

RESPONSE TO THE 3rd 5 YEAR REVIEW OF THE DISABILITY STANDARDS FOR ACCESSIBLE PUBLIC TRANSPORT 2002

Submission by the Bus Industry Confederation



November 2018

Bus Australia Network



Bus Industry Confederation

25 November 2018

Disabilities Transport Access Secretariat
Road Safety Policy and Transport Standards Section
Land Transport Policy and Safety Branch
Department of Infrastructure, Regional Development and Cities
GPO Box 594
Canberra ACT 2601
Email: DisabilitiesTransportAccessSecretariat@infrastructure.gov.au

**BUS INDUSTRY CONFEDERATION RESPONSE TO THE 3rd 5 YEAR REVIEW OF THE DISABILITY STANDARDS FOR ACCESSIBLE
PUBLIC TRANSPORT 2002**

Introduction

The Bus Industry Confederation (BIC) provides this submission for the 3rd 5 year review of the Disability Standards for Accessible Public Transport (DSAPT) 2002.

BIC is concerned about the lack of progress on many of the issues raised by the industry as part of the first two 5 year reviews.

The current review asks operators, providers and their representative organisations 3 questions:

1. Have you been able to meet the 2017 Transport Standards legislated targets? If not can, you elaborate on the reasons for not being able to meet these targets?
YES, except in instance where whole of journey requirements have not been met due to lack of complying bus stop infrastructure.
2. Are there requirements that have proven to be impractical or difficult to implement? If so, please specify these
YES. These are listed in the following submission
3. Can you provide detail of any initiatives and actions you have undertaken, not currently detailed under the Transport Standards or other legislative requirements, in relation to removing discrimination against people with a disability?
Initiatives and actions undertaken by the bus industry include:
 - **Development of education and information materials for bus and coach operators**
 - **Practical trials such as “Mobility device trials” to improve compliance**
 - **Uptake of technology by operators to improve mobility outcomes for people with disabilities**
 - **Production and provision of signage materials to inform bus customers of DSAPT requirements**
 - **Travel assistance by tourism and coach operations for people with disabilities**
 - **Staff training and education to assist people with disabilities**
 - **Participation on Government DSAPT forums and Committees**

Bus Industry Confederation

In order to answer the questions above more fully BIC presents a number of high level aspects of the Disability Standards for Accessible Public Transport that should be considered as part of this 3rd 5 year review. Most of these were raised in submissions to the first two 5 year review by the Bus Industry Confederation. This is followed by a number of specific issues related to the bus and coach industry.

High Level Issues

The third 5-year review of the Disability Standards for Accessible Public Transport 2002 (DSAPT) once again provides an important opportunity to check that these standards are:

- a) efficient and effective at removing discrimination against persons on the grounds of disability; and
- b) not creating unforeseen or unintended safety, operational or practical problems for disabled persons, public transport passengers in general, and the staff (including contractors) of public transport providers

Modernisation of DSAPT

The Modernisation of DSAPT was a key recommendation of the 2nd 5 year review and the BIC believes that it is essential that the DSAPT reflect changing technologies, infrastructure, services and needs over time. The current process has been slow and bogged down in detail rather than initiating holistic improvements to the Standards to deliver real benefits for people with disabilities, clarify the expectations and responsibilities of providers and focus on mobility outcomes rather than strict adherence to prescriptive standards on a mode by mode basis.

Equal Access and Removing Discrimination

The Bus Industry Confederation supports the spirit and intent of the Disability Standards and the Disability Discrimination Act 1992 (DDA). However, it is matter of significant concern that the legislation has progressively begun to be interpreted more literally than was intended or envisaged. Worryingly, provisions and targets in the Disability Standards are being interpreted by many members of the Disability Community and sector advocates, as a blunt instrument to remove discrimination no matter what the cost.

Applying the Disability Standards in a literal sense without consideration of reasonable practicability can work counterproductively, especially when compliance becomes physically, technologically or economically impossible for public transport providers. This submission contends that such an approach is at odds with the intent of the legislation; namely, to increase accessibility to, and by, public transport services.

A particular concern for the industry is the gap between the intent of the legislation, the implementation of the legislation and the enforcement of the legislation. There is no body or responsible department that a bus operator can approach where an issue arises, who can clarify the intent, the implementation or enforcement of the Disability Standards. The complaints process through the Australian Human Rights Commission (AHRC) provides little clarity in relation to definition or interpretation issues and often results in expensive legal proceedings that do not resolve the issue. There is a need for a body to be able to “make the call” and provide clarity in relation to the interpretation and implementation of the Disability Standards to all public transport providers. **This should not be the courts.**

Bus Industry Confederation

Industry Codes

As a result of industry experience since 2002, industry is uniquely positioned to articulate opportunities to improve the Disability Standards. It is the BIC view that a process should be established for industries, through their national peak bodies, to develop co-regulatory arrangements for the application and amendment of the Disability Standards as they apply to their respective sector. The BIC supports the work that the Attorney General's Department has begun in this area but is concerned about the lack of progress since this issue was raised in the first 5 year review.

The development of Industry Codes of Practice to provide clarity to public transport operators, people with disabilities, State and Territory jurisdictions and enforcement authorities (whoever they might be), needs to be prioritized as part of the Modernisation of the Standards.

From a bus industry perspective, a "Code of Practice for Bus Operations and Disability Standards" would provide practical advice and guidance to operators at a national level on how to meet the requirements of the Disability Standards, and guidance on appropriate equivalent access provisions. A further benefit of a Code would be to increase the consistency of approach adopted by operators across Australia, thus providing people with disabilities with greater confidence and certainty on the layout and operation of public transport services nationwide. These Industry Codes should be recognised by the law.

Conflict with Safety Standards

There is concern that requirements of the Disability Standards do at times conflict with workplace health and safety standards, as well as other legislative and regulatory requirements, that bus operators are obligated to meet.

Compliance with the Disability Standards has led to instances where passenger safety, vehicle standards, occupational health and safety, and workplace practices have been compromised. For example, the open areas where wheelchair spaces are positioned (without the usual "compartmentalizing" of seats) resulting in passengers being thrown into the stairwell, following sharp braking or steering. This risk is made worse by the fact that elderly passengers and mothers in prams are encouraged to sit in these areas. As a consequence, industrial injuries have been sustained, passengers have been subjected to additional risk, and bus operators exposed to possible new legal liabilities.

It is grossly unfair for any service provider, yet alone those operating small to medium sized passenger transport businesses, to be placed in a position where they are expected to make critical judgements that potentially trade off safety and compliance with requirements of the Disability Standards. The specifics of these concerns are outlined later in this submission.

Review of Compliance Timeframe

When the Disability Standards' compliance timetable was designed around two decades ago, it would not have been reasonable to expect it to fully anticipate:

1. the realities of future passenger transport demand by people with disabilities
2. the increased demand for public passenger transport services more broadly driven by escalating world oil prices, higher density urban planning, as well as community concerns about the environment
3. the levels of state and federal government funding directed to accessible passenger transport services
4. whether all of the requirements mandated were workable or achievable within the design and maintenance life of passenger vehicles operating in Australia, or
5. that ambiguity in the interpretation of the legislation and standards would have allowed the purchase of non-complaint vehicles

The BIC believes that it is reasonable to reconsider the Disability Standards' compliance timetable, and as necessary, reprioritise certain elements and their associated target dates. In the absence of unlimited resources, it is absolutely essential that public transport providers in partnership with Government(s) and the Disability Community pursue the elimination of discrimination in a structured manner that realistically seeks to deliver achievable outcomes in a sequence or order designed to promote the greatest benefit. The BIC supports a review of the compliance timeframe to meet accessible transport standards for public transport, including a consistent framework in which compliance assessment takes place.

Australian Human Rights Commission (AHRC)

The AHRC has played a key role in keeping an even-handed approach to the implementation of the Disability Standards and in addressing exemption issues as they have arisen.

However, there is a concern that discretion exists with complainants as to where they direct their complaints about disability discrimination in a public transport context. Presently, complaints can be directed to AHRC or to a respective State / Territory based Anti - Discrimination Commission, Tribunal or Board. There appears to be no mechanism in place to ensure consistency in decision making between these entities, especially in terms of penalties, sanctions or remedies, and accordingly the potential exists for markedly different outcomes to spring from otherwise similar circumstances. This lack of national consistency creates uncertainty for bus operators. AHRC should be the sole agency to deal with complaints related to Disability Standards for Accessible Transport.

As outlined above, the development and recognition in law of modally based industry Codes of Practice would also assist in the determination of complaints.

Bus Industry Confederation

Local Government

Part of the objectives of the Disability Standards was to ensure that the “whole of trip” eliminates as far as possible, discrimination for those with a disability.

While it is generally true that each of the different transport modes have used their best endeavors to meet, or progress toward meeting the Disability Standards, unfortunately, the same cannot be said for some local government authorities in relation to the provision of infrastructure, access to services, bus stops and buildings.

As a result, inaccessible surrounds in some local government areas effectively isolate fully compliant passenger transport services from access points such as bus stops, rail stations and taxi ranks.

Local Government have not been able to achieve outcomes compliant with the Disability Standards’ compliance timeframe because they have not been provided with the required funding. Accordingly, special State and Commonwealth financial assistance is required, as is an extension of the compliance timeframe for public transport providers and local government to make “whole of trip” accessibility a reality.

Specific Bus Issues

Mobility Devices – Identification

The Bus Industry Confederation has been calling for a requirement for mobility device manufacturers to ensure that all devices are appropriately identifiable as safe and suitable for public transport conveyance, and for purchasers of such devices to be made aware of the limitations that the standards impose, for example in the areas of size, mass and maneuverability.

BIC has undertaken bus trials on various mobility types with Australian Standards (AS) to develop such a standard for mobility devices so they can be recognized as DSAPT-compliant.

The Standard developed by Australian Standards, TS 3695.3 2018 (Blue Label Scheme) is highly unsatisfactory, has not taken into account the findings of the bus trials organised by BIC and provides no solution to the problem that was to be addressed.

Further works is required to align access and egress to buses and mobility devices being identifiable as meeting the maneuverability that DSAPT imposes in the case of buses.

Bus Industry Confederation

Mobility Devices – Safety

A concern for bus and coach operators in relation to mobility devices is the safety of people using them and the safety of other passengers.

The areas of concern relate to:

- Mobility devices and their impact on the safety of the user and other passengers on buses in the event of an accident, heavy braking or swerving incident if the device/passenger is not secured.
- The inconvenience caused to other public transport users and the dignity of people with disabilities when mobility devices, which are not suitable for use on a conveyance, break accessibility ramps on entry, or are not able to be maneuvered into allocated spaces due to their size and turning circle.
- The safety consequences of mobility devices of the “scooter” type that carry wet cell batteries. Wet cell batteries are a major concern due to possible leakage; the fluid is very acidic and flammable. Wet cell batteries have also been known to explode on impact and may be a safety hazard in the event of an accident or some form of impact on the battery.
- The effective restraint of mobility devices is a major concern to the industry. The bus and coach industry is required to meet stringent seat strength and anchorage requirements under Australian Design Rule (ADR) 68. Key issues to be considered include seat strength of the mobility device and its safe restraint, unsecured mobility devices and their risk of becoming projectiles and the fitment of anchorage points close to, or affixed to the floor which could inadvertently create trip hazards for other passengers.

The Bus Industry Confederation is concerned that wheelchairs and other mobility devices do not meet any equivalent seat strength or anchorage standard and the actual restraint of such devices to the ADR 68/00 standards is improbable.

In addition, mobility devices vary in their stability and are often at risk of being tipped over, even when restraints, either active or passive, are applied. It should also be recognized that the use of prams with children inside of them are being placed in the wheelchair space unrestrained. This is a significant safety problem and can also prevent a wheelchair from occupying its designated spot.

It is clear that people with disabilities being carried on a bus or coach in a mobility device receives a lower standard of occupant safety attention compared to other passengers in ADR 68/00 seats. This raises a number of legal and safety issues that need to be investigated and addressed.

A further issue for all State and Territory Governments who contract bus services is to consider the impact of “on-time running” and similar Key Performance Indicators when people with disabilities are boarding and alighting buses and having to restrain mobility devices. This can, and does, impact on timetables and can result in operators being penalised under contractual arrangements.

Regional and Remote Bus and Coach Operators

The 'one size fits all' approach to implementing the disability standards for public transport has created significant financial concerns for rural and regional operators.

For regional and remote operations the standards have resulted in increased costs for maintenance and reduced longevity to the operating life of low floor accessible vehicles. These vehicles are often operating on dirt roads, hilly terrain, frequent road culverts and floodways which take a heavy toll on the vehicles, often when there is little or no demand for such vehicles.

The BIC believes that a review of actual operating circumstances and demand for accessible transport services needs to be undertaken to assess whether bus services in many circumstances are the most cost effective and sensible approach to removing discrimination in many operating circumstances.

This situation is exacerbated in regional and remote areas where the lack of complimentary infrastructure, for example curbing, makes it pointless to operate low floor vehicles.

Charter Services

The Bus Industry Confederation does not support charter services being required to meet the accessible transport standards.

Charter services are services carrying specific groups of people who have booked a dedicated and defined service.

If accessible transport is required, this will form part of the charter request by the customer.

The Bus Industry Confederation would like to see the Australian Human Rights Commission (AHRC) confirm that bus and coach charter services are excluded from the requirement to meet the accessible public transport standards.

Coach Tours

The coach sector has had to deal with a considerable level of financial hardship in relation to the installment of wheelchair chair lifts that are rarely used.

The coach sector is seeking greater clarity and a revised guideline regarding equal access to coaches for disabled persons and a common procedure to follow in the absence of wheelchair lifts and/or an accessible toilet. Greater flexibility is required to allow operators to meet the mobility needs of people with disabilities.

Coach operators are faced with the dilemma of people with disabilities with mobility devices wanting to travel in a coach seat. This raises issues around transferring of passengers to a coach seat in a way that does not impact on the dignity of the person and the storage of mobility devices in coach luggage bins. Since such devices are not identifiable as meeting DSAPT requirements, they are sometimes too large for the coach bin

Bus Industry Confederation

and can impact on the overall legal mass of the bus. This can also create workplace health and safety issues for drivers having to move mobility devices in and out of coach luggage bins.

Coach operators are also seeking clarification in relation to destinations and tour visit locations that are not DDA compliant. Many tourist areas simply do not provide the facilities and/or infrastructure for people with disabilities and as such these issues remain out of the coach operator's control.

The Bus Industry Confederation believes that the exemption in relation to 'adventure travel' should be extended to allow coach operators the flexibility to assess the suitability of publically available coach tours and destinations.

Whilst it is clear to the industry that toilets on coaches do not need to meet accessibility standards due to the aisle width restrictions of buses and coaches, confusion still exists within some jurisdictions on this requirement, for example when specifying vehicles for rail replacement coach services.

A clear statement from AHRC or the Federal Department of Infrastructure and Transport in regard to accessible toilets on buses, in accordance with the ADR requirements for aisle width on buses and coaches, would provide clarity on this matter.

Workplace Injury and Practices

The Bus Industry Confederation is concerned about workplace injuries that are occurring as a direct result of the disability standards for accessible transport.

These injuries tend to occur in the event of drivers assisting people in mobility devices that are not suitable to travel on buses or coaches; where infrastructure does not provide easy access to accessible buses; or in attempting to provide equivalent access to a person with a disability.

These issues are an unexpected outcome of the introduction of the DSAPT. The current AHRC process, which relies on consumer feedback and complaints, provides little scope to refuse access to a service for fear of a complaint, thereby compromising safe workplace practices for bus and coach industry staff and imposing significant costs on the industry in the form of injury, rehabilitation and compensation.

The BIC would like confirmation that Work Place Health and Safety regulations override the requirements of the Disability Discrimination Act, Accessibility Standards for Public Transport.

State Government Contracts

An important aspect of the implementation of the accessible transport standards that needs to be addressed by state governments, AHRC and this 3rd 5 year Review is the nature of contractual arrangements that are entered into between State governments and private bus operators to provide contracted route services.

In some States route service contracts do not provide the funding to allow bus operators to upgrade their fleet to meet the compliance timeframe of the disability standards.

For example in NSW and Victoria the government contracts include a minimum age of fleet requirement as well as including the cost of capital as an inclusion in the contract to assist operators meet the age of fleet requirements.

The BIC believes that this DDA review should recommend that contractual arrangements in each state be assessed, and where contracts do not provide incentives or the financial support to renew the bus fleet and meet the compliance timeframe of the Act, consideration be given to providing a general exemption to the bus and coach industry in that State.

A further issue is the definition of “service” and what percentage of bus “services” need to meet the compliance requirements of the DSAPT. This ambiguity creates confusion amongst state governments and operators and the requirements within a service contract. Industry holds the view that a service is a trip. For example, an inward and outward trip is two services unless it is a circular route which would then be a single trip.

For example, under the DSAPT, 55% of services have to be compliant to the standards. This means that 55% of trips must be compliant, not 55% of the bus fleet in a bus operation.

School Bus Exemption

The BIC supports school buses being exempt from the DSAPT.

Whole of Trip Accessibility

The Bus Industry Confederation has previously raised concerns in relation to the provision of compliant infrastructure.

Both state and local governments have lagged behind in relation to investing in infrastructure that is compliant with the disability standards.

Bus Industry Confederation

This often results in bus and coach operators being unable to provide accessible trips as the surrounding infrastructure, for the 'whole trip', does not allow such a trip to occur. Where an operator provides an accessible vehicles in these circumstances it often results in significant assistance by drivers and other passengers to assist the person with a disability. This often compromises the dignity of the person with a disability, puts the driver and passenger at risk of injury, and results in the bus operator (rather than the infrastructure provider) being accused of not providing an accessible service.

There is a need for greater coordination and investment by state and local governments to address the 'whole of trip' gaps that result from infrastructure that is unsuitable for the provision of low floor bus services.

Consideration needs to be given to how the compliance time frame for accessible vehicles and services can more fairly reflect these circumstances, to allow operators to meet compliance requirements in alignment with the provision of infrastructure that is compliant with the standards.

Yours sincerely



Michael Apps
Executive Director
Bus Industry Confederation