

Reforms of the Disability Standards for Accessible Public Transport 2002 – Stage 2 Consultation

Submission by Spinal Cord Injuries Australia



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1. About Spinal Cord Injuries Australia

Spinal Cord Injuries Australia (SCIA) is pleased to provide this submission to The Department of Infrastructure, Transport, Regional Development and Communications to Stage 2 Consultations for Reforms of the Disability Standards for Accessible Public Transport 2002 (transport standards).

SCIA is a dedicated advocacy service for people with spinal cord injuries and similar disability. We currently employ around 200 staff across services nationwide including 14 staff dedicated to our Policy and Advocacy work in New South Wales. Some of our staff provide advocacy services from our regional office in Alstonville in Northern NSW.

SCIA provides specialty knowledge in Spinal Cord Injury and similar neurological conditions, and broader knowledge and experience across physical disability. SCIA was founded in 1967 by people with acquired spinal cord injury and continues to employ many people with spinal cord injury and similar physical disability. Having this representation on our staff creates a vast knowledge base that helps us to meet the individual needs of the people who use SCIA's services.

Alongside the many advocacy services that we provide to people with disability, SCIA actively promotes the rights of people with disability to equal access to the physical environment, transportation and other facilities and services [1]. It is a human right under the United Nations Conventions on the Rights of Persons with Disabilities (CRPD) to have accessible, safe, and convenient public transport in their local area, so the entitlement to live independently without barriers to roads and transportation can be realised.

We believe these reforms of the transport standards provide an opportunity for people with disability, and the disability sector more broadly, to build a cooperative relationship with transport operators and providers for the inclusion, safety and wellbeing of people with disability

2. Introduction

Since the transport standards were introduced in 2002, and despite conducting 5 yearly reviews, there has been little substantial reform to accessibility standards and only minor changes to modernise infrastructure and services [2].

The second five yearly review recognised that after more than a decade since their introduction the transport standards may not be meeting the current and future needs of people with disability, nor are they providing sufficient flexibility or guidance to transport operators and providers to practically fulfil their obligations under the Disability Discrimination Act 1992 (DDA) [2].

For people with disability, discrimination continues to create significant barriers to all services including transport. The slow implementation of the 2002 transport standards and the inadequacy in the compliance and reporting framework have contributed to these barriers [2].

Data on the use of public transport by people with disability has not been collected by the Australian Bureau of Statistics (ABS) since 2009. Often, research from 2009 would be considered obsolete, however many of the issues that impacted people with disability on public transport in 2009 are still relevant today and there are additional issues that have emerged with the reintroduction of light rail and the introduction of rideshare services [2].

In 2009, almost 30% or 1.2 million of the estimated 3.8 million people with disability at that time reported having difficulty with accessibility to public transport. Over a decade later, a 2020 report by the Australian Human Rights Commission on the new guidelines for public transport accessibility stated that more than one in five or 21.7% of people with disability in Australia needed help using public transport.

In a brief submission it is difficult to describe how essential accessible public transport is to people with disability for participation in community, social, economic, and daily life activities, and how much harm is caused by the discriminatory practices and attitudes that perpetuate exclusion and inequality.

For people with disability, each journey requires a significant amount of consideration and preparation and should include cooperation from the operators and providers of public transport whose role it is to get all users of public transport to their destinations safely. These reforms to the transport standards will remove existing ambiguity for operators and providers by clarifying their role in improving service accessibility for people with disability.

While the transport standards were accompanied by compliance targets for operators and providers, not much has been done to enforce them. Regulation has still proven to be the most efficient way to compel transport operators and providers to distribute information in a timely and accessible way even though cases bought by individuals have had to take the path of proving direct or indirect discrimination under the Disability Discrimination Act 1992 (DDA) [3].

This is backed up by the Transport for All, Disability Resource Centre (DRC) report 2018, which was written after three five yearly reviews of the transport standards. According to the DRC report, transport operators and providers were unwilling to follow through on any suggestions to improve accessibility for people with disability [4].

Of course, compliance and regulation alone cannot improve accessible and safety on public and private transport for people with disability. Planning, construction, design, customer service and technology are all essential and interconnected for an accessible transport journey [5]. But failure by operators and providers to meet their commitment to accessibility creates systemic problems across the transport system that endure for years and even decades.

Therefore, SCIA believes non-compliance with the transport standards should now be unlawful and operators and providers should be subject to mandatory reporting particularly as it relates to their ongoing compliance with the transport standards. The lack of accountability by some transport operators and providers makes it very clear that accountability to the transport standards will only occur if operators and providers are required by law to do so. We will continue to address the importance of regulation and mandatory reporting later in this submission.

SCIA is very pleased that reforms to communication standards and the availability of information have been prioritised. Particularly the communication of accessibility features, real time and emergency communication, and signals processes.

For people with disability information needs to be available and accessible so each stage of a journey can be planned to include:

- The location of lowered curbs, footpaths, and pedestrian crossings
- The location of bus stops, train stations, ferry, and light rail terminals and where ramps, accessible toilets and other facilities are located within those settings
- Communication processes so people with disability know if they are getting on the correct transport and if it stops where they need to get off
- The availability of staff if assistance is required
- Ensuring a wheelchair or mobility device will be safely secured
- Advice on what to do in the event of a disruption and alternative travel options during disruption.

And information must be visible, readable, and easily understood by people who are deaf or have a hearing impairment. For people who are blind or visually impaired, information needs to be audible or in Braille. Maps need to be available in Easy Read and other accessible formats. Many people with intellectual disability or people who have a disability that affects their fine motor skills either do not have mobile phones, or they find apps inaccessible so information must be available in other ways and in other formats

Transport staff at the interface of services for people with disability should receive training, including training by people with lived experience of disability. Websites should be amended to ensure that information is updated, consistent and accessible. Most importantly, reporting obligations and regulations should include communication standards for reporting any disruptions to services. Service disruptions should be communicated as soon as the information becomes available.

While the transport standards demonstrate a willingness to ensure that all people with disability can enjoy more accessibility and equity on land and ferry transport, little or no consideration has been given to providing a safe, accessible, and dignified experience during air travel and in airports. Transport standards for air travel and at Australian airports are well below world's best practice.

We believe air travel should be subject to the same reforms as land-based travel and ferries. This SCIA submission will address air travel and the need for consistent regulations and processes that provide clarity and assurance for people with disability.

The Stage 2 reforms of the Disability transport standards are an opportunity to create partnerships with transport operators and providers so people with disability can experience transport and travel in an accessible, efficient, and equitable manner.

In this submission SCIA will provide feedback on sections of the reform that are most relevant to the people with spinal cord injuries and similar disability who use our services.

3. Active restraints on buses

There are genuine risks for passengers in wheelchairs that could be mitigated by mandating active restraints on private and public buses. Wheelchairs are more susceptible to toppling or sliding on buses than other forms of public transport. Buses, as part of the traffic flow, may on occasions brake or accelerate suddenly, negotiate difficult turns, or strike a kerb. Wheelchairs on buses can tip or

slide to the front, rear or laterally, unlike trains and light rail which are only likely to move a wheelchair to the front or rear.

Lateral movement means a wheelchair can slide across the bus aisle and collide with a standing passenger or passengers in the bus seats on the opposite side. SCIA is aware of an incident that seriously injured a passenger due to the lateral movement of a power wheelchair.

Spinal Cord Injuries Australia (SCIA) understands that the question of wheelchair restraints is vexed, and the transport standards do not clearly define how wheelchairs should be restrained. Currently, there is no requirement for public transport buses to provide wheelchair restraints. We are aware however, that Sydney buses have installed single retractable tethering wheelchair restraints at each of the allocated spaces for passengers using wheelchairs.

Although these wheelchair restraints are installed, the bus drivers do not provide any assistance to attach them to the wheelchair nor do they inform the passengers that the restraints are available. Most passengers using wheelchairs are unable to attach the restraints to the wheelchair and may not be travelling with a family member or carer who is able to attach the wheelchair restraint for them. While many people with disability only feel safe using public transport if they are with a carer or family member, it should not be a requirement that people with disability travel with assistance for the purpose of attaching wheelchair restraints.

Another issue that passengers raise is the insufficient time given for passengers to be safely seated or in the case of wheelchairs, positioned into their designated space. Positioning the wheelchair is made more difficult due to the limited turning circle on buses. In some instances, drivers express frustration if they must wait or assist with ramps for wheelchair users to access the bus [4].

For the safety of all bus passengers, SCIA strongly recommends that the transport standards be amended to require public buses to be fitted with active wheelchair restraints and positioned appropriately so as to not interfere with access path width or manoeuvring space.

Furthermore, SCIA would like to propose the Q'straint Quantum wheelchair restraint system (or similar product) be installed in all public buses as it will prevent the front, rear and lateral movement of wheelchairs and the restraint system can be independently operated by the passenger with disability or the bus driver as the pushbutton is located next to both the passenger and the bus driver. The Q'straint Quantum system does not impede the bus operation so delays to the bus timetable or bus scheduling due to attaching wheelchair restraints can be avoided.

As a general principle, the use of restraints – passive and active – should be given adequate consideration based on safety irrespective of the type of conveyance. Little consideration has been given to passenger safety in travelling on the different modes of transport whilst using a wheelchair. Passenger safety must be paramount when decisions are made on configuring seating arrangements and utilising restraints.

4. Taxis, rideshare and accessible taxi ranks

Feedback from people with disability who are reliant on taxis and accessible rideshare vehicles say that lack of availability continues to cause them significant anxiety to the point that they are uncertain if they will arrive at their destination on time regardless of how much time they allow to book and take their journey.

It is common for vehicles to either arrive very late or not turn up at all resulting in people with disability missing appointments, social activities or not getting to work on time. And stories of people with disability waiting for hours late at night for a taxi to take them home are common.

In regional areas the problem is exacerbated because accessible taxis for people in wheelchairs are few and the alternatives to taxis are either limited or non-existent. Additionally, trips can be between towns and in the case of more remote areas, to larger towns, which reduces the number of accessible taxis for local or shorter rides.

Passengers have also reported to us that drivers do not like and therefore decline short or local fares. People with disability who travel with the assistance of companion dogs say drivers either refuse the ride or take off before the customer could get into the vehicle [4].

Rideshare services like Uber Assist have not proven to be a suitable alternative mainly because many people with disability cannot use smartphone apps and the Taxi Transport Subsidy Scheme in NSW (TTSS), and its equivalent in other states, does not apply to rideshare services.

Congestion at locations for loading and unloading passengers with wheelchairs can be such a challenge that it discourages many drivers from accepting rides. In regional areas there is less traffic and congestion, however people with disability are more reliant on taxis due to limitations in the public transport system. Therefore, the transport standards, as they relate to accessible taxi ranks and loading and unloading wheelchair passengers, should apply equally in urban and regional settings [2].

SCIA believes that reforms to improve accessibility for people with disability at taxi ranks should follow the regulatory option in the transport standards to ensure:

- Taxi ranks must connect to accessways and kerb ramps must be placed to the rear of the accessible taxi space
- At a minimum, every fourth space in a taxi rank must be accessible. If there is only one space at a taxi rank it must be accessible
- Designated passenger loading areas that facilitate drop off / pick up points for passengers, kiss and ride facilities for children, and accessible areas for taxis, ride share services and private vehicles to drop and collect people with disability, should have kerb ramps for accessibility.

5. Air travel

SCIA believes that regulation and mandatory reporting is needed to address the many systemic issues in process, accessibility, infrastructure, and a lack of disability awareness that discriminate against people with disability on Australia's airlines and in our airports.

A May 16, 2022, article on abc.net.au described the “dehumanising” treatment of a person with disability in an airline wheelchair at Sydney Airport. In the Canberra Times on May 21, a person with disability who uses a wheelchair said her experience on a domestic flight was “absolute hell” and in the same Canberra times article, former Disability Discrimination Commissioner Graeme Innes, who travels with the assistance of a guide dog, said that: “Airlines and airports have thumbed their noses at disability discrimination law for the last 20 years,” after two separate experiences he had going through security at Darwin and Adelaide airports.

The challenges experienced by people with disability commence from the time they choose and book flights online, through to making their way around the airport, then at check-in and security, all the way to getting on and off the plane. The apparent lack of accessibility, and awareness of the rights and needs of people with disability is stressful and distressing to many passengers.

Airlines and airports and other stakeholders should strive to ensure that people with disability maintain their independence and dignity as passengers. This can be achieved by: regulating changes to airline processes and regulating standards for airport infrastructure; appropriate training on the needs of people with disability and disability aware customer service; and technological and other solutions that can communicate information to people with disability in formats that are accessible.

And regulations should apply equally to airports and airlines. Airports are responsible for accessibility to buildings and infrastructure, security screening, exit immigration and customs. Training on the needs of people with disability and disability awareness are as applicable to airport staff as they are to airline staff.

Consistency in service delivery and built environments, and the associated feelings of familiarity and reliability make people with disability feel safer when travelling [5]. Unfortunately there is huge inconsistency in how air travel is provided to people with disability. Each carrier seems to have its own policy which includes differences in the way people with disability are supported onto planes and when disembarking at their destination. It is important, to the extent that it is possible, to have regulations and processes that are globally aligned to ensure people with disability receive the same treatment wherever they travel. It is disturbing for people with disability to have different processes for domestic and international carriers.

To emulate processes in other jurisdictions, check-in methods could be technology enabled via airline websites, mobile applications, and self-service kiosks with information accessible to people with disability who may be deaf or hearing impaired, blind or visually impaired, or people with intellectual disability or on the autism spectrum. If a technology enabled check in method is unsuitable then in-person service at the airport should be provided. People with disability in wheelchairs should not have to queue for check-in and should receive assistance with carry-on and check in baggage.

In an age when sophisticated technology is used to monitor and reward the behaviour of passengers for commercial purposes, surely data on the individual needs of people with disability could be recorded when they make their first booking, so the information does not need to be repeated for every future booking. People with disability say that phoning an airline to explain their support or mobility requirements after they have booked a flight can often take hours.

The arduous nature of airline travel for people with disability includes being the first onto the plane and the last off the plane. When people with disability board a plane or disembark, airlines, in cooperation with airport services, need to ensure prompt delivery of their wheelchair or device for the equal opportunity of disembarking in a timely manner. This may include assistance using mobility transfer techniques and the use of assistive devices which will require staff to be trained. Lengthy waits while other passengers disembark is discriminatory as are the limitations that apply to the number of wheelchair travellers that are allowed on an airline at any one time.

Consideration must be given to developing minimum standards that carriers must comply with that relates specifically to assistance on and off airplanes for people with mobility issues requiring physical assistance. Currently, there is almost no guidance in the transport standards related to this issue, unlike the consideration that is given to land-based transport. As a result, carriers are free to develop their own policy on this issue which has led to inconsistency and ongoing systemic issues that have negatively impacted people with disability. The status quo can no longer be acceptable. There must be tighter regulation developed that provides greater certainty on how wheelchair users will be assisted on and off airplanes and in gaining access to their mobility device in a timely manner once they've arrived at their destination.

Australia, compared to the rest of the world, does not respond well to the mobility needs of people with disability who travel by air. Other countries and jurisdictions are far more proactive in their efforts to reduce operational complexity and increase accessibility.

For instance, in 2019, The International Air Transport Association (IATA) held wheelchair assistance training for airport staff at Heathrow Airport in London, Indira Gandhi International Airport in India and John F Kennedy Airport in New York. These training initiatives included representatives from airlines, airports, regulators, disability advocacy groups and other stakeholders. In addition to modernising standards and practices and educating on the importance of 'global travel chains' for people with disability, processes to reduce incidents of damage to electric wheelchairs and other assistive devices are also addressed.

6. Providing Access to Designated School Buses

SCIA has never understood why designated school buses were not included in the initial transport standards or subsequent reviews. We believe that designated school buses should be included in the transport standards, and we strongly recommend that accessible, designated school buses should be phased-in during the next 5-10 years.

When students with disability are denied their human right to travel on designated school buses because they are not accessible, they are being denied the right and opportunity to have social interaction with their peers on their way to and from school and to school activities like swimming carnivals and school excursions. The purpose of the National Disability Insurance Scheme (NDIS) is to enhance the social, educational, and economic opportunities of people with disability. We believe it is essential that designated school buses are included in the transport standards so travel to and from school, and during school hours to school excursions, is as accessible to students with disability as it is to other students.

Currently, students with disability are transported separately in a wheelchair accessible taxi or accessible family vehicle, which is implied segregation, and it should be condemned. This issue is exacerbated for students with disability living in rural and remote areas.

SCIA is aware of one family who purchased and now operate a wheelchair accessible taxi so they can transport their child with disability to and from school and to sports carnivals and excursions because the school bus was inaccessible.

If the family had not purchased and operated the wheelchair accessible taxi their child would not be able to attend school at all.

The use of wheelchair accessible taxis by school students increases the overall demand for accessible taxis. While students with disability are not a lesser priority than other people with disability, education and transport authorities and transport regulators should, as a priority look to making designated school buses accessible and look to expand the availability of all modes of transport for students with disability.

7. Regulation and compliance

Spinal Cord Injuries Australia believes the proposed reforms to the transport standards should follow the regulatory option and that regulation should apply equally to public and private operators and providers.

Furthermore, breaches of the transport standards should be deemed unlawful and people with disability who are affected should be able to take their complaints directly to the Australian Human Rights Commission without first having to prove that they were subjected to direct or indirect discrimination under the DDA.

Additionally, representative groups should have the power and right to bring complaints to the Australian Human Rights Commission on behalf of groups of individuals.

While the DDA recognises the central role of public transport in everyday life and makes discrimination on the basis of disability unlawful in the provision of public transport services, as it does in other areas of public life like employment and education, a breach of the transport standards is not unlawful unless direct or indirect discrimination has been proven under the DDA [3].

There is an over reliance on individual complainants to ‘call out’ systemic problems and breaches to the transport standards. Aside from the stress, expense and effort that goes into lodging a complaint with the DDA, these types of conciliated agreements are often reached on the condition of their confidentiality or, if a settlement is reached and a systemic problem is addressed, only the complainant who is party to the settlement agreement can act if the respondent fails to meet their obligations [3].

These anomalies can be corrected by making breaches to the transport standards unlawful [3].

8. The case for Mandatory Reporting

SCIA believes that mandatory reporting needs to be applied to the transport standards for the protection and safety of people with disability when using public transport, and to ensure people with disability have equitable access to services without being subjected to discrimination when using public transport.

We have learnt from evidence to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission) that reporting processes that are not

mandatory or sufficiently independent perpetuate and cover-up discrimination and harm. All levels of organisations and institutions including the highest levels of Government Departments assigned the task of upholding regulations and standards and funding bodies like the NDIS with its own Quality and Safeguards Commission, have been unable to adequately protect people with disability [6].

The current system of funded disability service providers reporting to the agency that provides their funding is not only an inherent conflict of interest, but a motive for funded providers to not report or under report for fear of jeopardising their funding [6].

People with disability experience violence, abuse, neglect, and exploitation in their homes including in NDIS funded supported accommodation, workplaces, schools, prisons, in out of home care and respite centres and any number of other settings and places. Later in our submission we will refer to incidents of abuse and discrimination that regularly occur on our airlines and in airports.

In our view, this new era of accessibility in public transport heralded in by reforms to the transport standards will not realise its full potential if operators and providers, public and private, were allowed to set their own standards when it comes to compliance and reporting.

Therefore, SCIA believes that transport operators and providers should be subject mandatory reporting as it relates to their compliance to the standards including mandatory reporting of any incidents that occur in relation to the transport standards. We also believe that a completely independent entity needs to be established to design and oversee the compliance and reporting mechanisms that public and private operators and providers must conform to.

SCIA proposes a single, independent, and impartial oversight body for all operators, providers, entities, and individuals providing transport services to people with disability. This independent and impartial authority should include both people with disability and people with subject matter knowledge of the transport standards and be given the authority to report and investigate allegations and incidents.

For far too long the disability sector has failed to identify and report incidents of violence, abuse, neglect, and exploitation against people with disability. Of the incidents that were reported, insufficient effort was applied to their investigation because those investigations were invariably carried out by the same institutions responsible for perpetuating the harm. The transport standards should not repeat the mistakes made by other institutions.

9. Conclusion

SCIA advocates for people with disability who have lived experience with the risks and challenges of using the public and private transport system, commercial passenger vehicles including taxis and rideshare vehicles, and airlines and airports.

SCIA believes the opportunities inherent in reforms to the transport standards could have a positive impact on the human rights of people with disability for equal, inclusive access to public transport. An accessible public transport system is integral to the independence of people with disability to pursue opportunities and experience the services that most people in the community take for granted.

We are equally certain that the transport standards should be regulated by legislation and that mandatory reporting should apply to all transport operators and providers to monitor and ensure their ongoing compliance with the transport standards.

People with disability are also quick to point out the positive ‘knock-on’ effect that legislating these transport standards will have for the elderly, parents with prams and small children, and school aged children riding alone.

SCIA is grateful for the comprehensive community consultation and the opportunity to be actively involved. We were enthusiastic participants alongside people with disability, their families and carers and other stakeholders who have had vast experience with these transport standards since they were drafted in 2002.

While no one could dispute the positive intention of the transport standards to remove barriers to a safe and accessible journey for people with disability, most agree that the lack of regulation has made compliance optional for many operators and providers.

Failure to act now by legislating the transport standards in their entirety and enforcing mandatory reporting for all transport operators and providers will be another lost opportunity for people with disability. We should no longer place the interests of others above the right of people with disability to accessible public and private transport.

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