prioritise an independent audit of public transport conveyances against Schedule 1 of the Transport Standards to establish an accurate assessment of compliance to support the Review. This will create a baseline for future reviews and support enforcement. Findings of this audit should be made public.

a) The Commission, by way of its independence and functions under the Transport Standards, could be well placed to undertake this audit, provided it is resourced to do so.

A compliance and reporting framework should seek to move away from an opt-in, voluntary approach, which does not guarantee reporting, may disincentivise providers to report on areas of non-compliance that could be viewed as discriminatory, and will maintain an unwillingness to report. A non-regulatory model will contribute to the ongoing difficulties in enforcing and evaluating the Transport Standards. Instead, a robust regulatory approach informing a national reporting framework would:

- ensure consistency and transparency in reporting
- hold providers and operators accountable to demonstrate and work towards their legal obligation of compliance
- be important for the collection of reliable data and statistical analysis to measure progress and compliance against the Transport Standards
- support future reviews of the Transport Standards, which can then be used in conjunction with outcomes data associated with Australia's Disability Strategy
- assist the community to better identify transport services accessible to their needs and plan their journey
- support best practice and continuous improvement.

Considering Australia's reporting obligations under article 31 of the CRPD⁶⁷ and Australia's Disability Strategy,⁶⁸ alongside the overwhelming support of a regulatory approach from the disability community in previous reviews,⁶⁹ the Commission remains concerned about a lack of progress to establish a national framework for mandatory compliance reporting to ensure the Transport Standards can achieve their intended purpose to remove discrimination and improve accessibility.

Recommendation 4: The Australian Government should establish and enact a national framework for mandatory compliance reporting, as per the recommendation made by the UN Committee on the Rights of Persons with Disabilities. Compliance data should be collected on a mandatory basis on all assets covered by the Transport Standards. All data collected should be done so at regular intervals, made publicly available and reported upon periodically.

Recommendation 5: A mandatory reporting and compliance framework should:

- a) **be aligned to the mandatory provisions under the Transport Standards, whilst including equivalent access considerations to allow for flexibility**
- b) **set the minimum acceptable standard of public transport accessibility whilst encouraging innovative solutions and design beyond compliance to consider accessibility**
- c) **Include additional use elements, in particular the reporting of complaints made to an organisation.**

Recommendation 6: The Department should prioritise consultation and co-design with the disability community in the development of a national reporting framework.

The Commission makes the case for a responsive regulatory framework to promote and enforce compliance with federal discrimination law in chapter three, section two of its Free and Equal Position Paper.⁷⁰ While this paper focuses on broad reform, it provides an insightful evidence base for strengthening and modernising regulatory frameworks, relevant to the Transport Standards.

(b) Issues with enforcement

As highlighted earlier in this submission, the complaints process is the primary mechanism to address and remedy breaches of compliance, with individual legal action the only way that compliance has been enforced. The Commission's investigation and conciliation function ensures that people with disability have an avenue of redress against alleged discrimination by transport operators and providers. However, there are often power-imbalances due to the material and significant differences in resources of public transport operators and providers and people with disability.

While complaints mechanisms are critical to ensure remedies to discrimination, the Commission has raised issues with the effectiveness of this model, in that it

is reliant on an individual to make a complaint; the ADR [alternative dispute resolution] proceedings, being conducted confidentially do not generate a sense of expectations or benchmarks; access to a remedy through judicial pathways is potentially very costly; the Commission has limited investigation powers and no enforcement powers.⁷¹

In this regard, the Commission is of the view that due to complaint mechanisms focusing on redress rather than prevention, they 'should not be the first or only mechanism for addressing discrimination'.⁷² This has been a 'principal reason why anti-discrimination laws have been unable to address ongoing issues of entrenched and systemic discriminatory practices'.⁷³

Under the Disability Discrimination Act, organisations may submit Disability Action Plans to the Commission at their discretion.⁷⁴ However, these plans are more a form of identifying actions to progress compliance than an enforcement mechanism. Currently, 24 public transport operators or providers have lodged Disability Action Plans with the Commission, however 15 of these were developed 10 or more years ago. In the Free and Equal Position Paper, the Commission highlighted that action plans are limited in their effectiveness as a regulatory tool, and while stakeholders considered that such plans are 'necessary and helpful' the introduction of voluntary audits and positive duties would be of significant value.⁷⁵

Recommendation 7: Operators and Providers of public transport should commit to developing Disability Action Plans, as per the provisions under section 61 of the Disability Discrimination Act. These plans should include actions to achieve compliance with the Transport Standards based on accessibility audits and strategies towards enhanced accessibility and should be publicly reported against.

While reasonable adjustment provisions under the Disability Discrimination Act⁷⁶ and the requirements of the Transport Standards to implement minimum standards of accessibility, intend to impose a positive duty on operators and providers to prevent discrimination, the burden placed on individuals to make a complaint to enforce this significantly limits the effectiveness. Operators and providers have no clear accountability to ensure that they have complied with the Transport Standards or taken all reasonable steps to prevent discrimination unless they are seeking to respond to claims of alleged discrimination. Many incidents of non-compliance may go unaddressed. The low number of complaints made under the Transport Standards are an ineffective measure of assessing compliance and demonstrate that the current model is not effective in enforcing compliance or to ensure preventative measures are taken.

In the Free and Equal Position Paper, the Commission recommends that a positive duty be introduced to federal discrimination laws.⁷⁷ In the absence of broader reforms to the Disability Discrimination Act during this review cycle, there may be merit in introducing a positive duty within the Transport Standards. A positive duty could enforce greater compliance by requiring duty holders to engage proactively with their legal obligations.

To assist operators and providers to understand this duty in the context of the requirement to comply with the Transport Standards, procedural duties, such as policies or compliance plans, should be included.⁷⁸ This may include identifying areas of non-compliance, developing strategies to meet and maintain compliance, and evaluating and improving compliance, as explained in the

Explanatory Memorandum for the Victorian *Equal Opportunity Act 2010* (Vic).⁷⁹

Additionally, a positive duty may assist the enforcement of a mandatory compliance reporting framework and encourage a culture of prevention rather than non-compliance.

Recommendation 8: The Australian Government should introduce a positive duty with procedural duties to either the Disability Discrimination Act or the Transport Standards, in line with the recommendations made in the Commission’s Free and Equal Position Paper.

Positive duties should consider certain factors to determine whether a measure is reasonable and proportionate such as: the industry, size and nature of the organisation, resources of the organisation, practicality and cost, and other relevant facts or circumstances.

Recommendation 9: Any positive duty should also be accompanied by significant education and other outreach, as well as support for the Commission, legal assistance providers and business peak bodies, to be able to provide clear and accessible guidance about the positive duty.

Without greater coordinated leadership across all levels of government there is little incentive for operators and providers to comply and to demonstrate compliance. State and territory governments have the power to ensure that their legislation and contractual arrangements with transport operators and providers align with the Transport Standards to improve accountability, and that there is adequate funding and incentive to conduct audits.

Recommendation 10: The Australian Government Minister for Infrastructure, Transport, Regional Development and Local Government should write to:

- a) all Transport Ministers and state auditor-generals to recommend inclusion of at least one performance audit related to implementation of the Transport Standards in the auditor-general’s work programs from 2025 to inform future reviews of the Transport Standards. This could be through consideration of the implementation of the Transport Standards where relevant to an aspect of an existing planned performance audit.
- b) All Transport Ministers, and other relevant Ministers, asking them to ensure any arrangements within their portfolio for Transport have appropriate regard to the requirements of, and compliance with, the Transport Standards.

Recommendation 11: State and Territory governments should align the procurement and contractual arrangements with transport operators and providers to the Transport Standards as a mechanism to enforce compliance.

Recommendation 12: State and Territory Governments should review relevant legislation to ensure it is aligned with the Transport Standards.

The absence of additional and effective enforcement mechanisms creates difficulties in ensuring that the rights of people with disability are upheld in respect to transport accessibility. An enhanced regulatory approach to enforcement of the Transport Standards would undoubtedly result in improved accessibility for people with disability across public transport services and infrastructure. This is aligned with the purpose of the Transport Standards as well as article 9 of the CRPD.⁸⁰ Consideration should also be given to the Commission having an oversight role with regulatory powers to enforce compliance, in line with the reform agenda set out in the Free and Equal Position Paper.⁸¹ Resourcing an independent monitoring body (such as the Commission) to oversee enforcement has also been recommended by the Public Interest Advocacy Centre.⁸²

At present, the Commission has insufficient allocated resourcing to discharge its statutory functions, limiting its ability to monitor and report on the operation of disability standards, including the Transport Standards. The Disability Rights Team overseeing the Disability Discrimination Commissioner's policy portfolio is currently funded for one EL2 Director, one APS5/6 Policy Adviser and one Executive Assistant.

The Commission, as the National Human Rights Institution, can provide significant independent and expert analysis to any review or reform of the Transport Standards, including ongoing monitoring of the operation of the Standards, as well as education and guidance materials – with adequate resourcing to perform such functions.

Recommendation 13: The Australian Government should provide sufficient funding to the Australian Human Rights Commission to undertake the statutory functions conferred to the Commission under section 67 of the Disability Discrimination Act, which would increase the Commissions capacity to undertake the following functions:

- **monitoring and reporting on the operation of disability standards**
- **promoting an understanding and acceptance of, and compliance with the Disability Discrimination and Transport Standards**

- **undertaking research, educational and other programs for the purpose of promoting the Disability Discrimination Act and Transport Standards**
- **Development of guidelines for the avoidance of disability discrimination, in relation to the Transport Standards.**

(c) Measuring and evaluating benefits of accessible public transport

The absence of a national compliance reporting framework impacts the Australian Government's ability to measure the effectiveness of the Transport Standards adequately and robustly. This also impedes robust regulatory impact analyses of future reforms, as well as the social and economic impact of non-compliance and the benefits of enhanced accessibility. Measuring levels of transport accessibility is an important element of Australia's Disability Strategy Outcomes Framework, and essential to understanding cross-cutting benefits of improving transport accessibility.

Enhanced data collection and compliance with the Transport Standards is one way to start to illustrate this in Australia. The Australian Government should consider conducting work outside the scope of this review to explore how a reporting framework under the Transport Standards, and measuring the benefits of accessibility, can inform broader disability policy frameworks such as Australia's Disability Strategy.

Any work undertaken by the Australian Government to better understand national rates of compliance with the Transport Standards can inform and set a baseline for outcomes and benefits frameworks.

Understanding the economic benefits of improved transport accessibility

A report by the International Transport Forum, of which Australia is a member, acknowledges that 'a lack of a common framework to value the economic benefits of accessibility still constitutes a barrier to investment and regulatory decisions' impacting the prioritisation of accessibility improvements in the transport sector.⁸³ The report establishes the case and a proposed framework⁸⁴ for the inclusion of accessibility considerations in transport appraisals to demonstrate the benefits of enhanced accessibility and the costs of inaction, and calls for inclusion to be an explicit goal in transport policy.

A key recommendation of this report is to integrate accessibility research with health and wellbeing research, to account for broader cross-sector benefits and objectives in economic analysis considerations. The framework presented in the report includes broad analysis of accessibility benefits across four core domains:

agency benefits (transport); User benefits including people with and without disability; non-user benefits (broader society); and enhanced capability of people with disability.⁸⁵

Commitment from Australian Governments is required to undertake further cross-sector research to develop and build on the evidence base of the economic benefits of improved accessibility to inform transport investment, and to build this into improving the effectiveness of the Transport Standards. Gathering consistent Transport Standards compliance data can both inform and be informed by this. An enhanced and consistent approach to defining, quantifying, measuring, and publishing the benefits of accessibility, aligns with the Australian Government's commitment to 'measure what matters' in a revised national wellbeing framework.⁸⁶

Recommendation 14: The Australian Government should invest in research to establish an evidence base for the economic benefits of accessibility and inclusion, with the view to establish a consistent national framework for the appraisal of public transport investment.

(d) The role of minimum standards to improve accessibility.

The role of the Transport Standards is to provide a benchmark for compliance against a set of minimum standards and act as a regulatory tool to systemically increase access to public transport for people with disability. Minimum standards are developed with the intention to remove barriers to access and discrimination in a way that does not further disadvantage people with disability. While minimum standards require review and reform to ensure they are consistent with community expectations, new and emerging technology and other standards and codes, compliance with the Transport Standards constitutes compliance with the Disability Discrimination Act protecting against unlawful discrimination. If the Transport Standards fail to do this from a technical perspective, then they will not achieve their purpose.

While compliance data, or lack thereof, tells one part of the story, the other consideration required by this Review is whether the minimum standards set under the Transport Standards are sufficient to ensure people with disability have equitable access to public transport services, and whether there are appropriate enforcement mechanisms to realise this.

The Commission is concerned with the interpretation of the concept of 'minimum' standards on the Department's Reform webpage which states:

transport operators and providers who take only a minimum standard interpretation of the Transport Standards in fact face greater risk of failing to

meet the objectives of accessible public transport. This is because minimum standards do not always achieve the best functional outcomes for people with disability and can result in an unintended discriminatory outcome.⁸⁷

The Commission acknowledges the importance of ensuring reviews and reforms address shortcomings of minimum standards but disagrees with the sentiment in this statement. In principle, minimum standards should be set to achieve the objective of accessible public transport and are developed in consultation with various stakeholder groups to ensure this. This statement undermines the application of the Transport Standards and does not align with the spirit of the Transport Standards and Disability Discrimination Act.

The Commission also acknowledges that operators and providers should strive, and be encouraged, to increase accessibility beyond compliance to minimum standards, and that the Transport Standards may have the effect of reducing compliance to a minimum standard rather than encouraging innovative best practice. Within an effective regulatory framework, both compliance and best practice is possible.

There is an ongoing need to ensure that minimum standards are complied with supported by effective enforcement mechanisms. It is also valuable to ensure there are incentives to encourage and build the capacity of the sector towards incorporating accessibility and inclusion as part of universal design practices and policies, moving beyond minimum standards. This would ensure that accessibility is not an afterthought, applied retrospectively, or merely a practice of compliance, and that the rights of people with disability are promoted and protected to afford them with respect, dignity, and equal participation on all levels.

Recommendation 15: The Australian Government should review the Transport Standards in the context of Universal Design Principles to ensure the minimum standards maximise accessibility, use and benefit.

Recommendation 16: The Australian Government should consider creating an Accessibility Targeted Action Plan under Australia's Disability Strategy, with specific actions related to improving transport accessibility and compliance to the minimum standards set out in the Transport Standards.

6.2 Unjustifiable Hardship and Equivalent Access Provisions

The Commission is aware that transport operators and providers have sought 'legal certainty' of what could constitute an 'unjustifiable hardship' claim in previous review and reform processes.⁸⁸ Unjustifiable hardship is a defence to a claim of discrimination under the Disability Discrimination Act and the Transport

Standards.⁸⁹ The burden of proving that compliance would impose unjustifiable hardship lies on the person claiming unjustifiable hardship. Implicit in the concept of unjustifiable hardship is that some hardship will be justifiable:

the concept of ‘unjustifiable hardship’ connotes much more than just hardship on the respondent. The objects of the [Disability Discrimination Act] make it clear that elimination of discrimination as far as possible is the legislation’s purpose. Considered in that context, it is reasonable to expect that [a respondent] should have to undergo some hardship.⁹⁰

In *Francey v Hilton Hotels of Australia Pty Ltd*⁹¹ (‘Francey’), then Disability Discrimination Commissioner Graeme Innes held that the financial circumstances of the respondent should also be viewed from this perspective:

Many respondents imply that [their financial circumstances] should be given greater weight than other factors. Whilst it is important, it, along with all other provisions of the [Disability Discrimination Act], must be considered in the context of the [Disability Discrimination Act’s] objects. I do not suggest that intolerable financial imposts should be placed on respondents. However, for this defence to be made out the hardship borne must be unjustifiable. Therefore, if other factors mitigate in favour of preventing the discrimination – which is the Parliament’s intention in this legislation – then the bearing of a financial burden by the respondent may cause hardship which is deemed justifiable.⁹²

The lack of precedent regarding unjustifiable hardship claims under the Transport Standards reflects the small number of complaints in relation to the Transport Standards, and the even smaller number that proceed to court. The case of *King v Jetstar Airways Pty Ltd (No 2)*⁹³ (13 January 2012) is one example of a successful claim of unjustifiable hardship in the context of direct disability discrimination, however it did not expressly consider the Transport Standards. Since *King v Jetstar*, the Commission is aware of only a few other cases where unjustifiable hardship has been considered, taking into account the individual circumstances in each case.⁹⁴

To demonstrate unjustifiable hardship, operators and providers need to show they have taken efforts in good faith to comply with the relevant requirements⁹⁵ and exhausted all opportunities for providing equivalent access.⁹⁶ In July 2020, the Commission published Equivalent Access Guidelines⁹⁷ to provide clear and practical assistance to facilitate compliance with the Transport Standards through the use of equivalent access. The Commission considers that these Guidelines will help operators and providers avoid and, if necessary, respond to allegations that measures intended to make public transport accessible do not constitute equivalent access, including in relation to claims of unjustifiable hardship.

The Commission considers that further legal guidance or certainty regarding unjustifiable hardship is not appropriate or required under the Transport Standards. A final determination regarding a claim of unjustifiable hardship can only be made by the Court in the case that a formal complaint has been lodged with the Commission in the first instance and is based on the circumstance and evidence provided by the respondent. The Commission is of the view that the Transport Standards provide the required information for providers and operators to understand their legal obligations and grounds on which they may make a claim of unjustifiable hardship, as set out under section 33.7(3) of the Transport Standards. These provisions also include cost considerations and the balance of benefits and detriments to both people with disability, the wider community and the operator or provider.⁹⁸

Transport providers and operators should be encouraged to take all reasonable and appropriate steps to incorporate accessibility measures as part of their decision-making processes, to both comply and go beyond the Transport Standards to eliminate discrimination. It is vital that there are clear directives and incentives to do so to promote inclusion and universal design, rather than a culture of non-compliant practice.

6.3 Amendments to legislation

The decision by the Federal Court of Australia in *Haraksin v Murrays Australia Limited (No 2)*,⁹⁹ on 14 March 2013, established that non-compliance with the Transport Standards does not itself provide a sufficient bases for a person to lodge a complaint alleging unlawful discrimination under the Australian Human Rights Commission Act.

In this case, Nicholas J held that the applicant's claim that the respondent had discriminated against her and contravened the Transport Standards by not allowing her to book a wheelchair accessible seat on a coach service operated by the respondent, was based on a misconception as to the scope of section 46P and section 46PO(1) of the [Australian Human Rights Commission Act] because 'non-compliance with the Transport Standards does not itself constitute unlawful discrimination'.¹⁰⁰

In arriving at this view, Nicholas J did not refer to section 32 of the Disability Discrimination Act which provides that it is unlawful to contravene a disability standard, or to the definition of 'unlawful discrimination' in section 3 of the Australian Human Rights Commission Act, which specifically includes 'acts, omissions or practices that are unlawful ... under Part 2 of the [Disability Discrimination Act]', which includes section 32.

The Commission remains concerned with the legal correctness and impact of this decision on the enforcement of the Transport Standards, as raised in the Commissions 2018 Submission to the 2017 Review of the Transport Standards.¹⁰¹ In this submission, the Commission made recommendations to ensure that a breach of the Transport Standards (and therefore, a breach of section 32 of the Disability Discrimination Act) provides a standalone mechanism for lodging a complaint of unlawful discrimination with the Commission. These recommendations have not been addressed by the Department and are repeated below.

Recommendation 17: The Department should seek legal advice about the correctness of the decision in *Haraksin v Murrays Australia Limited (No 2)* as it relates to whether a breach of the Transport Standards can constitute ‘unlawful discrimination’ for the purposes of bringing a complaint under the Australian Human Rights Commission Act.

Recommendation 18: If the Department receives advice that it is reasonably arguable that a breach of the Transport Standards does not constitute ‘unlawful discrimination’ for the purposes of bringing a complaint under the Australian Human Rights Commission Act, then the Commission recommends making any necessary amendments to the Disability Discrimination Act, the Transport Standards and the Australian Human Rights Commission Act to ensure that a breach of the Transport Standards provides a standalone mechanism for lodging a complaint of unlawful discrimination under the Australian Human Rights Commission Act.

6.4 Inclusion and consideration of people with disabilities in the review and reform processes

The engagement, consultation and inclusion of people with disability is a vital consideration for this review of the Transport Standards.

To improve the current inefficiencies and effectiveness of the Transport Standards to remove discrimination, the benefits for people with disability and the broader community should be given sufficient weight in the review and subsequent reform decision-making processes.

People with disability, their families, carers and representative organisations should be consulted with and included in the design of services, standards and policies that affect them. In conjunction with their duty to comply with the Transport Standards, operators and providers of public transport should seek the expertise of the disability community in all stages of public transport

planning and implementation to ensure accessibility and universal design principles are considered to meet the needs of the community. Consultation with people with disability is also a requirement under equivalent access provisions in the Transport Standards, and a consideration in claims of unjustifiable hardship.¹⁰²

The Commission encourages the Department to consult the *Good Practice Guidelines for the Engagement of People with Disability*, once published as part of Australia's Disability Strategy supporting documents.

Recommendation 19: Australian Governments, operators and providers of public transport should prioritise the inclusion of people with disability in the following ways:

- d) Genuine consultation and co-design of services, policies, practices, and public transport developments.**
- e) Prioritise the employment of people with disability in their organisations.**
- f) Developing, publishing, and reporting against Disability Action Plans.**

6.5 Enhanced guidance on the Transport Standards and rights of people with disability

Core objects of the Disability Discrimination Act are to eliminate discrimination on the basis of disability as far as possible¹⁰³ and to 'promote recognition and acceptance within the community of the principle that persons with disabilities have the same fundamental rights as the rest of the community'.¹⁰⁴ The Transport Standards seek to address the first objective by enabling public transport operators and providers to remove discrimination. Whilst the Transport Standards do not give explicit reference to rights, they acknowledge that certain rights exist,¹⁰⁵ and as subordinate legislation to the Disability Discrimination Act have a role in giving effect to the rights under the CRPD to achieve their purpose.¹⁰⁶

The previous review identified that a lack of understanding and disability awareness by public transport staff acts as a barrier to public transport use by people with disability,¹⁰⁷ and that the disability community called for the incorporation of the CRPD within the Transport Standards to improve accessibility outcomes.¹⁰⁸ It also highlighted the need for greater promotion of the Transport Standards and guidance.¹⁰⁹ The Commission believes these to be areas requiring ongoing attention, which could benefit from further education

and guidance materials to promote the rights of people with disability and advance the objective of the Transport Standards.

It is a statutory function of the Commission to promote an understanding and acceptance of human rights in Australia, and to undertake educational programs for this purpose.¹¹⁰ Under the Disability Discrimination Act, the Commission also has statutory functions to promote an understanding and acceptance of, and compliance with the Act, to undertake educational programs to promote the objects of the Act, and to prepare and publish guidelines for the avoidance of discrimination on the basis of disability.¹¹¹

The need to translate rights and responsibilities under the Transport Standards, and educate on accessibility is twofold:

- a) to educate people with disability on their rights to accessible transport and what is required of operators and providers under the Transport Standards. This includes in accessible and easy read formats.
- b) to build capacity of the sector to understand the rights of people with disability, their responsibilities as a duty holder under the Transport Standards, and to identify, respond to and prevent non-compliance. This could also include providing further assistance on the development of disability action plans.

There is also a general need to improve the awareness of accessibility within transport sectors, as identified by the previously mentioned International Transport Forum Report.¹¹² The Commission's Equivalent Access Guidelines¹¹³ and the Department's Whole of Journey Guide¹¹⁴ are positive examples of approaches to build capacity of the sector towards best practice and proactive effort. There is also more that can be done to work with stakeholders and people with disability to co-design better guidance to facilitate the inclusion of people with disability on public transport.

The Commission has been told in consultations that there would be value in expanding the range of guidance materials, particularly on emerging issues.¹¹⁵ However, in addition to resourcing of the Commission being a key constraint, there are limitations to providing guidance where there is a lack of judicial interpretation which requires these materials to be generalised rather than a precise interpretation of the law. The Commission is dedicated to engaging with key stakeholders to identify where guidance material would be of most value acknowledging these limitations.

See recommendation 14 regarding resourcing the Commission to ensure it has sufficient funding to undertake its statutory functions. This will enhance the

capacity of the Commission to develop further resources, guidance, and education materials and to engage with key stakeholders on the Transport Standards.

6.6 International Examples

International examples of best practice regarding transport accessibility and regulation should be considered by the Department in this review.

One example is the *Accessible Canada Act* passed in 2019. The purpose of the Act is to remove and prevent barriers to access in Canada by 1 January 2040 across a wide range of areas including, but not limited to, the built environment, transportation, and employment.¹¹⁶ The Act includes a positive duty on federally regulated entities to prepare, publish and report on accessibility plans to identify, remove and prevent accessibility barriers through their policies, programs, practices and services.¹¹⁷ This also includes the duty to consult people with disabilities and to update their plans every three years.¹¹⁸

The Act establishes the mandate for the Canadian Accessibility Standards Development Organisation to develop accessibility standards,¹¹⁹ and the Accessibility Commissioner to monitor and enforce the Act, including compliance orders.¹²⁰ The Accessibility Commissioner is a member of the Canadian Human Rights Commission at the federal level. Although the Australian Disability Discrimination Commissioner and the Canadian Accessibility Commissioner share similar roles in relation to reporting to Ministers in respect to their relevant legislation, there are no equivalent regulatory powers to enforce compliance in Australia.

The Act is accompanied by the *Accessible Canada Regulations* which outlines duty holders' responsibilities regarding accessibility plans and penalties for non-compliance.

Accessibility standards developed are considered voluntary until they are adopted into regulation making them mandatory. The Canadian Government have yet to establish any accessibility standards, however the standards will impose the same duty to identify, eliminate and prevent barriers to accessibility.

This is a positive example of the harmonisation of accessibility legislation across various settings and entities to ensure there is a consistent removal of barriers for people with disability, while acknowledging the need for technical specificity as required. The Act also refers to the benefit of 'all persons' acknowledging that accessibility practices have broad reaching societal impact.

Recommendation 20: The Australian Government should consider international examples of best practice in the context of the review.

7 Conclusion

Access to transport enables inclusion and participation in the community for all people. It also plays a critical role in social and economic life, having positive impacts on health, employment, social, and education outcomes. For people with disability, transport is also essential to enabling consistent and reliable access to disability supports and services. Ensuring the Transport Standards are effective in achieving their intended purpose to remove discrimination is vital to improving outcomes and the realisation of economic, social and cultural rights for people with disability.

A lack of full compliance to the Transport Standards means people with disability in Australia continue to face discrimination on public transport and are disadvantaged across the whole journey. Without stronger regulatory mechanisms to ensure compliance to the Transport Standards and the Disability Discrimination Act, the capacity of the Transport Standards to create systemic change will be limited.

The importance of the Transport Standards in the broader disability policy landscape should not be understated. Given there will not be an opportunity to review the Transport Standards for another 10 years, it is vital that the outcomes of this review represent the views and lived experience of the disability community with the central goal to improve accessibility, not limit the intended effect of the Transport Standards for another decade. As such, the review should seek to enhance the regulatory framework to build a culture of inclusion rather than non-compliant practice.

If reviewed with the benefits to people with disability at the centre of decision-making, the Transport Standards can be a vital platform from which the benefits of inclusion and accessibility can be demonstrated, moving Australia towards a system of more equitable and universal infrastructure design and policy. This may also require harmonisation of accessibility legislation in Australia to address barriers to transport outside the scope of this review or the Transport Standards. True accessibility and inclusion cannot be achieved in isolation from the broader environment and has social and economic benefit for all people.

¹ *Disability Discrimination Act 1992* (Cth) s 31.

² James Vincent et al, 'Economic cost of violence abuse, neglect and exploitation of people with disability' (Research Report, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, February 2023) 82, 176, 185-6, 187.

³ See Australian Human Rights Commission, Submission No 30 to the Department of Infrastructure, Regional Development and Cities, *2017 Review of the Disability Standards for Accessible Public Transport 2002* (6 December 2018).

⁴ *Australian Human Rights Commission Act 1986* (Cth) s 7.

⁵ *Ibid* s 11(1)(g).

⁶ *United Nations Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, 2515 UNTS 3 (entered into force 3 May 2008) ('CRPD').

⁷ *Ibid* art 4(1)(b).

⁸ *Ibid* art 4(5).

⁹ *Ibid* art 3(f).

¹⁰ *Ibid* art 9.

¹¹ *Ibid* art 31.

¹² Article 33 of the CRPD (n 6) is in relation to National Implementation and Monitoring. Article 33(2) specifies that:

States Parties shall, in accordance with their legal and administrative systems, maintain, strengthen, designate or establish within the State Party, a framework, including one or more independent mechanisms, as appropriate, to promote, protect and monitor implementation of the present Convention. When designating or establishing such a mechanism, States Parties shall take into account the principles relating to the status and functioning of national institutions for protection and promotion of human rights.

¹³ *Committee on the Rights of Persons with Disabilities, Concluding Observations on the combined second and third periodic reports of Australia*, 22nd sess, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019, adopted 20 September 2019) 5 [18a].

¹⁴ *Disability Discrimination Act 1992* (Cth) s 4.

¹⁵ *Ibid* s 5.

¹⁶ *Ibid* s 6.

¹⁷ *Ibid* ss 5-6.

¹⁸ *Ibid* s 11.

¹⁹ *Ibid* s 31.

²⁰ *Ibid* s 31(2)(a).

²¹ Under the *Disability Discrimination Act 1992* (Cth), Part 2 deals with 'Prohibition of disability discrimination'. Section 34 provides 'If a person acts in accordance with a disability standard this Part does not apply to the person's act'.

²² See *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1977* (NSW); *Anti-Discrimination Act 1992* (NT); *Anti-Discrimination Act 1991* (Qld); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1998* (Tas); *Equal Opportunity Act 2010* (Vic); *Equal Opportunity Act 1984* (WA).

²³ See Department of Social Services (Cth), *Australia's Disability Strategy 2021-2023* (3 December 2021) < [Australia's Disability Strategy 2021-2031 | Disability Gateway](#) > ('*Australia's Disability Strategy*').

²⁴ Department of Social Services (Cth), *Australia's Disability Strategy 2021-2031 Outcomes Framework* (28 February 2023) 2 <

<https://www.disabilitygateway.gov.au/sites/default/files/documents/2021-11/1816-outcomes-framework.pdf>>.

- ²⁵ See Australian Human Rights Commission, *Free and Equal: A reform agenda for federal discrimination laws* (Position Paper, December 2021) <[Free and Equal: A reform agenda for federal discrimination laws \(2021\) | Australian Human Rights Commission](#)> (*Free and Equal Position Paper*).
- ²⁶ Ibid 141.
- ²⁷ Ibid citing Queensland Advocacy Incorporated, Submission 63, *Free & Equal Inquiry*, 11; Legal Aid NSW, Submission 12, *Free & Equal Inquiry*, 19.
- ²⁸ *Australian Human Rights Commission Act 1986* (Cth) s 11(1)(a)-(ab)
- ²⁹ Department of Infrastructure, Transport, Regional Development and Communications (Cth), *Third Review of the Disability Standards for Accessible Public Transport 2002* (Final Report, November 2021) 13 (*Third Review of Transport Standards*).
- ³⁰ Australian Human Rights Commission, *Annual Report 2012-2022* (3 November 2022) 18.
- ³¹ As of 7 June 2023.
- ³² In the following reporting years, the specified number of complaints have referred specifically to the Transport Standards:
- 2017-18: 10 complaints
 - 2018-19: 7 complaints
 - 2019-20: 53 complaints
 - 2020-21: 4 complaints
 - 2021-2022: 4 complaints
 - 2022-23: 8 complaints (up to 7 June 2023).
- ³³ *Disability Discrimination Act 1992* (Cth) s 55; *Disability Standards for Accessible Public Transport 2002* (Cth) 33A.1; *Disability (Access to Premises – Buildings) Standards 2010* (Cth) s 5.1.
- ³⁴ *Disability Standards for Accessible Public Transport 2002* (Cth) pt 33A.
- ³⁵ An overview of exemption applications and outcomes is available on the Commissions website: 'Exemption applications under the Disability Discrimination Act 1992 (Cth)', *Australian Human Rights Commission* (Web Page) <[Exemption applications under the Disability Discrimination Act 1992 \(Cth\) | Australian Human Rights Commission](#)>.
- ³⁶ Australian Human Rights Commission, *Notice of decision on application for temporary exemptions: Australasian Railway Association* (9 June 2022) [2.2], pt A, pt B <[Exemption applications under the Disability Discrimination Act 1992 \(Cth\) | Australian Human Rights Commission](#)>. See also: Australian Human Rights Commission, 'Australasian Railway Association exemption application (2020)', *Exemption application under the Disability Discrimination Act 1992* (Cth) (Web Page) <<https://humanrights.gov.au/our-work/legal/exemption-applications-under-disability-discrimination-act-1992-cth#ARA2020>>.
- ³⁷ See Australian Human Rights Commission, 'City of Ryde Council temporary exemption application (2021)', *Exemption applications under the Disability Discrimination Act 1992* (Cth) (Web Page) <<https://humanrights.gov.au/our-work/legal/exemption-applications-under-disability-discrimination-act-1992-cth#COR2021>>.
- ³⁸ See: Australian Human Rights Commission, *Notice of decision on application for temporary exemption: City of Ryde Council* (18 May 2023) <[Exemption applications under the Disability Discrimination Act 1992 \(Cth\) | Australian Human Rights Commission](#)>.
- ³⁹ *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.2(2).
- ⁴⁰ Ibid sch 1.

- ⁴¹ See: Victorian Auditor-Generals Office, *Accessibility of Tram Services* (Independent Assurance Report to Parliament 2020-21:7, October 2020) <[Accessibility of Tram Services | Victorian Auditor-General's Office](#)>.
- ⁴² Transport for New South Wales, *Accessibility Audit Findings* (Report, July 2021) 6 <[Accessibility Audit Findings Report \(nsw.gov.au\)](#)>.
- ⁴³ *Disability Discrimination Act 1992* (Cth) s 3 (a).
- ⁴⁴ Patrick Hatch, 'People with disabilities 'locked at home' as brakes slammed on transport accessibility' *The Age* (Online, 17 June 2023) <[Disability access on Melbourne's tram network stalls, with no new accessible stops in 12 months \(theage.com.au\)](#)>.
- ⁴⁵ Alison Xiao, 'Australia misses 20-year public transport accessibility target as many train and tram networks fail people with disabilities' *ABC News* (Online, 16 January 2023) <[Australia misses 20-year public transport accessibility target as many train and tram networks fail people with disabilities - ABC News](#)>.
- ⁴⁶ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings* (24 October 2018) Cat. no. 4430.0 <[Disability, Ageing and Carers, Australia: Summary of Findings, 2018 | Australian Bureau of Statistics \(abs.gov.au\)](#)>.
- ⁴⁷ *Ibid.*
- ⁴⁸ Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Cth), 'Aviation White Paper' (Web Page) <<https://www.infrastructure.gov.au/infrastructure-transport-vehicles/aviation/aviation-white-paper>>; Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Cth), 'Aviation White Paper – Terms of reference' (Web Page) <[Aviation White Paper - Terms of Reference | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#)>;
- ⁴⁹ See Australian Human Rights Commission, Submission a16 to the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Cth), *Aviation White Paper Terms of Reference* (9 March 2023).
- ⁵⁰ See Elias Visontay, 'Australia's airlines and airports urged to improve treatment of travellers with disabilities', *The Guardian* (Online, 3 February 2023) <<https://www.theguardian.com/australia-news/2023/feb/03/australias-airlines-and-airports-urged-to-improve-treatment-of-travellers-with-disabilities>>; Zach Harvard, 'Airlines and airports alike have been called to improve their treatment of passengers with disabilities by a Royal Commission into Disability', *Travel Weekly* (Online, 7 February 2023) <<https://www.travelweekly.com.au/article/airlines-and-airports-to-step-up-treatment-of-disabled-travellers/>>; Joe Attanasio, 'Turned away from flights, crawling down aisles and rejected loo breaks: Australians with disabilities say they are being 'dehumanised and humiliated'', *9 News* (18 November 2022) <<https://www.9news.com.au/national/australians-with-disabilities-suffer-dehumanising-treatment-at-airports-travel-news/b7de6139-258a-4e86-a615-031eb0e89074>>; Eleanor Beidatsch, 'Budget airlines make it hard for people with disabilities to travel, but Australian tourist sights get top marks', *ABC News* (online, 6 October 2022) <<https://www.abc.net.au/news/2022-10-06/why-people-with-disabilities-stay-home-and-avoid-flying-analysis/101440056>>; Cait Kelly, 'Second-class citizen': man lifted on to plane as Darwin airport had no ramp for wheelchair users', *The Guardian* (online, 6 October 2022) <<https://www.theguardian.com/society/2022/oct/06/second-class-citizen-man-lifted-on-to-plane-as-darwin-airport-had-no-ramp-for-wheelchair-users>>; Melanie Dimmitt, 'A timeline of Aussie travellers with disability being mistreated by airlines' *Hireup* (online, 14 October 2022) <<https://hireup.com.au/news/a-timeline-of-aussie-travellers-with-disability-being-mistreated-by-airlines/>>; Evelyn Leckie, 'Former disability discrimination commissioner Graeme Innes calls for change after 'humiliating' Adelaide Airport experience', *ABC News* (online, 15 May 2022)

<<https://www.abc.net.au/news/2022-05-15/sa-adelaide-airport-disability-discrimination-complaint/101068140>>.

- ⁵¹ Marta Pascual Juanola and Nell Geraets, 'Tired of the fight': Paralympian not allowed on flight with wheelchair', *The Sydney Morning Herald* (Online, 2 June 2022) <[Paralympian Karni Liddell blocked from boarding Jetstar flight with wheelchair \(smh.com.au\)](https://www.smh.com.au/paralympian-karni-liddell-blocked-from-boarding-jetstar-flight-with-wheelchair-20220602)>.
- ⁵² Department of Infrastructure, Transport, Regional Development and Communications (Cth), *Scope of conveyances: dedicated school buses* (Consultation Paper, Stage 2 Reforms of the Disability Standards for Accessible Public Transport 2002) <<https://www.infrastructure.gov.au/sites/default/files/documents/dedicated-school-buses.pdf>>.
- ⁵³ **Victoria 'Students with Disabilities Transport Program'**: See 'Getting to and from school for students with disability', *Vic.Gov.Au* (Web Page 23 December 2021) <[Getting to and from school for students with disability | Victorian Government \(www.vic.gov.au\)](https://www.vic.gov.au/getting-to-and-from-school-for-students-with-disability)>; **New South Wales (NSW) 'Assisted School Travel Program'**: See 'Assisted School Travel Program for school students with disability', *NSW Government* (Policy) <[Assisted School Travel Program for School Students with Disability \(nsw.gov.au\)](https://www.nsw.gov.au/assisted-school-travel-program)>; **Queensland 'School Transport Assistance Program'**: See 'School transport assistance program for students with disability procedure', *Queensland Government* (Web Page, 27 October 2022) <[School transport assistance program for students with disability procedure \(qed.qld.gov.au\)](https://www.qed.qld.gov.au/school-transport-assistance-program)>; **Northern Territory 'Special Needs Transport'**: See 'Transport for students with special needs', *NT.Gov.Au* (Web Page, 4 December 2018) <[Transport for students with special needs | NT.GOV.AU](https://www.nt.gov.au/transport-for-students-with-special-needs)>; **South Australia 'Transport for students with disabilities'**: See Department of Education (SA) *School Transport Policy* (1 February 2021) 33-4 <[School transport policy \(education.sa.gov.au\)](https://www.education.sa.gov.au/school-transport-policy)>; **Western Australia 'Transport Assistance Program'**: See 'Education Support Students' *School Bus Services* (Web Page) <[School Buses > Transport Assistance > Who's Eligible > ED Support Students](https://www.education.wa.gov.au/school-buses-transport-assistance)>; **Tasmania 'Transport Assistance Program for Students with Disability'**: See Department of Education (Tas), *Transport Assistance Program for Students with Disability Procedure* (2 November 2021) <<https://publicdocumentcentre.education.tas.gov.au/library/Document%20Centre/Transport-Assistance-Program-for-Students-with-Disability-Procedures.pdf>>; **Australian Capital Territory 'Special Needs Transport'**: See 'Special Needs Transport Guidelines', *Transport Canberra ACT Government* (Web Page) <[Special Needs Transport Guidelines - Transport Canberra \(act.gov.au\)](https://www.act.gov.au/transport-canberra/special-needs-transport-guidelines)>.
- ⁵⁴ See The Allen Consulting Group, *RIS analysis of Dedicated School Bus exclusion option* (Report, October 2009) <https://www.infrastructure.gov.au/sites/default/files/migrated/transport/disabilities/review/files/School_Bus_RIS_final.pdf>.
- ⁵⁵ Ibid 7; See Public Interest Advocacy Centre, *Submission to Reforms of the Disability Standards for Accessible Public Transport 2002 – Stage 2 Consultation Regulation Impact Statement* (9 August 2022) 20 <[Submission to the Reforms of the Disability Standards for Accessible Public Transport 2002 – Stage 2 Consultation Regulation Impact Statement | Public Interest Advocacy Centre \(piac.asn.au\)](https://www.piac.asn.au/submission-to-the-reforms-of-the-disability-standards-for-accessible-public-transport-2002-stage-2-consultation-regulation-impact-statement)>.
- ⁵⁶ Physical Disability Council of NSW, *Response to the Reform of the Disability Standards for Accessible Public Transport Regulation Impact Statement* (9 August 2022) 14.
- ⁵⁷ See Physical Disability Council of New South Wales, *Taxi Troubles: the experiences of people with disability and taxis in NSW* (Report, February 2023) <[apo-nid322005.docx \(live.com\)](https://www.pdcnsw.org.au/ipo-nid322005.docx)> 12-13; Eden Gillespie, 'We're not a priority': people with disabilities wait up to three hours for transport in regional Queensland', *The Guardian* (Online, 21 April 2022) <[We're not a priority: people with disabilities wait up to three hours for transport in regional Queensland | Queensland | The Guardian](https://www.theguardian.com/australia-news/2022/apr/21/we-re-not-a-priority-people-with-disabilities-wait-up-to-three-hours-for-transport-in-regional-queensland)>.

⁵⁸ Victorian Equal Opportunity and Human Rights Commission, 'Who's on board? Public transport for people with disabilities in Victoria' (Report, October 2013) 14; See Annette Ferguson, 'Dog Guide Refusal Incident Report 28 October 2022' (Report, Dog Guide Handlers Australia).

⁵⁹ See Matilda Marozzi, 'People with disabilities left feeling 'helpless' and 'humiliated' after trying to access subsidised taxi fares' *ABC News* (Online, 18 October 2022) < [People with disabilities left feeling 'helpless' and 'humiliated' after trying to access subsidised taxi fares - ABC News](#)>.

⁶⁰ Annette Ferguson, 'Dog Guide Refusal Incident Report 28 October 2022' (Report, Dog Guide Handlers Australia).

⁶¹ *Disability Discrimination Act 1992* (Cth) s 8.

⁶² See The Allen Consulting Group, *Review of the Disability Standards for Accessible Public Transport* (Final Report, Minister for Infrastructure, Transport, Regional Development and Local Government and the Attorney General (Cth), October 2009); Department of Infrastructure and Regional Development (Cth), *Review of the Disability Standards for Accessible Public Transport 2002* (Final Report, July 2015); *Third Review of the Transport Standards* (n 29).

⁶³ See The Allen Consulting Group, *Review of the Disability Standards for Accessible Public Transport* (Final Report, Minister for Infrastructure, Transport, Regional Development and Local Government and the Attorney General (Cth), October 2009); Department of Infrastructure and Regional Development (Cth), *Review of the Disability Standards for Accessible Public Transport 2002* (Final Report, July 2015); *Third Review of the Transport Standards* (n 29).

⁶⁴ Australian Human Rights Commission, Submission No 30 to Disabilities Transport Access Secretariat, Department of Infrastructure, Regional Development and Cities, *Review of the Disability Standards for Accessible Public Transport 2002* (6 December 2018) 4; Public Interest Advocacy Centre, Submission 90, *Free & Equal Inquiry*, 8; The Committee on the Rights of Persons with Disabilities, *Concluding Observations on the Second and Third Combined Reports of Australia*, 22nd sess, UN Doc CRPD/C/AUS/CO/2-3 (15 October 2019) para 18(a)(c); *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability*, Overview of responses to the Promoting inclusion Issues paper (October 2021); Public sentiment for a mandatory reporting framework is also documented in the Department of Infrastructure, Transport, Regional Development, Communications and the Arts (Cth), *Stage 2 Reforms of the Disability Standards for Accessible Public Transport 2002* (Public Consultation Report Summary, September 2022) 4.

⁶⁵ *Disability Discrimination Act 1992* (Cth) s 32.

⁶⁶ See: New South Wales Government, 'NSW Budget 2022-23 – Record Investment for Regional Transport and Roads' (Media Release, 21 June 2022) <https://www.budget.nsw.gov.au/sites/default/files/2022-06/20220620_01_FARRAWAY-Record-investment-for-regional-transport-and-roads-continues-to-soar.pdf>.

⁶⁷ *CRPD* (n 6) art 31. **Article 31 – Statistics and Data Collection:**

1. States Parties undertake to collect appropriate information, including statistical and research data, to enable them to formulate and implement policies to give effect to the present Convention. The process of collecting and maintaining this information shall:
 - a) Comply with legally established safeguards, including legislation on data protection, to ensure confidentiality and respect for the privacy of persons with disabilities;
 - b) Comply with internationally accepted norms to protect human rights and fundamental freedoms and ethical principles in the collection and use of statistics.
2. The information collected in accordance with this article shall be disaggregated, as appropriate, and used to help assess the implementation of States Parties' obligations

under the present Convention and to identify and address the barriers faced by persons with disabilities in exercising their rights.

3. States Parties shall assume responsibility for the dissemination of these statistics and ensure their accessibility to persons with disabilities and others

⁶⁸ *Australia's Disability Strategy* (n 23) 41-2.

⁶⁹ See The Allen Consulting Group, *Review of the Disability Standards for Accessible Public Transport* (Final Report, Minister for Infrastructure, Transport, Regional Development and Local Government and the Attorney General (Cth), October 2009); Department of Infrastructure and Regional Development (Cth), *Review of the Disability Standards for Accessible Public Transport 2002* (Final Report, July 2015); *Third Review of the Transport Standards* (n 29).

⁷⁰ See *Free and Equal Position Paper* (n 25) 91-186.

⁷¹ *Ibid* 39.

⁷² *Ibid* 55.

⁷³ *Ibid* 58.

⁷⁴ See *Disability Discrimination Act 1992* (Cth) pt 3.

⁷⁵ Queensland Advocacy Incorporated, Submission 63, *Free & Equal Inquiry*, 11 cited in *Free and Equal Position Paper* (n 25) 119.

⁷⁶ *Disability Discrimination Act 1992* (Cth) ss 5(2)-(3), 6(2)(b)-(c).

⁷⁷ See *Free and Equal Position Paper* (n 25) 58-80.

⁷⁸ See *Ibid* 75-76.

⁷⁹ Explanatory Memorandum, Equal Opportunity Bill 2010 (Vic) 17 quoted in *Free and Equal Position Paper* (n 25) 63.

⁸⁰ *CRPD* (n 6) art 9.

⁸¹ See *Free and Equal Position Paper* (n 25).

⁸² *Free and Equal Position Paper* (n 25) 140, citing Public Interest Advocacy Centre, Submission 90, *Free & Equal Inquiry*, 9.

⁸³ International Transport Forum, OECD, *Economic Benefits of Improving Transport Accessibility* (Roundtable Report 165, 2017) 9.

⁸⁴ See Daphne Federer and David Lewis, 'Towards a Framework for Identifying and Measuring the Benefits of Accessibility' (Discussion Paper No 2017-03, International Transport Forum, February 2017).

⁸⁵ See *Ibid* 40-55.

⁸⁶ See Australian Government, *Budget Strategy and Outlook* (Budget Paper No 1, October 2022) 119-145 < https://archive.budget.gov.au/2022-23-october/bp1/download/bp1_2022-23.pdf>.

⁸⁷ 'Reform of the Disability Standards for Accessible Public Transport 2002 (Transport Standards)', *Department of Infrastructure, Transport, Regional Development, Communications and the Arts* (web Page) < [Reform of the Disability Standards for Accessible Public Transport 2002 \(Transport Standards\) | Department of Infrastructure, Transport, Regional Development, Communications and the Arts](#)>.

⁸⁸ *Third Review of Transport Standards* (n 29) 71,118.

⁸⁹ *Disability Discrimination Act 1992* (Cth) sub-ss 21B, 29A; *Disability Standards for Accessible Public Transport 2002* (Cth) pt 33.7.

⁹⁰ *Finney v Hills Grammar School* [1999] HREOCA 14 (extract at (1999) EOC 93-020). Affirmed on review in *Hills Grammar School v Human Rights and Equal Opportunity Commission* (2000) 100 FCR 306, 318 [48]. See also *Access For All Alliance (Hervey Bay) v Hervey Bay City Council* [2004] FMCA 915, [84].

⁹¹ (1997) EOC 92-903

⁹² (1997) EOC 92-903, 77, 453. Since 2000, Commissioners have had no role in the handling of complaints.

⁹³ *King v Jetstar Airways Pty Ltd (No 2)* [2012] FCA 8.

⁹⁴ *Kristjansson v Queensland* [2018] FCCA 3894; *Sklavos v Australasian College of Dermatologists* [2016] FCA 179; *Forest v HK and W Investments Pty Ltd* [2014] FCCA 209. In these cases, unjustifiable hardship was considered in the context of indirect/direct disability discrimination also, not the Transport Standards.

⁹⁵ *Disability Standards for Accessible Public Transport 2002* (Cth) pt 33.7(3)(m).

⁹⁶ *Disability Standards for Accessible Public Transport 2002* (Cth) pt 33.7(3)(l).

⁹⁷ Australian Human Rights Commission, *Equivalent Access under the Disability Standards for Accessible Public Transport 2002* (Cth) (Guidelines, July 2002) <<https://humanrights.gov.au/our-work/disability-rights/publications/guidelines-equivalent-access-under-disability-standards>> (*Equivalent Access Guidelines*).

⁹⁸ See generally *Disability Standards for Accessible Public Transport 2002* (Cth) pt 33.7(3).

⁹⁹ *Haraksin v Murrays Australia Limited (No 2)* [2013] FCA 217.

¹⁰⁰ *Haraksin v Murrays Australia Limited (No 2)* [2013] FCA 217 at [86].

¹⁰¹ Australian Human Rights Commission, Submission No 30 to the Department of Infrastructure, Regional Development and Cities, *2017 Review of the Disability Standards for Accessible Public Transport 2002* (6 December 2018) 14-5.

¹⁰² *Disability Standards for Accessible Public Transport 2002* (Cth) s 33.4, 33.7(3)(o).

¹⁰³ *Disability Discrimination Act 1992* (Cth) s 3(a).

¹⁰⁴ *Disability Discrimination Act 1992* (Cth) s 3(c).

¹⁰⁵ *Disability Standards for Accessible Public Transport 2002* (Cth) s 1.3.

¹⁰⁶ See *Disability Discrimination Act 1992* (Cth) s 12(8)(ba).

¹⁰⁷ *Third Review of Transport Standards* (n 29) 98-9.

¹⁰⁸ *Ibid* 10, 104, 123.

¹⁰⁹ *Ibid* 125, 136, 139.

¹¹⁰ *Australian Human Rights Commission Act 1986* (Cth) s 11(g)-(h).

¹¹¹ *Disability Discrimination Act 1992* (Cth) s 67(g)-(h), (k).

¹¹² See International Transport Forum, OECD, *Economic Benefits of Improving Transport Accessibility* (Roundtable Report 165, 2017) 58-72.

¹¹³ See *Equivalent Access Guidelines* (n 97).

¹¹⁴ See Department of Infrastructure and Regional Development (Cth), *The Whole Journey: a guide for thinking beyond compliance to create accessible public transport journeys* (2017).

¹¹⁵ *Free and Equal Position Paper* (n 25) 116.

¹¹⁶ *Accessible Canada Act*, SC 2019, c. 10 (Canada) s 5.

¹¹⁷ *Ibid* s 42.

¹¹⁸ *Ibid* ss 42(2), 42(4).

¹¹⁹ *Ibid* s 18.

¹²⁰ *Ibid* s 37, pt 5.