



28 August 2007

Review of the Disability Standards for Accessible Public Transport  
Allen Consulting Group  
Level 12  
210 George St  
Sydney NSW 2000

KINGSFORD  
LEGAL CENTRE

By fax: 02 9247 2455  
And email: [dstransport@allenconsult.com.au](mailto:dstransport@allenconsult.com.au)

Dear Sir/Madam

**Submissions for Review of the Disability Standards for  
Accessible Public Transport**

Kingsford Legal Centre (**KLC**) welcomes the opportunity to contribute to the Review of the Disability Standards for Accessible Public Transport.

***About Kingsford Legal Centre***

KLC is a community legal centre located in Kensington in Sydney, New South Wales, and was first established in 1981. We are committed to human rights and the achievement of social justice. We do a range of advice and casework, law reform work and community education. We work to promote access to and reform of the legal system.

KLC is also a teaching facility and is part of the University of New South Wales Law School.

KLC gives free legal advice to people who live, work and study in the Botany and Randwick Local Government areas. We give advice in many areas of civil law and have a specialist employment law clinic. We also have a specialist state wide discrimination law practice. Within our discrimination practice we handle both Commonwealth and State discrimination matters, including complaints of disability discrimination.

There are a number of recommendations for reform of *Disability Standards for Accessible Public Transport 2002 (the Standards)* that KLC would like to submit, based on our observance of their application in the past five years.

***Summary of Recommendations***

We recommend that the following adjustments be made to the Standards:

1. That a monitoring system be implemented to ensure that public transport providers and operators comply with the standards; and

2. That public transport providers should be encouraged to accommodate new or different technologies, in the following ways:
  - Inclusion of a more comprehensive “Objectives” or “Purposes of the Standards” section, which includes a statement that encourages public transport providers and operators to accommodate new or different technologies; and
  - A requirement that public transport providers or operators independently test new or different technologies, which they are reluctant to allow on public transport due to safety or other concerns.

### ***Monitoring System***

The Standards are a very important and valuable tool for improving the lives of people with disabilities. They set out a wide range of standards which public transport providers and operators are required to meet in order to improve accessibility of public transport to people with disabilities.

These Standards are enforced through a complaints based system. This means that the only mechanism for monitoring the Standards is for people affected to bring complaints against the relevant public transport provider. The burden for implementing the goals and aims of the Standards falls on people with disabilities, who are required to bring time-consuming, stressful and possibly expensive legal action to enforce their rights under the Standards.

KLC believes that the Standards should impose a positive duty upon public transport providers to monitor their compliance with the Standards. While we believe that the complaints based system should still be retained as part of the Standards, it is important that a monitoring system also be implemented.

The monitoring system should include a duty upon public transport providers to produce a periodic report to the Human Rights and Equal Opportunity Commission (**HREOC**) or another independent body on how they are meeting their obligations under the Standards and any action they have taken in response to complaints brought against them. HREOC or the independent body could then provide the public transport provider with a response setting out possible areas for improvement and a timetable for these improvements to be made.

The combination of a complaints and monitoring based system would ensure that public transport providers keep up with their obligations under the Standards, and would share the burden of ensuring compliance between the public transport providers and people with disabilities.

### ***New or Different Technologies***

In our experience in dealing with disability discrimination in public transport matters we have noticed a general reluctance by transport service providers to accommodate new or different technologies, which assist in improving the standard of living of those with disabilities. As technology improves, there are more options available to people with disabilities to enhance their quality of life. It is important that public transport providers, which provide a service so essential to everyday living, do their best to acknowledge and accommodate these new or different technologies.

We are aware that when a public transport provider is faced with the prospect of a new or different technology used to assist a person with a disability, they have a number of concerns. These concerns can include their ‘duty of care’ to other passengers and operators, and the possibility of ‘opening the floodgates’ if they accommodate the technology in question. This can then lead a public transport provider to refuse to accommodate the

technology on safety grounds, without testing it. KLC believes that this is against the spirit of the Standards and should be discouraged.

KLC believes that the Standards should be amended to encourage public transport providers to acknowledge the benefits of technological advancements. Public transport providers should accommodate as far as possible disability aids and technologies which they have not previously allowed or had on their services.

We would like to see the Standards amended in two ways. Firstly, we would like to see included in an “Objectives” section a statement about the need for public transport providers to accommodate new or different technologies as much as possible. Secondly, we would like the Standards to impose a positive duty on public transport providers to independently test new or different technologies, which they would otherwise not allow on their services.

### *Objectives of the Standards*

KLC has noted that the purposes of the Standards have not been set out in any great detail. We would recommend that the “Purposes” section of the Standards (Part 1 Division 1.1) be redrafted to more comprehensively set out some of the guiding principles behind the Standards.

We submit that in this section it is important to include a specific provision stating that public transport providers should accommodate as far as possible new or different technologies which are used to assist people with disabilities. While this provision will not necessarily be legally enforceable, it will encourage public transport providers to accommodate new or different technologies and will also guide judicial interpretation of the rest of the Standards.

### *Testing New or Different Technologies*

While it is important to include the issue of new or different technologies in the objectives section, KLC does not think this will be sufficient to overcome the reluctance of public transport providers to be open to these technologies.

KLC recommends that improvements to technology may be addressed by establishing an obligation to independently test new or different technologies. If a person with a disability indicates to the public transport provider that they would like to use or carry an aide on a public transport service and the public transport provider is reluctant to let this happen, then the obligation would arise. If the public transport provider does not have any problem accommodating the request then there would be no obligation to test. However, if the public transport provider has safety or other concerns about the new or different technology, then we believe that the provider should organise for the technology to be tested. KLC recommends that the technology be tested independently. The independent test should give due consideration to issues such as safety and how the technology could be accommodated.

We also recommend that information outlining how the testing was done and the results of the independent test should be made available to the public, in order for the process to be seen to be transparent. However, it is important to note that we do not recommend the publication of the name of the person with a disability who has sought to have the technology accommodated. This will protect the privacy of that person.

An obligation to independently test a new or different technology will, we believe, result in a greater openness on the part of public transport providers to these technologies. It will guard against the tendency outlined above, to put new or different technologies in the ‘too hard’ basket.

## **Conclusion**

KLC welcomes this review of the Standards and is hopeful that it will result in an improvement to the lives of people with disabilities. In particular KLC hopes that this review will result in a system of monitoring of the Standards and the encouragement of public transport providers to accommodate new or different technologies.

We are happy to provide any further information that we are able to. If you have any questions regarding the above submissions, please do not hesitate to contact Teena Balgi on (02) 9385 9566.

Yours faithfully  
KINGSFORD LEGAL CENTRE

Teena Balgi  
Solicitor

Ting Lim  
Student Law Clerk