

30 June 2023

Director
Disability and Transport Standards
Land Transport Policy
Department of Infrastructure, Transport, Regional Development, Communications and
the Arts
GPO Box 594
Canberra ACT 2601
Be email: DisabilityTransport@infrastructure.gov.au

Dear Sir/Madam

**RE: 2022 REVIEW OF THE DISABILITY STANDARDS FOR ACCESSIBLE
PUBLIC TRANSPORT (2002)**

The Australian Taxi Industry Association (ATIA) is the national peak representative body for the taxi travel services¹ industry and more broadly, the *point-to-point transport* sector² in Australia. Its membership comprises the following State and Territory industry representative bodies –

- New South Wales Taxi Council;
- Taxi Council of Queensland;
- Limousine Association of Queensland;
- Taxi Council of South Australia;

as well as ATIA regional branches and company members in –

- Victoria;
- Tasmania;
- Australian Capital Territory (ACT); and
- Northern Territory (NT).

Relevantly then, ATIA represents the majority of stakeholder groups within the point-to-point passenger transport sector across Australia, including –

- booking networks/platforms;
- vehicle fleet operators;
- licence (permit) holders; and
- drivers;

¹ ATIA considers the ambit of “*taxi travel services*” to include –

on-demand and pre-booked, anywhere-to-anywhere, public passenger transport in light vehicles whether hired from a rank, by on-street hailing, or by sourcing electronically (e.g. via a dispatch network / platform).

ATIA’s view of taxi travel accords with the conclusion deduced by Justice Griffiths in *Uber B.V. v Commissioner of Taxation [2017] FCA 110*.

² New service offerings from the Sharing or Gig Economy resulted in a restructuring of the traditional taxi and limousine / hire car (with driver) sector in 2015 to 2017 and its renaming in NSW and SA as the Point-to-Point Transport sector, in VIC and NT as the Commercial Passenger Vehicle sector, in QLD as the Personalised Transport sector, and in WA, Tas and ACT as the On-demand Transport sector. This paper adopts the term *point-to-point transport sector*.

providing taxi, ride-share³ and/or limousine (hire car with driver) services.

In sum, ATIA either directly or indirectly represents over 70,000 small, medium, and large passenger transport businesses. ATIA and its members have a material interest in the matters under consideration in the *2022 Review of the Disability Standards for Accessible Public Transport 2002 - Discussion Paper* (the Paper). We accordingly offer the following observations and comments in relation to the Paper's questions using the order they were posed to transport operators.

ASSUMPTIONS AND CAVEATS:

Taxis v Ride-shares v Limousines

ATIA considers the deliberations of Justice Griffiths in the Federal Court case, "*Uber B. V. v Commissioner of Taxation [2017] FCA 110*", to be informative of the meaning of the terms *taxi*, *limousine*, and *ride-share* for the purposes of this submission. As per that case, unless Commonwealth Legislation makes obvious reference to State/Territory regulation the term *taxi* should be given its ordinary meaning within the community⁴. The Disability Standards for Accessible Public Transport (DSAPT) makes no such reference and so any artificial distinctions between taxi and ride-share conveyances under State/Territory regulations present as a matter of no material consequence⁵.

It also presents as a matter of no material consequence that the DSAPT mention taxis and make no mention of ride-share conveyances, operators or services. From their introduction into the Australia marketplace in 2014, ride-share services have operated in practice as a form of booked taxi service. The public positions advocated by some ride-share platforms that they were outside the purview of the DSAPT present as unconvincing and perhaps a convenient fiction for ignoring accountability for removing discrimination in their operations for people with disability.

For the purposes of this submission then, *ride-share* in a DSAPT context is best understood to simply be a subset or niche within the broader concept of *taxi*, rather than a distinctly unique and separate mode of public transport⁶.

In ATIA's view, the position of limousines in a DSAPT context presents as materially different to taxis, including ride-shares. Limousine conveyances, services and operators are exempt under DSAPT by reason of inherent attributes that also distinguish them for taxis, including ride-shares. ATIA considers the reasons that originally provided cause for exempting limousines from the DSAPT continue to remain valid.

³ "Ride-share" is used in this submission because it is the term in general public use. ATIA notes that it is a misleading and unsatisfactory term for the reasons set out in the SAE International Standard, J3163 (SEP2018), "*Taxonomy and Definitions for Terms Related to Shared Mobility and Enabling Technologies*". It is also a term that was considered and rejected by the Australian Taxation Office when developing its public policy positions regarding "ride-sourcing" (the ATO's preferred term for "ride-share" services).

⁴ *taxi (and ride-share) services are "transportation, by a person driving a private vehicle, of a passenger from one point to another at the passenger's direction and for a fare, irrespective of whether the fare is calculated by reference to a taximeter"*.

⁵ *attempting to import a Statutory or Trade meaning for the term taxi would not only be inappropriate, it also presents as comprehensively frustrated by material differences in the regulatory frameworks operating in the different States and Territories.*

⁶ *i.e. a ride-share service is simply a taxi service that is limited to being hired via a booking platform service (rather than also being available for hire directly with the driver via on-street hailing or at a rank).*

ATIA's comments in this submission accordingly focus on the Paper's application to members of the point-to-point transport sector offering taxi and ride-share services.

ATIA history

Importantly for this submission, it should be noted that ATIA has been an active member of the Government's *National Accessible Transport Taskforce* (NATT) since its inception in 2019. This involvement continues ATIA's longstanding interest in the development and implementation of the DSAPT, as evidenced by its active membership of NATT's predecessors –

- the *National Accessible Public Transport Advisory Committee* (NAPTAC); and before that,
- the *Accessible Public Transport National Advisory Committee* (APTNAC).

Also noteworthy, this submission continues ATIA's practice as a contributor to every previous 5 yearly review of the DSAPT.

Given this history, this submission will intentionally limit rearguing ATIA representations that have been previously well made through NATT, NAPTAC, APTNAC and/or earlier DSAPT reviews. ATIA considers such representations continue to stand and to be readily available elsewhere as part of the public record. That general position notwithstanding, this submission will continue ATIA's practice of drawing specific attention to –

- the unfitness-for-purpose of the (ongoing) target from 31 December 2007 for “*Response times for accessible vehicles are to be the same as for other taxis*”⁷; and
- the unsatisfactory and potentially unsafe incompleteness in the DSAPT in not requiring establishment of a labelling system to identify certified safe anchorage points on wheelchairs and other large mobility devices for affixing active restraints to ensure securement during travel in wheelchair accessible taxis (WATs) or other equivalent vehicles (WAVs)⁸.

COMMENTS AND OBSERVATIONS BY QUESTION:

1. *Are you familiar with the Transport Standards and what they are designed to do? If so, where did you find out about the Transport Standards? If so, how?*

⁷ the deficiency in this target has been accepted by previous DSAPT reviews but it nonetheless remains unremedied – e.g. the 2007 Review's Recommendation No 11 states, “The taxi modal sub-committee be tasked with developing a staged implementation timeframe similar to that for other modes of transport, and an appropriate performance measure, to replace the 2007 milestone for WAT compliance”, and unachieved it was replaced by Recommendation No 6 in the 2012 Review, “That the Australian Government, jointly with industry, state and territory governments, develop consistent national compliance milestones and response times for wheelchair accessible taxis by 31 December 2016”, which was also unachieved.

⁸ ATIA acknowledges that establishing such a system would not be without difficulties, but it is achievable, and had the Commonwealth and State Governments committed themselves to working with the disability sector and industry to co-designing a solution, and it conceivably would have been efficiently and effectively accomplished by 2023.

- 1.1. Yes.
- 1.2. ATIA became aware of the DSAPT through its government engagement activities. (ATIA was a member of the consultation groups tasked with formulating the DSAPT, and as noted above, has been an active member of the advisory groups that have overseen the DSAPT post 2002.)
2. *Do we need to increase awareness of the Transport Standards? If so, how?*
 - 2.1. Yes, ATIA is aware of non-members within the point-to-point transport sector who appear to be poorly informed or misinformed in regard to the DSAPT⁹.
 - 2.2. The Government should consider providing funding and assistance to peak industry representative bodies¹⁰ to provide advice and information to non-members, similar to that which they provide to their members.
3. *Do you provide any training about disability awareness or the Transport Standards? What does this involve?*
 - 3.1. Yes.
 - 3.2. As a general observation, accessibility specific modules are included in the training provided to point-to-point transport drivers (i.e. taxi and ride-share). Discussion of accessibility training and compliance are routinely included on the agendas of taxi industry conferences.
4. *Do you understand your obligations when it comes to removing discrimination from public transport services? How have the Transport Standards helped you to understand your obligations?*
 - 4.1. Yes.
 - 4.2. Notwithstanding some already noted exceptions¹¹, ATIA generally considers the DSAPT as providing practical and helpful guidance to point-to-point transport operators about what they need to do to remove discrimination from their services (and to comply with the Disability Discrimination Act).
5. *Do you think the Transport Standards have removed discrimination from public transport services? Why, or why not?*
 - 5.1. Yes, but not completely¹².
 - 5.2. Point-to-point transport operators with genuine commitment to their local communities and to conducting themselves as good corporate citizens have used the DSAPT to inform and adapt their operations to remove discrimination. Unfortunately, not all point-to-point transport operators share such values, and regrettably, some have in large measure ignored the DSAPT. In ATIA's view,

⁹ As noted above, some large ride-share platforms have incorrectly asserted that they are outside the purview of the DSAPT and so it is highly likely that many thousands of their affiliated drivers may have little or poor awareness of the DSAPT.

¹⁰ e.g. ATIA and its counterparts for other transport modes.

¹¹ e.g. the unfit-for-purpose wheelchair accessible vehicle response times target and the incompleteness associated with not establishing a labelling system for identifying certified safe anchorage points on wheelchairs and similar large mobility devices for affixing active restraints.

¹² i.e. only some discrimination has been removed.

DSAPT's reliance on complaints to initiate enforcement action has proved to be both a strength and a serious weakness. It has been a strength in allowing transport operators time and space to address areas of discrimination that required non-trivial remedies and solutions. However, by falling well short of effectively promoting universal compliance across the whole of the point-to-point transport sector, the complaints based approach has unintentionally promoted market distortions that advantage competitors who intentionally or unintentionally avoided costs that should have been incurred to remove discrimination for people with disability in their operations¹³.

6. *Are you aware of the Guidelines to support passengers, operators and providers when interpreting the Transport Standards? Do you consult the Guidelines to assist you to interpret the Transport Standards? If not, why not?*
 - 6.1. Yes (ATIA is aware of the Guidelines).
 - 6.2. Yes (ATIA consults the Guidelines).
 - 6.3. Not applicable (ATIA consults the Guidelines).
7. *Do barriers still exist for people with disability wanting to use public transport? If so, how do you think the Transport Standards could be improved to help address these barriers?*
 - 7.1. Yes.
 - 7.2. As noted above, there are point-to-point transport operators who currently consider the DSAPT do not apply to their businesses. As a case in point, some ride-share platforms in the point-to-point transport sector do not have any wheelchair accessible vehicles (WAVs) in their affiliated fleets, notwithstanding those fleets comprising tens of thousands of vehicles, and after more than a decade operating in Australia. Those same platforms offer no means for a person with disability to receive or request a wheelchair accessible service. In ATIA's view, there needs to be a determined commitment from the Commonwealth Government to ensure the DSAPT apply to all providers of taxi travel fairly and impartially.
 - 7.3. Similarly in the mass transit sector, many public transport operators have failed to meet their compliance obligations pleading at various times some superiority of Government budgetary constraints over their responsibility (duty) to determinedly remove discrimination. In ATIA's view, these public transport operators have had decades to develop and implement properly funded plans to ensure their compliance with DSAPT's staggered targets. There needs to be a determined commitment from the Commonwealth Government to ensure the DSAPT apply to all providers of transportation services, point-to-point and mass transit, fairly and impartially.
 - 7.4. In ATIA's view, the DSAPT would be improved by a stronger, clearer, and more effective approach to education. Similarly, the DSAPT would benefit from a stronger and more determined approach to enforcement. In ATIA's view, the consequences of non-compliance with the DSAPT need to be measured and proportionate, such that they present to all transport operators as more uncomfortable than the burdens

¹³ Put another way, in advantaging non-complying transport operators in competitive markets the DSAPT has unintentionally disadvantaged complying transport operators in those markets, at least to the extent of the marginal cost burdens associated with DSAPT compliance.

that may attach to responsible compliance. Thirdly, as per ATIA's previous representations, the DSAPT targets need to be refined and amended to hold transport operators accountable for outcomes that are genuinely achievable and within the capacity and control of the respective transport operators.

8. *Do the Transport Standards clearly articulate how to address barriers to ensure you comply with your obligations under the DDA?*

8.1. Generally yes, notwithstanding some exceptions already noted¹⁴.

9. *Do the Transport Standards need changing? If so, please tell us how you think the Transport Standards could be changed and why?*

9.1. Yes.

9.2. ATIA supports the full complement of changes to the DSAPT recommended by NATT.

9.3. In addition to the NATT recommended amendments, as noted above, ATIA considers –

9.3.1. DSAPT's (ongoing) target from 31 December 2007 for "Response times for accessible vehicles are to be the same as for other taxis" remains unfit-for-purpose and requires replacement; and

9.3.2. DSAPT should promote development, and require implementation, of a labelling system that identifies certified safe anchorage points on wheelchairs and other large mobility devices for affixing active restraints.

10. ***Planning a journey*** – *What is your experience supporting people with disability, including their family and carers, to plan a public transport journey? Do the Transport Standards provide sufficient clarity to enable your organisation to remove discrimination for people with disability when planning a public transport journey?*

10.1. ATIA's members in the point-to-point transport sector typically provide whole of journey solutions for customers and they also understand their obligations to remove discrimination for people with disability under the DSAPT.

10.2. Various non-members of ATIA within the point-to-point transport sector, particularly some large ride-share platforms, either misunderstand or otherwise ignore their obligations to remove discrimination for people with disability under the DSAPT. However, ATIA expects that implementation of the full complement of NATT recommendations will remedy this deficiency.

10.3. In ATIA's view, the development of Mobility-as-a-Service (MaaS) and whole-of-journey planning by public sector mass transit agencies have not progressed in Australia as much as would have been hoped or expected. In ATIA's view, the DSAPT focus on public transport providers removing discrimination within their own operations misses or minimises coverage of modal interconnections which can

¹⁴ e.g. the unfit-for-purpose wheelchair accessible vehicle response times target and the incompleteness associated with not establishing a labelling system for identifying certified safe anchorage points on wheelchairs and similar large mobility devices for affixing active restraints.

be very important for people with disability wishing to use public transport for the whole of their journeys.

11. Public transport stops, stations or terminals – *What is your experience supporting people with disability, including their family and carers, at public transport stops, stations, terminals, wharfs and other boarding locations? Do the Transport Standards provide sufficient clarity to enable your organisation to remove discrimination for people with disability arriving and waiting to board?*

11.1. The DSAPT currently provides inadequate guidance to the infrastructure owners of taxi ranks and other point-to-point transport designated on-street and off-street pick-up/drop-off locations¹⁵. However, ATIA expects that implementation of the full complement of NATT recommendations will remedy this deficiency.

12. On-board the public transport service – *What is your experience supporting people with disability, including their family and carers, during a public transport journey (on the vehicle). Do the Transport Standards provide sufficient clarity to enable your organisation to remove discrimination for people with disability during a public transport journey?*

12.1. ATIA's members in the point-to-point transport sector typically provide whole of journey solutions for customers where assistance is made available at the beginning and end of the trip, such as with ingress and egress of the vehicle, but not during travel as the driver must pay full attention to the task of driving. In cases where a passenger with disability may likely require assistance during travel it is highly desirable and recommended that they be accompanied by their carer. Unfortunately, the DSAPT provides no clarity for transport operators or carer organisations in circumstances where the latter may be unwilling or unable to send a carer with the passenger.

13. Disruption to your journey – *What is your experience supporting people with disability, including their family and carers, with planned and unplanned disruptions to the usual operation of public transport. Do the Transport Standards provide sufficient clarity to enable your organisation to remove discrimination for people with disability during planned and unplanned disruptions?*

13.1. ATIA's members in the point-to-point transport sector typically provide whole of journey solutions for customers using a single vehicle on a demand responsive basis. Accordingly, disruptions associated with connections once the journey has commenced are uncommon and unpredictable.

13.2. However, disruptions in the form of late arrival or non-arrival of a vehicle at a pick-up location are an ever present risk for on-demand systems. Taxi and ride-share booking platforms use GPS vehicle tracking to coordinate vehicle arrivals and inform of service delivery delays/problems. As this technology improves, better communication of service delivery delays/problems to customers should be possible.

¹⁵ The infrastructure owners of taxi ranks and other pick-up/set-down points comprise Local and State Governments, Shopping Centres, Airports, Sporting and Entertainment Venues etc.

14. **Complaints** – *In the past five years, have you received any complaints from passengers that said you were not meeting your obligations under the Transport Standards? How did you address these concerns?*

14.1. Yes.

14.2. ATIA’s standard practice has been to refer complaints to the respective service provider and assist in mediating mutually satisfactory outcomes.

15. *What sections of the Transport Standards are you having challenges complying with, and why? For each public transport asset relevant to your organisation, what simple and reliable points of reference (qualitative or quantitative) can you provide as the basis for assessing the extent of compliance against the requirements in the Transport Standards? In the past five years, what improvements have you made to accessibility and safety of public transport services for people with disability?*

15.1. The requirement at s17.7 of DSAPT that, “*Raised taxi registration numbers must be placed on the exterior of passenger doors forward of the handle*” had very high compliance within the Australian taxi fleet post its implementation 31 December 2007 (i.e. virtually 100% compliance). Unfortunately, ride-share vehicles operating as booked taxi services have not complied with the requirement at any time (i.e. virtually 0% compliance). This non-compliance within the ride-share fleet without any apparent adverse consequences, has seemingly spilled over to encourage falling compliance within the taxi fleet. Unfortunately, a minority of taxi operators in recent times have become less diligent in replacing raised registration numbers on their vehicles, arguing that if their ride-share competitors do not have to have to comply then why should they. In ATIA’s view, this is a disappointing development which hopefully will be remedied by implementation of the full complement of NATT recommendations, especially those directed at removing perceived inconsistencies of coverage within the personalized transport sector regarding s17.7.

15.2. As articulated in ATIA’s submissions to the 2007, 2012 and 2018¹⁶ DSAPT reviews, it is simply not within a taxi network’s capacity to ensure, and so be held accountable for achieving, equal or better response times for wheelchair accessible taxis (WATs) vis-a-vis other taxis (sedans/wagons). Taxi networks simply do not exercise the necessary control over many critical elements in the service supply chain that materially impact “response times” as imagined by a usual reading of the DSAPT target. For example, Taxi Networks -

15.2.1. do *not* control the number or proportion of WATs in their affiliated fleet (i.e. determined by State Government Regulation and/or affiliates responding to market forces);

15.2.2. do *not* control the number or proportion of WATs affiliated with their fleet that are on-road and available for hire at any point in time and/or in any particular place (i.e. determined by WAT drivers and others responding to market forces);

¹⁶ which properly should have been the 2017 DSAPT review.

- 15.2.3. do *not* have line or other directive control over WAT drivers (i.e. drivers are self-employed small or micro business owners);
- 15.2.4. do *not* (generally) own or otherwise control the WAT vehicles affiliated with their fleet (predominately owned and controlled by affiliates);
- 15.2.5. do *not* (generally) control the price(s) of WAT services (i.e. determined and set by State Government Regulation); and
- 15.2.6. may be effectively prevented by State/Territory regulation from dispatching WATs (e.g. such as in cities/jurisdictions where Government Regulators have established centralised booking/dispatching arrangements, namely Sydney, Canberra, Adelaide, and Perth).

Unfortunately, none of the NATT recommendations address the unfit-for-purpose wheelchair accessible vehicle response times target problem and so a remedy outside of that process will be required.

16. *As at 31 December 2022, to what extent are the public transport assets of your organisation compliant with the requirements in the Transport Standards?*

- 16.1. No comment. (ATIA is an industry representative body and not a transport operator per se.)
- 16.2. The taxi including ride-share component of point-to-point transport sector is highly regulated by State and Territory Governments. The relevant State/Territory regulatory agency is best placed to gather and report compliance by point-to-point transport operators with the DSAPT within their jurisdiction.

CONCLUSION

ATIA and our members are fully committed to the goal of removing discrimination for people with disability. However, it is fundamentally unfair for Governments and others to expect some private sector transport providers to bear the costs of making their services accessible while their competitors are allowed to ignore such costs. In particular, it is unequivocally not in the public interest to allow very large private and public sector transport operators to avoid DSAPT compliance costs because it very seriously distorts the efficient and effective operation of markets for mobility services. In ATIA's view, the DSAPT need to advance the accessibility of the public transport system as a whole and to that end we would urge the Commonwealth Government to give higher priority to –

- 1. implementing the full complement of NATT recommendations;
- 2. remedying deficiencies in the WAT (or WAV) response target in DSAPT;
- 3. establishing a labelling system that identifies certified safe anchorage points on wheelchairs for affixing active restraints; and
- 4. updating DSAPT on a regular and timely schedule to maintain their fitness-for-purpose.

Yours sincerely

Blair Davies
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Australian Taxi Industry Association