Public Interest Advocacy Centre

Submission to the Reforms of the Disability Standards for Accessible Public Transport 2002 – Stage 2 Consultation Regulation Impact Statement

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About the Public Interest Advocacy Centre

The Public Interest Advocacy Centre (PIAC) is a leading social justice law and policy centre. Established in 1982, we are an independent, non-profit organisation that works with people and communities who are marginalised and facing disadvantage.

PIAC builds a fairer, stronger society by helping to change laws, policies and practices that cause injustice and inequality. Our work combines:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change and public interest outcomes.

Our priorities include:

- Reducing homelessness, through the Homeless Persons' Legal Service
- Access for people with disability to basic services like public transport, financial services, media and digital technologies
- Justice for First Nations people
- Access to sustainable and affordable energy and water (the Energy and Water Consumers' Advocacy Program)
- Fair use of police powers
- Rights of people in detention, including equal access to health care for asylum seekers (the Asylum Seeker Health Rights Project)
- Improving outcomes for people under the National Disability Insurance Scheme
- Truth-telling and government accountability
- Climate change and social justice.

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1. List of recommendations

Recommendation 1 – Regular evaluation of Transport Standards

The Transport Standards should be subject to regular legislative evaluation every three years. The results of each evaluation should be properly considered and implemented. In addition to three-yearly evaluations, there should be a mechanism for the public and the Australian Human Rights Commission as the independent oversight body monitoring compliance to request that the Minister for Transport initiate ad hoc inquiries to address emerging issues and new modes of transport.

Recommendation 2 – Mandatory reporting and publication of data on compliance

Mandatory reports should include publication of data on the extent to which the operator and provider complies with the Transport Standards. All data should be provided in accessible formats and should be accompanied by plain English explanations prepared by the transport operator or provider.

Regulatory option 2 should be implemented in an amended form to include incremental expansion of reporting on all sections of the Transport Standards. The Transport Standards should require the Department to consult with disability representative organisations and the disability community to develop the incremental expansion of reporting. The process and stages of incremental expansion of reporting should be embedded into the Transport Standards.

Recommendation 3 – Publication of Action Plans

Transport operators and providers should be required to prepare and publish Action Plans that indicate the steps they will take to ensure they will meet the targets as set out in the Transport Standards.

Recommendation 4 – Funding for the Australian Human Rights Commission to provide independent oversight

Additional funding should be provided to the Disability Discrimination Commissioner, within the Australian Human Rights Commission, to provide independent oversight of reported compliance and Action Plans of transport operators and providers. This funding should allow for targeted and systemic reviews of this compliance.

Recommendation 5 – Comprehensive collection and publication of data

The Federal Government and/or COAG should establish a process for the collection of current data and evidence on the extent to which people with disabilities are able to access public transport on an equal basis across all jurisdictions. Data collected should include organisational data, data from complaints and submissions, research, consultation with staff, customers and the Australian Human Rights Commission. The data collected should be compiled into a publicly available report with a jurisdictional breakdown, published on an annual basis, or at a minimum every two years.

Recommendation 6 – A breach of the Transport Standards should be expressed to be unlawful

A section should be added to the Transport Standards to confirm that a breach of the Transport Standards is unlawful. This should include confirmation that a person may lodge a standalone complaint alleging breach of the Transport Standards in the Australian Human Rights Commission.

Recommendation 7 – Standing provisions under the Australian Human Rights Commission Act 1986 (Cth) and the Federal Court of Australia Act 1976 (Cth) should be amended

The Australian Human Rights Commission Act 1986 (Cth) and the Federal Court of Australia Act 1976 (Cth) should be amended to include a provision allowing organisations to bring a complaint in their own right or on behalf of an individual or two or more individuals in relation to a breach of the Disability Discrimination Act 1992 (Cth) or the Transport Standards to both the AHRC and the Federal Court, where the organisation can demonstrate a sufficient interest in the complaint.

Recommendation 8 - The Australian Human Rights Commission Act 1986 (Cth) should be amended to introduce a provision to limit adverse costs risk for applicants and a one-way costs shifting model

The Australian Human Rights Commission Act 1986 (Cth) should be amended to insert a cost protection provision for applicants similar to section 570 of the Fair Work Act 2009 (Cth). The amendments should specify that costs will only be ordered against an applicant if the court is satisfied:

a) the applicant instituted the proceedings vexatiously or without reasonable cause; or

b) that an applicant's unreasonable act or omission caused the respondent to incur costs.

Where an applicant is successful in a proceeding, the respondent should be liable to pay the applicant's costs.

Alternatively, if a one-way costs shifting model is not adopted, PIAC recommends that the position proposed by the AHRC in its Free & Equal Position Paper dated December 2021 be implemented.

Recommendation 9 - Equivalent access solutions should be developed through consultation and co-design, peer reviewed and certified

A regulatory reform to use equivalent access provisions should be introduced to give transport operators and providers assurance and legal certainty. A regulatory reform should be developed requiring:

- *use of equivalent access provisions in consultation with relevant stakeholders including disability representative organisations and the disability community;*
- *co-design of proposed equivalent access outcomes;*
- *evaluation of consultation and co-design processes;*
- *preparation of a draft report proposing an equivalent access outcome;*
- *independent peer review of the draft proposal of equivalent access outcomes and solutions; and*

- *validation by a certification body of the proposal including how co-design and consultation was incorporated. The certification body should appoint people with expertise and qualifications in accessibility, building compliance and public transport and should include people with lived experience of disability.*

Recommendation 10 – Clarification on consultation requirements

The Transport Standards should provide clarification on how consultation should occur in relation to any sections of the Transport Standards where consultation is encouraged or required. The guidance on consultation contained in the Australian Human Rights Commission 'Guidelines: Equivalent Access under the Disability Standards for Accessible Public Transport 2002 (Cth)' should be incorporated into the Transport Standards.

Recommendation 11 - Include rideshare services in the Transport Standards

The regulatory option should be implemented to amend the Transport Standards to explicitly include rideshare services in the Transport Standards.

Recommendation 12 – Remove dedicated school bus exemptions from the Transport Standards

Regulatory option 1 should be implemented to amend the Transport Standards to remove all exemptions for dedicated school buses.

Recommendation 13 - A new compliance schedule outlining compliance target dates for individual sections of the Transport Standards should be developed in consultation

For any agreed regulatory changes, option 1 should be implemented, namely a new compliance schedule outlining compliance target dates for individual sections of the Transport Standards. The Transport Standards should require the Department to consult with state and territory governments, public transport operators and providers, disability representative organisations and the disability community in developing a new compliance schedule. Consultation should be in line with Recommendation 10 of the recommendations made in this submission. Implementation of all reforms should occur expeditiously and without further unreasonable delay.

Recommendation 14 - Specific standards or legislation for air transport should be co-designed and administered by the Department of Infrastructure, Transport, Regional Development and Communications

Specific standards or legislation for air transport should be co-designed with people with disability for operators and providers. These standards should be administered and monitored for compliance by the Department of Infrastructure, Transport, Regional Development and Communications.

Recommendation 15 - A guide for air travel for customers with disabilities should be developed on an industry-wide basis

A guide for air travel describing the rights and obligations of customers with disabilities and complaint processes should be developed in consultation with customers with disabilities. This should be developed on an industry-wide basis, widely available and promoted by airline staff.

Recommendation 16 - Address the use of Australian Standards in the Transport Standards

The Transport Standards should be updated to either replace references to the Australian Standards with the full text of the applicable standard, or the relevant provisions of the Australian Standards which are used in the Transport Standards should be appended to the Transport Standards. Members of the public should have access to the Australian Standards to understand their rights and be able to hold transport operators accountable to the Transport Standards.

2. Introduction

The Public Interest Advocacy Centre (**PIAC**) has a long history of involvement in disability discrimination litigation and public policy development, particularly in the area of public transport. Of particular relevance is PIAC's work on the various reviews of the *Disability Standards for Accessible Public Transport 2002* (Cth) (**Transport Standards**), including our submission to the Department of Infrastructure, Transport, Regional Development and Communication (**Department**) Stage 1 Consultation Regulation Impact Statement (**RIS**).[1]

Unfortunately, the vast majority of the issues we have identified in past submissions, and the recommendations we have made, have not been addressed. This is because of a failure to implement changes to the Transport Standards despite three reviews over 20 years – specific recommendations have been made following each review,[2] which have not been implemented. Further, the lack of any proper reporting or compliance monitoring framework means there is no accountability or enforceability of the Transport Standards. Moreover, the ongoing shortcomings in the individual complaints process, which have not been rectified, and the reliance on such a process to enforce compliance impedes the capacity of the Transport Standards to act as a driver of any improvement to accessibility of public transport.

In addition to the recommendations we make below, we recommend the Transport Standards be subject to regular legislative evaluation and amended to be fit for purpose. Ensuring that public transport adequately meets the needs of people with disability is critical to increasing the economic and social participation of people with disability and protecting human rights. The continual development of new modes of public transport and new technologies warrants evaluation occurring every three years, instead of the current five-yearly reviews. In addition to introducing three-yearly evaluations, there should be a mechanism for the public and the Australian Human Rights Commission (**AHRC**) as the proposed independent oversight body monitoring compliance to request that the Minister for Transport initiate ad hoc inquiries to address emerging issues and new modes of transport. It is essential that the results of each evaluation or inquiry are properly considered, and that appropriate amendments to the Transport Standards are made, along with other related changes to improve its operation.

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1. PIAC, Submission to the Review of the Disability Standards for Accessible Public Transport 2002, *Flight Closed: Report on the experiences of People with Disabilities in Domestic Airline Travel in Australia* (August 2007) < https://www.piac.asn.au/wp-content/uploads/07.08.24-DSAPT_Review_Sub.pdf> (**Submission to 2007 review**); PIAC, Submission to the Minister for Infrastructure and Transport, *Get on Board! 2012 Review of the Disability Standards for Accessible Public Transport* (31 May 2013) < https://piac.asn.au/wp-content/uploads/13.05.31_-_get_on_board_2012_review_of_the_dsapt.pdf> (**Submission to 2012 review**); PIAC, Submission to the Department of Infrastructure, Transport, Regional Development and Communications, *Third Review of the Disability Standards for Accessible Public Transport 2002* (12 December 2018) <https://piac.asn.au/wp-content/uploads/2019/02/18.12.12-PIAC-Submission-Third-Review-of-Disability-Transport-Standards-FINAL-copy.pdf> (**Submission to 2018 review**); PIAC, Submission to the Department of Infrastructure, Transport, Regional Development and Communications, *Reform of the Disability Standards for Accessible Public Transport: Consultation Regulation Impact Statement* (22 April 2021) < https://piac.asn.au/wp-content/uploads/2021/04/21.04.22-PIAC-Submission-to-DSAPT-CRIS.pdf> (**Submission to Stage 1 reforms**).
2. The Allen Consulting Group, *Review of the Disability Standards for Accessible Public Transport: Final Report* (October 2009); Department of Infrastructure and Regional Development, *Review of the Disability Standards for Accessible Public Transport 2002: Final Report* (July 2015); Department of Infrastructure, Transport, Regional Development and Communications, *Third Review of the Disability Standards for Accessible Public Transport 2002 (Transport Standards)* (November 2021).

Our submission responds to the following reform areas identified in the Stage 2 Consultation RIS, where PIAC has expertise:

- Reporting (chapter 1);
- Equivalent access (chapter 2);
- Rideshare (chapter 3);
- Dedicated school buses (chapter 4);
- Implementation (chapter 61).

We also urge the Department to develop specific standards or legislation for air transport through co-design with people with disability. The Transport Standards fail to adequately take into account the unique elements of air travel, and the level of complexity passengers with a disability encounter when travelling by air. This has resulted in airlines and airports taking an inconsistent approach to accessibility and leaving people with disability with limited options to seek recourse. Urgent reform is required to ensure equal access to air travel.

Recommendation 1 – Regular evaluation of Transport Standards

The Transport Standards should be subject to regular legislative evaluation every three years. The results of each evaluation should be properly considered and implemented. In addition to three-yearly evaluations, there should be a mechanism for the public and the Australian Human Rights Commission as the independent oversight body monitoring compliance to request that the Minister for Transport initiate ad hoc inquiries to address emerging issues and new modes of transport.

3. Regulatory proposals

As a general point, PIAC considers regulatory measures are required to implement proposed reforms to support the elimination of discrimination and provide greater certainty to operators and providers regarding their responsibilities under the Transport Standards and the *Disability Discrimination Act 1992* (Cth) (**DDA**).

Maintaining the status quo or implementing non-regulatory options will not improve outcomes for people with disability, and will not 'eliminate discrimination, as far as possible', consistent with the objectives of the DDA.

The Transport Standards are formulated to provide guidance to public transport operators and providers as to the minimum accessibility requirements that apply to public transport services to enable 'operators and providers to remove discrimination from public transport services'.[3] However, shortcomings in the drafting of the Transport Standards, including the lack of enforcement mechanisms for breaches of the Transport Standards, have led to low levels of industry compliance, enabling continued discrimination.

Despite the Transport Standards setting compliance targets, there has been inadequate monitoring of public transport operators and providers to ensure they are meeting their obligations. Since the introduction of the Transport Standards in 2002, sporadic legal action by individuals has been the only mechanism to enforce compliance.

[3] Transport Standards, s 1.2(2).

In this context, where compliance and enforcement remain difficult even in respect of the minimum baselines established by the Transport Standards, the introduction of non-regulatory options will be ineffective in increasing compliance.

4. Reporting

4.1 International human rights law

The rights of people with disabilities to live without discrimination and to enjoy full economic, social and cultural rights on an equal basis with others are protected in various international instruments, including the International Covenant on Economic, Social and Cultural Rights (**ICESCR**), the International Covenant on Civil and Political Rights and the Convention on the Rights of Persons with Disabilities (**CRPD**).

Relevantly, Article 31 of the CRPD requires the Australian Government to collect appropriate information and data to implement policies to give effect to the CRPD. However, the Stage 2 Consultation RIS acknowledges:

> …The Australian Government is currently unable to effectively report data on public transport accessibility as there is currently no reporting framework in the Transport Standards.
>
> …As there is no nationally consistent approach to reporting, compliance and interpretation of the Transport Standards differs across state and territories and operators and providers.

The collection of data is not only relevant to reporting, but also important for monitoring. Effective monitoring requires data to measure 'the efficiency and effectiveness of the Transport Standards'.[4]

Article 33 of the CRPD, on national implementation and monitoring, creates a positive obligation on national governments to design an effective framework by which they are required to meaningfully implement the CRPD in domestic legislation and civil society. Specifically, it requires the Australian Government to:

- develop a framework to promote and monitor implementation;
- designate one or more focal points within government to manage implementation; and
- consider establishing a coordination mechanism to facilitate action in different sectors.

Similarly, under Article 2(1) of the ICESCR, each State is required to take steps to the greatest extent that it is able in relation to the resources available, with a view to achieving full realisation of the rights contained in that Covenant by all appropriate means, including particularly the adoption of legislative measures.

4.2 Regulatory option: Mandatory reporting on assets

The Transport Standards represent an important mechanism by which Australia should strive to implement the framework referred to in Article 33 of the CRPD. The Transport Standards are oriented towards setting minimum baselines that must be met by transport operators and

[4] Stage 2 Consultation RIS, page 30.

providers. However, to comply with international law and the CRPD, there needs to be a national mechanism to properly monitor and manage implementation of the Transport Standards.

If any of the proposed reforms included in the Stage 1 or Stage 2 Consultation RIS are implemented, particularly as regulatory reforms, it is essential that accurate reporting and monitoring follow. The implementation of regulatory reforms is pointless if there is no effort to improve the current systems of compliance, reporting and transparency. This is critical to identify areas that need further reform, and ensure that evaluations of the Transport Standards are accurate and effective.

Recommendation 2 of the 2012 review of the Transport Standards stated that 'the Australian Government, jointly with state and territory governments, establish a national framework for reporting on progress against the Transport Standards by 31 December 2016'. To date, there is still no mandatory national reporting framework for transport operators and providers.

Operators and providers of transport services should be required to publish data regarding the extent to which they comply with the Transport Standards. Without compliance reporting, there is no governance risk for transport operators and providers, and thus no incentive for them to drive accessibility improvements to their services.

PIAC supports a regulatory option for mandatory reporting. However, in our view none of the regulatory options proposed in Chapter 1 of the Stage 2 Consultation RIS are adequate for the following reasons:

- Regulatory option 1 would only require reporting of any new or substantially refurbished or upgraded assets – as there would be no reporting requirement for existing assets, this would not fully realise the purpose and benefits of mandatory reporting.
- Regulatory option 2 would require reporting on all assets (existing as well as new and substantially refurbished or upgraded) but only for select sections of the Transport Standards – all sections of the Transport Standards should be the subject of mandatory reporting.
- Regulatory option 3 would require reporting on new or substantially refurbished and upgraded assets and selected existing assets against select sections of the Transport Standards. An approach to reporting based on selected existing assets would not account for emerging technologies or new assets or modes of transport. This may lead to uncertainty and gaps in the assets that should be reported on. All assets and sections of the Transport Standards should be the subject of mandatory reporting.

Inadequate reporting will provide inadequate data and will not result in necessary improvements to the accessibility of public transport and the elimination of discrimination.

The non-regulatory option, due to its discretionary nature, will not achieve national consistency of reporting compliance. It will fall short of what is needed for effective monitoring and implementation, and impede the Australian Government's ability to comply with its international obligations.

PIAC supports a regulatory option where reporting is required on *all* sections of the Transport Standards. Relevantly, the Stage 2 Consultation RIS provides:[5]

[5] Page 32.

> The Australian Government would work with state and territory governments and operators and providers to incrementally expand the scope of the reporting regulations, with the aim to eventually cover all standards and to improve the quality of the data being reported.

Despite the above being included in the Stage 2 Consultation RIS, it is not incorporated into any of the regulatory options proposed.

PIAC would support regulatory option 2 if amended to include incremental expansion of reporting on all sections of the Transport Standards. This would improve the quality of the data being reported, provide a better opportunity to identify areas that need further reform and go further towards eliminating discrimination.

The Transport Standards should require the Department to consult with disability representative organisations and the disability community to develop the incremental expansion of reporting. Following consultation, the process and stages of incremental expansion of reporting should be embedded into the Transport Standards to provide an enforcement mechanism.

A national reporting framework on all sections of the Transport Standards is essential not only for the purpose of government monitoring compliance, but it would also assist people with disability by providing clear information on what services are (or should be) accessible, helping with day-to-day travel and use of public transport services.

Currently, there is no reliable data regarding the extent to which transport operators and providers are meeting the compliance targets as set out in the Transport Standards. Therefore, mandatory reporting should go beyond current compliance with the Transport Standards, to also require the development and publication of Action Plans that indicate how transport providers intend to meet future targets.

Recommendation 2 – Mandatory reporting and publication of data on compliance

Mandatory reports should include publication of data on the extent to which the operator and provider complies with the Transport Standards. All data should be provided in accessible formats and should be accompanied by plain English explanations prepared by the transport operator or provider.

Regulatory option 2 should be implemented in an amended form to include incremental expansion of reporting on all sections of the Transport Standards. The Transport Standards should require the Department to consult with disability representative organisations and the disability community to develop the incremental expansion of reporting. The process and stages of incremental expansion of reporting should be embedded into the Transport Standards.

Recommendation 3 – Publication of Action Plans

Transport operators and providers should be required to prepare and publish Action Plans that indicate the steps they will take to ensure they will meet the targets as set out in the Transport Standards.

4.3 Independent monitoring by the Australian Human Rights Commission

While mandatory self-reporting of compliance with the Transport Standards, and associated Action Plans, would add to the transparency of public transport accessibility in Australia, this transparency and accountability is inherently limited because it relies on self-reporting by transport operators and providers.

Therefore, PIAC supports funding an external body to provide independent oversight and monitoring of the information provided by transport operators and providers. This funding should allow for targeted and systemic reviews or audits of compliance of different aspects of reported compliance with the Transport Standards. This approach will both encourage upfront compliance from transport operators and providers and assist people with disability to have confidence that such reporting is accurate.

Given the existing functions of the AHRC under section 11 of the *Australian Human Rights Commission Act 1986* (Cth) (**AHRC Act**), the role of the Disability Discrimination Commissioner and the expertise of the AHRC more broadly, funding should be allocated to the AHRC to provide this independent oversight. This position is consistent with the AHRC *Free & Equal* Position Paper 2021, which said '[c]onsideration should…be given to the Commission having an oversight role with regulatory powers to enforce compliance'.[6]

Recommendation 4 – Funding for the Australian Human Rights Commission to provide independent oversight

Additional funding should be provided to the Disability Discrimination Commissioner, within the Australian Human Rights Commission, to provide independent oversight of reported compliance and Action Plans of transport operators and providers. This funding should allow for targeted and systemic reviews of this compliance.

4.4 Comprehensive collection and publication of data by government

The introduction of mandatory reporting would be more effective if there was a form of public accountability to ensure compliance. Therefore, in addition to mandatory self-reporting by transport operators and providers and independent monitoring by the AHRC, PIAC emphasises the importance of a national framework to collect and publish comprehensive data on compliance with the Transport Standards.

In our 2013 submission, we noted:[7]

> There is a need for collection of baseline data and evidence on the extent to which people with disabilities are able to access public transport on an equal basis. This includes organisational data, data from complaints and submissions, research, consultation with staff and consultation with customers…
>
> Intrinsic to developing a reliable body of data on the extent to which there has been compliance with the Transport Standards is incorporation of data on compliance that is based on the experiences of people with disabilities. Collection of such data is essential given that

6 AHRC, *Free & Equal: A reform agenda for federal discrimination laws* (December 2021), 141.
7 PIAC, Submission to 2012 review, above n 1, 15-16.

the Transport Standards should be classed as beneficial legislation, and the legislative framework is therefore primarily targeted at protecting the rights of passengers with disabilities. Consultation with people with disabilities should be integrated into the design of any data collection process.

The collection and publication of data would be most appropriately coordinated by the Department, or through a dedicated, representative Council of Australia Governments body.

The data collected should be compiled into a publicly available report, with a jurisdictional breakdown, published on an annual basis, or at a minimum every two years.

Recommendation 5 – Comprehensive collection and publication of data

The Federal Government and/or COAG should establish a process for the collection of current data and evidence on the extent to which people with disabilities are able to access public transport on an equal basis across all jurisdictions. Data collected should include organisational data, data from complaints and submissions, research, consultation with staff, customers and the Australian Human Rights Commission. The data collected should be compiled into a publicly available report with a jurisdictional breakdown, published on an annual basis, or at a minimum every two years.

4.5 Accountability and enforcement

The Stage 2 Consultation RIS does not address important issues about accountability of operators and service providers in upholding the Transport Standards, as well as the enforcement mechanisms in place to ensure compliance. For reforms to the Transport Standards to be effective, there must be meaningful accountability and enforcement mechanisms in place. We reiterate our recommendations from our submission to the 2018 review and our submission to the Stage 1 reforms below.[8]

4.5.1 A breach of the Transport Standards should be unlawful

PIAC strongly recommends that the Transport Standards be amended to clearly state that a breach of the Transport Standards is unlawful.

It is clear that the legislature intended that a breach of the Transport Standards would be unlawful. Section 32 of the DDA states that a breach of any disability standards developed under the DDA is unlawful. The Explanatory Memorandum to the DDA confirms that a breach of a disability standard is unlawful. It provides for a person to lodge a complaint to the AHRC under section 69 of the DDA where a disability standard is breached.[9] There is no requirement for a complaint regarding a breach of the Transport Standards to be accompanied by a complaint alleging a breach of the DDA. In essence, a breach of the Transport Standards results in a breach of the DDA.

This view is supported by the AHRC publication, ‘Federal Discrimination Law’, which states that:

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8 PIAC, Submission to 2018 review, above n 1, 4-7; PIAC, Submission to Stage 1 reforms, above n 1, 8-12.

9 Explanatory Memorandum, Disability Discrimination Bill 1992, 15. Although section 69 of the DDA has been subsequently repealed, section 46P of the *Australian Human Rights Commission Act 1986* (Cth) (which was modelled on section 69 of the DDA) and section 35.1(2) of the *Disability Standards for Accessible Public Transport Guidelines 2004* (No. 3) (Cth) confirm that a complaint may be made to the AHRC alleging a breach of the Transport Standards.

> It is unlawful for a person to contravene a disability standard. The exemption provisions (Part 2 Division 5) generally do not apply in relation to a disability standard. However, if a person acts in accordance with a disability standard the unlawful discrimination provisions in Part 2 do not apply to the person's act. [footnotes omitted] [10]

The decision of *Innes v Rail Corporation of NSW (No 2)* confirmed that a breach of Transport Standards also constituted a breach of the DDA.[11]

However, the provisions of the Transport Standards themselves do not confirm that a breach of the Transport Standards is unlawful. This has created some confusion about whether a breach of the Transport Standards is unlawful in the absence of a breach, or at least a complaint alleging a breach, of the DDA. For example, in *Haraskin v Murrays Australia* [2013] FCA 217, Nicholas J stated that:

> Non-compliance with the Standards does not of itself provide a sufficient basis for a person to lodge a complaint under ss46P or to commence a proceeding under s46PO(1). This is because non-compliance with the Standards does not of itself constitute unlawful discrimination.[12]

While PIAC respectfully disagrees with this view, for the reasons set out above, it highlights the need for clarity within the Transport Standards. The decision in *Haraskin* may result in complainants being required to lodge complaints claiming a breach of both the DDA and the Transport Standards. This will create practical difficulties for claimants who would otherwise lodge a complaint alleging a breach of the Transport Standards only. This is because the DDA contains legal requirements that do not exist in the Transport Standards. For example, the DDA requires complainants to make an allegation of indirect or direct discrimination, to show that they were treated less favourably because of their disability and grapple with concepts such as reasonable adjustments. By contrast, a complaint alleging a breach of the Transport Standards merely needs to show that the Transport Standards were not complied with. The requirement for complainants to deal with the DDA in addition to the Transport Standards when lodging a complaint to the AHRC would create an added hurdle for complainants who already bear a heavy burden when it comes to taking steps towards enforcing compliance with the Transport Standards.

PIAC recommends that a section be added to the Transport Standards to confirm that a breach of the Transport Standards is unlawful. PIAC recommends that this section confirm that a person may lodge a standalone complaint alleging a breach of the Transport Standards in the AHRC.

Recommendation 6 – A breach of the Transport Standards should be expressed to be unlawful

A section should be added to the Transport Standards to confirm that a breach of the Transport Standards is unlawful. This should include confirmation that a person may lodge a standalone

10 AHRC, Federal Discrimination Law (2016), ch 5, p 228.
11 *Innes v Rail Corporation of NSW (No 2)* [2013] FMCA 36 at [148]-[156].
12 *Haraskin v Murrays Australia* [2013] FCA 217, 86.

complaint alleging breach of the Transport Standards in the Australian Human Rights Commission.

4.5.2 Limitations of an individual complaints-driven process

Another issue raised in our previous submissions is the current reliance on individual complaints for enforcement of the Transport Standards. Instead, enforcement should be through a robust regime of monitoring compliance with the Transport Standards.

Reliance on an individual-complaints driven process requires individuals who experience discrimination to hold discriminators to account. This results in underreporting, a lack of accountability and a lack of meaningful action to improve the accessibility of public transport.

While these problems of an individual complaint-based system apply to all discrimination matters, they are highly relevant to breaches of the Transport Standards, which signify systemic issues that impact the rights of people beyond the individual complainant.

We have previously submitted:[13]

> A fundamental problem with the Transport Standards is the lack of enforcement mechanisms other than through individual complaints. The current individual complaints-based process is not appropriate for adequately and equitably addressing the implementation of Standards. There are a number of limitations on the use of the legal process by individuals to enforce compliance with the Transport Standards.
>
> PIAC's experience in assisting people with disability suggests that individual complaints should not act as a monitoring process to regularly ensure compliance with the Transport Standards, and indeed such an ad hoc process could not possibly achieve effective monitoring in any event. If, however, legal action remains the only mechanism to enforce compliance with the Transport Standards, PIAC submits that amendments should be made to the existing complaints system, and in particular the process for bringing a complaint through the federal courts.
>
> Taking legal action to enforce the Transport Standards involves significant commitment and risk by individual litigants, often for limited personal gain. It is time-consuming, financially risky and can be stressful and embarrassing. If resolved at conciliation, settlements are binding only between the parties to the complaint. Therefore, while a settlement may provide for systemic outcomes, such as training or policy changes, only the complainant who is a party to that settlement agreement can enforce it if the respondent fails to fulfil its obligations.
>
> In addition, conciliated agreements are often resolved on the basis that they be kept confidential. This means that the substance of the improvements that result from the complaint, even if it is merely to enforce the current legal standards, remains confidential and cannot be used by other people as a precedent to seek improvements more generally. If conciliation fails, and the complainant proceeds to a hearing, they face many obstacles. If the complainant succeeds at hearing, the outcome will generally be a declaration of unlawful

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[13] PIAC, Submission to 2012 review, above n 1, 27-28.

discrimination and a modest award of compensation. As such, the available remedies are often inadequate in fully eliminating discriminatory practices.

PIAC urges action to resolve these issues, specifically the burdens for individual complainants bringing complaints about breaches of the Transport Standards through the federal courts. There needs to be an adequate complaints system in place. Without such a system, there is no way of assessing the effectiveness of both Stage 1 and Stage 2 Consultation RIS reforms, should they be implemented in regulation. PIAC therefore recommends that an adequate complaints system is implemented as a matter of urgency.

4.5.2.1 Standing

As noted in our earlier submission, a possible remedy to the current individual complaints-based process would be to amend the standing provisions under the AHRC Act and the *Federal Court of Australia Act 1976* (Cth), to allow organisations (for eg, disability representative organisations and peak bodies) who can demonstrate a sufficient interest in the proceedings to bring complaints to the Federal Court in their own right or on behalf of an individual or two or more individuals.[14] As PIAC previously submitted, often such organisations 'are better placed than individuals to make complaints regarding discrimination, particularly in the case of systemic discrimination'.[15] Amending the standing provisions as above would be particularly useful to bring claims of disability discrimination relating to breaches of the Transport Standards, given such breaches would be systemic, and the public interest in resolving such breaches would be significant.

The AHRC *Free & Equal* Position Paper 2021 recommends that unions and other representative groups should be permitted to bring representative claims to court, consistent with the existing provisions in the AHRC Act that allow unions and other representative groups to bring a representative complaint to the Commission.[16] The *Free & Equal* paper further states that '[t]o facilitate this, representative organisations require adequate resourcing to bring these claims, and to support claimants through the process'.[17] PIAC considers that resourcing for representative organisations who can demonstrate a sufficient interest to enable them to bring complaints to the AHRC, or proceedings in court, should be considered as part of any proposal to reform the Transport Standards.

4.5.2.2 Litigation costs

Another ongoing barrier to the current individual complaints-driven process and enforcement of the Transport Standards, is the disincentive posed by litigation costs. As our previous submission noted, '[d]ue to the risk of an adverse costs order, many strong complaints relating to the Transport Standards do not proceed, or settle. This removes any precedent impact a successful

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14 PIAC, Submission to 2012 review, above n 1, 31. We note representative complaints cannot be brought in the Federal Circuit and Family Court of Australia.

15 PIAC, Submission to AHRC Free & Equal Anti-Discrimination Law Reform Discussion Paper, 17 < https://piac.asn.au/wp-content/uploads/2019/11/19.11.08-PIAC-Submission-Free-and-Equal-Anti-Discrimination-Law-Reform-Final.pdf>.

16 AHRC, *Free & Equal: A reform agenda for federal discrimination laws* (December 2021), 213-217.

17 Ibid, 213.

court decision might have.'[18] This issue needs to be resolved, even if the below Recommendation 7 (amending standing provisions) is also adopted.

Where an applicant is unsuccessful in their proceeding, each party should bear their own costs except in limited circumstances. In this regard, PIAC notes the approach to costs as recommended by the AHRC in the Respect@Work: Sexual Harassment National Inquiry Report:[19]

> …the Commission considers that the Australian Human Rights Commission Act be amended to insert a cost protection provision consistent with section 570 of the Fair Work Act 2009 (Cth). Such a provision should ensure costs may **only be ordered against a party** by the court if satisfied that the party instituted the proceedings vexatiously or without reasonable cause, or if the court is satisfied that a party's unreasonable act or omission caused the other party to incur costs. [emphasis added]

The AHRC recognises that such cost protection provision would be consistent with the objective of promoting consistency between the main legislative schemes.[20]

PIAC partially supports the AHRC's recommendation to amend the AHRC Act, as such costs protection would then apply to claims of disability discrimination, including a breach of the Transport Standards, subject to two amendments. First, the only costs that may be ordered against an applicant would be if the court is satisfied that the applicant instituted the proceedings vexatiously or without reasonable cause, or if the court is satisfied that an applicant's unreasonable act or omission caused the respondent to incur costs. Allowing a federal court to make an adverse costs order against an applicant only in these limited circumstances would enable greater access to justice.

Second, where an applicant is successful though, and the court has found a respondent has engaged in unlawful conduct in breach of the Transport Standards or DDA, the respondent should be liable to pay the applicant's costs because respondents should not be excused from paying costs where they have been found by a court to have breached anti-discrimination law (one-way costs shifting model). If there is no liability for costs, there will be less incentive for respondents to address ongoing discriminatory practices. Furthermore, applicants often rely on legal representatives acting on conditional costs arrangements and the availability of representation may be more limited if there is no prospect of the applicant's legal team recovering costs following a successful outcome.

If a one-way costs shifting model is *not* implemented, PIAC considers that legislating costs neutrality and/or an increased use of cost capping mechanisms, would assist to reduce (but not cure) the uncertainty faced by applicants seeking to bring breaches of the Transport Standards, and DDA matters, to court. Some judicial discretion already exists to implement these protections but has not to date reduced the cost risks faced by applicants in bringing claims. As such, if a one-way costs shifting model is not adopted, PIAC recommends that the position proposed by the

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18 PIAC, Submission to 2012 review, above n 1, 34.

19 AHRC, *Respect@Work: National Inquiry into Sexual Harassment in Australian Workplaces* (2020), 507, Recommendation 25.

20 Ibid 29.

AHRC in its *Free & Equal* Position Paper 2021 be implemented.[21] This would require an amendment to the *Federal Court Rules 2011* (Cth) to ensure the court retains a discretion to award costs in the interests of justice. It would also require amendments to the AHRC Act to include mandatory criteria to be considered by the courts in determining whether to award costs in the interests of justice.

Recommendation 7 – Standing provisions under the Australian Human Rights Commission Act 1986 (Cth) and the Federal Court of Australia Act 1976 (Cth) should be amended

The Australian Human Rights Commission Act 1986 (Cth) and the Federal Court of Australia Act 1976 (Cth) should be amended to include a provision allowing organisations to bring a complaint in their own right or on behalf of an individual or two or more individuals in relation to a breach of the Disability Discrimination Act 1992 (Cth) or the Transport Standards to both the AHRC and the Federal Court, where the organisation can demonstrate a sufficient interest in the complaint.

Recommendation 8 - The Australian Human Rights Commission Act 1986 (Cth) should be amended to introduce a provision to limit adverse costs risk for applicants and a one-way costs shifting model

The Australian Human Rights Commission Act 1986 (Cth) should be amended to insert a cost protection provision for applicants similar to section 570 of the Fair Work Act 2009 (Cth). The amendments should specify that costs will only be ordered against an applicant if the court is satisfied:

a) the applicant instituted the proceedings vexatiously or without reasonable cause; or

b) that an applicant's unreasonable act or omission caused the respondent to incur costs.

Where an applicant is successful in a proceeding, the respondent should be liable to pay the applicant's costs.

Alternatively, if a one-way costs shifting model is not adopted, PIAC recommends that the position proposed by the AHRC in its Free & Equal Position Paper dated December 2021 be implemented.

5. Equivalent access (chapter 2)

The extent to which the use of equivalent access provisions is compliant with the Transport Standards depends on the extent to which the equivalent standard of amenity, availability, comfort, convenience, dignity, price and safety is maintained. For operators and providers, this can only be determined if a complaint is brought against them. However, this means the burden of responsibility for enforcing compliance with the Transport Standards is on people with disability making a complaint.[22]

If the status quo was maintained, as the Stage 2 Consultation RIS observes '[t]here would likely be continued reluctance from operators to seek equivalent access solutions due to concerns about the lack of assurance and legal certainty'.

21 AHRC, *Free & Equal: A reform agenda for federal discrimination laws* (December 2021), 190-201.
22 This is a problem of the over DDA, and not just of the equivalent access provisions.

In July 2020, the AHRC released guidelines on the operation of the equivalent access provisions (**AHRC equivalent access guidelines**).[23] The guidelines were developed in response to transport operators and providers seeking further clarity around using the equivalent access provisions. Given this further clarity was needed, the non-regulatory option is unlikely to provide certainty to operators and providers.

PIAC broadly supports the regulatory option described in Chapter 2, including:

- use of equivalent access provisions in consultation with relevant stakeholders including the disability community;
- co-design of proposed equivalent access outcomes;
- evaluation of consultation and co-design processes;
- preparation of a draft report proposing an equivalent access outcome;
- independent peer review of the draft report; and
- validation by a certification body of the proposal including how co-design and consultation was incorporated.

However, PIAC is concerned with how the proposed peer review process will occur. The Stage 2 Consultation RIS states:[24]

> Under a proposed new process, operators and providers could utilise their own accessibility experts to peer review the performance solution reports or seek an independent expert to undertake the peer review process on their behalf.

If an operator or provider is permitted to use 'their own accessibility expert', the peer review process will not be independent. For the peer review process to be effective and meaningful, PIAC is strongly of the view that the peer review process must be independent from the Department. The report must be peer reviewed by a person with disability, with an understanding of the accessibility issue, but who is not involved in the transport operator or provider's business or operations. The peer reviewer must have an arms-length relationship with the operator or provider.

To ensure the independence of peer reviewers, there should be consultation about suitability for this role with disability representative organisations. Alternatively, the National Inclusive Transport Advocacy Network (NITAN) could fulfil the role of peer reviewer.

PIAC supports the central role of people with disability in contributing to equivalent access outcomes. Section 33.4 of the Transport Standards requires operators and providers to consult with passengers with disability who use the service or with organisations representing people with disabilities about any proposal for equivalent access. The *Disability Standards for Accessible Public Transport Guidelines 2004* (No. 3) (Cth) also encourage 'consultation between operators, providers, all levels of government and the community to ensure that accessible public transport initiatives will reflect local and regional needs'.[25] However, it is not clear what the requirements of consultation are to ensure the consultation process is meaningful and genuine. To this end, the

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23 AHRC, 'Guidelines: Equivalent Access under the *Disability Standards for Accessible Public Transport 2002* (Cth)' (July 2020).
24 Page 42.
25 *Disability Standards for Accessible Public Transport Guidelines 2004* (No. 3) (Cth), s 36.1(1).

AHRC equivalent access guidelines provide much needed clarification on consultation and should be embedded in the Transport Standards.

Similarly, any regulation introducing co-design should also make clear what is required for an effective co-design process.

The certification body should appoint people with expertise and qualifications in accessibility, building compliance and public transport. The decision-maker or panel of decision-makers from the certification body should include people with lived experience of disability.

A certification process would provide operators and providers with the assurance and legal certainty to use the equivalent access provisions and develop equivalent access outcomes. This would be in line with the objective of these reforms to provide greater certainty to operators and providers regarding their responsibilities under the Transport Standards. Ultimately, certified equivalent access outcomes should improve accessibility and reduce discrimination.

Further, if equivalent access outcomes are certified, then the burden for enforcing compliance with the Transport Standards would not fall to individuals to make a complaint.

Recommendation 9 - Equivalent access solutions should be developed through consultation and co-design, peer reviewed and certified

A regulatory reform to use equivalent access provisions should be introduced to give transport operators and providers assurance and legal certainty. A regulatory reform should be developed requiring:

- *use of equivalent access provisions in consultation with relevant stakeholders including disability representative organisations and the disability community;*
- *co-design of proposed equivalent access outcomes;*
- *evaluation of consultation and co-design processes;*
- *preparation of a draft report proposing an equivalent access outcome;*
- *independent peer review of the draft proposal of equivalent access outcomes and solutions; and*
- *validation by a certification body of the proposal including how co-design and consultation was incorporated. The certification body should appoint people with expertise and qualifications in accessibility, building compliance and public transport and should include people with lived experience of disability.*

Recommendation 10 – Clarification on consultation requirements

The Transport Standards should provide clarification on how consultation should occur in relation to any sections of the Transport Standards where consultation is encouraged or required. The guidance on consultation contained in the Australian Human Rights Commission 'Guidelines: Equivalent Access under the Disability Standards for Accessible Public Transport 2002 (Cth)' should be incorporated into the Transport Standards.

6. Rideshare (chapter 3)

The Transport Standards do not provide a definition of what constitutes a 'taxi'. Ridesharing services like Uber are increasingly more prominent in Australia, and often provide a cheaper or more convenient alternative to regular taxi services. As the Stage 2 Consultation RIS acknowledges, it is not clear whether the Transport Standards apply to rideshare services.

Given the concerns raised by stakeholders as listed in the Stage 2 Consultation RIS,[26] and which align with submissions made by PIAC in our submission to the 2018 review,[27] the minimum accessibility requirements that apply to taxi operators should also apply to rideshare services.

PIAC supports the regulatory option described in Chapter 3, including amending the meaning of 'conveyance' and 'public transport service' to include rideshare services, and ensuring the requirements that currently apply to 'taxis' are amended to be fit for purpose in application to rideshare conveyances.

Explicitly identifying that the Transport Standards apply to rideshare services will mean these services must comply with access requirements, giving people with disability access to a greater range of services that may provide cheaper and more convenient alternatives to regular taxi services.

Due to its discretionary nature, the non-regulatory option is unlikely to improve inclusion or access to rideshare services for people with disability and will not go far enough to eliminate discrimination.

The delayed action to date to explicitly incorporate rideshare services in the Transport Standards highlights the failings of the five-yearly review processes to respond to developments in modes of transport. Part 34 of the Transport Standards requires the Minister for Transport, in consultation with the Attorney-General, to review the efficiency and effectiveness of the Transport Standards every five years and identify any necessary amendments. However, in 20 years, despite three prior reviews, no changes have been made. The development of new technologies and the rise of rideshare services further demonstrate that the Transport Standards need to be subject to more regular legislative evaluation and change (see our Recommendation 1 above).

Recommendation 11 - Include rideshare services in the Transport Standards

The regulatory option should be implemented to amend the Transport Standards to explicitly include rideshare services in the Transport Standards.

7. Dedicated school buses (chapter 4)

Dedicated school bus services are currently exempt from some sections of the Transport Standards. The exemptions effectively mean that dedicated school bus services do not have to comply with the physical access requirements in the Transport Standards. More specifically, the exemptions remove any requirement that dedicated school buses are accessible for any student

26 See Stage 2 Consultation RIS, 46.

27 PIAC, Submission to 2018 review, above n 1, 8-9.

using a mobility device, or any student who has a mobility impairment (eg, there is no requirement to provide for handrails or grabrails).

Any reform must result in the Transport Standards being fully applicable to dedicated school buses. Therefore, PIAC supports the regulatory option 1 described in Chapter 4, to remove the exemptions for dedicated school buses, such that there would be no distinction between dedicated school buses and other buses.

PIAC does not support regulatory option 2. This option gives transport operators and providers the possibility of asserting that a low floor bus is not 'practical and available', eg, due to the road terrain. Such exceptions would enable operators and providers to use a high floor bus, which may not be accessible if the bus is travelling in an area where it has not been determined that there is a 'need for access to on-board accessible features by passengers using mobility aids'.[28] In circumstances where a low floor bus cannot be used, all high floor buses should be accessible.

Further, if all high floor buses are not accessible, then not all bus services would be accessible. Therefore, regulatory option 2 would not realise all the benefits of option 1. For example, as all school buses would be compliant with the Transport Standards under option 1, all school buses would be available for other public transport services (eg, rail replacement services), giving people with disability confidence that all buses will be accessible and facilitate the social inclusion of people with disabilities. Additionally, if all school buses were compliant with the Transport Standards, wheelchair accessible taxis would not be used as an alternative or parallel service in contravention of equivalent access principles. The reduced demand for wheelchair accessible taxis during school drop-off and pick-up times would mean that wheelchair accessible taxis would be available to meet the demand of other users of wheelchair accessible taxis.

Due to the discretionary nature of the non-regulatory option, uncertainty as to whether school bus services comply with the Transport Standards will remain. Further, there being no compulsion to comply, the non-regulatory option will continue to contribute to the lack of accessible transport for students with disabilities and will not eliminate discrimination.

As PIAC noted in our submission to the 2012 review,[29] operators and providers of modes of transport that are not currently covered, or are exempt from certain requirements (ie, dedicated school buses), have been required to comply with the DDA since it was introduced in 1992. This means that for 30 years, it has been unlawful for those operators and providers to discriminate against people because of their disability in the provision of services relating to transport or travel, unless they are able to prove that they would suffer an unjustifiable hardship. If exemptions for dedicated school buses are removed from the Transport Standards, the defence of unjustifiable hardship will still be available.

Recommendation 12 – Remove dedicated school bus exemptions from the Transport Standards

Regulatory option 1 should be implemented to amend the Transport Standards to remove all exemptions for dedicated school buses.

28 Stage 2 Consultation RIS, page 55.

29 PIAC, Submission to 2012 review, above n 1, 18.

8. Implementation (chapter 61)

As a general point, the timeframes for implementation and compliance must consider that operators and providers have been aware of the specific targets that exist within the current Transport Standards since the legislation was implemented in 2002. Providers and operators have been aware of minimum accessibility requirements for two decades. While regulation will provide specificity to accessibility requirements, much of this is not new. Implementation of all reforms should occur expeditiously and without further unreasonable delay.

For any agreed regulatory changes, PIAC supports implementation option 1 described in chapter 61, for a new compliance schedule to outline compliance target dates for individual sections of the Transport Standards. Option 1 is preferred as implementation based on individual sections aligns with the structure of the Transport Standards. This approach to implementation is more conducive to monitoring compliance and enforceability.

Further, option 1 provides an approach to compliance as is currently provided for in Schedule 1 ie, target dates for individual sections of the Transport Standards rather than target dates for transport assets. In other words, if the approach to compliance changes from individual sections to transport assets, this may result in significant changes to the management of asset compliance and result in further delay to compliance. Moreover, the Stage 2 Consultation RIS foreshadows the following challenges with option 2:[30]

> There may be difficulties in defining sets of assets and which amended elements of the Transport Standards apply for each different asset. There may also be difficulties where there are different responsibilities of assets. For example, at bus stops or tram stops local government, road authorities and the Transport Standards may intersect.

The Transport Standards should require the Department to consult with disability representative organisations and the disability community in developing a new compliance schedule. Consultation should be in line with Recommendation 10 above.

Conversely, Option 2 requires identification of assets, which would not account for new or emerging technologies or innovative assets or modes of transport. It would be uncertain how the compliance schedules would apply to new technologies or modes of transport. Such uncertainty is likely to delay or impede compliance.

PIAC does not support implementation option 3 as there would be no certainty when an existing asset would be compliant (if at all). Non-compliance of existing assets does not eliminate discrimination against people with disability and does not promote the full inclusion of people with disabilities in the community. Further, as the Stage 2 Consultation RIS notes, the lack of clarity around 'substantial refurbishment or alteration'[31] is unlikely to provide operators and providers with certainty regarding their responsibilities. A compliance schedule provides certainty, transparency and accountability for all stakeholders.

30 Page 369.
31 Page 370

Recommendation 13 - A new compliance schedule outlining compliance target dates for individual sections of the Transport Standards should be developed in consultation

For any agreed regulatory changes, option 1 should be implemented, namely a new compliance schedule outlining compliance target dates for individual sections of the Transport Standards. The Transport Standards should require the Department to consult with state and territory governments, public transport operators and providers, disability representative organisations and the disability community in developing a new compliance schedule. Consultation should be in line with Recommendation 10 of the recommendations made in this submission. Implementation of all reforms should occur expeditiously and without further unreasonable delay.

9. Air transport

The Transport Standards and Schedule 1 describe outcomes that providers of *all* modes of transport (to which the Transport Standards apply) are expected to achieve over specified time periods. However, air transport is not comparable to other modes of transport. It is a unique mode of transport, with specific issues and requirements.

Air travel encompasses a number of elements including booking a ticket, transportation of mobility devices, security screening, moving within the terminal, boarding and disembarking aircraft. The Transport Standards fail to adequately take into account all of these elements of air travel, and the level of complexity passengers with a disability encounter when travelling by air. As an example, the Transport Standards contain no provisions to ensure the accessibility of an airline's ticket booking process or the minimum assistance to be provided to move through the airport and to/from the aircraft.

Further, the Stage 2 Consultation RIS does not propose any reforms to specifically improve the accessibility of air travel despite the current Transport Standards not adequately meeting the accessibility needs of people with disabilities. The Transport Standards do not ensure equal access to air travel.

In relation to other modes of transport, state, territory and local government agencies are involved in ownership or regulation of aspects of service delivery. By contrast, regulation of the aviation industry is at a federal government level, by the Department. However, a lack of oversight and enforcement mechanisms have resulted in the inconsistent application of accessibility standards by airlines and airports. Inconsistencies between services limits choice for consumers. As we previously submitted, the outcome of the lack of regulation and guidance has reduced access to air transport for people with disabilities.[32]

Due to the many issues specific to air travel, it is not possible to achieve a consistent outcome with other modes of transport. As a result, the current Transport Standards are not fit for purpose for air travel – specific standards or specific legislation for operators and providers of air transport are required. The United States and the European Union provide examples of a specific standard or legislation for air travel.[33]

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32 PIAC, Submission to 2007 review, 28.

33 *Air Carrier Access Act of 1986*, 49 USC § 41705; *Nondiscrimination on the Basis of Disability in Air Travel*, 14 CFR Part 382; *Regulation (EC) No 1107/2006 of the European Parliament and of the Council of 5 July 2006 concerning the rights of disabled persons and persons with reduced mobility when travelling by air.*

These specific standards should be administered and monitored for compliance by a federal department with responsibility for the aviation industry. In this regard, the Department provides guidance to airline and airport operators to develop Disability Access Facilitation Plans and publishes those plans on its website. In addition, the Department provides secretariat support to the Aviation Access Forum. Therefore, the Department or an agency within the Department, with its expertise in air travel, is best placed to commence co-design with people with disability, administer the specific air travel standards or legislation that is developed and incorporate compliance measures along with other regulatory requirements.

As an example, PIAC would suggest that compliance with the specific air transport standards or legislation should be a core requirement of airline licensing.

The national transport agencies of the United States of America, Canada and the European Union also produce specific guidance for people with disabilities travelling by air describing their rights and obligations based on their respective regulations, standards and codes of practice.[34]

Currently, the Australian Civil Aviation Safety Authority (**CASA**) publishes 'advice for flying safely' for travellers with disabilities on its website.[35] However, this advice is limited and appears to acknowledge the inconsistent and discriminatory practices across airlines. For example, the advice states that people with disability should learn what support services are available and arrange them ahead of time but 'if an airline doesn't or can't meet your needs, try booking with another airline.'[36] The advice also states that customers '*should* get their wheelchair or mobility aid back as close as possible to the door of the aeroplane'.[37] However, despite what the advice says 'should' occur, this is not reflected in all airline policies and practices and needs to be enshrined in specific standards or legislation. This CASA advice demonstrates the need for a stronger framework to be implemented to mandate accessibility requirements for airports and airlines to ensure equal access to air travel. Specific standards or legislation, along with guidance, should be developed for the benefit of customers with disability, airlines and airports to clarify rights, obligations and to promote uniformity.

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34 U.S. Department of Transportation, 'Airline Passengers with Disabilities Bill of Rights' *Traveling with a* Disability (web page) <https://www.transportation.gov/individuals/aviation-consumer-protection/traveling-disability>; Canadian Transportation Agency, 'Take Charge of Your Travel: A Guide for Travellers with Disabilities' (web page) <https://otc-cta.gc.ca/eng/publication/take-charge-your-travel-a-guide-travellers-disabilities>; European Union, *Your Europe*, 'Rights for travellers with disabilities or reduced mobility' (web page) < https://europa.eu/youreurope/citizens/travel/transport-disability/reduced-mobility/index_en.htm#plane>.

35 Civil Aviation Safety Authority, 'Passengers with disability and reduced mobility' (web page) < https://www.casa.gov.au/operations-safety-and-travel/travel-and-passengers/passengers-disability-and-reduced-mobility>.

36 Civil Aviation Safety Authority, 'Passengers with disability and reduced mobility: Planning for travel with a disability' (web page) <https://www.casa.gov.au/operations-safety-and-travel/travel-and-passengers/passengers-disability-and-reduced-mobility/planning-travel-disability>.

37 Civil Aviation Safety Authority, 'Passengers with disability and reduced mobility: Wheelchairs and mobility aids' (web page) <https://www.casa.gov.au/operations-safety-and-travel/travel-and-passengers/passengers-disability-and-reduced-mobility/wheelchairs-and-mobility-aids> [emphasis added].

Recommendation 14 - Specific standards or legislation for air transport should be co-designed and administered by the Department of Infrastructure, Transport, Regional Development and Communications

Specific standards or legislation for air transport should be co-designed with people with disability for operators and providers. These standards should be administered and monitored for compliance by the Department of Infrastructure, Transport, Regional Development and Communications.

Recommendation 15 - A guide for air travel for customers with disabilities should be developed on an industry-wide basis

A guide for air travel describing the rights and obligations of customers with disabilities and complaint processes should be developed in consultation with customers with disabilities. This should be developed on an industry-wide basis, widely available and promoted by airline staff.

10. Use of Australian Standards

The reliance on the Australian Standards in the Transport Standards is problematic in circumstances where those Australian Standards are not freely accessible to the public. This has created a situation where, to understand the outcomes required by the Transport Standards and to hold transport operators and providers accountable, a member of the public has limited access to Australian Standards or must purchase them at a significant cost.

Limited access to documents or requiring people to purchase documents so that they may understand and enforce their legal rights is disempowering and is an impediment to holding transport operators and providers accountable.

PIAC acknowledges that in 2019 Standards Australia released its Distribution and Licensing Policy Framework anticipating that access to Australian Standards for non-commercial use will be available by December 2023, subject to financial sustainability considerations and third party rights.[38]

PIAC repeats its previous recommendation that either the references to the Australian Standards are removed and replaced with the text of the Australian Standards or other wording which sufficiently describes the regulatory standard, or to append the text of the relevant provision of the Australian Standards referred to in the Transport Standards.

Recommendation 16 - Address the use of Australian Standards in the Transport Standards

The Transport Standards should be updated to either replace references to the Australian Standards with the full text of the applicable standard, or the relevant provisions of the Australian Standards which are used in the Transport Standards should be appended to the Transport Standards. Members of the public should have access to the Australian Standards to understand their rights and be able to hold transport operators accountable to the Transport Standards.

[38] Standards Australia, *Distribution and Licensing Policy Framework* (November 2019) <https://www.standards.org.au/StandardAU/Media/attachment/media%20release/Standards-Australia-Distribution-and-Licensing-Policy.pdf>.