

Submission to the 2022 Review of the Disability Standards for Accessible Public Transport 2002

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Introduction

The Australian Government's 2022 Review (Review) of the *Disability Standards for Accessible Public Transport 2002 (Cwlth)* (Transport Standards) Part 34 requires that a review of the efficiency and effectiveness of the Transport Standards is undertaken every five years. The Federal Department of Infrastructure, Transport, Regional Development, Communications and the Arts (DITRDCA) announced the 2022 Review on 22 December 2022.

The *Disability Discrimination Act 1992 (Cwlth)* (DDA) allows disability standards to be formulated in a range of areas and prohibits both direct and indirect discrimination on the grounds of disability, both to a person with disability as well as family members, carers and associates (hereafter referred to as "discrimination").

The purpose of the Transport Standards is to provide requirements for public transport operators and providers to make their services accessible and remove discrimination for people with disability.

Terms of reference – 2022 Review

The Review will consider the efficiency and effectiveness of the Transport Standards, including:

1. whether discrimination has been removed, as far as possible, according to the requirements for compliance set out in Schedule 1 of the Transport Standards
2. any necessary amendments to the Transport Standards.

The Review will focus on:

- Assessing and reporting public views
- Progress towards removing discrimination for people with disability on public transport services
- Identifying areas of reform to the Transport Standards
- Assessing public transport operator and provider compliance with the requirements set out in Schedule 1 of the Transport Standards, including target dates for compliance in Schedule 1, Part 4 of the Transport Standards.

NSW context and focus of Review

Transport is a significant enabler of equality and a driver of social and economic activity. Accessible transport is required to provide all Australians, including people with disability, the opportunity to participate fully in their community and the economy. Public transport connects people with disability to work or study opportunities, essential services such as healthcare as well as family, friends, social and community activities.

Transport for NSW (TfNSW) acknowledges the importance of ensuring standards remain responsive and fit-for-purpose into the future. Guidance which provides clarity and flexibility is increasingly important in assisting transport operators and providers in fulfilling their obligations under the DDA. This is particularly critical in an evolving transport and technology environment and when there is a strong focus on providing solutions tailored to achieve the best customer outcomes.

TfNSW is committed to ensuring the views and needs of people with disability in the community are sought and considered in the development and delivery of projects, policy, and programs. The TfNSW Accessible Transport Advisory Committee (ATAC) comprises of representatives from more than 20 disability and ageing organisations across NSW. ATAC provides independent advice to TfNSW, with the aim of improving public and private transport access for people with a disability and older people. The commitment to customer-focused outcomes through improved accessibility and inclusiveness of the NSW public transport system is central to the current TfNSW Disability

Inclusion Action Plan 2018-2022 and remains a high priority in the new five-year Plan, which is currently under development.

The Transport Standards are made under the DDA and comprise prescriptive statutory requirements for public transport infrastructure and assets. Since their introduction in 2002, the Transport Standards have been successful in bringing about significant improvements to accessibility to the NSW public transport system. For example, in NSW, 67 per cent of suburban, intercity and regional stations are wheelchair accessible (250 of 373 stations). This compares with:

- London Underground with around a third of Tube stations and half of Overground stations wheelchair accessible
- Paris Metro with nine fully accessible stations out of a total of 309 (3 per cent)
- New York City which has 126 of its 472 stations, or 27 per cent, with elevators or ramps that make them fully accessible.¹

Today, more than 93 per cent of transport customer journeys in NSW begin from locations which are accessible to people with disability. More than \$2 billion has been invested through the Transport Access Program, resulting in safer and more accessible transport at train stations, ferry wharves, transport interchanges and in new commuter car parks. In the last five years alone, TfNSW has made accessibility improvements as part of the program to 49 train stations and five ferry wharves.

The NSW Government is investing billions of dollars in new networks, assets and infrastructure. For example, Sydney Metro and Parramatta Light Rail are being delivered to the highest level of accessibility. New fleets are also being purchased to replace legacy non-compliant assets.

Future directions

A new approach to the Review process is needed

TfNSW supports the continuous improvement of the Transport Standards and the contribution it makes to accessible public transport. However, TfNSW observes that the potential effectiveness in the review process for achieving outcomes for people with disability may be impacted by the timeliness and the implementation approach of the five-yearly Statutory Review provision.

Since 2019, the Australian Government has led a two-stage process to reform the Transport Standards. The current review process, launched in 2022 to align with legislation requirements, conflicts and overlaps with the reform process which is yet to conclude. This creates challenges for jurisdictions to effectively plan and deliver current and new compliance obligations.

TfNSW believes that a comprehensive revision of the statutory review approach is required. This should include revisiting the overarching principles, objectives and timeframes, with an intention to optimise the process in the current regulatory and operational environment.

The review provision in the Transport Standards was fit for purpose at its inception and successful in achieving considerable progress. However, in the 20 years since the inception of the Transport Standards there has been:

- Considerable progress in achieving accessible public transport
- Significant expenditure by State, Territory and Local Governments on making public transport accessible

¹ [Wheelchair access & avoiding stairs - Transport for London \(tfl.gov.uk\)](#) - accessed 19 April 2023; [Network accessibility | RATP](#) - accessed 19 April 2023

- Positive cultural change amongst transport authorities, providers and others in accepting responsibility and actively seeking better accessibility outcomes for people with disability
- An evolution in jurisdictional expertise when seeking solutions for accessibility challenges and a better understanding of the complexity involved in upgrading ageing infrastructure on a significant scale
- Development of a nuanced, informed and pragmatic approach by disability advocates in understanding the challenges faced by transport operators and how these might be overcome
- Increased collaboration, customer engagement and partnership between governments, transport operators and disability advocacy organisations in delivering accessibility outcomes
- Innovation in transport services (such as rideshare, on demand transport etc.)
- Rapid advances in technology particularly in communications and information provision.

Improving the review process would also provide an opportunity to review application terms such as 'infrastructure' and 'premises' and harmonisation with the *Disability (Access to Premises – Buildings) Standards 2010 (Cwlth)* (Premises Standards). As the Guide to Policy Impact Analysis states, regarding evaluation:

Even the best proposals should be periodically reviewed to determine if intervention is still needed or could be improved. Changes in technology, demography, consumer preferences or the introduction of other regulations can affect the relevance or effectiveness of any set of rules...which were not conceived at the turn of the twentieth century and which are still evolving rapidly.²

Prescriptive regulation versus principles or performance-based regulation

The Transport Standards are typical of prescriptive regulations, which are considered suitable for the particular regulatory circumstances underlying disability access to public transport in the late twentieth century. Prescription based on technical standards, supports standardisation and can create barriers to the adoption of new technology.³

Internationally, the aviation industry has moved to performance-based regulation because it allows a proactive approach to managing risk. In that sector, performance-based regulation has developed in response to rapidly evolving technological innovations. This regulatory model in the aviation context sets minimum performance objectives that must be met, favours innovation and flexibility while remaining effective and safe.⁴ The National Construction Code is a performance-based code which sets out the requirements for the construction of buildings in Australia. Performance requirements state the level of functionality which a Performance Solution or Deemed-to-Satisfy Solution must meet.⁵

TfNSW acknowledges that performance-based regulation is not always superior to the prescriptive model. A mix of prescriptive and performance-based elements might better meet the current and future needs of the sector. This combination should ensure that the regulatory elements are mutually supportive; setting out prescriptive regulatory requirements but providing mechanisms where performance-based alternative processes are adopted.⁶

² Australian Government Guide to Impact Policy Analysis, p.40

³ https://www.icao.int/Meetings/a41/Documents/WP/wp_107_en.pdf accessed 21 April 2023

⁴ https://www.icao.int/Meetings/a41/Documents/WP/wp_107_en.pdf accessed 21 April 2023.

⁵ [Understanding the NCC | NCC \(abcb.gov.au\)](https://www.ncc.gov.au/understanding-the-ncc) accessed 21 April 2023

⁶ Rex Deighton-Smith, Process and performance-based regulation: challenges for regulatory governance and regulatory reform [Minding the Gap \(trb.org\)](https://www.trb.org) p. 101.

Upgrading existing assets is complex and costly. Despite significant investment, NSW along with all other jurisdictions, has been unable to meet the disability standards compliance targets which were due for completion at the end of 2022. All jurisdictions, including NSW, will need to balance the remaining compliance obligations from the 2002 target dates with any new reforms.

The remaining 2002 compliance requirements and any new reforms require flexible planning and outcomes-based prioritisation approaches to be enabled to ensure that investment is going to areas with the highest impact on customer outcomes.

TfNSW is currently developing the Disability Compliance Management Strategy (Strategy). This will be a multi-modal strategy designed to guide prioritisation and management of the remaining compliance activity and any emerging compliance requirements. The objective is to demonstrate an evidence-based approach in prioritising and planning activities to meet statutory obligations under legislation, with a focus on investing in activities that enhance the highest priority outcomes for people with disability for an accessible and inclusive transport system. Critically, the Strategy will be informed by an extensive consultation process with people with disability, their families, carers and other disability stakeholders representing the interests, rights and wellbeing of people with disability. Development of the Strategy intends to provide a transparent and inclusive approach to addressing and prioritising the remaining Transport Standards compliance obligations, within the competing area of budgetary constraints in NSW.

Compliance reporting is complex and needs to be fit for purpose

The review process prescribed in the Transport Standards is tied to 'assessing public transport operator and provider compliance with the requirements set out in Schedule 1 of the Transport Standards'. However, while compliance reporting has a useful function, in the context of transport assets it is very complex and resource intensive.

Measuring strict compliance is not the only indicator of performance or positive outcomes for customers. For example, a location may have minor deviations from strict compliance in all aspects, rendering it non-compliant with the Transport Standards. It may nevertheless still provide a safe, functional and accessible outcome for most customers with disability. Equally, a bus stop location may be fully compliant, but have no footpath connections, rendering it non-useable for many customers.

Reporting needs to reflect the intent of the legislation, which is to proactively provide an accessible public transport system outcome for people with disability. TfNSW therefore takes a functional approach to inform customers of the accessibility of the network to assist with journey planning and decision making.

Compliance driven by reporting may result in work that is prioritised to improve performance indicators rather than by achieving real outcomes for people with disability. Full compliance is unlikely to be achievable and prescriptive compliance targets could be counterproductive in a public transport environment. For example, while 24 more ferry wharves in Sydney have been made wheelchair accessible since 2011 (66 per cent are accessible), the difficult geography and residential land use in some harbourside locations means that it is almost impossible to provide fully compliant access. Closure of these wharves would improve overall compliance measures but would not produce the best outcomes for the community.

There is no requirement to report on compliance within the Premises Standards, which are also made under the DDA. The later implementation of the Premises Standards and its performance-based requirements are a more contemporary approach to meeting compliance than that in the Transport Standards. The Premises Standards and the Transport Standards have heavy interplay

when applied to public transport assets. A process of timely harmonisation is required for any changes to both Standards and must be prioritised.

Funding

Adequate funding is a recurring issue in reviews of the Transport Standards and a barrier to achieving compliance as it is currently understood.

The Transport Standards were endorsed by the Australian Transport Council in 1999, on the stipulation the Australian Government should provide sufficient funding to State, Territory and Local Governments for their full implementation. As jurisdictions discovered, there are significant challenges in retrofitting extensive statewide, historical infrastructure in the context of a continuous operating environment. To date, funding and implementation of accessibility upgrades to meet existing requirements of the Transport Standards has been borne entirely by State, Territory and Local Governments and transport operators. The provision of financial support to implement the Transport Standards needs to be a consideration by the Australian Government, particularly when retrospective application is required.

Technology and information

TfNSW acknowledges that while new technology does eliminate some barriers for certain disability groups, it can adversely impact another. For example, digital information screens are critical for people with hearing impairment but cannot be used by some people with vision impairment. As technology continues to change the way customers receive transport information, it will be important for transport operators and providers to identify and demonstrate how information systems as a whole meet equivalency in a user's preferred format.

Consideration also needs to be given to the introduction of new technologies that replace existing systems. Grandfathering of existing technologies might be required until new technology is widely adopted by users. Transport operators should be allowed to discontinue installing legacy technologies currently prescribed by the Transport Standards where it is demonstrated that an alternate technology is widely available and has the same performance outcome through consultation with the disability sector. These changes may assist in achieving compatible systems and encourage investment by industry in system development. Any future changes to the Transport Standards should consider adoption of performance-based requirements for technology and information provision requirements.

Emerging technology, such as connected and automated vehicles (CAVs), has the potential to provide access to public transport for people with disability. As iMOVE, the national centre for transport and mobility research and development, notes, CAV technologies are advancing more quickly than governments can regulate. People with disability have high expectations of CAVs. The development of standards and regulations, especially for people with disability who need the technology the most, risks falling behind.⁷

The report of the iMOVE CAV project recommended to progressively incorporate CAV unique standards into the Transport Standards by:

1. Including CAV in the Transport Standards: Create a separate class of 'conveyances': driverless

2. Updating the definition of Public Transport

⁷ [Australia's Public Transport Disability Standards and CAVs \(imoveaustralia.com\)](https://www.imoveaustralia.com) accessed 25 April 2023.

3. Including standards for digital infrastructure⁸

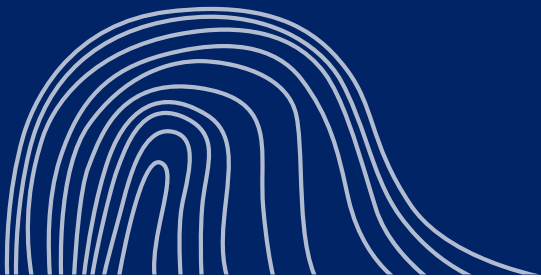
The report also recommended:

Creating a separate guideline for CAV that can serve as a live document until agreements about the specificities have been reached. Once these agreements are made and if they are ready to be deployed, consistency could be achieved before the agreement reaches the Transport Standards.⁹

A comprehensive review is required to identify whether the current Transport Standards adequately cover the scope of technological advances being developed and implemented; and the most effective regulatory approach to adequately address these technological enhancements and deliver the highest customer-focused outcomes.

⁸ [dsapt-cav-main-report.pdf \(infrastructure.gov.au\)](#), August 2021, p.7 accessed 25 April 2023.

⁹ [dsapt-cav-main-report.pdf \(infrastructure.gov.au\)](#), p.7.



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